



WorkCover **independent** review office

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Annual Report 2014

The WorkCover Independent Review Office 2013–14 Annual Report has been prepared in accordance with the relevant legislation for the Hon. Dominic Perrottet MP.

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22 December 2014

The Hon. Dominic Perrottet MP
Minister for Finance and Services
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Minister,

In accordance with the *Workplace Injury Management and Workers Compensation Act 1998*, I have pleasure in submitting, for your information and presentation to Parliament, the Annual Report of the WorkCover Independent Review Officer for the period from 1 July 2013 to 30 June 2014.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kim Garling', with a horizontal line underneath.

Kim Garling
WorkCover Independent Review Officer

MESSAGE FROM THE WORKCOVER INDEPENDENT REVIEW OFFICER

This office has three major operational functions:

- Dealing with complaints from workers and employers about insurers;
- Funding injured workers with claims against insurers; and
- Reviewing work capacity decisions of insurers

In addition WIRO oversees the operation of the WorkCover Scheme and provides advice and makes recommendations about the WorkCover Scheme to the Minister.

What started as a function to deal with complaints has become a major rapid dispute resolution method. When a matter which concerns an injured worker is received by the Call Centre, either by telephone or email (and very occasionally by mail), and raises an issue which requires a response from the insurer, a preliminary enquiry is sent with a request that a solution be provided (where possible) within 48 hours (two business days).

The insurers have all embraced this system and responded within that timeframe.

The outcome is that my office has been able to find a solution for the injured worker on average in 20 matters a week, which avoids the necessity to pursue the formal pathway.

One of the challenges for the office during the year has been to raise the awareness of the injured workers about the assistance this office does provide. The WorkCover Authority was not prepared during the financial year, to request insurers to notify injured workers of the existence of this office and its services. That would have been of major assistance to the injured workers.

That has been partially remedied since the end of the reporting period, however, there is a real reluctance to accept that this office actually assists injured workers to find a quick and effective solution to their concerns.

During the year as the old funding system phased out, and the majority of disputed claims were funded through the Independent Legal Assistance and Review Service ("ILARS"), it became apparent that valuable data was being collected.

As a general rule ILARS will have available the relevant material from the insurer as well as the evidence obtained by the lawyer for the worker. While an insurer may have much of this information in its files, this office has it in one place for all insurers (where there is a dispute) and all the relevant claim documentation is reviewed by one of the Principal Lawyers in the ILARS team.

That is an invaluable resource in identifying trends in claims, the time taken from the first request for funding through to the conclusion of the claim and also the efficiency of the dispute resolution management.

It has also enabled the office to introduce a new model for early and low cost resolution of the disputes where it is apparent that the dispute is one which should be resolved quickly.

While that is in its early stages it has already proved to be another valuable method for obtaining an early solution. This minimises the emotional upheaval for the worker and enables the employer and the insurer to reach a prompt outcome.

The WIRO contact centre received 1,544 enquiries from injured workers about their entitlements and 1,757 complaints about how their claim was being handled by the insurer. The protocol which has been accepted by the insurers generated a response within 48 hours and with the support and goodwill of the insurers we have been able to deal with most of these concerns within that time frame.

There are only a small minority (3%) of matters raised with the WIRO Contact Centre which result in a period of consideration which take longer than 30 days. This generally only occurs where the issues are complex and where further information is required from the parties.

While there has been an increase in the number of applications for procedural review by injured workers the number of applications is minimal having regard to the number of work capacity decisions made by insurers.

One of the major obligations imposed upon the government which was included in the 2012 reforms was to undertake a review of the 2012 amendments to determine whether the policy objectives of those amendments remained valid and whether the terms of the workers compensation acts remain appropriate to securing those objectives.

This review was undertaken by an external consultant under the supervision of the Office of Finance and Services. Regrettably the report that was released on 30 June 2014 contained many factual errors which demonstrated a lack of understanding as to how the Scheme operated.

From the information which is collected by this office it appears that the amendments have significantly achieved the policy objectives. The introduction of the work capacity assessment for determining access to earnings replacement has been particularly successful.

The resultant reduction in premiums and the reduction in ongoing claims was remarkable.

These reforms have also led to a reduction in future claims which has become apparent from the most recent statistics.

The aspects of the amendments which have not been as successful appear to have been hampered by disputes about the interpretation of the legislation.

For example, the decision by the NSW Court of Appeal in ADCO to overturn the decision of the President of the Workers Compensation Commission led to some workers obtaining benefits on the basis that the amendments did not apply to them. Other workers who were not aware of this decision were not so fortunate.

The High Court overturned the decision but the delay and the resulting uncertainty for many workers is unfortunate.

The NSW Legislative Council Standing Committee on Law & Justice undertook the first review of the exercise of the functions of the WorkCover Authority. That Committee delivered its recommendations on 17 September 2014 which was after the reporting period. It remains to see the response from the Government (due by 16 March 2015).

During the next year, it will be necessary to provide much education to insurers so that they appreciate the necessity to make work capacity decisions rather than deny liability on the basis of capacity. It is also apparent that there is a need for information about the reforms to be disseminated to the medical profession.

2014 has certainly been challenging and I am confident that 2015 will also be interesting.

A handwritten signature in black ink, appearing to read 'KA Garling', with a horizontal line underneath.

KA Garling
WorkCover Independent Review Officer

HIGHLIGHTS

Successful stakeholder engagement in Newcastle and Sydney

The WIRO's interview on ABC Radio Newcastle, on 26 June 2014, sparked discussion at a subsequent stakeholder event for the region. The perspectives of WIRO, workers, insurer and lawyers were all represented. The event gave participants in the NSW Workers Compensation System an opportunity to obtain and share valuable information about the role and function of WIRO and the impact of the 2012 reforms.

This success inspired WIRO to hold a seminar, in Sydney, on 29 August 2014. That seminar 'Myths and Realities' attracted about 500 participants and marked two years since the passage of the 2012 legislative amendments. Presentations by the WIRO and WIRO staff, a Union representative, Merit Review Service the Workers Compensation Commission, a self-insurer representative, a lawyer representing injured workers and a rehabilitation provider encouraged participation and vigorous discussion. The event also gave the participants the opportunity to meet the new Chief Executive Officer of Safety, Return to Work and Support.

WIRO also hosted a stand at the 2014 Royal Easter Show to raise awareness in the general public about the role and function of WIRO in the NSW Workers Compensation System.

The impact of ADCO

The decision of the High Court in *ADCO Constructions Pty Ltd v Goudappel* [2014] HCA 18 (*ADCO*) has had a significant impact on key stakeholders in the NSW Workers Compensation System after the 2012 reforms. In *ADCO*, the High Court overturned the decision of the NSW Court of Appeal that allowed a further workers compensation claim for lump sum compensation for whole person impairment of less than 11% made after 19 June 2012, where a previous claim had been made by the worker prior to that date. In this case, the worker had previously made a claim for weekly compensation but did not make a claim for whole person impairment until 20 June 2012. His whole person impairment was assessed at 6%. In overturning the decision of the Court of Appeal, the Court reiterated the parliamentary intent of limiting a worker's entitlement in the scheme to only one lump sum claim.

The impact of the 2012 reforms on the transitional provisions, as confirmed by *ADCO*, is that workers who lodge claims for whole person impairment on or after 19 June 2012 must be assessed as having whole person impairment of more than 10% to be entitled to lump sum compensation.

The WIRO takes the view that, where a claim for permanent impairment is made subsequent to 19 June 2012 in circumstances where a claim has, or claims have been made prior to 19 June 2012, funding may be granted when the worker's degree of impairment will be more than 10% whole person impairment.

Director ILARS shortlisted for leadership award

Paul Gregory, Implementation Director, was nominated for Safety, Return to Work and Support Annual Employee Awards for Leadership Excellence. This award covers all employees at various levels in all agencies in the Safety, Return to Work and Support jurisdiction and Paul was nominated for his exemplary leadership and guidance of ILARS. Paul has consistently exceeded organisational and operational expectations and was acknowledged for his concise and swift responses to stakeholder enquiries and complex issues in legislative and policy development. The fact that a WIRO Executive was shortlisted for an award of this nature is testament to the commitment, knowledge and skill WIRO staff demonstrate, in day-to day operations and in a high level strategic, policy and legislative environment.

Approved Lawyers

The number of lawyers who are Approved Legal Service Providers increased from 656 to 831 during the reporting period. During the year, the ILARS team became aware that many lawyers were potentially not active in the jurisdiction. WIRO aims to ensure that all approved lawyers have the requisite knowledge, skills and experience to competently represent injured workers in the Workers Compensation System, and therefore contacted those who were not apparently active to enquire about their status.

By employing this approach, WIRO discovered there were 36 lawyers who either wished to relinquish their status or were not contactable and subsequently removed their approval status. WIRO aims to ensure that lawyers are up-to-date so that injured workers can easily contact lawyers active in the jurisdiction who are currently practising and proficient.

WIRO acknowledges the sad passing of two lawyers during the reporting period and recognises their contribution to representing the interests of injured workers.

Innovation – improvements to the Resolve database

Since the inception of ILARS the number of invoices processed per month has increased from 80 to more than 1,000, and the ILARS database, Resolve, has proven robust in handling this increased volume. This capacity is testament to careful planning and decision-making in selecting the database and the skill and dedication of WIRO staff who contributed to the design phase of Resolve.

Improvements to the Resolve database during the reporting period include more succinct data such as: the nature of the worker's injury; the funding of certain disbursements; the name of Counsel briefed by an lawyer for hearings in the Workers Compensation Commission; identification of the specialist provider of medical evidence as funded; and a clearer distinction of the degree of whole person impairment percentage as assessed by that medical specialist. This information assists WIRO and stakeholders to isolate and quantify data that provides concise information for WIRO's reporting requirements, arrangements with stakeholders. Planned Resolve enhancements in the coming year will yield a more robust system that benefits not just WIRO but also stakeholders.

WHO WE ARE

The 2012 reforms to the Workers Compensation System created the WorkCover Independent Review Office headed by the Independent Review Officer. WIRO has a shared service arrangement with Safety, Return to Work and Support of the Office of Finance and Services. The Minister with portfolio responsibility for WIRO is the Minister for Finance and Services.

WIRO is a small but highly skilled agency of approximately 35 staff. The WorkCover Independent Review Officer (the WIRO), Kim Garling, is supported by an Executive comprising the Director of Employer/Insurer Complaints and Operations, Director of Complaints, WIRO Implementation Director, the Director Work Capacity Decision Reviews, and by administrative staff.

The Director Work Capacity Decision Reviews undertakes the majority of procedural reviews of Work Capacity Decisions once a Merit Review has been conducted by the WorkCover Authority's Merit Review Service.

WIRO's current structure and staffing is shown in Figure 1 (see Page 8). WIRO has endeavoured to recruit permanent staff during the reporting period and to maintain a staffing complement to meet changing operational needs. The organisational structure is intended to create an environment that is conducive to meaningful strategic planning and the success of longer term projects as well as running its day to day operations.

The bulk of the operational work at WIRO is undertaken by the ILARS and Complaints teams. ILARS lawyers receive and process requests for grants of assistance from lawyers who wish to represent injured workers. The Complaints team deals with enquiries, mostly by telephone, from injured workers, employers and lawyers about workers compensation issues. The small scale of the office dictates the approach to WIRO's work which is undertaken in an interdisciplinary fashion: operational staff assist on project work and contribute to the work of the WIRO and the Executive as required. This approach enables WIRO to deal with issues in a responsive manner.

The ILARS Director was shortlisted for a leadership excellence award and both the Complaints and ILARS teams were nominated for outstanding achievement awards in Safety, Return to Work and Support staff awards.

Lawyers who are successful obtaining grants of assistance for injured workers claim their fees from WIRO. WIRO's valued team of administrative staff process invoices and deal with invoicing and other issues as they arise. The WIRO Executive recognises that the organisation relies heavily on staff such as these to function efficiently.

Work Health and Safety

WIRO is committed to Work Health and Safety in its day-to-day operations and as part of management systems.

The WIRO's Work Health and Safety representative is responsible for the following systems supported by management in relation to health and safety:

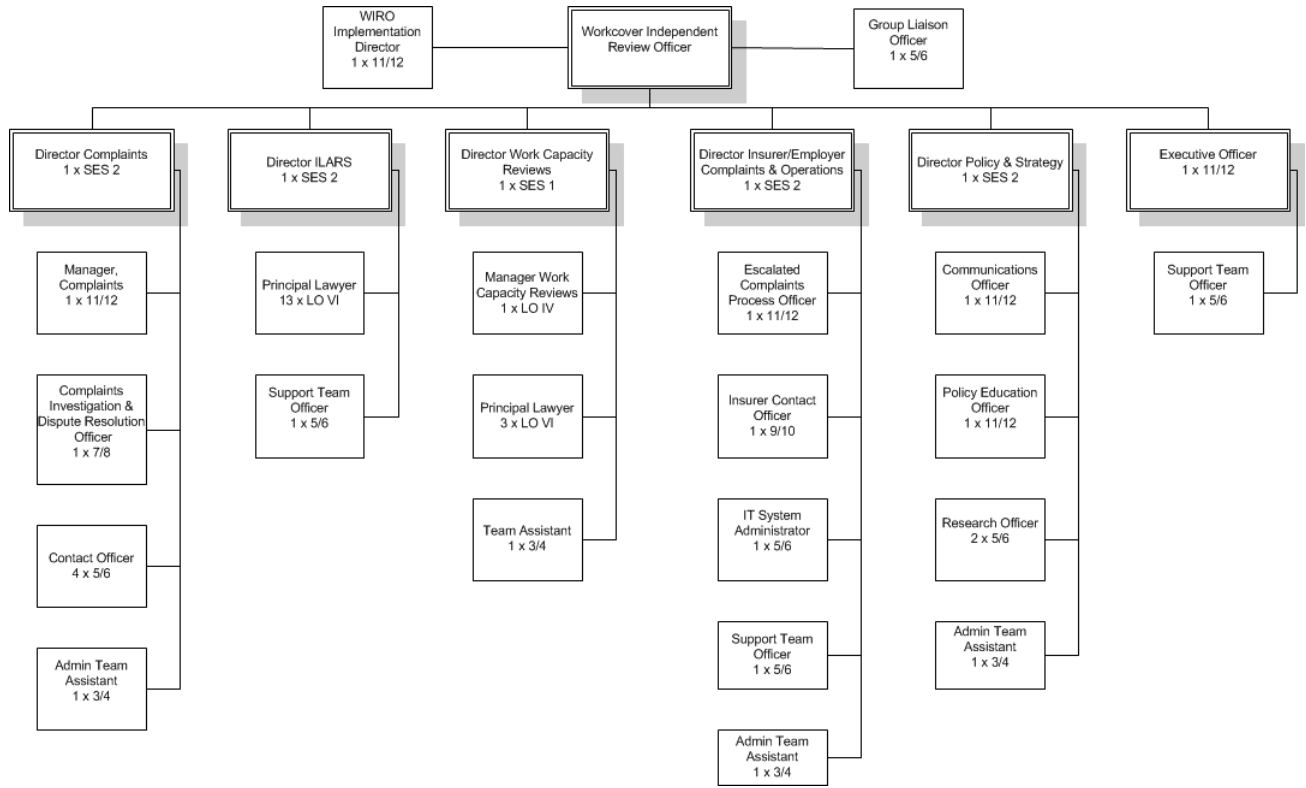
- quarterly attendance at the SRWS Work Health and Safety Committee meeting
- maintaining regular email subscriptions, staff newsletters, a notice board and policy and procedure documentation with dedicated information about Work Health and Safety
- arranging regular onsite reviews and assisting staff with the identification and reporting of risks and hazards in the workplace
- ensuring each staff member undertakes a six-monthly ergonomic evaluation of their workstation.

Initiatives include:

- arranging for a qualified massage therapist to do five-minute desk massages for a discounted fee and
- preparing the registration for WIRO to participate in the NSW Government's Get Healthy at Work Program.

An integral part of WIRO's approach to staff wellbeing, is a commitment to fostering a workplace that is professional, friendly and that values diversity. WIRO's quarterly staff newsletter, *WIRO Xpress*, illustrates this approach. *WIRO Xpress* offers staff an opportunity to share their stories and interests, and is instrumental in maintaining good staff morale at WIRO.

Figure 1 | Organisational chart, 30 June 2014



WHAT WE DO

WIRO provides an important accountability mechanism for the NSW Workers Compensation System that deals with complaints about insurers and manages the provision of legal assistance for injured workers.

WIRO's statutory functions, set out in section 27 of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act), are to:

- resolve complaints made by workers about insurers;
- review the procedures used by an insurer to make Work Capacity Decisions;
- encourage the establishment of a dispute resolution processes between employers and insurers; and
- undertake enquiries into and report to the Minister on matters arising in connection with the operation of the Workers Compensation Acts.

WIRO also has responsibility for facilitating access to independent legal advice for injured workers by providing funding to lawyers to assist and resolve disputes about entitlements. This role is a large proportion of the work undertaken by the office.

Christopher contacted WIRO stating that his insurer had previously advised him verbally that his surgery had been approved, but they had just informed him they were now reviewing liability for the procedure, which was due to take place in five days. The Complaints team contacted the insurer with an urgent preliminary inquiry. The insurer confirmed they would respond to WIRO by the end of the day. The insurer replied confirming that they would be continuing to accept liability for the surgery and had also made the necessary travel arrangements for Christopher and his companion to come to Sydney.*

**Not his real name.*

The NSW government sector values of integrity, trust, service and accountability, enshrined in the *Government Sector Employment Act 2013* are part of the way WIRO approaches its work. In particular WIRO is committed to:

Independence – We are impartial, fair and just

Respect – We show empathy, we are polite and honest

Collaboration – We work together, focusing on unity

Accessibility – We encourage direct, timely access to us as a resource and are responsive

Innovation – We find new and better ways of solving problems

COMPLAINTS

The WIRO Complaints team has achieved considerable success resolving disputes between injured workers and insurers during the reporting period. The approach of the team is collaborative while being independent and transparent.

The team has continued to grow and now has seven permanent staff members. During the reporting period the team was nominated for an 'Outstanding Achievement' award, and one team member was nominated for a 'Pursuit of Excellence' award in Safety, Return to Work and Support's staff awards.

In March 2014, WIRO invited case managers from some insurers to come and see the office and meet the Complaints team, giving both WIRO staff and the insurers' representatives an opportunity to exchange views and information. The visit allowed the Complaints team a better understanding of how insurers deal with the complaints and enquiries that WIRO receives.

The team continues to return excellent and timely results through our Preliminary Enquiries and Further Enquiries program. These results would not be possible without the assistance of the insurers who remain committed to working with WIRO to respond to the team within an agreed 48-hour time frame. Disputes that cannot be resolved as an enquiry are, when appropriate, taken up by the team as a complaint.

WIRO helps workers deal with concerns they may have about a decision made by an insurer, action taken by an insurer, or inaction on the part of an insurer that affects their entitlements, rights or obligations under NSW Workers Compensation Acts. These complaints may be about denial of liability, medical disputes or assessment of permanent impairment as well as the general process of claims management. WIRO is committed to finding a solution for these concerns wherever possible and quickly.

In 2013–14 the Complaints team dealt with 1,544 enquiries and resolved 890 complaints to the satisfaction of the injured worker. WIRO received 1,410 more complaints in 2013–14 than in 2012–13: an increase of 380%. This increase is significant, even taking into account the fact that WIRO did not operate for the full 2012–13 financial year. The monthly average number of complaints received was 146 in 2013–14, significantly higher than the 2012–13 average of 38.

Most complaints received related to weekly benefits and medical treatment for injured workers. Other common complaints related to denial of liability, lack of communication and delay. Of the enquiries received, 33% related to Work Capacity Decisions and Work Capacity Review process, and 21% concerned denial of liability.

Section 27C(c) of the 1998 Act requires WIRO to report on the numbers and types of complaints made during the year, but not dealt with. At the conclusion of the reporting period, WIRO had received 1,757 complaints and dealt with 1,741, including 44 complaints received in 2012–13, leaving 60 complaints received and not dealt with during the reporting period. Table 1 gives details of the primary issue to which those complaints related.

Table 1 Issues and outstanding complaints

Issue	Number of outstanding complaints
Whole person impairment	3
Medical	11
Weekly payments	26
Denial of liability	7
Communication	5
Other	8

WIRO resolved 80% of complaints made by employers in 2013–14.

The most common sources of employer complaint were premium increases arising from a claim and insurers accepting liability in circumstances where the employer believed liability ought not to have been accepted.

Some of the challenges the Complaints team has worked hard to meet during the reporting year have been:

- the changes to entitlements for injured workers in the NSW Workers Compensation Scheme and
- communicating information to those complainants about their entitlements.

WIRO acknowledges an important function of good complaints handling is identifying and targeting systemic issues. Emerging issues included:

- medical disputes
- disputes about the calculation of pre-injury average weekly earnings, and
- delays determining liability

WIRO aims to deal with these challenges and emerging issues in the next reporting period by:

- producing concise information, and materials about entitlements
- conducting information sessions for stakeholders
- training and educating insurers on legal issues

INDEPENDENT LEGAL ASSISTANCE AND REVIEW SERVICE

The Independent Legal Assistance and Review Service (ILARS) ensures that the approved lawyers provide independent legal advice to injured workers. ILARS makes grants of legal funding for those claims with reasonable prospects of success for a compensation claim against the insurer. WIRO approves lawyers who can seek grants of assistance. Details of approved lawyers are found at www.wiro.nsw.gov.au/find-a-lawyer/find-a-lawyer/.

CASE STUDY

Kathryn contacted WIRO after her insurer had not made payment for a permanent impairment claim that had been resolved by a Certificate of Determination 4 months previously. WIRO followed up this delay with Kathryn's insurer and they responded stating they would issue a cheque immediately to Kathryn's lawyer for \$40,000.*

**Not her real name.*

Injured workers who have not received what they believe to be their entitlement from the insurer and who wish to dispute a workers compensation decision may approach an approved lawyer.

Lawyers seeking to represent an injured worker may approach WIRO for a grant of financial assistance to investigate whether further legal action should be taken. Such an application will usually be by way of seeking funding to obtain a medical report. The ILARS team assesses information, which can be provided at this stage by either the lawyer or the worker, and grants funding if there are reasonable prospects of success for the injured worker in a compensation claim against the insurer.

Once an initial grant of assistance is made and further information is obtained, the ILARS team further assesses the information to determine whether the worker has a reasonably arguable case to proceed further. If this test is met the approved provider will receive additional funding to pursue the compensation claim.

ILARS performs two important functions in the NSW Workers Compensation System – the first is one of the advantages stemming from the 2012 reforms for many stakeholders.

The ILARS team identifies issues that are capable of resolution before they escalate and require legal representation. Lawyers for workers who contact WIRO with the intention of taking the compensation claim to the Workers Compensation Commission, may be referred to WIRO's Complaints team to try and resolve the matter with the insurer. By these means the delay and cost of taking a compensation claim to the Commission are avoided and the worker receives their entitlements sooner, and the issues are resolved for the insurer and the employer.

The second function is the ILARS grants process. This process ensures only those compensation claims that have some reasonable prospect of success proceed to the Commission. Only claims with merit receive funding and frivolous or vexatious claims are dispensed with at an early stage. In 2013–14, 1,120 (7%) of the 14,129 ILARS grant applications were declined on the basis that there was no reasonable prospect of the claim being successful.

WIRO aims to ensure workers have access to consistent and reliable legal advice to assist them with the conduct of their claims through the Workers Compensation Commission. One means of achieving this goal is by ensuring that approved lawyers have current knowledge and skills in the Workers Compensation area. At the conclusion of the reporting period there were 831 approved providers.

The vast majority of matters before the Workers Compensation Commission are now funded by ILARS grants of assistance. Most workers whose lawyers receive a grant of ILARS funding are successful before the Commission.

Matters approved

The number of ILARS grant requests grew dramatically over the reporting period with an average of 1,359 matters approved or pending each month. The busiest month was October, with 2,008 matters as a result of the decision of *ADCO*. Prior to May 2014 when the High Court overturned the NSW Court of Appeal’s decision, the Court of Appeal held that injured workers were able to bring a claim for permanent impairment under section 66 of the *Workers Compensation Act 1987* (the 1987 Act) without having to meet the 10% whole person impairment threshold if any sort of claim had been lodged before 19 June 2012. Many ILARS applications were made on behalf of injured workers who had made a claim before 19 June 2012 and wished to claim whole person impairment below the 10% threshold. To deal with the increased workload ILARS recruited six new lawyers during the reporting period.

The number of invoices (and their value) from approved providers processed and approved by WIRO increased from 85 (\$164,000) per month in July 2013 to 1,375 (\$3.9 million) in June 2014. The dedicated ILARS lawyers and the administration team dealt with the increased workload. The average amount per invoice increased from \$2,044 to \$2,841 over the year, an increase which reflects the increased legal work undertaken and indicates the complexity of the jurisdiction.

EMPLOYERS AND INSURERS

WIRO can assist employers and insurers to establish a complaint resolution process for complaints arising out of the Workers Compensation Acts and also deals with complaints from employers. This advice and assistance is currently available on a case-by-case basis as and when it is sought. WIRO will work with insurers and employers in 2014–15 to develop support material to assist with complaints handling processes for insurers and employers.

WORK CAPACITY DECISION

The 2012 reforms introduced a new basis for assessing whether a worker injured, in the course of their work, is entitled to weekly benefits by way of compensation. The new basis involved the insurer making a determination on the capacity of the injured worker to continue working, and replaced the previous system. The reforms also removed the determination of disputes about capacity and earnings from the Commission and replaced it with an administrative review process.

There are three points at which an injured worker can seek a review of a Work Capacity Decision.

Firstly, a worker may request an internal review by the insurer which is conducted by personnel who were not involved in the original decision. Secondly, if the worker is not satisfied with the outcome

CASE STUDY

Cameron contacted WIRO to dispute how his insurer had calculated his pre-injury average weekly earnings claiming a specific allowance should have been included. At the suggestion of WIRO, the insurer reviewed the matter and agreed that the allowance should have been included in Cameron’s calculations. A back payment of over \$11,000 was subsequently made to Cameron.*

**Not his real name.*

of that review he/she may seek a review of the merits of that decision by the Merit Review Service administered by the WorkCover Authority.

A worker who is unhappy with the outcome of the Merit Review Service may request that WIRO conduct a procedural review of the original Work Capacity Decision. This review may only examine the process followed in making the original Work Capacity Decision and cannot enter into the merits of the matter. WIRO will make recommendations on the decision-making process. The recommendation by WIRO is binding on the WorkCover Authority as well as the insurer.

Despite the increase in the number of Work Capacity Decision review requests injured workers are still precluded from obtaining legal advice in relation to this important review right.

Any recommendation is subject to review by the Supreme Court.

Lawyers may not, by Section 44(6) of the 1987 Act, charge workers for services for Work Capacity Decision reviews, and this prohibition has the practical effect of preventing access to legal advice by injured workers during such a review. A similar prohibition in relation to lawyers charging insurers for work in this regard has not been effective, creating a discrepancy that appears to operate unfairly in favour of insurers. As efforts to introduce a regulation have not been effective, WIRO has raised this aspect of the 2012 reforms with the NSW Government and it is discussed in more detail later in this report.

During the reporting period WIRO conducted procedural reviews of 129 work capacity decisions.¹

UNDERTAKING INQUIRIES

Section 27 of the 1998 Act provides that WIRO may undertake inquiries into, and report on such matters arising in connection with the operation of the Workers Compensation Acts as the WIRO considers appropriate or as may be referred by the Minister. The exercise of this function was, to some extent, overtaken by the Legislative Council Inquiry by the Law and Justice Committee – First Review of the exercise of the functions of the WorkCover Authority. WIRO gave evidence to the Inquiry about a number of obstacles to the effective functioning of this Office. The Inquiry will conclude during the 2014–15 reporting period.

PERFORMANCE

WIRO releases periodic performance reviews as part of its commitment to sharing the details of its activities and results. The performance review for the reporting period is on the WIRO website and some detail from that report, as well as high level information about the workload and performance, follows.

More detailed statistics are shown in Appendix A.

¹ 145 review requests were received, 16 of which were withdrawn without a review being conducted.

Table 2 | The big picture

	Received	Finalised	Outstanding ¹
Work capacity decision reviews	178	145	33
Complaints	1757	1741 ²	60
Enquiries	1238	1231	7
ILARS grant applications ³	15711	15377	334

1 Outstanding as at 5pm 30 June 2014 and may include matters received up until that time

2 Includes 44 received in 2012–13

3 Refers to requests for legal assistance made to ILARS and does not refer to the number of applications made to the Workers Compensation Commission

Matters received

WIRO has seen an increase in workload across all types of matter allowing for the fact that WIRO was not in existence for the full reporting period in 2012–13.

Matters finalised

Despite the increased workload, WIRO’s processes are proving timely and thus effective in keeping pace. When comparing the first and the second six months of the period, WIRO finalised 27% more complaints and 84% more enquiries. The number of finalised ILARS grant applications has held relatively steady after spiking through September to November 2013.

Current workload

At the end of the reporting period WIRO had on hand 60 complaints, 7 enquiries and 33 Work Capacity Decision reviews. At the same time there were 334 ILARS grant applications pending. In some circumstances the ILARS team requires further information from the approved provider to properly assess the grant application. In those circumstances the application is placed on hold to give the legal representative an opportunity to provide this additional information on behalf of the injured worker.

Since commencing operations in October 2012, the ILARS team has approved funding grants to almost \$95 million.

WIRO aims to determine ILARS grant applications within 10 days, and the average time taken to process grant applications during the reporting period was 15 days. The ILARS team met or bettered the 10-day timeframe in 45% of cases.

CASE STUDY

Stephanie’s lawyer submitted an ILARS application to make a claim for under payment of his client’s weekly benefits over several years. The ILARS team referred the matter to the Complaints team for possible resolution and after liaising with the insurer directly and requesting a review of Stephanie’s entitlements, it was discovered that she was owed \$60,000 in underpaid weekly benefits, which the insurer subsequently paid.*

**Not her real name.*

OUR APPROACH

WIRO aims to be responsive and speedy in its dealings with stakeholders, and in handling complaints and enquiries. The small size of the Office, use of a case management system and the interdisciplinary approach used by team members mean matters are quickly referred to where they can be resolved most effectively. Referrals can be made in real time without delay to the injured worker so that, for example, a complainant may seek a grant of legal assistance but the matter is best resolved as a complaint, or a complaint is received but a grant of legal assistance is clearly warranted.

While WIRO uses commonly accepted definitions of Complaint and Enquiry, in practice we look at whether:

- the matter involves a simple concern which can be answered without the need to involve the insurer, or
- the worker's concerns require a response from the insurer which may clarify what has occurred and provide an acceptable solution, or
- the complaint or enquiry raises systemic procedural matters which may warrant further investigation

WIRO's informal approach to complaint resolution seeks a solution to the matters of concern raised by or on behalf of the injured worker. This process is based on WIRO's Complaint Handling Protocol which is accepted by insurers who are asked to respond to us within 48 hours.

This cooperative approach between WIRO and the insurers is a singular achievement. The continued support of the insurers is a major factor in our ability to achieve sensible and prompt solutions.

If, at any stage, during the complaint resolution process our team identifies a legal issue which cannot be solved with the insurer, we may refer the matter to ILARS so the worker has access to independent legal advice.

Examples of complaint issues we have resolved include:

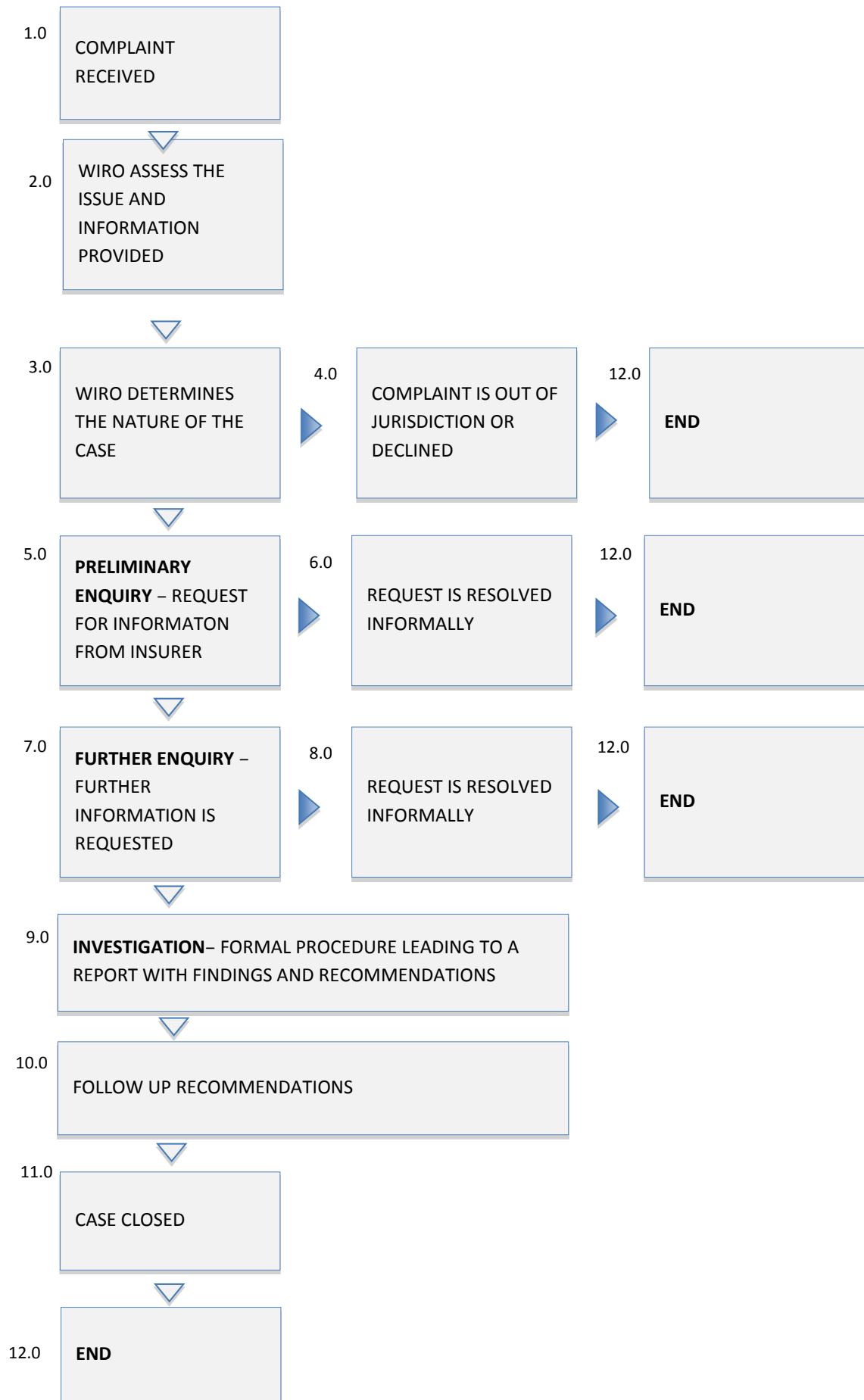
- denial of liability
- communication of problems with insurers
- general delays by insurers in decision-making
- errors in calculations or delays in receiving weekly payments
- referrals to independent medical specialists and approving medical treatment

Challenges WIRO faces when dealing with complaints and enquiries include:

- communicating effectively with injured workers who might be in distress because of the nature of the injury or the circumstances of the complaint
- communicating effectively, often with the assistance of interpreters, with injured workers with culturally or linguistically diverse backgrounds
- providing assistance in a highly complex, transitioning legal environment while ensuring that this assistance does not amount to legal advice

- navigating disputes with long histories and complex factual and legal information, and
- ensuring injured workers who are at a disadvantage because of psychological injuries or other mental health issues can access the services they need to obtain the benefits to which they are entitled.

Figure 2 | WIRO complaints resolution



INDEPENDENT LEGAL ASSISTANCE AND REVIEW SERVICE

ILARS deals with a high volume of grant applications under considerable pressure to process these applications quickly. The team aims to process grant applications or refer suitable matters to the complaints team for resolution in a timely fashion, usually within 10 business days.

ILARS received more than 15,000 applications in the 2013–14 reporting period.

Fifteen ILARS lawyers deal with new applications for legal funding, send out requests for further information, process invoices and applications for extended funding, and participate in project and other work according to the needs of WIRO.

The ILARS approach to dealing with funding application provides a quick but sound decision on a grant of funding by ensuring that all applications, enquiries, requests for extended funding and processing of invoices are dealt with within 10 business days from the date of receipt. The ILARS team achieves efficiencies by applying the case management approach of each ILARS lawyer handling each matter throughout the life of the matter.

The ILARS decision on whether to grant funding is based on an assessment of the prospects of the success of a claim or dispute by looking at:

- submissions made by the lawyer
- the currency and quality of the medical or clinical evidence provided in the application
- the application of the various legislative provisions in relation to the claim or dispute, and
- the practical considerations relevant to the particular facts of the claim or dispute.

Once there is decision to approve the grant of funding, lawyer are reminded of their obligations to their clients and to WIRO, in accordance with the Agreement for the Provision of Legal Services to Legally Assisted Persons and the terms in the Grant Application Guide.

As the provision of legal funding is at the discretion of WIRO, ILARS may not be bound by the accepted costs figures in Schedule 6 of the *Workers Compensation Regulation 2010*. The current costs schedule has been adopted, however, to encourage consistency and use an objective standard in relation to costs for ILARS-funded matters.

CASE STUDY

Andrew's lawyer had requested funding from ILARS to challenge an insurers decision to decline liability for surgery. The WIRO Complaints team contacted the insurer who responded stating Andrew's entitlement to payment for medical treatment had ceased by operation of Section 59A of the 1987 Act. WIRO pointed out that the surgery had been requested well in advance of the cessation date and all medical evidence supported the surgery. The insurer agreed to accept liability for the surgery after conceding that their own internal delay had resulted in the decision being made after the cessation date.*

**Not his real name*

COMMUNICATING WITH OUR STAKEHOLDERS

WIRO works with stakeholders in its day-to-day operations and through collaboration and consultation to ensure better outcomes for the NSW Workers Compensation System. The primary way WIRO makes itself accessible to all stakeholders is by its website. As part of a commitment to a paperless office and the transparency of operations, WIRO places all the information it produces on the WIRO website to assist stakeholders navigate the NSW Workers Compensation System.

WIRO's stakeholders include the following groups:

Injured workers

WIRO makes information available for injured workers on our website, and directly when an injured worker contacts WIRO by phone or email for assistance. WIRO has raised awareness of our role and function during the course of the 2013–14 financial year in a number of ways, including through the Unions. WIRO acknowledges that engaging the Unions does not engage all workers who might require assistance and is therefore developing more avenues and processes to roll out or test in the coming year.

Employers

In a similar fashion, employers engage with WIRO only when and if they encounter a problem with the workers compensation system in NSW. Employers have raised issues directly with WIRO during the year and WIRO has also been made aware of issues of concern to employers through such channels as questions in parliament and the media. WIRO engages the particular employer directly if these issues have arisen. WIRO can raise awareness of our role and function through employer associations, although it acknowledges that these associations do not include all employers.

Insurers

WIRO has proactively engaged with insurers during 2013–14. These stakeholders are fewer in number, easily identifiable and are in contact with WIRO on a daily or business-as-usual basis, and they have been amenable to direct engagement with WIRO on relevant issues.

Legal profession

WIRO communicates directly with approved providers through *WIRO Wire* updates, sent via email and posted on the website. *WIRO Wire* updates the profession on developments in the jurisdiction as well as providing information to practitioners about the approach WIRO takes to administering ILARS grants in a shifting legal environment. *WIRO Wire* proved particularly effective in keeping the profession updated when dealing with the uncertainty created by the ADCO decisions and appeals.

WIRO also consults and liaises with other stakeholders such as governments, government agencies, regulatory bodies and members of the health profession.

Newcastle stakeholder seminar

As part of its objective to disseminate information about WIRO services and functions and to engage more proactively with regional stakeholders, the WIRO and staff presented a full-day seminar on 26 June 2014 to legal practitioners, insurers, scheme agents, medical practitioners and other relevant service providers in the Newcastle region. Several ILARS lawyers talked about the operational aspects of WIRO and refreshed the interest of the attendees in analysing significant cases and emerging trends that impact on how WIRO exercises its functions. It was also an invaluable opportunity to create a more dynamic interaction with users of the scheme, including facilitating a dialogue between opposing parties on issues relevant to the pursuit of a Workers Compensation Claim or dispute.

The success of the Newcastle seminar was the springboard for the August 2014 stakeholder seminar in Homebush. The ‘Myths and Realities’ Seminar marked two years since the introduction of the 2012 reforms and was well received by the approximately 500 participants.

In the coming year, WIRO will make an increased effort in regional areas to raise awareness in of its role in implementing the changes to the Workers Compensation Scheme and related Legislation.

Sydney Royal Easter Show

WIRO is also working to increase public awareness of the role and the function of WIRO. By hosting a stand at the Sydney Royal Easter Show, WIRO was afforded an excellent opportunity to publicise its role and function to the approximately 900,000 members of the public who attended the show.

The stand was well received and WIRO distributed approximately 4,200 show bags and took enquiries from well over 1,000 members of the public. The positive reception to the stand has encouraged plans to host another stand at next year’s Show.

WORK CAPACITY DECISION REVIEW

Since the 2012 reforms, insurers are required to make a decision, called a Work Capacity Decision, about an injured worker’s capacity to work and whether a worker is entitled to weekly compensation because of reduced work capacity arising from the workplace injury.

An injured worker who is unhappy with the Work Capacity Decision made by the insurer may request the insurer undertake an internal review. The internal review will be conducted by a person not involved in making the original decision. A worker who is not satisfied with the outcome of the internal review can seek a Merit Review Decision from the Merit Review Service provided by the WorkCover Authority.

CASE STUDY

WIRO set aside an initial Work Capacity Decision that an injured worker was capable of 15 hours of work per week and made a binding recommendation that the Insurer make the decision correctly. Upon the Insurer undertaking the review again the procedural defects in the original decision making process were rectified. The worker again sought procedural review of the decision after internal and merit review options were exhausted. On this occasion WIRO did not find any procedural issue with the way in which the Work Capacity Decision had been made. The worker’s application for review was dismissed. This had the effect of the affirming the Work Capacity Decision that the worker was capable of 15 hours of work a week.

If the outcome of the Merit Review is unfavourable to the worker and the worker believes there has been some procedural error by the insurer in making the original Work Capacity decision, the worker may request a procedural review by WIRO.

The recommendation by WIRO is binding on the WorkCover Authority as well as on the insurer.

Any recommendation is subject to review by the Supreme Court.

In the year under review, WIRO received 173 requests for procedural review of Work Capacity Decisions from injured workers and conducted 129 reviews of which 128 identified procedural defects that resulted in a binding recommendation that the insurer undertake the process again. This high proportion of decisions overturned on procedural review may be attributable to the following factors:

- the difficulty of managing the changes that resulted from the 2012 reforms, particularly implementing a new decision-making process and function
- the *Better Decision-Making Guide* which insurers are required to follow (by the *WorkCover Guidelines*) was not available when many of the primary decisions were made
- time taken for the normative effect of procedural review to filter through to primary decision makers, and the impact on the processes and procedures of insurers after the 2012 reforms.

Sixteen requests were withdrawn because either the insurer decided to make a different Work Capacity Decision or the worker withdrew the review application.

At the conclusion of the reporting period, 33 review requests were outstanding.

One Work Capacity Decision procedural review request, in June 2013, remained outstanding at 1 July 2013.

Information on the operation of the process for review of Work Capacity Decisions

In the procedural review process, both the insurer and the worker are invited to make submissions to WIRO. These submissions only assist when they relate to the procedure the insurer follows when making the decision. Many of the submissions focused on the merits of the decision rather than on the procedure and therefore did not assist either party obtain a favourable outcome.

Common issues in the procedural review process leading to recommendations were:

- failure by the insurer to reveal the outcome of the assessment – including the date the decision was made
- incorrect, incomplete or confusing reasons for decisions
- failure to comply with legislation or *WorkCover Guidelines*
- took into account irrelevant considerations, and
- failure to consider relevant considerations

The hallmarks of decisions unlikely to be overturned on review included:

- stating and referring to the correct legislative provisions which related to the decision

- clearly setting out the dates upon which key events took place, including injury
- clearly articulating which aspects of the law applied at particular points in time, paying particular attention to the transitional provisions of the 2012 reforms
- specifying all of the evidence taken into consideration whether or not it supported the decision
- giving clear explanations of key legislative provisions and terms in the *WorkCover Guidelines*, and
- correctly giving notice of the decision by post

While there is no legislative requirement for an insurer to notify the applicant of the outcome of a Work Capacity Assessment, *WorkCover Guidelines* require an insurer to state the decision and give brief reasons, outline the evidence considered in making the decision (whether or not it supports the decision) and explain the reasons for the decision. The procedural reviews undertaken by WIRO have found that the *Guidelines* have the effect of requiring the insurer to notify the injured worker of the outcome of the assessment, including the date the assessment is made. This is in accordance with the principles of procedural fairness.

The overwhelming majority of review decisions resulted in binding recommendations that were unfavourable to the insurer.

Access to the *Better Decision-Making Guide* for insurers may have helped insurers make decisions in accordance with proper procedure and some of these unfavourable decisions on review may have been avoided.

RECOMMENDATIONS

IMPROVEMENTS TO WORK CAPACITY DECISIONS OR THE WORK CAPACITY ASSESSMENT PROCESS

The increase in the number of Work Capacity Decision procedural review requests received by WIRO during the 2013–14 reporting period resulted in more detailed information being made available about the operation of Work Capacity Decisions and the types of recommendation made by WIRO.

The legislation

The provisions relevant to the weekly benefits and the Work Capacity Assessment, decision-making and review process are set out in Division 2 of Part 3 of the 1987 Act.

The transitional provisions are set out in Part 19H of Schedule 6 of the 1987 Act.

Schedule 8 to the *Workers Compensation Regulation 2010* also contains regulations relevant to the reforms.

The *Guidelines* issued by the WorkCover Authority came into effect on 4 October 2013, superseding the original September 2012 *Guidelines*.

The 2012–13 WIRO annual report identified a number of issues about the Work Capacity Decision procedural review process. A number of these issues remained outstanding in 2013–14 and are discussed below.

Notice of change of weekly benefit payment

Although an insurer may undertake a Work Capacity Assessment and make a Work Capacity Decision which has the effect of reducing the weekly payment to the injured worker, the change is not effective until, and unless a notice of the decision is provided to the worker.

Section 54 of the 1987 Act requires an insurer to give the injured worker three months' notice of the change. That notice must be in writing and must be served upon the injured worker in person or by post in circumstances where electronic service would be just as effective and faster. A significant proportion of injured workers have access to the internet and could be served electronically, minimising delay.

WIRO recommends amending section 54(4) of the 1987 Act to permit electronic service

Access to legal advice for Work Capacity Decision procedural reviews

Before the 2012 amendments, the legal costs of parties to disputes about Workers Compensation (other than work injury damages matters) were met by insurers on a regulated fee basis. Injured workers could not be required to pay legal costs for their representation in compensation disputes unless the Workers Compensation Commission determined the application was frivolous or vexatious.

Section 44(6) of the 1987 Act provides:

A legal practitioner acting for a worker is not entitled to be paid or recover any amount for costs incurred in connection with a review under this section of a work capacity decision of an insurer.

This section goes further than merely requiring an injured worker to meet their own costs personally – it prohibits any lawyer from charging for any advice. This is a significant obstacle to an injured worker accessing legal advice in a procedural review.

The WorkCover Authority offers an advisory service to assist injured workers in procedures for reviews of Work Capacity Decisions. This service, however, merely directs injured workers to the information published by the Authority on the procedural review and does not provide advice or support to individual workers who wish to seek a procedural review.

Clause 9 in Schedule 8 of the *Workers Compensation Regulation 2010* was introduced for the express purpose of restricting the insurer from obtaining advice from the legal profession with the desired effect being to place the insurer and worker on equal footing in their access to legal services.

While that was the clear intention of the Government, the regulation has not been interpreted in this way and is not effective in this regard. Insurers are utilising the services of lawyers to:

- prepare work capacity decisions
- make submissions in to WorkCover on the merits of a decision, and
- make submissions in relation to procedural reviews that WIRO conducts

Injured workers continue to be doubly disadvantaged by being unable to obtain legal advice when the insurer can access it easily. Injured workers who have suffered a psychological injury are at a particular disadvantage.

WIRO recommends amending section 44(6) of the *Workers Compensation Act 1987* to allow legal practitioners acting for a worker to recover fair and reasonable fees for work undertaken in connection with a review of a Work Capacity Decision of an insurer.

WIRO recommends extending ILARS to allow for reimbursement for reasonable fees for work undertaken by lawyers in regard to Work Capacity Decision reviews.

IMPLEMENTED RECOMMENDATION

Zero weekly entitlement

In the annual report for 2012–13 WIRO raised the issue of injured workers for whom weeks in which a weekly payment of entitlements is calculated as ‘zero’ are counted towards the cap of weeks during which the worker is entitled to receive payments. On raising the issue with WorkCover it was agreed that this operated inequitably for those workers and that the weeks in which an injured worker receives a ‘zero’ payment should not count towards the cap of weeks during which a worker may receive entitlements.

OTHER RECOMMENDATIONS FOR LEGISLATIVE AND OTHER IMPROVEMENTS

Existing weekly recipient

The requirement to transition existing claimants to the post 1 October 2012 Workers Compensation System was introduced by Part 19H of Schedule 6 of the 1987 Act. The intention of the reforms was for workers in receipt of weekly payments under the old system to undertake a Work Capacity Assessment with the outcome of that assessment – a Work Capacity Decision – determining the worker’s entitlements under the new system.

Clause 3 of Part 19H of the 1987 Act extended the 2012 amendments to injuries suffered and claims made before the commencement of the amendment and affected current proceedings before the Commission or in a court. The definition of ‘existing weekly recipients’ in Clause 1 of Part 19H, however, extended only to those workers already in receipt of weekly payments and excluded those injured workers with pending claims and who were not actually in receipt of compensation by way of weekly payments as at 30 September 2012.

The transitional provisions do not apply to an injured worker who had made a claim for compensation, by way of weekly payments before 1 October 2012, and liability (or provisional liability) for that claim had not yet been admitted. Excluded also was an injured worker who, for example, had started proceedings in the Commission claiming compensation by way of weekly payments but had not yet received those payments.

The injured worker who was not in receipt of weekly payments immediately before 1 October 2012, but who subsequently had liability admitted and secured an entitlement to weekly payments, was entitled to weekly payments at the rate applicable before the transition.

The unintentional impact of the reforms was to create a group of injured workers who, according to the legislation, were unable to transition to the new weekly payment rate until existing entitlements to weekly payments had ceased. Two workers with the same injury suffered at the same time have a different entitlement depending on whether they were receiving weekly payments immediately before 1 October 2012. The legislation as it stands does not apply consistently or fairly in this regard.

The WorkCover Authority's guide to insurers during 2013–14 was to treat all claimants in the same manner, as at 1 October 2012, notwithstanding the legislative provisions. While the aim was to remove ambiguity and address unfairness in the legislation, the guide created a potential for this group of workers to be paid at a rate lower than their legal entitlement.

At the conclusion of the reporting period this inconsistency in the operation of the legislation had not been rectified and the WorkCover Authority policy regarding implementation of the legislation remained in place.

WIRO recommends that the legislation be amended to deal with this class of injured worker.

WIRO recommends that the Authority publish or amend its guidelines to reflect the legislation as it has applied since the reforms with respect to this class of injured worker.

Regulation and accountability in the NSW Workers compensation system

WIRO made submissions to and gave evidence before the Standing Committee on Law and Justice of the Legislative Council's Inquiry – First Review of the Exercise of the Functions of the WorkCover Authority during the reporting period. The WIRO submission can be accessed on the WIRO website. This was an important opportunity to make comments as an Independent Office about the operation of the NSW Workers Compensation System as well as the impact of the 2012 reforms. At the conclusion of the reporting period the report of the Inquiry had not yet been published.

WIRO's submission to the Inquiry highlighted the tension inherent in the WorkCover Authority's dual role as a regulator in workplace safety and as the Nominal Insurer in the Workers Compensation System. The WorkCover Authority issues guidance to employers, conducts safety inspections and has the power to take prosecution action in Work Health and Safety breaches. On the other hand, WorkCover acts on behalf of the Nominal Insurer (Section 23A of the 1998 Act) which is responsible for the solvency and commercial viability of the Workers Compensation Fund in NSW. Premium levels, quantity and quantum of claims impact on this financial viability. Ensuring the financial viability of the fund has the potential to influence decision-making about how the WorkCover Authority's regulatory function should be exercised and vice versa. If the fund is performing poorly there may be pressure to set high premiums, restrict the circumstances in which liability will be accepted, or adopt particular approaches to health and safety in the workplace.

Similarly, the WorkCover Authority has a role in advising employers on Work Health and Safety in the workplace on the one hand, and investigating breaches and taking regulatory and enforcement action on the other. The two roles can be perceived as being in conflict. This conflict can create reluctance on the part of non-compliant employers to contact the WorkCover Authority for advice and assistance and endanger workers. This also can create mistrust where an employer seeks and follows such advice but may nonetheless be subject to investigation or enforcement action.

WIRO recommends that the roles of Regulator and Nominal insurer be separated from each other in the NSW workers compensation scheme. WIRO notes that the Standing Committee on Law and Justice made a substantially similar recommendation in its report.

Functional and structural independence of WIRO

WIRO is effectively funded and administered by the WorkCover Authority and is reliant on its administration to undertake (among other things) appropriation and recruitment functions. WIRO has experienced administrative delays and in some cases obstruction that has compromised effective functioning.

WIRO accepts complaints from employers and injured workers about Workers Compensation insurers who operate under the auspices of the Nominal Insurer. The WorkCover Authority acts on behalf of the Nominal Insurer who in turn nominates Scheme Agents to be Workers Compensation insurers. In addition, the WorkCover Insurer approves and oversees self-insurance arrangements for Workers Compensation in NSW. WIRO receives complaints and has a complaints handling, review and regulatory function for these insurers. WIRO undertakes these functions independently, impartially and in accordance with its legislative mandate and the Ethical Framework for the NSW Government Sector.

However, given WIRO is neither functionally nor structurally independent from the WorkCover Authority, perceptions of partiality or bias may arise, particularly on the part of employers or injured workers. A regulator with a similar role and function to an Ombudsman would enhance accountability and public trust in the NSW Workers Compensation System.

WIRO recommends Part 3 Schedule 1 of the *Government Sector Employment Act 2013* be amended establishing WIRO as a separate public sector Agency. This would make WIRO independent from both the WorkCover Authority and Safety, Return to Work and Support. WIRO recommends it be designated as a special office for the purposes of its budget appropriation under its own Act, similar to the NSW Ombudsman. WIRO notes that the Standing Committee on Law and Justice made a substantially similar recommendation in its report

Whole Person Impairment Dispute Resolution

Circumstances often arise where there is a difference of medical opinion regarding an injured worker's level of permanent impairment between the injured worker and insurer's medical experts. Until now WorkCover has taken the position that these matters ought not be negotiated between the parties.

While these matters are very important to the injured worker, there are cases where the amount in dispute is minimal and allowing a compromise resolution would reduce the delay for the worker. Escalating this type of matter to the Workers' Compensation Commission to be resolved by an approved medical specialist may involve disproportionate expense and delay.

WIRO recommends that any obstacle to insurers settling disputes over small amounts in permanent impairment claims on a commercial basis be removed. WIRO notes that the Standing Committee on Law and Justice recommended that the WorkCover Authority and WIRO collaborate to develop a process whereby disagreements over permanent impairment can be resolved through negotiation between insurer and injured worker.

APPENDICES

Appendix 1 – Statistics

Figure A1 | Number of complaints and enquiries received

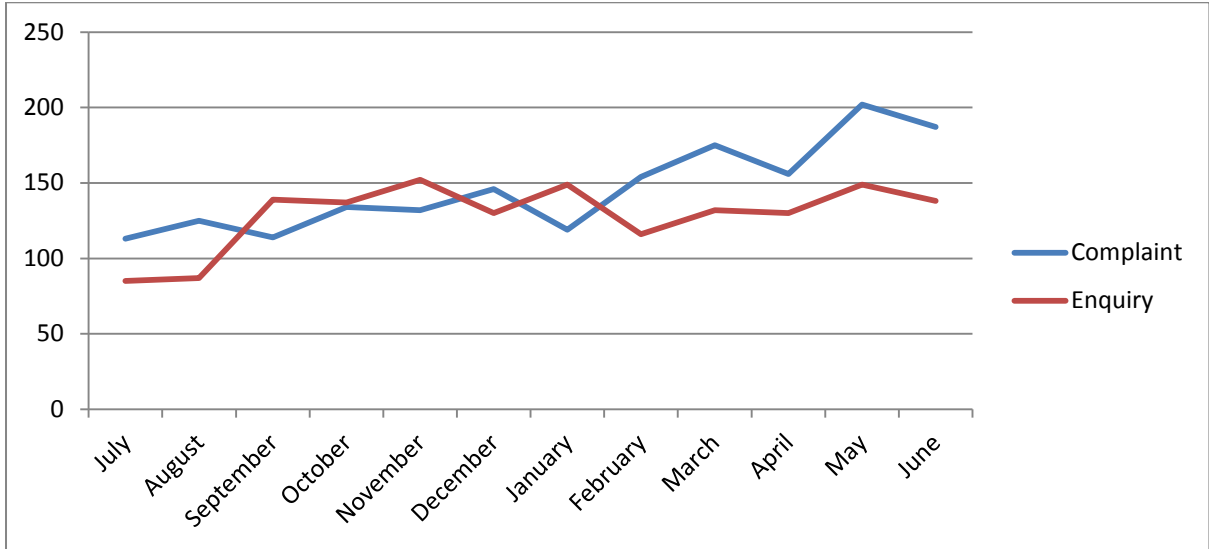


Figure A2 | Number of ILARS grant requests received – by type of claim

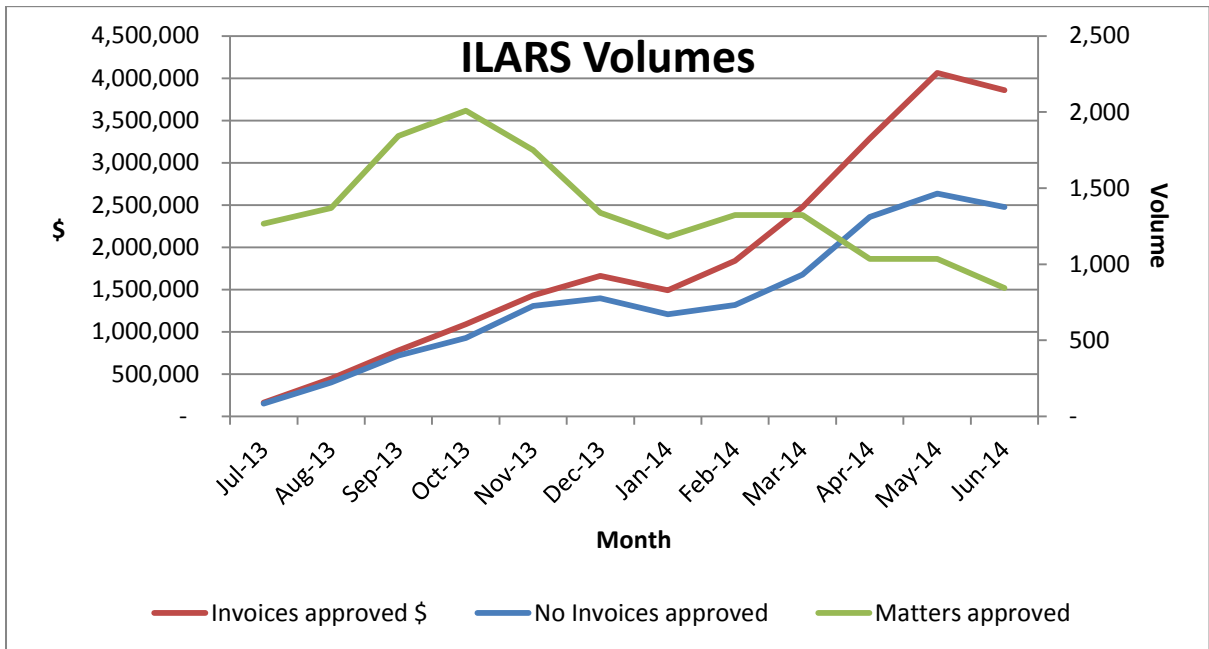


Figure A3 | Issues raised with us

Issue*	Complaint		Enquiry		Work Capacity Enquiry		ILARS		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
WPI	23	1	54	4	0	0	9504	65	9581	54
Denial of liability (s.74 notice)	188	11	320	26	2	1	3295	23	3805	21
Medical	539	31	255	21	4	1	1382	9	2180	12
Weekly benefits	610	35	195	16	9	3	352	2	1166	7
Communication	151	9	128	10	1	0	0	0	280	2
Work capacity	45	3	215	17	287	93	0	0	547	3
Death claim		0		0		0	46	0	49	0
Delay	156	9	32	3	3	1		0	191	1
Rehabilitation	29	2	25	2		0		0	54	0
Other	16	1	12	1	2	1	19	0	49	0
Total	1757		1236		308		14598		17899	

*The issue is the primary issue in connection with the matter. A matter may have more than one issue.

Figure A4 | How people heard about us (the source of the complaint)

Source of complaint	No.	%
Lawyer	946	49
Specific source not stated	216	26
Web search	158	8
Word of mouth	120	5
WorkCover Authority	160	0
Workers Compensation Commission	41	7
Union	47	3
Insurer or service provider	79	0
Advertising	32	1
Total	1799*	

* Differs from total number of complaints received – 1757 – because a small number of complaints came via more than one source

Figure A5 | Matters received per Insurer

Insurer name	ILARS	Complaints	Enquiries	Work capacity enquiries	Work capacity procedural reviews	Total
3M Australia Pty Ltd	1	0	0	0	0	1
Allianz Australia Workers Compensation (NSW) Ltd	2713	298	237	41	20	3309
Allianz TMF	318	97	70	23	22	530
AMP Life Limited	2					2
ANZ Group	10	1	0	2	0	13
Arrium Limited	39	3	1	1	0	44
Ausgrid	21	0	2	1	0	24
Bankstown City Council	6	0	0	0	0	6
BHP Billiton	11	0	1	0	0	12
Blacktown City Council (self-insurer)	20	2	0	1	0	23
Bluescope Steel Ltd	141	6	3	2	2	154
BOC Workers' Compensation Ltd	3	0	1	0	0	4
Brambles Insurance Services	8	1	0	0	0	9
Brickworks Ltd	3	0	1	0	0	4
Campbelltown City Council	5	0	0	0	0	5
Catholic Church Insurance Limited	120	30	9	2	0	161
CGU Workers Compensation (NSW) Ltd	1343	192	118	49	25	1727
City of Sydney	24	0	2	0	0	26
Club Employers Mutual (part of Hospitality Employers Mutual)	9	4	3	0	0	16
Coal Mines Insurance Pty Limited	22	3	2	0	0	27
Coles Group Ltd	165	24	12	3	5	209
Colin Joss & Co	0	1	0	0	0	1
CSR Limited NSW Workers Compensation	13	0	0	0	0	13
Delta Electricity	11	0	3	0	1	15
Electrolux Home Products Self Insurance	2	0	0	0	0	2
Employers Mutual NSW Ltd – TMF	222	88	44	11	5	370
Employers Mutual NSW Limited	1161	194	61	23	1	1440
Endeavour Energy	8	5	1	3	1	18
Eraring Energy	3	1	0	0	0	4
Fairfield City Council	2	0	0	0	0	2
Fletcher International Exports Pty Ltd	3	0	0	0	0	3
Former NSW insurer	13	1	0	0	0	14
Gallagher Bassett Services Pty Ltd	570	112	66	15	7	770
GIO – NSW Treasury Management	17	6	6	0	1	30

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Insurer name	ILARS	Complaints	Enquiries	Work capacity enquiries	Work capacity procedural reviews	Total
Fund						
GIO General Limited	1425	142	96	28	12	1703
Golden Tips Pty Limited	1	0	0	0	0	1
Gosford City Council	6	1	0	0	0	7
Government of NSW (Forestry Commission Division)	5	0	3	1	0	9
Guild Insurance Ltd	16	7	3	0	0	26
Holcim (Aust) Holdings Pty Limited (self-insurer)	2	0	0	0	0	2
Hotel Employers Mutual (part of Hospitality Employers Mutual)	23	4	5	1	0	33
Inghams Enterprises Pty Ltd (self-insurer)	20	2	0	0	0	22
Injury Management Department	1	0	0	0	0	1
ISS Property Services Pty Ltd	24	0	2	0	0	26
Lake Macquarie City Council	23	0	3	1	0	27
Liverpool City Council (self-insurer)	4	0	0	0	0	4
McDonald's Australia Holdings Limited	6	1	1	0	0	8
Myer Holdings Ltd	12	1	0	0	1	14
Newcastle City Council	25	0	1	0	0	26
Northern Co-Operative Meat Company Limited	2	0	0	1	1	4
Not provided	355	0	153	3	0	511
Not provided (Hearing Loss)	1287	0	0	0	0	1287
Other Insurers	1726	7	162	3	1	1899
Pacific National (NSW) Pty Ltd	11	1	1	0	1	14
Primary Health Care Limited	10	4	1	0	0	15
Qantas Airways Limited	81	10	8	1	1	101
QBE TMF	275	106	58	11	5	455
QBE Workers' Compensation (NSW) Ltd	2661	244	150	38	9	3102
Racing NSW Insurance Fund	41	4	5	2	2	54
Rail Corporation NSW	115	14	12	9	5	155
Rocla Pty Limited	4	1	0	0	0	5
Scheme agent	10269	1233	760	204	77	12543
Self-insured	1344	153	106	48	30	1681
Shoalhaven City Council	10	2	1	0	2	15
Skilled Group Limited – Self Insurance Division	12	4	2	0	0	18
Specialised insurer	444	73	36	8	5	566
State Transit Authority (STA)	29	1	2	2	2	36

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Insurer name	ILARS	Complaints	Enquiries	Work capacity enquiries	Work capacity procedural reviews	Total
StateCover Mutual Ltd	211	21	9	3	3	247
Sutherland Shire Council	4	0	1	0	0	5
The Star Pty Ltd	22	3	0	0	0	25
TMF	815	291	172	45	32	1355
Toll Pty Ltd	44	4	2	1	0	51
Transfield Services (Australia) Pty Ltd	38	2	3	3	3	49
Unilever Australia (Holdings) Pty Limited	10	0	0	0	0	10
University of New South Wales (self-insured)	1	0	0	0	0	1
University of Wollongong (self-insurer)	4	1	0	0	0	5
Veolia Environmental Services (Australia) Pty Ltd	6	0	0	0	0	6
Warringah Council	4	1	0	0	0	5
Westpac Bank (self-insurer)	38	6	6	0	0	50
Wollongong City Council	16	1	0	0	0	17
Woolworths Limited	242	49	30	16	5	342
WorkCover NSW	45	0	0	0	0	45
WorkCover ULIS	9	0	3	0	0	12
Wyong Shire Council	13	0	0	0	0	13
Xchanging	396	51	32	10	3	492
Total	14598	1757	1236	308	145	18609

Figure A6 | Time taken to resolve complaints – by issue*

Issue	Time to finalisation						Total
	Same day	Next day	2–7 days	8–15 days	16–30 days	<30 days	
Communication	8	6	79	35	22	3	153
Delay	3	10	87	29	25	3	157
Denial of liability (s.74 notice)	6	7	79	57	32	5	186
IME	1	2	9	4	1	0	17
Incorrect calculations	2	0	4	2	5	1	14
Medical costs	5	14	70	38	26	3	156
Medical treatment	26	19	174	88	50	14	371
Other	0	0	3	3	0	0	6
Rehabilitation	0	1	15	7	5	0	28
Weekly benefits	21	25	271	174	86	16	593
Work capacity (general)	1	3	22	10	4	0	40
WPI	1	1	9	8	1	0	20
Total	74	88	822	455	257	45	1741

* Includes complaints still open and carried forward from previous reporting period

Figure A7 | Complaints received by injury type

Injury type	No.	%
Amputation	2	<1
Ankle	42	2
Arm	24	1
Back	466	27
Broken bone(s)	5	<1
Crush injury	1	<1
Elbow	23	1
Feet	25	1
Hand	45	3
Head (brain) injury	18	1
Hearing loss	25	1
Knee	182	10
Leg	55	3
Neck	81	5
Other	58	3
Psychological	195	11
Shoulder	175	10
Wrist	44	3

Other	291	17
Total	757	

Figure A8 | Complaint outcomes

Outcome	No.	%
Case withdrawn	9	<1
Declined	99	6
Further enquiries not resolved	16	1
Further enquiries resolved	21	1
Preliminary enquiry not resolved	683	40
Preliminary enquiry resolved	869	51
Total	1697	

Appendix 2 – Stakeholder engagement

Date	Event	Stakeholder
July		
09-Jul-13	Meeting	Macquarie University Hearing Group
16-Jul-13	Meeting	National Workers Union
17-Jul-13	Meeting	Allianz Workers Compensation
24-Jul-13	Meeting	Healthshare NSW (Ann Mok and David Peters)
25-Jul-13	Meeting	Dr James Bodel
25-Jul-13	Meeting	Respondent Lawyers
25-Jul-13	Meeting	Everingham Solomons Solicitors at Tamworth
29-Jul-13	Meeting	Senior Advisor – Minister
31-Jul-13	Meeting	Audiology Association
August		
01-Aug-13	Address	Unions NSW Executive
02-Aug-13	Meeting	Law Partners
08-Aug-13	Meeting	Unions NSW – Delegates
08-Aug-13	Meeting	Slater and Gordon
09-Aug-13	Meeting	NSW Law Society Injury Compensation Committee
14-Aug-13	Address	Permanent Impairment Coordinating Committee Meeting
18-Aug-13	Address	Slater and Gordon – Workers Compensation Conference
22-Aug-13	Address	Self Insurers Association Bi monthly members meeting – Wollongong
23-Aug-13	Address	Regional Presidents Meeting – Law Society
28-Jul-13	Meeting	QBE Workers Compensation
29-Aug-13	Address	State Legal Conference Seminar
29-Aug-13	Meeting	CGU Workers Compensation (Jen Mitchell and Todd Campbell)
30-Aug-13	Address	ABC 1233 Newcastle and attended the AMU Conference – Newcastle
September		
03-Sep-13	Meeting	Allianz Workers Compensation
04-Sep-13	Meeting	The Hon. Andrew Constance MP
04-Sep-13	Meeting	Law Society Injury Compensation Committee
11-Sep-13	Address	Hicksons Lawyers Workers Compensation Forum – Newcastle
17-Sep-13	Meeting	Macquarie University Research Group
18-Sep-13	Address	Rail Tram and Bus Union Council
20-Sep-13	Address	Department of Finance and Services CLE Seminar
30-Sep-13	Address	IAIABC Annual Conference – San Diego USA
October		
15-Oct-13	Meeting	Macquarie University Research Group
16-Oct-13	Meeting	Law Society
21-Oct-13	Address	Unions NSW Delegates
30-Oct-13	Address	TMF Conference – Injury Management Group
31-Oct-13	Meeting	Unions
November		
15-Nov-13	Conference	IPAA (The Institute of Public Administration Australia) Conference

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15-Nov-13	Address	Australian Workers Union (AWU) Annual Conference
18-Nov-13	Address	ILARS Seminar – Law Society
21-Nov-13	Meeting	Christadelphian Aged Care Organisation – Director
25-Nov-13	Meeting	Injured Workers Network
26–28-Nov-13	Conference	GovInnovate Summit – Canberra
29 Nov 13	Address	Mid-North Coast Law Society annual meeting, Forster
29-Nov-13	Address	Personal Injury Education Foundation (PIEF)

Date Event Stakeholder

December

05-Dec-13	Meeting	Hearing Centre Macquarie University
12-Dec-13	Meeting	Legal Stakeholders Reference Group

2014

January

09-Jan-14	Meeting	Insurance Council
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February

07-Feb-14	Address	Department of Finance and Services (DFS) Reg 176 Seminar
10-Feb-14	Meeting	GIO Workers Compensation
11-Feb-14	Meeting	Injured Persons Support
20-Feb-14	Meeting	Carroll and O’Dea Lawyers
20-Feb-14	Meeting	IT News
27–28-Feb-14	Conference	National Workers Compensation Summit

March

04-Mar-14	Meeting	Self and Specialised Insurers and Scheme Agents
12-Mar-14	Meeting	CGU Workers Compensation
14-Mar-14	Meeting	Compensation Review Group
19-Mar-14	Conference	UNSW Faculty of Law – What Does the World of Workers Compensation Look Like Now?
21-Mar-14	Meeting	Standing Committee on Law & Justice – NSW Upper House
22-Mar-14	Address	Law Society Conference – Blue Mountains
26-Mar-14	Meeting	North Coast Compensation Lawyers – Port Macquarie
27-Mar-14	Address	Xchanging Workers Compensation
27-Mar-14	Address	Law Society Seminar
27-Mar-14	Address	Coffs Harbour Seminar – Terry Willis Barrister
27-Mar-14	Meeting	Thompson Wheelahan – Grafton
28-Mar-14	Meeting	Somerville Laundry Lomax – Lismore
28-Mar-14	Meeting	Riley and Riley – Lismore
28-Mar-14	Attendance	Upper House Enquiry
31-Mar-14	Meeting	Allianz TMF

April

02-Apr-14	Meeting	Employers Mutual Limited (EML)
03-Apr-14	Meeting	NSW President AMA
09-Apr-14	Meeting	WorkCover Authority Scheme Agents
10–23-Apr-14	Address	WIRO Royal Easter Show Exhibition Stand – Public Engagement

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14-Apr-14 Conference PIEF Course – Melbourne
29-Apr-14 Meeting IMO

May

01-May-14 Address Trinitas Conference
07-May-14 Meeting Villari Lawyers staff – Burwood
08-May-14 Meeting Hearing Industry Association
12-May-14 Attendance Upper House Enquiry Hearing
13-May-14 Attendance Law Week Breakfast
13-May-14 Meeting Allianz Workers Compensation – Claims managers
20-May-14 Meeting Brief Meeting with CIE
23-May-14 Address College of Law Seminar
27-May-14 Meeting Brief Meeting with CIE
30-May-14 Meeting Mr D Shoebridge MLC

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Date	Event	Stakeholder
June		
12-Jun-14	Meeting	Turner Freeman
24-Jun-14	Meeting	President Law Society
25-Jun-14	Meeting	Allianz Workers Compensation
26-Jun-14	Interview	ABC Radio Newcastle
26-Jun-14	Address	WIRO ILARS Seminar – Newcastle Region
30-Jun-14	Attendance	Safety, Return to Work & Support (SRWS) Board Meeting

Appendix 3 – Significant cases and case studies

SIGNIFICANT CASES

ADCO Constructions Pty Ltd v Goudappel [2014][HCA 18

High Court of Australia

On 17 April 2010, Mr Goudappel injured his left foot and ankle. On 19 April 2010, he claimed compensation. That claim was accepted and Mr Goudappel was paid weekly compensation.

On 20 June 2012, Mr Goudappel made a specific claim for lump sum compensation (under section 66 of the 1987 Act) in respect of a 6% whole person impairment arising from his injuries. This claim was made after the *Workers Compensation Legislation Amendment Act 2012* (the amending Act) was introduced.

The amending Act introduced a new threshold, that only a worker who receives an injury that results in a degree of permanent impairment greater than 10% Whole Person Impairment is entitled to receive compensation from the worker's employer (Section 66 (1)). In addition, the amending Act introduced savings and transitional provisions which were said to preserve the rights of workers who made a claim for compensation before 19 June 2012 (Schedule 6 Part 19H Clauses 3 and 15 of the 1987 Act).

On 1 October 2012, a transitional regulation was passed which provided that the amendments introduced by the amending Act 'extend to a claim for compensation made before 19 June 2012, but not to a claim that specifically sought compensation under Section 66 or Section 67 of the 1987 Act' (Clause 11). This was said to have had the effect of removing the protection conferred by the 1987 Act with respect to Mr Goudappel's lump sum compensation entitlement.

Mr Goudappel's claim for lump sum compensation was disputed by the employer's insurer on the ground that the whole person impairment was not greater than 10%.

The High Court held that a transitional regulation, introduced by the amending Act, which had the effect of changing the 1987 Act, was valid.

More broadly, the High Court held that the amendments to Part 3 Division 4 of the 1987 Act introduced by Schedule 2 to the 2012 amending Act 'apply to claims for compensation pursuant to section 66 of the 1987 Act made on and after 19 June 2012, where the worker has not made a claim specifically seeking compensation under Sections 66 or s 67 before 19 June 2012'.

As Mr Goudappel had not claimed or specifically sought lump sum compensation before 19 June 2012, the amendments introduced by the amending Act applied to him and he had no entitlement to such compensation.

Caulfield v Whelan Kartaway Pty Ltd [2014] NSWCCPD 34

Workers Compensation Commission – Presidential Decision (Roche DP)

On 9 August 2005, the appellant worker injured his right knee in the course of his employment with the respondent employer. Liability for this injury was never disputed.

Proceedings commenced in the Commission in 2010, the worker claimed a 15% whole person impairment due to his injury. In November 2010, the Commission ordered the respondent to pay the worker lump sum compensation, under Section 66, in the sum of \$10,000 in respect of 8% whole person impairment.

In March 2011, the worker underwent further surgery to his right knee. On 6 December 2011, the worker was medically reviewed and the worker was assessed to have 17% whole person impairment. On 29 August 2012, the worker claimed lump sum compensation. The respondent disputed liability on the grounds that:

- (a) the worker was not entitled to pursue a claim for further lump sum compensation pursuant to Section 66(1A) of the 1987 Act (as amended by the 2012 amending Act) as he received lump sum compensation on 19 November 2010 in respect of the injury on 9 August 2005
- (b) there had been no deterioration in the condition of the worker's right lower extremity (knee), because the 2011 assessment was identical to that made on 23 February 2010, and
- (c) the worker was estopped from pursuing a claim for further lump sum compensation because 'the assessment on which he relies has already been determined ...

In relation to deterioration and estoppel, the Deputy President applied the reasoning in *Abou-Haidar v Consolidated Wire Pty Ltd* [2010] NSWCCPD 128. That is, prior to the 2012 reforms, an arbitrator's task is to determine injury and other liability issues. Once that is done, the question of the extent of any whole person impairment as a result of the injury is a matter for an approved medical specialist. It is not necessary for the Commission to determine, as a threshold issue, whether the worker has demonstrated that his or her condition has deteriorated.

In relation to the 2012 amendments, the Deputy President applied paragraph 36 of the High Court's decision in *ADCO*. Namely, the amendments introduced by the 2012 amending Act did not apply to Mr Caulfield because the worker 'specifically sought' compensation under section 66 in 2010, which was prior to 19 June 2012. In other words, the worker was not caught by the new threshold and not restricted to making only one claim for permanent impairment compensation.

Inghams Enterprises Pty Ltd v Sok [2014] NSWCA 217

NSW Court of Appeal

Ms Sok alleged injury to lumbar spine as a result of two frank injuries and the nature and conditions of her employment between 2001 and 2004. From 2001 to November 2002, she was employed by Integrated (a labour hire company) at Inghams premises. From November 2002 to 2004 she was employed directly by Inghams. She had post-injury employment with Dick Smith and in a takeaway food store.

Ms Sok received weekly payments from time to time up to February 2005. She continued to experience pain and disability. In February 2012, her treating specialist recommended surgery. Liability was declined by the insurer for both weekly payments and medical expenses. A claim was brought for weekly payments and medical expenses. The Approved Medical Specialist agreed surgery was reasonably necessary. The Arbitrator made an award of weekly payments from 15 September 2012 to date and continuing.

Among many issues on appeal, the insurer submitted that the Workers Compensation Commission has no jurisdiction to examine, hear and determine matters concerning entitlement to and quantification of weekly benefits from 1 January 2013. Specifically, that the 2012 amendments had stripped it of its jurisdiction and the amendments applied in the circumstances of the case.

The two provisions introduced by the 2012 amendments that restricted the jurisdiction of the Commission were Sections 43(3) and 44(5). Both restrictions are contingent on a Work Capacity Decision having been made. In Ms Sok's matter, the insurer had not issued a Work Capacity Decision at any time.

The Deputy President disagreed with Inghams and held that 'in the absence of a Work Capacity Assessment having been conducted, and given that no Work Capacity Decision has been made, there is no obstacle presented by the terms of Section 43(3) or Section 44(5) for the Commission to determine Ms Sok's entitlement to weekly payments and the rate of such payments'. Inghams appealed.

The Court of Appeal dismissed the appeal. It held that the limits on the Commission's jurisdiction were only applicable where there specifically was a Work Capacity Decision. It did not extend to any weekly payments dispute about a matter of a kind which may be the subject of a Work Capacity Decision.

COMPLAINTS CASE STUDIES

Weekly benefits and the operation of section 54 of the Workers Compensation Act 1987

The lawyer for an injured worker submitted an application for funding to claim weekly payments. The injured worker had secured alternative employment and resigned from his position with the employer. He then injured himself during his period of notice with that employer and was unable to commence with his new employer. The insurer issued a notice pursuant to Section 54 of the 1987 Act disputing liability for weekly benefits, in part because the injured worker had resigned from suitable employment. The ILARS team referred the matter to the Complaints team to attempt to resolve the matter. The Complaints team alerted the insurer to the fact that a Section 54 notice could only be issued after payment had been received for a continuous period of at least 12 weeks and that the worker had been unable to commence his new role because of his injury. The worker had also resigned from his position prior to being injured and the issue of whether he had resigned from suitable duties was not settled. The insurer resumed weekly payments and the matter was resolved without the need for legal action.

Payment of weekly benefits at an incorrect rate

An injured worker contacted WIRO with concerns about whether the Insurer was paying the correct amount of weekly benefits. WIRO reviewed the matter and ascertained that the insurer had been paying the injured worker at the 2007 Award rate, the rate applicable at the date of injury, and it had not been increased since. A review of the file determined the injured worker was owed a back payment of approximately \$20,000, which the insurer agreed to pay.

Hearing aids – a collaborative approach

The ILARS team received a number of applications for grants of assistance from injured workers seeking replacement hearing aids from the same self-insurer who was denying liability. By operation of Section 59A of the 1987 Act (which imposes a time limit upon when payment for medical expenses can be made) the injured workers would not be entitled to receive payment for the hearing aids after 31 December 2013. Arrangements were made with the Workers Compensation Commission for the Applications to Resolve Disputes to be lodged together. The Workers Compensation Commission arranged for an Arbitrator to hear all the matters on the same day. The matters were resolved in favour of the workers who received new hearing aids. WIRO then negotiated with the self-insurer to provide hearing aids to a number of other workers who were in the same situation.

Resolution of low level Whole Person Impairment Claims – a systemic approach

During the reporting period, the ILARS team noticed lawyer for workers lodging applications for a grant of legal funding to pursue a whole person impairment claim of less than 5%, which attracts a maximum entitlement of approximately \$8700. WIRO has successfully negotiated the resolution of many of these matters without the need to fund legal assistance for applications to the Workers Compensation Commission. There has been particular success resolving claims for 1% to 2% whole person impairment where the cost of pursuing these matters far outweighs the amount of money in dispute. These matters are now typically referred to the Complaints team to resolve, resulting in the worker often receiving entitlements sooner with reduced cost to the system.

Urgent intervention

An injured worker called after receiving a letter via email from his insurer informing him that his weekly benefits had been ceased for failing to attend a Work Capacity Assessment. He stated that he had received notification of the appointment, but was unable to attend due to a family bereavement and called the insurer asking for it to be rescheduled to the following week. The insurer then issued the suspension letter via email that day, well in advance of the initial assessment date. WIRO contacted the insurer which agreed that they had acted too quickly in suspending the injured worker's weekly benefits. The insurer agreed to work with him to arrange another date for the Assessment and reinstate his weekly benefits instantly.