



LEGISLATIVE COUNCIL

PORTFOLIO COMMITTEE NO. 1

# Workers Compensation Amendment Bill 2021

Report 57

February 2022

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Portfolio Committee No. 1 - Premier and Finance

# **Workers Compensation Amendment Bill 2021**

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Workers Compensation Amendment Bill 2021

“February 2022”.

Chair: Hon. Tara Moriarty, MLC.



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## Terms of reference

That:

- (a) the Workers Compensation Amendment Bill 2021 be referred to Portfolio Committee No. 1 – Premier and Finance for inquiry and report,
- (b) the bill be referred to the committee upon receipt of the message on the bill from the Legislative Assembly, and
- (c) the committee report by Monday 21 February 2022.

The terms of reference were referred to the committee by the Legislative Council on 18 November 2021.<sup>1</sup>

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<sup>1</sup> *Minutes*, NSW Legislative Council, 18 November 2021, pp 2768-2770.

## Committee details

### Committee members

<b>The Hon Tara Moriarty MLC</b>	Australian Labor Party	<i>Chair</i>
<b>The Hon Robert Borsak MLC</b>	Shooters, Fishers and Farmers Party	<i>Deputy Chair</i>
<b>Mr David Shoebridge MLC*</b>	The Greens	
<b>The Hon Scott Farlow MLC**</b>	Liberal Party	
<b>The Hon Don Harwin MLC***</b>	Liberal Party	
<b>The Hon Taylor Martin MLC</b>	Liberal Party	
<b>The Hon Daniel Mookhey MLC****</b>	Australian Labor Party	

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- \* Mr David Shoebridge MLC substituted for Ms Abigail Boyd MLC from 23 November 2021 for the duration of the inquiry.
- \*\* The Hon Scott Farlow MLC replaced the Hon Ben Franklin MLC as a substantive member of the committee from 25 January 2022.
- \*\*\* The Hon Don Harwin MLC replaced the Hon Peter Poulos MLC as a substantive member of the committee from 25 January 2022.
- \*\*\*\* The Hon Daniel Mookhey MLC substituted for the Hon Penny Sharpe MLC from 30 November 2021 for the duration of the inquiry.



## Chair's foreword

On 18 November 2021, the Legislative Council referred the Workers Compensation Amendment Bill 2021 to Portfolio Committee No. 1 – Premier and Finance for inquiry and report by 21 February 2022.

The Workers Compensation Amendment Bill 2021 seeks to remove section 19B and related provisions of the *Workers Compensation Act 1987*. This section was inserted into the *Workers Compensation Act 1987* in May 2020 by the Parliament in response to the COVID-19 pandemic. Its purpose is to create a presumption that certain workers in frontline industries and occupations who acquire COVID-19 did so at work, thereby facilitating ready access for those workers to support through the workers compensation system.

The committee took evidence from a range of parties on the bill. The key supporters of the bill were peak business and industry bodies, peak property bodies, peak hospitality bodies and peak retail bodies. The key opponents of the bill were the unions and peak medical and education bodies, particularly representing workers in frontline industries and occupations. There was little common ground between those supporting and opposing the bill.

After considering the evidence, the committee resolved that the case has not been made for the bill. Accordingly, the committee recommends that the Legislative Council reject the Workers Compensation Amendment Bill 2021.

On behalf of the committee, I would like to thank all stakeholders who participated in this important inquiry. I would also like to thank my committee colleagues for their contributions to the inquiry, as well as the secretariat and Hansard staff for their assistance.



The Hon Tara Moriarty MLC  
**Committee Chair**

## **Recommendation**

### **Recommendation 1**

**37**

That the Legislative Council reject the Workers Compensation Amendment Bill 2021.

## **Conduct of inquiry**

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 18 November 2021.

The committee received 32 submissions and one supplementary submissions.

The committee received 889 responses from individual participants to an online questionnaire.

The committee held one public hearing at Parliament House in Sydney on 2 February 2022.

Inquiry related documents are available on the committee's website, including submissions, the hearing transcript and tabled documents.



## Chapter 1 Overview

This chapter provides background information on the Workers Compensation Amendment Bill 2021.

### Reference

- 1.1 The Workers Compensation Amendment Bill 2021 was introduced in the Legislative Assembly on 17 November 2021 by the Hon Victor Dominello MP, Minister for Customer Service and Digital Government.<sup>2</sup>
- 1.2 On Thursday 18 November 2021, the Legislative Council referred the provisions of the bill to Portfolio Committee No. 1 – Premier and Finance for inquiry and report by 21 February 2022.<sup>3</sup>
- 1.3 On Thursday 25 November 2021, the President reported receipt of a message in the House from the Legislative Assembly forwarding the bill to the Legislative Council for its concurrence. In accordance with the previous resolution of the House of 18 November 2021, the bill stood referred to this committee.<sup>4</sup>

### Background to the bill

- 1.4 In May 2020, in response to the emerging public health emergency arising out of the COVID-19 pandemic, the Parliament passed the COVID-19 Legislation Amendment (Emergency Measures-Miscellaneous) Bill 2020. The bill was assented to on 14 May 2020 and became the *COVID-19 Legislation Amendment (Emergency Measures-Miscellaneous) Act 2020*.
- 1.5 The *COVID-19 Legislation Amendment (Emergency Measures-Miscellaneous) Act 2020* amended the *Workers Compensation Act 1987* by the insertion of section 19B and schedule 6 relating to savings, transitional and other provisions.<sup>5</sup>
- 1.6 Section 19B creates a presumption for certain groups of workers that the link between their work and contracting COVID-19 has been established, therefore facilitating the making of a workers compensation claim. If an employer wishes to dispute liability, the onus is on them to prove that the worker acquired the virus elsewhere. These arrangements apply to workers in any of the following:
  - the retail industry (other than businesses providing only on-line retail)
  - the health care sector, including ambulance officers and public health employees
  - disability and aged care facilities

<sup>2</sup> *Hansard*, NSW Legislative Assembly, 17 November 2021, p 1 (proof) per Minister Dominello.

<sup>3</sup> *Minutes*, NSW Legislative Council, 18 November 2021, p 2768.

<sup>4</sup> *Minutes*, NSW Legislative Council, 25 November 2021, p 2893.

<sup>5</sup> *COVID-19 Legislation Amendment (Emergency Measures-Miscellaneous) Act 2020*, Sch 1.34. Section 19B was adopted by the Parliament as a result of an amendment moved in the Legislative Council by the Greens and supported by all parties. The amendment was not opposed by the government on the return of the bill to the Legislative Assembly.

- educational institutions, including pre-schools, schools and tertiary institutions (other than establishments providing only on-line teaching services)
- police and emergency services (including fire brigades and rural fire services)
- refuges, halfway houses and homeless shelters
- passenger transport services
- libraries
- courts and tribunals
- correctional centres and detention centres
- restaurants, clubs and hotels
- the construction industry
- places of public entertainment or instruction (including cinemas, museums, galleries, cultural institutions and casinos)
- the cleaning industry
- any other type of employment prescribed by regulations made under the *Workers Compensation Act 1987*.<sup>6</sup>

**1.7** Section 19B was adopted by the Parliament in May 2020, at which time little was known about the impacts of COVID-19 and a vaccine was not yet available. The intention was to provide additional assurance to workers in the above industries and occupations which were seen as essential to society.

**1.8** The Workers Compensation Amendment Bill 2021, introduced in the Legislative Assembly on 17 November 2021 by the Hon Victor Dominello MP, now seeks to remove section 19B from the *Workers Compensation Act 1987* and abolish the presumptive right to workers compensation for the above workers should they contract COVID-19. The bill also includes provisions that would entitle a worker to rely on those statutory presumptions under section 19B if they contracted COVID-19 prior to the commencement of the bill as an Act.<sup>7</sup>

**1.9** In addition, the bill makes a consequential amendment to the Workers Compensation Regulation 2016 to omit clauses 5B to 5D, which prescribe clinical criteria, matters relating to incapacity and employment related to COVID-19 injuries under the Act. It also proposes to omit Part 2 of Schedule 2 which prescribes positive medical test results for COVID-19.<sup>8</sup>

**1.10** In his second reading speech in support of the bill on 17 November 2021, Minister Dominello argued that it was necessary to remove the presumption that workers engaged in prescribed employment who contract COVID-19 did so in the course of their employment in order to ensure the sustainability of the workers compensation scheme, particularly for small businesses:

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<sup>6</sup> *Workers Compensation Act 1987*, s 19B(9).

<sup>7</sup> Workers Compensation Amendment Bill 2021, cl 3-4.

<sup>8</sup> Workers Compensation Amendment Bill 2021, Explanatory note.

This amendment will ensure the ongoing efficiency, effectiveness and viability of the workers compensation scheme for workers and employers in New South Wales. The amendment proposed by the bill is aimed at ensuring the sustainability of the workers compensation scheme by minimising premium increases for employers and ensuring a more consistent customer experience for policyholders, workers with an injury and other stakeholders of the workers compensation scheme.

The bill will also protect small businesses from bearing the brunt of a potential increase in insurance premiums of more than half a billion dollars. ... With a vaccination rate now above 90 per cent, it is fundamentally unfair that small businesses are hit the hardest. ... The modelling based on Doherty shows that the scheme could be hit with more than 25,000 extra claims, and we must follow the science. This would not only hit small businesses hard but it also has the potential to overwhelm the workers compensation scheme and impact already injured workers in the scheme.

...

This Government is committed to maintaining affordable workers compensation insurance premiums. Members would be aware that businesses across New South Wales fund the workers compensation system through their premiums. Many of those businesses have had to contend with closures and restrictions, loss of staff, decreased revenue and increased costs of operating. They have worked really hard during this pandemic, developing and implementing COVID-safe plans, investing in personal protective equipment, undertaking rapid antigen testing and absorbing additional cleaning costs to keep their workers and the community safe.

Many businesses have had to draw on their reserves at this time and many have very real concerns for their future viability. The bill seeks to address some of those concerns by ensuring that workers compensation premium increases are minimised and that New South Wales businesses in frontline industries such as cafes, restaurants, and retail do not have to bear a disproportionate cost of the COVID-19 health impacts. Those businesses are the lifeblood of our reopening economy and, without these legislative amendments, employers in some industries could be looking at premium increases of up to 27 per cent, which will hit small businesses hard. An increase of this magnitude means that the average premium for a small employer could increase by more than \$950 from \$3,579 to \$4,535. Without any action to curb premium increases, these increases are ultimately passed to the consumer through their purchase of goods and services, increasing the cost of living for families in New South Wales.

...

The most significant driver of the anticipated cost is the legislative presumption which has the potential to turn a large volume of COVID-19 cases into workers compensation claims. This presumption is the only one of this broad coverage in Australia and is wider than in any other identified jurisdiction in the world. It is time for the presumption to be removed and return certainty for the employers of New South Wales. I repeat, this presumption is the only one of its kind in Australia. In the height of the pandemic, Victoria did not have this presumption. Queensland did not have this presumption. No-one has had this presumption in place.

- 1.11** The committee highlights for the purposes of this report the figures cited by Minister Dominello in his second reading speech of 25,000 extra COVID-19 related claims, and an average impact for small business employers of more than \$950 million cumulatively, or from \$3,579 to \$4,535

individually. As cited, Minister Dominello attributed these figures to modelling undertaken for the government.

**1.12** The committee also notes that these figures were cited by the Premier, Treasurer, Minister for Finance and Minister Dominello in a combined media release dated 14 November 2021 announcing the Government's intention to repeal section 19B. The media release also stated that if the proposed changes were not made, 25,000 extra workers compensation claims could be made within a year and small businesses could experience an average increase of \$950 in their insurance premiums. In addition, the committee notes that the Minister for Finance and Small Business cited in the media release estimates based on Doherty Institute modelling that COVID-19 claims could cost the workers compensation system up to \$638 million over the coming year.<sup>9</sup>

**1.13** In his second reading speech in the Legislative Assembly, Minister Dominello backed up his argument for the repeal of section 19B by arguing that the circumstances in New South Wales had changed fundamentally since the initial outbreak of COVID-19 and the adoption by the Parliament of section 19B:

In May 2020 the New South Wales Parliament passed the COVID-19 Legislation Amendment (Emergency Measures) Bill 2020 in response to the emerging public health emergency arising out of the pandemic. These changes included an amendment to the Workers Compensation Act 1987 creating a presumption for workers in certain types of employment that the link between their work and contracting COVID-19 had been established, and facilitating the making of a workers compensation claim. This COVID-19 presumption was designed to provide additional assurance to workers at a time when little was known about the impacts of COVID-19 and vaccinations were simply a work in progress.

Eighteen months later we have come a long way, with the circumstances in New South Wales markedly different. Public health orders and COVID-safe plans have been developed and implemented as needed and, most notably, New South Wales workers are able to protect themselves with safe and effective vaccines available to all, free of charge. ... With the further easing of restrictions on 8 November for fully vaccinated people in New South Wales, in line with the New South Wales road map for easing COVID-19 restrictions, it is now business as usual for New South Wales living with COVID-19. Our Government believes that this should extend to workers compensation matters.

...

New South Wales is now leading Australia out of the pandemic and is on track to be one of the highest vaccinated jurisdictions in the world. This high rate of vaccination has allowed us to work together to develop the New South Wales road map for easing COVID-19 restrictions based on the modelling undertaken by the Doherty Institute. This is the right time to recognise that COVID-19 is not specific to employment, requiring extraordinary measures for workers, but a public health issue that affects the whole community. As together we begin to live with COVID, we thank the workers and employers of New South Wales who have kept the economy moving throughout the pandemic. The bill also responds to the needs of customers and stakeholders of the

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<sup>9</sup> Media release, NSW Government, 'NSW Government to save business half billion dollar COVID bill', 14 November 2021.



workers compensation scheme more generally by ensuring that the workers compensation system is not overrun with the influx of COVID-19 notifications and small claims predicted to arise from a combination of the COVID-19 presumption and the easing of movement restrictions.

- 1.14** However, the Minister reiterated that workers affected by the removal of the presumption will retain the right to make a claim for workers compensation if they are able to demonstrate that they contracted COVID-19 at work, and not while undertaking social or non-work related activities.<sup>10</sup>

## Parties to the inquiry

- 1.15** The committee addresses the provisions of the bill in detail in the following chapter. However, given the strength of positions adopted during this inquiry, the committee believes it is useful to identify the major parties to the inquiry that supported and opposed the bill.

- 1.16** The supporters of the bill were:

- peak business and industry bodies: the Business Council of Australia, Business NSW, the Australian Industry Group, the Council of Small Business Organisations Australia and the Pharmacy Guild of Australia
- peak property bodies: the Property Council of Australia and the Housing Industry Association
- peak hospitality bodies: Clubs NSW, the Australian Hotels Association NSW and Restaurant and Catering Australia
- peak retail bodies: the National Retail Association and the Australian Retailers Association.

- 1.17** The opponents of the bill were:

- Unions NSW, the peak body for unions in NSW
- the Australian Education Union (NSW Teachers Federation Branch) and the Independent Education Union of Australia (NSW/ACT Branch) representing workers in the education sector
- the Australian Medical Association (NSW), the Australian Salaried Medical Officers' Federation (NSW), the NSW Nurses and Midwives' Association and the Health Services Union representing medical and associated workers
- the Police Association of NSW representing sworn police officers in NSW
- the 'Transport Workers' Union and the Rail, Tram and Bus Union (NSW Branch) representing transport and other freight logistics industries
- the Construction, Forestry, Maritime, Mining and Energy Union (NSW Branch) representing workers in the building and construction industry in particular

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<sup>10</sup> *Hansard*, NSW Legislative Assembly, 17 November 2021, pp 1-3 (proof) per Minister Dominello.

- the Australian Manufacturing Workers' Union (NSW), representing manufacturing workers in both the public and private sectors
- the Public Service Association of NSW, representing workers across a range of public sector agencies and stated-owned corporations
- the Australian Services Union (NSW and ACT (Services) Branch), the Australian Workers' Union, the United Workers Union and the Shop, Distributive and Allied Employee's Association (NSW Branch) representing workers across a range of industries.

**1.18** The committee also received a submission and took evidence from witnesses appearing on behalf of the McKell Institute, which is an independent, not-for-profit research organisation.

**1.19** In addition, the committee received a submission and later supplementary submission from the State Insurance Regulatory Authority (SIRA) and took evidence from representatives of both SIRA and iCare.

## Chapter 2 Key issues

As indicated in the previous chapter, the purpose of the Workers Compensation Amendment Bill 2021 is to repeal section 19B and related provisions in Part 19N of Schedule 6 of the *Workers Compensation Act 1987*. These provisions currently provide a presumptive right to compensation under the New South Wales workers compensation scheme for workers in certain industries and occupations who contract COVID-19.

This chapter examines the key arguments advanced by parties to the inquiry both in support of and against the bill. It also examines modelling on the impact of section 19B on workers compensation premiums, which was a key issue raised during the inquiry, and alternatives to the repeal of section 19B raised in submissions and evidence.

At the outset the committee notes that there was little common ground between the parties to this inquiry in favour of and opposed to the bill.

### Arguments in support of the bill and the repeal of section 19B

- 2.1** The committee outlines below the key arguments raised during the inquiry in support of the passage of the Workers Compensation Amendment Bill 2021 and the repeal of section 19B.

#### **Circumstances have changed since section 19B was adopted in May 2020**

- 2.2** As noted in Chapter 1, in his second reading speech, Minister Dominello argued that it is now appropriate for section 19B to be repealed given that circumstances have changed fundamentally in New South Wales since the initial outbreak of COVID-19 in early 2020 and the adoption by the Parliament of section 19B in May 2020.
- 2.3** Peak business and industry, property and retail bodies adopted the same position in their evidence to the committee. These parties submitted that the adoption of section 19B was understandable and appropriate during the initial COVID-19 lockdown, when certain workers were required to attend at their workplace due to the essential nature of their work to the community. It was acknowledged that these workers faced greater risks than others who were able to work from home at the start of the pandemic, especially in the absence of an available vaccine, and that at the time there was a much greater likelihood that anyone who acquired COVID-19 did so in the workplace. In those circumstances, it was agreed that it was appropriate in May 2020 that workers be granted the additional protection afforded by section 19B.<sup>11</sup>
- 2.4** However, these parties also submitted that the rationale for the adoption of section 19B that applied in May 2020 is no longer valid today. It was variously observed that vaccination rates are now at high levels above 90 per cent for those aged 16 and over, booster shots are being widely rolled-out, individuals are well aware of the measure they need to take to protect themselves from COVID-19, state borders have largely re-opened, COVID-19 is now

<sup>11</sup> Submission 2, Business Council of Australia, p 2; Submission 3, Business NSW, p 1; Evidence, Mr Harding, Executive Director, Policy and Advocacy, Business NSW, 2 February 2022, p 33; Submission 5, Property Council of Australia, p 2; Submission 22, National Retail Association, p 1; Evidence, Ms Boyd, CEO, Council of Small Business Associations Australia, 2 February 2022, p 34.

circulating widely in the community and a new 'covid normal' way of life has emerged. In these circumstances, it was argued that it is now appropriate that section 19B be repealed.<sup>12</sup> The committee cites the following evidence of Mr Achterstraat, NSW Executive Director of the Property Council of Australia, as representative of this position:

We have got to learn to live with this virus, Mr Farlow. I think all the industry groups you have heard from today have emphasised that, that 19B was fit for purpose at one stage in time but is no longer fit for purpose. New South Wales should be proud of itself for hitting 95 per cent full vaccination rate. Governments all around the country are looking to grapple with Omicron. But 19B—its value has really run its course. The default presumption that we have all agreed is a handbrake on business, on investment and creates uncertainty, Mr Farlow, as well. We can talk all day around different modelling and who has modelled what and "Can we guarantee prices will go down?" No-one will ever want to make those sorts of guarantees. But the administrative burden, the red tape that 19B is providing to all the employers you have heard today, I think, is a universal and shared message.<sup>13</sup>

**2.5** As an extension of this position, it was further argued that much of the community is now much more likely to be exposed to COVID-19 in social or private settings than in the workplace. With transmission of the virus happening almost anywhere – in the home, office, places of worship, public transport, gyms, schools, correctional facilities, shopping centres, hospitality venues and so on – it was argued that it is no longer appropriate that employers bear the financial impact of COVID-19 cases that are not work related and beyond the scope of employers' work and safety obligations.<sup>14</sup> As Mr Harding, Executive Director of Policy and Advocacy at Business NSW, stated in evidence:

The close connection between contracting COVID and the worker's employment no longer firmly exists. As we transition from a pandemic to COVID 19 being, in part, endemic, much of the population will be exposed to the virus in social and private settings. This has been borne out by recent events, and 19B now sets an unrealistic and unworkable precedent with regards to a freely circulating virus in all of our communities.

...

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<sup>12</sup> Submission 2, Business Council of Australia, p 2; Submission 3, Business NSW, p 1; Submission 5, Property Council of Australia, pp 2, 3; Evidence, Mr Achterstraat, NSW Executive Director, Property Council of Australia, 2 February 2022, p 50; Submission 10, Australian Industry Group, p 3; Submission 13, Council of Small Business Organisations Australia, p 2; Evidence, Ms Boyd, CEO, Council of Small Business Associations Australia, 2 February 2022, p 34; Submission 22, National Retail Association, p 1; Evidence, Mr Zahra, CEO, Australian Retailers Association, 2 February 2022, p 43; Submission 24, ClubsNSW, p 1.

<sup>13</sup> Evidence, Mr Achterstraat, 2 February 2022, p 56.

<sup>14</sup> Submission 3, Business NSW, p 1; Submission 10, Australian Industry Group, p 3; Submission 13, Council of Small Business Organisations Australia, p 2; Evidence, Ms Boyd, CEO, Council of Small Business Associations Australia, 2 February 2022, p 34; Submission 21, Australian Hotels Association NSW, p 2; Submission 22, National Retail Association, p 2; Evidence, Mr Zahra, CEO, Australian Retailers Association, 2 February 2022, p 43; Submission 24, ClubsNSW, p 1; Evidence, Mr Sawday, Manager of Policy and Government, Clubs NSW, 2 February 2022, p 42; Evidence, Mr Lambert, CEO, Restaurant and Catering Australia, 2 February 2022, p 46; Evidence, Mr Armitage, NSW Deputy Executive Director, Housing Industry Association, 2 February 2022, p 49.

... Whilst the original intent of section 19B was laudable and may well have been appropriate at the time, it is now in conflict, we believe, with the very purpose of our statutory trust. The trust is considered to be the inappropriate vehicle, inappropriate to carry the cost and risk of living alongside COVID. We hold that 19B puts an unfair burden of a public health crisis onto the ledgers of our most vulnerable New South Wales entrepreneurs, of whom we as a community should be supportive and proud.<sup>15</sup>

- 2.6** As an extension of this argument, Ms Boyd, CEO of the Council of Small Business Associations Australia, submitted that if employers are forced to spend more on workers compensation insurance premiums, the inevitable response from some businesses will be a reduction in the number of people they employ. Rather, Ms Boyd argued that the right mechanism to compensate workers who fall ill with COVID-19 was a state-based mechanism similar to the disaster payments implemented at the commencement of the pandemic by governments across Australia.<sup>16</sup> The committee revisits this issue later in this chapter.<sup>17</sup>

### **Presumptive provisions are not appropriate in relation to COVID-19 related illness**

- 2.7** Peak business and industry, property and retail bodies, in particular the Business Council of Australia, also presented a number of other arguments during the inquiry aimed at showing why the presumptive provision in section 19B is no longer appropriately applied to COVID-19 related illness.
- 2.8** First, it was argued that most presumptive provisions that exist in legislation have been enacted where there is a clear history of workers contracting particular diseases in work environments and where there is incontrovertible medical evidence that such workplaces carry a higher risk of those diseases. It was argued that this is not the case with COVID-19.<sup>18</sup> As Mr Davies, Director of Workplace and Corporate Governance Policy at the Business Council of Australia, stated in evidence:

... I would suggest that deeming provisions do have a role to play in the workers compensation system. They exist in all jurisdictions where there is scientific evidence that certain workplaces have a higher risk profile. If the scientific evidence is that frontline health workplaces do have a higher risk profile, then deeming provisions can be considered in those workplaces. But I would also say ... trust the science, as I am sure you would agree, and the science in this case, however it is settled, being the vast majority of private sector workplaces, there is no greater risk of contracting COVID; in fact, the science shows that the opposite is the case.<sup>19</sup>

- 2.9** Second, it was argued that the presumptive provision in section 19B is extremely far-reaching in its application, capturing a wide range of workplaces including all retail, hospitality and construction workplaces, and applying to a wide-range of employees, including employees who have worked as little as one day in the previous 21.<sup>20</sup> Again this was reiterated by Mr Davies in evidence:

<sup>15</sup> Evidence, Mr Harding, 2 February 2022, p 33.

<sup>16</sup> Evidence, Ms Boyd, p 34.

<sup>17</sup> See the discussion under the heading 'Other options for support from government'.

<sup>18</sup> Submission 2, Business Council of Australia, p 3; Submission 10, Australian Industry Group, p 5.

<sup>19</sup> Evidence, Mr Davies, 2 February 2022, p 39.

<sup>20</sup> Submission 2, Business Council of Australia, p 3.

... the current legislation provides that an employee need only work a single shift in the previous 21 days to be eligible. A casual worker could work one shift and then attend an unlimited number of exposure sites on the 20 other days, yet still be eligible for workers compensation. By any measure, this now represents a clear public policy failure.<sup>21</sup>

- 2.10** Third, it was argued that section 19B as it stands is imposing an unprecedented burden on New South Wales businesses due to the sheer amount of mandatory notifications and claims they have to make for workers who are eligible, most of whom do not even wish to receive workers compensation. Mr Davies noted that under the current arrangements, if a worker contracts COVID-19, the employer must notify the employee of their eligibility for compensation and initiate a claim for them. It is then up to the employee to decide whether to progress that claim.<sup>22</sup> He further cited the example of a member of the BCA which had as many workers compensation claims in the first three weeks of 2022 as it would typically have for a full year. He noted that in the same period the business did not receive a single COVID-19 related workers compensation claim anywhere else in Australia.<sup>23</sup>
- 2.11** Similarly, Mr Zahra, CEO of the Australian Retailers Association, cited the example of one of the Association's members processing many more claims in the first month of 2022 than they did in the entirety of 2021.<sup>24</sup>
- 2.12** Finally, it was also submitted by Mr Sawday, Manager of Policy and Government at Clubs NSW, that a presumptive provision fails to reward businesses that protect their employees and implement effective COVID-19 controls:

Many clubs are going above and beyond to protect their staff by mandating vaccinations and requiring staff to do rapid tests and section 19B makes these clubs liable without any consideration of the controls, because whether the club's measures are actually successful at mitigating transmission is irrelevant under section 19B.<sup>25</sup>

### **New South Wales is out of step with other states**

- 2.13** A third argument made by peak business and industry, property and retail bodies for the repeal of section 19B was that the presumptive provision in section 19B is unique to New South Wales and that New South Wales is essentially out of step with other Australian jurisdictions.<sup>26</sup> As stated in the Business Council of Australia submission:

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<sup>21</sup> Evidence, Mr Davies, 2 February 2022, p 35.

<sup>22</sup> Evidence, Mr Davies, 2 February 2022, p 40.

<sup>23</sup> Evidence, Mr Davies, 2 February 2022, pp 34-35.

<sup>24</sup> Evidence, Mr Zahra, 2 February 2022, p 43.

<sup>25</sup> Evidence, Mr Sawday, 2 February 2022, p 42.

<sup>26</sup> Submission 2, Business Council of Australia, p 4; Evidence, Mr Davies, Director, Workplace and Corporate Governance Policy, Business Council of Australia, 2 February 2022, p 34; Submission 5, Property Council of Australia, p 2; Submission 13, Council of Small Business Organisations Australia, p 2; Evidence, Mr Zahra, CEO, Australian Retailers Association, 2 February 2022, p 45.

For national employers, the way in which workers compensation matters are managed in New South Wales is now vastly different to the rest of Australia. New South Wales now has a unique and burdensome strain of red tape that is not found anywhere else.<sup>27</sup>

**2.14** As an aside, various parties noted that the one partial exception to this is Western Australia, which has implemented a more limited presumptive provision in relation to health professionals only.<sup>28</sup>

**2.15** As an extension of the argument that New South Wales is out of step with other states, particular concerns were expressed during the inquiry about businesses operating near the state's border. As an example, Mr Armitage, NSW Deputy Executive Director of the Housing Industry Association, stated in evidence:

Our members in border regions have had a really difficult time throughout COVID. That is for all reasons. Particularly in some instances, the rules between different States have varied significantly. In one State, they are permitted to go to work. In another State, they are not allowed to leave. Often in cases, they are living in one State and working in another and have jobs across different borders. They may have contractors and employees living in different States as well. It is easy to underestimate just how much of a small business's resources goes into navigating these issues.<sup>29</sup>

### **It will become virtually impossible for employers to contest deemed liability under section 19B**

**2.16** A fourth argument made during the inquiry in support of the repeal of section 19B and deemed liability of employers for COVID-19 related workers compensation claims was the argument that if section 19B is not repealed, it will become virtually impossible for employers to contest workers compensation claims. The Business Council of Australia attributed this to various factors:

- Establishing that an employee contracted COVID-19 outside of the workplace is inherently difficult, given the widespread circulation of different strains and various means of transmission.
- NSW Health is no longer able to contract trace strains in the community or to share that data with employers.
- Workers are not required to share information with their employers about their attendance at other places outside of work, and employers cannot compel them to do so.<sup>30</sup>

<sup>27</sup> Submission 2, Business Council of Australia, p 4.

<sup>28</sup> See submission 2, Business Council of Australia, p 4; Submission 5, Property Council of Australia, p 2; Submission 13, Council of Small Business Organisations Australia, p 2; Evidence, Ms Browne, Manager, National Safety and Workers Compensation Policy and Membership Services, Australian Industry Group, 2 February 2022, p 40.

<sup>29</sup> Evidence, Mr Armitage, 2 February 2022, p 56.

<sup>30</sup> Submission 2, Business Council of Australia, pp 2-3. See also submission 23, National Retail Association, p 2.

- 2.17** Mr Sawday, Manager of Policy and Government at Clubs NSW, presented this argument another way in his evidence to the committee:

Section 19B also fails to reflect that a worker has a much better opportunity to demonstrate that they caught COVID-19 in the workplace compared to an employer demonstrating that a worker did not catch COVID-19 in the workplace. With rapid tests becoming more accessible, workers are more likely to identify if a positive case is at work.<sup>31</sup>

### **Workers compensation premiums will rise significantly if section 19B is retained**

- 2.18** As noted in Chapter 1, in introducing the Workers Compensation Amendment Bill 2021, Minister Dominello and the government in its media release of 14 November 2021 cited modelling and figures which indicated that 25,000 additional COVID-19 related claims may be made over the next year if section 19B is not repealed, at a cost of \$638 million to the workers compensation scheme, resulting in an average premium increase for small businesses of \$950 a year from \$3,579 to \$4,535.
- 2.19** The committee notes that this was the key argument made during this inquiry for the repeal of section 19B.
- 2.20** The peak business and industry, property and retail bodies giving evidence to this inquiry also referred to the modelling cited above to argue that if section 19B is not repealed, employers will face significantly higher workers compensation premiums. Some parties cited an increase in claims in the order of 25 per cent if section 19B is not repealed. Others cited an increase in premiums of over \$900 for employers.<sup>32</sup>
- 2.21** Parties also cited increased costs specific to their particular industry.
- 2.22** In its submission, the Property Council of Australia cited a cost to the construction sector if section 19B is not repealed of close to \$100 million. It argued that this would have a significant impact on insurance premiums, with employers estimating an increase of 27 per cent in this year alone,<sup>33</sup> which could mean the average premium for a small employer increasing by more than \$950. Conversely, it was submitted that the removal of section 19B would lead to a saving of roughly \$97.2 million to the construction and building industry.<sup>34</sup>
- 2.23** The Housing Industry Association indicated in its submission that the residential building industry is considered a high-risk industry, and as such already bears higher workers compensation premiums than other industries. Without the repeal of section 19B, the Association submitted that there would be significant increases to workers compensation premiums which would place an unjustifiable financial burden on the industry and an adverse

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<sup>31</sup> Evidence, Mr Sawday, 2 February 2022, p 42.

<sup>32</sup> Submission 2, Business Council of Australia, pp 2, 4; Submission 3, Business NSW, p 1; Submission 23, National Retail Association, p 2.

<sup>33</sup> The committee interprets this as meaning in 2022, although the submission was dated 17 December 2021. However, the committee notes that the point is not entirely clear.

<sup>34</sup> Submission 5, Property Council of Australia, p 2.



financial impact on a large number of trading entities.<sup>35</sup> Mr Armitage, NSW Deputy Executive Director of the Housing Industry Association, reiterated this in evidence:

Working in the housing industry already attracts some of the highest workers compensation premiums, compared with other industries. Without the bill, it is likely that premiums will increase further, placing significant pressure on our members, who are already dealing with significant disruptions to supply chains, material-price increases and labour shortages.<sup>36</sup>

**2.24** In its submission, ClubsNSW cited modelling it commissioned by Ernst & Young that found that retaining section 19B will cost the hospitality sector \$46.1 million.<sup>37</sup> This would come on top of more than \$1 billion in lost revenue for clubs in Greater Sydney alone due to the 2020 and 2021 lockdowns.<sup>38</sup> In evidence, Mr Sawday, Manager of Policy and Government at Clubs NSW, cited further data from Hospitality Employers Mutual that there have been 691 COVID-19 related workers compensation claims in the hospitality industry as of 27 January 2022, at an average cost of \$2,700 per claim. Based on an anticipated 1,500 to 3,000 claims this year, Mr Sawday indicated that a premium increase of 15 to 20 per cent would be required to fund the cost of these claims.<sup>39</sup>

**2.25** The Australian Hotels Association NSW submitted that its members are predominantly insured by a specialist insurer – Hospitality Employers Mutual – which has advised that premium increases of 15-20 per cent could be necessary to fund future COVID-19 related claims if section 19B is not repealed. To place this increase in context, the Association observed that this follows significant losses already sustained by the industry because of lockdowns, noting that hotels in New South Wales have been shut for 208 days since the start of the pandemic, and have operated with reduced capacity for almost all the remaining time.<sup>40</sup> Mr Morrissey, Deputy Chief Executive Officer of the Australian Hotels Association NSW, reiterated this in evidence:

... we are doing it extremely tough at the moment. An increase in workers comp insurance premiums of 15 to 20 per cent, particularly for a small country pub, is just something that is really hard to fathom in the current context of doing business and the context of what our members and our industry has been through over the last two years.<sup>41</sup>

**2.26** Mr Morrissey subsequently tabled at the committee's invitation correspondence to SIRA from Hospitality Employers Mutual Limited, which is part owned by the Australian Hotels Association, which set out similar modelling and concerns to those outlined above.

**2.27** Particular concerns were also expressed during the inquiry about increases in insurance premiums for small businesses.<sup>42</sup>

<sup>35</sup> Submission 17, Housing Industry Association, p 2.

<sup>36</sup> Evidence, Mr Armitage, 2 February 2022, p 49.

<sup>37</sup> ClubsNSW did not put a timeframe on this figure in its submission.

<sup>38</sup> Submission 24, ClubsNSW, p 1.

<sup>39</sup> Evidence, Mr Sawday, 2 February 2022, p 42.

<sup>40</sup> Submission 21, Australian Hotels Association NSW, p 2.

<sup>41</sup> Evidence, Mr Morrissey, 2 February 2022, p 43.

<sup>42</sup> Submission 2, Business Council of Australia, pp 2, 4.

- In its submission, the Council of Small Business Organisations Australia argued that most small businesses have accumulated significant debts during the COVID-19 lockdowns and that small business owners are very concerned at any increase in workers compensation premiums at a time when they are already struggling financially.<sup>43</sup> This was reiterated in evidence by Ms Boyd, CEO of the Council of Small Business Associations Australia, who submitted that '[s]ince the beginning of the pandemic, small businesses have been bending over backwards to protect their workers, their workplace, themselves and their communities, but to expect small businesses to continue to wear additional costs through a concern around increased premiums of workers compensation is simply unfair'.<sup>44</sup>
- In its submission, Restaurant and Catering Australia noted that 93 per cent of hospitality venues in New South Wales are small businesses that employ 19 people or less. The Association cited research that restaurants, cafes and caterers had lost \$10 billion in bookings and events since the start of the pandemic, and that maintaining the provisions of section 19B would only increase workers compensation premiums for venue operators, leading to further hardship and closures.<sup>45</sup> In evidence, Mr Lambert, CEO of Restaurant and Catering Australia, indicated that there had already been an 8 per cent increase in workers compensation premiums in the last financial year, and argued that further increases 'will certainly lead to potential closure of businesses and, certainly, the loss of jobs'.<sup>46</sup>
- In its submission, the National Retail Association indicated that despite having generally traded throughout the lockdowns, most of the Association's member businesses had significantly reduced incomes during the 2021-2022 financial year and are relying on reopening trade to recover from these setbacks and return to their pre-COVID-19 positions. In such circumstances, the Association submitted that businesses, particularly small and micro enterprises, are not in a position to subsidise the general costs of the pandemic.<sup>47</sup>
- In its submission, the Pharmacy Guild of Australia, representing community pharmacies, indicated that higher workers compensation insurance premiums are already being observed and felt by businesses.<sup>48</sup>

### **Workers ultimately retain the right to make claims for workers compensation**

- 2.28** The final argument made during the inquiry in support of the bill and the repeal of section 19B was that even if section 19B is repealed, employees retain their pre-existing right to claim workers compensation for COVID-19 related illness contracted at work.
- 2.29** As noted in Chapter 1, Minister Dominello made this argument in his second reading speech, indicating that workers will retain the right to make a claim for workers compensation if they

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<sup>43</sup> Submission 13, Council of Small Business Organisations Australia, p 2.

<sup>44</sup> Evidence, Ms Boyd, 2 February 2022, p 34.

<sup>45</sup> Submission 12, Restaurant and Catering Australia, p 1.

<sup>46</sup> Evidence, Mr Lambert, 2 February 2022, p 48.

<sup>47</sup> Submission 22, National Retail Association, p 2.

<sup>48</sup> Submission 14, Pharmacy Guild of Australia, p 3.

are able to demonstrate that, like any other workplace injury, they contracted COVID-19 at work and not whilst undertaking social or non-work related activities.<sup>49</sup>

- 2.30** This point was also made by the peak business and industry, property and retail bodies giving evidence to the inquiry. Ultimately it was argued that if the bill is passed, workers will still be eligible for compensation if they contract the virus at work. The repeal of section 19B will just mean that the normal processes under the *Workers Compensation Act 1987* will apply to such claims for compensation.<sup>50</sup> As Mr Davies, Director of Workplace and Corporate Governance Policy at the Business Council of Australia, observed in evidence:

... it is simply incorrect to assert that the bill will remove rights to workers compensation for employees who contract COVID 19 at work. This is a complete falsehood. Rather, the removal of these provisions will see New South Wales workers entitled to the same compensation protections as those in every other State and Territory in Australia.<sup>51</sup>

- 2.31** Similarly, Mr Harris, Director of Workplace Relations and Business Policy at the Pharmacy Guild of Australia, submitted that it is 'important we reinforce it does not remove, if the legislation is passed, the right for an employee to make a workers comp claim'.<sup>52</sup>

## Arguments against the bill and the repeal of section 19B

- 2.32** The committee outlines below the key arguments raised during the inquiry against the passage of the Workers Compensation Amendment Bill 2021 and the repeal of section 19B.

### The deeming provision is an efficient way of dealing with COVID-19 claims

- 2.33** The first argument raised by parties to the inquiry opposed to the bill and the repeal of section 19B was that the deeming provision in section 19B is a relatively efficient way of dealing with COVID-19 related workers compensation claims. Put simply, given that such claims tend to be for relatively small amounts and tend to be relatively quickly resolved, it was argued that it is more efficient to simply apply the deeming provision, rather than forcing employees to try to prove that they contracted COVID-19 at work, in the process tying up significant time and resources in the workers compensation system.
- 2.34** In evidence, Ms Deguara, Manager of Industrial Support at the Public Service Association of NSW, submitted that section 19B 'has made for speedier determinations, especially when people have needed it when they have been in hospital and the like'.<sup>53</sup> Ms Black, Lead Health and Safety Professional Officer at the NSW Nurses and Midwives' Association, similarly submitted:

<sup>49</sup> *Hansard*, NSW Legislative Assembly, 17 November 2021, pp 1-3 (proof) per Minister Dominello.

<sup>50</sup> Submission 2, Business Council of Australia, p 5; Submission 10, Australian Industry Group, p 5; Submission 23, National Retail Association, p 2; Submission 24, ClubsNSW, p 2; Evidence, Mr Zahra, CEO, Australian Retailers Association, 2 February 2022, p 43; Evidence, Mr Achterstraat, NSW Executive Director, Property Council of Australia, 2 February 2022, p 50.

<sup>51</sup> Evidence, Mr Davies, 2 February 2022, p 34.

<sup>52</sup> Evidence, Mr Harris, 2 February 2022, p 49.

<sup>53</sup> Evidence, Ms Deguara, 2 February 2022, p 24.

... because we have got this presumption, it has been a much more straightforward process. And so nurses who have claimed workers compensation, that claim has gone through, they have had the support that they need at the time that they need it. ... having that presumption and making that a much more streamlined and straightforward process has meant a lot to our membership.<sup>54</sup>

**2.35** Similar evidence was received from Ms Lewis, Manager of Human Resources and Industrial Divisions at the Health Services Union<sup>55</sup> and Ms Skinner, Research Manager at the Police Association.<sup>56</sup>

**2.36** The Construction, Forestry, Maritime, Mining and Energy Union (NSW Branch) also submitted that COVID-19 related workers compensation claims are unlikely to be longstanding claims, and that the entitlement to weekly benefits will fall away quickly for most workers who contract COVID-19. In such circumstances, the union suggested that removing the deeming provision was counterproductive.<sup>57</sup>

### **The repeal of section 19B will make COVID-19 related compensation claims by workers very difficult**

**2.37** Further to the argument cited above that the deeming provision is an efficient way of dealing with COVID-19 related workers compensation claims, it was also argued during the inquiry by parties opposed to the bill that the repeal of section 19B will make COVID-19 related compensation claims by workers very difficult.

**2.38** In its written submission, the Australian Workers' Union argued that if the bill is passed, insurers will routinely reject COVID-19 related workers compensation claims on the basis that COVID-19 is now endemic in the community, unless a worker can show that (a) a workplace exposure event occurred and (b) the worker was not otherwise exposed to COVID-19 at another location. The union argued that it would be very difficult for workers to show both (a) and (b).<sup>58</sup> A number of other parties adopted similar arguments.<sup>59</sup>

**2.39** As an extension of this argument, various parties also highlighted the winding back of QR check-ins and the scaling back of contract tracing by NSW Health, making it very difficult for workers to identify the source of a COVID-19 infection.<sup>60</sup> The committee cites as an example

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<sup>54</sup> Evidence, Ms Black, 2 February 2022, p 6.

<sup>55</sup> Evidence, Ms Lewis, 2 February 2022, p 6.

<sup>56</sup> Evidence, Ms Skinner, 2 February 2022, p 24.

<sup>57</sup> Submission 25, The Construction, Forestry, Maritime, Mining and Energy Union (NSW Branch), pp 7-8, 10.

<sup>58</sup> Submission 1, The Australian Workers' Union, pp 3-4; Submission 25, The Construction, Forestry, Maritime, Mining and Energy Union (NSW Branch), p 12; Australian Manufacturing Workers' Union (NSW), p 5, Submission 30, Unions NSW, p 10.

<sup>59</sup> See for example Submission 25, The Construction, Forestry, Maritime, Mining and Energy Union (NSW Branch), p 12; Submission 27, The Australian Manufacturing Workers' Union (NSW), p 5, Submission 30, Unions NSW, p 10.

<sup>60</sup> Submission 9, Transport Workers' Union, p 8, Submission 19, Shop, Distributive and Allied Employee's Association (NSW Branch), p 2; Submission 23, Public Service Association of NSW, p 4; Submission 25, The Construction, Forestry, Maritime, Mining and Energy Union (NSW Branch),

of this position the evidence of Ms Lewis, Manager of Human Resources and Industrial Divisions at the Health Services Union:

The workers comp system is difficult at the best of times to navigate. This extra burden on them at this time, particularly when contact tracing is being rolled back by the authorities and the onus is coming more and more back on the individual and on managers in the workplaces to actually do that local contact tracing—so all of that is adding to the enormous difficulty.<sup>61</sup>

**2.40** It was submitted to the committee that the only way that it could be categorically determined that an infection occurred in the workplace from a work colleague was via genomic testing, but that access to genomic sequencing is extremely limited.<sup>62</sup>

**2.41** As an example of the challenges faced by an employee seeking to bring a compensation claim for COVID-19 related illness if section 19B is repealed, the Police Association of NSW cited the example of a Police Officer, interacting with members of the community, often in conditions in which social distancing and use of PPE is not practical.<sup>63</sup>

**2.42** Parties further argued that the effect of repealing the deeming provision would be to shift the financial burden of COVID-19 from government and employers onto workers.<sup>64</sup> Particular concern was expressed about the impact of the proposed change on those in casual or precarious employment who have no access to sick or other forms of leave, and who may be without income for the duration of their illness.<sup>65</sup> As an example of this position, the committee cites the evidence of Mr Smith, Branch Secretary of the Shop, Distributive and Allied Employee's Association (NSW Branch):

A large number of our members are casual; those members do not have any paid leave entitlements to rely on. A large number of members in some of the non-essential areas that shut down during the pandemic for periods of time have exhausted their leave arrangements, particularly under the previous JobKeeper scheme where employers could make people take their leave. These people have no reserves to fall back on and that means that they are at real risk in terms of being able to provide the essential service that we depend upon and that you have seen across January has been really stretched.<sup>66</sup>

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p 11; Evidence, Ms Black, Lead Health and Safety Professional Officer, NSW Nurses and Midwives' Association, 2 February 2022, p 4.

<sup>61</sup> Evidence, Ms Lewis, 2 February 2022, p 5.

<sup>62</sup> Submission 28, The Australian Salaried Medical Officers' Federation (NSW), p 2; Evidence, Ms Black, Lead Health and Safety Professional Officer, NSW Nurses and Midwives' Association, 2 February 2022, p 4; Evidence, Dr Sara, President, Australian Salaried Medical Officers' Federation (NSW), 2 February 2022, pp 5, 7.

<sup>63</sup> Submission 20, Police Association of NSW, p 3.

<sup>64</sup> Submission 19, Shop, Distributive and Allied Employee's Association (NSW Branch), p 2; Submission 20, Police Association of NSW, p 4; Submission 29, Rail, Tram and Bus Union (NSW Branch), p 4; Evidence, Ms Deguara, Manager, Industrial Support, Public Service Association of NSW, 2 February 2022, p 20.

<sup>65</sup> Submission 27, Australian Manufacturing Workers' Union (NSW), p 5; Evidence, Ms Hayward, Legal/Industrial Officer, Construction, Forestry, Maritime, Mining and Energy Union (NSW Branch), 2 February 2022, p 11.

<sup>66</sup> Evidence, Mr Smith, 2 February 2022, p 14.

- 2.43 Parties to the inquiry also cited the challenges faced by workers, potentially already under extreme financial pressure, and potentially extremely ill with the virus, running workers compensation claim.<sup>67</sup>

**Workers on the front line still need the protection offered by section 19B**

- 2.44 As an extension of the arguments cited above, parties to the inquiry opposed to the bill also argued that workers in key frontline industries and occupations still require and deserve the protection afforded by section 19B, particularly in light of the recent surge in COVID-19 cases attributed to the Omicron variant, and also in circumstances where other protections such as isolation periods and government payments have been wound back.<sup>68</sup> Parties suggested that section 19B constitutes in effect a social contract between the government, employers and workers in response to the pandemic, a contract which the government is proposing to break.<sup>69</sup>
- 2.45 The committee presents this evidence by individual industries/occupations below.

***The education sector***

- 2.46 In its submission, the Australian Education Union (NSW Teachers Federation Branch), representing teachers in all public education worksites in NSW, submitted that throughout the pandemic, its members had continued to show extraordinary commitment and dedication to their students and school communities, both during periods of remote learning and face-to-face teaching. At the same time, however, it was submitted that the pandemic has taken a significant toll on teachers, with significant pressure and long hours, with no signs of that abating. In that context, the Federation submitted that shifting the onus onto teachers to prove they contracted COVID-19 in their workplace is not only 'harsh and unreasonable', but amplifies the risk of psychological injury to teachers. The Federation also argued that it is hypocritical for the government to determine that educators are essential workers, whilst at the same time seeking to repeal the protection offered by section 19B.<sup>70</sup> Ms Flohm, Senior Vice President at the Australian Education Union (NSW Teachers Federation Branch), reiterated this position in evidence:

It is just another example of the incredible disrespect and contempt for the teaching profession and the role that they play in caring for and educating our young children and young adults. Of course our members are concerned, but they take their responsibility to educate public school students seriously. What they demand of government is the rightful protection when they do that work.<sup>71</sup>

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<sup>67</sup> Submission 30, Unions NSW, p 10; Evidence, Ms Lang, Branch Secretary, Australian Services Union (NSW and ACT (Services) Branch), 2 February 2022, pp 14-15; Evidence, Ms Flores, Industrial Officer, WHS and Workers Compensation, Unions NSW, 2 February 2022, p 21.

<sup>68</sup> Submission 30, Unions NSW, p 5; Evidence, Mr Smith, Branch Secretary of the Shop, Distributive and Allied Employee's Association (NSW Branch), 2 February 2022, p 16; Evidence, Ms Skinner, Research Manager, Police Association, 2 February 2022, p 20; Evidence, Ms Deguara, Manager, Industrial Support, Public Service Association of NSW, 2 February 2022, p 24; Evidence, Mr Smith, Branch Secretary of the Shop, Distributive and Allied Employee's Association (NSW Branch), 2 February 2022, p 16.

<sup>69</sup> Evidence, Ms Skinner, Research Manager, Police Association, 2 February 2022, p 20.

<sup>70</sup> Submission 31, Australian Education Union (NSW Teachers Federation Branch), pp 2-4.

<sup>71</sup> Evidence, Ms Flohm, 2 February 2022, p 28.

**2.47** The Independent Education Union of Australia (NSW/ACT Branch), representing teachers and staff in non-government schools, early learning centres and secondary colleges, submitted that teachers and other education staff are at high risk of exposure to COVID-19. Schools are crowded environments and social distancing is almost impossible. Vaccination rates amongst children are also low, although rising. In such circumstances, the Union argued that removing the presumptive provision in section 19B could cause teachers and staff real financial hardship, and described the proposed change as 'harsh, heartless and unnecessary'.<sup>72</sup> In evidence, Ms Matthews, Acting Secretary of the Independent Education Union of Australia (NSW/ACT Branch), made the following comment on the proposed repeal of section 16B:

Look, I think it would definitely be seen as contemptuous, insulting and simply not understanding how schools operate and what is happening there. It is a lack of contact with the day to day reality of schools, not to even mention early learning centres, where there are even greater risks. People are really, really nervous in early learning centres, absolutely.<sup>73</sup>

### *The medical profession*

**2.48** In its submission, the Australian Medical Association (NSW), representing doctors and career medical officer, submitted that for medical practitioners and frontline workers in the health system, there remains high risk of exposure to COVID-19 every day and that their protection remains essential. The Association submitted that requiring medical officers to prove that they contracted the virus at work may be onerous, stressful and difficult and that the data on the impact of section 19B on workers compensation claims is only now becoming available. In those circumstances, the Association argued that section 19B should remain in place for another 12 months for medical practitioners and healthcare workers.<sup>74</sup> This position was reiterated in evidence by Dr McMullen, President of the Australian Medical Association (NSW).<sup>75</sup>

**2.49** The Australian Salaried Medical Officers' Federation (NSW), representing registered medical practitioners in New South Wales, submitted that its members had been critical to fighting the pandemic, involving long and arduous hours, sometimes with a shortage of PPE. In those circumstances, and with the pandemic ongoing, the Federation submitted that now was not the time to be removing the protection offered by section 19B. It cited a survey of its members indicating that 95 per cent were against the change, based on the high risk environment doctors work in, the extreme difficulty of proving where a person contracted COVID-19 was contracted and the unreasonable burden attempting to do so would place on doctors.<sup>76</sup>

**2.50** In its submission, the NSW Nurses and Midwives' Association, representing all nurses and midwives in New South Wales, argued that the pandemic had placed health workers in an exceptionally demanding situation, with heavy workloads and psychological stress. It also submitted that the majority of healthcare workers who have caught COVID-19 did so despite being vaccinated and that vaccination does not entirely prevent infection, serious disease and

<sup>72</sup> Submission 4, Independent Education Union of Australia (NSW/ACT Branch), pp 1-2.

<sup>73</sup> Evidence, 2 February 2022, p 31.

<sup>74</sup> Submission 26, Australian Medical Association (NSW), p 2.

<sup>75</sup> Evidence, Dr McMullen, President, Australian Medical Association (NSW), 2 February 2022, p 3.

<sup>76</sup> Submission 28, The Australian Salaried Medical Officers' Federation (NSW), pp 2-3. See also Evidence, Dr Sara, President, Australian Salaried Medical Officers' Federation (NSW), 2 February 2022, p 5.

death. In such circumstances, the Association argued that the bill essentially seeks to shift the cost burden associated with the pandemic onto individual healthcare workers, which it labelled 'unconscionable'.<sup>77</sup> In evidence, Ms Black, Lead Health and Safety Professional Officer at the NSW Nurses and Midwives' Association, reiterated these concerns:

A recent survey conducted by the association saw six out of 10 ICU nurses saying they had no intention of staying in the profession after their experience of the pandemic. This is not the time to be removing income protection should they become ill with COVID, nor to transfer the burden of proving where they contracted the disease to people who are sick and exhausted after two years of dealing with COVID.<sup>78</sup>

- 2.51** The Health Services Union, representing workers in both public and private health services together with ambulance paramedics and aged care workers, submitted that the proposed repeal of section 19B is both premature and unfair and shows a patent disregard for the selfless efforts of frontline health workers over the past two years. The Union cited a survey of its members indicating that over 95 per cent did not support the proposed change. The Union argued that the workers compensation system should be as accessible as possible for workers who are at risk of transmission of COVID-19 in the course of the work, giving them the confidence that they will be fully supported in the event of infection.<sup>79</sup> In evidence, Ms Lewis, Manager of Human Resources and Industrial Divisions at the Health Services Union, noted that since the Union's submission was lodged, the state's infection rates had risen with the Omicron outbreak, and that this had coincided with a lifting of restrictions and a dramatic scaling back of contract tracing, putting staff at greater risk. Ms Lewis continued:

We repeat our assertion that the Government's proposed changes to these workers compensation arrangements, which place the onus on the worker to prove that they caught COVID-19 at work, are both premature and unfair, and show a patent disregard for the selfless efforts of frontline workers over the past two years.<sup>80</sup>

- 2.52** The representatives of the various medical associations and unions cited above also indicated in evidence to the committee the extreme pressure that staff in the health system are under at the current time with the Omicron outbreak, and that they had not been consulted prior to the announcement by the government of the proposed repeal of section 19B. In such circumstances, they argued that the repeal of section 19B would be received extremely poorly by the medical profession and could lead to mass resignations from the sector.<sup>81</sup>

### ***Police***

- 2.53** In its submission, the Police Association of NSW, representing sworn police officers in NSW, argued that NSW police have gone above and beyond the requirements of duty to protect the community throughout the pandemic, at great personal risk to their own health. On that basis, the Association indicated its disappointment that the government is seeking in its view to

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<sup>77</sup> Submission 7, NSW Nurses and Midwives' Association, pp 3-8.

<sup>78</sup> Evidence, Ms Black, 2 February 2022, p 2.

<sup>79</sup> Submission 16, Health Services Union, pp 2-7.

<sup>80</sup> Evidence, Ms Lewis, 2 February 2022, p 3.

<sup>81</sup> Evidence, Dr McMullen, President, Australian Medical Association (NSW), Ms Lewis, Manager, Human Resources and Industrial Divisions, Health Services Union; Dr Sara, President, Australian Salaried Medical Officers' Federation (NSW), 2 February 2022, pp 3-4, 5-6.



transfer the cost of COVID-19 health impacts to individual police officers. The Association also argued that whilst society has the protection of vaccines, people are still being hospitalised and admitted to intensive care and that the danger of COVID-19 is not over.<sup>82</sup> Ms Skinner, Research Manager at the Police Association, reiterated this position in evidence to the committee.<sup>83</sup> She also further observed:

Our members are well versed in hearing words calling them "heroes" or that their actions should be praised and that their efforts have gotten us through the pandemic, only for practical decisions to be made that are massively to disadvantage them. It is a real sense of disillusionment and disappointment when things like that occur and it is really disappointing for all our members when we hear words such as those examples in the submission but then, at the same time, a decision is made that will make it harder for them to access support when they are ill as a direct result of things that they are doing to protect the community. It is a significant cause of disillusionment and burnout at a time when they are already working very hard under very difficult circumstances.<sup>84</sup>

### *The transport sector*

- 2.54** In its submission, the Transport Workers' Union, representing workers across road transport, aviation and freight logistics industries, argued that bus/coach drivers and taxi/rideshare drivers are at a high risk of being exposed to and contracting COVID-19, and that removal of the protection in section 19B is at best misguided, and at worst an attack on frontline workers who have put themselves and their family at risk during the pandemic to keep transport services operating. Equally, the Union submitted that the aviation industry involves an intractable level of risk, and that it defies logic to be removing compensation protections for aviation workers precisely at the time the industry is picking up and more workers will be exposed to COVID-19.<sup>85</sup> Mr Webb, Chief Legal Officer at the Transport Workers' Union, observed in evidence:

The Government's proposal to remove presumptive workers compensation protection for workers in the transport industry at a time when COVID case numbers remain extremely high is the clearest indication that this Government's attitude towards transport workers has not changed. While this Government seems happy to proceed with its let-it-rip approach to COVID and hoping that if they close their eyes for long enough COVID will just go away on its own, the reality is that COVID is still a major problem in the community, particularly the transport industry which we have all seen and experienced in the form of supermarket shortages over the past month or two.<sup>86</sup>

- 2.55** The Rail, Tram and Bus Union (NSW Branch), representing rail and bus workers, submitted that its workers had continued to work throughout the pandemic at a time when health and safety risks and infection rates were poorly understood and at a time when vaccines were not available. In those circumstances, the Union argued that the government was abandoning essential workers by eroding the protection available to them.<sup>87</sup> In evidence, Mr Hart, Industrial Officer at the Rail, Tram and Bus Union (NSW Branch), reiterated the importance of the safety

<sup>82</sup> Submission 20, Police Association of NSW, pp 2-4, 6.

<sup>83</sup> Evidence, Ms Skinner, 2 February 2022, p 20.

<sup>84</sup> Evidence, Ms Skinner, 2 February 2022, p 22.

<sup>85</sup> Submission 9, Transport Workers' Union, pp 6-7.

<sup>86</sup> Evidence, Mr Webb, 2 February 2022, p 10.

<sup>87</sup> Submission 29, Rail, Tram and Bus Union (NSW Branch), pp 2-4.

net offered by section 19B to the Union's workers, particularly workers in insecure employment.<sup>88</sup>

### ***Retail and related workers***

**2.56** In its submission, the Shop, Distributive and Allied Employee's Association (NSW Branch), representing workers in retail, fast food, warehousing, online retail, pharmacy and pharmaceutical manufacturing, argued that retail workers have a particularly high risk of exposure to COVID-19 in the workplace, particularly due to the high number of interactions with the general public each day. It also submitted that retail work is characterised by low wages and insecure work. As such, the Association argued that section 19B provides financial security as well as significant psychological support to thousands of essential workers.<sup>89</sup> In evidence, Mr Smith, Branch Secretary of the Shop, Distributive and Allied Employee's Association (NSW Branch), expanded on this argument:

... the risk to these workers that led to section 19B being put in place remains today. These workers cannot work from home. They did not work from home throughout the pandemic, and no matter what happened they had to turn up to work to serve our communities so that we got the essential goods that we require. ... This attempt to repeal section 19B is really an attempt to shift all of the risk around COVID-19 to the essential worker.<sup>90</sup>

### ***The building and construction industry***

**2.57** In its submission, the Construction, Forestry, Maritime, Mining and Energy Union (NSW Branch), representing workers in the building and construction industry, noted that the construction industry continued to operate throughout the pandemic, except for a two-week shutdown period during the Delta outbreak. In doing so, the Union submitted that the industry had kept the state afloat, despite the risks to workers and their families. In this context, the Union submitted that up until now, section 19B had given workers peace of mind that they could pay their bills and support their family if they contract COVID-19, but that the government's decision to seek to repeal section 19B was causing significant anger, disappointment and stress across the workforce...<sup>91</sup> Ms Hayward, Legal/Industrial Officer at the Construction, Forestry, Maritime, Mining and Energy Union (NSW Branch), repeated these points in evidence, whilst also submitting:

The case for repealing the presumption is unsound and unsupported. For workers in New South Wales to be hung out to dry on the back of flimsy statements and inaccurate reporting is disheartening and concerning. The workers compensation system deserves better. The workers represented here today deserve better.<sup>92</sup>

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<sup>88</sup> Evidence, Mr Hart, 2 February 2022, pp 23-24.

<sup>89</sup> Submission 19, Shop, Distributive and Allied Employee's Association (NSW Branch), p 2.

<sup>90</sup> Evidence, Mr Smith, 2 February 2022, p 9.

<sup>91</sup> Submission 25, The Construction, Forestry, Maritime, Mining and Energy Union (NSW Branch), pp 4-5, 13.

<sup>92</sup> Evidence, Ms Hayward, 2 February 2022, p 11.

***Manufacturing***

- 2.58** In its submission, the Australian Manufacturing Workers' Union (NSW), representing manufacturing workers in both the public and private sectors, noted that only about 10 per cent of its membership is captured by section 19B, mainly in construction. The Union indicated concern for those workers who do not have an entitlement to paid sick leave or government support, and argued that section 19B should be retained and expanded to cover other workers not currently captured, such as workers performing roadside assistance and service technicians.<sup>93</sup>

***Public sector agencies***

- 2.59** In its submission, the Public Service Association of NSW, representing workers across a range of public sector agencies and stated-owned corporations, argued that its members had worked to keep the state going during the pandemic and indicated that its members had been overrepresented in COVID-19 statistics. In that context, the Association argued that the proposal to repeal section 19B whilst the state is still experiencing the pandemic is grossly irresponsible.<sup>94</sup>

***Other industries***

- 2.60** In its submission, the United Workers Union, representing workers in a range of industries including food production, warehousing, hospitality, aged care and early childhood education, cited the impact of the proposed repeal of section 19B on essential workers in aged care and early childhood education and care, and in food manufacturing. It argued that that the proposed repeal of section 19B is a callous and unnecessary attack on workers who are already facing difficult conditions.<sup>95</sup> Mr Gatfield, National Director, Food and Beverages at the United Workers Union, reiterated this position in evidence.<sup>96</sup>
- 2.61** The Australian Services Union (NSW and ACT (Services) Branch), also representing workers in a range of industries including water, transport, aviation, disability and community sector industries, cited the impact of the proposed repeal of section 19B on workers in the public, private and social and community services sectors. The Union argued that the proposed repeal of section 19B will have a particularly disproportionate impact on low paid female workers who hold most jobs in the community and disability sectors.<sup>97</sup> Ms Lang, Branch Secretary of the Australian Services Union (NSW and ACT (Services) Branch), reiterated this position in evidence.<sup>98</sup>

**The community as a whole will also suffer**

- 2.62** During the inquiry, various parties further argued that if the financial support offered by section 19B to workers in key frontline industries and occupations is removed, the community as a whole will also suffer. This is because frontline workers will no longer be able to afford taking

<sup>93</sup> Submission 27, Australian Manufacturing Workers' Union (NSW), pp 2-3, 5-6.

<sup>94</sup> Submission 23, Public Service Association of NSW, covering letter.

<sup>95</sup> Submission 11, United Workers Union, pp 1-3.

<sup>96</sup> Evidence, Mr Gatfield, 2 February 2022, p 10.

<sup>97</sup> Submission 15, Australian Services Union (NSW and ACT (Services) Branch), pp 4-6, 12.

<sup>98</sup> Evidence, Ms Lang, 2 February 2022, p 11.

time off work to isolate at home and will instead continue to work whilst infectious with COVID-19, thereby spreading the disease further.<sup>99</sup> The committee cites as an example of this position the evidence of Mr Gatfield, National Director, Food and Beverages at the United Workers Union:

The people that you refer to that work in hospitality and in child care, these are the backbone of the New South Wales economy. We need these people in these jobs, and if they are not able to get the protections here, what do they do? What happens is they end up getting pressured to go to work, they spread the virus further, not because they want to but because they cannot do anything else.<sup>100</sup>

- 2.63** The argument was also made by a number of parties that removing the deeming provision in section 19B could lead to shortages of workers in critical frontline industries and occupations as they become less attractive to work in and employees leave.<sup>101</sup> As an example, Ms Lang, Branch Secretary of the Australian Services Union (NSW and ACT (Services) Branch), cited data indicating that nearly 30 per cent of workers in the community and disability sectors have indicated that they intend to leave their jobs in the next 12 months.<sup>102</sup>

### **The presumptive provision in section 19B remains appropriate**

- 2.64** As noted previously, peak business and industry, property and retail bodies argued during the inquiry that presumptive provisions are not appropriate in relation to COVID-19 related illness.
- 2.65** The committee notes, however, that the NSW Nurses and Midwives' Association and the Australian Services Union (NSW and ACT (Services) Branch) defended the application of a presumptive provision to healthcare workers by citing recent research conducted by Dr Driscoll for SafeWork Australia. That research indicated that healthcare workers satisfy three criteria for a presumptive provision: there is a strong causal link between COVID-19 and work as a frontline healthcare worker, there are clear means of diagnosing infection with COVID-19 via tests, and work related exposures appear to be responsible for a majority of the cases of COVID-19 in frontline healthcare workers.<sup>103</sup>

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<sup>99</sup> Submission 19, Shop, Distributive and Allied Employee's Association (NSW Branch), p 2; Submission 29, Rail, Tram and Bus Union (NSW Branch), p 4; Submission 30, Unions NSW, p 4; Evidence, Mr Smith, Branch Secretary of the Shop, Distributive and Allied Employee's Association (NSW Branch), p 12; Evidence, Mr Webb, Chief Legal Officer, Transport Workers' Union, 2 February 2022, p 12; Evidence, Ms Lang, Branch Secretary, Australian Services Union (NSW and ACT (Services) Branch), 2 February 2022, p 14; Evidence, Ms Flores, Industrial Officer, WHS and Workers Compensation, Unions NSW, 2 February 2022, p 21; Evidence, Prof Holden, Professor of Economics, University of New South Wales, 2 February 2022, p 62.

<sup>100</sup> Evidence, Mr Gatfield, 2 February 2022, p 11.

<sup>101</sup> Evidence, Mr Webb, Chief Legal Officer, Transport Workers' Union, 2 February 2022, pp 12, 15; Mr Smith, Branch Secretary of the Shop, Distributive and Allied Employee's Association (NSW Branch), p 13; Evidence, Mr Gatfield, National Director, Food and Beverages, United Workers Union, 2 February 2022, p 13; Evidence, Ms Hayward, Legal/Industrial Officer, Construction, Forestry, Maritime, Mining and Energy Union (NSW Branch), 2 February 2022, p 13.

<sup>102</sup> Evidence, Ms Lang, Branch Secretary, Australian Services Union (NSW and ACT (Services) Branch), 2 February 2022, p 11.

<sup>103</sup> Submission 7, NSW Nurses and Midwives' Association, p 6; Submission 15, Australian Service Union, pp 5-6.

### **Comparison with other states is not helpful**

**2.66** As noted previously, peak business and industry, property and retail bodies argued during the inquiry that section 19B is unique to New South Wales and that New South Wales is essentially out of step with other Australian jurisdictions

**2.67** In response, other parties to the inquiry argued that the comparison with other states is not helpful, arguing that the circumstances and response of New South Wales to COVID-19 has been entirely different from that of other states. For example, Ms Hayward, Legal/Industrial Officer at the Construction, Forestry, Maritime, Mining and Energy Union (NSW Branch) submitted:

If we had had a system that did not have icare in place, if we had a system that protected workers at a better rate than it currently does, we would not need the presumption. If you look at Queensland, they have a State-based workers comp system which is run at a central point. They do not have an icare to deal with. To compare New South Wales to other States is not comparing apples and apples, it is comparing apples and pears, ...<sup>104</sup>

**2.68** In turn, Ms Skinner, Research Manager at the Police Association, suggested that it is much easier to demonstrate that a compensable disease was contracted at work in Victoria than it is in New South Wales.<sup>105</sup>

### **The impact of section 19B on insurance premiums has been overstated**

**2.69** As noted above, Minister Dominello and other parties to the inquiry argued that workers compensation premiums paid by employers will rise significantly if section 19B is not repealed. As indicated, this was a key argument advanced in support of the bill for its passage through the Parliament.

**2.70** However, the committee notes that parties opposed to the bill and supporting the retention of section 19B equally questioned the reliability of the modelling referred to by Minister Dominello and others in support of the bill, arguing that the Doherty Institute itself had warned against use of the figures in the way they have been referred to,<sup>106</sup> and suggesting that the figures may in fact far exceed the actual costs to the workers compensation scheme of COVID-19 related claims.

**2.71** Of note, the McKell Institute presented in its submission separate modelling of the number of COVID-19 claims and the impact of these claims on the workers compensation system. Whilst that modelling was prepared prior to the Omicron outbreak, and was on the face of it out of date, Mr Buckland, CEO of the McKell Institute, updated the McKell Institute's calculations in evidence to the committee. He cited the following data:

- For every 10,000 COVID-19 cases, only 131 claims for workers compensation are being made, a rate of 1.31 per cent. This has fallen from a previous rate of 2.6 per cent.

<sup>104</sup> Evidence, Ms Hayward, 2 February 2022, p 17.

<sup>105</sup> Evidence, Ms Skinner, 2 February 2022, p 25.

<sup>106</sup> Submission 30, Unions NSW, p 6; Submission 18, The McKell Institute, p 5; Evidence, Mr Michael Buckland, CEO, McKell Institute, 2 February 2022, pp 63-64.

- In the worst case scenario, if the rate of infection with Omicron in the first few weeks of 2022 continued throughout 2022, it would mean 10.5 million infections in New South Wales in 2022 in total. However, with 95 per cent vaccination in the community, this is highly unlikely, with the more likely scenario relatively low levels of cases interspersed with intermittent outbreaks.
- For there to be 25,000 COVID-19 workers compensation claims in 2022, as cited by the government, there would need to be approximately 8.7 million infections. In the worst month of the Omicron outbreak there were 895,000 infections. Therefore to reach the cited figure of 25,000 claims in 2022, there would need to be nine more Omicron outbreaks in the next 11 months.<sup>107</sup>

**2.72** Mr Holden, Professor of Economics, University of New South Wales, subsequently cited McKell Institute modelling that even just allowing for 95 per cent vaccination rates, rather than the 80 per cent used in the Doherty Institute modelling, the number of claims is reduced from 25,000 to 12,000, and the cost to the workers compensation system from \$638 million to \$315 million.<sup>108</sup>

**2.73** Various other parties to the inquiry also argued that the figures presented by Minister Dominello were based on modelling by the Doherty Institute of the trajectory of COVID-19 cases in the community based on a much lower vaccination rate than have now been achieved.<sup>109</sup>

**2.74** The Australian Workers' Union also impliedly criticised the government for not releasing more recent and accurate modelling of the impacts of COVID-19 on workers compensation premiums. The Union noted that the Government and SIRA in introducing the Workers Compensation Amendment Bill 2021 had failed to put forward modelling of the actual increase in costs to the workers compensation scheme from COVID-19 infections since the reopening of the economy.<sup>110</sup>

### **Any increase in workers compensation premiums should be placed in context**

**2.75** A final issue arising during the inquiry was recent concerns about the management of iCare and the fact that businesses across New South Wales are already facing significant premium increases as a result of the poor claims management and administration of iCare. In such circumstances, it was submitted that any increases in premiums due to section 19B needs to be placed in context of other larger increases due to the poor financial position of iCare.<sup>111</sup> In particular the committee notes evidence raised by the Hon Daniel Mookhey during the inquiry that iCare

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<sup>107</sup> Evidence, Mr Michael Buckland, 2 February 2022, pp 58, 60, 61, 63.

<sup>108</sup> Evidence, Prof Holden, 2 February 2022, pp 58-59.

<sup>109</sup> Submission 1, The Australian Workers' Union, pp 2-3; Submission 18, The McKell Institute, p 6; Submission 25, The Construction, Forestry, Maritime, Mining and Energy Union (NSW Branch), p 8.

<sup>110</sup> Submission 1, The Australian Workers' Union, pp 2-3.

<sup>111</sup> Submission 23, Public Service Association of NSW, covering letter; Submission 25, The Construction, Forestry, Maritime, Mining and Energy Union (NSW Branch), p 6. See also Evidence, 22 February 2022, pp 78-79.

premiums will increase 2.6 per cent this year, and are forecast to increase by 26 per cent over the next seven years.<sup>112</sup>

- 2.76** Reference was also made during the inquiry to the government's changes to the *Workers Compensation Act 1987* in 2012. Mr Hart, Industrial Officer at the Rail, Tram and Bus Union (NSW Branch), referring to the changes in his evidence:

I am reminded, Committee members, that in 2012 there were amendments made to the Workers Compensation Act by the then Liberal Government led by Premier Barry O'Farrell. The amendments were made on the back of a crisis declared with respect to the workers compensation scheme. The crisis was described in terms of a \$4.1 billion deficit that the scheme faced, and yet within the 12 months that followed the passage of the amendments to that Workers Compensation Act the scheme had reduced its revenues by granting employers more than 12.5 per cent in reduction in their premiums and then, suddenly, within the space of that same period, there was no longer a crisis declared with the scheme. ...

What I would like to say is that the dramatic turnaround of the crisis in funding back in 2012 raised validity questions about the actuarial assumptions that underpinned the deficit. What happened though was the rapid recovery of the scheme's financial position was achieved through a dramatic reduction in the compensation that was provided to and allocated to injured workers. What we also can see through the attempt to repeal section 19B of the Workers Compensation Act is that it is similarly based on what I would say are flawed assumptions that there will be a blowout in costs associated with the scheme. We do not accept that that is a legitimate premise or basis on which the reduction or the repeal of the provision should be based.<sup>113</sup>

- 2.77** The point was also made during the hearings on 2 February 2022 that for public sector workers, the insurer is the Treasury Managed Fund, which is controlled by Treasury and is funded by the government. As such, for many workers, the government is itself meeting the cost of workers compensation premiums and as such is the beneficiary of any premium reduction.<sup>114</sup>

## **SIRA and iCare modelling of the impact of section 19B on insurance premiums**

- 2.78** As noted above, an issue central to this inquiry is the impact of COVID-19 related workers compensation claims on insurance premiums, and concern that premiums will rise, perhaps significantly, if the deeming provision in section 19B is not repealed.
- 2.79** Given the significance of this issue to the inquiry and indeed the ultimate passage or otherwise of the Workers Compensation Amendment Bill 2021 through the Legislative Council, the committee specifically sought further information from the government on modelling of the impact of section 19B on workers compensation premiums as part of this inquiry.

<sup>112</sup> Evidence, 2 February 2022, pp 35-36, 50-51.

<sup>113</sup> Evidence, Mr Hart, 2 February 2022, p 19.

<sup>114</sup> Evidence, Ms Skinner, Research Manager, Police Association, 2 February 2022, p 26; Evidence, Ms Deguara, Manager, Industrial Support, Public Service Association of NSW, 2 February 2022, p 26; Evidence, Mr Hart, Industrial Officer, Rail, Tram and Bus Union (NSW Branch), 2 February 2022, p 26; Evidence, Ms Flohm, Senior Vice President, Australian Education Union (NSW Teachers Federation Branch), 2 February 2022, p 29; Evidence, Mr Michael Buckland, CEO, McKell Institute, 2 February 2022, p 61.

- 2.80** In response, the committee received a submission from SIRA on Friday 28 February 2022, after the receipt of submissions from other parties to the inquiry. The committee also took evidence from SIRA and iCare representatives in the final session of the committee's public hearing on Wednesday 2 February 2022.
- 2.81** In its submission, SIRA indicated that at the start of the pandemic in April 2020 it received an initial report on the indicative potential cost of COVID-19 related claims on workers compensation premiums from independent actuaries Ernst & Young. That report estimated that the potential cost of claims could be up to \$8.6 billion over the duration of the pandemic if 20 per cent of the population contracted COVID-19 and the Australian experience replicated what was happening overseas.<sup>115</sup>
- 2.82** Subsequently, Ernst & Young completed revised modelling in October 2021, based on Doherty Institute modelling of COVID-19 infection rates, hospitalisations and deaths in the 180 days after transition to Phase B of the National Plan. Ernst & Young extrapolated this modelling out to 12 months and adopted the following assumptions:
- 80 per cent vaccination
  - 3 weeks for mild cases
  - 3.6 weeks for hospitalisation (over 12 per cent of claims)
  - 5.1 weeks for hospitalisation requiring ICU cases (almost 4 per cent of claims).
- 2.83** Based on these revised assumptions, Ernst & Young estimated approximately 25,000 claims, including over 320 deaths, at a total cost of up to \$638 million to the workers compensation system.<sup>116</sup> As noted previously in this chapter, these figures were cited by Minister Dominello in his second reading speech and the government in its media release of 14 November 2021, and by various parties to this inquiry.
- 2.84** Having cited this information, SIRA subsequently indicated in its submission that the number of COVID-19 related claim notifications remains in line with modelling at this stage, but that there is no long-term modelling available at the current time to forecast the impact of COVID-19 on the workers compensation system over the year ahead with any degree of confidence. Given the significance of this issue to the inquiry, the committee cites the SIRA submission on this point in full:

Since the modelling was undertaken, double vaccination rates have passed 93%, suppression strategies including lockdowns, capacity limits and masks were introduced. Possibly as a result of these and other public health settings put in place by the NSW Government, hospitalisation and fatality rates, which are the major drivers of cost, have not reached the probable scenarios.

Despite the slower than anticipated return to normal life and higher than modelled vaccination rates, the number of claim notifications is in line with the modelling at this stage.

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<sup>115</sup> Submission 32, State Insurance Regulatory Authority, pp 3-4; Evidence, Mr Dent, Chief Executive, SIRA, 2 February 2022, p 66.

<sup>116</sup> Submission 32, State Insurance Regulatory Authority, p 4; Evidence, Mr Dent, Chief Executive, SIRA, p 66.



The rapidly changing COVID-19 environment, as evidenced by the impact of Omicron, makes modelling with any level of certainty, particularly long term modelling, difficult. SIRA has been engaging with relevant bodies, though there is no long term modelling available that could be used to forecast the impact on the workers compensation system over the year ahead with any degree of confidence.<sup>117</sup>

- 2.85** However, in evidence, Mr Dent, Chief Executive of SIRA, did suggest that if current hospitalisation and fatality rates remain below the forecasts in the modelled scenarios, 'actual costs will likely not be anywhere near as high as those modelled scenarios'. Once again, the committee cites this evidence of Mr Dent in full:

Ernst and Young modelling on behalf of SIRA was conducted based initially on a report of the potential cost of COVID-19 in April 2020. It was informed by international experience at the time. The scenario estimated that the potential cost of claims to be up to \$8.6 billion over the duration of the claims if 20 per cent of the population contracted COVID-19 and the Australian experience replicated what was happening overseas. It is important to note that was not really modelling, but a range of scenarios based on the data available at the time. Detailed modelling was completed by EY in October 21, based on the Doherty Institute's modelling of the pandemic at that point in time. We provided that executive summary to this Committee.

That assumed an 80 per cent double vaccination rate and then up to 25,000 claims, including over 320 deaths at a cost of up to \$638 million. Since that modelling has been undertaken—and we have certainly discussed it at great length over time—Omicron has also emerged, double vaccination rates passed 93 per cent in New South Wales, various suppressant strategies have been introduced including lockdowns, capacity limits and masks. Fortunately hospitalisation and fatality rates have not reached anything like the modelled scenarios. If this remains the case, actual costs will likely not be anywhere near as high as those modelled scenarios.<sup>118</sup>

- 2.86** Mr Dent subsequently confirmed to the committee that SIRA is no longer relying on the Doherty Institute's modelling:

**The Hon. DANIEL MOOKHEY:** ... last year you told law and justice that that modelling was now out of date. That remains your position?

**Adam DENT:** Correct. That remains my position. The assumptions used by EY using the Doherty model at the time were around an 80 per cent vaccination rate, which we exceeded relatively quickly thereafter. It used a range of cost assumptions based on claims that had been potentially looked at at that time. There was very little data to base that on. Our experience since then is obviously dramatically different. I am comfortable that I did indeed say in law and justice that I would no longer rely on this modelling.<sup>119</sup>

- 2.87** Mr Harding, CEO and Managing Director of iCare, also indicated the following to the committee:

As Mr Dent has clearly said from an industry perspective, there is no one single source that can provide us with a clear projection going forward. And there is I think every person, including McKell, who have attempted some form of modelling and projection

<sup>117</sup> Submission 32, State Insurance Regulatory Authority, pp 4-5.

<sup>118</sup> Evidence, Mr Dent, 2 February 2022, p 66.

<sup>119</sup> Evidence, Mr Dent, 2 February 2022, p 69.

scenario analysis of COVID, whether it be Doherty and the Federal Government right through to our own experience with SIRA, we have found it very difficult to get an accurate projection on that. At this point in time we would like to see some more experience, we would like to see it unfold. Clearly the risk here is that there is a significant financial impact on the scheme at a point in time when the scheme, as you have pointed out before, Mr Mookhey, is not in the most sound financial position. It is clearly at a point where we are doing repair work to improve the scheme.<sup>120</sup>

- 2.88** Mr Harding acknowledged, however, that in 2021 iCare released \$96 million of its prior year reserves against future claims due to a partial removal of COVID-19 specific risks.<sup>121</sup>

### **SIRA and iCare modelling of the average cost of COVID-19 related workers compensation claims**

- 2.89** Related to the impact of COVID-19 workers compensation claims on insurance premiums, another issue raised during the inquiry was the average cost of each COVID-19 related workers compensation claim.
- 2.90** As indicated, modelling cited by Minister Dominello and the government in support of the bill estimated an additional 25,000 COVID-19 related claims over an undefined period at a cost of \$638 million, which equates to \$25,520 cost per claim.
- 2.91** In its submission received 28 January 2022, SIRA indicated that to 21 January 2022, it had been notified of 12,029 cases of COVID-19 acquired at work.<sup>122</sup> In turn, as of 30 November 2021, the gross cost to the workers compensation system of all COVID-19 related claims was \$27,857,286, based on 2,394 claims.<sup>123</sup> By the committee's own calculation that equates to an average cost of approximately \$11,635 per claim.<sup>124</sup> However, in evidence, Mr Dent, Chief Executive of SIRA, indicated that if psychological and other claims are excluded, the average cost of COVID-19 related claims was \$5,619.<sup>125</sup> As a caveat to these numbers, the committee notes that the gross incurred cost to 30 November 2021 may change over time and do not include insurer administration costs.<sup>126</sup>
- 2.92** The committee also notes the evidence of Ms Maini, Group Executive of Workers Compensation at iCare, that since the Omicron outbreak, iCare has experienced an 86 per cent increase in compensation claims.<sup>127</sup> Mr Harding CEO and Managing Director of iCare, subsequently elaborated on this, noting that self and specialised insurers had seen 8,000 claims

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<sup>120</sup> Evidence, Mr Harding, 2 February 2022, p 68.

<sup>121</sup> Evidence, Mr Harding, 2 February 2022, p 69.

<sup>122</sup> Mr Dent appeared to provide slightly updated figures to these in his evidence to the committee on 2 February 2022. See Evidence, Mr Dent, 2 February 2022, p 67.

<sup>123</sup> Submission 32, State Insurance Regulatory Authority, p 5.

<sup>124</sup> See also Evidence, Mr Dent, 2 February 2022, p 72.

<sup>125</sup> Evidence, Mr Dent, 2 February 2022, p 72.

<sup>126</sup> Submission 32, State Insurance Regulatory Authority, p 5; Evidence, Mr Dent, Chief Executive, SIRA, 2 February 2022, pp 66, 67.

<sup>127</sup> Ms Maini, Group Executive, Workers Compensation, iCare, 2 February 2022, p 75.

in the last month and a half alone, and that that can be expected to have a significant impact on filings from insurers in March 2022.<sup>128</sup>

### **The impact of section 19B on the processing of COVID-19 diagnosed claims**

- 2.93** As noted earlier in this chapter, there was also some debate during the inquiry whether section 19B has led to less disputation and easier resolution of compensation claims by employees diagnosed with COVID-19.
- 2.94** The committee raised this issue with SIRA and iCare representatives during the hearing on 2 February 2022. It subsequently received further information from both SIRA and iCare addressing this matter.
- 2.95** The committee understands that after section 19B was introduced, SIRA produced a new Standard of Practice entitled 'Managing claims during the COVID 19 pandemic' which set the expectation that insurers are flexible and adaptable and ensure that claims for workers compensation for contracting COVID-19 at work are managed with empathy and transparency, making liability decisions and paying entitlements without delay.<sup>129</sup>
- 2.96** iCare also attached to answers to questions on notice training material provided to claims managers entitled 'COVID-19: Practical tips for actioning positive diagnosis notifications', which describes the current steps that claims managers should undertake in responding to positive diagnosis notifications. The document advises claims managers as follows in relation to prescribed employment:

#### **To demonstrate employment contribution**

If the worker is in 'prescribed employment' contribution is presumed unless the employer produces evidence to indicate otherwise.

If the worker is not in 'prescribed employment' you will need evidence that indicates the only likely exposure to the virus was at or because of their work.

- 2.97** Noting this material, the committee understands from iCare that as at 4 February 2022, approximately 82 per cent of COVID-19 diagnosed claims had been being made by workers in presumptive industries and occupations, compared to only 18 per cent made by workers in non-presumptive industries and occupations. The majority of presumptive claims were from the health, justice, accommodation, law and order (police), retail and construction sectors.<sup>130</sup> Across the entire workers compensation system, SIRA cited a slightly higher proportion of claims coming from presumptive industries and occupations (86 per cent) compared to non-presumptive industries and occupations (14 per cent).<sup>131</sup>
- 2.98** iCare also indicate that the four week rolling return to work rate for the period December 2020 to November 2021 for COVID-19 related claims was 82 per cent, compared to 63 per cent for

<sup>128</sup> Evidence, Mr Harding, 2 February 2022, p 76.

<sup>129</sup> Submission 32, State Insurance Regulatory Authority, p 5.

<sup>130</sup> Answers to questions on notice, Mr Harding, CEO and Managing Director, iCare and Ms Maini, Group Executive, Workers Compensation, iCare, 8 February 2022, pp 6-7.

<sup>131</sup> Submission 32A, SIRA, p 1.

non-COVID-19 claims.<sup>132</sup> For all insurers, for the shorter period of July 2021 to October 2021 for confirmed COVID-19 diagnosed claims, SIRA indicated that the return to work rate at four weeks was 62 per cent, higher than the overall rate of 60 per cent. In was 73 per cent in presumptive industries, and 60 per cent in non-presumptive industries.<sup>133</sup> The differences between these two sets of figures from iCare and SIRA likely reflect the different time periods, types of claims and the range of insurers analysed.

**2.99** The committee also understands that as at 4 February 2022, only 18 COVID-19 diagnosed claims to iCare had been disputed. The average legal cost of a disputed claim had been around \$2,000. The average investigation cost of a disputed claim had also been around \$2,000.<sup>134</sup> Unfortunately, the committee has no data for non-COVID-19 claims to which to compare these figures.

**2.100** iCare also indicated that only 18 COVID-19 diagnosed claims had been denied, representing less than 1 per cent of all COVID-19 diagnosed claims.<sup>135</sup>

## Alternatives to the repeal of section 19B

**2.101** Finally, the committee notes that during the inquiry, a number of alternatives options to the repeal of section 19B were discussed. These are discussed below.

### The proposal for cost sharing of premiums across all employers

**2.102** During the hearing on 2 February 2022, inquiry participants and committee members raised the viability of a cost sharing mechanism across all employers to meet COVID-19 related workers compensation claims. In this regard, the committee notes that section 19B(8)(d) of the *Workers Compensation Act 1987*, as amended by the *COVID-19 Legislation Amendment (Emergency Measures-Miscellaneous) Act 2020* in 2020, provides as follows:

(8) In particular, the regulations may make provision for or with respect to the following matters—

...

(d) the sharing of the financial risk arising out of COVID-19 between all insurers under the Act, including through the imposition and enforcement of risk equalisation arrangements for that purpose,

**2.103** In November 2020, SIRA published for consultation a document entitled 'Cost-Sharing Mechanism for COVID-19 Workers Compensation Claims'. The document stated that '[t]here is a strong public interest case for all insurers and employers in NSW to contribute to the cost

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<sup>132</sup> Answers to questions on notice, Mr Harding and Ms Maini, 8 February 2022, p 9.

<sup>133</sup> Submission 32A, SIRA, p 1.

<sup>134</sup> Answers to questions on notice, Mr Harding and Ms Maini, 8 February 2022, p 1.

<sup>135</sup> Answers to questions on notice, Mr Harding and Ms Maini, 8 February 2022, p 8.

of COVID-19 related workers compensation claims<sup>136</sup> and proposed various objectives of the cost-sharing mechanism:

- to assist in maintaining a healthy and competitive workers compensation market in NSW
- to prevent one or more insurers from experiencing excessive financial strain due to disproportionate impacts from COVID-19 claims
- to enable the cost of COVID-19 claims to be redistributed across the scheme and, if required, deferred to future years and/or subsidised by other funding sources.<sup>137</sup>

**2.104** In evidence, Mr Dent, Chief Executive of SIRA, indicated that in the event, the proposal only received support from a handful of the specialised insurers. It was broadly unsupported by the self-insurers. As a result, SIRA did not continue the consultation process.<sup>138</sup> Mr Harding, CEO and Managing Director of iCare, suggested in evidence that small businesses did not want to be in the position of subsidising the likes of Coles, Woolworths, Qantas and other self-insurers.<sup>139</sup>

**2.105** Committee members raised the potential for cost-sharing and the SIRA consultation process with the representative of various peak business and industry, property and retail bodies during the hearing on 2 February 2022.

**2.106** Ms Browne, Manager of National Safety and Workers Compensation Policy and Membership Services at the Australian Industry Group, confirmed that the Australian Industry Group did not support the proposal at the time. She indicated that when the proposal was raised, the Australian Industry Group raised concerns about the uneven impact of such a scheme, particularly for businesses which had to close whilst others continued operating. Rather the Association favoured a public-funded health response.<sup>140</sup>

**2.107** Mr Armitage, NSW Deputy Executive Director of the Housing Industry Association, similarly confirmed that at the time the proposal was raised, the Housing Industry Association did not support a cost-sharing mechanism, on the basis that it would lead to premium increases.<sup>141</sup> The committee notes that the merits of this position was subsequently the subject of some debate between Mr Armitage and Mr Shoebridge, prompting Mr Shoebridge to table the 'Cost-Sharing Mechanism for COVID-19 Workers Compensation Claims' document.<sup>142</sup>

**2.108** Mr Harding, Executive Director of Policy and Advocacy at Business NSW, also argued against such a proposal:

With regard to spreading risk, we think that there are two principal issues here. One is the one that I raised earlier on that this is a statutory trust, which employers contribute to for injury which is in the workplace, and therefore the risk is bound by those two principles. What has been suggested today is that the very principle of the statutory trust

<sup>136</sup> SIRA, 'Cost-Sharing Mechanism for COVID-19 Workers Compensation Claims', Proposal for consultation, November 2020, p 4.

<sup>137</sup> Ibid, p 6.

<sup>138</sup> Evidence, Mr Dent, 2 February 2022, p 74.

<sup>139</sup> Evidence, Mr Harding, 2 February 2022, p 74.

<sup>140</sup> Evidence, Ms Browne, 2 February 2022, p 36.

<sup>141</sup> Evidence, Mr Armitage, 2 February 2022, p 53.

<sup>142</sup> Evidence, 2 February 2022, p 56.

is widened to manage the much wider risk of a pandemic turning into an endemic. Secondly, to that, I think that the risk should not be placed on those hardest working, particularly small businesses, at the moment which have come through a terrible two years. This is an inappropriate vehicle used wrongly to spread the risk of a pandemic into those small businesses which are least able to carry that risk.<sup>143</sup>

- 2.109** Mr Sawday, Manager of Policy and Government at Clubs NSW, Mr Morrissey, Deputy Chief Executive Officer of the Australian Hotels Association NSW and Mr Lambert, CEO of Restaurant and Catering Australia, indicated that they had not raised this matter with the government, but that their positions remained that the workers compensation system was not the appropriate vehicle to deal with costs associated with COVID-19.<sup>144</sup> Mr Morrissey testified as follows:

The position of the association has since the enacting of this amendment, the creation of the presumptive liability, advocated for its repeal. We have said all along it is unfair, it is unjust, and it is the inappropriate vehicle to do it. Just to answer your question, if ultimately it is the case government wishes to explore as an alternative to the repeal, repeal being the principal objective that we are working towards and we support now, then of course we will explore that.<sup>145</sup>

- 2.110** By contrast, Mr Buckland, CEO of the McKell Institute, supported the proposal, observing that the first principle of insurance is spreading risk and reducing risk concentration.<sup>146</sup>

- 2.111** The committee also notes the submission of the Australian Hotels Association, which whilst strongly supporting the repeal of section 19B, suggested that arrangements could be put in place to ensure that all employers contribute to the cost of COVID-19 related workers compensation claims through a levy. The Association submitted that this would ensure that the costs of COVID-19 to the workers compensation scheme are shared equally between industries, rather than being imposed only on those specified at the time section 19B was adopted.<sup>147</sup>

### **The proposal that the government inject additional funds into the workers compensation scheme**

- 2.112** Another alternative raised during the inquiry to the repeal of section 19B and to support the workers compensation scheme was a proposal that the government inject additional funds into the scheme to improve the funding ratios and offset any premium increases.<sup>148</sup> In this regard,

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<sup>143</sup> Evidence, Mr Harding, 2 February 2022, p 41.

<sup>144</sup> Evidence, Mr Sawday, 2 February 2022, p 44; Evidence, Mr Morrissey, 2 February 2022, p 45; Evidence, Mr Lambert, 2 February 2022, p 45.

<sup>145</sup> Evidence, Mr Morrissey, 2 February 2022, p 47.

<sup>146</sup> Evidence, Mr Buckland, 2 February 2022, p 63.

<sup>147</sup> Submission 21, Australian Hotels Association NSW, p 3.

<sup>148</sup> Submission 23, Public Service Association of NSW, covering letter. See also Evidence, Ms Deguara, Manager, Industrial Support, Public Service Association of NSW, 2 February 2022, p 21; Evidence, Ms Flores, Industrial Officer, WHS and Workers Compensation, Unions NSW, 2 February 2022, p 21.

the committee notes that the Victorian Government injected \$550 million into the Victorian WorkCover scheme in mid-2021, partially in response to the impact of COVID-19.<sup>149</sup>

- 2.113** Members of the committee also noted during the hearing on 2 February 2022 that the Government had put aside \$7 billion in the half-yearly budget update of 16 December 2021 for COVID-19 contingencies, and suggested that some of that money could be invested in the workers compensation scheme.<sup>150</sup>
- 2.114** Once again, committee members raised this proposal with the representative of various peak business and industry, property and retail bodies during the hearing on 2 February 2022.
- 2.115** In evidence, Ms Browne, Manager of National Safety and Workers Compensation Policy and Membership Services at the Australian Industry Group, indicated that the Australian Industry Group would definitely welcome such a development.<sup>151</sup>
- 2.116** Ms Boyd, CEO of the Council of Small Business Associations Australia, was more cautious:
- It has been COSBOA's stance since the beginning of the pandemic that we need to have tailored support and that we need multiple ways of alleviating the concerns and the costs to small business, so we would welcome anything that would help small businesses. However, what we are talking about today is the repeal of the bill, and we believe that repealing what we are talking about today will alleviate those costs. I cannot speak to how the New South Wales Government may or may not choose to spend other aspects of their money. I can only speak today on what it is that we are discussing.<sup>152</sup>
- 2.117** Mr Harding, Executive Director of Policy and Advocacy at Business NSW, indicated that Business NSW did not see the injection of additional funds into iCare as the appropriate course of action.<sup>153</sup> Mr Zahra, CEO of the Australian Retailers Association, also suggested that such a step would not address the administrative burden that retailers are facing managing COVID-19 infections in the workplace.<sup>154</sup>
- 2.118** Other parties to the inquiry indicated that their organisations had not formed a view on the actions taken by the Victorian government in this regard and had not engaged with the government on this issue.<sup>155</sup>
- 2.119** The committee also raised this proposal with the representatives of SIRA and iCare during the hearing on 2 February 2022. Mr Dent, Chief Executive of SIRA, indicated that SIRA had not specifically looked at the circumstances under which the Victorian Government had made its

<sup>149</sup> The Hon Ingrid Stitt MP, Victorian Minister for Workplace Safety, 'Keeping workplaces safe and supporting small business', Media release, 3 June 2021.

<sup>150</sup> Evidence, 2 February 2022, pp 22, 37.

<sup>151</sup> Evidence, Ms Browne, 2 February 2022, p 36.

<sup>152</sup> Evidence, Ms Boyd, 2 February 2022, p 37.

<sup>153</sup> Evidence, Mr Harding, 2 February 2022, p 37.

<sup>154</sup> Evidence, Mr Zahra, 2 February 2022, p 45.

<sup>155</sup> Evidence, Mr Armitage, NSW Deputy Executive Director, Housing Industry Association, 2 February 2022, p 52; Evidence, Mr Harris, Director of Workplace Relations and Business Policy, Pharmacy Guild of Australia, 2 February 2022, p 51; Evidence, Ms Carroll, Deputy CEO, National Retail Association, p 53.

contribution to the Victorian scheme.<sup>156</sup> However, Mr Harding, CEO and Managing Director of iCare, observed that the nominal insurer is an employer mutualist, and as such is not underwritten or guaranteed by the government. As such, he suggested that it may be problematic for the government in New South Wales to inject money into iCare.<sup>157</sup>

## Other options for support from government

**2.120** The committee notes that certain parties to the inquiry also suggested some form of support from government for workers who contract COVID-19 similar to government support arrangements put in place earlier in the pandemic:

- The Shop, Distributive and Allied Employee's Association (NSW Branch) noted that during the pandemic, both state and federal governments had offered significant financial support to workers through various schemes such as the Jobkeeper and Jobseeker programs and paid pandemic leave for state public sector employees. Businesses have also been offered financial support by both levels of government. Given that, the Association posited that perhaps individual employers should not bear the cost of COVID-19 related workers compensation claims through higher premiums, and that rather the government should consider funding or underwriting COVID-19 workers compensation claims for essential workers.<sup>158</sup>
- The National Retail Association also propose the possibility of the government underwriting a no-fault compensation scheme for workers with COVID-19 through specific policy or legislative measures similar to previous government disaster payments, applying equally to all employees and workers rather than only to specific industries.<sup>159</sup>
- As noted previously, in evidence to the committee, Ms Boyd, CEO of the Council of Small Business Associations Australia, submitted that the right mechanism to compensate workers who fall ill with COVID-19 was a state-based mechanism similar to the disaster payments implemented at the commencement of the pandemic by governments across Australia.<sup>160</sup>

## Committee comment

**2.121** The committee does not believe that the case has been made for the Workers Compensation Amendment Bill 2021 at the current time. In particular, the government has not made the financial case for the bill. The Minister in his second reading speech argued that if section 19B is not repealed, the cost to the workers compensation scheme will be \$638 million, resulting in an average premium increase for small businesses of \$950 a year from \$3,579 to \$4,535. Quite simply, the evidence before the committee does not support these figures.

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<sup>156</sup> Evidence, Mr Dent, 2 February 2022, p 71.

<sup>157</sup> Evidence, Mr Harding, 2 February 2022, p 77.

<sup>158</sup> Submission 19, Shop, Distributive and Allied Employee's Association (NSW Branch), p 3.

<sup>159</sup> Submission 22, National Retail Association, p 2. See also Evidence, Ms Carroll, Deputy CEO, National Retail Association, p 52.

<sup>160</sup> Evidence, Ms Boyd, 2 February 2022, p 34.



- 2.122** The committee also believes that now is not the time to be withdrawing support from workers in key frontline industries and occupations who still require and deserve the protection afforded by section 19B. In the committee's view, in proposing the repeal of section 19B at the current time, the government is breaking the social contract put in place between it, employers and workers at the beginning of the pandemic. Arguments that New South Wales is out of step with other jurisdictions or that the deeming provision is an anachronism in workers compensation law have little weight in the context of a one in a hundred year pandemic. Despite arguments to the contrary, it is manifestly clear that the repeal of section 19B would shift the financial burden of managing COVID-19 in the workplace entirely from government and employers onto workers. This will adversely affect all workers, but particularly those in casual and precarious employment. If anything, what data is available at the current time suggests that the deeming provision in section 19B is working relatively efficiently and effectively.
- 2.123** The committee is also disappointed that the government has not done more in the time available to it to look at alternative options to the straight repeal of section 19B, such as those raised during the inquiry: cost sharing of premiums across employers or some form of intervention by the government to support workers in other ways.
- 2.124** The committee notes that it received no submission from the government as part of this inquiry. As a result the committee had to rely on information provided by SIRA and iCare. Even that information was only provided after the committee wrote again to those bodies seeking information. The committee finds this both perplexing and baffling. This is the government's own bill. The government should be prepared to stand up and make a submission in support of its own proposed laws if it wants them passed by the Legislative Council.
- 2.125** As it is, the committee recommends that the Legislative Council reject the Workers Compensation Amendment Bill 2021.

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**Recommendation 1**

That the Legislative Council reject the Workers Compensation Amendment Bill 2021.

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## Appendix 1 Submissions

No.	Author
1	The Australian Workers' Union
2	Business Council of Australia
3	Business NSW
4	Independent Education Union of Australia NSW ACT Branch
5	Property Council of Australia
6	Professor Robert Guthrie
7	NSW Nurses and Midwives' Association
8	The Law Society of New South Wales
9	Transport Workers' Union (TWU)
10	Australian Industry Group (Ai Group)
11	United Workers Union
12	Restaurant & Catering Australia
13	The Council of Small Business Organisations Australia (COSBOA)
14	Pharmacy Guild of Australia
15	Australian Services Union NSW & ACT (Services) Branch
16	Health Services Union
17	Housing Industry Association (HIA)
18	The McKell Institute
19	Shop, Distributive and Allied Employee's Association (NSW Branch)
20	Police Association of NSW
21	Australian Hotels Association NSW
22	National Retail Association
23	Public Service Association of NSW
24	Clubs NSW
25	CFMMEU (NSW Branch) Construction & General Division
26	Australian Medical Association (NSW)
27	Australian Manufacturing Workers' Unions NSW Branch
28	Australian Salaried Medical Officer's Federation (ASMOF) NSW
29	Australian Rail Tram and Bus Industry Union, NSW Branch
30	Unions NSW
31	Australian Education Union NSW Teachers Federation

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<b>No.</b>	<b>Author</b>
32	State Insurance Regulatory Authority (SIRA)
32a	State Insurance Regulatory Authority (SIRA)

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## Appendix 2 Witnesses at hearings

02 February 2022

Preston-Stanley Room, Parliament House, Sydney, NSW

<b>Witness</b>	<b>Position and Organisation</b>
Ms Veronica Black	Lead Work Health and Safety Professional Officer, NSW Nurses and Midwives' Association
Ms Ayshe Lewis	Manager, Human Resources and Industrial Divisions, Health Services Union
Dr Antony Sara	President, Australian Salaried Medical Officers Federation – Doctors Union
Dr Danielle McMullen	President, Australian Medical Association (NSW)
Mr Gavin Webb	Chief Legal Officer, Transport Workers' Union of NSW
Ms Mel Gatfield	NSW Secretary, United Workers Union
Ms Natalie Lang	Branch Secretary, Australian Services Union NSW & ACT (Services) Branch
Mr Bernie Smith	Branch Secretary, Shop, Distributive and Allied Employees' Association New South Wales Branch
Ms Sherri Hayward	Legal/Industrial Officer, CFMEU (NSW Branch) Construction and General Division
Ms Shay Deguara	Manager, Industrial Support, Public Service Association
Mr Angus Skinner	Research Manager, Police Association
Mr Jason Hart	Industrial Officer, Australian Rail Tram and Bus Industry Union NSW
Ms Natasha Flores	Industrial Officer, WHS and Workers Compensation, Unions NSW
Ms Carol Matthews	Acting Secretary, Independent Education Union of Australia, NSW/ACT Branch
Ms Amber Flohm	Senior Vice President, NSW Teachers Federation
Mr Ben Davies	Director, Workplace and Corporate Governance Policy, Business Council of Australia
Mr David Harding	Executive Director, Policy and Advocacy, Business NSW
Ms Alexi Boyd	CEO, Council of Small Business Organisations Australia
Ms Tracey Browne	Manager, National Safety and Workers Compensation Policy and Membership Services, Australian Industry Group
Mr Simon Sawday	Manager of Policy and Government, Clubs NSW

Mr Sean Morrissey	Deputy Chief Executive Officer, Australian Hotels Association NSW
Mr Wes Lambert	CEO, Restaurant and Catering Australia
Mr Paul Zahra	CEO, Australian Retailers Association
Ms Lindsay Carroll	Deputy CEO and Legal Director, National Retail Association
Mr Scott Harris	Director of Workplace Relations and Business Policy, NSW Branch, Pharmacy Guild of Australia
Mr Luke Achterstraat	NSW Executive Director, Property Council of Australia
Mr Brad Armitage	NSW Deputy Regional Executive Director, Housing Industry Association
Mr Michael Buckland	CEO, McKell Institute
Mr Richard Holden	Professor of Economics, University of New South Wales
Mr Adam Dent	Chief Executive, State Insurance Regulatory Authority
Mr Richard Harding	CEO and Managing Director, icare
Ms Mary Maini	Group Executive, Workers Compensation, icare

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## Appendix 3 Minutes

### Minutes no. 53

22 November 2021

Portfolio Committee no. 1 – Premier and Finance

Room 1043, NSW Parliament House, 8.32 am

#### 1. Members present

Ms Moriarty (*via videoconference*)

Ms Boyd (*via videoconference*)

Mr Khan

Mr Martin

Mr Poulos (*via videoconference*)

Mr Searle

#### 2. Apologies

Mr Borsak

#### 3. Previous minutes

Resolved, on the motion of Mr Martin: That draft minutes no. 52 be confirmed.

#### 4. Inquiry into the Public Interest Disclosure Bill 2021

##### 4.1 Submissions

Resolved, on the motion of Mr Khan: That the committee authorise the publication of supplementary submission no. 1b.

##### 4.2 Consideration of Chair's draft report

The Chair submitted her draft report entitled Public Interest Disclosures Bill 2021, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Searle: That paragraph 2.19 be amended to omit 'baseless' before 'allegations being made public', and insert instead 'inaccurate'.

Resolved, on the motion of Mr Searle: That paragraph 2.57 be amended to omit 'feasibility' before 'of civil remedies and relief', and insert instead 'effectiveness'.

Resolved, on the motion of Mr Searle: That paragraph 2.57 be amended by inserting the following sentences before the final sentence: 'As an alternative, Professor Brown suggested creating a legislated positive duty to protect whistleblowers. Any failures to adhere to this could then trigger an action for damages, with an easier burden for whistleblowers to discharge than is provided for in the current drafting. Further,'

Resolved, on the motion of Mr Khan: That:

- The draft report as amended be the report of the committee and that the committee present the report to the House;
- The submissions, tabled documents, and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished submissions, tabled documents and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

- The report will be tabled in the house shortly after 2.30 pm on 23 November 2021.
- The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

## 5. Inquiry into the Workers Compensation Amendment Bill 2021

### 5.1 Terms of reference

The committee noted the following terms of reference referred by the House on 18 November 2021:

That:

- (a) the provisions of the Workers Compensation Amendment Bill 2021 be referred to Portfolio Committee No. 1 – Premier and Finance for inquiry and report,
- (b) the bill be referred to the committee upon receipt of the message on the bill from the Legislative Assembly, and
- (c) the committee report by Monday 21 February 2022.

### 5.2 Inquiry timeline

Resolved, on the motion of Mr Searle: That the following timeline for the inquiry be adopted:

- Monday 20 December, closing date for submissions
- Monday 20 December, closing date for online questionnaire
- Week beginning 31 January 2022, one day hearing
- 15 or 16 February 2022, Chair's draft report circulated
- 17 or 18 February 2022, report deliberative
- 21 February 2022, report tabled.

### 5.3 Stakeholder and witness list

Resolved on the motion of Mr Searle: That the following stakeholders be invited to make a submission and/or appear as a witness at the hearing:

- SIRA
- icare
- NSW Health
- NSW Nurses and Midwives' Association
- Australian Medical Association (NSW)
- NSW Teachers Federation
- NSW Secondary Principals' Council
- NSW Primary Principals' Association
- Shop Distributive And Allied Employees Association NSW
- Unions NSW
- Injured Workers' Support Network
- AIG
- Employers First
- Small Business Council
- The accounting firm that conducted the actuarial modelling that informed the bill.

Resolved, on the motion of Mr Searle: That members be provided with the opportunity to nominate additional stakeholders to make a submission and/or appear as a witness to give evidence by COB Wednesday 24 November 2021 and that the committee agree to additional stakeholders by email, unless a meeting of the committee is required to resolve any disagreement.

### 5.4 Post-hearing responses

The committee noted that there is insufficient time for stakeholders to provide answers to questions on notice or supplementary questions.



Resolved, on the motion of Mr Searle: That transcript corrections and clarifications to evidence be provided within 48 hours of the receipt of the transcript by the witness.

### 5.5 Online questionnaire

Resolved, on the motion of Mr Searle: That the committee conduct an online questionnaire to capture individuals' views with the following questions and preamble:

On 22 November 2021, the NSW Legislative Council's Portfolio Committee No. 1 – Premier and Finance commenced an inquiry into the Workers Compensation Amendment Bill 2021.

The object of this Bill is to amend the Workers Compensation Act 1987 to abolish presumptive rights to workers compensation for certain workers who contract COVID-19. The Bill also makes a consequential amendment to the Workers Compensation Regulation 2016.

Further information about the inquiry, including the terms of reference, can be found on the committee's [website](#).

As part of the inquiry, the committee is seeking public comment on the bill through the following questions. Responses are due by 20 December 2021.

Responses may be used in the committee's report. Names and contact details of respondents will not be published. The questionnaire will take approximately 5 minutes to complete.

1. Please enter your contact details.

Name:  
Email address:  
Postcode:

2. Are you a resident of NSW? Select one of these options:
  - a. Yes
  - b. No

3. Position on the bill:

The object of this Bill is to amend the Workers Compensation Act 1987 to abolish presumptive rights to workers compensation for certain workers who contract COVID-19. The Bill also makes a consequential amendment to the Workers Compensation Regulation 2016.

Based on your own understanding and the description above, what is your position on the Workers Compensation Amendment Bill 2021? Select one of these options:

- a. Support
- b. Partially support
- c. Support with amendments
- d. Oppose

4. Based on the response selected at question 3, the respondent will be directed to a customised question asking them to explain their position on the bill:
  - a. Please explain why you support the bill (max 300 words)
  - b. Please explain why you partially support the bill (max 300 words)
  - c. What amendments would you like incorporated? (max 300 words)
  - d. Please explain why you oppose the bill? (max 300 words)

5. Do you have any other comments (max 300 words)?

Resolved, on the motion of Mr Searle: That the committee not accept pro formas.

**5.6 Questionnaire report**

Resolved, on the motion of Mr Searle: That the secretariat prepare a summary report of responses to the online questionnaire for publication on the website and use in the report, and that:

- only responses from NSW participants will be analysed in the report
- the committee authorises the secretariat to publish the questionnaire report on the inquiry website unless any member raises an objection to publication via email
- individual responses be kept confidential on tabling.

**5.7 Advertising**

The committee noted that all inquiries are advertised via Twitter, Facebook, stakeholder emails and a media release distributed to all media outlets in New South Wales.

**6. Adjournment**

The committee adjourned at 8.44 am, *sine die*.

Peta Leemen

**Committee Clerk**

**Minutes no. 54**

Wednesday 2 February 2022

Portfolio Committee No. 1 – Premier and Finance

Preston Stanley Room, Parliament House, Sydney at 8.45 am

**1. Members present**

Ms Moriarty, *Chair*

Mr Farlow

Mr Harwin

Mr Martin

Mr Mookhey

Mr Shoebridge

**2. Apologies**

Mr Borsak

**3. Draft minutes**

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 53 be confirmed.

**4. Correspondence**

Committee noted the following items of correspondence:

***Received***

- 30 November 2021 - Email from Mr David Shoebridge, to the secretariat, advising that he will substitute for Ms Abigail Boyd for the duration of the inquiry into the Workers Compensation Amendment Bill 2021 (*attached*)
- 30 November 2021 - Email from the office of the Opposition Whip, to the secretariat, advising that the Hon Daniel Mookhey MLC will substitute for the Hon Penny Sharpe MLC for the duration of the inquiry into the Workers Compensation Amendment Bill 2021 (*attached*)
- 14 December 2021 – Correspondence from a member of the public telling of her experience of being refused an air ambulance by her workers compensation insurer (*attached*) D21/66611

- 19 January 2022 – Email from Mr James Mathison, Principal Advisor to the Chief Executive, State Insurance Regulatory Authority, confirming that SIRA will make a submission and the Chief Executive will appear at the hearing (*previously circulated*)
- 25 January 2022 – Email from Mr Jason Robertson, Director – Policy, Sustainability and Impact, Australian Retailers Association, requesting that the organisation be invited to appear at the public hearing on Wednesday 2 February 2022.

**Sent**

- 18 January 2022 – Email to Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority, reiterating the invitation to make a submission and issuing an invitation to appear at the hearing (*attached*)

Resolved, on the motion of Mr Shoebridge: That the committee keep the correspondence from a member of the public reporting that she was refused an air ambulance by her workers compensation insurer, received 14 December 2021, confidential, as per the recommendation of the secretariat, as it contains identifying and/or sensitive information.

**5. Inquiry into the Workers Compensation Amendment Bill 2021****5.1 Public submission**

Resolved, on motion of Mr Martin: That submission no. 32 be published by the committee clerk without the covering letter in accordance with the request made by SIRA.

**5.2 Online questionnaire report**

The committee noted that according to previous resolution, the survey report had been published on the inquiry web page.

**6. Public hearing****6.1 Live streaming and recording of hearing**

The committee noted that the hearing will be live streamed via the Parliament's website and recorded. All recordings will be made publicly available online.

**6.2 Committee photo for use on social media**

The committee agreed that a screenshot of the committee be taken for use on social media.

**6.3 Questions on notice and supplementary questions**

The committee noted the previous resolution of the committee that there be no questions taken on notice at the public hearing or supplementary questions from members.

**6.4 Timing for questions**

Resolved, on the motion of Mr Farlow: That the sequence of questions to be asked during the hearing alternate between opposition, crossbench and government members, in that order, with equal proportion of time allocated being allocated to each

**6.5 Hearing**

Witnesses were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Veronica Black, NSW Nurses and Midwives Association
- Ms Ayshe Lewis, Health Services Union
- Dr Antony Sara, Australian Salaried Medical Officers Federation
- Dr Danielle McMullen, Australian Medical Association.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Gavin Webb, Transport Workers Union
- Ms Mel Gatfield, United Workers Union
- Ms Natalie Lang, Australian Services Union
- Mr Bernie Smith, Shop, Distributive and Allied Employees' Association New South Wales Branch
- Ms Sherri Hayward CFMEU (NSW Branch) Construction and General Division

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Shay Deguara, Public Service Association
- Mr Angus Skinner, Police Association
- Mr Jason Hart, Australian Rail Tram and Bus Industry Union NSW
- Ms Natasha Flores, Unions NSW

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Carol Matthews, Independent Education Union
- Ms Amber Flohm, NSW Teachers Federation

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Ben Davies, Business Council of Australia
- Mr David Harding, Business NSW
- Ms Alexi Boyd, Council of Small Business Organisations Australia
- Ms Tracey Browne, Australian Industry Group

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Simon Sawday, Clubs NSW
- Mr Sean Morrissey, Australian Hotels Association NSW
- Mr Wes Lambert, Restaurant and Catering Australia
- Mr Paul Zahra, Australian Retail Association

Mr Morrissey tendered the following document:

- Correspondence from Mr Angus McCullagh, CEO, Hospitality Employers Mutual, to SIRA regarding the impact of COVID-19 on Hospitality Employers Mutual.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Lindsay Carroll, National Retail Association
- Mr Scott Harris, Pharmacy Guild of Australia
- Mr Luke Achterstraat, Property Council of Australia
- Mr Brad Armitage, Housing Industry Association

Mr Shoebridge tendered the following document:

- Report of SIRA entitled "Cost sharing mechanism for COVID-19 Workers Compensation Claims – Proposal for consultation", dated November 2020.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Michael Buckland, McKell Institute
- Mr Richard Holden, UNSW

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Adam Dent, State Insurance Regulatory Authority
- Mr Richard Harding, iCare
- Ms Mary Maini, iCare

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 5.04 pm.

#### **6.6 Tendered documents**

Resolved, on the motion of Mr Mookhey: That the committee accept and publish the following documents, tendered during the public hearing:

- Correspondence from Mr Angus McCullagh, CEO, Hospitality Employers Mutual, to SIRA regarding the impact of COVID-19 on Hospitality Employers Mutual., tendered by Mr Morrissey,
- Report of SIRA entitled "Cost sharing mechanism for COVID-19 Workers Compensation Claims – Proposal for consultation", tendered by Mr Shoebridge.

#### **6.7 Distribution of the Chair's draft report**

Resolved, on the motion of Mr Shoebridge, that the Chair's draft report be distributed no later than 12.00 midday on Monday, 14 February 2022 ahead of the report deliberative on Thursday 15 February 2022 at 10.00 am.

### **7. Adjournment**

The committee adjourned at 5.07 pm until 17 February 2022, 10.00 am (report deliberative, inquiry into the Workers Compensation Amendment Bill 2021).

Stephen Frappell  
**Committee Clerk**

#### **Draft minutes no. 55**

17 February 2022

Portfolio Committee no. 1 – Premier and Finance  
 via Webex, NSW Parliament House, 3.33 pm

#### **1. Members present**

Ms Moriarty, *Chair*  
 Ms Boyd (*until 3.50 pm*)  
 Mr Farlow  
 Mr Harwin  
 Mr Martin (*from 3.38 pm*)  
 Mr Mookhey

Ms Sharpe (*until 3.50 pm*)

Mr Shoebridge (*from 3.45 pm*)

## 2. Previous minutes

Resolved, on the motion of Mr Martin: That draft minutes nos 46, 47, 48, 49, 50, 51 and 54 be confirmed.

## 3. Inquiry into Budget Estimates 2021-2022

### 3.1 Correspondence

The committee noted the following items of correspondence:

#### **Received:**

- 25 November 2021 – Email from the Hon Damien Tudehope MLC, Minister for Finance and Small Business, to the secretariat, clarifying evidence given at the Finance and Small Business hearing on 29 October 2021
- 25 November 2021 – Email from Ms Renata Trkulja, Associate Director, Parliamentary Services, Executive & Ministerial Services Branch, NSW Treasury, to the secretariat, seeking an extension for providing post-hearing responses

#### **Sent:**

- 2 November 2021 – Email from the secretariat, to the Hon Matthew Mason-Cox, President of the Legislative Council, forwarding transcript of evidence with questions on notice highlighted and supplementary questions
- 3 November 2021 – Email from the secretariat, to the Hon Stuart Ayres MP, Minister for Jobs, Investment, Tourism and Western Sydney, and Industry and Trade, forwarding transcript of evidence with questions on notice highlighted and supplementary questions
- 4 November 2021 – Email from the secretariat, to the Hon Don Harwin MLC, Special Minister of State, Public Service and Employee Relations, Aboriginal Affairs and the Arts, forwarding transcript of evidence with questions on notice highlighted and supplementary questions
- 5 November 2021 – Email from the secretariat, to the Hon Damien Tudehope MLC, Minister for Finance and Small Business, forwarding transcript of evidence with questions on notice highlighted and supplementary questions
- 10 November 2021 – Email from the secretariat, to the Hon Matt Kean MP, Treasurer, forwarding transcript of evidence with questions on notice highlighted and supplementary questions
- 11 November 2021 – Email from the secretariat, to the Hon Dominic Perrottet MP, Premier, forwarding transcript of evidence with questions on notice highlighted and supplementary questions
- 26 November 2021 – Email from the secretariat, to Ms Renata Trkulja, Associate Director, Parliamentary Services, Executive & Ministerial Services Branch, NSW Treasury, advising that the Chair has agreed to an extension until 3 December 2021 for post hearing responses to be provided
- 3 December 2021 – Email from the secretariat, to Ms Margaret Crawford, NSW Auditor General, forwarding transcript of evidence with questions on notice highlighted and supplementary questions

### 3.2 Budget Estimates 2021-2022 additional hearings timetable

The committee noted the proposed timetable for additional hearings:

- Treasurer, Energy, Monday 28 February 2022
- The Legislature, Wednesday 2 March 2022
- Finance, Employee Relations, Friday 4 March 2022
- Enterprise, Investment & Trade, Tourism & Sport, Western Sydney, Tuesday 8 March 2022
- Premier, Thursday 10 March 2022
- Aboriginal Affairs, Arts and Regional Youth, Tuesday 15 March 2022

### 3.3 Witnesses, allocation of question time and total hearing time

The committee noted that as per the Notice of Motion for additional budget estimates hearings,

1. (a) (i) each portfolio, except The Legislature, be examined concurrently by Opposition and Crossbench members only, from 9.30 am to 11.00 am, and from 11.15 am to 12.45 pm, then from 2.00 pm to 3.30 pm, and from 3.45 pm to 5.15 pm, with 15 minutes reserved for Government questions at the end of the morning and afternoon session, if required,
- (ii) the portfolio of The Legislature be examined concurrently by Opposition, Crossbench and Government members from 9.30 am until 12.30 pm,
- (b) Ministers be invited to appear for the morning session unless requested by the committee to appear also for the afternoon session.

### **3.4 Witnesses to appear at hearings**

Resolved, on the motion of Mr Mookhey:

- That the witness list suggested by the Opposition be circulated to members with any comments, additions be lodged by midday Friday 18 February,
- That the committee not invite parliamentary secretaries to appear as a witness at the hearings,
- That for the portfolio hearing for the Premier, time be reserved for government questions for each independent agency appearing.

### **3.5 Recording of hearing**

Resolved, on the motion of Mr Mookhey: That the additional Budget Estimates hearings be recorded and that these recordings be placed on the inquiry webpage as soon as practicable after the hearing.

### **3.6 Answers to questions on notice and supplementary questions – supplementary hearings**

The committee noted that following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice and supplementary questions from the Hon Matthew Mason-Cox MLC, President of the Legislative Council, received 23 November 2021
- answers to questions on notice and supplementary questions from the Hon Stuart Ayres MP, Minister for Jobs, Investment, Tourism and Western Sydney, and Industry and Trade, received 24 November 2021
- answers to questions on notice and supplementary questions from the Hon Don Harwin MLC, Special Minister of State, Public Service and Employee Relations, Aboriginal Affairs and the Arts, received 25 November 2021
- answers to questions on notice and supplementary questions from the Hon Damien Tudehope MLC, Minister for Finance and Small Business, received 25 November 2021
- answers to questions on notice and supplementary questions from Mr John Schmidt, NSW Electoral Commissioner, NSW Electoral Commission, received 2 December 2021
- answers to questions on notice and supplementary questions from the Hon Dominic Perrottet MP, Premier, received 2 December 2021
- answers to questions on notice and supplementary questions from the Hon Matt Kean MP, Treasurer, received 3 December 2021
- answers to questions on notice from Ms Margaret Crawford, NSW Auditor General, received 24 December 2021

## **4. Inquiry into the Workers Compensation Amendment Bill 2021**

### **4.1 Submission**

The committee noted it received a late submissions from SIRA, as previously circulated and published by the committee clerk under the authorisation of the resolution appointing the committee.

### **4.2 Answers to questions taken on notice by iCare**

The committee noted that additional information was received from iCare on 9 February 2022 and published by the committee clerk under the authorisation of the resolution appointing the committee.

### 4.3 Consideration of Chair's draft report

The Chair submitted her draft report entitled *Workers Compensation Amendment Bill 2021*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Martin: That paragraph 1.7 be amended by omitting 'there were low rates of vaccination in the community' and inserting instead 'a vaccination was not yet available'.

Mr Martin moved: That paragraphs 2.121-2.123 be omitted and the following new paragraphs be inserted instead:

2.121 The Committee notes the unprecedented circumstances that led to the adoption of section 19B of the *Workers Compensation Act 1987* in May 2020 and the arguments made by both proponents for and opponents of removing the provision now.

2.122 The committee believes that the financial case for the *Workers Compensation Amendment Bill 2021* has been well made and that any modelling used by the Government has been used responsibly and in good faith.

2.123 The committee also believes that with 94.2 per cent of adults double vaccinated it is fundamentally unfair for small businesses to solely bear the burden of section 19B of the *Workers Compensation Act 1987*'.

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Harwin, Mr Martin.

Noes: Mr Mookhey, Ms Moriarty, Mr Shoebridge.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Martin moved: That paragraphs 2.124 and 2.125 be omitted and the following new paragraph inserted instead: 'The committee recommends that the Legislative Council proceed with debate on the *Workers Compensation Amendment Bill 2021*'.

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Harwin, Mr Martin.

Noes: Mr Mookhey, Ms Moriarty, Mr Shoebridge.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Martin moved: That Recommendation 1 be omitted and the following new recommendation inserted instead:

'That the Legislative Council proceed with debate on the *Workers Compensation Amendment Bill 2021*'.

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Harwin, Mr Martin.

Noes: Mr Mookhey, Ms Moriarty, Mr Shoebridge.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mr Shoebridge: That:

- The draft report, as amended, be the report of the committee and that the committee present the report to the House;



- The submissions, correspondence, transcripts, tabled documents, answers to questions on notice, online questionnaire report and dissenting statements relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all submissions, correspondence, transcripts, tabled documents, answers to questions on notice, online questionnaire report and dissenting statements relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- Dissenting statements be provided to the secretariat by 5.00 pm Friday 18 February 2022.
- The report be tabled with the Clerk at 12.30 pm on Monday 21 February 2022.
- The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

**5. Adjournment**

The committee adjourned at 4.09 pm, *sine die*.

Stephen Frappell  
**Committee Clerk**

## Appendix 4 Dissenting Statements

### **The Honourable Scott Farlow MLC, the Honourable Don Harwin MLC and the Honourable Taylor Martin MLC, Liberal Party**

Section 19B of the *Workers Compensation Act 1987* was enacted at a time of much uncertainty and when no vaccine existed. The situation is now very different, with COVID-19 being readily transmitted throughout the community. This will likely continue as we transition to an endemic stage of the disease. As at 11 February 2022, the State Insurance Regulatory Authority (SIRA) has received 17,337 COVID claims and notifications, with 16,031 of those being for a confirmed diagnosis.<sup>1</sup> Between late December and late January, approximately 10,000 claims and notifications were received, more than double the number an insurer could expect in any given month.

Vaccinations are now also readily available and have been successfully taken up by the NSW population. Double dose vaccination rates are above 94 per cent for the population aged over 16 years, and a growing number of people have received their third dose. This makes NSW one of the highest vaccinated jurisdictions in the world.

If the presumption is removed, workers still be able to make a workers compensation claim if they contract COVID at work. The Bill does not remove the right of a worker to make a claim, nor does it impact their right to quality care and support during their treatment and recovery.

SIRA has advised that it encourages insurers to take a pragmatic approach and expects insurers to be flexible and adaptable and ensure that claims are managed with empathy and transparency, making liability decisions, and paying entitlements without delay. In seeking information from claimants, insurers can tailor their approach to meet the needs of the workers, employers and other system participants.

Evidence provided by icare at the hearing on 2 February 2022, indicated that, where the presumption does not apply, evidence of whether COVID was contracted at work is usually determined via a series of questions. These cover areas such as if the claimant was tested, when they last worked, if there had been a positive case in their workplace, if any family or friends had recently tested positive and when they started experiencing symptoms. Regarding genomic sequencing, icare indicated that they were “not asking that level of detail”.

Even with the level of tragedy experienced in many overseas countries, with much higher COVID-19 infection rates, no other jurisdiction has implemented anything comparable to the broad presumption that NSW has in place. Where a presumption is in place in a small number of other jurisdictions, it is typically linked to a smaller class of workers (such as healthcare workers) or is only admissible during a lock-down period.

The costs of the NSW workers compensation system are funded by employers through premiums. Any costs to the system of claims made through the presumption will have a direct impact on employer premiums.

As business groups highlighted at the hearing, this is cost of doing business and will hit business confidence at a time they are trying to get back on their feet after two years of business disruption. In

addition to the direct claim costs are the administrative costs for insurers in managing increases in claims.

With vaccination rates at such high levels in New South Wales, it is time to return to normal operation so that businesses can gain some certainty in relation to premium costs and not bear the financial burden of what is a public health issue.

The workers compensation system should not be the frontline in the fight with COVID-19, pitting employers against employees. The adoption of the *Workers Compensation Amendment Bill 2021* will bring balance back to the workers compensation system, protecting workers and businesses alike.

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<sup>i</sup> State Insurance Regulatory Authority, *Workers compensation claim statistics*, [Accessed 18 February], [https://www.sira.nsw.gov.au/resources-library/list-of-sira-publications/coronavirus-covid\\_19/workers-compensation-claim-statistics](https://www.sira.nsw.gov.au/resources-library/list-of-sira-publications/coronavirus-covid_19/workers-compensation-claim-statistics)





