



## Legislation Review Committee

Correspondence received in response to the Legislation Review Committee  
Digest No. 21/57 – 13 October 2020



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The Honourable Victor Dominello MP  
Minister for Customer Service

Our reference: COR-06988-2020  
Your reference: LAC20/007.12

Mr Trevor Khan MLC  
Deputy Chair  
Legislation Review Committee  
By email: [legislation.review@parliament.nsw.gov.au](mailto:legislation.review@parliament.nsw.gov.au)

Dear Mr Khan *Trevor*

Thank you for your correspondence relating to the Legislation Review Committee's comments in the Legislation Review Digest No 21/57 considering the *Workers Compensation Amendment (Consequential COVID-19 Matters) Regulation 2020* (Regulation).

**Trespasses on personal rights and liberties**

*Restricting right to compensation - types of prescribed employment*

I note the Committee's concerns regarding the limits to the types of prescribed employment covered in section 19B of the *Workers Compensation Act 1987* (1987 Act) and clause 5D of the Regulation.

The establishment of presumptive rights to workers compensation for COVID-19 does not create any additional entitlements to workers compensation benefits. Rather, it makes it easier for workers in prescribed employment who contract COVID-19 to access workers compensation benefits to support their recovery. However, all workers who contract COVID-19 in the course of their employment are entitled to make a claim for workers compensation benefits.

Prescribed employment is defined broadly in the 1987 Act and the Regulation. For example, security and other staff involved in hotel quarantine could be covered under section 19B(9)(k) 'employment in restaurants, clubs and hotels' and warehousing/distribution services can be covered under the umbrella term the 'retail industry' (section 19B(9)(a) of the 1987 Act).

Employers and insurers are able to adopt a beneficial approach when determining claims. Equally, employers and insurers are able to rebut the presumption if they have evidence to do so. Ultimately, the Workers Compensation Commission as the independent statutory tribunal has exclusive jurisdiction to determine workers compensation claims.

*Restricting right to compensation - types of tests*


As identified by the Committee the medical tests in the Regulation are those listed in the Australian Register of Therapeutic Goods. These are described by the Therapeutic Goods Administration (TGA) as the 'gold standard' for diagnosing COVID-19.

I acknowledge the Committee's comments relating to emerging evidence regarding the accuracy and utility of COVID-19 tests generally. As noted above, all workers who contract COVID-19 in the course of their employment are able to bring a claim for workers compensation benefits.

Please be assured that the State Insurance Regulatory Authority continues to work closely with state and Commonwealth health and workplace safety agencies to ensure our workers compensation scheme supports workers and employers during these unprecedented times.

I thank you and the Committee for the comments concerning the *Workers Compensation Amendment (Consequential COVID-19 Matters) Regulation 2020*. Should you have any further queries please contact Nicholas Cobb, Director Workers & Home Building Compensation Regulation at [nicholas.cobb@sira.nsw.gov.au](mailto:nicholas.cobb@sira.nsw.gov.au) or 02 9289 1352.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Victor Dominello', with a large loop at the end.

**Victor Dominello MP**  
Minister for Customer Service

Date: 12-11-20