

# **Portfolio Committee No 1. – Premier and Finance**

## **Report on the online questionnaire**

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

As part of its inquiry into the Workers Compensation Amendment Bill 2021, Portfolio Committee No. 1 – Premier and Finance launched an online questionnaire to encourage individuals to participate in the inquiry.

The committee received 889 responses to the questionnaire. These responses will inform the committee's views throughout the inquiry.

This report summarises the views expressed by participants and provides samples of those views. Sample comments have been chosen to best represent the variety of views expressed by the participants.

#### **Questions asked**

Participants were asked six main questions, including questions regarding the individual respondent's position on the bill and open ended questions regarding:

- the reasons for their position on the bills
- any other comments to explain their views.

The questions are reproduced at Appendix 1.

#### **Responses to questions**

##### ***Question Three: What is your position on the bill?***

Question Three was presented in a multiple choice format and participants were able to choose from the options of 'Support', 'Partially support', 'Support with amendments' or 'Oppose'.

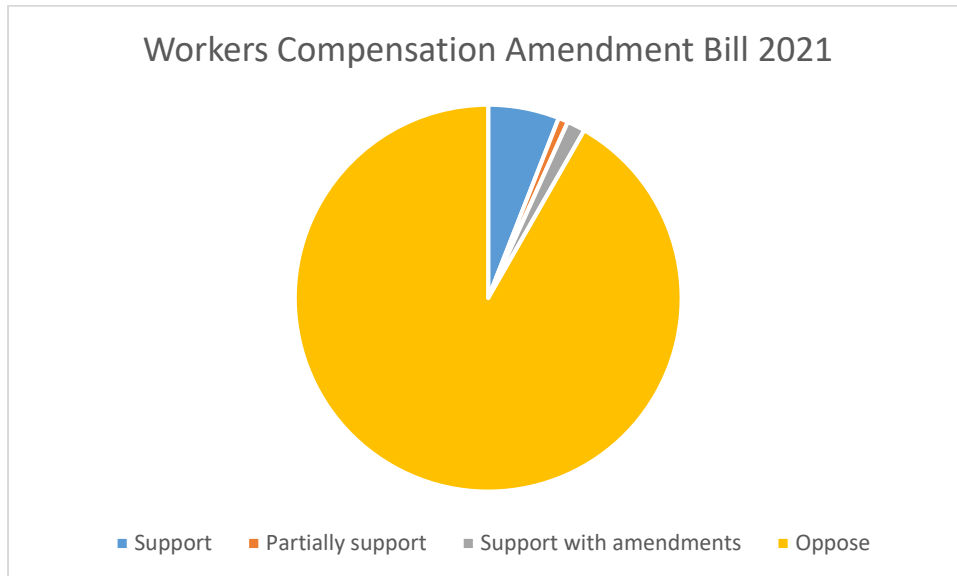
The vast majority of participants (92 per cent, or 787 responses) opposed the bill. As shown by the responses reproduced below, in general participants stated that the bill will place an unfair burden of proof on workers compensation claimants who they argued are at high risk of having contracted COVID-19 while undertaking duties as front line workers.

A small number of participants (6 per cent, or 53 responses) supported the bill.

Seven participants (1 per cent) partially supported the bill.

13 participants (2 per cent) supported the bill with amendments.

33 participants did not respond to the question.



Samples of comments in respect of these views are set out below.

***Questions Four through Eight: Please explain why you support/partially support/oppose the bill.***

Questions Four through Eight provided participants opportunities to give reasons for their position on the bill, to propose amendments to the bill, and to provide any additional comments on the bill.

***Support for the bill***

Participants noted that removing the presumptive rights to workers compensation for workers who contract COVID-19 would protect employers, including small businesses, from increases in insurance premiums:

- "The presumptive provisions of the existing legislation place additional costs on small and family businesses in the retail sector. The bill seeks to restore a standard provision as to liability across all sectors and employees are not disadvantaged."
- "It is unfair and excessively burdensome on employers to assume that the infection occurred during the course of work."

***Opposition to the bill***

Underscoring opposition to the bill was the view that frontline workers have risked their own health and that of their families by going to work and performing essential services during the COVID-19 pandemic, and that in turn, frontline workers deserved the government's protection due to the risk of them being exposed to COVID-19 while at work.

In addition to this central theme, opposition to the bill tended to fall within one, or several, of the following categories:

- Risk to frontline workers of contracting COVID-19 at work
- Difficulty proving COVID-19 was contracted at work
- Financial support for frontline workers who contract COVID-19

- Disincentive to remain in or seek frontline work
- Mental health impacts of the pandemic
- COVID-19 should be treated in the same way as any other workplace injury

Doubts about the fiscal benefits of the bill

### **Risk to frontline workers of contracting COVID-19 at work**

The majority of responses referred to the ongoing risk of contracting COVID-19 faced by frontline workers, noting in particular the risk of health care workers contracting COVID-19 in the workplace:

- "I work in a large NSW hospital in the frontline, and also in a COVID-19 Community Medical response team. I know that it is almost impossible to definitively identify the source of a COVID-19 infection, and this uncertainty will increase (not decrease) with easing of restrictions. Frontline workers and their families already take risks and to change the workers compensation laws at this stage is unjust."
- "Healthcare workers already are putting their lives and their loved ones lives at risk working nonstop during the COVID-19 pandemic and need to be looked after. They have supported the public hospital system in these dire times and physically attended the hospitals and other facilities without the protection of working from home. They deserve better treatment and should not be required to have to go through bureaucratic procedures to protect themselves and loved ones."
- "The requirement for government frontline workers to engage with the general populace places us at an increased risk. Attempting to somehow prove that you contracted the illness through work is, in itself unworkable. If the government respect what we have done and expect the same in the future then the presumption should remain."
- "Healthcare is a high risk occupation exposing staff to COVID-19 patients, suspected COVID-19 patients and close contacts. Staff attend work every day knowing this risk and putting their own health at risk to care for all patients. All staff strive to wear correct PPE however it is NOT always available. The highest hygiene and cleaning standards and double vaccination still do not completely eliminate the risk of contracting COVID-19 in the hospital workplace. The only way a health care worker can completely avoid COVID-19, is to completely avoid hospitals. Of course COVID-19 can be contracted elsewhere but working in a hospital for 8 hours is surely a greater risk than spending 10 minutes in a supermarket. I believe workers compensation should be awarded to all healthcare staff without question or incrimination."
- "I am a paramedic who has no choice on the patients I treat. I'm happy to do it but want support from NSW ambulance and government if I contract COVID-19. I take care in and outside of work. If you want us front liners to continue to put ourselves on harm's way the least you can do is not change this bill."
- "As a front line worker I feel exposed every day to the possible threat of COVID-19. I limit my personal exposure and therefore I feel the only way I would contract COVID-19 would be though exposure in work. Having this compensation removed would be an insult to me as I have no choice but to visit my clients in their home and I am at the mercy of their honesty in revealing their own exposure when entering their homes."
- "As a registered nurse I don't have any choice but to place my health and welfare at risk to

care for others health. While we take all precautions possible we are not fully protected and thus at greater risk than most of the community. This also translates into financial risk also. So should be contract COVID-19 and survive we may have lost our homes etc. This also places our families at risk also of contracting COVID-19. Therefore, I cannot support the bill and most vehemently oppose it."

- "I work as a Registered Nurse. There are many instances I can envisage where I will not be able to prove the source of an infection without breaking patient confidentiality. I should not have to prove where I got an infection as a health care worker to be covered by insurance. Our job is hard enough, and our pay low enough. We should not have to wear this too, just so insurers can make more money for less risk. And as a government you should not be choosing the interests of those who were able to hide away during the pandemic, working safely from home over the interests of those of us who stood up and put ourselves in danger to help others, day, after day."

### **Difficulty proving COVID-19 was contracted at work**

Related to the views around risk, the majority of responses argued that it was unfair to place the onus on the claimant to prove that COVID-19 was contracted at work. Many respondents said that it would be 'impossible' to prove that this was the case, and that frontline workers would be at a disadvantage when engaging with the workers compensation system to prove the source of their infection:

- "There is a higher occupational exposure risk (especially in certain clinical areas) that makes transmission more likely than the general population. This is even more likely with a lower community transmission rate as the comparison risk ratio is greater for occupational exposure. On the balance of probabilities, worker's compensation should protect healthcare workers for this exposure risk. Proving this is a work exposure is essentially impossible and so this is a removal of protection by stealth. There should potentially be a right to decline working with COVID-19 patients if this protection is lost. This will have significant impacts on frontline staffing."
- "The burden of proof should lie with proving that COVID-19 has not been contracted in a workplace setting. The occupational exposure risk remains high, despite effective PPE and vaccinations. In particular, full PPE is not utilised on non-COVID-19 or frontline wards, where it is still possible to contract COVID-19."
- "It is absolutely ridiculous to think that doctors, nurses and other healthcare professionals are asked to work on the forefront of the pandemic and are the most exposed to the virus but then actually contracting the virus means it is more likely we contracted it outside of work. The logic does not add up. On the balance of probabilities, worker's compensation should protect healthcare workers for their high exposure risk. Proving this is a work exposure is essentially impossible and so this is a removal of protection by stealth. There should potentially be a right to decline working with COVID-19 patients if this protection is lost. The burden of proof should therefore fall on proving it was not contracted within a work environment if such claims are to be declined."
- "It is nearly impossible to prove that a COVID-19 infection was contracted whilst working in a healthcare setting. You would essentially need complete genetic sequencing of each infected worker's coronavirus strain and all known COVID-19 patients in the hospital in order to prove it definitively occurred in hospital. This is not only prohibitively expensive but also not able to catch every form of transmission e.g. Asymptomatic visitor with COVID-19. It would appear no healthcare worker would be protected by the proposed bill and in essence this bill reads as an attempt to remove protections to save money. There is

also the risk vulnerable workers will continue to work despite being ill if these protections are removed resulting in compromised infection control."

- "Workers in frontline and essential services should not need to prove how they caught COVID-19. This obligation would be too onerous and looking into the future where COVID-19 becomes more prevalent it will likely be very difficult. The likelihood is that workers dealing with the public will have obtained COVID-19 in the workplace. Someone working for wages is unlikely to have the resources to prove how they obtained COVID-19 and is therefore at a distinct disadvantage in a legal situation against an employer."
- "(The bill) seeks to reduce the rights of injured workers in NSW. Placing the burden on an injured worker to prove how he/she acquired COVID-19 would have the effect of depriving the injured worker of any claim. The cost of proving would be prohibitively expensive and the outcome uncertain. It is likely that icare would either decline claims outright or settle claims for nominal amounts."

### **Financial support for frontline workers who contract COVID-19**

The need to provide financial support to frontline workers who contract COVID-19 was another commonly expressed theme:

- "I believe that all public servants should be entitled to fair and just compensation if they contract a serious illness such as COVID-19 while they are serving members of the public. It is important that special compensation be given to those workers who have to take time off of work to go to hospital, and get treated and recover from serious illnesses through no fault of their own. I urge you to think about all the workers around Australia who have kept this economy running, caring for the sick, and put their lives on the line for others. I encourage more support and financial compensation to help our workers in our society as we confront this Global Pandemic. No one wants to be forced into poverty without proper care and the needed time off of work to recover. We need to come together as a society with help for others."
- "Workers compensation is a necessary protection for those whose jobs require them to be on the front line of exposure to COVID-19 on a daily basis and therefore have a much higher (chance) of contracting the virus at work. The ongoing health issues associated with COVID-19 infection (including) "long COVID" syndrome means those impacted by COVID-19 infection may be unable to work to support themselves and their families for long periods after initial infection. Frontline workers deserve access to appropriate financial support and protection for their financial security. Their work requires them to undertake higher risks of exposure and protection via compensation is essential."
- "As a frontline NSW Health worker, I at times have to care for a COVID-19 positive patient, and being casual I do not have the luxury of sick leave or any other paid leave. I need full support from my workplace if I contract COVID-19. If NSW Health say I have to care for a COVID-19 patient then NSW Health can compensate me financially. Casual staff have got so much more to lose in the workplace and this includes the financial burden, if we are off sick due to work related COVID-19 exposure we could have \$0 income for weeks, totally unacceptable from NSW Health."

### **Disincentive to remain in or seek frontline work**

Participants noted that the change to the legislation could be viewed as a disincentive to remain in or seek out employment in frontline positions:

- "I know from personal experience that nursing staff have worked exceptionally hard under hugely increased pressure caused by the COVID-19 pandemic, risking their own lives to protect the community. I expect that nurses should be supported and protected 100% by the NSW Government, in order to protect the people of NSW - whom they represent. Nurses still have to deliver care to all patients at the same time as caring for COVID-19 patients, and this must be acknowledged by giving them all possible protection to continue their life-saving work. It is unconscionable to aim at removing s19B of the Workers' Compensation Act which gives protection to essential workers who contract COVID-19 so they do not have to prove the transmission occurred at work in order to receive compensation. Removing this common sense support away from one of the most essential services is unjust punishment for being a nurse. It may also mean casual nurses and midwives cannot risk working as they would be financially, physically and physiologically impacted by COVID-19, with no support. This will in turn lead to more patients being cared for by fewer nurses, putting even more strain on an already burnt-out workforce."
- "As a nurse working for NSW health I am at increased risk of getting COVID-19 particularly as NSW health has decided not to screen clients as to whether they are vaccinated or not. They have deemed us working with well people (child and family health) and that we cannot ask vaccination status. As one is approximately 20 times more likely to contract the virus from the unvaccinated - we are at high risk. Recently my colleague caught COVID-19 - couldn't prove it was from work so she had to use all of her annual leave as she was incapacitated for six weeks. I feel angry that politicians know that we are on the frontline and are prepared to let us bear the risk with no extra leave provisions or workers comp. I am a nurse and midwife of long standing but I can understand colleagues leaving the profession and I feel tempted to leave my job and find work in a more protected area. (Perhaps an RSL where the unvaccinated will be excluded)."
- "Shifting the onus of proof to health care staff is likely to create an environment of distrust and fear amongst our frontline workers and provides yet another reason for them to walk away from their jobs and careers. I see the rationale for doing this. It makes sense from a fiscal point of view but from a human point of view it seems grasping, greedy and distasteful. It certainly won't encourage my loyalty to NSW Health. I'd rather protect my health and walk away."

### **Mental health impacts of the pandemic**

In addition to the physical risks associated with contracting COVID-19, many participants noted concerns around the impact to frontline workers' mental health of the pandemic:

- "Whilst we continue to learn about COVID-19 and how it continues to evolve there are mental health concerns for us all as we face this ongoing Global Pandemic. Millions have died globally, many more hospitalised with serious illness and there are also many enduring "Long COVID" where some symptoms fail to resolve after months and for some years. Workers infected at work must be supported when they are ill and recovering and NOT have to worry about being able to afford to put food on the table, pay the rent or mortgage, car payments etc. because they have lost their job or have run out paid sick leave etc. As a disability advocate I know many within recovery achieve faster and better outcomes when they are in the right 'head space'. Once the mind is in a positive aspect and committed to the recovery tasks then the body will follow. Not having good mental health because you are constantly worrying about finances and income will detract from concentrating on getting better. Indeed, some may get worse if they are not financially supported via workers compensation."
- "As a clinical psychologist who works with people with chronic illness (many who have

come through the workers compensation system), I have seen how many need support to get back into the workforce, and how stress impacts not only on mental but physical health. Any system that works to reduce stress by somewhat alleviating financial stress and allowing people to connect with health services in a timely fashion should be supported. To reduce support for workers who may be exposed to COVID-19 in the workplace appears counterproductive and is likely to cause further disability in the long run."

- "Nurses and midwives were not well paid prior to the pandemic, and have received no recompense for the increased risks that they take by remaining committed to their jobs. The physical and psychological burden experienced by nurses and midwives working through a pandemic due to understaffing, keeping up to date with ever changing restrictions and information, meeting the complex emotional needs of patients who are isolated from their usual social network and the fear of contracting the virus and taking it home or passing it on to vulnerable patients is real. Nurses and midwives shouldn't be further emotionally and mentally burdened by being required to "prove" they contracted the virus at work, and nor should they be financially disadvantaged if they cannot "prove" their case. The commitment to support fellow humans during unprecedented challenges shown by nurses and midwives should be recognised and rewarded, not taken for granted."

### **COVID-19 should be treated in the same way as any other workplace injury**

Several participants argued that COVID-19 should be treated as any other illness or injury received in the workplace, suggesting that removing the provisions relating to COVID-19 contradicts the principles of workers compensation legislation:

- "Workers Comp is vicarious liability and should remain that way in that skin cancer is accepted to be a compensable injury for persons that work outdoors such as council workers. The reverse onus of proof required by this bill is against the long standing principles of vicarious liability for workers comp. If anything, the employer must prove the COVID-19 was acquired elsewhere."
- "Workers will be exposed to COVID-19 at work during the course of carrying out essential duties. In the same way they could be exposed to asbestos or respirable silicate dust. They need and deserve support if they become sick carrying out these essential duties."
- "The intention of the NSW Government, to remove the protection currently allowed to essential workers, against sickness provisions contained therein, is completely inequitable, and does not meet any justifiable social need, other than to penalise those workers, who, while complying with all rules as set out therein, contract the symptoms of COVID-19 in any of its various iterations, and as a result incur time off work, and sickness that may be severe enough to require hospitalisation, incurring even further costs and loss of salary or wages. The requirements of an essential workforce, is to support the state in various capacities in keeping those services, classified as essential, working to their fullest capacity. For the state to remove essential worker safety cover, is completely abhorrent, and against all principles of moral requirements of the employer to their employees."

### **Doubts about the fiscal benefits of the bill**

Several participants expressed doubt that any fiscal benefits intended by the bill would be realised:

- "Any claims regarding expected savings provided by this proposed amendment should have any associated modelling and evidence made public and subject to peer review. I have not seen any evidence to suggest that \$600 million is a legitimate saving, or details regarding the time period associated with this saving. If savings are paramount, I suspect greater savings can be recovered by addressing tax loopholes."

- "Medical experts are clear – COVID-19 is here for a long time. It is NOT over now we are out of lockdown as the Omicron variant has shown us. We know that by taking away people's ability to keep themselves and fellow workers / community safe, through financial supports, the spread increases. Surely the small cost of this measure is outweighed by the benefits in or on-going fight against COVID-19."

### ***Amendments to the bill***

One participant proposed that workers who are fully vaccinated against COVID-19 should still be covered under the relevant provisions of the Act.

- "Workers who have done their duty and been fully vaccinated should be supported by the Act ... This amendment should complete the government COVID-19 response package and convey the 'sentiment' – once employees are vaccinated, the rare instances of infection leading to lifelong disability and career and income loss should be supported, and this in turn will lead to increased compliance with public health initiatives."

### **Conclusion**

The online questionnaire process was a valuable tool to seek the views of interested stakeholders on the significant issues raised in the terms of reference. In addition to this input, the committee sought more detailed written submissions from organisations and individuals with specialist knowledge in the field.

The material gathered will inform committee members' views as the inquiry progresses and be considered in the inquiry report.

The committee notes that questionnaire participants cannot be considered to represent a statistically valid, random sample of views on the bill. The participants were self-selected in choosing to respond (in the same way that submission authors are self-selected) and should not be considered to be a representative sample of the population.

### **Questions**

1. Please enter your contact details.

Name:

Email address:

Postcode:

2. Are you a resident of New South Wales?
3. What is your position on the Workers Compensation Amendment Bill 2021?
  - a. Support
  - b. Partially Support
  - c. Support with amendments
  - d. Oppose



4. Please explain why you support the bill.

*300 words – free text box*

5. Please explain why you partially support the bill.

*300 words – free text box*

6. What amendments would you like incorporated?

*300 words – free text box*

7. Please explain why you oppose the bill.

*300 words – free text box*

8. Do you have any other comments?

*300 words – free text box*