

**Submission  
No 5**

**INQUIRY INTO WORKERS COMPENSATION  
AMENDMENT BILL 2021**

**Organisation:** Property Council of Australia

**Date Received:** 16 December 2021

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Australia's property industry

## Creating for Generations

17 December 2021

The Hon Tara Moriarty MLC  
Chair  
Portfolio Committee No. 1 - Premier and Finance  
Parliament House  
Macquarie St  
SYDNEY NSW 2000

Dear Ms Moriarty,

### INQUIRY INTO THE WORKERS COMPENSATION AMENDMENT BILL 2021

The Property Council of Australia welcomes the opportunity to provide a submission to the Chair, Portfolio Committee No. 1 - Premier and Finance Committee regarding the *Workers Compensation Amendment Bill 2021*.

Property is the nation's biggest industry, representing one-ninth of Australia's GDP and employing more than 1.4 million Australians, as well as being the largest employer in Australia. In NSW, the industry creates more than \$581.4 billion in flow on activity, generates around 387,000 jobs and provides around \$61.7 billion in wages and salaries to workers and their families.

Our members are the nation's major investors, owners, managers, and developers of properties of all asset classes. They create landmark projects, environments, and communities where people can live, work, shop, and play. The property industry shapes the future of our cities and has a deep long-term interest in seeing them prosper as productive and sustainable places.

We are pleased to provide the attached comments for the Committee's consideration, in support of the passage of the Bill in its current form.

Should you have any questions regarding the content of this submission, please contact Charles Kekovich, NSW Senior Policy Adviser on [ckekovich@propertycouncil.com.au](mailto:ckekovich@propertycouncil.com.au) or 0409 776 588.

Yours sincerely,

**Luke Achterstraat**  
NSW Executive Director  
Property Council of Australia

The Property Council understands that in 2020, a non-government amendment was moved to introduce *Section 19B to the Workers Compensation Act 1987 (NSW)*, creating a 'COVID-19 presumption'. This created a scenario whereby a worker in a prescribed industry such as construction, planning or design can contract COVID-19 and be automatically deemed to have contracted COVID through work. This enables workers to automatically have a valid workers compensation claim, unless the insurer can prove the illness was not contracted at work. In comparison, other workers compensation claims require the worker to demonstrate that their injury or illness occurred in the course of work thereby placing the onus on employees to prove their claims.

The COVID-19 presumption required under *Section 19B of the Workers Compensation Act 1987 (NSW)* is broad and covers industries including healthcare, education, retail, transport, emergency services, construction, disability and aged care, dining, and entertainment. Research suggests that the presumption in NSW goes far beyond that which applies in another jurisdiction in Australia or internationally. There is no sunset clause, making the amendment permanent, unless it is repealed or amended, as proposed by the current legislation being considered by the Committee.

The amendment to the existing Act was supported by the NSW Parliament at a time when there was great uncertainty about the health impacts of the Covid-19 pandemic and before the development and approval of vaccinations as well as the societal and government shift to a new 'COVID normal' way of life. The passing of the *Workers Compensation Amendment Bill 2021* would ensure that a fair and balanced approach is implemented when assessing claims made under the Workers Compensation Act and that COVID-19 would be treated much like any other communicable disease defined under the existing legislation.

Should every worker who contracts COVID-19 automatically have a workers compensation claim, the cost to the system, business owners, small- and large-scale operators could be in excess of over half a billion dollars. According to NSW Government modelling, using the Doherty Institute modelling, cost to the construction sector alone is likely to reach close to \$100 million if left unchanged. This would have a significant impact on businesses insurance premium increases, with employers estimating an increase of almost 27 per cent this year alone, which could mean the average premium for a small employer increasing by more than \$950. The impact of removing Section 19B of the *Workers Compensation Act 1987 (NSW)* would roughly equate to a \$97.2 million saving for the construction and building industry alone.

Based on current modelling there could be an additional 25,000 claims (a 25 per cent increase on current levels) as a result of COVID-19, if the presumption remains defined under the Act. Advice from iCare and its scheme agents suggests that this increased volume of claims could impact the quality of claims management and outcomes for all injured workers.

Removing the presumption will not remove the right of a worker who has contracted COVID-19 to make a workers compensation claim. This right is retained. The Property Council is supportive of the carve out provisions agreed to in amendments passed by the Legislative Assembly, which would allow frontline workers to be exempt from the Section 19B repeal. We believe the Bill in its current form strikes an appropriate balance between what is appropriate and adequate protection for workers on the frontline as well as industries such as construction and development, which has strong track record of work, health and safety practices on sites across New South Wales.

The continued responsibility of employers to maintain records and notify authorities if any worker tests positive for COVID-19 is one which the Property Council fully supports and one which we believe will further contribute to enhanced safety in businesses and across work sites. NSW Health may become involved if there are multiple cases associated with a business or workplace, including if information shared with SafeWork indicates there have been 3 or more employees test positive in a 7-day period. This record keeping and recording acts as a safeguard to ensure an employee that legitimately catches COVID-19 at work will be able to demonstrate this is the case. New South Wales has achieved vaccination rates well over 90% for those aged 16 and above and as such it is now necessary for the Parliament to support new 'covid normal' ways of life, policies and legislation which rolls back provisions passed hastily during the worst days of the pandemic and supports businesses and workers in a safe, equitable and realistic manner.

**Recommendation:**

The Property Council recommends the Committee support the *Workers Compensation Amendment Bill 2021* in its current form.