

Submission
No 9

INQUIRY INTO WORKERS COMPENSATION AMENDMENT BILL 2021

Organisation: Transport Workers' Union (TWU)

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Inquiry into the Workers Compensation Amendment Bill 2021**

Submission – Transport Workers' Union of New South Wales



Transport Workers' Union of NSW

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1. Introduction

The Transport Workers' Union of New South Wales (TWU) represents tens of thousands of men and women in Australia's road transport, aviation, oil, waste management, gas, passenger vehicle and freight logistics industries.

With over one hundred years' experience representing the workers who conduct Australia's crucial passenger and freight transport, the TWU has been proactive in advocating for the establishment and improvement of industry standards which advance the lives and safety of transport workers, their families and the community at large.

The TWU welcomes the opportunity to make this submission to the Inquiry into Workers Compensation Amendment Bill 2021 (the Inquiry).

2. Role of Transport Workers During the COVID-19 Pandemic

Like many other essential workers, transport workers have been on the frontline day in, day out throughout the COVID-19 pandemic.

When health workers, teachers, retail workers and other essential workers needed to get to and from work safely, it was workers in the passenger transport industry driving their buses, taxis and rideshare services.

When people across NSW went shopping for essential supplies at their local supermarket or pharmacy, it was workers in the road transport industry that kept the shelves stocked.

When people shifted to doing more of their shopping online during lockdown, it was transport workers in distribution centres and couriers working to deliver the packages to people's front door.

When planes arrived carrying vaccines and other essential medical supplies, it was transport workers that unloaded them and transported them across the country to where they were needed.

It is for these reasons that it is particularly disappointing that the NSW and Commonwealth Governments have consistently failed to recognise the critical role transport workers have played in keeping our state and nation moving throughout the pandemic.

Despite the public-facing nature of their work, and repeated calls from the TWU, transport workers were not given priority access to COVID-19 vaccines until well after the horse had bolted and the Delta variant had already wrought havoc on Sydney¹.

When the NSW Government first sought to restrict the movement of essential 'authorised workers' in local government areas of concern, transport workers were initially excluded, and it was only after joint calls from the TWU and the Australian Road Transport Industry

¹ <https://twunsw.org.au/press/freight-chaos-twu-demands-vaccine-priority-as-borders-close-to-unvaccinated-transport-workers/>



Organisation (ARTIO) that the NSW Government relented and included transport workers as 'authorised workers².'

When bus depots across Sydney were thrown into chaos after several drivers tested positive for COVID-19 and dozens more were forced into isolation as close contacts, the NSW Government refused to implement rapid antigen testing at bus depots. Instead, drivers at the Smithfield bus depot were forced to exercise their right to cease unsafe work as a result of the NSW Government's failure to keep them safe while working³.

And despite being subjected to some of the most comprehensive, arduous testing requirements facing any workers in the nation, transport workers – particularly heavy vehicle drivers in the road freight industry – were constantly fighting to access testing locations suitable for their vehicles and working hours.

The NSW Government's failure to recognise the critical nature of transport workers has been constant throughout the COVID-19 pandemic, and in particular in the latter half of 2021 with the Delta outbreak. The Government's proposal to remove the presumptive workers compensation protection for workers in the passenger transport industry, at a time where COVID case numbers are regularly setting daily records, is the clearest indication that their attitude towards transport workers has not changed.

3. Overview of Workers Compensation Amendment Bill 2021

The terms and provisions of the *Workers Compensation Amendment Bill 2021* (the Bill) will be examined in thorough and comprehensive detail by other submissions, and as such this section of the submission will seek only to provide a brief overview of the legislation itself, while subsequent sections will explore in greater length the specific impacts the Bill would have on transport workers if enacted.

The effect of the Bill is to repeal s19B of the *Workers Compensation Act 1987* (the Act). Section 19B was added to the Act as part of a suite of amendments contained in the *COVID-19 Legislation Amendment (Emergency Measures – Miscellaneous) Act 2020* (the amending Act), which passed both Houses of Parliament in May 2020⁴. It is worth noting that when the amending Act was first introduced to Parliament by the Attorney-General, this measure was not included. Instead, it was left to the crossbench & opposition in the Legislative Council to insert this measure into the amending Act.

The purpose of s19B of the Act, according to the relevant explanatory note in the amending Act, is to "establish presumptive rights to compensation under the *Workers Compensation Act 1987* in respect of the disease COVID-19 for workers in certain prescribed employment that involves an elevated risk of exposure to COVID-19⁵."

² <https://twunsw.org.au/press/twu-artio-nsw-demand-automatic-exemption-of-transport-workers-from-snap-rule-changes/>

³ <https://twunsw.org.au/press/bus-drivers-force-closure-of-smithfield-depot-over-failure-to-protect-from-covid-exposure/>

⁴ <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3745>

⁵ Part 1.34, <https://legislation.nsw.gov.au/view/pdf/asmade/act-2020-5>



Section 19B(9) lists the industries deemed 'prescribed employment' for the purposes of the section. Most relevant to the workers represented by the TWU is s19B(9)(g) '*passenger transport services*,' which includes workers in the bus/coach, taxi/rideshare and aviation industries.

If the Bill is passed, workers in these industries will no longer have the protection that comes from the presumed entitlement to workers compensation entitlements if they contract COVID-19. Instead, the onus will be on the individual worker to **prove** that they contracted COVID-19 in the course of their employment before they will be entitled to workers compensation protection.

The following two sections of this submission will discuss the significant COVID-19 risks facing TWU members (and indeed all workers) in these industries, and the difficulties that they will face in proving they contracted COVID-19 in the course of their employment if the Bill is enacted.

4. COVID-19 Risks in Relevant Industries

This section of the submission will outline the nature of the increased risk of contracting COVID-19 in each the passenger transport industry. In particular, this section will focus on bus/coach & taxi/rideshare drivers and aviation workers (ground & cabin crew).

4.1 Bus/Coach and Taxi/Rideshare Drivers

In the absence of any publicly available information on the matter, it is assumed that for the purposes of s19B(9)(g) of the Act, '*passenger transport services*' includes both public passenger services (per s5 of the Passenger Transport Act 2014), and passenger services (per s4 of the Point to Point Transport (Taxis and Hire Vehicles) Act 2016). As such, in relation to workers represented by the TWU, the presumptive entitlement provided by s19B(9)(g) is taken to apply to drivers of bus, coach, taxi and rideshare services in NSW.

The increased risk of COVID-19 transmission associated with the provision of passenger transport services is plainly apparent. This line of work inherently involves a high degree of physical contact with hundreds of people every day, with a limited ability for physical or social distancing within the vehicles. At the height of the Delta outbreak in August 2021, more than 560 transport workers were forced into isolation due to exposure to COVID-19 in the workplace – including more than 200 at the Leichhardt bus depot alone⁶. Among these hundreds of drivers exposed to COVID-19 in the workplace were many who actually contracted the disease.

While concrete figures about the number of taxi/rideshare drivers are less easily obtained, the nature of the work involves much closer contact with passengers than in buses or coaches, which creates a higher risk of COVID-19 transmission. Furthermore, due to the

⁶ <https://www.smh.com.au/national/nsw/hundreds-of-transport-workers-thrust-into-covid-isolation-sparking-major-disruption-warnings-20210812-p58ia0.html>



exploitative business models used by rideshare companies, divers are often left without the protections provided by WHS and workers' compensation laws at a state and federal level⁷.

It is abundantly clear that for workers in the passenger transport industry, the risk of being exposed to and/or contracting COVID-19 at work is significantly higher than the risk among the general public. For the NSW Government to suggest otherwise by attempting to remove the protections provided to these workers under s19B of the Act is at best misguided, and at worst a wilful attack on frontline workers who have continued to put themselves and their families at risk to keep transport services operating throughout the pandemic.

4.2 Aviation Workers

The elevated risks of COVID-19 transmission in the aviation industry could not be clearer. With the exception of the Ruby Princess, every COVID-19 outbreak in Australia has entered our country through our airports. This most notably includes the 2021 Delta outbreak, where a limousine driver transporting international flight crews contracted COVID-19 during the course of his employment, leading to the biggest outbreak in Australia of the entire pandemic.

The risks associated with COVID-19 transmission in the workplace in the aviation industry are to a large extent inherent and unavoidable, however they have been exacerbated by extremely lax, and in some cases outright negligent, control measures being implemented by employers in the industry and/or at a government level. The TWU and its members have encountered numerous examples of governments and employers in the aviation industry taking insufficient steps to fulfil their work health and safety obligations to provide a safe workplace, including:

- In February 2020 Theo Seremetidis, a cabin cleaner for Qantas at Sydney Airport, raised his concerns with Qantas management about inadequate PPE when cleaning planes arriving from China. Even after the Federal Government had announced the closure of Australia's border to non-citizens coming from China, Qantas ignored his concerns and used threats and intimidation to make their workers continue working in an unsafe environment. Mr Seremetidis, as an elected health and safety representative, instructed his work group to cease unsafe work by not cleaning planes arriving from China, which Qantas responded to by standing him down. SafeWork NSW recently announced they had commenced criminal proceedings against Qantas in relation to this matter under s104 of the *Work Health and Safety Act 2011 (NSW)*.
- In March 2020, there was an outbreak at Adelaide Airport among Qantas baggage handlers. The TWU launched its own safety investigation into the outbreak using its rights under WHS laws⁸, which found that Qantas had failed to protect its workers from COVID-19 on a number of fronts. These failures included a lack of access to

⁷https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_Report

⁸<https://www.twu.com.au/wp-content/uploads/2020/05/TWU-Qantas-Adelaide-Airport-Safety-Investigation-2.pdf>



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proper PPE, continued insistence from Qantas that the risk associated with COVID was “low” and the general continuation of a “business as usual” approach.

- In June 2021, a man tested positive for COVID-19 several days after transporting three FedEx freight crew members from Sydney Airport to hotel quarantine, leading to the 2021 Delta outbreak. The NSW Government announced that NSW Police would investigate the matter to determine if the driver had breached any Public Health Orders, with Police announcing shortly thereafter that there was insufficient basis to charge the driver. It is later revealed that at the time the driver contracted COVID-19, the NSW Government’s Public Health Orders inexplicably did not mandate the wearing of face masks or any other PPE for workers involved in this high-risk work⁹.

In addition to these examples of negligence on the part of employers and governments contributing to COVID-19 exposure in the workplace, there is also an intractable degree of risk involved in aviation due to the very nature of the industry. As we move towards state and international borders reopening, and seeing more planes in the sky, more workers in the aviation industry will go back to work after an incredibly difficult two years – which the TWU welcomes – but this comes with a greater risk of COVID-19 exposure for these workers too. It simply defies rationality to be removing workers compensation protections for aviation workers precisely at the time the industry begins to pick up and more workers will be put at risk of COVID-19 exposure.

There is also a significant degree of hypocrisy on the part of the NSW Government in relation to the COVID-19 risk for aviation workers. On the one hand, the *Public Health (COVID-19 Air Transportation Quarantine) Order (No 4) 2021*¹⁰ and related *NSW Airport and Quarantine Workers Vaccination Program*¹¹ require the overwhelming majority of workers in the aviation industry to be double-vaccinated in order to be permitted to access work. According to s4(c) of the Order, the basis for this is “*there is an ongoing risk of continuing introduction and transmission of COVID-19 in New South Wales, particularly from overseas arrivals who are unvaccinated.*” Yet despite this explicit acknowledgement of the COVID-19 risk in the aviation industry in the NSW Government’s own Public Health Orders, particularly in respect of overseas arrivals, the Bill proposed by the NSW Government will remove workers compensation rights from the very workers being exposed to the “ongoing risk”.

The position of the TWU is unequivocal – aviation workers are among those workers most exposed to the risk of contracting COVID-19 in connection with their employment, and as such any proposal to reduce their workers’ compensation protections in that regard should be strongly refuted by the Committee. The Government’s basis for requiring mandatory vaccination of aviation workers under the Public Health Order mentioned above due to the increased risks inherent in the work should be applied similarly in the context of those workers’ protections under the workers compensation system.

⁹ [https://legislation.nsw.gov.au/file/Public%20Health%20\(COVID-19%20Air%20Transportation%20Quarantine\)%20Order%20\(No%202\)%202021_210607.pdf](https://legislation.nsw.gov.au/file/Public%20Health%20(COVID-19%20Air%20Transportation%20Quarantine)%20Order%20(No%202)%202021_210607.pdf)

¹⁰ [https://legislation.nsw.gov.au/file/Public%20Health%20\(COVID-19%20Air%20Transportation%20Quarantine\)%20Order%20\(No%204\)%202021_211203.pdf](https://legislation.nsw.gov.au/file/Public%20Health%20(COVID-19%20Air%20Transportation%20Quarantine)%20Order%20(No%204)%202021_211203.pdf)

¹¹ <https://www.health.nsw.gov.au/Infectious/covid-19/Documents/airport-and-quarantine-workers-vax.pdf>



5. Difficulties Proving Source of COVID-19 Infection

While the above sections of the submission have sought to demonstrate that the protections afforded by s19B of the Act should not be removed on the basis of the increased risks in the passenger transport and aviation industries, this section will seek to explain the difficulties workers in those industries (and indeed others) would face in attempting to prove they acquired their COVID-19 infection during the course of their employment, if the s19B presumption was to be removed per the intent of the Bill.

Since November 2021, NSW Health has significantly scaled back its contact tracing activities, and now operates with a much narrower focus¹². This scaling-back of contact tracing efforts is set to continue, with policy changes that took effect on 15 December 2021 which no longer require the use of QR-code check-ins at most business & venues (whereas they were previously mandatory across the board)¹³. The combined effect of these changes, in the context of the Bill, is that it will become highly difficult for workers to identify the source of their COVID-19 infection if they contract the virus.

For example, if a bus driver tests positive for COVID-19 at a time where there is only very minimal contact tracing occurring, it will be nearly impossible for that driver to conclusively determine whether they contracted the virus in the course of their work, or at their local supermarket or café (or similar venue). However, if proper contact tracing processes were maintained, much greater information would be available about whether exposure to COVID-19 had occurred in the supermarket/café, which would serve to rule it 'in' or 'out' as the likely source of the driver's infection.

In aviation, particularly for aviation workers involved in international flights, contact tracing across multiple jurisdictions as travel restrictions continue to ease will be even more difficult. For example, if an Australian-based cabin crew worker contracts COVID-19 from a passenger on a flight from Australia to an international location, that worker will effectively have no means of identifying the source of the infection once the passengers disembark the plane. Similarly, requiring 'ground crew' aviation workers who are exposed daily to hundreds of passengers travelling to dozens of different locations, to locate/identify the person that was the source of their COVID-19 infection is a task of preposterous difficulty, yet that is precisely what will be required for them to maintain workers' compensation protections if the Bill is passed.

6. Conclusion

In conclusion, the NSW Government's proposal to remove presumptive entitlements to workers compensation entitlements for frontline workers will have a significant, detrimental effect on TWU members and all workers in the passenger transport and aviation industries (among others). These industries inherently involve an unavoidable, increased risk of COVID-19 transmission in the workplace and as such should continue to have the protections afforded by s19B of the Act, particularly in the context of contact tracing being

¹² <https://www.health.nsw.gov.au/Infectious/covid-19/Pages/case-locations-and-alerts.aspx>

¹³ <https://www.nsw.gov.au/covid-19/easing-covid-19-restrictions/opening-in-dec>



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wound back which will make it near impossible for workers who contract the disease to prove the source of their infection.

The TWU thanks the Committee for the opportunity to make this submission, and would welcome the opportunity to give further evidence at a hearing if the Committee feels that will be useful to the Inquiry.