Submission No 10

INQUIRY INTO WORKERS COMPENSATION AMENDMENT BILL 2021

Organisation: Australian Industry Group (Ai Group)

Date Received: 17 December 2021

Australian Industry Group

Workers Compensation Amendment Bill 2021

Repeal of COVID-19 presumptive legislation

Submission to the Portfolio Committee No. 1 - Premier and Finance

DECEMBER 2021

WORKERS COMPENSATION AMENDMENT BILL 2021
REPEAL OF COVID-19 PRESUMPTIVE LEGISLATION

SUBMISSION TO PORTFORLIO COMMITTEE NO. 1 – PREMIER AND FINANCE

INTRODUCTION

The Australian Industry Group (Ai Group) is a peak industry association and has been acting for business for more than 140 years. Along with our affiliates, we represent the interests of businesses employing more than one million staff. Our longstanding involvement with diverse industry sectors including manufacturing, construction, transport, labour hire, mining services, defence, airlines and ICT means we are genuinely representative of Australian industry.

Our vision is for ***thriving industry and a prosperous community*****.**

We have ongoing contact and engagement with employers across Australia on the broad range of issues related to the operation of their businesses, informing them of regulatory changes, discussing proposed regulatory change, discussing industry experiences and practices and providing advice, consulting and training services.

We also interact with and provide regulators and scheme managers across all Australian jurisdictions with employer views and experience on WHS/OHS and workers' compensation.

Our membership is diverse, operating across a broad spectrum of industries. We have a significant number of large organisations within our membership. However, around three quarters of our members employ fewer than 50 employees and half employ fewer than 20 employees.

Ai Group welcomes the opportunity to provide feedback to the Committee in relation to the Workers Compensation Amendment Bill 2021 which will repeal the COVID-19 presumptive liability provisions that were made effective by s.19B of the Act in July 2020.

The 2020 amendments were passed without an end date but were clearly a product of the pandemic and lockdown conditions prevailing at the time. Indeed, they were included in a tranche of Emergency Provisions Bills covering a raft of short-term adjustments to statutory provisions to overcome problems created by the push at that time to implement social and economic restrictions in order to seek to effectively eliminate the virus from local circulation.

If the provisions had a public policy objective during the period when essential parts of the economy had to be kept open while we sought to otherwise shut down to eliminate the virus from the community, that objective has been fulfilled. The public health strategy, risks of exposure, vaccine coverage and vectors of transmission have all changed substantially since last year.

It should be noted that the presumption covers a broad range of industries, way beyond frontline healthcare workers. The full list is established in section 19B(9) as follows:

(a) the retail industry (other than businesses providing only on-line retail),
(b) the health care sector, including ambulance officers and public health employees,
(c) disability and aged care facilities,
(d) educational institutions, including pre-schools, schools and tertiary institutions (other than establishments providing only on-line teaching services),
(e) police and emergency services (including fire brigades and rural fire services),
(f) refuges, halfway houses and homeless shelters,
(g) passenger transport services,
(h) libraries,
(i) courts and tribunals,
(j) correctional centres and detention centres,
(k) restaurants, clubs and hotels,
(l) the construction industry,
(m) places of public entertainment or instruction (including cinemas, museums, galleries, cultural institutions and casinos),
(n) the cleaning industry,
(o) any other type of employment prescribed by the regulations for the purposes of this definition.

It is difficult to understand why construction work, for example, was included in 19B(9) when it has little or no interaction with the public. Indeed, construction was allowed to continue to operate largely because its worksites did not prove to be a strong vector of transmission.

To continue to hold employers in such a broad range of industries automatically responsible for an employee's COVID-19 infection, on the assumption that in those sectors COVID-19 is still overwhelmingly likely to have been caught at work, is no longer sustainable or fair.

We note that In 2015 Safe Work Australia commissioned work to establish a national list of "deemed diseases" that meet the threshold conditions for presumptive liability in workers compensation. In the background to the document it is stated, at page 1, that:

> *Most jurisdictions in Australia have a Deemed Diseases List as part of their workers' compensation system. This List comprises a list of diseases that are deemed to be work-related. The effect of this is to reverse the onus of proof. A worker with the disease who has been exposed to the relevant exposure in the course of their work is assumed to have developed that disease because of the exposure unless there is strong evidence to the contrary. Diseases that are not included on the List can still be the subject of a workers' compensation claim through the normal approach, where the reverse onus of proof would not apply. The Deemed Diseases approach simplifies relevant claims on the assumption that there is a high likelihood that the disease has arisen as a result of work-related exposures* **[emphasis added]**

Jurisdictions are not required to incorporate the list into their workers compensation legislation and may choose to adopt none, some or all of the list within relevant presumptive liability provisions.

A review of the list was recently undertaken on behalf of Safe Work Australia by Dr Tim Driscoll and peer reviewed by Dr Andrew Lingwood. The *SWA Deemed Diseases List – Recommendations for amendments to the 2015 List – Final Report* was published in December 2021. In this report, the inclusion of COVID-19 as a deemed disease was discussed. The conclusion reached was that "*… at this point the data only appear strong enough to include healthcare workers with direct patient contact." (page 7)*

Noting that the Report was not available when the Bill was introduced into Parliament, Ai Group encourages the committee to review this Report to inform itself of the current recommendations of Dr Driscoll, a highly regarded specialist in occupational medicine and public health medicine and an independent consultant in epidemiology, occupational health and public health.

Previous use of the presumed liability provisions in the State's workers compensation system have properly been strictly limited to diseases where there is overwhelming evidence of an occupational cluster for an otherwise rare disease. In the absence of such evidence in the case of COVID-19, we would be very concerned if employers were asked to fund a default system of welfare support through the workers compensation system. That is not the purpose of the scheme and the credibility of the scheme is risked by doing so.

It is important to recognise the that the removal of the presumption does not mean that workers would be unable to make a successful claim for workers compensation if they did contract COVID-19 through a workplace exposure.

It would mean that they would be put on an equal footing with every other worker in NSW who may contract COVID-19 through work, including those in manufacturing, distribution and freight operation, who also largely continued to operate throughout the periods of lockdown in 2020 and 2021.