

**Submission  
No 11**

**INQUIRY INTO WORKERS COMPENSATION  
AMENDMENT BILL 2021**

**Organisation:** United Workers Union

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**BIGGER, STRONGER, UNITED.**

**TIM KENNEDY** SECRETARY  
**JO SCHOFIELD** PRESIDENT

United Workers Union  
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Dear Portfolio Committee No. 1 – Premier and Finance,

United Workers Union (UWU) welcomes the opportunity to make a submission on the Workers Compensation Amendment Bill 2021, which proposes the repeal of Section 19B of the Workers Compensation Act 1987. UWU strongly opposes this Bill, which, if passed, robs essential workers of the protection and peace of mind they need to keep working during the pandemic. This is a clear attack on workers who have kept the economy going during COVID-19, especially when the existing Section 19B presumption is rebuttable by employers and insurers.

Our 150,000 members work across most of the essential industries that have remained open in NSW throughout the COVID-19 pandemic, including early childhood education and care, home care, hospitality, logistics, security, and food services, manufacturing, and processing. As a result, many UWU members have contracted the virus, suffering acute and in some cases ongoing physical harm – in addition to financial turmoil – having put themselves in harm's way to serve their communities.

Since the introduction of Section 19B of the Workers Compensation Act 1987, those engaged in **prescribed employment in NSW** ('essential workers') have had the protection and peace of mind they deserve as they have not been required to prove they contracted the virus in the workplace to access workers compensation.

For essential workers in aged care and early childhood education and care (ECEC), the Section 19B protection is vital. ECEC workers are crucial to the NSW economy, allowing others to work while, day-in day-out, bravely working in environments that, despite rigorous safety protocols, have seen some of the largest COVID-19 outbreaks.<sup>1</sup> While many are at centre-based worksites, others, such as home care workers, are exposed to the additional dangers of travelling from site to site, to offer care and support to vulnerable and often immunocompromised elderly clients. These workers face a high risk of exposure to the virus and this risk has exacerbated existing issues around workforce attraction and retention.

An UWU survey of ECEC educators earlier this year,<sup>2</sup> larger than the recent workforce survey conducted by the Australian Children's Education and Care Quality Authority,<sup>3</sup> found that 73% intend

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<sup>1</sup> Christopher Knauss, 'Covid outbreaks threaten 34 aged care facilities across NSW', The Guardian, 18 August 2021, <https://www.theguardian.com/australia-news/2021/aug/18/covid-outbreaks-threaten-34-aged-care-facilities-across-nsw>; Katina Curtis, 'Experts warn childcare will be the next COVID frontline as sector calls for safety plan', The Sydney Morning Herald, 28 October 2021, <https://www.smh.com.au/politics/federal/experts-warn-childcare-will-be-the-next-covid-frontline-as-sector-calls-for-safety-plan-20211026-p5933q.html>; Melissa Iaria, 'Study of Delta strain in NSW schools, childcare finds most spread by staff', The West Australian, 21 October 2021, <https://thewest.com.au/news/study-of-delta-strain-in-nsw-schools-childcare-finds-most-spread-by-staff-c-4291912>.

<sup>2</sup> United Workers Union, 'ECEC Workforce Crisis Report', August 2021.

<sup>3</sup> Australian Children's Education and Care Quality Authority (ACECQA) May 2021, 'Consultation on a ten year national workforce strategy', <https://www.acecqa.gov.au/national-workforce-strategy>.

to leave within the next three years. Over a quarter said they would be leaving in the next 12 months, with almost half of all surveyed (including those who do not intend to leave the sector) saying they would not recommend ECEC as a career to others.<sup>4</sup>

As UWU member Kelly, an ECEC educator, has told us, COVID-19 has significantly compounded these problems. Kelly and her colleagues' workloads have increased substantially, with the workforce hit by COVID-19 infections and, as in aged care, fewer support staff willing to work in the sector due to the obvious risk of exposure. The repeal of Section 19B is a further and unnecessary attack on these workers who are already facing difficult conditions.

In light of these factors, any move by Government that would further destabilise these industries, such as repealing Section 19B, should be avoided.

For other UWU members, such as food manufacturing worker Jalen, the automatic presumption of workplace transmission removed a considerable, and unnecessary, legal burden. Jalen contracted COVID-19 while working at a food processing plant in Sydney, needing a spell in the intensive care unit with severe acute symptoms. To this day, he continues to suffer the effects of the virus, including ongoing problems with his lungs and liver. Despite the physical cost of COVID-19, the automatic presumption allowed Jalen to access the financial assistance he and his family needed via workers compensation, without incurring further stress and turmoil.

Fair access to workers compensation is also vital for many other UWU members in essential worker roles, as the nature of their employment arrangement does not include access to leave to cover absences caused by a work-related COVID-19 transmission. This includes a large casual and migrant workforce, particularly in sectors like farms, hospitality, cleaning, logistics, and security; many of whom may be employed by unscrupulous employers who seek to undercut wages and conditions.<sup>5</sup> UWU members like Sebastian<sup>6</sup> (a warehouse worker) and Mani<sup>7</sup> (a fruit picker) have told us of their concerns of workplace transmission, highlighting the invaluable role played by Section 19B in facilitating access to workers compensation for such workers.

Furthermore, despite the indispensable role essential workers play in the economy, they are generally among the lowest paid in Australia. In a September 2021 report on the first twelve months of COVID-19 in Australia, the Australian Institute of Health and Welfare (AIHW) starkly observed “an increased risk of developing COVID-19 and dying from it for those in lower socioeconomic groups [such as those] ... employed in occupations that require work onsite.”<sup>8</sup> As the AIHW observed, “there were almost four times as many deaths due to COVID-19 registered for people in the lowest socioeconomic group compared with the highest socioeconomic group.”<sup>9</sup> In this context, it should

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<sup>4</sup> United Workers Union, 'ECEC Workforce Crisis Report', August 2021, pp.2-3.

<sup>5</sup> Joo-Cheong Tham, 'We've let wage exploitation become the default experience of migrant workers', The Conversation, 22 March 2019, <https://theconversation.com/weve-let-wage-exploitation-become-the-default-experience-of-migrant-workers-113644>.

<sup>6</sup> Name changed.

<sup>7</sup> Name changed.

<sup>8</sup> Australian Institute of Health and Welfare, 'The first year of COVID-19 in Australia: Direct and indirect health effects', September 2021, p.52.

<sup>9</sup> Ibid.

come as no surprise that in NSW the regions hardest hit by COVID-19 infections and lockdowns were those with the highest proportion of essential workers, whose “workplaces quickly became locations of high [rates of] transmission and ... the largest outbreaks.”<sup>10</sup>

As essential workers extend their working hours amid the re-opening of NSW’s economy, it is unfair to expect that along with the fear of potentially contracting COVID-19 at work, they must also now lose the benefit of the automatic presumption that has helped workers like Jalen continue to support themselves and their families. With rising case numbers of the Omicron variant bringing the risk of potential further lockdowns,<sup>11</sup> essential workers – who do not have the choice to remain at home – must be protected in the unfortunate scenario that their employment leads to them contracting the virus. As Teresa, an aged care worker, told UWU during a recent lockdown:

We receive updates and texts from managers but their reassurance is hollow when we know they are at home on their laptops. We have no idea if our next client is infected.

UWU also again draws the Committee’s attention to the fact that the existing Section 19B presumption is rebuttable by employers and insurers. A positive COVID-19 test result does not automatically lead to a workers compensation payout if the circumstances do not in fact support a determination of workplace transmission. To this end, repealing Section 19B would simply reverse the onus of establishing the burden of proof that the transmission was work-related – from employers and insurers back on to essential lower paid workers. The proposed repeal is a callous and unnecessary attack on workers. UWU opposes this Bill and calls for Section 19B to be maintained.

Kind regards,

Mel Gatfield  
NSW State Secretary  
20 December 2021

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<sup>10</sup> SGS Planning & Planning, ‘Closing the divide: Essential workers, Australian cities and COVID-19’, 7 October 2021, <https://www.sgsep.com.au/publications/insights/closing-the-divide-essential-workers-australian-cities-and-covid-19>.

<sup>11</sup> On 15 December, the Health Minister cited UNSW modelling that predicted case numbers may rise to 25,000 a day by the end of January 2022. Mary Ward & Sarah McPhee, ‘NSW could see 25,000 COVID-19 cases a day, says Health Minister’, The Sydney Morning Herald, 15 December 2021, <https://www.smh.com.au/national/nsw/nsw-reports-1360-covid-19-cases-highest-daily-total-in-three-months-20211215-p59hmu.html>.