

INQUIRY INTO WORKERS COMPENSATION AMENDMENT BILL 2021

Organisation: The Council of Small Business Organisations Australia
(COSBOA)

Date Received: 20 December 2021

The Hon Tara Moriarty MLC
Chair, Portfolio Committee No. 1 – Premier and Finance
NSW Legislative Council
Parliament House
6 Macquarie Street
Sydney NSW 2000

By email: portfoliocommittee1@parliament.nsw.gov.au

Dear Chair,

RE: Inquiry into the Workers Compensation Amendment Bill 2021

Thank you for the opportunity to make a submission with respect to the NSW Legislative Council's Inquiry into the Workers Compensation Amendment Bill 2021.

The Council of Small Business Organisations Australia (COSBOA) appreciates your willingness to receive input from a broad range of stakeholders with respect to the Bill. We are pleased to provide a submission on behalf of our national industry association members and small business people in New South Wales.

COSBOA is the national peak body representing the interests of small business. Collectively, COSBOA's members represent an estimated 1.3 million of the 2.5 million small and family businesses that operate in Australia. As a collaboration of peak organisations across a wide range of industries, COSBOA acknowledges small and medium sized enterprises (SMEs) are major contributors to the Australian economy. SMEs employ 68% of Australia's workforce. In GDP terms, SMEs together contribute 56% of value added. Small and medium businesses are therefore key partners in rebuilding Australia's economy as Australia emerges from the COVID-19 pandemic.

COSBOA's consultation on the Workers Compensation Amendment Bill 2021 has included discussions with our industry association members who collectively represent approximately 800,000 small business owners in Australia, a significant proportion of which are located in New South Wales.

COSBOA strongly supports the NSW Government's intention to repeal section 19B of the Workers Compensation Act (1987). This section, introduced in May 2020, states that *"if a worker ... engaged in a prescribed employment contracts the disease COVID-19 ... it is presumed (unless the contrary is established) that the disease was*

contracted by the worker in the course of the employment, and the employment ... was a substantial contributing factor ... or ... was the main contributing factor.”

COSBOA was opposed to the introduction of this amendment in 2020 on the following grounds:

- It presented a significant risk of escalation of workers compensation premiums for small business;
- It was an inappropriate mechanism to deal with situations where casual staff who had no personal/carer's leave lost work due to COVID-19;
- It potentially exposed business owners to litigation – that is, being held vicariously liable for harm caused to a third person who had been shown to be infected by a worker who had been deemed to have contracted COVID-19 in the workplace.

While the introduction of the amendment was initially tolerable at a time when little was known about COVID-19 transmission, the continuation of the amendment is not reasonable. No other state in Australia has a law such as this. It is not the right mechanism to compensate workers who become unwell with COVID-19. It has significant consequences for small business employers in the prescribed employment categories which include the retail industry; restaurants, clubs and hotels; places of public entertainment, and more.

As restrictions ease further and the community learns to 'live with the virus' being managed consistent with other infectious diseases as dictated by National Cabinet's plan, it is inevitable that employees will be exposed to COVID-19, whether at the workplace or in their personal lives. This is especially true for workers in sectors such as essential retail where individuals are not required to be vaccinated in order to enter a business premise.

It is also inevitable that workers will contract COVID-19 outside of work which is beyond the control of small business employers, however according to Section 19B it is the employer's fault until proven otherwise. Small business owners therefore have a financial interest in monitoring or questioning employee behaviour outside of work hours which could lead to an unhealthy culture of suspicion and mistrust.

Our members are very concerned the risk of workers being exposed to COVID-19 will lead to an increase in workers compensation premiums at a time when many small businesses are already struggling financially. Most small businesses have accumulated significant debt by deferring rent, tax and loan payments during lockdowns. We note statements by iCare that such premium increases would only be absorbed for the 2020-21 Financial Year (and largely offset by extraordinary investment gains during that same period). Such increases will disincentivise employment and impede the economic recovery of New South Wales.

When a small business owner considers employing an individual, they calculate the cost of wages, superannuation, and insurance. If the cost of mandatory insurance is too high, they make decisions based on the overall cost of employing workers and therefore may decide to employ fewer people. This impacts upon the whole business and its capacity to trade and to grow. In the present climate, it is essential that small

business owners can invest in new staff and higher wages, rather than inflated and unnecessary insurance premiums.

We understand the presumption was created with the intention to provide an additional income 'safety net' for workers who were unable to access paid leave entitlements in the event of COVID-19 exposure or infection, however the maintenance of this provision is no longer in the public interest. Using the workers compensation system to offset losses created by the COVID-19 virus is neither fair nor reasonable. Workers compensation is designed to compensate employees for injuries arising from workplace accidents only.

If it is deemed necessary to compensate workers who are unable to work due to COVID-19, then a more suitable mechanism might be the development of a NSW equivalent of the Federal Government's Pandemic Leave Disaster Payment (PLDP).

We understand the proposed repeal of Section 19B will still allow workers to make claims. Insurers can focus on sound claims management practices. Small business owners can focus on rebuilding their business and overcoming the significant losses they have suffered.

We therefore respectfully request the NSW Government repeal the COVID-19 presumptive provision of Section 19B and revert to the standard requirement to prove causation before a workers compensation claim is paid. We urge you to support the cause of NSW small business owners as they seek to rebuild their business from the damage caused by the COVID-19 lockdowns.

On behalf of our members, I sincerely thank you for the opportunity to participate in this consultation process and for your consideration of NSW small businesses.

Please don't hesitate to contact me if you require any further information.

Yours sincerely,

Alexi Boyd
Chief Executive Officer
Council of Small Business Organisations Australia (COSBOA)

20 December 2021