

**Submission
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INQUIRY INTO WORKERS COMPENSATION AMENDMENT BILL 2021

Organisation: Housing Industry Association (HIA)

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4 Byfield Street
Macquarie Park NSW 2113
PO Box 884
North Ryde BC NSW 1670
t (02) 9978 3333
f (02) 9978 3375
hia.com.au

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Portfolio Committee No. 1 – Premier and Finance
Parliament House Macquarie Street
SYDNEY NSW 2000

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

Inquiry into the Workers Compensation Amendment Bill 2021

I am writing in response to the Upper House inquiry into the *Workers Compensation Amendment Bill 2021* (the Bill).

HIA understands that, if passed, the Bill will remove the presumption that certain workers who contract COVID-19 will have contracted the virus in the course of their employment and therefore require employees to demonstrate that they contracted COVID-19 at their workplace in order to make a workers compensation claim.

HIA supports the Bill.

It is estimated that without this change an increase in insurance premiums of more than half a billion dollars would be required to cover COVID-19 claims. As noted by Committee Chair, the Hon Tara Moriarty MLC:

'The government has said that it introduced this legislation to ensure the efficiency, effectiveness and sustainability of the workers compensation scheme, and to minimise the premium increases that it expects to arise from COVID-related claims. The government has cited modelling that estimates more than 25,000 extra claims on the workers compensation system will arise from COVID at a cost of \$600 million.'

It is well known that section 19B of the *Worker Compensation Act 1987* (the Act) was designed to provide additional assurance to workers at a time when little was known about the impacts of COVID-19 and vaccinations were simply a work in progress.

However, the current situation is significantly different, and it is vital that the NSW workers compensation scheme (the Scheme) be re-assessed to safeguard its sustainability and ensure the Scheme remains fit for purpose.

Concerns surrounding the impact of COVID-19 on the Scheme

HIA has three main concerns with the interaction of COVID-19 and the Scheme.

Firstly, it is inevitable that some insurers and employers will be exposed to a higher proportion of

COVID-19 claims either due to their industry or the effect of section 19B of the Act. This will significantly impact claims costs which ultimately will impact employer premiums.

Secondly, premiums should be calculated according to an appropriate risk assessment, including the safety record of the insured business. A case of COVID-19 at a workplace, deemed to be compensable should not be determined to have the same impact on premiums as other types of compensable claims. The work, health and safety obligations and appropriate control measures to be implemented in mitigating against the risk of COVID-19 at a workplace are still evolving and so far has been underpinned by Government mandates through Public Health Orders, breaches of which are generally clear.

Given that the Government mandates no longer apply, it is currently unclear how an employer is expected to respond to the risks posed by COVID-19.

Finally, a compensable injury or illness must truly arise out of or in the course of employment, or the employment must have played a major or significant part in the development of the injury or disease.

A case of COVID-19 at a workplace should be assessed based on the general approach through causation as opposed to continuing to apply section 19B of the Act. This is vital to limit the liability and costs for the employers as workers might not necessarily contract COVID-19 at work. For example, through contacts with other family members, or through the course of day-to-day activities such as essential shopping or exercise.

Furthermore, if the Bill is passed workers who contract COVID-19 would still be able to make a claim for compensation.

Workers Compensation Premiums in the Residential Building Industry

The residential building industry is considered one of the most high-risk industries in New South Wales. As such, employers in the residential building industry already face higher workers compensation premiums than other industries.

Further, the residential building industry includes a diverse range of businesses from large project home builders to small family run operations structured as companies and partnerships through to sole traders.

Most of these entities will have contact with workers compensation, whether it is due to the engagement of employees or through the engagement of a contractor who is 'deemed' to be a worker and so fall within the scheme.

As such, without the removal of the COVID-19 presumption, significant increases to workers compensation premiums would be inevitable resulting in:

- A disproportionate impact on those in the residential building industry;
- An additional unjustifiable financial burden on the industry; and
- An adverse financial impact on a large number of trading entities in the industry.

The impact of COVID-19

This is a difficult time for many businesses and the likelihood of an increased premium resulting from reasons outlined above will add to ongoing financial difficulty throughout 2022. Businesses, especially small businesses, have faced unique and significant challenges throughout 2020 and 2021 the effect of which, will continue throughout 2022 and beyond. On this basis any trigger that would highly likely result in an increase to workers compensation premiums would be unwise.

HIA supports the Bill and the Government's commitment in maintaining affordable workers compensation insurance premiums. HIA urge the Committee to support the Bill.

If you require further information on this matter please do not hesitate to contact Jasminne Muliadi
– Manager Workplace Services (NSW)

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

David Bare
Executive Director