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INQUIRY INTO WORKERS COMPENSATION AMENDMENT BILL 2021

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T H E M C K E L L I N S T I T U T E

**Workers Compensation and COVID-19:
Proposal to repeal section 19B**

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About the McKell Institute

The McKell Institute is an independent, not-for-profit research organisation dedicated to advancing practical policy solutions to contemporary issues.

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Introduction

On 14 May 2020, the NSW Government amended the Workers Compensation Act 1987 to include a new section 19B that inserted a presumption that workers in some industries who contracted COVID-19 did so at work.

The changes assured workers who took on additional risk that they would be covered by the workers compensation (WC) system. It prevented workers from having to undertake costly and time-consuming efforts to prove COVID-19 had been contracted at work, while also reducing red tape for insurers.

The NSW Government is now considering repealing Section 19B. The change is based on modelling that forecasts a dramatic increase in workers compensation claims and costs because of COVID-19.

The two principal government claims are:

“The modelling based on Doherty shows that the scheme could be hit with more than 25,000 extra [workers compensation] claims...”

“...recent estimates based on Doherty Institute modelling, indicate COVID-19 claims could cost the NSW workers compensation system up to \$638 million over the coming year.”

If true, these forecasted claims and costs will have a material impact on the workers compensation scheme and the premiums paid by businesses that support the scheme.

However, as of December 10 December 2021, the State Insurance Regulatory Authority (SIRA) reported a total of 2,270 COVID-19 related workers compensation schemes. Most of these cases were claimed in the three months following the worst of the Sydney outbreak.¹

As of July 2021, the total payments for COVID-19 related claims were reportedly \$7.1 million and is expected to grow to \$13.9 million for the year.²

This report scrutinises the claims that underscore the decision to repeal section 19B and seek to explain why the forecasted claims and costs are so much higher than what has occurred to date.

Our findings suggest that the modelling used to inform the decision to repeal section 19B does not reflect current vaccination rates and has most likely been misapplied to the current political debate.

Recommendation: The McKell Institute recommends delaying any decision regarding the repeal of section 19B until the modelling used to inform the decision is made public and is properly reviewed.

Key findings

1. The two government claims relied on to repeal section 19B are based on an 80 per cent vaccination rate, substantially lower than the current 95 per cent vaccination rate.
2. When adjusting the two statements for a 95 per cent vaccination rate, the original claims have been overestimated by at least 103 per cent.

	Original claims (80% vaccination rate)	Adjusted DI model (95% vaccination rate)
WC claims	25,000	12,344
WC claim costs	\$638 m	\$ 315 m

3. However, modelling based on the Doherty Institute research, adjusted for a 95 per cent vaccination rate, forecasts 30,480 COVID-19 infections in NSW in 2022.
4. 261 workers compensation claims were made for every 10,000 COVID-19 cases in 2021 (to 3 December).
5. 11.05 per cent of resolved workers compensation claims were rejected in 2020, including for reasons that COVID-19 was not contracted at work.
6. The McKell Institute modelled two scenarios; [1] an adjusted Doherty Institute model accounting for a 95 per cent vaccination rate and [2] a 300 daily cases scenario which would indicate a higher rate of infection in 2022 than in 2021.

Under both scenarios the savings to the workers compensation scheme from repealing section 19B are substantially lower than has been reported.

	Scenario 1: Adjusted DI model	Scenario 2: 300 daily cases
2022 COVID-19 cases in NSW	30,480	109,500
COVID-19 related WC claims	796	2,858
COVID-19 related WC claims made ineligible after repealing Section 19B	88	316
Cost of claims made ineligible after repealing Section 19B	\$2.2 m	\$8.1 m

The COVID-19 related risks to the workers compensation scheme have been regularly overestimated

The most extensive epidemiological modelling in Australia related to COVID-19 has been undertaken by the Doherty Institute to inform decisions made by the National Cabinet. The forecast of 25,000 workers compensation claims and \$638 million have both been described as “based on Doherty Institute modelling.”

Despite their extensive research, Doherty Institute have warned against using their modelling for forecasting.

“The Doherty modelling provides scenarios for planning, but because we respond and adapt to the current epidemiological situation, none of them can be considered quantitative predictions.”

“Any such considerations need to accept the vast uncertainty in future epidemic behaviour, and hopefully embrace that uncertainty.”

– Prof. James McCaw, Doherty Institute Epidemiologist and Professor of Mathematical Biology at the University of Melbourne

A degree of caution is expected from insurers when facing the substantial uncertainty related to the ongoing effects of COVID-19.

However, insurers have a history of overestimating the costs associated with COVID-19. In 2020 the nominal insurer, iCare, accounted for \$169 million in workers compensation liabilities arising from COVID-19. In 2021 these liabilities were adjusted downward by 38.5 per cent (\$65 million).

In October 2021, SIRA published a report that has since been withdrawn because it overstated risks associated with COVID-19. At the time, the CEO of SIRA, Adam Dent stated:

“This information, which has now been removed from the SIRA website, overstated current risks and did not reflect my views as the SIRA chief executive.”

Claims based on Doherty Institute research need to be updated

The 25,000 additional workers compensation claims and \$638 million in payments is based on the Doherty Institute (DI) base case model which assumes an 80 per cent vaccination rate for the population 16 years of age and older.

A State Insurance Regulatory Authority spokeswoman said its estimate of \$638 million cost of compensation was based on 80 per cent vaccination coverage of the adult population. – “Staff Infected with COVID-19 at work set to claim \$600m”, Sydney Morning Herald, 8 October 2021

As of 10 December 2021, 95 per cent of the 16+ population has received at least one dose and 93 per cent of people are fully vaccinated.³ In addition, 670,000 Australians have received 3rd-shot boosters, with 4.1 million eligible for such a shot by December 31.⁴

When adjusted for a 95 per cent vaccination rate, the number of expected COVID-19 infections falls by 50.6 per cent.⁵

If we update the original claim to reflect the higher vaccination rate, the forecasted claims and costs fall by more than half. The two government claims have therefore been overestimated by at least 103 per cent.

	Original claims (80% vaccination rate)	Adjusted DI model (95% vaccination rate)
WC claims	25,000	12,344
WC claim costs	\$638 m	\$ 315 m

Workers' compensation claims are a function of COVID-19 cases

The adjusted Doherty Institute model forecasts 15,031 infections in 180 days, or approximately 30,480 COVID-19 infections in 2022.

Not all infections result in a workers compensation claim. Based on the experience during 2021, covering the worst of the Sydney outbreak, only 261 workers compensation claims were made for every 10,000 COVID-19 infections.

	1 January to 3 December 2022
COVID-19 infections	77,586
SIRA reported COVID-19 related WC claims	2,028
Rate of WC claims to infections	2.61 %

The McKell Institute has modelled two scenarios. Scenario one assumes infection rates based on the Doherty Institute base case adjusted for vaccination rate of 95 per cent. The second is a more pessimistic scenario, assuming 300 cases per day throughout 2022.

	Scenario 1: Adjusted DI model	Scenario 2: 300 daily cases
2022 COVID-19 cases in NSW	30,480	109,500
COVID-19 related WC claims	796	2,858

Under these scenarios, the number of workers compensation claims is substantially lower than the 25,000 claimed.

Repealing Section 19B will only exclude workers who cannot prove they contracted COVID-19 at work.

The NSW Government has reassured workers that repealing section 19B will only affect workers who did not contract COVID-19 at work.

"Workers who contract COVID-19 are still able to make a claim for compensation; however, like other claims, they need to show that they contracted COVID-19 in the course of their employment."

The counterfactual to consider is not the total number of workers compensation claims, but the total number of workers compensation claims that would likely have been rejected because COVID-19 cannot be proven to have been contracted at work.

In 2020, 11.05 per cent of COVID-19 related workers compensation claims were rejected throughout Australia.

"Rejected claims may include a range of scenarios, including where a worker was tested for COVID-19 but found to be negative, or where there was evidence the disease was not contracted at work."

Most infections during this time occurred in Victoria where the workers compensation scheme does not have a presumption that COVID-19 was contracted at work.

The percentage of rejected claims is a good proxy for the number of workers who would likely have their workers compensation claims rejected if section 19B is repealed. Given it includes some factors that are not relevant, it is a conservative assumption likely to overestimate the number of claims affected by repealing section 19B.

The average lifetime cost of a COVID-19 related workers compensation claim is not publicly available. However, based, on the government statements, the average claim will cost \$25,520.

	Scenario 1: Adjusted DI model	Scenario 2: 300 daily cases
2022 COVID-19 cases in NSW	30,480	109,500
COVID-19 related WC claims	796	2,858
COVID-19 related WC claims made ineligible after repealing Section 19B	88	316
Cost of claims made ineligible after repealing Section 19B	\$2.2 m	\$8.1 m

The cost of these claims should be considered in the context of the \$4.14 billion in annual premiums collected by the workers compensation system and the \$3.69 billion in annual payments made.⁶

The proposal to repeal Section 19B will have a limited effect on the finances of the workers compensation system but will introduce a substantial administrative burden and increase the risks for workers who are more likely to be exposed to COVID-19. Many of these exposed industries are already experiencing a shortage of workers.

The government forecasts a substantial worsening of COVID-19

Given the ratio of workers compensation claims to COVID-19 cases (2.61 per cent) and the ratio of rejected claims to accepted workers compensation claims (11.05 per cent), we can extrapolate the number of COVID-19 cases the government expects in 2022 based on the statements.

If failure to repeal section 19B exposes the workers compensation system to 25,000 claims at a cost of \$638 million then the total number of COVID-19 related workers compensation claims is likely to be 226,244 at a cost of \$5.8 billion.

For 226,244 COVID-19 related workers compensation claims to be made, 8.7 million COVID-19 infections can be expected in NSW.

The model the government is relying upon to repeal Section 19B assumes more than one infection for every person in NSW within the 2022 calendar year. This represents a worst-case scenario, but not one that is likely given 95 per cent vaccination rates.

Such a scenario would indicate substantial social and economic disruption, the least of which will be the workers compensation system.

Conclusion

The discrepancy between the government claims and the likely number of WC claims and costs suggests that it is likely the modelling cited has been misapplied. It may be that the claims and costs represent total possible COVID-19 related exposure and not exposure due to Section 19B.

SIRA are the regulator for the Treasury Managed Fund (TMF). While the TMF has exposure to workers compensation claims, it is also exposed to other COVID-19 claims. These are often more costly. For example, the latest annual report includes \$380 million in claims made from Taronga Zoo, the Opera House and Port operations largely driven by claims for “revenue and consequential loss and even cancellations.” While these claims fall within COVID-19 related claims regulated by SIRA, they do not relate to the workers compensation system.

COVID-19 has undoubtedly created substantial uncertainty, especially for insurers. We applaud the insurers, regulators, and government for trying to protect the integrity of the workers compensation system.

However, the modelling used to justify the repeal of Section 19B is out of date, overestimated and likely misapplied or wrong. Decision makers should properly review these claims before accepting them.

We recommend that the modelling used to justify this decision be made public and reviewed before any action is taken.

While the repeal of Section 19B will not have a substantial financial impact for NSW, it will have a substantial impact on the finances and trauma of workers who are infected at work.

Workplaces in many industries exposed to COVID-19 are already facing skills shortages. Job security is exacerbated by the possibility that entire industries may be shut down due to lockdowns. We cannot attract people to work in these industries if we cannot provide them the most basic assurances that if they contract COVID-19 at work they will be compensated.

The changes to section 19B will create a burden of proof that will be costly and difficult to administer for a minor cost saving.

Endnotes

¹ <https://www.sira.nsw.gov.au/open-data/system-overview>

² <https://www.smh.com.au/business/workplace/warning-of-surge-in-covid-related-workers-compensation-claims-20210924-p58ufw.html>

³ <https://www.nsw.gov.au/covid-19/stay-safe/data-and-statistics#toc-vaccination-in-nsw>

⁴ <https://www.smh.com.au/politics/federal/covid-boosters-fast-tracked-to-five-months-gap-making-millions-more-eligible-for-third-shot-20211211-p59grr.html>

⁵ The “Doherty base case” (DBC) considers total infections in 180 days post reopening in 80% coverage, medium seeding, optimal TTIQ Australia wide. See [https://www.doherty.edu.au/uploads/content_doc/DOHERTY_MODELING_INTERIM_REPORT_TO NATIONAL CABINET 17TH SEPTMBER 2021.pdf](https://www.doherty.edu.au/uploads/content_doc/DOHERTY_MODELING_INTERIM_REPORT_TO_NATIONAL_CABINET_17TH_SEPTMBER_2021.pdf). The DBC involves a gradual path to 90% vaccination from an 80% level at reopening. By contrast, 2022 in NSW the 16+ vaccination rate looks set to be 95%. There is also the very significant of 3rd-shot boosters after a 5-month interval. Together these provide both a direct reduction in infections and an indirect reduction through reduced circulation of the virus. In addition to this, there is significant vaccination among the 12-15-year-old population, and the rollout of vaccination among 5-11-year olds from early January 2022. These add to the indirect benefits of immunity.

⁶ https://www.sira.nsw.gov.au/__data/assets/pdf_file/0007/989035/workers-compensation-system-monthly-dashboard-dec-2020.pdf