

**INQUIRY INTO WORKERS COMPENSATION
AMENDMENT BILL 2021**

Organisation: Shop, Distributive and Allied Employee's Association (NSW Branch)
Date Received: 20 December 2021

SDA NSW SUBMISSION ON *WORKERS COMPENSATION AMENDMENT BILL 2021*

1. The SDA

- 1.1 The Shop, Distributive and Allied Employees' Association (SDA) is the largest private sector union in Australia with over 200,000 members. The SDA covers workers in retail, fast food, warehousing, online retail, pharmacies and pharmaceutical manufacturing. This submission is made on behalf of the New South Wales Branch of the SDA.
- 1.2 The SDA's membership consists largely of low-paid service workers who have been on the frontline during the COVID-19 pandemic. SDA members are essential workers. These workers who supported the community throughout the pandemic, risking their health to keep us supplied with essential goods, are entitled to the ongoing support of the community in the event they contract COVID-19.

2. The Bill

- 2.1 The *Workers Compensation Amendment Bill 2021* amends the *Workers Compensation Act 1987* (NSW) by removing section 19B and related provisions. Section 19B was inserted by the *COVID-19 Legislation Amendment (Emergency Measures—Miscellaneous) Act 2020 No 5* (NSW) in response to the COVID-19 pandemic.
- 2.2 Section 19B provides presumptive rights to workers compensation for certain workers who contract COVID-19. Prescribed workers are presumed to have contracted the COVID-19 in the course of their employment. This presumption may be rebutted if it is established that the contraction of COVID-19 is not related to the employment. Prescribed workers include workers in the retail industry (other than businesses providing only online retail), restaurants (including fast food restaurants) and supermarkets.¹

3. Supporting workers infected with Covid

- 3.1 Workers' compensation continues to be an important support mechanism for workers who contract COVID-19 in the workplace. Over 1,500 claims for workers' compensation have been made for confirmed cases of COVID-19 in New South Wales.²
- 3.2 As with all injuries or illnesses sustained in the workplace, workers' compensation provides compensation for lost wages and medical expenses for workers who contract COVID-19 in the workplace.

¹ See *Workers Compensation Act 1987* s 19B(9) and *Workers Compensation Regulation 2016* r 5D.

² State Insurance Regulatory Authority (SIRA), *Workers compensation claim statistics*, accessed 16 December 2021, <https://www.sira.nsw.gov.au/resources-library/list-of-sira-publications/coronavirus-covid_19/workers-compensation-claim-statistics>

- 3.3 Section 19B gives essential workers, whose employment exposes them to the public on a regular basis, the presumption that if those workers contracted COVID-19 it presumes they caught it in the workplace and puts the onus on the insurer to prove otherwise. These workers prescribed under section 19B are those workers who come into contact with large numbers of people at work and have kept our community functioning throughout the pandemic. They are therefore more likely than not to have contracted COVID-19 in the workplace.
- 3.4 By removing section 19B, the onus moves to the worker to prove they sustained COVID-19 in the workplace. Given contact tracing and QR check-ins have been substantially wound back, an individual employee has no capacity to prove where they contracted the virus. Removing section 19B will severely limit the application of workers' compensation to COVID-19 and shifts all the financial risk to the essential worker.
- 3.5 Retail workers have a particularly high risk of exposure to COVID-19, primarily due to the high number of interactions with the general public in their day-to-day work, which goes into the hundreds on any given day.
- 3.6 The retail industry is characterised by low wages and insecure work. The median hourly rate of pay for workers in the retail industry is 30% lower than the national average. The industry is also characterised by high levels of casual employment, with 37% of retail workers having no paid leave entitlements. This combination of low wages and insecure work means retail workers who contract COVID-19 are less likely to take time off work when sick and more likely to spread COVID-19. Those that do take time off work may be more vulnerable to financial hardship. Accessing workers' compensation payments assists in protecting the community by enabling these workers to take time off work and isolate without suffering financial hardship.
- 3.7 Section 19B provided not only direct financial support to workers who got COVID, but also significant psychological support to the thousands of essential workers isolating daily waiting for COVID test results. These workers at least had the comfort that should they return a positive result they had the support of workers compensation.
- 3.8 Section 19B was inserted into the Act for a purpose, to ensure essential workers at higher risk of exposure were supported to continue working safe in the knowledge they would have financial support if they did contract COVID; and to ensure insecure workers did not feel a financial pressure to work if they had COVID symptoms for fear of losing shifts without compensation. That purpose has not evaporated. At the time of writing, COVID-19 cases have once again spiked above 2,000 per day. This pandemic is not over. Workers continue to need support, particularly when they contract the virus.

4. Who should pay for COVID-19 in the workplace?

- 4.1 Throughout the pandemic, State and Federal Governments have supported workers and businesses that have been affected by the impacts of COVID-19. The Federal Government's JobKeeper and JobSeeker programs, and later the COVID-19 Disaster Payment, provided financial assistance for employees who lost income due to government-imposed restrictions. This Federal Government support for workers has largely been wound back.
- 4.2 Some individual employers have provided paid pandemic leave for workers who have been unable to work due to isolation requirements or when they have contracted the virus.

Anecdotally, it appears this support has been limited to a small number of best practice employers.

- 4.3 In the Federal industrial relations system, the Fair Work Commission introduced unpaid pandemic leave into most awards, while two weeks' paid pandemic leave was inserted into the aged care, nursing and health services awards for a limited period of time only.
- 4.4 Much of the economic burden then has been borne by government through support payments. This approach has been accepted by the community as a fair way of distributing the costs of the pandemic. Government support for workers and businesses has enabled most businesses to keep their doors open and allowed workers to stay connected with their employment.
- 4.5 Likewise, we do not oppose the concept that the cost of workers' compensation claims for COVID-19 should not be borne by individual employers who have been unfortunate in having the virus circulating through their workplace. Already a business will have costs of replacing workers who need to be absent from work while isolating and may lose business due to temporary closures. However we do oppose transferring that cost to the individual worker.
- 4.6 If the intent of the bill is to remove financial risk related to COVID from small business it fails to achieve this for two key reasons.
- 4.7 Firstly the removal of section 19B will lead to more workers accessing sick leave entitlements, rather than utilising the workers compensation scheme. This cost will be borne by individual employers anyway.
- 4.8 Secondly if a worker who contracts COVID at work is still somehow able to show they caught COVID at work the employer will be liable for the relevant workers compensation claim and the resultant higher ongoing workers compensation premiums.
- 4.9 The Bill as it stands will do little to reduce costs to employers, it will simply either transfer the cost from the indirect cost of premiums to more direct costs of sick leave for essential workers unable to show where they caught COVID or alternatively for those workers able to show they caught COVID at work there is no relief for the employer from higher workers compensation premiums.
- 4.10 A more appropriate way to deal with these scenarios is for the cost to be shared by the community through government support. To this end, the Government should consider funding or underwriting COVID-19 workers' compensation claim for essential workers rather than allowing the cost to be borne by essential workers and businesses.

5. Conclusion

- 5.1 The SDA does not support the removal of section 19B and submits the Bill should be rejected by the Parliament.
- 5.2 The Government should consider other ways for limiting the cost of COVID-19 workers' compensation claims on employers, including by the Government underwriting claims.