

**INQUIRY INTO WORKERS COMPENSATION  
AMENDMENT BILL 2021**

**Organisation:** Police Association of NSW

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Police Association of NSW

Submission to Portfolio Committee No. 1 –  
Premier and Finance

Inquiry into the Workers Compensation  
Amendment Bill 2021

Thank you for the opportunity to contribute to this Inquiry.

The Police Association of NSW represents the professional and industrial interests of all sworn police officers in NSW. Their health, safety and financial security after injury and illness is one of our top priorities.

Throughout COVID-19, everyone in NSW has relied on the workers who perform essential tasks, like treating us when we are sick, providing us with groceries, and ensuring COVID-19 rules are complied with.

These workers show up at work every day despite potentially exposing themselves to the risks of COVID-19. The consequences of contracting COVID-19 could be life threatening for the workers and their loved ones, but they keep showing up to work every day because NSW needs them.

While they put themselves at risk to make sure we are all safe and have access to essential services despite the challenges of COVID-19, it is only right that Parliament backs them if they contract COVID-19.

In the 2<sup>nd</sup> Reading Speech the Minister for Customer Service, and Minister for Digital, the Hon. Victor Dominello, stated that small businesses are “the lifeblood of our reopening economy” and the Government does not want them “to bear a disproportionate cost of the COVID-19 health impacts”.

It is disappointing that the Government would prefer nurses, police officers and the workers who ensure we can get our groceries to bear those costs. It is disappointing they do not consider those workers the lifeblood of our community and essential to the businesses that our economy relies on.

The Police Association NSW, on behalf of all police officers in NSW, supports the retention of the presumption, and oppose the repeal of section 19B.

### **NSW relies on prescribed workers that looked after us**

NSW police officers went above and beyond to protect the people of NSW throughout COVID-19, incurring great personal risk to their health, a significant burden in workload, new procedures and new laws, and at times in the face of strong debate about the role asked of them by NSW.

Below are some of the comments made by this Government highlighting how crucial police have been during this time:

The leadership, integrity and strength of the NSW Police has been a shining light during our state's recent challenges. The Police Force has continued to keep the people of NSW safe during the devastating bushfire season and the COVID-19 pandemic. Thank you for the care you show to the community each day.

NSW Police has many complex objectives but, in the end, everything you do is about community protection. Across a force of more than 17,000 police officers, every single one of you makes a difference to the strength of our social cohesion and protecting the people of NSW - you touch every corner of this state.

During the COVID-19 pandemic, NSW Police has shown its agility and its understanding of the communities it serves. These unprecedented times have required the authorities to be firm and fair as everyone adapts to rapidly changing social expectations. The professionalism shown by the NSW Police during these challenging times develops a mutual trust and respect between police and civilians which will stand NSW in good stead going forward.

Thank you to every NSW Police officer for your agility, resilience, compassion, skill and dedication to our state and its people. You have been tested in previously unimaginable ways in recent months, and have proved adept at managing crises with confidence and consistency. NSW needs its police more than ever and it is a credit to the Force that its relationship with the people has never been stronger.

As boundaries and expectations are reshaped in the coming months and years, I look forward to NSW Police officers guiding our state into an even more respectful, enjoyable and safer place to be.

**Gladys Berejiklian – then Premier and Liberal Member for Willoughby**

In spite of the increased personal risk in an already dangerous job, you have risen to the occasion and served with distinction during this current public health emergency. I offer all NSW Police officers my personal thanks and that of the community.

**Dominic Perrottet – then Treasurer of NSW and Liberal Member for Epping**

The COVID-19 pandemic has been an unprecedented time for the NSW Police Force with many officers going above and beyond the call of duty to protect the health and lives of our community. I'll continue to work in lock step with the Police Association to ensure the police have the resources and respect they deserve to get the job done. On behalf of the NSW Government, I thank every single one of you for your unwavering service and dedication.

**David Elliott, Minister for Police and Emergency Services and Liberal Member for Baulkham Hills**

Police officers, along with all essential workers on whom we have relied on to get us through the pandemic, did not have the choice to work remotely, to take time off, to stay away during spikes or clusters, to socially distance, to not perform tasks that are at heightened risk of exposure, or to avoid high risk situations. They are performing work that has to be done, regardless of the risk. They keep showing up for every shift, for overtime, to learn new procedures and job requirements, to adapt to new situations and ways they need to help the people of NSW.

These workers adapted to new practices and PPE to reduce that risk of exposure, but there is no getting away from the fact they continue to perform frontline duties, interacting with countless people in circumstances where social distancing was impossible, and PPE is not a guarantee of safety.

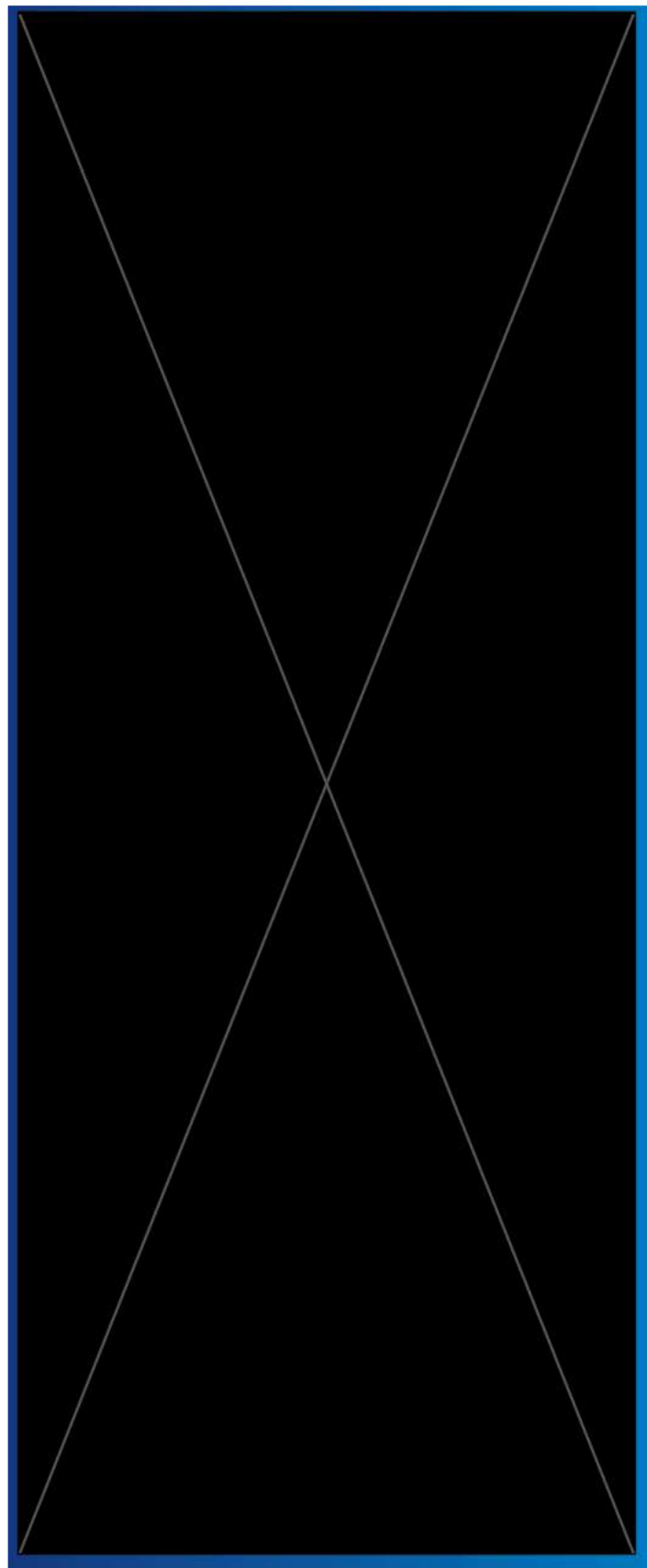
These people put themselves at considerable risk to do the job NSW need them to and protect the people of NSW.

The Government repealing 19B is telling those people to bear that risk themselves, without the assurance they will be looked after if they contract COVID-19.

### **Consequences of COVID**

In the December Edition of the PANSW Police News magazine, a police officer shared their story of battling with COVID-19.

That story is extracted below:



# COVID-19 NO ORDINARY VIRUS

PANSW Member

In July 2021, I returned a positive Covid-19 test. I have not been the same since.

I graduated with class 234 in 1988 and have been a NSW Police Officer for 33 years. I was front line operational for about 16 years and have been a Prosecutor ever since.

Like most of us, I first became aware of Covid-19 through the media and the unfolding events overseas. I watched as the Australian media picked up the story. I recall having a bad feeling about it.

## KEEPING AN OPEN MIND

Prior to catching Covid, I considered myself to be physically healthy and fit with no underlying health issues.

I know people, both professionally and socially, who have talked about Covid being non-existent or being nothing more than a virus.

I also know people who were anti vaccination and pro vaccination. It has been a political and divisive issue.

I kept an open mind and respected people's rights to a view. For myself, I had made the decision to get the vaccine and was due to get the 'jab'.

## SYMPTOMS THAT KEPT GETTING WORSE

In July 2021, I came home from work and was feeling tired, after a long week.

In the following days, I developed a headache, sore throat and a runny nose. This developed into a fever, shivering cold, aching joints and muscles. This was like nothing I had previously experienced.

During this time I had undergone Covid testing at the local Covid clinic and contacted work advising I was ill and would not be able to come in pending the results of the Covid test.

I was subsequently notified by the Department of Health that I was positive for Covid-19.

This also had implications for my household. My symptoms continued to worsen. Headache, shaking, fever, muscle and joint pain continued and there was no relief, no sleep – it was relentless. A bad cough and severe sore throat had developed and I was continuously shaking and shivering.

I was contacted by various Superintendents in relation to contact tracing and my thoughts and concerns turned to colleagues and their families being infected and the possible consequences.





*Views from the bubble-room at St Vincent's Hospital*

Owing to the concerns of infecting others in the household, we went to the Covid hotel at Mascot. Oxygen levels and heart rates were monitored throughout the day. You were not allowed to exit the motel room and any contact was at a distance with nurses wearing special clothing.

### ... AND WORSE

I was incredibly fatigued, bed ridden and my terrible headache had not subsided. The sounds of trucks and trailers hitting pot holes outside my hotel room window were piercing with the continuous migraine.

I could not get any relief from it at all. My oxygen levels had declined and I developed a delirium where I perceived that I had to do the perfect 'COPS' event each night or I would suffer worsening of Covid in the form of severe reflux and other continuing symptoms in the morning. There was no relief, no sleep, nothing to get back some strength.

My oxygen levels were reduced to the point that I was taken by ambulance to St Vincent's Hospital.

My entry to the ambulance and the hospital, and my movement through the hospital, was like a parting of the Red Sea.

Corridors were closed down and people moved away. I was assessed and put into a Covid isolation ward.

The room had positive air pressure with an air lock and was known as the 'bubble room'. I did not fully comprehend what was going on and was in what I can only described as a fog. I was afraid of the great unknown and having to be placed on oxygen which may lead to a downward spiral. It was during this time I contacted my solicitor Patrick Duffy to get my affairs in order and contact lists as a precaution. Such was my fear.

### THE BUBBLE ROOM

There were three of us in the bubble room, from all different walks of life, ages, cultures, occupations, backgrounds.

The room was silent but for the sounds of the machines and the meals / checks being conducted by Nurses and Doctors doing rounds. It was not possible to discern one from another

with the protective clothing and face shields, other than by way of shoes.

One man who had a family, rapidly declined and coded. He was rushed to intensive care. I did not see him again. Another man replaced him who had been in the ICU for 26 days after going to a butcher shop to buy meat and returning home with Covid.

Another patient regularly had reduced oxygen levels which constantly triggered alarms on the oxygen monitor and the immediate response of nurses and doctors. I was on oxygen and a drip and monitored throughout the day with various medications. The nursing staff had to enter the room via a positive airlock and were only able to stay with us for a limited time to minimise exposure.

I was afraid of my oxygen levels dropping any further. I saw others having to wear the full face masks and being rolled over onto their stomachs to assist with air flow. This was not a good sign for them. I feared this would happen to me.

### **THE COVID HOTEL BACK AND FORTH**

Although I regularly Facetime my young daughter, I put that aside during this time as I did not want to scare her given my appearance and the monitors and oxygen tubes.

After five days in the Covid ward my oxygen had reached levels where I could return to the Covid hotel which I did.

We remained at the Covid hotel, recovering and excitedly anticipating our imminent release. A care package, together with some Uber Eats meals provided a distraction, and an external visit albeit from the road outside via mobile phone was a welcome relief.

Whilst in the Covid Hotel, I unfortunately developed an issue with the circulation in my left leg. This reached a point whereby I indicated to medical staff that if they did not get me an ambulance, I would not make it through the night.

I was taken via ambulance (with one of the paramedics being ex job) to Prince of Wales Hospital and was treated as a Covid positive patient.

Again I was isolated and I was given strong pain killers. Immediate scans of my left leg revealed a 30cm blood clot had developed from my knee to my stomach. I was told this clot was directly linked to Covid-19.

### **FACING A WORST CASE SCENARIO**

There were discussions amongst my medical team about the worst case treatment scenario which included my leg being amputated. Again, I was in contact with family, friends, PANSW and my solicitor.

In coming days, I underwent a number of surgeries, involving both vascular and respiratory teams. Doctors tried to clear the clot through blood thinners, balloons and wires. A cage was inserted into my main artery to catch any pieces of clot that may break free. The cage would prevent any fragments of the clot going to my lungs or heart which could potentially be fatal. A stent was also inserted into my stomach. While in hospital, it was not possible to have any visitors. I am grateful to a friend who dropped off things I needed to get through and communications from colleagues. It meant a lot.

During the time in hospital I again refrained from much communication as I did not wish to frighten or upset loved ones with my appearance and the monitors, lines and bruising. The blood thinners I was on meant that I bruised easily. Each time they removed the drip I bled profusely.

### **26 DAYS LATER**

I had reached a point where I could be released, however, before I could be released I had to learn to walk again, as the amount of time I had spent in the hospital and the surgeries I had undergone had caused such damage to my leg. This simple act was deeply emotional and physically challenging for me.

Some 26 days after testing positive, and after ticking all the boxes for release from hospital, I was waiting still dressed in a hospital gown until the nurse indicated I should get changed, lest someone think I was a hospital escapee – sound advice. I was wheeled out of hospital into the daylight, and was picked up by staff from Campbelltown City PAC. I am deeply grateful to them for that.

### **STARTING ON THE ROCKY RECOVERY ROAD**

I returned home, where I took stock and started my recovery process. The simple act of a shower with sutures and removing the various Elastoplast and hospital tags was a major effort.

I had multiple further medical appointments with various doctors and further blood tests and scans.

One of the challenges was that as the LGA's went into lockdown, my ability to access medical professionals and hospitals was severely compromised. There were requirements for a clear Covid test and this was problematic.

Two weeks later, I returned to Sydney to Prince of Wales Hospital to have the cage removed from my artery and for a clot that had developed around the stent to also be removed.

The process involved entry through my neck and legs. I was discharged and again went through the process of healing and recovery.

A week later, I went back to my GP and was advised to have a Covid test, which I underwent without being immediately notified of the results.

Two days later, I attended hospital as a result of a further issue with circulation and numbness in my left foot.

I was admitted as a fresh 'Covid' positive patient on the basis that the Covid test days before had been positive. I was placed on oxygen monitoring and had catheters inserted. I was informed I had contracted Covid for a second time and again placed into isolation for many hours and had further scans for the new clot.

The Department of Health advised that I should not have undergone the Covid test as persons who have contracted Covid will test positive for up to 6 months afterwards, although not infectious. Again, the conversation turned to the potential of having to amputate my foot.

### **COVID IS REAL!**

Before this all happened to me, I didn't know anyone who suffered from Covid. I remain open minded but I can tell you that Covid is real. I have long term effects and felt on a few occasions that I wouldn't make it through the night.

Some four months later, I am undergoing physio. I have an ongoing dry cough and still get out of breath easily. I have lost mobility and have put on a significant amount of weight. I continue to suffer intermittent pain to my muscles and joints and will remain on blood thinners long term.

Some days are good and some are bad, but I am fortunate.

I received numerous texts whilst in hospital which were in support of me. This really helped me and it reminded me of the camaraderie we experience as Police and members of the PANSW.



## PEACE OF MIND WITH PANSW

Being a member of the PANSW gave me peace of mind as I knew I could reach out for assistance and support.

My Organiser Ben Lee and my Industrial Officer Gabe Doyle supported me with my p902, questions that I had about my insurance cover and hospital stays, my entitlements, and even just for a chat. That was really important to me.

I remember when I was initially told about the 30cm clot, I sent Ben my solicitor's details as I wanted him to have that contact in the event I didn't make it through. That's how bad this experience was and I think that really reflects where I was at that point.

## THE IMPORTANCE OF FIRST-HAND ACCOUNTS

In hindsight, I wish that first-hand accounts of people who have suffered from Covid had been used as part of the information and education process. The social media platforms promote information and disinformation. You need to speak with someone or see it first hand to get an appreciation of what it is capable of.

The issue of Covid and getting vaccinated has been a divisive issue for some. I understand that and acknowledge the rights and freedoms of people.

I also understand front line Policing. It needs to be remembered that policing is a frontline contact sport.

Every day Police face dangers. You go to a job, you don't know if there is a weapon.

In the pandemic context, you now go to a job and you don't know if there is Covid. You can't see it, hear it or smell it and you worry about contracting it or bringing it home.

It's been a long road, Covid fatigue frustrates people. Covid did not give an inch and was relentless.

If someone told me that Covid is not a real thing, I would shake my head and walk off.

If someone told me they were not getting vaccinated, I would say to them that they can make their own decision, but if they are exposed to Covid, they are playing Russian Roulette with their health. Covid-19 is real and I am 'lucky' enough to say that I am living proof.

In closing I would like to thank the PANSW for their support.

I would like to thank Amanda and John Clarke, family and friends for their support and help during this difficult time.

I'd also like to thank the vascular team at Prince of Wales Hospital and my friend and colleague solicitor Patrick Duffy, Madelaine, Darren and Hoota.

The stoic and tireless work of the nurses and doctors at St Vincent's Hospital and Prince of Wales Hospital on the front line dealing with Covid through all of this was humbling.

I also wish to thank the New South Wales Police Force for their support during this difficult period. Thanks to all those who reached out to me during this journey.

To those who have Covid, my thoughts and prayers are with you. Stay safe.

## **Purpose of the amendments**

On 13 May 2020, the Parliament agreed to amendments moved by Mr David Shoebridge, which inserted section 19B and created the presumption.

Mr Shoebridge outlined the purposes of the amendment:

As the law stands, workers who contract COVID-19—let us say a nurse at a hospital working in a busy ward—have to prove that work was a substantial contributing factor to them contracting the disease. They have to prove that they contracted the disease at work or in the course of their employment. The legal challenges in proving that for the worker are quite significant. How, for example, does the nurse prove that the disease was contracted at work rather than on a bus journey on the way to work, or when attending the supermarket to buy groceries, or in the course of contact with extended family members? We have spoken to lawyers who practise in this jurisdiction and they told us this will be a legal bun fight. There will be experts at 20 paces and an extremely delayed set of outcomes for COVID-19.

...

This amendment does a number of key things. First, it says frontline workers who contract COVID-19 are deemed to have contracted the disease in the course of their employment, it is deemed to be work-related.

As highlighted by Mr Shoebridge and agreed to by the Parliament, there are many cases where an essential worker like a health worker, a police officer, or staff at a grocery store, could contract COVID-19 at work, but be unable to demonstrate the transmission occurred at work. This would in effect deny those essential workers the crucial support they are entitled to under the Workers Compensation scheme.

This is also the case for journey claims. While there were amendments to journey claims in 2012, journey claims are still available in some circumstances. Also, certain emergency services workers, who overlap with prescribed workers under section 19B, were exempt from those 2012 amendments, and journey claims remain an important part of their workers compensation protections. The repeal of s19B would render those journey claim protections unworkable in relation to COVID-19 claims.

The case study provided above in this submission shows the terrible health consequences, the time off work, and the medical costs incurred by a police officer who contracted COVID-19. We have serious concerns that without the section 19B presumption, cases like this would find it incredibly difficult to access the support they are entitled to under the Workers Compensation scheme.

The damage of going through that experience and at the same time have a difficult, or worse, declined, workers compensation claim, would be severe.

## **Those purposes are still applicable**

For the same reasons the presumption was so necessary on 13 May 2020, it is still equally necessary today.

The below table is extracted from the COVID-19 weekly surveillance report for the week in which 19B was agreed to by Parliament:

### COVID-19 cases and tests reported in NSW, up to 16 May 2020

	Week ending 16 May	Week ending 9 May	% change	Total to 16 May
Number of cases	23	25	-8%	3,075
Overseas acquired	8	5	+60%	1,770
Interstate acquired	0	1	-100%	71
Locally acquired	15	19	-25%	1,234
Number of deaths	1	2	-50%	48
Number tested	60,648	67,779	-6.46%	374,556

Source: COVID-19 WEEKLY SURVEILLANCE IN NSW, Epidemiological week 20, ending 16 May 2020.

The table below is from the most recent COVID-19 weekly surveillance report (at the time of writing this submission).

Table 4. COVID-19 cases and tests reported, NSW, from 16 June 2021 to 04 December 2021

	Week ending 04 Dec	Week ending 27 Nov	% change	16 Jun to 31 Oct 2021	Since 1 Nov 2021
Number of cases	1,775	1,543	15 %	69,765	7,753
Locally acquired	1,637	1,472	11 %	69,494	7,452
Known epidemiological links to other cases or clusters	1,279	1,146	12 %	43,540	5,917
No epidemiological links to other cases or clusters	358	326	10 %	25,954	1,535
Overseas acquired	65	36	81 %	240	135
Interstate acquired	38	30	27 %	31	120
Number of tests	507,080	445,535	14 %	13,978,818	2,377,309

Note: The case numbers reported for previous weeks is based on the most up to date information from public health investigations. Source of acquisition is subject to change as data are cleaned and updated.

Source: COVID-19 WEEKLY SURVEILLANCE IN NSW Epidemiological week 48, ending 4 December 2021

At the same time that we are having record case numbers, restrictions being eased, and contact tracing is moving to a “light touch” level, the Government proposes to remove a presumption that helps essential workers access workers compensation.

While we now have the protection of vaccinations, people are still being hospitalised and admitted to intensive care. The danger of COVID-19 is not over, and those people that are harmed by it still need protection and support.

### **Effect of the repeal**

The Government has claimed repealing the presumption is necessary to reduce the cost of workers compensation premiums to businesses. We have since learned the cost they claim to be avoiding is significantly lower than the outdated modelling they relied on to justify this Bill.

Putting to one side the Government’s over-estimates, it is inescapable the Government wants essential workers to foot the bill instead; to contract COVID-19 but be unable to access the support they need under workers compensation, so that workers compensation costs can be avoided.

In his 2<sup>nd</sup> Reading Speech, Minister Dominello said:

On repeal of section 19B, sections 4 and 9A of the 1987 Act will apply, as they normally do, to all claims for compensation made by a worker, including claims for injury arising out of contracting COVID-19; that is, 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 and that COVID-19 was the main or substantial contributing factor to their injury.

We acknowledge the repeal of the presumption will not make it impossible to access workers compensation in *all* cases an essential workers contracts COVID-19 at work; there are circumstances where there might be sufficient information to show they contracted it at work. But there will also be circumstances where that is not possible, where a police officer, or nurse, or any other essential worker contracts COVID-19 at work but cannot show they got it at work, rather than doing their grocery shopping, or on the bus.

For example if a police officer gets to the end of a long week at work in which they have interacted with many members of their community, often in conditions in which social distancing and PPE is not possible to rely on effectively. They have also done their grocery shopping and spent time with their family and friends. They start to feel ill and are tested, and receive a positive result.

As circumstances stand today, it would be incredibly difficult to ascertain when and where that officer had been a contact of a positive case, and which contact was the cause of the transmission.

It is those uncertain cases that concern us; what if that same case is one in which the person becomes very ill, and incurs considerable time off work and medical bills? The Government wants that person to undertake the difficult process of figuring out where and when they were exposed to COVID-19, or not have the support they are entitled to under the workers compensation scheme.

The decision we face with this amendment is: which scenario are we as a community more determined to prevent?

- A presumption results in some claims being accepted that may have otherwise been declined, and this in turn may result in costs increases to workers compensation premiums, but a regulation making power exists regarding claims histories and sharing of financial risks for those claims, or
- An essential worker, who we have relied on to ensure our health, safety, and necessary services, is exposed to a potentially life threatening virus, suffers illness, time off work and medical costs, but is unable to access support under the workers compensation scheme and therefore personally bears that harm and cost due to their service to the people of NSW.

As with many decisions we have had to face since COVID-19 emerged, neither option is one we hoped for. But the PANSW submits there is clearly one which better protects the people of NSW, the people who most need support, and the people who have kept NSW going through these incredibly challenging times.

Neither option is easy, but one is clearly the right thing to do, and that is to honour the promise we made to essential workers who have kept us safe, kept us going, and who we continue to rely on.

Thank you for your consideration of this submission, please let us know if the PANSW can be of any further assistance to this Committee.

Kind regards

Tony King  
President – Police Association of NSW