

**Submission
No 21**

**INQUIRY INTO WORKERS COMPENSATION
AMENDMENT BILL 2021**

Organisation: Australian Hotels Association NSW

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The Director
Portfolio Committee 1
Parliament House
Macquarie Street
SYDNEY NSW 2000

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

To whom it may concern,

**RE: INQUIRY INTO THE WORKERS COMPENSATION AMENDMENT
BILL 2021**

Who We Are

The Australian Hotels Association NSW is the peak hospitality industry body in New South Wales, representing over 1,800 licensed premises from bush pubs to inner-city entertainment complexes. The AHA NSW welcomes the opportunity to provide a submission to the inquiry into the *Workers Compensation Amendment Bill 2021*.

As a representative body for employers of labour across the state, we strongly support the proposed repeal of the presumptive liability provisions under the *Workers Compensation Amendment Bill 2021*.

The Workers Compensation Amendment Bill 2021

Introduced as an amendment to the COVID-19 Legislation Amendment (Emergency Measures—Miscellaneous) Bill 2020 by David Shoebridge MLC, the new Section 19B of the *Workers Compensation Act 1987* creates a presumption that the employer is liable if a worker in specified industries contracts COVID-19.

Section 19B reverses the principle whereby the employer is only liable where work is a substantial contributing factor of the COVID-19 infection. This new provision holds the employer liable regardless of what measures the employer puts in place to provide a COVID-19 safe environment for their workforce and their customers.

Estimated Impact

If Section 19B is repealed, workers who contract COVID-19 at work would still be entitled to claim workers compensation – that right remains in other existing provisions. However, the presumptive provisions place a substantial financial burden on insurers and in turn employers of NSW.

These costs will ultimately need to be borne by the employers – and in turn, the workers – of NSW.

Place of Transmission

Eighteen months into the pandemic, it is well established that transmission of the virus can happen almost anywhere – in many homes, offices, places of worship, public transport, gyms, cruise ships, schools, correctional facilities, shopping centres, stadiums, courthouses, as well as hospitality venues.

Section 19B ignores this reality in favour of a simplistic, punitive presumption that transmission *only* occurs in certain settings, and that the operators of those settings should bear the subsequent cost. Heading into a post lockdown environment, where the community adapts to living with COVID-19, it is not appropriate that either employers or workers bear the financial impact of COVID-19 cases that are not work related.

Specialised Insurers

Our members (both accommodation hotel and traditional ‘pub-style’ hotels) are predominately insured by specialised insurer Hospitality Employers Mutual (HEM) and are subject to the presumptive provisions as the hospitality industry is one of listed industries.

If Section 19B is not repealed, specialised insurers may become unsustainable and premiums will need to increase. Specialised Insurers cannot run at a deficit (as the nominal insurer does) due to being regulated by the Australian Prudential Regulation Authority.

Specialised insurers deliver better return to work outcomes and customer service. Hospitality Employers Mutual has 50% fewer workers remaining off work at 13-weeks than iCare, ensuring hospitality workers are back to work faster, improving their life and our members in turn have lower premiums.

We have been advised that premium increases of 15-20% could be necessary to fund future COVID-19 claims in the industry.

We strongly support the submission made by Employers Mutual.

The Financial Impact of COVID-19 on Hotels

An increase in insurance premiums due to the presumption that COVID-19 was caught in the workplace is yet another strain on business that would have significant financial impact.

Hotels in New South Wales have been shut down for 208 days since the pandemic was first declared in 2020, and have operated under reduced capacity for nearly all of the remaining time. Accommodation hotels also saw occupancy drop to single digits, as travel was restricted not only from overseas and interstate, but between Local Government Areas.

While the modelling provided by the State Insurance Regulatory Authority and others to date has varied, the recent development of the Omicron variant and

the predicted surge in case numbers highlights the uncertainty in this area and indicates that the ongoing costs of the presumptive liability scheme will be significant.

COVID-19 Contribution

If it is the intention of the Committee to recommend the continuation of COVID-specific provisions in the Workers Compensation Act, the AHA NSW submit as an alternative that an effective mechanism be implemented to ensure all employers contribute to the cost of COVID-19 claims through a levy. This type of mechanism has been utilised to address similar natural disasters or disease, such as dust diseases and floods. It is noted that the current Section 19B provides the Minister with the power to establish such a mechanism.

This would ensure the costs of COVID-19 are shared equally between industries, rather than imposed only on those currently listed. The announced approach by iCare (to not pass on COVID-19 claims costs to employers in premium adjustments), the presumption created by Section 19B, and the lack of a COVID-19 Contribution could force employers currently insured by a specialised insurer to seek coverage from iCare, resulting in an increased monopoly with comparatively less beneficial claims management outcomes.

Conclusion

We strongly support the proposed repeal of the presumptive liability provisions under the *Workers Compensation Amendment Bill 2021*.

Thank you for the opportunity to make a submission to the inquiry.

If you require further information on any of the issues raised in this submission, please contact AHA NSW Deputy Chief Executive Officer Sean Morrissey

Yours Faithfully,

JOHN WHELAN
Chief Executive Officer