Submission No 24

INQUIRY INTO WORKERS COMPENSATION AMENDMENT BILL 2021

Organisation: Clubs NSW

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ClubsNSW Submission
Workers Compensation Amendment Bill 2021

ClubsNSW welcomes the opportunity to make a submission on the inquiry into the Workers Compensation Amendment Bill 2021 **(the Bill)** which, if enacted, will repeal section 19B of the *Workers Compensation Act 1987*.

ClubsNSW supports the Bill.

ClubsNSW submits that the longstanding workers compensation system is a suitable framework for dealing with COVID-19 in the workplace, and that there is no basis to treat COVID-19 differently.

Section 19B creates a presumption that hospitality businesses are liable if their worker contracts COVID-19. This provision results in COVID-19 being treated differently to other injuries, including other infectious diseases. Retaining section 19B is estimated to cost the hospitality sector $46.1 million.

Section 19B was introduced in May 2020 when little was known about how COVID-19 transmits.

However, a lot has changed since the early stages of the pandemic. A range of mitigation and control measures are now well established, including vaccinations, physical distancing and QR code check-in. Since May 2020, more is known about how COVID-19 spreads and the common sources of transmission.

Notwithstanding these developments, section 19B has remained in force which means employers remain liable for their employees contracting COVID-19 despite the fact that people commonly contract COVID-19 in non-work settings.

The Bill is an important step to reflecting the updated COVID-19 climate.

Section 19B makes clubs liable for COVID-19 cases unconnected to the workplace

Section 19B unfairly makes clubs liable if their employees contract COVID-19 from friends or family.

This is because:

- a club employee who contracts COVID-19 from a family member or friend, or in a social setting, is still presumed to have contracted the virus at their workplace, and
- it is **impractical for a club to prove that the employee contracted the virus outside the workplace**, effectively making clubs liable for events and an 'injury' to which they have no connection or fault.

No other state or territory in Australia has imposed an automatic presumption that a COVID-19 positive worker contracted the virus in the workplace. The presumption in NSW goes beyond that which applies in any other Australian or international jurisdiction.

In recent days, COVID-19 case numbers have risen steeply, driven in part by transmission in social settings. The University of New South Wales estimates that NSW will record 25,000 cases of COVID-19 per day by the end of January 2022.

If section 19B remains in force as case numbers continue to surge, clubs and the rest of the business community will be liable for the associated health costs.

The presumption in section 19B also fails to reflect that clubs apply strict safety measures to protect their workers and patrons from COVID-19. These measures include precluding unvaccinated people from the premises, facilitating physical distancing, enhancing ventilation and encouraging outdoor dining, and promoting cleanliness.

Section 19B will cause club premiums to rise

The 2020 and 2021 lockdowns have devastated the club industry. Clubs in Greater Sydney alone lost more than $1 billion in revenue as a result of the 2021 lockdown.

According to modelling conducted by Ernst & Young, retaining section 19B is estimated to cost the hospitality sector $46.1 million.

Section 19B has not disadvantaged the industry to date, because case numbers were effectively managed in the pre-Delta pandemic phase, and clubs were closed during the recent Delta outbreak. As discussed earlier, this is likely to change in the coming months, as case numbers increase and the public learns to live with the virus.

The existing system is fit for purpose

ClubsNSW believes that repealing section 19B and instead, relying on the existing, longstanding, system for dealing with infectious diseases and injuries at work is optimal.

ClubsNSW reinforces that an employee who contracts COVID-19 at work will still be entitled to claim workers compensation if section 19B is repealed.

A sufficient case has not been made that the existing system is unsuitable to deal with COVID-19 cases, so as to necessitate the continuation of section 19B. Indeed, in the 2020-21 year, only 4% of claims were declined across the NSW scheme.

Repealing section 19B will preserve club employees' ability to claim workers compensation if they contract COVID-19 in the workplace. Additionally, there are multiple tools for employees to trace their diagnosis to their workplace, including NSW Health case alerts and requirements for employers to monitor and report COVID-19 diagnoses among employees.

Should you wish to discuss this submission further, please contact Simon Sawday