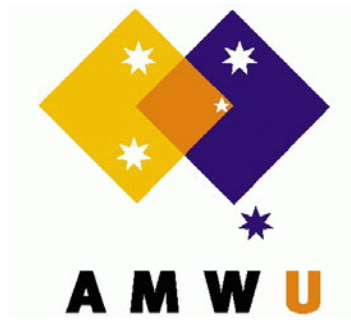


**INQUIRY INTO WORKERS COMPENSATION
AMENDMENT BILL 2021**

Organisation: Australian Manufacturing Workers' Unions NSW Branch
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INQUIRY INTO THE WORKERS COMPENSATION AMENDMENT BILL 2021

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Introduction

1. The Australian Manufacturing Workers' Union (AMWU) welcomes the opportunity to make a submission with relation to the Inquiry into the *Workers Compensation Amendment Bill 2021* ("the Bill").
2. The full name of the AMWU is the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union. The AMWU NSW Branch has a membership of over 15,000 workers. Our members are employed in the private and the public sectors, in blue collar and white collar positions, and in a diverse range of industries, vocations and locations. About 10% of the membership of NSW Branch would be covered by section 19B of the *Workers Compensation Act 1987* ("the Act"), mainly in construction.¹
3. The AMWU opposes the Bill and any measures that put the cost burden of COVID-19 on workers.

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Summary

4. Many workers have and will continue to be exposed to Covid-19 through their workplace. Most of the AMWU's membership do not have the ability to work from home and are thus dependent on measures taken by their employer to mitigate their risk of such exposure. Our members' experience over the past 18 months suggest that employer efforts are haphazard and at times more focussed on the cost to the business rather than the risk to its workforce.
5. The benefit of the sections proposed to be repealed by the Bill ensures that workers can immediately receive financial support for time taken to recover from an exposure to COVID. Given the proportion of employees who do not have an entitlement to paid sick leave and the limited availability of government support, this is a necessary protection for workers who may have no other safety net.
6. The AMWU is of the view that the provision should be retained and expanded to cover workers who fall outside the industry definitions prescribed in the Act –

¹ An analysis of the AMWU membership database indicates a strong membership in the construction industry. Members are also employed directly in retail, by NSW Health, in passenger transport and public entertainment facilities.

such as roadside assistance workers, service technicians and contract maintenance workers – who are similarly exposed to COVID risks in the course of their employment.

AMWU members' experience of COVID risk mitigation and prevention by employers

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7. Most AMWU members are not able to work from home and have had to attend their workplace throughout the course of the pandemic. The importance and value of the work our members perform was recognised in the list of industries for authorised workers – including the manufacture of food, packaging, medical equipment, protective equipment and the maintenance of infrastructure. In short, they are critical to the functioning of New South Wales.
8. From the earliest notification of the Covid-19 virus in February 2020 the AMWU has sought to ensure that workers who needed to continue to work were protected. From the start we wanted to ensure that workers did not suffer financially for having to take time off work because they needed to isolate. While a number of employers agreed to paid isolation leave, including paid leave while waiting for test results (including when the testing and isolation was due to an exposure in the workplace), this was in no way universal. Even later Government support did not provide such financial assistance to all workers, or necessarily in a timely manner.
9. In July 2021 we surveyed our members on their experiences in how their employer was managing the risk of COVID-19 in the workplace.² Of those who responded, nearly half believed that they had been put at risk of a COVID transmission in their workplace.³ Further, of those workers who were required to be regularly tested or be vaccinated for their work, only a small proportion were being paid for the time required to take these steps.⁴
10. We have also had a range of experiences in the employer's response to the notification of COVID infection in the workplace. In the "gold standard" group,

² <https://www.amwu.org.au/report>

³ AMWU Survey

⁴ AMWU Survey

employers have immediately sent workers home, with pay, to be tested while cleaning and investigation of likely close and casual contacts occurred. Workers who were required to isolate as a result of their workplace contact were paid. At the other end of the scale, workers were not notified of a positive case in their workplace for some days and workers were required to either use their sick leave or other leave to cover any form of time off for testing and/or isolation. Part of the problem for our members was the overwhelmed contract tracing system, which did not necessarily provide information to employers quickly, and/or underestimated the potential exposure of workers.

11. In many of our workplaces the AMWU has a strong workplace relationship with the employer and we have used this relationship to build robust consultative frameworks around work health and safety. However, in many smaller workplaces or for our members who are service technicians and contract maintenance, we cannot be sure that the person conducting the business or undertaking wherever they work will be as diligent. As such, the AMWU does not support any legislative change that removes an automatic presumption for particular workers that COVID has been acquired in the workplace.

Workers' access to financial support for illness and injury generally

12. Over 20% of the Australian workforce⁵ and roughly 17-20% of those employed in the manufacturing sector⁶ and a similar proportion in construction have no access to paid leave entitlements.
13. Under current workers compensation scheme arrangements, a worker who suffers a workplace related illness or injury may need to access leave entitlements for absences before they gain access to workers compensation income benefits. Insurers are required to make provisional payments to workers within seven calendar days of notification of an injury, *unless they have a reasonable excuse not to* (emphasis added).

⁵ *Insecure Work in Australia: Australian Council of Trade Unions submission to the Senate Select Committee Inquiry into the impact on insecure or precarious employment*

⁶ AMWU submission to the Senate Select Committee Inquiry into the impact on insecure and precarious

14. Under the current presumption contained in the Act, eligible workers should receive provisional payments very soon after notification of a COVID diagnosis. Workers will receive a payment within a week of notification, which minimises the loss of income faced by a worker who must take time off work to not only recover, but to be cleared to return to the workplace.
15. If the presumption is removed, insurers can provide a reasonable excuse to defer the issue of liability and thus withhold payment while an investigation occurs. Access to provisional payments is then delayed and is dependent on the cooperation of the worker, employer and insurer in obtaining all necessary information and making a determination concerning liability as soon as possible.
16. If a worker has an entitlement to paid leave, and enough leave accrued to cover this time off work, then they would not be without financial support until weekly compensation benefit payments started. For casual workers in construction, including those employed through labour hire companies, they do not have the benefit of paid leave and are therefore dependent on the speedy payment of workers compensation income benefits. Workers in industries such as retail and hospitality, where casual employment is the norm and not the exception, are also reliant on this presumption. If such a presumption is removed, these workers may be without income for the duration of their illness and may not receive any back paid entitlements for some time.
17. The effect of the proposed amendment is to transfer the cost of their time off work to a worker. In many cases these workers cannot afford that transfer as they have no paid leave entitlements. Such a transfer is unacceptable.

Limitations of the existing provisions

18. While the AMWU supports the retention of section 19B of the Act, we note that many of our members are similarly placed in front-line roles where they have increased exposure to risk of COVID.
19. A key group of workers are those who perform roadside assistance. These workers are interacting with members of the public in close proximity in order to perform a vital service. There is no requirement for customers to wear a mask, be vaccinated or maintain social distancing. While our members may have

means of minimising the risk of infection, they are at a greater risk than mechanics in garages who have less direct interaction with the public.

20. Similarly, some of our members are service technicians for companies that provide machines used within the retail industry – such as fridges, vending machines, coffee and frozen beverage machines, weighing machines. These workers generally perform their work at retail premises and may be performing this work during times when the premises are open to the public. Their risk of exposure to COVID may therefore be greater than colleagues in workshops and may be outside the direct control of their employer.

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21. It is accepted that if any worker in these situations contracted COVID as a result of their employment would be entitled to workers compensation. It is the AMWU's submission, however, that all workers who are in front-line roles where they are interacting with the public should receive the same presumption that their employment was a substantial contributor to the cause of their illness, which ensures access to income payments under the Scheme as quickly as possible.

Conclusion

22. The past two years has been a particularly difficult time for workers, particularly those who must work in front-line essential roles. The AMWU believes that, in addition to Government acknowledgement of the fine work they have performed, the actual protections that have been put in place to support them should be strengthened and maintained. The AMWU urges that the proposed amendment be opposed by the Legislative Council.

END