

**Submission
No 29**

**INQUIRY INTO WORKERS COMPENSATION
AMENDMENT BILL 2021**

Organisation: Australian Rail Tram and Bus Industry Union, NSW Branch

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Rail, Tram & Bus Union

(NSW Branch)

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Legislative Council Portfolio Committee No.1 – Premier and Finance

*Inquiry into the Workers Compensation
Amendment Bill 2021*

Submission of the Rail, Tram & Bus Industry Union

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ORGANISING WORKERS IN THE TRANSPORT INDUSTRY
PROTECTING AND BUILDING RIGHTS AT WORK

Summary

The Australian Rail Tram and Bus Industry Union, NSW Branch (RTBU) represents workers in the Rail, Tram and Bus industries and is an “industry” union meaning that it has coverage of all workers in those industries, regardless of occupation.

The union has a proud history of representing workers for more than 160 years whose efforts have contributed to one of the world’s largest and most complex public transport systems.

Transport workers, like many essential workers, have turned up to work each and every day throughout the pandemic. And they have contributed to the economic success of the State by ensuring the travelling public and freight have been able to continue moving throughout this public health crisis.

RTBU position on mandatory vaccination

The RTBU asserts that the key to protecting rail, tram and bus workers from COVID-19 lies in:

- long term testing in the workplace comprising of a range of measures such as Saliva Swab testing, Rapid Antigen Testing and PCR Surveillance testing;
- a proactive priority vaccination rollout to rail, tram and bus workers at their workplace for those wishing to be vaccinated;
- incentives from government and employers to promote vaccination of workers.

The RTBU condemns the lack of leadership by the Federal Government in this area, and its failure to ensure all workers in the transport industry can access vaccines. This failure has led to an urgency in the vaccine roll out that has forced consideration of mandatory vaccination which is an entirely unworkable solution.

The RTBU would like to see optimal vaccination rates for the health and safety of everyone involved in our transport systems. Recognising that there will be some who may not be able to take the COVID vaccines due to religious or medical reasons or even because they are conscientious objectors.

No worker should be disadvantaged because of the political failures of Government¹.

Unlike many other sectors of the economy that were able to rapidly pivot and enable work from home (WFH), the majority of our members simply did not have that option. Instead, they continued to work at a time where health and safety risks, transmission, and infection rates were poorly understood – and for the majority of the period encompassing March 2020 until mid-2021 – vaccines were not available.

Shambolic Government Response

The delayed availability of vaccine treatments in Australia is symptomatic of the broader failings of the Federal Liberal-National party government. In essence, the supply, access and distribution of vaccines has been shambolic². The Morrison government had two fundamental jobs to do during this crisis: 1) quickly obtain sufficient vaccines for the Australian population; and 2) have proper quarantine facilities capable of preventing community transmission of the virus.

Similarly, the NSW Berejiklian government’s bungled efforts to contain the virus was clearly demonstrated through the arrival and disembarkation of passengers from the Ruby

¹ <https://rtbuexpress.com.au/rtbu-position-on-mandatory-vaccination> [as published 3 Sep 2021]

² <https://rtbuexpress.com.au/media-release-regulation-on-the-fly-putting-services-workers-at-risk-transport-workers-call-for-rapid-antigen-testing-and-pcr-option-to-be-returned/>

Princess.³ Subsequent Public Health Orders were similarly ad-hoc and appear to have been more focused on ensuring business interests were protected versus the population's health needs.

This led to inconsistent approaches to determining the types of permitted activities, requirements to wear masks in public or indoors and on public transport. In fact, both government and employer responses to health and safety measures have been at best incoherent and at all times insufficient to meet the needs of employees or the general public.

Examples of the NSW government's failings and negligence in this regard were borne out in circumstances where Transport for NSW (TfNSW) and its related entities (Sydney Trains, NSW Trains, NSW Ferries and Buses) initially refused to supply face-masks to staff. In one egregious example of corporate imbecility, management challenged the efficacy of mask wearing and suggested that masks were likely to cause disease and consequently refused to distribute masks to employees.

The COVID taskforce and the imbedded health officer for TfNSW argued that masks were dangerous on the basis that they 'gave false confidence to wearers' and went on to suggest that mask wearing would contribute to transmission prevalence.

This position only changed following continued efforts by the union to protect the health and safety of workers. However, the corporate attitude on display, is emblematic of the broader problems faced by the union movement and our members⁴.

In the absence of widespread availability of vaccinations until 2021, employers within the Transport cluster refused to utilize Rapid Antigen Testing in the workplace (RAT)⁵ or adopted an approach that can best be characterized as scatter-gun.

Similarly, access to PCR testing – as with the range of measures available to employers and health authorities – was sporadic and no doubt has contributed to the porousness of defensive measures taken to prevent transmission and infections.⁶

The ongoing failures by both Federal and NSW State governments, along with employer groups to adopt a range of critical measures to protect workers from infection in the workplace is the central basis of our submission in rejecting the proposed amendments to the Workers Compensation Act which removes the presumptive protections contained in the Workers Compensation act.

The Government's proposed amendments does little to protect workers at a time where new variants have emerged, ranging from Delta to Omicron. The future is uncertain, and workers should not have legal protections eroded by the Government abandoning essential workers at this most critical juncture of the pandemic.

Removing Legislative Protections

Section 19B of the *Workers Compensation Act 1987* (NSW) (the Act) was added to the Act in May 2020 with the purpose of establishing presumptive rights to compensation under the

³ <https://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/The-Special-Commission-of-Inquiry-into-the-Ruby-Princess-Listing-1628/Report-of-the-Special-Commission-of-Inquiry-into-the-Ruby-Princess.pdf>

⁴ <https://rtbuexpress.com.au/nsw-government-urged-to-prioritise-rapid-covid-testing-and-vaccination-for-transport-workers-as-transport-delays-hit-sydney/>

⁵ <https://rtbuexpress.com.au/rapid-antigen-testing-vital-safety-measure-transport-workers/>

⁶ <https://rtbuexpress.com.au/media-release-regulation-on-the-fly-putting-services-workers-at-risk-transport-workers-call-for-rapid-antigen-testing-and-pcr-option-to-be-returned/>

Act in respect of the disease COVID-19 for workers in certain prescribed employment that involves an elevated risk of exposure to COVID-19⁷

Section 19B(9) lists the industries deemed 'prescribed employment' for the purposes of the section. Relevantly, this section encompasses workers represented by the RTBU.

In the event the Bill is passed, workers across the Transport cluster will lose the protections that comes from the presumptive provisions of the Act, shifting the onus on to individual workers to prove that they contracted COVID-19 in the course of their employment.

Access to measures such as paid vaccination leave or testing leave have and will continue to create a barrier for low-paid and casual workers who may also face insecure working arrangements in circumstances where access is denied. The absence of such measures can only further exacerbate transmission and infection rates and erode other measures adopted during the course of the pandemic.

The RTBU stands wholly against the erosion of protections for workers who have and continue to keep the State moving. The Committee should reject the proposed amendments.

Conclusion

The NSW Government's proposed amendment to remove the presumptive entitlements to workers compensation protections for our members will have significant and enduring adverse legacies for workers.

The RTBU thanks the Committee for the opportunity to make this submission and would welcome the opportunity to give further evidence at a hearing to assist with the Committee's work.

Yours faithfully,

Alex Claassens
Secretary, NSW Branch
Australian Rail Tram & Bus Industry Union

⁷ Part 1.34 <https://legislation.nsw.gov.au/view/pdf/asmade/act-2020-5>