

**Submission
No 23**

**INQUIRY INTO WORKERS COMPENSATION
AMENDMENT BILL 2021**

Organisation: Public Service Association of NSW

Date Received: 20 December 2021

SUBMISSION

WORKERS COMPENSATION CLAIM FORM



General	Employer (Name & Address incl. zip)		Carrier/Administrator
	Sic Code		Jurisdiction
Per Claims Admin	Carrier (Name, Address & Phone Number)		Insured Report No.
	Employer FEIN		Employer's Location Address
			Policy Period
		To	Ch
		<input type="checkbox"/>	i

Submission to Portfolio Committee No.1 Premier and Finance Inquiry into the Workers Compensation Amendment Bill 2021



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Tara Moriarty MLC
Chair
Portfolio Committee No.1
Premier and Finance
Legislative Council

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Dear Chair,

I make no apologies for stating our members kept our state going during the pandemic.

Our members were the contact tracers in the Ministry of Health; the workers in our courts and tribunals, prisons and Youth Justice centres; and the disability workers working for those most in need. They worked in TAFE campuses, universities and in schools to help children and students continue their studies, and allowing parents to return to work. We were the Police Service civilians, the SES, the RFS and Service NSW workers who maintained support for our community and businesses throughout the pandemic, mouse plague, drought, floods and bushfires. Our members are the workers who maintained our transport networks and cultural institutions throughout the lockdowns.

They have all worked to keep us physically and mentally safe. They have not been able to walk away from their worksites and have maintained their commitment to public service by attending what are potentially life-threatening working conditions.

The social compact has always been to support these workers who put themselves at risk, looking after them through a supportive, no-fault compensation system. The Workers Compensation Amendment Bill 2021 carries on from the Workers Compensation Amendment Bill 2012 in making it harder, if not impossible, for these workers who support us to be supported if they are injured keeping our communities safe.

The union has supported these workers through its constant advocacy for access to safer, more flexible workplaces; through access to safety and immunisation education; through priority immunisation; and through greater support for workers when they or their families are infected.

The proposal by the NSW Government to reduce these protections whilst we are still experiencing the worst days of the pandemic yet is grossly irresponsible. These supports have helped infected workers to return to work. The cost of these protections pales when compared to those created by mismanagement of the scheme by this government with its icare contracting debacles.

We suggest that a more appropriate manner to deal with this issue is to undertake what the Victorian Government has done, by injecting funds into the scheme to improve the funding ratios, which are in no way the fault of workers who are continuing to support our community during the pandemic.

Yours faithfully,

Stewart Little
General Secretary

The Public Service Association of NSW (PSA) and the Community and Public Sector Union NSW Branch's (CPSU NSW) members have supported the NSW public throughout the series of disasters beset upon this state and throughout the pandemic.

The PSA and CPSU NSW members work across the state for a range of public sector agencies, state-owned corporations and private sector companies. Many employers are large enough to be self-insured under workers compensation, and a few are under the nominal insurer.

The PSA and CPSU NSW members who work across the following areas of prescribed employment as described by Section 19B of the Workers Compensation Act 1987.

"prescribed employment" means employment in any of the following--

....

(b) the health care sector, including ambulance officers and public health employees,

(c) disability and aged care facilities,

(d) educational institutions, including pre-schools, schools and tertiary institutions (other than establishments providing only on-line teaching services),

(e) police and emergency services (including fire brigades and rural fire services),

(f) refuges, halfway houses and homeless shelters,

.....

(h) libraries,

(i) courts and tribunals,

(j) correctional centres and detention centres,

(k) restaurants, clubs and hotels,

(l) the construction industry,

(m) places of public entertainment or instruction (including cinemas, museums, galleries, cultural institutions and casinos),

(n) the cleaning industry,

....

Many workers in the industries above were required to attend high-risk workplaces throughout lockdowns.

Section 19B has assisted our members to attend work in lockdown and in the recovery so that they can be confident they will be supported if they get sick at work.

	All claims & notifications	Confirmed diagnosis	Psychological	Other, incl. reaction to vaccine
Total	2,270	1,596	345	329
Nominal Insurer	768	638	97	33
Self-insurers	699	679	NP	NP
Specialised insurers	58	43	NP	NP
Government self-insurers (TMF)	745	236	228	281

Note: Cells with low values have been replaced with NP (not provided) to prevent potential identification of claimants.

Source: State Insurance Regulatory Authority Website 3 December Workers Compensation Claims Data

From the statistics supplied by the State Insurance Regulatory Authority it is clear government employees are over-represented in the claims and notifications¹. Despite representing fewer than one in 10 of the NSW labour force, the current case and notification statistics indicate that these workers represent roughly one third of cases. This indicates a higher risk profile of these essential workers.

The decisions made by the state and federal governments have meant we have not contained COVID-19 and the numbers of cases have increased again, despite large vaccination rates. Our members are continuing to be exposed at work to a COVID positive public. It is a decision of the government however, to remove restrictions such as mandatory mask wearing in public places, QR code access, reduced contact tracing and other measures. These workplaces are still considered high risk for COVID infections and many workers in these environments are still being required to isolate for two weeks if they are a close contact or infected.

Deemed Diseases

It is common for workers compensation systems to accommodate “deemed diseases” through presumptive liability. The advantages of deeming the disease to a particular occupation or exposure include:

- a) That that industry can be incentivised to reduce exposure through improved workplace safety measures.
- b) Less argument about liability means that the injured worker can secure support earlier.
- c) That the workers compensation system is designed to better support workers’ return to work after an injury or illness.
- d) Workers can be assured that when they attend work, no matter how dangerous the work, that they will be covered if they are injured.

Case Study: Medical Escorts

After the benchmarking restructure in NSW gaols a Sydney metro medical escort unit was established to escort sick and injured inmates to hospital (when Justice Health could not assist inside), as these were having a significant effect on correctional centre security and safety as different posts would need to be “stripped” in order to escort the ill inmate to hospital. This specialised role will see correctional officers maintain security for inmates in public hospitals during their shift for as long as the hospital requires the inmate to remain hospitalised.

The correctional officer will stay with the inmate on their journey through the hospital including through ED and through to the end of their shift. If there is no available staff, then the correctional officer will remain for another shift. It is not unheard of for these officers to do three shifts in a row.

Because these officers are breathing the same air as health care workers and working in the same environment, they have caught COVID-19. At least six workers in this small unit have caught COVID-19 that we are aware of.

¹ SIRA COVID-19 statistics, https://www.sira.nsw.gov.au/resources-library/list-of-sira-publications/coronavirus-covid_19/workers-compensation-claim-statistics

Safe Work Australia with Professor Tim Driscoll² reviewed the deemed diseases in Australia. The list is not exhaustive and foreign research can progress a hazardous occupation or exposure to a deemed disease prior to it being included in the Australian recommendations. There are a number of deemed diseases not included in the NSW legislation that are included in other jurisdictions throughout Australia.

The inclusion of the above prescribed employment has been demonstrated internationally and locally to be categorising the correct occupations. There are, however, several other occupations that the PSA advocates should be included based on the maintenance of the requirement to attend workplaces and the risks associated with this activity. These include the Service NSW staff who maintained attendance at work during the lockdown, child protection workers who attended hybrid-work arrangements and also the regulatory officers who were required to attend workplaces and monitor COVID safety compliance.

Case Study: Sydney Disability Group Homes

Group Homes will typically operate throughout NSW with five or so clients and 1-2 staff present. The CPSU NSW looks after the Ageing, Disability and Home Care (ADHC) legacy homes which often have disability clients who are unable to make or comply with decisions about their own welfare such as self-isolation or social distancing.

In 2020 most large disability providers closed day programs due to the higher risk to clients and staff from having a client mix with other clients from other centres and then returning to their group homes and infecting the other clients. One large provider chose to continue to do day programs. When the 2021 lockdown occurred, many of the other providers saw the cost savings of enabling day programs during the lockdown, especially as the large provider had continued in 2020 despite stay at home orders and group homes and day programs located in LGAs of concern.

After several staff and clients were notified with COVID-positive alerts the day programs were cancelled again until the end of lockdown.

There is still a reluctance to regulate isolation requirements for close contacts in group homes, and still many clients have not been vaccinated without an education program in place.

Liability

The Government's information has stated that repealing this section will reduce 75 per cent of claims for COVID-19. The question that remains is how will a worker be able to prove that they were infected at work by COVID-19? Workers, unlike the State of NSW, do not have access to contact tracing data (despite its effectiveness decreasing with the large numbers), and are prohibited from accessing contact tracing due to privacy, and cannot access genome sequencing. The increase in Delta and then Omicron in the community makes it even more difficult to prove that the infection was caused at work.

² Safe Work Australia, Deemed diseases in Australia, Tim Driscoll December 2021

The 2012 changes to workers compensation legislation made liability more difficult, with the requirement for work to be the main contributing factor to accessing liability.

Prior to Workers Compensation Amendment Act 2012

Workers Compensation Act 1987

4 Definition of “injury”

In this Act:

injury:

- (a) means personal injury arising out of or in the course of employment,*
- (b) includes:*
 - (i) a disease which is contracted by a worker in the course of employment and to which the employment was a contributing factor,*

Workers Compensation Act 1987 No 70

Current version for 1 July 2021 to date (accessed 19 December 2021)

June 2012 Amendments

4 Definition of “injury”

*In this Act—**injury**—*

- (a) means personal injury arising out of or in the course of employment,*
- (b) includes a **disease injury**, which means—*
 - (i) a disease that is contracted by a worker in the course of employment **but only if the employment was the main contributing factor** to contracting the disease, and*

Given the difficulties of workers undertaking their own genome sequencing, and contact tracing, the requirement to prove that work was the main contributing factor to contracting COVID-19 will be virtually impossible.

Case Study: Parklea Private Prison

Parklea Private Prison has been managed for two years by a new operator. COVID-19 has caused two major incidents at this gaol in 2021.

Much like in other gaols COVID has caused a significant amount of inmate unrest, believed to be partially due to the reduced contraband that is entering the gaols through fewer contact visits.

Earlier this year there was a riot that saw inmates storm a wing. They climbed onto the roof and set fire to a wing. Heightened aggression has been witnessed across the system during COVID-19.

The second incident occurred in August when the gaol experienced a COVID-19 infection.

Significant numbers of staff were removed to isolation as close contacts, despite the gaol operating with staffing levels fewer than required due to constant turnover.

It was reported that at least 10 staff caught COVID-19, with reportedly more than 170 inmates being infected. At least one of the officers was seriously ill with COVID-19. Due to the reduced capacity of the riot, and reduced staffing of the operator without the ability to pull officers from a large pool elsewhere, managing the outbreak was more difficult. To the staff and management's credit, the gaol did manage the outbreak when it transferred a number of inmates to other centres.

Presentation

Work presentation has been an issue for all industries since the start of the pandemic. We have seen entire shifts wiped out in the public sector with COVID exposures, a shortage of available staff in all sectors, and a larger-than-usual group of resignations. These labour shortage effects are likely to be far costlier to the economy than what the government claims workers compensation is costing.

Maintaining worker well-being is an important aspect of reducing labour shortage. Maintaining the protections of Section 19B for prescribed occupations and industries will contribute to this by enabling workers to continue to attend work knowing they will not lose financial stability if they catch COVID at work.

The following describes members' experiences with COVID-19 both during lockdown and between lockdowns.

Recommendations

1. Maintain Section 19B and the prescribed occupations
2. Add Service NSW, Child Protection, and Government Regulatory Officers to the list of prescribed occupations.

Industry Risk Descriptions

The Workers Compensation Amendment Bill 2021 is cruel in that it targets those who were unable to refuse work at various parts of the pandemic, as well as those who were unable to socially distance. The following describes the risk profile of the prescribed occupations.

Prescribed Occupation	<i>(b) the health care sector, including ambulance officers and public health employees</i> Our membership in Ministry of Health includes contact tracers and myriad workers who work in the health care environment, including DCJ staff
Risk Factors	Workers working in close confines with infected people, worked during lockdown attending workplaces.
Alternate Work Available	No
Work During Lockdown	Continued work during lockdown.
Work During Recovery	Are continuing to work however with less resources.
Cases	Several scares but minimal cases overall for our coverage areas.

Prescribed Occupation	<i>(c) disability and aged care facilities</i> Our coverage includes workers in the legacy group homes and out of home care in the disability sector.
Risk Factors	Maintenance of day programs and work programs during the pandemic including during LGAs of concern. Clients mingling between different residences and also clients attending different activities, including those of high-risk such as retail facilities and health care. Disability workers are highly casualised and, despite labour shortages, continued to work across providers and work locations to make ends meet. Many clients are not vaccinated and there is no health order for clients, only staff. Disabilities are considered “high-risk” environments due to the vulnerability of the client population and also the high needs of the clients, which makes social distancing difficult. There is a reluctance for disabilities providers to apply isolation controls due to it being a restrictive practice.
Alternate Work Available	No
Work During Lockdown	Yes
Work During Recovery	Yes
Cases	Several in Western Sydney during lockdown 2021. There is starting to be a significant number of close contacts that are not being adequately quarantined due to behaviour issues of clients with severe intellectual disabilities.

Prescribed Occupation	<i>(d) educational institutions, including pre-schools, schools and tertiary institutions (other than establishments providing only on-line teaching services)</i> We cover support staff in schools, TAFE and universities. Educational Institutions have been kept open throughout the pandemic despite some courses going to online learning. For
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	<p>example universities and TAFE have continued to deliver through the pandemic and face-to-face continued in health and other high-need skills areas during lockdowns.</p>
Risk Factors	<p>Schools School learning support staff work with students with high needs. They are vulnerable and do not always understand social distancing or cohorting. Children aged 5-12 have not been able to vaccinate until January 10 2022. There is no mandate for 12-18 year olds in secondary school and despite the large uptake, vaccination rates are still lower than the general population. School admin officers usually manage sick bays and these are inadequate for the numbers of sick students and the transmissibility of COVID-19. There have been more than 500 schools closed as COVID-19 case locations. Ventilation has been problematic despite the efforts of the Department. However, measures are still being implemented to improve ventilation. Delays in notifications and the requirement for schools to undertake contact tracing has led to several cases expanding to larger numbers of cases. Cohorting has made contact tracing easier, but is not effective in some scenarios with school grounds becoming a limiting factor, as well as siblings and extra curricula infections across the cohorts.</p> <p>Tertiary This sector has been relatively successful with online learning due to the age component, to reduce infections. There are a number of practical areas where there is a significant risk including health and aged-care skills, and construction where there have been cases.</p>
Alternate Work Available	<p>Schools Part of the school could be taught online through home schooling. However, school learning support was difficult due to the stay at home orders, and various learning supports required for students.</p> <p>Tertiary For all but face-to-face practicals, much of the learning was converted to online. There is a large backup of practical work that was required prior to completion in 2021.</p>
Work During Lockdown	<p>Schools applied a skeleton presence with a maximum of six persons at schools in lockdown to look after at times hundreds of students of essential workers and parents who could not undertake home schooling. This included support staff and teaching staff. General assistants attended more often and their work requires minimal face-to-face contact.</p> <p>Except for essential practicals much of the TAFE and university teaching environment shifted to online. These will predominately return to face to face where they were face to face formerly, in 2022.</p>
Work During Recovery	<p>Schools Almost full capacity back to face-to-face already</p>
Cases	<p>Schools There have been more than 500 schools closed and we have been informed of several cases where staff have caught COVID-19 from school cases.</p> <p>Tertiary There were several cases where healthcare students caught COVID and attended their learning institution and</p>

	hospitals. We are aware of members catching COVID-19, but are unaware of the cause (work or otherwise).
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Prescribed Occupation	<i>(e) police and emergency services (including fire brigades and rural fire services)</i> The PSA covers support staff for Fire and Rescue, and unsworn Police, as well as State Emergency Service (SES) and Rural Fire Service (RFS) employees.
Risk Factors	They must work in dangerous situations, have had to manage a range of emergencies including numerous floods, and assistance to the health and quarantine during the pandemic. RFS and SES are often required to relocate across the state to assist with emergencies, making isolation difficult.
Alternate Work Available	Minimal. Some training could be undertaken online or in location, whilst some operations such as for RFS already occur through WFH.
Work During Lockdown	Continued to operate as normal, but with some extra requirements for work to assist with emergencies such as camps at Kempsey/Taree and assisting with the pandemic.
Work During Recovery	Continued to operate as normal but with some extra requirements for work to assist with emergencies and the pandemic.
Cases	There have only been a few cases reported in our areas of coverage.

Prescribed Occupation	<i>(f) refuges, halfway houses and homeless shelters</i> The PSA CPSU NSW covers workers who work in emergency housing such as Housing NSW workers who undertake outreach, and people in the disability sector who undertake work in halfway houses.
Risk Factors	It is difficult to risk assess a workplace for COVID risk prior to attending. There are competing duties of care. The outreach work would assist homeless people and would undertake an interview and provide limited assistance. The Housing Contact Centre is a call centre with a large number of people working in close location.
Alternate Work Available	Minimal for this work.
Work During Lockdown	Continued to work during lockdown with some staff.
Work During Recovery	Continued to work during the recovery.
Cases	There have been large outbreaks in particular residences which has required the assistance of our members.

Prescribed Occupation	<i>(h) libraries</i> The PSA CPSU NSW covers libraries such as State Library, and university and TAFE Libraries and internal agency libraries that are not open to the public.
Risk Factors	Libraries were closed at various times to the public due to Health Orders. We were able to agitate around alternate interactions

	with libraries and the public at the start of the lockdown, such as click-and-collect. While TAFE libraries were part of an educational institution and exempted from stay at home health orders, the management did not want to make restrictions as they were exempted. It was only part way into the Health Orders in the LGAs of concern that the union was able to get the TAFE libraries in these areas to enforce the stay at home orders by closing libraries for study and other face-to-face interactions in LGAs of concern.
Alternate Work Available	The union delegates and staff were able to work with management to enable greater electronic and non-contact mechanisms to get books and information to students and library clients.
Work During Lockdown	All libraries remained functional but had different levels of face-to-face contact.
Work During Recovery	Full service available.
Cases	There have been several cases with students at TAFE colleges and universities in the first wave.

Prescribed Occupation	<i>(i) courts and tribunals</i> The PSA covers all staff in courts and tribunals with the exception of the judiciary.
Risk Factors	Courts and tribunals have been exempted from health orders. People have to attend court if required by the court. Jurors have also been required to attend court (with small pauses) and Sheriff's Officers must manage the juries and court security. Several judges' attitudes to masks was confusing at best. The COVID protocols could also make people more violent and aggressive at a court house. The court room is quite busy for certain types of matters and social distancing is extremely difficult. List matters and arraignments are an example.
Alternate Work Available	During peak outbreaks there have been delays to some matters, some judges have gone online and corrections have enabled greater utilisation of audio-visual resources to reduce the number of people in close proximity.
Work During Lockdown	Courts continued during lockdown, including in LGAs of concern.
Work During Recovery	Courts have attempted to reduce backlogs and this can mean that some courts are more busy with more people than usual.
Cases	We are aware of a small number of case location notifications.

Prescribed Occupation	<i>(j) correctional centres and detention centres</i> The PSA CPSU NSW covers public youth justice, correctional centres, community corrections and Youth Justice, and private prisons (except Junee Correctional Centre).
Risk Factors	Correctional centres and court escort and security must take fresh inmates/detainees from the public. The WHO describes the correctional environment as particularly high risk due to the vulnerability of the cohort, and also the close confines of the prison population inside a wing. Early in the pandemic, we saw prison complexes worldwide experience large

	<p>numbers of staff and inmate fatalities. Inmates have not been immunised to the same level as staff as it is only “strongly encouraged”. The union and DCJ have worked well to minimise risk by making amendments to activities and new receptions processes, to reduce the number of COVID cases inside the gaol system.</p> <p>The private gaols have fewer staff to draw on and as a result have been less able to manage COVID or inmates’ reactions to COVID restrictions.</p> <p>Medical Escort Service takes inmates to hospital and must sit with inmates in hospital for entire shifts. They are effectively exposed to whatever COVID cases come into the ward.</p>
Alternate Work Available	There is minimal alternate work available, with Community Corrections able to base at home whilst still undertaking community work for different levels of risk. Were able to use more audio-visual operations due to courts allowing it.
Work During Lockdown	Continued to have full shifts, and the COVID protocols increased workload due to exposures reducing staff numbers and also the requirement to isolate new receptions.
Work During Recovery	Has continued to operate with COVID measures as risk has not gone away, and with increased community transmission, the risk is increasing.
Cases	<p>Youth Justice - There have been cases of staff at Cobham as a reception centre.</p> <p>Medical escorts have had more than six cases that we are aware of.</p> <p>There has been a significant outbreak at Parklea Private Gaol (see case study), as well as a number of cases at various court and reception centre locations in the state system.</p> <p>We are aware of more than 60 cases of state system staff.</p>

Prescribed Occupation	<p><i>(m) places of public entertainment or instruction (including cinemas, museums, galleries, cultural institutions and casinos)</i></p> <p>Our coverage includes the Powerhouse Museum, State Library, Art Gallery of NSW, Museum of Contemporary Art, Sydney Opera House, Australian Museum, Sydney Living Museums. We cover compliance officers at the Casino. Additionally, natural indoor locations such as the Jenolan Caves are also likely to fit in this category.</p>
Risk Factors	There is a large cohort of visiting public from different parts of the state, a large cohort of unvaccinated children/school visitors (reduced by fewer school excursions), and much of the work location is indoors. December 15 removal of the vaccination requirement may increase the risk for some venues.
Alternate Work Available	These venues were forcibly shut to the public during lockdown, but work continued and many of those with face to face requirements were re-allocated to assist with cataloguing in the Powerhouse or even contact tracers.

Work During Lockdown	A majority of workers were able to continue their normal work, with the exception noted above.
Work During Recovery	The cultural institutions have re-opened to the public, all with enhanced safety protections. There are, however, case location alerts and isolation occurring.
Cases	There has been some significant and newsworthy cases at the Opera House which have caused significant staff numbers to be isolated.

Prescribed Occupation	<i>(l) the construction industry</i> The PSA covers regulatory inspectors in Fair Trading and SafeWork, as well as workers constructing infrastructure for transport, education, correctives, Department of Customer Service, police and other agencies.
Risk Factors	They were working throughout the pandemic, excluding a two-week period. There was, and remains, varied compliance with COVID safety procedures. There are a range of subcontractors from different companies attending any site on a particular day.
Alternate Work Available	Nil
Work During Lockdown	The regulatory inspectors were asked to additionally support business by helping them improve their COVID safety education and compliance. Government construction continued.
Work During Recovery	Regulatory inspectors continued to maintain COVID safety compliance, and also normal regulatory operations.
Cases	There were a number of reported cases on construction sites, with minimal cases on government construction sites.

The PSA CPSU NSW also covers small numbers of workers in the following prescribed industries:

- (k) restaurants, clubs and hotels,
- (n) the cleaning industry,

These workers are required to absorb the risk of their larger host employer, such as TAFE and Parliament.