

Initial Submission on the Return to Work (COVID-19 Injury) Amendment Bill 2020 (SA)

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Australian
Retailers
Association

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Having regard to the urgent schedule for feedback on the aforementioned Bill, the Australian Retailers Association is pleased to make the following initial submission (with the qualification that should the Bill progress, the ARA reserves the right to provide further input at a later juncture, as appropriate).

Background

The proposed Bill is to be introduced by the Australian Labor Party in the South Australian Legislative Council in the week commencing 6 April 2020. It seeks to amend the Return to Work Act 2014 (SA) (“the Act”), which governs the workers compensation system in South Australia.

The Act provides a “no fault” compensation system for workplace accidents. The Act requires that for compensation to be payable, an injury or disease must arise from employment. The onus is on the employee to satisfy this test, with a “balance of probability” threshold test that must be satisfied for claims to succeed.

Proposed Amendments

The proposed amendments would add a schedule of “prescribed occupations” and “prescribed workplaces” under which any person who works in such a workplace or occupation and contracts novel Coronavirus (COVID-19) will be deemed to have contracted it from their employment.

The definition of “prescribed workplace” is extremely broad, covering myriad businesses and other ongoing government and commercial activities not compulsorily shut down to date by decrees from state and/or federal governments. These include health and emergency services, aged care, schools, and retail outlets such as supermarkets, pharmacies, and service stations.

Summary of the ARA’s position

On behalf of the retail sector in South Australia, the ARA opposes the Bill in its entirety.

Due to factors based on community activity that remains permitted, the contagious properties of COVID-19, public behaviour to this point in the COVID-19 pandemic, and simple common sense, the Bill is an unrealistic and unreasonable attempt to apportion responsibility for COVID-19 infections to businesses that may have no causal relationship with new infections.

The Bill attacks business, and is an attempt to further damage retailers who may still be trading despite COVID-19 control measures and whose employees, regrettably, contract this virus from any source.



Activities that remain permitted despite COVID-19 control measures

Notwithstanding the cessation of most international and domestic air travel to, from and within Australia – and the measures and restrictions introduced by various states and the Commonwealth in response to the spread of Coronavirus in Australia – a range of activities involving public movement (and therefore, personal interaction) remains permitted.

These include, but are not limited to

- Travelling by public transport;
- Attending in person at some workplaces (extending beyond the occupations and workplaces set out in the Bill);
- Attending in person at supermarkets, pharmacies, service stations etc as non-employees (or as employees attending in an off-duty private capacity);
- Procuring takeaway and/or delivered food items or other products, exposing vendors to purchasers directly at some point in executing requisite transactions;
- The sending and receiving of postal articles;
- Participating in “social gatherings” of up to two people (which includes persons in relationships but not cohabiting visiting each other);
- Participating in “social gatherings” comprised of direct family members which are exempt from the two-person rule (e.g. a family of two parents and three children, where one or both parents come and go consequent on other permitted activities).

While this list is by no means exhaustive, even this amply illustrates that there remains a broad range of contexts in which COVID-19 may be spread.

We should note that whilst there may be scope for affected employees to be exposed to the virus in such situations, there equally remains scope for such persons to infect people who do not work with them at all.

Coronavirus does not recognise boundaries such as legislation, workplace parameters or company policies, nor any agenda to artificially apportion responsibility to business owners to the exclusion of a plethora of equally possible (or likely) methods by which the virus may spread and cause further infections.

The contagious properties of COVID-19

At the time of writing, and having regard to what is known to date in terms of the virus, an incubation period of approximately seven (7) days is required after infection before symptoms begin to appear.

Clearly, this seven-day window is too broad to allow conclusive attribution of any new infection to a workplace.



The table *below* shows the efficacy of the virus after it has contaminated various substances. These substances may be encountered by any person going about their business in *full compliance* with mandated restrictions. It is obvious there is ample scope for this to occur outside the workplaces of the occupations prescribed in the Bill.

| Surface | How long does the virus last? |
|-----------------------|-------------------------------|
| Air | 3 hours |
| Copper | 4 hours |
| Cardboard | 24 hours |
| Stainless Steel | 2-3 days |
| Polypropylene Plastic | 3 days |

Source: *New England Journal of Medicine*

Public behaviour during the COVID-19 pandemic

In recent weeks, there have been several occurrences (well documented in the press) of people flouting restrictions on movement imposed by governments in response to the COVID-19 pandemic event.

These have included

- Several hundred partygoers attending Bondi Beach in Sydney following curbs on attending business premises by the New South Wales Government;
- A similar incident at St Kilda Beach in Melbourne, which subsequently prompted the closure of all Bayside beaches in Melbourne by the Victorian Government;
- A motor rally in Brisbane, at which 60 infringement notices were issued by Queensland Police for non-essential assembly under COVID-19 restrictions implemented by the Queensland Government.

The point – simply stated – is that whilst most Australians are doing the right thing and heeding anti-Coronavirus restrictions that are in place, there remains a cohort determined to ignore these measures.

We simply suggest this is human nature: it is relevant in the context of the Bill because the fact mandatory restrictions continue to be flouted by an unquantifiable number of persons simply adds weight to the point workplaces are by no means the sole channel through which the virus can be spread (and for the pretext of the Bill to be valid, it would be unilaterally necessary for this not to be so).

Common sense dictates this Bill should not be further proceeded with

Advice from government health departments, reputable medical and academic sources, and precedents in Australia and abroad conclusively suggest COVID-19 is an extremely contagious and infectious disease.

Whilst initial cases (in Australia and abroad) related directly to international travel and/or personal contact with persons recently returned to Australia, it is now accepted that new cases are occurring as a result of community transmission that are not directly related to these sources of origin.



The scenarios outlined in this submission (which are by no means exhaustive) clearly show that there are far too many alternative avenues for infections to occur to make any judgement or regulation that holds the workplace responsible for any further spread of the virus.

We would observe that while it may or may not be possible for an employer to satisfy a “balance of probabilities” test in showing an employee did not contract Coronavirus at work, for the reasons otherwise outlined in this paper, it would be well-nigh impossible for an employee to prove that they did.

This does not constitute a satisfactory reason in any way whatsoever for the reverse onus of proof contained in the Bill. In fact, it is a tacit admission that any ambition to place employers in the frame for further COVID-19 infections is baseless.

Conclusion

Retail businesses affected by the COVID-19 pandemic – some of which have either closed or lost up to 80% of their usual turnover – are already reeling under the weight of the impact of the Coronavirus pandemic without subjecting them to an additional layer of ambit, unjustified and unjustifiable accountability that is based on a false premise.

We fully support the maintenance (and expansion, as indicated) of measures in retail stores to mitigate the spread of Coronavirus: this should in no way be interpreted as a validation of the Bill or its objectives; rather, such measures are merely a component of sensible containment initiatives that have been rolled out on a community-wide basis across the country.

The ARA does not support the Bill in any way, and strongly urges the South Australian Legislative Council to vote the proposed Bill down at its earliest opportunity.



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