



## Workers Compensation (Dust Diseases) Amendment Bill 2022

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### STATEMENT OF PUBLIC INTEREST

#### **Need: Why is the policy needed based on factual evidence and stakeholder input?**

The Workers Compensation (Dust Diseases) Authority (**the Authority**), managed by icare, is responsible for administering the Dust Diseases Scheme (**the Scheme**) under the *Workers' Compensation (Dust Diseases) Act 1942 (WCDD Act)* which is to be read together with the pre-2012 *Workers Compensation Act 1987 (1987 Act)*.

The legislation is complex and over time, multiple legislative amendments have resulted in ambiguity in the interpretation of provisions for the calculation of injured worker entitlements. icare and its predecessor organisations had continued payment practices that appeared reasonable but became inconsistent with the legislative provisions.

Without legislative amendment, payment practice would need to change. Injured workers would lose entitlements that have in practice been paid to date.

The Workers Compensation (Dust Diseases) Amendment Bill 2022 (**the Bill**) is needed to ensure:

- Rates of compensation to injured workers align with the current practices and are not reduced;
- Workers receiving payments for dependants continue to do so.

The Bill also takes the opportunity to address a further challenge with the existing legislation whereby totally disabled workers are required to verify their historic earnings in detail. This is a difficult request in circumstances where many of these workers are elderly and/or gravely ill. Therefore, the proposed legislative amendment will simplify the process and allow the administrator to use the Australian Bureau of Statistics' (ABS) average earnings statistics (specifically ABS average weekly total cash earnings by detailed occupation for the reference period May 2018 (and as adjusted biannually for CPI)) to estimate past earnings in the calculation of benefits where workers are unable to provide evidence of past income. This will reduce payment delays.

#### **Objectives: What is the policy's objective couched in terms of the public interest?**

The objective of the Bill is to ensure that the legislation is consistent with current payment practices so that benefit entitlements to injured workers may continue. It also seeks to simplify the process of calculating the benefits for these workers which will reduce the administrative burden to source records or information.

#### **Options: What alternative policies and mechanisms were considered in advance of the bill?**

The Bill preserves current payment practices and amends legislation to be consistent with those practices. Without the legislative amendments, current payment practices would need to change to reflect provisions within the existing legislation which are currently inconsistent and inequitable.

In particular, without these amendments benefit entitlements to injured workers from dust disease would be lower than that of the general workers compensation scheme, and payments for dependants of partially disabled workers who are retired, and totally disabled

workers with an injury before 30 June 1987, would be discontinued. The administrative requirement of providing verifiable documentation on historical earnings would endure, placing a burden on workers who may be elderly or gravely ill.

**Analysis: What were the pros/cons and benefits/costs of each option considered?**

If the legislative amendments are not made, the Dust Diseases Authority will need to amend its practices to ensure it complies with the current legislation, resulting in the reduction in benefits for workers, as well as increased administrative burden, delays, distress and confusion for other workers.

**Pathway: What are the timetable and steps for the policy's rollout and who will administer it?**

The legislative change proposed in the Bill allow payment practices to continue in its current form. The scheme is managed by icare and implementation of the proposals will be immediate as it reflects the current payment practices.

**Consultation: Were the views of affected stakeholders sought and considered in making the policy?**

Treasury and icare have worked together to develop the Bill. The Department for Communities and Justice and the Department of Premier and Cabinet were consulted, given the links to other areas of dust diseases-related legal reforms.

The legislative amendments to address the overpayment issues are to enable the continuation of the current practice. The Authority has not received any objections from, and does not anticipate opposition from, scheme participants as to the current practice and did not consider that broader consultation on these amendments was necessary. There will be no impact to employers and thus it was considered unnecessary to consult with employer representative groups.

Given the potential for the proposed legislative amendments to impact liabilities under the James Hardie (JH) agreement with the State (that provides compensation for asbestos-related injuries caused by JH company products), icare has consulted with the JH Trustee and the JH parent company in the United States to advise of the proposed legislative changes.

The JH Trustee have formally confirmed they have no comments or concerns with the proposed amendments.