

Standing Committee on Law and Justice

# **First review of the Dust Diseases scheme**

Ordered to be printed according to Standing Order 231 on 24  
August 2017

New South Wales Parliamentary Library cataloguing-in-publication data:

**New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice**

First review of the Dust Diseases scheme / Standing Committee on Law and Justice. [Sydney, N.S.W.] : The Committee, 2017. – [ix ; 45] pages ; 30 cm (Report ; no. 61)

Chair: Shayne Mallard, MLC  
"August 2017".

ISBN 9781922258373

1. Lungs—Dust diseases—New South Wales.
2. Workers' compensation—New South Wales.
  - I. Title
  - II. Mallard, Shane.
  - III. Series: New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice. Report ; no. 61

368.41009944 (DDC22)

## Table of contents

	<b>Terms of reference</b>	<b>v</b>
	<b>Committee details</b>	<b>vi</b>
	<b>Chair’s foreword</b>	<b>vii</b>
	<b>Recommendations</b>	<b>viii</b>
	<b>Conduct of review</b>	<b>ix</b>
<b>Chapter 1</b>	<b>Overview</b>	<b>1</b>
	<b>Oversight role of the committee</b>	<b>1</b>
	<b>Overview of the Dust Diseases scheme</b>	<b>1</b>
	Workers Compensation (Dust Diseases) Authority and icare Dust Diseases Care	2
	Dust Diseases Board	4
	SIRA	4
	Dust Diseases Tribunal	5
	<b>Scheme performance</b>	<b>5</b>
	Financial performance	6
	Levy setting	7
	Claims processing	9
	Claimant satisfaction	10
	Recent service initiatives	11
	<b>Recommendation from the previous scheme review</b>	<b>13</b>
<b>Chapter 2</b>	<b>Stakeholder proposals</b>	<b>17</b>
	<b>Compensable diseases</b>	<b>17</b>
	<b>Disease prevention and education</b>	<b>21</b>
	Reporting of dust diseases and keeping statistics	24
	<b>Improving access to entitlements</b>	<b>26</b>
	Compensation backdated to date of diagnosis	26
	Electronic filing	27
	Medical Appeals Tribunal	29
<b>Appendix 1</b>	<b>Submissions</b>	<b>31</b>
<b>Appendix 2</b>	<b>Witnesses at hearings</b>	<b>32</b>
<b>Appendix 3</b>	<b>Minutes</b>	<b>34</b>



## Terms of reference

1. That, in accordance with section 27 of the *State Insurance and Care Governance Act 2015*, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers compensation and motor accidents legislation, which include the:
  - (a) Workers' Compensation Scheme
  - (b) Workers' Compensation (Dust Diseases) Scheme
  - (c) Motor Accidents Scheme
  - (d) Motor Accidents (Lifetime Care and Support) Scheme.
2. In exercising the supervisory function outlined in paragraph 1, the committee:
  - (a) does not have the authority to investigate a particular compensation claim, and
  - (b) must report to the House at least once every two years in relation to each scheme.

The terms of reference were referred to the committee by the Legislative Council on 19 November 2015.<sup>1</sup>

---

<sup>1</sup> *Minutes*, NSW Legislative Council, 19 November 2015, p 623.

## Committee details

---

### Committee members

<b>The Hon Shayne Mallard MLC</b>	Liberal Party	<i>Chair</i>
<b>The Hon Lynda Voltz MLC</b>	Australian Labor Party	<i>Deputy Chair</i>
<b>The Hon David Clarke MLC</b>	Liberal Party	
<b>The Hon Trevor Khan MLC</b>	The Nationals	
<b>The Hon Daniel Mookhey MLC</b>	Australian Labor Party	
<b>Mr David Shoebridge MLC</b>	The Greens	

### Contact details

---

<b>Website</b>	<b><a href="http://www.parliament.nsw.gov.au/lawandjustice">www.parliament.nsw.gov.au/lawandjustice</a></b>
<b>Email</b>	<b><a href="mailto:lawandjustice@parliament.nsw.gov.au">lawandjustice@parliament.nsw.gov.au</a></b>
<b>Telephone</b>	<b>02 9230 2620</b>

---

## Chair's foreword

The Law and Justice committee first examined the Dust Diseases scheme in 2014, during its review of the exercise of the functions of the Workers' Compensation (Dust Diseases) Board. Since then, the Workers' Compensation (Dust Diseases) Authority has assumed administrative responsibility for the scheme. This is the committee's first review of the scheme since these changes.

During this review, the committee heard evidence from the scheme's administrators and regulators, health professionals, legal specialists and advocacy groups. The majority of evidence indicates that the scheme is performing effectively and the Dust Disease Fund continues to grow.

The committee has, however, identified a number of services that could be developed and improved. Subsequently, we have made recommendations in relation to data collection, the application process and the supporting information that is available to applicants, and the appeals process for unsuccessful claimants.

On behalf of the committee I would like to thank all the stakeholders who participated in this review for their contribution. I would also like to extend my thanks to my committee colleagues for their enthusiasm, support and thoughtful perspectives on the evidence provided. Finally, I thank the committee secretariat for their hard work and assistance.



Hon Shayne Mallard MLC  
**Committee Chair**

## Recommendations

- Recommendation 1** **24**  
That the relevant Minister urgently convene a taskforce of industry, regulatory and workforce representatives to review safety standards in the manufactured stone industry and consider regulatory changes necessary to protect workers in the industry.
- Recommendation 2** **26**  
That icare consult with stakeholders to examine the feasibility of establishing a national dust diseases data collection system.
- Recommendation 3** **27**  
That Dust Diseases Care ensure that its fact sheets and brochures emphasise the importance of lodging a Dust Diseases scheme application quickly, and explain the nexus between receipt of application and payment of benefits.
- Recommendation 4** **29**  
That icare expedite the development of an online application process for the Dust Diseases scheme that provides for 24 hour electronic lodgement and receipt, similar to that provided by the Dust Diseases Tribunal.
- Recommendation 5** **30**  
That the NSW Government consider establishing a statutory internal appeals panel to provide an affordable and independent avenue to review decisions about Dust Diseases scheme eligibility.

## Conduct of review

The terms of reference for the review were referred to the committee by the Legislative Council on 19 November 2015.

The committee received 6 submissions.

The committee held 2 public hearings at Parliament House in Sydney.

Review related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.



## Chapter 1 Overview

This chapter provides an overview of the Workers Compensation (Dust Diseases) scheme, including the role of the committee in overseeing the scheme, and the role of the Workers Compensation (Dust Diseases) Authority and other bodies involved in administering it. The chapter also provides an overview of the scheme's recent performance. Finally, the chapter examines the response to the sole recommendation made as part of the committee's previous review of the scheme.

### Oversight role of the committee

- 1.1 In accordance with s 27 of the *State Insurance and Care Governance Act 2015*, the operations of the Workers Compensation (Dust Diseases) scheme are required to be supervised by a committee of the Legislative Council.<sup>2</sup>
- 1.2 The Standing Committee on Law and Justice has been designated as the committee to undertake this role. The resolution requires the committee to report to the Legislative Council in relation to the scheme at least once every two years. The same resolution also requires the committee to supervise the operation of the other insurance and compensation schemes established under the state's workers compensation and motor accidents legislation, including the Compulsory Third Party scheme, the workers compensation scheme and the Motor Accidents (Lifetime Care and Support) scheme.<sup>3</sup>
- 1.3 The committee reported on the workers compensation scheme in March 2017 and the Compulsory Third Party scheme in August 2016. The review of the Motor Accidents (Lifetime Care and Support) scheme was conducted concurrently with this review. Those outcomes will be published in a separate report in August 2017.
- 1.4 Although this report is entitled *First review of the Dust Diseases scheme*, the committee previously monitored and reviewed the scheme as part of its 2014 *Review of the exercise of the functions of the Workers' Compensation (Dust Diseases) Board*. Information about that review can be found on the committee's website at [www.parliament.nsw.gov.au/lawandjustice](http://www.parliament.nsw.gov.au/lawandjustice).

### Overview of the Dust Diseases scheme

- 1.5 The Workers Compensation (Dust Diseases) scheme is a no-fault workers compensation scheme for people who have developed a compensable dust disease from occupational exposure to dust as a worker in New South Wales, and their dependants.
- 1.6 There are 14 dust diseases that are compensable under the scheme. These are listed in Schedule 1 to the *Workers' Compensation (Dust Diseases) Act 1942*, namely:
  - Aluminosis
  - Asbestosis
  - Asbestos induced carcinoma

---

<sup>2</sup> *State Insurance and Care Governance Act 2015*, s 27.

<sup>3</sup> *Minutes*, NSW Legislative Council, 19 November 2015, p 623.

- Asbestos related pleural diseases
- Bagassosis
- Berylliosis
- Byssinosis
- Coal dust pneumoconiosis
- Farmers' lung
- Hard metal pneumoconiosis
- Mesothelioma
- Silicosis
- Silico-tuberculosis
- Talcosis.<sup>4</sup>

**1.7** These diseases are caused by the inhalation of dusts which cause progressive scarring of the lungs, and in the case of asbestos, lesions on the lining of the lung. Symptoms include cough, breathlessness and chest pain, and in some cases respiratory failure and death.<sup>5</sup>

**1.8** The dust diseases scheme compensates sufferers of these diseases where there is evidence of workplace exposure to the dust within New South Wales and lung function impairment.<sup>6</sup> Compensation includes a fortnightly benefit payment, payment of all reasonable and necessary medical and related treatment expenses, and payment of funeral expenses. The scheme also provides financial support to the dependants of deceased workers.<sup>7</sup>

**1.9** The annual cost of operating the scheme is paid for through a levy on employers (discussed later at 1.34 to 1.36).

### **Workers Compensation (Dust Diseases) Authority and icare Dust Diseases Care**

**1.10** Following legislative changes made on 1 September 2015, the Workers Compensation (Dust Diseases) Authority replaced, and is a continuation of, the former Workers' Compensation (Dust Diseases) Board. As such, it is now the Authority that is responsible for determining claims for compensation under the *Workers' Compensation (Dust Diseases) Act*.<sup>8</sup>

**1.11** icare (Insurance and Care NSW) is a public financial corporation governed by an independent board of directors that was established on 1 September 2015 to consolidate the state's insurance and care schemes.<sup>9</sup> icare provides services including staff and facilities for the

---

<sup>4</sup> *Workers' Compensation (Dust Diseases) Act 1942*, Sch 1

<sup>5</sup> Submission 4, The Thoracic Society of Australia and New Zealand, p 1.

<sup>6</sup> Answers to questions on notice, Mr Vivek Bhatia, Chief Executive Officer, icare, 30 June 2017, p 2.

<sup>7</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 62.

<sup>8</sup> *Workers' Compensation (Dust Diseases) Act 1942*, s 5

<sup>9</sup> *State Insurance and Care Governance Act 2015*, Pt 2.

Workers Compensation (Dust Diseases) Authority through its service line, Dust Diseases Care.<sup>10</sup>

**1.12** As well as delivering insurance and care services to eligible workers under the dust diseases scheme through Dust Diseases Care, icare also delivers services under the workers compensation scheme (Workers Care), the Lifetime Care and Support scheme (Lifetime Care), the NSW Self Insurance Corporation (Self Insurance) and the Sporting Injuries Compensation scheme (Sporting Injuries Insurance).<sup>11</sup>

**1.13** Dust Diseases Care is run under the executive leadership of icare's Group Executive – Integrated Care, who also leads the Lifetime Care and Support scheme and the transition of seriously injured workers from the workers compensation and Treasury Managed Fund schemes. icare has also recently appointed a General Manager – Operations with expertise in workers compensation, business improvement and strategic reform to provide leadership and support to the Dust Diseases Care team.<sup>12</sup>

**1.14** Dust Diseases Care's key roles and responsibilities under the dust diseases scheme are set out below.

- Dust Diseases Care provides workers with a fortnightly compensation payment and healthcare support by arranging and paying for medical treatment and expenses related to their dust disease. It also pays for funeral expenses when the person passes away and provides financial support to their dependants.
- Dust Diseases Care arranges and pays for medical examinations for workers who have been exposed to hazardous dusts. These include chest x-rays, lung function tests and examination by a respiratory physician.
- Dust Diseases Care assesses applications for compensation made by workers by assessing their medical records and documenting their work history and exposure to dusts in the workplace. It also assists workers by obtaining medical records on their behalf and helping them document their work history.
- Dust Diseases Care supports the Medical Assessment Panel, which determines if an applicant for compensation has a dust disease covered by the scheme, the extent of any disability and the level of occupational exposure as a worker in New South Wales. The three-person Panel is made up of a chairperson and two members nominated by employer and employee groups. Panel members are highly qualified respiratory physicians who specialise in occupational dust diseases.
- If the Medical Assessment Panel determines that a worker has a compensable dust disease, Dust Diseases Care calculates their compensation entitlement.<sup>13</sup>

**1.15** In addition, Dust Diseases Care undertakes and funds research to help identify dust diseases, assist workers with dust diseases and prevent occupational lung disease. It does this by:

<sup>10</sup> *State Insurance and Care Governance Act 2015*, s 10.

<sup>11</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 23.

<sup>12</sup> Answers to pre-hearing questions, Mr Vivek Bhatia, Chief Executive Officer, icare, 19 May 2017, p 2.

<sup>13</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 60.

- administering the Dust Diseases Care Research and Community Grants scheme
- maintaining a research database
- responding to requests for scientific information from research institutes, industry groups, actuaries, the icare executive and the Medical Assessment Panel
- performing asbestos fibre counts on samples of lung tissue.<sup>14</sup>

**1.16** The Research and Community Grants scheme is monitored by the new Dust Diseases Board, as discussed below.

### **Dust Diseases Board**

**1.17** The Dust Diseases Board, as distinct from the former Workers' Compensation (Dust Diseases) Board, was established on 1 September 2015 to:

- authorise and oversee grants for research into the prevention and treatment of dust diseases, known as the Research and Community Grants scheme
- authorise and oversee grants for assistance to groups or organisations that provide support for victims of dust diseases or their families.<sup>15</sup>

**1.18** The board comprises eleven members appointed by the Treasurer, including three employer representatives, three employee representatives, two representatives of dust diseases sufferers' support groups, a research academic and a health professional.<sup>16</sup>

**1.19** Mr Vivek Bhatia, Chief Executive Officer of icare, noted that icare is one of the largest funders in the country of research and grants for dust diseases, and that the board's role in overseeing these grants is 'an important responsibility'.<sup>17</sup> The five research grants currently being funded under the Research and Community Grants scheme are aimed at developing and evaluating new or improved treatments for dust diseases, treatments to improve quality of life for sufferers, and techniques for screening and diagnosis and for assessing disability.<sup>18</sup>

### **SIRA**

**1.20** The State Insurance Regulatory Authority, known as SIRA, was established on 1 September 2015 as the state's independent insurance regulator. SIRA also monitors the financial solvency and performance of the three compulsory insurance schemes: workers compensation, motor accidents injury compensation and home building compensation.<sup>19</sup>

**1.21** SIRA has four key roles in relation to the dust diseases scheme:

---

<sup>14</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 65.

<sup>15</sup> *Workers' Compensation (Dust Diseases) Act 1942*, s 6(2A).

<sup>16</sup> See, *Workers' Compensation (Dust Diseases) Act 1942*, s 5AC; Answers to questions on notice, Mr Bhatia, pp 4-6 .

<sup>17</sup> Evidence, Mr Vivek Bhatia, Chief Executive Officer, icare, 2 June 2017, p 46.

<sup>18</sup> Answers to pre-hearing questions, Mr Bhatia, pp 12-13.

<sup>19</sup> SIRA, *State Insurance Regulatory Authority Annual Report 2015-16*, 2016, p 4.

- determining the amount and timing of contributions to the Workers Compensation (Dust Diseases) Fund by workers compensation insurers
- determining the rate of the Dust Disease Levy according to industry, discussed further below
- publishing levy details in the form of a notice so that insurers include the details in their premium filings
- indexing the weekly compensation payments and death benefits prescribed in the *Workers' Compensation (Dust Diseases) Act 1942*.<sup>20</sup>

### Dust Diseases Tribunal

- 1.22** Separate from the scheme administered by the Workers Compensation (Dust Diseases) Authority, the Dust Diseases Tribunal was established in 1989 to hear and determine common law claims for damages by sufferers of dust-related diseases. Such damages may include compensation for pain and suffering, reduction in life expectancy, and voluntary care and assistance provided by the person's family members.
- 1.23** Workers who have made a successful claim for compensation with the Authority cannot claim for medical and related expenses in the Tribunal, because those expenses are already covered by the Authority. However, such workers are still entitled to claim damages in the Tribunal for loss of their capacity to provide voluntary domestic services to their dependants as a consequence of their condition.<sup>21</sup>
- 1.24** Claims relating to asbestos-related conditions in the Tribunal are subject to a claims resolution process. This process is aimed at reducing the cost of claims and to encourage settlement by allowing information and particulars to be exchanged early on. All claims must be referred to mediation and only those that do not settle proceed to a hearing before the Tribunal. There is also provision for 'urgent' claims to be removed from the claims resolution process and fast-tracked, such as where the claimant's life expectancy is so short as to leave insufficient time for the process to be completed and the claim finally determined by the Tribunal.<sup>22</sup>

### Scheme performance

- 1.25** This section of the chapter examines the performance of the dust diseases scheme since the committee's last review in 2014. This includes information about the scheme's financial performance, the process for setting the levy on employers, timeframes for processing claims, customer satisfaction levels, and recent initiatives to improve services for scheme participants.
- 1.26** In terms of the overall operation of the scheme, icare Dust Diseases Care paid \$81.63 million in compensation benefits and \$9.47 million in healthcare and funeral benefits during 2015/16.

<sup>20</sup> See, Tabled document, SIRA, *Opening statement*, 28 June 2017, p 2; Answers to questions on notice, SIRA, 21 July 2017, p 13.

<sup>21</sup> *Civil Liability Act 2002*, s 15B.

<sup>22</sup> Dust Diseases Tribunal Regulation 2013, Pt 4.

As at 30 June 2016, these benefits were being paid to a total of 4,127 claimants, including 1,128 workers and 2,999 dependants.<sup>23</sup>

**1.27** icare advised that asbestos currently accounts for over 95 per cent of claims awarded under the scheme.<sup>24</sup> This was reflected in the fact that, of the 14 diseases listed in Schedule 1 to the *Workers' Compensation (Dust Diseases) Act*, the following account for 98.3 per cent of the total work-related dust diseases certified by the Medical Assessment Panel:

- Mesothelioma
- Asbestosis
- Asbestos related pleural diseases
- Asbestos induced carcinoma
- Silicosis.<sup>25</sup>

**1.28** However, Dr Nick Allsop, Chief Actuary, icare, also told the committee that the average age of claimants entering the scheme is currently about 75 years, and stated that the scheme was now past the peak of asbestos-related claims:

... [T]he reason we believe we are past the peak of asbestos-related claims reporting is that the majority of our exposure is pre-1987, and combined with the age of the participants who enter the scheme at the moment, we believe we are going to see a tapering off over the next—admittedly 20 or 30 years, but it is past the peak.<sup>26</sup>

**1.29** Dr Allsop identified better awareness and understanding of the risks of asbestos exposure, as well as better safety measures to protect workers who are exposed, as factors likely to contribute to lower claims rates in the future.<sup>27</sup>

### **Financial performance**

**1.30** The dust diseases scheme is a 'pay-as-you-go' scheme, meaning that each year the money in the Workers Compensation (Dust Diseases) Fund collected through the levy on employers pays for the costs of operating the scheme:

The levy pays for compensation benefits, and hospital, medical, ambulance and other related expenses for workers with dust diseases and the costs of operating the scheme.<sup>28</sup>

**1.31** icare informed the committee that in 2016/17, the Workers Compensation (Dust Diseases) Fund exceeded \$1.1 billion and continues to grow with 'strong performance'.<sup>29</sup> Dr Allsop

---

<sup>23</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 62.

<sup>24</sup> Answers to questions on notice, Mr Bhatia, p 2.

<sup>25</sup> Answers to questions on notice, Mr Bhatia, p 3.

<sup>26</sup> Evidence, Dr Nick Allsop, Chief Actuary, icare, 2 June 2017, p 48.

<sup>27</sup> Evidence, Dr Allsop, 2 June 2017, p 48.

<sup>28</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 60.

<sup>29</sup> Answers to pre-hearing questions, Mr Bhatia, p 4.

explained that while the fund's assets represent only around 68 per cent of the fund's liabilities, due to the pay-as-you-go nature of the scheme it is the annual levy, rather than the assets, that funds expenditure for each year.<sup>30</sup>

**1.32** The fund's investment performance as at 31 March 2017 is set out in the following table.

**Table 1 Workers Compensation (Dust Diseases) Fund investment performance**

Assets under management	\$1,130 million
12-month performance	9.40 per cent
Financial year to date performance	5.99 per cent
Approximate investment income (financial year to date)	\$64.4 million

*Source: Answers to pre-hearing questions on notice, icare, 19 May 2017, p 4.*

**1.33** icare also advised the committee of the fund's current asset allocation:

As at 30 June 2016, the Workers Compensation (Dust Diseases) Fund asset allocation has a well-diversified strategic asset allocation, with 57.0 per cent of assets in diversified growth assets and 43.0 per cent in defensive assets. The performance of the Workers Compensation (Dust Diseases) Fund was 4.70 per cent, achieving a return of 0.15 per cent in excess of the benchmark for the financial year. The Fund has also exceeded the benchmark over the three (1.07 per cent) and five (0.82 per cent) year periods.<sup>31</sup>

### Levy setting

**1.34** As noted earlier, the annual cost of operating the scheme is paid for through a levy on employers. The process for calculating this levy is as follows.

- SIRA writes annually to icare to formally request a certified estimate of expenditure out of the Workers Compensation (Dust Diseases) Fund for the following year.<sup>32</sup>
- icare estimates the scheme's outstanding claims liability twice a year, with the December estimate used to aid in the levy setting process for the following financial year commencing 1 July. This work is supported by icare's internal actuaries as well as external consultants PricewaterhouseCoopers.<sup>33</sup>
- In preparing the estimate, icare considers both:
  - benefit-related costs, calculated taking into account the likely incidence of future dust-related diseases as well as the benefit periods associated with claims that have already been accepted
  - the expenses of administering the scheme.<sup>34</sup>

<sup>30</sup> Evidence, Dr Allsop, 2 June 2017, p 50.

<sup>31</sup> Answers to pre-hearing questions, Mr Bhatia, p 4.

<sup>32</sup> Answers to questions on notice, SIRA, 21 July 2017, p 13.

<sup>33</sup> Answers to pre-hearing questions, Mr Bhatia, p 5.

<sup>34</sup> Answers to pre-hearing questions, Mr Bhatia, p 5.

- This combined amount forms the estimated annual cost for the scheme, which for 2017/18 is \$108.5 million. However, the committee heard that for the first time this year, icare's board has approved the inclusion of investment income as a source of revenue in the estimation of levies. This means that for 2017/18, investment income of 4.5 per cent on the fund's \$1,135 million in assets has been included in the calculation of the levy passed on to employers, reducing the levy to \$59.9 million.<sup>35</sup>
- Once the overall target levy amount has been determined, it is translated into a levy rate based on the estimated wage roll of New South Wales employers. For 2017/18, the estimated wage roll is \$245 billion, giving rise to a levy rate of 0.0244 per cent of wages.<sup>36</sup>
- icare then considers the relative risk across eight different Work Industry Classification groups, based on each group's experience or estimated exposure to dusts covered by the scheme. If icare considers a particular industry would be more appropriate in another group based on their dust disease claims experience, it will make a recommendation to SIRA accordingly.<sup>37</sup> This information is provided to SIRA once the icare board has approved the aggregate rate and expected collection amount.<sup>38</sup>
- SIRA then assesses how the levy is to be split amongst insurers and across industries. SIRA uses estimates of wages by industry, as well as advice from icare regarding changes in claims experience by industry, to determine how much each insurer is required to contribute.<sup>39</sup>
- In performing this task, SIRA takes into account icare's actuarial report and may also undertake additional analysis if required, including from SIRA's own actuaries.<sup>40</sup> The levy rates are based on industry classifications, and each of the eight Work Industry Classification groups is allocated to a schedule, with Schedule 1 representing the highest risk of dust disease and Schedule 8 representing the lowest.<sup>41</sup>
- The SIRA board then considers and approves the final employer contributions.<sup>42</sup>

**1.35** Mr Andrew Nicholls, Executive Director, Motor Accidents Insurance Regulation, SIRA, told the committee that while every employer in New South Wales makes a contribution, the vast bulk contribute a base rate of 0.01 per cent of the payroll. In contrast, mining and construction employers pay around 1.2 per cent of the payroll, whereas employers who specifically handle asbestos pay a defined rate of 4 per cent and are therefore not allocated to a schedule.<sup>43</sup> This is reflected in the table below, which sets out the 2017/18 levy rates for each schedule.

<sup>35</sup> Answers to pre-hearing questions, Mr Bhatia, p 5.

<sup>36</sup> Answers to pre-hearing questions, Mr Bhatia, p 5.

<sup>37</sup> Answers to questions on notice, SIRA, p 14.

<sup>38</sup> Answers to pre-hearing questions, Mr Bhatia, p 6.

<sup>39</sup> Answers to pre-hearing questions, SIRA, p 4.

<sup>40</sup> See, Answers to pre-hearing questions, SIRA, p 4; Answers to questions on notice, SIRA, p 13.

<sup>41</sup> Answers to questions on notice, SIRA, p 13.

<sup>42</sup> Answers to pre-hearing questions, SIRA, p 4.

<sup>43</sup> Evidence, Mr Andrew Nicholls, Executive Director, Motor Accidents Insurance Regulation, SIRA, 28 June 2017, p 37; Answers to questions on notice, SIRA, p 13.

**Table 2 SIRA-approved dust diseases levy rates for 2017/18**

Schedule	Levy rate
D12	4 per cent
1	1.250 per cent
2	0.500 per cent
3	0.250 per cent
4	0.110 per cent
5	0.065 per cent
6	0.040 per cent
7	0.020 per cent
8	0.010 per cent

Source: *Answers to questions on notice, SIRA, 21 July 2017, p 14.*

- 1.36** The committee was advised that six industries were moved to a lower schedule in 2017/18, with no industries moved to a higher schedule.<sup>44</sup> SIRA also stated that the inclusion of investment income as a source of revenue in the estimation of levies had lowered the levy rates by 40 to 90 per cent compared with the 2016/17 rates.<sup>45</sup>

### Claims processing

- 1.37** The committee was told that since 1 September 2015, icare has reduced the time taken to determine claims for compensation by over 50 per cent. As at 31 March 2017, the average time taken to determine a claim from the date of application was:

- 61.77 days for a worker, down from 136.7 days which represents a reduction of 54.8 per cent
- 28.36 days for a dependent, down from 70.98 days which represents a reduction of 60 per cent.<sup>46</sup>

- 1.38** Mr Chris Koutoulas, General Manager Operations, Dust Diseases Care, icare, explained that the discrepancy between the time taken to determine claims by workers and by dependants is because dependents by definition must have a family member already in the scheme, with their medical information and diagnosis accepted.<sup>47</sup>

- 1.39** icare attributed the reduction in claims processing times to a number of factors, including improved administrative processes and a new statutory timeframe for determining claims once medical information is finalised:

<sup>44</sup> Answers to questions on notice, SIRA, p 14.

<sup>45</sup> Answers to questions on notice, SIRA, p 14.

<sup>46</sup> Answers to pre-hearing questions, Mr Bhatia, p 1.

<sup>47</sup> Evidence, Mr Chris Koutoulas, General Manager Operations, Dust Diseases Care, icare, 2 June 2017, p 47.

This reduction is attributed to the introduction of a triage process for new applications within 24 to 48 hours of receipt, choice of medical screening service providers and more efficient administrative processes, as well as the introduction of a new timeframe of two working days for determining claims for compensation after certification of a dust disease by the Medical Assessment Panel or provision of all information needed by the Authority to make a determination.<sup>48</sup>

- 1.40** The committee heard that since 1 September 2015, the two-day statutory timeframe for determining claims has been met in 100 per cent of cases,<sup>49</sup> and that the percentage of claimants who are successful in being accepted into the scheme is stable at 97.8 per cent.<sup>50</sup>
- 1.41** Recent improvements to the scheme's administrative processes are discussed in more detail below.

### **Claimant satisfaction**

- 1.42** icare has recently introduced a new system, known as a Net Promoter Score, to measure customer satisfaction for Dust Diseases Care. The Net Promoter Score captures feedback on a customer's experience via a short survey conducted by an independent research agency.<sup>51</sup>
- 1.43** icare advised that surveys for existing and new scheme participants are currently underway, including workers and their dependents as well as service providers and users of the Lung Screen mobile health monitoring service. Surveys will be conducted at least once and up to four times each year, with participation voluntary and able to be done via email or telephone interview.<sup>52</sup>
- 1.44** The committee was told that as at early May 2017, Dust Diseases Care had a Net Promoter Score of +61, compared with average scores of +10 for the insurance sector and +27 for charities. Dust Diseases Care has also implemented a procedure to follow up low-scoring survey respondents 'to ensure the timely response to and resolution of issues identified'.<sup>53</sup>
- 1.45** icare Dust Diseases Care's high Net Promoter Score was reflected in positive comments from several review participants about the quality of customer service since the transition to Dust Diseases Care in September 2015. For example, the Bernie Banton Foundation, a support organisation, stated that both claims processing and service delivery decisions are made 'in an extremely timely fashion',<sup>54</sup> and that staff are responsive when issues are raised:

When the Foundation is alerted to a problem, and advocates on behalf of those concerned to Dust Diseases Care, invariably the problem is dealt with expediently by

---

<sup>48</sup> Answers to pre-hearing questions, Mr Bhatia, p 1.

<sup>49</sup> See, Answers to pre-hearing questions, Mr Bhatia, p 1; *Workers' Compensation (Dust Diseases) Act 1942*, Pt 1; s 8 (1A).

<sup>50</sup> Evidence, Mr Koutoulas, 2 June 2017, p 48.

<sup>51</sup> Answers to pre-hearing questions, Mr Bhatia, p 18.

<sup>52</sup> Answers to pre-hearing questions, Mr Bhatia, p 18.

<sup>53</sup> Answers to pre-hearing questions, Mr Bhatia, p 18.

<sup>54</sup> Submission 3, Bernie Banton Foundation, p 2.

the DDC – we couldn't be happier with reaction times and the attitude of DDC staff from the top down, when an issue becomes apparent.<sup>55</sup>

- 1.46 Mr Rod Smith, Awareness and Support Coordinator, Bernie Banton Foundation, echoed these comments in his evidence at the hearing, telling the committee that dealing with Dust Diseases Care has been 'absolutely brilliant'<sup>56</sup> and that its 'response is almost immediate and we always get a satisfactory resolution'.<sup>57</sup>
- 1.47 Similarly, Mr David Anderson, Partner, HWL Ebsworth, appearing for the Law Society of New South Wales, told the committee that the feedback he has received since the scheme was transferred to icare Dust Diseases Care was that 'the process has sped up markedly and that there is customer satisfaction in relation to the services on the ground'.<sup>58</sup>

### **Recent service initiatives**

- 1.48 The committee heard that icare has implemented a range of new initiatives to improve and enhance customer service for dust disease scheme participants in a number of key areas.

### ***Administrative processes***

- 1.49 The Bernie Banton Foundation submitted that the burden of paperwork was a key barrier for sufferers of dust diseases to access the scheme:

We believe most problems come about due to over complicated paperwork being issued in the initial application and/or registration pack. This includes an application form and process that more often than not overwhelms people who are invariably already stressed due to having been diagnosed – let alone being faced with a mountain of daunting paperwork.

It is not uncommon to be contacted by a diagnosed sufferer of a dust disease, or their loved ones, who has sat on the DDA folder for many months, even years, purely because they could not face filling out the application form.<sup>59</sup>

- 1.50 In response to this concern, icare advised that it has commenced a co-design initiative to simplify the process for accessing the scheme. Developed in consultation with Dust Disease Care staff as well as scheme applicants and participants, the project has resulted in two key changes:
- the development of a new two-page application form, down from eight pages
  - a new initiative to accept applications over the phone.<sup>60</sup>

<sup>55</sup> Submission 3, Bernie Banton Foundation, p 4.

<sup>56</sup> Evidence, Mr Rod Smith, Awareness and Support Coordinator, Bernie Banton Foundation, 28 June 2017, p 11.

<sup>57</sup> Evidence, Mr Smith, 28 June 2017, p 10.

<sup>58</sup> Evidence, Mr David Anderson, Partner, HWL Ebsworth, appearing for the Law Society of New South Wales, 28 June 2017, p 2.

<sup>59</sup> Submission 3, Bernie Banton Foundation, p 2.

<sup>60</sup> Answers to pre-hearing questions, Mr Bhatia, p 9.

- 1.51** The next step in the project is to develop fact sheets and information brochures explaining the new procedures, before testing is carried out with a select cohort of new applicants. icare anticipates that the finalised application form template and procedures will be rolled out to all new applicants from October 2017. It also foreshadowed the development of a new online portal facility for easier and timelier lodgement of documents in the future.<sup>61</sup>
- 1.52** Other administrative initiatives to be rolled out over the next 12 months include:
- a single customer liaison point for applicants and scheme participants, designed to ‘facilitate the delivery of more cohesive end-to-end, person-centric services tailored to the needs of the individual’
  - a dedicated, phone-based service request facility for scheme participants to directly access fast track determinations and approvals for a range of services and other related healthcare requests
  - pre-approved healthcare services packages for scheme participants with a level of disability less than 100 per cent, which will provide faster access to healthcare and support following a single upfront approval from their medical treating specialist.<sup>62</sup>

### ***Access to information***

- 1.53** Another challenge identified by the Bernie Banton Foundation was around lack of understanding amongst sufferers of dust diseases about how the scheme works:

The vast majority of enquiries from sufferers, their carers and loved ones who are experiencing problems, stem from lack of initial knowledge about the DDA and if registered, a lack of understanding of entitlements that can be accessed and the due processes needed to access them.<sup>63</sup>

- 1.54** In response, icare outlined a range of recent projects and activities it has undertaken to promote awareness of the scheme:
- redesigning the icare website, planned for release in the fourth quarter of 2017, as well as updating the current website and social media content in the interim<sup>64</sup>
  - updating current brochures and fact sheets regarding entitlements and services available under the scheme, which are routinely issued to all participants at the application and compensation award stages<sup>65</sup>
  - sponsoring and participating in events attended by sufferers of dust diseases and their families and carers, such as the Asbestos Diseases Foundation of Australia’s Asbestos Awareness Day and Asbestos Awareness Week<sup>66</sup>

---

<sup>61</sup> Answers to pre-hearing questions, Mr Bhatia, p 9.

<sup>62</sup> Answers to pre-hearing questions, Mr Bhatia, p 19.

<sup>63</sup> Submission 3, Bernie Banton Foundation, p 3.

<sup>64</sup> Answers to pre-hearing questions, Mr Bhatia, p 19.

<sup>65</sup> Answers to pre-hearing questions, Mr Bhatia, p 7.

<sup>66</sup> Answers to pre-hearing questions, Mr Bhatia, p 8.

- representing the scheme at a number of stakeholder forums including relevant industry conferences/forums<sup>67</sup>
- issuing media releases explaining the changes to the dust diseases scheme brought about in 2015, as well as contacting existing scheme participants and key stakeholders to inform them of the changes<sup>68</sup>
- rebranding brochures, fact sheets, letterheads and forms now identifying the scheme as icare Dust Diseases Care.<sup>69</sup>

### ***Access to medical screenings***

- 1.55** icare provides a free medical screening service for workers and retired workers with a history of exposure to occupational dusts. As noted above, this generally involves a chest x-ray, lung function test and examination by a respiratory physician.
- 1.56** The committee was told that since 1 March 2016, scheme participants have been offered a choice of service provider for their medical screening examination from among the following:
- a medical examination at the icare Dust Diseases Care medical centre located in the Sydney CBD
  - the icare Lung Screen mobile respiratory unit, which visits regional areas
  - the worker's own regular treating respiratory physician
  - a locally based provider recommended by Dust Diseases Care close to where the worker lives.<sup>70</sup>
- 1.57** Dust Diseases Care is also currently trialling a Home Lung Function pilot program to workers who are unable to leave their home and travel to medical screening appointments because of health, age and immobility.<sup>71</sup>

### **Recommendation from the previous scheme review**

- 1.58** This section examines the response by the New South Wales Government to the sole recommendation made in the committee's 2014 review of the exercise of the functions of the Workers' Compensation (Dust Diseases) Board, and considers further actions since that response was tabled.<sup>72</sup>

<sup>67</sup> Answers to pre-hearing questions, Mr Bhatia, p 3.

<sup>68</sup> Answers to pre-hearing questions, Mr Bhatia, p 3.

<sup>69</sup> Answers to pre-hearing questions, Mr Bhatia, p 3.

<sup>70</sup> Answers to pre-hearing questions, Mr Bhatia, p 1.

<sup>71</sup> Answers to pre-hearing questions, Mr Bhatia, p 1.

<sup>72</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Review of the exercise of the functions of the Workers' Compensation (Dust Diseases) Board* (2014).

**2014 review of the exercise of the function of the Workers' Compensation (Dust Diseases) Board recommendation 1:** That the NSW Government investigate the feasibility of introducing provisional liability for malignant claims to the scheme.

- 1.59** Under the proposal discussed in the committee's 2014 review, liability would be determined on a provisional basis within seven days of receiving an application form for a malignant claim. The application form would be accompanied by a medical report and statutory declaration outlining the applicant's occupational exposure to asbestos.<sup>73</sup>
- 1.60** In the response from the New South Wales Government dated 27 February 2015, the Hon Dominic Perrottet MP, then Minister for Finance and Services, indicated that the government accepted the recommendation in principle, but that it would consider its impacts 'within a broader consideration of the compensation process and scheme sustainability'.<sup>74</sup>
- 1.61** In the context of the current review, icare gave evidence that introducing provisional liability for malignant claims may result in:
- possible financial impacts upon the sustainability of the scheme
  - possible impacts upon finalisation of matters in the Dust Diseases Tribunal in circumstances where an individual pursues claims in both jurisdictions, and the ability to recover costs from negligent third parties
  - potential impacts on the physical and mental health of applicants should a provisional award not lead to a final award.<sup>75</sup>
- 1.62** icare also pointed to difficulties in diagnosing dust diseases, particularly for malignant mesothelioma,<sup>76</sup> and more generally, noted the significant improvements in claims processing times as discussed earlier. Finally, icare indicated that malignant dust diseases such as mesothelioma are usually assessed with 100 per cent disability from time of diagnosis, and that in some instances, an interim award may be made in accordance with s 8B of the *Workers' Compensation (Dust Diseases) Act* pending a final determination by the panel.<sup>77</sup>

#### ***Committee comment***

- 1.63** In its 2014 review, this committee commended the excellent work of the Workers' Compensation (Dust Diseases) Board and found that the board was exercising its statutory functions and corporate governance responsibilities in an exemplary manner.
- 1.64** The same can be said about the new Workers Compensation (Dust Diseases) Authority working through icare Dust Diseases Care. The evidence before the committee is that the

<sup>73</sup> Standing Committee on Law and Justice, *Review of the exercise of the functions of the Workers' Compensation (Dust Diseases) Board*, p 17.

<sup>74</sup> Correspondence from the Hon Dominic Perrottet MP, Minister for Finance and Services, to Clerk of the Parliaments, 6 May 2015.

<sup>75</sup> Answers to pre-hearing questions, Mr Bhatia, p 10.

<sup>76</sup> Answers to pre-hearing questions, Mr Bhatia, p 10.

<sup>77</sup> Answers to pre-hearing questions, Mr Bhatia, p 11.

organisational transition has been managed successfully, and that if anything, the services provided to scheme applicants and participants are more timely than they were previously.

- 1.65** We particularly commend Dust Diseases Care on significantly reducing claims processing times and on maintaining a culture of continuous improvement. The new customer service initiatives that have been rolled out or that are in the pipeline, particularly those aimed at simplifying the claims application and management process, will hopefully make the lives of the very ill participants in this scheme a little easier.
- 1.66** The committee acknowledges icare’s evidence identifying potential issues around introducing provisional liability for malignant claims. In the context of the significant reduction in claims processing times, we are of the view that there is no longer a strong case for such a change, at least for now.



## Chapter 2 Stakeholder proposals

During this review, stakeholders raised three key proposals to improve the operation and efficiency of the dust diseases scheme: expanding the compensable diseases covered by the *Workers' Compensation (Dust Diseases) Act 1942*, enhancing the role Dust Diseases Care has in education, prevention and record keeping, and providing better access to entitlements. This chapter examines those proposals.

### Compensable diseases

- 2.1** Section 3 of the *Worker's Compensation (Dust Diseases) Act 1942* specifies that a dust disease is 'any disease specified in Schedule 1, and includes any pathological condition of the lungs, pleura or peritoneum, that is caused by dust that may also cause a disease so specified.'<sup>78</sup> As mentioned in chapter 1, there are 14 dust diseases included in Schedule 1 of the Act.
- 2.2** Essentially, the Act provides that a worker may be eligible for compensation through the Dust Diseases scheme if they are debilitated by a Schedule 1 disease that has been caused by the person's exposure to dust inhalation in the course of their work.
- 2.3** A number of witnesses suggested that the prescriptiveness of the Act is dated and needed to be broadened. For example, the Thoracic Society of Australia and New Zealand pointed out that numerous dust-related diseases occurring in the modern workplace are not currently captured by the Act. In particular, there are a number of lung and respiratory diseases that are caused by inhalation of substances such as fumes, chemicals or gases, and vapours that are excluded.<sup>79</sup> These include:
- Occupational asthma including reactive airway dysfunction (RADS) and occupationally exacerbated asthma
  - Occupational lung cancers including those related to causes other than asbestos (e.g. silica, arsenic)
  - Dust-induced pulmonary fibrosis
  - Chronic obstructive pulmonary disease (COPD) related to dust, fume and mist exposure
  - Pneumonia related to occupational exposures.<sup>80</sup>
- 2.4** Maurice Blackburn Lawyers expressed concern that the legislation is neglecting workers who should be given access to the Dust Diseases scheme:
- Despite medical and legal consensus on the types of occupational dust diseases that tragically kill our fellow citizens every day, large numbers are excluded from the current scheme due to out of date definitions and poor design.<sup>81</sup>
- 2.5** The Bernie Banton Foundation submitted that eligibility for the scheme needed to be reviewed and contemporised:

<sup>78</sup> *Worker's Compensation (Dust Diseases) Act 1942*, s 3.

<sup>79</sup> Submission 4, The Thoracic Society of Australia and New Zealand, p 2.

<sup>80</sup> Submission 4, The Thoracic Society of Australia and New Zealand, p 2.

<sup>81</sup> Submission 2, Maurice Blackburn Lawyers, p 2.

The Dust Diseases Authority covers a wide and varied list of dust diseases contracted after being exposed to dust whilst working as an employee in New South Wales. However, the list of diseases covered, whilst tried and true, is ageing and no longer is necessarily reflective of modern day work places, situations, standards and workplace dust caused diseases.<sup>82</sup>

- 2.6** Dr Susan Miles, Respiratory and Sleep Physician, NSW Occupational and Environmental Lung Disease Special Interest Group, Thoracic Society of Australia and New Zealand, advocated for the list of compensable diseases to be amended to take into account current medical knowledge of diseases:

The Act was written with the medical knowledge at the time and what was important at the time. Medical science has advanced since then and things like occupational asthma are more important and recognised.<sup>83</sup>

- 2.7** Specifically, the Thoracic Society of Australia and New Zealand recommended the list be expanded to include occupational asthma, occupational chronic obstructive pulmonary disease, occupational lung cancers, dust-induced occupational pulmonary fibroses and occupational pneumonias.<sup>84</sup>

- 2.8** However, Ms Theodora Ahilas, National Practice Head, Asbestos and Dust Diseases Department, Maurice Blackburn Lawyers, cautioned against simply expanding the list by prescribing more diseases that could also eventually become outdated:

I would like it to be much wider to include the host of other diseases that are caused by dust. Saying that, there will always be something that falls outside it because as time passes more dust diseases are discovered. Pulmonary fibrosis was never deemed to be a dust disease but we are seeing that a lot more. Occupationally induced COPD is something that is live, but some people say that is tobacco induced. It is hard to broaden it completely or in full terms because someone will fall outside. If you have a catchall phrase and there is an interpretive value in that it could be broadened.<sup>85</sup>

- 2.9** Maurice Blackburn Lawyers suggested that the *Workers' Compensation (Dust Diseases) Act* definition of dust disease be amended to replicate the catchall definition in s 3 of the *Dust Diseases Tribunal Act 1989* which specifies that a dust related condition is 'a disease specified in Schedule 1, or any other pathological condition of the lungs, pleura or peritoneum that is attributable to dust.'<sup>86</sup>

- 2.10** The significant feature of the definition in the *Dust Diseases Tribunal Act* is that the condition does not have to be caused by dust.

---

<sup>82</sup> Submission 3, Bernie Banton Foundation, p 5.

<sup>83</sup> Evidence, Dr Susan Miles, Respiratory and Sleep Physician, NSW Occupational and Environmental Lung Disease Special Interest Group, The Thoracic Society of Australia and New Zealand, 28 June 2017, p 11.

<sup>84</sup> Submission 4, The Thoracic Society of Australia and New Zealand, p 5.

<sup>85</sup> Evidence, Ms Theodora Ahilas, National Practice Head, Asbestos and Dust Diseases Department, Maurice Blackburn Lawyers, 28 June 2017, p 24.

<sup>86</sup> Submission 2, Maurice Blackburn Lawyers, p 3.

**2.11** Ms Ahilas explained to the committee that she has encountered many clients who have missed out on the valuable entitlements of the Dust Disease scheme because of the prescriptiveness of the *Workers' Compensation (Dust Diseases) Act*.<sup>87</sup>

**2.12** During evidence, Ms Ahilas presented several examples where this occurred, including the following case of Mr F:

Mr F worked in a cardboard producing factory where dust was produced through the manufacturing process. So he had exposure to a dust in the course of his employment in New South Wales. Our expert evidence indicated that his dust exposure was causative of his pulmonary fibrosis—so he had a diagnosis of pulmonary fibrosis. The problem was that there was no schedule 1 disease that deals with this particular exposure scenario. Further, none of the other diseases which appear in the schedule are caused by dust exposure through cardboard dust and, accordingly, he was locked out of obtaining benefits through the DDA and, in turn, he was locked out of the paying benefits through the Dust Diseases Tribunal.<sup>88</sup>

**2.13** Mr David Andersen, Partner, HWL Ebsworth, appearing for the Law Society of New South Wales noted that it was the prerogative of the government to change the legislation. However, he cautioned that broadening s 3 of the *Workers' Compensation (Dust Diseases) Act* to mirror the broader definition of dust related condition prescribed by the *Dust Diseases Tribunal Act* could have the unintended consequence of expanding common law liability for claims that can be made under section 15B of the *Civil Liability Act 2002*, which provides for damages to be awarded for loss of capacity to provide domestic services to dependents. Mr Anderson told the committee:

... you should be aware that if you change the definition of dust disease so as to expand the range of diseases that would attract compensation under the 1942 Act, it could well have the consequence that there will be expanded liability for common law claims, particularly, as I said, section 15B of the Civil Liability Act.<sup>89</sup>

**2.14** This is because those workers not covered by the *Workers' Compensation (Dust Diseases) Act*, and who therefore make a claim under the *Workers' Compensation Act 1987*, thereby forego their right to pursue common law claims, including those provided under s 15B of the *Civil Liability Act*. By contrast, and as noted in chapter 1, workers entitled to compensation under the *Workers' Compensation (Dust Diseases) Act* retain their common law rights in relation to loss of capacity to provide domestic services.

**2.15** Mr Andersen explained the circumstances under which these claims can be made and noted that the amounts awarded can be significant:

It is quite common in asbestos claims when the plaintiff is elderly and you have got the classic case of the husband with mesothelioma and a wife with arthritis and other medical condition. Because he can no longer look after her that is to be compensated at commercial rates. That can become quite a large head of damage in those cases and if they are looking after grandchildren. ... It could give rise to quite a large head of

<sup>87</sup> Evidence, Ms Ahilas, 28 June 2017, p 20.

<sup>88</sup> Evidence, Ms Ahilas, 28 June 2017, p 20.

<sup>89</sup> Evidence, Mr David Andersen, Partner, HWL Ebsworth, appearing for the Law Society of New South Wales, 28 June 2017, p 2.

damage if common law proceedings are taken pursuant to an expanded definition of dust diseases.<sup>90</sup>

**2.16** Mr Andersen did not think that the full cost implications of additional section 15B claims had been considered.<sup>91</sup>

**2.17** In addition, the liability of Dust Diseases Care could increase significantly. The cost of care for an expanded cohort of eligible scheme participants and their spouses would need to be factored in. Accurate costing predictions would be complicated by the fact that different diseases will have different treatment costs and prognoses. Dr Anthony Johnson, Respiratory and Sleep Physician, NSW Occupational and Environmental Lung Disease Special Interest Group, Thoracic Society of Australia and New Zealand, noted:

There would be differences because mesothelioma has a median survival of nine months, so your treatment costs are, on average, for nine months. Whereas a person with occupational asthma will not necessarily have a reduced life expectancy. Your treatment costs may be for the rest of their lives. The same with COPD and pulmonary fibrosis. The prognosis is different. Obviously with a fatal illness the treatment costs are going to be more per day but over the period of time it may well be more.<sup>92</sup>

**2.18** However, Mr Rod Smith, Awareness and Support Coordinator, Bernie Banton Foundation commented that expanding the list of compensable diseases would not necessarily result in a significant cost blow out for Dust Diseases Care as some diseases require very minimal treatment and care services:

If I might add a couple of points about the funding. Something that has not been mentioned is that mesothelioma, for example, can be an extremely expensive disease to fund as far as treatment goes. Asbestosis, possibly not, if you take Bernie Banton's eldest brother. He has now lived for 40-odd years. He essentially has no treatment. He has only 30 to 40 per cent lung capacity. He does not have oxygen. His cost to the Dust Diseases Care would be very minimal. Adding diseases on is not necessarily saying it is going to cost a heck of a lot more. It all depends on each person.<sup>93</sup>

**2.19** Mr Chris Koutoulas, General Manager, Dust Diseases Care, icare pointed out that any legislative change would require considerable investigation and research to gauge the financial impact of broadening the scheme to include other diseases. Data including prevalence, exposure rates, incidence, workplace patterns, and latency periods for each disease would need to be researched and studied.<sup>94</sup>

---

<sup>90</sup> Evidence, Mr Andersen, 28 June 2017, p 5.

<sup>91</sup> Evidence, Mr Andersen, 28 June 2017, p 5.

<sup>92</sup> Evidence, Dr Anthony Johnson, Respiratory and Sleep Physician, NSW Occupational and Environmental Lung Disease Special Interest Group, The Thoracic Society of Australia and New Zealand, 28 June 2017, pp 12-13.

<sup>93</sup> Evidence, Mr Rod Smith, Awareness and Support Coordinator, Bernie Banton Foundation, 28 June 2017, p 15.

<sup>94</sup> Evidence, Mr Chris Koutoulas, General Manager, Dust Diseases Care, icare, 2 June 2017, p 49.

- 2.20** Mr Koutoulas noted that workers who are unable to claim under the Dust Diseases scheme are able to receive statutory benefits under the New South Wales workers compensation scheme:

From the perspective of other types of diseases that might not be covered, the workers compensation legislation does generally allow other diseases of gradual onset to be covered under that legislation, so I guess the dust diseases has its mandated schedule of diseases, but there is availability of support under workers compensation generally.<sup>95</sup>

***Committee comment***

- 2.21** The committee acknowledges that there have been significant changes in medical science since the *Workers' Compensation (Dust Diseases) Act* was drafted. The causes of dust and other respiratory diseases have broadened and are more readily identified. In addition, respiratory diseases are increasingly diagnosed that have causative agents other than dust, while other diseases are being linked to dust exposure where the connection may have been previously unknown.

**Disease prevention and education**

- 2.22** As mentioned in chapter 1, Dust Diseases Care undertakes and funds research to help identify dust diseases and prevent occupational lung disease.<sup>96</sup> During evidence, Mr Koutoulas from icare advised that Dust Diseases Care is involved in several joint research projects:

Usually we are jointly involved in quite a lot of research projects and so forth. A good example is our heads of asbestos co-ordinating authorities, we are a member. We work with a lot of the other regulatory agencies, including local government, SafeWork and we have joint programs.<sup>97</sup>

- 2.23** Mr Koutoulas noted that Dust Diseases Care maintains data for the diseases listed in Schedule 1 of the *Workers' Compensation (Dust Diseases) Act*, including incident rates, exposures, industries and employers. This information is available to other organisations for research purposes.<sup>98</sup>

- 2.24** Dust Diseases Care also funds a variety of research projects through its research grants program. Grants are allocated for:

... discovery, and translational research, and clinical trial infrastructure support into the causes, mechanisms, diagnosis, treatment and prevention of dust diseases to reduce the risk of people developing a dust disease and optimise health and care outcomes for people with a dust disease and their families.<sup>99</sup>

<sup>95</sup> Evidence, Mr Koutoulas, 2 June 2017, p 49.

<sup>96</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 65.

<sup>97</sup> Evidence, Mr Koutoulas, 2 June 2017, p 51.

<sup>98</sup> Evidence, Mr Koutoulas, 2 June 2017, p 51.

<sup>99</sup> Answers to pre-hearing questions, Mr Vivek Bhatia, Chief Executive Officer, icare, 19 May 2017, p 2.

**2.25** As noted in chapter 1, icare also provides free medical screening examinations for workers and retired workers with a history of exposure to occupational dusts.

**2.26** There was a perception, however, that government bodies could take a greater role in preventing diseases by notifying and educating industry, the medical profession, employers and workers, particularly in regard to emerging diseases or increasing incidences of existing diseases.

**2.27** For example, the Thoracic Society of Australia and New Zealand submitted that the Dust Diseases Authority does not act to prevent disease:

The Dust Diseases Authority deals with compensation. It does not contribute to the prevention of dust diseases, nor feedback its findings into existing prevention processes. The TSANZ SIG is concerned that this results in a missed opportunity for prevention. The TSANZ SIG recommends that the scope of operations of the Dust Diseases Authority be expanded to include improving efforts to prevent dust related diseases.<sup>100</sup>

**2.28** icare contended that it does consult with workers and employers to provide up to date information about occupational diseases and prevention:

icare directly engages with workers to provide them with the latest information about dust diseases and the importance of preventing workplace exposures to dusts such as silica and asbestos, as well as providing this information to employers operating in ‘at risk’ industries.<sup>101</sup>

**2.29** In regard to an emerging occurrence of silicosis, Dr Miles advised that she was aware of an increasing number of cases across the manufactured stone industry:

Recently there have been several cases of silicosis diagnosed in New South Wales from the engineered stone products industry—that is, the manufacture of Caesarstone—which have arisen despite existing legislation. One of these patients is currently awaiting a lung transplant.<sup>102</sup>

**2.30** Dr Johnson explained that Caesarstone is used in the manufacture of benchtops, predominately in small scale operations where dust suppression is non-existent or inadequate.<sup>103</sup> Dr Johnson was concerned that no government agency was taking responsibility to prevent further incidences:

So far as the manufactured stone products, we have notified those cases to WorkCover and I understand WorkCover was planning to inspect some of these sites. That is as far as we have got. I do not think anybody is watching them ....<sup>104</sup>

---

<sup>100</sup> Submission 4, The Thoracic Society of Australia and New Zealand, p 4.

<sup>101</sup> Answers to additional supplementary questions, Mr Vivek Bhatia, Chief Executive Officer, icare, 21 July 2017, p 2.

<sup>102</sup> Evidence, Dr Miles, 28 June 2017, p 9.

<sup>103</sup> Evidence, Dr Johnson, 28 June 2017, p 13.

<sup>104</sup> Evidence, Dr Johnson, 28 June 2017, p 14.

- 2.31** SafeWork NSW replaced WorkCover as the agency responsible for managing health and safety issues in New South Wales.<sup>105</sup> This responsibility extends to managing exposure risks and the prevention of dust diseases. icare provides assistance to SafeWork NSW where possible.<sup>106</sup>
- 2.32** Employers are mandatorily responsible for reporting incidences of occupational disease to SafeWork NSW:
- Under work health and safety legislation, employers are required to notify SafeWork NSW if the report indicates that a worker has contracted an illness, disease or injury as a result of their employment, and/or the report includes recommendations for the employer to undertake remedial measures in the workplace.<sup>107</sup>
- 2.33** In responding to the increasing incidence of silicosis, icare advised that it is aware of the issue<sup>108</sup> and that Dust Diseases Care is working with SafeWork NSW on the Respirable Crystalline Initiative which will involve workplace monitoring of employers using artificial stone.<sup>109</sup>
- 2.34** Dr Miles stressed the importance of early notification of occupational diseases in treating the illness:
- We think they are being underdiagnosed. Often they begin to develop before you are symptomatic. Generally the symptoms of an occupational lung disease are cough, breathlessness and wheeze. That will then come to the attention of a doctor but it may be misdiagnosed as an airways disease or something. That is the difficulty. Also if you can reduce the exposure early you may truncate the illness or slow down the progression of the illness. That is the other reason to try to diagnose early.<sup>110</sup>
- 2.35** In addition, Dr Miles noted that it was important that doctors receive adequate training to enable them to diagnose these diseases earlier.
- 2.36** icare stated that it would welcome the opportunity to work with the Thoracic Society and other professional organisations to develop education and tools for physician that would enhance early awareness and early notifications.<sup>111</sup>

***Committee comment***

- 2.37** The return of any occupational disease is deeply troubling and the fact that silicosis is occurring to such a degree in our society is evidence of a significant failure in our work health safety regime. There clearly is a need for a review of what has gone wrong, whether at a workplace level or at a state regulatory level, that has caused this disease to return. The fact

---

<sup>105</sup> Department of Finance, Service and Innovation, WorkCover has changed, <https://www.workcover.nsw.gov.au/>.

<sup>106</sup> Answers to additional supplementary questions on notice, Mr Bhatia, p 1.

<sup>107</sup> Answers to additional supplementary questions on notice, Mr Bhatia, p 2.

<sup>108</sup> Answers to supplementary questions on notice, Mr Bhatia, p 2.

<sup>109</sup> Answers to pre-hearing questions, Mr Bhatia, p 15.

<sup>110</sup> Evidence, Dr Miles, 28 June 2017, p 14.

<sup>111</sup> Answers to supplementary questions, Mr Bhatia, p 2.

that at this stage it appears to be limited to the manufactured stone industry suggests that if addressed rapidly lives can be saved and failings can be remedied to protect other parts of the workforce.

---

**Recommendation 1**

That the relevant Minister urgently convene a taskforce of industry, regulatory and workforce representatives to review safety standards in the manufactured stone industry and consider regulatory changes necessary to protect workers in the industry.

---

- 2.38** While the committee notes that SafeWork NSW is primarily responsible for responding to workplace health and safety notifications, it believes there is an opportunity for icare, and Dust Diseases Care as the expert, to take a more active and responsive role in promoting incidences of dust disease and providing advice to industry on management and prevention of occurrences.
- 2.39** The committee encourages icare to work with SafeWork NSW and the medical fraternity to improve processes relating to the prevention, notification and early intervention for occupational dust diseases. The committee particularly encourages icare and Dust Diseases Care to consult with the NSW Occupational and Environmental Lung Disease Special Interest Group, Thoracic Society of Australia and New Zealand to progress options.

**Reporting of dust diseases and keeping statistics**

- 2.40** The Thoracic Society of Australia and New Zealand recommended that a data collection scheme, similar to the Surveillance of Australian Workplace Based Respiratory Events (SABRE) program, be developed and administered by Dust Diseases Care.<sup>112</sup>
- 2.41** The former Dust Diseases Board administered the SABRE program from 2001 to 2008. SABRE was a voluntary notification scheme established to record the incidence of occupational lung disease.<sup>113</sup>
- 2.42** According to icare, the SABRE program was discontinued as a result of its inherent flaws:
- ...SABRE was a voluntary notification scheme whose performance was hindered by external dependencies and factors including low participation, under diagnosis and under reporting, resulting in incidence rates of new diagnoses being underestimated. It was as a result of these factors that the former Dust Diseases Board determined to suspend the SABRE program.<sup>114</sup>
- 2.43** Dr Miles stated that a new data collection model could include mandatory reporting processes which would improve participation rates and data capture, solving some of the issues with the SABRE scheme:

---

<sup>112</sup> Submission 4, The Thoracic Society of Australia and New Zealand, p 4.

<sup>113</sup> Answers to additional supplementary questions on notice, Mr Bhatia, p 3.

<sup>114</sup> Answers to additional supplementary questions on notice, Mr Bhatia, p 3.

If it is enforced by law it will be done. It is unlike the Surveillance of Australian Workplace Based Respiratory Events [SABRE] scheme where people had voluntary reporting. That, therefore, significantly underestimated the incidence of disease.<sup>115</sup>

**2.44** Dr Miles suggested that the medical profession would be ideally placed to report notifications of disease, and the respiratory specialist that diagnoses the condition would be the logical choice of practitioner.<sup>116</sup>

**2.45** Mr Smith noted that the Australian Mesothelioma Registry, run by the Federal Government, is working effectively and could be used as a prototype for a new reporting scheme for dust diseases:

... it could be used as a model. It is starting to work quite effectively. It is taking some time, but it is a model that could be used and it at least gives us fairly reliable data now on how many cases there are. For example, we know in 2015, with the adjusted figures, there were 212 mesothelioma cases in New South Wales.<sup>117</sup>

**2.46** Dr Miles submitted that the reporting system for infectious diseases was another exemplar of a successful mandatory reporting scheme.<sup>118</sup>

**2.47** icare noted that while there currently is no mandatory reporting requirement, physicians are strongly encouraged to report occupational dust diseases to Dust Diseases Care:

Physicians diagnosing possible cases of silicosis attributed to workplace exposures, including those stemming from exposures to engineered stone, are encouraged to notify and refer their patients to icare to help promote awareness and timely access to any potential care and support available under the Dust Diseases Scheme.<sup>119</sup>

**2.48** As noted previously, Dust Diseases Care does maintain data from the applications it receives for workers compensation as a result of dust exposure in a New South Wales workplace. The data is primarily used for actuarial purposes and for service improvements to the Dust Diseases scheme. icare has also shared the data with other relevant bodies including: SafeWork NSW, the Heads of Asbestos Co-ordinating Authority (HACA), SafeWork Australia, SIRA, the Centre of International Economics, and the NSW Mine Safety Advisory Council.<sup>120</sup>

**2.49** icare believes there is merit in establishing a national data collection system but noted it would need commitment from all of those involved to maintain its relevancy:

icare supports the idea of a national data collection system for occupational lung diseases, although notes the establishment of such a system would take extensive collaboration, co-operation and effort between industry, academia, government and other special interest groups across Australia to ensure the usefulness and ongoing commitment to, and validity of, the project.<sup>121</sup>

<sup>115</sup> Evidence, Dr Miles, 28 June 2017, p 14.

<sup>116</sup> Evidence, Dr Miles, 28 June 2017, p 14.

<sup>117</sup> Evidence, Mr Smith, 28 June 2017, p 15.

<sup>118</sup> Evidence, Dr Miles, 28 June 2017, p 10.

<sup>119</sup> Answers to additional supplementary questions on notice, Mr Bhatia, p 3.

<sup>120</sup> Answers to pre-hearing questions on notice, Mr Bhatia, p 16.

<sup>121</sup> Answers to pre-hearing questions, Mr Bhatia, p 16.

**2.50** icare said that it would consider contributing funds to establish a national data system:

icare would consider co-funding a national data system which would entail data collection on diseases caused by occupational agents, including those other than dusts, along with other government authorities and industry organisations that will benefit from contributing to and accessing the data available from the system.<sup>122</sup>

***Committee comment***

**2.51** A national register for gathering data on the incidence of dust disease would provide a variety of benefits, including information sharing and contributing to disease prevention, planning, research and education. The information could also be used to identify trends across industry, occupations, locations and age groupings, allowing for resources to be directed where needed.

**2.52** The committee is encouraged by icare's interest in establishing and co-funding a national system, but acknowledge that it would need commitment from key stakeholders across the country. The committee recommends that icare commence consultations with these stakeholders to examine the feasibility of establishing such a system.

---

**Recommendation 2**

That icare consult with stakeholders to examine the feasibility of establishing a national dust diseases data collection system.

---

## **Improving access to entitlements**

**2.53** During this review, it was suggested that Dust Diseases Care could enhance its promotion of the scheme and provide a more accessible application process. In addition, suggestions were made to provide an independent appeals process.

### **Compensation backdated to date of diagnosis**

**2.54** Dust Diseases Care provides weekly compensation benefits to Dust Diseases scheme participants diagnosed with a malignant disease from the date of diagnosis. For those scheme participants diagnosed with a non-malignant disease, compensation is payable from the date an application is received. icare advised the compensable dates differ because for malignant diseases it is 'medically easier to determine the date that the disability attributed to the dust disease commenced'.<sup>123</sup>

**2.55** Maurice Blackburn Lawyers pointed out that this practice seems unfair given that many claimants are not in a position to submit their application as soon as they are diagnosed, meaning they are missing out on benefits:

---

<sup>122</sup> Answers to additional supplementary questions, Mr Bhatia, p 4.

<sup>123</sup> Answers to pre-hearing questions, Mr Bhatia, p 12.

In our experience, claimants and their dependants confront significant physical and emotional hardship which hinders their submission of an application for workers' compensation benefits under the scheme. This typically manifests in an application for benefits under the scheme and supporting documents not being submitted with urgency or within the lifetime of the claimant.<sup>124</sup>

- 2.56** In addition, the person may not know initially that they are entitled to benefits under the Dust Diseases scheme. In the interests of fairness, Maurice Blackburn Lawyers recommended that compensation be payable from the date of diagnosis for both malignant and non-malignant claims.<sup>125</sup>
- 2.57** Maurice Blackburn Lawyers also suggested that Dust Diseases Care produce a fact sheet on the Dust Diseases scheme that emphasises the importance of submitting an application in order to access entitlements as early as possible.<sup>126</sup>
- 2.58** icare responded that Dust Diseases Care does consider an earlier date for reimbursement of medical expenses where evidence is provided to demonstrate that the expenses incurred relate to the dust disease'.<sup>127</sup>
- 2.59** As noted in chapter 1, Dust Diseases Care is currently updating and reissuing its brochures and fact sheets that provide information to potential clients and scheme participants about entitlements and services, and is undertaking a range of projects and initiatives to promote awareness of the scheme.

### *Committee comment*

- 2.60** The committee acknowledges that the application process may be delayed until claimants have the capacity and/or knowledge of the scheme to complete it. The committee agrees that information provided on Dust Diseases Care should emphasise the importance of applying to the scheme as early as possible. In the current review of its brochures and fact sheets for Dust Diseases Care, icare should ensure information is included on the importance of lodging an application quickly and the nexus between receipt of application and payment of benefits.

---

### **Recommendation 3**

That Dust Diseases Care ensure that its fact sheets and brochures emphasise the importance of lodging a Dust Diseases scheme application quickly, and explain the nexus between receipt of application and payment of benefits.

---

### **Electronic filing**

- 2.61** Applications to the Dust Diseases scheme are made by completing the scheme's application form and forwarding it to Dust Diseases Care along with a doctor's report stating that the

---

<sup>124</sup> Submission 2, Maurice Blackburn Lawyers, p 6.

<sup>125</sup> Submission 2, Maurice Blackburn Lawyers, p 6.

<sup>126</sup> Submission 2, Maurice Blackburn Lawyers, p 6.

<sup>127</sup> Answers to pre-hearing questions, Mr Bhatia, p 16.

applicant has a compensable dust disease. In addition, it must include proof of identity documents for the claimant and dependents and any substantiating medical information, such as x-rays and test results. The application must be received by Dust Diseases Care while the applicant is alive.<sup>128</sup>

**2.62** Many potential claimants are not diagnosed until they are close to death and in poor condition, leaving very little time to complete and lodge the form.

**2.63** Ms Ahilas from Maurice Blackburn Lawyers noted that the Dust Diseases Tribunal caters for these last minute lodgements by accepting applications electronically at any time of day, however the Dust Diseases Authority does not. Ms Ahilas illustrated the benefits of having this 24/7 accessibility when there is a need to lodge a claim over a weekend or on a public holiday by giving the following example:

It was Saturday afternoon on the last October long weekend that I got a phone call from a respiratory specialist in Darwin to tell me he had a client with mesothelioma, who was just diagnosed, who had, at best, a couple of days to live, and could I get to Darwin to take instructions to start a common law claim for him, which I did.

I got to Darwin and took instructions from this gentleman, who was lucid and was able to provide instructions. He had exposure in the course of his employment in New South Wales in an occupational sense. He had Dust Diseases Tribunal entitlements and Dust Diseases Authority entitlements. I was trying very hard to get a common law statement of claim filed in the Dust Diseases Tribunal to protect his entitlements, because general damages die if you do not start in the plaintiff's lifetime. I was able to file a statement of claim that evening at 9.00 p.m. because the Dust Diseases Tribunal stays open 24/7. It is deemed that you have filed your statement of claim when you have lodged it electronically. He also had Dust Diseases Board entitlements and it was a long-weekend. I was thinking how am I going to get this man's entitlements filed in time before he dies? He was literally at death's door.

I had to ring the general manager of the Dust Diseases Authority to talk to him about it on a Saturday night and ask him to give me an undertaking that this claim was to be filed on Saturday although I could not physically file the claim until Tuesday morning.<sup>129</sup>

**2.64** Ms Ahilas noted that the arrangement she made with the general manager was only possible because she knew him, and that other applicants would not have this access which is why there needs to be an application process that allows for 24/7 lodgement and receipt.<sup>130</sup>

**2.65** As noted in chapter 1, icare recently introduced a new service which allows applications to be made over the phone and is also planning to introduce an online portal for applications:

In future, icare intends that the new application form will be supported by an online portal facility to facilitate easier and timely lodgement and receipt directly from the applicant and/or their nominated representative.<sup>131</sup>

<sup>128</sup> Workers' Compensation Dust Diseases Board, *Making a claim*, <https://www.ddc.nsw.gov.au/making-a-claim/how-to-apply>.

<sup>129</sup> Evidence, Ms Ahilas, 28 June 2017, p 22.

<sup>130</sup> Evidence, Ms Ahilas, 28 June 2017, p 22.

<sup>131</sup> Answers to pre-hearing questions, Mr Bhatia, p 9.

*Committee comment*

- 2.66** The committee commends the work icare is undertaking to improve the Dust Diseases scheme application process to make it more accessible. However, Ms Ahilas has highlighted a flaw in the application process that can have serious repercussions for a claimant's entitlements, and the entitlements for family members. The committee urges icare to expedite the development of an online application process. The committee recommends that the portal provide for 24 hour electronic lodgement and receipt, similar to that provided by the Dust Diseases Tribunal.

**Recommendation 4**

That icare expedite the development of an online application process for the Dust Diseases scheme that provides for 24 hour electronic lodgement and receipt, similar to that provided by the Dust Diseases Tribunal.

**Medical Appeals Tribunal**

- 2.67** Applications to the Dust Diseases scheme are assessed by an independent Medical Assessment Panel, comprised of a Chair and Deputy Chair, and two senior respiratory physicians selected by employer and employee groups.<sup>132</sup>
- 2.68** Although not legislatively required, Dust Diseases Care provides an internal review if an applicant disagrees with the decision of the Medical Assessment Panel. Another panel will be established to consider the review. Following this the decision is final. The applicant can however lodge an appeal within six months of a decision to the District Court of New South Wales.<sup>133</sup>
- 2.69** Appeals to the District Court require the claimant to pay the costs of all parties if they are unsuccessful. Ms Ahilas explained the financial implications for an applicant who loses:
- The point of making an appeal to the District Court is that it is a costs-based jurisdiction, so if you lose the appeal then you bear the onus of paying the costs for the DDA, which could be hundreds of thousands of dollars.<sup>134</sup>
- 2.70** Ms Ahilas added that many deserving claims are not pursued because the individuals simply do not have the financial resources:
- People who are in this position do not have the funds to do that, and where a case is perhaps a 50/50 per cent chance of being successful they may decide against it, where they may have a very good claim.<sup>135</sup>

<sup>132</sup> Answers to pre-hearing questions, Mr Bhatia, p 10.

<sup>133</sup> Answers to pre-hearing questions, Mr Bhatia, p 10.

<sup>134</sup> Evidence, Ms Ahilas, 28 June 2017, p 21.

<sup>135</sup> Evidence, Ms Ahilas, 28 June 2017, p 22.

- 2.71** The Thoracic Society of Australia and New Zealand submitted that an independent medical appeals tribunal should be established:

We also note that there is no formal medical appeal process for decision making. This can result in legal action with associated long delays and entailing considerable cost, producing significant distress for applicants. Where a difference of opinion has arisen on a medical matter, this would be best resolved by a medical appeal process involving independent medical experts.

... the DDA should give consideration to the establishment of a Medical Appeal Tribunal, where medical decisions can be resolved rapidly and without an adversarial process, and according to up to date established medical evidence.<sup>136</sup>

- 2.72** The Thoracic Society noted that this would provide for a faster and less adversarial resolution process than that afforded through the District Court.<sup>137</sup>

- 2.73** Five district court appeals were lodged in relation to Medical Assessment Panel decisions in 2015-16.<sup>138</sup>

***Committee comment***

- 2.74** The committee notes that icare, while not legislatively required, does provide an independent review process at no cost to the individual. Appeals beyond that, however, must go through the District Court, and we acknowledge the concerns raised by stakeholders regarding the cost and length of this appeals process. The committee therefore encourages the NSW Government to consider the establishment of a statutory internal appeals panel.

---

**Recommendation 5**

That the NSW Government consider establishing a statutory internal appeals panel to provide an affordable and independent avenue to review decisions about Dust Diseases scheme eligibility.

---

---

<sup>136</sup> Submission 4, The Thoracic Society of Australia and New Zealand, p 4.

<sup>137</sup> Submission 4, The Thoracic Society of Australia and New Zealand, p 4.

<sup>138</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 65.

## Appendix 1 Submissions

No	Author
1	Carers NSW
2	Maurice Blackburn Lawyers
3	Bernie Banton Foundation
4	The Thoracic Society of Australia and New Zealand
5	Safe Work Australia
6	Law Society of NSW

## Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
<b>Friday 2 June 2017</b>		
<b>Jubilee Room, Parliament House, Sydney</b>	Mr Andrew Stone SC	Member, Common Law Committee, NSW Bar Association
	Ms Genevieve Henderson	Solicitor, State Practice Group, Slater and Gordon appearing for Australian Lawyers Alliance
	Ms Danielle Bennett	President, Attendant Care Industry Association
	Ms Natasha Cebalo	General Manager, Attendant Care Industry Association
	Ms Barbara Merran	Advisor, Attendant Care Industry Association Board
	Mr Matthew Kayrooz	Head of Accident and Trauma, Personal Insurance Portfolio and Products, Suncorp
	Dr Adeline Hodgkinson	Co-Chair, Brain Injury Rehabilitation Directorate, NSW Agency for Clinical Innovation
	Ms Rachel Morris	Case Manager, Hunter Brain Injury Service
	Mr Vivek Bhatia	Chief Executive Officer, icare
	Dr Nick Allsop	Chief Actuary, icare
Mr Don Ferguson	Group Executive, Integrated Care, icare	
Mr Chris Koutoulas	General Manager Operations, Care, icare	
<b>Wednesday 28 June 2017</b>		
<b>Macquarie Room, Parliament House, Sydney</b>	Mr David Andersen	Partner, HWL Ebsworth, appearing for the Law Society of NSW
	Mr Tim Concannon	Partner, Carroll & O'Dea, appearing for the Law Society of NSW
	Dr Susan Miles, FRACP	Respiratory and Sleep Physician, NSW Occupational and Environmental Lung Disease Special Interest Group, Thoracic Society of Australia and New Zealand
	Dr Anthony Johnson, FRACP	Respiratory and Sleep Physician, NSW Occupation and Environmental Lung Diseases Special Interest Group, Thoracic

---

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
		Society of Australia and New Zealand
	Mr Rod Smith	Awareness and Support Coordinator, Bernie Banton Foundation
	Ms Theodora Ahilas	National Practice Head, Asbestos and Dust Diseases Department, Maurice Blackburn Lawyers
	Mr Andrew Nicholls	Executive Director, SIRA Motor Accidents Insurance Regulation, SIRA
	Mr Cameron Player	Executive Director, SIRA Dispute Resolution Services, SIRA
	Mr David Bowen	Chief Executive Officer, National Disability Insurance Agency

---

## Appendix 3 Minutes

### 1. Minutes no. 18

Friday 2 June 2017

Standing Committee on Law and Justice

Jubilee Room, Parliament House, Sydney 9.02 am

### 2. Members present

Mr Mallard, *Chair*

Ms Voltz, *Deputy Chair* (from 9.10 am until 11.49 am)

Mr Clarke (from 9.16 am)

Mr Khan (until 1.36 pm)

Mr Mookhey

Mr Shoebridge

### 3. Previous minutes

Resolved, on the motion of Mr Mookhey: That draft minutes no. 17 be confirmed.

### 4. Correspondence

The committee noted the following items of correspondence:

#### ***Received:***

- 14 March 2017 – Email from the Office of the President and Chief Executive Officer, Australian Medical Association (NSW) Limited, advising that they will not submit to the review in this instance
- 18 April 2017 – Email from Ms Carmelina De Lorenzo-Crowe, A/Executive Support Manager, Strategy, Planning and Communications, Agency for Clinical Innovation to secretariat, advising that the Agency for Clinical Innovation will not be making a submission to the inquiry
- 17 May 2017 – Letter from Hon Dominic Perrottet MP, Treasurer and Minister for Industrial Relations to Chair, advising of Insurance & Care NSW (icare) witnesses
- 19 May 2017 – Letter from Hon Victor Dominello MP, Minister for Finance, Services and Property to Chair, nominating SIRA witnesses and attaching answers to pre-hearing questions on notice for SIRA
- 19 May 2017 – Letter from Mr Vivek Bhatia, Chief Executive Officer, icare to secretariat, attaching answers to pre-hearing questions on notice for icare
- 26 May 2017 – Email from Ms Sarah Phillips, Acting General Manager Consumer Relations & Market Development, Insurance Council of Australia to secretariat, advising that the Insurance Council of Australia is unable to attend the hearing
- 26 May 2017 – Letter from Mr Greg Chalik to secretariat, regarding alleged failings by the NSW Civil and Administrative Tribunal and calling for an inquiry into NCAT operations, culture and practices.

#### ***Sent:***

- 28 April 2017 – Letter from Chair to Hon Victor Dominello MP, Minister for Finance, Services and Property, attaching pre-hearing questions on notice for SIRA
- 28 April 2017 – Letter from Chair to Hon Dominic Perrottet MP, Treasurer and Minister for Industrial Relations, attaching pre-hearing questions on notice for icare.

### 5. First review of the Dust Diseases and Lifetime Care and Support schemes

#### 5.1 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Andrew Stone SC, Member, Common Law Committee NSW Bar Association
- Ms Genevieve Henderson, Member, Australian Lawyers Alliance.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Danielle Bennett, President, Attendant Care Industry Association
- Ns Natasha Cebalo, General Manager, Attendant Care Industry Association
- Ms Barbara Merran, Advisor, Attendant Care Industry Association Board.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Matthew Kayrooz, Head of Accident and Trauma, Personal Insurance Portfolio and Products, Suncorp.

Mr Kayrooz tendered the following documents:

- Suncorp Group, 'Insurance insights: The mechanics of motor injury schemes: Design considerations for personal injury insurance schemes for motorists', October 2013
- Suncorp Group, 'Insurance insights: Beyond fault: Progressing to universal no-fault insurance for catastrophic motor injuries', June 2014.

The evidence concluded and the witness withdrew.

Ms Voltz left the meeting at 11.49 am.

The following witnesses were sworn and examined:

- Dr Adeline Hodgkinson, Co-Chair, Brain Injury Rehabilitation Directorate, NSW Agency for Clinical Innovation
- Ms Rachel Morris, Case Manager, Hunter Brain Injury Service.

Ms Morris tendered the following document:

- Letter from Synapse to icare regarding eligibility of Lifetime Care participants and the NDIS, 28 March 2017.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Vivek Bhatia, Chief Executive Officer, icare
- Dr Nick Allsop, Chief Actuary, icare
- Mr Don Ferguson, Group Executive, Care, icare
- Mr Chris Koutoulas, General Manager Operations, Care, icare.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

The public hearing concluded at 1.35 pm.

Mr Khan left the meeting at 1.36 pm.

## 5.2 Tendered documents

Resolved, on the motion of Mr Shoebridge: That the committee accept and publish the following documents tendered during the public hearing:

- Suncorp Group, 'Insurance insights: The mechanics of motor injury schemes: Design considerations for personal injury insurance schemes for motorists', October 2013, tendered by Mr Kayrooz
- Suncorp Group, 'Insurance insights: Beyond fault: Progressing to universal no-fault insurance for catastrophic motor injuries', June 2014, tendered by Mr Kayrooz
- Letter from Synapse to icare regarding eligibility of Lifetime Care participants and the NDIS, 28 March 2017, tendered by Ms Morris.

## 5.3 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: Dust Diseases scheme submissions 1-6, and Lifetime Care and Support scheme submissions 1- 5 and 7-10.

Resolved, on the motion of Mr Mookhey: That the committee authorise the publication of submission no. 11 to the Lifetime Care and Support scheme.

#### **5.4 Partially confidential submission**

Resolved, on the motion of Mr Shoebridge: That the committee keep names and/or identifying and sensitive information confidential, as per the request of the author in Lifetime Care and Support scheme submission no. 6.

#### **5.5 Answers to pre-hearing questions on notice**

The committee noted that the following answers to pre-hearing questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice by SIRA, received from Hon Victor Dominello MP, Minister for Finance, Services and Property, 19 May 2017
- answers to questions on notice by icare, received from Mr Vivek Bhatia, Chief Executive Officer, icare, 19 May 2017.

#### **5.6 Additional witness**

Resolved, on the motion of Mr Mookhey: That the committee invite a representative from the National Disability Insurance Agency to appear as a witness for 1 hour at the next hearing on 28 June 2017.

#### **5.7 Redaction of sensitive information**

Resolved, on the motion of Mookhey: That the committee redact the name of a Lifetime Care and Support scheme participant identified in the evidence given by Mr Vivek Bhatia.

### **6. Adjournment**

The committee adjourned at 1.41 pm, until Wednesday 28 June 2017 (public hearing, first review of the dust diseases and lifetime care and support schemes).

Sharon Ohnesorge  
**Clerk to the Committee**

#### **Minutes no. 19**

Wednesday 28 June 2017

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney 9.00 am

#### **1. Members present**

Mr Mallard, *Chair*

Ms Voltz, *Deputy Chair*

Mr Clarke

Mr Khan

Mr Mookhey (*from 9.19 am*)

Mr Shoebridge

#### **2. Previous minutes**

Resolved, on the motion of Mr Clarke: That draft minutes no. 18 be confirmed.

#### **3. Correspondence**

The committee noted the following items of correspondence:

**Received:**

- 22 May 2017 – Email from Carmel Donnelly, Acting Chief Executive, State Insurance Regulatory Authority, advising that she is unable to appear as a witness at the hearing on 28 June 2017

**Sent:**

- 7 June 2017 – Email from secretariat to Mr Mike Sprange, Chair, Intellectual Disability Rights Service, inviting him to make a submission to the First Review of the Dust Diseases and Lifetime Care and Support schemes.

**4. First review of the Dust Diseases and Lifetime Care and Support schemes****4.1 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr David Andersen, appearing for the Law Society of NSW.
- Mr Tim Concannon, Member, Injury Compensation Committee, Law Society of NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Anthony Johnson FRACP, Respiratory and Sleep Physician, NSW Occupational and Environmental Lung Disease Special Interest Group, Thoracic Society of Australia and New Zealand
- Dr Susan Miles FRACP, Respiratory and Sleep Physician, NSW Occupational and Environmental Lung Disease Special Interest Group, Thoracic Society of Australia and New Zealand,
- Mr Rod Smith, Awareness and Support Coordinator, Bernie Banton Foundation.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Theodora Ahilas, National Practice Head, Asbestos and Dust Diseases Department, Maurice Blackburn Lawyers.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Andrew Nicholls, A/Chief Executive SIRA, and Executive Director, SIRA Motor Accidents Insurance Regulation
- Mr Cameron Player, Executive Director, SIRA Dispute Resolution Services.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr David Bowen, Chief Executive Officer, National Disability Insurance Agency.

The evidence concluded and the witness withdrew.

The public and media withdrew.

The public hearing concluded at 1.05 pm.

**4.2 Tendered documents**

Resolved, on the motion of Ms Voltz: That the committee accept and publish the following document tendered during the public hearing:

- State Insurance Regulation Authority, SIRA statement, tendered by Mr Andrew Nicholls.

**5. Adjournment**

The committee adjourned at 1.08 pm, until 9.30 am, Monday 21 August 2017 (report deliberative, first review of the dust diseases and lifetime care and support schemes).

Rebecca Main  
**Clerk to the Committee**

**Draft minutes no. 20**

Monday 20 August 2017

Standing Committee on Law and Justice

Room 1254, Parliament House, Sydney 9.40 am

**6. Members present**

Mr Mallard, *Chair*  
Mr Clarke  
Mr Khan  
Mr Mookhey  
Mr Shoebridge

**7. Apologies**

Ms Voltz

**8. Previous minutes**

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 19 be confirmed.

**9. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 10 July 2017 – Letter from Mr Rod Smith, Awareness and Support Coordinator, Bernie Banton Foundation, providing clarification on the role of the Dust Diseases Board
- 10 July 2017 – Letter from Mr Rod Smith, Awareness and Support Coordinator, Bernie Banton Foundation, providing clarification to a figure incorrectly stated in evidence on 28 June 2017
- 16 July 2017 – Email from Mr Dean Pike regarding the workers' compensation scheme
- 17 July 2017 – Letter from Ms Pauline Wright, President, The Law Society of New South Wales, providing clarification regarding evidence on restrictions of the Dust Diseases Tribunal in relation to malignant claims on 28 June 2017
- 24 July 2017 – Email from Mr Dean Pike responding to the secretariat's email regarding the workers' compensation scheme.

***Sent***

- 3 July 2017 – Letter from Chair to Mr Vivek Bhatia, Chief Executive Officer, icare, requesting answers to additional questions on notice
- 20 July 2017 – Email from the secretariat to Mr Dean Pike in response to his email regarding the workers' compensation scheme.

**10. First review of the dust diseases and lifetime care and support schemes****10.1 Answers to questions on notice**

The committee noted that answers to questions on notice from the following witnesses were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Insurance and Care NSW, received 30 June 2017
- Suncorp, received 29 June 2017
- Attendant Care Industry Association, received 29 June 2017

- The Thoracic Society of Australia and New Zealand, received 21 July 2017
- Insurance and Care NSW, received 21 July 2017
- State Insurance Regulatory Authority, received 21 July 2017
- The Law Society of New South Wales, received 27 July 2017.

## 10.2 Consideration of Chair's draft report Dust Diseases scheme report

The Chair submitted his draft report entitled *First review of the Dust Diseases scheme*, which, having been previously circulated, was taken as being read.

### Chapter 1

Resolved, on the motion of Mr Mookhey: That paragraph 1.26 be amended by omitting 'customers' and inserting instead 'claimants'.

Resolved, on the motion of Mr Mookhey: That the heading above paragraph 1.42 be amended by omitting 'Customer satisfaction' and inserting instead 'Claimant satisfaction'.

Resolved on the motion of Mr Mookhey: That the heading 'Recent customer service initiatives' before paragraph 1.48 be omitted and inserting instead 'Recent service initiatives'.

Resolved, on the motion of Mr Mookhey: That paragraph 1.45 be amended by omitting 'a leading support organisation' and inserting instead 'a support organisation'.

Mr Mookhey moved: That paragraph 1.64 be omitted: 'It is extremely pleasing to see that the same can be said about the new Workers' Compensation (Dust Diseases) Authority working through icare dust Diseases Care. It is clear from the evidence before the committee that the organisation transition has been managed successfully, and that if anything, the services provided to scheme applicants and participants are even better than they were previously' and the following new paragraph be inserted instead:

'The transition to the new workers compensation authority has not yet jeopardised the previous scheme's exemplary performance, however the committee is concerned about the absence of the victim's voice in the decision making councils of the authority'.

Question put.

The committee divided.

Ayes: Mr Mookhey, Mr Shoebridge.

Noes: Mr Mallard, Mr Clarke, Mr Khan.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That paragraph 1.64 be amended by:

- omitting, 'It is extremely pleasing to see that' before 'the same can be said'
- omitting, 'It is clear from' before 'the evidence before the committee'
- inserting 'is' before 'the organisational transition'
- omitting 'even better' before 'than they were previously' and inserting instead 'more timely'.

### Chapter 2

Mr Khan moved: That paragraphs 2.21 to 2.24 be omitted:

'As mentioned previously, participation in the workers compensation scheme would, however, prevent the person from claiming any common law damages through the Dust Diseases Tribunal. Ms Ahilas from Maurice Blackburn Lawyers, cited the example of Mr F (previously mentioned at 2.11):

He did have entitlements to make a claim through the WorkCover scheme as a worker; however, in order to do that he had to give away any common law entitlements he had because he had very serious debts to pay for his medical expenses. So he had to trade some of his entitlements away for some others. That is the difference with the Dust Diseases Authority entitlements and the

Dust Diseases Tribunal entitlements at common law, they are concurrent entitlements. A person facing an entitlement through the Dust Diseases Authority does not have to trade away his common law entitlements, which is what happens under the draconian workers compensation scheme in some instances.’[FOOTNOTE: Evidence, Ms Theodora Ahilas, National Practice Head, Asbestos and Dust Diseases Department, Maurice Blackburn Lawyers, 28 June 2017, p 20.]

Ms Ahilas added that the Dust Diseases scheme was very attractive as it provided benefits and security far beyond what is available under workers compensation legislation:

It is a security factor. It is knowing that if they die from a dust disease, which a lot of these applicants do, that their families will continue to be protected and their families or dependants become entitled to a claim through the DDA for a lump sum. There are a host of entitlements. The other thing is medical expenses. Anything deemed reasonable for their treatment is covered by the DDA for the medical expenses. In the case of Mr F he had a lung transplant. His expenses were huge and he could have had the benefit of the medical expenses through the DDA. [FOOTNOTE: Evidence, Mr Theodora Ahilas, National Practice Head, Asbestos and Dust Diseases Department, Maurice Blackburn Lawyers, 28 June 2017, p 25.]

Ms Ahilas noted that under the Dust Diseases scheme participants are supported to participate in medical trials, providing access to costly treatments that are not covered by the Pharmaceutical Benefits Scheme. [FOOTNOTE: Evidence, Ms Theodora Ahilas, National Practice Head, Asbestos and Dust Diseases Department, Maurice Blackburn Lawyers, 28 June 2017, p 25.]

In response to the suggestion to broaden the scheme to include other occupational diseases, icare pointed out that the current legislation allows Dust Diseases care to exercise a degree of flexibility when it comes to determining scheme eligibility:

There is some flexibility under the Act to allow for the awarding of compensation for other occupational disease of the lungs, pleura or peritoneum if the condition relates to an exposure that leads to any of the diseases listed on the Schedule. Dust Diseases care has utilised this provision to award workers compensation benefits in four instances where the individual has developed scleroderma based on the history of exposure to silica.’ [FOOTNOTE: Answers to questions on notice, Mr Vivek Bhatia, Chief Executive Officer, icare, 30 June 2017, p 3.]

The committee divided.

Ayes: Mr Clarke, Mr Khan, Mr Mallard.

Noes: Mr Mookhey, Mr Shoebridge.

Question resolved in the affirmative.

Mr Khan moved: That paragraphs 2.26 to 2.27 be omitted:

‘This has resulted in an inequitable situation where some individuals are being excluded from the scheme because their conditions do not meet the restrictive definition currently specified in section 3 of the Act or their disease is not included in Schedule 1.

The committee notes that there is some flexibility in the current legislation to approve applications from individuals with conditions that do not strictly meet the eligibility requirements. However, based on the evidence, the committee believes that there is merit in conducting research and actuarial studies in consideration of updating the Act to expand the range of compensable diseases. We recommend that stakeholders be consulted during this process.’

Question put.

The committee divided.

Ayes: Mr Clarke, Mr Khan, Mr Mallard.

Noes: Mr Mookhey, Mr Shoebridge.

Question resolved in the affirmative.

Mr Mookhey moved: That recommendation 1 be amended by:

- e. omitting 'expanding the definition of' and inserting instead 'replacing the definition of'
- f. inserting 'with section 3 of the Dust Diseases Tribunal Act 1989' before 'and that it consult with stakeholders in the process'.

Question put.

The committee divided.

Ayes: Mr Mookhey, Mr Shoebridge.

Noes: Mr Clarke, Mr Khan, Mr Mallard.

Question resolved in the negative.

Mr Khan moved: That recommendation 1 be omitted:

'That the NSW Government consider expanding the definition of 'dust disease' in section 3 of the Workers' Compensation (Dust Diseases) Act 1942, and that it consult with stakeholders in the process.'

Question put.

The committee divided.

Ayes: Mr Clarke, Mr Khan, Mr Mallard

Noes: Mr Mookhey, Mr Shoebridge.

Question resolved in the affirmative.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 2.42:

'The return of any occupational disease is deeply troubling and the fact that silicosis is occurring to such a degree in our society is evidence of a significant failure in our work health safety regime. There clearly is a need for a review of what has gone wrong, whether at a workplace level or at a state regulatory level, that has caused the disease to return. The fact that at this stage it appears to be limited to the manufactured stone industry suggests that if addressed rapidly lives can be saved and failings can be remedied to protect other parts of the workforce.'

Mr Shoebridge moved: That the following recommendation be inserted after paragraph 2.42:

**Recommendation X**

That the relevant Minister urgently convene a taskforce of industry, regulatory and workforce representatives to review safety standards in the manufactured stone industry and consider regulatory changes necessary to protect workers in the industry. Given lives are at risk the task force is to deliver an initial report within six months of being established.'

Mr Khan moved: That the motion of Mr Shoebridge be amended by omitting 'Given lives are at risk the taskforce is to deliver an initial report within six months of being established.'

Amendment of Mr Khan put.

The committee divided.

Ayes: Mr Clarke, Mr Khan, Mr Mallard.

Noes: Mr Mookhey, Mr Shoebridge.

Amendment of Mr Khan resolved in the affirmative.

Original question of Mr Shoebridge, as amended, put and passed.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.79 be amended by omitting 'establishment of a Medical Appeals Tribunal' and inserting instead 'establishment of a statutory internal appeals panel'.

Resolved, on the motion of Mr Shoebridge: That recommendation 5 be amended by omitting ‘Medical Appeal Tribunal’ and inserting instead ‘statutory internal appeals panel’.

Resolved, on the motion of Mr Clarke: That:

- g. the draft report, as amended, be the report of the committee and that the committee present the report to the House
- h. the transcripts of evidence, submissions, tabled documents, answers to questions on notice and correspondence relating to the review be tabled in the House with the report
- i. upon tabling, all unpublished attachments to submissions be kept confidential by the committee
- j. upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and correspondence relating to the review be published by the committee, except for those documents kept confidential by resolution of the committee
- k. the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- l. the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee
- m. dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting.
- n. that the report be tabled on Thursday 24 August 2017.

### **10.3 Consideration of Chair’s draft report Lifetime Care and Support scheme report**

The Chair submitted his draft report entitled *First review of the Lifetime Care and Support scheme*, which, having been previously circulated, was taken as being read.

#### **Chapter 1**

Resolved, on the motion of Mr Shoebridge: That all references to ‘Ray Williams’ be omitted and replaced with ‘the relevant minister’.

#### **Chapter 2**

Mr Mookhey moved: That paragraph 2.54 be amended by:

- a. omitting ‘The committee is confident that SIRA and icare are effectively using’ and inserting instead ‘The committee urges SIRA and icare to effectively use’
- b. omitting ‘The committee strongly encourages icare and SIRA to continue their consultation with stakeholders in the development of the associated guidelines and processes.’

Question put.

The committee divided.

Ayes: Mr Mookhey.

Noes: Mr Mallard, Mr Clarke, Mr Khan, Mr Shoebridge.

Question resolved in the negative.

Mr Shoebridge moved: That paragraph 2.54 be amended by:

- c. omitting ‘The committee is confident that SIRA and icare are effectively using the long lead time’ and inserting instead ‘The committee notes that SIRA and icare are using the long lead time’
- d. inserting at the end of paragraph 2.54 ‘Detailed annual reports on the progress in transitioning to the new scheme should be provided by both agencies.’

Question put.

The committee divided.

Ayes: Mr Shoebridge, Mr Mallard, Mr Clarke, Mr Khan.

Noes: Mr Mookhey.

Question resolved in the affirmative.

Mr Mookhey moved that: The following new recommendation be inserted after paragraph 2.54:

**Recommendation X**

That SIRA develop a transfer strategy which:

- e. assesses claims management by insurers prior to transfer
- f. publishes all results of mismanagement by insurers
- g. publishes quantum recovered by the insurer.

Mr Shoebridge moved that the motion of Mr Mookhey be amended by omitting ‘That SIRA develop a transfer strategy which’ and inserting instead ‘That the State Insurance Regulatory Authority annual reports include details on a transfer strategy, which should’.

Question put.

The committee divided.

Ayes: Mr Shoebridge, Mr Mallard, Mr Clarke, Mr Khan.

Noes: Mr Mookhey.

Question resolved in the affirmative.

Original question of Mr Mookhey, as amended, put and passed.

**Chapter 3**

Resolved, on the motion of Mr Mookhey: That paragraph 3.53 be amended by omitting ‘The committee commends icare’s position on creating a more considered approach’ and inserting instead ‘The committee notes icare’s position on creating a more considered approach.’

**Chapter 4**

Resolved, on the motion of Mr Mookhey: That the following new recommendation be inserted after paragraph 4.48:

**Recommendation X**

That the Lifetime Care and Support Authority continue to explore and report on the feasibility of providing participants with periodic sums for treatment and care needs, or for the purchase of low cost items, for the purpose of promoting greater self-management of care.’

**Chapter 5**

Mr Khan moved:

- h. that paragraph 5.14 be amended by omitting ‘The committee recommends that icare consider the proposal’ and inserting ‘The committee see merit in icare considering the proposal’; and
- i. that Recommendation 1 be omitted: ‘That icare consider bringing forward the date that the Lifetime Care and Support scheme assumes liability for scheme participants to the date of the accident, and that it consult with the State Insurance Regulatory Authority in relation to the impact of such a change on the Medical Care and Injury Services Levy.’

Question put.

The committee divided.

Ayes: Mr Clarke, Mr Khan, Mr Mallard, Mr Mookhey.

Noes: Mr Shoebridge.

Question resolved in the affirmative.

Mr Mookhey moved: That recommendation 3 be amended by omitting ‘the NSW Government consider providing icare with legislative power’ and inserting instead ‘the NSW Government provide icare with legislative power’.

Question put.

The committee divided.

Ayes: Mr Mookhey, Mr Shoebridge.

Noes: Mr Clarke, Mr Khan, Mr Mallard.

Question resolved in the negative.

Resolved on the motion of Mr Shoebridge: That recommendation 3 be amended by omitting 'legislative power to compel insurers and lawyers to provide the information' and inserting instead 'legislative power to compel insurers to provide the information'.

Resolved on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 5.88:

'However, we remain concerned that there are an unlimited number of appeals available to insurers who seek to have an injured person accepted by the LTCSA. This can cause significant delay in finalising that person's claim and puts the scheme and the injured person to often significant financial outlay. Of course insurers should be given a reasonable opportunity to challenge any refusal, but this should not be an open-ended opportunity. Some form of statutory limitation seems appropriate to address this problem, the exact terms of which require consideration by stakeholders in the industry.'

Mr Shoebridge moved: That the following new recommendation be inserted after the new paragraph 5.88:

**Recommendation X**

That the NSW Government put a legislative limitation on the number of times that an insurer can seek to dispute a decision by the Lifetime Care and support Authority to not accept an injured person into the scheme.'

Mr Khan moved: That the motion of Mr Shoebridge be amended by omitting 'the number of times that an insurer can seek to dispute a decision' and inserting instead 'the number of times that a party can seek to dispute a decision'.

Amendment of Mr Khan put.

The committee divided.

Ayes: Mr Clarke, Mr Khan, Mr Mallard.

Noes: Mr Mookhey, Mr Shoebridge.

Amendment of Mr Khan resolved in the affirmative.

Original motion of Mr Shoebridge, as amended, put and passed.

Resolved on the motion of Mr Clarke: That:

- j. the draft report, as amended, be the report of the committee and that the committee present the report to the House
- k. the transcripts of evidence, submissions, tabled documents, answers to questions on notice and correspondence relating to the review be tabled in the House with the report
- l. upon tabling, all unpublished attachments to submissions be kept confidential by the committee
- m. upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and correspondence relating to the review be published by the committee, except for those documents kept confidential by resolution of the committee
- n. the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- o. the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee
- p. dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting.

q. that the report be tabled on Thursday 24 August 2017.

**11. Adjournment**

The committee adjourned at 10.40 am, *sine die*.

Teresa McMichael  
**Clerk to the Committee**