STANDING COMMITTEE ON LAW AND JUSTICE
REVIEW OF THE DUST DISEASES SCHEME
QUESTIONS ON NOTICE

1.

Compensable dust diseases under Schedule 1 of the *Workers Compensation (Dust Diseases) Act 1942*

Mr DAVID SHOEBRIDGE: Before we go off dust diseases, I do not know if any of you had the opportunity to read the submission from Maurice Blackburn Lawyers? Their particular concern is that there is a much more limited class of dust diseases under the Dust Diseases Act than are picked up in common law. They detail, for example, types of pneumoconiosis. There seems to be an arbitrary line; some are in the Act, some are not in the Act. Do you notice in practice that there is this arbitrary line?

Mr KOUTOULAS: We have that defined list of dust diseases in our legislation and we receive applications relating to those diagnoses. The vast majority of our claims are related to asbestos exposure, and that accounts for roughly 95 per cent of our total cases. 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 the workers compensation generally.

Mr DAVID SHOEBRIDGE: Looking at the kind of conditions they say are in, for example, schedule 1 has coal workers' pneumoconiosis but does not include carborundum pneumoconiosis. It includes hard metal pneumoconiosis but not bauxite fibrosis. These seem to be subjected to luck as to whether you fall on hard metal pneumoconiosis but not bauxite fibrosis. These seem to be subjected to luck as to whether you fall on one side or the other of this is completely arbitrary line.

The Hon. TREVOR KHAN: Is it that some are more, dare I say, fatal in respect of their consequences? Is that the reasoning that has been applied? You do not know?

The CHAIR: Or more prevalent?

Mr KOUTOULAS: I do not know from a medical perspective. In respect of prevalence, we would need to do more studies to understand what is the incidence, what are the exposure rates, what are the types of latency periods associated with these types of diseases, what are the workplace patterns. It requires quite a lot of investigation and research to help us understand what is the actual impact from a financial perspective.

The Hon. TREVOR KHAN: Black lung?

The Hon. DANIEL MOOKHEY: Is black lung covered by your scheme?

Mr KOUTOULAS: It is covered under the dust diseases scheme, but there has not been any claims for that in New South Wales.

The Hon. DANIEL MOOKHEY: Queensland has got quite a few.

Mr KOUTOULAS: Queensland has got one, yes.

Mr BHATIA: Queensland, yes.

The Hon. TREVOR KHAN: Sorry, got one?

The Hon. DANIEL MOOKHEY: Queensland has more than one.

Mr KOUTOULAS: More than one, sorry.

Mr BHATIA: We have not had one as yet in New South Wales.

The CHAIR: It is a late-emerging disease after exposure. Going back to your in-house expertise, can we take on notice why some are excluded and some are not?

Mr DAVID SHOEBRIDGE: Farmer's lung is in, grain worker's lung is not.

Mr BHATIA: Some of them are probably a decision from a long time ago. As Chris has said, we need to make sure that we take this on notice and come back to you and say what the prevalence is, but one of the things that may come out of it is that we need to do a lot more research to understand the incident rates, the prevalence, the mortality rates, et cetera.

ANSWER:

The Dust Diseases Scheme has its origins back in 1927, when it was established to provide compensation to stonemasons and quarrymen employed by the County of Cumberland who were disabled from their exposure to silica dust. Since that time, our understanding of dust diseases has grown and the list of compensable dust diseases under Schedule 1 of the *Workers Compensation (Dust Diseases) Act 1942* is reflective, in part, of the situation existing at the time the legislation was passed. The most significant inclusion of dust in terms of disease diagnosis was that of asbestos, which currently accounts for over 95 per cent of claims awarded under the Scheme.

The definition of a dust is solid particles generated and dispersed into the air for example - by handling, crushing, grinding, and drilling of inorganic material such as rock, ore and metal, or organic materials such as cotton and mouldy hay. Other non-dust agents such as welding fumes, gases and vapours are also found in many industrial settings.

The following are required for compensation under the dust diseases legislation:

- the presence of a dust disease, generally detected through radiology;
- evidence of workplace exposure to the dust within NSW; and
- lung function impairment.

A thorough industrial history detailing the work an individual performed, including how they performed the work and the materials and tools utilised during employment is used to differentiate dust exposure from other exposures in the workplace that may lead to a disability.

Many factors influence whether an individual will go on to develop a dust disease such as:

- the type of dust;
- particle size, which affects whether it can be breathed deep into the lung (i.e. respirable); and
- the dose, which reflects the concentration, frequency and duration of exposure.

Workplace exposure standards represent the airborne concentration of a contaminant including dusts within a worker's breathing zone, for example - as a time weighted average over an eight-hour work shift, that must not be exceeded. When assessing airborne dust exposure, the most toxic component of the dust is measured and compared to its standard. For example, the toxicity of contaminants such as asbestos, silica and cobalt entails much lower exposure standards than other contaminants such as aluminium oxide (bauxite) or silicon carbide (carborundum).

There are forms of pneumoconiosis that are due to the direct effects of inhaled inorganic dusts on lung tissue resulting in fibrosis. However, not all inorganic dusts cause fibrosis. Talcosis, coal dust pneumoconiosis, hard metal pneumoconiosis, silicosis and asbestosis are examples of fibrotic pneumoconioses and are included in the list of compensable dust diseases under Schedule 1. Berylliosis is an example of a fibrotic pneumoconiosis that results from an immune response, which is also included under Schedule 1.

There are forms of pneumoconiosis that result in no impairment. Stannosis and siderosis are examples of non-fibrotic forms of pneumoconiosis. Individuals diagnosed with these diseases typically do not have respiratory symptoms or impairment to lung function that is observed in fibrotic pneumoconiosis. These are examples of diseases not listed under Schedule 1.

Lung diseases caused by the inhalation of organic dusts tend to result in an immunologic response and include hypersensitivity pneumonitis. In these conditions, the initial reaction involves inflammation in the lung tissue and airways. Two examples of this currently included under Schedule 1 are Bagassosis and Farmer's Lung. Farmer's lung stems from exposure to mouldy hay and differs from the symptoms observed following grain dust exposure, which include fever or immune reaction in the airway, which of its own is not included in the list under Schedule 1.

In the last five years, the following five dust diseases out of the 14 currently listed in Schedule 1 account for 98.3 per cent of the total work-related dust diseases certified by the Medical Assessment Panel under the Scheme:

- Mesothelioma
- Asbestosis
- Asbestos related pleural diseases
- Asbestos induced carcinoma
- Silicosis

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 individuals had developed scleroderma based on the history of exposure to silica.

icare is aware of the re-emergence of cases of coal dust pneumoconiosis (black lung) in Queensland and a recent increase in cases of silicosis attributed to exposures to artificial stones in Victoria and other states. Both diseases are currently listed under Schedule 1 and are compensable should more cases arise in NSW.

To identify and understand the prevalence of other possible occupational dust diseases that may not be currently included in the list under Schedule 1 of the Act, detailed epidemiological studies investigating the incidence of the dust disease would need to be undertaken; the exposure profile of the New South Wales workforce including workplace conditions would have to be examined; the latency period would have to be determined and allowed for; and the severity of the disease on its occurrence would need to be investigated. This research would take a considerable length of time and is costly.

Without first undertaking this analysis on each other possible dust disease type, it is very difficult to gauge the impact that amending the list under Schedule 1 would have on the Scheme. Any amendments to Schedule 1 of the Act would require legislative change.

2.

Dust Diseases Board:

Mr DAVID SHOEBRIDGE: Could we get a little more detail on notice about the formal or informal arrangement with the NDIA. I note that Ms Morris, who gave the evidence, is in the room so maybe you could have a talk with her as that would be really helpful.

The Hon. DANIEL MOOKHEY: In addition, could you on notice describe the mechanisms of interaction between icare and the NDIA on a formal level? Is there a council or committee and how often do you talk? That information would be really useful. Secondly on notice relating to dust disease, can we get the dates of all meetings of the board and board membership?

Mr BHATIA: Yes, absolutely.

ANSWER:

NDIA:

The mechanisms of interaction with the NDIA and icare are as follows:

- icare is working with the NDIA executive to establish a Memorandum of Understanding between agencies to exchange information relating to participants.

  This is to ensure that both agencies are able to access information needed to determine eligibility for either Scheme and ensures participant privacy is respected. This will also ensure an effective handover between schemes.
- icare has established regular contact with the directors from the NDIA's NSW Branch and Head Office in Geelong; and
- At the local level, icare also works with NDIA planners and other staff at each NDIS region when participants are contacted by NDIA staff or have applied to the NDIS.

Dust Diseases Board Membership and Meetings:

Dust Diseases Board Membership

The Dust Diseases Board is established under Section 5AC(1) of the *Workers' Compensation (Dust Diseases) Act 1942* comprising of the following members appointed by the Minister:

- Three persons representing employers
- Three persons representing employees
- Representatives of dust diseases sufferers' support, advocacy or awareness groups or organisations
- Persons involved in research into dust diseases or in academic matters relating to dust diseases
- Health professionals
- An independent chairperson

The members of the Dust Diseases Board are listed in the table below.

Representative Group	Name	Experience
Independent Chair	Gavin Bell	• Director, Insurance and Care NSW • Director, Smartgroup • Former CEO and MD of Herbert Smith Freehills • Former Board member, SRWS
Employer	Brain Eichhorn	• Representative of Australian Federation of Employers and Industries • Extensive manufacturing industry experience • Former member of Dust Diseases Board (abolished entity)
Employer	Ray Petty	• Director FIFO Capital • Former member of Dust Diseases Board (abolished entity) • Former member of SRWS Audit and Risk Committee (abolished entity)
Employer	Sylvia Kidziak	• Deputy Chair of the Board of the Asbestos Diseases Research Foundation and Chair of the Executive Committee • Former member of Dust Diseases Board (abolished entity) • Former Chair of Dust Diseases Board's Research Grant Committee (abolished entity) • Former Chair of ARPANSA Radiation Health and Safety Advisory Council
Employee *(Unions NSW)*	Shay Deguara	• Industrial Officer, Unions NSW • Director on the Injured Workers Support Network • Holds Master of Science and Technology (Occupational Health and Safety) and a Bachelor of Economics (Industrial Relations and Economics) from the University of New South Wales
Employee *(Unions NSW)*	Kate Minter	• Research Officer, Unions NSW • Masters of Science (Applied Sciences) • Bachelor of Social Sciences, University of Sydney
Employee *(ETU)*	Steve Robinson	• Extensive industry experience • Former alternative member of Dust Diseases Board (abolished entity) • Former member of the Vocational Training Tribunal and Vocational Training Appeals Panel
Victim Support Group	Rod Smith	• Operations Manager for the Bernie Banton Foundation • Graduate Community Services
Victim Support Group	Barry Robson	• President of the Asbestos Diseases Foundation of Australia • Board Member of the Asbestos Diseases Research Institute • Councillor Asbestos Safety and Eradication Agency

Researchers / Academics	Prof. Nico van Zandwijck	• Director of the Asbestos Diseases Research Institute • Professor of Medicine at the University of Sydney • Former member of Board of Directors of the International Association for the Study on Lung Cancer • Authored or co-authored more than 250 peer-reviewed international scientific papers and book chapters
Health Professionals	Dr Ryan Hoy	• Respiratory and Sleep Disorders physician • Member of Thoracic Society of Australia and New Zealand (TSANZ) • Member of American College of Chest Physicians (ACCP) • Fellow of the Royal Australasian College of Physicians • Member of Australasian Sleep Association (ASA) • Member of Australasian Society of Clinical Immunology and Allergy (ASCIA)

Dust Disease Board Meeting Schedule

Year	Date	Time
2016	21 March	10.00am – 12.45pm
	23 June	9.30am – 12.30pm
	15 September	9.30am – 12.30pm
	1 December	9.30am – 12.30pm
2017	16 February	9.30am – 11.00am
	12 April	9.30am – 12.30pm
	15 June	9.30am – 2.30pm
	21 September	9.30am – 12.30pm
	7 December	9.30am – 12.30pm