

Standing Committee on Law and Justice
2019 Review of the Dust Diseases Scheme
Questions on Notice from 11 February 2020 hearing

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- 1) **Mr NAGLE:** It is a point that has been made. The ratio is similar to the prior years. On notice we are happy to provide the detail but the number of screenings we have been doing have increased dramatically over the last three years. More specifically, it is targeted at the manufactured stone industry.

Answer

Increased screening focused on the manufactured stone industry has led to an increase in the numbers of silicosis cases detected, especially in asymptomatic cases.

Until 2019/20 the frequency of cases detected had not been outside the levels observed in previous years. The increases in 2018/19 and 2019/20 while concerning, do point to greater awareness of the risks associated with working with silica containing products and the identification of people impacted by silica before they display symptoms.

The following table provides the number of new cases of silicosis identified from FY 2010/11 to FY 2019/20:

Financial Year	New cases of silicosis
2010/11	11
2011/12	9
2012/13	10
2013/14	9
2014/15	9
2016/16	9
2016/17	6
2017/18	9
2018/19	40
2019/20 (to 31 January 2020)	70

The following table provides the number of health monitoring for silica and silica/asbestos from FY 2010/11 to FY 2019/20:

Financial year	Number of screenings
2010/11	3,205
2011/12	4,429
2012/13	4,517
2013/14	4,838
2014/15	4,124
2015/16	3,934
2016/17	2,773
2017/18	4,191
2018/19	5,283
2019/20 (to 31 January 2020)	3,023

*It should be noted that prior to 2010/11, data breaking down screening numbers by dust type was not collected.

The following provides the frequency of silica related disease per at risk worker screened from FY 2010/11 to FY 2019/20:

Financial year	New case detection frequency
2010/11	0.3 per cent
2011/12	0.2 per cent
2012/13	0.2 per cent
2013/14	0.2 per cent
2014/15	0.2 per cent
2015/16	0.2 per cent
2016/17	0.2 per cent
2017/18	0.2 per cent
2018/19	0.8 per cent
2019/20 (to 31 January 2020)	2.3 per cent

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Question

2) The Hon. TREVOR KHAN: Have you analysed the manufactured stone cohort as opposed to the total number?

Dr ALLSOP: We can do that analysis but I do not have in front of me today.

Mr DAVID SHOEBRIDGE: You can get us that on notice.

Dr ALLSOP: Okay, yes.

Answer

Financial Year	0	1	4-5	6-10	11-15	16-20	21-30	31-40	41-45	46-50	51-100	Grand Total
2017/18	4			3				1			1	9
2018/19	9	18	1	5		1	1		1		4	40
2019/20	2	55	1	4	1	2	2	1		1	1	70

Financial Year	Age Group							Grand Total
	18-30 years	31-40 years	41-50 years	51-60 years	61-70 years	71-80 years	>80 years	
2017/18			1	1	2	4	1	9
2018/19	2	5	13	4	8	6	2	40
2019/20	3	13	19	31	1		3	70

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Question

3) **The Hon. TREVOR KHAN: Can you identify what is identified as an industry with an exposure to dust? How broad is that category?**

Dr ALLSOP: They are broad categories. We are not going down into the fine detail of what each individual employer is doing—it is categories such as construction and that sort of level.

The Hon. TREVOR KHAN: What else apart from construction?

Dr ALLSOP: I would have to go back and check to see.

Answer

The Dust Diseases Authority Compensation Scheme is funded via levies collected from NSW workers compensation insurers. In turn these insurers factor the levies into the premiums they charge employers to offset this cost. This effectively results in NSW employers funding the Dust Disease Scheme.

Based on independent actuarial advice using the historical costs of dust disease claims in the Scheme, icare determines the aggregate levy requirement for each financial year. This is communicated to the State Insurance Regulatory Authority (SIRA) who then determines the levy to be charged by each industry group covered by workers compensation insurance.

In this way industries that have been responsible for workers contracting dust diseases meet the costs of compensating these injured workers.

Levy contributions are published annually in the NSW Government Gazette and on the SIRA website at <https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-compensation-policies/dust-diseases-contributions-2019-2020>.

For the 2019/20 year the levy rates as a percentage of wages by schedule, as determined by SIRA, for employers captured under the NSW Workers Compensation Nominal Insurer were as follows:

- Schedule 1; 1.25000 per cent
- Schedule 2; 0.50000 per cent
- Schedule 3; 0.25000 per cent
- Schedule 4; 0.11000 per cent
- Schedule 5; 0.06000 per cent
- Schedule 6; 0.04000 per cent
- Schedule 7; 0.02000 per cent
- Schedule 8; 0.00727 per cent

Industry sectors are allocated to schedules based on SIRA's independent actuarial assessment of relative exposure levels.

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Question

4) **The Hon. TREVOR KHAN:** I know there have been instances, but the rise that we are identifying now is contrary to historical trends, one would think. I am trying to work out the spread of industries that are carrying the burden of this exposure by a particular industry.

Mr NAGLE: On notice we are happy to provide the details of which industry codes are amalgamated into the levy.

Answer

SIRA determines the level of risk associated with different industries based on actuarial advice of the historical costs of dust diseases claims by industry type. This information is then used to inform the levy to be charged by each industry group covered by workers' compensation insurance under section 6 of the *Workers Compensation (Dust Diseases) Act 1942*.

Dust Disease levy contributions based on industry type are published annually in the NSW Government Gazette, which can be found on the SIRA website at

<https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-compensation-policies/dust-diseases-contributions-2019-2020>

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Question

5) The Hon. DANIEL MOOKHEY: You are probably right as you are the actuary so your maths is better! When was the last time you revised the \$100 million figure?

Dr ALLSOP: We had that reassessed at 31 December as part of our regular six-monthly cadence of doing valuations.

The Hon. DANIEL MOOKHEY: What was it prior?

Dr ALLSOP: I would have to take that on notice but it has increased to December on the back of the increased numbers of silica-related diseases being identified.

Answer

Every six months icare, on behalf of the Dust Diseases Authority, engages independent actuaries to estimate the outstanding claims liabilities for the Dust Diseases Scheme. This was last completed at 31 December 2019, however the results are still in draft and subject to change. The liability assessment covers asbestos related diseases as well as non-asbestos related diseases covered by the Scheme. The majority of the non-asbestos related diseases are related to silica exposure.

- The inflated and discounted liabilities held for non-asbestos-related disease claims as at 30 June 2019 was \$100.5 million. This does not include the liability held to cover the cost of administering these claims.
- The inflated and discounted liabilities held for non-asbestos-related disease claims as at 31 December 2019 was \$148.4 million (draft and subject to change). This does not include the liability held to cover the cost of administering these claims.

For reference the estimated draft liability for the Dust Diseases Scheme in its entirety as at 31 December 2019 was \$1,906.1 million on an inflated and discounted basis.

The growth in the non-asbestos liability between 30 June 2019 and 31 December 2019 reflects the increasing numbers of cases of silicosis being identified. There is significant uncertainty in this figure and it relies on estimates of the number of low impairment cases that will progress as well as the number of cases yet to be detected. It is possible this estimate will require further revision, but it could be up or down.

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Question

6) Mr NAGLE: Sure. Generically, since 1 July 2017 to 31 December 2019, we have screened 7,692 workers for both silica and asbestos exposure. In the financial year 2019 to December 2019 we had screened 2,047 people.

The Hon. DANIEL MOOKHEY: But how many sites?

Mr NAGLE: In terms of sites I do not have that information.

The Hon. DANIEL MOOKHEY: You accept that you told us there were 62 as of September, presumably, in your figures.

Mr NAGLE: Yes.

The Hon. DANIEL MOOKHEY: How many do you do a month?

Dr ALLSOP: That is variable, depending on driving time and things like that.

Mr NAGLE: We will have to take that on notice and come back to you.

Answer

Lung Bus Screenings by FY and Location		
Financial Year	HM Lung Bus Location	Lung Bus screening Count
2013	18	777
2014	19	1,404
2015	14	1,124
2016	32	1,692
2017	26	1,561
2018	22	1,858
2019	41	2,875
2020	37	1,728
Grand Total	209	13,019

The following provides locations of sites visited by the Lung Bus when undertaking screening of workers exposed to silica and silica/asbestos dust:

Lung Bus Screenings by FY and Location		
Financial Year	HM Lung Bus Location	Lung Bus Screening Count
2013		777
	Casino	146
	Inverell	100
	Grafton	79
	Tweed Heads	58
	Dee Why	55
	Armidale	43
	Millers Point	43
	Horsley Park	41
	Glen Innes	32
	Townsend	32
	Wetherill Park	31
	not stated	30
	Karuah	23
	Dubbo	22
	Campbelltown	20
	Punchbowl	16

	Queanbeyan	6
2014		1404
	Kurnell	431
	Liddell Power Plant	166
	Rutherford	109
	Berrima	106
	Barangaroo	78
	Chatswood	71
	Wetherill Park	62
	Unanderra	49
	Narrandera	46
	Somersby	45
	Alexandria	41
	Homebush	40
	Appin	32
	Goolgowi	31
	Dubbo	30
	Seaham Quarry	29
	Hartley	24
	Dunedoo	9
	Coffs Harbour	5
2015		1124
	Kurnell	256
	Orange	158
	Coffs Harbour	127
	Lismore	96
	Grafton	87
	Byron Bay	77
	Marulan	59
	Wollongong	47
	Bringelly	42
	Barangaroo	41
	Schofields	38
	Townsend	31
	Horsley Park	25
	Cecil Hills	22
	Cecil Park	18
2016		1692
	Goulburn	138
	Liverpool	106
	Orange	90
	Bathurst	89
	Leeton	82
	Lithgow	79
	Port Macquarie	75
	Armidale	66

	Maldon	62
	Wagga Wagga	60
	Broken Hill	59
	Lismore	55
	Mudgee	55
	Tamworth	48
	Bega	46
	Dubbo	45
	Port Kembla	40
	Taree	39
	Albury	38
	Coffs Harbour	38
	Ingleside	37
	Grafton	35
	Inverell	34
	Buronga	32
	Tweed Heads	32
	Deniliquin	30
	Westmead	30
	Marulan	28
	Walcha	27
	Cooma	26
	Ballina	25
	Nyngan	25
	Queanbeyan	21
2017		1561
	Muswellbrook	194
	Wetherill Park	129
	Horsley Park	120
	Coffs Harbour	112
	Portland	97
	Wilberforce	97
	New Berrima	94
	Thornleigh	94
	Somersby	64
	Tweed Heads	62
	Prospect	51
	Alexandria	47
	Maroota	44
	Unanderra	40
	Moree	37
	Cessnock	36
	Dunmore	36
	Ingleside	30
	Rosehill	30
	Wyong	28

	Bowral	27
	Lismore	26
	Punchbowl	20
	West Pennant Hills	16
	Karuah	15
	Bega	9
	Newcastle	6
2018		1858
	Thornleigh	250
	Homebush	187
	Wallsend	176
	Zetland	174
	Arncliffe	121
	Ourimbah	117
	Mannering Park	114
	Moss Vale	102
	Kempsey	84
	Hornsby	71
	Silverwater	70
	Rutherford	68
	Oatley	60
	Bega	43
	Marulan South	39
	Marulan	36
	Russell Vale	35
	Muswellbrook	23
	Somersby	23
	Cromer	21
	Singleton	21
	Dubbo	19
	Newcastle	4
2019		2875
	Orange	420
	Muswellbrook	301
	St Peters	164
	Marulan	145
	Arncliffe	119
	Thornleigh	115
	Bexley	104
	Macquarie Park	94
	Berrima	83
	Lismore	74
	Casino	73
	Eraring	73
	Maldon	70
	Byron Bay	69

	Port Macquarie	68
	Marrickville	66
	Chatswood	54
	Schofields	50
	Glen Innes	45
	Raleigh	43
	Badgerys Creek	42
	Quirindi	42
	Taree	42
	Ingleside	41
	Alexandria	39
	Kingsgrove	39
	West Gosford	38
	Cessnock	37
	Moree	37
	Wentworth	34
	Broken Hill	31
	Horsley Park	27
	Buronga	26
	Hornsby	24
	Ingleburn	24
	Seaham	23
	Tomago	21
	Karuah	20
	Tweed Heads	18
	Dubbo	17
	Newcastle	14
	Wagga Wagga	9
2020		1728
	Wagga Wagga	130
	Dubbo	127
	Liverpool	127
	Goulburn	120
	Bathurst	109
	Port Macquarie	107
	Marrickville	95
	Chatswood	86
	Wetherill Park	77
	Barangaroo	72
	Horsley Park	57
	Warren	52
	Tweed Heads	47
	Wellington	42
	Wyee	42
	Prospect	39
	Bringelly	32
	Maroota	30

	Albury	29
	Coffs Harbour	28
	Goolgowi	26
	Bungonia	24
	Leeton	24
	Bowral	21
	Deniliquin	19
	Woonona	19
	Cecil Park	18
	Orange	18
	Prestons	17
	Punchbowl	17
	Cudal	16
	Maitland	15
	Cecil Hills	13
	Newcastle	12
	Temora	11
	Ballina	4
	Moss Vale	4
	Not stated	2
Grand Total		13019

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Question

7) **The Hon. GREG DONNELLY:** Just pause there. On notice, can you provide to the Committee what is the category or the list of information that is the basis upon which a decision is made to refer them on to more sophisticated testing?

The Hon. TREVOR KHAN: Would you like to invite Dr Colquhoun to make a contribution on this as well?

The Hon. GREG DONNELLY: Sure.

The Hon. TREVOR KHAN: He looks interested in the question.

Mr DAVID SHOEBRIDGE: And if we are doing that, could you address this: There was a meeting of the national task force at the end of last year, I think. I know that one of the issues on that agenda was the recommendation from the Royal College of Radiologists that everybody get a CT scan. I am fairly certain that recommendation from radiologists, which has not been adopted by icare is my understanding, was up for discussion at that national task force. I do not know what the decision was.

Dr COLQUHOUN: Sure. I suppose a very direct answer to this is we are pre-empting proactively some changes to SafeWork Australia guidelines—they are currently in draft—that states that any worker in the manufactured stone industry who has been working in that occupation for three or more years should immediately go to a high-resolution CT scan as a screening method. We have implemented that as of this year.

The Hon. GREG DONNELLY: I am sorry—implemented when? As at 1 January?

Dr COLQUHOUN: I would have to get the exact date.

Answer

icare complies with SafeWork Australia's health monitoring requirements for screening people who have been exposed to crystalline silica in the workplace. The health monitoring requirements consist of:

- Collection of demographic, medical and occupational history;
- Records of personal exposure;
- Standardised respiratory questionnaire;
- Consultation with a qualified respiratory physician;
- Standardised respiratory function tests, for example FEV1, FVC and FEV1/FVC;
- Chest X-ray full PA view (baseline and high-risk workers only) meeting ILO standard.

icare engages qualified radiologists registered by the Royal Australian and New Zealand College of Radiologists (RANZCR) to review all health monitoring chest X-rays. Chest X-rays are then reviewed by an experienced registered Senior Respiratory Physician who upon the detection of any dust related abnormalities, requests a follow up investigation which includes an high-resolution computed tomography (HRCT) scan for diagnostic purposes. Any discrepancy in diagnosis is referred for a third level of review.

Since early February 2020 icare has been referring workers with a minimum three-year exposure to silica or who have a history of high exposure (e.g. working with manufactured stone products, dry cutting, etc.) for HRCT scanning as part of the initial diagnostic process.

On 14 February 2020 SafeWork Australia published the *Crystalline silica health monitoring guide*. The revised guidelines recommend that health monitoring examinations should consist of:

- Chest X-rays to be carried out as a baseline measure;
- X-rays are to be read by a radiologist who meets reporting requirements and competencies of the RANZCR. It is also recommended that the radiology practice or hospital department be accredited under the Diagnostic Imaging Accreditation Scheme for Medicare and meets the quality criteria of the ILO classification or is a qualified B reader;
- For lower risk occupations and industries, a chest X-ray is recommended every five years for the first 20 years of work. Workers with an abnormal X-ray, increased or prolonged exposure above the exposure standard may be referred for an X-ray on a more frequent basis (e.g. every three years);
- Workers with a high level of exposure, such as working with manufactured stone benchtops, or a high level of silica exposure over three years are to have a HRCT as a replacement or adjunct to an X-ray.

icare is currently reviewing the new guidelines to ensure that our health monitoring procedures continue to comply with SafeWork Australia's health monitoring requirements.

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Question

8) Mr NAGLE: I think it is fair to say that we are reacting to what is in front of us. There has been quite a bit of debate and we think that the draft proposals make sense.

The Hon. DANIEL MOOKHEY: How long have these draft proposals been drafted for to the best of your knowledge?

Dr COLQUHOUN: I would need to check on that and provide that on notice.

Answer

icare was provided with a copy of the draft proposal on 10 December 2019. icare has not been asked for comment.

Based on the draft proposal, icare has, since early February 2020, been referring workers from the manufactured stone industry for a HRCT scan if they meet the following exposure criteria:

- The worker has a minimum of three years' experience working in the manufactured stone industry; or
- The worker has experienced a high level of exposure to silica as a result of dry cutting practices.

Question

9) **Mr NAGLE: We have been asked for our view and we have presented our view that we support the creation of the register.**

The Hon. DANIEL MOOKHEY: How were you asked for your view, and how did you provide that view?

Mr NAGLE: I would have to take that on notice and come back to you.

Answer

The proposal to establish a New South Wales Dust Diseases register arose from recommendation four of the Legislative Council Committee on Law & Justice's 2018 review of the Dust Diseases Scheme. The Committee recommended that if a National Dust Diseases Register was not established by the end of 2019, then the NSW Government was to establish a NSW Register.

icare in its formal response to the Committee's recommendations responded that it supported the recommendation in principle. icare recognises the benefits of having a comprehensive Dust Diseases Register and would support the development of a NSW register in the event that a national register is not established.

Question

10) Mr DAVID SHOEBRIDGE: But if somebody has been exposed to silicosis in the industry and they have the early signs, but it is asymptomatic, and on medical advice they choose to leave the industry and have a period of unemployment or underemployment that follows, are they eligible for make-up pay provided by the scheme?

Dr ALLSOP: Where we have deemed them to have at least 1 per cent impairment then, yes, they would be eligible for compensation under the scheme.

Mr DAVID SHOEBRIDGE: Has anyone received that?

Dr ALLSOP: I would have to double-check that and get back to you on notice.

Answer

A partially disabled worker with a one per cent disablement for work would be entitled to make up pay in circumstances where their earnings from suitable employment are less than their earnings from prior to their silicosis diagnosis.

A total of two workers have received make up entitlements over the FYs 2018-19 and 2019-20 as a result of obtaining suitable employment.

Question

11) Mr DAVID SHOEBRIDGE: And what is the cap? If they were earning 70 grand a year as a fabricator or installer—

The Hon. TREVOR KHAN: That is highly unlikely.

Mr DAVID SHOEBRIDGE: They might be working seven days a week. What would they be likely to be—

Dr ALLSOP: I would have to come back to you on notice with the exact capped amount.

Answer

Workers who are disabled for work as a result of silica exposure while employed as an NSW worker may be entitled to receive weekly compensation benefits and reasonably necessary medical and related treatments.

All workers who have been identified as showing signs of silicosis, are invited to make an application to receive workers' compensation benefits under the Dust Diseases Scheme.

Entitlement to weekly compensation benefits will vary depending on whether the worker is partially or totally disabled, is undertaking suitable duties/vocational rehabilitation or is unable to obtain suitable employment as a result of their silicosis. Accordingly, a partially disabled worker with a 1 per cent disability has entitlements to workers compensation benefits.

Workers with a dust disease are entitled to weekly payments at rates that pre-date the 2012 amendments to the *Workers Compensation Act 1987*. A worker's entitlement to income replacement or make up pay in the first 26 weeks of their disablement is currently capped at \$2,195.70 per week under section 35 of the pre-2012 *Workers Compensation Act 1987*.

After 26 weeks, a workers' entitlements are capped at the statutory rate which is currently \$516.40 per week under section 37(1)(a)(i) of the Act. Workers who are undertaking vocational rehabilitation or retraining may be entitled to weekly benefits capped at \$2,195.70 for the first 26 weeks under section 35 of the Act and then benefits paid at 80 per cent of their pre-injury earnings for a further 26 weeks in accordance with section 38(3) of the Act.

Rates are indexed twice a year in April and October and are published in SIRA's *Workers' Compensation Benefit Guide*.

Of the 70 workers who have been identified as having signs of silicosis in the 2019/20 financial year to date:

- 42 workers have been awarded workers compensation benefits. Of those:
 - 20 workers are receiving weekly compensation benefits and medical expenses; and
 - 22 workers are receiving medical expenses (these workers have continued in their existing employment).
- 26 workers have lodged an application that is yet to be determined.
- 2 workers have nil disability and do not qualify for workers' compensation benefits.