

Legislative Council Standing Committee on Law and Justice
2021 Review of the Dust Diseases Scheme

Prehearing questions for icare

According to icare's submission, medical screening examinations for dust diseases consist of an x-ray; full lung function test; a 20-metre walk test; and a medical examination with a medical specialist. Why is x-ray still used as a primary diagnostic tool despite contrary medical advice? What steps are being taken to make the more accurate CT scanning technology more accessible to workers? What barriers are preventing CT scanning from more widespread use?

Medical screening examinations as described in the question relate to asbestos related screenings, which still account for the majority of icare lung screenings and applications.

CT scanning is recommended for diagnosis of silicosis, particularly when working with manufactured stone. CT scans are used by icare and are a fundamental tool in determining whether a worker exposed to crystalline silica has developed silicosis. icare uses the existing network of radiology providers for CT scans, including a same day service by arrangement with Sydney Hospital for workers who are screened at the icare Screening Clinic.

All workers who have had exposure to manufactured stone are offered and recommended to have a CT scan during their medical examination with icare. The CT scans are provided free of charge to the worker, and icare can arrange the appointment on their behalf at the time of the screening.

In 2020/2021, a total of 184 CT scans were provided by icare, resulting in 17 silicosis diagnoses. The use of CT scans is offered in accordance with clinical diagnostic guidance and any time when clinically indicated for the individual worker. They are used frequently, and the benefits are explained to the worker. There are no structural barriers to the widespread use of CT scans, however, not all workers consent or agree to undertake the scan.

What discrepancies and/or inequalities in compensation payable to workers exist in the relevant legislation (*Workers' Compensation (Dust Diseases) Act 1942* and *Workers Compensation Act 1987*) which have necessitated icare's Dust Diseases Care Remediation Program? Are legislative steps being considered to address these issues?

There are three primary discrepancies that give rise to inequalities and complexity in the relevant Dust Diseases legislation. These were uncovered by icare during the preparation for a new claims system to support Dust Diseases Care customers.

1. Pre-1987 Workers:

Workers with an injury before 30 June 1987 should be receiving a rate which is 20 per cent lower than the amounts paid to workers with an injury after 30 June 1987.

The relevant legislation is as follows:

- Section 8(2) of the *Workers Compensation (Dust Diseases) Act 1942* States that workers are to be paid compensation benefits prescribed by Division 1 of Part 3 of, and Schedule 6 of the *Workers' Compensation Act 1987*.

- Section 8(3A) of the *Workers Compensation (Dust Diseases) Act 1942* defines a workers' date of injury as to have happened at the time when the person was last employed as a NSW worker in an occupation to which their dust disease is due.
- Schedule 6, Part 4, of the *Workers Compensation Act 1987 pre-2012 version* provides that workers' with a dust disease whose date of injury occurred before 30 June 1987 are to be paid weekly compensation at rates at the amounts applicable under the *Workers Compensation Act 1926*.

The legislation currently does not allow for workers with a date of injury prior to 30 June 1987 to be paid at the higher rates under Division 1 of Part 3.

2. Dependant allowance:

Workers who have been certified as partially disabled and with an injury after 30 June 1987 should not receive payments for dependants. Only partially disabled workers with an injury before 30 June 1987 should be receiving dependant payments. This has implications for the younger cohort of workers with silicosis as well as retired workers who would no longer receive allowances for dependants.

Sections 38 and 40 (Division 1 of Part 3) of the *Workers Compensation Act 1987* (pre-2012 provisions) set out the calculation and amount of compensation a partially disabled worker may be eligible to receive. Both sections provide for the payment of weekly compensation, calculated as either the worker's current weekly wage rate or average weekly earnings. However, neither section 38 or 40 contain provision for a worker to be paid additional allowances for dependant spouses and children.

3. Retired or unemployed totally disabled workers:

Under section 36 of the historical, pre-2012 provisions of the *1987 Workers Compensation Act*, totally disabled workers who are retired or unemployed are entitled to weekly benefits according to their current weekly wage rate (CWWR) during their first 26 weeks of incapacity.

Section 42 of the pre-2021 provisions of the *Workers Compensation Act 1987* currently requires that, for retired and unemployed workers who are certified as totally disabled, weekly benefits in the first 26 weeks of incapacity should be paid based on the current value of award rates that the worker was earning at the time they left the occupation that caused their dust disease (the CWWR). This is usually not viable in practice as the award rates in question often relate to 30 or 40 years ago and documentation of earnings from these periods cannot be supplied by workers, many of whom are now in their late 70's and in poor health as a result of their dust disease.

Legislation change:

Without legislative change, the discrepancies and inequalities outlined above would continue leading to inconsistent entitlements to workers in the first two cases and increased complexity and anxiety in the third. icare, SIRA and Treasury are working together to prepare options which aim to address issues with the current legislation for government consideration.

Past and current practice:

Past practice for each of the above discrepancies, as established by the former governing bodies for Dust Disease Care, has been as follows:

1. Workers whose date of injury pre-dates 30 June 1987 and are currently legislatively entitled to weekly compensation that is 20 per cent lower than worker with an injury date after 30 June 1987, have been paid at the higher post 30 June 1987 rate.

2. Workers who have been certified as partially disabled and with an injury after 30 June 1987, have been paid dependant entitlements at the same level as an equivalent cohort whose accident dates are pre 30 June 1987.
3. Totally disabled workers who are retired or unemployed have been receiving payments at the statutory indexed weekly wages rate, rather than at the rate of their historical earnings, in the first 26 weeks.

icare has continued the practices set out in 1 and 2 above. This ensured workers and their dependents were not disadvantaged by the discrepancies in the legislation. Without legislative change, the first two practices would need to cease, resulting in a significant number of workers and dependants losing their entitlements.

icare has recognised the inequity in the third practice, as well as appreciating the complexity in the current legislative requirements. To address this, icare has amended past practices in respect of the calculation of benefits for retired totally disabled workers, so that the weekly benefits for a worker's first 26 weeks of incapacity are estimated using the Australian Bureau of Statistics' average wage rates for the relevant industry, or an equivalent external benchmark for average earnings. This amendment simplifies the process of estimating weekly benefits, thereby reducing the burden on injured workers suffering from a dust disease by no longer requiring them to recall records or information about past earnings. It also provides a level of compensation that is estimated to be around or above the workers CWWR.

Without legislative change, the weekly benefits in the first 26 weeks for retired totally disabled workers would need to be assessed based on CWWR. This would require a lengthy process of tracing past earnings from decades ago to determine entitlements from elderly people who may be very ill because of their dust disease.