

**ANSWERS TO QUESTIONS ON NOTICE - MR BEN KRUSE LEGAL/INDUSTRIAL OFFICER, CFMEU  
CONSTRUCTION – HEARING 16 FEBRUARY 2022 – STANDING COMMITTEE ON LAW AND JUSTICE**

**2021 REVIEW OF THE DUST DISEASES SCHEME**

We refer to the question on notice arising from pages 12 to 13 of the uncorrected transcript 16 February 2022-extracted below.

**“Mr DAVID SHOEBRIDGE:** Thanks to the two of you for your evidence today and the work that both of your unions do towards safety on the ground. Have you had the opportunity to read the icare submission, Mr Kruse?

**BEN KRUSE:** Yes.

**Mr DAVID SHOEBRIDGE:** What do you make of the situation where icare has a 59 per cent funding ratio? What has led to that, be it higher claims management or a stuff-up in past underpayments? What do you make of that?

**BEN KRUSE:** I am sorry, I did miss a little bit of that. Were you talking about the underpayments issue, Mr Shoebridge?

**Mr DAVID SHOEBRIDGE:** According to icare, the Dust Diseases Care scheme has only a 59 per cent funding ratio, with \$1.2 billion in funds under management. When I do the numbers, that is a deficit of some \$833 million. They say that the scheme's liabilities have been adversely impacted by a higher than expected number of claims, an increase in expected claims handling expenses and allowances for remediating past underpayments for some workers and revising future payment practices. A lot of that seems to be stuff-ups from icare, but I could be wrong. What is your view?

**BEN KRUSE:** Yes. Look, we addressed that at point 11 on page 16 of our submission. There have been concerns with payments. There are some retired and disabled workers that were paid the statutory rate rather than the actual rate of pay for 26 weeks of incapacity. I mean, that is a stuff-up. There are also overpayments made in some circumstances. Rather than focusing on the past, I am more concerned with the future. One of the concerns we have is that the standard icare response is to engage external advisers, such as PricewaterhouseCoopers, to come and resolve these issues. What clearly needs to happen is that they need to improve their competence within the organisation to actually address these issues themselves.

**Mr DAVID SHOEBRIDGE:** Mr Donovan?

**CHRIS DONOVAN:** I just echo the comments of my comrade in the CFMMEU, to be honest. It is obviously not too good and, just like him, I think I would like to concentrate on the future in terms of having this matter resolved. But in all of these things it might be a question worth posing as well to the lawyers, given they might have better sight of that.

**Mr DAVID SHOEBRIDGE:** In one of the matters of the icare submission they point out how the underpayments have arisen and how, on their fresh reading of the law, some incapacitated workers' dependants are not entitled to even the very modest payments under dust diseases and it really depends on when you are found to have a hazardous dust disease. They say that they have recommended to the Government that that be fixed by legislation so that, regardless of what your injury is, you and your dependants have the right to the same fair compensation. Have you been consulted about any of the amendments to that effect?

**BEN KRUSE:** I am not aware of any direct consultation about that with us about that matter. If I could also just be a bit opportunistic and point to one concern that it is in our submission about legal issues. Our lawyers who represent injured workers tell us that there is a real problem for the tribunal, the Dust Diseases Tribunal, in deregistered companies having to be reinstated through expensive and timely Supreme Court actions. This issue needs to be resolved. I used to run dust diseases cases myself and I am well aware that there is often a real race to get these hearings on because people's health conditions can turn very quickly. It really needs to be done to streamline the process for people getting their cases heard before the tribunal.

**Mr DAVID SHOEBRIDGE:** Could I ask you, if you could, to give us a brief additional submission on that point? Many years ago when I did practise in this space I recall those fairly pointless summonses to the

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Supreme Court with costs and extensive delays to reinstate a company purely to have some kind of Nominal Defendant who is then represented by an insurer—a ridiculous waste of money and time—so if you have a proposed law reform in that regard, it would be great if you could articulate it with some clarity in your answer.

**BEN KRUSE:** Yes. Well, I take you to page 17 of our written submission. The best example of the problem is identified *In the Matter of Richards Contracting*. All of these procedures are relatively automatic but they are involved moving through, step-by-step, an extraordinary number of applications that were costly. Simply put, the Act needs to be amended so that any claim made by a worker and a former employer kelpie managed and satisfied by naming SIRA in the proceedings in the Dust Diseases Tribunal without also having to obtain leave from the Supreme Court corporations list to reinstate deregistered corporate employers.

**Mr DAVID SHOEBRIDGE:** All right. That seems to be extremely rational, although it does cut out some work for lawyers. Maybe that should be part of the scheme. Mr Donovan, do you have a view about the need to urgently implement legal changes, as apparently icare has informed the Government, to ensure that no dependant or worker is worse off with a dust disease claim just depending on some arbitrary date of their injury?

**CHRIS DONOVAN:** Yes, certainly. We touch on this in the submission. I can only speak anecdotally, really. We have a number of people who fall into that category. If you look at the workforce in general, they are typically the old sort of system of the breadwinner, basically, and the partner who is not working and who typically stays at home to do sort of domestic duties in that fashion. When we see instances of silicosis occur, it is typically quite harsh. It is actually discouraging people and workers who were aware of actually coming forward and who are already displaying symptoms of silicosis or potential lung diseases because there is lack of faith in the system itself, which we are concerned about.

But certainly any changes should also include, given what I mentioned before, provisions for adequate compensation going forward relative to the current role and for that compensation and also extra support for family members. I think you will find as well that many of the tunnelling workers that we represent are on a decent wage, given the amount of risk that their job requires them to do. However, the tunnelling jobs will not be around forever. Typically, what we see is a lot of movement within the industry—that is, workers will go from Victoria to Queensland back down to Sydney to continue to do

and work on tunnelling projects, which puts them at further and further risk of developing these sorts of diseases.

**Mr DAVID SHOEBRIDGE:** Can I ask you both, if you would not mind, just to take on notice and maybe go back and check with other officers what, if any, consultations happened with your organisations about the underpayments issue?

**BEN KRUSE:** Yes.”

The CFMMEU provides the following reply:

As a representative on the Nominal Insurer Advisory Committee (NIAC) the CFMEU received an initial briefing on the Dust Disease PIAWE issue on 2 July 2021. During that briefing, we were told that icare was seeking legislative changes that would allow it to continue its existing arrangements that related to the overpayments. We understood that there had been conversations with the Treasurer about the situation. The NIAC members suggested that icare may want to keep the group updated as it was in the interests of our members to ensure the correct payments were being made and that any change to interpretation did not result in reduction to benefits.

Since then there has been no further update on the discussions with cabinet regarding legislative change and we are not aware of other discussions concerning legislative changes.

The CFMEU is due to receive an update on the progress of the dust remediation on 4 April 2022

Regards

**Ben Kruse**

Legal/Industrial Officer



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