

**LEGISLATIVE COUNCIL STANDING COMMITTEE ON LAW AND JUSTICE**

**FIRST REVIEW OF THE EXERCISE OF THE FUNCTIONS OF  
WORKERS COMPENSATION (DUST DISEASES) BOARD**

**QUESTIONS ON NOTICE ARISING FROM PUBLIC HEARING 28 MARCH 2014**

**QUESTION 1:**

**CHAIR:** I will ask one more question and then I will hand questioning over to other people. Earlier we heard evidence from the Asbestos Diseases Foundation of Australia, keeping in mind that time is critical because once this is diagnosed people die between nine to 12 months later or thereabouts. I understand these claims are processed within a period of about two months. It has been suggested that there be provisional approval within seven days, keeping in mind that the facts that you need to establish in these cases are pretty clear cut. What is the view of the board in considering tentative approval in a period of seven days? That makes a big difference, does it not—seven days compared to two months.

**Mr DAVID SHOEBRIDGE:** We got that figure from the metal workers—that out of 150 claims, only one of this class had been refused.

**CHAIR:** That is right.

**Ms ANDERSON:** If you like, I will provide some comment on that, but I will firstly put a rider to it to say that I do not speak on behalf of the board. I am the administrator and it would in fact be a decision for government. I will speak to give you some background and context to help you understand the issue.

**CHAIR:** Are there any logistic problems, without going into the issue of policy?

**Ms ANDERSON:** There would be a number of logistic problems that would have to be carefully considered.

**CHAIR:** Yes.

**Ms ANDERSON:** But I first want to say that there is no need for someone to get an award from the board before they seek medical treatment. There is not a pre-approval process. You can go and get your medical treatment. We regularly are reimbursing Medicare and private health organisations for the cost of treatment that was incurred before the making of the award. It is unlike other jurisdictions where you have got to get the approval of the insurer. That does not happen in this jurisdiction. There is no financial disadvantage to the person. The proposal needs to be looked at in terms of impacts on the scheme and whether or not in fact it would achieve the outcome. I had thought of some of the things.

Mr Henry said that there would be no financial impact, but you would have to have a look at that because it would require fundamental changes to the operating model of the Dust Diseases Board and the way in which compensation application decisions are made. Both the medical authority and the board have a decision making role. That would have to be looked at if that was to be condensed into a seven-day period about how you would go about doing that. I understand from the Asbestos Diseases Foundation of Australia [ADFA] submission they are suggesting it be done on the basis of external documents. There are also implications for the Dust Diseases Tribunal because they work in concert with each other.

They hang off making their award until the Dust Diseases Board has determined its liability. Questions about whether they would make an award on provisional liability or not would have to be considered.

**Mr DAVID SHOEBRIDGE:** I think you would assume that the answer to that would be no.

**Ms ANDERSON:** I am just saying that it is something to be considered. The other thing is that the Dust Diseases Board has the ability to recover its costs from negligent third parties. Whether or not the provisional liability would have an impact on that, I do not know. It will have to be considered. Lastly, there is a consideration of the person themselves if provisional liability did not end in a final award and we had to say, "Look, I'm sorry, you're not going to get any more compensation", and just the personal devastation of that.

They are all things that need to be considered.

**CHAIR:** Good.

**The Hon. PETER PRIMROSE:** Can I ask you this: Is it possible to get a comment from the board about this proposal?

**Ms ANDERSON:** I am sure the board would.

**The Hon. PETER PRIMROSE:** There are a number of proposals.

**Ms ANDERSON:** Yes.

**The Hon. PETER PRIMROSE:** This is the key one and the other one is removing the \$50,000 cap.

**Ms ANDERSON:** Yes. I think the primary consideration in relation to provisional liability is the medical diagnosis. We see a significant number of applications coming to the board where there is not a definitive diagnosis of mesothelioma. It is a very complex area of diagnostic skill and it is an area of expertise.

Last year the Asbestos Diseases Research Institute issued guidelines for the diagnosis and treatment of mesothelioma, and if I may quote the reasons they gave for having to issue those guidelines, they were, "The diagnosis of mesothelioma can be difficult with symptoms and clinical findings that mimic and can be mimicked by other diseases." They went on to say, "There are indications in Australia that diagnostic and treatment practices for malignant mesothelioma are not equally distributed."

**CHAIR:** Why do we not give you some questions on notice?

**Ms ANDERSON:** We will be happy to take those on notice and give you some background information.

**CHAIR:** We will give you some questions on notice to give you the opportunity to respond to all of these technical issues.

**Ms ANDERSON:** Of course.

## **RESPONSE:**

### **Provisional approval of dust diseases claims for mesothelioma**

The provisional approval of dust diseases claims is a policy decision for the New South Wales Government. The role of the Dust Diseases Board, as set out in the *Workers' Compensation (Dust Diseases) Act 1942* (the Act), is to administer the Fund and to examine into, hear and determine all matters and questions arising out of a claim for compensation under the Act. The Dust Disease Board does not have a statutory role to advise on legislative policy issues.

A diagnosis of mesothelioma is a specialist area of medical practice requiring holistic consideration of a range of diagnostic tests and any co-morbidities.

The Board's Medical Authority is comprised of a panel of specialist respiratory physicians with expertise in the diagnosis and treatment of dust diseases including mesothelioma.

The Dust Diseases Board works with applicants to help them obtain all the necessary medical and other information needed to achieve a successful application outcome. The Dust Diseases Board frequently works directly with the applicant's medical providers on behalf of the worker to obtain their medical records.

Once the required information has been obtained, the application for compensation can move without delay through the Medical Authority to the Board for approval of an award of compensation. In urgent cases, the Board members will consider the award by way of circulatory resolution between Board meetings.

While there is no requirement for workers to seek prior approval of the Board or await an award from the Board before undertaking treatment and incurring medical expenses in relation to their dust disease, the Board has delegated to the General Manager the authority to make awards for payment of urgent medical care if required.

In the 2013 Client Satisfaction Survey, 77% of respondents rated the Dust Diseases Board favourably in relation to the timeliness of application processing, while 9% of respondents said it could improve in this area.

Given the Board is made up of equal representatives from employer and employee organisations, members would need sufficient information on costs, benefits and implications and sufficient time for peak organisations to consult with their members and the medical profession prior to providing comment. This will require significantly more time before the Board would be in a position to be able to comment on the desirability of the provisional approval of claims.

### **\$50,000 medical expenses cap**

As at February 2014, the Dust Disease Board had a total of 64 clients who were receiving medical expenses in excess of the \$50,000 statutory cap, representing 6.5% of all clients currently receiving medical and hospital expense entitlements.

Section 8(2)(d) of the *Workers' Compensation (Dust Diseases) Act 1942* provides that the Dust Diseases Board is to pay medical and related treatment or hospital, occupational rehabilitation or ambulance expenses that become reasonable and necessary as a result of dust diseases. The benefits payable are prescribed by Division 3 of Part 3 of the *Workers Compensation Act 1987* (sections 59 to 64A).

Section 61(3) of the Principal Act sets a limit of \$50,000 for the payment of medical expenses; except, where some greater amount has been fixed by the WorkCover Authority by order published in the Gazette. The Dust Diseases Board currently exercises its authority under section 61(4) of the Principal Act to approve awards for the continuation of medical and/or hospital expense entitlements under section 8(2)(d) in excess of the maximum limit as appropriate. The Board routinely approves awards for continuation of medical expense entitlements at its monthly board meetings. The process does not result in any disadvantage to the Board's beneficiaries.

The Dust Diseases Board is investigating the ability of WorkCover to gazette a higher limit for medical expenses for dust diseases under section 61 of the *Workers' Compensation Act 1987*.

## **QUESTION 2:**

**Mr SCOT MacDONALD:** I would like you to take my question on notice. I had experience with a small council in the west which came upon an asbestos incident. The council did not handle the incident well to start with, probably because this was the first incident it had had to handle—and I do not think the council would object to my saying that. Staff suddenly found asbestos in old drain sites, from memory.

I heard you say you are working with local councils, but I would like to be comforted that you are assisting smaller councils without the capacity to deal with these issues. The environmental director of this council is also the planning director and has various other roles. I would like information about what you are doing for small councils, covering fewer than 5,000.

**Mr DUNPHY:** I am happy to respond to that. One thing we made sure of when we set up Heads of Asbestos Coordination Authorities was that there was a strong local council involvement. We have a representative from the Division of Local Government, the State agency, as well as a representative from Local Government NSW who represents all the local councils. We have funded a position in Local Government NSW to assist the Heads of Asbestos Coordination Authorities to get all councils to develop asbestos policies. For the last two years we have funded a fulltime position with Local Government NSW with the role to work with all 150 or so councils to develop a model asbestos policy. This policy was developed and launched towards the end of November 2012. The Division of Local Government gazetted that as a guideline under the Local Government Act in about April last year. That is a requirement for all local councils developing model asbestos policies.

Now the policy has been developed that person is working with local councils, running workshops for people like environmental directors and building inspectors.

## **RESPONSE:**

### **Assistance for small councils without the capacity to deal with asbestos issues**

The Heads of Asbestos Coordination Authorities currently funds a resource position within Local Government NSW who works with all local councils, including councils with less than 5,000 residents, to develop the Model Asbestos Policy. The position provides technical advice, support and assistance to these local councils to assist them develop and implement the policy.

The Model Asbestos Policy and supporting guide for local council provides for the preparation of a comprehensive and compliant asbestos policy in each local government area. The Model Asbestos Policy has been issued to all councils by the Division of Local Government under section 23A of the *Local Government Act 1993*.

Local Government NSW with support from the Heads of Asbestos Coordination Authorities has held 10 Asbestos Management Workshops across New South Wales in 2013 to support Councils in adopting the Model Asbestos Policy. A total of 89 Councils and approximately 340 staff attended Asbestos Management Workshops held across New South Wales. The workshops give participants the opportunity to explore the roles and responsibilities of councils in safely managing asbestos and features expert presenters, council case studies and group activities to help outline useful strategies.

In July 2013, “Betty” the asbestos house embarked on her first regional tour of New South Wales. Betty is a purpose built, mobile model home designed to demonstrate where asbestos might be found in and around any home built or renovated before 1987. Her exterior resembles a typical fibro home, but when opened up, she has extensive audio and visual information including a bathroom, kitchen, living room, shed/garage and a dog house. During the Asbestos Awareness Month Campaign in November 2013, Betty travelled 2,438 kilometres and made 29 individual appearances. To ensure local community engagement, Betty was hosted by 17 councils around New South Wales.

The Heads of Asbestos Coordination Authorities has also provided the following support to local councils:

- development of a Local Government Fact Sheet on asbestos safety in homes for up-loading onto local council websites;
- asbestos Management Decision Tree developed for NSW Councils;
- guidance material developed for councils regarding health monitoring and personal protective equipment following feedback from workshops;
- asbestos and Telstra communication pits advice circulated to all Councils; and
- for the first time in 2013, an Asbestos Management Award category (sponsored by WorkCover) was awarded to a NSW council at the Local Government NSW Excellence in the Environment Awards.