

## INQUIRY INTO 2018 REVIEW OF THE DUST DISEASES SCHEME

**Organisation:** State Insurance Regulatory Authority

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# Submission to the Legislative Council Standing Committee on Law and Justice: second review of the Dust Disease Scheme

State Insurance Regulatory Authority

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## 1. Context

The *State Insurance and Care Governance Act 2015* (SICG Act) designates the Legislative Council's Standing Committee on Law and Justice as the committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers compensation and motor accidents legislation, which include the:

- (a) Workers' Compensation Scheme
- (b) Workers' Compensation (Dust Diseases) Scheme
- (c) Motor Accidents Scheme
- (d) Motor Accidents (Lifetime Care and Support) Scheme.

In exercising this function, the Committee must report to the House at least once every two years in relation to each Scheme. It is not authorised to investigate particular compensation claims.

## 2. Introduction

The State Insurance Regulatory Authority (SIRA) welcomes the opportunity to make a submission to the Committee's second review of the Dust Diseases Schemes since the commencement of the SICG Act.

## 3. SIRA Background & Overview

SIRA was established on 1 September 2015 through the SICG Act. SIRA aims to ensure people who suffer injury or loss are supported, and insurance is affordable, well managed and sustainable.

SIRA is a statutory body and NSW Government agency constituted under section 17 of the SICG Act. It is governed by an independent Board.

SIRA is an agency within the Finance, Services and Innovation cluster. Its staff are employed by the the NSW Department of Finance, Services and Innovation (DFSI).

SIRA regulates workers compensation insurance and related activities, motor accidents CTP insurance and home building compensation insurance in NSW. It also provides some independent dispute resolution services.

SIRA administers legislation and regulations and holds insurers accountable for compliance with conduct, claims management, premium, prudential and other legislative and licence condition requirements. SIRA also administers specific

regulatory obligations of employers, vehicle owners, and service providers in the statutory schemes.

SIRA also funds, promotes and informs injury prevention in relation to the schemes it regulates. SIRA also has specific functions within the Lifetime Care and Support Scheme and the Dust Diseases Scheme.

## 4. SIRA's role in Dust Diseases scheme

SIRA's regulatory role in relation to Workers Compensation Dust Diseases as defined in the *Workers Compensation (Dust Diseases) Act 1942* (1942 Act) is to determine the contributions to be paid by insurers to the Workers Compensation (Dust Diseases) Fund (Fund). The Dust Diseases Authority (DDA) administers the Fund and is not subject to independent regulation of claims, conduct or prudential functions, though the NSW Treasurer is the responsible Minister according to the allocation of Acts.

In addition to determining insurer contributions, SIRA indexes the compensation payments for dust diseases, based on the Workers Compensation Act 1987 (1987 Act) provisions for exempt workers, and death benefits prescribed in section 8 of the 1942 Act. (NB. Relevant indexation provisions are in the 1987 Act.)

### Dust diseases contributions

To determine the amount and timing of contributions to be paid by insurers, SIRA writes annually to the DDA to formally request a certified estimate of the amount to be expended out of the Fund for the next following year commencing 1<sup>st</sup> July.

SIRA considers the estimates provided by the DDA and if required, will undertake additional analysis to determine:

- The insurers or classes of insurers to pay contributions;
- The amount of contributions to be paid by insurers; and
- The timing of contributions to be paid by insurers.

SIRA may also determine additional amounts of contributions to be paid by insurers it considers necessary in regard to prevailing circumstances and the financial stability of the Fund.

### Methodology for dust diseases contributions

All employers in NSW contribute to the Fund through their annual workers compensation insurance premiums. The dust diseases contribution rates (Dust Diseases Levy) for each policy year are determined by SIRA.

The Dust Diseases Levy for employers are based on the classification of an employer's business by Workers Compensation Industry Classification (WIC) code. Each WIC

code is allocated to a Schedule in relation to the Dust Diseases Levy. There are eight Schedules with Schedule 1 representing the highest risk of dust disease and Schedule 8 representing the lowest risk. SIRA may move WICs between schedules based on analysis of information including estimates to be expended from the Fund, actuarial reports, recommendations made by the DDA and claims experience data.

For the policy year 2018/19, the DDA recommended the movement of 19 WICs between the dust diseases schedules. SIRA commissioned independent actuarial analysis and approved the DDA recommendations.

The Workers Compensation Industry Classification is published in the SIRA Market Practice and Premiums Guidelines.

Those industries defined as 'determined classes of employment', as per the Government Gazette of 11 May 1979, are not allocated to a Schedule, as these industries specifically handle asbestos and have a defined rate of four per cent.

SIRA has engaged Taylor Fry Actuaries to review the methodology used to determine dust diseases contributions. The review will be completed by February 2019 in order to inform SIRA's consideration of contributions for the 2019/20 financial year.

## 5. Previous scheme reviews and progress on recommendations

In 2017, the Standing Committee on Law and Justice conducted its first review of the Dust Diseases Scheme. The Committee's Final Report included 5 recommendations for icare and the Government. The recommendations were:

### **Recommendation 1**

*That the relevant Minister urgently convene a taskforce of industry, regulatory and workforce representatives to review safety standards in the manufactured stone industry and consider regulatory changes necessary to protect workers in the industry.*

### **Recommendation 2**

*That icare consult with stakeholders to examine the feasibility of establishing a national dust diseases data collection system.*

### **Recommendation 3**

*That Dust Diseases Care ensure that its fact sheets and brochures emphasise the importance of lodging a Dust Diseases scheme application quickly, and explain the nexus between receipt of application and payment of benefits.*

### **Recommendation 4**

*That icare expedite the development of an online application process for the Dust Diseases scheme that provides for 24-hour electronic lodgement and receipt, similar to that provided by the Dust Diseases Tribunal.*

## **Recommendation 5**

*That the NSW Government consider establishing a statutory internal appeals panel to provide an affordable and independent avenue to review decisions about Dust Diseases scheme eligibility.*

The NSW Government provided its response to the Committee's report in February 2018, in which it noted its support, or support in principle, for all 5 recommendations, and outlined its commitment to implementation of those recommendations.

No recommendations were directed to SIRA in the Committee's report.

However, SIRA is contributing to the assessment of the viability of a national dust disease register and is undertaking consultation with a range of New South Wales and national stakeholders.

Consultation to date indicates that there are existing national agencies that could deliver a national dust diseases register and that requirements for successful establishment of a register would include:

- support from all states, territories and the Commonwealth
- support and engagement from all state and territory health agencies
- mandatory reporting from all states and territories.

SIRA is continuing to consult with New South Wales and national stakeholders to assess the feasibility of a Dust Diseases data collection system.

The COAG Health Council meeting considered a national register for dust diseases at its October 2018 meeting. The matter was referred to the Clinical Principal Committee (CPC) of the Australian Health Ministers' Advisory Council (AHMAC) to examine the creation of a national dust diseases register. The CPC is scheduled to meet in early November 2018 to review the matter. SIRA will monitor and respond to any direction or action from COAG's Health Council.

## **6. Conclusion**

SIRA would be pleased to provide further information as required by the Committee.