

INQUIRY INTO 2019 REVIEW OF THE DUST DISEASES SCHEME

Organisation: State Insurance Regulatory Authority (SIRA)

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State Insurance Regulatory Authority

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1. Context

The *State Insurance and Care Governance Act 2015* (SICG Act) designates the Legislative Council 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.

SIRA notes that the Committee has resolved that the 2019 review will focus on the response to silicosis in the manufactured stone industry in New South Wales.

2. Introduction

The State Insurance Regulatory Authority (SIRA) welcomes the opportunity to make a submission to the Committee's 2019 review of the Dust Diseases Scheme.

SIRA would welcome the opportunity to provide evidence to the Committee or to answer questions on notice.

Noting the focus of the 2019 Review, SIRA offers to take on notice any questions the Committee wishes to be directed to SafeWork NSW. In addition, as Ms Donnelly, Chief Executive of SIRA, is the Safe Work Australia Member representing NSW, Ms Donnelly also offers to seek responses to relevant questions on notice from Safe Work Australia if required.

3. SIRA 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 Customer Service cluster. Its staff are employed by the NSW Department of Customer Service (DCS).

SIRA regulates workers compensation insurance and related activities, motor accidents compulsory third party (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 Dust Diseases Scheme and the Lifetime Care and Support Scheme.

4. SIRA's role in the 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.)

4.1 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 1st 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.

4.2 Methodology for dust diseases contributions

Dust Disease contributions are payable by insurers. Contributions are determined based on the Workers Compensation Industry Classification (WIC) codes of employers insured

by each insurer. Each WIC code is allocated to one of eight schedules depending on the relevant industry's dust disease risk, and each schedule is assigned a rate, which is applied to the wages of insured employers.

SIRA may move WICs between schedules based on analysis of information including estimates by the DDA of the amount to be expended from the Fund each financial year, actuarial reports and claims experience data.

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

Based on analysis undertaken by Taylor Fry, SIRA moved 41 WIC codes between schedules for the 2019/20 policy year; and the rates for two schedules were reduced slightly, while the rate for the remaining six schedules remain unchanged.

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.

In the second half of 2018, SIRA engaged Taylor Fry Actuaries to review the methodology used to determine dust diseases contributions. In December 2018, Taylor Fry advised that the existing methodology for determining contributions is reasonable, although alternative valid methodologies are also available.

5. Previous scheme reviews and progress on recommendations

5.1 First review of the Dust Diseases Scheme

In 2017, the Standing Committee on Law and Justice conducted its first review of the Dust Diseases Scheme. The Committee's Final Report included five recommendations for icare and the Government. No recommendations were directed to SIRA in the Committee's report. However, in line with the Government response to recommendation 2, SIRA progressed action on the recommendation to investigate the feasibility of a national dust diseases register and mandatory reporting of occupational lung diseases.

5.2 2018 review of the Dust Diseases Scheme

SIRA's submission to the 2018 review of the Dust Diseases Scheme, and evidence provided at the hearing on 25 January 2019, outlined its contribution to examining the feasibility of a national dust disease data collection system (recommendation 2 from the first review of the Dust Diseases Scheme). SIRA provided details of consultation undertaken with a range of New South Wales and national stakeholders and noted work

being undertaken by the COAG Health Council, through its advisory bodies, investigating the creation of a national dust diseases register.

On 26 February 2019, the Committee published its Final Report on the 2018 (second) review of the Dust Diseases Scheme. The report included eight recommendations proposing individual actions for the Government, SIRA, icare and SafeWork NSW. One recommendation was directed to SIRA:

Recommendation 6

That the State Insurance Regulatory Authority liaise with key stakeholders, including the Thoracic Society of Australia and New Zealand, regarding updating of the list of dust diseases contained in Schedule 1 of the Workers' Compensation (Dust Diseases) Act 1942 and commission an independent actuarial study to consider the implications of making any amendments.

The Government response to the Committee's recommendations, tabled on 8 July 2019, noted its support, or support in principle, for all eight recommendations.

Recommendation 6 was supported in principle by the Government which noted:

...that in order to consider inclusion of other occupational dust diseases not currently included in Schedule 1 of the Workers' Compensation (Dust Diseases) Act 1942, it will be necessary to undertake research into:

- *epidemiological studies on the incidence of the dust diseases;*
- *an exposure profile of the NS workforce over time;*
- *latency periods (ie. The time between exposure to the hazard and onset of illness); and*
- *the severity of the diseases on its occurrence.*

SIRA has commenced consultation with key stakeholders, including the Thoracic Society of Australia and New Zealand (TSANZ) and has met with icare and agreed to ongoing collaboration to progress action on recommendation 6.

SIRA and icare are together progressing action on ***Recommendation 7:***

That the NSW Government make a regulation that the payment of reasonable funeral expenses in the Workers Compensation (Dust Diseases) Scheme be increased to not exceed \$15,000, in line with the Workers Compensation Scheme statutory maximum.

This recommendation was supported in principle by the Government pending investigation of financial and regulatory implications.

The Committee also recommended the establishment of a dust diseases register:

Recommendation 4

That, if a National Dust Diseases Register is not established by the end of 2019, the NSW Government establish a New South Wales Dust Diseases Register.

The Government response supported this recommendation in principle, stating:

... It is noted that the Commonwealth Government has announced funding for a National Dust Diseases Taskforce and the establishment of a National Dust Diseases Register. The Clinical Principal Committee of the Australian Health Minister's Advisory Council is examining the creation of a national register. The NSW Government will consider the outcomes of the report once available.

SIRA continues to work with key stakeholders and support concurrent programs of work at state and national levels regarding the introduction of a national dust diseases register. An update of recent action is provided below.

On 30 April 2019, the Federal Minister for Health announced, in a pre-election commitment, the Federal Government's decision to fund the establishment of a 'National Dust Diseases Taskforce' to develop a national approach for the prevention, early identification, control and management of dust diseases in Australia. The funding will also establish a National Dust Diseases Register, commission new research to support understanding, prevention and treatment of preventable occupational lung diseases.

On 26 July 2019, the Commonwealth Chief Medical Officer, Professor Brendan Murphy, announced the establishment of the National Dust Disease Taskforce and released its Terms of Reference.

The Taskforce will initially be chaired by the Commonwealth Chief Medical Officer and the other seven members are drawn from the medical community, industry, research and Government.

It is expected that the Taskforce will begin its work in August 2019. The Taskforce will provide interim advice by the end of 2019 to the Commonwealth Minister for Health. The Taskforce will provide a final report to the Council of Australian Governments' Health Council, through the Commonwealth Minister for Health, by no later than December 2020.

The establishment of the National Dust Diseases Taskforce is being coordinated by the Australian Government Department of Health's Office of Health Protection. SIRA has undertaken preliminary consultation with representatives from the Office of Health Protection and will continue to monitor the establishment and activities of the Taskforce.

In Queensland, the *Health and Other Legislation Amendment Bill 2018* was assented on 11 April 2019. The Bill included amendments to the *Public Health Act 2005* to make dust diseases notifiable by medical practitioners to the Chief Health Officer and the establishment of a Notifiable Dust Lung Disease Register. These changes commenced on 1 July 2019.

6. Conclusion

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

