

INQUIRY INTO 2024 REVIEW OF THE DUST DISEASES SCHEME

Organisation: Australian Manufacturing Workers' Union

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AMWU NSW/ACT Branch Submission 2024 Review of the Dust Diseases Scheme

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Introduction

The Australian Manufacturing Workers' Union (AMWU) welcomes the opportunity to make a submission in relation to the NSW Government 2024 Review of the Dust Diseases Scheme.

The full name of the AMWU is the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU). The AMWU NSW Branch membership consists of over 13,000 workers across various industries, vocations, and locations across the state.

Background

Although this Review focuses on younger workers within the Dust Diseases Scheme, as part of the *Workers' Compensation (Dust Diseases) Act 1942 (NSW)*. The entire NSW Workers' Compensation system is still subject to most of the brutal Liberal National Party (LNP) reforms of 2012. Allied with this is the sorry state of SafeWork NSW after 12 years of de-fanging.

The union movement saw the election of the new Minn's ALP Government, as perhaps some hope that quick action might be taken to improve Worker's Compensation rights and improve the operations of SafeWork NSW. After 20 months nothing much seems to have happened. Although this submission refers to younger people in the main, it applies to every worker who is exposed to dust through their work and their dependents.

There is a cruel irony in the title, "Dust Diseases Scheme", for a worker approaching it with a claim. They may have the misapprehension that it is a scheme that will maintain their income and properly look after their family, when they are too sick to work, or are killed by their preventable exposures to dust.

A quick look through the brutal step downs of the so-called benefits, would quickly convince a dust diseased worker, that these benefits are better termed 'detriments', because that is what they are.

The Review Outline

This year's review focuses on two key areas;

Support available to younger workers within the Dust Diseases Scheme

i. The first will be the support available to younger workers within the Dust Diseases Scheme (the Scheme), including; How younger workers can readily access appropriate supports to maintain or extend their working life in suitable duties,

To be able to '*readily access appropriate supports*', younger workers need to be aware that there is a Dust Diseases Scheme available in the first place.

To that end, the Scheme has no presence on the social media that younger people typically use to find information. A list of the following social media websites and applications:

- i. Youtube;
- ii. Tiktok;
- iii. Instagram;
- iv. Apple App Store;
- v. Facebook;
- vi. X (formerly known as Twitter);
- vii. Reddit;
- viii. Tumblr;
- ix. Twitch;
- x. Discord;
- xi. Snapchat; and
- xii. Podcasts

With respect to icare, they do have an 'icare NSW' YouTube channel. The only obvious video related to the Scheme, is titled '*Bringing the icare Mobile Lung Screen to NSW*'. This video has had only 752 views in 7 years and has generated no comments in that time.

In the alternative, icare does not have a presence on;

- i. Tiktok;
- ii. Instagram;
- iii. Apple App Store;
- iv. Facebook;
- v. X (formerly known as Twitter);
- vi. Reddit;
- vii. Tumblr;
- viii. Twitch;
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- x. Snapchat; and
- xi. Podcasts

Recommendation 1. icare / Dust Diseases Scheme needs to develop a social media strategy. This should be formulated and reviewed periodically, with a group of young people undertaking work in which dust is a foreseeable hazard, including those in the construction, maintenance and manufacturing industries. This is to ensure that such a strategy is both appealing to the target audience and that keeps pace with changes in the social media landscape.

Appropriate supports to maintain or extend their working life in suitable duties

ii. With respect to ‘appropriate supports to maintain or extend their working life in suitable duties’. Typically, once any worker contracts a dust disease, it is very difficult to stay working in a dusty environment. As employers will usually argue that they cannot provide suitable duties that are safe and healthy for workers suffering from a dust disease.

The AMWU will continue to advocate for suitable duties for our injured members, regardless of their age. Once a dust disease becomes a chronic condition, employers usually fail to return such a worker to their former role. Sooner or later, they are classified as unable to fit the inherent requirements of their job. Which ends in their termination from employment, by the person conducting a business or undertaking (PCBU) that failed to keep them healthy and safe, with minimal retraining on offer.

Recommendation 2. SafeWork NSW needs to employ sufficient numbers of return-to-work inspectors, to ensure wherever possible suitable duties are provided to young dust disease sufferers.

Recommendation 3. Where employers refuse to provide suitable duties where they can, SafeWork NSW needs to ensure that such employers are swiftly and thoroughly prosecuted.

Recommendation 4. That where suitable duties are genuinely not possible, icare and the insured employer, must ensure that young dust disease sufferers have access to genuine retraining, up to the relevant qualification level, required to accommodate their need to work in workplaces that have clean air, including to certificate III, certificate IV, diploma and degree level.

Young workers suffering from dust diseases, have often been working towards their skilled labourer or trade qualification, from their time in high school and will have invested greatly in the status that being a young skilled labourer or tradesperson brings. Losing the ability to work in that skill or trade causes not only financial stress, but also psychological stress. Both due to their dust disease condition and the loss of the status that having a skill or trade brings.

While the icare Annual Report has a paragraph on their Employee wellbeing program, for those who are on the Scheme, with ‘*one-on-one wellbeing sessions with a professional psychological supervisor*’, there are no statistics on its overall use, outcomes and no detail on how long young workers have to wait to access this scheme. Especially those living in regional and remote areas.

Recommendation 5. That icare publishes statistics on the use of their Employee wellbeing program and outcomes achieved. Including how many counselling sessions are accessed, the length of time young people wait to access the program. And any barriers to treatment faced by young people, such as living in regional and remote areas.

The icare 2022-23 Annual Report¹ and the icare milestones and achievements 2022-23², fail to discuss in any detail the overall performance of Dust Diseases Care, with respect to overall return to work statistics. While raw numbers of those returned to work are listed in the milestone’s infographic. There is no detailed information regarding the outcomes for those unable to return to their former work.

Critically there is no information provided with respect to the provision of full return to work and suitable duties, for young people or any specific demographic. These documents appear more as ‘spin’, rather than a serious attempt to report on actual outcomes.

Recommendation 6. That icare produce detailed statistics on the Scheme’s return to work outcomes. These should include: type of dust disease, age brackets, metropolitan, regional and remote residence, types of retraining made available and completed.

Recommendation 7. The statistics called for in Recommendation 6 should be produced in a publicly available dashboard format, that allows for users to produce their own reports.

¹ icare, Annual Report 2022-23; <https://www.parliament.nsw.gov.au/tp/files/187067/Attachment%20A1%20-%20icare%20Annual%20Report%202022-23.pdf>

² icare 2023, Milestone & Achievements; <https://www.icare.nsw.gov.au/-/media/icare/unique-media/about-us/annual-report/media-files/files/related-downloads/2023-milestones-and-achievements.pdf>

iii. When this is not possible due to dust disease, how the Scheme can provide financial supports commensurate to their situation in flexible ways

It is the 'flexible' nature of weekly benefits³ that is one of the major injustices in the Scheme and the Workers Compensation regime more generally. As is clear from the short benefits summary below, the Scheme is a fast road to poverty. With all the additional hazards to good health, both mental and physical, that poverty is well known to bring.

“For the first 26 weeks of total incapacity

If a dust disease sufferer is not on an award, industrial or enterprise agreement, then immediately their income is reduced to 80% including regular overtime and allowances.

Otherwise, they are paid 100% of their remuneration, excluding overtime, shift work, payments for special expenses and penalty rates.

Either way entry into the Scheme usually comes with an immediate substantial cut in take home pay.

After 26 weeks of total incapacity

After 26 weeks of incapacity the weekly payments are reduced and will usually be the lesser of the statutory rate or 90 per cent of average weekly earnings. However, the total weekly benefit cannot exceed the worker's current weekly wage rate.

The current maximum statutory rate is; 1 October 2024 to 31 March 2025 \$593.40

The current minimum statutory rate is; 1 October 2024 to 31 March 2025 \$472.00”

Any benefits should be recast as Full Remuneration Replacement Payments, including any received non-monetary benefits before the disease was contracted – including any regular overtime, shift allowances and other allowances. The only flexibility applied to them needs to be any increases in line with the award or enterprise agreement that would otherwise apply to the young dust disease sufferer. Only when a young dust disease sufferer returns to work, should their Full Remuneration Replacement Payments be reduced in line with their earned income.

This would remove the need for the current miserable rates paid as *weekly allowances for dependants*. It is a form of structural violence to pay only \$156.40 for a dependent spouse and \$111.80 for a dependent child.

³ State Insurance Regulatory Authority (SIRA), *Workers compensation benefits guide – October 2024*; <https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-and-claims/Workers-compensation-benefits-guide.pdf>, (ISBN 2653-4479) pages 27, 50 and 52.

Young apprentices and trainees, in the Scheme, will most likely miss out on age and competency-based pay increases. Also, young apprentices and trainees on Scheme benefits, will miss out on full adult rates of pay and the pay increases that come with experience after they qualify. This will also reduce their Superannuation payments too.

No amount of counselling is going to help a young dust disease sufferer, as they watch their financial future and independence drain away into a system, that punishes them for a disease they never wanted, or dreamed would happen to them.

Often a young worker will have taken out a loan to purchase a vehicle for work and these loans are usually repaid over multiple years, with the ‘flexibility’ of the Scheme making it next to impossible to keep up with repayments and keep possession of their vehicle.

Recommendation 8. Benefits paid under the Scheme, to be recast as Full Remuneration Replacement Payments. These must be at 100% of the remuneration that sufferers are paid at the time of entering the Scheme. Including superannuation and any received non-monetary benefits before the disease was contracted – plus any overtime, shift allowances and other allowances. With the only flexibility being remuneration increases, in line with the award or enterprise agreement that would otherwise apply to the young dust disease sufferer.

Recommendation 9. For young dust disease sufferers, on junior rates, their Full Remuneration Replacement Payments, must also increase with age and competency-based remuneration increases, flowing from applicable award and enterprise agreements including Superannuation. To reflect a notional minimum training period.

Scheme compensation paid to the families of dead young workers is currently set at⁴:

...a lump sum payment of up to \$420,000.00 and compensation paid fortnightly of up to \$346.40 per week...

By way of comparison, payments made due to a non-dust related workers’ compensation work related injury are⁵:

⁴ State Insurance Regulatory Authority (SIRA), **Workers compensation benefits guide – October 2024**; <https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-and-claims/Workers-compensation-benefits-guide.pdf>, (ISBN 2653-4479) Pages 75 & 77.

⁵ State Insurance Regulatory Authority (SIRA), **Workers compensation benefits guide – October 2024**; <https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-and-claims/Workers-compensation-benefits-guide.pdf>, (ISBN 2653-4479) Page 63.

...dependants of a worker whose death as result of a work-related injury occurred on or after 24 October 2007 are entitled to: a lump sum payment (\$938,600 as of October 2024).

There is no justification for paying less than half under the Scheme, when compared to a death caused by a frank workplace injury.

Clearly the maximum weekly benefit to the dependant of a dead worker of up to \$346.40 per week, represents a paltry poverty inducing sum even at its' maximum and presumably many are paid less than this amount. There is no justification to not pay the dependant of a dead worker the Full Remuneration Replacement Payment paid at the time of death. With additional increases paid in line with Recommendations 8 and 9.

Recommendation 10. Death benefits under the Scheme need to be immediately increased to match those paid for other work-related injury, \$938,600.

Recommendation 11. The Full Remuneration Replacement Payment paid at the time of death to the dust disease sufferer, to be paid to the dependent spouse, or other carer for any of their children.

However, even this sum falls well short of that calculated by The Office of Impact Analysis (OIA), in The Department of Prime Minister and Cabinet⁶;

A key concept is the value of a statistical life (VSL) which is an estimate of the value society places on reducing the risk of dying. By convention the life is assumed to be the life of a young adult with at least 40 years of life ahead. It is a statistical life because it is not the life of any particular person. Based on international and Australian research a credible estimate of the value of statistical life is \$5.4m...

Recommendation 12. The death benefit figure of \$929,000 represents a placeholder amount and needs to be increased in proportion to the OIA, following further detailed analysis of how much is to be paid at a particular age of a dead dust disease sufferer.

Recommendation 13. Based on the AMWU's recommendations, a full icare actuarial study to be undertaken to cost the financial parameters of implementing a fair Dust Diseases Scheme. This is to include retrospective payments to made to dust disease sufferers and their dependents. To be conducted via an equal tripartite industry sector standing committee, that reports to the NSW Treasurer.

⁶ The Office of Impact Analysis; Department of the Prime Minister and Cabinet, 2024 – Value of statistical life
<https://oia.pmc.gov.au/resources/guidance-assessing-impacts/value-statistical-life>

Recommendation 14. The Minns' ALP Government to fund a fair Dust Diseases Scheme, as per the foregoing AMWU recommendations as soon as is possible.

iv. Related medical, care and treatment supports for them, and when appropriate, their families.

As it stands the Scheme covers sufferers medical, care and treatment supports, *that are 'reasonably necessary'⁷ and are required as a result of your dust disease.*

The weasel words 'reasonably necessary' are unwelcome and unjust qualifiers, to what is required to ensure the just level of support a dust disease sufferer deserves. These things are either medically required or not and should not be subject to arguments about what 'reasonably' means. In addition, any required home modifications need to be part of the Scheme. There is no justification for their exclusion.

A dust disease does not only have physical effects on the body of the sufferer. It also causes psychological injury. This can involve not only the direct sufferer but their dependents as well. So, the Scheme must explicitly include paying for face-to-face psychiatrist and psychologist treatment, including travel costs. With telehealth used where face to face counselling, within practical travelling distance is not available.

Recommendation 15. Remove the words 'reasonably necessary' as a qualifier to reduce the otherwise required medical, care and treatment supports that are required by the sufferer.

Recommendation 16. Include home modifications in supports paid for by the Scheme.

Recommendation 17. The Scheme to include paying for face-to-face psychiatrist and psychologist treatment, including travel costs. With telehealth used where face to face counselling, within practical travelling distance is not available.

⁷ icare, **Medical treatment for people with a work-related dust disease, October 2024**; <https://www.icare.nsw.gov.au/injured-or-ill-people/work-related-dust-disease/services-and-support/medical-treatment>

Other risk areas for silicosis, including, but not limited to, tunnelling and quarrying.

v. The second focus will be other risk areas for silicosis, including, but not limited to, tunnelling and quarrying.

It is noted that the *Work Health and Safety Amendment (Crystalline Silica Substances) Regulation 2024*, commenced on 1 September 2024. This is a matter that principally needs to be addressed through a well trained and well resourced SafeWork NSW, with specialist Inspectors experienced in the construction. Ensuring that PCBUs are rigorously compliant with their new duties in these Regulations, under the existing duties in Sections 19-27 in the NSW WHS Act.

There is however a pervasive lack of faith in SafeWork NSW after 12 years of being defanged under the previous LNP Government. Unfortunately, 20 months into the new ALP Government, this lack of faith has not been dispelled, with no meaningful reforms to SafeWork NSW since then.

With respect to the activities of SafeWork NSW with silica, this is contained in the *Findings report: Silica Safety in Construction 2023 Report*⁸.

It is noteworthy that this Report is only an executive summary. The full report is not available, for reasons that are unexplained. Figures from the survey do not identify who undertook the survey, so their veracity is hard to ascertain. Compliance in most areas is suspiciously high 80-90% in the main.

The report states that 142 compliance notices were issued. However, there are no further details on what types of breaches were involved, sector of the construction industry, workers affected, HSRs involved, size of the PCBU etc, or amounts of the fines. Most notably not one prosecution is included in the Report.

This is hard to understand given that;

- 47% of site supervisors were unaware of the PCBU duties to perform air monitoring, Section 19, Regulations 49 and 50.
- 49% of workers were not fit tested for the respiratory protection equipment, breaching Section 19 and Regulation 44.
- 13% of workers were exposed to uncontrolled silica dust. Section 19, Regulation 49 and 50.

Clearly SafeWork NSW are happy to conduct a compliance campaign, but actual enforcement through prosecutions, they are not interested.

⁸ **Findings Report: Silica Safety in Construction 2023, Safe Work NSW**, accessed at <https://www.safework.nsw.gov.au/about-us/evaluation/findings-report-silica-safety-in-construction-2023>

The Report concludes stating:

“SafeWork will continue to work with major industry stakeholders through its dedicated construction teams to increase awareness, educate, and improve overall safety standards and commitment to on-site silica safety risks.”

Predictably there is no mention of a prosecution strategy. It appears that SafeWork NSW will continue to use meaningless concluding phrases such as ‘*commitment to on-site silica safety risks*’, when exposed workers and their unions are desperate for real prosecutorial deterrent. Rather than what amounts to the usual blind eye.

With respect to the NSW Dust Strategy 2020 – 2022⁹, there was no mention of prosecutions as part of the Silica Focus Area.

Also, there was a six-month silica safety blitz to protect workers' health, launched on 05 Dec 2023, which states ¹⁰:

“SafeWork inspectors take a zero-tolerance approach to workers’ lives being placed at risk through exposure to silica dust and can issue stop work notices for activities that generate high levels of dust, or when a worksite hasn’t got adequate dust control measures in place. If these notices are not complied with, employers can face penalties of up to \$130,000.”

Again, no mention of enforcement through prosecution.

There are three structural flaws in the regulation of work health and safety in NSW. The first is illuminated in SCHEDULE 2 – The regulator, *Work Health and Safety Act 2011 (NSW)* (“**WHS Act**”). The second is illuminated in the *Work Health and Safety Act 2011 (QLD)* (“**QLD WHS Act**”). *SCHEDULE 2 – The regulator and local tripartite consultation arrangements and other local arrangements.*

The third is contained in Division 7A - Work Health and Safety Disputes of the QLD WHS Act.

SafeWork NSW still labours under the arrangements that the Australian Capital Territory abandoned when they removed their WorkSafe ACT, from Access Canberra. Re-establishing it as a stand-alone statutory authority.

As per Schedule 2 of the WHS Act, currently SafeWork NSW is part of the NSW Department of Customer Services. The Model WHS Laws and the NSW version of these are not endeavours that are ‘customer focused’. They are aimed at preventing injury and disease and punishing duty holders, through genuine WHS Regulator

⁹ **NSW Dust Strategy 2020 - 2022, Safe Work NSW, accessed at:**

https://www.safework.nsw.gov.au/_data/assets/pdf_file/0004/923431/NSW-Dust-Strategy-2020-2022.pdf

¹⁰ **Safe Work NSW, Six-month silica safety blitz to protect workers' health, 5 December 2023;**

<https://www.safework.nsw.gov.au/news/safework-media-releases/six-month-silica-safety-blitz-to-protect-workers-health#:~:text=The%20NSW%20Government%20has%20launched%20a>

compliance and enforcement. Which creates specific and general deterrence for those who do not comply with their duties.

If SafeWork NSW is going to have a real preventative effect on the scourge of dust diseases, it must be as a stand-alone statutory authority.

The second flaw is clear when one reads Schedule 2 of the QLD WHS Act. It establishes a tripartite Work Health and Safety Board, with the following key function;

Part 2, Division 2 - The board and its functions 3 Work health and safety board

(1) The primary function of the board is to give advice and make recommendations to the Minister about policies, strategies, allocation of resources, and legislative arrangements, for work health and safety.

The absence of such a schedule in the NSW Act means that there is no ongoing independent management of SafeWork NSW, no establishment of industry sector standing committees, or working parties, under tripartite direction.

SafeWork NSW goes on its' way, creating its' own customer service standards, policies, strategies and most secretively working through the Heads of Work Safety Authorities (**HWSA**). With no real oversight by those who know what is going on in workplaces, sectors and industries.

The NSW Act desperately needs the QLD WHS Act's *Division 7A - Work health and safety disputes*, legislated by the NSW ALP Government. This allows unions to have a proper jurisdiction to go to. When as is often the case, the allocated SafeWork NSW inspector, either fails to visit the PCBU's worksite in question, or fails to properly deal with the work health and safety issue.

Recommendation 18. The NSW Government to legislate for SafeWork NSW to become a stand-alone statutory authority again.

Recommendation 19. The NSW Government to legislate for the QLD Schedule 2 Work health and safety board model in the NSW WHS Act.

Recommendation 20. The new NSW Work health and safety board to become the policy and strategy setting body for SafeWork NSW in consultation with the NSW Minister for Work Health and Safety.

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Recommendation 22. The NSW Minister for Work Health and Safety to direct that the full *Findings report: Silica Safety in Construction 2023*, is published on the SafeWork NSW website, as soon as possible.

Recommendation 23. Dust diseases will only be seriously prevented through a SafeWork NSW restructure initiated by the Minn’s ALP Government, resulting in a spill and fill of all executive positions. With new leadership that follow the strategies and policies set for them by the tripartite NSW Work health and safety board in consultation with the NSW Minister for Work Health and Safety.

Recommendation 24. The NSW Work health and safety board in consultation with the NSW Minister for Work Health and Safety to publish a Prevention, Prosecution and Deterrence Strategy for Dust Diseases. With a tripartite industry sector standing committee, established for the implementation and review of such a Strategy.

The AMWU thanks the Committee for the opportunity to respond. We are available for ongoing consultation and discussion as this matter is paramount to the health and safety of our members and all workers.

AMWU Recommendations Summary

Recommendation 1. icare / Dust Diseases Scheme needs to develop a social media strategy. This should be formulated and reviewed periodically, with a group of young people undertaking work in which dust is a foreseeable hazard, including those in the construction, maintenance and manufacturing industries. This is to ensure that such a strategy is both appealing to the target audience and that keeps pace with changes in the social media landscape.

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