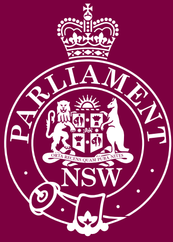

LEGISLATIVE COUNCIL

STANDING COMMITTEE ON LAW AND JUSTICE

2018 review of the Dust Diseases Scheme

Report 69

February 2019

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Standing Committee on Law and Justice

2018 review of the Dust Diseases Scheme

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Terms of reference

1. That, in accordance with section 27 of the State Insurance and Care Governance Act 2015, the Standing Committee on Law and Justice be designated as the Legislative Council 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.

2. In exercising the supervisory function outlined in paragraph 1, the committee:

   (a) does not have the authority to investigate a particular compensation claim, and
   (b) must report to the House at least once every two years in relation to each scheme.

The terms of reference were referred to the committee by the Legislative Council on 19 November 2015.[1]

[1] *Minutes*, NSW Legislative Council, 19 November 2015, p 623.

Committee details

Committee members

The Hon Natalie Ward MLC	Liberal Party	*Chair*
The Hon Lynda Voltz MLC	Australian Labor Party	*Deputy Chair*
The Hon David Clarke MLC	Liberal Party	
The Hon Trevor Khan MLC	The Nationals	
The Hon Daniel Mookhey MLC	Australian Labor Party	
Mr David Shoebridge MLC	The Greens	

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Chair’s foreword

This is the committee's second review of the Dust Diseases Scheme since icare assumed administrative responsibility for the scheme through its service line Dust Diseases Care.

Evidence received by the committee suggests the scheme is performing well and is providing personalised care and support to past and present workers with dust diseases, as well as their families.

While the scheme is operative effectively concerns were raised with the committee that silicosis is a serious emerging health issue, particularly in the manufactured stone industry. To ensure this issue is accorded priority in New South Wales the report recommends that icare and SafeWork NSW conduct a case finding study for silicosis with focus on the manufactured stone industry and that the NSW Government urgently undertake targeted awareness and education initiatives into the dangers associated with working with these materials.

Given the importance of this issue, the committee recommends that its next review of the Dust Diseases Scheme focuses on silica dust and silicosis, particularly in the manufactured stone industry.

Stakeholders also noted that implementing a Dust Diseases Register is an urgent priority. While a national register is the optimal solution, the report recommends that if a national register is not established by the end of 2019, New South Wales should establish its own register.

On behalf of committee members, I sincerely thank all those who participated in the inquiry, via written submissions and oral evidence at public hearings. I thank my committee colleagues for their considered engagement and collaborative work throughout the inquiry. I am also appreciative of the support provided by the committee secretariat staff, Rebecca Main, Samuel Griffith and Janina Moaga.

I commend the report to the Parliament.

The Hon Natalie Ward MLC
Committee Chair

Recommendations

Recommendation 1 **19**
That icare and SafeWork NSW conduct a case finding study for silicosis in the manufactured stone industry in New South Wales.

Recommendation 2 **20**
That the Standing Committee on Law and Justice's next review of the Workers Compensation (Dust Diseases) Scheme focus on silica dust and silicosis, particularly in the manufactured stone industry.

Recommendation 3 **20**
That the NSW Government urgently undertake targeted awareness and education initiatives into the dangers associated with the manufactured stone industry, including a focus on non-English speaking background workers and employers.

Recommendation 4 **23**
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.

Recommendation 5 **29**
That icare review the last two years of medical assessment decisions made by the Medical Assessment Panel to check for consistency and conformity with current medical evidence and ensure that international best practice is being followed.

Recommendation 6 **31**
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.

Recommendation 7 **32**
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.

Recommendation 8 **34**
That the NSW Government, through the Council of Australian Governments, liaise with the Commonwealth Government to ensure that periodic compensation payments paid to Workers Compensation (Dust Diseases) Scheme participants are not treated as income by Centrelink, to ensure that participants who receive benefits such as the Age Pension do not have their benefits reduced on account of their involvement in the scheme.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 19 November 2015.

The committee received 11 submissions and held one public hearing at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Chapter 1 Overview

This chapter provides an overview of the Workers Compensation (Dust Diseases) Scheme, including the role of the committee in oversighting the scheme, and the role of the Workers Compensation (Dust Diseases) Authority and other bodies involved in administering it. The chapter also provides an overview of the scheme's recent performance and concludes with a discussion of recent initiatives implemented by icare.

Oversight role of the committee

1.1 In accordance with s 27 of the *State Insurance and Care Governance Act 2015*, the operations of the Workers Compensation (Dust Diseases) Scheme are required to be supervised by a committee of the Legislative Council.[2]

1.2 The Standing Committee on Law and Justice has been designated as the committee to undertake this role. The resolution requires the committee to report to the Legislative Council in relation to the scheme at least once every two years. The same resolution also requires the committee to supervise the operation of the other insurance and compensation schemes established under the state's workers compensation and motor accidents legislation, including the Compulsory Third Party Scheme, the workers compensation Scheme and the Motor Accidents (Lifetime Care and Support) Scheme.[3]

1.3 A review of the Motor Accidents (Lifetime Care and Support) Scheme was conducted concurrently with this review. The outcomes of this review will be published in a separate report in February 2019.

1.4 The reports and inquiry documents for the committee's previous reviews can be found on the committee's website at www.parliament.nsw.gov.au/lawandjustice.

Overview of the Dust Diseases Scheme

1.5 The Dust Diseases Scheme is a no-fault scheme for New South Wales workers who have developed a dust disease from occupational exposure to hazardous dust. The scheme provides compensation benefits to workers with an occupational dust disease and their dependents. Scheme participants have access to medical, healthcare and related support services such as domestic assistance, mobility aids and equipment, and home modifications.[4]

1.6 The Dust Diseases Scheme is focused on providing ongoing assistance to support workers' and their dependents' quality of life, with operating costs funded by an employer levy on workers compensation insurance premiums.[5]

2 *State Insurance and Care Governance Act 2015*, s 27.

3 *Minutes*, NSW Legislative Council, 19 November 2015, p 623.

4 Submission 11, icare, p 1.

5 Submission 11, icare, p 1.

1.7 There are 14 dust diseases that are compensable under the scheme. These are listed in Schedule 1 to the *Workers' Compensation (Dust Diseases) Act 1942*, namely:

- Aluminosis
- Asbestosis
- Asbestos induced carcinoma
- Asbestos related pleural diseases
- Bagassosis
- Berylliosis
- Byssinosis
- Coal dust pneumoconiosis
- Farmers' lung
- Hard metal pneumoconiosis
- Mesothelioma
- Silicosis
- Silico-tuberculosis
- Talcosis.[6]

icare's Dust Diseases Care

1.8 icare (Insurance and Care NSW) is a public financial corporation governed by an independent board of directors that was established on 1 September 2015 to consolidate the state's insurance and care schemes.[7] icare provides services including staff and facilities through its service line, Dust Diseases Care (also formally known as the Workers Compensation (Dust Diseases) Authority or DDA).[8]

1.9 icare provides access to information, personalised care and comprehensive support to past and present workers with dust diseases as well as their families. icare also funds research, information and education about dust diseases and provides medical lung screening and health monitoring services to facilitate early detection of occupational hazardous dust exposure.[9]

1.10 As well as delivering insurance and care services to eligible workers under the dust diseases scheme, icare also delivers services under four other schemes:

- the Workers Compensation Scheme (Workers Care)
- the Lifetime Care and Support Scheme (Lifetime Care)

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6 *Workers' Compensation (Dust Diseases) Act 1942*, Sch 1.

7 *State Insurance and Care Governance Act 2015*, Pt 2.

8 *State Insurance and Care Governance Act 2015,* s 10.

9 Submission 11, icare, p 1.

- the NSW Self Insurance Corporation (Self Insurance)
- the Sporting Injuries Compensation Scheme (Sporting Injuries Insurance).[10]

SIRA

1.11 The State Insurance Regulatory Authority, known as SIRA, is the state's independent insurance regulator. SIRA also monitors the financial solvency and performance of the three compulsory insurance schemes: workers compensation, motor accidents injury compensation and home building compensation.[11]

1.12 SIRA's regulatory role in relation to the Dust Diseases Scheme is to determine the contributions to be paid by insurers to the Workers Compensation (Dust Diseases) Fund. SIRA also indexes compensation payments for dust diseases, based on the *Workers Compensation Act 1987* provisions for exempt workers, and death benefits prescribed in s 8 of the *Workers Compensation (Dust Diseases) Act*.[12]

Funding the scheme

1.13 The Dust Diseases Scheme is a 'pay-as-you-go' scheme, meaning that each year the money in the Workers Compensation (Dust Diseases) Fund collected through the Dust Diseases Levy pays for the costs of operating the scheme. The levy pays for the scheme's operation, compensation benefits, as well as hospital, medical, ambulance and other related expenses for workers with dust diseases.[13]

1.14 All employers in New South Wales contribute to the fund through their annual workers compensation insurance premiums. The dust diseases contribution rates are determined by SIRA each year. The levy for employers is based on the classification of an employer's business by the Workers Compensation Industry Classification code. Each code is allocated to one of eight schedules in relation to the levy, with schedule 1 representing the highest risk of dust disease and schedule 8 the lowest risk.[14]

1.15 A business's annual dust disease contribution is determined by multiplying the business's anticipated total wages expenditure by the dust disease levy rate for the applicable schedule. Schedule rates are between 0.01 per cent and 1.25 per cent, while a separate rate of 4 per cent applies to industries that handle asbestos.[15]

1.16 SIRA noted that in order to determine the amount and timing of levy contributions to be paid by insurers, it writes annually to icare to formally request a certified estimate of the amount to be expended out of the fund for the next financial year.[16]

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[10] icare, *Insurance and Care NSW Annual Report 2017-18*, (2018), p 9.

[11] Submission 8, SIRA, p 4.

[12] Submission 8, SIRA, p 5.

[13] icare, *Insurance and Care NSW Annual Report 2015-16*, (2016), p 60.

[14] Submission 8, SIRA, pp 4-5.

[15] Answers to pre-hearing questions, SIRA, 14 January 2018, p 1.

[16] Submission 8, SIRA, p 4.

1.17 For 2018/19, icare recommended the movement of 19 business classifications between the dust diseases schedules. SIRA commissioned independent actuarial analysis and approved these recommendations.[17]

1.18 SIRA informed the committee that it is working with icare and Taylor Fry Actuaries to determine what levy rate should be applied for the 2019-20 financial year. SIRA noted that the cost of engaging with Taylor Fry Actuaries for the review is approximately $60,000 (including GST).[18]

1.19 In addition, just under 50 per cent of the levy is funded through icare's investment funds. Mr Darren Parker, Acting Executive Director, Workers Compensation and Home Building Regulation at SIRA advised that there is $1.1444 billion sitting in icare's reserve. Projections based on investment return mean that the scheme could be fully self-funded by 2025-26.[19]

Dust Diseases Tribunal

1.20 Separate from the scheme administered by icare, the Dust Diseases Tribunal was established in 1989 to hear and determine common law claims for damages by sufferers of dust-related diseases. Such damages may include compensation for pain and suffering, reduction in life expectancy, and voluntary care and assistance provided by the person's family members.[20]

1.21 Workers who have made a successful claim for compensation under the Dust Diseases Scheme cannot claim for medical and related expenses in the Tribunal, because those expenses have already been covered. However, such workers are still entitled to claim damages in the Tribunal for loss of their capacity to provide voluntary domestic services to their dependants as a consequence of their condition.[21]

1.22 The Tribunal can allow for 'urgent' claims to be removed from the claims resolution process and fast-tracked, such as where the claimant's life expectancy is so short as to leave insufficient time for the process to be completed and the claim finally determined by the Tribunal.[22]

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17 Submission 8, SIRA, pp 4-5.

18 Answers to pre-hearing questions, SIRA, 14 January 2018, p 1.

19 Evidence, Mr Darren Parker, Acting Executive Director, Workers Compensation and Home Building Regulation, SIRA, 25 January 2019, p 76.

20 NSW Dust Diseases Tribunal, *Welcome to the website of the NSW Dust Diseases Tribunal*, (December 2018), http://www.dustdiseasestribunal.justice.nsw.gov.au/.

21 *Civil Liability Act 2002*, s 15B.

22 Dust Diseases Tribunal Regulation 2013, Pt 4.

Scheme performance

1.23 This section briefly examines the performance of the Dust Diseases Scheme.

1.24 In the 2017-18 financial year 1,405 workers and 3,204 dependents were supported under the scheme. Compensation benefits totalling $84.65 million in healthcare and $16.7 million in funeral benefits were paid out.[23]

1.25 icare informed the committee that since 1 September 2015, the average timeframe to complete applications and determine claims has been significantly reduced under the scheme:

- for workers it has reduced from 136.7 days prior to September 2015 to 42 days as at 30 June 2018
- for dependents it has reduced from 71 days prior to September 2015 to 26 days as at 30 June 2018.[24]

1.26 icare's annual report noted the following breakdown of dust diseases certified by the medical assessment panel from 2013 to 2018.[25]

Table 1 Cases certified by the medical assessment panel by disease type[26]

Date range	Mesothelioma	Asbestosis	ARPD	Asbestosis	Lung cancer	Silicosis	Other	Total
2013-14	140	21	71	14	18	9	3	**276**
2014-15	153	4	105	14	20	9	7	**312**
2015-16	139	30	66	15	20	9	10	**289**
2016-17	175	21	79	8	21	6	1	**311**
2017-18	174	32	68	15	27	8	0	**324**

1.27 Customers are generally satisfied with the service provided by Dust Diseases Care. icare's Net Promoter Score, which measures customer satisfaction across all icare schemes, noted that Dust Diseases Care had the highest score for the 2017-18 financial year (see figure 1 below). The Net Promoter Score is based on feedback provided by customers via a short survey conducted by an independent research agency.[27]

23 icare, *Insurance and Care NSW Annual Report 2017-18*, 2018, p 64.

24 Submission 11, icare, p 2.

25 icare, *Insurance and Care NSW Annual Report 2017-18*, 2018, p 67.

26 icare, *Insurance and Care NSW Annual Report 2017-18*, 2018, p 67.

27 icare, *Insurance and Care NSW Annual Report 2017-18*, 2018, p 33.

Figure 1 icare's Net Promoter Score for 2017-18[28]

Month	Workers Insurance	Insurance for NSW	HBCF	Dust Diseases Care	Lifetime Care
Jul 2017	9.0	0.0	51.5	60.7	37.7
Aug 2017	10.8	6.3	34.0	64.7	45.9
Sept 2017	14.2	11.5	51.1	66.8	49.0
Oct 2017	15.2	8.3	42.4	68.5	51.2
Nov 2017	19.0	11.4	39.5	64.5	45.2
Dec 2017	18.4	8.2	44.4	58.8	38.5
Jan 2018	19.3	17.7	48.4	50.0	38.5
Feb 2018	19.0	21.1	47.1	43.3	48.6
Mar 2018	17.0	24.0	50.2	58.6	51.9
Apr 2018	14.5	24.0	51.9	56.8	51.7
May 2018	14.3	24.7	55.0	63.1	53.7
Jun 2018	13.8	17.1	55.9	64.5	57.4

1.28 icare received a total of 21 complaints during 2017-18, including two escalated complaints, with the top three categories relating to icare's level of service, funding decisions and policies and procedures. Frontline complaints were open for an average of seven business days, while escalated complaints were open for an average of 12 business days.[29]

1.29 The Australian Lawyers Alliance noted it had received positive reports from scheme participants and stated that 'the Act and the Authority enjoy almost universal recognition by treating respiratory physicians, oncologists and cardiothoracic surgeons, such that a patient with a dust disease is invariably directed by the treating specialist to make contact with the Authority'.[30]

Recent initiatives

1.30 icare informed the committee that it has implemented a range of new initiatives to enhance customer service for Dust Disease Scheme participants.

Access to medical screenings

1.31 Initiatives to ensure greater access to medical screenings have recently been introduced. icare provides medical screening examinations free of charge for any worker who believes they are at risk from past exposures to hazardous dusts, such as asbestos and silica.[31] These examinations can take place at the new Dust Diseases Care Clinic in the Sydney CBD, on the 'Lung Bus' mobile respiratory unit, or through an external provider of choice.[32]

28 icare, *Insurance and Care NSW Annual Report 2017-18*, 2018, p 33.

29 icare, *Insurance and Care NSW Annual Report 2017-18*, 2018, p 125.

30 Submission 4, Australian Lawyers Alliance, p 5.

31 Submission 11, icare, p 2.

32 Answers to pre-hearing questions, icare, 15 January 2019, p 1.

1.32 On average, icare covers between 1,250 and 1,400 individual worker medical examinations each year. Workers screened at the icare clinic will typically have a claim determined within 10 to 30 days. This compares to between 30 to 180 days when completed by external providers.[33]

1.33 icare also provides a subsidised occupational screening service for employers to help them meet their obligations under the *Work, Health and Safety Act 2011*. Examinations are provided at the reduced cost of $100 (plus GST) per worker. icare has experienced an increase in usage of the occupational screening service, with 4,781 examinations completed in the 2018 calendar year, which is a 64 per cent increase from the 2,914 examinations completed in 2017.[34]

1.34 In addition, icare noted that it is partnering with SafeWork NSW to support its Work Health and Safety Roadmap for NSW 2022 initiative, in relation to crystalline silica and protecting workers from harm, securing safety standards and reducing workplace exposures (see the next chapter for more information). icare's role is to provide a free health screening service for workers of small businesses with less than 30 employees, and subsidised screening for medium and large employers, whose workers are identified by SafeWork NSW as being most at risk. As at 31 December 2018, 71 workers and 14 employers had accessed screening services through this program.[35]

Lung bus

1.35 icare's 'Lung Bus' health monitoring mobile screening service is available to small and medium employers with workers at risk of occupational dust exposures. icare proactively contacts employers in regional locations when the Lung Bus is visiting to offer the respiratory screening service. This service supports employers to comply with their legislative responsibilities to provide health monitoring for their workers.[36]

1.36 The service is provided at a subsidised rate to encourage proactive screening. Since 1 September 2015 the Lung Bus has:

- hosted 351 screening days
- serviced 119 different employers
- provided 10,294 health monitoring examinations
- identified 44 potential dust related abnormalities during health monitoring examinations
- provided 524 screening examinations in regional locations for individual compensation clients.[37]

1.37 In 2017-18 the Lung Bus provided respiratory health monitoring examinations to 3,661 workers at 71 locations including Bega, Marulan, Marulan South, Dubbo, Broken Hill, Temora and

33 Submission 11, icare, p 2.

34 Answers to pre-hearing questions, icare, 15 January 2019, p 2.

35 Answers to pre-hearing questions, icare, 15 January 2019, p 2.

36 Submission 11, icare, p 2.

37 Submission 11, icare, p 3.

Mudgee.[38] icare is also seeing an increase in the utilisation of the Lung Bus, which is already taking bookings up until May 2019.[39]

Upgrade of Dust Diseases Care clinic

1.38 The Dust Diseases Care clinic was recently relocated which provided an opportunity to enhance and increase the services offered. The new clinic opened in August 2018 and has been designed based on customer feedback about their experience, mobility requirements and needs for a private and personal environment.[40]

1.39 The clinic's extended capability will result in an additional 40 workers being screened each week, which will help employers located in the Sydney metropolitan area to meet their work, health and safety obligations in respect of health screenings.[41]

Service delivery

1.40 icare has implemented a range of service delivery initiatives to improve the customer service experience of scheme participants.

Client liaison team

1.41 To enhance communication and access to information for workers and their families, icare established a single point of contact for clients through the Client Liaison Team who provide advice and guidance to clients in navigating the scheme.

1.42 Since November 2017, the Client Liaison Team has doubled in size from four to eight members. Its implementation has resulted in:

- 75 per cent of services being approved in one step
- 30 per cent of all care and support services being pre-approved
- 45 per cent of non-pre-approved services are now pre-approved at first contact
- a significant improvement in customer satisfaction levels with the Net Promoter Scores from new customers increasing from +37 to +69.[42]

1.43 As at 2 January 2019, the Client Liaison Team is caring for 195 workers and 53 dependants. The team is also assisting a further 222 applicants for workers compensation through the application process, and 11 dependents in their transition to receive a lump sum and weekly benefits.[43]

1.44 The Bernie Banton Foundation noted that the Customer Liaison Team initiative has been received positively by new clients. However, it raised concern that the service is not offered to clients registered prior to September 2017:

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38 Submission 11, icare, p 3.

39 Answers to pre-hearing questions, icare, 15 January 2019, p 2.

40 Submission 11, icare, p 3.

41 Submission 11, icare, p 4.

42 Submission 11, icare, p 4.

43 Answers to pre-hearing questions, icare, 15 January 2019, p 4.

> Unfortunately those registered before September 2017 do not have the luxury of the Customer Liaison Team. These 'hidden majority' are often totally out of the loop and have no idea of the services they could be entitled to.[44]

1.45 The Bernie Banton Foundation recommended that the Customer Liaison Team be expanded to allow all Dust Diseases Care clients to be allocated an individual officer.[45]

1.46 Mr Rod Smith, Awareness and Support Coordinator at the Bernie Banton Foundation stated that staff levels in the Customer Liaison Team should keep going up to ensure officers can provide the necessary support to individuals. He explained that this was also for the benefit of the officers to ensure that they do not 'burn out' from being allocated too many clients. In addition, he questioned whether KPIs should be in place for the Customer Liaison Team, as effective care and service is more important that meeting targets.[46]

1.47 icare informed the committee that as at 2 January 2019, there are 3,978 long-term customers who have not been allocated a Customer Liaison Officer. This group consists of 957 workers and 3,021 dependants. Customers who lodged their claim prior to the Customer Liaison Team being established receive support directly from Dust Diseases Care's Compensation and Health Care Services teams.[47]

1.48 In 2019, icare will be conducting a review to determine the best way to provide support to all clients. It is intended that there will be an ongoing increase in workers and dependants receiving support through a single point of contact arrangement, as offered through Client Liaison Officers.[48]

1.49 Mr Chris Koutoulas, Interim Group Executive, Care and Community at icare noted that the organisation is still determining the right caseload for Client Liaison Officers as the intensity of supporting customers changes over time:

> We are still looking at the caseloads for client liaisons. We still are early in the journey. We are getting some great results. We are still learning from that implementation around what is the right caseload. There is a lot of intensity in the application process and there is some intensity once they become eligible into the scheme and we create the supports and the access to services. But once that occurs the intensity drops off. We want to understand the time frames as to when that occurs and then what is the right caseload for the customer liaison.[49]

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44 Submission 7, Bernie Banton Foundation, p 3.

45 Submission 7, Bernie Banton Foundation, p 5.

46 Evidence, Mr Rod Smith, Awareness and Support Coordinator, Bernie Banton Foundation, 25 January 2019, pp 39-40.

47 Answers to pre-hearing questions, icare, 15 January 2019, p 5.

48 Answers to pre-hearing questions, icare, 15 January 2019, p 5.

49 Evidence, Mr Chris Koutoulas, Interim Group Executive, Care and Community, icare, 25 January 2019, p 61.

Contacting Dust Diseases Care

1.50 In December 2018 icare implemented a new contact centre system for Dust Diseases Care customers. The centre is staffed by two dedicated call centre operators.[50]

1.51 The new contact centre aims to resolve 80 per cent of incoming calls on first contact, reducing the need for customers to be transferred to another officer. If the centre is at full capacity, the call is automatically directed to a member of the Client Liaison Team for immediate response.[51]

1.52 The Bernie Banton Foundation stated that a major complaint it receives from clients is not being able to contact anyone in icare or receive a reply to a message or email. The Foundation indicated that the previous Internet phoned-based system installed in February 2018 was 'abysmal' as it often sent 'clients into a never-ending loop of a recorded message'.[52]

1.53 Mr Smith stated that this problem has been overcome by the new system. However, now there is no ability to leave a voice message for a particular person. The system is good for general callers, but not ideal for people wanting to speak to a particular officer: He explained that what happens now is that if he wants to contact a direct phone line to speak to a particular officer, and that liaison officer is already on a call, he will then get put in a loop.[53]

1.54 icare noted that the ability for Dust Diseases Care customers to leave a voice mail during office hours was recently deactivated as messages were often inaudible and most callers did not leave a message. However, customers are able to leave messages outside business hours, and messages are checked daily to ensure the timely return of calls.[54]

1.55 Mr John Nagle, CEO and Managing Director, icare identified further improvements could be made in the future to ensure people receive advice from icare outside normal business hours:

> About 30 per cent of activity happens outside normal business hours … We run our support centres seven o'clock to seven o'clock and yet we still have people who are trying to contact us in their time frame. We see further investments and artificial intelligence—WebChat and WebBox—and various other forms of robotics that will enable simple questions to be serviced at somebody's convenience.[55]

New service delivery model

1.56 icare has developed a new service delivery model for the most severely injured and ill participants of Dust Diseases Care, Lifetime Care and Workers Care. The model takes into account the individual experiences of scheme participants and anticipates that there will be triggers over time that will change their immediate circumstances.[56] The model is outlined in the figure below.

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50 Answers to pre-hearing questions, icare, 15 January 2019, p 6.

51 Answers to pre-hearing questions, icare, 15 January 2019, p 6.

52 Submission 7, Bernie Banton Foundation, p 3.

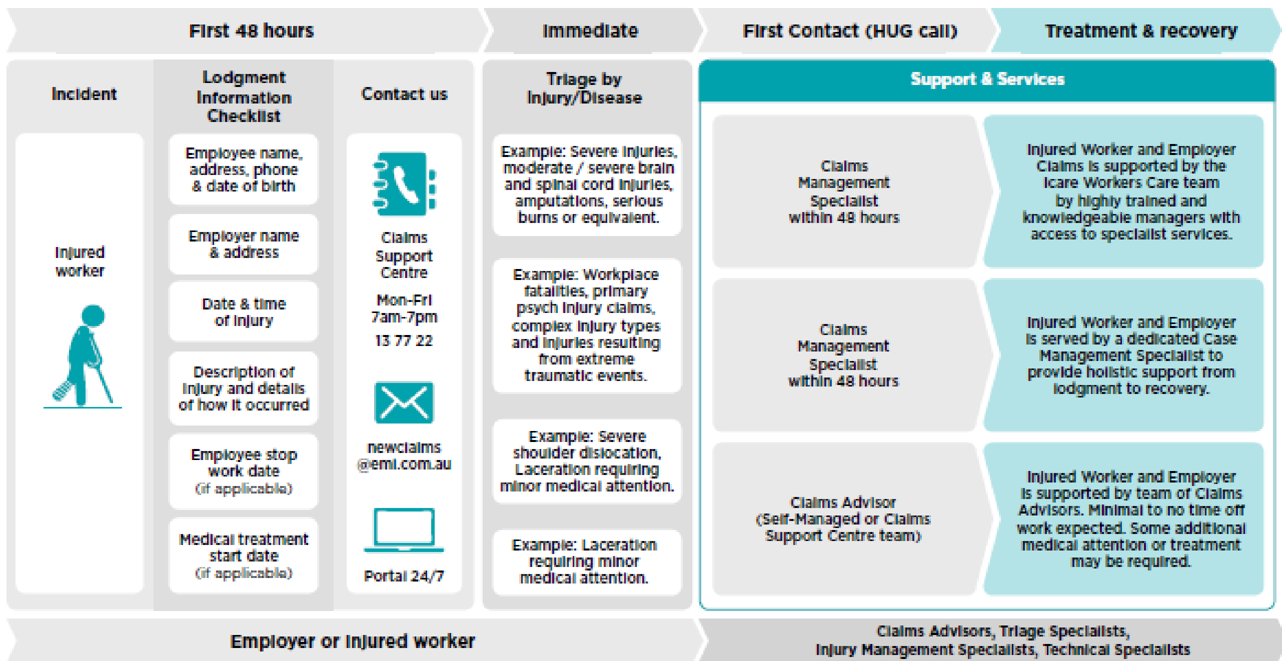
53 Evidence, Mr Smith, 25 January 2019, p 38.

54 Answers to pre-hearing questions, icare, 15 January 2019, p 6.

55 Evidence, Mr John Nagle, CEO and Managing Director, icare, 25 January 2019, p 61.

56 Submission 11, icare, p 6.

Figure 2 New claims service model[57]



My Plan Pilot

1.57 icare has also implemented the 'My Plan' pilot which is intended to provide clients with more certainty, choice and greater control of their care. The pilot is being progressively rolled out to all scheme participants this financial year. My Plan aims to provide people with more independence in identifying their goals and support needs, and ensure their preferences and requirements are a priority. The My Plan tool aims to help people plan for the things they want to achieve and includes a 'My Affairs' option to identify and plan for specific end-of-life needs.[58]

57 icare, *Insurance and Care NSW Annual Report 2017-18*, 2018, p 51.

58 Submission 11, icare, p 5.

Chapter 2 Progress on recommendations from the 2016 review

This chapter examines the response by the NSW Government to the five recommendations made in the committee's 2016 review of the Dust Diseases Scheme, and considers further actions since that response was tabled.[59]

2016 recommendation 1: Manufactured Stone Industry Taskforce

> 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.

2.1 The NSW Government supported this recommendation and noted that on 24 October 2017, it launched a five-year hazardous chemicals strategy, *2017-2022 Hazardous Chemicals and Materials Exposures Baseline and Reduction Strategy* to protect workers against exposure to crystalline silica. The strategy was developed in consultation with industry associations, unions, peak bodies, medical professionals and other government agencies and aims to introduce measures to protect workers in all industry sectors. The strategy includes:

- undertaking an extensive program of workplace assessments to identify exposure levels and verify control measures
- engaging with businesses to build their knowledge and skills to eliminate or reduce exposures
- encouraging and promoting research that drives innovation and best practice in the design of jobs and work practices that create healthy and safety workplaces
- collaborating with Dust Disease Care to introduce a New South Wales register for occupational lung disease
- the icare lung bus providing subsidised health monitoring in Sydney and Regional New South Wales
- working with Safe Work Australia to adopt international best practice Workplace Exposure Standards for Crystalline Silica.[60]

2.2 As part of the strategy, a Manufactured Stone Industry Taskforce has been convened by SafeWork NSW and comprises industry, peak bodies, medical professionals, unions and other government agencies including the Lung Foundation, Australian Industry Group and Unions NSW. The Taskforce is operational from July 2018 to 30 June 2019 and is reviewing safety standards in order to better protect workers from crystalline silica dust exposure.[61]

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59 Standing Committee on Law and Justice, NSW Legislative Council, *First review of the Dust Diseases Scheme* (2017); The Hon Dominic Perrottet MP, Treasurer and Minister for Industrial Relations, *Government response to the First review of the Dust Diseases Scheme*, 27 February 2018.

60 The Hon Dominic Perrottet MP, Treasurer and Minister for Industrial Relations, *Government response to the First review of the Dust Diseases Scheme*, 27 February 2018, p 1.

61 Media release, *Safety Taskforce to protect stone industry workers*, Finance, Services & Innovation, 11 July 2018, https://www.finance.nsw.gov.au/about-us/media-releases/safety-taskforce-protect-stone-industry-workers.

2.3 SIRA advised that the Taskforce has made a number of recommendations on how to better protect workers from silica dust exposure and to ensure New South Wales laws are effective in responding to silicosis cases. It noted that the Minister for Innovation and Better Regulation, the Hon Matt Kean MP, is consulting with other New South Wales ministers regarding these recommendations.[62]

2.4 icare noted that it has partnered with SafeWork NSW to assist with its Safety Roadmap for NSW 2022 project. This includes visits to approximately 9,000 businesses over the next five years to reduce worker risks associated with exposure to respirable crystalline silica. In addition, icare is providing occupational health screenings free of charge to small businesses with less than 30 workers who are issued improvement notices from SafeWork NSW following workplace visits. A 50 per cent subsidy is applied for businesses with over 30 employees who are issued notices from SafeWork NSW. icare also advised it is collaborating with the Australian Tunnelling Society to improve education around working safely with crystalline silica and has provided health monitoring services to employers in the industry.[63]

Call for urgent action

2.5 Unions NSW informed the committee that it considers the re-emergence of silicosis to be an emerging health crisis which requires urgent and immediate action to ensure workers do not continue to die from a preventable disease.[64] It noted that recent Australian research suggests that 6.6 per cent of Australian workers were exposed to respirable crystalline silica and 3.7 per cent were highly exposed. This is equivalent to 329,000 workers.[65]

2.6 Ms Natasha Flores, Work Health and Safety and Workers Compensation Industrial Officer at Unions NSW noted that various unions are part of the government's Taskforce. While it found these meetings to be a valuable opportunity to discuss issues, the union remains 'extremely concerned for the safety of people working in these industries'.[66]

2.7 Unions NSW noted that its primary concerns relate to the manufactured stone industry where products can contain amounts of silica in excess of 90 per cent, creating a much greater risk for workers cutting stone in preparation for installation.[67]

2.8 Associate Professor Deborah Yates, Senior Staff Specialist in Respiratory Medicine, St Vincent's Hospital representing the Thoracic Society of Australia and New Zealand also considered that the risks are much greater with manufactured stone products: 'As far as we know, the risk with

62 Answers to pre-hearing questions, SIRA, 14 January 2019, p 2.

63 Submission 11, icare, p 8.

64 Submission 10, Unions NSW, pp 2-3.

65 Submission 10, Unions NSW, p 5.

66 Evidence, Ms Natasha Flores, Work Health and Safety and Workers Compensation Industrial Officer, Unions NSW, 25 January 2019, p 15.

67 Submission 10, Unions NSW, p 6.

artificial stone is much, much greater. The silica levels are 1,000 times greater than in traditional industries'.[68]

2.9 Associate Professor Yates noted that this is a new type of silicosis that 'is rapidly progressive, and it is occurring in young people'.[69] For these reasons she considered 'that the health implications are so important and urgent that a case finding study needs to be conducted now'.[70]

2.10 The CFMMEU agreed that 'this is a young person's disease' with many new cases being reported in respect of workers in their late 20s or 30s.[71] The CFMMEU was particularly concerned that it was affecting a vulnerable workforce made up of employees from non-English-speaking backgrounds:

> Kitchen bench top installation is largely carried out by independent contractors and the employees of small businesses. In New South Wales a large percentage of this workforce is made up of employees from non-English-speaking backgrounds. This workforce also has a relatively low level of unionisation with workers being less likely to be supported through elected health and safety representatives. These factors combine to create an extremely vulnerable uninformed workforce with little knowledge and capacity to apply controls so as to minimise occupational dust exposure. Further, other workers and visitors engaged in everyday work activities where such installation work is occurring suffer secondary exposure.[72]

2.11 The CFMMEU noted that the Taskforce's work feeds into the Safety Roadmap 2022 initiative, meaning there may not be change for some time. The CFMMEU stated that New South Wales cannot afford to wait until 2019 or 2022 for the Taskforce to report or for the Roadmap to be finalised:[73]

> While responses are presently underway through the Taskforce and Roadmap - the Taskforce is not due to report to Government until 30 June 2019. Further, outputs from the Taskforce are to be incorporated within the government's Work Health and Safety Roadmap by 2022. For a matter about which an urgent response is required these dates remain distant. In this context the CFMMEU has called upon the Government to take urgent and widespread health promotion action to address the crisis. The CFMMEU has called the government to undertake targeted awareness and education initiatives including a focus on non-English speaking background workers and incorporating broader public health initiatives such as education in workplaces and schools.[74]

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68 Evidence, Associate Professor Deborah Yates, Senior Staff Specialist in Respiratory Medicine, St Vincent's Hospital, and Associate Professor, University of New South Wales, representing the Thoracic Society of Australia and New Zealand, 25 January 2019, p 48.

69 Evidence, Associate Professor Yates, 25 January 2019, p 48.

70 Evidence, Associate Professor Yates, 25 January 2019, p 49.

71 Submission 9, CFMMEU, pp 3-4.

72 Submission 9, CFMMEU, p 6.

73 Submission 9, CFMMEU, pp 3-4.

74 Submission 9, CFMMEU, p 20.

Queensland experience

2.12 Unions NSW and the CFMMEU expressed their concern that in a three week period before 18 September 2018, 22 new cases of silicosis were diagnosed in Queensland.[75]

2.13 Mr Ben Kruse, Legal and Industrial Officer for the CFMMEU indicated that based on the Queensland experience, cases of silicosis are likely to be underreported in New South Wales, as there is no mandatory reporting and workers often do not want to get tested for fear they may lose their job:

> … there is a real concern that the actual incidence has been massively underreported. In Queensland … in the last 12 months there actually has been a massive increase in the number of reported cases. Because of Queensland's experience with black lung disease they have become very focused on this and so they are actually looking for the results. In New South Wales it is not a reportable disease. If you go to the doctor and you do not have silicosis, the doctor does not have to give a mandatory report and most workers will not want to have a mandatory report of this disease because once you report that you have got it, the most likely outcome is that you will lose your job because it is unsafe for you to continue to work in these dusty environments if you have the disease. I think even icare accepts that the figures that are being reported did not reflect the actual state of the issue. I would be very careful to base any response on the current data that is available.[76]

2.14 Associate Professor Yates, stated that New South Wales will likely have a similar level of silicosis cases to Queensland and the difference between the states is that Queensland has been actively looking for cases, while New South Wales has not.[77]

2.15 Associate Professor Yates noted that there have now been over 100 cases in Queensland and predictions are there will be around 800 or 900 cases. She noted that there is a case-finding rate of 30 per cent of complicated silicosis, which are very progressive and will cause death.[78]

2.16 Associate Professor Yates indicated that icare and the silicosis Taskforce have been trying to look for cases, but silicosis occurs within a wide variety of different occupational exposures, such as tunnelling, mining, boring and artificial stone. She stated that SafeWork has been trying to get workers screened, but 'have not looked specifically and concentrated particularly on the artificial stones'. She stated that from her knowledge the silicosis task force had only been examined 19 workers from this industry, from a workforce of about 4,000 or 5,000 workers.[79]

2.17 icare informed the committee that it has been monitoring coverage of the incidence of new silicosis cases diagnosed in Queensland. In addition, icare engaged with WorkSafe Queensland and the Thoracic Society of Australia and New Zealand in late 2018 to learn more about the commonalities and differences between the health monitoring programs offered in each jurisdiction. This comparison is laid out in the table below.[80]

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75 Submission 10, Unions NSW, pp 2-3.

76 Evidence, Mr Ben Kruse, Legal and Industrial Officer, CFMMEU, 25 January 2019, p 17.

77 Evidence, Associate Professor Yates, 25 January 2019, p 46.

78 Evidence, Associate Professor Yates, 25 January 2019, p 47.

79 Evidence, Associate Professor Yates, 25 January 2019, pp 46-47.

80 Answers to questions on notice, icare, 7 February 2019, p 1.

Table 2 Jurisdictional comparison between New South Wales and Queensland[81]

New South Wales	Queensland
Available to all current and former workers employed to work with crystalline silica, including manufactured stone.	Available to all current and former workers employed to work with manufactured stone products.
Employers can choose to have their workers screened: • On the "Lung Bus" on the employer's premises or location nearby • icare Clinic, 115 Pitt Street, Sydney • The employer can arrange their own tests through local providers (and forward test results to DDC health monitoring)	The statutory authority (WorkCover Qld) refers workers to their local GP for a referral for full chest x-ray.
The health monitoring consists of: • Consultation with a screening physician • Lung function test (spirometry) • A full chest x-ray	WorkCover Qld arranges: • lung function test (both spirometry and DLCO) • a full chest x-ray
X-rays are reported by a radiologist with an interest / expertise in chest disease including occupational dust diseases and ability report to the ILO standard.	X-ray results are read by a radiologist qualified as a B Reader
X-rays are reviewed by the screening doctor, radiologist and respiratory physician with lung function results reviewed by screening doctor and respiratory specialist. Further tests such as CT scans and DCLO are arranged as required.	Occupational physician conducts examination of worker and reviews x-ray and lung function results. Further tests, such as CT scans arranged as required.
Respiratory physician issues medical report for employer and worker containing outcome and recommendations	Occupational physician issues medical report for employer and worker containing outcome and recommendations
Workers receives their results within 24 hours	Worker receives their results within 24 hours
Workers suspected of having a silica related dust disease are assisted in making a claim for workers compensation	Workers suspected of having a silica related dust disease are assisted in making a claim for workers compensation
Workers with a history of prior exposure to silica but not yet presenting with a dust disease are recommended to attend ongoing health monitoring	Workers with a history of prior exposure to silica but not yet presenting with a dust disease are recommended to attend ongoing health monitoring
Health monitoring process can take up to **one month** to complete for each worker.	It is understood that the health monitoring process can take up to **five months** to complete for each worker (no one stop shop process).

Workplace exposure standards

2.18 The current maximum workplace exposure standard for respirable crystalline silica is 0.1mg/m3 of air. Unions NSW advised that the United States has implemented a silica dust exposure standard of 0.025mg/m3 as an eight-hour time weighted average. Unions NSW expressed concern that the Australian standard 'is four times this amount' and recommended a reduction in the exposure standard to 0.025mg/m3 to match that of the United States.[82]

2.19 The CFMMEU noted the workplace exposure standard for silica in British Columbia and Mexico is also 0.025 mcg/m3. It stated that while the United Kingdom standard is the same as Australia at 0.1, there is an increasingly urgent debate in the country regarding that standard being out of date.[83]

81 Answers to questions on notice, icare, 7 February 2019, Appendix A.

82 Submission 10, Unions NSW, pp 8-9.

83 Answers to questions on notice, CFMMEU, 5 February 2019, p 3.

2.20 The CFMMEU contended that the workplace exposure standards in Australia do not reflect the most relevant scientific data or comparable exposure standards. It noted that this matter is currently the subject of a regulatory review by Safe Work Australia. However, there is no immediate plan to reduce the levels in New South Wales, as the revised standards are not due until December 2019.[84] For this reason the CFMMEU recommended that the NSW Government take urgent action to review workplace exposure standards for silica exposure.[85]

2.21 The Thoracic Society of Australia and New Zealand also advocated for the mandatory limit for silica dust exposure be reduced to 0.025mg/m3.[86]

2.22 Associate Professor Yates noted that there could potentially be technological complications in lowering dust levels in all work environments which may have implications for certain workplaces and projects.[87]

Further research

2.23 The CFMMEU recommended that the NSW Government conduct research to gain a better understanding of the nature, extent and effects of silica exposure under dry and wet cutting conditions.[88]

2.24 Unions NSW noted the new engineered stone product Geoluxe as a potential alternative to caesarstone and called for more research to be done on its suitability:

> Recently we have been made aware of a new product. The new product: Geoluxe, is apparently an engineered stone product made of 100 per cent minerals and zero resin, which is the component used to bind quartz together in products like caesarstone. … We have the manufacturer's safety data sheets and it presents ranges of silica from a minimum of 7 per cent to 25 per cent maximum. Obviously more research and investigation should be undertaken on this product but, on the face of it, it looks as though there are alternatives available to the traditional engineered stone products currently used. We would encourage this Committee to cconsider recommending that further research be undertaken into new products like Geoluxe.[89]

Monitoring air quality

2.25 Unions NSW were concerned that air monitoring is not always occurring. It noted that SafeWork NSW advises businesses that where engineering controls and personal protective equipment is in use, air monitoring is not necessary. Unions NSW stated that an absence of air monitoring has created an absence of data where we 'do not know what the air quality is like in

84 Submission 9, CFMMEU, p 12.

85 Submission 9, CFMMEU, p 13.

86 Submission 5, Thoracic Society of Australia and New Zealand, p 2.

87 Evidence, Associate Professor Yates, 25 January 2019, pp 48-49.

88 Submission 9, CFMMEU, p 15.

89 Evidence, Ms Flores, 25 January 2019, p 15.

most workplaces'.[90] To rectify this, Unions NSW recommended government subsidised air quality monitoring of workplaces where any exposure to dust occurs.[91]

2.26 The CFMMEU agreed with the proposal and called on the NSW Government to require mandatory air monitoring and the use of controls in all circumstances where workers may be exposed to silica dust.[92]

Medical screening in workplaces

2.27 Unions NSW supported the Lung Bus initiative outlined in Chapter 1, but called for icare to increase the service and to provide free screening to all workers. It noted that many workers currently at the greatest risk of developing silicosis are working within metropolitan Sydney and are often drawn from different migrant communities. Unions NSW considered that a free service must be made easily available to these workers.[93]

2.28 The CFMMEU supported the expansion of icare's free screening service and recommended the introduction of additional x-ray services particularly targeting workers in vulnerable populations. The CFMMEU noted concerns that silicosis is under reported amongst these populations and stated that extra services will provide a better picture of the extent to which exposure to silica dust affects workers.[94]

Committee comment

2.29 The committee acknowledges stakeholder views describing silicosis to be a very serious emerging health issue, given recent cases in Queensland.

2.30 The committee notes the NSW Government has done work through the Taskforce and Roadmap 2022 initiative, and recommends that New South Wales, like Queensland, undertake steps to actively look for cases of silicosis, particularly in the manufactured stone industry.

Recommendation 1

That icare and SafeWork NSW conduct a case finding study for silicosis in the manufactured stone industry in New South Wales.

2.31 The committee proposes that in the new Parliament the Law and Justice Committee review the Dust Diseases Scheme with a focus on the issue of silica and silicosis, particularly in the manufactured stone industry, closely considering safe handling methods, exposure levels as well as from an education and prevention perspective and ensuring there is effective screening and diagnosis.

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90 Submission 10, Unions NSW, p 8.

91 Submission 10, Unions NSW, p 8.

92 Submission 9, CFMMEU, p 11.

93 Submission 10, Unions NSW, pp 9-10.

94 Submission 9, CFMMEU, pp 7-8.

2.32 The committee is of the view that the NSW Government should urgently undertake targeted awareness and education initiatives into the dangers associated with the manufactured stone industry, including a focus on non-English speaking background workers and employers.

Recommendation 2

That the Standing Committee on Law and Justice's next review of the Workers Compensation (Dust Diseases) Scheme focus on silica dust and silicosis, particularly in the manufactured stone industry.

Recommendation 3

That the NSW Government urgently undertake targeted awareness and education initiatives into the dangers associated with the manufactured stone industry, including a focus on non-English speaking background workers and employers.

2016 recommendation 2: National dust diseases register

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

2.33 The NSW Government supported this recommendation, noting that preliminary discussions have been held with relevant stakeholders. The government stated that it is aiming to obtain support for this initiative at both a Commonwealth and state/territory level.[95]

2.34 Mr John Nagle, CEO and Managing Director at icare noted the organisation's support for a national register and was not aware of any body in New South Wales that opposed the proposal.[96] Ms Carmel Donnelly, Chief Executive at SIRA noted they were also supportive of a national register and indicated that the matter needs to be given priority.[97]

2.35 icare advised that SIRA, as the regulator, has agreed to take the lead on this initiative.[98] SIRA informed the committee that Ministers at the Council of Australian Governments Health Council requested the Clinical Principal Committee of the Australian Health Ministers' Advisory Council examine the creation of a national register. The committee is currently scheduled to report back to the Health Council on 8 February 2019. SIRA has liaised with the committee to inform their examination of the feasibility of a national register[99] and will monitor and respond to any direction or action from the Health Council.[100]

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95 The Hon Dominic Perrottet MP, Treasurer and Minister for Industrial Relations, *Government response to the First review of the Dust Diseases Scheme*, 27 February 2018, p 1.

96 Evidence, Mr John Nagle, CEO and Managing Director, icare, 25 January 2019, p 55.

97 Evidence, Ms Carmel Donnelly, Chief Executive, SIRA, 25 January 2019, p 70.

98 Submission 11, icare, Annexure A.

99 Answers to pre-hearing questions, SIRA, 14 January 2018, p 1.

100 Submission 8, SIRA, p 7.

2.36 SIRA is also in consultation with the Thoracic Society of Australia and New Zealand and other stakeholders to progress a survey through Australian clinicians to collect data on the prevalence of dust diseases and inform the feasibility of the register. Stakeholders have indicated that existing data sources currently underreport the incidences of dust diseases as they primarily capture compensation claims only. The survey aims to demonstrate the magnitude of discrepancy in incidences and compensation claims.[101]

2.37 SIRA noted that consultations to date highlighted that respiratory and occupational clinicians are best placed to provide timely and accurate notification of dust diseases into a national register as many affected workers do not claim compensation due to a range of reasons including language barriers, visa status or fear of losing employment.[102]

2.38 Discussions also demonstrate that the requirements for successful establishment and ongoing utility of a national register include support from all states, territories and the Commonwealth, including health agencies as well as the mandatory reporting of dust diseases. SIRA indicated that previous attempts at a voluntary register in the Surveillance of Workplace Based Respiratory Events had 'fallen over' due to reductions in notifications over time. It noted to ensure ongoing utility of a register, mandatory reporting of incidents is required.[103]

2.39 Dr Petrina Casey, Director Health Strategy at SIRA highlighted that the national register needs commitment at both the State and Commonwealth levels, to incorporate mandatory reporting and be made by clinicians:

> I guess a lot of what we found has reiterated some of the evidence that you have already heard today in relation to needing commitment at both a State and Federal level. That came through strongly with the consultations that we heard. Learning lessons from the past, so there has been a past attempt through a surveillance system and really that highlighted the need for it to be mandatory—if it was voluntary the notifications dropped off over time. The consultation highlighted that it really needs to be at the clinician level. So again not necessarily at a claim, compensation or regulator level.[104]

2.40 SIRA noted that that there are existing national agencies that could deliver a national register such as the Australian Institute of Health and Welfare.[105]

2.41 The Thoracic Society of Australia and New Zealand supported the development of a National Registry for Occupational Lung diseases and suggested that the NSW Government should consider future support of an evidence-based national health surveillance program for workers exposed to dusts, fumes and vapours. Currently, icare does not have any responsibility towards prevention, but the Thoracic Society viewed that this should change to allow better interaction between SafeWork, icare and clinicians.[106]

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101 Answers to pre-hearing questions, SIRA, 14 January 2019, p 2.

102 Answers to pre-hearing questions, SIRA, 14 January 2019, p 2.

103 Answers to pre-hearing questions, SIRA, 14 January 2019, p 2.

104 Evidence, Dr Petrina Casey, Director Health Strategy, SIRA, 25 January 2019, p 68.

105 Answers to pre-hearing questions, SIRA, 14 January 2019, p 2.

106 Submission 5, Thoracic Society of Australia and New Zealand, p 2.

2.42 Associate Professor Yates stated that support and funding for the national register needs to come from both the State and Commonwealth levels and highlighted that this should be implemented as a matter of priority.[107]

2.43 Unions NSW supported calls for a centralised, comprehensive health surveillance and occupational lung diseases national register by the Lung Foundation Australia, the Thoracic Society of Australia and New Zealand and the Australasian Faculty of Occupational and Environmental Medicine. While a national approach would be best, Unions NSW called on New South Wales to 'lead the way in best practice by introducing measures to establish dust diseases registries and legislate for the mandatory reporting of dust diseases'.[108]

2.44 The CFMMEU called on the NSW Government to expedite measures to establish dust disease registries and the mandatory reporting of dust diseases.[109] It noted that the true extent and impact of silicosis remains hidden and urgent action is needed to capture reporting information.[110]

2.45 Mr Kruse commented on this factor, noting:

> The disease is hidden and that is why we need the mandatory reporting mechanisms, more screening to ensure that people actually do get the care and we can actually map where the disease is prevalent.[111]

2.46 The CFMMEU provided information regarding the Health and Other Legislation Amendment Bill 2018 which was introduced into the Queensland Parliament on 13 November 2018. One of the objects of the bill is to amend Queensland's *Public Health Act 2005* to 'establish the Notifiable Dust Lung Disease register and require prescribed medical practitioners to notify the chief executive of Queensland Health about cases of notifiable dust lung disease'.[112]

2.47 The purposes of the register are to monitor and analyse the incidence of notifiable dust lung diseases and enable information about notifiable dust lung diseases to be exchanged with an entity of the State. The CFMMEU noted that this could be a suitable model for New South Wales to follow in implementing a state register.[113]

2.48 SIRA noted that the Queensland bill would make dust diseases notifiable by medical practitioners to the Chief Health Officer and creates a Notifiable Dust Lung Disease Register. The register will record cases of coal workers' pneumoconiosis, silicosis and other lung conditions caused by occupational exposure to inorganic dust which could feed into a national register.[114] It would also authorise medical practitioners to give information where they may otherwise be required to maintain confidentiality under an Act, oath, rule of law or practice.[115]

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107 Evidence, Associate Professor Yates, 25 January 2019, p 50.

108 Submission 10, Unions NSW, pp 10-11.

109 Submission 9, CFMMEU, p 8.

110 Submission 9, CFMMEU, p 8.

111 Evidence, Mr Kruse, 25 January 2019, p 17.

112 Answers to questions on notice, CFMMEU, 5 February 2019, p 2.

113 Answers to questions on notice, CFMMEU, 5 February 2019, p 2.

114 Answers to pre-hearing questions, SIRA, 14 January 2019, p 2.

115 Answers to questions on notice, SIRA, 7 February 2019, p 3.

2.49 SIRA stated that Queensland's model 'would meet many of the requirements of a dust diseases register recommended by the Thoracic Society'.[116]

2.50 Ms Carmel Donnelly, Chief Executive at SIRA indicated that she has advocated for a national register, but, she could not see any barrier to starting a New South Wales register.[117]

2.51 While certainly achievable, Dr Petrina Casey, Director Health Strategy at SIRA cautioned that the creation of a register is complex and involves many bodies working together and implementing the necessary training:

> I do not think we can underestimate how complicated it is in terms of getting health departments, clinicians trained so there are some resources, but we can look to the existing mesothelioma register as an example of where it does work. We know there is an annual maintenance cost and we would have establishment fees. It is obviously doable but there would be some significant work in establishing it and training people in relation to what the reporting requirements would be.[118]

Committee comment

2.52 The committee acknowledges that icare and SIRA are supportive of a national register and have been advocating for its inception.

2.53 Some stakeholders note that implementing a register is an urgent priority and point to Queensland which is in the process of legislating for the establishment of its own register.

2.54 A national register is the optimal solution, however if this is not expedited, the committee recommends as an alternative that New South Wales establishes its own dust diseases register as a priority in the new Parliament.

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.

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116 Answers to questions on notice, SIRA, 7 February 2019, p 3.

117 Evidence, Ms Donnelly, 25 January 2019, p 69.

118 Evidence, Dr Casey, 25 January 2019, p 69.

2016 recommendation 3: Fact sheets and brochures

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.

2.55 The NSW Government supported this recommendation and recognised the importance of providing timely information to claimants to ensure they are aware of the nexus between receipt of application and payment of benefits.[119]

2.56 icare has since updated its application forms, factsheets and website content to include a statement about the importance of making a dust diseases application as soon as possible, to facilitate early and timely access to support. icare also noted that it has streamlined the Dust Diseases Scheme application form, reducing it to two pages, and introduced a phone-based application process. This process is intended to alleviate the administrative burden, complexity and improve timeframes for the determination of claims for applicants.[120]

2.57 Further, icare has introduced an electronic form allowing applicants to apply for a medical examination or compensation via the icare website.[121]

2.58 Mr John Nagle, CEO and Managing Director of icare noted that icare has also updated most of its key forms in eight languages and is talking to SBS Radio about making these into radio clips.[122]

2016 recommendation 4: Online application process

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.

2.59 The NSW Government supported this recommendation[123] and icare informed the committee that it has introduced an electronic form allowing applicants, or persons acting on their behalf, to apply for a medical examination or compensation via the website. icare is also working towards the development of an online portal to further enhance services.[124]

119 The Hon Dominic Perrottet MP, Treasurer and Minister for Industrial Relations, *Government response to the First review of the Dust Diseases Scheme*, 27 February 2018, p 2.

120 Submission 11, icare, Annexure A, p 1.

121 Submission 11, icare, p 4.

122 Evidence, Mr Nagle, 25 January 2019, p 60.

123 The Hon Dominic Perrottet MP, Treasurer and Minister for Industrial Relations, *Government response to the First review of the Dust Diseases Scheme*, 27 February 2018, p 2.

124 Submission 11, icare, Annexure A.

2016 recommendation 5: Statutory internal appeals panel

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.

2.60 The NSW Government supported the recommendation in principle and recognised that the current appeal process can be costly and lengthy, and may deter some individuals from initiating the process. The government indicated that it will explore options concerning the establishment of a statutory appeals panel, noting that this would require a legislative amendment.[125]

2.61 icare stated that internal review mechanisms currently exist for the Medical Assessment Panel to reconsider eligibility decisions relating to medical certification of dust disease and disability level.[126]

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125 The Hon Dominic Perrottet MP, Treasurer and Minister for Industrial Relations, *Government response to the First review of the Dust Diseases Scheme*, 27 February 2018, p 2.

126 Submission 11, icare, Annexure A.

Chapter 3 Other matters raised regarding the Dust Diseases Scheme

This chapter examines a range of matters that have been raised with the committee during the review. This includes Medical Assessment Panel processes, the list of dust diseases covered by the scheme, entitlements, research grants, compensation payments and appeal rights.

Medical Assessment Panel

3.1 The Thoracic Society of Australia and New Zealand made a range of recommendations concerning the operation of the Medical Assessment Panel. This included a review of its processes to ensure they are conducted by 'the most appropriately qualified and experienced medical practitioners, are consistent in their application of decisions and provide clear and transparent reporting to both the Dust Diseases Authority and to applicants'.[127]

3.2 The Thoracic Society suggested that a review of the last two years' of medical assessment decisions be undertaken, to check for consistency and conformity with current medical evidence.[128] Associate Professor Deborah Yates, Senior Staff Specialist in Respiratory Medicine, St Vincent's Hospital considered that reviewing two years of data 'is just enough numbers to get an appropriate review'.[129]

3.3 The Thoracic Society also called for dedicated training and regular renewal of training of medical staff to ensure optimal standards are maintained.[130] Associate Professor Yates noted that a recent review in Queensland of Coal Worker's Pneumoconiosis found that medical staff were poorly trained in performing x-rays to examine lung function. She therefore called for training and education to improve in New South Wales, noting a lack of qualified practitioners in the field:

> The difficulty, I think, is related to the fact that in Australia we have got into an area of complacency and that is really well shown in Queensland where when they reviewed the system they found that the systems that were in process for doing x-rays for lung function and for acting on those results were very bad, and one of the reasons for that was partly because the medical profession were very poorly trained in that regard. The Thoracic Society have been trying to improve the training in this particular area and we run a course, which is currently supported by icare, which is done on alternate years to improve education in that regard. But there is a dearth of practitioners who have any experience or real knowledge of occupational lung diseases and we would like to expand that. I think there should be a standard procedure for knowing what people should be qualified for when they apply for the medical authority; there is no quality control audit of those particular decisions and, again, the decision-making processes are not

127 Submission 5, Thoracic Society of Australia and New Zealand, p 1.

128 Submission 5, Thoracic Society of Australia and New Zealand, p 1.

129 Evidence, Associate Professor Deborah Yates, Senior Staff Specialist in Respiratory Medicine, St Vincent's Hospital, and Associate Professor, University of New South Wales, representing the Thoracic Society of Australia and New Zealand, 25 January 2019, p 44.

130 Submission 5, Thoracic Society of Australia and New Zealand, p 1.

> necessarily in conformity with what is the international situation with regard to diagnosing these diseases.[131]

3.4 Lung function can be measured through a spirometry test or a full lung function test. Both tests are able to determine lung function capacity in an individual, taking into account age, sex, height and racial group.[132] The Thoracic Society suggested that all lung function testing be conducted by Thoracic Society accredited laboratory providers. It noted that this was a key recommendation in the Queensland review.[133]

3.5 The Thoracic Society indicated that it is currently developing auditing capacity for spirometry only providers, as evidence from Queensland suggests that spirometry has not met uniform acceptable criteria in the context of occupational health screening.[134] Associate Professor Yates noted that New South Wales should apply the same rules as Queensland and it can use that State's data to inform our position.[135]

3.6 Finally, the Thoracic Society stated that appointments to the Medical Assessment Panel should be made after wide advertisement and based on transparent, objective criteria. It considered that demonstrated qualifications and training in occupational respiratory disease are essential.[136]

3.7 icare stated that there are currently no mandatory accreditation requirements for health monitoring service providers in New South Wales. This differs to Queensland, where from 19 March 2019 it will be mandatory for all health monitoring providers for the coal industry to be accredited by the Thoracic Society. Health monitoring must also comply with the Thoracic Society's *Standards for the Delivery of Spirometry for Coal Mine Workers*. icare stated that it does not believe these requirements have been extended to health monitoring providers for other industries including for manufactured stone.[137]

3.8 icare advised it has designed its health monitoring service to be compliant with the Work, Health and Safety Regulation 2017. In addition, icare applies the SafeWork Australia *Guidelines for Crystalline silica health monitoring* when providing health monitoring for workers exposed to silica. icare lung function testing is performed by staff members with qualifications in Exercise Science and Rehabilitation, Clinical Physiology and Occupational Hygiene Practice. One staff member is a certified by the Australian and New Zealand Society of Respiratory Science as a qualified Respiratory Lung Function Scientist and is a member of the Thoracic Society. Testing is also conducted to the standards set out within the *Technical Statements and Standard for Lung Function Testing* published by the American Thoracic Society and European Respiratory Society.[138]

3.9 icare indicated that it would be happy to collaborate with relevant stakeholders, including the Medical Assessment Panel, the Thoracic Society and the Australasian Faculty of Occupational

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131 Evidence, Associate Professor Yates, 25 January 2019, p 43.

132 Evidence, Associate Professor Yates, 25 January 2019, pp 44-45.

133 Submission 5, Thoracic Society of Australia and New Zealand, p 2.

134 Submission 5, Thoracic Society of Australia and New Zealand, p 2.

135 Evidence, Associate Professor Yates, 25 January 2019, p 45.

136 Submission 5, Thoracic Society of Australia and New Zealand, pp 1-2.

137 Answers to questions on notice, icare, 7 February 2019, p 1.

138 Answers to questions on notice, icare, 7 February 2019, p 1.

and Environmental Medicine, to review existing health monitoring guidelines to ensure its program continues to adopt and apply international best practice.[139]

3.10 In relation to the appointments to the Medical Assessment Panel, Mr Chris Koutoulas, Interim Group Executive, Care and Community at icare noted that the panel is identified or formed through nominations from the relevant parties. Under the legislation the Medical Assessment Panel is to comprise of medical specialists representative of workers and employers. When appointments are due to come up, icare write to a series of worker-related and employer-related associations seeking nominations.[140] Mr Koutoulas indicated that assessors are appointed on merit and experience, in particular 'experience with the diagnosis, the treatment of dust diseases, experience around respiratory diseases and occupationally related illnesses'.[141]

Committee comment

3.11 In light of the evidence from Queensland's Coal Worker's Pneumoconiosis review the committee notes that the Thoracic Society has called for a review of the last two years' of medical assessment decisions to be undertaken in New South Wales, to check for consistency and conformity with current medical evidence.

3.12 While the committee acknowledge the work of icare in this area, given the high importance of this matter and the evidence from Queensland, the committee recommends that icare review the last two years' of medical assessment decisions made by the Medical Assessment Panel to check for consistency and conformity with current medical evidence and ensure international best practice is being followed.

Recommendation 5

That icare review the last two years of medical assessment decisions made by the Medical Assessment Panel to check for consistency and conformity with current medical evidence and ensure that international best practice is being followed.

Dust diseases listed in the *Workers' Compensation (Dust Diseases) Act 1942*

3.13 The Australian Lawyers Alliance submitted that the list of 14 dust diseases in Schedule 1 of the *Workers' Compensation (Dust Diseases) Act 1942* should be updated to remove outdated diseases and add diseases related to occupational asthma. This view was supported by the Thoracic Society of Australia and New Zealand.

3.14 The Australian Lawyers Alliance indicated that almost all compensation recipients suffer from just five of the 14 diseases, those being the asbestos related diseases and silica-related diseases. There have been very few awards made with respect to other diseases. For example, byssinosis,

[139] Answers to questions on notice, icare, 7 February 2019, p 2.

[140] Evidence, Mr Chris Koutoulas, Interim Group Executive, Care and Community, icare, 25 January 2019, p 54.

[141] Evidence, Mr Koutoulas, 25 January 2019, p 54.

a condition related to the inhalation of cotton dust, is almost redundant due to the decline of the industry in Australia.[142]

3.15 The Australian Lawyers Alliance noted that an increasingly common form of respiratory disease arising in the workplace is occupationally induced asthma, which is commonly caused by the inhalation of welding fumes. Occupational asthma includes reactive airways dysfunction syndrome (RADS), chronic obstructive pulmonary disease (COPD) and the aggravation of pre-existing asthma.[143]

3.16 Ms Joanne Wade, Practice Group Leader, Slater and Gordon representing the Australian Lawyers Alliance observed that amending the schedule would have financial implications for the scheme and noted that 'actuarial advice and recommendations in relation to the costings of those diseases' would be required. She indicated that currently people diagnosed with those diseases are not able to obtain compensation through the Dust Diseases Scheme, but they do have rights under the *Workers Compensation Act 1987*.[144]

3.17 From a health perspective, Associate Professor Yates stated that the spectrum of occupational lung disease has widened in the last 25 years and she considers that Australian laws no longer conform to international best practice:

> I come from the health point of view and as such my focus is diagnosis and prevention rather than primary compensation. I start with diagnosis. In the last 25 years there have been a lot of changes with regard to respiratory medicine, particularly with understanding basic disease physiology. That has included occupational lung disease, and the spectrum of occupational lung disease has vastly widened. I think it is fair to say that Australia is not as advanced as some other areas with regard to the spectrum of occupational lung diseases and essentially we in the Thoracic Society think this needs to be expanded to conform to international best practice.[145]

3.18 Associate Professor Yates noted that occupational asthma and COPD were previously associated with cigarette smoking, but data now suggests that 30 to 40 per cent are instead associated with dust and environmental exposures.[146] She indicated that the spectrum of dust diseases recognised here is out of date, as in the United Kingdom occupational asthma has been on the industrial disablement benefit since the late 1980s.[147]

Committee comment

3.19 The committee notes the views of inquiry participants that the scheme does not cover a range of dust diseases, including occupational asthma. Any change to the diseases set out in schedule 1 of the *Workers' Compensation (Dust Diseases) Act 1942* would require careful analysis of how it would impact the scheme as it could have significant cost implications.

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142 Evidence, Ms Joanne Wade, Practice Group Leader, Slater and Gordon representing the Australian Lawyers Alliance, 25 January 2019, p 26; Submission 4, Australian Lawyers Alliance, p 5.

143 Evidence, Ms Wade, 25 January 2019, p 26.

144 Evidence, Ms Wade25 January 2019, p 26.

145 Evidence, Associate Professor Yates, 25 January 2019, p 42.

146 Evidence, Associate Professor Yates, 25 January 2019, p 42.

147 Evidence, Associate Professor Yates, 25 January 2019, p 43.

3.20 The committee recommends that SIRA liaise with key stakeholders regarding the list of dust diseases and, based on these discussions, commission an independent actuarial study of the implications of making these amendments.

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.

Funeral expenses

3.21 The Australian Lawyers Alliance submitted that the amount icare provides for funeral expenses for deceased workers is inadequate and called for it to be increased. This amount has been capped at $9,000 since 2004.[148] Mr Gerard McMahon, Partner, Turner Freeman Lawyers, representing the Australian Lawyers Alliance stated that funeral expenses should be increased to meet the reasonable cost of a funeral.[149]

3.22 Mr Koutoulas from icare explained that the organisation is currently bound by the statutory maximum of $9,000 for dust diseases and any change would need to be reviewed through the statutory process. This would start with SIRA as it determines the statutory maximums attached to the schedules.[150]

3.23 icare advised that in 2017-18 it expended a total of $2,742,091.03 on funeral expenses for Dust Diseases Care participants. This equated to an average of $8,489.45 per person.[151]

3.24 Mr John Nagle, CEO and Managing Director of icare, informed the committee that the Workers Compensation Scheme moved its statutory maximum for funeral expenses to $15,000 as part of the 2015 reforms.[152]

3.25 SIRA noted that any change to the prescribed rate of $9,000 can be achieved through an amending regulation published by the NSW Government.[153]

3.26 SIRA indicated that currently section 8(2A) of the *Workers Compensation (Dust Diseases) Act 1942* notes that the sum to be prescribed for funeral benefits is set out in section 27 of the *Workers Compensation Act 1987*. While section 27 used to specify that the amount was $9,000, SIRA advised that the section was repealed from the *Workers Compensation Act* in 2008. However, SIRA

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148 Submission 4, Australian Lawyers Alliance, p 7.

149 Evidence, Mr McMahon, 25 January 2019, p 31.

150 Evidence, Mr Koutoulas, 25 January 2019, p 64.

151 Answers to pre-hearing questions, icare, 15 January 2019, p 4.

152 Evidence, Mr John Nagle, CEO and Managing Director, icare, 25 January 2019, p 64.

153 Answers to questions on notice, SIRA, 7 February 2019, p 4.

stated that the original link between the two Acts indicates that there should be parity in funeral benefits between the Workers Compensation and Dust Diseases Schemes.[154]

Committee comment

3.27 The committee notes that there is a disparity between the dust diseases and workers compensation schemes regarding the statutory maximum for funeral benefits. The committee notes evidence from SIRA that the original intention of the relevant Acts was for there to be parity between the schemes. The committee recommends that the NSW Government make a regulation that the payment of reasonable funeral expenses be increased to not exceed $15,000 in line with the Workers Compensation Scheme.

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.

Awareness of scheme entitlements

3.28 The Australian Lawyers Alliance were concerned that, as the overwhelming majority of recipients of compensation are elderly people, many may be unaware of entitlements to the provision of services such as lawn mowing and gardening. The Alliance recommended that icare review cases where workers have a level of disability of 15 per cent or more to proactively determine if they have a need for such services.[155]

3.29 In response, icare noted the role of Client Liaison Officers is to guide new participants through the scheme, providing personalised information about the services they may be entitled to. Client Liaison Officers are able to immediately pre-approve requests for low-risk services, such as lawn mowing, up to a value of $2,000. This means clients are no longer required to send in quotes, or undergo an assessment by an occupational therapist or registered nurse to receive approval for services.[156]

3.30 icare noted that it also has information available on its website regarding entitlements and provides presentations about its services and entitlements at a range of stakeholder forums.[157]

Research grants

3.31 Mr McMahon raised concern that the Dust Diseases Board has provided substantially more funding for research grants to Western Australian researchers rather than researchers in New

[154] Answers to questions on notice, SIRA, 7 February 2019, p 4.

[155] Submission 4, Australian Lawyers Alliance, pp 6-7.

[156] Answers to pre-hearing questions, icare, 15 January 2019, pp 2-3.

[157] Answers to pre-hearing questions, icare, 15 January 2019, p 3.

South Wales. $2.6 million in grants have been made to practitioners at the University of Western Australia, whereas grants of just over $900,000 have been made to New South Wales researchers. Mr McMahon found this concerning because these grants are being funded through premiums paid by New South Wales employers. He thought that New South Wales should be fostering research here, as opposed to giving money to another State.[158]

3.32 Mr Koutoulas noted that the Dust Diseases Board is responsible for the grants process. He stated that while it is the natural inclination of Board members to support New South Wales capability building, the most important consideration is to achieve outcomes for people. The grants program is competitive and merit-based and the Board's decision-making therefore primarily relates to 'the merit of the programs, the capability, the likelihood of success and the flow-on benefit from the research'.[159]

Periodic compensation payments

3.33 The Australian Lawyers Alliance noted that there are many elderly people in the scheme who are also in receipt of the Age Pension from Centrelink. However, periodic compensation payments paid to scheme recipients are treated as income by Centrelink. Consequently, there is a reduction in Centrelink benefits received by the compensation recipient.[160]

3.34 The Australian Lawyers Alliance observed that this can lead to situations where compensation is of no practical benefit to the recipient, and can even be a burden as they are receiving income from two sources and must satisfy administrative requirements for both.[161]

3.35 Ms Joanne Wade, Practice Group Leader, Slater and Gordon representing the Australian Lawyers Alliance explained the conundrum experienced by some scheme participants:

> It is a problem for some people suffering from dust diseases because when they get the dust disease care pension they have to go along to Centrelink and tell them "I'm now getting this pension". Centrelink takes away dollar for dollar what they were getting and if they lose their age pension they lose all those extra benefits with the health care card, the reduction on rates, and then they say "I'm worse off".[162]

3.36 The Australian Lawyers Alliance recommended that this issue be considered by the state and federal governments. It noted that as there is a low number of people receiving compensation, consideration could be given to 'quarantining' the periodic compensation paid from the income test used by Centrelink or making periodic payments of compensation tax-free.[163]

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158 Evidence, Mr McMahon, 25 January 2019, p 27.

159 Evidence, Mr Koutoulas, 25 January 2019, p 63.

160 Submission 4, Australian Lawyers Alliance, p 7.

161 Submission 4, Australian Lawyers Alliance, p 7.

162 Evidence, Ms Wade, 25 January 2019, p 33.

163 Submission 4, Australian Lawyers Alliance, p 7.

Recommendation 8

That the NSW Government, through the Council of Australian Governments, liaise with the Commonwealth Government to ensure that periodic compensation payments paid to Workers Compensation (Dust Diseases) Scheme participants are not treated as income by Centrelink, to ensure that participants who receive benefits such as the Age Pension do not have their benefits reduced on account of their involvement in the scheme.

Appeal rights

3.37 Mr McMahon noted that appeal rights to decisions from the Authority currently go to the District Court.[164]

3.38 Mr McMahon stated that the problem with this approach is that 'it lets a lot of adverse decisions go through to the keeper, so to speak, because they do not have the money to challenge it'. He considered that it would be more appropriate for judges of the Dust Diseases Tribunal to adjudicate decisions of the Dust Diseases Authority, as opposed to the District Court as they have a good background in the medical issues that arise in these cases.[165]

3.39 Ms Wade indicated that she has only had three or four matters go to appeal over her 20 years practicing in the area.[166] Mr McMahon did not think that these appeals would add much to the judges' workload and that this change would not 'open the floodgates'.[167]

Dust Diseases Tribunal

3.40 While not within the committee's terms of reference, the Australian Lawyers Alliance raised concerns that an increasing number of plaintiffs are dying before their claim is finalised by the Dust Diseases Tribunal (see chapter 1 for further information about the Dust Diseases Tribunal).[168] The Australian Lawyers Alliance considered that these delays cause considerable hardship and distress to plaintiffs and their families.[169]

3.41 The Australian Lawyers Alliance explained that the *Dust Diseases Tribunal Regulation 2013* contains a timeframe for the completion of malignant and non-malignant asbestos disease claims referred to as the 'Claims Resolution Process'. Since the introduction of this process, a number of plaintiffs with malignant disease have died prior to the finalisation of their claims. The Australian Lawyers Alliance indicated that anecdotal evidence suggests that the proportion is as high as one third. The primary reasons for this occurring are:

- that mesothelioma can progress unpredictably and very quickly

164 Evidence, Mr McMahon, 25 January 2019, p 33.
165 Evidence, Mr McMahon, 25 January 2019, p 27.
166 Evidence, Ms Wade, 25 January 2019, p 34
167 Evidence, Mr McMahon, 25 January 2019, p 34.
168 Submission 4, Australian Lawyers Alliance, p 8.
169 Submission 4, Australian Lawyers Alliance, p 8.

- the inflexibility of the timetable imposed by the Claims Resolution Process on malignant claims.[170]

3.42 The Australian Lawyers Alliance stated that the filing of cross-claims adds to the length in the timeframe for claims, meaning they can take up to 15 weeks to finalise. In the majority of cases, the identity of a potential cross-defendant is known to a defendant as litigation concerning asbestos related disease claims have been taking place against the same defendants since 1989. Litigation against a first time defendant is rare.[171]

3.43 The Australian Lawyers Alliance advised that the only way to ensure that the maximum possible number of malignant claims is concluded within the lifetime of a plaintiff is for all malignant claims to be case managed by a Judge of the Dust Diseases Tribunal.[172]

3.44 It submitted that this proposal would not impose any additional costs burden on the parties. In practical terms, the proposal provides for an initial appearance before a Judge for procedural directions that would ultimately require the parties to perform the same work that the Claims Resolution Process currently requires of them. At the same time, the proposal requires that work to be performed within a timely manner with quick access to the Tribunal in the event of sudden deterioration in a plaintiffs condition.[173]

Committee comment

3.45 While outside of the terms of reference for this review, the committee does see merit in the proposal of the Australian Lawyers Alliance for all malignant claims to be case managed by a Judge of the Dust Diseases Tribunal.

170 Answers to questions on notice, Australia Lawyers Alliance, 7 February 2019, p 1.

171 Answers to questions on notice, Australia Lawyers Alliance, 7 February 2019, p 1.

172 Answers to questions on notice, Australia Lawyers Alliance, 7 February 2019, p 1.

173 Answers to questions on notice, Australia Lawyers Alliance, 7 February 2019, p 2.

Appendix 1 Submissions

No.	Author
1	Dr Graeme Edwards
2	Confidential
3	Confidential
4	Australian Lawyers Alliance
5	The Thoracic Society of Australia and New Zealand
6	Carers NSW
7	Bernie Banton Foundation
8	SIRA
9	CFMMEU
10	Unions NSW
11	icare

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Friday 25 January 2019 **Macquarie Room** **Parliament House, Sydney**	Ms Natasha Flores	Industrial Officer – WH&S and Workers Compensation, Unions NSW
	Mr Mark Morey	Secretary, Unions NSW
	Mr Ben Kruse	Legal and Industrial Officer, CFMMEU
	Ms Joanne Wade	Practice Group Leader, Slater and Gordon representing the Australian Lawyers Alliance
	Mr Gerard McMahon	Partner, Turner Freeman Lawyers, representing the Australian Lawyers Alliance
	Mr Rod Smith	Awareness and Support Co-ordinator, Bernie Banton Foundation
	A/Prof Deborah Yates	Staff Specialist, St. Vincent's Hospital, representing the Thoracic Society of Australia and New Zealand
	Mr John Nagle	CEO and Managing Director, icare
	Dr Nick Allsop	Interim Group Executive, Organisational Performance/CFO, icare
	Mr Chris Koutoulas	Interim Group Executive, Care and Community, icare
	Ms Suzanne Lulham	General Manager, Care, Innovation and Excellence, Care and Community, icare
	Ms Carmel Donnelly	Chief Executive, SIRA
	Mr Darren Parker	Acting Executive Director Workers Compensation and Home Building Regulation, SIRA
	Ms Mary Maini	Executive Director Motor Accidents Insurance Regulation, SIRA
	Dr Petrina Casey	Director Health Strategy, SIRA

Appendix 3 Minutes

Minutes no. 29
23 August 2018
Standing Committee on Law and Justice
Jubilee Room, Parliament House, Sydney, 9.02 am

1. Members present
Mrs Ward, *Chair*
Ms Voltz, *Deputy Chair*
Mr Clarke
Mr Khan
Mr Mookhey
Mr Shoebridge

2. Draft minutes
Resolved, on the motion of Mr Mookhey: That draft minutes nos 27 and 28 be confirmed.

3. ***

4. 2018 review of the Dust Diseases and Lifetime Care and Support Schemes

4.1 Inquiry timeline

Resolved, on the motion of Ms Voltz: That the committee adopt the following timeline:
- submission closing date of 4 November 2018
- a hearing be scheduled in early December 2018, subject to the secretariat canvassing member availability.

Resolved, on the motion of Mr Shoebridge: That government witnesses be provided with pre-hearing questions on notice and be requested to provide a general update on the progress of matters since the government response was tabled for the last review.

5. ***

6. ***

7. ***

8. Adjournment
The committee adjourned at 5.05 pm.

Tina Higgins
Clerk to the Committee

Minutes no. 38
Friday 25 January 2019
Standing Committee on Law and Justice
Macquarie Room, Parliament House, Sydney at 8:51 am

1. Members present
Mrs Ward, *Chair*

Ms Voltz, *Deputy Chair*
Mr Clarke
Mr Mookhey
Mr Khan
Mr Shoebridge (from 8.55 am)

2. Previous minutes
Resolved, on the motion of Mr Khan: That minutes no. 37 be confirmed

3. Correspondence
The committee noted the following items of correspondence:

Received
- 19 November 2018 – Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to Committee Chair, letter providing additional documents for the reviews of the CTP and workers compensation schemes
- 19 November 2018 – Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to secretariat, providing NSW Motor Accidents CTP scheme – Draft interim scheme performance report from December 2017 to June 2018 for the review of the CTP scheme
- 19 November 2018 – Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to secretariat, providing the Claims administration manual for the review of the CTP scheme
- 19 November 2018 – Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to secretariat, providing Draft workers compensation guidelines for the review of the workers compensation scheme
- 10 December 2018 – Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to Committee Chair, letter providing additional documents for the review of the CTP scheme
- 10 December 2018 – Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to Committee Chair, providing the Review of the NSW CTP Green Slip Scheme under the Motor Accident Injuries Act 2017 report for the review of the CTP scheme
- 10 December 2018 – Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to Committee Chair, providing Peer review of advice provided by Ernst & Young on a review of experience for the NSW CTP Green Slip Scheme for the review of the CTP scheme
- 9 January 2019 – Ms Dahbo Wheeler, Executive Assistant, Australian Medical Association, to secretariat, email declining invitation to appear at public hearing on 25 January 2019 for the review of the Dust Diseases Scheme
- 15 January 2019 – Mr Tony Jones, Policy & Advocacy Manager, Spinal Cord Injuries Australia to secretariat, email declining invitation to appear at public hearing on 25 January 2019 for the review of the Lifetime Care and Support Scheme.

Resolved, on the motion of Mr Khan: That the committee keep the correspondence from Ms Carmel Donnelly dated 19 November 2018 confidential.

4. Report deliberative dates
The committee noted the following report deliberative dates:
- Workers Compensation and CTP schemes – Wednesday 6 February 2019
- Lifetime Care and Support and Dust Diseases schemes – Thursday 21 February 2019.

5. 2018 review of the Lifetime Care and Support Scheme

5.1 Public submissions
The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: 1 to 3.

5.2 Answers to pre-hearing questions

The committee noted that the following answers to pre-hearing questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to pre-hearing questions by SIRA, received from Ms Carmel Donnelly, Chief Executive, 14 January 2019
- answers to pre-hearing questions by icare, received from Ms Clemency Morony, Head of Ministerial and Parliamentary Support Risk and Governance, 15 January 2019.

6. 2018 review of the Dust Diseases Scheme

6.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: 1 and 4 to 11.

6.2 Confidential submissions

Resolved, on the motion of Ms Voltz: That the committee keep submission nos 2 and 3 confidential as per request of the author.

Resolved, on the motion of Mr Shoebridge: That the secretariat, on behalf of the committee, write to the author of submission no. 2 requesting that the author provide the committee with a copy of the public interest disclosure referred to in the submission on a confidential basis.

6.3 Answers to pre-hearing questions

The committee noted that the following answers to pre-hearing questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to pre-hearing questions by SIRA, received from Ms Carmel Donnelly, Chief Executive, 14 January 2019
- answers to pre-hearing questions by icare, received from Ms Clemency Morony, Head of Ministerial and Parliamentary Support Risk and Governance, 15 January 2019.

7. 2018 reviews of the Lifetime Care and Support Scheme and Dust Diseases Scheme

7.1 Answers to questions and supplementary questions

Resolved, on the motion of Mr Khan:

- That, following the receipt of the transcript, members have 24 hours to submit supplementary questions to the secretariat
- That witnesses return answers to questions on notice and supplementary questions by Thursday 7 February 2019.

7.2 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceeding and other matters.

The following witness was sworn and examined:

- Ms Lynn Franco, Chief Executive Officer, Australian Community Industry Alliance.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Brian Wood, Secretary, Motorcycle Council of NSW Inc.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Natasha Flores, Industrial Officer, WH&S and Workers Compensation, Unions NSW
- Mr Mark Morey, Secretary, Unions NSW
- Mr Ben Kruse, Legal Industries Officer, CFMMEU

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Joanne Wade, Practice Group Leaders, Slater and Gordon representing the Australian Lawyers Alliance
- Mr Gerard McMahon, Partner, Turner Freeman Lawyers, representing the Australian Lawyers Alliance

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Rod Smith, Awareness and Support Co-ordinator, Bernie Banton Foundation

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- A/Professor Deborah Yates, Staff Specialist, St. Vincent's Hospital, representing the Thoracic Society of Australia and New Zealand

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr John Nagle, CEO and Managing Director, icare
- Dr Nick Allsop, Interim Group Executive, Organisations Performance/ CFO, icare
- Mr Chris Koutoulas, Interim Group Executive, Care and Community, icare
- Ms Suzanne Lulham, General Manager, Care, Innovation and Excellence, Care and Community, icare

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, SIRA
- Mr Darren Parker, Acting Executive Director Workers Compensation and Home Building Regulation, SIRA
- Ms Mary Maini, Executive Director Motor Accidents Insurance Regulation, SIRA
- Dr Petrina Casey, Director Health Strategy, SIRA.

Dr Casey tendered the following documents:

- 'SIRA Consultations on the feasibility of the national dust disease collection system',
- 'CTP Care, Program Plan December 2018'.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

7.3 Tendered documents

Resolved on the motion of Ms Voltz: That the committee accept and publish the following document tendered during the public hearing:

- 'SIRA Consultations on the feasibility of the national dust disease collection system', tendered by Dr Petrina Casey
- 'CTP Care, Program Plan December 2018', tendered by Dr Petrina Casey.

8. Previous report

Resolved on the motion of Ms Voltz: That the committee authorise the redaction of any reference to the author of correspondence distributed at the meeting in the report entitled Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018 as published on the committees website.

9. 2018 review of the CTP insurance Scheme

Resolved on the motion of Mr Shoebridge: That the secretariat ascertain the publication status of the Ernst & Young and Taylor Fry actuarial reports regarding the 2017 CTP insurance scheme, and if required, write to Ernst & Young and Taylor Fry to see if they have any objections to the committee publishing the reports.

10. Adjournment

The committee adjourned at 4.30 pm, until 9.30 am, Wednesday 6 February 2019, Macquarie Room, Parliament House (CTP and Workers Compensation report deliberative).

Samuel Griffith
Committee Clerk

Minutes no. 39
Wednesday 6 February 2019
Standing Committee on Law and Justice
Macquarie Room, Parliament House, Sydney at 1.35 pm

1. Members present

Mrs Ward, *Chair*
Ms Voltz, *Deputy Chair*
Mr Clarke
Mr Khan
Mr Mookhey

2. Apologies

Mr Shoebridge

3. Previous minutes

Resolved, on the motion of Mr Clarke: That the draft minutes no. 38 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 31 January 2019 – Email and document from confidential submission author no. 2 regarding the review of the Dust Diseases Scheme
- 5 February 2019 – Email and proposed amendments to the Chair's draft report for the 2018 review of the Workers compensation scheme, as provided to the secretariat by Mr Shoebridge.

Sent

- 30 January 2019 – Letter from the Director to confidential submission author no. 2 regarding the review of the Dust Diseases Scheme.

Resolved, on the motion of Mr Clarke: That the committee keep the following items of correspondence confidential:

- 31 January 2019 – Email and document from confidential submission author no. 2 regarding the review of the Dust Diseases Scheme
- 30 January 2019 – Letter from the Director to confidential submission author no. 2 regarding the review of the Dust Diseases Scheme.

Resolved, on the motion of Mr Mookhey: That the secretariat, on behalf of the committee, write to confidential submission author no. 2 concerning their correspondence.

5. ***

6. ***

7. ***

8. Next meeting

The committee adjourned at 2.16 pm, until Thursday 21 February 2019 (report deliberative for Lifetime Care and Dust Diseases reviews).

Tina Higgins
Clerk to the Committee

Draft minutes no. 40
Thursday 21 February 2019
Standing Committee on Law and Justice
McKell Room, Parliament House, Sydney at 1.37pm

1. Members present
Mrs Ward, *Chair*
Mr Amato (substituting for Mr Clarke)
Mr Khan
Mr Mookhey
Mr Shoebridge

2. Apologies
Mr Clarke
Ms Voltz

3. Previous minutes
Resolved, on the motion of Mr Khan: That draft minutes no. 39 be confirmed.

4. Correspondence
The Committee noted the following items of correspondence:

Received
- 4 February 2019 – Ms Lyn Franco, Chief Executive, Australian Community Industry Alliance, seeking corrections and clarifications to her transcript of evidence from 25 January 2019 for the review of the Lifetime Care and Support Scheme
- 5 February 2019 – Letter from Mr Rod Smith, Bernie Banton Foundation, providing transcript corrections to his evidence from 25 January 2019 for the review of the Dust Diseases Scheme
- 7 February 2019 – Email from Mr Gerard McMahon, representing the Australian Lawyers Alliance, providing transcript corrections to his evidence from 25 January 2019 for the review of the Dust Diseases Scheme
- 11 February 2019 – Email from Ms Jacky Dawkins, Thoracic Society of Australia and New Zealand providing transcript corrections to Associate Professor Deborah Yates' evidence from 25 January 2019 for the review of the Dust Diseases Scheme
- ***
- 21 February 2019 – Letter from the Hon Natasha MacLaren-Jones, Government Whip, advising that the Hon Lou Amato MLC will substitute for the Hon David Clarke MLC at the meeting on 21 February 2019.

Sent
- 11 February 2019 – Letter from the Director to confidential submission author no. 2 regarding the review of the Dust Diseases Scheme.

Resolved, on the motion of Mr Amato: That the committee keep the following item of correspondence confidential, at the suggestion of the secretariat:

- 11 February 2019 – Letter from the Director to confidential submission author no. 2 regarding the review of the Dust Diseases Scheme.

***

5. 2018 review of the Lifetime Care and Support Scheme

5.1 Answers to questions on notice and supplementary questions

The committee noted that the answers to questions on notice and supplementary questions from the following witnesses were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Ms Lyn Franco, Chief Executive Officer, Australian Community Industry Alliance, received 6 February 2019
- Mr Brian Wood, Secretary, Motorcycle Council of NSW, received 1 February 2019
- Ms Clemency Morony, Head of Ministerial and Parliamentary Support Risk, icare, received 7 February 2019
- Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, received 7 February 2019.

5.2 Consideration of Chair's draft report

The Chair submitted her draft report entitled *2018 review of the Lifetime Care and Support Scheme,* which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Mookhey: That the first sentence of paragraph 3.10 be amended by omitting 'On the evidence provided, icare is taking an active and comprehensive approach to ensure it maintains' and inserting instead, 'icare must ensure that it continues to maintain its'.

Resolved, on the motion of Mr Mookhey: That Recommendation 1 be amended by omitting after 'icare', 'should continue to ensure that its high standards in respect of care providers are maintained' and inserting instead, 'must ensure that it continues to maintain its high standards in respect of care providers'.

Resolved, on the motion of Mr Khan: That all references to 'CTP Care Scheme' be amended to 'CTP Care Program'.

Resolved, on the motion of Mr Khan: That:

- the draft report as amended be the report of the committee and that the committee present the report to the House;
- the transcripts of evidence, submissions, tabled documents and correspondence relating to the inquiry be tabled in the House with the report;
- upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- the report be tabled on 26 February 2019.

6. 2018 review of the Dust Diseases Scheme

6.1 Answers to questions on notice and supplementary questions

The committee noted that the answers to questions on notice and supplementary questions from the following witnesses were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Mr Rod Smith, Awareness and Support Co-ordinator, Bernie Banton Foundation, received 5 February 2019
- Mr Ben Kruse, Legal and Industrial Officer, CFMEU, received 5 February 2019
- Mr Gerard McMahon, representing the Australian Lawyers Alliance, received 7 February 2019
- Ms Clemency Morony, Head of Ministerial and Parliamentary Support Risk, icare, received 7 February 2019
- Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, received 7 February 2019.

6.2 Consideration of Chair's draft report

The Chair submitted her draft report entitled *2018 review of the Dust Diseases Scheme,* which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.29 be amended by omitting 'an emerging health issue' and inserting instead 'a very serious emerging health issue'.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.30 be amended by omitting 'acknowledges the NSW Government has done a great deal of work through' and inserting instead 'notes the NSW Government has done work though'.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.31 be amended by omitting 'from an education and prevention perspective as well as ensuring' and inserting instead 'closely considering safe handling methods, exposure levels as well as from an education and prevention perspective and ensuring'.

Resolved, on the motion of Mr Mookhey: That the following new paragraph and recommendation be inserted after paragraph 2.31:

> The committee is of the view that the NSW Government should urgently undertake targeted awareness and education initiatives into the dangers associated with the manufactured stone industry, including a focus on non-English speaking background workers and employers.
>
> **Recommendation X**
>
> That the NSW Government urgently undertake targeted awareness and education initiatives into the dangers associated with the manufactured stone industry, including a focus on non-English speaking background workers and employers.

Resolved, on the motion of Mr Mookhey: That the first sentence of paragraph 2.51 be omitted as follows: 'Progress has been made towards establishing a national dust diseases register, although Australia is still some way from reaching this objective'.

Resolved, on the motion of Mr Shoebridge: That recommendation 3 be amended by omitting 'if significant progress is not made for the establishment of a National Dust Diseases Register' and inserting instead 'if a National Dust Diseases Register is not established by the end of 2019'.

Resolved, on the motion of Mr Shoebridge: That:

- the draft report, as amended, be the report of the committee and that the committee present the report to the House
- the transcripts of evidence, submissions, tabled documents and correspondence relating to the inquiry be tabled in the House with the report
- upon tabling, all unpublished attachments to submissions be kept confidential by the committee
- upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee
- the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling

- the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee
- the report be tabled on 26 February 2019.

7. Legacy Report

The Chair submitted her draft report entitled *Law and Justice Legacy Report 56th Parliament,* which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Shoebridge: That the following dot point be inserted at the end of the committee reflections text box after paragraph 2.13:

- 'the allocation of benefits from the scheme'.

Resolved, on the motion of Mr Shoebridge: That:

- the draft report, as amended, be the report of the committee and that it be published on the committee's website
- upon receipt of government responses to committee's inquiry reports that the secretariat be authorised to update the legacy report where necessary.

8. Adjournment

The committee adjourned at 2.20 pm, *Sine die*.

Stephanie Galbraith
Committee Clerk