Insurance and Care NSW

Standing Committee on Law and Justice

2024 Review of the Dust Diseases Scheme

RESPONSES TO QUESTIONS ON NOTICE FROM HEARING ON 11 DECEMBER 2024

(DUE TO COMMITTEE ON 31 January 2025.)

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ROHIT MANDANNA: Sure. Thank you, Stuart. Firstly, from a data perspective, SafeWork is working towards collecting the data and building out a register of employers that have exposure to environments that have got hazardous dust. We're working closely with SafeWork on the completion of that register. Once we have the register, we have the opportunity to identify employers at higher risk of dust exposure and then we can work jointly with SafeWork to target and prioritise screening services to those employers that are in greatest need.

The CHAIR: That sounds like potentially quite a horribly slow way of the State being able to access accurate information in a timely fashion about the exposure of tunnelling workers to silicosis. In other words, from exposure through to actually seeing data—seeing figures with some specificity. That would take, I would imagine, many, many months. Would you agree?

ROHIT MANDANNA: Thank you for the question. In terms of the register, SafeWork is looking to publish that register over the course of the first part of next year. That's the time frame that we are working towards, and I can take that away on notice to identify more detail on how we can work better to get access to the data..

ANSWER

icare is currently building the technology to have daily access to data from the Silica Worker Register published by Safework. We will then be able to compare the data with our records and contact the employer if they have not been registered for health monitoring by icare. The Register is due for launch by mid-2025.

Continuing to work and engage with SafeWork and NSW Health will be essential in addressing emerging issues with tunnelling and other industries. Data and information sharing between agencies allows for better assessment of emerging issues. The Silica Worker Register and National Occupational Respiratory Disease Registry (NORDR) will help to address data sharing. An opportunity exists to broaden access to data and information through formalised agreements

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Ms ABIGAIL BOYD: The alternative suggestion in the submissions, then, is that there at least be some mandatory reporting back to icare from the private clinics. What would that involve? Presumably you would need to set up the system and there would be a lead time. What would the resources look like for that as an option?

STUART FARQUHARSON: I think it's a question that we should consider and get back to you on. What I would say is that that is some of the issue. It would allow us to proactively engage and do further screening. I think there are benefits out of that. Practically speaking, from a reporting mechanism, I'm not sure what the demand would be. Rohit, do you have a view on that?

ROHIT MANDANNA: From what we know, there are 78,000 employees across the State that work in environments that have got exposure to hazardous dust. Out of that, we know that there are approximately 26,000 that would require screening on an annual basis. As Stuart mentioned, we have the capacity to provide screening to approximately 5,000 of those employees, and there is a broader market that we need to work with that can help meet that demand. That's something that the dust diseases team is exploring options in terms of how we best can increase our capacity to meet increased demand.

STUART FARQUHARSON: But I think your question was around the implications of implementing a reporting mechanism so that we have that information.

Ms ABIGAIL BOYD: Yes.

STUART FARQUHARSON: That's probably something that will require some consideration from us, because how do we respond to that additional information? We're saying it would inform us to be able to be more proactive, and I think that's the point out of this.

Ms ABIGAIL BOYD: Yes, that's right. If next year we were to pass a bit of legislation that said actually all of these results need to be forwarded through to icare, what would it then take from your side of things? Could you take that on notice and come back on that?

STUART FARQUHARSON: Yes.

ANSWER

There is an existing mechanism for mandatory reporting of screening results with the NORDR, via a Federal Government program managed by NSW Health. icare reports all of its screening results to NORDR, but there is an opportunity for greater rigour and oversight of the NORDR to ensure that all service providers are complying with their obligations. As a NSW Government agency, icare has authority to access the information from this register for forecasting purposes

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The CHAIR: Can I just jump in quickly? Sorry to interrupt. Data sharing, at the end of the day, if we just go back to the paragraph we're quoting from on page 8, with respect to the employers, it seems to me from your experience—and correct me if I'm wrong—that there is some great reticence and reluctance to cooperate with respect to handing over data. Is that a fair assessment or a fair statement to make?

STUART FARQUHARSON: I'm not sure what the driver is. But, yes, we do not have a level of insight into the prevalence of dust disease through that screening**.**

The CHAIR: Has that information been requested? I appreciate you're in that role for a relatively short period of time. In that context, I do understand if you need to take it on notice. But has icare been quite assiduous in trying to get cooperation to receive data and then you've met basically a brick wall?

STUART FARQUHARSON: I will let you respond to that, if you're comfortable to.

ROHIT MANDANNA: That's something I might need to take away on notice and we can come back to the Committee.

ANSWER

Employers are generally willing to share information about their work practises and controls with icare's screening team. The information aids in the assessment of the worker's exposure history and therefore risk of developing a dust disease.

icare understands employers are not currently permitted to voluntarily disclose health monitoring data without a worker's written consent, due to the provisions under section 378(2) of the *Work Health and Safety Regulation 2017.*

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ROHIT MANDANNA: We provide the total contribution data to SIRA. Essentially, then SIRA looks at the experience across the range of industries to then determine the appropriateness of the levy setting. Where we're seeing industries or companies with increasing exposure, then the levy setting will essentially be adjusted to factor in the rate at which the levy is calculated for those industries.

Ms ABIGAIL BOYD: Is that a standard model of doing this? Are there examples, in other parts of Australia or other places, of ways in which levies can be more accurately assessed against—I guess you'd need the data—a future claim pool, rather than working on this year by year? Is that just the way it is, or are there changes that can be made?

ROHIT MANDANNA: Each of the various workers compensation schemes operate slightly differently across the different jurisdictions in Australia. We'll probably need to take that away on notice to identify where there are opportunities for us to learn from and identify different levy-setting arrangements.

STUART FARQUHARSON: I'm not aware of an arrangement that allows for the collection of levies based on future liabilities coming through in this area, but it may well exist. We can investigate and get back to you on that.

ANSWER

icare does not currently have access to the levy setting arrangements in other jurisdictions for dust diseases.

Any changes to the levy setting arrangements would require legislative review, which is a matter for Government.

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The Hon. ROD ROBERTS: I'll put to you, then, that icare is not adopting the CT scanning method because it's financially too restrictive. Is that what you're saying?

STUART FARQUHARSON I think the point here is a little bit different. There is a financial consideration. There are also operational considerations, and we spoke about the fact that there's a nuclear medicine accreditation that could take two years. But the point and the advice that I've received—and we can come back to you on this, and we absolutely will, to confirm—is that a CT scan is not applicable and necessary in every situation. If I look at the information that I've seen—I quoted the numbers of workers that we screen through our process, which is approximately 5,000 a year. Since 2019 we've ordered 1,200 CT scans. What that implies and suggests, and as I understand, is that a CT scan is not applicable for every screen or every screening instance. Based on the medical advice where there's a need for that scan, then we will arrange for it. That's the answer, but we are very happy to get into the detail of what you're asking and come back to you with that. The view is that it's not about a purely financial perspective; it's about the need and what is a pragmatic way of operating the screening.

ANSWER

icare adopts best practice following the Australian Government's Department of Health and Aged Care's *National guidance for doctors assessing workers exposed to respirable crystalline silica dust*, and Safe Work Australia's *Health Monitoring Guidelines for screening and diagnosing a dust disease*. The clinical pathways adopted by icare include referral to high resolution computerised tomography (HRCT) scanning as necessary. The assessment by icare's clinical team includes a chest x-ray, lung function test, medical history review, occupational history review and examination by an occupational physician or respiratory specialist. During the assessment, doctors assess the risk to the worker and review their medical history to ensure ordering a HRCT scan is the appropriate step to take in making a clear diagnosis.

icare uses several providers to perform HRCT scans to ensure timely return of results. The process is also supported by icare team members who arrange appointments, follow up results and offer reimbursement of travel to radiology practices if needed.

In March 2023, icare undertook an independent feasibility assessment to determine if an in-house HRCT scanner would be appropriate. The recommendation at that time was to continue outsourcing referrals for HRCT scans. This was predominantly due to the fact that there was good access to local radiology providers and it was financially more sustainable given the volume of HRCT scans required. Additionally, the provision of nuclear medicine services was identified as being higher risk and requires multiple accreditations, which icare does not hold.

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The Hon. ROD ROBERTS: It was alluded to by yourselves that there's a financial risk in CT scans. My concerns are that we've been told that it is the ultimate tool—not a chest X-ray or a lung test, but a CT scan. That's my concern that that has not been utilised. I will move on to one other subject, and that is that we have heard from witnesses here about cross-jurisdictional issues. The tunnelling profession moves from State to State on major infrastructure projects. There's a conflict about where the "injury" occurred: Did it occur when I was a worker on a tunnelling project in Victoria but I'm now on a tunnelling project in New South Wales, where I get screened? Can you talk us through that conflict? How can we resolve that to ensure that workers get the best possible treatment available?

STUART FARQUHARSON: I may need to take that on notice, unless Rohit is able to provide some insight into it. But it's about exposure within business places in New South Wales. I think that's the key trigger in this. That's the important point**.**

ROHIT MANDANNA: We might take that away on notice

ANSWER

icare is committed to maintaining best practice in health monitoring and will continuously review and adopt recommended approaches to ensure quality and accuracy in diagnosis.

All workers who come through icare for screening receive the same service, even if they have worked in other jurisdictions for a period of time. Understanding their full work history is critical in assessing exposure risk.

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The Hon. CHRIS RATH: I want to ask about the relationship between the dust diseases scheme and the workers compensation scheme. You've probably seen employees who have started off in the workers comp scheme and then have been pushed over to the dust disease scheme. Can you walk through with us how that works? Would you say that one scheme is more generous than the other in terms of the financial claims that are made by injured workers?

STUART FARQUHARSON: What I can say is we do have detail here and we can provide you detail on the benefits provided under the dust disease scheme. But I wouldn't be able to comment on a comparison of the benefits today. Practically speaking, I don't really have anything to add to that, so I'm not answering your question.

My apologies. Rohit, is there anything we can add to that, to address that question?

ROHIT MANDANNA: We might take that away on notice.

The Hon. CHRIS RATH: Surely you've got examples or there would be many cases of workers who start off in the workers compensation scheme and then are moved to the dust disease scheme.

STUART FARQUHARSON: I can't comment on that. What I do know is what benefits are legislated for the dust disease scheme. I'm not sure about that transition, so I'll need to respond on that. My apologies.

ANSWER

Occasionally, workers will make a claim for a dust-related condition against their employer's workers compensation policy. In this scenario, the claims service provider (CSP) should divert the worker into the Dust Diseases Scheme. Occasionally, these are missed and the worker successfully claims in the Nominal Insurer Workers Compensation Scheme. icare is working with the CSPs to minimise this. When icare is made aware of these situations, additional information is obtained from the worker which is required for the application process support them into the Dust Diseases Scheme. The Dust Diseases Scheme reimburses the Nominal Insurer for any funds that were already paid out.

There are differences between the Workers Compensation Scheme and the Dust Diseases Scheme, which may lead to different outcomes for a worker. For example, there are differences dependent on the age of the person and whether they are still working. The Workers Compensation Scheme is usually more generous with respect to benefits paid to persons who are still working. However, the Dust Diseases Scheme provides compensation to persons who have retired and for life. Anyone who is retired would not receive any funds under the general Workers Compensation Scheme. There are also differences dependent on a person's level of disability, as the Dust Diseases Scheme provides entitlement for life regardless of percentage of disability.

After a worker has passed away, dependants under the Dust Diseases Scheme receive lump sum payments and weekly payments. The lump sum payments are less than those under the general Workers Compensation Scheme, but dependants also receive weekly payments which are not available under the Workers Compensation Scheme.

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The Hon. BOB NANVA: The NSW Dust Disease Register, where notifiable incidents of certain conditions have to be reported by NSW Health to SafeWork.

Ms ABIGAIL BOYD: The one that has now gone to Federal.

The Hon. BOB NANVA: Has that historically been utilised by icare for the purposes of its projections and modelling?

STUART FARQUHARSON: It would be. It's a component of a broader valuation exercise. In terms of the specifics of how that flows in, I'm very happy to come back to you on that. I think that's what you're getting at—to what extent we use that to inform our views of the future exposure. We can provide that on notice.

ANSWER

icare reports all new cases of silicosis to the NORDR, which will be further expanded to include all notifiable dust diseases. The Registry has a minimum reporting requirement, which includes physician and patient details, disease and exposure details, and lung function testing values. There is also an opportunity to provide additional details such as patient demographics, occupational history, and medical tests.

The use of the NORDR for reporting and research purposes is not currently available. icare submitted an enquiry to the Registry in November 2024, with the response confirming that it would be available for research use some time in 2025. The administrative and ethical requirements for requesting and using NORDR data for research and reporting is currently unknown.

While icare routinely reports on case numbers within the Dust Diseases Scheme, there is limited data sharing between Australian jurisdictions. Accessing NORDR data for research use would allow NSW data to be compared directly with other jurisdictions, and to be included in large, Australia-wide research cohorts. This would lead to a much better understanding of the incidence, distribution, and nature of dust diseases across Australia.

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The CHAIR: Yes. I got the numbers around the wrong way. With the 78,000, on notice, are you able to provide to the Committee the number of entities—I use the word as a generic term—that are paying the dust levy?

STUART FARQUHARSON: Yes, I'm sure we could do that.

The CHAIR: On notice.

STUART FARQUHARSON: Yes, and that will be linked to the entities that are paying workers comp premiums, because the levies are included in that and allocated through a methodology that is set by SIRA.

The CHAIR: The levy is on a per capita basis, I presume. I shouldn't presume, I suppose. What is the levy? If you don't have the specific details—I don't mean to put you on the spot.

STUART FARQUHARSON: I can absolutely give you some information on the levies. I'll just step back a bit. If you want me to rush through, please let me know. I spoke about the pay-as-you-go basis and the net result. Per the legislation, the levy is based on the expected expenses of the scheme. That comprises the benefit payments and the support costs. I spoke about the mechanism and the link with investment income—the drawdown of investment assets. I know you've asked me about per capita, but just to give you an outlook for the next year, for the next financial year the scheme's estimated costs will be $158 million.

Of that, $75 million will be paid by levy contributions and $84 million will be funded through investment income and the scheme assets. If we look at this from last year, $83 million was collected towards funding the scheme costs, so $83 million of the $125 million. What does that mean? I think that's the nub of what you were getting at. Average employer contributions are a percentage of wages, so for the last period, from 2019 through to the outlook for next year, it's 0.3 per cent. In 2023, there was an increase to 0.35 per cent. That levy that has been collected has ranged from about $63 million up to a high of $83 million. In terms of what that means per capita, I can't tell you that. But I can get back to you on that. It comes out as a percentage of wages.

Of course, SIRA sets the arrangements. Icare provides SIRA with a total contributions amount required to cover the costs, as I've just described. SIRA then determines how to acquire the contributions across the industries. It's based on charging at-risk industries with at-risk workers by setting a percentage rate for each dollar of wages paid. So it's back to the percentage of wages. I'm not sure if we could get to a per capita but we can try to come back with that. It's business activity, it's risk profile and it's claim expense. All three of those things link into that percentage. So there is, I expect, some incentivisation out of that to run a safe environment. It's collected as the workers compensation insurance premiums, which is what I mentioned earlier.

ANSWER

In accordance with section 6 of the *Workers' Compensation (Dust Diseases) Act 1942*, SIRA determines the manner in which NSW workers compensation insurer contributions to the Workers' Compensation (Dust Diseases) Fund will be applied for the 2023-24 financial year. icare determines the total contribution amount; however, it is then SIRA that divides it between insurers and self-insurers, and therefore employers.

This question is better directed to SIRA as the agency responsible for determining the levy by entities.

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Ms ABIGAIL BOYD: There was a recommendation in one of the submissions in relation to an issue where you can sometimes get payments out of the scheme that then push you out of getting a Centrelink payment or other types of government payments. I understand that under the Federal legislation, they have a thing where basically you can reduce payments to make sure that doesn't happen to a person. Is that something that you think we ought to be doing in New South Wales as well? Is that something that has crossed your path?

ROHIT MANDANNA: I might just take that on notice and come back to you with a position on that.

Ms ABIGAIL BOYD: That would be really useful. Another one of the recommendations was that we increase the 26 weeks of support to 52 weeks. Again, from an icare perspective, has there been any modelling around that? What would that do in terms of those yearly levies?

STUART FARQUHARSON: We could absolutely provide that information. But it's the same principle. As you say, it's not currently built into the existing mechanism. If there was a legislative change on that, there would be a high cost that would need to be funded through this mechanism.

ANSWER

How the Federal Government assesses income (Centrelink or other) is not within icare's remit.

No separate modelling has been undertaken for vocational support, as these services are already offered to all eligible workers under the Dust Diseases Scheme and are already included in the modelling used for Scheme valuations.

Any changes to the provisions would require extensive actuarial analysis as part of a legislative review. Any legislative review is a matter for the Government.

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Ms ABIGAIL BOYD: Has there been any modelling done in relation to those other two points: psychological support and the costs of including vocational support as a legislative measure? Is this stuff that is readily available?

STUART FARQUHARSON: I'd have come back to you on what insight we have gleaned and what modelling has been done.

ROHIT MANDANNA: There has been some very preliminary modelling but we will come back to you. In terms of the psychological support, it's also looking at how not just the workers but also their families can be supported and have access to services such as counselling et cetera.

ANSWER

Some preliminary modelling was undertaken regarding the provision of psychological supports to family members. Provision of supports to family members is not covered under the Dust Diseases Scheme and would require legislative change.

No separate modelling has been undertaken for vocational support, as these services are already offered to all eligible workers under the Dust Diseases Scheme and are already included in the modelling used for Scheme valuations.

Any changes to the provisions would require extensive actuarial analysis as part of a legislative review. Any legislative review is a matter for the Government.

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The CHAIR: In regard to Comcare and some of the large companies doing this work having insurance coverage with respect to their workers, what do you understand is happening with these large companies? Do you have any sense, with respect to taking out their insurance coverage for workers with Comcare, what might be the motivation behind that? What are the implications of that, looking at the whole system in New South Wales?

We've got the large companies working in a certain way. What's your thinking around all of that since you've come into the role and have you done any assessments about it? I'd be very keen to hear your observations.

ROHIT MANDANNA: Firstly, thank you for the question. That's something we might just take away on notice and come back to the Committee.

The CHAIR: You'll take that on notice?

STUART FARQUHARSON: Yes.

ANSWER

Comcare is part of the Commonwealth workers compensation legislative framework that permits self-insurance for employers on a national scale. It may be an attractive option for eligible employers operating in more than two states or territories who wish to consolidate their workers compensation operations.

To be eligible for a self-insurance licence in the Comcare scheme, the relevant Minister must first declare the corporation eligible before they can submit an application to be considered by the Safety, Rehabilitation and Compensation Commission.

Since 2018, five employers have elected to leave the NSW Nominal Insurer scheme and self-insure through Comcare.