

QUESTION 1

The CHAIR: Specifically with respect to exposure to silica dust, that can occur in a number of ways, as I'm sure you would appreciate. There's been the manifestation of a lot of exposure through manufactured stone, which has been legislatively dealt with now through the banning of it. But there are instances that one would include: stonemasons and stonemasonry work; mining and quarrying—we're talking not about sub-surface work but surface work—building and construction; and then tunnelling. Our focus, obviously, is tunnelling in New South Wales and tunnelling in the main, if not exclusively—except for Snowy 2.0—in the Greater Sydney metropolitan area. If we took tunnelling as an example, I presume it doesn't fit as an industry category by itself— or am I wrong?

MANDY YOUNG: I would have to take that on notice in terms of the technicality, but certainly manufacturing and mining and all of those various other forms would. So it's likely it would be a high-risk category, but I'd take that on notice to confirm.

ANSWER

Employers in NSW pay a dust diseases contribution or levy. For most employers, the levy is collected as part of an employer's workers compensation premium. An employer's business is classified according to the icare *Workers Compensation Industry Classification System*. There are about 535 Workers Compensation Industry Classifications (WICs); icare decides the WIC Code for each employer.

The WIC is based on the classification applicable to the business which most accurately describes the entire business of the employer. For some companies, tunnelling may be a small part of their overall business. This is a decision made by icare. An employer can only have one WIC code per business.

Each year, SIRA allocates each WIC code to one of the nine dust disease levy schedules. The levy schedule rates range from 0.0053% of wages to 4% of wages. The employer pays the dust diseases levy in addition to their workers compensation premium.

An employer engaged in the construction of tunnels is most likely covered in WIC class *412200 Non-Building Construction* and includes employers mainly engaged in the construction of railway permanent way, dams, irrigation systems, harbour or river works, water or gas supply systems, oil refineries (except buildings), pipelines or construction projects not elsewhere classified, in the on-site assembly of boilers, furnaces or heavy electrical machinery from prefabricated components, the maintenance or general repair of such structures, machinery or equipment or in organising or managing these activities as the prime contractor.

The current dust diseases contribution rate for class *412200 Non-Building Construction not elsewhere classified* is 0.0220%.

Examples of other dust levy contribution rates include:

WIC Code	WIC Description	Dust Diseases Contribution
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141100	Gravel and sand quarrying	0.1100%
421010	Demolition	0.2750%
282100	Shipbuilding	1.8150%

QUESTION 2

The CHAIR: And with respect to tunnelling—or, indeed, take some other subcategory—are you aware whether, from time to time, there are internal reviews done by SIRA about the classification grade and whether or not that classification grade, with respect to the levy, should be altered or changed?

MANDY YOUNG: I would again take that on notice in terms of whether we do. It's an annual process that we go through. I would expect that we would look at the risk classifications regularly, but I will take that on notice to see.

The CHAIR: What's behind my question is, if that is done, what criteria gets considered and what is the mechanism for this potential review of the gradation of an industry or a sub-industry with respect to potential risk? Anything you can provide in regard to that—but I'm very much interested in the mechanism of how that's done, if it is done, and any historical information about where that's been done in the past and those results.

ANSWER

In accordance with the *Workers' Compensation (Dust Diseases) Act 1942*, the Dust Diseases Authority (DDA) estimates the amount to be paid out of the Dust Diseases Fund each year. This is forwarded to the State Insurance Regulatory Authority (SIRA).

The role of SIRA is to determine the insurers or classes of insurers by whom the contribution is to be made; the amount of the contribution and the times at which the contributions are to be paid. SIRA does not allocate individual employers to WIC Codes – that is the role of icare. SIRA engages EY to assist in setting the levy rates and allocating each Workers Compensation Industry Classification (WIC) to one of the nine levy schedules.

The levy setting approach can be summarised as follows:

- derive the target overall average levy rate based on the target contribution outlined in icare's Dust Disease Fund levy certificate to SIRA and the estimated wage pool for the year
- allocate the individual WICs to an appropriate levy schedule based on credibility weighted claims cost experience
- adjust the schedule levy rates to achieve the target levy contribution.

In setting the levy rates, EY has regard to the *SIRA Market Premium and Practice Guidelines* including the following principles:

- maintaining or minimising levy rate adjustments to limit levy rate volatility relative to the prior year's levy rate for each schedule
- keeping WIC movements between schedules to a minimum
- considering the impact on the level of cross subsidy between the schedules compared to the prior year.

EY also has regard to the latest actuarial valuation of the Dust Diseases Fund undertaken by the external actuarial advisor to the Dust Diseases Authority and icare. The valuation identifies key risks and trends within the claims experience.

In 2023/24, a total of 49 WICs moved between schedules. In 2024/25, there were 19 WIC movements:

- an increase in levy rates for 15 WICs
- a reduction in levy rates for 4 WICS.

QUESTION 3

Ms ABIGAIL BOYD: How is it determined, that amount that then sits in assets? Is that just the surplus from the year that gets booked, or is it built into the amount of the levy to ensure that there is a certain buffer?

MANDY YOUNG: I'm not sure of the answer to that. I'd take that one on notice for you. By having what I keep calling a temporal problem, I guess we're creating a bit of moral hazard as well in the scheme in that you've got employers now paying less than perhaps they really ought to be responsible for, but then they could have disappeared by the time we get to the realisation of the harm that they've caused under the scheme. Are there any other aspects of everything that icare is running in New South Wales that has that sort of element in it, or is all of the rest of it—
MANDY YOUNG: The rest of it isn't on a pay-as-you-go levy-based format.

Ms ABIGAIL BOYD: It's just this one.

MANDY YOUNG: It's this one. That's the only one.

ANSWER

Each year, the Dust Diseases Authority (DDA) determines the estimated amount needed to be paid out of the Dust Diseases Fund for the year ahead. The DDA then determines how much is to be met by the Fund's assets/return on investments and how much needs to be collected from insurers. SIRA's role is limited to determining the insurers or classes of insurers by whom the contribution is to be made; the amount of the contribution and the times at which the contributions are to be paid.

For 2024/25, the Dust Diseases Authority estimated the amount required to be paid out of the Fund to be \$158 million. The DDA determined \$83 million to be paid from the Fund's assets / investment returns with the remaining \$75 million to be collected through the levy on insurers.

QUESTION 4

The Hon. ROD ROBERTS: Ms Young, following along on a similar thing, I am looking for your advice and guidance here. We won't nominate any particular real-life companies, but let's just say there's company A who is engaged in the tunnelling industry and there's company B. Company A is a cowboy outfit with numerous recordings of high exposure to dust and potential silica dust et cetera. Company B operates to the best possible practice. Am I understanding it correctly that if both are in the tunnelling industry both will therefore pay the same premium, even though company A has demonstrated that they are a much higher risk to workers and the scheme? Am I correct in that?

MANDY YOUNG: Yes.

The Hon. ROD ROBERTS: I don't want to put you in this position—I realise you are new to it and you may not want to answer this or can't answer it, or whatever—but it doesn't seem like a very fair equation then, really, does it, when both pay the same but one is a lot less of a risk than the other one? Can we address that in some way, do you think?

MANDY YOUNG: Again, I think it's probably something I'll take on notice to think more about.

The Hon. ROD ROBERTS: Sure. I understand that. That's no problem.

ANSWER

In the principal NSW workers compensation scheme, medium to large employers' (experience-related employers) premiums are impacted by claims performance. This premium methodology is designed to incentivise safety performance. It is noted that the claims experience impacts premiums directly for 3-4 years depending on product type. For claims reported later, e.g. dust disease claims, the cost of these claims would be incorporated into the setting of the base WIC rate, further WIC cross-subsidisation may also be applied.

Dust diseases are typically diseases of long latency. For example, the asbestos related dust diseases can emerge more than 40 years post exposure. Many employers are no longer trading by the time the disease is diagnosed. This makes it difficult to link the dust diseases levy to the current safety performance of a specific employer.

The current design and structure of the NSW Dust Diseases Scheme does not allow the dust diseases levy to be adjusted based on the current safety performance of a specific employer. The design and structure of the NSW Dust Diseases Scheme is a matter for icare and the responsible Minister (Minister for Work Health and Safety).

QUESTION 5

MANDY YOUNG: As I alluded to before, I think there is definitely a benefit to us looking into this a little further, given the changes in what's happening within the dust diseases component areas.

The Hon. ROD ROBERTS: I'm talking about where there have been notified incidents and SafeWork has been involved et cetera, so we're able to demonstrate that there have been a number of breaches, through negligence perhaps. It is my personal thought that that company should be held a lot more responsible than the good company, and therefore should perhaps be paying a higher premium because of their risk exposure.

MANDY YOUNG: I understand what you're saying but, in the current settings we have, that's not how it works.

The Hon. ROD ROBERTS: I understand—not currently. But perhaps that's something that could be looked at in the future.

MANDY YOUNG: Again, I'll take that on notice.

ANSWER

See above answer to question 4.

QUESTION 6

The Hon. AILEEN MacDONALD: I may be repeating this question, but what measures can improve the alignment of levy contributions with the scheme demands?

MANDY YOUNG: Again, I think that's where we would take that away and have a think about that and about the risk ratings that we have, what that means and what that looks like.

ANSWER

See above answer to question 4.

QUESTION 7

The CHAIR: Within the organisation itself, SIRA, would you say there is a heightened sensitivity about the issue of exposure to silica dust compared to other matters that it might be dealing with in terms of threats to employee occupational health and safety?

MANDY YOUNG: Because we have such a limited role in this particular scheme, there are probably very few people working in SIRA who actually work on silicosis. It would only be those who help provide the support around the dust and diseases and how we set the levies because it is such a—

The CHAIR: On notice, could you provide the Committee with a headcount?

MANDY YOUNG: I could provide that on notice. I think it would be quite small because we set the levy once a year. But, from a broader perspective around silicosis awareness and what that means and what that looks like, there's definitely a heightened awareness and a heightened view of what we're doing in that space, and particularly the work that we've been doing nationally with the heads of workers compensation. We've been working together to develop some key principles for working across Australia, and compensation schemes across Australia, particularly for the use of silica, but any dust-related diseases. That's certainly heightened the work that we've done. Obviously because we work closely with SafeWork and they've got a very heightened experience in this area, some of the conversations that we have are also around how we support that work and what that looks like. So whilst the role that we have in the current scheme is very small, the broader issue around the impacts of dust and diseases is very clear within SIRA. We do have those conversations and think about where and how we can support.

ANSWER

SIRA plays a limited role in the Dust Disease Scheme. Overall, it is estimated to be approximately 0.20 of a full time equivalent (FTE) on dust diseases work generally. This includes reviewing the Dust Diseases valuation, reviewing the actuarial findings on the levy and submitting for internal approval, liaising with icare, responding to any emerging concerns, supporting the Heads of Workers Compensation/Safe Work Australia work, monitoring common law dust litigation, updates to the SIRA Claims Management Guide on dust, dust related queries from self and specialised insurers and the Insurers' Guarantee Fund.

QUESTION 8

The CHAIR: With respect to what I would describe as the tunnelling operators, those that do the tunnelling construction—let's call it an industry or sub-industry, however you'd like to define it—there are a number of large players. I'll use the vernacular. With respect to those large players, the evidence is that, in general terms, there has been somewhat of a reluctance or lack of cooperation—my words—to provide information and detail about matters to do with exposure, or potential exposure, of workers to silica dust. Through its process of setting the levy, does SIRA deal directly with what I would describe as tunnelling operators in its discussions? In other words, say for example that you're going to increase it. Do you go out to market and say, "This is what we're proposing to do," and provide a consultation mechanism?

MANDY YOUNG: I'll come back to you on notice just to be clear around that but, as I understand it, we set the levy but we don't have a consultation process within that.

The CHAIR: I was just interested in whether or not you're receiving any sort of—if "feedback" is not the word—flow of information back from the operators, in terms of what they're saying about the industry or sub-industry.

ANSWER

SIRA has a limited role in the NSW Dust Diseases Scheme. We do not engage directly with the tunnelling industry when setting the dust diseases levy rates.

QUESTION 9

Ms ABIGAIL BOYD: To your knowledge, has there been consideration in the other States around including non-respirable dust diseases? I understand that, in a lot of the submissions, there's a bunch of other diseases that have now been associated with silica exposure. To your knowledge, is that appearing on the list of compensable diseases of the other States and Territories?

MANDY YOUNG: I'll take that one on notice. We can certainly come back to you. There are definitely conversations about it, but I take on notice whether it's actually appearing in compensable injuries.

ANSWER

The list of prescribed dust diseases in NSW is contained in Schedule 1 to the *Workers' Compensation (Dust Diseases) Act 1942* and includes systemic sclerosis.

Other than NSW, jurisdictions deal with dust diseases as part of their principal workers compensation scheme. Each jurisdiction has different eligibility and entitlement provisions.

For example, as part of the Victorian Government's plan to address workplace risks relating to silica, the list of proclaimed diseases for stonemasons and those working with engineered stone was reviewed. Two new diseases, lung cancer with silicosis and scleroderma with silicosis are now automatically deemed to be caused by the nature of that work making it easier and faster for workers to access compensation.

Safe Work Australia issues a biennial report comparing Australia and New Zealand's workers' compensation arrangements - *Comparison of Workers' Compensation Arrangements in Australia and New Zealand*.

QUESTION 10

The CHAIR: But to confirm—and I'm not reflecting on you personally—the matter of silica dust exposure for tunnelling work wasn't on the agenda explicitly? Perhaps it was dealt with at a more implicit level, where it was picked up and discussed as you went back and forth on other issues.

MANDY YOUNG: Yes, as I understand it. I'd have to check, but I do think it was listed as an "other item".

The CHAIR: Could you please do that on notice? I'd like to know whether or not it was expressly listed.

MANDY YOUNG: I could probably come back to you quite quickly, I think.

The CHAIR: I'll allow you to do that.

ANSWER

At the meeting between icare, SafeWork and SIRA, silica dust exposure as a result of tunnelling work was on the Agenda under Other Business.

QUESTION 11

The CHAIR: Once again, thank you for your submission. On page 4 of your submission, item 2.3 is about SIRA-funded support programs. Explicitly, it is referring to a workers compensation scheme regulator. Then it drops down to the dot points in the final paragraph about the \$5.3 million in funding. I take it that \$5.3 million is not for the dust diseases scheme; that's for the overall workers compensation. On notice, I'm wondering if it is possible—and it may not be, but please try anyway—to disaggregate that \$5.3 million and see if there's a specific amount that was allocated for programs and works et cetera inside the dust diseases area specifically.

MANDY YOUNG: I'll take it on notice to confirm, but they would not have been, because we don't have the legislative ability to fund dust diseases specifically. They would all be broader workers compensation vocational programs that we would fund, and icare would fund any dust diseases specifically.

The CHAIR: So, without being cute about it, none of that \$5.3 million would have gone into dust diseases.

MANDY YOUNG: No would be my answer, but I will confirm that.

ANSWER

The \$5.3 million for the SIRA funded programs applies only to the principal workers compensation scheme. SIRA does not fund any vocational rehabilitation programs in the dust diseases scheme.