

**Submission
No 3**

INQUIRY INTO 2024 REVIEW OF THE DUST DISEASES SCHEME

Organisation: Slater and Gordon Lawyers

Date Received: 3 October 2024



**Submissions to the iCare NSW
*'Review of the Dust Diseases
Scheme NSW'***

By Joanne Wade and Nicole Valenti

Submitted by
Slater and Gordon Lawyers

1 October 2024

Commercial-in-Confidence

Dear Committee Members,

Who we are

Slater and Gordon is one of Australia's most successful and well-known plaintiff law firms. The firm has handled some of the most complex and widely publicised cases ever undertaken in Australia. These include representing hundreds of asbestos miners who were dying as a result of their exposure to the deadly dust at the Wittenoom mine in Western Australia; 30,000 landowners affected by BHP's OK Tedi mine in PNG; victims of medically acquired HIV from contaminated blood supplies; and women suffering health problems due to faulty IUDs and breast implants.

Introduction

Slater and Gordon is grateful for the opportunity to participate in the 2024 Review of the Workers' Compensation (Dust Diseases) Scheme ("the Scheme"). The Review has outlined two key focuses for this year's review¹:

1. The support available to younger workers within the Scheme; including:
 - How younger workers can readily access appropriate supports to maintain or extend their working life in suitable duties,
 - When this is not possible due to dust disease, how the Scheme can provide financial supports commensurate to their situation in flexible ways, and
 - Related medical, care and treatment support for them, and when appropriate, their families.

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

The following recommendations have been drafted from our experiencing in representing dust diseases clients, including younger workers suffering from silicosis, for many years. We have stood alongside them in a legal capacity on their compensation journey and have observed their experiences within the Scheme. Slater and Gordon believes it is a Scheme that can be improved, to better support the rehabilitation and retraining of these younger workers. We welcome the opportunity to share our experience with the Committee.

Key Area 1: Support available for younger workers within the Scheme

The Scheme, established under the *Workers' Compensation (Dust Diseases) Act 1942* ("the Act") has historically been utilised by older workers, most of whom have suffered from asbestos related diseases including mesothelioma, lung cancer, asbestosis and asbestos related pleural disease. This cohort of workers are either retired, or close to retirement age, given the long latency period an asbestos related disease takes to develop (between 20 – 60 years on average). Given the terminal nature of mesothelioma, younger workers

¹ <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=3068>

diagnosed with mesothelioma utilising the Scheme have not returned to work, nor have they required retraining or rehabilitation services.

The new cohort of workers diagnosed with silica-related diseases are mostly younger workers, with quite different life circumstances. These workers are usually aged in their 20s to 50s and working full-time as stonemasons or tunnellers (predominately). They are generally male, have young families, and are the breadwinner in their families. They are paying rent or have mortgages. They are not financially secure and not yet financially established. Often English is not their first language and many have low education attainment. Depending on the severity of their disease, they may need to go back to work to support themselves and their families.

The Scheme does not serve these younger workers in the same way that it does workers suffering from asbestos-related diseases. The Scheme needs to be a retraining and rehabilitation service for these younger workers, so that, if their disease allows, they can successfully re-enter the workforce. Under the current Scheme, workers find it difficult to leave their current jobs, due to financial pressures, and some are working for longer, which both increases their risk of suffering progression of their disease and worsening health outcomes, including mental health. This culminates in a longer and more difficult road to rehabilitation for workers. Improving retraining and rehabilitation, where these workers are able to be gainfully employed at incomes either equal to or greater than their pre-injury incomes, will reduce the financial burden on the Scheme as these workers' income support will reduce to zero.

Slater and Gordon has outlined some recommendations below, that we believe will assist the Scheme in becoming a fuller and more rounded service for this cohort of younger workers.

Recommendation 1: Broadened Scope of Compensable Diseases for workers

1.1 The Definition of 'Dust Disease' in the Act is confined to *“any disease specified in Schedule 1, and includes any pathological condition of the lungs, pleura or peritoneum.”*

In 2022, the Act was amended to expand the list of diseases at Schedule 1 to include:

- diffuse dust-related pulmonary fibrosis
- hypersensitivity pneumonitis
- pneumoconiosis (any form)
- silica-induced carcinoma of the lung, and
- systemic sclerosis.

Schedule 1 does not allow for support for workers suffering from a multitude of diseases caused by high levels of silica exposure², including:

² Parkes Occupational Lung Disorders (Table 18.1) – Diseases Associated with Respirable Crystalline Silica

- a. **Autoimmune Diseases** such as systemic lupus or rheumatoid arthritis;
- b. **Mycobacterial Diseases** such as pulmonary and extra- pulmonary tuberculosis;
- c. **Chronic Renal Disease;** and
- d. **Airways Diseases** such as chronic obstructive pulmonary disease, emphysema and chronic bronchitis.

This list is an ever increasing one, as more research and studies are undertaken regarding the link between silica exposure and the emergence of these additional health issues in younger workers. Graves Disease and Mixed Connective Tissue Disease are some additional autoimmune diseases observed in stonemasons for whom we have acted.

Some stonemasons present with autoimmune diseases, and not with silicosis. Others have minimal or no impairment from their silicosis, but significant mobility impairment as a result of an autoimmune disease. Under the current Act, these workers cannot be compensated for their autoimmune disease, and the bodily impairment that causes.

To allow workers to be properly assessed, Schedule 1 of the Act should be updated to include:

- a. Silica induced autoimmune diseases;
- b. Silica induced airways diseases;
- c. Silica induced mycobacterial diseases; and
- d. Chronic Renal Disease.

1.2 Noting the emergence of silica-related autoimmune diseases in this cohort of younger workers, it is our view that workers would benefit from a rheumatologist on the iCare medical panel. A rheumatologist will be able to consider links between workplace exposure to silica and the development of autoimmune diseases. This is critical for workers exposed to high levels of silica who are not suffering from silicosis, but post exposure, are now suffering from an autoimmune disease.

Recommendation 2: Improved Retraining and Rehabilitation for Workers

Workers in high silica industries are being tested more regularly and being diagnosed with silicosis sooner than ever before. Workers diagnosed with simple silicosis may have no breathing impairment at the time of diagnosis, but are assessed under the Scheme as 1% disabled, which allows them to access the retraining and rehabilitation program.

Workers diagnosed with silicosis, whether it is causing them breathing impairment at that point in time, are encouraged by medical professionals to leave the industry, and avoid dusty work environments, to avoid any further injury, and the acceleration of their condition.

2a. The Scheme offers a retraining and rehabilitation program for workers who have developed silicosis, who are looking to leave the industry (and their dusty working environment). The majority of workers with

silicosis, unlike the asbestos cohort, are young and often in the early stages of their careers, with young families to support. Workers receive 26 weeks of fortnightly pay at their pre-injury income rates. This does not include any regular overtime that the workers have been undertaking. 26 weeks of pay at pre-injury income rates less overtime, is not a significant amount of time for young workers, grappling with a life changing diagnosis, and the prospect of finding a new career, to retrain and rehabilitate.

From our experience workers will continue to work in the stone industry as they feel 26 weeks does not afford them sufficient time to find and retrain in a new role in a new industry, and they are often not able to support their families at the minimum statutory rate.

Workers should be entitled to at least 52 weeks of fortnightly pay at their pre-injury income rates (including regular overtime and based on their taxable income) so that they can focus on retraining with minimal financial burden.

- 2b. If a worker has worked across different states and territories, including NSW, and is deemed to be suffering from silicosis under the Act, this impacts their benefits. If a small percentage of their exposure falls within the Act (for instance they were a subcontractor for the majority of their employment in NSW and/or if they had worked only part of their time in NSW), then they are entitled to the 26 weeks of fortnightly pre- injury income but only at the percentage of that income that falls within the Act.

A recent client was found to be 30% disabled by his silicosis, with 30% of his exposure falling under the Act (as an employee) and 70% of his exposure as a sub-contractor, which does not fall within the Act. He only received 30% of his pre-injury income when he decided to leave the industry, which was crippling for him and his family whilst he searched for new employment.

These workers should also receive at least 52 weeks of fortnightly pay at their full pre- injury income rates (including regular overtime and based on their taxable income) irrespective of the percentage covered under the Act. Leaving the industry is almost impossible for workers who are only receiving a fraction of their former salary, there is insufficient support for these workers (often subcontractors) who must live with pay under minimum wage whilst they retrain.

- 2c. Many of the workers diagnosed with silicosis are younger, and due to improvements in testing and diagnosis, are being diagnosed sooner, with little to no breathing impairment at the time of diagnosis.

These younger workers have often worked as stonemasons or tunnellers for many years, and the skills gained in these careers are not easily transferable, particularly as after their diagnosis, these workers are told to avoid dusty working environments.

They are generally in the prime of their working lives and need to work well into the future to support their families and become financially secure.

At present there does not appear to be an established Scheme to support younger workers who must leave their jobs, to be retrained into another career path.

In our experience, there are mixed responses from our clients relating to the rehabilitation and retraining services offered to them under the Scheme. Some have reported that no services were offered, whilst others have been referred to independent providers, and primarily assisted with applying for courier or driving roles. The workers report they are provided with very limited retraining options and express a stress that they will need to accept low-income roles.

To become a fuller and more rounded service for this cohort of workers, it is important that they are provided with retraining support, and more retraining options.

This cohort of workers would benefit from services including, but not limited to:

- a. Career Counselling and Coaching Services (setting goals based on a thorough analysis of workers interests and skills);
- b. Retraining Assistance (assistance with applying for tertiary education courses if desired, including TAFE certificate and diplomas, real estate or financial planning course, or university degrees);
- c. Job seeking skills;
- d. Assistance with resumes, cover letters and job applications;
- e. Preparing for job interviews.

Recommendation 3: Improved Access to Mental Health Services for workers

Workers diagnosed with silicosis often note they are experiencing significant psychological stress. The workers are generally young, the breadwinners of their families, with young families to support. They are at a crossroads in that they are leaving a secure, usually well-paying career, to retrain in a new industry.

More emphasis should be put on the Scheme providing these workers with mental health support, and broader access to mental health services. This should be extended to immediate family members of workers also.

In our experience, workers need to obtain approval to access mental health services under the Scheme, and sometimes need to fight to obtain that approval through the Scheme. Workers advise that this approval can take quite some time.

Given the wait times to obtain access to mental health services, this approval needs to be provided quickly, and in fact the Scheme should encourage workers to access this support by making available up front a number of mental health sessions with a qualified psychologist or psychiatrist as part of being accepted into the Scheme.

Key Area 2: Other Risk Areas for Silicosis, including but not limited to, tunnelling and quarrying

Engineered stone is not the only risk area for workers being exposed to silica dust. Tunnelling and quarrying are two areas where Australian workers are exposed to silica dust daily, when drilling through sandstone which has a high content of natural silica.

These workers should also be tested regularly for silicosis and other silica related conditions.

Slater and Gordon support any proposed legislative changes that will protect this cohort of workers.

We would be happy to provide further information or answer any questions if it would assist the Committee.

Yours Faithfully

Joanne Wade
Head of National Asbestos and Dust Diseases
Slater and Gordon Lawyers

Nicole Valenti
Practice Leader NSW Asbestos and Dust Diseases
Slater and Gordon Lawyers