

Standing Committee on Law and Justice

Review of the exercise of the functions of the Workers' Compensation (Dust Diseases) Board

Ordered to be printed 3 September 2014 according to Standing
Order 231

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice.

Review of the exercise of the functions of the Workers' Compensation (Dust Diseases) Board / Standing Committee on Law and Justice. [Sydney, N.S.W.] : the Committee, 2014. – [xv, 35] pages ; 30 cm. (Report ; no. 53)

Chair: David Clarke, MLC.

“September 2014”.

ISBN 9781920788742

1. New South Wales. Workers' Compensation (Dust Diseases) Board.
2. Lungs—Dust diseases—New South Wales.
3. Workers' compensation—New South Wales.
 - I. Title
 - II. Clarke, David.
 - III. Series: New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice. Report ; no. 53

368.41009944 (DDC22)

How to contact the committee

Members of the Standing Committee on Law and Justice can be contacted through the Committee Secretariat. Written correspondence and enquiries should be directed to:

The Director

Standing Committee on Law and Justice

Legislative Council

Parliament House, Macquarie Street

Sydney New South Wales 2000

Internet www.parliament.nsw.gov.au

Email Lawandjustice@parliament.nsw.gov.au

Telephone 02 9230 3435

Facsimile 02 9230 3371

Terms of reference

1. That, in accordance with section 11 of the Safety, Return to Work and Support Board Act 2012, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the exercise of the functions of the following authorities:
 - (a) Lifetime Care and Support Authority under the Motor Accidents (Lifetime Care and Support) Act 2006,
 - (b) Motor Accidents Authority under the Motor Accidents Compensation Act 1999 and the Motor Accidents Act 1988,
 - (c) WorkCover Authority under the Workplace Injury Management and Workers Compensation Act 1998, and
 - (d) Workers' Compensation (Dust Diseases) Board under the Workers Compensation (Dust Diseases) Act 1942.
2. That the terms of reference of the committee in relation to these functions be:
 - (a) to monitor and review the exercise by the authorities of their functions,
 - (b) to monitor and review the exercise by any advisory committees, established under section 10 of the Safety, Return to Work and Support Board Act 2012, of their functions,
 - (c) to report to the House, with such comments as it thinks fit, on any matter appertaining to the authorities, and the advisory committees, or connected with the exercise of their functions to which, in the opinion of the committee, the attention of the House should be directed,
 - (d) to examine each annual or other report of the authorities and report to the House on any matter appearing in, or arising out of, any such report, and
 - (e) to examine trends and changes in compensation governed by the authorities, and report to the House any changes that the committee thinks desirable to the functions and procedures of the authorities, or advisory committees.
3. That the committee report to the House in relation to the exercise of its functions under this resolution at least once every two years in relation to each authority.
4. That nothing in this resolution authorises the committee to investigate a particular compensation claim under the legislation referred to in paragraph 1.¹

¹ *Minutes*, Legislative Council, 14 November 2012, pp 1368-1369.

Committee membership

The Hon David Clarke MLC	Liberal Party	<i>Chair</i>
The Hon Peter Primrose MLC	Australian Labor Party	<i>Deputy Chair</i>
Mr Scot MacDonald MLC	Liberal Party	
The Hon Sarah Mitchell MLC	The Nationals	
The Hon Shaoquett Moselmane MLC	Australian Labor Party	
Mr David Shoebridge MLC	The Greens	

Table of contents

	Chair's foreword	ix
	Summary of findings	x
	Summary of recommendations	x
Chapter 1	Introduction	1
	The committee's role	1
	Conduct of the review	1
	Submissions	1
	Hearings	2
	Overview of the Dust Diseases Board and its scheme	2
	Structure of the report	2
Chapter 2	Dust Diseases Board and scheme	3
	Workers' Compensation (Dust Diseases) Board	3
	Current board	3
	Organisational structure	4
	Funding	6
	Compensation scheme	7
	Scheme coverage	8
	Claims process	9
	Compensation application process for workers	9
	Compensation application process for dependants	14
	Client satisfaction	14
Chapter 3	Stakeholders' proposals	17
	Provisional liability	17
	Cap on medical expenses	19
	Independent chair of the Dust Diseases Board	21
	Awareness of the Dust Diseases Board	22
	Industrial work history	23

Appendix 1	Submission list	24
Appendix 2	Witnesses at hearings	25
Appendix 3	Answers to questions on notice	27
Appendix 4	Minutes	28

Figures

Figure 1	Safety, Return to Work and Support organisational chart	5
Figure 2	Workers' Compensation (Dust Diseases) Board divisional structure	6
Figure 3	The award decision process	9

Chair's foreword

This is the first review of the Workers' Compensation (Dust Diseases) Board conducted by the Standing Committee on Law and Justice as required under s 11 of the *Safety, Return to Work and Support Act 2012*.

The Dust Diseases Board has operated for over 85 years and provides a no-fault compensation scheme to individuals (and their dependants) that have developed a compensable dust disease following exposure to dust as a worker in New South Wales.

The overwhelming view of review participants is that the Dust Diseases Board and its compensation scheme are performing in an exemplary manner. It is a rare feat for a government agency to receive such uniform praise from stakeholders. The committee commends the board for performing its functions to such a high standard.

The report considers five proposals for improving the efficiency of the board and the scheme. These are discussed in the final chapter of this report.

The committee has benefited from the valuable contributions of stakeholders who have participated in this first review. Their involvement has allowed us to explore the issues at hand and identify appropriate recommendations for improvements. On behalf of the committee I thank all of our review participants for their important contributions.

I also express my thanks to my colleagues for their thoughtful contributions to this first review of the Dust Diseases Board. Finally, I thank the staff of the committee secretariat for their continued professional support, in particular Teresa McMichael, Director, Kate Mihaljek, Senior Council Officer, Chris Angus, Assistant Council Officer and Lynn Race, Assistant Council Officer.



Hon David Clarke MLC
Committee Chair

Summary of findings

- Finding 1** **16**
That the Workers' Compensation (Dust Diseases) Board is executing its statutory functions and corporate governance responsibilities in an exemplary manner.
- Finding 2** **16**
That the Workers' Compensation (Dust Diseases) compensation scheme meets the needs of workers with dust diseases and their dependents.

Summary of recommendations

- Recommendation 1** **19**
That the NSW Government investigate the feasibility of introducing provisional liability for malignant claims to the scheme.

Chapter 1 Introduction

This chapter provides an overview of the review process and outlines the committee's approach to the first review of the Workers' Compensation (Dust Diseases) Board. The chapter briefly describes the board's compensation scheme and concludes with a summary of the report's structure.

The committee's role

- 1.1 A committee of the Legislative Council is required under s 11 of the *Safety, Return to Work and Support Board Act 2012* to supervise the exercise of the functions of the:
 - Workers' Compensation (Dust Diseases) Board
 - WorkCover Authority of NSW
 - Motor Accidents Authority
 - Lifetime Care and Support Authority.
- 1.2 The resolution appointing the Standing Committee on Law and Justice to this role was resolved on 14 November 2012 and stated the committee must report at least once every two years.²
- 1.3 The terms of reference are reproduced in full on page iv.
- 1.4 This review was conducted concurrently with the committee's first review of the WorkCover Authority. That review will be the subject of its own report, also to be published in September 2014. The review process for the Motor Accidents Authority and the Lifetime Care and Support Authority are part of a separate review process by the committee.

Conduct of the review

- 1.5 The committee resolved to commence this review on 19 June 2013.
- 1.6 The committee would like to thank all participants to this review. The considered contributions of stakeholders have greatly assisted the committee to successfully undertake its reviewing role.

Submissions

- 1.7 The committee invited submissions through advertisements in the *Sydney Morning Herald* and *The Daily Telegraph*, and through a press release distributed via *Media Monitors*. The committee also wrote directly to a number of stakeholders to invite them to make a submission.
- 1.8 The committee received seven submissions from scheme participants, a legal firm, unions and insurance organisations. A full list of submissions is available in Appendix 1.

² *Minutes*, Legislative Council, 14 November 2012, pp 1368-69.

Hearings

- 1.9** The committee held three public hearings on 21 and 28 March and 12 May 2014. The committee heard from representatives from the Dust Diseases Board, legal associations, unions and the Asbestos Diseases Foundation. A full list of witnesses is provided in Appendix 2.

Overview of the Dust Diseases Board and its scheme

- 1.10** The Dust Diseases Board has exclusive jurisdiction to examine into, hear and determine all matters and questions arising out of a claim for compensation under the *Workers' Compensation (Dust Diseases) Act 1942*.³ The board has operated for over 85 years.
- 1.11** The scheme provides compensation for workers (and their dependents) with a compensable dust disease caused by occupational exposure to dust during employment in New South Wales, and is funded by a levy on the total wages of employers.

Structure of the report

- 1.12** This report has three chapters. This first chapter outlines the committee's role in reviewing the Dust Diseases Board.
- 1.13** Chapter 2 describes the Dust Diseases Board and its compensation scheme.
- 1.14** Chapter 3 outlines stakeholders' proposals to improve the efficiency and effectiveness of the board.

³ *Workers' Compensation (Dust Diseases) Act 1942*, s 5.

Chapter 2 Dust Diseases Board and scheme

This chapter provides an overview of the role and functions of the Workers' Compensation (Dust Diseases) Board and its compensation scheme.

As this is the committee's first review into the Dust Diseases Board this chapter provides a comprehensive background to the board and scheme.

Workers' Compensation (Dust Diseases) Board

- 2.1** The Dust Diseases Board (or 'the board'), has been operating in New South Wales for over 85 years. The following sections include an overview of the board, an outline of its current organisational structure and funding and detail about its compensation scheme ('the scheme').

Current board

- 2.2** The Dust Diseases Board currently operates pursuant to the *Workers' Compensation (Dust Diseases) Act 1942*. The benefits provided under its compensation scheme are prescribed by the *Workers' Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*. Further discussion of the scheme is provided later in this chapter.
- 2.3** Section 5 of the *Dust Diseases Act* sets out that the board has exclusive jurisdiction to examine into, hear and determine all matters and questions arising out of a claim for compensation under the Act.⁴
- 2.4** The board described its primary role as providing '... a no fault workers' compensation scheme to past and present workers who have developed a compensable dust disease from occupational exposure to dust as a worker in New South Wales and their dependents.'⁵
- 2.5** The statutory functions of the Dust Diseases Board are:
- determining claims for compensation made under the *Dust Disease Act* (s 5(2))
 - administering the Workers' Compensation Dust Diseases Fund (s 6(2))
 - estimating the amount to be expended from the Dust Diseases Fund for each year (s 6(4))
 - making payments from the Dust Diseases Fund for compensation payments, fees payable to members of the board and the Medical Authority (discussed below) and for remuneration of the board's staff (s 6(2))
 - making grants from the Dust Diseases Fund for research and to victims support groups (s 6(2A))

⁴ *Workers' Compensation (Dust Diseases) Act 1942*, s 5.

⁵ Safety, Return to Work & Support, *NSW Workers' Compensation Dust Diseases Scheme Briefing to Legislative Council Standing Committee on Law and Justice*, November 2013, p 2.

- paying the costs involved in the operation of the Dust Diseases Tribunal of NSW (s 6(2)).

- 2.6** The dual decision making bodies responsible for determining claims for compensation are: the Medical Authority which determines the veracity of a claim; and the board itself which determines compensation. The roles of both of these bodies are discussed in more detail later in this chapter.
- 2.7** The board's corporate governance responsibilities include setting the strategic direction of the board in conjunction with management, ensuring the board's operations accord with its stated vision and purpose and monitoring risk, financial and operational performance and conformance.⁶
- 2.8** The Dust Diseases Board also engages in health promotion activities. For example, the board provides free medical examinations to past and present workers who have been exposed to hazardous dust in the workplace and conducts professional and public awareness campaigns about dust diseases. The board also participates in the Heads of Asbestos Coordination Authorities and supports the work of the Asbestos Diseases Foundation of Australia.⁷
- 2.9** The board currently comprises of seven members: three representing employers, three monitoring the interests of workers, and an independent chair. All members are appointed for three years by the Minister for Finance and Services.⁸

Organisational structure

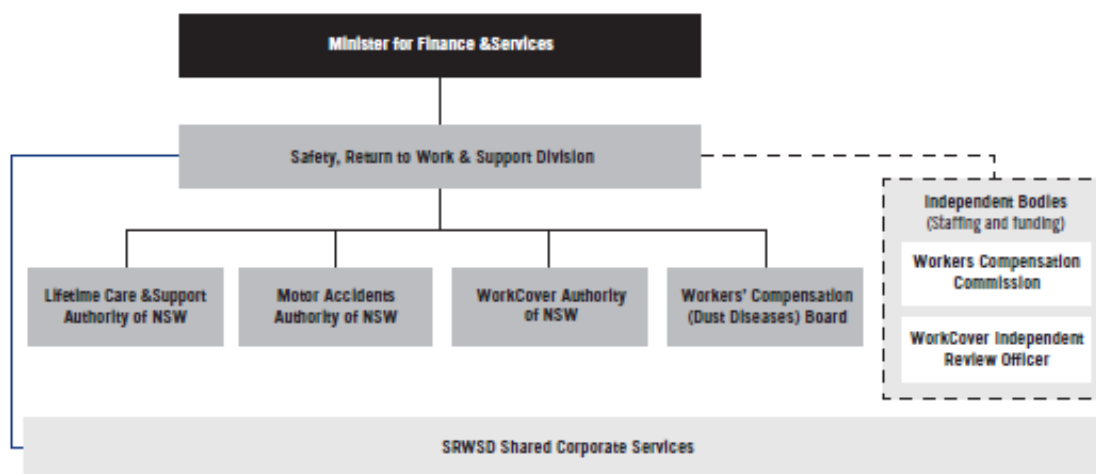
- 2.10** As mentioned in chapter 1, the *Safety, Return to Work and Support Board Act 2012* established the Safety, Return to Work and Support Board and consolidated the governance arrangements for the Motor Accidents Authority, the Lifetime Care and Support Authority, the WorkCover Authority and the Dust Diseases Board.⁹ Figure 1 is the Safety, Return to Work and Support organisational chart.

⁶ Workers' Compensation (Dust Diseases) Board, *Information Requested By The Legislative Council Standing Committee On Law And Justice For The Review Of The Exercise Of The Functions Of The Workers' Compensation (Dust Diseases) Board*, 2014, p 2.

⁷ Evidence, Ms Anita Anderson, General Manager, Workers' Compensation (Dust Diseases) Board, 28 March 2014, p 78 and p 80.

⁸ Workers' Compensation (Dust Diseases) Board, 2014, p 1.

⁹ Section 11 of the *Safety, Return to Work and Support Board Act 2012* included the provision requiring the appointment of a committee of the Legislative Council to oversight the Motor Accidents Authority, the Lifetime Care and Support Authority, the WorkCover Authority and the Dust Diseases Board. On 14 November 2012 the House passed a resolution designating the Law and Justice Committee as the Committee for the purposes of s 11 of the *Safety, Return to Work and Support Board Act 2012*.

Figure 1 Safety, Return to Work and Support organisational chart

- 2.11** Ms Anita Anderson, General Manager, Workers' Compensation (Dust Diseases) Board, advised the committee that each agency within the Safety, Return to Work and Support is a separate entity. However, while the other agencies report to the Safety, Return to Work and Support Board, the Dust Diseases Board has its own board:

Each is an entity in itself. The Dust Diseases Board has a slightly different relationship to the Safety, Return to Work and Support Division than others. We have our own board whereas the others are under one board.

In a legislative sense we are autonomous. In a day-to-day operational sense we certainly have a close relationship with the other schemes in the agency. Things like corporate shared services and training and development of staff are all provided as a cluster, if you like.¹⁰

- 2.12** The General Manager of the Dust Diseases Board is the chief administrator of the agency, and is appointed by the Chief Executive Officer, Safety, Return to Work and Support under delegation from the Secretary of the Department of Finance and Services:

The General Manager... is responsible for the day to day administration of the Board, management of the staff, supporting the Board to carry out its statutory functions and implementing the decisions of the Board and Medical Authority.¹¹

- 2.13** The staffing provisions for the board are set out in the *Dust Diseases Act*:

The DDB Act [Dust Diseases Act] provides that the Board may, with the approval of the Minister, arrange for the use of the services of staff from government department or agencies. The Secretary, Department of Finance and Services, as the person exercising employer functions under the *Government Sector Employment Act 2013* is responsible for providing staff to carry out the work of the Board and to implement its decisions.¹²

¹⁰ Evidence, Ms Anderson, 28 March 2014, p 88.

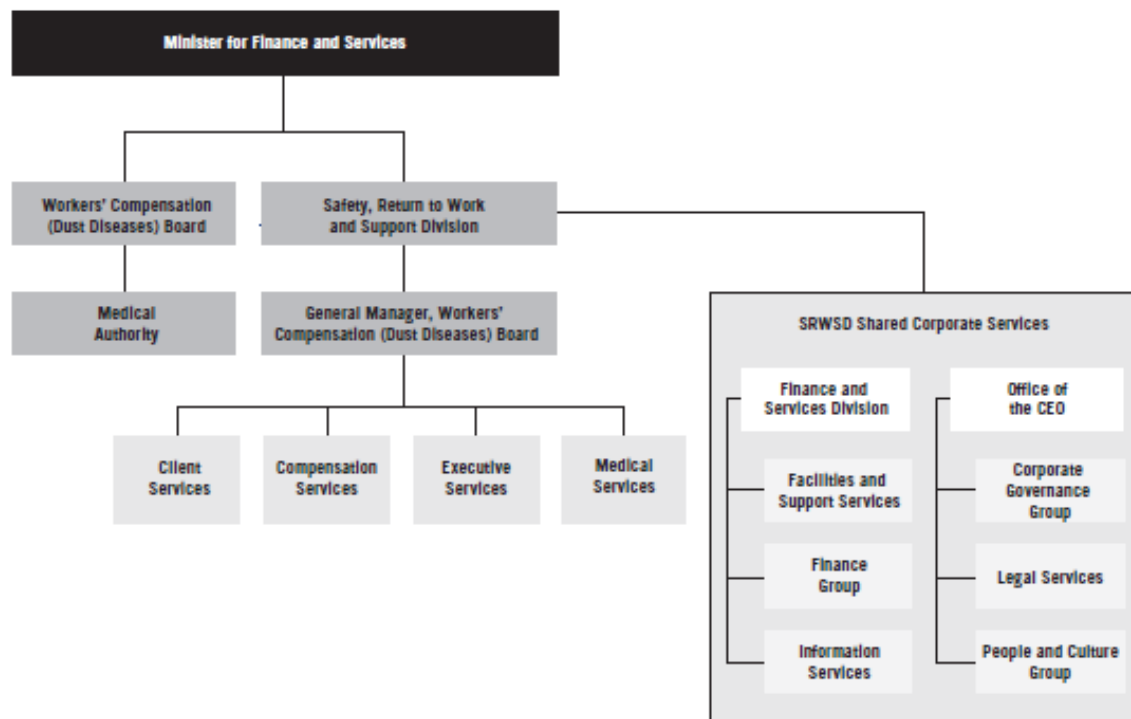
¹¹ Workers' Compensation (Dust Diseases) Board, 2014, p 2.

¹² Workers' Compensation (Dust Diseases) Board, 2014, p 2.

2.14 In 2012-13 the board employed 50 staff across four divisions: Executive Services, Medical Services, Client Services and Compensation Services. The staff work to support the deliberations, and implement the decisions, of the board.¹³

2.15 Figure 2 is a diagram of the divisional structure of the Dust Diseases Board.

Figure 2 Workers' Compensation (Dust Diseases) Board divisional structure



Funding

2.16 As previously mentioned, the Dust Diseases Board administers the Dust Disease Fund. The board currently has \$792 million in funds under investment and has a one year investment return of 17.38 per cent.¹⁴

2.17 The board's compensation scheme (discussed in the next section) is funded by a small levy on the total wages of individual employers and forms part of their premium notices (the scheduled fee issued by WorkCover licensed insurers to employers). The levy varies between 0.025 per cent and four per cent of total wages according to employer classifications based on claims experience.¹⁵

2.18 Ms Anderson described this system as a 'pay-as-you-go' scheme which allows the board to fix its levy and in turn determines the workers compensation premiums imposed by insurers:

¹³ Workers' Compensation (Dust Diseases) Board, 2013, *Annual Report 2012 – 2013*, p 22 and p 6.

¹⁴ Safety, Return to Work and Support, November 2013, p 13.

¹⁵ Safety, Return to Work and Support, November 2013, p 6.

Each year the board estimates what it will pay out in the next year for the claims we know about and are already in the system, and the ones we know from actuarial experience will come into the system in that year. That is the amount of money we collect through the levy. It is an annualised pay-as-you-go scheme. The levy is collected from the New South Wales insurers and they in turn impose that on the workers comp premiums...¹⁶

- 2.19** Ms Anderson advised that the board has approximately \$780 million in reserve which can be invested and returned to the Dust Diseases Fund:

We do have a reserve because we estimate how much money we are going to spend and we collect that money. It goes into the fund and if there is a surplus or an extra, you have a reserve on which you can reply. I think there is around \$780 million in the reserve now. We invest that money. All the investment goes back into the fund.¹⁷

- 2.20** Ms Anderson also explained the funding ratio used by the board:

We offset the funding ratio of our known liabilities against what we have in the fund... The board would like to see the ratio it has set kept within the 90 to 110 per cent mark. Most recently, I think at the end of December, it was at 109 per cent of assets to liabilities.¹⁸

Compensation scheme

- 2.21** As at 30 June 2013, the Dust Diseases Board provided compensation benefits to 3,961 people: 1,128 workers and 2,833 dependents of deceased workers. During 2012-13 the board paid out \$87.958 million in compensation benefits, including \$10.862 million in health care and funeral benefits.¹⁹

- 2.22** The board granted 500 new awards in 2012-13 including:

- 295 new worker awards
- 22 new medical expenses awards
- 183 new dependent awards.²⁰

- 2.23** Ms Anderson advised that with the exception of cancer rates which have remained stable, the total number of awards made by the board has fallen over the past decade:

... over the last 10 years the total number of dusts diseases awards that we have made has actually fallen. They have fallen by 22 per cent but the group that has not fallen are the cancers, the mesotheliomas and the lung cancers; they are very static. We have not seen an increase. The numbers have been very static over the last 10 years.²¹

¹⁶ Evidence, Ms Anderson, 28 March 2014, p 90.

¹⁷ Evidence, Ms Anderson, 28 March 2014, p 90.

¹⁸ Evidence, Ms Anderson, 28 March 2014, p 91.

¹⁹ Workers' Compensation (Dust Diseases) Board, 2013, p 13.

²⁰ Workers' Compensation (Dust Diseases) Board, 2013, p 13. The 500 new awards include applications for awards received but not determined prior to 1 July 2012.

²¹ Evidence, Ms Anderson, 28 March 2014, p 79.

Scheme coverage

- 2.24** As previously discussed, the scheme covers workers who are medically assessed as having been disabled by a dust disease that has been contracted in the course of their employment within New South Wales. The scheme also covers dependents of deceased workers who were receiving or were entitled to receive compensation under the *Dust Diseases Act*.
- 2.25** The scheme excludes:
- workers who were exposed outside of New South Wales
 - workers who were exposed while self-employed
 - coal and shale mine workers
 - workers receiving compensation for economic loss from another jurisdiction
 - Commonwealth employees.²²
- 2.26** Schedule 1 of the *Dust Diseases Act* sets out compensable dust diseases. Mesothelioma is the most common dust disease certified by the Medical Authority, followed by asbestos related pleural disease and asbestosis.²³
- 2.27** The long latency period for dust diseases results in many scheme applicants already being passed retirement age. Additionally, as Ms Anderson explained these are lifelong diseases; once you get a dust disease you have it for the remainder of your life.²⁴
- 2.28** Ms Anderson explained the scheme's no-fault jurisdiction and its very low eligibility threshold of 'reasonable attribution' during her evidence to the committee:
- ... dust diseases is a no-fault jurisdiction. To be eligible for compensation, the person has to satisfy the board that they have a dust disease and that they are disabled as a result of it and the dust disease is reasonably attributable to exposure in a workplace in New South Wales... The eligibility threshold in the Dust Diseases Board is very low. It is what we call reasonable attribution. It is not the common law balance of possibilities test. The court has said reasonable attribution means more than trivial.²⁵
- 2.29** The key features of the scheme are:
- there are no age limits on applying for compensation or receiving compensation
 - compensation benefits and medical expenses are paid for the life of a worker
 - there is no income test
 - subject to certain conditions, compensation entitlements move from the worker to their dependents when the worker passes away

²² Safety, Return to Work and Support, November 2013, p 8.

²³ Safety, Return to Work and Support, November 2013, p 14.

²⁴ Evidence, Ms Anderson, 28 March 2014, p 78.

²⁵ Evidence, Ms Anderson, 28 March 2014, p 85.

- there is no bar on also pursuing common law damages as the workers compensation scheme for the Dust Diseases Board and the common law scheme administered by the Dust Diseases Tribunal act in concert
- payments are indexed and adjusted bi-annually to reflect wage increases.²⁶

Claims process

2.30 There are a number of steps involved with lodging a compensation application with the board. The process can be initiated by a worker or their dependents. This section details the claims process for both situations.

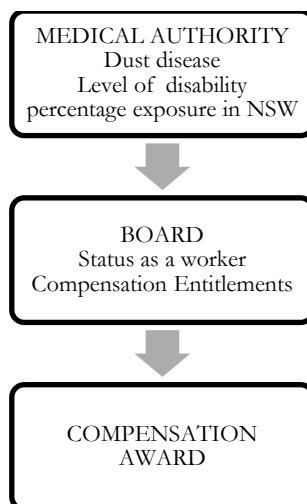
Compensation application process for workers

2.31 As previously discussed, workers seeking an award from the Dust Diseases Board must be partially or totally disabled by a compensable dust disease that can be reasonably attributed to dust exposure that occurred while employed in New South Wales.

2.32 There are no costs associated with lodging a claim with the board.²⁷

2.33 Figure 3 is a diagram of the claims process for an award from the board.

Figure 3 The award decision process



Safety, Return to Work and Support, November 2013, p 23.

2.34 A worker initiates the claims process by lodging an application form with the board, along with other documents including their relevant medical records.²⁸

²⁶ Evidence, Ms Anderson, 28 March 2014, p 78; and Safety, Return to Work and Support, November 2013, p 9.

²⁷ Evidence, Ms Anderson, 28 March 2014, p 86.

²⁸ Workers' Compensation (Dust Diseases) Board, 2014, p 4.

- 2.35** If the applicant is unable to provide their medical records from their treating doctor, the board can do so following the receipt of consent.²⁹ Additionally, the board will accept an application without supporting documents when those documents cannot be easily obtained.³⁰
- 2.36** During the committee's review the Asbestos Diseases Foundation of Australia proposed that a provisional liability process be introduced to expedite the claims process.³¹ This proposal is examined in chapter 3.
- 2.37** On receipt of the application the board collects evidence regarding the worker's industrial history including:
- names and locations of all of their employers
 - details of employment structures (whether the person was self-employed, a sole trader, in partnership or a subcontractor etc)
 - approximate employment dates
 - details of all job positions and tasks performed during employment
 - duration and frequency of any and all dust exposures
 - details of all non-occupational exposures
 - verification of employment and dust exposure.³²
- 2.38** The board's industrial history officers interview the applicant and then conduct their own research to corroborate the information they have received. Ms Anderson elaborated on this process during her evidence to the committee:
- ... the first thing we do [when we get an application] is document the person's work history. We ask them where they work and what jobs they did and things like that. We do not put the onus on the applicant to provide information about proof of the work. We take their statement and we go away and do the work to try to find the evidence that supports their statements. It is rare that we cannot find some evidence.³³
- 2.39** Ms Anderson advised that the Dust Diseases Board can access a range of documents and processes to establish a person's work history and level of exposure including work records, workplace photographs, council plans and internet searches.³⁴ The board also accesses union membership records, company title searches, statements from work colleagues and friable asbestos removal permits.³⁵ Additionally, the board has an extensive database of workplace exposures that can assist in its investigations.³⁶

²⁹ Workers' Compensation (Dust Diseases) Board, 2014, p 4. The application form includes medical authority forms that allow the Dust Diseases Board to obtain these records.

³⁰ Workers' Compensation (Dust Diseases) Board, 2014, p 4.

³¹ Submission 7, Asbestos Diseases Foundation of Australia, p 3.

³² Safety, Return to Work and Support, November 2013, p 27.

³³ Evidence, Ms Anderson, 28 March 2014, p 85.

³⁴ Evidence, Ms Anderson, 28 March 2014, p 86.

³⁵ Workers' Compensation (Dust Diseases) Board, 2014, p 5.

³⁶ Evidence, Ms Anderson, 28 March 2014, p 86.

- 2.40** Ms Anderson explained that much of the board's work involves assisting injured workers with their claims:

A lot of the work that we do at the Dust Diseases Board is talking to our clients and explaining the process to them. We actually help them through the process. A lot of the work we do is getting the information they need to get a successful outcome rather than sending them off and saying, "You will have to get this, that and the other and a medical test." We do that for them.³⁷

- 2.41** Mr Peter Dunphy, Acting General Manager, Dust Diseases Board, and Chair, Heads of Asbestos Coordination Authorities Working Group, added that the industrial officers go to great lengths to assist clients who are often quite ill:

... the industrial history officers ... spend so much time researching to establish the workplace relationship... They do a lot of work and it is really a great service that they provide to the person, who is often quite ill, in respect of gathering that evidence so they have all the right information to make the claim.³⁸

- 2.42** A proposal to expand Industrial History Officers' investigative powers is examined in chapter 3.

- 2.43** While the industrial history report is being prepared, the board concurrently obtains the worker's relevant medical records. Mr Dunphy praised the work of the medical staff who, like the industrial officers, work diligently to assist the applicant:

... the medical staff, who spend a lot of time chasing the hospitals to get all the information they need in respect of the diagnosis, the X-rays, the CT scans, which the applicant does not have. We often get applications that people have forgotten to sign or they have forgotten to provide all sorts of information but we still go through the process of following that up. We do not reject it and send it back.³⁹

- 2.44** The evidence from the industrial history and medical records are collated into a report that is submitted to the Medical Authority. Each of the Medical Authority's three panels are comprised of three respiratory specialists (an independent chair, a member representing employees, and a member representing employers) who are appointed by the Minister for Finance and Services.⁴⁰ The Medical Authority is responsible for assessing whether '... the worker has a compensable dust disease, the extent of any disability as a result of that disease and the proportion of exposure as a worker in New South Wales that is reasonably attributable to the disease.'⁴¹

- 2.45** If the Medical Authority certifies that the worker is disabled as a result of a compensable dust disease, an award for compensation is submitted to the board for consideration, along with the Medical Authority's certificate and the industrial history and dust exposure report.⁴²

³⁷ Evidence, Ms Anderson, 28 March 2014, p 86.

³⁸ Evidence, Mr Peter Dunphy, Acting General Manager, Dust Diseases Board, and Chair, Heads of Asbestos Coordination Authorities Working Group, 28 March 2014, p 87.

³⁹ Evidence, Mr Dunphy, 28 March 2014, p 87.

⁴⁰ Safety, Return to Work and Support, November 2013, p 24.

⁴¹ Workers' Compensation (Dust Diseases) Board, 2014, p 5.

⁴² Workers' Compensation (Dust Diseases) Board, 2014, p 5.

Finally, the board determines whether the applicant was exposed to the relevant dust while employed as a worker in New South Wales and, if so, the amount of compensation they are entitled as set out in the *Workers' Compensation Act* and the *Dust Diseases Act*.⁴³

- 2.46** Decisions of the Dust Diseases Board are appealable to the District Court of New South Wales.

Workers' entitlements

- 2.47** The calculation of a worker's weekly payments, which may include an amount to acknowledge dependants, depends on the individual's assessed degree of disability, the level of total exposure to the dust that caused the disease while they were a worker in New South Wales, and whether they were employed at the time of their diagnosis.⁴⁴ The current compensation benefit rates are set out in the Benefits Guide issued by the WorkCover Authority.

- 2.48** The date of commencement for compensation payments is dependent on whether a person has a malignant or non-malignant case:

For malignant cases, compensation may be payable from the date of diagnosis or initial investigation of the disease. For non-malignant cases, compensation is paid from the date your application is received by the DDB [Dust Diseases Board].⁴⁵

- 2.49** The workers' compensation benefit is payable for the remainder of the worker's life.

- 2.50** Division 3 of the *Workers' Compensation Act* sets out the entitlements and monetary limits for medical and treatment expenses. The medical and treatment expenses covered include hospital, nursing home, palliative care and rehabilitation, medical treatments, ambulance services, and travelling costs to medical treatments.

- 2.51** Other specifications include that the medical and treatment expenses must be reasonably necessary and are a reasonable cost.⁴⁶

- 2.52** The Medical Authority reviews a worker's level of disability every two or three years. The worker (or their treating doctor) can also request that their case be reviewed if they believe their condition has worsened.⁴⁷

- 2.53** The monetary limits on medical and treatment are:

- \$50,000 on medical expenses
- \$50,000 on hospital expenses
- \$10,000 on ambulance services

⁴³ Workers' Compensation (Dust Diseases) Board, 2014, p 5.

⁴⁴ Workers' Compensation (Dust Diseases) Board, *What are my entitlements if the Board approves my claim?*, <<http://www.ddb.nsw.gov.au/MakingaClaim/Entitlements/Pages/default.aspx>>.

⁴⁵ Workers' Compensation (Dust Diseases) Board, *What are my entitlements if the Board approves my claim?*, <<http://www.ddb.nsw.gov.au/MakingaClaim/Entitlements/Pages/default.aspx>>.

⁴⁶ Safety, Return to Work and Support, November 2013, p 19.

⁴⁷ Workers' Compensation (Dust Diseases) Board, *What are my entitlements if the Board approves my claim?*, <<http://www.ddb.nsw.gov.au/MakingaClaim/Entitlements/Pages/default.aspx>>.

- \$1,200 on occupational rehabilitation.⁴⁸

- 2.54** The board may, in exceptional circumstances, approve the payment of medical, hospital or ambulance expenses that are greater than the limits listed above if the additional treatment required is necessary as a result of an applicant's dust disease for which they are being treated.⁴⁹ Some stakeholders argued that this cap should be removed.⁵⁰ This suggestion is considered in chapter 3.
- 2.55** Section 26 of the *Workers' Compensation Act* sets out that a maximum of \$9,000 for funeral expenses is payable regardless of whether the death was due to the dust disease.⁵¹
- 2.56** The Dust Diseases Board also provides a number of services, including health care services, (such as nursing care and domestic assistance) to its clients. Ms Anderson explained that while clients have the option of sourcing their own services the board often takes on this responsibility:

Many of our workers... are elderly. They are very ill. While there is no requirement that they use our services, they can go out and purchase their own services, they do not have to get pre-approval in the dust diseases board for medical expenses. For many of them, we take that responsibility on for them and we will organise health care services for them. We have contracts in place for nursing care, domestic assistance, lawn mowing services, oxygen services, and we will organise those services for them and the invoices are sent directly to us so the person does not have to worry about it.⁵²

- 2.57** Clients can also have their treating doctors and service providers send their invoices to the board so that the worker does not have to pay it.⁵³
- 2.58** The Dust Diseases Board informed the committee that workers are notified of the details of their entitlements within 48 hours of the board's decision to award compensation benefits.⁵⁴
- 2.59** Scheme participants may be excluded from receiving benefits from Centrelink as the Australian Tax Office has defined all workers' compensation payments as ordinary income. However, Ms Anderson noted that most participants are able to receive some part of the age pension:

Centrelink has defined compensation payments, not just from the Dust Diseases Board but all workers compensation payments, as ordinary income...

Generally, most of our beneficiaries get some part of the age pension, which allows them to retain the benefits. It is when they have other income streams as well when

⁴⁸ *Workers Compensation Act 1987*, ss 61-63A.

⁴⁹ Workers' Compensation (Dust Diseases) Board, *Medical Expenses*, <<http://www.ddb.nsw.gov.au/MakingaClaim/MedicalExpenses/Pages/default.aspx>>.

⁵⁰ Submission 7, p 4.

⁵¹ *Workers' Compensation Act*, s 26.

⁵² Evidence, Ms Anderson, 28 March 2014, p 78.

⁵³ Evidence, Ms Anderson, 28 March 2014, p 78

⁵⁴ Workers' Compensation (Dust Diseases) Board, 2014, p 6.

added to the Dust Diseases Board scheme that throws them outside of the Centrelink thresholds.⁵⁵

Compensation application process for dependants

- 2.60** Section 8 of the *Dust Diseases Act* sets out that following the death of a worker their dependants are entitled to receive entitlements. Dependants may be a spouse or de facto partner, a child under the age of 16 (or 21 if engaged in full time study), or a 'prescribed relative' (such as parents or siblings) where the worker does not have a spouse or de facto partner.⁵⁶
- 2.61** The dependant must submit an application form and relevant documents to receive benefits from the board.⁵⁷
- 2.62** The Medical Authority and the board establish whether the deceased worker was entitled to receive compensation if the worker had not applied for compensation before their death prior to the dependant's claim being determined.

Dependants entitlements

- 2.63** Dependants may be entitled to a lump sum or fortnightly benefits. The amount of the benefit paid is prescribed by the *Dust Diseases Act* and the *Workers' Compensation Act*. The applications are assessed on an individual basis and vary according to the circumstances of the deceased worker and the dependant.⁵⁸ Similarly, how long dependants may receive entitlements from the board is dependent on individual circumstances as set out in the *Dust Diseases Act*.⁵⁹
- 2.64** The current benefit rates are set out in the Benefits Guide issued by the WorkCover Authority.
- 2.65** Dependants are notified of their entitlements within 48 hours of the award being made.⁶⁰

Client satisfaction

- 2.66** Most stakeholders spoke very positively about the Dust Diseases Board. For example, in its submission to the review the Construction, Forestry, Mining and Energy Union (CFMEU) stated that the board works at its optimum capacity to best serve the needs of its clients:

The CFMEU supports the Dust Diseases Board and believes that the Board in its current state functions efficiently and effectively. The Dust Diseases Board has a

⁵⁵ Evidence, Ms Anderson, 28 March 2014, p 91.

⁵⁶ Safety, Return to Work and Support, November 2013, p 16.

⁵⁷ Workers' Compensation (Dust Diseases) Board, 2014, p 7.

⁵⁸ Safety, Return to Work and Support November 2013, p 17.

⁵⁹ *Workers' Compensation (Dust Diseases) Act 1942*, s 2B,

⁶⁰ Workers' Compensation (Dust Diseases) Board, 2014, p 8.

unique jurisdiction and uses it to its full potential. Through the Dust Diseases Board, sufferers of asbestos related diseases have found justice and understanding.⁶¹

2.67 A similar sentiment was reflected in the board's 2013 client satisfaction survey which found that 93 per cent of clients rated the board's overall performance favourably.⁶² The survey found that clients most appreciated:

- the courteousness and helpfulness of staff
- the willingness of staff to listen to their clients
- the dignity and respect shown by staff
- the timeliness of the provision of services.⁶³

2.68 Ms Anderson advised the committee that the board's staff were committed to providing the best services to its clients.⁶⁴

2.69 Mr Dunphy suggested that the board's long history, strong client-focus and regular contact between staff and clients led to client satisfaction.⁶⁵

Committee comment

2.70 The committee commends the excellent work of the Dust Diseases Board. The evidence presented during this review demonstrates that the board has a person-centred approach to service delivery that allows it to execute its statutory functions and corporate governance responsibilities in an exemplary manner. The committee believes that it would be in the public interest to ensure that the expertise and experience of Board members is retained.

2.71 The committee acknowledges the excellent overall satisfaction rating the Dust Diseases Board achieved in its 2013 customer satisfaction survey. The board's staff have worked diligently to provide an empathetic and courteous service for their clients and should be commended for their efforts.

2.72 We note that the *Dust Diseases Act* and the *Workers' Compensation Act* set out the requirements for a compensation scheme that meets the needs of workers with dust diseases and their dependents. In our view, the board has developed appropriate administrative procedures in accordance with the legislation to ensure the best outcomes for its clients.

⁶¹ Submission 5, Construction, Forestry, Mining, Energy Union (NSW Division), p 1.

⁶² Workers' Compensation (Dust Diseases) Board, *Workers' Compensation (Dust Diseases) Board*, <<http://www.ddb.nsw.gov.au/Pages/home.aspx>>.

⁶³ Workers' Compensation (Dust Diseases) Board, *Workers' Compensation (Dust Diseases) Board*, <<http://www.ddb.nsw.gov.au/Pages/home.aspx>>.

⁶⁴ Evidence, Ms Anderson, 28 March 2014, p 78.

⁶⁵ Evidence, Mr Dunphy, 28 March 2014, p 88.

Finding 1

That the Workers' Compensation (Dust Diseases) Board is executing its statutory functions and corporate governance responsibilities in an exemplary manner.

Finding 2

That the Workers' Compensation (Dust Diseases) compensation scheme meets the needs of workers with dust diseases and their dependents.

Chapter 3 Stakeholders' proposals

Five proposals were raised during this review to improve the efficiency of the board. This chapter examines those suggestions.

Provisional liability

3.1 The Asbestos Diseases Foundation of Australia proposed introducing a provisional liability process for malignant claims processed by the board. Under this proposal, provisional liability would be determined within seven days of receipt of an application form for a malignant claim. The application would be accompanied by a diagnosing pathology or medical report and a statutory declaration outlining the applicant's exposure to asbestos while working in New South Wales.⁶⁶

3.2 Ms Maree Stokes, Vice President, Asbestos Diseases Foundation of Australia and Coordinator, Central Coast Support Group, explained that the primary motivations for the foundation's proposal were the affected worker's rapid health decline and need for assistance as quickly as possible:

The majority of people with mesothelioma will have had it in their body for many years. Once they are diagnosed, it is very rapid and they might only have months. Therefore, it is important for the Dust Diseases Board to pass people for help as quickly as possible. The wives, family and children are in shock when they know their loved one is going to go down very quickly. That is why we hope the board will continue and pass people more quickly.⁶⁷

3.3 Ms Stokes added that the provisional liability process would have provided financial security to her family after her husband was diagnosed with work-related mesothelioma:

My husband was in his mid-fifties [when he was diagnosed]. He went to work one day and never went back. We were left without an income for some time and had to live off savings. If you have a mortgage, you have a problem until you are finally accepted by the Dust Diseases Board. I think it was up to two months before my husband was accepted by the board.⁶⁸

3.4 Ms Eileen Day, Secretary, Asbestos Diseases Foundation of Australia, whose husband also had work-related mesothelioma, said that provisional liability would lessen the emotional and financial burden of the diagnosis:

It would have been less worrying. People would know they would get help. They have to have medication and it is quite expensive. They have to leave work so there is no income and they need money from the Dust Diseases Board.⁶⁹

⁶⁶ Submission 7, Asbestos Diseases Foundation of Australia, p 3.

⁶⁷ Evidence, Ms Maree Stokes, Vice President, Asbestos Diseases Foundation of Australia, and Coordinator, Central Coast Support Group, 28 March 2014, p 12.

⁶⁸ Evidence, Ms Stokes, 28 March 2014, p 13.

⁶⁹ Evidence, Ms Eileen Day, Secretary, Asbestos Diseases Foundation of Australia, 28 March 2014, p 12.

- 3.5** Ms Rita Mallia, President, Construction, Forestry, Mining and Energy Union and Member, Dust Diseases Board's Research Grants Committee, supported introducing a provisional liability process if it improved the efficiency and effectiveness of delivering payments to injured workers:

I sit on the Workers Compensation Dust Diseases Board and see the suffering of workers affected by dust diseases. It takes a toll on their bodies, and any process to improve the capacity for benefits to be delivered, either by way of payments or medical expenses—and that is the biggest role of the board—should be encouraged.⁷⁰

- 3.6** The Australian Lawyers Alliance and Unions NSW also expressed support for the proposal.⁷¹

- 3.7** In response, the Dust Diseases Board firstly noted that the board's powers did not extend to advising the government on legislative policy issues such as the adoption of a provisional liability process:

The provisional approval of dust diseases claims is a policy decision for the New South Wales Government. The role of the Dust Diseases Board, as set out in the *Workers' Compensation (Dust Diseases) Act 1942* (the Act), is to administer the Fund and to examine into, hear and determine all matters and questions arising out of a claim for compensation under the Act. The Dust Disease Board does not have a statutory role to advise on legislative policy issues.⁷²

- 3.8** The board then advised that there would be a number of logistical and financial issues to consider if a provisional liability process was adopted. For example, Ms Anita Anderson, General Manager, Workers' Compensation (Dust Diseases) Board, explained that implementing the proposed system would significantly change the board's current operating model, particularly the decision making roles of the Medical Authority and the board:

... it would require fundamental changes to the operating model of the Dust Diseases Board and the way in which compensation application decisions are made. Both the medical authority and the board have a decision-making role. That would have to be looked at if that was to be condensed into a seven-day period about how you would go about doing that. I understand from the Asbestos Diseases Foundation of Australia submission they are suggesting it be done on the basis of external documents.⁷³

- 3.9** Another challenge would be providing a definitive diagnosis of a dust disease. Ms Anderson stated that medical diagnosis should be the principle consideration in relation to provisional liability and noted the challenges of diagnosing mesothelioma:

⁷⁰ Evidence, Ms Rita Mallia, President, Construction, Forestry, Mining, Energy Union (NSW Division) and Member, Dust Diseases Board, Research Grants Committee, 28 March 2014, p 61.

⁷¹ Evidence, Ms Elizabeth Welsh, Barrister and Member, Common Law Committee, Australian Lawyers Alliance and Mr Andrew Stone, Barrister and Member, Common Law Committee, Australian Lawyers Alliance, 28 March 2014, p 43; Answers to questions on notice, Mr Shay Deguara, Industrial Officer, Unions NSW, 24 April 2014, p 20.

⁷² Answers to questions on notice, Workers' Compensation (Dust Diseases) Board, 5 May 2014, p 3.

⁷³ Evidence, Ms Anita Anderson, General Manager, Workers' Compensation (Dust Diseases) Board, 28 March 2014, p 82.

I think the primary consideration in relation to provisional liability is the medical diagnosis. We see a significant number of applications coming to the board where there is not a definitive diagnosis of mesothelioma. It is a very complex area of diagnostic skill and it is an area of expertise.⁷⁴

- 3.10** The board added that the Medical Authority could assist in diagnosing dust diseases as its specialist respiratory physicians are experts in this field of medicine.⁷⁵
- 3.11** Ms Anderson also noted that provisional liability may impact on the ability of the board to recover costs from negligent third parties, and reflected that problems may arise if provisional liability did not end in a final award for an individual.⁷⁶
- 3.12** Further, consideration would need to be given to any impact provisional liability would have on decisions of the Dust Diseases Tribunal, as the tribunal defers making its awards until after the board determines its liability.⁷⁷

Committee comment

- 3.13** The committee acknowledges the Asbestos Diseases Foundation of Australia's proposal for a provisional liability process and recognises that workers who are diagnosed with a dust disease, particularly mesothelioma, quickly come under significant financial and emotional strain. We note the comments from the board that there would be a number of logistical and financial issues to consider if such a process was adopted, and recommend that the government investigate the feasibility of introducing provisional liability for malignant claims to the scheme.

Recommendation 1

That the NSW Government investigate the feasibility of introducing provisional liability for malignant claims to the scheme.

Cap on medical expenses

- 3.14** Section 61(3) of the *Workers' Compensation Act 1987* sets a \$50,000 cap on medical expenses except where some greater amount has been fixed by the WorkCover Authority (WorkCover) by order published in the Gazette.⁷⁸ The board may also approve the payment of additional medical, hospital or ambulance expenses if the treatment is necessary as a result of an applicant's dust disease for which they are being treated.⁷⁹

⁷⁴ Evidence, Ms Anderson, 28 March 2014, p 82.

⁷⁵ Answers to questions on notice, Workers' Compensation (Dust Diseases) Board, 2 May 2014, p 3.

⁷⁶ Evidence, Ms Anderson, 28 March 2014, p 82.

⁷⁷ Evidence, Ms Anderson, 28 March 2014, p 82.

⁷⁸ *Workers' Compensation Act 1987*, s 61(3).

⁷⁹ *Workers' Compensation (Dust Diseases) Act 1942*, s 8(2)(d).

- 3.15** As at February 2014, 64 of the Dust Diseases Board's clients were receiving medical expenses in excess of the \$50,000 statutory cap, representing 6.5 per cent of all clients currently receiving medical and hospital expense entitlements.⁸⁰
- 3.16** The Asbestos Diseases Foundation of Australia proposed entirely removing the \$50,000 cap on medical expenses as it has not been revised since 1987 and does not account for the increasing costs of medical treatments, particularly chemotherapy.⁸¹
- 3.17** Mr David Henry, NSW Branch Work Health and Safety Officer, Australian Manufacturing Workers Union and Member, Dust Diseases Board Corporate Governance and Research Grants Committees, presented a similar argument, adding that the life expectancy of a person with mesothelioma in New South Wales has increased from eight to 12 months – an increase of 50 per cent - in approximately a decade.⁸²
- 3.18** Mr Henry explained that the cap was an administrative process and that the board has never declined a request to pay for medical expenses, particularly as all treatment costs must pass the statutory test of being 'reasonably practicable':
- It is fair to say that the Dust Diseases Board has never refused to extend a cap as all medical requests are supported by an Australian registered physician's report justifying the requirement for hospital treatment or whatever the treatment may be. Further, it serves no purpose as all costs for treatment have already passed through a statutory test, and that test is being reasonably practicable for the treatment required having regard to the reasonable necessity of the treatment.⁸³
- 3.19** Mr Henry said that the board had approved bridging the gap on 208 occasions over a 15 year period and that he did not anticipate that it would ever decline a request for additional medical expenses, particularly as the money was being spent on improving a person's quality of life.⁸⁴
- 3.20** In response to this proposal, the board confirmed that it routinely approves awards for continuation of medical expense entitlements and that its clients have not been disadvantaged by this process.⁸⁵
- 3.21** Additionally, the board advised that it is investigating whether WorkCover can gazette a higher limit for medical expenses for dust diseases under s 61(3) of the *Workers' Compensation Act*.

Committee comment

- 3.22** The committee notes the Asbestos Diseases Foundation of Australia's proposal to remove the \$50,000 cap on medical expenses and the fact that the board has never denied a claim for additional medical expenses. The committee considers it more appropriate for the Dust Diseases Board to continue pursuing whether WorkCover can gazette a higher cap on

⁸⁰ Answers to questions on notice, Workers' Compensation (Dust Diseases) Board, 2 May 2014, p 3.

⁸¹ Submission 7, p 4.

⁸² Evidence, Mr David Henry, New South Wales Branch Work Health and Safety Officer, Australian Manufacturing Workers Union, 28 March 2014, p 74.

⁸³ Evidence, Mr Henry, 28 March 2014, p 74.

⁸⁴ Evidence, Mr Henry, 28 March 2014, p 74; and Evidence, Ms Anderson, 28 March 2014, p 89.

⁸⁵ Answers to questions on notice, Workers' Compensation (Dust Diseases) Board, 2 May 2014, p 4.

medical expenses for dust diseases under s 61(3) of the *Workers' Compensation Act*. However, we will keep a watching brief on this issue.

Independent chair of the Dust Diseases Board

3.23 The Asbestos Diseases Foundation of Australia proposed having an independent chair of the Dust Diseases Board.⁸⁶ Ms Stokes argued that the chair should be a person distinct from WorkCover to better facilitate communication between stakeholders.⁸⁷

3.24 Ms Mallia said that the proposal for an independent chair had merit as it is difficult for WorkCover to manage its many, often conflicting, roles:

I think an independent chair would be a good idea. WorkCover has many hats. It has to manage the investments, it has to ensure that the obligations of the legislation are met. That makes it very difficult then to be a chair of a board dealing with decisions around liability or exposure.⁸⁸

3.25 When this proposal was raised with the Dust Diseases Board during the review, Mr Peter Dunphy, Acting General Manager, Workers' Compensation (Dust Diseases) Board and Chair, Heads of Asbestos Coordination Authorities Working Group, advised that prior to 1989, legislation set out that the board (in its prior incarnation as the Silicosis Committee) had an independent chair who was a fulltime executive officer of the board. However, since the legislation was amended in 1989 and WorkCover was created, the chair has been the general manager of WorkCover or chief executive officer of the Safety, Return to Work and Support Division who was appointed by the Minister.⁸⁹ Mr Dunphy reasoned that having a chair who was employed by WorkCover provided accountability which is crucial considering the chair's role in resources, staffing and governance arrangements that give effect to the board's decisions.⁹⁰

Committee comment

3.26 The committee acknowledges the proposal for there to be an independent chair of the Dust Diseases Board. However, the current structure of the agency and its governance arrangements with Safety, Return to Work and Support suggests that it may be in the best interests of the board's clients that the chair remain an employee of WorkCover to ensure accountability for operational matters such as staffing and funding.

3.27 The committee will, however, also keep a watching brief on this issue.

⁸⁶ Submission 7, p 3.

⁸⁷ Evidence, Ms Stokes, 28 March 2014, p 13; and Evidence, Ms Day, 28 March 2014, p 15.

⁸⁸ Evidence, Ms Mallia, 28 March 2014, p 61.

⁸⁹ Evidence, Mr Peter Dunphy, Acting General Manager, Workers' Compensation (Dust Diseases) Board and Chair, Heads of Asbestos Coordination Authorities Working Group, 28 March 2014, p 84.

⁹⁰ Evidence, Ms Dunphy, 28 March 2014, p 84.

Awareness of the Dust Diseases Board

- 3.28** Another suggestion raised during the review was that there needs to be greater public awareness of the Dust Diseases Board and workers' rights to compensation. The Asbestos Diseases Foundation of Australia gave anecdotal evidence that individuals who called the foundation's helpline were not aware of the board or their entitlements.⁹¹ Ms Day shared the experience of one client who called their helpline looking for assistance:

I had a person named Hans who lives in Dubbo who did not have any support. He did not know he was entitled to have oxygen, a chair or a bed. Through our conversations I was able to help him that way and to tell him that if he got in contact with his doctor these things could be arranged. The thing is that people do not know. Older people especially find it hard to ring up and to get information.⁹²

- 3.29** The Asbestos Diseases Foundation of Australia noted that older people find it difficult to access the board's website and suggested that the optimal means of communicating with affected individuals was for doctors to be better informed about the board and to have pamphlets with relevant information available in medical practices.⁹³ It was also suggested that there should be a focus on asbestos awareness in schools.⁹⁴
- 3.30** In response to this issue, the board advised that its client survey found that 60 per cent of the people who came to board found out about it through their doctor. The survey also confirmed the Asbestos Diseases Foundation of Australia's anecdotal evidence regarding the internet, finding that 90 per cent of beneficiaries did not access the board's website to obtain information.⁹⁵
- 3.31** In recognition of these findings the board has concentrated its promotional efforts on liaising with the Australian and New Zealand Society of Occupational Medicine and the Thoracic Society (representative groups for respiratory physicians) to promote the board and its work. The board also employs nine respiratory physicians who raise awareness about the board within their profession.⁹⁶
- 3.32** As discussed in chapter 2, the Dust Diseases Board conducts a number of its own awareness raising activities and funds and supports other initiatives such as those conducted by the Heads of Asbestos Advisory Committees.

Committee comment

- 3.33** The committee acknowledges the Asbestos Diseases Foundation of Australia's concern that workers with a dust disease are not adequately informed about the Dust Diseases Board and their potential entitlements. However, we are satisfied that the Dust Diseases Board has taken

⁹¹ Evidence, Ms Day, 28 March 2014, p 16.

⁹² Evidence, Ms Day, 28 March 2014, pp 16-17.

⁹³ Evidence, Ms Stokes, 28 March 2014, p 18; and Evidence, Ms Day, 28 March 2014, p 17.

⁹⁴ Evidence, Ms Day, 28 March 2014, p 16.

⁹⁵ Workers' Compensation (Dust Diseases) Board, *Information Requested By The Legislative Council Standing Committee On Law And Justice For The Review Of The Exercise Of The Functions Of The Workers' Compensation (Dust Diseases) Board*, 2014, p 9.

⁹⁶ Evidence, Ms Anderson, 28 March 2014, p 83.

proactive steps to address this issue by conducting various awareness raising activities, particularly with the medical community.

Industrial work history

3.34 In its submission to this review, DLA Piper Australia suggested that the industrial history officers' investigative powers be enhanced to ensure the accuracy of their reports, as these documents often form the basis of an applicant's claim at the Dust Diseases Tribunal.⁹⁷

3.35 DLA Piper was concerned that following the preliminary oral interview between the applicant and the industrial history officer '... there is little if any, further investigations conducted by the DDB [Dust Diseases Board] with regards to the accuracy of the details given by the worker or to corroborate any assertions made.'⁹⁸ DLA Piper claimed this placed the worker at a disadvantage during any proceedings in the Dust Diseases Tribunal:

We have experienced situations where the information which our clients rely upon in the DDB file was in fact inaccurate. For example, a number of Claimants were actually not employed by the employer alleged and/or did not suffer the exposure alleged because of the nature of the duties which he/she undertook with a particular employer.

Where the information contained in the DDB file with regards to employment proves to be inaccurate a Defendant incurs significant legal expenses which includes paying the legal costs of the incorrectly joined third party employer.⁹⁹

3.36 The Dust Diseases Board was not asked to respond directly to this proposal. However, as discussed in chapter 2, industrial history officers can access an applicant's work records, workplace photographs, council plans, union membership records, company title searches, statements from work colleagues and friable asbestos removal permits to determine their work history. Officers can also conduct internet searches and access the board's extensive database of workplace exposures.¹⁰⁰

3.37 Additionally, as further discussed in chapter 2, the board's evidentiary threshold of 'reasonable attribution' is very low unlike the 'balance of probabilities' threshold required at the Dust Diseases Tribunal.

Committee comment

3.38 The committee notes DLA Piper Australia's proposal that the the board's industrial history officers' investigative powers be enhanced to ensure greater accuracy in their reports.

3.39 However, as the board's evidentiary threshold is that of 'reasonable attribution', we believe that the industrial history officers have appropriate powers. As with some other areas raised in this chapter, the committee will keep a watching brief on this issue.

⁹⁷ Submission 3, DLA Piper, p 3.

⁹⁸ Submission 3, p 2.

⁹⁹ Submission 3, p 2.

¹⁰⁰ Evidence, Ms Anderson, 28 March 2014, p 86; and Workers' Compensation (Dust Diseases) Board, 2014, p 4.

Appendix 1 Submission list

No	Author
1	Name suppressed
2	Australian Manufacturing Workers' Union
3	DLA Piper Australia
4	Suncorp Group
5	Construction, Forestry, Mining and Energy Union
6	NSW Workers Compensation Self Insurers Association Inc
7	Asbestos Diseases Foundation of Australia Inc.

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
28 March 2014 Macquarie Room, State Library of New South Wales, Sydney	Mr Luke Aitken	Senior Manager, Policy and Advocacy, NSW Business Chamber
	Mr Craig Milton	Policy Analyst, NSW Business Chamber
	Mr Greg Pattison	Advisor, WHS and Industrial Relations, NSW Business Chamber
	Ms Eileen Day	Secretary, Asbestos Diseases Foundation of Australia Inc
	Ms Maree Stokes	Vice President, Coordinator, Asbestos Diseases Foundation of Australia Inc
	Mr Jason Allison	Chief, Workers Compensation Underwriting & Portfolio Management, Suncorp Group
	Mr Timothy Concannon	Partner, Carroll and O'Dea Lawyers and Member, Injury Compensation Committee, Law Society of New South Wales
	Ms Roshana May	Slater and Gordon Lawyers and Member, Injury Compensation Committee, Law Society of New South Wales
	Mr Andrew Stone	Member, Common Law Committee, Bar Councillor, New South Wales Bar Association
	Ms Elizabeth Welsh	Member, Common Law Committee, New South Wales Bar Association
	Mr Bruce McManamey	NSW Committee Member, Australian Lawyers Alliance
	Mr Anthony Scarcella	NSW Committee Member, Australian Lawyers Alliance
	Ms Rita Mallia	State President, Construction, Forestry, Mining and Energy Union, New South Wales Branch
	Ms Sherri Hayward	Industrial Officer, Construction, Forestry, Mining and Energy Union, New South Wales Branch
	Mr Ivan Simic	Partner, Taylor & Scott Lawyers,

Date	Name	Position and Organisation
		Construction, Forestry, Mining and Energy Union, New South Wales Branch
	Mr Michael Perks	Injured worker
	Mr Atilio Villegas	Private citizen
	Mr David Henry	New South Wales Branch Work Health and Safety Officer, Australian Manufacturing Workers' Union
	Mr Peter Dunphy	Acting General Manager, Workers Compensation (Dust Diseases) Board and Chair of Heads of Asbestos Coordination Authorities Working Group
	Ms Anita Anderson	General Manager, Workers Compensation (Dust Diseases) Board

Appendix 3 Answers to questions on notice

The committee received answers to questions on notice from:

- Asbestos Diseases Foundation of Australia Inc
- Workers Compensation (Dust Diseases) Board.

Appendix 4 Minutes

Minutes No. 22

Wednesday 19 June 2013

Standing Committee on Law and Justice

Room 1136, Parliament House, at 1:16 pm

1. Members present

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell

Mr Moselmane

Mr Shoebridge

2. Previous minutes

Resolved, on the motion of Mrs Mitchell: That draft Minutes No. 21 be confirmed.

3. ***

4. ***

5. ***

6. Review of the WorkCover Authority and the Workers' Compensation (Dust Diseases) Board

Resolved, on the motion of Mr Shoebridge: That the Committee commence the Review of the WorkCover Authority and the Workers' Compensation (Dust Diseases) Board, and receive a briefing from the Safety and Return to Work Support Division in November 2013.

7. Adjournment

The Committee adjourned at 1.29 pm *sine die*.

Teresa McMichael

Committee Clerk

Minutes No. 25

Tuesday 22 October 2013

Standing Committee on Law and Justice

Members' Lounge, Parliament House, Sydney, 2.20 pm

1. Members present

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

2. Previous minutes

Resolved, on the motion of Mr MacDonald: That draft Minutes No. 24 be confirmed.

3. Reviews of the WorkCover Authority and the Workers' Compensation (Dust Diseases) Board

Resolved, on the motion of Mr MacDonald that:

- The reviews and the call for submissions be advertised in the Sydney Morning Herald and Daily Telegraph on Wednesday 6 November 2013.
- The Committee hold at least one day of hearings on dates to be confirmed by the Secretariat in consultation with the Chair and subject to the availability of members and witnesses.
- Representatives of the WorkCover Authority and the Workers' Compensation (Dust Diseases) Board be invited to appear as witnesses along with any other witnesses determined by the Secretariat in consultation with the Chair and the Committee.

4. Adjournment

The Committee adjourned at 2.22 pm, until Friday 15 November 2013 at 10.00am (WorkCover and Dust Diseases Board briefing).

Teresa McMichael

Clerk to the Committee

Minutes No. 26

Friday 15 November 2013

Standing Committee on Law and Justice

Room 1153, Parliament House, 10.00 am

1. Members present

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell

Mr Moselmane

Mr Shoebridge

2. Reviews of the WorkCover Authority and the Workers' Compensation (Dust Diseases) Board**2.1 Briefing**

Representatives from the WorkCover Authority and Dust Diseases Board briefed the Committee.

3. Previous minutes

Resolved, on the motion of Mr MacDonald: That draft Minutes No. 25 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Sent:

- 31 October 2013 - Letter to Minister Andrew Constance regarding the Committee's review of the WorkCover Authority of NSW and Workers' Compensation (Dust Diseases) Board.

Received:

- ***

5. Reviews of the WorkCover Authority and the Workers' Compensation (Dust Diseases) Board**5.1 Hearings**

Resolved, on the motion of Mr Moselmane: That the Committee hold public hearings on 21 March and 28 March 2014 (reserve date).

6. ***

7. ***

8. **Adjournment**

The Committee adjourned at 2.49 pm *sine die*.

Teresa McMichael

Clerk to the Committee

Minutes No. 29

Friday 7 March 2014

Standing Committee on Law and Justice

Macquarie Room, State Library of New South Wales, 9.20 am

1. **Members present**

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell

Mr Moselmane

Mr Shoebridge (9.35 am)

2. **Previous minutes**

Resolved, on the motion of Mr MacDonald: That draft Minutes No. 28 be confirmed.

3. **Correspondence**

The Committee noted the following items of correspondence:

Received

- ***
- 10 January 2014 – From Mr G M Grimson, Industrial Registrar, Industrial Relations Commission of NSW, declining the invitation to make a submission to the WorkCover/Dust Diseases reviews
- 17 January 2014 – From Dr Louise Roufeil, Executive Manager Professional Practice (Policy), Australian Psychology Society to Chair, declining to make a submission to the WorkCover review but offering to appear as a witness
- ***

Sent

- ***
- 25 February 2014 – From Chair to the Hon Andrew Constance MP, Minister for Finance and Services, inviting representatives from the WorkCover Authority and Workers' Compensation (Dust Diseases) Board to give evidence at hearings on 21 and 28 March 2014.

4. **Reviews of the WorkCover Authority of NSW and Workers' Compensation (Dust Diseases) Board**

4.1 Public submissions

The Committee noted that the following submissions were published under the authorisation of an earlier resolution:

- WorkCover: Submission Nos 1-38
- Dust Diseases Board: Submission Nos 2-7.

4.2 Partially confidential submissions

Resolved, on the motion of Mr Primrose: That the Committee authorise the publication of the following submissions, with the exception of the name and other identifying details of the author which are to remain confidential.

- WorkCover: Submission Nos 11, 17, 17a, 21, 23 and 37
- Dust Diseases Board: Submission No 1.

4.3 Confidential submissions

Resolved, on the motion of Mrs Mitchell: That the following submissions to the WorkCover review remain confidential:

- Submission Nos 10 and 25, at the request of the author
- Submission Nos 9 and 16, as the authors have not been contactable to confirm their preferred publication status.

4.4 Report deliberative dates

Resolved, on the motion of Mrs Mitchell: That the Committee hold report deliberatives on the following dates:

- Friday 20 June 2014 (Review of the WorkCover Authority of NSW)
- Friday 27 June 2014 (Review of the Workers' Compensation (Dust Diseases) Board).

Mr Shoebridge joined the meeting.

5. ***

6. ***

7. ***

8. ***

9. Adjournment

The Committee adjourned at 4:45 pm until Monday 17 March 2014, at 8:45 am in the Hamilton Room, Level 47, MLC Centre, ***.

Teresa McMichael
Clerk to the Committee

Minutes No. 32

Friday 21 March 2014

Standing Committee on Law and Justice

Hobart Room, Sofitel Sydney Wentworth Hotel, Sydney, 8.50 am

1. Members present

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell

Mr Moselmane from 10.55 am

Mr Shoebridge

2. Apologies

Mr Moselmane until 10.55am.

3. Previous minutes

Resolved, on the motion of Mr MacDonald: That Draft Minutes No. 30 and 31 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Received

- 18 March 2014 - From Hon Andrew Constance MP, Minister for Finance and Services to Chair, confirming witnesses appearing at the WorkCover and Dust Diseases Board review hearings on 21 and 28 March 2014.
- 20 March 2014 – From Ms Carmel Donnelly, General Manager, Strategy & Performance, Safety, Return to Work and Support, providing an update report from the independent Scheme actuary on the performance of the Workers Compensation Nominal Insurer Scheme.

Resolved, on the motion of Mrs Mitchell: That the report from the independent Scheme actuary on the performance of the Workers Compensation Nominal Insurer Scheme, provided by Ms Donnelly, be published.

5. ***

6. Reviews of the WorkCover Authority of NSW and Workers' Compensation (Dust Diseases) Board

6.1 Public submissions

Resolved, on the motion of Mr MacDonald: That the Committee authorise the publication of Supplementary Submission Nos 3a and 26a.

Resolved on the motion of Mr MacDonald: That the Committee authorise the publication of Submission No. 39 with the exception of the name and other identifying details of the author which are to remain confidential.

6.2 Answers to questions on notice

Resolved, on the motion of Mrs Mitchell: That witnesses be requested to return answers to questions on notice and/or supplementary questions from members within 21 days of the date on which questions are forwarded to the witnesses by the committee clerk.

6.3 Request for information

Resolved, on the motion of Mr MacDonald: That the Secretariat contact the Workers' Compensation (Dust Diseases) Board to request it provide a brief written overview to the Committee about the Board's role and functions.

6.4 Public hearing

Witnesses, the public and the media were admitted.

The following witnesses were sworn and examined:

- Mr John Watson, General Manager, Work Health and Safety, WorkCover Authority of NSW
- Ms Carmel Donnelly, General Manager, Strategy and Performance, Safety, Return to Work and Support
- Mr Gary Jeffrey, Acting General Manager, Workers Compensation Insurance Division, WorkCover Authority of NSW
- Mr Michael Playford, Consulting Actuary and Partner, Pricewaterhouse Coopers and actuary for Workers Compensation Nominal Insurer Scheme.

Mr Watson tendered the following document:

- WorkCover opening statement 21 March 2014.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined

- Mr Kim Garling, WorkCover Independent Review Officer, WorkCover Independent Review Office.

Mr Garling tendered the following document:

- WorkCover Independent Review Office opening statement.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Mark Lennon, Secretary, Unions NSW
- Ms Emma Maiden, Assistant Secretary, Unions NSW
- Mr Shay Deguara, Industrial Officer, Unions NSW

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Denise Fishlock, Chairperson, NSW Workers' Compensation Self Insurers Association
- Mr Paul Macken, Honorary Lawyer, NSW Workers' Compensation Self Insurers Association.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Steve Turner, Assistant General Secretary, Public Service Association of NSW.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Ashley Wilson, Board Director, Hearing Care Industry Association.
- Mr Michael Davis, WorkCover Manager, Hearing Life.
- Mr Graham Holdgate, private citizen.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Brett Holmes, General Secretary, New South Wales Nurses' Association
- Mr Stephen Hurley-Smith, Industrial Officer, New South Wales Nurses' Association.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Adam Grumley, Coordinator, Injured Workers Support Network
- Ms Janet Chan, Member, Injured Workers Support Network.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Susan Smith, Project Manager, Disability Safe, NSW National Disability Services
- Mr Scott Holz, State Manager, NSW National Disability Services.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.00 pm.

6.5 Tendered documents

Resolved, on the motion of Mr Primrose: That the Committee accept and publish the documents tendered during the hearing held on Friday 21 March 2014:

- WorkCover opening statement tendered by Mr John Watson, General Manager, Work Health and Safety, WorkCover Authority of NSW.

- WorkCover Independent Review Office opening statement tendered by Mr Kim Garling, WorkCover Independent Review Officer, WorkCover Independent Review Office.

6.6 Supplementary questions on notice

Resolved, on the motion of Mr Shoebridge: That the Committee forward any supplementary questions on notice to the Secretariat by 5 pm on Tuesday 25 March 2014.

7. Adjournment

The Committee adjourned at 4.05 pm until Friday 28 March 2014, at 8:45 am in the Macquarie Room, State Library, for the public hearing into the WorkCover Authority and the Workers' Compensation (Dust Diseases) Board.

Teresa McMichael

Clerk to the Committee

Minutes No. 33

Friday 28 March 2014

Standing Committee on Law and Justice

Macquarie Room, State Library, Sydney, 8.47 am

1. Members present

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell

Mr Moselmane (from 8.55 am)

Mr Shoebridge

2. Previous minutes

Resolved, on the motion of Mrs Mitchell: That Draft Minutes No. 32 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received:

- ***
- 25 March 2014 – From Ms Carmel Donnelly, Safety Return to Work and Support, to Director, providing information on the operation of the Workers Compensation (Dust Diseases) Board as requested by the Committee on 21 March 2014

Sent:

- ***
- 21 March 2014 – From Director to Ms Carmel Donnelly, General Manager, Strategy and Performance, Safety, Return to Work and Support Agencies, requesting a brief written overview of the Dust Diseases Board's role and function
- ***

Resolved, on the motion of Mr MacDonald: That the Committee publish the information on the operation of the Workers' Compensation (Dust Diseases) Board provided by Ms Donnelly.

4. ***

5. ***

6. **Reviews of the WorkCover Authority of NSW and Workers' Compensation (Dust Diseases) Board**

6.1 Recall of WorkCover witnesses

Resolved, on the motion of Mr Primrose: That the WorkCover Authority witnesses be recalled to another hearing on Monday 12 May 2014.

6.2 Declaration of interest

Mr MacDonald declared that he pays Workers' Compensation premiums for his personal business.

6.3 Public hearing

Witnesses, the public and the media were admitted.

The following witnesses were sworn and examined:

- Mr Luke Aitken, Senior Manager, Policy, NSW Business Chamber
- Mr Greg Pattison, Advisor, WHS and Industrial Relations, NSW Business Chamber
- Mr Craig Milton, Policy Analyst, NSW Business Chamber.

Mr Aitken tendered the following document:

- NSW Business Chamber, Review of the exercise of the functions of the WorkCover Authority, Second hearing: Friday 28 March 2014, Supplementary material.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Maree Stokes, Vice President, Asbestos Diseases Foundation of Australia, and Coordinator – Central Coast Support Group
- Ms Eileen Day, Secretary, Asbestos Diseases Foundation of Australia.

Ms Day tendered the following document:

- Southern Cross University, The Asbestos Narratives: A report into the real impact of an asbestos-related diagnosis on the lives of men and women and their carers.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Jason Allison, Manager, Chief Workers Compensation Underwriting & Portfolio Management, Suncorp Group.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Roshana May, Member, Injury Compensation Committee, The Law Society of NSW
- Mr Tim Concannon, Member, Injury Compensation Committee, The Law Society of NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Elizabeth Welsh, Member, Common Law Committee, NSW Bar Association
- Mr Andrew Stone, Member, Common Law Committee, NSW Bar Association.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Anthony Scarcella, NSW Director, National Council, Australian Lawyers Alliance
- Mr Bruce McManamey, NSW Committee Member, Australian Lawyers Alliance.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Rita Mallia, President, CFMEU
- Ms Sherri Hayward, Industrial Officer, CFMEU
- Mr Ivan Simic, Partner, Taylor & Scott
- Mr Michael Perks, Injured worker
- Mr Atilio Villegas, Private citizen.

Mr Villegas tendered the following document:

- Opening statement.

Resolved, on the motion of Mr Shoebridge: That a non-publication order be issued for the individuals named in Mr Villegas' opening statement.

Mr Simic tendered the following document:

- Email, 7 March 2014.

Ms Hayward tendered the following documents:

- Supplementary material
- Work capacity decision merit review response times.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr David Henry, NSW Branch WHS Officer, Australian Manufacturing Workers' Union.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Anita Anderson, General Manager, Workers' Compensation (Dust Diseases) Board
- Mr Peter Dunphy, A/General Manager, Workers' Compensation (Dust Diseases) Board.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 5.10 pm.

6.4 Tendered documents

Resolved, on the motion of Mrs Mitchell: That in regard to the documents tendered during the hearing on Friday 28 March 2014, the Committee:

- accept and publish the opening statement tendered by Mr Villega, with the exception of the names of individuals which are to remain confidential
- accept and publish the email tendered by Mr Simic, with the exception of identifying information
- accept and publish the following:
 - supplementary material tendered by Mr Luke Aitken, NSW Business Chamber

- 'The Asbestos Narratives' tendered by Ms Eileen Day, Secretary, Asbestos Diseases Foundation of Australia
- supplementary material tendered by Ms Sherri Hayward, Industrial Officer, CFMEU
- work capacity decision merit review response times tendered by Ms Sherri Hayward, Industrial Officer, CFMEU.

7. Adjournment

The Committee adjourned at 5.15 pm until Monday 31 March 2014, at 9.30 am in the Pioneer Community Hall, Bowraville ***

Teresa McMichael
Clerk to the Committee

Minutes No. 34

Monday 31 March 2014

Standing Committee on Law and Justice

Pioneer Community Hall, High Street, Bowraville

1. Members present

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell

Mr Moselmane

Mr Shoebridge

2. Participating member

Ms Cusack attended the meeting as a participating member.

3. Reviews of the WorkCover Authority of NSW and Workers' Compensation (Dust Diseases) Board

3.1 Publication of transcript

Resolved, on the motion of Mrs Mitchell: That the Committee publish the transcript of proceedings from the WorkCover hearing on Friday 28 March 2014, with the exception of the names of individuals named by Mr Villega and CFMEU witnesses, which are to remain confidential.

4. ***

5. Adjournment

The Committee adjourned at 3.15 pm until Thursday 1 May 2014, at the Nambucca Shire Council Chambers, Macksville for ***

Teresa McMichael
Clerk to the Committee

Minutes No. 35

Thursday 1 May 2014

Standing Committee on Law and Justice

Nambucca Shire Council Chambers, Macksville, 1.50 pm.

1. Members present

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell

Mr Moselmane

Mr Shoebridge

2. Participating members

Ms Cusack

3. Correspondence

The committee noted the following items of correspondence:

Received:

- ***
- 4 April 2014 – From Mr Ashley Wilson, Hearing Care Industry Association, to Director, providing answers to questions on notice to the WorkCover/Dust Diseases reviews
- ***
- 16 April 2014 – From Mrs Maree Stokes, Asbestos Disease Foundation of Australia Inc., to Committee, providing answers to questions on notice to the Dust Disease review
- 17 April 2014 – From Asbestos Diseases Foundation, to Senior Council Officer, providing answers to questions on notice to the Dust Diseases review
- ***
- 17 April 2014 – From Mr Dave Henry, Australian Manufacturing Workers Union, providing answers to questions on notice to the WorkCover/Dust Diseases reviews
- 23 April 2014 – From Ms Denise Fishlock, NSW Self Insurers Association Inc., to Director, providing answers to questions on notice to the WorkCover review
- 24 April 2014 – From Mr Brett Holmes, New South Wales Nurses and Midwives' Association, to Chair, providing answers to questions on notice to the WorkCover review
- 24 April 2014 – From Mr Kim Garling, WorkCover Independent Review Office, to Director, providing answers to questions on notice to the WorkCover review
- 24 April 2014 – From Ms Sherri Hayward, CFMEU, to Director, providing answers to questions on notice to the WorkCover review
- 24 April 2014 – From Ms Eva Urban, Suncorp, to Director, providing answers to questions on notice to the WorkCover review
- 24 April 2014 – From Mr Craig Milton, NSW Business Chamber, to Director, providing answers to questions on notice to the WorkCover review
- 24 April 2014 – From Mr Shay Deguara, Unions NSW, to Director, providing answers to questions on notice to the WorkCover review.

Sent:

- ***

4. Previous minutes

Resolved, on the motion of Mr MacDonald: That draft minutes nos. 33 and 34 be confirmed.

5. ***

6. ***

7. **Reviews of the WorkCover Authority of NSW and Workers' Compensation (Dust Diseases) Board**

7.1 Public submissions

The committee noted that the following submissions to the WorkCover Review were published by the committee clerk under the authorisation of an earlier resolution: submission nos. 40 and 40a.

7.2 Partially confidential submission

Resolved, on the Mr Moselmane: That the committee authorise the publication of submission no. 41 with the exception of the name and other identifying details of the author which are to remain confidential.

8. ***

9. **Adjournment**

The committee adjourned at 5.40pm until Friday 2 May 2014 at 9.00am ***

Teresa McMichael
Clerk to the Committee

Minutes No. 37

Monday 12 May 2014

Standing Committee on Law and Justice

Macquarie Room, Parliament House, 8.55 am

1. **Members present**

Mr Clarke, *Chair*
Mr Primrose, *Deputy Chair*
Mr MacDonald
Mrs Mitchell
Mr Shoebridge

2. **Apologies**

Mr Moselmane

3. **Participating members**

Ms Cusack

4. ***

5. **Reviews of the WorkCover Authority of NSW and Workers' Compensation (Dust Diseases) Board**

5.1 Public hearing

Witnesses, the media and the public were admitted.

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

The following witnesses, who were sworn under a previous oath, were examined:

- Mr John Watson, General Manager, Work Health and Safety, WorkCover Authority of NSW
- Ms Carmel Donnelly, General Manager, Strategy and Performance, Safety, Return to Work and Support
- Mr Gary Jeffrey, Acting General Manager, Workers Compensation Insurance Division, WorkCover Authority of NSW

- Mr Michael Playford, Consulting Actuary and Partner, Pricewaterhouse Coopers and Scheme actuary for Workers Compensation Nominal Insurer Scheme.

Mr Playford tendered the following documents:

- correspondence from Mr Michael Playford, Partner, PricewaterhouseCoopers to Mr Chris Koutoulas, Acting Director of Claims, Safety, Return to Work and Support Division, WorkCover NSW regarding the potential impact of *Goudappel v ADCO Constructions Pty Ltd*, dated 14 April 2014
- document entitled 'Workers Compensation Nominal Insurer Scheme: Valuation results as at 31 December 2013'.

The evidence concluded and the witnesses withdrew.

6. ***

7. Correspondence

Received:

- 24 April 2014 – From Mr Adam Grumley, Injured Workers Support Network, to Director, providing answers to questions on notice to the WorkCover review
- 28 April 2014 – From Ms Janet Chan, Injured Workers Support Network, to Director, providing answers to questions on notice to the WorkCover review
- 28 April 2014 – From Ms Sherri Hayward, CFMEU, to Director, providing answers to questions on notice to the WorkCover review
- 28 April 2014 – From Ms Carmel Donnelly, Safety, Return to Work and Support, to Director, providing answers to questions on notice to the WorkCover review
- 30 April 2014 – From the Hon Dominic Perrottet MP, Minister for Finance and Services, to Chair, confirming the appearance of WorkCover Authority representatives at the committee's hearing on 12 May for the WorkCover review
- 1 May 2014 – From Mr Alastair McConnachie, NSW Bar Association, to Director, providing answers to questions on notice to the WorkCover review
- 2 May 2014 – From Ms Emily Mitchell, Australian Lawyers Alliance, to Committee, providing answers to questions on notice to the WorkCover review
- 5 May 2014 – From Ms Carmel Donnelly, Safety, Return to Work and Support Division, to Director, providing answers to questions on notice to the Dust Diseases review
- 5 May 2014 – From Ms Ros Everett, Law Society of New South Wales, to Committee, providing answers to questions on notice to the WorkCover review
- 7 May 2014 – From Ms Carmel Donnelly, Safety, Return to Work and Support, to Director, providing answers to additional supplementary questions to the WorkCover review
- 7 May 2014 – From *** to committee, regarding changes to the Workers Compensation Scheme.
- 12 May 2014 – From Mr Kim Garling, Workplace Independent Review Office to Director, regarding an answer to a question on notice from WorkCover.

Resolved, on the motion of Mr MacDonald: That the committee keep the correspondence from *** confidential.

Sent:

- ***

8. Reviews of the WorkCover Authority of NSW and Workers' Compensation (Dust Diseases) Board

8.1 Tendered document

Resolved, on the motion of Mr Shoebridge: That the committee accept and publish the following documents tendered during the hearing on 12 May 2014:

- correspondence from Mr Michael Playford, Partner, PricewaterhouseCoopers to Mr Chris Koutoulas, Acting Director of Claims, Safety, Return to Work and Support Division, WorkCover NSW regarding the potential impact of *Goudappel v ADCO Constructions Pty Ltd*, dated 14 April 2014, tendered by Mr Michael Playford
- document entitled 'Workers Compensation Nominal Insurer Scheme: Valuation results as at 31 December 2013', tendered by Mr Michael Playford.

8.2 Public submission

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of supplementary submission no. 34a.

8.3 Partially confidential submissions

Resolved, on the motion of Mrs Mitchell: That the committee authorise the publication of submission nos. 42 and 43 with the exception of names and personal details of third parties which are to remain confidential.

8.4 Answers to questions on notice

Resolved, on the motion of Mr MacDonald:

- That the committee:
 - authorise the publication of the CFMEU answers to questions on notice received on 24 April 2014,
 - authorise the publication of the CFMEU answers to questions on notice received on 28 April 2014, with the exception of identifying details of third parties which are to remain confidential,
 - keep the attachments to the CFMEU answers to questions on notice received on 24 and 28 April 2014 confidential as they contain identifying details of third parties.
- That the committee keep the attachments to the answers to questions on notice received from the Injured Workers Support Network confidential as they contain personal details of third parties.

9. ***

10. Adjournment

The committee adjourned at 2.15 pm until Monday 2 June 2014.

Teresa McMichael
Clerk to the Committee

Minutes No. 38

Monday 2 June 2014

Standing Committee on Law and Justice

Room 1254, Parliament House, 8.55 am

1. Members present

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell (*via teleconference*)

Mr Shoebridge

2. Apologies

Mr Moselmane

3. Participating members

Ms Cusack (*from 11.18 am, via teleconference*)

4. *****5. Previous minutes**

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 37 be confirmed.

6. Correspondence***Received:***

- 8 May 2014 – From Mr Tom Fallow, private citizen, to Chair, expressing concern over WorkCover funding changes to hearing aids
- ***
- 13 May 2014 – From Mr Robert A’Court, private citizen, to Chair, supporting Hearing Care Industry Association submission regarding WorkCover funding changes to hearing aids
- 13 May 2014 – From Mr Russell Fletcher, private citizen, to Chair, supporting Hearing Care Industry Association submission regarding WorkCover funding changes to hearing aids
- 13 May 2014 – From Ms Jen Osborne, private citizen, to Chair, supporting Hearing Care Industry Association submission regarding WorkCover funding changes to hearing aids
- 13 May 2014 – From Mr David Reid, private citizen, to Chair, supporting Hearing Care Industry Association submission regarding WorkCover funding changes to hearing aids
- 13 May 2014 – From Mr Geoff Trist, private citizen, to Chair, supporting Hearing Care Industry Association submission regarding WorkCover funding changes to hearing aids
- 13 May 2014 – From Mr Robert Chislett, private citizen, to Chair, supporting Hearing Care Industry Association submission regarding WorkCover funding changes to hearing aids
- 16 May 2014 – From Mr Frank Rice, private citizen, to Chair, supporting Hearing Care Industry Association submission regarding WorkCover funding changes to hearing aids
- 19 May 2014 – From Mr Steve Turner, PSA, providing answers to questions on notice from 21 March hearing to the WorkCover/Dust Diseases Board review
- ***
- 22 May 2014 – From G Chilcott, private citizen, to Chair, supporting Hearing Care Industry Association submission regarding WorkCover funding changes to hearing aids
- 22 May 2014 – From K Foster, private citizen, to Chair, supporting Hearing Care Industry Association submission regarding WorkCover funding changes to hearing aids
- 22 May 2014 – From Mr Luca Bisegna, private citizen, to Chair, supporting Hearing Care Industry Association submission regarding WorkCover funding changes to hearing aids
- ***
- 29 May 2014 – From Ms Jennifer Henderson, private citizen, to Chair, supporting Hearing Care Industry Association submission regarding WorkCover funding changes to hearing aids
- 29 May 2014 – From the Hon Dominic Perrottet MP, Minister for Finance and Services, to Director, confirming attendance of representatives from Safety, Return to Work and Support at 2 June 2014 meeting.

Sent:

- ***
- 20 May 2014 – From the Chair to Ms Carmel Donnelly, Safety, Return to Work and Support, to Director, providing additional supplementary questions to the WorkCover review.

7. Review of the WorkCover Authority of NSW

7.1 Correspondence regarding hearing aids

The committee noted that it had received numerous letters from people expressing support for the Hearing Aid Industry Association's submission, and that as the closing date for submissions to the WorkCover review was 11 January, the secretariat has treated these letters as correspondence rather than processing them as submissions.

8. ***

9. Adjournment

The committee adjourned at 12.10 pm until Friday 27 June 2014.

Teresa McMichael
Clerk to the Committee

Minutes No. 39

Thursday 28 August 2014

Standing Committee on Law and Justice

Room 1254, Parliament House, Sydney, 9.40 am

1. Members present

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell

Mr Moselmane (until 1.11 pm)

Mr Shoebridge

2. Review of the Dust Diseases Board – consideration of Chair's draft report

2.1 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Review of the exercise of the functions of the Workers' Compensation (Dust Diseases) Board* which, having been previously circulated, was taken as being read.

Chapter 2

Resolved, on the motion of Mr Primrose: That paragraph 2.21 be amended by omitting 'customers' and inserting instead 'people'.

Resolved, on the motion of Mr Primrose: That paragraph 2.70 be amended by inserting at the end: 'The committee believes that it would be in the public interest to ensure that the expertise and experience of Board members is retained'.

Chapter 3

Mr Primrose moved: That paragraph 3.22 be amended by:

- a) omitting 'However, we will keep a watching brief on this issue'
- b) inserting the following recommendation after paragraph 3.22:

'Recommendation X

That the NSW Government consider gazetting a higher limit for medical expenses for dust diseases under s 61(3) of the *Workers Compensation Act*.'

Question put and negatived.

Resolved, on the motion of Mr Shoebridge: That paragraph 3.26 be amended by omitting 'is in the best interest' and inserting instead 'may be in the best interest'.

Mr Primrose moved: That paragraph 3.26 be amended by omitting 'However, the current structure of the agency and its governance arrangements with the Safety, Return to Work and Support Division suggests that it may be in the best interests of the board's clients that the chair remain an employee of WorkCover to ensure accountability for operational matters such as staffing and funding.'

Question put and negatived.

Resolved, on the motion of Mrs Mitchell: That:

- a) the draft report, as amended, be the report of the committee and that the committee present the report to the House
- b) the transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry be tabled in the House with the report
- c) upon tabling, all transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry not already made public, be made public by the committee, except for those documents kept confidential by resolution of the committee
- d) the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- e) the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee
- f) dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting
- g) the report be tabled by no later than Friday 5 September 2014.

3. ***

4. **Adjournment**

The committee adjourned at 2.05 pm until 7.45 am, Friday 29 August 2014, Terminal 3, Sydney Airport (Inquiry into the family response to the murders in Bowraville)

Teresa McMichael
Clerk to the Committee