

# 2021 Review of the Dust Diseases Scheme

Submission to the NSW Legislative Council Standing  
Committee on Law and Justice

11 November 2021



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## Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.<sup>1</sup>

The ALA office is located on the land of the Gadigal of the Eora Nation.

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<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au).

## Introduction

1. The ALA welcomes the opportunity to have input into the 2021 Review of the Dust Diseases Scheme being undertaken by the Standing Committee on Law and Justice ('the Committee').
2. The ALA has made submissions to the previous reviews of the Dust Diseases Scheme undertaken by the committee in 2018 and 2019.

## Definition of Dust Disease

3. In its 2018 submission the ALA stated that the list of diseases in Schedule 1 of the *Workers' Compensation (Dust Diseases) Act 1942* ('the Act') requires updating. This has still not been done. While there are 14 dust diseases listed in Schedule 1, almost all compensation recipients suffer from just five of those diseases, those being the asbestos related diseases and silica-related diseases.
4. In the previous 2017 review several submissions called for a review of the definition of a dust disease covered by the Scheme. The ALA submits that the definition should be extended to include such diseases as occupational asthma including reactive airways dysfunction syndrome (RADS), dust-induced pulmonary fibrosis, chronic obstructive pulmonary disease (COPD) related to dust, fume and mist exposure. The ALA supports widening the definition to the catchall definition as covered by the *Dust Diseases Tribunal Act 1989*. This was discussed in the 2017 review at length and was highlighted in submissions made at the time, including by the Thoracic Society.<sup>2</sup>

## Incidence of silicosis in NSW

5. The ALA acknowledges the positive initiatives developed as a result of Safework NSW's Dust Strategy 2020-2022, including the awareness education and the development of the NSW Dust Disease Register.

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<sup>2</sup> Thoracic Society of Australia and New Zealand (2017), *Submission to the NSW Legislative Council's Standing Committee Regarding the First Review of the Dust Diseases and Lifetime Care and Support Schemes*, available online at <https://www.parliament.nsw.gov.au/lcdocs/submissions/57597/0004%20The%20Thoracic%20Society%20of%20Australia%20and%20New%20Zealand.pdf>

6. In its 2019 submission the ALA recommended that all employees in NSW in the manufactured stone industry be offered free lung screening for the first round of screening. The ALA restates this and repeats that there should be no costs for the first round of screening.

## **Continuing concerns regarding iCare scheme**

7. The following details the ALA's continuing concerns regarding the iCare scheme, which were stated in our 2018 submission.

### **Awareness of entitlement to funding for support services**

8. The ALA is concerned that as the overwhelming majority of recipients of compensation under the Act are elderly people, many are unaware of their potential entitlement to the provision of services such as lawn mowing and gardening paid for by the Authority. A person whose recognised level of disablement is 15% or more may qualify for the provision of such services as well as paid nursing care and related services. Where the recipient has a malignant and terminal condition, the need for such services is an inevitable consequence of the progression of the disease and so the person will ultimately find out, one way or another, that the Authority will pay for such services. However, a person with a benign condition often remains ignorant of the fact that he or she can apply to the Authority for the provision of services. While it is true that information published by the Authority makes the existence of these services plain, it is often the case that elderly persons do not read or comprehend the material for one reason or another.
9. The ALA recommends that the Authority review the claim of each compensation recipient with a level of disability of 15% or more to proactively determine if they have a need for such services.

### **Compensation payments treated as income by Services Australia**

10. Given that the overwhelming majority of recipients of compensation under the Act are elderly people, many are retired working people of limited means. Almost all are in receipt of the Age Pension. Periodic compensation payments paid by the Authority to the recipient are treated as income by Services Australia. Consequently, there is a reduction in Services Australia benefit received by the compensation recipient. This leads to the situation where the compensation awarded by the Authority is of no practical benefit to the recipient in many

cases. In fact, it increases the burden on the recipient because they now have income from two sources and must satisfy the administrative requirements of both.

11. The ALA considers that this issue should be considered by the state and federal governments. Given the low number of people receiving compensation under the Act, consideration could be given to 'quarantining' the periodic compensation paid from the income test used by Services Australia or making periodic payments of compensation tax-free. Such initiatives would result in compensation payments being just that: compensation.
12. In addition, when elderly workers already in receipt of a Services Australia age pension receive periodic compensation payments paid by the Authority, this may result in the cancellation of their age pension. This results in them losing their pensioner concession card which entitles them to a range of concessional benefits including public transport concessions, concessional rebates on their council and water rates, and reductions on car registration fees and the like. As a result they are at risk of incurring significant financial penalties merely by virtue of the fact that their age pension has been replaced by the periodic compensation payment from the Authority.

## Conclusion

13. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the 2021 review of the Dust Diseases Scheme conducted by the Standing Committee. The ALA would also welcome the opportunity to appear before the Committee at the scheduled hearing for this inquiry.



**Joshua Dale**  
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**Australian Lawyers Alliance**