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9 April 2026

Dear Colleagues

Re Joint submissions on the operation of the Workers' Compensation and Injury Management Act 2023 (the Act). (Formal parts omitted)

We thank you for the invitation to provide submissions and feedback on the operation of the Workers Compensation and Injury Management Act 2023 (the Act) as set out in the consultation paper dated February 2026.

Whilst the consultation paper seeks public comment on eight (8) defined issues1 (Defined Issues), we note that WorkCover WA also seeks feedback on any proposal considered necessary to ensure the Act operates as intended (General Issues).

Our submission below addresses both the Defined Issues and General Issues as requested & permitted in discussion with CEO Chris White, Senior policy Officer Kevin Gillingham and Minister McGurk.
The authors and signatories to this submission consist of the following:

- Melita Markey CEO The Asbestos Disease Society of Australia Inc;
- Jonathan Walsh, Specialist Dust Diseases Lawyer and Chair of the Australian Lawyers' Alliance Dust Diseases Special Interest Group.
- Transport Workers Union WA;
- Australian Manufacturers Workers Union WA;
- Marco Tedeschi, Barrister [redacted]
- Electrical Trades Union WA Letter of Support Direct to WorkCover.

Together, the above coalition represents a large proportion of patients who suffer from asbestos and other dust related diseases and at-risk workers in affected industries. We represent and speak for the workers and patients of these terrible and long-term diseases and provide you with their, and our, lived experience of the WA workers compensation scheme, and the issues that arise.

[1] Page 2 of the Consultation Paper

We look forward to your response regarding the concerns and issues raised in our joint submission.

Submissions

1. **Issue 1: First Certificate of Capacity Requirement for Retired Workers**

1.1 The first certificate under the WA workers' compensation scheme is the initial Certificate of Capacity for Work, issued by a medical practitioner, confirming a work-related injury or disease and the worker's capacity for work (**First Certificate**). It is the medical document that activates entitlement to compensation.

1.2 For at least the 40-year period prior to July 2025, WorkCover WA practically exempted retired workers who suffer from a dust disease from providing a first certificate for two main reasons:

(a) Retired workers are not, in fact, "workers" as defined by the Act; and

(b) Obtaining the First Certificate imposes an unnecessary financial and practical burden on retired workers to attend upon their medical practitioner or specialist to obtain both the certificate and the supporting medical evidence including CT scanning and lung function testing.

1.3 Notwithstanding the wholly reasonable and pragmatic reasons for exempting retired workers affected by a dust disease prior to the amendments to the Act, WorkCover WA now presses that all applications, working or retired, obtain a first certificate to support their claim. This has caused retired workers prejudice and hardship due to the cost and time taken to obtain such a certificate and the underlying supporting evidence.

1.4 A cursory inquiry into the associated costs of obtaining a First Certificate reveals that:

(a) A standard consult with a Respiratory Physician costs approximately between $198 and $268 after the Medicare rebate; and

(b) A non-contrast CT scan costs approximately $223 to $473 after the Medicare rebate.

1.5 When coupled with the cost of travel, parking and other associated costs, the cost implications for retired workers very quickly becomes overwhelming. Whilst it is true that pensioners receive discounted rates for medical appointments, such appointments must be scheduled at public hospitals, which often means very long waiting times upwards of 6-9 months.

1.6 Further, and separate to the cost and time taken to obtain a First Certificate, the authors can cite numerous examples of occasions when workers and retired workers have confronted barriers from the medical profession when attempting to obtain a first certificate. These barriers take the form of a general and pervasive reluctance by many WA GPs to complete First Certificates in all cases except for mesothelioma. For example, we have a number of examples of cases in which workers have been diagnosed with silica induced lung fibrosis (silicosis or diffuse dust fibrosis) and a GP has refused to complete the certificate thus forcing the worker (including retired worker) into a costly and time-consuming process of consulting with a Respiratory Physician.

1.7 WorkCover WA's revised position on the requirement and need for First Certificates has, as we understand it, been influenced by the Western Australian Court of Appeal decision of *Neville v Choice One Pty Ltd* [2024] WASCA 104. The decision of *Neville* essentially reinforces the need for uniformity across the board when it comes to elections by workers to pursue either workers' compensation or common law damages. However, given the high cost, delays and associated stress that workers, especially retired workers, must face in order to have their application for a dust disease determined by the DDMP, we urge WorkCover WA to exempt workers (especially retired workers) with a dust disease from the requirement to obtain a first certificate.

Recommendation 1: WorkCover WA exempts workers with a dust disease from the requirement to obtain a first certificate of capacity.

2. Issue 2: Medical evidence required by the Dust Diseases Medical Panel (DDMP)

2.1 Over the past 2 years, we have become concerned with the increasing requests by the DDMP for workers (especially retired workers) to obtain costly medical reports in order to support their workers' compensation applications. Specifically, the DDMP has consistently required that workers, especially retired workers, obtain a CT scan and lung function test of no later than 6 months in age in order for their application to be considered by the DDMP.

2.2 Closely related to Issue 1, the significant time and cost imposed on workers, who are mostly retired, to incur and re-incur significant medical and related costs simply to have their claim assessed by the DDMP presents a significant and prejudicial barrier to workers to access basic workers' compensation.

2.3 In our view, however, there is a simple solution.

2.4 Broadly, when an NSW worker, including a retired worker, applies for workers' compensation entitlements with iCare Dust Diseases Care (**iCare DDC**), iCare DDC undertakes the following steps:

(a) Obtains and reviews the workers' medical records;

(b) In the absence of up to date radiology or lung function testing (generally within the past 12 months), arranges and pays for the worker to obtain High Resolution CT scan and spirometry, including reasonable travel and accommodation costs for those living in regional and remote areas;

(c) If the worker has not seen a Respiratory Specialist, arranges and pays for the worker to consult with a Respiratory Specialist;

(d) If the worker does not provide a work history statement at the time of applying for entitlements, arranges a telephone consult and thereafter generates a "industrial history" statement as proof of exposure history;

(e) Provides the above evidence to the three member "Medical Assessment Panel" (**MAP**) for determination. Currently the MAP meets once per month to determine applications. In addition, the MAP is comprised of a "Worker" representative and an "Employer" representative so that the interest of worker and employer are equally addressed, and aligned;

(f) If the worker is still in employment and the workers' application is rejected, iCare DDC arranges a follow up with the worker in 12 month intervals at no cost to the worker, including providing and paying for updated CT scans (usually every 2 years); and

(g) If the worker is retired and the workers' application is rejected, the retired worker is invited to apply again at a future time.

2.5 What is clear is that iCare DDC incurs the cost of assessing the worker for entitlements. It does not, like in WA, require the workers to self-fund their own application.

2.6 Similar to iCare DDC, upon application by a QLD worker, including a retired worker, WorkCover Queensland (**WCQ**):

(a) Obtains and reviews the workers' medical records;

(b) If there is no up to date radiology or lung function testing (generally within the past 12 months), arranges and pays for the worker to obtain High Resolution CT scan and spirometry , including reasonable travel and accommodation costs for those living in regional and remote areas;

(c) If the worker has not seen a Respiratory Specialist, arranges and pays for the worker to consult with a Respiratory Specialist for the purposes of accepting or rejecting the claim and for the purposes of having their degree of permanent impairment assessed;

(d) If the worker has seen a Respiratory Specialist, arranges and pays for a permanent impairment assessment undertaken by the treating Respiratory Specialist for the purposes of accepting or rejecting the claim and for the purposes of having their degree of permanent impairment assessed;

(e) If the worker does not provide a work history statement at the time of applying for entitlements, arranges a telephone consult to obtain details of their exposure history; and

(f) Upon acceptance, workers medical expenses are fully covered until their degree of permanent impairment is assessed.

2.7 Again, unlike WA, WCQ incurs the cost of assessing the worker for entitlements. It does not, like in WA, require the workers to self-fund their own application.

2.8 Self-evidently, the NSW and QLD systems are both reasonable and supportive of workers, especially retired workers, who suffer from dust related conditions. There is no cost to the worker for applying for entitlements, including where they have no contemporaneous medical evidence to support their claim.

Recommendation 2: WorkCover WA, or the underlying private insurer, funds the cost of all medical reports requested by the DDMP for workers who apply to the panel for certification of their dust disease.

3. Issue 3: The removal of the "election" mechanism for workers

3.1 Under the 1981 Act, an injured worker faced a formal statutory election once certain thresholds were met. The worker was required to choose between:

(a) Remaining in the statutory compensation system, or

(b) Electing to pursue common law damages against the employer.

3.2 Once made, the election was typically final and irrevocable. This election framework was central to the operation of the former scheme and was expressly embedded in the legislation. The WCIM Act 2023 however, abolishes the election system altogether and replaces it with a voluntary, regulated Settlement Agreement process. A Settlement Agreement is, in this context, a:

(a) negotiated resolution of a workers' compensation claim;

(b) a resolution which may commute part or all of a worker's statutory entitlements to a lump sum; and

(c) (importantly) only takes effect once registered and approved by WorkCover WA.

3.3 Since inception, difficulties and delays have been experienced due to the relevant WorkCover WA case officers making or requiring amendments to Settlement Agreements. These amendments were often inconsistent with the legislative requirements. For example, erroneous amendments often related to s117 of the Act which stipulates the day on which dust disease injury is suffered. An amendment of this nature can require the Agreement to be returned to claimants for re-execution who often cannot attend in person due transport difficulties, illness and cost. Moreover, we have received feedback from numerous workers that the relevant case officers "negotiating" the settlement agreements are inexperienced, slow to act and lacking the necessary skills and acumen to advance a negotiation with sufficient speed.

3.4 Unlike the election process under the prior iteration of the Act, the new settlement process therefore presents a number of unintended yet material problems, including but not limited to:

(a) If the worker dies prior to the execution and/or registration of the settlement agreement, the settlement agreement is rendered null and void; and

(b) A process which is vulnerable to delay and administrative failure due to:

(i) inexperience of insurer personal preparing or processing agreements; and

(ii) absence of clear published guidelines regarding the settlement agreement process (for both worker and insurer) leading to inconsistent outcomes;

Recommendation 3: That the settlement agreement process be urgently revised to take account of and make adjustments for the unique requirements of workers with dust diseases.

4. Issue 4: The profound inadequacy of the DDMP "accepted" injuries list

4.1 The current list of "accepted injuries" recognised by the Western Australian Dust Diseases Medical Panel (**DDMP**) is unduly narrow, medically outdated, and administratively prejudicial to workers suffering from dust-related disease. Its limited

scope operates contrary to both the purpose and intent of the Western Australian workers' compensation scheme.

4.2 At present, the DDMP recognises only the following conditions:

(a) Pneumoconiosis or silicosis (any mineral dust)

(b) Mesothelioma (exposure to asbestos)

(c) Lung cancer (exposure to asbestos)

(d) Diffuse pleural fibrosis (exposure to asbestos, but only if diagnosed after 2009)

4.3 This list is extraordinarily narrow. It captures only a small subset of dust-related diseases and focuses disproportionately on asbestos exposure, despite the increased incidence of silica-related disease across multiple industries in Western Australia, including construction, mining, engineered stone fabrication, and manufacturing.

4.4 The effect is not merely administrative; it is substantive. Workers suffering from serious, life-altering, and sometimes fatal dust-induced diseases are excluded from the specialist dust disease framework altogether.

4.5 Even within its already limited scope, the DDMP adopts a conservative and restrictive interpretation of its accepted injuries. This approach sits uneasily with the beneficial and remedial purpose of workers' compensation legislation in Western Australia, which is intended to provide protection, certainty, and expedited compensation for workers injured in the course of their employment.

4.6 Rather than functioning as a gateway to specialist recognition and streamlined entitlements, the DDMP framework has become a barrier—filtering out legitimate claims on technical or definitional grounds that are misaligned with contemporary medical understanding.

4.7 The deficiencies of the DDMP are made particularly clear when compared to the iCare DDC scheme, which recognises a far broader range of dust-related pathologies, including:

(a) Aluminosis;

(b) Asbestosis and asbestos-induced carcinoma;

(c) Asbestos-related pleural diseases;

(d) Bagassosis, Berylliosis and Byssinosis;

(e) Coal dust pneumoconiosis;

(f) Diffuse dust pulmonary fibrosis;

(g) Farmer's lung;

(h) Hard metal pneumoconiosis;

(i) Hypersensitivity pneumonitis;

(j) Mesothelioma;

(k) Pneumoconiosis (any form);

(l) Silica-induced carcinoma of the lung;

(m) Silicosis and silico-tuberculosis;

(n) Systemic sclerosis;

(o) Talcosis; and

(p) Any pathological condition of the lungs, pleura or peritoneum caused by dust exposure.

4.8 This inclusive approach reflects a proper understanding of dust diseases as a spectrum of related conditions—many of which share overlapping mechanisms of injury, latency periods, and progressive trajectories.

4.9 By contrast, Western Australia's DDMP framework lags far behind, both clinically and administratively. In comparison, its limitations are, with respect, embarrassingly apparent.

4.10 Of particular concern is that the DDMP accepted injuries list does **not** cover:

(a) Silica-induced lung cancer, despite overwhelming medical evidence establishing silica as a Group 1 carcinogen since 1997;

(b) Dust-induced COPD and emphysema, conditions well recognised in occupational and respiratory medicine;

(c) Dust-induced occupational asthma, a common and debilitating condition among exposed workers; and

(d) Silica-induced autoimmune and systemic conditions, including sarcoidosis, scleroderma, and rheumatoid arthritis.

4.11 The exclusion of these conditions is medically indefensible. The connection between occupational dust exposure—particularly respirable crystalline silica—and these diseases is no longer medical and scientifically controversial. It is well documented, widely accepted, and increasingly reflected in international diagnostic and compensation frameworks.

4.12 The accepted injuries list has not kept pace with advances in medical and scientific knowledge. Over the past two decades, research has dramatically expanded our understanding of how dust exposure contributes not only to classical pneumoconiosis but also to malignancy, obstructive lung disease, hypersensitivity reactions, and systemic autoimmune conditions.

4.13 A compensation framework that fails to evolve alongside this knowledge is, by definition, unfit for purpose. It undermines confidence in the scheme, erodes worker protections, and exposes the system to inequitable and inconsistent outcomes.

4.14 The consequences of these limitations are severe and tangible. Workers whose conditions fall outside the DDMP's narrow definitions are forced into the general workers' compensation scheme, where they:

(a) Do not benefit from the specialist medical assessment pathway provided by the DDMP;

(b) Experience significantly slower claim determination and dispute resolution; and

(c) Are deprived of the protections and entitlements specifically designed for dust disease sufferers.

4.15 In effect, two workers with functionally identical dust-induced impairments may receive radically different treatment and entitlements based solely on whether their diagnosis happens to appear on an artificially constrained list. This inequity is fundamentally inconsistent with the principles of fairness, accessibility, and worker protection that underpin the WA workers' compensation system.

4.16 There is no principled justification for maintaining such a restricted and outdated accepted injuries list. Expanding the DDMP framework would not represent a radical departure but rather a necessary alignment with established medical science and interstate best practice.

4.17 Reform should ensure that the WA DDMP recognises the full spectrum of dust-related diseases in line with the DDC.

4.18 Failure to act perpetuates injustice, delays treatment and compensation, and leaves Western Australian workers demonstrably worse off than their interstate counterparts. Expansion of the DDMP accepted injuries list is not merely desirable—it is essential.

Recommendation 4: The DDMP accepted injuries list be immediately expanded to include all injuries currently accepted by the equivalent scheme in NSW.

5. Issue 5 - the need to abolish time limits and common law thresholds for dust diseases

5.1 In considering the operation of the Act, it is neither possible nor appropriate to disregard—or compartmentalise—the broader consequences of the compensation framework governing dust diseases. Against that backdrop, the imposition of limitation periods and whole-person impairment thresholds for access to common law damages has long been a source of disquiet for West Australian workers, particularly when contrasted with the more progressive regimes operating in the Eastern States.

5.2 In New South Wales, Queensland and the Northern Territory, there is:

(a) No statute of limitation period imposed on any dust disease sufferer within which they must file a claim in court to pursue damages against a tortfeasor; and

(b) No threshold (defined by degree of whole person impairment or otherwise) with which a dust disease sufferer must be afflicted by in order to pursue common law damages.

5.3 The above position reflects an understanding by the respective legislatures that dust diseases have a long latency period between exposure and diagnosis, dust diseases have an unpredictable course of progression and dust diseases are often

difficult to diagnose clearly in the initial stages of the disease process. This position is so irrespective of whether the person was exposed to the toxic dust in employment or non-employment context. Accordingly, a pragmatic approach was taken in these jurisdictions to exempt all dust diseases from being subject to the strict time limits imposed on contemporaneous personal injuries. It is recognised both good law and good policy.

5.4 However, the same cannot be said for Western Australia.

5.5 In WA, a dust disease sufferer is subject to a limitation period in which a sufferer must file a claim within 3 years[2] of:

(a) becoming aware they have sustained a material (not trivial) injury consistent with a dust disease; or

(b) experiences the first clinical sign or manifestation consistent with having sustained such an injury.

5.6 In addition, for dust disease sufferers who disease is caused as a result of employment exposure, they must additionally:

(a) suffer from at least 15% whole person impairment; and

(b) elect to pursue common law damages rather than receive workers' compensation.

5.7 Whilst provisional damages were introduced for subsequent dust diseases in 2024[3] to partially bring WA into line with some of the Eastern States, WA continues to lag behind when it comes to addressing time limits and common law thresholds.

5.8 The current state of WA law presents a significant prejudice to dust disease sufferers when one examines the following examples:

(a) In 2025, a 50-year-old former mine worker diagnosed with radiological silicosis but with nil disability is medically advised by his Respiratory Physician to cease work in mining as further exposure to silica dust would serve only to worsen his disease. The worker is further advised that his disease will progress slowly and will only likely reach 15% impairment by the age of 70 years (if at all). As a Pilbara FIFO miner, the worker was earning $165,000.00 per year. With limited transferrable skills, the worker obtains subsequent employment as a security guard in Perth earning $80,000.00 per year. Under current WA law, notwithstanding that his silicosis was negligently caused by his former mining employer and he has suffered a 50% reduction in his economic earning capacity, the worker:

(i) is unable to sue for common law damages against his employer because he does not reach the 15% threshold; and

[2] The 3 year limitation period can be extended under specific circumstances but only up to a maximum of 3 further years.

[3] A subsequent dust disease is a different diagnosable disease arising from the same exposure, for example:

- mesothelioma following asbestosis;
- pleural disease followed by mesothelioma.

These claims may be commenced at any time, regardless of how long has passed since exposure or the first disease.

(ii) if he delays filing proceedings until such time as he reaches 15% impairment, then his claim will be statute barred as he did not commence a claim (and elect to pursue damages) within 3 years of becoming aware of his silicosis; and

(b) In 2020, a then 67-year-old recently retired quarryman was told by his Respiratory Physician that he had developed COPD as a result of his work in quarries and partially as a result of his historic smoking habit. He was further told that whilst the impairment was 5%, which explained his daily cough and some breathlessness on exertion, his disease may progress as he aged. Thinking that as he retired, the worker didn't think he could bring any type of compensation claim, particularly where his injury was partially related to his smoking habit. In retirement, the worker managed his home, tending daily to the needs of his pets and upkeep of his property. However, due to his worsening COPD, by 2026, at the age of 73, the worker could no longer tend to the needs of his home and needed help with food shopping, cleaning his home and driving any significant distances to see his grandchildren. Under current WA law, notwithstanding that his COPD was negligently caused by his employer and he now suffers from significant disabilities as a result of his COPD, the worker:

(i) is statute barred from bringing a common law claim for damages against his former employer as he became aware 6 years earlier in 2020 that he has material (not trivial) dust related disease and that his breathless and cough was related to that disease; and

(ii) notwithstanding the information provided to him in 2020 by his Respiratory Physician in relation to his COPD, he was not in a position in any event to lodge a common law claim for damages as he did not, at that time, suffer from the required 15% whole person impairment.

5.9 There are of course many more examples of how the intersection of the statute of limitation and common law thresholds for workers significantly prejudice their compensation rights in WA. Unlike NSW, QLD and NT, WA does not adequately (or at all) recognise that dust diseases have a long latency period between exposure and diagnosis, dust diseases have an unpredictable course of progression and dust diseases are often difficult to diagnose clearly in the initial stages of the disease process. There is no defensible policy reason to not treat dust diseases as a special class of injury which should be exempt from the regular workers compensation regime.

5.10 The solution, if course, is simple: for dust diseases, abolish time limits and common law thresholds.

Recommendation 5: For dust diseases, abolish time limits and common law thresholds in WA.

6. Issue 6: Survival of claims

6.1 Currently, if a worker with a dust disease resulting in a whole person impairment dies prior to their claim being finalised by an insurer, no entitlements are payable to that workers' estate.

6.2 This position is at starkly odds with other States and Territories. In QLD, for example, where a worker lodges a valid claim for terminal illness benefits with WorkCover QLD[4] and they subsequently die prior to the claim being determined, WorkCover QLD will nonetheless process the claim and pay entitlements to the workers' estate. In this way, Queensland recognises the unique nature of a dust disease, in particular a terminal dust disease, and has responded pragmatically and reasonably with a policy which is just.

6.3 The same cannot be said of the current Western Australian scheme. As presently constructed, it operates in a perverse and unjust manner, effectively penalising workers—and their families—who are diagnosed with severe dust diseases and who are gravely ill as a direct consequence of their employment. It is antithetical to principles of fairness and justice that an insurer may evade liability for reasonable and lawful entitlements simply because a worker succumbs to the very work-related injury for which the claim is made.

Recommendation 6: That workers' compensation entitlements survive a workers' death so long as a workers' compensation claim is lodged in their lifetime.

7. Issue 7: Common law damages for uninsured employers

7.1 A fundamental proposition is that the Default Insurance Fund was established to "provide a safety net for scheme and system risks". Moreover, the Act was intended to streamline and consolidate within the DIF the administrative and funding arrangements for liabilities associated with uninsured employers, insolvent insurers, self-insurers, and acts of terrorism.

7.2 However, there was no legislative intention that the creation of the DIF would have the effect of restricting or extinguishing dust disease sufferers' access to the common law safety net. Yet, this is precisely what we are seeing play out.

7.3 Section 267 of the Act (together with any related provisions) should be amended to make clear that the Default Insurance Fund (**DIF**) is liable to meet an uninsured employer's obligation to pay common law damages for any period during which the employer was uninsured, including periods predating 1 October 2011.

7.4 Any amendment to the Act that would expressly and deliberately exclude the DIF's liability for such uninsured periods would operate unjustly against dust disease sufferers, who ought to have equal and unfettered access to the common law as a fundamental safety net. The DIF should continue to respond to historical common law claims where the employer was uninsured and the relevant liability arose before 1 October 2011.

Recommendation 7: Amend section 267 of the Act (and any related provisions) to ensure that the DIF is liable to meet an uninsured employer's obligation to pay common law damages in respect of any worker with a dust disease for any period during which the employer was uninsured, including periods predating 1 October 2011.

[4] A valid claim is lodged when the worker submits a signed written application and a Incapacity Certificate, a document signed by the workers doctor which confirms diagnosis and that it is work related (in whole or in part)

We look forward to discussing our recommendation in the near future.

Melita Markey

Melita Markey

CEO Asbestos Diseases Society of Australia.