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icare

Assessment of the design effectiveness of the Dust Diseases Care Award Remediation Program Methodology

12 August 2021

# 1 Background

## 1.1 Background to the program

The Dust Diseases Scheme (DDS) is administered by icare and operates under the Workers' Compensation (Dust Diseases) Act 1942 (1942 Act) which is to be read together with the pre-2012 Workers Compensation Act 1987 (1987 Act).

In 2019, in order to prepare for a system build and the coding of entitlement amounts for compensation payments, a review was completed regarding the interpretation of the Dust Diseases Care (DDC) benefit entitlements provided for under the 1942 Act and 1987 Act and the calculations used by icare to determine compensation benefits.

icare have advised there are three types of issues which have been identified from this review that result in the miscalculation of compensation payments and were caused by an incorrect interpretation of the 1942 Act. The issues identified are:

1. Underpayment of participants due to an incorrect rate being used for the first 26 weeks.
2. Overpayment of participants due to an incorrect rate being used.
3. Overpayment of participants due to dependent allowances being granted in error.

As a result, icare commenced the DDC Award Remediation Program (DDC Award Program or Program) in 2021, with the objective of remediating participants who have been underpaid as a result of the DDC Award miscalculation from 4 December 2014. At the time of our report, only participants who have been potentially underpaid will be subject to review, and remediation where applicable, as icare intends to pursue legislative change which will help address situations of overpayment.<sup>1</sup>

The DDC Award Program applies the following key remediation principles<sup>2</sup>:

- Participant centric – the aim of the remediation program is to do what is right and fair for the participant or their estates in the first instance.
- Adhere to icare's social and legislative duty – all remediation activities will be performed in accordance with social duty, regulatory requirements, expectations and obligations.
- Consistent and comprehensive – the reconciliation and remediation approach is consistent for all affected in scope participants.
- Overpayments will not be recovered – no effort will be made to recover historical overpayments to participants.
- Participant contact – reasonable efforts will be made to contact all impacted participants, including dependants of deceased participants.

## 2 Deloitte scope and approach

### 2.1 Scope

Deloitte (we or our) was appointed to assess the extent to which the DDC Award Remediation Program Methodology (DDC Award Methodology or Methodology), is considered appropriate, fair and timely as it relates to the remediation of underpaid DDC participants, or beneficiaries to the estate of deceased DDC participants, and to identify areas for improvement (as required). The scope of our work was limited to the services described as 'Phase 1: Review of the Methodology' in the engagement letter signed for and on behalf of icare on 11 June 2021 (the Engagement Letter) and to aspects of the design of the DDC Award Methodology that relates to potentially underpaid participants. Any subsequent changes to the Methodology could have an impact upon our conclusion. Our work is subject to the assumptions, conditions and limitations contained in the Engagement Letter and as described in this report.

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<sup>1</sup> DRAFT DDC Award Remediation Program methodology document, v0.4, 30 June 2021.

<sup>2</sup> Ibid.

## 2.2 Approach

In assessing the Methodology we used our standard procedures for assessing remediation methodologies which includes consideration of the following:

- The period of time covered by the DDC Award Program.
- How in scope participants would be identified.
- How assessments would be conducted to determine if an error occurred.
- How remediation calculations would be performed.
- How participants and/or their legal representatives would be contacted throughout the DDC Award Program.
- How participants and/or the beneficiaries of their estate would be paid where remediation was applicable.
- How workers could dispute the findings if they disagreed with the outcome.

Deloitte completed the following procedures in our review:

1. Obtained, read and assessed the document that sets out the Methodology and process.
2. Gained an understanding of the remediation approach through inquiry, including discussions with icare.

In determining whether the Methodology was appropriate, fair and timely, the following definitions have been applied in performing our work.

**Table 1: Assessment definitions**

Term	Definition
<b>Appropriate</b>	<p>The appropriateness of a methodology considers the extent that it is designed to effectively:</p> <ul style="list-style-type: none"><li>• identify and remediate participants impacted by the issue in question; and</li><li>• enable the achievement of other remediation program objectives.</li></ul> <p>Consideration of the extent that a program is appropriate gives consideration to the legal, regulatory and operational challenges. Consideration is also given to whether the methodology is “fair” and “timely” as defined below.</p>
<b>Fair</b>	<p>The fairness of a methodology considers whether reasonable steps will be taken to proactively identify and engage with participants impacted by the remediation issue; and that participants are treated in a manner that is timely, consistent, honest and with the necessary support to be remediated where required. Fairness is considered largely from the perspective of the participant.</p>
<b>Timely</b>	<p>The timeliness of a methodology considers whether the activities noted in the methodology are able to be conducted without unnecessary delay; and the stated period for any timebound steps or processes are considered reasonable.</p>

## 2.3 Our report is based on the following assumptions and conditions:

- Our work was based on information and artefacts provided to us by icare for the DDC Award Program.
- We have assumed that the information provided is true, correct and not misleading. If the information is untrue, incorrect or misleading then our work may be incorrect or inappropriate.

The scope of our work did not include the following:

- An end to end design assessment of icare’s business rules, work instructions and associated training materials against legal advice.
- An assessment of icare’s communications approach, specifically letter templates, email templates, call scripts and frequently asked questions (FAQs), as these were not finalised at the time of this Report.

- An assessment of icare’s calculators, payment policies, mechanisms and processes, as these were not finalised at the time of this Report.
- An assessment of icare’s unclaimed monies approach, as this was not finalised at the time of this Report.
- An assessment of business-as-usual (BAU) processes that will be adopted by the Program e.g. relating to the payment of remediation monies.
- An assessment of the skills and capabilities of staff at icare or any intended service provider.
- Any reperformance or assessment of any activities related to the execution of the Methodology (e.g. participant identification, assessment and calculation).
- Validation of the completeness and accuracy of any data relied upon by icare, e.g. data to identify in-scope participants or an assessment of the design of the data related quality controls e.g. pertaining to extraction and/or manipulation.
- Any interpretation of law. No legal opinions or tax advice are provided or can be assumed.

### 3 Deloitte conclusion

#### 3.1 Design assessment conclusion

Except for the findings noted in Section 3.2 below, at the date of this report we consider that the design of the DDC Award Methodology is appropriate, fair and timely, as it relates to the remediation of impacted underpaid DDC Award participants, based on the scope of our work, assumptions and limitations as set out herein.

Our assessment is based on the Methodology dated 30 June 2021. We understand the Methodology is substantively complete, however, any subsequent changes to the Methodology could have an impact upon our conclusion.

#### 3.2 Recommendations to improve appropriateness, fairness, and/or timeliness

Table 2: List of key findings and recommended actions

#	Finding	Recommended actions
1	<p><b>The scope of the Program and the remediation period</b></p> <p>It is acknowledged that the start date for the remediation period has been determined (i.e. 4 December 2014), and participants are in scope where:</p> <ul style="list-style-type: none"> <li>• Their first 26 weeks of benefits commenced after 4 December 2014.</li> <li>• Their first 26 weeks of benefits commenced prior to 4 December 2014 and continued after that date.</li> <li>• Their first 26 weeks of benefits completed prior to 4 December 2014 and the participant is still alive.</li> </ul> <p>Whilst the current justification for the remediation period is supported by legal advice and aligned with industry practice, it would be more appropriate to consider additional data led analysis to support the decision in determining the start date and/or any scoping decisions.</p>	<ul style="list-style-type: none"> <li>i) icare should explore the quality of their relevant and accessible data, including a sense-check of the file content, and use this analysis to support the decision on the start date of the Program and/or scoping of potentially impacted participants (prior to implementation of the Methodology). This analysis should be documented and recorded.</li> <li>ii) icare should commit to having a checkpoint following the implementation of the Methodology to review continued relevance, for example whether information is easier to obtain, of better quality than expected and/or whether the estates of deceased participants are more easily traced, which may in turn alter the current scope.</li> <li>iii) icare should undertake targeted analysis, when the time is right, that addresses whether the errors that gave rise to the DDC Award Program are no longer adversely impacting participants to the extent that would warrant further remediation action when determining the end date of the Program. In addition, icare could</li> </ul>

# Finding	Recommended actions
<p>For example, a participant who completed their first 26 week period on 30 November 2014 and died in March 2021 would be considered out of scope based on the current approach.</p> <p>At the time of our report the end date for the remediation period and Program had not been set.</p>	<p>consider performing a risk assessment to understand any updated processes and controls, and whether those controls are designed and operating effectively.</p> <p>iv) icare should determine the relevant actions and process steps for the circumstances where a participant/legal representative of a deceased participant that is not eligible for review (out of scope) contacts icare for a review. This should be documented accordingly to ensure fair and equitable treatment of all scheme participants.</p> <p>Refer also Finding 2.</p>
<p><b>2 Ongoing analysis of remediation outcomes should continue to inform future Methodology enhancements and/or alter initial scoping decisions</b></p> <p>It is understood that following a ‘go-live’ date, there will be a period of ‘hypercare’ where the solution will be closely monitored using designed controls. However, there is currently no commitment in the Methodology to undertake continued analysis of interactions with participants or their beneficiaries, or the outcomes of closed cases, to identify whether additional activities are required to be undertaken by the DDC Award Program. This may include adjustment to the scope and/or enhancements to the Methodology.</p> <p>It would be appropriate to include the ongoing consideration of any identified trends to ensure that any themes relevant to remediation are identified and actioned.</p>	<p>i) Together with recommended actions (i) and (ii) from Finding 1, icare should monitor and seek data indicators to identify if segments of the population require further action (e.g. conducting more reviews where the participant is deceased, but the legal representatives of the estate are known) and commit to this within its documented Methodology.</p> <p>The ongoing analysis may inform whether enhancements are needed around communication methods, the content of any communications and influence whether or not amendments to the review period and/or scope are necessary.</p>
<p><b>3 Time value of money</b></p> <p>The application of time value of money (interest) to a remediation payment amount is appropriate for the DDC Award Program. This differs from other icare remediation programs, where icare is not able to do so due to the applicable legislative requirements.</p> <p>At the time of our work icare had not decided upon the interest rate to adopt in order to compensate the participant or their beneficiary for the time value of money, although it was considering a flat rate of 3% reflecting the Reserve Bank of Australia (RBA) cash rate plus an additional 200 – 300 basis points.</p> <p>Standard industry practice for the remediation of underpayments of wages is the Federal Court Pre-Judgement Interest Rate, which is RBA + 4%, applied at a simple rate of interest. For clarity, the interest that accrues on each shortfall is based on the</p>	<p>i) icare should consider adopting an interest rate that is appropriate and fair. In contemplating this, icare should take into consideration the following factors:</p> <ul style="list-style-type: none"> <li>• Is the rate: <ul style="list-style-type: none"> <li>– reasonably high;</li> <li>– relatively stable;</li> <li>– set by an independent body; and</li> <li>– aligned to standard industry practice.</li> </ul> </li> <li>• Whether the rate will set a precedent for other remediation programs and/or settlements e.g. complaint resolution.</li> </ul> <p>Refer also Finding 4.</p>

# Finding	Recommended actions
<p>relevant RBA cash rate + 4% for the period, and each subsequent period, up to the date of remediation.</p> <p>In remediation programs pertaining to insurance products we have often seen Section 57 of Insurance Act and Regulation 38 of the Insurance Contracts Regulations 2017 (ICR) applied, which sets out a rate based on the 10-year treasury bond yield at the end of the half-financial year, plus 3% being used, applied at a daily compounding rate of interest.</p>	
<p><b>4 Provision of a payment to cover tax, legal or other professional advice costs</b></p> <p>Whilst the nature of the remediation payment itself is not considered to be complex, the impacts to personal income tax and Centrelink benefit payments may be difficult for DDC participants or their beneficiaries to understand and assess in the context of their situation.</p> <p>Whilst icare are already considering the implications with regards to this and any related communications, it would be appropriate in the circumstances for icare to also cover reasonable professional advice costs which may be incurred by the participant or beneficiary associated with an assessment of the remediation payment on their situation e.g. tax and legal costs.</p> <p>From our experience of similar programs of this scale and anticipated remediation levels, a reasonable cost would typically be between \$500 and \$1,500.</p>	<p>i) icare could consider implementing a process that enables the participant, beneficiary and/or legal representative to recover associated reasonable costs for tax, legal or other related advice costs.</p> <p>As an alternative, and subject to legal limitations and having regard for any personal income and fringe benefit tax implications, icare may want to consider payment of professional costs as an advance payment at the time of the remediation, rather than as a reimbursement. This will reduce the red-tape burden placed upon the participant/beneficiary or their legal representative and ensure better access to timely advice to support their understanding of the remediation payment and any associated impact.</p> <p>If icare wish to make an advanced payment to cover professional advice costs, the amount may be influenced by the chosen interest rate used to compensate for time value of money. A proactive payment should be set at a fixed/capped amount, for example \$1,000 and clearly differentiated from the remediation payment in outcome letters and/or reporting.</p>

## 4 Limitations of our work

### 4.1 General Use Restriction

This report is solely for the internal use of icare. Deloitte understands that icare will provide a copy of this report to State Insurance Regulatory Authority (“SIRA”) and NSW Treasury. We agree that a copy of our report can be provided to SIRA and NSW Treasury, and also released publicly on the basis that it is published for general information only and that we do not accept any duty, liability or responsibility to any person (other than icare) in relation to this report. Recipients of this report should seek their own independent expert advice. The report has been prepared for the purpose set out in the Engagement Letter dated 10 June 2021.

### 4.2 Limitations

Deloitte assumes that any information provided by icare in relation to inquiries for this report are true, complete and not misleading. Deloitte has not performed any audit, testing or verification of the information supplied. However, if based on Deloitte’s professional experiences, Deloitte identified a deficiency or gap in the information provided to Deloitte by icare, Deloitte has raised this with icare to see whether icare has the missing information. If the information provided is untrue,

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We believe the statements made in this report are accurate, but no warranty of completeness, accuracy, or reliability is given in relation to the statements and representations made by, and the information and documentation provided by icare.

We have not attempted to verify or test the completeness and accuracy of any data sources independently unless otherwise noted within the report.

Deloitte was appointed under the Standard Form of Agreement icare Assurance Review Services Contract 4600002099. The procedures that we performed however did not constitute an assurance engagement in accordance with Australian Standards for Assurance Engagements, nor did it represent any form of audit under Australian Standards on Auditing, and consequently no assurance opinion or conclusion is provided. The procedures performed were high level in nature.

Our work was performed on a sample basis, we did not examine the entire content of the relied upon document, every activity or procedure, nor can we be a substitute for management's responsibility to ensure adequacy of the charters, policies and maintenance of adequate controls over all levels of operations and their responsibility to prevent and detect irregularities, including fraud.

Our assessment is based on the relevant legislative and compliance obligations as identified within the Engagement Letter and information provided by you at a point in time which are subject to change and hence cannot be relied upon to meet the future compliance needs.

We do not provide any legal advice or opinion as part of our Services.

Our Services cannot be relied upon to disclose irregularities, including fraud, other illegal acts, or errors which may exist; however, Deloitte agreed to inform icare of any such matters as they come to Deloitte's attention in the performance of the Services. No matters have been identified.

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