

**Senate Standing Committee on Education, Employment
and Workplace Relations**

Inquiry into the Asbestos Safety and Eradication Agency Bill 2013

**Department of Education, Employment and Workplace Relations
Submission**

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Introduction

The Department of Education, Employment and Workplace Relations welcomes the opportunity to make a written submission to the Senate Committee Inquiry into the Asbestos Safety and Eradication Bill 2013 (the Bill).

On 20 March 2013, the Hon Bill Shorten MP, Minister for Employment and Workplace Relations, introduced the Bill into the House of Representatives.

The Bill implements the recommendation of the Asbestos Management Review Report to establish a new national body to administer a national strategic plan for asbestos eradication, handling and awareness.

This Bill establishes the Asbestos Safety and Eradication Agency (the Agency) as an independent statutory agency. It sets out the functions of the new agency as well as the Chief Executive Officer and outlines the reporting arrangements for the new agency.

The Bill also establishes the Asbestos Safety and Eradication Council (the Council) to support the efforts of the Agency to improve asbestos safety and delivery of the national strategic plan.

This submission outlines the review processes leading to this Bill and the measures included in the Bill.

Australia's asbestos legacy

Australia was one of the highest per capita users of asbestos in the world until the mid-1980s. Approximately one third of all homes in Australia built between 1945 and 1987 contain asbestos products and asbestos-containing materials were used in a wide range of manufacturing products.

Due to the high usage, Australia has one of the highest incidences of asbestos-related disease in the world, including the highest incidences of mesothelioma. The main risk factor of mesothelioma is asbestos exposure. In 2010, 642 Australians died from mesothelioma.

Australia began to regulate the use of asbestos products in light of identified health risks. The use of crocidolite (blue) asbestos was banned in 1967, while the use of amosite (brown) asbestos continued until the mid-1980s. A national ban on chrysotile (white) asbestos came about 20 years later, at the end of 2003.

Due to the long period between asbestos exposure and the onset of the disease, the numbers of diagnosed cases of asbestos-related disease (ARD) will continue to rise. In the next 20 years, an estimated 30,000 to 40,000 Australians will be diagnosed with an ARD – and these diseases are not forecast to peak until 2020.

Despite the bans, Australians are still exposed to asbestos in many buildings - residential, government and commercial - that contain asbestos cement and other asbestos products. Workplace exposure has been the most common cause of mesothelioma and other ARDs to date. However, recent evidence suggests a developing demographic in the wider population including tradespeople, home renovators and their families being exposed to asbestos fibres through unsafe removal practices, poor maintenance and damage of asbestos-containing materials.

Asbestos Management Review

In 2010, the Australian Government established the Asbestos Management Review (the Review) to make recommendations for the development of a national strategic plan to improve asbestos management and awareness in Australia.

The primary aim of the Review was to make recommendations for the development of a national strategic plan to improve asbestos awareness and management within Australia.

The Review's terms of reference had a broad scope and encompassed asbestos management issues beyond work health and safety (WHS), including environmental and public health issues. The review also looked at relevant local and international initiatives that could be considered best practice.

The terms of reference acknowledged existing work already underway at both the Commonwealth and state or territory levels, and asked the Review to complement this work. This included the work to harmonise WHS laws.

In accordance with its terms of reference, the report highlighted the major asbestos issues for the Australian community and made a series of recommendations to address these issues.

The Review was chaired by Mr Geoff Fary. An expert Advisory Group provided advice in order to assist with the formulation of the recommendations and the development of the report. The members of the Advisory Group were Mr Jim Barrett, Executive Director of the Australian Constructors Association; Mr Paul Bastian, National President of the Australian Manufacturing Workers Union; Mr Lindsay Fraser AM, Assistant Secretary of the Construction, Forestry, Mining and Energy Union; Dr Robert Guthrie, Adjunct Professor of Workers' Compensation and Workplace Laws at Curtin University; Mr Tim Hammond, Barrister at Francis Burt Chambers, Perth; Ms Sylvia Kidziak AM, Managing Director of SL Engineering; Professor Bruce Robinson, Director of the National Centre for Asbestos Related Diseases; Ms Tanya Segelov, Partner, Turner Freeman Lawyers; and Professor Nico van Zandwijk, Director of the Asbestos Diseases Research Institute.

The Chair met with some 80 stakeholder organisations, who assisted with the identification of issues and provided valuable information on matters falling within the scope of the review.

The Review was conducted in three phases:

Planning – The first phase of the review consisted of research, data gathering and a consultative process with key stakeholders, including representatives from government, unions and business, research and support organisations and asbestos disease sufferers, to identify major issues and to refine the scope of the review.

Consultation – The second phase of the review involved the preparation of an issues paper that posed a series of questions for response by stakeholders and interested persons. The issues paper was released for public comment on 14 July 2011.

Written submissions were invited for an eight-week period, which closed on 9 September 2011. The review received 57 written submissions from government representatives, unions, community organisations, business enterprises, industry representatives, academics and individuals.

Reporting – The third phase of the review concentrated on the development of the Review report and recommendations. The Review report was released in August 2012 and made 12 recommendations. In the main, the recommendations addressed the structure and content of the national strategic plan. The Review also recommended the establishment of a new national body to administer that plan.

The report of the Review can be found at <http://deewr.gov.au/asbestos-management-review-0>.

Establishment of the Office of Asbestos Safety

The Office of Asbestos Safety was established within the Department of Education, Employment and Workplace Relations at the end of 2012 with responsibility for assisting with the development of the Government's response to the recommendations of the Review report, including developing the National Strategic Plan for Asbestos Awareness and Management.

The National Strategic Plan

The Department of Education, Employment and Workplace Relations is currently working with all jurisdictions and stakeholders to develop the national strategic plan by 1 July 2013. This input will be vital to ensure that the plan is implementable and comprehensive in addressing:

- asbestos awareness and education
- identification, removal, handling, storage and disposal, and
- ways to achieve a coordinated approach across all levels of government.

In developing the plan, the recommendations of the Review will be considered, including how they might be practically implemented.

The Office of Asbestos Safety conducted forums across Australia in early April 2013 with stakeholders interested in asbestos awareness, management and eradication.

The opportunity for comments following the forums is open until 26 April 2013. The discussion draft of the national strategic plan can be found at: <http://deewr.gov.au/national-strategic-plan>.

A new agency

The establishment of a new agency is an essential part of the Government's commitment to reduce the risk of avoidable exposure to asbestos. It will pave the way for a national approach to asbestos eradication, handling and awareness in Australia, by taking responsibility for administering the national strategic plan.

The new Agency will provide a focus on issues which go beyond workplace safety to encompass environmental and public health issues. It will ensure asbestos issues receive the attention and focus needed to drive change across all levels of government.

The Review found that there was a pressing need for a dedicated and appropriately resourced specialist agency to address asbestos issues that would not be diverted to other activities or priorities.

Assigning responsibility for the National Strategic Plan to an existing body would expand its role and functions, diverting it from its current responsibility and area of expertise. The new Agency will be able to build tailored consultative mechanisms that most effectively provide for participation by the appropriate representatives from governments and stakeholders from the asbestos community rather than rely upon an existing body's processes.

The role of States and Territories

Minimising asbestos exposure is the responsibility of all levels of government.

The Review identified that, in light of the complexity and inter-connectedness of the issues posed by the regulation of asbestos, several jurisdictions have taken steps to facilitate coordination between different government agencies within the state and territory. Much of this activity has identified existing gaps and a need for better coordination. Queensland's Ombudsman tabled a report in Parliament on 21 March 2013 calling for an asbestos plan for that state and the creation of a lead agency to coordinate the management and regulation of asbestos within Queensland. Likewise, NSW Ombudsman identified the need for significant reform. Their November 2010 report found that 'in NSW there is no single government agency responsible for coordinating the management and containment of asbestos. There is no state-wide government plan for dealing with asbestos, there are gaps in asbestos legislation and funding to deal with these issues is inadequate'. In response, NSW has recently released a State-wide Asbestos Plan which is coordinated by an inter-agency committee. Further, both South Australia and Tasmania have put in place arrangements for a more strategic and coordinated approach to asbestos management.

Dealing with Australia's asbestos legacy requires urgent nationwide action undertaken in a systematic way, building on existing initiatives across jurisdictions. A national plan is an appropriate way to better drive focus and coordinate efforts to address asbestos-related issues across Australia's diverse communities.

The 'business as usual' approach has not led to a reduction in the number of asbestos-related deaths and disease. The new Asbestos Safety and Eradication Agency will work with Commonwealth, state, territory and local governments for a nationally consistent approach on asbestos eradication, handling and awareness, including environmental and public health issues.

The National Strategic Plan has been informed by the content of asbestos plans of all jurisdictions with a view to complementing state and territory activities, not duplicating them.

The National Strategic Plan on Asbestos Awareness and Management was recently on the agenda of the Select Council of Workplace Relations (SCWR). Members of SCWR outlined steps already being taken within their jurisdictions to limit asbestos exposure. Minister Shorten emphasised that the involvement of all levels of government in a nationally coordinated approach is important to prevent a third wave of asbestos deaths and noted that the Commonwealth's preferred position was to reach consensus with SCWR members on the National Strategic Plan. SCWR members agreed to active consultation on the development of the plan.

What are the proposed functions of the Asbestos Safety and Eradication Agency?

The functions of the Agency are set out on section 8 of the Bill:

- (a) to encourage, coordinate, monitor and report on the implementation of the National Strategic Plan;
- (b) to review and amend the National Strategic Plan as required by the National Strategic Plan or at the request of the Minister;
- (c) to publish and promote the National Strategic Plan;
- (d) to provide advice to the Minister about asbestos safety, if requested to do so by the Minister;
- (e) to liaise with Commonwealth, State, Territory, local and other governments, agencies or bodies about:
 - (i) asbestos safety; or
 - (ii) the implementation, review or amendment of the National Strategic Plan;

- (f) to commission, monitor and promote research about asbestos safety;
- (g) such other functions as are conferred on the Agency by or under this Act, the rules or any other law of the Commonwealth;
- (h) to do anything incidental or conducive to the performance of any of the above functions.

The Bill outlines the reporting arrangements for the Agency. It provides that the Minister approves the Agency's annual operational plan to support the implementation of the National Strategic Plan. Further, the Minister will be required to table the Agency's annual report in Parliament.

The Agency will comprise a CEO and Staff. The CEO will manage the Agency and be responsible for the performance of its functions. The Remuneration Tribunal will determine the CEO's remuneration. The body will be subject to Commonwealth governance regimes and will be a prescribed agency under the *Financial Management and Accountability Act 1997*. The staff will be engaged under the *Public Service Act 1999*.

The cost to establish a new statutory agency will be \$12.3 million over the forward estimates.

What are the proposed functions of the Asbestos Safety and Eradication Council?

The Bill will also establish the Asbestos Safety and Eradication Council (the Council), which will have the functions of providing advice to the CEO and Minister. The Council will consist of: a Chair; one member representing the Commonwealth; two members representing state, territory and local governments; and four other members appointed by the Minister. These four members are to have knowledge or experience in one or more of the following:

- (a) asbestos safety;
- (b) public health issues relating to asbestos;
- (c) asbestos-related diseases;
- (d) the representation of, or the provision of support to, persons with asbestos-related diseases and their families;
- (e) financial management;
- (f) corporate governance.

The functions of the Council are spelt out in the Bill. It is proposed that the Council's functions include: to provide advice, and make recommendations, to the CEO about

the performance of the Agency's functions, on its own initiative or at the request of the CEO and to provide advice to the Minister about asbestos safety.

The Council may also issue written guidelines to the CEO about the performance of the Agency's functions.

The Bill provides that the Council will have the power to do all things necessary or convenient to be done for or in connection with the performance of its functions. The Minister may, by legislative instrument, give written directions to the Asbestos Safety and Eradication Council about the performance of the Council's functions.

Under the Bill, the Remuneration Tribunal will determine the remuneration of the Council members.

Consultation process

In addition to the widespread consultations conducted as part of the Review, the Office of Asbestos Safety conducted a range of further consultations on the proposed structure and functions of the new statutory agency, including a state, territory and local government officials via a Government Reference Group and with Commonwealth officials via an Australian Government Inter-departmental Committee. Consultation has been undertaken with the following Australian Government agencies and departments: Prime Minister and Cabinet; Finance; Department of the Treasury; Attorney General's Department; Department of Foreign Affairs and Trade; Department of Health and Aging; Department of Resources, Energy and Tourism; Department of Sustainability, Environment, Water, Population and Communities; Department of Regional Australia, Local Government, Arts and Sport; Department of Families, Housing, Community Services and Indigenous Affairs; Department of Infrastructure and Transport; Department of Defence; Safe Work Australia; Australian Customs and Border Protection Service; and the Australian Public Service Commissioner.

Stakeholder consultations were held with industry, unions, government representatives, business, hygienists, public health experts, and asbestos victims support groups in Canberra, Sydney, Brisbane, Perth, Adelaide and Hobart in April 2013. These consultations are to ensure responses to the Review's recommendations are practical and able to be implemented and specifically asked for input on a discussion draft National Strategic Plan.

At its March 2013 meeting, the National Workplace Relations Consultative Council (NWRCC) noted progress in the development of the Government's response to the recommendations of the Review, including the development of a draft national strategic plan for asbestos awareness. NWRCC members committed to work with the Government to develop the National Strategic Plan.

As noted above, SCWR discussed issues related to the development of the National Strategic Plan and the proposed Agency at its meeting in April 2013.

International role

The Review asked submitters to consider whether Australia should take on a more active role in encouraging an effective ban on the international trade in asbestos. This was supported. Having regard to its national experience with asbestos, the Review concluded Australia has a moral obligation to play an international leadership role.

The Report also recommended that Australia continue to play a leadership role in the global asbestos campaign.

The Government has agreed that the Australia will continue to play a leadership role and actively lobby for improvements in international arrangements governing the management of asbestos with the objective of achieving a worldwide ban in the production and trade of asbestos and asbestos-containing products.

What is the international community saying about this?

The World Health Organisation, in collaboration with ILO, promotes the planning for and implementation of several asbestos safety measures including by developing a comprehensive national programme for elimination of asbestos-related diseases.

There has been some encouraging progress made by the European Union (EU) recently with members voting in favour of a motion for a European Parliament Resolution on asbestos related occupational health threats and prospects for abolishing all existing asbestos. The European Parliament is calling on the EU to undertake a broad range of initiatives in relation to asbestos. Some of these initiatives relate to:

- the screening and registration of asbestos
- ensuring qualifications and training
- development of removal programs
- recognition of asbestos-related diseases
- support for asbestos victims' groups, and
- strategies for a global ban of asbestos.

A Resolution concerning asbestos was adopted by the International Labour Conference at its 95th Session in 2006. Noting that all forms of asbestos, including chrysotile, are classified as human carcinogens by the International Agency for Research on Cancer (IARC), and expressing its concern that workers continue to face serious risks from asbestos exposure, particularly in asbestos removal, demolition, building maintenance, ship breaking and waste handling activities, it calls for the elimination of the future use of asbestos and the identification and proper management of asbestos currently in place as the most effective means to protect workers from asbestos exposure and to prevent future asbestos-related diseases and deaths.

The proposal currently being considered by the Senate inquiry affords Australia an opportunity to take a global leadership role in the proper management and coordination of asbestos issues, simultaneously and in the same vein as the European Parliament and international agencies.

Conclusion

This Bill marks an important step in Australia committing to the objective of the ultimate elimination of asbestos-related diseases.

The Review made it clear that Australia must act quickly to prevent further Australians from being exposed to deadly asbestos fibres. We need to prevent a third wave of asbestos deaths, particularly of people exposed in the home. To do so, the Review recommended a national strategic plan for asbestos awareness, management and eradication. The Review also recommended that a new asbestos agency be established to have responsibility for coordination and oversight of the national strategic plan.

This is the first time a national approach to asbestos eradication, handling and awareness is being pursued beyond the workplace. Due to the long period between exposure to asbestos and the onset of disease, the situation may worsen before it improves; a long term commitment is needed.