

9 September 2011

Review Secretariat
Asbestos Management Review
Department of Education, Employment
and Workplace Relations
Canberra ACT 2600

Via email: asbestosmanagementreview@deewr.gov.au

Dear Mr Fary,

RE: **ACTU Submission - Asbestos Management Review (the Review)**

Introduction

The Australian Council of Trade Unions (ACTU) is the peak council for Australian trade unions, representing approximately 1.8 million union members Australia-wide.

The ACTU welcomes this initiative of the government and congratulates the Gillard Labor Government for its initiative in establishing the Review. The government is also to be congratulated for recently ratifying ILO Asbestos Convention, 1986 (No. 162).

The ACTU has consulted its membership broadly in development of its submission. There are, in addition to the ACTU submission, a range of other union submissions that the Review will benefit from reading. Many of these submissions provide further detail regarding matters which have directly affected members in their workplaces, industry, region, state or territory.

Please find attached an Executive Summary of the ACTU submission, followed by the detail of our submission.

If you have any queries, please contact ACTU OHS Workers' Compensation Officer, Margot Hoyte, on mhoyte@actu.org.au or on (03) 9664 7300.

Yours faithfully,



Jeff Lawrence
Secretary



Australian Government Asbestos Management Review

09 September 2011

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D No. 51/2011

ACTU Submission to the Asbestos Management Review

Executive Summary

Asbestos has been the cause of much suffering, disease and death in Australia. It is a dangerous carcinogen that injures and kills workers, family members and affects entire communities.

Asbestos was mined and widely used in Australia. From the 1950s to the 1980s we had the highest per capita use of asbestos in the world. Approximately every third domestic dwelling built in Australia before 1982 is thought to contain asbestos. It is in our homes, our schools and hospitals and our workplaces.

The World Health Organisation has stated that there is no safe exposure level for asbestos. Due to the long latency of many asbestos related diseases, such as mesothelioma, the peak in Australian deaths attributable to exposure is currently not expected until 2017 – 2020. Figures released by Safe Work Australia in August show that in 2007 there was an increase by more than 10% of new mesothelioma cases. In 2007 there were 551 deaths caused by mesothelioma and 660 new cases.

Australian workers have been hit hard by the asbestos epidemic. Workers in every sector have been affected. Even family members have lost their lives through exposure to asbestos brought home from the workplace. And now 'home renovators', who now constitute the largest proportion of all non-occupational cases of mesothelioma, are very often workers going home to renovate their homes.

A failure by our nation to deal comprehensively with ACMs would condemn future generations to continued death and suffering.

Unions have been at the forefront of asbestos campaigns for decades

- In the 1980s unions fought for the right of workers to cease working when exposed to airborne asbestos
- In the 1980s and 1990s unions successfully campaigned in many states and territories for dedicated Asbestos Regulations
- Unions backed legal claims for compensation for asbestos sufferers
- Unions successfully campaigned for Australia's December 2003 complete ban on importation, production and use of asbestos.
- Unions campaigned for *James Hardie* to pay compensation to its victims
- Unions now call for an Asbestos Free Australia

Key recommendations for future action:

1. The aim of the National Strategic Plan must be the elimination of all Asbestos Containing Material from the built environment by 2030.
2. A stand-alone National Asbestos Authority must be established.

3. A national Audit identifying the location and condition of all ACM in the built environment must occur:
 - Government owned buildings and workplaces, as well as asbestos dump sites, are the priority areas for the Audit.
 - All privately owned residential properties must obtain an 'Asbestos Safety Certificate', (auditing asbestos) when a property is sold or leased.
4. Prioritised removal is necessary to get rid of asbestos, starting with government-owned buildings.
5. Education and awareness is an important component of an asbestos strategy.
6. Asbestos must only be removed by licensed removalists.

Chapter 1 - A National Strategic Plan

1.1 'Aim' of the National Strategic Plan

1.¹ A suitable and achievable aim for Australia's national strategic plan is "The elimination of all asbestos containing materials from the built environment in Australia by 2030."

The goal proposed by the Issues Paper is misdirected and aims low. Disease is a consequence of exposure to Asbestos Containing Materials (ACMs). If ACMs are not present, people cannot be exposed to them. Disease will be eliminated when ACMs are eliminated. Thus, it is the source of the problem that must be the focus of elimination activity.

"Reduction" of disease is not an acceptable goal. To accept such a goal is to accept as a society that there is an 'acceptable level of disease'. There is no acceptable level of asbestos related disease.

1.2 Priority Areas under a National Strategic Plan

Priority areas of action for a National Strategic Plan should be:

1. A national Audit of ACMs in the built environment.
2. Followed by a program of Prioritised Removal of all ACMs
3. The identification of all previous and current dump sites
4. Education and the raising of public awareness
5. Nationally consistent legislation covering all asbestos related areas, including removal and disposal laws
6. Oversight of nationally consistent data management and reporting on issues
7. Remote, rural and regional areas, including remote, rural and regional indigenous communities, should be a particular area of focus of the National Strategic Plan. Whether this is a stand-alone, or integrated priority may be determined by a National Asbestos Authority

1.3 Coordination and management of a National Strategic Plan

3. There is no existing body suitable to take responsibility for the effective driving of a national strategic plan for the elimination of ACMs.

4. The scope and extent of the 'asbestos problem' throughout Australia has been well documented, particularly in the last decade. The union movement, support groups, the medical

¹ Note that numbers 1 – 51 of this submission refer to the questions that were asked in the Asbestos Management Review Issues Paper, July 2011

and legal community as well as various government agencies have, over some years, documented, and advocated around various elements of 'the asbestos problem'. An example of one aspect of this is the NSW Ombudsman November 2010 Report, *Responding to the asbestos problem: the need for significant reform in NSW*. The Ombudsman set out clearly that 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. An 'all of government approach' response is insufficient to the necessity of specific leadership in this field – there is no clear, dedicated authority. While jurisdictions such as Tasmania and the ACT have tackled these shortcomings, no state or territory based initiative alone will be sufficient to address the scope of problems – or ensure the realisation of a cohesive national program.

A new stand-alone statutory authority is needed.

A dedicated and centralised body is required. It would provide a focused approach to dealing with all elements of asbestos.

The role of the new organisation, that in this submission is referred to as the 'National Asbestos Authority' (NAA), would be to provide oversight and a dedicated focus to the elimination of ACMs from the built environment.

Its primary function will be:

- To plan, co-ordinate and be responsible for the achievement of a proactive strategy to locate and remove asbestos from the built environment throughout Australia

To achieve this objective, the organisation's functions must include, working co-operatively with Commonwealth, state and local Governments to:

- Co-ordinate and build upon existing strategies to effectively and safely remove asbestos from the built environment
- Oversee and co-ordinate the Prioritised Removal of ACMs from publicly owned buildings and workplaces
- Create, implement and co-ordinate a nationally consistent data management system monitoring the incidence and removal of asbestos
- Create and co-ordinate a nationally consistent reporting system
- Identify and record all 'dump sites' of ACMs, areas contaminated with asbestos and areas containing naturally occurring asbestos
- Create and administer a national scheme designed to require owners of private domestic residences to identify and publicly record the presence of asbestos on their properties (via attainment of an 'Asbestos Safety Certificate')
- Ensure compliance with reporting and identification requirements of the legislation
- Develop and implement public awareness campaigns concerning the incidence of, and hazards created by, asbestos with the aim of preventing exposure
- Develop and provide expert advice regarding nationally consistent legislation to address the identification and removal of asbestos

- Work co-operatively with other agencies which have jurisdiction in areas of asbestos policy and regulation (e.g. state and territory WHS regulators, Safe Work Australia)
- Report to Parliament on the progress of the National Asbestos Strategy
- Provide advice to the Government on asbestos policy, including matters of international significance relating to elimination of the extraction and sale of asbestos globally

Consequently, the organisation's powers must include:

- Investigative powers, including powers to compel the provision of information concerning the location of asbestos from owners of private property, other land owners, corporations, and all levels of Government
- Powers of inspection to examine removal or location of asbestos in various locations
- Enforcement powers, or a capacity to refer enforcement issues to another appropriate Government Department, with particular regard to public recording of asbestos in public and private buildings

Membership of the Authority would be based on the tripartite principle.

The agency should have a **finite life**, sun setting 31 December 2030 – the year in which Australia aims to be asbestos free in the built environment. If there is a need to extend upon the life of the Authority, this may be determined by review of completion target dates for Audit and Prioritised Removal priority areas prior to 2030.

Chapter 2 - Activities under a national strategic plan

2.1 Identification of Asbestos

5. A national audit must be conducted, starting with government and public buildings, workplaces and dump sites, in order to identify the location and condition of ACMs.

No single audit mechanism will provide a complete picture of the location and condition of asbestos in Australia. The conduct of a national Audit requires the deployment of a number of strategies in a number of particular areas. It should be clear from the outset that much of the data required for a comprehensive National Audit already exists. It simply needs to be located and drawn into one overall Audit.

Government and Public Buildings

The first Audit priority is that of all government and public buildings. This includes buildings owned by Federal, state and local governments. Governments at all levels must provide leadership in identifying the location and condition of asbestos containing materials. ACMs, present in many schools, hospitals, remaining public housing stock and other publicly owned buildings, represent a significant section of Australia's total ACMs in the built environment.

The ACTU acknowledges that much work has already been done by some government agencies. An example of this is the development of Asbestos Registers by the Queensland Department of Education and Training for its schools, TAFEs and Early Childhood Education and Care sites in 2009. However, the importance of currency of these registers, particularly in light of the event of natural disasters such as Cyclone Yasi, is clear. If not maintained, a register lacks reliability and consequently worker and community confidence in it. This submission speaks elsewhere further to the significance of natural disasters in relation to ACMs.

A harmonised auditing duty for all Persons Conducting a Business or Undertaking (PCBU) will exist in all jurisdictions from 1 January 2012. All government departments and agencies are within the definition of (PCBU). All publicly owned buildings are a workplace either continuously, or from time to time. This also applies to publicly owned housing (as workers conduct activities such as maintenance, repairs and refurbishment on these premises). Consequently, the duty to conduct this Audit will already exist. The merit of it occurring in the context of a national asbestos management plan is that data will be gathered together to draw a national picture.

With further regard to **publicly owned housing**, 2006 Census figures² show that a total of 304,430 dwellings were listed as being rented by a State or Territory Housing Authority. Some government agencies have audited all or part of their housing stock. Existing current audits can be identified and in so doing identify those that are yet to be done.

² The Census identified a total of 7,144,096 residences in Australia. Of these Cat. No. 2068.0 – 2006 Census Tables, 2006 Census of Population and Housing Australia, Tenure Type and Landlord type by dwelling structure by indigenous status of household

Workplaces

Regulation 422 of the model Work Health and Safety Regulations (*Asbestos to be identified or assumed at workplace*), places a statutory duty on all persons with management or control of a workplace to ensure asbestos or ACM is identified by a competent person. Where material cannot be identified, or a part of the workplace is not accessible, asbestos or ACM must be assumed to be present. A process of providing auditing information can be initially managed by existing jurisdictional regulators. Information can be provided to the NAA.

Dump Sites

The location and condition of all previous and current asbestos dump sites is a necessary element of a National Audit.

Some of this information can be gathered by examination of already publicly available information, in which some 'signal information' is available. This includes some information that can be provided by local governments and a number of state government agencies.

Some of this information can be gathered by requiring the disclosure of sites by companies formerly engaged in the mining and manufacture of ACMs.

Asbestos dump sites are in various locations and various conditions. Some, such as that documented at NSW's Wood Reef Mine tailings mound, are clear hazards to the nearby community and people passing through the area. Other sites have since been turned to use for everything from school grounds to rifle ranges. All of these uses constitute a future risk to workers, and other members of the community, including in some cases children. Some of these sites constitute a current risk, where ACMs in a friable condition are exposed and thus becoming airborne.

As some dump sites will already be captured by Regulation 422 of the Workplace Health and Safety Regulations, by virtue of still or now being a workplace, the extent of discovery of other dump sites is a matter that the National Asbestos Authority can map.

Privately owned residences

Asbestos was a widely used building material in the decades after 1945. About one third of all domestic dwellings (publicly and privately owned) that were built before 1982 are thought to contain asbestos.

The 2006 Census identified 4,866,840 residences as fully owned or being purchased. A further 1,498,208 were being rented out (1,024,207 by a real estate agent and 474,001 from a parent, relative or other person). While many of these houses were built after the production of ACMs for domestic building materials in Australia had been phased out, not all homes built in the period between asbestos production cessation and the last completed Census date will be free of ACMs (due to some recycling of materials etc). The likelihood of a private residence being 'Asbestos Free' increases as further time elapses since the cessation of production in Australia and hence usage of ACM as building materials.

An Audit of ACMs in privately owned residential properties must occur. The responsibility for this should rest with the property owner. Attainment of an audit could be indicated by an 'Asbestos Safety Certificate' (ASC). More detail with regard to how and when this should occur is provided elsewhere in this submission.

Naturally occurring asbestos

For the purpose of completeness, the Audit should also include at some time the location of all known locations of naturally occurring asbestos. State government agencies³ already possess a lot of 'signal information' as to the location of these spots. It should also be a requirement that it be identified whether asbestos is present when a PCBU is seeking to develop or extend an extraction activity.

The priority of this part of the Audit should reflect one of the risk elements of asbestos. That is, people typically come into contact with asbestos in the built environment, or when engaged in an activity that happens to be on a former dump site (e.g. attending school). Far fewer people may come into contact with naturally occurring asbestos.

Keeping information up to date

Work Health and Safety Asbestos Regulation 426, *Review of asbestos register* places a duty on a PCBU to review a register in a range of circumstance, including when it is disturbed. Similarly, Regulation 430, *Review of asbestos management plan* contains the same and further triggers. Compliance with these duties will assist with keeping information up to date. The occurrence of disasters, either naturally, or via some human activity, should trigger a re-Audit of those affected areas.

Turnover in private domestic residences and private rental properties will assist in some currency of that data.

Defence Housing

The Defence Housing Authority managed 18,058 properties at 30 June 2010⁴. The SRCC Chrysotile Special Advisory Committee, should be asked to provide advice to the National Asbestos Authority on what Audits are currently conducted and to continue to report annually on audits conducted within its property portfolio.

6. Owners of *private property that is a workplace* have duties under the WHS Act and Asbestos Regulations. These exist irrespective of whether a property is privately owned or not.

Owners of private residential properties do not have similar duties.

The owners of privately owned residential property must be legally required to undertake a process that identifies the presence of asbestos on their property. The substantial risk that exists from exposure to asbestos in domestic dwellings makes it absolutely necessary that all asbestos in domestic properties is identified and placed on the public record to enable access to this information by property owners and any entity seeking to undertake work on the property.

For practical purposes, the onus on establishing the presence of asbestos in residential properties must rest with the owner. It is the ACTU's submission that a newly established National Asbestos Authority should create and implement a system for auditing, reporting and recording the existence of ACMs in privately owned residential property.

The ACTU recommends a system be created that requires homeowners to seek an assessment of the presence and condition of asbestos in their property at key trigger points in the life of their ownership:

³ These agencies would include departments dealing with matters such as parks, mines, minerals and recreation.

⁴ Page 4, Defence Housing Australia Annual Report 2009 - 10

1. For an owner of a property an 'Asbestos Safety Certificate' would be required to be obtained at the point they seek to sell their own home or an untenanted investment property and
2. For the owner of a property that is leased to a private tenant, once the legislation takes effect, on the next occasion their tenant vacates the property, before the property is released.

These two triggers will capture the vast majority of dwellings in the private sector over the next 19 years up to 2030.

Once an assessment has been obtained from a qualified expert, that certification retains currency until the status of the asbestos in the property is altered – either by removal or some kind of disruption.

For owners of properties leased to a tenant, these duties may be able to be phased in over a specified time. The approach of graduated compliance to a new duty held by private property owners, is not new. Variations of it have been used previously in the implementation of other duties, such as fencing of backyard pools, installation of RCDs in Queensland and installation of smoke alarm systems.

Duties to comply have largely been accepted in all these areas and now form part of community- expected minimum standards for all residential dwellings.

7. Activities should have oversight and co-ordination by the National Asbestos Authority. Depending on the activity some agencies may have carriage of that activity (e.g. workplace audits). Additionally, there may be some activities which can be delivered in partnerships with the private sector, governments and unions.

Adequate numbers of trained and competent assessors must be available, in order for all to be able to fulfil Asbestos Audit activities.

Activities in relation to the identification of asbestos include education, information and, perhaps, an awards program. Promotion of an 'Asbestos Free Building' plaque for commercial and domestic residences should also be considered.

The NAA should recognise the proactive and effective role unions and trained and resourced Health and Safety Representatives will play in raising Audit obligations in workplaces.

Work Health and Safety Regulators transparently report on compliance and enforcement activities.

Local government have a particular role to play in participating in and supporting activities around ACM Auditing, including in the provision of information to home owners, locating dump sites.

2.2 Management

8. The standard 'risk management' approach is not sufficient to protect against risk of exposure to asbestos fibres. There is no 'safe exposure level' for ACMs.

Fundamentally, a 'risk management' approach allows for the hazard to remain in place. The risk associated with that hazard is then managed. While a hazard continues to be present a

level of risk continues. While the hazard continues to be present, costs continue (not only in relation to administrative costs of monitoring both the hazard but also compliance with whatever risk management strategies have been determined). While 'elimination' is at the top of the hierarchy of control it is often not used in workplaces. 'Risk' is only completely managed when a hazard is *eliminated*. Ongoing costs of risk management compliance are also then eliminated.

So, while ACMs remain in place, the risk of exposure remains.

Other factors relevant here are:

- There has been poor compliance with existing ACM risk management duties in workplaces (and poor enforcement of duties),
- Education and awareness of ongoing risks associated with ACMs, and the consequent necessity to not disturb them unless being removed by a licensed removalist, is an ongoing cost and challenge.
- All building materials have a finite life. Building materials deteriorate.
- ACMs do not remain the same. The condition of ACMs deteriorates. The risk then increases.
- Natural disasters, such as floods and cyclones, damage ACMs that have been in situ. Asbestos fibres come into the environment and workers, their families and other members of the community are exposed.

Australia has experienced waves of asbestos related disease victims. These waves will continue while ACMs remain in the built environment.

A more proactive approach is necessary. In Australia in 2011 a 'Prioritised Removal' program is a necessity.

9. It must be noted that there are no measures, including possible research, that can be undertaken to improve current management approaches. There are no safe alternatives to asbestos removal. Risk remains while the hazard remains. Building materials deteriorate. Permanent bonding is a waste of building materials and a waste of money. The only effective measure is actual removal.

10. The advantage of a Prioritised Removal program for ACM in the built environment is that the hazard is eliminated.

Prioritised Removal deals with the problem once and for all. It removes the hazard from workplaces and the community. It ensures a reduced likelihood of Asbestos Related Disease in the community. Reduced and eliminated disease incidence, in addition to the reduction and elimination of suffering and death will lead to reduction and elimination of compensation paid to victims.

A 'Prioritised Removal' program would address all relevant factors, including particularly the ongoing degradation of ACMs. Prioritised Removal delivers a finite cap on costs (of removal). This compared to infinite costs of maintenance, compliance and enforcement activity and other 'risk management' costs.

A 'Prioritised Removal' program has the following elements:

Identification and categorisation of all ACMs in the built environment

Categorisation is based on the condition of the ACM:

Red – ACM that is currently dangerous and requiring immediate disposal

Yellow – ACM not presenting an immediate threat, but will deteriorate in the future and require removal within five years

Green – all other ACM to be removed by 2030.

11. A Prioritised Removal program should ensure government properties and structures are targeted first as part of this program.

A Prioritised Removal program must prioritise removal of ACM from government and publicly owned buildings. These buildings are throughout Australia and removal of ACMs from them would represent a significant reduction in locations where workers and other members of the community may be exposed to airborne fibres now and into the future. A moral responsibility also rests with government to lead the Prioritised Removal program. Citizens expect government to protect them from hazards. And, as a one off cost, Prioritised Removal represents a fiscally responsible approach by all levels of government.

Workplaces must also form part of the Prioritised Removal program. While it is anticipated that all workplaces will be covered by harmonised Asbestos Regulations from 1 January, 2012, these regulations are based on a ‘risk management’ approach. Ultimately, these regulations must reflect an outcome of elimination of ACMs from the built environment by 2030. Certainly, identification, assessment and control duties are useful, but duties need also to require the establishment of a removal date of ACMs – based on the Red, Yellow, Green categorisation of risk.

Attainment of ‘Asbestos Safety Certificates’ is the initial priority for owners of private domestic residences.

12. Activities complementary to a National Audit and Prioritised Removal should be included. In addition to those canvassed in previous parts of this submission, the adoption of relevant arrangements with local governments, state agencies and any other identified parties should occur. This includes arrangements with state Environmental Protection Agencies, Health and Safety Regulators and training agencies (for those delivering asbestos removal and other relevant training). Consistency of information and education provided to the public also needs to be ensured.

Activities need to be anchored to Auditing, Removal and disposal of ACMs from the built environment.

13. The most effective activity to deal with risks posed by disasters that occur naturally or *via* some human activity is the elimination of ACMs from the built environment, utilising a Prioritised Removal approach.

Some recent natural disasters in Australia (and clean-up activities afterwards) have illustrated that natural disasters will often increase the risk of exposure to airborne fibres from ACMs. Unions issued warnings of the risks of exposure to ACMs following the January 2011 Brisbane floods⁵.

⁵ See for example *Insidious danger in wake of deluge*, The Sunday Telegraph, 23 January 2011.

Until Australia's built environment is asbestos free, relevant emergency response agencies should develop and implement particular components of emergency response plans that identify and address needs in relation to ACMs. This includes education regarding the hazards and risks of ACMs, location of them, removal and disposal requirements.

2.3 Removal and Handling

14. If it is not possible to ensure the safe removal of ACMs it should not be done.

Indeed, it is the position of the ACTU that ACMs must only be removed by licensed removalists. That is, licenses that are issued according to provision in Workplace Health and Safety Asbestos Regulations.

In addition, licensing and regulation of removalists must improve.

15. Risks posed by naturally occurring asbestos will largely be covered by existing mining and Health and Safety laws. Compliance with, and enforcement of, these laws will determine the sufficiency of this data.

As proposed earlier in this submission, the location and condition of naturally occurring asbestos should be mapped. The ACTU believes that a lot of 'signal information' exists and that this should be used to achieve the mapping of locations.

16. Government should not have responsibility in relation to removal of asbestos from former government owned properties that have been sold or disposed of. However, information that government possesses regarding the presence and condition of ACMs at the time of sale or disposal should be made available to current property owners.

Where the presence of ACM came about as a consequence of a specification of a government agency at that time, then responsibility should be shared.

17. Activities that should be included in a national strategic plan in relation to the removal and handling of asbestos include:

The promotion of closer monitoring of licensees by the responsible regulators. Area for monitoring include when a 'Class B' (non-friable asbestos) removal job becomes a 'Class A' (friable asbestos), yet the lesser qualified removalist continues with the job, conditions under which ACMs are transported for disposal and the actual disposal sites of removalists. This is an activity to be delivered by WHS regulators.

The apparent creation of a new category of removalist in the WHS Asbestos Regulations (where no license is required because removal work to be undertaken is less than 10m²) is of concern to the ACTU. ACMs are hazardous and no removal work should be conducted by a non-licensed removalist. Monitoring activity on this should be delivered by WHS regulators.

A consistent and transparent pricing structure for removal, transport and disposal of ACM must be developed. The ACTU is aware of anecdotal evidence whereby pricing is set by rationales ranging from "whatever we think the customer will accept", to adding a "dangerous substance 'premium'". The cost of safe and effective removal and disposal of asbestos has been cited as a matter which affects choices made by parties in the removal and disposal of ACMs. Opportunistic premiums, with little or no sustainable financial rationale, deter people from

removing ACMs safely and ensuring proper disposal of ACMs. This results in cost shifting (from the property owner often to a local council that then cleans up dump sites) and goes towards increasing the scale of the asbestos dumping problem. Opportunistic premiums also contribute to increased exposure to ACMs by the broader community, when materials are dumped. It is an issue for the removal industry and the disposal industry, including that provided for by local councils.

The identification of alternative disposal locations is a matter of great urgency. It matters little if safe and effective removal activity is increased, if there are limited sites for disposal. Disposal sites to be delivered by local and state governments.

Consistent and transparent pricing structures for all removal-related activity to be delivered by industry, state and local governments.

The National Asbestos Authority should oversight delivery of these matters.

18. The 'Asbestos Safety Certificate' (ASC), discussed earlier in this submission, is a positive incentive to homeowners. Creating no additional legal obligations, the ASC simply states whether ACMs are present and in what condition. The certificate, obtained at the time of preparing documentation for the sale of a property, alerts prospective purchasers to whether or not ACMs are present. The incentive lies in bringing a factor that may affect purchaser behaviour to the forefront, thus encouraging vendor to consider removal of ACMs prior to sale – or alternatively encouraging new owners to undertake the contracting of licensed removal work early in the period of home ownership.

An ASC would also be required when a rental property is re-let. This would alert prospective tenants to the location and condition of ACMs and may be a factor in determining whether a property is let. It is noted though that the strength of both these factors may be affected to the availability of housing stock.

2.4 Storage and Transport

19. There is a need to regulate the storage and transport of asbestos that has been removed from private domestic premises. All removal work should only be conducted by licensed removalists. Part of the licensing regime requires that ACM be disposed of, as prescribed. The current regulatory regimes prohibit the storage of ACMs. This must continue.

However, irrespective of who is actually removing, storing and transporting asbestos at the present time, there appears to be little effective enforcement of the existing regulatory regime.

20. The NAA should oversight improvements in education and enforcement of existing laws.

21. Australia has an inadequate number and location of disposal sites and facilities for ACMs. Provision of disposal sites and facilities by local and state/territory governments are patchy. These inadequacies increase the likelihood that parties will illegally dump ACMs in order to dispose of them. The dumping of ACMs increases the risk of exposure to asbestos fibres by workers and other members of the community as well as shifting the cost from those who have removed ACMs to other bodies such as local councils who then locate and clean up ACM dump sites on a regular basis. This cost is then borne, in turn by local rate payers, including also a cost of services not provided to members of the local community because resources are diverted to necessary clearing of ACM dump sites.

2.5 Disposal

22. Fees that are charged for the disposal of ACM can be a disincentive to dispose of ACMs appropriately. As such, fees can be part of the factors that influence a decision to dump ACMs.

Disposal fees form part of the pricing structure for commercial asbestos removal. Unjustifiably high fees cause removal work to be more expensive, thus creating a disincentive to be a responsible individual citizen or corporate citizen.

As stated earlier in this submission, a consistent and transparent pricing structure must be developed.

23. ACMs should not be disposed of in amongst everyday household waste. All ACMs must be disposed of in designated and recorded locations. This is also important as part of the scope of Australia's current problems with ACMs include that many dump sites of the past are now the playgrounds of our children, creating untold levels of exposure to asbestos fibres.

The NAA must oversight the development of a consistent and transparent pricing structure. Such a pricing structure will result in the reduction of disposal fees in many locations.

24. Uniform regulations, adopted by all jurisdictions, should apply to all asbestos disposal sites and facilities. Uniform regulations, adopted by all jurisdictions, should also apply to the transport of ACMs. Both of these regulatory measures would be consistent with a consistent and transparent pricing structure. Uniformity in all these measures would also facilitate the provision of clear and consistent information to all parties regarding hazards, rights and responsibilities in relation to the identification, removal and disposal of ACMs.

25. The ACTU is aware of an amount of anecdotal evidence that current approval and monitoring processes of disposal sites vary widely. Consequently, the level of safety that the Australian community expects is not always met.

As stated earlier in this submission, the location of all past asbestos dump sites must be a priority for a national asbestos audit.

26. Other activities, in addition to those set out above in relation to the disposal of asbestos, that should be included in a national strategic plan in relation to the disposal of asbestos include the improvement of education and enforcement of existing and proposed uniform laws.

27. Incentives associated with the safe disposal of asbestos should include avoiding a real possibility of prosecution for illegal disposal. Prosecutions should be able to capture both individuals and companies. Incentives for local councils for improved disposal provision should include the ability to divert resources currently spent on clean-up activities to the provision of other services.

2.6 Awareness

28. The need for awareness activities, information and education sources and resources will continue while ACMs continue to exist in our built environment. In this regard, these activities

are a continuing and recurring cost to various parties. Whilst necessary at present, there is also some concern as to the effectiveness of many activities. The effectiveness of activities needs further consideration. Consequently, a key element of awareness programs must be the positive promotion of removal of ACMs.

Raising public awareness and education are important elements of any comprehensive strategy to address asbestos-related issues. However, a public awareness and education campaign will not, in and of itself, fix a problem. It will not get rid of ACMs from the built environment. It is only a mechanism that can direct people towards actions in certain directions. In the case of ACMs, as is the case generally, an awareness and education campaign would be a recurring cost and recurring burden to the governments of future generations if ACMs are not removed. Improved public awareness does not prevent exposure to ACMs. Elimination of ACMs prevents exposure to ACMs.

A range of activities and information sources currently exist with the purpose of informing and educating parties in order to raise awareness around asbestos. The nature and content of this awareness raising is largely dependent on the target audience. For example, the Queensland government's flyer on common locations where asbestos can be found in homes has a different purpose to that of information provided on health and safety regulator sites targeting statutory duty holders. In addition to various government agencies providing information, unions and asbestos support groups also provide information to members and the wider community regarding hazards associated with asbestos and duties of workplace parties and others.

The union movement has also been at the forefront of campaigning for change in the way asbestos is dealt with. This has included raising awareness of the hazards of asbestos, improvements in health and safety laws related to asbestos, the calling to account of James Hardie and the banning of the import of ACMs. Support groups around Australia have also been active for many years in awareness raising activities. Each year, during Asbestos Awareness Week (the last week of November), the union movement and support groups conduct a range of activities, including information and awareness raising activities regarding risks and responsibilities associated with asbestos.

The identification of any networks and other parties not currently engaged in promoting awareness of asbestos, its hazards and responsibilities of parties should be done by the National Asbestos Authority.

29. There are a range of barriers to raising awareness and they include:

Awareness raising is not a 'one off' activity. While it continues to be present in our workplaces, homes and community the need to raise awareness is recurring. Awareness ebbs and flows.

There is a perception in some parts of the workforce and the wider community that asbestos has been dealt with. The view that, since Australia no longer produces ACMs there is no longer a problem, is one that many union officials commonly hear raised.

Lack of vigorous enforcement by all government agencies with some regulatory responsibility means that awareness of the hazards, responsibilities and consequences of failure to comply with duties are not promoted via strategic prosecutions, as they might be.

There is anecdotal evidence that some levels of government fail to fulfil their information, education and awareness raising role, referring parties instead to other information providers.

Many members of Australia's workforce and the wider community speak a range of languages and not all people speak or are literate in English. Consequently, information must be provided in a range of community languages.

There is a view that if awareness of the presence of asbestos is raised, then the ensuing concern by workers, or community members will in itself be difficult to manage. Therefore, awareness should not be raised – but suppressed. Unions have seen this where, for example, removal work is carried out without advising workers it is happening. Or where ACM is identified, but not labelled. These various breaches of duties often do not attract sanctions.

Addressing these, and any other identified barriers, should be included as part of the national strategic plan of the National Asbestos Authority.

30. The National Asbestos Authority should also map all awareness raising activities that are currently occurring and identify any gaps. Partnerships may be identified whereby particular groupings of the community (e.g. home renovators) are identified and corresponding information and awareness sources are identified.

Those best placed to deliver awareness activities to the community include those bodies with existing statutory functions to provide information and awareness. And this should include any parties who have some regulatory responsibility for one or more asbestos related matter.

Those that have profited in the past from mining, manufacture and distribution of ACMs also hold a particular duty. Writing in the *Medical Journal of Australia*, Gordon and Leigh⁶ identify the companies James Hardie and CSR as having a duty to warn homeowners of the risks of asbestos exposure during maintenance and renovations. The ACTU supports this view.

Where a home becomes asbestos free, an 'Asbestos Free Certificate' should be available. Where a commercial or public building becomes asbestos free, a Plaque should promote and advise its asbestos-free achievement. The NAA should promote positive achievements as well as hazards and breaches of law.

2.7 Education

31. Education activities, including formal courses of training will continue to be necessary whilst ACMs continue to be present in our build environment. Where education has been completed, research⁷ has indicated an increased awareness of the hazards of asbestos and an ability to identify it. What is perhaps indicated by this work though is that asbestos awareness, the ability to identify it and knowledge of rights must be more thoroughly embedded in the provision of existing training and education – both by formally accredited bodies, including TAFEs etc, but also by Persons Conducting Businesses or Undertakings – particularly where there is a high occupational likelihood of exposure to ACMs.

Consideration should also be given to embedding asbestos awareness and identification into school curriculum. This would serve to 'capture' the workers of tomorrow who will be exposed to ACMs, the children of home renovators who are being exposed to airborne fibres today and the renovators of tomorrow that some of these school children will become.

⁶ J. Gordon, J. Leigh *Medical Journal of Australia*, September 2011, Australian Medical Association

⁷ Pratt B, et al, *Safe Work Australia*

32. Educational needs of various parties are largely defined by what role, rights and responsibilities they have and the activities they are undertaking relevant to the National Asbestos strategy.

For example:

Home renovators are now the largest proportion of all non-occupational related sufferers of mesothelioma. Their needs include awareness of the hazard, responsibilities to themselves, neighbours and the wider community, some ability to identify likely ACMs, how and where to access asbestos removalists, any duties when selling or leasing a residential premises.

Other private residential property owners include owners of properties that are being leased. These owners should have particular responsibilities to inform tenants and prospective tenants of the condition and location of ACMs.

Employers need to know what their duties are under Asbestos regulations – and that these duties will change, in varying degrees, from 1 January 2012. Depending upon the location and/or activities of the employer, they will have one or more sets of duties under these regulations.

Workers need to know what the hazards of asbestos exposure are, how to identify likely ACMs, what their rights are, including the right to cease or refuse hazardous work, and what options for recourse they have.

Much of the broader community will be ‘touched’ by one or more of the above. For example: home renovators are very often also workers and thus are touched in two capacities.

The National Asbestos Authority should map where members of the community are ‘touched’, and where people may be missed. This exercise could be improved by liaison with existing government departments who are conducting national initiatives (for example, the Department of Health and Aging is conducting a national health promotion project which targets workers, school children and community members. Although the messages and purpose of programs are different, the intent to touch every single member of Australia’s community is the same).

Similarly, Cancer Council Australia has considerable experience in designing and delivering effective social marketing campaigns. The NAA should draw upon the evaluation of previous social marketing campaigns in designing education and risk awareness campaigns about asbestos.

2.8 Remote, rural and regional issues

34. There are significant barriers to dealing with asbestos in remote, rural and regional communities. That is, where there is ACM in a built environment which also happens to be remote or rural or regional there may be reduced provision of and access to information, removal and transport services and disposal sites. An additional aspect of these communities is that many of Australia’s indigenous communities are remote, or rural or regional.

There are clear logistical challenges to accessing these parts of Australia’s built environment. This includes the distance that needs to be travelled, particularly for remote communities in order to provide asbestos identification or removal services.

Certainly, there are avenues for providing information and awareness to remote, rural and isolated communities. Community radio stations, including those that service indigenous communities, may be well placed to provide information and improve awareness.

35. The National Strategic Plan should ensure remote, rural and regional areas, including remote, rural and regional indigenous communities, are a particular area of focus. Whether this particular focus is an integrated or stand-alone priority may be determined by the NAA.

With regard to ACMs in the built environment of remote, rural or regional indigenous communities, the ACTU has been made aware of documentation gathered as part of the NTNER, where ACMs were found by experts to be in a stable state, within the 2009 – 2010 financial year. It is the view of the ACTU that ACMs deteriorate and further that this deterioration may be exacerbated by other events such as natural disasters and/or human intervention. Consequently, where ACMs remain in situ, a need for re-assessment arises and that this should occur at appropriate periodic times – to ensure that material previously assessed as being in a stable state is in fact still in a stable state.

36. The NAA would be best placed to drive the delivery of services and initiatives to remote, rural and isolated communities by local, state/territory and federal government agencies.

2.9 Medical data

37. Australia requires a nationally consistent and consolidated data base of all asbestos related diseases.

We suffer the highest known rate of mesothelioma in the world, yet the national Mesothelioma Register was nearly discontinued a few years ago. A campaign by unions, support groups and the medical community stopped its closure. A new register is now functioning. The most recent report from the registry, released 30 August 2011⁸, documents a new peak in new cases of mesothelioma. This underscores the urgency of the development of a national strategic Plan to eliminate asbestos from the built environment.

Other data is collected by other agencies, including the NSW Dust Diseases Board. The Board, which administers the Workers' Compensation (Dust Diseases) Act 1942, provides compensation for a range of diseases or lung conditions that may be caused by occupational exposure. The Board and the Act it administers represents a 'high-water mark' for data collection of this nature in Australia. It should be expanded to all jurisdictions.

In addition, given there is a relationship between asbestos exposure and lung cancer, and that, as lung cancer is a reportable illness, data collection measures should improve to also capture in particular occupational data relating to exposure to ACMs.

Data from all sources should be published annually, by either the NAA or Safe Work Australia (or jointly) and available to researchers upon application and satisfaction of ethics approval.

The consideration of privacy issues should first review that provided for by the Mesothelioma Register and the NSW Dust Diseases Board.

⁸ Mesothelioma in Australia, insert rest of reference...

Enforcement of data provision may come through making asbestos related diseases notifiable under respective Health Acts. Provision of data by workers' compensation authorities should not be problematic.

38. The National Strategic Plan should provide for the NAA to oversee the development of consistent definitions, consistent notification and reporting requirements and consistent data bases. It may also seek to work towards the development of one overall data base in the future.

This will necessarily be achieved by working with Safe Work Australia, which in December 2010 agreed to a National Workers' Compensation Action Plan, including the consideration of recommendations from the *Senate Standing Committee on Community Affairs Inquiry into Workplace Exposure to Toxic Dust*, which included approaches to improve research and data on toxic dusts.

2.10 Location data

39. The provision of information to identify locations* where asbestos contaminated materials have been disposed of is a key element of the proposed National Audit.

As stated earlier, there already exists two primary sources of information to conduct this element of the National Audit:

- Information still held by miners, manufacturers and producers of ACMs – *James Hardie* and *CSR* and
- Much 'signal information' that is held by various agencies and federal, state and local government level. For example, local councils should know the location of current and past council-operated disposal sites. Organisations such as the Department of Defence should know when it has used asbestos contaminated materials in sites formerly used as rifle ranges.

In addition to these sources, Parramatta City Council's *Asbestos Enforcement Policy*, placing requirements on development approvals is another useful mechanism to ensure location data is effectively gathered. Western Australia's Contaminated Sites Act 2003 also appears to provide a useful model for the collection and storage of location data.

*It should be noted that ACMs have been disposed of on public and private lands and consequently the NAA should not confine itself to just examining disposal sites on current public land.

It should also be noted again at this point in the submission a point made earlier in this submission in regard to the NTER, regarding the need to maintain current assessments - to ensure that material previously assessed as being in a stable state is in fact still in a stable state.

40. Disclosure of disposal sites must be mandatory for entities and persons who have knowledge of such sites. This is imperative to facilitate the completeness of the National Asbestos Audit.

The ACTU would consider the merit of any case put forward for the provision of an amnesty to any persons or companies with relevant information. However, at this time there is no clear merit to such a proposal.

41. Vendor notification requirements, as provided for by South Australia and the ACT are strongly endorsed by the ACTU. The ACTU has earlier in this submission recommended the adoption of a similar disclosure mechanism – the “Asbestos Safety Certificate” – for all vendors of residential dwellings and owners of residential property to be leased.

42. The disclosure of the location and condition of ACMs where private property is a **workplace** is mandatory under Work Health and Safety Asbestos Regulations. Those regulations require not only the duty to identify the presence of asbestos, but also that the presence and location of asbestos is to be indicated etc.

With regard to the location and condition of ACMs on private property where it is a residential premises, the ACTU strongly advocates the adoption nationally of a legislative requirement to identify and assess these matters at the point of sale or letting of a property. This can be achieved by completion of an ‘Asbestos Safety Certificate’. Disclosure would be mandated to any prospective purchaser or tenant and would form part of the ‘deed of sale’ or ‘rental agreement’.

43. Consolidated information on the location of asbestos is required. This is one of the primary purposes of the National Audit. The goal of “The elimination of all asbestos containing materials from the built environment in Australia by 2030” is not achievable without first establishing the location and condition of all ACMs in the built environment.

Mechanisms for collection of this data have been previously discussed elsewhere in this submission.

Statutory duties to obtain information and duties to then provide information as well as enforcement provisions need to attach to the National Asbestos Authority to ensure data is provided by all parties.

Data should be publicly available and accessible. This would be an important underpinning element of other parts of the Strategy, including information, awareness and education elements. The ACTU cannot currently envisage circumstances under which data might not be publicly available.

44. Activities that should be included in the National Strategic Plan to improve reporting and disclosure of information include:

Liaising with relevant federal, state and local government bodies (this may include the development of MOUs between the NAA and various agencies).

The NAA should develop consistent reporting frameworks.

The NAA should develop a national data base on the location of asbestos. The data base will necessarily be comprised of a range of sources, previously detailed in this submission.

Information and awareness raising activities will need to include components on identification and reporting obligations, as well as the purpose of these obligations.

2.11 Exposure data

45. Existing requirements for the reporting of workplace exposure to asbestos are not adequate.

Exposure data is and can be important to collect, for reasons including:

- Where workers are exposed to asbestos this is a clear flag generally that duties under Asbestos Regulations (Regulation 420 *Exposure to airborne asbestos at workplace* and others) are being breached.
- It can also be important in expediting the making of a claim for compensation for those workers who later develop a compensable asbestos related disease, for which the cause is occupational exposure.
- It could be included as a component of the larger recommended Asbestos Audit data base, identifying the location and condition of ACMs in the built environment.

However, as currently drafted, the *incident notification* requirements of Part 3 of the WHS Act do not place a duty on a PCBU to notify the regulator when a worker has been exposed to asbestos. And the Regulation 387 *Statement of exposure to be provided to workers*, which is made under Part 7.1 of the Hazardous Chemicals Chapter of the WHS Regulations, does not extend to asbestos. By and large it is only where someone contacts the regulator and specifically requests the attendance of an Inspector that action is taken by a regulator. And the provision of a 'letter of exposure' to workers when they are exposed is generally a reflection of union membership and advocacy by a union. Thus, 'exposure letters' are not provided automatically.

Thus, there is no present statutory trigger for the engagement of the regulator when workers are exposed to asbestos. And there is no statutory right of a worker to a statement that they have been exposed to asbestos.

The WHS Act and Regulations are required to be amended to encompass asbestos exposure. Further, information identifying the location and condition of ACMs arising from these exposure events should, in turn, be also provided to the National Audit. It should also be noted here that these provisions would also apply to *persons*, where exposure has arisen from the conduct of a business or undertaking.

46. A centralised system for reporting public exposure is supported. This would be in addition to that required for work-related exposures, as dealt with above.

The purpose of public exposure data would include adding to the location and condition data collected arising from occupational exposure.

How such a system would operate and whether it would be mandatory and any necessary controls could be a matter for consideration by the National Asbestos Authority.

47. Existing exposure registers that are 'successful' turn, in part, on the definition of 'successful'. No known Registers actually prevent exposure to asbestos.

Registers of 'exposure letters', currently maintained by private parties are successful to the extent that data on that Register may assist in expediting the claim for compensation of a dying person.

The Mesothelioma Register (relaunched last year) is strongly supported and may be successful in, amongst other matters, assisting with the prediction of new trends and patterns.

48. Activities that should be included in the National Strategic Plan with respect to collection of exposure data are canvassed above. The National Asbestos Authority is best placed to oversight delivery of these activities.

2.12 Import and export controls

49. Challenges to the enforcement of Australia's ban on the import and export of ACMs include:

- The importation of plant and materials that contain asbestos – without labelling to identify them.
- The inaccuracy of some '*asbestos free certificates*' issued by some shipyards overseas means that some ships have been found to contain asbestos. In relation to '*asbestos free certificates*' unions remain concerned that ships entering Australia, particularly for work in the offshore oil and gas industry, are still being found to contain asbestos.

The ACTU supports the ban. To improve the efficacy of it measures need to be taken to better capture both intended and unintended import of ACMs.

The NAA may consider a definition of an '*asbestos free product*', ensuring that it is consistent with WHS asbestos regulations and that there are not further matters included in a test of whether something constitutes an ACM by inclusion of matters such as 'intent', as currently occurs in the UK.

In order for a more meaningful definition of '*asbestos free product*' to have full effect in Australia, the Australian government itself will have to take an active role in various international forums seeking that a consistent definition of '*asbestos free product*' be adopted internationally.

The NAA should also work with existing Maritime bodies to seek improved monitoring and enforcement of Australia's ban.

With regard to the asbestos contained in ships, the NAA should seek to liaise with the Seacare Authority, and AMSA as the OHS Inspectorate under the OHS (MI) Act, regarding the establishment of improved compliance procedures to address this issue.

50. Australia must take an active role in encouraging an effective ban on the international trade in asbestos. This includes working with all stakeholders here and internationally who are equally committed to achieving an effective ban on the trade of asbestos.

Giving effect to a true global ban will also involve addressing issues raised above regarding changes to the definition of '*asbestos free product*' and current shortcomings in the issuance of '*asbestos free certificates*'.

The NAA should work with various existing government departments, including the Department of Foreign Affairs and Trade, unions, community groups and others to actively promote an effective ban – and counter wrong and misleading statements and actions of proponents of continued trade.

51. Australia should continue to ban the import and export of ACMs, with further attention to matters listed above. The Priority Areas for the National Strategic Plan remain those listed earlier in this submission.

2.13 A final comment

While a new Work Health and Safety Act and Asbestos Regulations, commencing 1 January 2012, will improve current requirements in some jurisdictions, it will also mean a loss of rights in other jurisdictions. And while jurisdictions haven't fully met their regulatory responsibilities in the past, the value of these new laws will depend strongly on tough enforcement.