



**Supplementary Submission
Australian Manufacturing Workers' Union**

Senate Community Affairs Committee

Inquiry into Workplace Exposure to Toxic Dust

August 2005

INTRODUCTION

1. The Australian Manufacturing Workers' Union (AMWU) seeks to make the following supplementary submission to the inquiry of the Senate Community Affairs References Committee (the Committee) into workplace exposure to toxic dust. The supplementary submission specifically deals with, and draws on, the AMWU's experiences in relation to workplace exposure to *asbestos*.
2. The full name of the AMWU is the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union. The AMWU has membership that extends into many areas where workplace exposure to toxic dust, and especially to asbestos, has been common including: power stations, railways, workshops, dockyards, shipping, engineering, construction, maintenance in power plants, chemical plants, oil refineries and the brake repair industry.
3. Sadly, many members of the AMWU have died because of their exposure to asbestos, including in 1997, the former National President of the AMWU, Brian Fraser, who died as a result of mesothelioma.
4. On the basis of the experience of AMWU members regarding workplace exposure to asbestos, this supplementary submission urges the Committee to make recommendations regarding:
 - corporate law reform to ensure that defendants of dust disease claims do not structure their affairs in order to avoid paying damages to victims;
 - the creation of an “asbestos safety certificates” regime to improve the safety of the community and workers in the construction industry; and
 - the creation of a national reporting regime which includes requirements both in relation to workplace exposure to toxic dust and the contraction of dust diseases.
5. In addition to the matters raised in this submission, the AMWU attaches for the consideration of the Committee submissions made on behalf of the union and other bodies in relation to the call for submissions made by the New South Wales Government in its recent Issues Paper “Review of Legal and Administrative Costs in Dust Diseases Compensation Claims”. The appended submissions, although originally intended for a different inquiry, would nevertheless appear to be relevant to the terms of reference of the current inquiry and in particular those concerning access for compensation and legal redress.
6. The AMWU has not sought to bring material to the Committee's attention with respect to the health impacts of exposure to asbestos fibres as such information is otherwise available in the public domain. The AMWU is nevertheless able to provide such material if it would assist the Committee.

THE NEED FOR CORPORATE LAW REFORM – ASBESTOS CLAIMS

7. It is critically important for those who are seriously ill as a result of exposure to toxic dust that employers and other potential defendants should not be able to hide behind a corporate veil or artificial company structures to avoid the payment of appropriate compensation. While the AMWU recognises that problems of corporate restructuring are by no means limited to the ability of victims of dust diseases obtaining compensation, the nature of illnesses caused by exposure to toxic dust and the lengthy time in which it often takes symptoms of the illnesses to become evident means that victims are peculiarly at risk of not being able to secure compensation.
8. Unfortunately, the case of James Hardie provides an excellent example of this very problem. Evidence to the NSW Government's Jackson Inquiry into the activities of James Hardie indicated that:
 - James Hardie spent millions of dollars to restructure and move to the Netherlands.
 - The restructured company cut off the asbestos arm from the rest of the company.
 - James Hardie established a trust fund to compensate victims of asbestos disease, which was substantially under funded (evidence suggested that \$1.2b - \$1.6b would be needed).
 - James Hardie arranged for experts to write reports that have disguised the real extent of its liabilities for compensation of asbestos victims – even to the directors of the very trust that it had established.
 - James Hardie was engaged in asset stripping and charging of high “management fees” to its subsidiaries to reduce the money available to the trust fund to compensate victims of asbestos disease.
 - James Hardie's former legal advisor knew that the company was “seriously entertaining” options to insulate the Netherlands company from the Australian parent company, although Hardie assured the NSW Supreme Court that a “lifeline” for creditors would remain in the form of a \$1.9bn share asset from the Netherlands company. This asset was subsequently cancelled following the company becoming aware of the claims by the Medical Research and Compensation Foundation of its imminent financial collapse.
 - James Hardie's former legal advisor believed that the company may have misled the Supreme Court of NSW.
9. There can now be very little doubt about why James Hardie restructured its companies and moved to the Netherlands. The evidence to the Jackson Inquiry was nothing short of scandalous.

10. James Hardie exploited the Corporations Act for its own purposes. Unfortunately this practice has become all too common. The AMWU is aware of both large and small corporations who put in place “asset protection schemes” which result in their employees, or victims and potential victims as the case may be, being unable to access the full and true assets and resources of the company in the event that the company enters administration or liquidation.
11. The AMWU seeks that the Committee recommend reforms to the Corporations Act that would prevent the burgeoning industry that is developing around companies who deliberately contrive to avoid their statutory and other financial responsibilities, specifically:
 - legislation addressing “fraudulent conveyancing” for the purposes of avoiding corporate liabilities; and
 - legislation allowing a “piercing” of the corporate veil so that related entities’ liabilities can be addressed.

ASBESTOS SAFETY CERTIFICATES

12. While the terms of reference for this inquiry relate to “workplace” exposure to toxic dust, the next wave of people who will die from asbestos related disease are those who have been exposed to the deadly fibres, not as a result of their paid work, but as a result of the current fashion for “Do-It-Yourself” home renovations. In the coming decades, tens of thousands of people are expected to contract asbestos related diseases. Many of these people will be home renovators. Sadly, many of the people exposed will be young children, present in the house while their parents work at renovations.
13. Warning labels were not placed on asbestos cement sheets until 1978 and many of these would no longer be in place or visible. Many householders would be unaware of the presence of asbestos in their home and the risks it represents.
14. The AMWU therefore urges the Committee to make strong recommendations to reduce unnecessary deaths and disease arising from exposure to asbestos in residential (and commercial) buildings. To this end the AMWU suggests the creation of an “Asbestos Safety Certificate” regime. Asbestos Safety Certificates could be issued as a normal part of conveyancing and development applications before councils.
15. The certificate inspections could be carried out by accredited inspectors who would identify the presence and condition of any asbestos materials on site. The potential purchaser or renovator would then be in a position to make an informed decision about any work needed on the property.
16. If implemented, an Asbestos Safety Certificate regime would be a highly effective public health initiative, that could be undertaken with very little cost and with very

clear long term benefits. Such an initiative would save the lives of thousands of householders undertaking unpaid work in their own home as well as a significant number of workers in the building and construction industry.

MAKING DUST DISEASES NOTIFIABLE

17. It is estimated that more than 40,000 Australians will contract asbestos related disease over the next 30-40 years. More than 14,000 are expected to develop mesothelioma. At the present time, there are no satisfactory and / or systematic processes to monitor the incidence of asbestos exposure or asbestos related diseases at a national level. This failing of public health policy should be addressed.
18. In the United Kingdom, the *Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995* require employers to report workplace injuries, diseases and dangerous occurrences. The information gathered allows enforcing authorities to identify where and how risks arise and to investigate serious accidents. A dangerous occurrence specifically includes exposure to asbestos.
19. It is the AMWU's submission that the Committee should recommend the creation of a national reporting regime which includes requirements both in relation to workplace exposure to toxic dust and the contraction of dust diseases. Such a regime would enable accurate data to be collected for the purposes of health planning and education.

CONCLUSION

20. The AMWU thanks the Committee for the opportunity to make submissions regarding workplace exposure to toxic dust. Exposure to toxic dust continues to cause thousands of deaths and a great deal of suffering. With appropriate legislative and policy initiatives, much of this death and suffering could be avoided. In those cases where harm cannot now be avoided, it is to be hoped that the recommendations of this Committee will lead to victims of exposure to toxic dust being dealt with in a more humane and just manner.
21. The AMWU commends the recommendations it has made in both its original and this supplementary submission for the Committee's consideration and would value the opportunity to make further submissions to the inquiry should public hearings be held.