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Senate Inquiry Health Impacts of Workplace Exposure to Toxic Dust

Submission by Richard White, Thomas Faunce and Kate Flower for the Australian Sandblasting Diseases Coalition

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1 Executive Summary

This submission presents information on the actual and potential health impacts of workplace-related toxic dust, especially silica, from Mr Richard White and the numerous people who have contacted the Australian Sandblasting Diseases Coalition which he established. This information suggests that toxic dust in workplaces throughout Australia have been causing significant health problems for a large number of Australians. It suggests that these problems have been exacerbated by employers failing to apply and enforce safety standards and precautions. It suggests that Australia currently lacks a uniform system of providing compensation to workers who have experienced health problems as a result of exposure to toxic dust. It suggests that there are significant problems in the legal standards being applied in compensation proceedings.

It is recommended that the Senate recommend the creation of a national regulatory body, a National Toxic Dust Diseases Board, to investigate, adjudicate and **where** appropriate provide financial compensation for employees and their families whose health has been adversely affected by toxic dust diseases. It is further recommended that such National Toxic Dust Diseases Board regulatory would apply standards established on the best available scientific evidence by medical and epidemiological experts. In addition to this, the regulatory body would be in charge of distributing funds from the responsible employer corporations, to compensate for any medical, or other financial expenses, incurred by toxic dust associated diseases. Finally, the regulatory body would be responsible for creating awareness as to the causes of toxic dust diseases in relation to the established Occupational Health & Safety regulations thereby forcing employers to comply with a duty of care preventing future exposure to toxic dust.

2 Submission Against Terms of Reference

On 22 June 2005 the Senate referred the following matters to the Senate Community Affairs References Committee for inquiry and report by 1 December 2005.

a. the health impacts of workplace exposure to toxic dust including exposure to silica in sandblasting and other occupations;

The Senate Committee in investigating this issue must advertise to and visit locally in all workplace areas throughout Australia where employees had a high probability of exposure to toxic dusts. “Toxic dusts” should be interpreted as widely as possible by the Committee after taking expert medical and epidemiological evidence. ‘Health impacts’ should also be interpreted as widely as possible. One of the main areas of controversy in this area, responsible for denying compensation, involves health problems such as asthma, **silicosis**, emphysema or excess sputum being ascribed exclusively to uncompensable cigarette smoking in workers with that history, regardless of exposure to toxic dust. This conclusion is not in accordance with the best recent scientific evidence or the approach emerging from the recent UK coal mining disease litigation and enquiry.

Another major area of controversy here could involve the toxic ingredients in workplace dust, not just produced by commercial sandblasting, but by sand mining or tunnelling.

b. the adequacy and timeliness of regulation governing workplace exposure, safety precautions and the effectiveness of techniques used to assess airborne dust concentrations and toxicity;

Our concern is that national guidelines in these areas may not be monitored, developed and implemented in accordance with best scientific practice. Legislation varies from state to state.

c. the extent to which employers and employees are informed of the risk of workplace dust inhalation;

The committee should recommend legislation requiring workplaces to display national standardised notices warning of the health risks of toxic dusts and the recommended ‘**worlds best practice**’ safety precautions.

d. the availability of accurate diagnoses and medical services for those affected and the financial and social burden of such conditions;

The committee should recommend the creation of a National Toxic Dust Diseases Board with **the** capacity to liaise with the medical profession over such issues.

- e. the availability of accurate records on the nature and extent of illness, disability and death, diagnosis, morbidity and treatment;**

The committee should recommend the creation of national standards on such issues **and further, wider availability for better treatment.**

- f. access to compensation, limitations in seeking legal redress and alternative models of financial support for affected individuals and their families; and**

The committee should recommend the creation of a National Toxic Dusts Diseases Board concerning such issues.

- g. the potential of emerging technologies, including nanoparticles, to result in workplace related harm.**

The committee should interpret this term of reference as broadly as possible. It does not solely relate to toxic dusts but includes all emerging technologies including biotechnology and gene-based pharmaceuticals as well as nanotechnology. Workplace related harm, similarly should be interpreted to include adverse events in public or private hospitals

3 Introduction and Background

On 22 June 2005 the Senate referred the following matters to the Senate Community Affairs References Committee for inquiry and report by 1 December 2005.

Mr Richard White's legal action for damages for silicosis-related lung disease against Pink Batts Insulation Pty Ltd, formerly known as Divic Pty Ltd formerly known as Dimet Corrosion Pty Ltd, formerly known as Dimet Corrosion Prevention Pty Ltd **and their insurers, Commercial Union (CGU)**, was ultimately unsuccessful. The detailed medical reports related to **the case**, (particularly a histopathology report from the Alfred

Pathology Service dated 20 September 2000 showing silicate crystals in his lungs with associated tissue damage) appear to provide the “sentinel” case justifying a broader and more extensive investigation of the problem of Australian, toxic dust workplace-related disease in the public interest. Of particular importance, given the failure of the judicial system to provide ~~him~~ Mr White with compensation for workplace-related silicosis, is the following quote from the cited pathology report:

“Scant brightly birefringent, needle-shaped crystalline material, consistent with inhaled silicate crystals, are noted within these macrophages. In addition, similar material is noted in macrophages within the lymphoid aggregates of the dust sumps, with a miniscule amount of associated interstitial fibrosis.”

Associate Professor Bryant in his report of 4 April 2001, states that these results in the context of Mr White’s minimal smoking history and absence of prior confirmed lung disease “unequivocally” proves Mr White has silica deposits in his lungs, as well as changes of silicosis.

Mr White has since established the Australian Sandblasting Diseases Coalition (“ASDC”). This has encouraged the collection of testimony both to itself and to this Senate Committee directly concerning health problems related to toxic dust exposure in Australian workplaces.

Wayne Kenneth Nayda and Thomas Shepherd, amongst the numerous others who have contacted the ASDC, are capable of providing evidence detailing alleged deficiencies in sandblasting practices in the Northern Territory (particularly at the Darwin RAAF base when compared with other States in Australia. Mr Shepherd also states that he was using the sandblasting technique at Darwin in the early 1970’s. The statement of Barry Thomas Medley also provides evidence that sandblasting was used as a technique in the Northern Territory in the 1970’s.

If these claims are true, particularly in relation to the known toxins in the stripping process, the lack of safety equipment and possible injury and deaths, they suggest that **both the standards in this area and their implementation have not been** uniform throughout Australia. As Mr Shepherd recounts:

“They’d be gasping for air, covered with sand and metal particles and paint particles...coughing and wheezing...there was no actual face mask, gas mask

type things on 'em at all."

Mr White, Wayne Nayda and Barry Medley who worked for Pink Batt Insulation (The Dimet Group) in the Northern Territory as sandblasters, have given statements that indicate there was no regulations enforced or safety precautions to prevent or monitor the level of exposure to toxic dust and other airborne particles:

"A lot of the times we just used to have to wear a piece of rag around our mouths... occasionally we had to argue to get em [in relation to dust masks]" – Barry Medley.

"No, no such thing as work practices." – Wayne Nayda

Contrasting regulations were enforced at RAAF where *"RAAF required fresh air to be supplied, face masks with charcoal scrubbers in them to be worn and preferably used in an open environment"* – Thomas Shepard.

The ASDC has also become aware of concerns in the community about the health impacts of sandmining and tunnelling.

4 Toxic Materials Involved in Sandblasting

It is well documented that exposure to toxic or carcinogenic materials such as asbestos, toxic fibres (wood, fibreglass), silica and other airborne particles (spray paint), materially increase the risk of silicosis, respiratory diseases and cancer.¹

Apart from silica there is a list of allegedly toxic or carcinogenic materials involved in sandblasting operations (particularly at the Darwin RAAF base): including Asbestos A, Asbestos 7TFI, Silica QFF, Celite 499, Strontium Chromate, Coal Tar Pitch, Diethylene Triamine, Iso Butanol, Silica 300 QF, Tri-Butyl Tin Oxide, Desmodur N 75, Chromium Oxide, Lead 24%, and Metal Lead Bronze Flake. From the safety comments written on these documents it is clear the hazards of these substances were

¹ Hunter D. (1975). "The Pnuemoconioses", pp955-970 in: Hunter D. 'The Diseases of Occupations', 5th Ed. [Hodder and Stoughton: London]; Katabami M, Dosaka-Akita H, Honma K, et al "Pneumoconiosis-related lung cancers: preferential occurrence from diffuse interstitial fibrosis-type pneumoconiosis" *Am J Respir Crit Care Med.* 2000;162(1): 295-300.

known.

In the course of Mr White's employment at Pink Batt Insulation (The Dimet Group) from 1971 – 1974, he and many workers performing similar tasks throughout Australia, were repeatedly exposed to such toxic substances whilst sandblasting, and in some instances in very confined and poorly ventilated areas.

5 National Regulations on Workplace Exposure to Toxic Dust

Evidence of workplace regulations in relation to toxic substances date back to the 1954 United Kingdom regulations.² It appears that by 1959, New South Wales Abrasive Blasting Regulations had prohibited sand as an abrasive blasting agent. The statement of Nayda, however, indicates that he was involved in sandblasting in the Northern Territory in 1971, that sandblasting was illegal in South Australia at the time and that he never used it as a technique after he moved to Whyalla.

Australian Standard Z18 (Respiratory Protective Devices) was first published in 1963 and was revised in 1968. Australian Standard CZ11 (Code of Recommended Practice for Respiratory Protective Devices) was first issued in 1960 and was also revised in 1968. Neither of these standards appears to have been implemented in relation to the sandblasting activities in the Northern Territory in the 1970's.

It is evident that national regulations should have been enforced in 1954, or at the very latest along with New South Wales in 1959 across all Australian jurisdictions to prevent harm to employees from the exposure to toxic dust diseases. However, it was not until 2002 that Victoria prohibited workplace exposure to toxic dust³ and moreover, there is still no evidence of regulations or standards in place in the Northern Territory.

The National Occupational Health & Safety Commission reduced the standard for exposure of silica in January 2005 to 0.1mg/m³. A national statutory body should ~~also~~ **therefore** monitor and regulate the equipment supplied by corporations, such as Pink Batt Insulation (The Dimet Group), and used by employees, to make sure they comply

² *Mines and Quarries Act 1954* (Eng), Chapter 70

³ *Occupation Health and Safety (Hazardous Substances) Regulations 1999*, Worksafe Victoria, Vic work cover authority, Reg 300(b) enforced Jan 1 2002

with current international practices and levels of ‘safe’ exposure to toxic dust and other airborne particles. Continuous monitoring of international standards should also be carried out.

The National Occupational Health & Safety Commission (NOHSC) is the existing organisation with the most expertise in relation to safety levels for toxic dust and other airborne particles. It is therefore suggested that an established statutory body work closely with the findings of NOHSC to ensure emerging technologies in workplace related harm are put into effect to prevent the future toxic dust diseases.

6 Lack of Education on Sandblasting Safety

Statements taken from Mr White, Wayne Nayda and Barry Medley (attached) indicate that there was no training or education of how to handle or be safely exposed to toxic dust and other airborne particles whilst working for Pink Batt Insulation (The Dimet Group).

“I’d never ever heard anything like that until later years” – Barry Medley [in relation to information given about workplace hazards and health effects]

“No I wasn’t” – Wayne Nayda [answer to being asked if he was made aware that he may contract some type of disease by using sand in sandblasting when first employed by Dimet]

It is therefore recommended that a national statutory body monitor the level of training and education provided to employees who are exposed to toxic dust and other airborne particles in the course of their employment.

Finally, it is recommended that sanctions be enforced with corporations who do not comply with the level of training and education required for employees to be ‘safely’ exposed to toxic dust and other airborne particles.

7 Compensation, Therapy and Social Issues

The courts have failed to recognise the dramatic effect of toxic dust on employees, instead, dismissing such claims as a result of mild or moderate exposure

to cigarette smoke⁴. The invasive nature of the operation Mr White underwent to discover empirical evidence of silicosis is not a practical measure for all employees to take. It is then recommended that the Senate accept the close connection that has been established by medical experts, where the various disciplines involved in Mr White's employment materially increased the risk of silicosis.

“Cardiorespiratory Therapy Services” operates in Sydney. No service of this nature operates in the ACT. Travel and treatment to access this service is costly, yet a service that is needed by sufferers of toxic dust diseases to maintain a comfortable standard of living. Therefore, it is suggested that greater access to specialised services needs to be established and provided for by the negligent corporations.

There is finally an enormous social burden of living with toxic dust diseases. The risk of other people coughing, exposure to dead skin cells and the like could have grave consequences for people affected. The Senate is urged then, to take the seriousness of toxic dust diseases into account when assessing the needs for medical services and compensation.

It is recommended that specialists and researches, both nationally and internationally, share current and new information in order to establish accurate and up-to-date records of the nature and extent of toxic dust and other airborne related diseases. Further, it is suggested that a statutory body readily publish this shared information so that regulations and practices may be easily enforced and complied with by various corporations, such as Pink Batts Insulation (The Dimet Group), in connection with the new information.

Treatment for toxic dust related diseases varies due to the affordability and accessibility for a patient. Essentially, it is a long slow death as the lung capacity decreases over the years. The requirement then, of shared information, is necessary in order to establish more advanced treatments for future sufferers of toxic dust related diseases.

⁴ Mild or moderate cigarette smoking has been recognised to mean '15 – 20 cigarette's per day' from *Workers Compensation (Dust Diseases) Board v Kelly* NSWCA [2000] 57 at 4 per Sheller JA

Mr White has exhausted all legal avenues for compensation against Pink Batts Insulation (The Dimet Group) and their insurers, Commercial Union, and their negligent regulations in sandblasting and employee safety (term of employment 1971-1974).⁵ New medical evidence has arisen from the Alfred Hospital Histopathology report by Dr Jessup, which confirms that Mr White is suffering from silicosis, as a result of his exposure to silica whilst working for Pink Batts Insulation (The Dimet Group).

As Mr White is unable to work because of his ill health, the lack of compensation has meant that Mr White's family have had to bear his financial burden, covering all medical, legal and household bills

Given Mr White's failure in accessing compensation and in view of the large costs associated with legal action, it is unlikely that the current (recognised) 927 employees that may be affected by toxic dust will be afforded compensation unless the Senate **supports** a regulatory body to enforce such claims in a cost-effective and timely manner.

For cases where exposure to dust **have** occurred in NSW, there is no statute of limitations. If the exposure to dust occurred in other states, then the limitation laws of those states will apply. As silicosis has an incubation period of anywhere between 10 to 30 years, this could dramatically effect the outcome for employee's across Australia affected by the exposure of toxic dust and negligent work practices/regulations. It is therefore recommended that the Senate establish a regulatory body to allocate compensation claims nationally for those employees affected by toxic dust related diseases.

It is recommended that **the** companies that have subjected workers to toxic dust be held financially accountable for the costs associated with work-related diseases by way of payment through a regulatory body (like Comcare or the Dust Diseases Board of NSW). The body would be in charge of administering compensation nationally to the affected employees and their families.

Effect of Mr White's silicosis on his family and need for financial support, as an example of the social problems arising from workplace exposure to toxic dusts:

⁵ *White v Pink Batts Insulation P/L* [2000] NTSC 27 at 10 per Thomas J

- Mr Richard White has been admitted to hospital 28 times since being diagnosed with a reoccurring upper respiratory disease in 1992, later confirmed as silicosis by Dr Jessup.
- At age 7 and 10, Daniel and Nathan White were told that their father was going to die within 5 – 7 years. Over the past 13 years Daniel and Nathan have witnessed the stress, both financial and emotional, of living with silicosis, which has deprived them of a ‘normal’ childhood.
- At 20 years of age, Daniel holds down three jobs and fulltime TAFE course to contribute substantially to the family’s medical and household bills as well as the maintenance because his father, Richard White, is unable to work as a result of silicosis.
- *“At such a young age, the interaction that you want as a child with your father was dramatically restricted because of his illness” – Daniel White*
- Nathan has also taken out a \$6,000 Centrelink loan in order to help pay medical and household bills due to the family’s insufficient income.
- *“My father is and was a very successful man when it came to all walks of life: business, friendships, family and personally. I am and still very proud of my father and to see what has happened to him makes me irate beyond comprehension and to see what he was and to what has become of my father only stirs my hate for the legal system and Industrial Occupation Health & Safety laws in our country. The lack of justice reaches beyond the illness. It has placed stress on our family to simply cope with living with silicosis and the constant reminder through oxygen and medication; burdened our family financially through both medical and legal bills as well as our future investment and inheritance of Prime Real Estate; as well as being aware of my friends health for fear of exposing my father to greater complications; most importantly silicosis has affected our father/son relationship.” – Nathan White*
- Christine White recommenced to fulltime work in 1997 with the ACT government to support the family.
- *“As a result of Richard’s personal injury claim against The Dimet Group, I feel we, as a family, have been cheated. The ongoing medical costs as well as the unpredictable hospitalisations and setbacks that occur are a real concern as both a mother and a wife. Of greatest concern is the long-*

term picture, whereby the time will come when the family are not in a position to take care of Richard and a carer would be required. In the immediate future, a heart/lung transplant maybe necessary for Richard to stay alive, inturn creating additional burdens on the family; psychologically, financially and emotionally. I feel our boys have been emotionally tormented from such a young age, justice and recognition to alleviate some of the pain caused is a reasonable request” – Christine White

In light of these accounts, it is proposed that the companies also be held responsible for income replacement payments, which include reasonable medical costs.

The enactment of an alternative model of financial support for individuals is seen as necessary. In some instances this support may be too late; therefore it is finally recommended that the families be compensated for medical expenses incurred because of toxic dust related diseases.

Attached is a report by Phillip Turner dated 6th March 1996. It explores and suggests practical means of controlling the exposure an employee has in relation toxic dust and other airborne particles. Suggestions include: elimination, substitution, isolation, engineering controls, administrative controls and personal protective equipment.

Mr white has had to pay himself for much of the work of the ADSC in bringing this issue to the attention of relevant workers. The Senate might consider reimbursing him in some way for his efforts should the information so gathered prove valuable.

8 Conclusion

It is recommended that the Senate rectify the injustices caused to Mr White and his family, as well as the other 927 employees who have contacted the ASDC that may have been affected or exposed to toxic dust and other airborne particles as a result of poor workplace health and safety measures implemented by corporations, such as Pink Batts Insulation (The Dimet Group) and their insurers, Commercial Union (CGU). The Senate is therefore encouraged to recommend uniform national legislation **and** to establish a National Toxic Dust Diseases Board. Furthermore, it is

requested that employees and the general public be made aware of the hazardous nature of toxic dust and other airborne particles and the grave health risks associated with such substances.

Additionally, the encouragement of the sharing of medical information and research is seen as necessary in order to keep workplace health and safety regulations current as well as increasing the access to facilities that alleviate some of the burden of living with a toxic dust related disease. It is lastly argued that the Senate **Committee recommend the establishment of** a statutory body to control and administer compensation claims in a timely and cost-effective manner to affected employees and their families. Essential to the effectiveness of this statutory body is the acknowledgement that, although smoking may have contributed towards health problems, it does not offset the exposure and known risks associated with toxic dust that employees were subject to whilst working for corporations, such as Pink Batts Insulation (The Dimet Group) and their insurers, Commercial Union (CGU).

In addition to the obvious damage done to the physical health of the affected employees, exposure to toxic dust has also taken its toll on employees and their families' mental health and financial situations: Their way of life in some circumstances has been partially or completely destroyed. Attempts at seeking damages for negligence⁶ from Pink Batts Insulation (The Dimet Group) to compensate for the diseases caused by the exposure to toxic dust have repeatedly failed (namely for Mr White). It is therefore recommended that the Senate create national awareness as to the causes of toxic dust diseases and legislation allowing for methods/regulations for the prevention of exposure. It is further suggested that the Senate establish mechanisms for the sharing of medical research and diagnosis on both a national and international level, so as to have advanced systems in place to avoid exposure to toxic dust. Finally, that an alternative model of financial support be established to rectify, or at the very least, minimise the injustices brought upon those individuals and families affected by toxic dust diseases as a result of the negligent employment regulations.

⁶ *White v Pink Batts Insulation P/L* [2000] NTSC 27 at 10 per Thomas J

9 Contact Details

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10 Appendices: Australian Sandblasting Diseases Coalition