

The Secretary
Senate Community Affairs References Committee
Parliament House
Canberra ACT 2600

Dear Secretary and Senate Committee,

INQUIRY INTO WORKPLACE EXPOSURE TO TOXIC DUST

Submission - November 2005

This submission focuses on the past and current practices in the Western Australian bureaucracies that regulate, enforce, and advise on toxic dusts in the workplace and environment.

Included terms of reference:

- a) Health Impacts
- b) Adequacy of Regulation
- c) Information to Employers and Employees of Risks
- d) Availability of Accurate Diagnosis and Medical Services
- e) Availability of Accurate Records, Nature of Illness, Disabilities
- f) Access to Compensation, Limitations in Seeking Legal Redress

The general consensus is that times are very different than the period that allowed Western Australia become the world capital for mesothelioma.

However current and recent handling by WA government agencies demonstrate that toxic dust problems presented to the WA government still continue to be treated without due responsibility, or in an open and accountable manner.

This situation is not confined only to toxic dust management, but also has been exhibited with occupational and domestic chemical use.

Western Australia is probably not alone in this manner of concealment and denial mentality. However with such a history of large-scale deaths caused by previous mismanagement, WA presents a good example that despite such a well-publicised and shamefully miserable track record, the entrenched inertia of public disservice has still not been addressed.

There is no argument that mechanisms such as WorkSafe have improved the occupational environment, but while the mentality of concealment and denial persists within the public bureaucracy, there exists little hope of seriously addressing the issues of human and environmental toxins exposure in the manner that the circumstances warrant.

Far too many cases come to light to believe these are the exception to the rule.

In Ben Hills' investigation, "*Blue Murder, Two Thousand Doomed To Die-*" he illustrates the scenario that allowed so many to suffer and die due to blue asbestos mined at Wittenoom:

“...Tragically for the victims, none of this information emerged from the locked vaults of the Western Australian government until far too late ...when the mine had been closed 20 years, when 2000 people had already been fatally infected...

...the bureaucrats fought to protect their own.

It got to the stage where the (Asbestos Disease Society) searchers were using miniature cameras, like spies in an old B-grade movie, to photograph documents they found in case next time they went looking they were unaccountably missing.

...a story of bureaucratic incompetence and inertia almost unrivalled in Australian political history, ...

the WA Mines department, and the Health Department. Between them they have to share a large portion of the blame for what happened in Wittenoom.

*In the margin of the letter, some anonymous civil servant has written that Dr. *** was “misinformed” and that there was no need for action.*

*Here are letters to ***’s own consultant physician, telling him over and over that the men were dying, that something must be done urgently.*

... and they tried, without success, to get the Mines Department to act.

*In spite of detecting the most outrageous breaches of mine safety laws over a period of more than 20 years, not a single prosecution was ever launched against ***, no effective demands were ever made for safe ventilation in the mine or the mill, the operation was never shut down for a single day, although it was within their legal power. Instead, at the highest levels of the department, there were attempts to cover up the true extent of the disaster, and to discredit the doctors who doing their best to expose it.”*

Unfortunately the undercurrent of covert mismanagement still continues today, with no lessons learned from the terrible and shameful Wittenoom saga.

From the LEAD Group, based in New South Wales in an article about a Western Australian worker exposed to lead-oxide dust:

“A disturbing claim made by the mostly male inquirers is the difficulty they have experienced in getting information and appropriate medical advice, often from the very government organisations whose role is ostensibly the protection of workers’ health.”

In this well-documented case, workers performing fire assay duties were exposed to massive amounts of lead-oxide dusts and fumes while working in a laboratory with insufficient ventilation.

The WA Health Department was monitoring blood lead levels, but neglected to inform the workers of contracting a disease, nor were the workers advised of the requirement for immediate medical treatment.

This was even after the initially exposed worker presented to the Health department with textbook symptoms, high blood lead, and seeking medical treatment. He was informed he *“had nothing to worry about.”*

Despite the first poisoning, other workers were allowed to continue to be exposed to the on-going hazard. The Health Department continued to monitor the blood lead and the workers continued to be exposed to extremely high levels of lead-oxide dust and fumes. One worker eventually collapsed on the job.

On attempting to recover his recorded blood test results from WorkSafe, he was supplied only with “safe” readings. No records exist of the many other blood tests he completed.

The workers are now faced with permanent injuries as a result of their lead poisoning and subsequent failure to receive urgent medical treatment.

Not only are the workers now faced with limited or no work capabilities, but also psychiatric management due to brain injury and permanent neurological damage.

Personal economic losses have been substantial, avoidable pain and suffering endured, yet no avenue is open to claim personal damages against the state for its negligence, due to the WA government hiding behind the Limitations Act as defence. It is worthwhile noting that WA government also differs from most other Australian jurisdictions in not allowing a plaintiff to claim for an extension of time due reasonable cause.

Despite apparent breaches of the criminal code, and official complaints, no official has ever been convicted.

In August 2005 the Executive Director of Public Health in WA was requested to investigate the number of workers exposed to high levels of lead during the offending period illustrated above. It is a fair assumption that other workers also may not have been informed of the nature of their exposure and contraction of disease. Once located, belated management of the workers’ health condition may be implemented to improve longstanding symptoms and quality of life.

How many others suffer the disease, but have not been informed?

An investigation is required, but has not been initiated.

Rather, these citizens suffer in designed ignorance.

Although this submission generally addresses the “mentality” past and present of the WA Health and Occupational bureaucracy, occasionally the offending negligent behaviour is demonstrated personally by a WA government official.

To use the word “corruption”, one assumes personal benefit by way of payment or other tangible credit. This however devalues the real benefit and status that “brownie points” can achieve for the bureaucrat with a misguided sense of right and wrong. Particularly with injuries caused by the likes of toxic dusts where an industrial disease is the result. In this scenario in WA, we often find that that the regulator, the advisory agency, and the insurer, are one and the same; - The WA government.

Here we find individuals operating with Adolph Eichmann-type efficiency to protect their employer’s interests from likely insurance claim.

Certainly the lead-poisoned workers were unable to make claim for a disease that they were unaware of contracting. Likewise the with asbestos, again text from Ben Hills’ “Blue Murder”:

Victims have been told they have a virus, pneumonia, bronchitis, anything, but what it inevitably turns out to be – asbestos disease.

Robert Vojakovic (of ADS) believes some government doctors do this deliberately, to try and save on compensation payments.

A few years ago he set a trap: He selected a Wittenoom survivor who had been approved for compensation with 80 per cent asbestosis, and took him to the Perth Chest Clinic for an X-ray. The doctor put the negatives up on his screen and announced, "nothing there, come back in a year". When Mr. Vojakovic pointed to a dark patch and said, "Isn't that a shadow on his lung?" The doctor snapped off the light and repeated his diagnosis.

Sometimes the WA Health department simply exhibits a bloody-minded denial despite full knowledge of facts.

During a campaign by members of the public against the use of chemicals applied in mandatory spraying of new homes and extensions, the media reported that the WA Health Department admitted it was aware the pesticides it approved contained chemicals long considered to cause cancer and birth defects. But officials were still informing the public that residues in breast milk did not pose a threat.

Given this public display of corporate schizophrenia, one is obliged to seriously question the competence of those charged with protecting the public from toxic substances. It is assumed however that competence or ability of individual government officers is satisfactory.

What requires investigation is the underlying peer pressure within the WA government's bureaucratic hierarchy that causes such aversion for public disclosure of the true nature of toxic substances, and the respective impacts on health and the environment.

The past and present practice of "sweeping it under the carpet" has and will continue to cost individuals and the community at large many, many more times than if issues regarding toxic substances are addressed correctly in the first instance.

Relevant Terms of Reference

Summarising with this submission's relevance to the Inquiry's Terms of Reference: This submission relates to experiences with asbestos and lead dusts, but there is no reason to believe that these same scenarios will not and have not been repeated with other toxic dusts and substances.

a) Health Impacts

The impacts of asbestosis are well documented, with a diagnosis of mesothelioma the prognosis is grim. This is akin to slowly dying with wet concrete in one's chest. The impact of the WA government's mismanagement at Wittenoom is evident in the "Blue Murder" sub-title, - "Two Thousand Doomed To Die". We are by now past seeing the predicted deaths emerging of a second generation, - Children who lived and played in the town.

With lead in WA, the impact has been difficult to gauge, as the numbers excessively exposed have not been made public. Indeed, no investigation has taken place to determine the numbers not informed of contracting the disease. Whether it is two or three known cases, or a score, remains to be answered. There has been much research on the health impacts of lead, but no research has been undertaken to correlate with the extreme level of exposure recorded by the WA workers, with these blood lead levels being above the rate that kills children. The brain and CNS are prime target areas for lead. Of the two exposed workers from the same laboratory, both now suffer

permanent neurological damage, together with a history of other textbook lead induced symptoms.

b) Adequacy of Regulation

The scenarios demonstrated here did not occur due to lack of regulation. Regulations existed and were adequate. Regulations were deliberately ignored and not enforced.

c) Information to Employers and Employees of Risks

The situation with Wittenoom asbestosis is both employers and employees were informed to some degree about the associated risks. However this was largely ignored. By continual lack of action by the regulator, this ignorance was encouraged. With regards to the lead exposure, despite the WA government agency monitoring the blood lead levels the true nature of the employees' excessive exposure was not revealed. Would the employer continue to expose additional workers to certain poisoning if they had been informed?

d) Availability of Accurate Diagnosis and Medical Services

As seen with the example of the chest X-ray given here, government officers sometimes deliberately avoid accurate diagnosis.

Also as demonstrated here with the lead worker; despite having several symptoms and extremely high blood lead readings, he was informed he had nothing to worry about. To compound his already serious condition, he was denied urgently required medical treatment. This negligence causing loss of any hope of resumption of normal health.

e) Availability of Accurate Records, Nature of Illness, Disabilities

Experience with WA government records indicates that all too often records go "missing", are "misplaced", or "never existed".

Serious investigation of mismanagement is often thwarted by this means.

While the Asbestos Disease Society personnel were seeking documents from WA government departments they resorted to taking along a small spy camera to photograph documents in case the documents had somehow disappeared on subsequent visits.

As stated here, a lead worker has been unable to recover blood lead test results that he knows he completed.

Another lead worker was told no record of consultation with a department doctor existed. However in additional correspondence the department contradicted itself by referring to these records.

It is an interesting phenomenon that these disappearances should happen so frequently in an otherwise efficient public service.

f) Access to Compensation, Limitations in Seeking Legal Redress

Sadly the situation in WA regarding legal redress and compensation has only relatively recently been addressed.

Key to this has been WA's Limitations Act, and although currently in the process of being reformed, it is feared the new version may still block out legal redress for some plaintiffs, perhaps even those suffering from latent conditions, such is typical with dust diseases.

Prior to the 1980's there was no legal redress for damages outside the 6 years limitations period. Unlike other states of Australia, there existed no scope for an extension of time by way of judiciary discretion.

It was only through the sheer embarrassingly high number of Wittenoom victims in WA making WA the world capital for mesothelioma, and the work of the Asbestos Diseases Society that a new law was legislated enabling asbestos disease to make claim for personal damages.

This has left WA with a totally illogical situation where an asbestos disease claimant can sue outside the limitations period, but no other claimant with any other disease or circumstances.

This is particularly relevant for dust and toxic substance diseases with a longer latency or manifestation period. There is also the situation as presented in the lead workers where they exhibit the disease, but are misinformed by the WA government that there is not a problem. Despite the WA government generating the misinformation causing the delay, it also hides behind the Limitations Act to deny justice and payment of compensation for damages that its own negligence has caused!

The proposal to change the current Limitations Act may assist some toxic substance victims, but the WA State Solicitor's Office argues against full discretionary extension powers to the judiciary that are exercised in nearly all other Australian states. So in this case, only plaintiffs that fit the fixed criteria will be granted an extension of time from a 3-year limitation period.

Unfortunately this will prevent the judiciary from being informed of ALL the reasons causing delay and acting in any discretionary manner. Therefore circumstances will arise where plaintiffs would have legitimate cause for a damages claim in other states in Australia, but not WA.

This failure of separation of powers of the judiciary and the legislature may give some indication of why this submission illustrates such a poor outlook of public confidence in the administration of toxic dust substances and the impact on health.

It may be argued that due to isolation the WA bureaucracy has evolved differently than other states, allowing an unwarranted power base. There appears to be an unwillingness to lose control of whatever departmental realm that any open investigation of mismanagement would expose to scrutiny. This of course is not limited to WA, but evidence presents the relatively high number of people dead or maimed by public mismanagement of toxic substances and a continual denial of problems. This situation is not confined to toxic dusts, but is also repeated elsewhere.

Far from being alone in this assessment, it is a longstanding view held by many. While working on the asbestos cases in WA, Queens Counsel, David Ashley went home to Victoria where his young daughter asked him how the verdict would go? His reply: *"Darling, we are not going to win, you know, ...anywhere else, but not in Western Australia."*

Why did our learned friend say such a thing?
...And what has changed since?