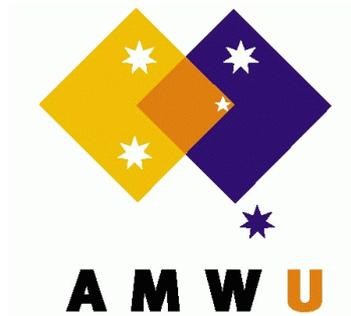


**AUSTRALIAN MANUFACTURING WORKERS' UNION**



**Submission to the Senate Economics References Committee**

**An inquiry into the effects of non-conforming building products on the Australian building  
and construction industry**

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The “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” is known as the Australian Manufacturing Workers’ Union (AMWU). The AMWU represents approximately 80,000 members working across major sectors of the Australian economy, in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food manufacture. Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations in engineering and across diverse industries including food technology and construction.

Unfortunately, many AMWU members have suffered and will suffer from asbestos related diseases as a result of their exposures to friction parts, insulation and ship building industries. Our members have become asbestos disease sufferers as a result of maintenance, service and repair work.

The AMWU has and continues to be a preeminent campaigning organisation pursuing the necessary political and policy change to eradicate the use of asbestos. We have worked at every level of government and industry – both here and internationally. The AMWU was a key player in the NGO delegation at the last Conference of the Parties for the Rotterdam Convention in Geneva. We actively support organisations working to reduce the burgeoning use of asbestos in our neighbouring countries. The AMWU therefore welcomes the expansion of the Terms of Reference for this inquiry and appreciates the extension of time for submissions. Our representatives would welcome the opportunity to speak to our submission.

The AMWU commends the recommendations in the ACTU submission to the Committee.

## **AMWU PROPOSALS**

The effective implementation of the ban on importation of asbestos containing products into Australia is essential if we are to reduce the toll of asbestos related disorders. Key components necessary to obtain a ban on the importation of asbestos product include:

- Pursuit of an international ban on the trade in asbestos – the first step being listing of chrysotile on Annex III of the Rotterdam Convention
- Increasing the use of sanctions by Australian Border Force
- Strengthening actions taken by Australian Consumer Competition Commission
- Introducing a provision into work health and safety laws that allows for the mandatory removal of asbestos containing materials imported and put into “use” post 2003.

## 1. INTERNATIONAL BAN

An essential first step to the implementation of a world wide ban on the trade in asbestos – chrysotile is the listing of chrysotile as a substance requiring prior informed consent. This process, under the Rotterdam Convention<sup>1</sup> requires a exporter to notify the country to which the substances is being exported, to allow the potential importing country to allow or disallow the product for importation. Currently a few countries have used their right of veto to disallow the listing of chrysotile.

Working with the process at the Rotterdam Convention Conference of the Parties to change the voting conventions to remove the requirement for a consensus and institute a seventy five percent majority ruling<sup>2</sup>. This is an essential step, as if chrysotile were to be added to Annex III, asbestos containing products would need to be notified to Australia, this would facilitate the implementation of Australia's ban.

Australia has played a positive and pivotal role in support of the listing of chrysotile and this must continue through the active engagement of the Australian government in reform of the voting procedures [see below].

### 1.1. Rotterdam Convention Processes

There are two unique elements of this Convention. The first is that Annex III is simply an "advice and consent" provision; it means that any country wishing to export any product containing a substance listed in Annex III must advise that it contains the substance, and the receiving country must consent to the importation.

The second is that while it is known as a "consensus" Convention, it actually requires a unanimous vote of the signatory parties. The last COP in Geneva showed this pretty well, when Senegal, of all the countries present, objected to the listing of a herbicide, despite the incontrovertible evidence of its carcinogenic nature, yet insisted that they would vote against its inclusion. The end result being that it wasn't listed. It is believed that this was at the behest of a well-known chemical manufacturer.

The peculiarities of the Convention are clear. Voting is allowed, except Annex III. For this to take place any listing (requiring unanimity) must then be ratified by a minimum 2/3 of the parties. Hence were there to be a forced change to the ratification process of the Convention, this would then need to be re-voted in its entirety. And it is expected that the Russians at least would probably vote against a re-ratified treaty.

The ACTU has written to the Federal Government seeking urgent action on the listing of chrysotile. This is a bipartisan approach; both employers and unions support this. The

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<sup>1</sup> <http://www.pic.int/TheConvention/Overview/tabid/1044/language/en-US/Default.aspx>

<sup>2</sup> <http://www.pic.int/Implementation/ProcessforListingChemicals/Overview/tabid/5250/language/en-US/Default.aspx>

reason for the urgency is that, to be placed on the agenda for COP 8, amendments and proposals have to be received 6 months prior to the meeting. As this is currently scheduled for the end of April 2017, any proposals must be provided by the end of this month.

A grouping of African nations is now seeking to amend the processes of notification, effectively to a vote of 3/4 of signatories to the Convention:

*"The African region proposes the amendment of Article 22 of the Convention, so that decisions by the COP to list substances in Annex III are taken by consensus where possible. If all efforts at consensus have been exhausted, and no agreement reached, a decision may as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting."*

The AMWU requests that the Australian Federal government urgently support the proposals to move to a consensus model for amendment of Article 22 of the Rotterdam Convention.

## **2. AUSTRALIAN BORDER FORCE SANCTIONS**

Current legislation fails to apply liability to importers, builders or traders that deliberately or inadvertently breach border security and bring Asbestos into Australia.

Since the 2003 asbestos ban came into effect, only two companies have been fined for importing asbestos, and they've been fined a mere \$150,000 in total. Such levels of fines are unlikely to deter large corporations eg Yuanda that generated \$217 million in revenue last financial year [2015-2016].

Australian Border Force must

- make better use of current provisions and
- have available an increased variety of sanctions that can be applied under the Customs (Prohibited Imports) Regulations 1956 which bans the importation of fibrous forms of asbestos and ACM to Australia.

Currently, Border offences relating to asbestos currently attract fines of up to \$180,000 or three times the value of the goods, whichever is the greater, in accordance with the *Customs Act 1901* (Cth). For a body corporate the same border offence attracts a higher penalty of up to \$900,000 or five times the amount applied to an individual, whichever is greater, in accordance with the *Crimes Act 1914* (Cth). However, such an approach has never been taken by The Department of Immigration and Border Force. If never used legal sanctions are poor deterrents.

An extension of current sanctions needs to be adopted:

- Importers of banned substance eg asbestos must be required to remove the asbestos prior to supplying/distributing or selling the product

- Requirement for importer to notify the relevant work health and safety jurisdiction of the intent to import products that are at risk of containing asbestos
- Requirement for importer to make a public declaration about any ACM /asbestos that has been attempted to be imported
- Sanctions against importers need to be graduated and include obligation to rectify the breach. For example for :
  - Business knowingly/recklessly imported a banned substance – punitive sanctions and pay for remediation and safe disposal of ACMs
  - Business mistakenly imported a banned substance, as the importer had reasonably accepted misleading evidence – pay for remediation and safe remediation of ACMs.

## 2.1 DIBP review of asbestos ban 2016

In March 2016 KHG Border Services delivered their report on the effectiveness of the DIBP processes for managing asbestos border control. The review limited its recommendations to improvements in communication and awareness for business and the public <sup>3</sup>.

The KHG Border Services report failed to make any assessment of deterrents that may be available to improve compliance with the ban – in fact the review said *“it may be **inefficient** for suppliers that sell to a range of markets, to ensure compliance with Australia’s strict import prohibition”* <sup>4</sup> [emphasis added]. It is most disturbing that the risks to human health from asbestos exposure were trivialised as “inefficiency”.

Additionally the report incorrectly portrays the international understanding about the risks associated with chrysotile -- “chrysotile is not internationally recognised as a dangerous form of asbestos”<sup>5</sup>.

In 1986, the World Health Organisation published assessments that

Epidemiological studies, mainly on occupational groups, have established that all types of asbestos fibres are associated with diffuse pulmonary fibrosis (asbestosis), bronchial carcinoma, and primary malignant tumours of the pleura and peritoneum (mesothelioma)<sup>6</sup>.

Subsequent to that there have been numerous publications on the health effects of chrysotile<sup>7</sup>, the most important being the 2006 publication Elimination of Asbestos-related

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<sup>3</sup> Asbestos Importation Review, KHG Border Services, March 2016 Reference Number: 1600018, page

<sup>4</sup> Ibid , page 5

<sup>5</sup> Ibid , page 5

<sup>6</sup> <http://www.inchem.org/documents/ehc/ehc/ehc53.htm#SubSectionNumber:1.1.5>

<sup>7</sup> <http://www.who.int/bulletin/volumes/92/11/13-132118/en/>

[http://www.who.int/ipcs/assessment/public\\_health/chrysotile\\_asbestos\\_summary.pdf](http://www.who.int/ipcs/assessment/public_health/chrysotile_asbestos_summary.pdf)

Diseases<sup>8</sup>. The KHG report failed to distinguish the medical and scientific assessment of chrysotile as a carcinogen with the economic propaganda of the international asbestos industry which refutes the evidence and has been effective in convincing a minority of countries that chrysotile asbestos is “safe”.

The AMWU draws the attention of the Committee that although an important element, this prior focus on “education and awareness” fails to appreciate the tragedy of Australia’s use of asbestos containing materials and ignores the well established facts that deterrents and an interventionist approach by regulatory agencies is necessary to change the practice of those potentially importing ACMs.

### **3. AUSTRALIAN CONSUMER COMPETITION COMMISSION**

In late 2012, the Australian Competition and Consumer Commission issued a recall notice for Chery, Great Wall and Geely MK cars due to the presence of asbestos in gaskets contained in the cars and in 2015 there was a recall of heavy haulage trailer parts.<sup>9</sup>

Letters were sent to owners of the vehicles *“reassuring them that there is “negligible risk” to vehicle occupants while warning them off carrying out DIY maintenance in case they disturb and potentially release asbestos fibres from the affected gaskets”*.

Given the number of asbestos gaskets in the Great Wall cars [30 across 2 models] the AMWU considers this was an inadequate response.

There were no repercussions on the importers and any DIY maintenance workers and auto mechanics in the service and repair who did not receive the notice in 2012 will be potentially unnecessarily exposed. This is of particularly grave importance in this sector which is dominated by small business with a mobile workforce which has in the last decade been educated against the use of asbestos friction products and until 2012 could have reasonably assumed that friction products, in use in Australia, were friction free. There has been no ongoing mass education of the sector, by the ACCC or any regulators, about the changed circumstances.

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<sup>8</sup> [http://www.who.int/occupational\\_health/publications/asbestosrelateddiseases.pdf?ua=1](http://www.who.int/occupational_health/publications/asbestosrelateddiseases.pdf?ua=1) Elimination of asbestos-related diseases. Geneva: World Health Organization; 2006.

<sup>9</sup> 2012 -- Great Wall Cars -- 30 gaskets across 3 models [X200, V200 and SA 220] and Chery J11 and J3 models with 2 gaskets asbestos materials in engine intake manifold gasket 25,000 Great Wall and Chinese cars .

2015 -- Brake shoe suppliers, Maxiparts [product name Maxus] and Watts Friction Plus [product name Bremsbelage] announced a recall of brake shoes that may be contaminated with asbestos. The brake shoes have been distributed across Australia. The brakes are for heavy haulage [truck] trailers. The imported brake shoes are believed to be from the Chinese company Worldwide Industries Ltd. MaxiParts is recalling product imported since September 2013; WattsFrictionPlus recall is for product imported from September 2012.

The ACCC needs to have a broader range of sanctions available and must more effectively use its powers to issue compulsory recalls. Additionally ACCC must be required to publish a statement of reasons relating to any decision not to compulsorily recall asbestos containing products.

#### **4. WORK HEALTH AND SAFETY LAWS**

Following the introduction of the asbestos ban in 2003, health and safety regulators made the assumption that any *in situ* asbestos containing materials would originate from before the bans implementation [acknowledging that there was a phase in period for existing friction parts to move through supply chain]. As a result, current health and safety laws don't require the removal of *in situ* asbestos i.e. a company can install in 2016 a substance banned in 2003, but the health and safety regulators are limited in their regulatory response.

It is therefore essential, that health and safety laws are changed to enable jurisdictions to require the removal of illegal asbestos product – and the removal/remediation/safe disposal of the ACMs is to be paid for by the importer and supplier.

A good example of where this would and should apply is electrical switch boards containing ACMs installed in 2015/2016. Future electricians will be required to work on those switchboards and must not be put at risk of future asbestos exposures. The effectiveness of a ban is limited if health and safety regulators are hamstrung in their ability to require the removal and disposal of recently imported product.