

PUBLIC HEALTH RISK WARNINGS ON LEGACY ASBESTOS

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Asbestos Awareness Australia



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Public Health Risk Warnings on Legacy Asbestos¹

Introduction

The prior report discussed the findings of our household survey research. This survey asked Australians the following questions:

1. Is asbestos dangerous to health?
2. What level of exposure to asbestos is dangerous?
3. What is the most harmful effect of asbestos exposure?
4. How many Australians die each year from asbestos-related diseases?²

The results of this survey demonstrated an enormous gap between public knowledge and the harsh realities. We concluded that the findings are consistent with inadequate public information, education, and warnings in Australia on asbestos threats and consequences.

This paper considers the consistency of the views and beliefs of the public with existing public health guidance.

There have been no nationally coordinated mass media public health campaigns that highlight and explain the risks of exposure to legacy asbestos in Australia.³ Our

¹ Legacy asbestos is asbestos already inbuilt within properties across Australia and is analogous to the phrase “in situ asbestos”.

² See Digital Finance Analytics and Asbestos Awareness Australia Ltd, *Community Awareness & Knowledge Of Asbestos Threats & Consequences* (March 2021) available at <https://digitalfinanceanalytics.com/blog/the-silent-killer-you-need-to-know-about/>.

³ This fact was confirmed in an email to us from the Asbestos Safety and Eradication Agency.

research suggests that federal and state public health communications on asbestos risks are presently restricted to online guidance and fact sheets, and occasional messages through social media channels and community newspapers.

The existing online public health guidance includes the following:

1. Environment Health Standing Committee, enHealth, *Asbestos: A Guide for Householders and the General Public* (February 2013)(“The Guide”).⁴
2. NSW Government, *Asbestos Fact Sheet for Home Owners and Tenants* (March 2019) (“NSW Factsheet”).⁵

1. Public Health Guide

The Environment Health Standing Committee, enHealth, *Asbestos: A Guide for Householders and the General Public* (February 2013) is the primary public health guidance directed at householders by a federal health body. This Guide states upfront that it is a risk management document,⁶ and its content categorises the risks of asbestos exposure in specified circumstances as very low, low, moderate, high, or extreme.

In the foreword of the Guide, the chief medical officer confirms that there is no safe level of exposure to asbestos and strongly advises householders to engage experienced and licensed professionals to undertake home renovations where asbestos is present.⁷

⁴ Available at <https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-enhealth-asbestos-may2012.htm>

⁵ Available at <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/applications/asbestos/factsheet/19p1498-AA-factsheet-homeowners.pdf>.

⁶ The “About this Guide” page explains that the guide is a risk management document.

⁷ Environment Health Standing Committee, enHealth, *Asbestos: A Guide for Householders and the General Public* (February 2013) foreword. This guide was endorsed by the Australian Health Protection Principal Committee.

The introduction of the Guide refers briefly to the possibility of asbestos-related disease and death from asbestos exposure, with an unsourced general comment that the health impacts from asbestos are well documented. Asbestos-related lung cancer is then provided as an example, with an emphasis on the duration of exposure.⁸

The main body of the Guide is 34 pages long, but the nature and levels of asbestos-related fatalities are not mentioned throughout.

The Guide describes mesothelioma as a “rare” form of cancer, with 90 percent of patients ‘having a confirmed history of significant exposure’.⁹ The terms “rare” and “significant exposure” are not explained.¹⁰

Occasional exposure to asbestos fibres (including during unsafe home renovation or demolition next door) is categorised as a low risk to life, while frequent exposure to asbestos fibres (for example when builders or tradespeople use unsafe techniques) is characterised as high risk.¹¹

The Guide states that although ‘there is no absolutely safe level of exposure to asbestos fibres, occasional exposure to low levels of fibres poses only a low risk to your health.’¹²

The Guide indicates that a ‘very small number of asbestos related disease cases occur each year in people that have not worked with asbestos products.’¹³ The phrases “a

⁸ Environment Health Standing Committee, enHealth, *Asbestos: A Guide for Householders and the General Public* (February 2013) 4.

⁹ Environment Health Standing Committee, enHealth, *Asbestos: A Guide for Householders and the General Public* (February 2013) 15. No sources are provided to support this assertion, the total number of deaths is not provided, and the remaining 10 percent of deaths without significant exposure are left unexplained.

¹⁰ See also Australian Government, Australian Institute of Health and Welfare, ‘Cancer in Australia 2019 (Cancer 18. Series no 119. Cat no CAN 123, Canberra: AIHW) vi. A rare cancer is defined as having an incidence rate of fewer than 6 cases per 100,000 persons.

¹¹ Environment Health Standing Committee, enHealth, *Asbestos: A Guide for Householders and the General Public* (February 2013) 16.

¹² Environment Health Standing Committee, enHealth, *Asbestos: A Guide for Householders and the General Public* (February 2013) 17.

¹³ Environment Health Standing Committee, enHealth, *Asbestos: A Guide for Householders and the General Public* (February 2013) 17.

very small number” and “people that have not worked with asbestos” are left vague and unexplained.

The Guide categorises the general risk to householders from asbestos as very low in normal circumstances.¹⁴

The Guide acknowledges that asbestos fibres can be released as products age and weather but suggests this is not a health problem because the fibres are dispersed, diluted, and washed away.¹⁵

The risk of a home renovator engaged in unsafe removal with occasional exposure is later tabulated in the Guide as medium risk.¹⁶ While a concession is made that unsafe handling of asbestos in the home may have contributed to asbestos-related disease cases, the Public Health Guide notes that it is difficult to determine the exact cause in these instances.¹⁷

One of the highlighted case studies in the Guide suggests that a person with a damaged corrugated fibro roof should have the roof replaced ‘when he can afford it’.¹⁸

¹⁴ Environment Health Standing Committee, enHealth, *Asbestos: A Guide for Householders and the General Public* (February 2013) 18.

¹⁵ Environment Health Standing Committee, enHealth, *Asbestos: A Guide for Householders and the General Public* (February 2013) 18. No sources are provided for this claim.

¹⁶ Environment Health Standing Committee, enHealth, *Asbestos: A Guide for Householders and the General Public* (February 2013) 19.

¹⁷ Environment Health Standing Committee, enHealth, *Asbestos: A Guide for Householders and the General Public* (February 2013) 17.

¹⁸ Environment Health Standing Committee, enHealth, *Asbestos: A Guide for Householders and the General Public* (February 2013) 20. See also Peter Franklin and Alison Reid, ‘The Ongoing Problem of Asbestos *In Situ*’ in Lenore Layman and Gail Phillips (eds), *Asbestos in Australia: From Boom to Bust* (Monash University Publishing, 2019) 261 “Asbestos in Australia”. Asbestos cement roofs in Australia are getting very old and many have not been maintained adequately.

2. The NSW Asbestos Factsheet for Homeowners and Tenants

The NSW Factsheet recommends that if ‘the house contains bonded asbestos products that are in good condition, it is best to leave them alone but check them from time to time for any signs of damage or deterioration.’¹⁹

The NSW Factsheet also advises renovators to use a licensed asbestos removalist when in doubt about the existence of asbestos in one’s home.²⁰

3. Other Official Guidance

Our researchers found examples of public messaging within public guidance and advice and from public health officials or experts in Australia indicating the following:

- Exposure to asbestos does not always result in asbestos related disease.²¹
- We do not know why some people who are heavily exposed to asbestos do not develop disease and why others with apparently limited exposure do.²²
- Asbestos discovered in the community is “safe”, “low risk” or an “acceptable

¹⁹ NSW Government, *Asbestos Fact Sheet for Home Owners and Tenants* (March 2019). See also SafeEnvironments, ‘Managing Property Risks’ at <http://www.safeenvironments.com.au/identifying-asbestos/>.

²⁰ NSW Government, *Asbestos Fact Sheet for Home Owners and Tenants* (March 2019) available at <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/applications/asbestos/factsheet/19p1498-AA-factsheet-homeowners.pdf>. The factsheet is not paginated.

See also NSW Government, ‘Asbestos Blueprint – A Guide to Roles and Responsibilities for Operational Staff and Local Government’ (November 2011) 14-18. Page 18 of the NSW Government asbestos blueprint of 2011 notes the following: 1. ‘The legislative and policy framework should aim for and assist in securing the safe management of asbestos by providing clear and cohesive requirements that encourage good practice; 2. Residents, including owner occupiers and tenants, should be aware of the presence of asbestos materials in any residential buildings, structures or alterations; 3. Asbestos materials should be identified and safely contained or removed and disposed of before any renovation, maintenance or demolition work is carried out; 4. Removal of friable asbestos and bonded asbestos (10 square metres or greater) should be restricted to licensed asbestos removalists; 5. Prior to disturbing asbestos materials, residents should have access to information and advice on the risks of asbestos, the prohibition on the use/re-use of asbestos materials, the safe management of asbestos, and the safe removal and disposal of minor quantities of asbestos materials; 6. Local Councils to play a lead role to effectively administer the control framework for asbestos in residential premises.’ While these objectives are appropriate, our research suggests that specific plans and actions to achieve them are either lacking, inadequate or have not been publicly released.

²¹ Email from a health body to one of our researchers.

²² Email from a health body to one of our researchers.

risk”.²³

- Evidence of deaths from mesothelioma caused by or linked to home renovations is limited.²⁴
- There has been no ‘noticeable increase by population of mesothelioma ... but this is something we should keep an eye on.’²⁵
- The general incidence rate of mesothelioma has not increased.²⁶

4. Asbestos Warnings or Signage

The wording on asbestos warning signs generally includes the words “danger” and sometimes refer to the risks of lung disease or cancer. We found no evidence of asbestos warning signs that explicitly warn that exposure to asbestos can be deadly.

Our Critique & Summary

Our critique initially considers the individual public health guides and material. We then discuss our broader views.

1. Public Health Guide

Public health advice and scientific facts and uncertainties should be subject to robust and open debate and should be underpinned by verifiable sources. The Guide claims

²³ See, eg, Sarah McPhee, ‘Hundreds of Asbestos Pieces to Shut Down Eastern Suburbs Beach’, *smh* 22 April 2012; Anne Davies, ‘Revealed: Asbestos-Contaminated Waste Found in Landscaping Material at New Sydney Housing Estate Site’ *The Guardian* 22 September 2020.

²⁴ See, eg, Bruce Armstrong and Tim Driscoll, ‘Mesothelioma in Australia: Cresting the Third Wave’ (2016) 26 *Public Health Research and Practice* 1, 4. These authors conclude that ‘currently, scientific evidence for the existence of the hypothesised third wave is limited’.

²⁵ Kate Midena, ‘Federal Government Announces \$8m Assistance Scheme for Mr Fluffy Asbestos Victims, ACT Government Set to Match It’, *ABC Radio Canberra News online* posted 6 May 2021. This article cites advice from the Health Department to the ACT Government in 2014.

²⁶ Kate Midena, ‘Federal Government Announces \$8m Assistance Scheme for Mr Fluffy Asbestos Victims, ACT Government Set to Match It’, *ABC Radio Canberra News online* posted 6 May 2021.

to be scientifically based and this is emphasised on the Federal Health Department website:

*'enHealth has received extensive feedback on the Guide from stakeholder groups. A second iteration of the Guide is now available, which incorporates these suggestions, where supported by scientific evidence.'*²⁷

Despite these scientific claims, the Guide does not disclose the sources, or the identities of the experts relied upon, or the names of the panel who agreed the final content. In any event, the sources would now be out of date given the publication date of 2013.

The Guide indicates that the health impacts from asbestos are well documented but fails to provide examples of such documentation and does not provide any references to material or websites that the public can read.

The Guide claims to be scientifically based but fails to adequately highlight and explain the gravity and magnitude of harms resulting from asbestos exposure. The only time the concept of asbestos-related mortality is mentioned in the main body is a vague statement to the effect that inhaling asbestos fibres may cause asbestos-related disease and death. The general impressions created by the Public Health Guide are that the risks of asbestos exposure for householders are very low and the worst harm is cancer.²⁸

The Guide categorises most non-occupational sources of exposure as low risk (or at worst medium risk). When public health officials or experts claim that the risk of exposure to asbestos in homes is low, they understand that there is no known

²⁷ Australian Government, Department of Health, 'Asbestos—A guide for householders and the general public' viewed 11 June 2021 at <https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-enhealth-asbestos-may2012.htm>. The website includes the bolded phrasing.

²⁸ Environment Health Standing Committee, enHealth, *Asbestos: A Guide for Householders and the General Public* (February 2013) 15.

threshold below which exposure causing death may not occur, but are choosing to emphasise the risks when exposure is intense over long periods.

The Guide fails to discuss and adequately reflect the long-standing medical research linking mesothelioma and other asbestos-related disease to non-occupational exposures, low dose exposures and occasional exposures. Instead, the higher risk categorisations are restricted to people exposed from occupational sources over long durations.

This relative risk approach seemingly downplays the risks of occasional and low dose exposures. Using a similar relative risk framework, one can compare the incidences of dying from murder, drowning, terrorism and COVID 19 in Australia against the risks of dying from asbestos-related diseases, and conclude that the risks of these other events and diseases are “low” or “very low”. Our point here is that we think this simplistic relative approach to public health risk management is inappropriate when mass deaths are occurring and there are many lives at risk.

The foreword of the Guide acknowledges the dangers of exposure during home renovations. However, these risks and impacts are, in our view, carefully played down in the main sections of the document. For example, the claim that it is unclear whether unsafe handling of asbestos in homes causes asbestos related disease suggests scientific evidence on the linkages between asbestos exposure and home renovations is lacking. In fact, medical and legal evidence on these linkages and deaths is longstanding and compelling.²⁹

The varying risk categories applied to home renovators and tradesperson in the Guide assume that asbestos-related diseases are always or usually linked to the

²⁹ See, eg, KPMG, *Valuation of Asbestos Related Disease Liabilities of Former James Hardie Industries Ltd Entities to be Met by the Asbestos Injuries Compensation Fund* (19 May 2020) 27-28. KPMG audits and reports on the Asbestos Injuries Compensation Fund annually. Of the mesothelioma claims made through the Fund from 2008 to 2019, 52 percent are categorized as relating to home renovations. See also *Amaca Pty Ltd v Werfel* [2020] SASCFC 125 (“Werfel Case”); Gary Marsh, Alexander Riordan, Kara Keeton and Stacy Benson, ‘Non-Occupational Exposure to Asbestos and Risk of Pleural Mesothelioma: Review and Meta-Analysis’ (2017) 74 *Occupational Environmental Medicine* 838.

duration and intensity of exposure to asbestos. In the Werfel Case, Their Honours concluded that warnings that emphasise the risks of high concentrations of asbestos dust must be contrasted with the then published scientific consensus that the contraction of mesothelioma is not necessarily dose related.³⁰

The claim in the Guide that the number of people with asbestos related diseases linked to unsafe handling of asbestos in homes is a very small number suggests the number of deaths caused by unsafe renovations in Australia is tiny and insignificant. In our view, this claim fails to properly reflect available evidence on the scale of these deaths.

The Guide notes the World Health Organization advice that there is no safe level of exposure to asbestos, but then dilutes or masks this advice by categorising most people within low-risk categories and by excluding appropriate context or statistics.

The claim in the Guide that fibres released as a result of ageing or weathering are not concerning because they are dispersed, diluted, and washed away is seemingly inconsistent with the advice that there is no safe level of exposure. Accurate and more nuanced public health guidance here is critical, because asbestos cement roofs in Australia are getting very old and many have not been maintained adequately.³¹ Asbestos fibres that are released from ageing or weathered asbestos-containing products are dangerous and such materials should be risk assessed and or removed as quickly as possible.³²

Public health risks (especially those leading to loss of life) should be openly debated and widely distributed in public forums. However, the Guide has not been marketed or distributed widely. People must know enough about the dangers of asbestos to proactively search for it online.

³⁰ Werfel Case [324].

³¹ Peter Franklin and Alison Reid, 'The Ongoing Problem of Asbestos *In Situ*' in Asbestos in Australia 261.

³² Peter Franklin and Alison Reid, 'The Ongoing Problem of Asbestos *In Situ*' in Asbestos in Australia 258.

The Guide is covered by strict copyright protections and states that its content cannot be publicly cited in full or in part without specific written permission from the Commonwealth.³³ To be prudent, our researchers sought written permission from the Commonwealth to discuss the guidance on our website. Although we received acknowledgement of our application, no subsequent response to the application was forthcoming.

While there are fair use exemptions in the federal copyright legislation that allow research and criticism, those who wish to publicly discuss the efficacy and appropriateness of public health advice should not have to rely on these possible defences. The fact that any public health guide funded by taxpayers is subject to copyright protection (in part or in full) is surprising. Imagine if the public health guidance on COVID 19 was subject to copyright, and scholars and the media were unable to discuss it in public forums without concerns about legal liability.

2. NSW Fact Sheet

The notion that most residential owners and tenants are assessing, or can themselves determine, the nature, scale, condition, and risk of legacy asbestos in their properties seems fanciful. In any event, non-friable asbestos products decay over time and typically have an average lifecycle of around 50 years.³⁴ So, materials that were installed in the 1970s (the peak period of consumption of asbestos in Australia) pose increasing risks across the built environment. Worse still, when corrosion of asbestos products occurs through extreme weathering, this can cause a release of fibres within 15 years.³⁵

While the NSW Factsheet advises renovators to use a licensed asbestos removalist when in doubt about the existence of asbestos in one's home, it does not explain why renovators should do so and the possible consequences if they do not.

³³ The copyright is included in the initial pages that are not paginated.

³⁴ See, eg, PJ Landrigan, 'The Third Wave of Asbestos Disease: Exposure to Asbestos in Place. Public Health Control Introduction.' (1991) 643 *Annals of the New York Academy of Sciences* xv.

³⁵ Corie Gray, Renee Carey and Alison Reid, 'Current and Future Risks of Asbestos Exposure in the Australian Community' (2016) 22 *International Journal of Occupational and Environmental Health* 292, 295.

A sentence in small lettering in the NSW Factsheet states that we ‘now know that asbestos can be dangerous and may put your health at risk if you are working with it’.³⁶ The nature, gravity, and magnitude of the dangers to health are not explained. Use of the word “now” is interesting, as it implies that the NSW Government were not aware of the health risks until recently. If so, this claim is implausible given the medical history of asbestos. Use of the phrase “Working With It” is also curious, as this appears to exclude the dangers from weathering or product aging.

The highlighted omissions and the overall bland tone of the information provided are problematic. Australians cannot make fully informed decisions without understanding the nature and magnitude of the risks involved; namely that there is no such thing as a safe level of exposure to asbestos,³⁷ that mesothelioma is a fatal disease, and that the Asbestos Safety And Eradication Agency estimates that 4,000 lives are lost every year to asbestos-related diseases.³⁸

3. Other Official Guidance

Statements to the effect that exposure to asbestos does not always result in asbestos related disease, and that we do not fully comprehend why some people with very limited exposure to asbestos develop diseases, while others with more intense exposure over longer durations do not, are true but unhelpful. Such medical conundrums apply to many, if not most, diseases. For example, medical science does not fully understand why only some smokers get lung cancer, while others develop lung cancer who have never smoked. Similarly, medical science cannot fully explain why some apparently healthy and fit people have sudden heart attacks, while others who are overweight and unfit do not.

³⁶ NSW Government, *Asbestos Fact Sheet for Home Owners and Tenants* (March 2019). This factsheet is not paginated.

³⁷ NSW Ombudsman, ‘Responding to the Asbestos Problem: The Need for Significant Reform in NSW’ (November 2010) 4.

³⁸ Asbestos Safety and Eradication Agency, ‘Asbestos Health Risks’ viewed 16 May 2021 at <https://www.asbestossafety.gov.au/asbestos-health-risks-and-exposure/asbestos-health-risks>.

The credibility of comments from some public health officials and scholars concerning the lack of evidence of a growing incidence rate of mesothelioma (without further context) is highly questionable. Such responses effectively treat the present deaths (around 7-800 deaths annually) as “acceptable” and minimise the necessity to prevent future deaths. Do such statements mean these persons will merely keep an eye on the incidence rate until it potentially falls and will then change their messaging to the “incidence rate is falling”.

We were unable to find similar responses to fatalities caused by other diseases or events. If official public health advice were to indicate that the incidence rates of breast cancer, speeding fatalities, or COVID 19 are not growing and are therefore of lower concern, this would likely be met with the following common-sense responses:

- That measures should be put in place to reduce the incidence rate as much as possible.
- That an incidence rate involving ongoing mass deaths requires public health and policy responses that are abundantly cautious.

4. Signage

Use of the word “cancer” and “lung diseases” on asbestos warning signs has likely influenced public perceptions of the dangers involved. Our survey found that most Australians think that lung disease or cancer is the most harmful effect of asbestos exposure. Only a small percentage know that asbestos-related diseases are commonly fatal.³⁹

³⁹ See Digital Finance Analytics and Asbestos Awareness Australia Ltd, *Community Awareness & Knowledge of Asbestos Threats & Consequences* (March 2021).

Overall

Public health risk frameworks should be proportionate and highly prudent and should be guided by evidence. When assessing public health risks and the content of risk warnings, proper analysis must include the incidence rate of the specific risk and its gravity and magnitude of harm, including the morbidity and mortality rates. Without such knowledge, public health categorisations of asbestos threats as low (or very low) are, in our opinion, misnomers and complacent. Imagine if the information provided by governments on COVID 19 was limited to “it is dangerous to health” without any sources provided and without proper context on the risks of death and the death counts.

On balance, we suggest that the Guide and NSW Factsheet (when in fact read) are unlikely to properly inform homeowners or renovators about the risks and harms of asbestos exposure, or to prompt them to engage licensed professionals to assess the dangers of asbestos in their homes. In particular, the messaging fails to highlight the gravity and magnitude of the harms involved. Regardless of how one categorises or defines the levels of risk of legacy asbestos, the most relevant risk information for Australians to make fully informed decisions on asbestos risks and dangers is the real possibility of death and the scale of ongoing fatalities.

Similar points are made in the Werfel case. The Justices reviewed various publications containing warnings to the public about asbestos and found that some were notable for the careful way in which the warnings were expressed. These warnings failed to mention that even a low exposure might result in the contraction of mesothelioma. They selectively chose to quote only those experts (not specified or identified) who were of the view that there was a low risk and failed to refer to the substantial body of reasonable medical opinion that there was no safe dose. Their Honours conclude that such material is ‘unlikely to have imprinted the risk of contracting cancer on the relevant class, or to have impressed on them the importance of taking precautions.’⁴⁰

⁴⁰ See, eg, Werfel Case [218], [337].

We conclude that official guidance and warnings on legacy asbestos targeted at householders and home renovators presents a confusing and potentially misleading picture of the risks and impacts. The primary aim of this material appears to be to reassure the public that the risks of asbestos exposure are low. The warnings are consistently hedged with qualifications that diminish the dangers. The messaging to encourage Australians to take precautions is clinical, qualified, and lacks proper context about the health dangers involved.⁴¹

The Guide indicates or implies that high-to extreme risk exposure is limited to miners and tradespersons, while the risks for the rest of the population are generally very low, low or at worst, medium. These risk categories are allocated without clear or complete explanations about the gravity and magnitude of the risks involved.

The Guide and other sources suggest that mesothelioma and other asbestos-related deaths are rare, but fail to provide the proper context, namely the death counts involved.

Many official sources state that *in situ* asbestos contained within bonded materials is generally safe and better left in place than removed, without highlighting or explaining the full risks and trade-offs involved.⁴²

Most critically, the online guides presume that the public knows about the dangers of asbestos, this knowledge will prompt them to proactively look for asbestos-related guidance, and relevant stakeholders will readily find and act appropriately on the most accurate and relevant information.

⁴¹ See Werfel Case [324].

⁴² McCulloch and Tweedale conclude that the arguments that 1. Only heavy exposure cases cause adverse health effects; 2. Asbestos is safely bonded into cement products, and 3. Any asbestos-related disease occurs from historical settings that are no longer relevant, are familiar but cranky; Jock McCulloch and Geoffrey Tweedale, *Defending the Indefensible: The Global Asbestos Industry and its Fight for Survival* (2008, Oxford University Press, Oxford) 270 “Defending the Indefensible”.

Based on the evidence we reviewed, the current risk management frameworks around legacy asbestos dangers in Australia do not fully reflect available scientific evidence, omit critical facts and context, and are not widely disseminated. The public health sector, policy makers and others are still maintaining and justifying a low-key risk management approach to asbestos threats using the following mechanisms:

- Taxpayer funded public health guidance and warnings to householders and home renovators are qualified and barely disseminated.
- The public health guidance to householders from the federal government claims to be scientifically based, but fails to disclose the sources relied on, any contributions made or influenced by conflicted persons, and is out of date. Similarly, the NSW Factsheet is unsourced.
- The federal guidance is subject to strict copyright terms, which are generally used to protect commercial investments and rights.
- Available guidance lacks appropriate risk context for households and home renovators to make well informed risk decisions. It fails to mention that mesothelioma is incurable, that more than 800 people die each year from mesothelioma in Australia,⁴³ and that thousands more are estimated to be dying from asbestos-related lung cancer and asbestosis.⁴⁴

So let us now consider whether the existing public health guidance is consistent with, or has influenced, the public's awareness of asbestos threats and consequences. To do this, we will reconsider the survey questions and responses.

Question 1: Is asbestos dangerous to health?

⁴³ Australian Government, Australian Institute of Health and Welfare, *Mesothelioma in Australia 2019* (published August 2020). The number of deaths from mesothelioma was over 700 when the Guide for Householders and the General Public was published in June 2013. See also Jock McCulloch, *Asbestos: Its Human Cost* (1986, St Lucia, Queensland University Press) 251-252. McCulloch suggests that the wording of public statements on asbestos issues in the 1980s were timid and reflected the influences and views of the industry.

⁴⁴ Asbestosis results in the formation of scar tissue in the lungs around inflammation caused by asbestos fibres. It is a chronic lung disease caused exclusively by inhalation of asbestos fibres. While this condition is not fatal, it can trigger respiratory or cardiac failure and or can lead to subsequent diagnoses of mesothelioma or lung cancer.

More than two thirds of the respondent households did not positively understand that asbestos is dangerous to health, suggesting this most basic tenet of asbestos knowledge is poorly understood across the population.

These household responses are consistent with the qualified and incomplete messaging in the Guide and NSW Factsheet. They also likely reflect the failure of the industry, the federal and state governments, and the public health sector to provide broadly disseminated public health guidance and warnings on asbestos threats.

Question 2: What level of exposure to asbestos is dangerous?

A large majority of the remaining households (79 percent) thought that asbestos is only dangerous when exposure is intense over a long period. Only 2 percent correctly indicated that there is no safe level of exposure.⁴⁵

These survey results are consistent with the Guide and other official sources that emphasise the intensity and durations of exposure to asbestos when discussing the risks to householders.

Question 3: What is the most harmful effect of asbestos exposure?

Most of the household respondents who knew that asbestos is dangerous to health thought lung disease or cancer is the most harmful effect of asbestos exposure (88 percent). Less than 5 percent knew that most asbestos-related diseases result are fatal.

These results are consistent with the Guide and other warnings that use the terms “lung disease” or “cancer” but avoid mention of death.

The public health guidance and risk warnings on asbestos dangers in Australia should be required to explicitly use the word “death”. **The five-year survival rate of**

⁴⁵ See Digital Finance Analytics and Asbestos Awareness Australia Ltd, *Community Awareness & Knowledge of Asbestos Threats & Consequences* (March 2021).

mesothelioma is 5-6 percent,⁴⁶ the lowest such rate among the cancer types recorded by the Australian Institute of Health and Welfare, and this level has barely moved over the last 30 years.⁴⁷ The average five-year survival rate of lung cancer is also relatively low at 19 percent.⁴⁸

Any person who has been given a cancer diagnosis will understand the trauma of the average survival statistics that are commonly presented upon diagnosis. For mesothelioma victims, this trauma is the most extreme because effective treatment options are limited to non-existent,⁴⁹ and the survival statistics are the worst on the cancer continuum.

The average 5-year survival rate for all cancers in Australia is now close to 70 percent and is above 90 percent for some forms of cancer.⁵⁰ So while a diagnosis of cancer remains a serious medical outcome that should be feared, many of these sufferers can be treated and cured of their cancer or can live for long periods following their diagnosis. This is not the case for mesothelioma which is incurable and invariably fatal.

These medical facts ought to be conveyed to the public so people can make proper risk-based decisions regarding legacy asbestos in their homes.

Question 4: How many Australians die each year from asbestos-related diseases?

⁴⁶ Australian Government, Australian Institute of Health and Welfare, *Mesothelioma in Australia 2018* 1. See also Australian Government, Australian Institute of Health and Welfare, 'Cancer in Australia 2019' (Cancer 18 Series no 119. Cat no CAN 123, Canberra: AIHW) 78.

⁴⁷ Australian Government, Australian Institute of Health and Welfare, 'Cancer in Australia 2019' (Cancer 18 Series no 119. Cat no CAN 123, Canberra: AIHW).

⁴⁸ Australian Government, Cancer Australia, 'Lung Cancer in Australia Statistics' viewed on 22 September 2020 at <https://www.canceraustralia.gov.au/affected-cancer/cancer-types/lung-cancer/statistics>.

⁴⁹ See, eg, Greg Callaghan, 'Doctors and Lawyers are Calling it the Third Wave: The Spate of Asbestos-related Diseases Contracted Through Home Renovations and Indirect Exposure' *smh.com.au* (24 November 2017). Professor Ken Takahashi, director of the Asbestos Diseases and Research Institute confirms that, '[w]e don't even have a drug to treat ... [mesothelioma] once a diagnosis is confirmed, much less one that will prevent its development once someone has been exposed to asbestos dust.'

⁵⁰ Australian Institute of Health and Welfare, 'Cancer in Australia: In brief 2019' (Cancer Series no. 122. Cat no. CAN 126. Canberra). These statistics are averages for each cancer type.

The household survey confirmed that a large majority of the remaining households (93 percent) believe that less than 50 people die each year from asbestos diseases. Only 5 percent of these households chose the more than 1,000 deaths options.⁵¹

These household responses are consistent with the phrase “a very small number of asbestos-related disease cases” in the Guide and inferences or omissions in other guidance and official websites concerning the death counts from asbestos-related diseases.

McCulloch suggests the mass deaths from asbestos-related disease during the 20th century were acceptable only because of the passivity of governments and the ignorance of the general public.⁵² This argument remains valid today. In the existing official guidance from federal and state bodies, the possibility of death is highlighted in only muted ways and the fact that asbestos-related diseases are killing an estimated 4,000 people annually is not mentioned other than in material from the ASEA.⁵³

Public and occupational health and safety authorities, governments and non-government agencies, the mainstream news media, trade associations, and building hardware suppliers in Australia are still apparently unwilling to publicly explain the dangers of occasional exposure to asbestos to householders in unequivocal terms.

In Werfel, the Justices indicated that:

The sobering effect on the Australian community of an unequivocal and very public warning that an activity might cause cancer should not be underestimated. Such an acknowledgement by James Hardie, and an endorsement by it of the precautions which occasional users should take, would have been inherently

⁵¹ See Digital Finance Analytics and Asbestos Awareness Australia Ltd, *Community Awareness & Knowledge of Asbestos Threats & Consequences* (March 2021).

⁵² Jock McCulloch, *Asbestos: Its Human Cost* (1986, St Lucia, Queensland University Press) 120.

⁵³ Asbestos Safety and Eradication Agency, 'Asbestos Health Risks' viewed 16 May 2021 at <https://www.asbestossafety.gov.au/asbestos-health-risks-and-exposure/asbestos-health-risks>.

*newsworthy and likely to have been published and republished by the mainstream news media, by governments and non-government agencies, by trade associations, building hardware suppliers and by public health and occupational authorities.*⁵⁴

Their Honours conclude that ‘in the absence of a comprehensive acknowledgement by James Hardie of those risks, the commentary of others naturally enough was, ... guarded.’⁵⁵

Similar principles apply to the federal and state governments and local councils today. Unequivocal and highly public warning about the grave risks of legacy asbestos, including the risks of death from occasional exposure during home renovations, should not be underestimated. If such warnings were given, others would be less hesitant and guarded about speaking out on asbestos risks and deaths, and the policy debates and actions could then progress.

The public ignorance reflected in our survey research after more than a century of mass deaths caused by asbestos-related diseases raises serious questions concerning the transparency and efforts of the industry, the federal and state governments, local councils, scholars, and the media to acknowledge and explain the facts.

The highest priority of policy makers and public health sectors in a wealthy developed nation should arguably be to protect life, especially when mass lives are involved. During the COVID 19 period, most public health experts and policy leaders in Australia repeatedly indicate that the safety of the public is the paramount objective and that the appropriate public health and policy responses needs to be “abundantly cautious”. Epidemiologist commonly discuss the incidence rates, the actual and potential levels of deaths, and the risk benefit trade-offs of the various state-based emergency measures and vaccination programs. The same approaches are appropriate and necessary in relation to asbestos threats.

⁵⁴ Werfel Case [231].

⁵⁵ Werfel Case [231].

Imagine a COVID 19 public health campaign or warnings highlighting the following:

- Deaths from COVID 19 in Australia are rare.
- Deaths from COVID 19 in Australia are usually limited to older people.
- The incidence rate of COVID 19 diagnoses in Australia is falling.
- The risks of COVID 19 to the community are low or very low.
- When cases are found of COVID 19, they pose an “acceptable risk” to the community.
- A diagnosis of COVID 19 does not always result in illness or death.
- We do not know why only some people who are exposed to the virus contract it, while others do not show symptoms or become sick.

And consider the following content in public health campaigns or warnings on smoking:

- While there is no absolutely safe level of cigarette smoking, occasional smoking poses only a low risk to your health.
- Smoking is usually only high risk when many cigarettes are smoked over long periods.
- Smoking does not always result in lung disease.
- We do not know why some smokers suffer from lung cancer and others do not.
- The incidence rate of lung cancer is decreasing.

The efficacy and credibility of these imagined warnings could be reasonably questioned and challenged by public health officials and the community.

Proposed Reforms

There are clear public health and policy options that would prevent future deaths from asbestos-related diseases in Australia, but these options require investment and would have political implications.

The only substantive question today is the priority placed on the value of human life. The Industry, federal and state leaders must decide whether they are willing to save future lives from asbestos-related diseases despite the financial impositions

required. Continued inaction or low-level responses represent acquiescence to avoidable deaths.

All asbestos warning signs should include the word “death”, so readers fully comprehend the gravity of harm arising from exposure to asbestos.

All official guidance and factsheets on asbestos threats in Australia should be required to emphasise upfront and in bold and large lettering:

- 1. That unlike other medical conditions, asbestos-related diseases are manmade and preventable.⁵⁶**
- 2. That unlike other medical conditions, the only known primary risk factor of these diseases is exposure to asbestos.⁵⁷**
- 3. That asbestos related diseases arise on an involuntary basis.⁵⁸**
- 4. That there is no safe level of exposure to asbestos.**
- 5. The potential harms resulting from asbestos exposure include a diagnosis of mesothelioma which is incurable and invariably fatal, or a diagnosis of lung cancer that presently has a 19 percent average 5-year survival rate.**
- 6. The levels of morbidity and mortality stemming from asbestos-related diseases in Australia include an estimated 4,000 deaths a year.⁵⁹**

⁵⁶ See, eg, T Driscoll, D Nelson, K Steenland, James Leigh, M Concha-Barrientos, M Fingerhut and A Pruss-Ustun, ‘The Global Burden of Disease Due to Occupational Carcinogens’ (2005) 48 *American Journal of Industrial Medicine* 419. These authors conclude that work-related cancers are largely preventable.

⁵⁷ Safe Work Australia, *Asbestos-Related Disease Indicators* (August 2012) v. See also T Driscoll, D Nelson, K Steenland, James Leigh, M Concha-Barrientos, M Fingerhut and A Pruss-Ustun, ‘The Global Burden of Disease Due to Occupational Carcinogens’ (2005) 48 *American Journal of Industrial Medicine* 419. These authors state that ‘malignant mesothelioma is virtually only caused by exposure to asbestos.’ See further, BWS Robinson, AW Musk and RA Lake, ‘Malignant Mesothelioma’ (30 July 2005) 366 *The Lancet* 397. These authors confirm that ‘few common cancers have such a direct causal relation with an exposure to a defined carcinogen as mesothelioma has with asbestos exposure – even lung cancer with cigarette smoking’.

⁵⁸ That is, most sufferers were not aware of, or were not properly informed about, the risks of exposure they faced and were not able or advised to take precautionary measures.

⁵⁹ Under corporate law, disclosure by companies to investors and the general public must be “clear, concise and effective”: *Corporations Act 2001* (Cth) s 715A. The Australian Securities and Investments Commission advise that corporate disclosure documents should provide the most important information upfront with the most material facts highlighted in bold and in large lettering. Given the lives at stake, these same disclosure principles should be applied to all asbestos related guides. A partial analogy would be the legislative requirement for clear health warnings to be included on cigarette packaging.

Public health guidance should emphasise the known and possible risks of exposure to asbestos and the actual and estimated deaths, rather than the uncertainties. The inclusion of obvious facts and broad scientific uncertainties that apply to most or all diseases creates noise and distracts from the messages and warnings given.

All the public health campaigns and guidance relating to smoking and AIDS in Australia viewed by our researchers purposefully sought to scare people in order to effectively warn about the risks involved and to encourage the community to take these risks seriously. None of them emphasise the cases of people that smoked for their entire lives and did not develop lung cancer, or the people that were possibly exposed to the AIDS virus but who fortunately remained well.

The same principles apply to asbestos-related diseases. People should fear exposure to asbestos because the risk of deadly exposure is real and substantive.

We urge all bodies and persons to cease referring to mesothelioma and other asbestos-related diseases as rare and to instead state the actual or estimated death counts.

We suggest public health guidance and other material omit statements to the effect that we do not know why some people who are exposed to asbestos do not suffer from asbestos-related disease.

We call for unequivocal and widely disseminated public health warnings regarding the risks and consequences of legacy asbestos across the community.

We advocate for nationally coordinated public campaigns that properly warn Australians about the specific risks and deadly consequences of exposure to legacy asbestos in their homes, including the dangers and impacts of ageing, weathering, maintenance and renovations.

Asbestos Awareness Australia Ltd is a registered not-for-profit company limited by guarantee, is a registered charity, and has endorsement from the Australian Taxation Office as a gift deductible recipient. The company was set up:

- **To enhance public awareness and knowledge of the dangers of asbestos threats.**
- **To promote measures and policies that prevent or minimise the harms from asbestos-related diseases.**
- **To achieve these objectives, the company provides public access to widely sourced information on asbestos risks and impacts, including the associated medical, legal, and political debates.**