

BRIEFING NOTE: MANAGING IMPORTED ASBESTOS IN AUSTRALIAN SUPPLY CHAINS

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ABOUT ACCR

The Australasian Centre for Corporate Responsibility (ACCR) is a not-for-profit association that promotes responsible investment through undertaking and publishing research to evaluate and improve the performance of Australian listed companies on environmental, social and governance (ESG) issues. We have a small portfolio of shares that we hold for the purpose of engaging with companies, including through the filing of shareholder resolutions.

This briefing note has been prepared by Dr. Katie Hepworth, Director of Workers' Rights, and Freya Newman, Research & Education Officer. ACCR's worker rights stream is currently focused on the limits of third party or social audits, and the importance of worker-driven initiatives in mitigating workplace risks and ensuring compliance along the supply chain.

INTRODUCTION

Australia has a comprehensive ban on asbestos importation. Despite this, asbestos is still imported into the country. The Asbestos Safety and Eradication Agency (ASEA) has identified "workforce oversight" as a key element in identifying imported asbestos that is not picked up at the border.¹ This briefing note is focused on the elements that will increase the effectiveness of "workforce oversight" in identifying imported asbestos that has made its way onto Australian worksites.

Safe Work's Review of Model Work Health and Safety Laws (2018) includes a section on asbestos. Like most current WHS guidelines the focus is on identifying existing asbestos on site, not the identification and management of imported asbestos in new building products. Given the paucity of information on management of new asbestos onto worksites, this briefing note looks at best practice models of OHS management, and considers their applicability to the identification and management of imported asbestos. It also identifies workplace issues that may compound workplace OHS risks, specifically the negative impact of the increasing prevalence of labour-hire and casual work on OHS management.

WORKER AND TRADE UNION INVOLVEMENT IN OHS MANAGEMENT

Extensive research shows a strong link between worker involvement and improved OHS outcomes. A number of regulatory bodies now specify worker consultation and worker representation as a core part of effective OHS management. See for example: the UK's Health and Safety Executive (HSE) or the European Agency for Safety & Health at Work (EU-OSHA). Worker representation could take the form of Health and Safety Representatives or Health and Safety Committees.

Workers are typically better placed than management to assess risks and provide continuous monitoring of the workplace, as they have detailed knowledge of day-to-day operations and can identify issues and risks as they arise. Significantly, the research finds that representation and consultation are only effective in the context of a unionised workplace. The research observes only limited benefit from the presence of Health and Safety Representatives in non-unionised workplaces. Trade unions ensure that OHS representatives are well-trained, they provide an alternative avenue for workers to raise concerns regarding workplace health and safety (in addition to their direct line manager), and they allow workers to raise concerns about health and safety anonymously - lessening potential repercussions due to raising workplace issues.

¹ https://www.asbestossafety.gov.au/sites/asea/files/documents/2018-02/ASEA%20supply%20chain%20diagram_final.pdf

- EU-OSHA (2012), the European Agency for Safety and Health at Work, finds that workplaces where workers actively contribute to OHS typically have lower operational risk profiles.
- Fidderman and McDonnell (2010) find that where worker involvement happened in non-unionised workplaces it was more likely to follow the employer’s agenda. By contrast, “unionised safety representatives were more likely to be empowered to set an agenda and be challenging”.
- Walters (2003, p. 12) finds that where Health and Safety representatives are supported by trade unions, “they are more likely to be able to engage meaningfully and autonomously in the dialogue with employers that is essential to self-regulation’.
- Walters (2004, p. 73) finds that trade union representation is a significant factor in Health and Safety representatives’ ability to represent their own interests with regards to OHS.

This research correlates with broader research on the limitations of third party audits in ensuring workplace compliance within global supply chains. In their 2016 report, *Workplace Compliance in Global Supply Chains*, the ILO conducted a comprehensive review of policies and programmes that have been developed to ensure workplace compliance in global supply chains and highlighted current best practice across multiple industry sectors. The focus of their analysis and conclusions was on a variety of labour issues, including safety. The report is particularly critical of the ability of voluntary self-regulation and “private compliance initiatives” (codes of conduct, auditing, certification schemes or other self-reporting mechanisms such as the UN Global Compact or the Global Reporting Initiative) to sufficiently manage business and operational risks in global supply chains.

The Clean Clothes Campaign (2016) argues that “the best auditors are the workers themselves since they are continually present at the production site”. Before workers can adequately participate in monitoring their own workplaces (including on OHS issues), studies show that they must be provided with in-depth education by trade unions (ETI 2004). Similarly, a World Bank (2003) study concludes that one of the main barriers to effective code implementation is the “absence of a comprehensive and accountable means of engaging workers as well as their unions”.

As the research makes clear, effective OHS management requires a multi-stakeholder approach that includes both employers and workers (with the support of trade unions). In the case of managing imported asbestos in Australian supply chains, this would involve workers who are trained to properly identify new asbestos products when they arrive on site, properly identified channels to report that asbestos (including independent reporting through their trade union), and systems in place to quarantine and manage that asbestos.

IMPACT OF LABOUR-HIRE AND PRECARIOUS WORK ON OHS MANAGEMENT

There is a growing body of research highlighting the adverse effects of precarious workplace arrangements for occupational health and safety (OHS) (Quinlan et al. 2016). Precarious work includes both casualised work and the use of labour-hire. This literature has considerable relevance for the building and construction industry where short-term contracts, informal employment arrangements and complex sub-contracting claims are common (Lingard, Cooke & Blismas 2009). The CFMMEU has argued that the informal and casualised labour arrangements, sham contracting and fragmented labour-hire structures which increasingly characterise this industry all have negative implications for OHS (CFMMEU, Construction & General Division 2018, p. 2). See also:

- Johnstone & Quinlan (2006, p. 273) have documented evidence that agency workers face greater health and safety risks than other workers undertaking equivalent work, and are less likely to be granted legislative protection.
- The Victorian Government’s *Inquiry into Labour Hire Employment* (2005), found that the use of labour hire can undermine or complicate work processes including in relation to OHS, and heard evidence of substandard training, supervision and processes for labour hire workers in relation to OHS (see pp. 126-9).

- Johnstone, R., Quinlan, M. and Walters, D. 2005, 'Statutory Occupational Health and Safety Workplace Arrangements for the Modern Labour Market', *Journal of Industrial Relations*, vol. 47, no. 1, pp. 93-116.

The widespread use of labour-hire and casual workers is associated with increased vulnerability to accidents, injuries and ill-health (see Johnstone & Quinlan 2006). Research suggests that this correlation may be due, in part, to:

- The statutory framework for OHS in Australia — which has been constructed to suit a paradigm of labour law which assumes that typical employment relationships are permanent, full-time, and covered by a contract of employment set out by a single entity employer — being out of step with the reality of precarious work, including labour hire work arrangements (see Johnstone et al. 2005, p. 95). This statutory framework includes mechanisms for worker involvement in OHS management. Put another way, OHS legislative frameworks in Australia have been 'designed on a presumption of employment relationships and a level of unionisation that are now no longer the norm' (Johnstone et al. 2005, p. 112).
- An association between precarious employment arrangements and: reduced familiarity among precarious workers of the rules governing OHS on each job site; more complicated lines of management control; complex webs of legal responsibility, and more 'buck-passing' for OHS risks; work intensification; and an increased risk of regulatory failure (Quinlan, Mayhew & Bohle, 2001, pp. 345, 351).
- A reluctance on the part of temporary agency workers' to raise OHS issues, due to their increased vulnerability to termination (Underhill and Quinlan 2011).

As this research indicates, effective OHS management must address workforce composition and the proportion of permanent and casual or labour-hire staff. Regarding the management of imported asbestos, the workforce must be well-trained to identify asbestos, and must feel secure in their ability to raise issues with management, to ensure that the asbestos is properly quarantined and managed.

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