

14 October 2019

The Secretary
Legislative Council Standing Committee on Law and Justice
Parliament of New South Wales

By email: Law@parliament.nsw.gov.au
Cc:

Dear Sir/Madam

Committee Enquiry – 2019 Review of the Dust Diseases Scheme

Post-Hearing Response

We thank the Standing Committee for the opportunity to answer the following further question on notice.

During the course of our testimony on 16 September 2019, the Honourable Member, Mr David Shoebridge, put to the writer, the submission made by the The Master Builders' Association of New South Wales, that dust from manufactured stone be treated in the same way as asbestos dust, using the existing controls.

We have now had the opportunity to re-review the written submissions of the Master Builders' Association dated 12 August 2019, and note their first recommendation:

“Master Builders recommends that the Standing Committee on State Development reduce red tape by applying existing asbestos safety controls to the generation, management and disposal of silica dust.”

Maurice Blackburn Lawyers rejects this submission by the Master Builders' Association of New South Wales on the basis that the existing regulatory framework governing the handling of asbestos in New South Wales is inadequate to mitigate the specific workplace risks associated with crystalline silica dust.

The regulation of asbestos in New South Wales broadly falls under the jurisdiction of two government entities. On the one hand, SafeWork NSW is responsible for regulating the handling of asbestos on worksites under the provisions of the *Work Health and Safety Regulation 2011* (NSW). On the other hand, the New South Wales Environmental Protection agency is responsible for the transportation and disposal of asbestos waste under the provisions of the *Protection of the Environment Operations Act 1997* (NSW), and the

Protections of the Environment Operations (Waste) regulation 2014. In addition Local Government Areas also set their own regulations for the disposal of asbestos in waste disposal facilities.

Maurice Blackburn Lawyers submits that the current regulatory framework governing the handling of asbestos in New South Wales is inadequate to simply be applied to the handling of artificial stone dust. This is because the use of asbestos has been banned since 2003, and so the regulatory framework around asbestos mainly governs aspects of safe removal, storage, and disposal of asbestos. There is no substantive regulatory framework governing safe uses of asbestos, specifically because it is a banned substance and use is prohibited.

We note that many aspects of the regulatory framework governing the safe disposal of asbestos, such as a requirement to use licensed removalists, or the requirement to dispose of waste in designated landfills, would be superfluous in the context of silica dust. These regulations have been enacted to mitigate for the highly carcinogenic nature of asbestos fibres, even in small quantities. The health hazards of silica dust are different in nature to that of asbestos fibres.

In the absence of any outright ban on materials containing crystalline silica, Maurice Blackburn Lawyers submits that the handling of crystalline silica dust in New South Wales must be governed according to a regulatory framework that has been specially constructed to mitigate the specific health-hazards associated with crystalline silica dust. Such a regulatory framework would invariably focus on the safe use of high-risk materials, such as artificial stone products, rather than just the removal and disposal of waste, which is the focus of most regulations governing the use of asbestos.

Yours faithfully

Jonathan Walsh
Principal
MAURICE BLACKBURN LAWYERS