

Australian Industry Group

5 year review of the role and functions of the Asbestos Safety and Eradication Agency

Submission to
Department of Jobs and Small Business

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5 YEAR REVIEW OF THE ROLE AND FUNCTIONS OF THE ASBESTOS SAFETY AND ERADICATION AGENCY

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Introduction

The Australian Industry Group (Ai Group) is a peak industry association and has been acting for business for more than 140 years. Along with our affiliates, we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our longstanding involvement with diverse industry sectors including manufacturing, construction, transport, labour hire, mining services, defence, airlines and ICT means we are genuinely representative of Australian industry.

We have ongoing contact with employers of all sizes, through the provision of membership, consulting and training services, with a strong focus on workplace relations, work health and safety and workers' compensation. This enables us to understand the key issues that employers are facing when managing these important issues which often overlap and interact.

An important part of our role is to develop strong relationships with governments and regulators across the country to provide a voice for employers when legislative and policy issues are being considered. Ai Group is a member of Safe Work Australia and has strong links with relevant regulators in all states and territories.

Ai Group has held the Ministerial appointment to the Asbestos Safety and Eradication Council (ASEC), as *the member representing the interests of employers in Australia*, since 2013.

Ai Group welcomes the opportunity to make a submission to the Review on the role and functions of the Asbestos Safety and Eradication Agency (ASEA).

Overall, it is our view that ASEA and the National Strategic Plan (NSP) has provided a strong national focus to progress the improved management of asbestos in the built environment, and to address issues associated with disposal and illegal importation.

Our response to the specific questions posed by the Review are provided below.

The Agency's current role and purpose

Do ASEA's functions, or the way those functions are performed by ASEA, duplicate effort or include activities that would be more appropriately performed by other organisations? If so, which organisations?

The regulation and management of asbestos related issues in Australia is incredibly complex with multiple agencies, across multiple states, territories and the Commonwealth involved in activities associated with increasing awareness and reducing exposure to asbestos containing products.

Within this complex environment, ASEA has identified opportunities to bring together organisations and jurisdictions to work together on difficult issues, and to assist some specific industries and jurisdictions to develop their own solutions.

The risk will always be that duplication may occur. It is important for ASEA and ASEC to be vigilant about this issue when considering ongoing and future work.

ASEA's role is focused on the NSP. Accordingly, only a national body can undertake this work. The establishment of ASEA as an independent Agency with its own Chief Executive means that there will always be a strong focus on the specific asbestos work; if this work was undertaken within a large government department the focus may not be as strong.

Are ASEA's activities well targeted to achieve its objectives?

It is the view of Ai Group that, as a small Agency that has existed for only 5 years, ASEA has achieved significant outcomes targeted to achieve its objectives. The next NSP will build on this work, with the potential for enhanced outcomes over the next 5 years.

What are the Agency's strengths and key achievements? What are its weaknesses?

As an independent Agency, ASEA can fully focus efforts on the requirements of the NSP. It has been our experience that the staff of ASEA have been passionate about the management of asbestos within Australia, and in influencing our nearest neighbours. It is important that this passion is maintained as staff changes inevitably occur over time.

It is not necessary for us to consider all the key achievements; these are well documented in published progress reports. In summary, it is our view that the overall key achievement is the bringing together of diverse interest groups and regulators to work collectively on solutions.

The addition to the knowledge base associated with asbestos issues, through targeted research, has also assisted to build the case for improved management of asbestos.

The major weakness, or threat, for ASEA is the potential loss of knowledge and passion as staff changes occur. As a small Agency, the loss of key staff will inevitably result in periods of time when work is unable to be pursued whilst replacement staff are appointed.

Is the Agency doing work outside its functions under the Act? If so, is this work valuable and should it be continued and provided for under the Act, or should it be discontinued/performed by other organisations? If so, which organisations?

We are not aware of any work undertaken by ASEA that is outside its functions.

Is the Agency not doing work that it should be? Are there gaps in the national framework that ASEA should fill?

We are not aware of any gaps in the national framework that ASEA should fill. As a member of ASEC, we will be keen to see if others identify any such areas for consideration.

The Agency's relationship with the NSP

When considering the role of ASEA and the relationship with the NSP, it is informative to look at the roles and functions of Safe Work Australia, which like ASEA has no regulatory or administrative role in relation to the areas over which they have responsibility.

Section 5A of the Safe Work Australia Act states:

The object of the establishment of Safe Work Australia is to improve national WHS outcomes and workers' compensation arrangements by providing an inclusive tripartite forum for representatives of governments, workers and employers to:

- (a) collaborate on national WHS and workers' compensation matters; and
- (b) lead the development of evidence-based national WHS and workers' compensation policies and strategies; and
- (c) promote consistency in WHS and workers' compensation arrangements across Australia.

In comparison section 2A of the ASEA Act states:

The object of this Act is to establish the Asbestos Safety and Eradication Agency to administer the National Strategic Plan, which aims to prevent exposure to asbestos fibres in order to eliminate asbestos-related disease in Australia.

This variation may be because the NSP had already been developed prior to the passing of the Act and the subsequent establishment of ASEA and ASEC.

Alternatively, there may have been a specific decision that ASEA's role was only to implement the NSP and not to undertake what might be seen as a broader role.

This Review should consider whether the direct linkage to the management of the NSP is necessary, or whether broader objectives similar to those in the Safe Work Australia Act would be more appropriate.

What should the Agency's role and functions be in relation to the NSP?

The current functions are very clearly linked to “encourage, coordinate, monitor and report on the implementation of the National Strategic Plan”. This has led to some tension over the life of ASEA about when they are able to “do things” that support the NSP, rather than just coordinate others to do so.

It is our view that there should be greater flexibility to allow ASEA to undertake activities that directly contribute to the achievement of the plan, with the caveat that they are not to do things that are the responsibility of others.

Further, when ASEA was first established the NSP was already in place (albeit that ASEA was given the role of further enhancing the NSP to achieve full acceptance by all states, territories and the Commonwealth). Five years' on ASEA is now involved in developing the next NSP. A strict interpretation of the Act may result in a view that this is outside the bounds of section (8)(1)(b) which allows the NSP, which was a 5 year plan, to be reviewed and amended.

There may be a need to amend this section to clearly establish a role for ASEA to establish subsequent NSPs.

Is the purpose and focus of the NSP clearly defined in the Act? What amendments would be appropriate?

It is our view that the NSP clearly outlines what is to be achieved and provides flexibility through the inclusion of 5A(1)(d) which allows the NSP to “deal with any other relevant matters”

Should the Act continue to prescribe the NSP ‘priority areas’? Should there be more flexibility for new priority areas?

The current priority areas will continue to be relevant for the 5 year life of the next NSP. As outlined previously, section 5A(1)(d) allows flexibility for additional priorities to be added to the NSP.

The issue arises however, that the subsequent NSP will be under development at the same time as the next 5 year review of the Act is underway. For this reason, it may be appropriate to amend section 5A of the Act to allow for one or more of (1)(c)(i) to (vi) to be excluded from the NSP if they are thought to be no longer relevant.

Should the Agency's functions be more specific in relation to, for example: information sharing, awareness raising, data collection, stakeholder engagement and coordination, international leadership?

Our response to this question is determined by whether the Act continues to link ASEA's activities directly to the NSP. The NSP reflects these activities making their direct reference in the Act superfluous and, in the future, potentially in conflict with the NSP.

If the Act was modified to provide a broader role for ASEA, as considered above, these functions would need to be specifically included in the Act.

Future challenges

What are the future challenges facing asbestos management and awareness in Australia? What should the Agency's role and functions be in relation to these future challenges?

Many of the future challenges facing asbestos management and awareness are those that are present today: ageing buildings and infrastructure; general community lack of awareness about ongoing risks of exposure; and limited access to reasonably priced disposal options. ASEA will continue to play a role in addressing the current challenges.

Additional challenges are likely to arise from the developers of new technologies that claim to improve identification of asbestos (possibly through non-destructive testing) and potential opportunities to treat asbestos waste in a way that makes it inert. Such technologies could provide great opportunities to reduce risk, but if they turn out to not deliver on their promises may inadvertently increase the risk.

ASEA can play a part in monitoring technological developments at a national and international level, and providing relevant information to interested parties.

The CSIRO Report [Asbestos Safety Futures](#) provides a range of possible future scenarios in relation to the management of asbestos issues into the future. There is a role for ASEA to ensure that the NSP considers these options and that there is a regular review of which of the scenarios are emerging and how such scenarios should be managed.

Agency name

Does the title of the Agency clearly reflect its role? If not, what alternative title should be considered?

The use of “eradication” in the Agency’s title is somewhat misleading.

Section 5A of the Act establishes that the NSP, which ASEA is established to implement, “aims to prevent exposure to asbestos fibres in order to eliminate asbestos-related disease in Australia”. This is repeated in the overarching aim of the [current NSP](#).

In reality, it is not possible to fully eradicate asbestos. Even if all asbestos was to be removed from the built environment, there will continue to be a need for Australia to manage the ongoing legacy of asbestos that remains in waste sites across the country.

It is Ai Group’s view that a more appropriate title for the Agency would be the one recommended in the Asbestos Management Review Report: the Australian Asbestos Awareness and Management Agency.

However, there may be some that view a change of name as lowering the expectations placed on the Agency, and it may be more pragmatic to maintain the name for the purposes of the Agency’s image.