

ASBESTOS DISEASES ASSN (INC) OF NEW ZEALAND

A VIEW OF THE ASBESTOS SITUATION FROM 1990 TO THE YEAR 2000



This is a photograph of James Hardie Ltd super-six asbestos cement roofing. The yellow colour is due to excessive use of lime in this material.

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1. Introduction

The first Polynesian settlers arrived in this country in approximately one thousand AD. They named it Aotearoa, the land of the long white cloud. The first European to sight this land was the Dutch explorer, Abel Janszoon Tasman in 1642 and he named it New Zealand after the Dutch province of Zeeland. He mapped some of the coastline in the North Island and when leaving the North Island gave the name of Maria van Diemen to the northernmost tip in honour of the wife of the Governor of Batavia.

In 1769 the British explorer and navigational genius, Captain James Cook, rediscovered it after getting maps and other data from the Dutch Governor of Batavia. Upon his arrival, he hoisted the British flag and claimed it for the British Empire. At that time there was a comparatively small Maori population living in scattered tribes.

Soon after this the first European settlers arrived. These were mainly Missionaries. By 1901 the population had increased to 815,862. A hundred years later the population numbered 3,781,300. The ethnic groups were now approximately 79.5% Europeans, 13% Maori, 5% Pacific Islanders and 2.5% unidentified.

The North and South Islands cover an area of 103,736 square miles. The driving distance from north to South is 2,575 km. The nearest continent to the north is Australia, 2200 km away. The next closest continent is the South Pole almost the same distance away.

By 1936 the population had increased to 1,573,812 and continual arrivals increased the demand for cheaper building materials. This opportunity opened the door to the manufacturers of asbestos cement building materials. James Hardie Ltd was already established in Australia and exporting asbestos cement products to New Zealand. In 1938 this company started up a subsidiary in Auckland which was soon producing a range of asbestos cement products. By 1945 the plant was in full production.

A second asbestos cement plant was established in the South Island. It started operation in Christchurch in 1943 and was solely owned by New Zealand interests.

Over the years the bulk of asbestos fibres were imported from Canada and South Africa.. Crocidolite from the Witenoom mines of Western Australia probably also found its way to the two N.Z. plants.

1.1. The Use of Crocidolite (Blue Asbestos) in New Zealand

Under specifications 17% Asbestos was used in the manufacture of asbestos cement products, such as pipe and roofing material which require maximum strength and contained 80% Chrysotile and 20% Crocidolite. After the closure of the Witenoom mines in 1968 the Australian manufacturers ceased using Crocidolite, replacing it with Amosite. The Crocidolite held in storage in the James Hardie plant in Sydney, N.S.W. and the Crocidolite already on order under contract from South Africa was diverted to New Zealand from 1967 up to 1976-1977. (Ref. No. 1).

1.2. The Use of Chrysotile (White Asbestos) in New Zealand

New Zealand has deposits of Chrysotile asbestos in the South Island and smaller deposits in the North Island. There is a large deposit in the Nelson area of the South Island. This has been mined and used in a small asbestos cement factory in Christchurch. The poorer quality of this material from both Islands was given the name of "Serpentine Rock" from the Greek word "Serpentine" which means fibres from the Devil and his Serpent. This material was ground into fine dust and mixed with superphosphate to make an artificial manure for use by the farming community. It was never stated that this material was

mainly Chrysotile asbestos or that some of the South Island sources were contaminated by Tremolite. Some 68,933 tonnes of Serpentine rock were used in New Zealand in 1982. The general belief at that time was that Chrysotile asbestos was harmless.

1.3. The Use of Amosite (Brown Asbestos) in New Zealand

This product was not used extensively in New Zealand and was only eventually used after the discontinuation of Crocidolite in 1977. **It is apparently less harmful than either Crocidolite or Chrysotile.**

1.4. The Production of asbestos cement products in New Zealand

Plant No. 1. This is a subsidiary of James Hardie Ltd, Australia.. It began as a small operation in Auckland in 1935 and by 1965 was in full production using 6,900 tons of asbestos fibres annually. Production was 7,500,000 square yards of building products. These products contained a fibre content of Chrysotile, Crocidolite and Amosite. Crocidolite continued to be used possibly as late as 1977. It was not until 1980 that they began using synthetic fibres and are still producing fibre cement products. At the time of maximum production 600 workers were employed 80 per cent of whom were Maori and Pacific Islanders.

Plant No. 2. This was New Zealand owned and manufactured under the name of Durock Industries. This plant employed a workforce of 300 and apparently was the only factory in New Zealand to use Chrysotile asbestos from the Takaka mine in Nelson. This mine produced 850 tons of asbestos in 1951 and 680 tons in 1952. This asbestos was found to be sub-standard and its use discontinued. The total production of the plant was 2,500,000 square yards of building material and this was used mainly in the South Island.

This plant operated from 1943 to 1973 when it was closed for economic reasons. It was also at this time that asbestos-related diseases began to appear amongst the workers.

1.5. The Use of Asbestos in New Zealand

Asbestos and asbestos containing material was used excessively in the building industry. It was used in the construction of virtually every house, school, hospital, factory and public building. Asbestos cement products such as flat sheeting and roofing, insulation for pipes, ducting, ceilings, fireproofing to protect steel construction. Many houses and offices featured textured ceilings. This was sprayed on and contained excessive amounts of Chrysotile Asbestos. It was also used in the manufacture of paint and flooring products .

2. Statistics

New Zealand is sparsely populated when compared with the rest of the civilised world. In 1945 the total population was 1,702,298. In 1998 the N.Z. population had increased to 3,681,546.

1961 Health statistics in a population of 2,414,984 show lung cancer cases for Males 489 and Females 70. These totalled 559 cases, 23 per 100,000. At this time the first mesothelioma death was recorded and by 1997 56 cases of mesothelioma were recorded. In 1997 the population numbered 3,681,546. An increase in lung cancers and pneumoconiosis became apparent after the introduction of asbestos in the nineteen forties. Lung Cancer deaths were Males 904 and Females 503, totalling 1,407 or 39 cases per 100,000. The worst affected lung cancer group was Maori. In 1993 the total lung cancer deaths were 92.4 per 100,000. In 1994 there were 84 deaths per 100,000.

Lung Cancer Registration only. Males 1993 -1994 approximately 45 per 100,000 annually. Maori Males totalled 111.5 per 100,000 annually.

The 1996 Ministry of Health statistics for chronic obstructive respiratory diseases Males 758 and Females 543 totalling 1,301.

Pneumonia and Influenza Males 438 and Females 748 totalling 1,186.

Ministry of Health Statistics for Lung Cancer Deaths:

1994 - 1,403 cases 1995 - 1,407 cases 1996 - 1,406 cases 1997 - 1,402

There is a second set of health statistics recorded by the Department of Statistics:

This is well presented and was published in the 1998 N.Z. Year Book.

	<u>1993</u>	<u>1994</u>	<u>1995</u>
Trachea,	M 892	M 919	M 893
Bronchus & Lung	<u>F 444</u>	<u>F 404</u>	<u>F 513</u>
	1,336	1,403	1,406
Pneumonia	999	1,015	1,161
Respiratory Diseases	1,310	1,329	1,491
Bronchitis, Asthma and Enphysema	395	400	362

Occupational Diseases: Not since 1994 have these diseases been itemised separately

	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
<u>Asbestos-related</u>				
Diseases	103	132	67	71
Industrial Asthma	60	97	81	67
<u>Industrial Respiratory</u>				
Diseases	11	34	31	24
Cancer	1	3	2	4

ACC statistics over a three year period from 1995 to 1998 show that 36 fatalities occurred due to Inhaling and Lead. Our statistics as well as world statistics do not agree with this figure.

3. Ministry of Health

3.1. The Management of Asbestos in the Non-Occupational Environment

Guidelines for the Public Health Services June, 1997.(Extract from page 19)

Pleural and Peritoneal mesothelioma. Mesothelioma is a rare cancer of the cells lining body cavities. It is the classic tumour associated with asbestos exposure and appears to be unrelated to smoking and short duration exposure to Crocidolite and Amosite **but not to Chrysotile** have been associated with mesothelioma For exposure of any duration Amphibole asbestos is more strongly associated with mesothelioma than Chrysotile. Other mineral fibres are implicated in mesothelioma, especially eronite. **Eronite deposits are also to be found in the South Island of New Zealand.**

The above statement is not correct. Eronite was not responsible for mesothelioma which occurred in Turkey in 1970. This was investigated by a team of experts in 1976. The mesothelioma was caused by excessive use of Chrysotile asbestos used in the painting, and plastering of walls and floors in village dwellings. (Ref. American Journal of Pathology 85 pp 241-262, 1976).

Pages 20 and 21 of the Ministry of Health Guidelines regarding the size of asbestos fibres is both confusing and misleading.

The impression is given that fibres 5 microns or longer are the most carcinogenic and that the shorter particles properly described elongated particles are much less carcinogenic, if they are carcinogenic at all.

Two international experts do not agree with this. If fibres smaller than 5 microns are not counted or analysed by electric microscope this creates a worrying situation for experts. An Australian expert states "It would appear that practically all human mesothelioma is due to asbestos exposure and that there is no threshold dose response. There is a reasonable argument that short fibres being the ones that concentrate in the pleura, and may play a role in human mesothelioma. (Ref. No. 2).

The common and often quoted belief that Chrysotile Asbestos is a safe product is still used by those who should know better.

The results of animal tests have proved that asbestos fibres are able to cause mesothelioma in animals. Chrysotile 2.9, Crocidolite 2.8, Amosite only - 0.7%.

In Germany in the state of Saxony-Anholt a series of 483 cases of mesothelioma were identified. 67 were exposed to Chrysotile only. 331 were exposed to Chrysotile probably contained by Amphibole fibres (Tremolite). 135 were exposed to Amphibole.

This clearly shows that both Crocidolite and Chrysotile are equally responsible for mesothelioma. It appears Amosite is less likely to be responsible. (Ref. No. 3).

Some of this Chrysotile asbestos material was grey/blue and mistakenly identified as Crocidolite material from other areas is grey/yellow and greenish in colour. It is also a crystal system: and a crystal form of fibres. These fibres can hold high electrostatic which can destroy red blood cells within the lungs and responsible for a long list of other diseases. (Ref. No. 4).

4. Recent Research

In 1998 a review of 97 cases of mesothelioma revealed that only 28.3% of the asbestos fibres found in the lungs were Chrysotile. It was the major fibre type identified in the mesothelial tissue. (Ref. No. 5).

4.1. The Consequences of Asbestos and Lung Cancer

This is well documented by the National Institute of Occupational Health (Worksafe Australia - Lung Cancer and Bronchial Carcinoma). The population attributable risk of lung cancer related to asbestos has been estimated as between 13% and 27%. Using a modern study based on good pathological and exposure data a figure of 19% for Finland had been reported. A Norwegian study put it at 23%. Professor Matti Huuskonen, Finland, estimated it at 13% to 35%.

A series of studies shows that asbestos workers exposed to asbestos and also smoke have an increased risk of five times more likely to contract lung cancer. This is often used as an excuse for asbestos induced lung cancer but it is easily established that asbestos exposure is responsible for the condition. If workers were not exposed to asbestos or given protective clothing or respirators to use then the lung cancer rate could be considerably reduced.

Japanese workers are heavy smokers but the workers in the shipyards in Tokyo Bay have a very low lung cancer rate of approximately 27 per 100,000. This is the result of clean working conditions.

The good news is that in June, 1975, the Swedish Board of Industrial Safety banned the use of all asbestos in that country with one small exception. Today they have the lowest cancer rate in the world.

There are two sides to every story and there is no exception for asbestos-related diseases. This is well documented in the book "Magic Mineral to Killer Dust" by Geoffrey Tweedale published the year in 2000 which also gives a good example of man's disregard for his fellow man. The use of asbestos has produced more industrial diseases and deaths in the workforce and left a legacy of misery amongst their families.

The removal of asbestos is a technical procedure and would have been better left in the hands of the Department of Labour than managed by the Health Sector.

The Department of Labour also published Guidelines for the Management and Removal of Asbestos (65 pages). There is no need for two almost identical documents.

- Ref. No. 1** Report of the House of Representatives Standing Committee on Aboriginal Affairs. Sydney, N.S.W. Australia, October, 1984. Page 54.
- Ref. No. 2** The Australian Mesothelioma Programme Report, Dr J. Leigh, Worksafe Australia, N.S.W.
- Ref. No. 3-1** Environmental Health Criteria 203, WHO, Page 122.
- " No, 3-2** Wagner, J.C., Berry, etc. 1974 British Journal of Cancer No.29 Page 252-269
- Ref. No. 4** Brody, A.R. George, G. and Hill, L.H., Laboratory Investigations No. 49 Page 468-475. October, 1983.
- Ref. No. 5** Suzuki, Y, Yeun, S, etc. Excerta Medica, International Congress, Series 1153, Page 709.

5. Asbestos Diseases and ACC

5.1. Introduction - The Compensation Issue and ACC

By 1973 asbestos-related diseases were increasing throughout the world and New Zealand. The 1988 Labour Government became increasingly alarmed at the growing number of asbestos-related diseases appearing in the workforce. It was thirty to forty years since the asbestos plants had begun manufacturing asbestos cement products and these were widely used in building and other industries. The Minister of Justice, Geoffrey Palmer, was interviewed in the August 1988 "Frontline" T.V. programme where he admitted there was a serious problem over compensation for asbestos victims. ACC was continually using the excuse that asbestos-related diseases were the responsibility of private Insurance Companies because the diseases had been contracted before 1974.

The Labour Government established the Asbestos Advisory Commission in October, 1990. This was inherited by the incoming National Government following the general election of October 27, 1990. After three terms of a National Government over a nine year period, the asbestos problem had once again returned to a Labour Government. It is over to them to give fair treatment to all victims of Industrial Diseases and implement the safe cleaning up of asbestos and all other dangerous materials.

The Hon. Bill Birch announced in December, 1991, "The Asbestos Advisory Committee report to be implemented. The Government has said it will implement all the recommendations made by this Committee."

"ACC COVER FOR ALL VICTIMS OF INDUSTRIAL DISEASE." This will mean that as long as a claim is lodged before the October 1, 1992, people will be able to lodge a claim for lump sum compensation.

Some distasteful claims have been made in extending coverage where it has not existed, the Government is perpetrating a cruel hoax on asbestos victims. Nothing could be further away from the truth. The fact that the Government is removing the legal uncertainties for victims and compensation for victims and their families is surely a welcome move. Another recommendation of the Committee involved a new entitlement to counselling for sufferers of asbestos-related conditions. The ACC will be responsible for the implementation of this recommendation, Mr Bill Birch said..(Ref Safeguard magazine, December, 1991).

5.2. The outcome of these promises – From ACC Statistics

As far as N.Z. compensation to those with industrial diseases is concerned, this can only be described as pitiful.

The 1995/98 ACC Statistics figures for "Inhaling Diseases Asbestos and Lead" show a total of 204 New Claims for a three year period. This is 68 cases annually.

1995/1996 - 76 New Claims including 11 Fatalities. Cost of all entitlements \$142,000.

1996/1997 - 60 New Claims including 7 Fatalities. Cost of all entitlements \$117,000.

1997/1998 - 68 New Claims including 18 Fatalities. Cost of all entitlements \$448,000.

Over a three year period only thirty-six Fatal Claims were accepted (what happened to the other claims?) In comparison the new Accident Compensation Act could be classified as "something for everybody with a provision to pay or not to pay."

The new 1998 Accident Insurance Act No 114 contains 324 pages of what could be described as a legislative nightmare.

5.3. The Compensation issue between Richard D. W. and ACC

According to the new Act this man should be treated as under the 1992 Act. (Page 47 Item 45). It appears that ACC cannot or will not pay him work-related compensation as he is now living in Australia. His present condition is the consequence of his asbestos exposure during his working conditions in New Zealand where he was employed up until 10/8/80. He was suffering from terminal mesothelioma. If a New Zealander did work with asbestos in Australia and returned to New Zealand to live he would be entitled to compensation.

The only compensation he received from New Zealand was an Independence Allowance of \$50 per week. His claim was accepted on June 27, 1999, but he did not receive his first payment until December, 1999. Richard died on January 22, 2000. ACC refused to pay his medical expenses nor did his widow receive a funeral or spouse grant.

5.4. The Compensation Issue between Jacob R. and ACC

The second more recent case is that of Jacob R. who worked as a logger for five years from 1967 to 1972 at the Wairakei Power Station. He would have been heavily exposed to asbestos during that time. A doctor he consulted reported to Whakatane Hospital in April, 1997, that he had some exposure to asbestos. This man was treated from 1985 for asthma. Finally a Waikato Hospital specialist confirmed his lung condition was due to asbestos exposure. Some fifteen years later in 1999 he was finally diagnosed as suffering from extensive pleural thickening an asbestos-related lung condition and was not asthma as previously diagnosed. His medical file also recorded his heart was half the normal size

On February 26, 1999, his doctor sent a claim to ACC for payment of medical expenses. This claim was accepted July 12, 1999. Some nineteen weeks later an assessment was made of what help would be available to this man. He died on October 13, 1999. Virtually nothing was done for this family. His widow had been obliged to take out a mortgage on their home to meet his medical and funeral costs.

It had taken seven months from lodgement of his claim before some help from ACC was arranged. In the case of mesothelioma and asbestos-related lung diseases this delay appears to be the norm. After his death ACC refused payment of any compensation to his widow. His Death Certificate states his death was due to respiratory diseases and a massive Haemorrhagic Infact.

5.5. The Compensation Case Between Keith Draper and ACC

This man also worked at Wairakei Power station and was one of Taupo's celebrities who made a significant contribution to the tourist industry. He was the author of a series of books on recreation in New Zealand, the main topic being trout fishing in Taupo.

In 1998 he developed lung problems. Because of the poor hospital facilities in the Taupo area he was sent for an examination by a Lung Specialist in Hamilton. His x-rays confirmed he had developed terminal Mesothelioma due to his exposure to asbestos. ACC refused to pay his medical expenses, hospital charges, etc. The reason given was he had not asked for prior permission from ACC. The fact that the local doctors were not qualified to diagnose or treat his condition was not taken into consideration.

He took his case to a Wellington Court and on 12/11/98 the District Court Judge, A.W. Middleton stated. "I agree with Professor M.R. Miller's submission that the tenor of the

legislation and the report in regarding to asbestos-based claims is that medical costs of establishing a claim ought to be recoverable.”

5.6. ACC Treatment of Maori and Pacific Islanders

According to the Asbestos Register 1995 only three cases of Mesothelioma were registered.. 2 Maori and 1 Pacific Islander.

A Maori aged 51 was diagnosed with mesothelioma. He and his wife had a combined income sufficient to support themselves and their four children. He worked by day as a labourer in a printing factory and his wife at a night-time cleaning job. His exposure to asbestos dated back 26 years when he worked dismantling and removing asbestos. Under the ACC Act it would have been possible to assess them on their potential earnings.

He suffered from respiratory diseases as early as 1995 and his doctor referred him to Greenlane Hospital. His first appointment was December 28, 1995. A biopsy was performed on January 5, 1996. This was inconclusive and a second biopsy performed on February 2, 1996. This confirmed he was suffering from mesothelioma.

His doctor sent a claim to the Henderson Office of ACC on February 16, 1996. Due to the delay in processing this man was put on a Sickness Benefit. Finally on October 14, 1996, an appointment was made for him to be interviewed for an Independence Allowance. On November 8, 1996, the interviewer finally arrived but the man had died on November 3, 1996.

In January 1997, his widow approached us for help. Our experience with the Henderson office of ACC had been most unsatisfactory so we immediately took the case to the late John Fisher, an ACC director. He was horrified at the treatment this man, his wife and children had received and within fourteen days the widow received the spouse grant for herself and four dependent children and other entitlements.

Without our help it was possible she would not have received these entitlements from ACC. She had no option but to return to her northern tribal land where she lived with her dependent children in a small house without electricity. We visited her in February 1998. She was now receiving an ACC benefit of \$251.60 p.w. inclusive of the children's allowances but had not been paid the funeral grant. We wrote to ACC and this was paid immediately.

5.7. The Compensation Issue between Desmond Milton Putt (decd) & ACC

This Maori was a sad case. He had been brought up in an orphanage and in his teens was given a permanent job at the James Hardie Ltd factory. He was in his sixties when diagnosed with mesothelioma. His only entitlement was an Independence Allowance and some medical costs. His leg was broken in an accident many years before and he been paid compensation. As a result his Independence Allowance was reduced to \$38 per week.

Due to this situation he was advised to approach his ex-employer for compensation through an Australian legal firm and when this was discovered by ACC, his entitlements were cancelled. His widow is now on a Widow's Benefit and left to pay the funeral and some of his medical expenses.

The 1992 ACC Act, Part 2, Section 7, clearly states that “He is not entitled to compensation if he commences any action in any Court in New Zealand.” Which he did not do.

5.8. The Compensation issue between Ian and ACC

Ian had a working life of thirty-eight years. He worked for thirty-one years in New Zealand and six and a half in Australia. The N.S.W. Dust Tribunal granted his wife a small entitlement and after two years of argument ACC agreed to pay part of her New Zealand entitlement.. This was a fair arrangement but his last N.Z. employer for whom he worked 20 years before being diagnosed with mesothelioma applied to ACC for a review subject to an experience rating of 25%. The employer’s medical officer stated that the 20 years of employment with a New Zealand company made no contribution to his mesothelioma. Virtually all asbestos-related mesothelioma and lung cancer begin to appear at the age of 50 and start to decline at the age of 70. The submission made by the Company’s medical representative and lawyer and ACC all insist that it takes 22 to 35 years after asbestos exposure for mesothelioma to develop. Smoking was also attributed to his mesothelioma and the possible use of Blue Asbestos for a short time when working in Australia. As a result of some of misleading statements, the Review Officer took the opportunity to cancel his New Zealand entitlement from ACC.

The World Health Organisation’s recent report “Health Criteria 203” page 114 details the conclusions and recommendations for protection of human health.

(Item A) Exposure to Chrysotile Asbestos poses and increased risk for asbestosis, lung cancer and mesothelioma in a dose-dependent manner. No threshold has been identified for carcinogenic risk. (This organisation also has given the same warning for other types of asbestos).

6. "Rebuilding ACC Beyond the Year 2000"

Rebuilding ACC Beyond the Year 2000 was published by the N.Z. Council of Trade Unions in October 1999. This public information booklet includes 10 papers from various sources

Page 29 - Comprehensive Entitlement

"Comprehensive Entitlement" means that the events that give rise to cover and entitlement must be easily identified and universally accepted. In other words every accidental injury must be covered. That means that expressions like "accident", "injury", "incapacity", "medical misadventure", "gradual process disease or infection", "earnings", etc. must be defined in a comprehensive and liberal way so that all events which are intended to be covered by the scheme are in fact covered and that no injured person falls through the cracks under the legislation.

Ref. Paper by D.A. Rennie, International Insurance Consultant.

Page 62 - a. Reduce Benefits.

The design of benefit systems should, of course, not act as a disincentive to vocational rehabilitation, nor should they be provided at levels which are unrealistically generous.

Nonetheless, New Zealand's unique across-the-board ban on negligent actions necessitates a form of compensation which is perceived, on balance, as just. Others in this conference address these issues, but it is clear that the present entitlements, which are based on the 1992 Act, fail to achieve the fairness and equity required of the scheme. Reducing benefits to such an extent results in greater costs of personal injury being shifted to the injured person and his or her family. These transferred costs are not accounted for by the scheme but they remain as costs to individuals, families, and ultimately to the community as a whole. Reducing benefits to achieve efficiency may thus, if taken too far, simply transfer risks and liabilities from one sector of society to another with no aggregate or real improvement in efficiency or productivity.

Ref. Paper by Dr Grant Duncan, Senior Lecturer in Social Policies, Massey University, Albany, Auckland.

Page 64 - Prompt and Efficient Service

It is a question of the prompt and fair assessment of claims but the Woodhouse Report place its emphasis in discussion of "administrative efficiency". This is also an area in which ACC has traditionally attracted much negative publicity. Its Annual Reports contain statistics on its efficiency in this respect. For example, in 1998, the median delay between claims registration and the first payment of weekly compensation was 30 days. In other words, most claimants waited a month or more for their first payment. While delays in payment are reportedly the major source of claimant dissatisfaction, overall satisfaction with the ACC's service is around 70% of those surveyed. This falls short of the 80% target, and there remains a considerable minority of claimants who are clearly dissatisfied.

Ref. Paper by Dr Grant Duncan, Senior Lecturer in Social Policies, Massey University, Albany, Auckland.

7. What are the Opinions and Predictions of Experts

A person dying from mesothelioma which has been described by world experts as one of the most terrible diseases of the last century and one which will be continuing into the next century.

The following is a summing up of the Australian, Justice O'Malley who presides over Dust Tribunal Asbestos cases:

"I have been at the bedside of many men and women dying of mesothelioma. I have seen many people present at court, at their homes, at hospitals and at hospices dying of mesothelioma. It is a dreadful and devastating disease accompanied by pain which is uncontrollable. Those who suffer it reach a stage where it is necessary to fight for every breath, with every breath accompanied by pain so dreadful that the only way to avoid it is not to breathe. The choice between breathing and not breathing is no choice at all. Constant and exquisite pain is all that one may expect in the struggle to survive. My own experience is that in 80 to 85 per cent of cases, plaintiffs with mesothelioma reach a stage where they suffer pain which is uncontrollable."

8. The introduction of a New Zealand workers insurance Scheme

After years of argument within the private insurance sector for workers, in the nineteen seventies the N.Z. Government decided to do away with this type of insurance and start their own insurance scheme. The new Government owned this scheme, Accident Compensation Corporation, or the ACC as it became to be known. It was reasonable solution and also gave workers in some instances the right to sue their employer.

This scheme provided instant payment of medical costs and the worker was assured he would be paid 80% of his wages. In some circumstances, lump sum compensation would be made. Over the years further legislation was included such as non work- related injuries and by the late eighties this scheme, according to the politicians, had become unsustainable.

With a change of Government in October, 1990, it was decided by the newly installed National Party politicians that changes were needed and a new insurance scheme was put into place. It was called the Accident Rehabilitation and Compensation Insurance Corporation. This scheme could only be called “lean and mean” and workers had to fight for every penny no matter how deserving their disabilities. They were denied access to any Court for sufficient and fair compensation. The worst affected were those with industrial diseases such as Hepatitis, Industrial Asthma, etc. and those with asbestos-related diseases.

The insurance scheme attitude was more or less “take it or leave it.” A review of your compensation was possible. Legal costs were approximately \$6,000. If not satisfied with the outcome you could take it to Court but the extra compensation would finish up paying legal fees. The worst was yet to come. The National Government altered the Insurance Scheme for the second time. On December 18, 1998, it was privatised by Government legislation. This Act may be cited as the Accident Insurance Act 1998. In plain terms it was nightmare legislation of 325 pages.

Now the situation became a problem of “who paid what.” A claimant in some cases was covered by several different Acts of legislation which are constantly amended.

1. Those injured before 1974 such as asbestos victims.
2. Those injured between 1974 and 1992.
3. Those injured between 1992 and 1998
4. Those injured between 1998 and the year 2000.

An asbestos-related disease such as mesothelioma would, in most instances, have been due to injuries caused by exposure to asbestos and the disease and would have been contracted before 1992. The victim has no redress to his employer if the injuries happened before 1974. If the injuries occurred between 1974 and 1992 he should have been covered by the ACC Act and receive reasonable compensation.

If the consequences of his injuries occur after 1992. and before 1998 Act his case would be dealt with under the 1992 Act.

If the consequences occurred under the 1998 Act he is left in mid air. If his employer or the self-employed have private insurance, the private insurer must pay him but then the Insurance Company must apply to the ACC for reimbursement. This situation has caused nothing but delays and stress to the victim and family.

James Hardie Pty Limited is the company responsible for injuries caused to workers at their plant and those using their products and cannot be sued by these workers for compensation under present legislation.

Before 1998 a few cases of mesothelioma sued the parent company in Australia through the Dust Diseases Tribunal in Sydney, Australia. After the awarding of compensation to Desmond Putt in January, 1998, James Hardie Pty, where his injuries were caused between 1947 and 1951, the company appealed the Tribunal's decision in the Australian Court of Appeal where the decision of the Tribunal was overturned. Due to the circumstances under N.Z. law the victim cannot sue the Company in New Zealand where the wrong doing was done. The James Hardie Companies in New Zealand were managed through the Head Office in Sydney, Australia.

Under International Domestic Law if you cannot sue the Company in the country where the wrong doing was done, you cannot sue the Company in another country.

This apparently means that any overseas Company can operate a subsidiary in New Zealand and cannot be held responsible for the wrong doing of that subsidiary as happened in the Putt case.

Compensation for victims of Industrial Diseases. In most cases asbestos-related diseases begin to appear between the ages of 50 - 75. After then they start to decline. This has been well documented in Spain and published in the American Journal of Medicine 37..159/168, 2000. 132 mesothelioma cases were identified in the 35 - 44 age group. 6 cases. From 45 - 54 16 cases. In the 55 - 64 age group 34 cases. In the 65 - 74 age group 72 cases. The remainder over the age of 75 were 23 cases of mesothelioma. This means that 66% of mesothelioma occur between the ages of 55 - 74. This is almost identical to the situation in New Zealand. We taken the last 100 cases of mesothelioma reported to us and in the age group 45 - 54 there were 9 cases. In the 55 - 64 age group 34 cases.. From 65 - 74 there were 37 cases and after age 74 plus 20 cases. Between the ages of 55 - 74 there were 71 cases or 71%.

Similar figures occur in the same age groups in New Zealand showing that mesothelioma is age related. There is also a similar situation with age and lung cancer figures.

The majority of mesothelioma victims are sick for some years while others have been unemployed or retired. Under present ACC law these people are not eligible for 80% of work-related income as are those still employed. Although theirs is a work-related disease it is family and welfare agencies who are left to provide care and financial support. In two recent cases where the victims were 48 and 51 years of age and had been unemployed for several years found they were not eligible for work-related compensation. The only available remuneration was a sickness benefit, just slightly higher than the unemployment benefit. Their asbestos-related lung damage was the cause of mesothelioma and indisputably work-related.

This same situation has forced one family to mortgage their house and another to sell off family possessions to meet daily expenses and medical costs. Another contributing factor has been poor diagnostic medical procedures, compounded by long delays in the processing of ACC claims.

Although ACC fails victims of industrial diseases there are apparently sufficient funds available for non-work injuries such as Sports and Recreation, Non Earners, and teenage

car drivers which cost this country approximately hundreds of millions annually. To make it even worse, overseas tourists and visitors to this country are informed before arrival that they are entitled to full ACC cover for accidents which are often preventable. ACC also promises full cover for occupational diseases.

“Advisory Committee Report to be Implemented and ACC Cover for All Industrial Diseases.”

The previous statement was made by the Minister of Labour, Hon. Bill Birch, in December, 1991. (Ref. Safeguard Magazine). This promise was never fully honoured and it was recommended that ACC should review the systems for processing claims in such cases to ensure efficiency and consistency.

A surveillance scheme was proposed for victims of Occupational Diseases. This most important procedure has not been made available. If a victim should urgently need medical attention, which was not always readily available in the public health sector, the victim was forced to go privately, often at great cost to the family and was not recoverable from ACC. Even if the victim's claim was accepted for compensation and medical costs, there were delays, arguments and cost cutting by ACC.

The ACC premium paid by white collar workers at the time was 96 cents per \$100. Tradesmen and factory workers paid two to three times higher premiums. This latter group did not fully receive the payment and service applicable for their health and safety needs. This is where the ACC system failed them.

9. The Disposal of Asbestos Waste in the Past

The waste from the two New Zealand asbestos cement plants in Auckland and Christchurch created disposal and health problems from the very beginning. The James Hardie Ltd Auckland plant was the bigger of the two and began production of asbestos cement products in 1937. The disposal problem of their asbestos waste was further added to by that from other manufacturing companies using asbestos in their products.

A 1965 a Company report showed that a staff of 500 to 600 workers were employed in the manufacturing section. 6,900 ton of asbestos was used that year. Unfortunately very little data is now available but we do know that approximately 80%-90% Chrysotile was used. The remaining 10%-20% was made up by Crocidolite or Amosite.

When the Wittenoon Mines Scenario was made public in 1966 and that Crocidolite was found to present a serious health risk not only to workers but the residents of the area as well, the Australian operation of James Hardie Ltd ceased using Crocidolite in its manufacture. It has since become evident from recent documentation that all Crocidolite on order from South Africa was diverted to New Zealand to be used in production of asbestos cement products.

It is quite possible that Crocidolite from the Wittenoon Mines also found its way to the N.Z. asbestos plants. Statements made by James Hardie Ltd and the Health Department that no Crocidolite had been used in manufacture in this country is not correct.

A report from the Australian House of Representatives Standing Committee on Aboriginal Affairs states that all shipments of Crocidolite from South Africa from 1953-1976 were sent to the N.Z. Plants. (Ref. 3-1).

The bulk of the waste material from the Auckland plant containing all three types of asbestos, the dust from the Dust Collectors, sludge containing asbestos fibres from the floors of the factory were mainly dumped along the Manukau foreshore in the Onehunga and Penrose areas, only 1.5 to 2 km from the Penrose factory.

The results of excessive use of asbestos and asbestos products became evident as early as 1980 when asbestos-related lung cancers and mesothelioma were diagnosed. The first six cases of mesothelioma were registered by the Health Department in 1975. In 1980 there were 16 cases of mesothelioma. By 1990 it had risen to 27 cases annually.

The Ministry of Labour began to take notice and formed an Asbestos Advisory Committee in 1990. They reported to the Minister of Labour in April, 1991. One of their recommendations was that all contaminated land and dump sites were to be tagged and encapsulated by at least one metre of earth. Unfortunately very little notice was taken. A similar situation occurred in Glasgow where Turners asbestos cement factory also dumped their waste along the waterfront of the River Clyde. A nearby disused dock basin was deepened by a dredge and all the asbestos contaminated soil and material was removed and dumped in the dock basin. The whole area was then encapsulated by concrete at a cost of eight million pounds of tax-payer's money.

“The City's Various Councils, Health Boards and Regional Councils have apparently never considered such an option.”

As far back as November, 1988, the Auckland Trade Union Health and Safety Centre warned Unions and the Government about the Southdown asbestos tip sites. At this time the volunteer workers from the Friends of the Earth Society got involved. No notice was taken of their warnings and the Auckland City Council issued building consent for the further erection of large offices and factories in the tipping area.

In February, 1995, Mercury Energy Ltd was given permission under the Resource Management Act 1991 to decontaminate the proposed site in preparation for the erection of a new gas fired Power Supply. By November, 1995, this work was completed and some 17,502 ton of asbestos waste was removed from the site and taken across the city to an approved tip site. This was all done under a Non Notified Resource Consent Application. The next Auckland City Council project was the creation of a park on the tip site. The work was carried out with a total disregard for the health and safety of the Council park staff or weekend Periodical Detention workers, excavating the site in preparation for the planting of native shrubs and flax bushes.

The more the ground was prepared for the park, the more asbestos waste was brought to the surface. The next project was to put in a steam pipeline through the park from a Power Station. This brought further asbestos waste to the surface. Finally after further complaints from our Association, the park was closed down, to be de-contaminated. After the supposed completion of this work, present recommendations and legislation to encapsulate the area with one metre of earth were ignored.

Many other Auckland areas have been used to dump asbestos waste from the James Hardie manufacturing plant, such as the well publicised as South Auckland Flat Bush residential area, The biggest problem at present facing N.Z. over the asbestos issue is which Government Department does what. The Department of Health is involved, they in term, have passed the problem over to Auckland Healthcare Services. The Safety and Health Inspectors of the Auckland Regional Council are also involved, as are the Council Health and Safety Inspectors. The Safety Inspectors from the Departments of Labour and Health are involved as well. Finally Inspectors from the Ministry of the Environment make their recommendations.

Private developers of these dump sites have their own ideas and hire private Health and Safety consultants. Almost without exception the combined reports of all these organisations state that the health risk is minimal. The last resort for those not satisfied with the opinions of the above are advised they can always consult James Hardie Ltd, the Health Department has sought their advice in the past. It must be pointed that all Government and Local Body Inspectors are not accountable for their decisions and are exempt from prosecution.

Adjacent to the tip site area are three artificial manure plants using Serpentine rock which contains Chrysotile asbestos. This is ground up and mixed with super phosphate. There is a large residential area close by these operations which has one of the highest asthma rates in the world. Asthmatic conditions are common amongst workers exposed to asbestos and asbestos containing material.

10. Conclusions

The opinions and recommendations of world experts on asbestos-related diseases and other industrial diseases are simply to discontinue exposing workers to the materials by banning their use.

The Editors of many books dealing with asbestos, its use and the results of exposure in the workplace or environment, make the observation:

“The ever smokers (current and ex-smokers) relate to an overlapping public health problem, but the effect of smoking should not be used to obscure the magnitude or the severity of the asbestos public health problem.”

An Australian specialist in Industrial Diseases, Professor Bill Musk, was interviewed regarding a Health Report on mesothelioma. The reason for concern was that according to statistics more people are dying from the cancer called mesothelioma than cervical cancer and mesothelioma is still increasing yearly. This is a reason for concern and point to the problem that can arise if you ignore occupational diseases. **This is a cancer where prevention is vital.**

The best opinion comes from the French Researcher, Dr. J. Bignon, Asbestos exposure - and the search for a safe level is *“the concept is illusory.”*

This extract is from the Australian Mesothelioma Programme published in 1994. “The evidence in the literature for non-asbestos related mesothelioma is at the best very anecdotal. It would appear that practically all mesothelioma is due to asbestos exposure and there is no threshold dose relationship responsible. One other excuse is that Crocidolite is the major cause in mesothelioma. (Seidman and Nicholson 1994). The unit risk for pure Crocidolite exposure was consistent with that for Chrysotile. The last excuse is Eronite, and that it was responsible for mesothelioma in the Turkish village This is not correct as Chrysotile was used extensively as a building material.

It is time the excuse that mesothelioma is not wholly the result of exposure to asbestos should be discarded. The results of research, statistics and other evidence have firmly established that asbestos exposure is the only cause of asbestos-related diseases. The safe disposal of asbestos waste and a world-wide ban on its mining and use will ensure future deaths do not occur and, at last, it seems this ban is inevitable.

10.1. The mesothelioma situation in New Zealand

From 1982 to 1997 mesothelioma has increased from 10 cases in 1982 to approximately 60 cases in 1997. The most surprising fact that emerged is that 19% are women. The remaining 81% are male.

Statistics show lung diseases are responsible for the deaths of 3,000 New Zealanders annually. Lung cancer alone causes the death of another 1,400. The reliability of these statistics has been questioned recently by a N.Z. Public Health Specialist, Professor David Skegg,.

11. Acknowledgement

We look with respect at the many people who have contributed so much towards bringing hope and restoration of the health of asbestos victims. These are Professors Ivor Sellikoff and W.J. Nicholson, U.S.A. Professors Bill Musk and J. Leigh, Australia. Professors Sir Richard Doll and Julius Peto, U.K.

In New Zealand the late Thelma Bell who watched her husband die from mesothelioma as a result of working with asbestos and the late Robin MacKenzie were the first to take on the system. They were soon joined by others most of whom had worked with asbestos which eventually claimed many of their lives.

We must also not forget the doctors and nurses who are still dedicating their expertise and energy in helping and caring for the unfortunate victims of asbestos exposure and other work-related diseases.

What is there to say for those who are without regard for their fellow citizens. They are not concerned about bringing an end to these deaths by banning the use and reuse of these killer materials and prefer to ignore the written proof and results of laboratory research by international experts. Is it that they consider the money spent on cleaning up these toxic wastes could be put to better use enhancing cities and other such projects?

12. Afterword

My name is Ed and it was by chance I became involved with the Asbestos Diseases Association of New Zealand. As a tradesman I had worked with asbestos in Hospitals in this country. I arrived here as an emigrant from the Netherlands in 1952 where I worked in our family business as a heating engineer and plumber. From 1946 - 1950, I served overseas with the Netherlands Army. I became a qualified radio technician and recognised the potential of crystal minerals. This made me acutely aware of the potential of asbestos which is a crystal system.

Before my retirement I had a plumbing and heating business in West Auckland and all my work was on maintenance and new work for the schools in this large area. During this time I became more and more interested in the health and safety issue generally and its importance in the prevention of diseases and accidents.

“For the victims, their families having to cope with their eventual death under the most terrible circumstances is traumatic enough without waiting up to seven or eight months before receiving any help or compensation from ACC.”

My name is Lois. Several years after completing a Commercial College course I was employed as a medical secretary in a large hospital. Later I became secretary to a consulting physician and after moving overseas with my husband and family, worked at the Faculty of Medicine in a overseas University as secretary to the Professor of Preventive Medicine before returning to New Zealand.

Before my retirement I worked for some 15 years in a secretarial capacity for a Trade Union Secretary. It was during this time I became aware of the danger to workers of the toxic chemicals and materials used in various factories and the necessity for safety procedures and protective clothing for these workers. Also apparent was the necessity for constant inspection of work sites and the reporting of unsafe practices by employers to Government Inspectors.

My name is Ken and I am also a tradesman who has worked with asbestos. My son was exposed to asbestos as an apprentice and died from mesothelioma. He left behind two young children and a loving wife. He was in his prime and fought hard for life and the right to guide his children to maturity. I do not want to see other families suffer the loss of a son, husband and father through this preventable disease.

13. Supporting Information

Extract from Occupational Report Series 2000 published by the New Zealand Department of Labour.

Pages 8, 9 & 10. These statistics show the increase in mesothelioma over a period of fifteen years. These figures have increased from 10 cases in 1982 to close to 60 cases in 1997. It is surprising to find that 19% of these are women and the remaining 81% male .

Photographs

The development of a park on part of the James Hardie Ltd tip site.

Photograph No. 1 shows the preparation of the ground for the planting of native flax.

Photograph No. 2 shows safety measures taken by the Council staff to make the public safe from asbestos when visiting the park.

Photograph No. 3 is taken of the asbestos waste lying uncovered on the ground behind the fences.

No. 4 is part of the same tip site. After excavation asbestos waste is clearly shown on the surface.

No. 5 is of a re-erected building which has been re-clad with deteriorated asbestos cement sheeting. A photo of this material is shown on the document cover-sheet.

No. 6 is a 100 mm water pipe. It had deteriorated to the consistency of cardboard. Note the cut in the side which has been done with a Stanley knife to show the poor quality of the pipe.

No. 7 shows a textured ceiling in a rented house in 1999. The occupants were a family of two adults and four children. The Area Health Board tested the ceiling and stated the asbestos risk was minimal. Private testing found the textured ceiling contained 50% asbestos.

No. 9 is a piece of 100 mm watermain. This had supplied water to a large residential area.

Part I

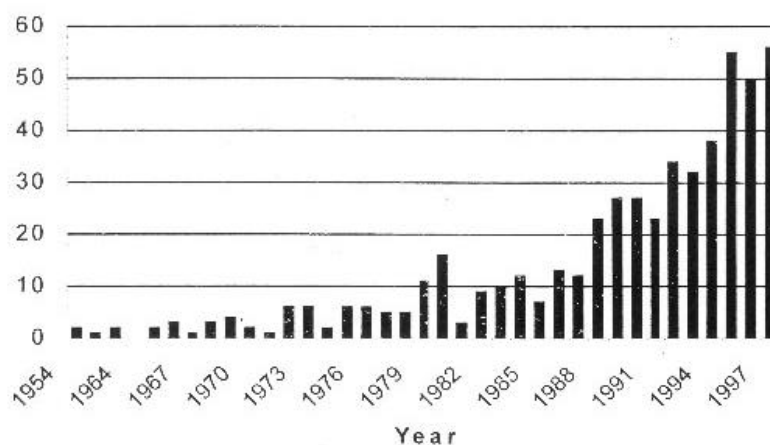
Mesothelioma notifications to the Cancer Registry (1954-1997)

Figure 1 illustrates the annual incidence of Mesothelioma as recorded by the Cancer Registry up to 1997. However, all subsequent

figures (2-8) relate to the more comprehensive data available up to and including 1986.

Thereafter, such detail has not been recorded.

Figure 1: Incidence of mesothelioma in New Zealand 1954-1997



It can be seen from the data in figure 1 that there has been a marked and sustained increase in the incidence of malignant mesothelioma in New Zealand from 1973 onwards. This trend almost certainly includes the contribution from the increase in the production and use of asbestos in the asbestos cement manufacturing

industry immediately after the second world war and the use of such products in the building industry. From information available, both crocidolite and amosite were used in such manufacture in addition to the more predominant use of chrysotile.

Figure 2: Gender distribution of cases

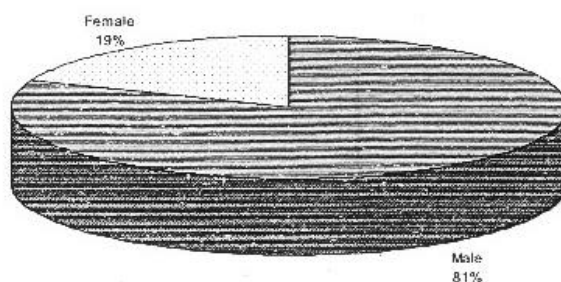


Figure 2 illustrates the preponderance of male gender in cases of malignant mesothelioma and

reflects the predominance of males employed in asbestos exposed occupations.

Figure 3: Age of notifications by gender

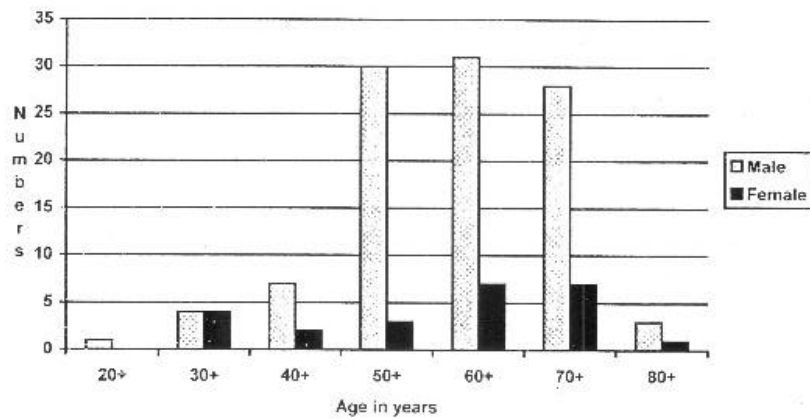


Figure 3 illustrates that malignant mesothelioma is uncommon under 40 years of age in both sexes, and appears to plateau over the age of 50

years, with the exception of the over 80 year olds.

Figure 4: Country of birth for notified cases of mesothelioma

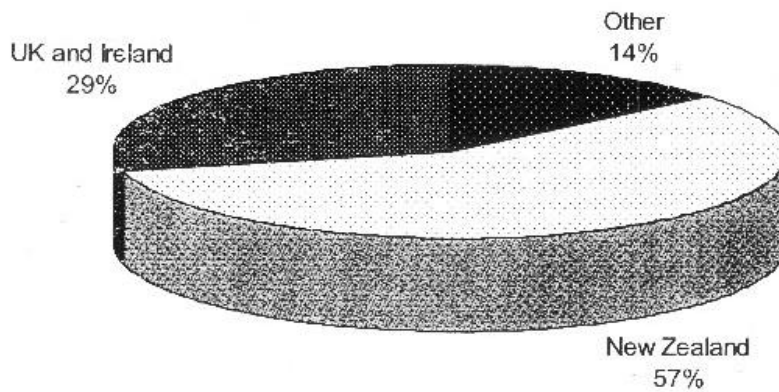


Figure 4 illustrates that the majority of individuals notified were New Zealander born, although there was a significant proportion of

other nationalities, particularly from the United Kingdom and Ireland.

Figure 5: Occupation of male cases at the time of first exposure to asbestos

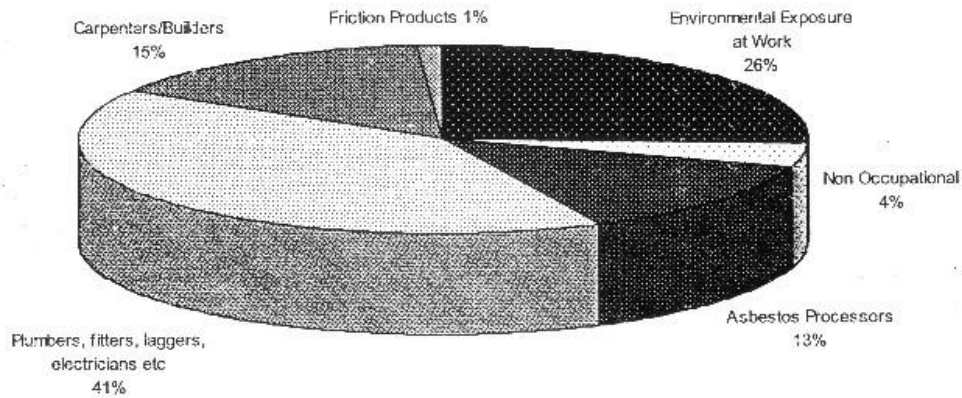


Figure 5 shows the breakdown of cases by occupation when first exposed to asbestos. Plumbers, fitters and ladders were most exposed to the highest levels of asbestos as they frequently worked in confined spaces. This

work practice probably explains the proportions seen in the above figure. Carpenters and builders involved in Figure 5 almost certainly represent those working with asbestos cement products.

Figure 6: Occupation of female cases

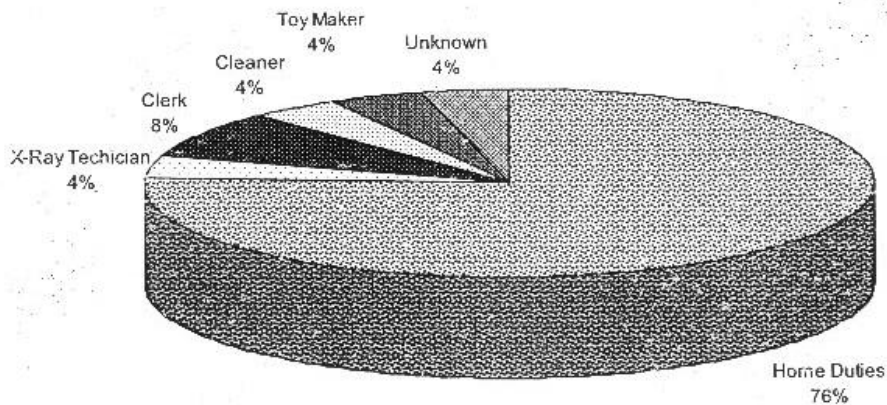


Figure 6 reflects the predominance of females exposed within the home, possibly reflecting the transfer of asbestos from the workplace on

clothing, shoes and hair of their husbands and sons and the traditional female role of washing clothes.



1



2



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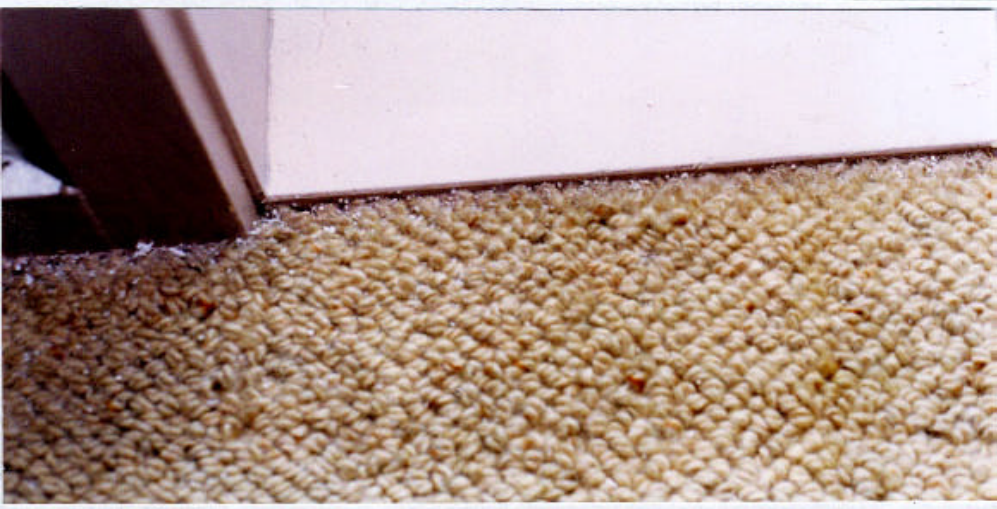
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6



7



8

March 25, 1995

**PHOTO OF SAMPLE OF ASBESTOS WATERMAIN
CORNER RUA & WEST COAST ROADS, GLEN EDEN**

Note: Blue and White Asbestos fibres clearly visible on outer side of the pipe in the top photograph. In the lower photograph the blue and white fibres can be seen on the inner side of the pipe.

