

Legal update

12 August 2011

Asbestos - a new risk ... to landlords

Claims for personal injury arising from asbestos exposure are well known. A 9 August 2011 decision by the New South Wales Supreme Court raises issues for landlords of buildings containing asbestos cement sheeting - commonly referred to as fibro.

In *El-Saiedy v New South Wales Land & Housing Corporation* the Court considered the obligations of the landlord Corporation to keep residential premises "in reasonable repair". Like many buildings constructed from 1945 to 1980 the house contained asbestos cement sheeting. The sheets were used in the bathroom, kitchen, laundry, and in the eaves of the house.

The tenant complained that the sheets were damaged and gave rise to a risk of injury to himself and his family. The plaintiff adopted domestic arrangements (including limiting use of various rooms in the house) which attempted to reduce the health risks he perceived from the damaged sheets. He sought orders from the Court that repairs be effected and also claimed damages for disappointment and distress caused by the physical inconvenience.

The Court noted:

Where asbestos remains undisturbed, in situ, it does not pose a risk to tenants and nothing needs to be done. However, this is not the situation here.

The Court accepted evidence from the plaintiff's expert that damage to the asbestos cement sheeting was "widespread" and that repairs were necessary to guard against possible inhalation of fibre liberated from the damaged sheeting. The Court held that the landlord Corporation's obligations under the lease required repair (by replacement) of the damaged sheets (around 70 metres square).

The Commission was also ordered to pay the plaintiff \$4,000 in damages to the plaintiff for disappointment and distress.

The case emphasises the need to maintain asbestos cement in good condition and effect repairs when necessary. Given the large amount of asbestos cement used in Australia (57% of houses built in New South Wales between 1945 and 1954 were clad with fibro) the potential impact on landlords and building owners may be substantial.

CBP is happy to assist with any questions arising from the Court's decision.



David Miller
Partner

D: 61 2 8281 4419
E: dem@cbp.com.au



Katherine Jones
Senior Associate

D: 61 2 8281 4452
E: kej@cbp.com.au