



# 2010 Annual MLAANZ Conference

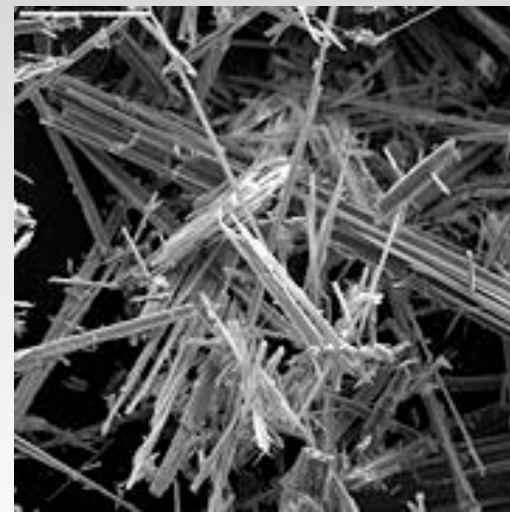
## The Voyage Continues.... Asbestos Litigation

David Miller

Katherine Jones

# Miracle product

- Regarded as “the wonder mineral”
- Used in building and insulation products
- Australia had world’s highest per capita use
- Mesothelioma claims will not peak until at least 2014



# Miracle product

## Asbestos Clad Inventor Defies Flames



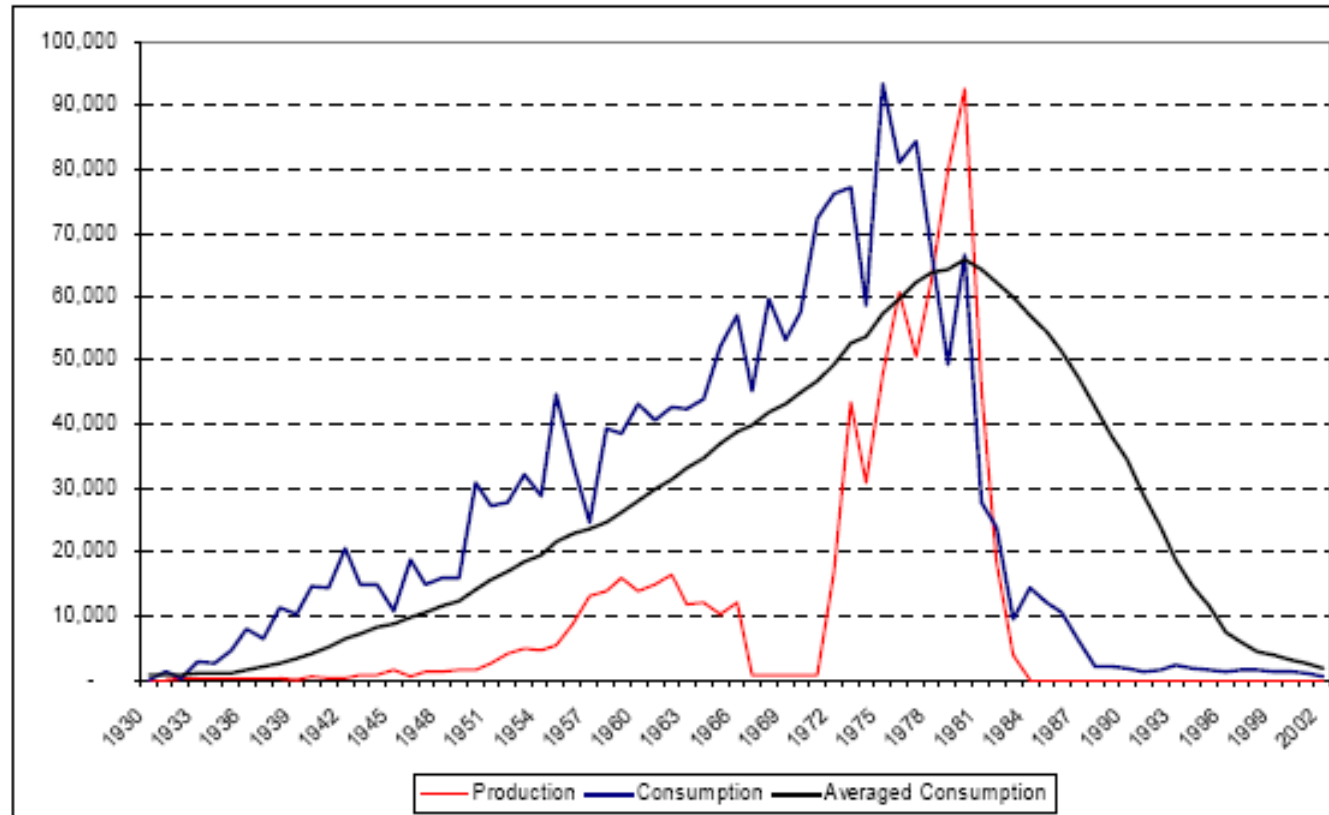
Not until the blazing airplane in which he was testing an asbestos suit was almost reduced to ashes did this inventor, shown at right, leave the cockpit. He was unharmed by heat.

**D**EFYING searing flames that would have meant death in a moment under normal circumstances, an English inventor calmly remained seated in the cockpit of a burning plane to test his asbestos suit.

In outward appearance the suit resembles conventional winter flying togs with abnormally large helmet and visor. A special apparatus suspended over the breast cools the air for breathing purposes.

The burning airplane test was conducted as a demonstration for the Royal Aeronautical Society of England. When the flames had reached their peak, the inventor stepped from the plane unharmed, another successful invention to his credit.

# Consumption and Production Indices in Australia 1920 – 2002



Source: KPMG  
"Valuation Of Asbestos  
Related Disease  
Liabilities Of Former  
James Hardie Entities  
To Be Met By The AICF  
Trust". As at 31 March  
2008

Source: World Mineral Statistics Dataset, British Geological Survey, [www.mineralsuk.com](http://www.mineralsuk.com)  
R Virta, USGS Website Annual Yearbook



# Industrial / Occupational Exposure

# Exposure

## Trades

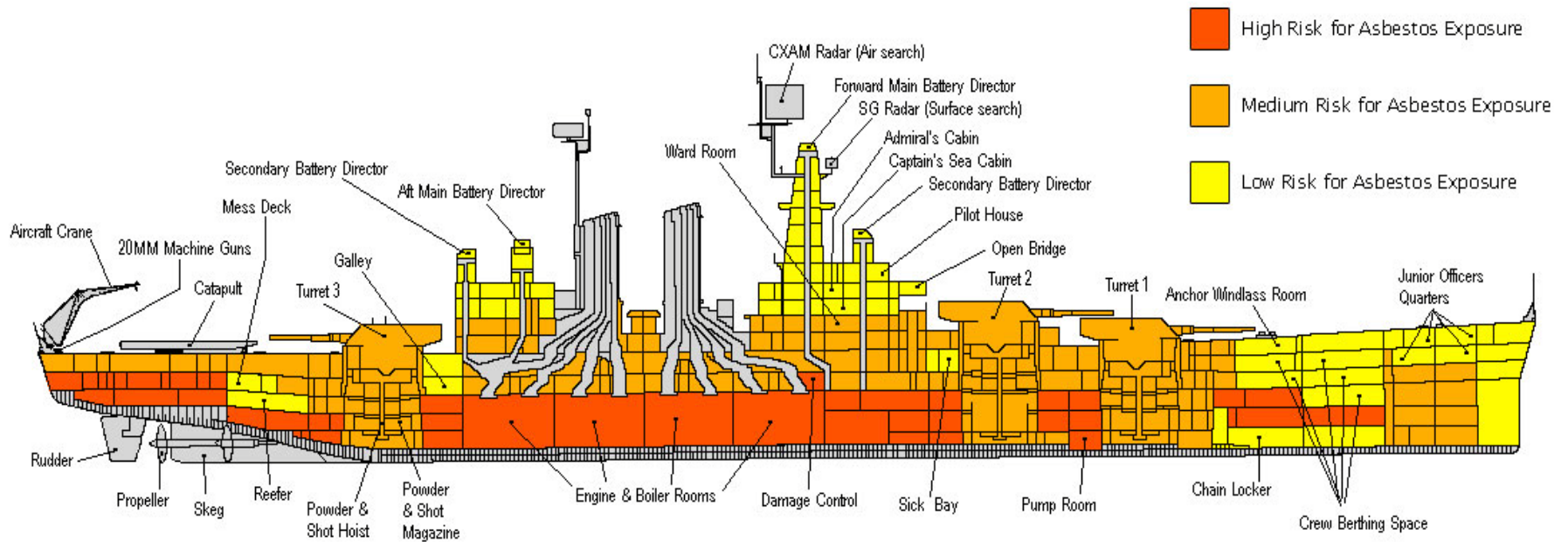
- Stevedores
- Navy personnel who served aboard ship
- Insulators
- Boilermakers
- Plumbers, pipefitters and steamfitters
- Electricians
- Carpenters
- Plasterers
- Bricklayers
- Millwrights
- Steelworkers
- Refinery and other industrial workers
- Maintenance workers and labourers

## Sites

- Shipyards
- Power plants
- Refineries
- Paper mills
- Manufacturing Plants
- Foundries
- Construction sites

# Shipboard exposure

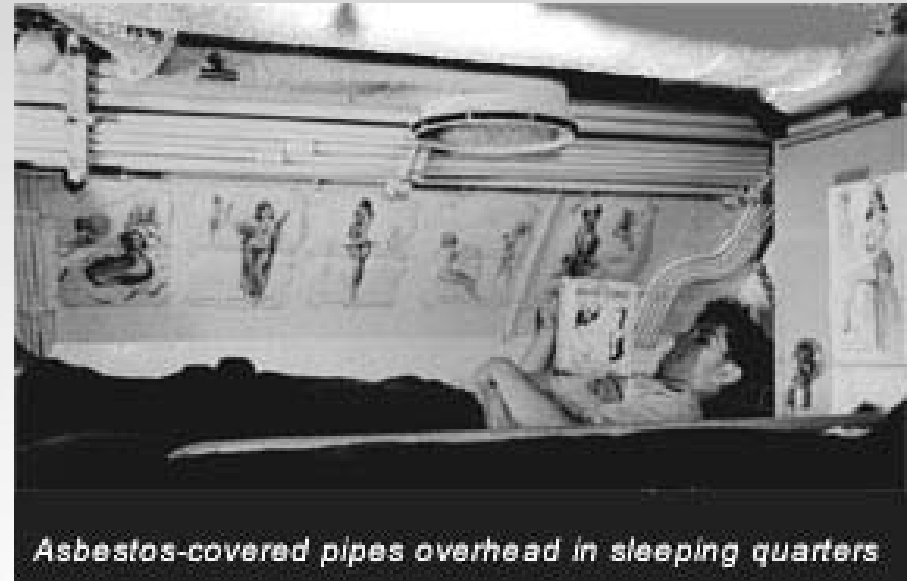
Levels of Risk for Asbestos Exposure on U.S. Naval Vessels



©Asbestos.com

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# Exposure



Asbestos-covered pipes overhead in sleeping quarters



# Exposure



## Asbestos Liabilities



One shareholder asked if the Group has existing or prospective asbestos related liabilities, and questioned if we were taking a proactive approach in this area.

The Group does have existing and prospective asbestos related liabilities. While we have never produced or sold asbestos products, asbestos was used in the Whyalla shipyards which operated from the 1940s until closing in 1978. We have had, and continue to receive, asbestos related claims from former employees who worked at the shipyards. Asbestos was also used as a construction material at the Newcastle Steelworks which closed in 1999, and claims have been made and continue to be made from former employees of the Steelworks.

Our approach to any potential liability is that it will be met as necessary by the then parent entity (BHP Billiton Limited), and not by any operating or non-operating subsidiary. We deal with each claim individually and on its merits. The fact that the parent entity, and not a subsidiary company or third party accepts responsibility, gives a claimant a high degree of certainty that any financial obligations will be met.

Our asbestos liabilities are provided for in the financial accounts under the line item "Employee Provisions". We recalculated that provision each year so that we do understand and are prepared for our financial exposure in this matter.

The Group is proactive in the area of the health of employees. Specifically, in the case of asbestos issues, we fund a program that enables an annual health assessment of former employees in our businesses that used asbestos. We also have a system in place to encourage former employees who believe they have suffered from asbestos exposure to come directly to us for the lodging of claims with the aim of reducing both personal expenses and anxiety.

Submitted  
questions ahead  
of 2004 AGM



# The threat from deadly asbestos

Asbestos, once a prized building material, is now banned or restricted in 52 countries because it causes cancer. Its use in developing nations, however, is growing thanks to a multinational lobbying campaign.

## Where banned or restricted

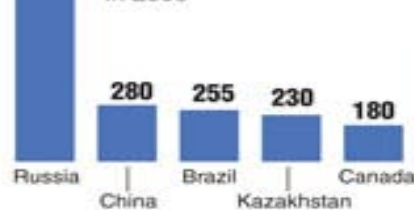


## Who deals in asbestos

In thousands of metric tons

1,017

### Top producers In 2008

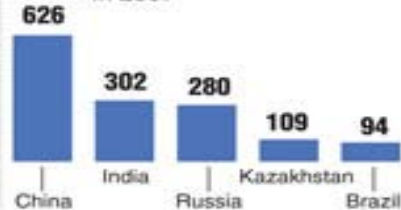


## Health effects

- 100,000 workers die from asbestos-related disease each year

- Thousands more die from environmental exposure

### Top consumers In 2007



### Top exporters In 2008



## What is asbestos?

- A mined fibrous mineral that is fire- and heat-resistant

- Used to make building materials, brake linings and gaskets, water pipes

- Two million metric tons mined in 2009, consumed mainly in developing nations

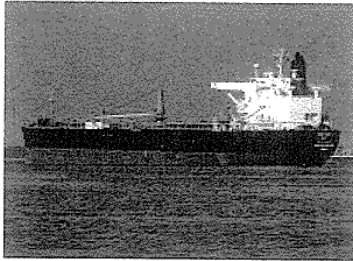
Source: U.S. Geological Survey; U.N. Commodity Trade Statistics Database; U.N. Environment Program; International Ban Asbestos Secretariat; International Consortium of Investigative Journalists

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# Government moves on ships containing asbestos

Ship operators have been warned to check for asbestos in their ships before using them on trade to Australia



Ships can only be imported into Australia after being checked for asbestos.

Speaking at the SEA10 Conference in Melbourne this week, Sarah Major from the Australian Customs and Border Service said ships built after January 1, 2005, could be turned away if they contained asbestos or had not been checked for the toxic substance.

"Older vessels over 150 tonnes with asbestos, that have an appropriate management plan considered suitable by the regulators, will be allowed in even though strictly speaking asbestos is prohibited under Australian law," Ms Major said.

"New ships, these are ships built after January 1, 2005, that have asbestos in any form will be turned away and we have already done so.

"I know the cost of some of these vessels being turned back to their port of exit or somewhere else is not insignificant but the government is very clear on its position on this that new vessels must not have asbestos in place," she said.

"It is the obligation of the importer to check that that has been checked."



# Asbestos-related illnesses

# Asbestos Diseases

## 1. Malignancies

- Mesothelioma
- Lung Cancer

## 2. Non-malignancies

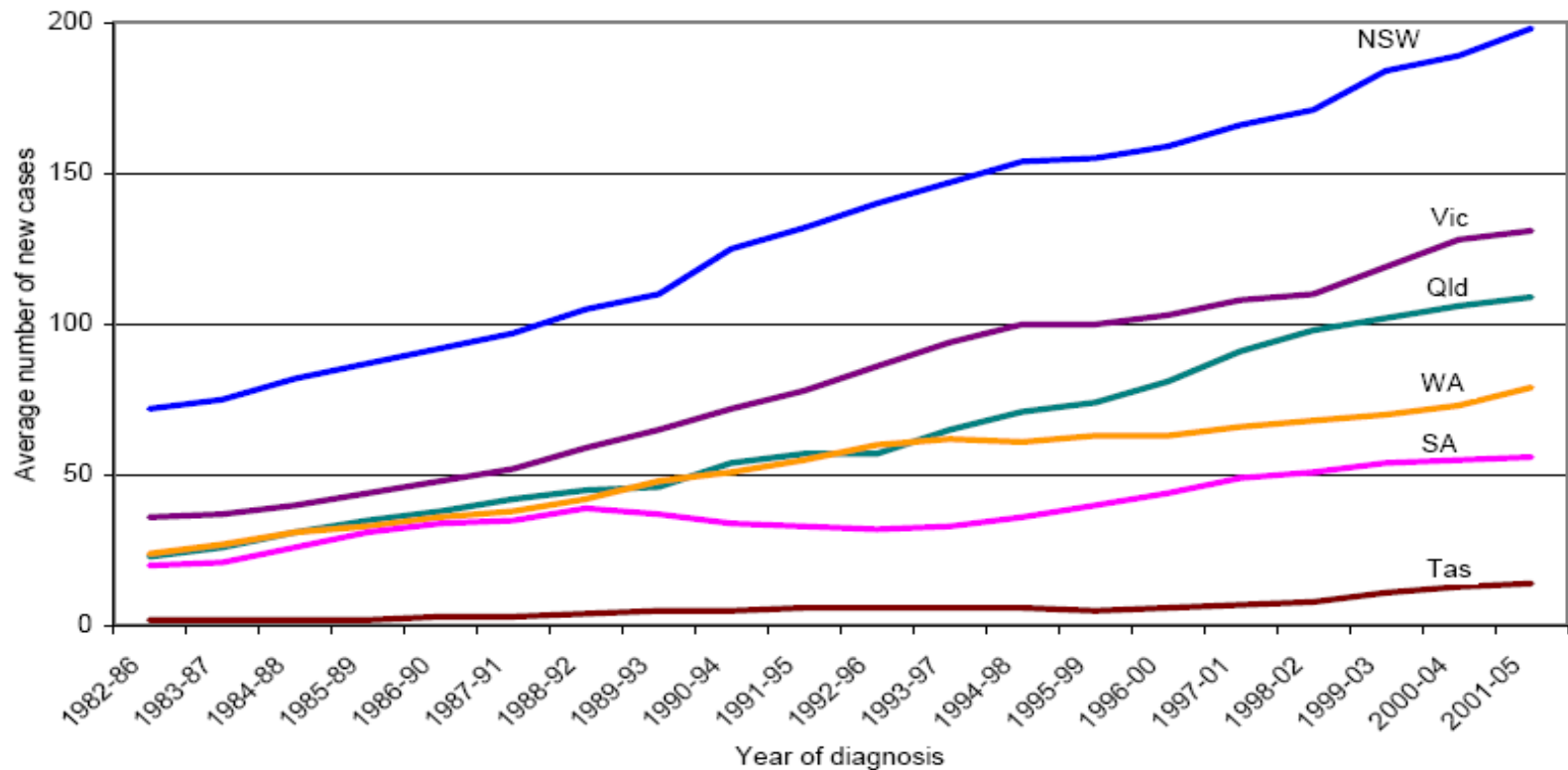
- Asbestosis
- Asbestos Related Pleural Disease
- Pleural Plaques?
  - *Torrens v James Hardie* [1990] NSWDDT 6
  - *Johnstone v NEI International Combustion* [2007] UKHL 39
- Fear of Injury?
  - *CSR v Thompson* (2003) 59 NSWLR 77

## 3. Other cancers?

- *Seltsam v McGuinness* (2000) 49 NSWLR 262

# Incidence of Mesothelioma by State

**Figure 7** New cases of mesothelioma: five-year rolling average number of cases by state or territory<sup>(a)</sup>, 1982–1986 to 2001–2005



# Asbestos Claims - logistics

1. Service of claim
2. Obtain employment records
3. Contact AMSA to obtain records showing ships on which the Plaintiff worked and time aboard
4. Contact relevant P & I Club(s)
5. Claims handling



# Employer Records

SURNAME [REDACTED] ADDRESS *13 James St.*  
 CHRISTIAN NAMES [REDACTED] *Woolahra.*  
 (BORN. *1930 Sydney*)

SHIP	STATION	FROM	TO	SERVICE		REMARKS
				M.	D.	
<i>RONA</i>	<i>5th Engr.</i>	<i>16.5.52</i>	<i>26.5.52</i>			
<i>TAMBUA</i>	<i>5<sup>th</sup> Engrs</i>	<i>27.5.52</i>	<i>23.9.52</i>	<i>3</i>	<i>27</i>	<i>Close of Art.</i>
<i>~</i>	<i>4th Engrs</i>	<i>24.9.52</i>	<i>12-10-52</i>		<i>19</i>	<i>On Articles</i>
<i>~</i>	<i>~</i>	<i>13.10.52</i>	<i>28.2.53</i>	<i>4</i>	<i>12</i>	<i>On leave P.O. Sydney</i>

W.E.S.-641-2M-8/49

# Australian Maritime Safety Authority Records

**SURNAME** [REDACTED] **CHRISTIAN NAMES** [REDACTED] **Yr** 11

**NATIONALITY AND PLACE OF BIRTH** Sydney **YEAR OF BIRTH** 1930

**HOME** M. 13 James St. 11 Purvis St.

**ADDRESS** Woollahra Carlingbah

**NO. CERTIF. RES. COMM. R. V2 OR LICENSE** 2/6 1384 acc/060- N 14757 **EFFICIENCY AS BOAT HAND** First.

NAME OF SHIP (F STE-M, INSERT S.S.)	TRADE	ENGAGED.		DISCHARGED.		CHARACTER.		REFERENCE.		
		PLACE	DATE	CAPACITY	PLACE	DATE	CONDUCT	ABILITY	E.	D.
IRON KING	AT	NC	12/52	6 Eng.	NC	12/52	✓	✓	5373	16706
✓ BARON.	✓	Atoll	12/52	5 Eng.	Atoll	3/4/53	✓	✓	6790	5592
TAMBUA	✓	Syd	27/52	10/11/52	Syd	23/9/52	✓	✓	H	1419-500
✓	✓	✓	12/10/52	4 Eng.	✓	24/2/53	✓	✓	A	1435-317
CARDROSS	✓	Bevo	14/53	3 Eng.	✓	30/6/53	✓	✓	9481	1445-505
CARLISLE	✓	Syd	3/7/53	3 Eng.	✓	2/9/53	✓	✓	A	1456-661
✓	✓	✓	3/9/53	3 Eng.	✓	2/3/54	✓	✓	a	1475-966
✓	✓	✓	3/3/54	3 Eng.	✓	3/5/54	✓	✓	A	1483-594
CYCLE	✓	✓	4/5/54	4 Eng.	✓	15/11/54	✓	✓	A	1522-505
✓	✓	✓	16/1/55	4 Eng.	✓	13/4/56	✓	✓	A	1570-761
Rurua	✓	✓	14/5/56	3 Eng.	✓	13/12/56	✓	✓	A	1602/083
✓ CORINDA	✓	BRIS	12/1/57	4 Eng.	BRIS	3/5/57	✓	✓	11137	6224

NETLORE	PG	Syd	01/5/57	6 ENGRS					A	
✓	✓	HK	14/57	4 ENGR.	E. 2	3/8/57	VC	VC		10741
Atleam	A.T.	Syd	30/1/59	5 Eng.	E.C.	16/2/57	✓	✓	A	7372
Zaranin	✓	Mell	11/3/58	4 Eng.	Mell	22/6/58	✓	✓	311	1608
✓	✓	✓	23/6/58	6 Eng.	2/6/58	5/8/58	✓	✓	D/665	1335
Cycle	✓	Bevo	13/11/58	3 Eng.	Bevo	2/1/59	✓	✓	1046	1245
✓	✓	Sydney	21/1/59	3 Eng.	Sydney	1/9/59	✓	✓	a	102/529
✓	✓	✓	4/9/59	3 Eng.	Bevo	23/6/59	✓	✓	a	2756
✓	✓	Bris	17/1/60	3 Eng.	✓	19/1/60	✓	✓	743P	2763
✓	✓	✓	20/1/60	3 Eng.	Sydney	24/2/60	V.G.	V.G.	7440	1719/188
CENTURY.	✓	SYDNEY	10/5/60	3 Eng.	N Ele.	22.5.60?	V.G.	V.G.	A	5204



# Some Recent Developments

# Insurance Issues

- Triggers in most relevant policy wordings are commonly either:
  1. Injury occurring during the policy period, and/or
  2. Legal liability arising during the policy period
- Importance of review of policy wording
- Continuing importance of *Favelle Mort Ltd v Murray* in asbestos cases
- Tripple Trigger ?

# Recent Developments

- *Wallaby Grip Ltd v QBE Insurance (Australia) Ltd & Anor* [2010] HCA 9 [re Stewart]
- *Amaca v Ellis* [2010] HCA 5
- UK cases
- James Hardie Funding
  - AICF