

The Senate

Economics
References Committee

Non-conforming building products: the need
for a coherent and robust regulatory regime

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Abbreviations and acronyms

ASEA	Asbestos Safety and Eradication Agency
ABCB	Australian Building Codes Board
ABF	Australian Border Force
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
AGGA	Australian Glass and Glazing Association
APCC	Australasian Procurement and Construction Council
AWA	Australian Window Associations
BMF	Building Ministers' Forum
BPIC	Building Products Innovation Council
BRF	Building Regulators' Forum
COAG	Council of Australian Governments
EWPAA	Engineered Wood Products Association of Australasia
HIA	Housing Industry Association
MBA	Master Builders Australia
MEA	Master Electricians Australia
NATA	National Association of Testing Authorities, Australia
NCBP	Non-Conforming Building Products
NCC	National Construction Code
NECA	National Electrical and Communications Association
PPI Group	Plumbing Products Industry Group Inc
QBCC	Queensland Building and Construction Commission
Shergold and Weir Report	<i>Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia</i>
SOG	Senior Officers' Group
SOG Implementation Plan	<i>Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products</i>
SOG Report	<i>Strategies to address risks related to non-conforming building products</i>
Queensland legislation	<i>Queensland Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017</i>

Executive summary

Confidence in the materials we use to build our domestic, commercial and public buildings is of paramount importance to all. Australians have a right to feel secure and safe in their built environment. As such, safety has always been a key motivator in the design and implementation of modern building regulations and construction codes. Often it is impossible for consumers and end users of building products to know whether a product is fit-for-purpose; trust is placed in those with the appropriate technical knowledge to ensure Australians are protected when they purchase or use building products, or that the appropriate product has been used in the place where they may work or live.

Recent failures, such as the importation of asbestos-containing building products and the 2014 Lacrosse apartment building fire in Melbourne's Docklands, have highlighted the need for continued vigilance of building materials used in Australia. This is to ensure that building products and building practices in general, conform with the relevant building regulations and standards to guarantee public safety, along with building integrity and investment confidence in Australian building and construction.

Non-conforming building products in Australia

This inquiry into non-conforming building products in Australia was brought about following a number of industry-led forums that highlighted the growing body of evidence of the use of non-conforming building materials in the Australian construction industry. The inquiry has examined a range of issues surrounding the production, sourcing and use of non-conforming and non-compliant building products.

A non-conforming product or material is one that claims to be something it is not, and does not meet the required Australian standard for the material—for example, the use of inferior grade material, or a product that contains illegal materials such as asbestos. A non-compliant building product is, one that has been used in a situation where its use does not comply with the requirements for such a material under the National Construction Code (NCC).

As the inquiry's terms of reference detail, significant issues were raised by stakeholders regarding the impact of non-conforming products in industry supply chains (including the importers of products and the manufacturers and fabricators of products), workplace safety and the variety of risks and costs that could be passed on to Australian customers. Alongside these issues, the committee took evidence relating to the use of non-compliant building materials. The inquiry also considered and examined the effectiveness of the current Australian building regulatory frameworks that are designed to ensure that building products conform to, and have been used or installed in compliance with, the relevant Australian Standards.

Inquiry's interim reports

Through the course of the inquiry, the committee has tabled three interim reports in relation to the issues raised by submitters and at public hearings as outlined in Chapter 1.

The interim reports were:

- *Interim report: Safety—'not a matter of good luck'*—4 May 2016;
- *Interim report: aluminium composite cladding*—6 September 2017; and
- *Interim report: protecting Australians from the threat of asbestos*—22 November 2017.

The first interim report, in May 2016, raised a range of concerns; including, the illegal importation of building products containing asbestos; the 2014 Lacrosse apartment fire in Melbourne and the use of non-compliant aluminium composite cladding; and the national recall of Infinity electric cable. The committee found that there had been a serious breakdown in the regulation and oversight of both non-conforming and non-compliant building products. In particular, the committee highlighted the weakness in the regulatory regime, including the certification process and the disjointed regulation of the use of building products, both manufactured in Australia and overseas. Based on the findings in the first interim report, the committee made one recommendation which was to continue the inquiry.

In September 2017, the committee tabled its second interim report—*Interim report: aluminium composite cladding*. This report focused on the issues raised around the use of polyethylene (PE) core Aluminium Composite Panels (ACPs) that had significantly contributed to the Lacrosse fire in Melbourne in 2014 and the tragic Grenfell Tower fire in London in 2017. The report found that deregulation and privatisation of building certification processes and the absence of proper regulatory controls, coupled with the increase in ACP product importation, led to the proliferation and installation of non-compliant building products. Importantly, the report was also critical of the lack of any timely government response to the Lacrosse fire, as well as any meaningful resolution between governments, the Building Ministers' Forum, and the Senior Officers' Group on possible steps forward in dealing with the proliferation of ACP panels. The committee's report put forward eight recommendations to address the importation and use of ACP panels and strengthen the regulatory system including recommending banning the importation of ACP panels and a national licencing scheme for all trades and professionals (See Appendix 3 for list of recommendations).

In November 2017, the committee tabled its third interim report titled, *Interim report: protecting Australians from the threat of asbestos*. Like its predecessor, this report concentrated on one topic, the illegal importation of asbestos. This report made 26 recommendations addressing how best to combat the intentional and unintentional importation of asbestos in building and other materials, including complete machinery (See Appendix 4 for list of recommendations).

Final inquiry report

This final report outlines many of the common issues across the prior three reports. It also supports the compliance concerns raised in the Building Ministers' Forum report, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, prepared by Professor Peter Shergold and Ms Bronwyn Weir, and draws attention to the progress being made in dealing with non-conforming products in some jurisdictions. Specifically, the committee was encouraged by the proactive work undertaken by the Queensland Government in their new legislation designed to strengthen the chain of responsibility for the importation and distribution of building materials. As such, Recommendation 6 of this report suggests that other jurisdictions also move to implement similar legislation to ensure responsibility and accountability is spread more evenly across supply chains.

Recommendation 6

3.86 The committee recommends that the Building Ministers' Forum give further consideration to introduce a nationally consistent approach that increases accountability for participants across the supply chain. Specifically, the committee recommends that other states and territories pass legislation similar to Queensland's *Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017*.

Where to next?

By and large, many of the 13 recommendations of this final report echo those recommendations put forward in the previous interim reports. The committee is cognisant that the Building Ministers' Forum is already moving on some of these issues as highlighted by the Shergold and Weir report. Nevertheless, the committee would encourage both the government and the Building Ministers' Forum to increase the level of momentum in implementing these recommendations and, moreover, those recommendations that have been raised previously. These include, expediting mandatory third party certification for high risk products, including a national register of non-compliant products if feasible, and the introduction of a national licencing scheme.

A simple change that the committee put forward previously, and one which it strongly believes would assist stakeholders, is to consider making all Australian Standards freely available. All forms of legal requirements should be freely available, where feasible, so that stakeholders can inform themselves adequately of their obligations under the relevant law.

Final report recommendations

The recommendations contained in this report are aimed at strengthening accountability and compliance and providing greater information to stakeholders, in turn, allowing stakeholders to make informed choices and ensuring the development of a coherent and robust regulatory regime for building materials in Australia.

The committee believes that the areas that would benefit from urgent action by the Building Ministers' Forum include the following recommendations: 1, 3, 5, 6 and 10.

Recommendation 1

3.69 The committee recommends that the Building Ministers' Forum develop improved consultative mechanisms with industry stakeholders. In addition, the Building Ministers' Forum should amend the terms of reference for the Senior Officers' Group and the Building Regulators Forum to include annual reporting requirements on progress to address non-conforming building products.

Recommendation 3

3.78 The committee calls on the Building Ministers' Forum to expedite its consideration of a mandatory third-party certification scheme for high-risk building products and a national register for these products.

Recommendation 5

3.80 The committee recommends that the Building Ministers' Forum, through the Senior Officers' Group, examine international approaches—including the European Union's regulations and processes—for testing of high-risk products prior to import and determine if they can be suitably adapted to benefit and enhance Australian requirements.

Recommendation 10

5.13 The committee gives in-principle support to Recommendation 12 of the Shergold and Weir Report '[t]hat each jurisdiction establishes a building information database that provides a centralised source of building design and construction documentation' so regulators are better placed to identify where non-compliant building products have been installed.

The committee has also identified a range of specific recommendations (numbers: 2, 4, 7, 8, 9, 11, 12, and 13) that it believes are best placed for government to progress and, as indicated earlier, a number of these have been proposed in earlier interim reports.

Recommendation 2

3.74 The committee recommends that the Australian Government develop a confidential reporting mechanism through which industry and other stakeholders can report non-conforming building products.

Recommendation 4

3.79 The committee recommends that where an importer intends to import goods that have been deemed high-risk, the Australian Government require the importer, prior to the importation of the goods, to conduct sampling and testing by a NATA accredited authority (or a NATA equivalent testing authority in another country that is a signatory to a Mutual Recognition Arrangement).

Recommendation 7

4.21 The committee recommends that the Australian Government work with state and territory governments to establish a national licensing scheme, with requirements for continued professional development for all building practitioners.

Recommendation 8

4.40 The committee strongly recommends that the Australian Government consider making all Australian Standards freely available.

Recommendation 9

5.10 The committee recommends that the Australian Government consult with industry stakeholders to determine the feasibility of developing a national database of conforming and non-conforming products.

Recommendation 11

5.22 The committee recommends the Australian Government consider imposing a penalties regime for non-compliance with the National Construction Code such as revocation of accreditation or a ban from tendering for Commonwealth funded construction work and substantial financial penalties.

Recommendation 12

5.27 The committee recommends that the Australian Government consider the merits of requiring manufacturers, importers and suppliers to hold mandatory recall insurance for high-risk building products.

Recommendation 13

5.42 The committee recommends that the Australian Government review the *Customs Act 1901* (and other relevant legislation) to address the challenges of enforcing the existing importation of asbestos offence, with the aim to close loopholes and improve the capacity of prosecutors to obtain convictions against entities and individuals importing asbestos. This review should include consideration of increasing the threshold required to use 'mistake of fact' as a legal defence.

The committee strongly advocates that the Australian Government and Building Ministers' Forum move quickly to adopt and implement these recommendations to provide greater confidence in building products and to protect all Australians.

Chapter 1

Introduction and overview

1.1 On 23 June 2015, the Senate referred the matter of non-conforming building products to the Economics References Committee (the committee) for inquiry and report by 12 October 2015.¹ The committee was granted a number of extensions and the inquiry lapsed at the dissolution of the 44th Parliament. On 11 October 2016, the Senate agreed to the committee's recommendation that this inquiry be re-adopted in the 45th Parliament.

1.2 Under its terms of reference, the committee was to inquire into:

- (a) the economic impact of non-conforming building products on the Australian building and construction industry;
- (b) the impact of non-conforming building products on:
 - (i) industry supply chains, including importers, manufacturers and fabricators,
 - (ii) workplace safety and any associated risks,
 - (iii) costs passed on to customers, including any insurance and compliance costs, and
 - (iv) the overall quality of Australian buildings;
- (c) possible improvements to the current regulatory frameworks for ensuring that building products conform to Australian standards, with particular reference to the effectiveness of:
 - (i) policing and enforcement of existing regulations,
 - (ii) independent verification and assessment systems,
 - (iii) surveillance and screening of imported building products, and
 - (iv) restrictions and penalties imposed on non-conforming building products; and
- (d) any other related matters.²

1.3 On 13 October 2016, as part of its broader inquiry, the committee resolved to inquire into the illegal importation of products containing asbestos. The committee adopted the following additional terms of reference for this part of the inquiry:

The illegal importation of products containing asbestos and its impact on the health and safety of the Australian community, with particular reference to:

1 *Journals of the Senate*, No. 100, 23 June 2015, p. 2766.

2 *Journals of the Senate*, No. 100, 23 June 2015, p. 2766.

- (a) the prevalence and sources of illegally imported products containing asbestos;
- (b) the effect of illegally imported products containing asbestos on:
 - (i) industry supply chains, including importers, manufacturers and fabricators, and
 - (ii) workplace and public safety and any associated risks;
- (c) possible improvements to the current regulatory frameworks for ensuring products containing asbestos are not illegally imported to Australia, with particular reference to the effectiveness of:
 - (i) policing, enforcement, surveillance and screening of imported products, including restrictions and penalties imposed on importers and end users of products containing asbestos;
 - (ii) preventing exposure and protecting the health and safety of workers and other people affected by the illegal importation of products containing asbestos,
 - (iii) establishing responsibility for remediation of sites where illegally imported products containing asbestos has been found;
 - (iv) coordination between Commonwealth, state and territory governments and the role of the Australian Government in coordinating a strategic approach to preventing the importation of products containing asbestos;
- (d) any other related matters.³

1.4 In light of the tragic fire at the Grenfell Tower in London in June 2017, the committee agreed to prepare an additional interim report on the implications of the use of non-compliant external cladding materials in Australia as a priority.

Conduct of the inquiry

1.5 The committee advertised the inquiry on its website and wrote to relevant stakeholders and interested parties inviting submissions.

1.6 The committee received 164 submissions, as well as a number of supplementary submissions. The submissions range from government departments and agencies to peak industry bodies, unions, individuals working in the industry and consumers. A list of submissions to the inquiry is at Appendix 1.

1.7 Public hearings were held on:

- 13 November 2015 in Canberra;
- 15 February 2016 in Melbourne;

3 *Journals of the Senate*, No. 12, 7 November 2016, p. 379. The committee presented an interim report on 18 October 2016 containing the additional terms of reference. The Senate adopted the additional terms of reference on 7 November 2016.

-
- 30 January 2017 in Brisbane (asbestos);
 - 9 March 2017 in Perth (asbestos);
 - 14 July 2017 in Melbourne (asbestos and cladding);
 - 19 July 2017 in Sydney (cladding);
 - 31 July 2017 in Adelaide (asbestos and cladding);
 - 3 October 2017 in Sydney (asbestos);
 - 17 October 2017 in Canberra (asbestos); and
 - 2 August 2018 in Canberra.

1.8 The names of witnesses who appeared at the hearings are listed at Appendix 2.

1.9 The committee thanks all individuals and organisations who assisted with the inquiry, especially those who made written submissions and participated in the public hearings.

Definition of non-conforming and non-compliant building products

1.10 In understanding the issues and findings in this inquiry, it is important to understand the distinction between non-conforming building products and non-compliant building products.

- Non-conforming building products are 'products and materials that claim to be something they are not; do not meet required standards for their intended use; or are marketed or supplied with the intent to deceive those who use them'.
- Non-compliant building products are products that are 'used in situations where they do not comply with the requirements of the National Construction Code (NCC). A building product can be both non-conforming and non-compliant'.⁴

1.11 The Australian Building Codes Board (ABCB) illustrated the distinction between non-conforming and non-compliant building products with the following example:

A building product that is labelled or described as being non-combustible but which is combustible is a non-conforming product. A building product that is combustible, and described as such, but is used in a situation where a non-combustible product is required under the NCC, is not fit for purpose (it is a non-complying product).⁵

1.12 The Housing Industry Association (HIA) explained that non-conforming building products are products that:

4 Australian Building Codes Board, 'What are non-conforming building products?', <https://www.abcb.gov.au/NCBP/Non-conforming-building-products/What-are-non-conforming-building-products> (accessed 12 November 2018).

5 Australian Building Codes Board, *Submission 49*, p. 4.

- do not conform with the required Australian building regulations and technical standards including incorrect certification;
- are counterfeit copies of legitimate conforming products;
- are supplied with fraudulent certification or documents attesting to their conformance; and
- are substituted for the original product at the point of sale or installation.⁶

Previous committee reports

1.13 The committee has heard from a range of stakeholders about the widespread use of non-conforming and non-compliant products in the Australian construction industry. The committee has tabled three interim reports in relation to this inquiry:

- *Interim report: Safety—'not a matter of good luck'* on 4 May 2016;
- *Interim report: aluminium composite cladding* on 6 September 2017; and
- *Interim report: protecting Australians from the threat of asbestos* on 22 November 2017.

1.14 In addition, the committee's inquiry into the future of Australia's steel industry examined the issue of non-conforming building products in relation to steel. The report—*Australia's Steel Industry: forging ahead*—was tabled on 1 December 2017.

1.15 Prior to these inquiries, the committee conducted an inquiry into insolvency in the Australian construction industry, which examined issues within the building and construction industry more broadly that may impact on the use of non-conforming and non-complying building products. This report was tabled on 3 December 2015.

Inquiry into insolvency in the Australian construction industry, 3 December 2015

1.16 The committee's inquiry into insolvency in the Australian construction industry found that businesses operating in the Australian building and construction industry face an unacceptably higher risk than any other stand-alone industry of either entering into insolvency themselves, or becoming the victim of insolvency further up the contracting chain. The committee stated:

In an industry characterised by low barriers to entry, small profit margins and inequitable allocation of risk, an effective licensing regime is necessary to protect participants from both unscrupulous and hapless operators.⁷

1.17 The committee is concerned that the structure of the building and construction industry, in which contractors and subcontractors are working with razor-thin profit margins, may lead to sub-optimal choices when procuring building products. Such market structures, power imbalances and supply chain profitability differences can incentivise, both consciously and unconsciously, actions such as product substitution. At one end of the spectrum, it might involve a sub-contractor, with little conscious

6 Housing Industry Association, *Submission 30*, p. 6.

7 Senate Economics References Committee, *Insolvency in the Australian construction industry*, 3 December 2015, p. xxii.

thought, installing a slightly inferior, cheaper product that is more expensive when rationally assessed over its full life cycle. At the other end of the spectrum, such market structures could incentivise conscious, deliberate product substitution that may compromise the health and safety of both workers and building occupants, especially when supervision and enforcement is lacking.

1.18 In addition, insolvency and illegal phoenix activity⁸ can also make it difficult to assign responsibility for remediation when non-conforming building products have been installed in a building. This issue is highlighted in the case of Infinity cables.

1.19 In 2014, the Australian Competition and Consumer Commission (ACCC) issued a national recall of Infinity and Olsent-branded Infinity cables which failed to meet electrical safety standards due to poor quality insulation (plastic coating).⁹ The ACCC advised that electrical retailers and wholesalers have recalled Infinity and Olsent-branded electrical cables, warning that 'physical contact with the recalled cables could dislodge the insulation and lead to electric shock or fires'.¹⁰

1.20 In its recall notice, the ACCC reported that the cables were supplied in:

- NSW (2010–2013);
- ACT (2011–2013);
- Victoria, Queensland, South Australia and Western Australia (2012–2013); and
- Tasmania (2013).¹¹

1.21 The importer and supplier of Infinity cables declared bankruptcy and liquidated shortly after identification of the safety issue; consequently retailers and electrical installers are meeting the cost of the remediation. Four years on, and remediation is still ongoing, with the ACCC noting that it had been advised by experts that any Australian locations of unremediated cable could now present a safety risk.¹²

8 Illegal phoenix activity generally involves company directors deliberately trying to avoid paying the company's creditors.

9 Australian Competition and Consumer Commission, 'Infinity and Olsent branded Infinity TPS and Orange Round Electrical Cables', <https://www.productsafety.gov.au/recall/infinity-olsent-branded-infinity-tps-orange-round-electrical-cables?source=recalls> (accessed 15 November 2018).

10 Australian Competition and Consumer Commission, 'Infinity cable recall: act now before it's too late', <https://www.accc.gov.au/update/infinity-cable-recall-act-now-before-its-too-late> (accessed 30 April 2016).

11 Australian Competition and Consumer Commission, 'Infinity cable recall: act now before it's too late', <https://www.accc.gov.au/update/infinity-cable-recall-act-now-before-its-too-late> (accessed 28 November 2018).

12 Treasury Portfolio, Question No. 5, Answers to Questions on Notice, Senate Economics Legislation Committee, Additional Estimates 2017–18, p. 2.

Interim report: Safety—'not a matter of good luck', 4 May 2016

1.22 The committee's 2016 interim report, *Safety—'not just a matter of good luck'*, noted that prior to the referral of this inquiry, industry had already taken steps to address the issue of non-conforming building products.

1.23 In 2012, HIA held a national summit, *Building Products: A compliance free zone*, which raised the profile of product compliance as an industry issue.¹³

1.24 In November 2013, Ai Group released a research report on non-conforming building products, *The quest for a level playing field: The non-conforming building product dilemma*. The Ai Group's report analysed the steel, electrical, glass, aluminium, engineered wood and paint sectors to gauge the scale of the problem and its causes. In brief, the report found that the product conformance framework—'all regulations, codes of practice, standards, certification scheme (first, second or third) or accreditation schemes that bring about product conformance in the building and construction sector including the regulators, regulation, codes of practice and standards'¹⁴—does not operate effectively. The report found:

Gaps and weaknesses were identified in the building and construction conformance framework allowing nonconforming product onto the market. These include inadequacies of: surveillance; audit checks; testing; first party certification and enforcement. The report suggests that building certifiers bear a disproportionate share of the burden for ensuring product conformance. Greater emphasis on conformance at point of sale and increased responsibility on product suppliers and builders may be required.

The product conformance framework, that is collectively made up of the regulators, regulation, codes of practice and standards, does not operate effectively. There is confusion among stakeholders about who has responsibility and the arrangements for recourse when non-conforming product is found.

The end result is an uneven playing field. Companies, including importers, manufacturers and fabricators that are playing by the rules are adversely impacted by suppliers of NCP paying scant regard to the standards and requirements set by Government and industry. Industry needs to show leadership and cohesion to tackle this issue.¹⁵

1.25 In March 2014, following the release of the report, Ai Group convened a forum, including government and industry stakeholders, to determine an action plan to address the matters identified in the report. The Construction Product Alliance was formed to facilitate industry involvement.¹⁶

13 Housing Industry Association, *Submission 30*, p. 11.

14 Ai Group, *The quest for a level playing field: The non-conforming building product dilemma*, November 2013, p. 15.

15 Ai Group, *The quest for a level playing field: The non-conforming building product dilemma*, November 2013, p. 6.

16 Construction Product Alliance, *Submission 33*, p. 2.

- In September 2014, the Australasian Procurement and Construction Council (APCC) together with 30 key industry stakeholders developed and launched the *Procurement of Construction Products—A guide to achieving compliance*. The guide was produced in response to the increasing evidence of, and concerns about, the market penetration of non-conforming construction products, particularly for many 'safety critical' products.¹⁷

1.26 The 2016 interim report raised concerns in relation to: the illegal importation of building products containing asbestos; the 2014 Lacrosse apartment fire in Melbourne and the use of non-compliant aluminium composite cladding; and national recall of Infinity cable, which was found to be non-conforming. The committee observed that:

Clearly there has been a serious breakdown in the regulation and oversight of both non-conforming and non-compliant building products, which requires determined action. The committee notes progress already underway, especially the work of the [Senior Officers' Group]. Given the seriousness of the problem, the various areas of glaring weakness in the regulatory regime, including the certification process, and the disjointed regulation of the use of building products, both manufactured in Australia and overseas, the committee has formed the view that it should continue its inquiry.¹⁸

Interim report: aluminium composite cladding, 6 September 2017

1.27 The committee's interim report on aluminium composite cladding was brought about by the events of the Lacrosse apartment building fire in Melbourne in 2014 and the tragic Grenfell Tower fire in London in 2017.

1.28 The report found that deregulation and privatisation in recent decades, without proper controls, audits and enforcement, as well as the increase in product importation following the significant decline in Australia's manufacturing base, have led to the proliferation of unsafe building products over the last few decades.

1.29 The committee heard evidence that there is little accountability for non-conforming and non-compliant products in the supply chain.

1.30 In the case of the Lacrosse apartment fire, it appears that no party has accepted responsibility:

While the owners' corporation blames a range of contractors for the fault, LU Simon [the builder] is largely passing blame for the fire to architect Elenberg Fraser and other consultants.

The architects say they are not responsible because they merely designed the building. At fault, they say, were the builder, fire engineer and surveyor.

17 Australasian Procurement and Construction Council, *Submission 1*, p. 1.

18 Senate Economics References Committee, *Interim report, Safety—'not a matter of good luck'*, 4 May 2016, p. 18.

The building surveyor says that while it was not at fault, if it is found to have in part caused the fire, the occupants of the building must share the blame, because the owners' corporation "failed to conduct any routine inspections to ensure balconies of the Lacrosse apartments were not used for storage".¹⁹

1.31 A lack of accountability has led to the risks of non-conforming and non-compliant products being left to building owners, particularly in cases where hidden faults emerge many years after any warranties have expired. The Owners Corporation Network lamented that there is a 'greater duty of care in the sale of a refrigerator than in the delivery of people's homes'.²⁰

1.32 The committee heard evidence about the reliability of certification documentation, particularly the prevalence of fraudulent certification. In addition, product substitution was identified as perhaps the most significant contributing factor to the prevalence of non-compliant products in Australian buildings. There were also concerns raised about a lack of nationally consistent standards for licensing for building practitioners.

1.33 The committee made a number of recommendations, including:

- implementing a total ban on the importation, sale and use of polyethylene core aluminium composite panels as a matter of urgency;
- establishing a national licensing scheme, with requirements for continued professional development for all building practitioners;
- introducing nationally consistent measures to increase accountability for participants across the supply chain;
- making all Australian Standards and codes freely available;
- imposing a penalties regime for non-compliance with the NCC such as revocation of accreditation or a ban from tendering for Commonwealth funded construction work and substantial financial penalties;
- ensuring the Federal Safety Commissioner is adequately resourced to ensure the office is able to carry out its duties in line with the new audit function and projected work flow;
- expediting the process of introducing Director Identification Numbers in order to prevent directors from engaging in illegal phoenix activity; and
- developing a nationally consistent statutory duty of care protection for end users in the residential strata sector.

1.34 The recommendations from the interim report on aluminium composite cladding are listed in full at Appendix 3.

19 'Cladding deadline looms in \$24m Lacrosse stoush', *The Age*, 10 September 2018, p. 1.

20 Mr Stephen Goddard, Spokesperson, Owners Corporation Network, *Committee Hansard*, 19 July 2017, p. 44.

Australian Government response to the Interim report: Aluminium composite cladding

1.35 The Australian Government response to the *Interim report: Aluminium composite cladding* was tabled on 26 February 2018. The response stated that the Australian Government:

- Did not support the total ban on the importation, sale and use of Polyethylene core aluminium composite panels as a matter of urgency (Recommendation 1);
- Noted the recommendation to establish national licensing scheme national licensing scheme, with requirements for continued professional development for all building practitioners (Recommendation 2);
- Supported the recommendation that the Building Ministers' Forum (BMF) give further consideration to nationally consistent measures to increase accountability in the supply chain (Recommendation 3);
- Supported in principle that the Commonwealth make all Australian Standards and codes freely available (Recommendation 4);
- Noted the recommendation that the Commonwealth government consider imposing a penalties regime for non-compliance with the NCC such as revocation of accreditation or a ban from tendering for Commonwealth (Recommendation 5);
- Noted the recommendation to ensure the Federal Safety Commissioner is adequately resourced to ensure the office is able to carry out its duties in line with the new audit function and projected work flow (recommendation 6).
- Supported the recommendation to give further consideration to Director Identification Numbers and recommends that it expedites this process in order to prevent directors from engaging in illegal phoenix activity (Recommendation 7); and
- Noted the recommendation for a nationally consistent statutory duty of care protection for end users in the residential strata sector (Recommendation 8).²¹

Interim report: protecting Australians from the threat of asbestos, 22 November 2017.

1.36 The committee's interim report on asbestos found that, although the importation, use and sale of asbestos has been banned since the end of 2003, Australians remain at risk of exposure to asbestos through the illegal importation of asbestos containing products including; gaskets, insulation, brake pads and even children's toys. The committee heard evidence that frontline workers and community

21 The full text of the Australian Government response to the *Interim report: Aluminium composite cladding* is available on the committee's website at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Non-conforming45th/Government_Response (accessed 28 November 2018).

advocates were too often the last line of defence in identifying asbestos in building and consumer products.

1.37 The interim report included 26 recommendations aimed at:

- pursuing a coordinated, strategic approach to enforce Australia's strict asbestos prohibition at the border, including whole of government coordination of activities to address unlawful asbestos imports;
- providing increased funding for the Asbestos Safety and Eradication Agency (ASEA);
- making sure those in supply chains are more accountable for illegal asbestos importation;
- continuing Australia's information campaign on the risks of asbestos in the Asia-Pacific region and pursuing global restrictions on chrysotile (white) asbestos through the 2019 Rotterdam Convention;
- strengthening asbestos-related regulations, including increased penalty levels;
- improving product testing standards;
- establishing a national public asbestos register; and
- providing better information and training for industry participants.

1.38 The recommendations from the interim report on asbestos are listed in full at Appendix 4.

Australian Government response to the interim report: Protecting Australians from the threat of asbestos

1.39 The Australian Government response to the *Interim report: Protecting Australians from the threat of asbestos* was tabled on 22 August 2018. The government noted the substantial number of the recommendations set out in the report.²² There is further discussion of some of these recommendations Chapter 5.

Australia's Steel Industry: forging ahead, 1 December 2017

1.40 The committee's inquiry into the future of Australia's steel industry received evidence indicating that some imported products pose a considerable safety risk because they do not comply with Australian Standards, or their certificates stating compliance are fraudulent.

1.41 The committee's recommendations sought to:

- Improve certification processes for structural and fabricated steel and harmonise standards between jurisdictions and regulatory bodies.

22 The full text of the Australian Government response to the *Interim report: Protecting Australians from the threat of asbestos* is available on the committee's website at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Non-conforming45th/Government_Response (accessed 28 November 2018).

- Develop a confidential reporting mechanism for non-conforming building products, impose stricter penalties for non-conforming or fraudulent materials, and establish a public database to register these products and their origins.

1.42 At the time of reporting, the Australian Government had yet to table a response to this report.

Shergold and Weir Report

1.43 In mid-2017, following the Grenfell Tower fire, Professor Peter Shergold and Ms Bronwyn Weir were commissioned by the Building Ministers' Forum (BMF) to independently assess broader compliance and enforcement problems within the building and construction systems across Australia.

1.44 Their report, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia* (Shergold and Weir Report), stated:

We have heard suggestions that large numbers of practitioners operating in the industry either lack competence, do not properly understand the NCC and/or have never had proper training on its implementation.

We have consistently heard that the adequacy of design documentation is generally poor and that, on occasion, builders improvise, making decisions on matters which affect safety without independent oversight. This exacerbates disputes about the quality and compliance of building work. It also results in inadequate information to guide the future maintenance of safety systems in buildings. These issues undermine public accountability in building approvals processes.

We have been told that oversight by licensing bodies, state and territory regulators and local governments can be weak due either to inadequate funding or a lack of skills and resources to undertake effective enforcement. We found that, until relatively recently, there has been almost no effective regulatory oversight of the commercial building industry by regulators. Those involved in high-rise construction have been left largely to their own devices. Where there has been supervision, this has generally been by private building surveyors whom critics argue are not independent from builders and/or designers.

The compliance and enforcement systems have not been adequate to prevent these problems from emerging and they need to change as a matter of priority.²³

1.45 As such, the Shergold and Weir Report proposed a significant package of reforms to strengthen effective implementation of the NCC, including:

23 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, pp. 4–5.

- a nationally consistent approach to registration of certain categories of building practitioners, and compulsory continuing professional development, including mandatory training on the NCC and supervised training;
- broader powers conferred on regulators and greater collaboration between state and local government bodies to improve regulatory oversight;
- mandated early engagement with fire authorities on designs, which include, performance solutions on fire safety matters;
- focus on the integrity of building surveyors, including minimum statutory requirements for their engagement and role, and a code of conduct with legislative status;
- a central regulatory database to provide information sharing to inform regulatory activities, accessible by appropriate authorised persons, including owners and purchasers;
- statutory obligations on design practitioners to prepare documentation that demonstrates that proposed buildings will comply with the NCC, and a more robust approach to third party review of designs, and to the documentation and approval of performance solutions and variations;
- mandated on-site inspections of all building works, and greater oversight of the installation and certification of fire safety systems in commercial buildings;
- the production of a comprehensive digital building manual for commercial building owners, which may be passed on to successive owners, to include as-built construction documents; details of fire safety systems and maintenance requirements; and
- that the BMF agree its position on the establishment of compulsory product certification system for high-risk building products.²⁴

1.46 The Shergold and Weir Report recommended a commitment to a three-year timetable for implementation of the recommendations.²⁵ The Shergold and Weir report's recommendations are listed in full at Appendix 5.

1.47 The Shergold and Weir Report was presented to the BMF in February 2018, and published in April 2018. The committee had the opportunity to consult some stakeholders on their views on the report at a public hearing on 2 August 2018.

1.48 At its meeting on 10 August 2018, the BMF noted that the Shergold and Weir Report 'makes 24 recommendations fundamental to the effective delivery of

24 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 5.

25 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 5.

Australia's National Construction Code (NCC).²⁶ The BMF directed the development of a paper that sets out an implementation plan for reform, incorporating feedback from industry stakeholders, for consideration at the BMF's next meeting. The paper will focus on recommendations 9 to 11 (which relate to the integrity of private building surveyors), with further consideration of recommendations 1 and 2 (relating to nationally consistent registration of building practitioners) and recommendation 13 (relating to documentation provided by design practitioners).²⁷

1.49 The Department of Industry, Innovation and Science advised the committee that the BMF meeting on 10 August 2018 included an industry forum where the ministers heard directly from industry stakeholders about their views on the report and the key priorities.²⁸

Structure of the report

1.50 This report consists of five chapters, including this introductory chapter:

- Chapter 2 provides examples of building products where non-conforming products have been identified.
- Chapter 3 explores the actions taken by government to identify and respond to non-conforming building products.
- Chapter 4 examines options to lift professional standards in the building and construction industry.
- Chapter 5 considers other measures to address non-conforming building products.

26 Building Ministers' Forum, *10 August 2018—Communiqué*, <https://www.industry.gov.au/data-and-publications/building-ministers-forum-communiques> (accessed 1 November 2018).

27 Building Ministers' Forum, *10 August 2018—Communiqué*, <https://www.industry.gov.au/data-and-publications/building-ministers-forum-communiques> (accessed 1 November 2018).

28 Mr Trevor Power, Head, Industry Growth Division, Department of Industry, Innovation and Science, *Committee Hansard*, 2 August 2018, p. 27.

Chapter 2

Examples of non-conforming building products

2.1 The issue of non-conforming building products affects a range of sectors—construction, manufacturing and retail. Some specific issues were covered in the interim reports on products containing asbestos and the non-compliant use of aluminium composite cladding. This chapter presents a range of examples from other sectors where non-conforming building products have been identified, including electrical, lighting, plumbing/water, wood, steel, and vinyl/PVC.

2.2 The Ai Group's report, *The quest for a level playing field: The non-conforming building product dilemma*, was based on the survey responses from 222 participants and interviews/discussions with a similar number of stakeholders. The report found that:

...92% of all respondents to Ai Group's survey reported NCP in their supply chains. Local producers conforming to relevant standards and regulations can be at a competitive disadvantage when the price at which a competing product is sold reflects lower levels of attention to the quality that is required under Australia's conformance framework. Immediate business impacts of this uneven playing field are usually in the form of eroded margins and reduced revenues. According to this survey, that is happening to 45% of companies in this sector.¹

2.3 The Australasian Procurement and Construction Council (APCC) highlighted the importance of the construction industry, noting that productivity in this industry is critical to Australia's growth and the economy.² In 2016–17, the building and construction industry accounted for 7.4 per cent of Australia's gross domestic product (GDP), and employed 9.2 per cent of the workforce.³

2.4 The APCC informed the committee that it is 'increasingly concerned about the compliance and durability of construction products as the potential risks to the community and construction industry workers are immeasurable and should not be underestimated'.⁴

Electrical

2.5 The National Electrical and Communications Association (NECA) raised concerns about the impacts of non-conforming products for the electrical contracting

1 Ai Group, *Submission 46*, p. 7.

2 Australasian Procurement and Construction Council (APCC), *Submission 1*, p. 1.

3 Office of the Chief Economist, *Industry Insights: 1/2018 Flexibility and Growth*, 2018, p. 26, <https://publications.industry.gov.au/publications/industryinsightsjune2018/globalising-australia.html> (accessed 1 November 2018).

4 Australasian Procurement and Construction Council (APCC), *Submission 1*, p. 3.

sector. Of particular concern was the presence of counterfeit and non-conforming products in the supply chain, manifesting as threats to:

- the risk of electrical fire and shocks;
- property damage;
- legal liability issues;
- serious injury and death;
- cost to businesses operating with the supply chain of the electrical sector;
- industry reputation; and
- consumer confidence.⁵

2.6 An example of counterfeit products was provided by HPM Legrand. It informed the committee that it had discovered counterfeit versions of its socket outlets had been manufactured in China and were being sold in Australia without its approval. It noted that although the source had been tracked down and 'with the help of the New South Wales office of fair trading they were successfully prosecuted and fined because they were [using] the RCM mark without a licence. Unfortunately the fine was relatively small at \$8000, which was not much of a deterrent'.⁶

2.7 Master Electricians Australia (MEA) pointed out a number of circumstances where the cost of faulty products may be passed on to consumers. For example, in circumstances where a contractor is not in a financial position to remove and replace the faulty product without charge, the customer may be left to pay for the work to be completed out of their own pocket.⁷ In addition, there could be financial repercussions when homeowners come to sell their properties if they only become aware of faulty products upon inspection. There may also be adverse consequences for homeowners who do action a recall, noting that in circumstances such as with Infinity cable:

...the ACCC [Australian Competition and Consumer Commission] recall did not apply to the funded removal and replacement of cable located in the inaccessible areas of a home. Should these inaccessible areas include the cable a sign must be attached to the switchboard notifying anyone to the presence of the cable. Informing potential buyers about the presence of dangerous cable is likely to deter many purchasers and make the property virtually unsaleable. Alternatively, it could cost the homeowners a large sum of money to pay a contractor to enter these inaccessible areas to remove and replace the cable.⁸

2.8 Ms Leigh Evans' submission to the inquiry outlined her serious concerns surrounding non-conforming building products in the SmartSpace Kit Home which she had purchased from Bunnings in 2013. Ms Evans documented the 'severe financial

5 National Electrical and Communications Association (NECA), *Submission 60*, p. 3.

6 HPM Legrand, *Submission 59*, p. 1.

7 Master Electricians Australia, *Submission 4*, p. 3.

8 Master Electricians Australia, *Submission 4*, pp. 3–4.

and personal impacts I have suffered because of the travesty of being supplied noncompliant and defective components in my house'.⁹ Electrical Components in SmartSpace Kit Homes supplied by Bunnings prior to July 2015 have since been the subject of a product recall noting the risk of electrical shock and fire posed by the following defects:

The cables have failed some of the required ageing tests of AS/NZS 5000.2. The insulation could become prematurely brittle with age. If the insulation becomes brittle and the cables are disturbed, the insulation could break and expose live conductors, resulting in possible electric shock or fires.

The circuit breaker and RCD [Residual Current Device] do not pose a safety risk, however these components are not approved for sale in Australia.¹⁰

2.9 MEA highlighted the considerable workplace safety risks that faulty, non-conforming electrical products may carry. As well as the occupants themselves, tradespeople who may come into contact with these items while working in homes and buildings are particularly at risk of direct exposure to faulty electrical products.¹¹

2.10 The Electrical Trades Union also highlighted the risks to tradespeople:

Dodgy imported products represent a risk for workers where issues can lie dormant for years before becoming apparent when regulators must go through significant time and expense of a costly product recall.¹²

2.11 Further, MEA was concerned that faulty electrical products may result in insurance costs to consumers:

Insurers will insure buildings based on an expectation that all electrical installations and equipment in the building comply with the relevant standards. If some of the wiring in the property does not comply with the standard and the insured does not disclose this as a materially relevant fact to the insurer and there is a subsequent claim arising out of, caused by, or contributed to by the defective cable, the insurer is likely to refuse to cover the insured on the basis of nondisclosure of a materially relevant fact.¹³

Lighting

2.12 The Lighting Council Australia noted that its members spend a considerable percentage of their turnover on ensuring their products are conforming, and are concerned that competitors who do not comply with Australian laws and safety

9 Ms Leigh Evans, *Supplementary Submission 143.1*, pp. 1–2.

10 Australian Competition and Consumer Commission, *Bunnings Group Limited—SmartSpace Kit Home Electrical Components*, PRA No. 2018/16768, 10 May 2018, <https://www.productsafety.gov.au/recall/bunnings-group-limited-smartspace-kit-home-electrical-components> (accessed 1 November 2018).

11 Master Electricians Australia, *Submission 4*, p. 3.

12 Electrical Trades Union, *Submission 14*, p. 3.

13 Master Electricians Australia, *Submission 4*, p. 3.

standards are operating with a significant market advantage. It raised a number of concerns arising from reports that non-conforming lighting products are increasingly available in the Australian market:

- Unsafe (not complying with safety standards) lighting products will continue to pose a shock and fire risk to workers, consumers and installations;
- False product claims (lumens output, lifetime, energy efficiency) will continue to result in reduced productivity including energy productivity, non-conformance with building regulations and the need to replace products before their claimed life;
- Reduced professionalism in the industry will continue leading to a further decline in safety outcomes and productivity;
- Non-conforming products are overstating their lumen output resulting in underperforming and unsafe installations—the National Construction Code requires lighting levels and standards to be met so that particular tasks, such as safe movement, orientation and particular work tasks, can be undertaken in a safe and efficient manner;
- Non-conforming new technology products that do not live up to product performance claims are removed and replaced with less efficient technology;
- Lighting Council and our members report an increase in new lighting product suppliers with little or no product knowledge who are purchasing, importing and installing non-conforming products;
- Product certification information has proven to be false and certification logos are used in advertising without agreement or justification.¹⁴

Windows and glazing

2.13 The Australian Window Associations (AWA) reported that the amount of non-conforming imported windows, doors and other glass and aluminium based products including curtain walls, balustrades and balconies products on the Australian market has reached significant proportions. AWA reported that failures due to non-conforming glass products may include 'glass breakage, excessive water damage, gross deflection, hot box effect—often leading to irreparable damage to the building envelope, people getting cut (even fatally) or running costs prohibitively high'.¹⁵

2.14 AWA reported the growth of fraudulent documentation in this industry, as well as flawed testing and reporting being conducted in overseas laboratories, as significant threats to this sector.¹⁶ It stated that:

14 Lighting Council Australia, *Submission 32*, pp. 1–2.

15 Australian Window Association, *Submission 5*, p. 2.

16 Australian Window Association, *Submission 5*, p. 1.

In 2003, with almost 300 member companies the AWA received three requests a year to deal with product or installation issues, in 2013 with more than 600 member companies, the AWA received three requests a week. Year to date 2015, we have received up to six requests a week. The issue is getting worse, not better and more compliant companies are closing as they can't compete.¹⁷

2.15 AWA noted that the nature of the high-rise residential and office market, in which windows and doors tend to be consistent dimensions through all the levels, lends this market to high volume importation, subsequently leading to a higher prevalence of non-conforming products.¹⁸ The Building Products Innovation Council (BPIC) provided an example where non-conforming glass was discovered in a large building project leading to additional costs for the developer:

The replacement of sub-standard glass at the 150 Collins St building project in central Melbourne is estimated to cost \$18 million. Grocon has revealed ...it has to replace half the glass in the \$180 million building. The glass came from Chinese supplier, China Southern Glass.¹⁹

2.16 The Australian Glass and Glazing Association (AGGA) noted that the manufacture of safety glass is one of the main areas of potential risk of non-conforming glass products. Of particular concern is the safety risk for glass processors and installers where glass has not been toughened appropriately and can therefore break more easily when it is handled, thus posing a risk of injury. AGGA also observed:

Of particular concern is the hazard it poses for the 'DIY' market where product can be purchased 'off the shelf' and installed by unskilled labour. General consumers are unlikely to understand the standards required for safety glass and thus it is easier for non-compliant product to enter the market through these channels.²⁰

2.17 The AGGA also pointed to the risks associated with non-conforming double glazed products:

Insulated glass units, commonly known as double glazing, can also fail if they are not manufactured correctly. Failures typically happen over time and result in the seal being compromised, leading to internal condensation ('fogging') that reduces performance and visual amenity. Whilst such failures do not present major safety issues the costs of replacement can be substantial when they are part of a building façade.²¹

17 Australian Windows Association, *Submission 5*, p. 1.

18 Australian Window Association, *Submission 5*, p. 2.

19 Building Products Innovation Council, *Submission 83*, p. 1.

20 Australian Glass and Glazing Association, *Submission 24*, p. 3.

21 Australian Glass and Glazing Association, *Submission 24*, p. 3.

Plumbing

2.18 Plumbing Products Industry Group Inc. (PPI Group), highlighted the potential public health risks relating to plumbing products and the importance of ensuring product conformance. It provided a number of examples to demonstrate the public health risks associated with the failure of plumbing systems:

- Loss of life through the outbreak of severe acute respiratory syndrome (SARS) in Hong Kong;
- Spread of the infectious organisms, *Cryptosporidium* and *Giardia*, through the Sydney water supply;
- Reported cases of water borne disease outbreaks in the USA causing some 443,000 reported cases of illness; and
- The World Health Organisations (WHO) concerns with respect to substandard plumbing leading to legionellosis and other water borne illnesses.²²

2.19 An area of escalating public concern is the potential level of lead in taps. The opening of the Perth Children's Hospital was delayed by nearly three years due to lead contamination in drinking water caused by brass tap fittings,²³ and in 2017, the Queensland Building and Construction Commission (QBCC) raised concerns about lead levels in taps sold at Aldi.²⁴ Subsequently, Aldi informed the ACCC that it had undertaken testing of its tapware through a NATA accredited laboratory which showed the taps to be within normal lead levels.²⁵

2.20 BPIC reported instances where plumbing products have failed in regards to heavy metal contamination in sanitary grade products.²⁶ As well as products that fraudulently claim to meet the requirements under the Water Efficiency Labelling and Standards (WELS) scheme:

The WELS Regulator has noted the increased supply of non-conforming showers into the Australian market from overseas manufacturers. These instances of non-conformance include showers supplied without flow controllers, with substituted flow controllers or flow controllers supplied

22 Plumbing Products Industry Group Inc., *Submission 84*, p. 1.

23 John Rolfe, 'Safe Water's flow-on effect', *Adelaide Advertiser*, 26 November 2018, p. 9.

24 John Rolfe, 'A kitchen tap sold by Aldi has been found to contain dangerous levels of lead', *News Corp Australia Network*, 16 December 2017, <https://www.news.com.au/finance/business/retail/a-kitchen-tap-sold-by-aldi-has-been-found-to-contain-dangerous-levels-of-lead/news-story/bdba66667e0d15fe0e6a9fa0d7c8506d> (accessed 28 November 2018)

25 Australian Competition and Consumer Commission, <https://www.productsafety.gov.au/news/aldi-tapware-test-result-update> (accessed 29 November 2018)

26 Building Products Innovation Council, *Submission 83*, p. 3.

separately. These products use more water than their WELS label indicates, therefore consumers are being provided with fraudulent information.²⁷

Engineered wood products

2.21 Engineered wood products include interior and exterior plywood products, structural plywoods used for formwork, residential and commercial flooring, wind and earthquake bracing, and feature cladding; and Laminated Veneer Lumber and I-beam products used in both commercial and residential structures.

2.22 The Engineered Wood Products Association of Australia (EWPAA) submission stated that the engineered wood products sector is experiencing significant problems with product non-compliance, both in the construction phase (for example, in relation to the structural performance of building and construction materials), through to the impact of materials in completed buildings on occupant health and safety (for example, from structures that do not perform their function to protect against storms and cyclones, through to the risk of formaldehyde emissions exposure).²⁸

2.23 The Furniture Cabinets and Joinery Alliance also raised concerns about the risk of formaldehyde emissions from engineered wood products and board/panelling materials. The National Industrial Chemicals Notification and Assessment Scheme (NICNAS) recommends maximum emission levels for exposure to formaldehyde, as it is a known carcinogen. It noted that:

...as it is significantly 'cheaper to manufacture wood product/board from glues that emit higher levels of formaldehyde, there is an economic driver toward non-conformance of branded emission class. This affects the safety during construction (e.g. cabinetry manufacture where workers are exposed to fresh product for long periods of time) and occupants of buildings.²⁹

2.24 The CFMEU noted the example of a NSW apartment block that had to have all cabinets, which had been imported from China, removed as formaldehyde 'emissions were going through the roof'.³⁰

Steel

2.25 In addition to submissions to this inquiry, the committee's inquiry into the future of Australia's steel industry also received evidence relating to non-conforming building products in the steel industry.³¹

2.26 Bureau of Steel Manufacturers of Australia (BOSMA) provided the following examples of non-conforming products that compete with steel products:

27 Building Products Innovation Council, *Submission 83*, p. 3.

28 Engineered Wood Products Association of Australia, *Submission 12*, p. 2.

29 Furniture Cabinets and Joinery Alliance, *Submission 121*, p. 6.

30 CFMEU, *Submission 74*, p. 5.

31 Senate Economics References Committee, *Australia's Steel Industry: forging ahead*, 1 December 2017, Chapter 4.

- Products with lower metallic coating and/or paint film thickness than required by standards (AS 1397 and AS/NZS 2728).
- Paints with lead content above the 0.1% limit specified in the Poisons Standard - Paints and Tinters.
- Products not marked as per standards requirements (AS 1397).
- Products incorrectly described as BlueScope branded products.
- Products with false or non-compliant test certificates.
- There have been significant increases in prefabricated products and/or modular assemblies where demonstrating evidence of compliant steel mill product being used has been variable.³²

2.27 The Australian Steel Institute (ASI) highlighted the risks of quality issues in a whole range of steelwork from portal frames, guard rails, sheds, bridge trusses and building construction projects. It stated:

Observable defects such as substandard welding that needed to be ground out and replaced, laminations in plate that could cause catastrophic failure, substandard corrosion protection affecting the life of an asset and generally poor workmanship were found unfortunately to be commonplace on imported structural steelwork. There also is a price depressing effect from these imports that affects a sector of local fabricators that are forced to chase price at the expense of maintaining their quality systems and procedures. The knock-on effect is that currently many fabricators and steelwork manufacturing SMEs are unable to maintain a reasonable profit that would allow them to reinvest in their businesses.

Testing by the steel industry has also identified metallic coated and pre-painted steels that do not meet Australian Standards and regulations. Examples include substandard metallic coating and paint thicknesses and non-conforming levels of lead in paint.

The non-compliances are not limited to poor quality and bad workmanship but extend to deliberate fraudulent behavior with examples such as falsified test certificates, welds made with silicone rubber and then painted, attachment of bolt heads with silicon rather than a through bolt and water filled tube to compensate for underweight steelwork with fraudulent claims that their products meet particular Australian Standards.³³

Access covers and grates

2.28 Nepean Building & Infrastructure, a company that designs, manufactures and supplies stormwater grates, highlighted the risks associated with drainage grates that do not comply with Australian Standards when installed in building projects.

32 Bureau of Steel Manufacturers of Australia (BOSMA), *Submission 18, Attachment 1*, p. 8.

33 Australian Steel Institute, *Submission 19*, p. 6.

2.29 Nepean Building & Infrastructure noted that 'the issue of compliance for what is essentially a load bearing asset is almost completely disregarded by many builders, where grates are sourced and installed based only on price'.³⁴ The consequences of drainage grates failing are 'at best the need for replacement at an inflated reconstruction cost or at worst, serious accident in the public domain due to product failure'.³⁵

Vinyl/PVC

2.30 The Vinyl Council of Australia noted that vinyl, or PVC, is a common building material which is used in pipes, conduit, cables, flooring, permanent formwork, window frames, profiles and membranes. It observed that the growing number of non-conforming PVC products that fail or become subject to product recalls is having a significant impact on:

- the reputation of all PVC products in certain applications;
- the ability of our members to compete with these lower cost, sub-standard products; and
- the safety and sustainability of the built environment.³⁶

2.31 Infinity cables, subject to a recall in 2014, are an example of a non-conforming PVC insulated cable product falsely claiming to have met Australian Standards. The Vinyl Council of Australia noted that the Infinity cables 'were not fit for purpose, did not meet regulatory standards and present a high fire and human safety risk'.³⁷

2.32 It also advised that as PVC is a thermoplastic, one of the issues for the sector is fire safety. It also noted:

In the case of PVC windows, a growing product segment in Australia because of their high energy efficiency performance, there are concerns of non-conforming product failing because of insufficient UV resistance in the PVC formulation. In the case of PVC plumbing and pipe, failures can cause contamination of the water system and be a public health concern. Large scale failure from poorly formulated, cheap product has occurred in other jurisdictions overseas and wiped out virtually the entire market for the product because of damage to consumer confidence.³⁸

34 Nepean Building & Infrastructure, *Submission 9, Attachment 1*, p. 1.

35 Nepean Building & Infrastructure, *Submission 9, Attachment 1*, p. 2.

36 Vinyl Council of Australia, *Submission 11*, p. 1.

37 Vinyl Council of Australia, *Submission 11*, p. 2.

38 Vinyl Council of Australia, *Submission 11*, p. 2.

2.33 Of particular concern to the Vinyl Council of Australia was that, in cases where imported products have been found to be non-conforming, it has fallen on local manufacturers to investigate and pursue the cases. It stated:

Local manufacturers have unfairly borne the cost of bringing these cases to light to ensure public safety, while at the same time have to compete with cheaper, inferior non-compliant products in the market.³⁹

Committee view

2.34 The committee is extremely concerned by evidence to this inquiry that illustrates the growing prevalence of non-conforming building products. Non-conforming building products pose serious risks to the construction industry, workers and the broader community.

2.35 The committee received evidence of products across a range of industry sectors that:

- are not fit for purpose;
- do not conform with the required Australian building regulations and technical standards;
- are counterfeit copies of legitimate conforming products; and
- are supplied with fraudulent certification or documents.

2.36 The costs of non-conforming products are being passed on to consumers through costs of remediation, devaluation of properties, increased insurance premiums, as well as costs associated with reduced energy and water efficiency.

2.37 Further, importers, suppliers and manufacturers of products that conform to Australian building regulations and technical standards are being forced to compete on an uneven playing field with cheaper, inferior non-conforming building products.

2.38 The committee is particularly concerned about the potential safety risks to consumers and construction industry workers including risks of fire, electrocution, exposure to toxic chemicals and water contamination.

2.39 Without urgent and effective action the risk to Australian lives will only increase.

39 Vinyl Council of Australia, *Submission 11*, p. 2.

Chapter 3

Government action on non-conforming building products

3.1 This chapter examines the ongoing work of the Building Ministers' Forum (BMF) to address the issue of non-conforming building products, including relevant progress by the Senior Officers' Group (SOG).

Role of the Commonwealth, states and territories

3.2 Under the Australian Constitution, governance of the built environment is the responsibility of state and territory governments. The roles, responsibilities and powers of the Australian Government are set out in the Australian Constitution. By standard convention, those matters that are not mentioned in the Constitution remain the responsibility of the states and territories. Matters regarding the safety, health and amenity of people in buildings are not mentioned in the Constitution and therefore, responsibility for them rests with the state and territory governments. This has led to eight separate Acts of Parliament and eight distinct building regulatory systems.¹

3.3 The regulatory responsibility for building product compliance and enforcement, as well as licencing of trades and regulation of construction sits with the relevant state and territory governments. The regulation of building products is covered by a range of state and territory legislative instruments that require building work to be carried out in accordance with the requirements of the National Construction Code (NCC) and be fit for purpose.²

3.4 Each jurisdiction has a building regulator, either established within a statutory body or a government department. Building regulators oversee licensees, including builders and building contractors in charge of installing building products and building certifiers/surveyors who certify work to the requirements of the NCC.³

3.5 While the Australian Government does not have a formal role in the administration of building, plumbing and construction works, it assists at the policy level, in particular through the Council of Australian Governments (COAG) to facilitate agreement and adoption of the nationally consistent building regulations expressed primarily through the NCC.⁴

3.6 There is Commonwealth legislation that, in some circumstances, can assist with enforcement in relation to non-conforming building products. The Australian Competition and Consumer Commission (ACCC) is the Commonwealth statutory

1 Australian Building Codes Board, 'BCA History', <https://www.abcb.gov.au/ncc-online/About/BCA-History> (accessed 28 November 2018).

2 Department of Industry and Science, *Submission 43*, p. 3.

3 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 7, <http://www.hpw.qld.gov.au/SiteCollectionDocuments/NonConformingBuildingProductsReport.pdf> (accessed 28 November 2018).

4 Department of Industry and Science, *Submission 43*, p. 3.

authority responsible for enforcing laws that promote competition, consumer protection and fair trading in Australia (Australian Consumer Law (ACL)). The ACL contains a number of generic consumer protections and prohibitions that may apply to individuals or businesses that supply building products in trade or commerce. For example, the ACL provides that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive, or is likely to mislead or deceive.⁵

3.7 With regard to imported products, under the *Customs (Prohibited Imports) Regulations 1956* (PI Regulations), the Australian Border Force (ABF) has the power to detain goods where they are suspected of containing asbestos, including building products and a range of other goods. However, the ABF does not have any legislative powers to ensure that imported building products conform to building standards or performance levels. Accordingly, the ABF does not examine or inspect imported building products at the border to assess compliance with standards.⁶

3.8 The Commonwealth is also involved in a number of other areas that can be relevant to building products, such as the workplace health and safety and electrical safety regulatory frameworks.⁷

Building Ministers' Forum

3.9 The BMF is responsible for overseeing governance of the built environment, in relation to policy and regulatory issues impacting the building and construction industries. The Commonwealth works collaboratively with the states and territories through the BMF.

3.10 The BMF is made up of Australian Government and state and territory government ministers with responsibility for building and construction. The Hon. Karen Andrews MP, Minister for Industry, Science and Technology, is the current Chair of the BMF; with the Department of Industry, Innovation and Science providing secretariat support.

3.11 The BMF's work covers:

- harmonisation of building regulations and standards;
- collaboration on compliance and enforcement; and
- other policy issues affecting Australia's building and construction industries.⁸

5 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 9, <http://www.hpw.qld.gov.au/SiteCollectionDocuments/NonConformingBuildingProductsReport.pdf> (accessed 28 November 2018).

6 Department of Immigration and Border Protection, *Submission 56*, p. 3.

7 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 7, <http://www.hpw.qld.gov.au/SiteCollectionDocuments/NonConformingBuildingProductsReport.pdf> (accessed 28 November 2018).

8 Department of Industry, Innovation and Science, 'Building Ministers' Forum', <https://www.industry.gov.au/regulation-and-standards/building-ministers-forum> (accessed 15 November 2018).

3.12 Taking account of any COAG agreements, together with societal needs and expectations, the BMF sets the strategic policy direction for the:

- Australian Building Codes Board (ABCB)⁹;
- Senior Officers' Group (SOG); and
- Building Regulators' Forum (BRF).¹⁰

3.13 The BMF may direct the ABCB, the SOG and the BRF, to work collaboratively on specific national issues affecting the building and construction industries.¹¹

3.14 The BMF's next meeting is scheduled for December 2018.¹²

Senior Officers' Group on non-conforming building products

3.15 On 31 July 2015, shortly after this inquiry started, the BMF established a Senior Officers' Group (SOG) to address the issue of non-conforming building products. The SOG was tasked with reporting back to the BMF on strategies to 'minimise the risks to consumers, businesses and the community associated with failure of building products to conform to relevant laws and regulations and at the point of import'.¹³ The SOG comprises two senior officers from each state and territory as well as the Commonwealth.¹⁴

3.16 The SOG prepared a consultation report, *Strategies to address risks related to non-conforming building products* (SOG Report), in 2016, and following consultation, it released its *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products* (SOG Implementation Plan) in September 2017, including a number of recommendations relevant to this inquiry.

9 The ABCB is the standards writing body responsible for the National Construction Code (NCC) which comprises the Building Code of Australia (BCA) and the Plumbing Code of Australia (PCA). The Commonwealth is one of nine government members on the ABCB; Department of Industry and Science, *Submission 43*, p. 1.

10 Department of Industry, Innovation and Science, 'Building Ministers' Forum Charter', <https://www.industry.gov.au/sites/g/files/net3906/f/building-ministers-forum-charter.pdf> (accessed 15 November 2018).

11 Department of Industry, Innovation and Science, 'Building Ministers' Forum Charter', <https://www.industry.gov.au/sites/g/files/net3906/f/building-ministers-forum-charter.pdf> (accessed 15 November 2018).

12 Building Ministers' Forum, *Building Ministers' Forum: 10 August 2018—Communiqué*, https://www.industry.gov.au/sites/default/files/August%202018/document/pdf/building_ministers_communique_-_august_2018.pdf (accessed 1 November 2018).

13 Building Ministers' Forum, *Communiqué for the Building Ministers' Forum—31 July 2015*, https://www.industry.gov.au/sites/default/files/July%202018/document/extra/building_ministers_forum_communique_-_july-2015.pdf (accessed 1 November 2018).

14 Queensland Department of Housing and Public Works, 'Non-conforming building products', last updated 29 March 2016, http://www.hpw.qld.gov.au/construction/Building_Plumbing/Building/Pages/NonConformingBuildingProducts.aspx (accessed 1 November 2018).

3.17 The recommendations from these reports included the following:

- Improve 'the regulatory framework to enhance the powers of building regulators to respond to incidents of NCBPs [non-conforming building products] e.g. providing the ability to conduct audits of existing building work or take samples from a building for testing'.¹⁵
- Establish 'a national forum of building regulators to facilitate greater collaboration and information-sharing between jurisdictions'.¹⁶
- Improve 'collaboration between building and consumer law regulators and consistency in the application of the "false and misleading claims" aspect of the Australian Consumer Law'.¹⁷
- Develop 'a "one-stop-shop" national website to provide a single point of information for consumers and building product supply chain participants, including examining arrangements for hosting and maintaining a website'.¹⁸
- Develop 'mechanisms that ensure that, where all states and territories prohibit the use of a NCBP, evidence is provided to the Commonwealth enabling proportionate action to be taken based on the risk posed by the product'.¹⁹
- Implement 'an information sharing arrangement where import data collected by the Department of Immigration and Border Protection can be provided to state and territory regulators to facilitate compliance and enforcement activities for NCBPs'.²⁰
- Initiate 'a review, with the ABCB and Standards Australia, of Australian Standards related to high risk building products referenced under the NCC, including assessing the costs and benefits of mandating third party certification and establishing a national register for these products'.²¹

3.18 Progress on the implementation of these recommendations is outlined below.

15 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 2, p. 3.

16 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 3B, p. 5.

17 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 2, p. 3.

18 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 3D, p. 6.

19 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 4A, p. 7.

20 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 4B, p. 7.

21 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 5, p. 8.

The Queensland Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017

3.19 The SOG Report found that the current building regulatory system in Australia does not provide an overarching framework for identifying and addressing non-conforming building products. The SOG Implementation Plan noted:

Building regulator powers are focussed primarily on active building sites and practitioners. While some regulators, such as electrical safety regulators, have powers to compel documents, undertake inspections or instigate recalls in response to identified issues, building regulators generally do not have these powers.²²

3.20 The Queensland Government took the lead on the SOG Report's recommendation to seek ways to improve 'the regulatory framework to enhance the powers of building regulators to respond to incidences of NCBPs e.g. providing the ability to conduct audits of existing building work or take samples from a building for testing'.²³

3.21 The Australian Government response to the committee's interim report on aluminium composite cladding noted that the Australian Government, through the BMF and the SOG, has been working with the states and territories to improve accountability across the building supply chain. The government response noted that the *Queensland Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017* (the Queensland legislation) is an example of how jurisdictions can improve regulatory oversight of the building product supply chain.

3.22 The purpose of the Queensland legislation is to, among other matters:

- confer responsibilities on the building product supply chain to ensure building products, so far as reasonably practicable, conform to mandatory standards;
- expand the obligations of building practitioners (licensees) to notify the Queensland building regulator of work health and safety issues; and
- widen grounds for the Queensland building regulator to take disciplinary action against licensees.

3.23 The government response noted:

Queensland's legislation is based on principles agreed by the BMF, and is intended to be used by other jurisdictions as a model to be either adopted in full or revisited as appropriate to accommodate their existing regulatory structure.

While some of the powers and enforcement measures contained in Queensland legislation may already exist in other jurisdictions, the

22 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, p. 3.

23 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, p. 3.

legislation can be a 'best practice' approach to impose consistent obligations on participants of the building product supply chain and improve jurisdictional ability to detect and address non-conforming building products.²⁴

Establishment of the Building Regulators Forum

3.24 The SOG Report recommended establishing a national forum of building regulators to facilitate greater collaboration and information-sharing between jurisdictions. The SOG Implementation Plan noted that:

While national forums exist for other regulators such as electricity and consumer law regulators to help government agencies work more cooperatively and efficiently across jurisdictions and portfolios, there has been no similar forum for building regulators. While established forums exist through the Australian Building Codes Board (ABCB) for jurisdictions and building regulators to collaborate, these forums are focused on the development and maintenance of the National Construction Code (NCC).²⁵

3.25 The BRF was established in response to this recommendation to provide an intergovernmental forum for state and territory building regulators to work cooperatively and efficiently on regulatory responses to issues of national significance, in addition to providing the BMF with regulatory advice. The BRF enables building regulators to:

- share information on best practice regulation and enforcement activities;
- collaborate to deliver timely and coordinated responses to issues of national significance related to NCBPs and other matters as directed by the BMF; and
- consider and triage issues for escalation to relevant Commonwealth entities for response or the BMF for consideration.²⁶

3.26 The BRF is currently chaired by the Victorian Building Authority and consists of the senior regulator of each state and territory building authority, and representation from relevant Commonwealth agencies.²⁷

Improving collaboration between building and consumer law regulators

3.27 The SOG Report recommended improving collaboration between building and consumer law regulators and consistency in the application of the 'false and

24 Australian Government response to the *Interim report: Aluminium composite cladding*, February 2018, p. 11.

25 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, p. 4.

26 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, p. 4.

27 Australian Government response to the *Interim report: Aluminium composite cladding*, February 2018, p. 6.

misleading claims' aspect of the Australian Consumer Law (ACL). The SOG Implementation Plan noted that:

Consumer law regulators can play a valuable role when NCBPs are captured under the consumer law. While building products are not generally considered 'consumer goods' under the ACL, it is unlawful for a business to make false or misleading representations about goods or services (including building products) when supplying, offering to supply, or promoting them.²⁸

3.28 The measures to address this recommendation include establishing a Building and Consumer Law Working Group under the auspices of the BRF to collaborate on best practice regulation and enforcement activities on non-conforming building product matters.²⁹

One-stop-shop website for non-conforming building products

3.29 The SOG Report recommended developing a 'one-stop-shop' national website to provide a single point of information for consumers and building product supply chain participants, including examining arrangements for hosting and maintaining a website. The SOG Implementation Plan noted:

No overarching website or network hub exists with information such as a list of building regulators, government and industry building product schemes, or how to report NCBPs. In contrast, similar regulatory systems have a general website with information and links to relevant Commonwealth, state and territory regulators, e.g. the Australian Competition and Consumer Commission's website.³⁰

3.30 On 30 June 2017, the Commonwealth launched the national non-conforming building products webpage to provide information on non-conforming building products, key links to the non-conforming building product webpages of each state and territory building jurisdiction, and a mechanism for industry and consumers to report suspected non-conforming building products.

3.31 The one-stop-shop non-conforming building products webpage, hosted on the ABCB website, was developed in consultation with state and territory building jurisdictions and key industry stakeholders.³¹

28 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, p. 5.

29 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, p. 5.

30 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, p. 6.

31 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, p. 6.

Research to improve the evidence base relating to non-conforming building products

3.32 The SOG Report recommended that independent research should be undertaken, including manufacturer and random off-the-shelf product testing, to improve the evidence base relating to non-conforming building products. The SOG Implementation Plan noted:

Based on primarily anecdotal evidence presented during consultations, the SOG concluded that NCBPs exist in the Australian building and construction industry supply chain.

However, the SOG found it difficult to quantify the extent and impacts of NCBPs. While valuable information exists about the economic, commercial, social and legal impacts of individual NCBPs, independent quantitative analysis of overall consequences is required.³²

3.33 As part of the Western Australian (WA) State Government's contribution to the work of the SOG, the WA Building Commission is providing research funding to a major project which includes the completion of independent and quantitative research to improve the evidence base relating to non-conforming building products to help better determine the scale and prevalence of issues. The research will also involve the analysis of key supply chain factors, the evaluation of risk, relevant retrospective examination as well as some limited market testing. Following an open tender process, the lead researcher working on the project is Professor Russell Kenley from Swinburne University.³³

Information sharing arrangement for import data

3.34 The SOG Report recommended implementing an information sharing arrangement where import data collected by the Department of Home Affairs (formerly the Department of Immigration and Border Protection) can be provided to state and territory regulators to facilitate compliance and enforcement activities for non-conforming building products. The Implementation Plan noted:

Regulators currently have limited ability to stop known NCBPs entering Australia and making their way into the building product supply chain. Goods, including building products, are usually imported without an intended purpose specified (beyond what is listed in the tariff description).

The [Department of Home Affairs] collects customs data from import declarations and ensures any sharing of this official information complies with relevant legislative and privacy provisions.

The [Department of Home Affairs] and its enforcement arm, the Australian Border Force (ABF), does not have legislative powers to ensure imported

32 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, p. 9.

33 Government of Western Australia, 'Recent developments in non-conforming building products', last updated 26 July 2018, <https://www.commerce.wa.gov.au/building-commission/recent-developments-non-conforming-building-products> (accessed 1 November 2018).

building materials conform to building standards or performance levels and can't reliably determine at the border whether the building product will be used or installed correctly. The [Department of Home Affairs] also can't prevent entry of a good into Australia unless it is prohibited under legislation, even if it has been subject to a national recall.³⁴

3.35 The Department of Home Affairs has developed an Import Data Sharing Arrangement to address this recommendation, where import data collected can be provided to state and territory regulators.

3.36 The department advised the committee that this import data covers the tariff subheadings under which these building products are described within an import declaration. This covers:

- aluminium cladding;
- prefabricated buildings;
- plasterboard sheeting;
- tiles and panels; and
- insulated electrical cables.

3.37 The department advised that the data provided includes information on the declared goods description; importer and delivery details; the origin and date of import; the value of the goods; and details of the overseas supplier. The data includes products which may be used as external cladding following importation.

3.38 State and territory regulators can also make ad hoc requests to collect specific data where they identify a safety or compliance issue relating to an imported product. These types of requests assist the regulators to more efficiently respond to particular incidents.³⁵

Feasibility of a mandatory third-party certification scheme for high-risk building products and a national register

3.39 The SOG Report recommended a review, with input from the ABCB and Standards Australia, of Australian Standards related to high-risk building products referenced under the NCC, including assessing the costs and benefits of mandating third party certification and establishing a national register for these products. The SOG Implementation Plan noted:

At present, 162 primary Australian Standards are referenced in the NCC and over 3000 secondary referenced standards. The secondary standards typically contain product and testing standards.

34 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, p. 7.

35 Department of Home Affairs, answers to questions on notice, pp. 6–7 (received 13 August 2018).

Currently no framework exists to determine what constitutes a high risk building product and which referenced standards relate to such products. This recommendation will help the building industry, consumers and regulators determine whether a product is conforming, through potentially mandating third party certification and establishing a national register for these products.³⁶

3.40 The Department of Industry, Innovation and Science advised the committee that work is ongoing on the SOG Report's recommendation to examine the feasibility of a compulsory third party product certification scheme for high-risk building products and a national register for these products. This project is being led by the Victorian Government (in consultation with the Western Australian Government), on behalf of the SOG.³⁷

3.41 Following the Grenfell Tower fire, the BMF commissioned an independent assessment of the broader compliance and enforcement problems within the building and construction systems across Australia (the Shergold and Weir Report). Recommendation 21 of that report reiterated the SOG Report's recommendation, stating:

The product certification systems will need to include mandatory permanent product labelling and prohibitions against the installation of high-risk building products that are not certified. Once a common position is reached by the BMF, it should make it a priority to implement this through amendments to the NCC and/or through consistent reforms to each jurisdiction's legislation.³⁸

3.42 Mr Harris from the department observed that while the process is underway, determining which products were considered high-risk was not straight forward:

It's been a difficult and complex problem as it's taken some time to identify what would be considered a high-risk product. It's a difficult threshold to try and pin down, because of the complexity of the nature of the products and how they're used. It goes to the application of those products which will determine the level of risk associated with them, and therefore there are quite a few variables at play.³⁹

Views on progress

3.43 Mrs Tracey Gramlick from the Australian Window Association (AWA) expressed the view that, although some good preliminary work had been done to

36 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, p. 8.

37 Department of Industry, Innovation and Science, answers to questions on notice, p. 2 (received 10 August 2018).

38 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 36.

39 Mr Rodney Harris, Acting Manager, Building Industry Section, Department of Industry, Innovation and Science, *Committee Hansard*, 2 August 2018, p. 30.

address the issue of dealing with non-conforming building products through the work of the BMF, there was still a lot of work to be done. She noted:

There is some good stuff that has been done. Queensland has stood up and made a very good start... We work very closely with them. It has been quite effective in identifying where issues are. State by state, you would probably give different scores. This year, I have been looking at non-conforming products for 15 years, and it has got worse and worse over the 15 years. The AiG report was published in 2013 and it is now 2018. There is so much more building stock in the country since then, so I would have to say that it has been very slow.⁴⁰

3.44 The Housing Industry Association (HIA) noted that much of the BMF's focus appeared to be on using products properly and non-compliance, rather than on non-conforming building products.⁴¹ Mr Gover, from the Engineered Wood Products Association of Australia (EWCAA), also noted that 'beyond the Queensland legislation, very little appears to have changed, unless it is asbestos or cladding related'.⁴²

3.45 HIA also observed that a single national approach is critical in 'this age of a global supply chain for building products'.⁴³ It noted that while some progress had been made to address the issue of non-conforming building products through the work of the BMF and various working groups, 'more is required to give builders or trade contractors confidence'.⁴⁴ Mr Simon Croft from HIA stated:

Despite the Infinity Cable case and issues considered by this committee in relation to asbestos, which are both examples of non-conforming building products, action is yet to be taken to include building products as a consumer safety issue, and there is no connection between a finding that a building product has been supplied to the market with false and misleading information and the potential recall of that product. These types of changes must occur at a national level. This has left our industry with ongoing uncertainty about which agency or which entity they should go to for a resolution.⁴⁵

40 Mrs Tracey Gramlick, Executive Director and Chief Executive Officer, Australian Window Association, *Committee Hansard*, 2 August 2018, p. 2.

41 Ms Kristin Brookfield, Chief Executive, Industry Policy, Housing Industry Association, *Committee Hansard*, 2 August 2018, p. 17.

42 Mr David Gover, Chief Executive Officer, Engineered Wood Products Association of Australasia, *Committee Hansard*, 2 August 2018, p. 6.

43 Mr Simon Croft, Executive Director, Building Policy, Housing Industry Association, *Committee Hansard*, 2 August 2018, p. 17.

44 Mr Simon Croft, Executive Director, Building Policy, Housing Industry Association, *Committee Hansard*, 2 August 2018, p. 17.

45 Mr Simon Croft, Executive Director, Building Policy, Housing Industry Association, *Committee Hansard*, 2 August 2018, p. 16.

Australian Consumer Law

3.46 As noted at paragraph 3.27, the SOG Report recommended improving collaboration between building and consumer law regulators and consistency in the application of the 'false and misleading claims' aspect of the ACL. The SOG Implementation Plan states:

Consumer law regulators can play a valuable role when NCBPs are captured under the consumer law. While building products are not generally considered 'consumer goods' under the ACL, it is unlawful for a business to make false or misleading representations about goods or services (including building products) when supplying, offering to supply, or promoting them.⁴⁶

3.47 The SOG Implementation Plan indicated that a Building and Consumer Law Working Group would be established under the auspices of the BRP to collaborate on best practice regulation and enforcement activities on non-conforming building product matters.⁴⁷

3.48 HIA's view is that the solutions lie with consumer protection and need to begin with changes to the ACL to enable the ACCC at the Commonwealth level, and the relevant state and territory agencies, to address instances where a building product has been supplied to the market with false and misleading information. Ms Brookfield explained HIA's view:

The impediment is the legislation as it stands today, rather than what could be the roles of either state or federal agencies. The definition of a consumer product is essentially the same at the state and federal level, and therefore the limitation that we talk about—that a building product is not a consumer product—means, therefore, that the remedies that exist under the Australian Consumer Law can't be used. That is across both state and federal. That could be changed by changing the legislation, by creating either a secondary definition that a building product is a consumer product, and when these things occur this is the process to be used. That process, I would suggest, would be a mirror of the current process when there is a non-conforming pram or a non-conforming child's toy. We're looking for the same things to be possible, for penalties to occur, for investigations to happen, for products to be taken off sale.⁴⁸

Accountability across the supply chain

3.49 Submissions to the inquiry highlighted the fact that responsibility and accountability for addressing the issue of non-conforming building products is weighted too heavily at the end of the supply chain.

46 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, p. 5.

47 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, p. 5.

48 Ms Kristin Brookfield, Chief Executive, Industry Policy, Housing Industry Association, *Committee Hansard*, 2 August 2018, p. 18.

3.50 HIA expressed concern that the building products supply chain in Australia, combined with the current building approval administrative framework, leaves those at the end of the supply chain—the builder, the trade contractor and the home owner—with all the responsibility. HIA noted that although the Queensland legislation is intended to be a model for other states to follow, no other state has moved to introduce similar provisions. Mr Croft from the HIA noted:

The Queensland legislation, while containing many good concepts, in particular around shared accountability across the building product supply chain, is still settling issues around the practical implementation and on the ground. These issues would need to be resolved before this legislation was implemented nationally; hence a trial period in Queensland is likely to be a useful exercise.⁴⁹

3.51 HIA supported Queensland legislation being extended to other jurisdictions, with some amendments. It noted:

That legislation fails to address building designers and it fails to address building certifiers' role in the approval of plans and therefore the selection of products. It's also unclear right now how many products are captured by that legislation. At the moment we understand Queensland's taking a fairly measured approach, and only a small number of products are on their radar. Also that legislation is reactive in a sense—there needs to be a potential threat to safety for something to proceed. We would prefer to have legislation which brought it back to the beginning of the supply chain where something is manufactured or put on the shelf.⁵⁰

3.52 Mr David Gover, from the EWPA, was also broadly supportive of the Queensland legislation and believed that other states should follow suit. However, he commented that:

I was really disappointed when the New South Wales government had prepared legislation, had consulted with industry and had feedback from industry that the legislation was supportive of our concerns, and then, somewhere between consulting with industry and presenting that to the chamber in New South Wales, it had been completely gutted. Some fervent work by industry advocates attempted to get amendments back into that legislation, but they were all blocked. My interpretation of the amendments from the New South Wales building act is that it's pretty gutless in terms of trying to counter non-conforming building products.⁵¹

49 Mr Simon Croft, Executive Director, Building Policy, Housing Industry Association, *Committee Hansard*, 2 August 2018, p. 16.

50 Ms Kristin Brookfield, Chief Executive, Industry Policy, Housing Industry Association, *Committee Hansard*, 2 August 2018, p. 17.

51 Mr David Gover, Chief Executive Officer, Engineered Wood Products Association of Australasia, *Committee Hansard*, 2 August 2018, p. 7.

3.53 HIA considered the New South Wales Government's legislation to be 'essentially more reactive than proactive'.⁵²

Due diligence requirements for participants in the supply chain

3.54 The committee's interim report found that recent incidents of illegal importation of asbestos in building products have highlighted the weakness in the due diligence systems of importers and contractors. The committee notes the Queensland legislation included due diligence requirements for participants across the supply chain in relation to non-conforming building products.⁵³

3.55 If a company has a duty under the Queensland legislation in relation to non-conforming building products, then an executive officer of the company must exercise due diligence to ensure compliance.

3.56 Due diligence is defined in the Queensland legislation as taking reasonable steps to:

- acquire and keep up to date knowledge of matters about the safe use of building products;
- gain an understanding of the nature of the company's business activities relating to building products and safety risks and non-compliance risks associated with them;
- ensure the company has and uses appropriate resources and processes to manage risks and to comply with the company's duties;
- ensure the company has, and implements appropriate processes for receiving, considering and responding in a timely way to, information about the risks and any incidents arising from the risks and for complying with the company's duties; and
- verify the resources and processes mentioned above are being provided, used and implemented.⁵⁴

Penalties for non-conforming building products

3.57 Many submitters drew the committee's attention to the need for regulators to be able to issue meaningful penalties to address the issue of non-conforming building products. For example, the Victorian Building Action Group stated:

No punishment and no penalties mean that in reality there are 'NO LAWS'.
No matter the breaches, no matter the injuries or deaths, no matter the serial

52 Mr Simon Croft, Executive Director, Building Policy, Housing Industry Association, *Committee Hansard*, 2 August 2018, p. 17.

53 Senate Economics References Committee, *Interim report: protecting Australians from the threat of asbestos*, 22 November 2017, p. 54.

54 Queensland Department of Housing and Public Works, *Non-Conforming Building Products: Code of Practice*, October 2017, p. 10.

offending, there are no consequences for any of the incalculable number of recalcitrant rogues operating with license to kill and maim with impunity.⁵⁵

3.58 Lighting Council Australia agreed that there was a need for greater penalties:

Industry considers that the penalties imposed for product non-conformance generally are not tough enough and investigations insufficiently rigorous.⁵⁶

3.59 The Australian Glass and Glazing Association considered that:

Any policing and enforcement regime must have meaningful penalties and restrictions that can be applied effectively to different parties in the supply chain, both in Australia and overseas.⁵⁷

3.60 HIA observed that in order for voluntary industry schemes to be effective, there needs to be government support to impose penalties:

The other significant element in operating such schemes is the need to have strong surveillance and reporting processes, and to have penalties that can be applied. Voluntary industry schemes, such as those operated by the AWA and Engineered Wood Product Association of Australasia (EWPAA) include surveillance and reporting processes. However, the application of penalties in voluntary schemes is more difficult. Products can be removed from the scheme, but any acts of fraud or misleading conduct or legal recourse must be managed through the appropriate channels.

Effective enforcement and penalties can only exist with the support of governments.⁵⁸

3.61 Ai Group recommended that the states and territories 'improve surveillance and audit activities and implement stronger penalty regimes to improve conformance with the National Construction Code (NCC) and other building regulations'.⁵⁹

3.62 Ai Group also informed the committee that its members are willing to support regulatory regimes by funding their own surveillance and testing initiatives if regulators ensure that there are meaningful penalties and consequences for those supplying the non-conforming building product into the market.⁶⁰

Increased regulator powers

3.63 The Shergold and Weir Report found that recent cladding audits in high rise buildings had raised the issue of whether authorities have the necessary powers to require rectification, recall products or issue warnings about products. As such, it recommended that 'each jurisdiction give regulators a broad suite of powers to

55 Victorian Building Action Group, *Submission 136*, p. 3 (emphasis in original).

56 Lighting Council Australia, *Submission 32*, p. 13.

57 Australian Glass and Glazing Association, *Submission 24*, p. 6.

58 Housing Industry Association, *Submission 30*, p. 21.

59 Ai Group, *Submission 46*, p. 5.

60 Ai Group, *Submission 120*, p. 12.

monitor buildings and building work so that, as necessary, they can take strong compliance and enforcement action'.⁶¹

3.64 The Shergold and Weir Report considered that each jurisdiction requires a minimum range of legislated powers, including:

- powers of entry for monitoring compliance;
- powers of entry where there is a reasonable belief of the commission of an offence or grounds for disciplinary inquiry;
- powers to require the production of documents or information;
- powers to investigate following a complaint or proactively;
- powers to seize documents and test and seize materials;
- powers to evacuate, make all necessary orders, or stop works;
- powers to negotiate voluntary undertakings;
- powers to undertake disciplinary processes;
- performance audit powers over all registered practitioners (including architects); and
- infringement notice and prosecution powers.⁶²

3.65 Ai Group noted that the SOG Report included a recommendation to improve 'the regulatory framework to enhance the powers of building regulators to respond to incidents of NCBPs e.g. providing the ability to conduct audits of existing building work or take samples from a building for testing'.⁶³

3.66 Ai Group considered that this recommendation 'addresses the issue that building regulatory frameworks are focused on building practitioners rather than building products'.⁶⁴ Ai Group considered that the increased powers of the Queensland Building and Construction Commission established under the Queensland legislation would ensure the regulator is 'better able to address the current gaps with product surveillance, check testing and enforcement'.⁶⁵

61 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 21.

62 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 21.

63 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 2, p. 3.

64 Ai Group, *Submission 120*, p. 8.

65 Ai Group, *Submission 120*, p. 8.

Committee view

3.67 The committee is encouraged by the collaborative approach of the BMF and SOG, and supports the BMF's strategies to address non-conforming building products, but also notes concerns from stakeholders that progress has been slow. The committee is aware, however, that since the Grenfell Tower fire, issues around the non-compliant use of building products have shifted the focus away from addressing non-conforming building products.

3.68 In order to improve the confidence of industry stakeholders that progress is being made on non-compliant and non-conforming issues, the BMF should develop improved consultative mechanisms with industry stakeholders. The committee also believes the BMF should amend the terms of reference for the SOG and BRF to include annual reporting requirements on progress to address non-conforming building products to provide greater transparency and accountability.

Recommendation 1

3.69 The committee recommends that the Building Ministers' Forum develop improved consultative mechanisms with industry stakeholders. In addition, the Building Ministers' Forum should amend the terms of reference for the Senior Officers' Group and the Building Regulators Forum to include annual reporting requirements on progress to address non-conforming building products.

3.70 The committee commends the establishment of a 'one-stop-shop' national website as a single point of information for consumers and building product supply chain participants, and notes that the Australian Building Codes Board now performs this function.

3.71 The committee's steel report supported the inclusion of a reporting mechanism for non-conforming building products as part of the ABCB's one-stop-shop website in accordance with the recommendation from the SOG report. The committee noted, however, that the current reporting mechanisms require submitters to provide various forms of identifying information. The committee expressed the view that there should be an option for confidential reporting so that businesses are not accused of breaching contracts. As such, the report included a recommendation that the Australian Government develop a confidential reporting mechanism through which industry and other stakeholders can report non-conforming steel products.⁶⁶

3.72 The committee's 2016 interim report⁶⁷ noted the Ai Group's support for the Construction Product Alliance's call for the establishment of a confidential reporting system. Ai Group considered it should be a priority to assess the feasibility of establishing a confidential reporting system, such as the Confidential Reporting of

66 Senate Economics References Committee, *Australia's Steel Industry: forging ahead*, 1 December 2017, p. 52.

67 Senate Economics References Committee, *Interim report, Safety—'not a matter of good luck'*, 4 May 2016, p. 10.

Structural Safety (CROSS) that is operated in the UK, to facilitate the reporting of non-conforming building products.⁶⁸

3.73 The committee considers that a confidential reporting mechanism for non-conforming building products would enable stakeholders to raise concerns without fear of retribution.

Recommendation 2

3.74 The committee recommends that the Australian Government develop a confidential reporting mechanism through which industry and other stakeholders can report non-conforming building products.

3.75 The committee notes the progress on the SOG Report's recommendation to determine the feasibility of a mandatory third-party certification scheme for high-risk building products and a national register appears to have stalled, with the Shergold and Weir Report calling for the BMF to settle its position on the issue. The committee considers that settling this issue, including defining a high-risk product, should be a matter of priority.

3.76 The committee notes that its interim report on asbestos recommended mandatory product testing for imported products deemed to be high-risk of containing asbestos. The committee believes that, in determining the feasibility of mandatory third-party certification scheme for high-risk building products more broadly, the SOG should consider including requirements for importers—for example, products deemed to be high-risk of containing excessive levels of formaldehyde—prior to the importation of the goods, to conduct sampling and testing by a NATA accredited authority (or a NATA equivalent testing authority in a another country that is a signatory to a Mutual Recognition Arrangement).

3.77 The committee notes that the issue of non-conforming building products is not limited to Australia. As such, the committee believes there is value in the SOG examining the international approaches—including regulations and processes in the European Union—relating to certification and testing of high-risk products prior to import and determine if they can be suitably adapted to benefit and enhance Australian requirements.

Recommendation 3

3.78 The committee calls on the Building Ministers' Forum to expedite its consideration of a mandatory third-party certification scheme for high-risk building products and a national register for these products.

Recommendation 4

3.79 The committee recommends that where an importer intends to import goods that have been deemed high-risk, the Australian Government require the importer, prior to the importation of the goods, to conduct sampling and testing

68 Ai Group, Answers to questions on notice from a public hearing held in Canberra on 13 November 2015 received on 27 January 2016, p. 3.

by a NATA accredited authority (or a NATA equivalent testing authority in another country that is a signatory to a Mutual Recognition Arrangement).

Recommendation 5

3.80 The committee recommends that the Building Ministers' Forum, through the Senior Officers' Group, examine international approaches—including the European Union's regulations and processes—for testing of high-risk products prior to import and determine if they can be suitably adapted to benefit and enhance Australian requirements.

3.81 As previously noted in the committee's interim reports on asbestos and aluminium composite cladding, the committee continues to consider that responsibility for building compliance in general is currently weighted too heavily at the end of the supply chain and measures need to be put in place to address this. Consequently, the committee reiterates its recommendation that the BMF consider introducing nationally consistent measures to increase accountability across the entire supply chain.

3.82 The committee considers that the Queensland legislation goes some way to ensuring responsibility and accountability is spread more evenly across the supply chain from designers to manufacturers, importers, suppliers and installers. The committee supports the intent of the Queensland legislation and believes that it provides a model for best practice 'chain of responsibility' that should be adopted by other states and territories.

3.83 Evidence to this inquiry clearly showed that the level of penalties and the application of penalties are currently inadequate in providing effective deterrence of the importation and supply of non-conforming building products. The committee notes the willingness of industry to support surveillance and testing, but it is clear that the scope and level of penalties available to state building regulators requires action. The committee notes the Queensland legislation introduced additional penalties as an enforcement mechanism for the Queensland Building and Construction Commission and 'to ensure a credible level of deterrence for violations when a non-conforming building product is used in a building, supplied, imported, manufactured and/or designed'.⁶⁹

3.84 The committee also supports the introduction of increased regulator powers and due diligence requirements in the Queensland legislation.

3.85 The committee previously recommended that the other states and territories should include provisions such as those in the Queensland legislation which incorporate due diligence requirements for participants across the supply chain in relation to non-conforming building products.

69 Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Bill 2017, *Explanatory Notes*, p. 8.

Recommendation 6

3.86 The committee recommends that the Building Ministers' Forum give further consideration to introduce a nationally consistent approach that increases accountability for participants across the supply chain. Specifically, the committee recommends that other states and territories pass legislation similar to *Queensland's Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017*.

Chapter 4

Increasing compliance in the building industry

4.1 The Lacrosse apartment fire and Grenfell Tower fire highlighted the potential safety risks of non-compliance in the building and construction industry. The committee's interim report on cladding included a number of recommendations aimed at lifting professional standards in the building and construction industry in order to address issues involving non-compliant use of building products. This chapter revisits this area and examines the need for a national licensing scheme, the role of building surveyors, the need for onsite inspection during the construction process, making the National Construction Code (NCC) more user friendly, and making Australian Standards freely available.

Licensing and inspections

National licensing scheme

4.2 The committee's inquiry into insolvency in the Australian construction industry considered that 'an effective licensing regime is necessary to protect participants from both unscrupulous and hapless operators'.¹

4.3 The committee's interim report on aluminium composite cladding found that a national licensing scheme for all trades and professionals involved in the building and construction industry, including building surveyors, building inspectors, builders and project managers, would improve compliance and provide greater consumer protection and public safety outcomes. The committee considered that a national licensing scheme, including requirements for continuing professional development, would ensure that building practitioners have the necessary skills and knowledge to operate in the building industry's complex regulatory environment.²

4.4 The government response to the interim report on aluminium composite cladding noted that:

A consistent occupational licensing scheme across jurisdictions has been previously considered by the Council of Australian Governments (COAG). The Commonwealth moved away from national licensing in 2013 when COAG announced that occupational licensing would remain a state and territory matter which would be addressed through the Council for the Australian Federation. This decision followed extensive state-based consultation, after which the majority of states decided not to pursue the proposed National Occupational Licensing Scheme (NOLS) reform.

...

1 Senate Economics References Committee, *Insolvency in the Australian construction industry*, 3 December 2015, p. xxii.

2 Senate Economics References Committee, *Interim report: aluminium composite cladding*, 6 September 2017, p. 43.

The outcome of the BMF Assessment [the Shergold and Weir Report] will be to establish a national best practice model for compliance and enforcement for building and construction, to improve the compliance and safety of Australian buildings. As such, the findings of the BMF Assessment may inform the case for change, and potential options for government intervention.³

4.5 The Shergold and Weir Report also recommended a nationally consistent approach to the registration of certain categories of building practitioners and compulsory Continuing Professional Development, which includes mandatory hours/units dedicated to training on the NCC and the establishment of supervised training schemes.⁴

4.6 As such, the Shergold and Weir Report found:

Registration of practitioners is a regulatory mechanism for providing public accountability. Whilst all jurisdictions register building practitioners as part of their compliance and enforcement systems, the categories that are registered differ. This affects the mobility of participants and creates complexity in applying mutual recognition. More importantly, there are gaps in the accountability of practitioners with key responsibilities for compliance with the NCC across Australia.⁵

Recommendation 1

That each jurisdiction requires the registration of the following categories of building practitioners involved in the design, construction and maintenance of buildings:

- Builder
- Site or Project Manager
- Building Surveyor
- Building Inspector
- Architect
- Engineer
- Designer/Draftsperson
- Plumber

3 Australian Government response to the *Interim report: Aluminium composite cladding*, February 2018, pp.10–11.

4 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 5.

5 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 15.

- Fire Safety Practitioner⁶

4.7 With regard to the need for consistent requirements for registration, the Shergold and Weir Report found:

Currently, where the same category of practitioner is registered in two or more jurisdictions, there are often different requirements for registration. Nationally consistent training packages are limited. Each jurisdiction recognises different levels of qualification and experience when assessing applications for registration. This makes the operation of mutual recognition burdensome.⁷

Recommendation 2:

That each jurisdiction prescribes consistent requirements for the registration of building practitioners including:

- certificated training which includes compulsory training on the operation and use of the NCC as it applies to each category of registration;
- additional competency and experience requirements;
- where it is available, compulsory insurance in the form of professional indemnity and/or warranty insurance together with financial viability requirements where appropriate; and
- evidence of practitioner integrity, based on an assessment of fit-and-proper person requirements.⁸

4.8 The Shergold and Weir Report outlined the need for Continuing Professional Development:

Building practitioners operate in a dynamic environment. New products, technologies and practices are actively encouraged through the performance-based NCC which, itself, is amended every three years. The introduction of nationally consistent mandatory registration requirements provides a mechanism to ensure currency of competencies. Those already practising need to have up-to-date knowledge of the current edition of the NCC.⁹

6 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 15.

7 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 17.

8 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 17.

9 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 18.

Recommendation 3:

That each jurisdiction requires all practitioners to undertake compulsory Continuing Professional Development on the National Construction Code.¹⁰

Role of building surveyors

4.9 The committee's interim report on aluminium composite cladding noted evidence received concerning the role and independence of building surveyors in ensuring buildings are built in compliance with the NCC and the relevant Australian Standards. Since the early 1990s, state and local governments have progressively privatised once in-house building surveyor services. While some building surveyors are still employed by local governments, most functions are fully privatised. The committee noted that at the same time the role of building surveyors was privatised there was a shift to deregulation.¹¹

4.10 The Shergold and Weir Report recommended the establishment of supervised training schemes which provide better defined career paths for building surveyors (Recommendation 4). In addition, it made a number of recommendations intended to improve the integrity of building surveyors. These included minimum statutory requirements for the engagement, and role, of private building surveyors, a code of conduct with legislative status and enhanced supervisory powers and reporting obligations (Recommendations 9–11).¹²

On-site inspections

4.11 The committee's interim report on cladding found that there was a need for a nationally consistent approach to mandatory on-site inspections throughout the construction process. Evidence to the committee highlighted the need for oversight, independent from industry to provide assurance to the public that structures are built according to the agreed national standards. The committee also endorsed the inclusion of mandatory inspections by fire safety engineers and fire authorities to ensure buildings are compliant and public safety is upheld.¹³

4.12 The Shergold and Weir Report found that there are significant differences across jurisdictions in the number of inspections required and the notification stages. In addition, it considered that:

Increased requirements for inspections are necessary. Unfortunately, there are doubts about whether there are sufficient numbers of suitably qualified

10 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 18.

11 Senate Economics References Committee, *Interim report: aluminium composite cladding*, 6 September 2017, p. 43.

12 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 5.

13 Senate Economics References Committee, *Interim report: aluminium composite cladding*, 6 September 2017, p. 47.

persons to conduct them. Reservations have been expressed about the conflict of interest that arises when the private building surveyor who has certified the building documentation then inspects the building work. Some question whether the inspections will be thorough and whether surveyors will be willing to act if they discover non-compliant building works.

For Commercial buildings, many jurisdictions leave it to the building surveyor to determine what inspections are appropriate. This makes it difficult for regulators to know what level of oversight is occurring and whether it is adequate.¹⁴

4.13 As such, the Shergold and Weir Report recommended that each jurisdiction requires on-site inspections of building work at identified notification stages (Recommendation 8).¹⁵

Committee view

4.14 The committee believes the current system is broken and fragmented, with regulation and licensing spread over eight jurisdictions, and various regulators each having different requirements and standards for building practitioners.

4.15 The committee believes the work undertaken by building practitioners greatly affects building compliance, and as a result, the fire safety of Australian buildings. As such, the committee believes there should be consistent licensing arrangements across all jurisdictions.

4.16 The committee's interim report on aluminium composite cladding concluded that a national licensing scheme for all trades and professionals involved in the building and construction industry including building surveyors, building inspectors, builders and project managers, would improve compliance and provide greater consumer protection and public safety outcomes.

4.17 The committee's view has not changed and it believes further consideration be given to developing a national licensing authority to oversee the development of a national licensing policy and administration of such a licensing scheme.

4.18 The committee is encouraged that the Shergold and Weir Report confirms the evidence received by the committee as well as its finding that compliance and enforcement systems have not been adequate to prevent these problems from emerging and need to change as a matter of priority.

4.19 The committee notes that the recommendations of the Shergold and Weir Report support the committee's position on the need for a national licensing scheme and that the BMF is considering Recommendations 1 and 2 as part of its initial Implementation Plan for reform.

14 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 32.

15 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 33.

4.20 The committee reiterates the need for the government to prioritise the establishment of a national licensing scheme as outlined in the committee's interim report on aluminium composite cladding.

Recommendation 7

4.21 The committee recommends that the Australian Government work with state and territory governments to establish a national licensing scheme, with requirements for continued professional development for all building practitioners.

4.22 As noted in Chapter 1, the BMF is developing an Implementation Plan for reform, incorporating feedback from industry stakeholders, for consideration at the BMF's next meeting in December 2018. The initial Implementation Plan will focus on Recommendations 9 to 11 (which relate to the integrity of private building surveyors), with further consideration of Recommendations 1 and 2 (relating to nationally consistent registration of building practitioners) and Recommendation 13 (relating to documentation provided by design practitioners).¹⁶

4.23 The committee is encouraged that the Shergold and Weir Report confirms the evidence received by the committee in relation to the role of building surveyors and on-site inspections, issues that were raised in the interim report on cladding.

4.24 The committee gives in principle support to the following recommendations from the Shergold and Weir Report:

- Improve collaboration, including between state government bodies, local governments and private building surveyors in order to minimise duplication, establish clear lines of responsibility and improve information sharing (Recommendation 5).¹⁷
- Establish a more proactive strategy for the regulation of Commercial buildings by ensuring that 'each jurisdiction makes public its audit strategy for regulatory oversight of the construction of Commercial buildings, with annual reporting on audit findings and outcomes' (Recommendation 7).¹⁸
- Each jurisdiction establishes a supervised training scheme which provides a defined pathway for becoming a registered building surveyor in order to

16 Building Ministers' Forum, *10 August 2018—Communiqué*, <https://www.industry.gov.au/data-and-publications/building-ministers-forum-communiques> (accessed 1 November 2018).

17 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 19.

18 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 21.

ensure there is an adequate supply of building surveyors to meet future needs (Recommendation 4).¹⁹

- Ensure the integrity and independence of private building surveyors by recommending each jurisdiction; establish minimum statutory controls to mitigate conflicts of interest and increase transparency of the engagement and responsibilities of private building surveyors; develop codes of conduct for building surveyors; and provide private building surveyors with enhanced supervisory powers and mandatory reporting obligations (Recommendations 9, 10 and 11).²⁰
- The committee is encouraged by the BMF's commitment to developing an implementation plan for reform, as noted above, and welcomes the recommendation in the Shergold and Weir Report that each jurisdiction report annually on progress of the implementation of the report's recommendations (Recommendation 24).²¹

National Construction Code

Out-of-cycle amendment to the National Construction Code

4.25 Following the Grenfell Tower fire in London, in June 2017, the BMF directed the ABCB to expedite the implementation of a comprehensive package of measures to prevent non-compliant use of wall cladding on high-rise buildings. In order to achieve this, an out-of-cycle amendment to Volume One of the 2016 edition of the NCC was released (waiting until the release of NCC 2019), which came into effect from 12 March 2018.

4.26 The ABCB also published an updated *Fire Performance of External Walls and Cladding Advisory Note* (to reflect the amended provisions), and a new *Evidence of Suitability Handbook*.

4.27 In addition, on 6 October 2017, the BMF agreed that all Ministers will use their available laws and powers to prevent the use of aluminium composite panels (ACPs) with a polyethylene (PE) core on class 2, 3, or 9 buildings of two or more storeys, and class 5, 6, 7 or 8 of three or more storeys, until it can be demonstrated that manufacturers, importers and installers, working in collaboration with building practitioners, are complying with:

19 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 19.

20 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, pp. 24–26.

21 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 38.

- the new fire testing standard for external wall cladding products (AS 5113:2016); and
- a newly established system of permanent labelling on cladding products to prevent product substitution.²²

4.28 To ensure ACP products are supplied and used for the purpose for which they are designed, the BMF agreed to address inappropriate advertising and labelling of polyethylene (PE) aluminium composite cladding utilising available laws and powers, and to ask the Legislative and Governance Forum on Consumer Affairs (CAF) to create a national information standard for ACP products.²³

4.29 The SOG is consulting with industry on possible options for a new system of permanent labelling for cladding products and a discussion paper was released in June 2018.²⁴

Guidance material in relation to support the National Construction Code

4.30 A number of submissions to the inquiry called for the development of guidance material on how to meet the evidence of suitability requirements under the NCC. For example, Master Builders Australia (MBA) submitted:

There is limited guidance available to local manufacturers as to when they are required to comply with the NCC and what evidence should be supplied to the market.²⁵

4.31 The Housing Industry Association (HIA) advised the committee that since it made its original submission to the inquiry 'some good work has been done to revise and improve the NCC product evidence requirements, which included enhanced evidence requirements'.²⁶ The ABCB has been working since late 2016 to implement a comprehensive package of measures which included enhancing evidence of suitability provisions and developing a new supporting handbook to complement them. HIA further explained:

The ABCB recently produced an 'evidence of suitability/product assurance handbook' based on a similar publication by the New Zealand government. This handbook contains a product assurance framework and introduces the use of a risk matrix that looks at likelihood of product failure and

22 Department of Industry, Innovation and Science, *Building Ministers' Forum—6 October 2017—Communiqué*, https://www.industry.gov.au/sites/default/files/July%202018/document/extra/building_ministers_forum_communique_-_october-2017.pdf (accessed 1 November 2018).

23 Australian Government response to the *Interim report: Aluminium composite cladding*, February 2018, p. 7.

24 Department of Industry, Innovation and Science, Building Ministers' Forum sub-groups, <https://www.industry.gov.au/regulation-and-standards/building-ministers-forum/building-ministers-forum-sub-groups> (accessed 1 November 2018).

25 Master Builders Australia, *Submission 125*, p. 26.

26 Housing Industry Association, answers to questions on notice, p. 2 (received 14 August 2018).

consequence of failure. Where there is a high likelihood of failure and/or consequence of failure is potentially significant it suggests enhanced product evidence requirements.²⁷

4.32 The government response to the interim report on aluminium composite cladding also noted that the ABCB is 'simplifying the design and language of the NCC to make it easier to understand by a wider audience'.²⁸

Committee view

4.33 The committee supports the work of the ABCB to make the NCC more accessible to a wider audience, including the development of additional guidance material such as the *Evidence of Suitability Handbook*, and encourages the ABCB to publish additional guidance where specific issues arise in relation to non-compliance with the NCC.

Availability of Australian Standards

4.34 The inquiry received evidence indicating that the cost of purchasing Australian Standards may deter companies from ensuring their products comply with relevant standards. In the committee's interim report on aluminium composite cladding, it recommended 'that the Commonwealth government consider making all Australian Standards and codes freely available'.²⁹

4.35 The government response to the committee's interim reported stated:

Ensuring reasonable public access to Australian Standards is fundamental to the reliability of products and services in the economy. Improving access to standards requires the support of Standards Australia and SAI Global in facilitating greater flexibility and cost options available to government.

In July 2017, the COAG Industry and Skills Council (CISC) established a Standards Accessibility Working Group tasked with investigating options for improving standards accessibility. The working group will report back to the CISC by 31 January 2018.³⁰

4.36 The COAG Industry and Skills Council is comprised of ministers from the Commonwealth, states and territories with portfolio responsibility for industry and skills in their jurisdiction. The Communiqué following its meeting on 20 April 2018 stated:

Standards are designed to help ensure products, services and systems are safe, reliable and consistent. Following a detailed investigation into access to Australian Standards, ministers considered how to make standards,

27 Housing Industry Association, answers to questions on notice, p. 2 (received 14 August 2018).

28 Australian Government response to the *Interim report: Aluminium composite cladding*, February 2018, p. 12.

29 Senate Economics References Committee, *Non-conforming building products interim report: Aluminium composite cladding*, September 2017, pp. 49–51.

30 Australian Government response to the *Interim report: Aluminium composite cladding*, February 2018, p.12.

including those referenced in legislation, more accessible. A more coordinated approach to collecting information about standards referenced in legislation and to purchasing standards information across governments is key to providing better solutions for community and businesses who rely on this information. Ministers agreed that recommendations on solutions to the longstanding issue of access to and charges for standards be progressed as a matter of priority, out of session, prior to the next meeting.³¹

4.37 At its most recent meeting on 3 October 2018, ministers 'considered options to progress towards a more open and cost effective approach to accessing standards...This includes continuing to support public access to standards for non-commercial users through national and state libraries'.³²

4.38 In a response to questions on notice, the Department of Industry, Innovation and Science noted:

The development of standards is not free. Industry, governments and others volunteer their time to the standards development process. Standards Australia recoups part of their costs for facilitating this development through royalties earned on the sale of standards. Free access to standards for all users would require government/s to seek to enter into an agreement with the standards distributor and fund the development and delivery of standards to the community. At present there are no plans for government/s to fully fund these costs but Governments are exploring ways to provide more universal access for consumers for non-commercial purposes.³³

Committee view

4.39 The committee maintains its view that building practitioners should not be expected to pay unreasonable sums of money to access Australian Standards which are required to ensure they comply with the NCC. In the committee's view, making Australian Standards freely available would have a significant positive impact on building compliance. More importantly, it will reduce the overall cost of compliance and insurance and, most significantly, it will reduce the cost and impact on future state and territory emergency, fire and medical services.

Recommendation 8

4.40 The committee strongly recommends that the Australian Government consider making all Australian Standards freely available.

31 COAG Industry and Skills Council, *Communiqué for the COAG Industry and Skills Council*, 20 April 2018, p. 2.

32 COAG Industry and Skills Council, *Communiqué for the COAG Industry and Skills Council*, 3 October 2018, p. 1.

33 Department of Industry, Innovation and Science, answers to questions on notice, p. 1 (received 10 August 2018).

Chapter 5

Other measures to address non-conforming building products

5.1 This chapter considers ways to make information regarding non-conforming building products more available and explores various deterrent options. This chapter examines the development of national databases, Commonwealth funded building work and the enforcement of the *Code for the Tendering and Performance of Building Work 2016*, and mandatory recall insurance for high-risk products. The last section of this chapter discusses some of the issues arising from the committee's interim report on asbestos.

National databases

5.2 The committee received evidence from a range of submitters that the development of a consolidated national database of conforming and non-conforming products could provide a useful tool to assist industry participants to address the issue of non-conforming building products. Such a national database would go further than the one-stop-shop website which has already been established (discussed in Chapter 3), which provides general information on non-conforming building products.

5.3 Master Builders Australia argued for the development of an information portal that consolidates existing information about certified products and their appropriate use:

There is a common lack of guidance information on how to use a building product in practice and no information about what is the best evidence or way to educate a consumer as to how a product should be used. Were this information made mandatory and done so in a way that is produced consistently, industry participants would be better placed to address NCPs.¹

5.4 The National Electrical and Communications Association (NECA) also supported the development of a national database, suggesting:

Given concerns relating to the authenticity and accuracy of test certificates, NECA believes the database use could be extended to include the verification of test certificates to maintain an imported product's proof of compliance. Test certificates are generally accepted by importers as proof of a product's legitimacy but in certain cases, certificates have been found to be illegitimate or counterfeit. In order to enhance this process, verification could be based off a list of legitimate, accredited test labs that are subject to an audit regime based upon track record and level of risk.²

5.5 SAI Global noted that it conducts over 100 000 global audits annually and has experience in supply chain control, auditing and assessing against standards across a

1 Master Builders Australia, *Submission 125*, p. 26.

2 National Electrical and Communications Association (NECA), *Submission 60*, p. 7.

large number of industries. In its view, the enforcement of the standards and data collection across the supply chain is not well managed and, where registers are kept of certification, they are isolated and difficult for consumers to find and use. As such, SAI Global expressed the view that central management of supply chains is necessary to ensure compliance. It noted:

The sheer number of products and the lack of a single database to be able to check batches / shipments leaves the process and subsequent product open to Economically Motivated Adulteration (EMA) where substitution occurs either in the manufacturing process or in the supply chain. The product verification can be further inhibited by fraudulent documentation.³

5.6 SAI Global considered the centralised database should be self-funded by industry participants, noting:

Economic benefits to the suppliers result from finding non-conforming product earlier in the supply chain, preferably prior to shipment from the manufacturing point thus lowering economic risk and product release.⁴

5.7 The Housing Industry Association (HIA) indicated it had moved on from plans to develop a national database as it had not received government funding for its development:

There are a number of other groups that have undertaken work in the register space. Some of those are private; some of those are government based. NATSPEC⁵ is a group that has produced a register. What we have seen so far have been very simple attempts at collecting information about a product, putting that in one space and allowing someone to find that information. What no-one has done yet is establish a register that says whether a product is good or not good, and it's a challenging thing. So without support for HIA to do that, and we always knew that was a significant task, we have now looked to see if there are other ways to solve that problem and we're not actively looking to develop a register.⁶

5.8 The Department of Industry, Innovation and Science noted that there are a number of industry led initiatives which provide tools and resources; however, the department itself is not involved in the development of a national register or database to facilitate people getting access to accurate information about products.⁷

3 SAI Global, *Submission 6*, p. 2.

4 SAI Global, *Submission 6*, p. 3.

5 NATSPEC is a national not-for-profit organisation, owned by government and industry objective is to improve the construction quality and productivity of the built environment through leadership of information.

6 Ms Kristin Brookfield, Chief Executive, Industry Policy, Housing Industry Association, *Committee Hansard*, 2 August 2018, p. 17.

7 Mr Rodney Harris, Acting Manager, Building Industry Section, *Department of Industry, Innovation and Science*, *Committee Hansard*, 2 August 2018, p. 29.

Committee view

5.9 The committee agrees with views in submissions that the development of a consolidated national database of conforming and non-conforming products could provide a useful tool to assist industry participants to address the issue of non-conforming building products. The committee believes the government should consult with industry stakeholders to determine the feasibility of developing a national database of conforming and non-conforming products.

Recommendation 9

5.10 The committee recommends that the Australian Government consult with industry stakeholders to determine the feasibility of developing a national database of conforming and non-conforming products.

5.11 With regard to compliance, the committee notes that the Shergold and Weir Report recommended that 'each jurisdiction establishes a building information database that provides a centralised source of building design and construction documentation' (Recommendation 12).⁸ This recommendation is aimed at improving access to documentation to enable information sharing and data analysis to inform regulatory decision-making. The Shergold and Weir Report suggested the following information should be collected:

- the name of the appointed building surveyor or issuing authority;
- a description of the proposed building work;
- details of all practitioners engaged;
- details of design certificates relied on and any information about third party review;
- details of any performance solutions and any information about third party review;
- inspection records;
- enforcement actions taken;
- final approval information, including details of certificates relied on and fire safety maintenance requirements and any design assumptions that must be maintained or considered in future changes to the building; and
- details of compliance inspections/certificates issued in relation to ongoing maintenance obligations through the life of the building.⁹

8 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 27.

9 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, pp. 27–28.

5.12 The committee gives in-principle support to the collection of detailed building construction and maintenance documentation for buildings to enable the audit of buildings in the instance of another incident of widespread use of non-compliant building products, such as has occurred with aluminium composite cladding.

Recommendation 10

5.13 The committee gives in-principle support to Recommendation 12 of the Shergold and Weir Report '[t]hat each jurisdiction establishes a building information database that provides a centralised source of building design and construction documentation' so regulators are better placed to identify where non-compliant building products have been installed.

Code for the Tendering and Performance of Building Work 2016

5.14 The *Code for the Tendering and Performance of Building Work 2016* (the Code) commenced on 2 December 2016.

5.15 The Code contains a range of requirements for code covered entities. The Code also places obligations on funding entities both during the procurement of Commonwealth funded building work and during the conduct of that work.

5.16 Building contractors or building industry participants, who are subcontracting Commonwealth funded building work are responsible for ensuring all expressions of interest, tenders and contractual documentation are consistent with the requirements of the Code. All subcontractors invited to express interest in, or tender for, Commonwealth funded building work must be informed of the application of the Code to the work.

5.17 The report of the committee's inquiry into the future of Australia's steel industry noted that the *Code for the Tendering and Performance of Building Work 2016* requires Commonwealth funding entities to only enter into building contracts with preferred tenderers where code-covered businesses can prove that their products comply with Australian Standards.¹⁰ It also noted that the 2017 Commonwealth Procurement Rules also require, where contracts are above a certain threshold, that if an Australian Standard exists for particular goods or services being procured, 'tender responses **must** demonstrate the capability to meet the Australian standard, and contracts **must** contain evidence of the applicable standards'.¹¹ The committee commented that:

The Code is an important instrument for government procurement, but the question of who holds responsibility for the enforcement of compliance with the Code is yet to be determined.¹²

10 Senate Economics References Committee, *Australia's Steel Industry: forging ahead*, 1 December 2017, p. 39.

11 Department of Finance, *Commonwealth Procurement Rules*, 1 March 2017, clause 10.10 (emphasis in original).

12 Senate Economics References Committee, *Australia's Steel Industry: forging ahead*, 1 December 2017, p. 57.

5.18 One of the key roles of the Australian Building and Construction Commission (ABCC) is to monitor the Code. Ms Cathy Cato from the ABCC noted that the Code is the only area of the ABCC's jurisdiction that relates to Australian Standard building products:

The code places requirements on funding entities who are procuring Commonwealth funded building work. Two of the requirements relate to the use of Australian standard building materials and products. Firstly, before entering into a contract, a funding entity must collect information from the preferred tenderer about whether the building materials to be used to undertake the building work comply with relevant Australian standards published by or on behalf of Standards Australia. Secondly, a funding entity must only enter into a contract with a code covered entity that only uses products in building work that comply with the relevant Australian standards published by or on behalf of Standards Australia.

To assist funding entities to comply with these code requirements, the ABCC has published model clauses that funding entities may include in tender and contract documentation when procuring Commonwealth funded building work. If the funding entity imposes the requirements and a contractor fails to use Australian standard building materials, the contractor could be in breach of its contract with the funding entity. The code also provides that, if satisfied a funding entity has not complied with the code, the ABCC commissioner may refer the matter or make a complaint to the secretary of the Department of Finance for investigation or further action.¹³

5.19 The role of the ABCC in relation to the Code is limited to making sure:

...that funding entities put these model clauses into their tenders and their contracts so that they are collecting the information that they should be so they can assess during that tender stage whether or not companies will use Australian standard building materials. Our proactive activities to date show that those model clauses are being used across the board and also that the contracts themselves contain that requirement.¹⁴

Committee view

5.20 While the compliance framework exists for Commonwealth funded building work, there appears to be limited recourse to penalise companies that do not comply with the Code.

5.21 The committee noted in its interim report on cladding that it did not consider that loss of accreditation to conduct Commonwealth funded building work to be a strong enough penalty for non-compliance with the NCC. The committee is of the view that a stronger penalties regime should be imposed.

13 Ms Cathy Cato, Deputy Commissioner, Operations and Code, Australian Building and Construction Commission, *Committee Hansard*, 2 August 2018, p. 10.

14 Ms Cathy Cato, Deputy Commissioner, Operations and Code, Australian Building and Construction Commission, *Committee Hansard*, 2 August 2018, p. 10.

Recommendation 11

5.22 The committee recommends the Australian Government consider imposing a penalties regime for non-compliance with the National Construction Code such as revocation of accreditation or a ban from tendering for Commonwealth funded construction work and substantial financial penalties.

Mandatory recall insurance for high-risk building products

5.23 The committee's interim report on asbestos noted concerns raised by stakeholders about the potential impacts of product safety recalls on the public and industry, and expressed the view that consideration should be given to introducing mandatory recall insurance to reduce the economic impact of such recalls. Concerns raised by stakeholders were not limited to recalls in relation to asbestos containing products, but product recalls for non-conforming building products more generally.

5.24 Master Electricians Australia (MEA) and the Furniture Cabinets and Joinery Alliance noted that in an ideal world, manufacturers, importers and suppliers of faulty electrical products would have a process in place to fund the removal and replacement of any faulty electrical equipment¹⁵. However, MEA noted:

Unfortunately, this is not always the case with companies often going into liquidation after a product they have manufactured, imported or supplied is identified as being unsafe.

Mandatory recall insurance would give security to consumers that any faulty or non-compliant electrical products purchased are removed and replaced without delay.¹⁶

5.25 NECA outlined how non-mandatory recall insurance might not work to protect consumers:

Whilst varying forms of product recall insurance exist within the electrical products supply chain within Australia, NECA understands that its take-up is often by the more reputable businesses within the sector. The uptake of recall insurance by those distributors/importers that arguably require it most is low. This was all too evident in the Infinity Cable case.¹⁷

5.26 The Queensland Proposal, an alliance of industry groups representing the Queensland building and construction industry, argued that more needs to be done to minimise the impact of a product safety recall on the public and industry. It recommended the government consider introducing:

Mandatory recall insurance where manufacturers, importers and suppliers of high risk products are required to have a process in place to fund the

15 Master Electricians Australia, *Submission 4*, p. 3; Furniture Cabinets and Joinery Alliance, *Submission 121*, p. 14.

16 Master Electricians Australia, *Submission 4*, p. 3.

17 National Electrical and Communications Association (NECA), *Submission 60*, p. 7.

removal and replacement of any product found to be faulty and/or not compliant to Australian Standards.¹⁸

Committee view

The committee acknowledges concerns raised by stakeholders about the potential impacts of product safety recalls on the public and industry, and is of the view that consideration should be given to introducing mandatory recall insurance to reduce the economic impact of such recalls. As noted in Chapter 3, the BMF is determining the feasibility of mandatory certification for high-risk building products. The committee believes that where building products are deemed to be high-risk, consideration should be given to requiring importers and suppliers to hold mandatory recall insurance.

Recommendation 12

5.27 The committee recommends that the Australian Government consider the merits of requiring manufacturers, importers and suppliers to hold mandatory recall insurance for high-risk building products.

Building products containing asbestos

Removal and remediation of asbestos

5.28 The committee observed in its interim report that the removal of asbestos can be expensive, time consuming and dangerous; and while the aim of Australia's regulatory framework is to stop asbestos at the border, recent incidents highlight the reality that asbestos containing materials remain an ever-present threat to Australians.

5.29 The committee believed that Australia's work health and safety (WHS) legislation needs to be strengthened to specifically provide that, where illegally imported asbestos is discovered, it is mandatory that it be removed and disposed of, providing it is safe to do so, and that the costs of any such removal and disposal will be borne by the importer of the illegal asbestos. In addition, the committee considered that, in cases where illegally imported asbestos is not discovered during installation, mechanisms should be developed to clearly establish who has legal responsibility for remediation of sites. The committee was particularly concerned about cases where, at the time asbestos is discovered, the companies involved in the illegal importation of the asbestos, supply or fabrication have ceased to exist.¹⁹

5.30 As such, the committee recommended:

...that Commonwealth, state and territory governments work together to develop nationally consistent legal obligations to require the removal and/or disposal of illegally imported asbestos (if it is safe to do so following consideration of the hazards likely to be faced by the workers undertaking

18 Queensland Proposal, *Submission 102*, p. 4.

19 Senate Economics References Committee, *Interim report: protecting Australians from the threat of asbestos*, 22 November 2017, p. 60.

the work) and to make importers responsible for the cost of such removal and/or disposal of asbestos.²⁰

5.31 This recommendation was supported in the Australian Government response to the interim report:

Under the model WHS laws, all jurisdictional regulators have powers to deal with the removal and disposal of asbestos that has been unlawfully imported and then used in a workplace. SWA [Safe Work Australia] is currently reviewing these powers to determine whether they need to be strengthened. The issue is also being considered as part of the independent review of the model WHS laws which is due to report by the end of the year.

Should any issues with regulators' powers to deal with removal and disposal of asbestos be identified, amendments to the model WHS laws will be progressed through SWA's usual governance processes including consideration by Safe Work Australia Members and WHS ministers.²¹

Establishing a national portal for information on asbestos containing products

5.32 As noted in Chapter 3, following the recommendations in the SOG Report, the Commonwealth has launched a one-stop-shop, non-conforming building products webpage providing information on non-conforming building products, key links to the non-conforming building product webpages of each state and territory building jurisdiction, and a mechanism for industry and consumers to report suspected non-conforming building products.

5.33 With regard to the illegal importation of non-conforming building products containing asbestos, the committee noted in its interim report that the information that is currently available online regarding this risk can be difficult to locate and recommended that the Asbestos Safety and Eradication Agency develop a one-stop-shop website to provide a single point for participants across the supply chain to access information regarding the illegal importation of asbestos.²²

5.34 The committee is pleased to note that the government supported this recommendation. The government response to the interim report advised:

The Government supports measures to improve public access to information about asbestos. ASEA updated its website on 2 February 2018 and provides access to a wide range of information about asbestos, including links to relevant agencies such as the Department of Home Affairs for more detailed advice. ASEA's website provides:

20 Senate Economics References Committee, *Interim report: protecting Australians from the threat of asbestos*, 22 November 2017, p. 60.

21 Australian Government response to the *Interim report: Protecting Australians from the threat of asbestos*, August 2018, p. 14.

22 Senate Economics References Committee, *Interim report: protecting Australians from the threat of asbestos*, 22 November 2017, p. 35.

- comprehensive information about Australia's ban on importing asbestos, including a list of goods that are at risk of containing asbestos
- information on who to contact for asbestos issues, including links to state and territory WHS and environmental regulators
- consumer protection information including safety alerts and recall notices
- identification and disposal information including links to relevant government agencies in each state/territory
- information for homeowners
- general asbestos information including asbestos related research.

ASEA will continue to refine its website to ensure it provides up-to-date links to comprehensive information that meets the needs of the public.²³

Offences and penalties

5.35 The committee's interim report on asbestos noted evidence received from a range of submitters that there is a need for a greater focus on enforcement, including prosecution and penalties to effectively deter the illegal importation of asbestos. While the committee acknowledged the challenges of enforcing the existing importation of asbestos offence, it held the view that a review of the relevant provisions of the *Customs Act 1901* (and other relevant legislation) should be conducted. In particular, the committee expressed concern that the 'mistake of fact' defence is not operating as intended and recommended that the current threshold required to make out the 'mistake of fact' defence should be increased.

3.86 The committee also expressed concerns regarding by the apparent lack of enforcement of the importation ban since it came into force on 31 December 2003, and considers that there needs to be a greater focus on prosecutions for importing asbestos. The committee recommended that reviewing the quantum of penalties would have a significant deterrent effect on the illegal importation of asbestos.²⁴

5.36 The government response to the interim report noted that the Department of Home Affairs is 'preparing advice to support the review on changes to the offences and penalties for the unlawful import/export of asbestos, detailed in customs legislation, including in relation to the 'mistake of fact' defence'.²⁵

23 Australian Government response to the *Interim report: Protecting Australians from the threat of asbestos*, August 2018, p. 10.

24 Senate Economics References Committee, *Interim report: protecting Australians from the threat of asbestos*, 22 November 2017, p. 46.

25 Australian Government response to the *Interim report: Protecting Australians from the threat of asbestos*, August 2018, p. 11.

5.37 At a public hearing on 2 August 2018, Mr Joshua Hutton, from the Department of Home Affairs, noted that while the review process was ongoing, he was able to provide an update to the committee.

What we've actually received approval for from government is to list asbestos as a tier 1 good under the Customs Regulations. That means that, in a prosecutorial sense, in a legal sense, imprisonment of up to five years is now on the cards as a penalty for illegal importation of asbestos. As part of that process, we looked at things like the mistake of fact offence and absolute liability versus strict liability. For these types of offences, the strict liability and the presence of the mistake of fact defence is quite a core legal principle and so was going to be a hard threshold to get over. However, changing it to a tier 1 good, as listed under the Customs regs, does take away a small aspect of the strict liability and changes it to an absolute liability offence. However, the mistake of fact defence is still present and able to be used.²⁶

5.38 Mr Hutton stated further, 'the fact that it puts imprisonment, a term of up to five years, on the table for the penalty. In terms of the more egregious offenders and repeat offenders, we felt that that was an appropriate penalty to be used as a deterrent'.²⁷ Having received approval for this change, the next step for the department is the process of amending the regulations to reflect the change.²⁸

Committee view

5.39 The committee is encouraged by the Australian Government's support for the committee's recommendation to develop nationally consistent legal obligations for removal and remediation where asbestos containing products have been installed in buildings. The committee welcomes the review these powers by Safe Work Australia and the independent review of the model WHS laws. The committee looks forward to seeing the findings of these reviews.

5.40 The committee is also pleased that the government has actioned the recommendation to develop a one-stop-shop information portal to provide single point for participants across the supply chain to access information regarding the illegal importation of asbestos.

5.41 The committee supports the listing of asbestos as a tier 1 good under the Customs Regulations, and agrees that a term of up to five years imprisonment for more egregious offenders and repeat offenders is an appropriate penalty to be used as a deterrent. However, the committee notes that this change does not remove the 'mistake of fact' defence, which is still present and able to be used. The committee remains concerned that the 'mistake of fact' defence is not operating as intended and

26 Mr Joshua Hutton, Acting Assistant Secretary, Customs and Border Revenue Branch, Department of Home Affairs, *Committee Hansard*, 2 August 2018, p. 22.

27 Mr Joshua Hutton, Acting Assistant Secretary, Customs and Border Revenue Branch, Department of Home Affairs, *Committee Hansard*, 2 August 2018, p. 22.

28 Mr Joshua Hutton, Acting Assistant Secretary, Customs and Border Revenue Branch, Department of Home Affairs, *Committee Hansard*, 2 August 2018, p. 22.

reiterates its recommendation from the interim report on aluminium composite cladding.

Recommendation 13

5.42 The committee recommends that the Australian Government review the *Customs Act 1901* (and other relevant legislation) to address the challenges of enforcing the existing importation of asbestos offence, with the aim to close loopholes and improve the capacity of prosecutors to obtain convictions against entities and individuals importing asbestos. This review should include consideration of increasing the threshold required to use 'mistake of fact' as a legal defence.

Senator Chris Ketter
Chair

Coalition Senators' Additional Comments

General comments

1.1 Coalition Senators are in firm agreement with the committee's view that 'confidence in the materials we use to build our domestic, commercial and public buildings is of paramount importance to us all'.

1.2 Coalition Senators note that the government has been working consistently to stamp out the use of non-conforming building products.

Building Minister's Forum (Recommendations 1, 3, 5, 6 and 10)

1.3 Coalition Senators note that the Australian Government does not have legislative or regulatory power in relation to buildings; however, the government does have an important role in leading collaboration across jurisdictions through the Building Ministers' Forum (BMF).

1.4 The BMF is working collaboratively to implement a national best practice model for compliance and enforcement consistent with the recommendations of the Building Confidence Report.

1.5 The initial focus will be on reforms to the integrity and transparency of the building certification processes. The BMF will also be exploring a consistent approach to the registration and training of practitioners, and the responsibilities of design practitioners.

1.6 Coalition Senators note that the Australian Government does not have the power to impose penalties, as the regulatory framework governing the built environment relies on the constitutional authority of the state and territory governments.

1.7 Coalition Senators stress that, given the seriousness of the possible implications for safety, state and territory governments should carefully consider the enforcement actions they have in place, including penalty regimes.

1.8 Coalition Senators note that the inappropriate use of combustible cladding is a symptom of a broader issue of non-compliance with state and territory regulatory frameworks that is undermining the effective implementation of the National Construction Code (NCC).

1.9 Coalition Senators commend the Government for recognizing the widespread non-compliance with the NCC, and consequently for providing advice to the BMF to commission Professor Peter Shergold and Ms Bronwyn Weir to undertake assessment of the compliance and enforcement problems within the building system. The BMF released their final report, *'Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia'*, on 27 April 2018. The BMF has agreed to develop an

implementation plan for national best practice model for compliance and enforcement, in response to the recommendations of the Building Confidence Report.

Penalties regime (Recommendation 11)

1.10 Coalition Senators wish to stress that, as mentioned before, states and territories have responsibility for the built environment, including regulation of products and building materials in accordance with the NCC.

1.11 However, Coalition Senators note that the Federal Safety Commissioner made compliance with the NCC a condition of accreditation under the Australian Government Work Health and Safety Accreditation Scheme in January 2017.

1.12 Coalition Senators wish to highlight that the Federal Safety Commissioner is currently working with state and territory governments and consulting with key industry stakeholders on a framework to implement this function and undertake audit activities across the accredited companies to foster a strong culture of compliance across industry through education and promotion of preventative management systems.

Enforcement of existing importation of asbestos offence (Recommendation 13)

1.13 Coalition Senators wish to draw attention to the government's strong record on taking action to prevent Australians from the scourge of asbestos. Importation of all forms of asbestos was made illegal by the Coalition Government as of 31 December 2003. Border offences relating to asbestos can attract significant fines up to \$210,000 for individuals, \$1.05 million for a body corporate, or three times the value of the goods—whichever is greater. This ban supports the equally strict workplace ban on asbestos, which was also introduced nationally by the Coalition on 31 December 2003. Here, under the model work health and safety laws, the most serious offences are punishable by imprisonment and substantial penalties.

1.14 Coalition Senators further draw attention to the announcement on 30 November 2018 by the Hon. Kelly O'Dwyer, Minister for Jobs and Industrial Relations, and Senator the Hon. Linda Reynolds CSC, Assistant Minister for Home Affairs, that the government will consult shortly on reforms to further strengthen the penalties associated with the unlawful importation of asbestos by increasing penalties, simplifying classification of asbestos materials, and helping to protect the community from illegal importation of asbestos materials into the future. These reforms are further evidence of the Government's commitment to keeping Australia's asbestos border control management processes secure.

Appendix 1

Submissions and additional information

Submissions (44th Parliament)

- 1 Australasian Procurement and Construction Council Inc.
- 2 Product Presence Pty Limited
- 3 Mr Mark Whitby
- 4 Master Electricians Australia
- 5 Australian Window Association
- 6 SAI Global
- 7 Integrity Compliance Solutions
- 8 Plumbing Products Industry Group Inc
- 9 Nepean Building & Infrastructure
- 10 Asbestos Safety and Eradication Agency
- 11 Vinyl Council of Australia
- 12 Engineered Wood Products Association of Australasia
- 13 Commonwealth Scientific and Industrial Research Organisation (CSIRO)
- 14 Electrical Trades Union
- 15 Australasian Certification Authority for Reinforcing and Structural Steels Ltd (ACRS)
- 16 Australian Institute of Building
- 17 Insulation Australasia
- 18 Bureau of Steel Manufacturers of Australia (BOSMA)
- 19 Australian Steel Institute
- 20 Queensland Alliance
- 21 CplusC Architectural Workshop
- 22 Metropolitan Fire and Emergency Services Board
- 23 Fairview Architectural
- 24 Australian Glass and Glazing Association
- 25 Australian Institute of Building Surveyors
- 26 Expanded Polystyrene Australia
- 27 Australasian Fire and Emergency Service Authorities Council (AFAC)

- 28 Australian Cablemakers Association
- 29 Snap Fire Systems
- 30 Housing Industry Association
- 31 Fire Protection Association Australia
- 32 Lighting Council Australia
- 33 Construction Product Alliance
- 34 Office of the NSW Small Business Commissioner
- 35 Master Builders Australia
- 36 Insulation Council of Australia and New Zealand (ICANZ)
- 37 Dr Peter Haberecht
- 38 Unions NSW
- 39 Australian Competition & Consumer Commission (ACCC)
- 40 Ms Fiona O'Hehir
- 41 Arrium Steel
- 42 Australian Forest Products Association
- 43 Department of Industry and Science
- 44 Steel Reinforcement Institute of Australia (SRIA)
- 45 Standards Australia
- 46 Ai Group
- 47 Mr Stel Capetanakis
- 48 Mr David Chandler
- 49 Australian Building Codes Board
- 50 Confidential
- 51 Confidential
- 52 Confidential
- 53 Confidential
- 54 Ms Sonya Tissera-Isaacs
- 55 Queensland Government
- 56 Department of Immigration and Border Protection
- 57 Victorian Government
- 58 Mr Graeme Doreian
- 59 HPM Legrand
- 60 National Electrical and Communications Association (NECA)

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- 61 Insurance Australia Group (IAG)
 - 62 Wren Industries
 - 63 Ms Anne Paten
 - 64 Victorian Building Action Group Inc.
 - 65 Ms Beverley Loyson
 - 66 Name Withheld
 - 67 Dr Leon Jacob, Mr Peter Smithsons, Mr Phillip Davies & Mr Gerard McCluskey
 - 68 Dr Nathan Munz
 - 69 Confidential
 - 70 Amtron Valve Monitoring Device
 - 71 Mr Tony Coon
 - 72 Building Products Innovation Council
 - 73 ProductWise Pty Ltd
 - 74 Construction, Forestry, Mining and Energy Union (CFMEU)
 - 75 Waffle Pod Manufacturers of Australia

Submissions (45th Parliament)

- 76 Mr Tony Kennedy
- 77 Fairview
- 78 Product Presence Pty Ltd
- 79 Expanded Polystyrene Australia
- 80 Building Commission, Department of Commerce, Western Australia
- 81 Australian Construction Industry Forum
- 82 Australian Institute Of Marine And Power Engineers
- 83 Building Products Innovation Council
- 84 Plumbing Products Industry Group
- 85 Mr David Chandler & Dr Mary Hardie
- 86 Electrical Trades Union
- 87 Green Building Council of Australia
- 88 Owners Corporation Network of Australia Ltd
- 89 SafeWork SA
- 90 Asbestos Safety and Eradication Agency

- 91 Australian Government Department of Employment
- 92 Asbestos Disease Support Society
- 93 Mairin OHS&E Consulting Pty Ltd
- 94 Mr Geoff Fary
- 95 Australian Constructors Association
- 96 Australian Services Union
- 97 Australian Manufacturing Workers' Union
- 98 Timber Preservers' Association of Australia
- 99 ProductWise Pty Ltd
- 100 Waffle Pod Manufacturers of Australia Inc.
- 101 Engineered Wood Products Association of Australasia Ltd (EWPAA)
- 102 Queensland Proposal
- 103 Australian Window Association
- 104 Asbestos Council of Victoria/GARDS Inc.
- 105 Bureau of Steel Manufacturers of Australia
- 106 Australasian Fire and Emergency Service Authorities Council (AFAC)
- 107 Maurice Blackburn Lawyers
- 108 Department of Immigration and Border Protection
- 109 National Association of Testing Authorities, Australia (NATA)
- 110 Think Brick Australia
- 111 Concrete Masonry Association of Australia
- 112 Roofing Tile Association of Australia
- 113 Building and Wood Workers' International
- 114 Union Aid Abroad - APHEDA
- 115 Greencap
- 116 Construction Product Alliance
- 117 AWS Global Pty Ltd
- 118 Ms Carolyn Davis
- 119 Housing Industry Association
- 120 The Australian Industry Group (Ai Group)
- 121 Furniture Cabinet Joinery Alliance Ltd
- 122 Australian Nursing and Midwifery Federation
- 123 Australian Workers' Union

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- 124 Australian Institute of Building Surveyors
 - 125 Master Builders Australia
 - 126 Australian Steel Institute
 - 127 Australian Council of Trade Unions
 - 128 Construction, Forestry, Mining and Energy Union
 - 129 Ms Jacqueline Kriz
 - 130 Australian Council of Trade Unions (ACTU)
 - 131 Subcontractors Alliance
 - 132 The Australian Furniture Association (AFA)
 - 133 Confidential
 - 134 Victorian Trades Hall Council
 - 135 Confidential
 - 136 Victorian Building Action Group Inc.
 - 137 Customs Brokers and Forwarders Council of Australia Inc.
 - 138 Professor Andrew Lowe and Doctor Eleanor Dormontt
 - 139 The Termite Action Group (TAG)
 - 140 Community Debate
 - 141 Mr Graeme Doreian
 - 142 Asbestos Diseases Society of Australia Inc.
 - 143 Ms Leigh Evans
 - 144 Confidential
 - 145 Mr Lawrence Reddaway
 - 146 Engineers Australia
 - 147 Standards Australia
 - 148 Icon Plastics
 - 149 Mr Barry Harrington
 - 150 Australian Building Codes Board
 - 151 Australian Institute of Building (AIB)
 - 152 Insurance Council of Australia
 - 153 Ignis Solutions
 - 154 Alucobond Architectural (a division of Halifax Vogel Group Pty Ltd)
 - 155 Builders Collective of Australia
 - 156 Asbestoswise

- 157 Australian Institute of Architects
- 158 The Warren Centre
- 159 Master Plumbers and Mechanical Services Association of Australia (MP)
- 160 Insurance Australia Group (IAG)
- 161 Tasmanian Government
- 162 Confidential
- 163 Mr John Hipper
- 164 Gordon Gould Ipson Architects

Tabled documents (44th Parliament)

- 1 Document tabled by the Metropolitan Fire and Emergency Services Board (MFB) at a public hearing in Canberra on 13 November 2015.

Tabled documents (45th Parliament)

- 1 Construction, Forestry, Mining and Energy Union: Vale - Alan Whitehead, April 2005 (public hearing, Brisbane, 30 January 2017).
- 2 Yuanda Australia: Email from Workplace Health and Safety Queensland to Yuanda, 16 December 2016. Attachment - Preventing goods or materials containing asbestos being supplied to workplaces in Queensland, Queensland Office of Industrial Relations (public hearing, Brisbane, 30 January 2017).
- 3 Asbestos Diseases Society of Australia: Tabled by Mr Robert Vojakovic (public hearing, Perth, 9 March 2017).
- 4 Construction, Forestry, Mining and Energy Union: Tabled by Mr Mick Buchan (public hearing, Perth, 9 March 2017).
- 5 Coffey Services: Opening statement (public hearing, Perth, 9 March 2017).
- 6 Comcare: Opening statement (public hearing, Perth, 9 March 2017).
- 7 John Holland Pty Ltd: Opening statement (public hearing, Perth, 9 March 2017).
- 8 Construction, Forestry, Mining and Energy Union: Opening statement (public hearing, Melbourne, 14 July 2017).
- 9 Federal Safety Commissioner: Opening statement (public hearing, Melbourne, 14 July 2017).
- 10 Construction, Forestry, Mining and Energy Union: Tabled by Travis Wacey (public hearing, Melbourne, 14 July 2017).
- 11 Construction, Forestry, Mining and Energy Union: Tabled by Travis Wacey (public hearing, Melbourne, 14 July 2017).

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- 12 Engineers Australia: Tabled by Mr Chris Stoltz (public hearing, Sydney, 19 July 2017).
 - 13 Victorian Building Authority: Opening statement (public hearing, Sydney, 19 July 2017).
 - 14 AIMPE: Magazine article referred to at the public hearing (public hearing, Sydney, 3 October 2017).

Answers to questions on notice (44th Parliament)

- 1 Answers to questions on notice from a public hearing held in Canberra on 13 November 2015 received from the Metropolitan Fire and Emergency Services Board on 4 December 2015.
- 2 Answers to questions on notice from a public hearing held in Canberra on 13 November 2015 received from the Department of Industry, Innovation and Science on 12 December 2015.
- 3 Answers to questions on notice from a public hearing held in Canberra on 13 November 2015 received from the Department of Immigration and Border Protection on 15 December 2015.
- 4 Answers to questions on notice from a public hearing held in Canberra on 13 November 2015 received from the CSIRO on 18 December 2015.
- 5 Answers to questions on notice from a public hearing held in Canberra on 13 November 2015 received from the Australian Industry Group on 27 January 2016.
- 6 Answers to questions on notice from a public hearing held in Melbourne on 15 February 2016, received from the Victorian Government on 4 March 2016.
- 7 Answers to questions on notice from a public hearing held in Canberra on 13 November 2016 received from the ACCC on 10 March 2016.
- 8 Answers to questions on notice from a public hearing held in Melbourne on 15 February 2016, received from the Construction Product Alliance on 10 March 2016.
- 9 Answers to questions on notice from a public hearing held in Melbourne on 15 February 2016 received from Standards Australia on 7 March 2016.
- 10 Answers to questions on notice from a public hearing held in Melbourne on 15 February 2016, received from the Asbestos Safety and Eradication Agency on 18 March 2016.

Answers to questions on notice (45th Parliament)

- 1 Asbestos Disease Support Society: Answers to questions taken on notice from a public hearing on 30 January 2017 (received 17 February 2017).
- 2 Yuanda Australia Pty Ltd: Answers to questions taken on notice from a public hearing on 30 January 2017 (received 20 February 2017).
- 3 Queensland Office of Industrial Relations: Answers to questions taken on notice from a public hearing on 30 January 2017 (received 22 February 2017).
- 4 Department of Immigration and Border Protection: Answers to questions taken on notice from a public hearing on 30 January 2017 (received 24 February 2017).
- 5 Comcare: Answers to questions taken on notice from a public hearing on 9 March 2017 (received 29 March 2017).
- 6 John Holland Pty Ltd: Answers to questions taken on notice from a public hearing on 9 March 2017 (received 31 March 2017).
- 7 Department of Treasury, Government of Western Australia: Answers to questions taken on notice from a public hearing on 9 March 2017 (received 31 March 2017).
- 8 CFMEU: Answers to questions taken on notice from a public hearing on 9 March 2017 (received 12 April 2017).
- 9 Fairview Architectural: Answers to questions taken on notice from a public hearing on 19 July 2017 (received 25 July 2017).
- 10 Department of Housing and Public Works: Answers to questions taken on notice from a public hearing on 14 July 2017 (received 1 August 2017).
- 11 WorkSafe Victoria: Answers to questions taken on notice from a public hearing on 14 July 2017 (received 2 August 2017).
- 12 Fire Protection Association Australia: Answers to questions taken on notice from a public hearing on 19 July 2017 (received 4 August 2017).
- 13 Engineers Australia: Answers to written questions taken on notice (received 10 August 2017).
- 14 Expanded Polystyrene Australia: Answers to written questions taken on notice (received 10 August 2017).
- 15 Ignis Solutions: Answers to written questions taken on notice (received 10 August 2017).
- 16 Fairview: Answers to questions taken on notice from a public hearing on 19 July 2017 (received 16 August 2017).
- 17 CEPU Electrical Energy and Services Division: Answers to questions taken on notice from a public hearing on 31 July 2017 (received 17 August 2017).
- 18 Fairview: Answers to questions taken on notice from a public hearing on 19 July 2017 (received 1 August 2017).

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- 19 SA Government: Answers to questions taken on notice from a public hearing on 31 July 2017 (received 25 August 2017).
 - 20 Australian Window Association: Answers to written questions taken on notice (received 29 August 2017).
 - 21 Australasian Fire and Emergency Service Authorities Council (AFAC): Answers to questions taken on notice from a public hearing on 19 July 2017 (received 12 September 2017).
 - 22 National Association of Testing Authorities, Australia: Answers to questions taken on notice from a public hearing on 3 October 2017 (received 11 October 2017).
 - 23 Safety, Rehabilitation and Compensation Commission: Answers to questions taken on notice from a public hearing on 3 October 2017 (received 13 October 2017).
 - 24 Australian Competition & Consumer Commission: Answers to questions taken on notice from a public hearing on 3 October 2017 (received 17 October 2017).
 - 25 CFMEU: Answers to questions taken on notice from a public hearing on 14 July 2017 (received 13 October 2017).
 - 26 Department of Immigration and Border Protection: Answers to written questions taken on notice (QoNs 18-54) (received 20 October 2017).
 - 27 University of Adelaide: Answers to questions taken on notice from a public hearing on 31 July 2017 (received 2 November 2017).
 - 28 Australian Building and Construction Commission: Answers to written questions on taken on notice and answers to questions taken on notice from a public hearing on 2 August 2018 (received 8 August 2018).
 - 29 Australian Building and Construction Commission: Answers to questions taken on notice from a public hearing on 2 August 2018 (received 14 August 2018).
 - 30 Engineered Wood Products Association of Australasia: Answers to written questions on taken on notice (received 10 August 2018).
 - 31 Department of Industry Innovation and Science: Answers to written questions on taken on notice (received 10 August 2018).
 - 32 Department of Home Affairs: Answers to written questions on taken on notice and answers to questions taken on notice from a public hearing on 2 August 2018 (received 13 August 2018).
 - 33 Australian Windows Association: Answers to written questions on taken on notice (received 13 August 2018).
 - 34 Housing Industry Association: Answers to questions taken on notice from a public hearing on 2 August 2018 (received 14 August 2018).
 - 35 Yuanda Australia: Answers to written questions on taken on notice (received 31 August 2018).

Additional information (44th Parliament)

- 1 Document provided by the National Association of Testing Authorities (NATA) following the public hearing held in Canberra on 13 November 2015.
- 2 Document provided by the National Association of Testing Authorities (NATA) following the public hearing held in Canberra on 13 November 2015.
- 3 Document provided by the Housing Industry Association (HIA) following the public hearing held in Canberra on 13 November 2015.
- 4 Additional information provided by Dr Nathan Munz following a hearing held in Melbourne on 15 February 2016.

Additional information (45th Parliament)

- 1 Document provided by CertMark International on 28 June 2017—Advisory Notice No. 06/2017, Aluminium Composite Panels (ACP)—Fire Risk—Australia & New Zealand.
- 2 Document provided by Metropolitan Fire and Emergency Services Board on 14 July 2017—Opening statement from a public hearing in Melbourne on 14 July 2017.
- 3 Document provided by Metropolitan Fire and Emergency Services Board on 14 July 2017—Victorian Cladding Taskforce TOR.
- 4 Document provided by Metropolitan Fire and Emergency Services Board on 14 July 2017—Excerpt: Fire Protection Research Foundation Report.
- 5 Document provided by Asbestos Council of Victoria on 14 July 2017—Opening statement from a public hearing in Melbourne on 14 July 2017.
- 6 Document provided by Australian Institute of Building Surveyors on 19 July 2017—Opening statement from a public hearing in Sydney on 19 July 2017.
- 7 Document provided by Fire Protection Association Australia on 19 July 2017—Opening statement from a public hearing in Sydney on 19 July 2017.
- 8 Document provided by Australasian Fire and Emergency Service Authorities Council (AFAC) on 19 July 2017—Opening statement from a public hearing in Sydney on 19 July 2017.
- 9 Document provided by Victorian Cladding Taskforce on 19 July 2017—Finalised Terms of Reference.
- 10 Document provided by Fairview Architectural on 19 July 2017—Opening statement from a public hearing in Sydney on 19 July 2017.
- 11 Document provided by AMWU on 18 July 2017—Asbestos imported in products.
- 12 Document provided by Owners Corporation Network on 9 August 2017.

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- 13 Document provided by Asbestos Audits, Removals & Management Services on 2 October 2017—High Risk imported goods containing asbestos and ACM.
 - 14 Document provided by Safety, Rehabilitation and Compensation Commission on 3 October 2017—Opening statement from a public hearing in Sydney on 3 October 2017.

Additional hearing information (44th Parliament)

- 1 Hansard correction received from the Housing Industry Association re a public hearing held in Canberra on 13 November 2015.

Additional hearing information (45th Parliament)

- 1 Hansard correction received from the Victorian Building Authority regarding a public hearing held in Sydney on 19 July 2017.

Correspondence (45th Parliament)

- 1 Two letters of correspondence received from the Queensland Government:
1. Department of Housing and Public Works (18 Nov 2016). 2. Office of Industrial Relations (17 Nov 2016).
- 2 Correspondence received from the Hon Richard Wynne MP, Minister for Planning, Victorian State Government (20 December 2016).
- 3 Correspondence received from the Hon Bill Johnston MLA, Minister for Mines and Petroleum; Commerce and Industrial Relations; Electoral Affairs; Asian Engagement, Western Australian State Government (31 July 2017).
- 4 Correspondence received from Mr Martin Hoffman, Secretary of Department of Finance, Services and Innovation, New South Wales State Government (5 September 2017).

Appendix 2

Public hearings and witnesses

13 November 2015, Canberra

Members in attendance: Senators Edwards, Ketter, Madigan, Xenophon.

BROOKFIELD, Ms Kristin, Senior Executive Director, Building Development and Environment, Housing Industry Association

BURGESS, Mr Mark, Executive Manager, CSIRO Services, Commonwealth Scientific and Industrial Research Organisation

BURN, Dr Peter, Head, Influence and Policy, Australian Industry Group

BYRNE, Dr Anne, General Manager, Manufacturing and Services Policy Branch, Department of Industry, Innovation and Science

CHANDLER, Mr Andrew, Assistant Secretary, Trade and Customs, Department of Immigration and Border Protection

CHESWORTH, Mr Peter, Acting Deputy Secretary, Department of Industry, Innovation and Science

DALE, Ms Erin, Commander, Customs Compliance, Australian Border Force

DALRYMPLE, Mr Adam, Director, Fire Safety, Metropolitan Fire Brigade

DAVIS, Mr Gary, Manager, Building Metals and Construction Section, Department of Industry, Innovation and Science

GOODWIN, Mr Shane, Managing Director, Housing Industry Association

GREGSON, Mr Scott, Executive General Manager, Consumer Enforcement, Australian Competition and Consumer Commission

HATCHER, Ms Emma, Director, Regulated Goods Policy, Department of Immigration and Border Protection

HUMPHREY, Mr David, Senior Executive Director, Business Compliance and Contracting, Housing Industry Association

NEWHOUSE, Mr Kevin, Group Manager, NCC Management and Product Certification, Australian Building Codes Board

PATEN, Ms Anne, President, Victorian Building Action Group

RIDGWAY, Mr Nigel, Executive General Manager, Consumer, Small Business and Product Safety Division, Australian Competition and Consumer Commission

SAVERY, Mr Neil, General Manager, Australian Building Codes Board

SMITH, Mr Zachary, ACT Branch Organiser, Construction and General Division, Construction, Forestry, Mining and Energy Union

SQUIRE, Mr Martin, General Manager, Trade and International Branch, Department of Industry, Innovation and Science

THOMSON, Mr James, Senior Adviser, Standards and Regulation, Australian Industry Group

WACEY, Mr Travis Kent, National Policy Research Officer, Forestry, Furnishing, Building Product and Manufacturing Division, Construction, Forestry, Mining and Energy Union

WOLFE, Mr Graham, Chief Executive, Industry Policy and Media, Housing Industry Association

YAXLEY, Mr Julian, Manager, Economics and Strategic Projects, Metropolitan Fire Brigade

ZIPPER, Dr Marcus, Director, CSIRO Services, Commonwealth Scientific and Industrial Research Organisation

15 February 2016, Melbourne

Members in attendance: Senators Edwards, Ketter, Madigan, Xenophon.

GINIVAN, Mr John, Acting Executive Director, Statutory Planning And Heritage, Department of Environment, Land, Water and Planning, Victoria

HARNISCH, Mr Wilhelm, Chief Executive Officer, Master Builders Australia

JACOB, Dr Leon, Private capacity

JONES, Mr Phil, General Manager, G James Glass and Aluminium

LE COMPTE, Mr Lindsay, Chair, Construction Products Alliance

MULHERIN, Mr Peter, Founder, ProductWise

MUNZ, Dr Nathan, Private capacity

OVERTON, Mr Warren, Chief Executive Officer, Australian Glass and Glazing Association

RICE, Mr Jamie, Assistant General Manager, G James Glass and Aluminium

RILEY-TAKOS, Ms Kareen, General Manager, Standards Development, Standards Australia

STINGEMORE, Mr Adam, General Manager, Stakeholder Engagement and Public Affairs, Standards Australia

TIGHE, Mr Peter, Chief Executive Officer, Asbestos Safety and Eradication Agency

30 January 2017, Brisbane

Members in attendance: Senators Hume, Ketter, Xenophon.

BLUNDELL, Mr Thady, Lawyer, Asbestos Disease Support Society, Turner Freeman Lawyers

BRAME, Mr Colin, Director, Customs Brokers and Forwarders Council of Australia Inc

BUCHHORN, Mr Wayne, Assistant Commissioner, Investigations Division, Department of Immigration and Border Protection

CHANDLER, Mr Andrew, Assistant Secretary, Trade and Customs Branch, Department of Immigration and Border Protection

DALE, Ms Erin, Commander, Customs Compliance Branch, Department of Immigration and Border Protection

GEDDES, Ms Linda, First Assistant Secretary, Traveller, Customs and Industry Policy Division, Department of Immigration and Border Protection

GOLDSBROUGH, Mr Paul, Executive Director, Safety, Policy and Workers Compensation Services, Office of Industrial Relations, Queensland Treasury

HUTCHINSON, Mr Joe, Site Delegate, Construction and General Division, Queensland/Northern Territory Branch, Construction, Forestry, Mining and Energy Union

JOHNSTONE, Mr John McGregor (Ian), Member, Asbestos Disease Support Society

MORRIS, Mr Stephen, Executive Director, Customs Brokers and Forwarders Council of Australia Inc

PARKER, Mr Bradley, National Assistant Secretary, Construction and General National Office, Construction, Forestry, Mining and Energy Union

RAMSAY, Mr Andrew, Workplace Health and Safety Coordinator, Construction and General Division, Queensland/Northern Territory Branch, Construction, Forestry, Mining and Energy Union

RICHARDS, Ms Amanda Marion, Chief Executive Officer, Asbestos Disease Support Society

WACEY, Mr Travis Kent, National Policy Research Officer, Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union

WILL, Mr Kevin, Managing Director, Yuanda Australia Pty Ltd

9 March 2017, Perth

Members in attendance: Senators Sterle, Xenophon.

ALBONICO, Mr Lindsay Robert, Project Director, John Holland Pty Ltd

BENKESSER, Mr Robert Anthony, Safety Officer, Construction, Forestry, Mining and Energy Union

BROOKS, Mr Andrew John, Health, Safety, Environment and Quality Manager, John Holland Pty Ltd

BUCHAN, Mr Mick, State Secretary, Construction and General Division,
Construction, Forestry, Mining and Energy Union

EASTON, Mr Frederick Spencer, Business Manager, Coffey

MANN, Mr Richard Dorham, Executive Director, Strategic Projects and Asset Sales,
Department of Treasury, Western Australia

MORGAN, Mr Daniel, Principal Consultant, Coffey

MUSK, Professor Arthur William (Bill), Member, Australian Medical Association
(Western Australia)

NAPIER, Mr Justin, General Manager, Regulatory Operations Group, Comcare

SUTCLIFFE, Mr Tony, Director, Regional Operations Western Australia, Regulatory
Operations Group, Comcare

VOJAKOVIC, Mr Robert Dragutin, President, Asbestos Diseases Society of Australia
Inc.

14 July 2017, Melbourne

Members in attendance: Senators Kim Carr, Ketter, Xenophon.

AYLWARD, Mr David, Shop Steward, Trades Union of Australia

BANNAM, Mr Clinton, Organiser, Australian Manufacturing Workers Union,
Victoria

CARROLL, Ms Liza, Director-General, Department of Housing and Public Works

CHRISTIE, Mr Matt, Organiser, Australian Manufacturing Workers Union, Victoria

CLEMENT, Mr David, President, Asbestoswise

DALRYMPLE, Mr Adam, Acting Deputy Chief Officer, Metropolitan Fire and
Emergency Services Board

de SILVA, Mr Radley, Chief Executive Officer, Master Builders Association of
Victoria

DISTON, Mr Steven, Organiser, Electrical Trades Union of Australia

EDWARDS, Mr Alan, Federal Safety Commissioner, Office of the Federal Safety
Commissioner

FINNIMORE, Mr Philip, Principal Adviser, Building Industry and Policy,
Department of Housing and Public Works

HAMILTON, Mrs Vicki, OAM, Chief Executive Officer; Secretary, Asbestos Council
of Victoria/GARDS Inc

KELLY, Mr Robert, Director, Specialist Services, Health and Safety, WorkSafe
Victoria

McDONALD, Mr Matthew, Group Manager, Innovation and Analysis, Australian
Building Codes Board

MIER, Mr David, Assistant National Secretary, Electrical Trades Union of Australia

MUSOLINO, Ms Renata, Secretary, Asbestoswise

NEWHOUSE, Mr Kevin, Group Manager, Australian Building Codes Board

RAFFERTY, Mr Max, National Manager, Technical Services, Master Builders Australia

ROBERTS, Mrs Dorothy, President, Asbestos Council of Victoria/GARDS Inc

ROSS, Ms Sarah, Education Officer and OHS Officer, Australian Manufacturing Workers Union, Victoria

SAVERY, Mr Neil, General Manager, Australian Building Codes Board

SMITH, Mrs Marie, Vice-President, Asbestos Council of Victoria/GARDS Inc

TIMMS, Mr Logan, Executive Director, Department of Housing and Public Works

WACEY, Mr Travis, National Policy Research Officer, Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union

WAWN, Mrs Denita, Chief Executive Officer, Master Builders Australia

19 July 2017, Sydney

Members in attendance: Senators Kim Carr, Ketter, Xenophon.

ATTWOOD, Mr Graham, Director, Expanded Polystyrene Australia

BARNETT, Dr Jonathan, Chair, Society of Fire Safety, Engineers Australia

BHASIN, Mr Sahil, National General Manager, Roscon Property Services

DWYER, Mr Phillip, National President, Builders Collective of Australia

FAIFER, Mr Norman, Immediate Past National President, Australian Institute of Building

GARDNER, Mr Ken, Chief Executive Officer, Master Plumbers and Mechanical Services Association

GENCO, Mr Joseph, Director, Technical and Regulation Division, Victorian Building Authority

GILLIES, Mr Andrew, Managing Director, Fairview Architectural

GILLIES, Mr Roy, Sales Manager, Fairview Architectural

GODDARD, Mr Stephen, Spokesperson, Owners Corporation Network

HEATHER, Mr Paul, National President, Australian Institute of Building

HILLS, Mr Rodger, Executive Officer, Building Products Innovation Council

HUGHES-BROWN, Mr Benjamin, Managing Director, Ignis Solutions Pty Ltd

IRELAND, Miss Talissa, Senior Client Liaison Officer, CertMark International

LECK, Ms Amanda, Director, Information and Community Safety, Australasian Fire and Emergency Service Authorities Council

LLEWELLYN, Mr Robert, Built Environment Consultant, Australasian Fire and Emergency Service Authorities Council

MARTIN, Mr Wade, National Technical Manager, Halifax Vogel Group Pty Ltd

McINTYRE, Mr Peter, Chief Executive Officer, Engineers Australia

O'BRIEN, Dr Darryl, National Technical Committee representative, Non-Conforming Building Products, Australian Institute of Building Surveyors

OLDS, Mr Troy, Board Director, Australian Institute of Building Surveyors

RATZ, Mr Laurie, Special Risks Manager, Insurance Council of Australia

RAYMENT, Mr Bruce, Chief Executive Officer, Halifax Vogel Group Pty Ltd

SMITH, Mr Murray, Acting Chief Executive Officer, Victorian Building Authority

STEWART, Mr Greg, Sales Manager, Fairview Architectural

STILES, Ms Karen, Executive Officer, Owners Corporation Network

STOLTZ, Mr Christopher, President, Victoria Division, Engineers Australia

SULLIVAN, Mr Karl, General Manager Risk & Disaster Planning, Insurance Council of Australia

THORPE, Mr John Charles, Chief Executive Officer, CertMark International

TUXFORD, Mr Timothy, National President, Australian Institute of Building Surveyors

WILLIAMS, Mr Scott, Chief Executive Officer, Fire Protection Association Australia

31 July 2017, Adelaide

Members in attendance: Senators Hume, Ketter, Xenophon.

CARTLEDGE, Mr Aaron, State Secretary Construction and General, Construction, Forestry, Mining and Energy Union, South Australia

DOREIAN, Mr Graeme, Private capacity

DORMONTT, Dr Eleanor, Research Fellow, The Advanced DNA, Identification and Forensic Facility, University of Adelaide

GAVIN, Mr Clint, National Sales, Manager, SGI Architectural Pty Ltd

HOPGOOD, Mr Michael (Mick), SA Organiser, Australian Workers Union

JOHNSON, Mr Robin, Managing Director, Robin Johnson Engineering

KIRNER, Mr Dave, District Secretary Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union, South Australia

KWONG, Mr Chris, Manager, Development, Policy and Assessment, Development Division, Department of Planning, Transport and Infrastructure, South Australia

LAMPS, Mr Peter, SA Branch Secretary, Australian Workers Union

LOWE, Professor Andrew John, Chair, Plant Conservation Biology, The Advanced DNA, Identification and Forensic Facility, University of Adelaide

McKIE, Mr Chris, Chief Inspector, Compliance and Enforcement, SafeWork SA, South Australia

PISONI, Mr Simon, Assistant Branch Secretary, Electrical and Plumbing South Australia, Communications Electrical Plumbing Union

PURSE, Dr Kevin, President, Asbestos Diseases Society of South Australia

RAU, The Hon. John MP, Deputy Premier, South Australia

RENOUF, Mr Timothy, Managing Director, Wren Industries Pty Ltd

WARD, Mr Jim, National Director, Occupational Health and Safety, Australian Workers Union

WILCZYNSKI, Mr Joseph, Private capacity

3 October 2017, Sydney

Members in attendance: Senators Hume, Ketter, Xenophon.

BAXTER, Ms Michelle, Commissioner, Safety, Rehabilitation and Compensation Commission

BYRNE, Mr Martin, Federal Secretary, Australian Institute of Marine and Power Engineers

CROSS, Mr Michael, National Safety and Training Officer, Maritime Union of Australia

GARRETT, Mr Paul, Assistant Secretary, Sydney Branch, Maritime Union of Australia

GAULD, Mr Trevor, Commissioner, Safety, Rehabilitation and Compensation Commission

GREGSON, Mr Scott, Executive General Manager, Consumer Enforcement, Australian Competition and Consumer Commission

GRIMWADE, Mr Timothy, Executive General Manager, Consumer, Small Business and Product Safety, Australian Competition and Consumer Commission

MANTLE, Mr Andrew Gordon, Managing Director, Asbestos Audits & Environmental Audits Pty Ltd

MATTHEW, Mr Neville, General Manager, Consumer Product Safety, Australian Competition and Consumer Commission

MITCHELL, Mr John, Manager, Government Relations, National Association of Testing Authorities, Australia

SHEPHERD, Mr Neil, Sector Manager, Life Sciences, National Association of Testing Authorities, Australia

SHERRIFF, Mr Barry, Chairperson, Safety, Rehabilitation and Compensation Commission

17 October 2017, Canberra

Members in attendance: Senators Dastyari, Hume, Xenophon.

BOROWICK, Mr Michael, Assistant Secretary, Australian Council of Trade Unions

2 August 2018, Canberra

Members in attendance: Senators Ketter, Patrick.

BROOKFIELD, Ms Kristin, Chief Executive, Industry Policy, Housing Industry Association

CATO, Ms Cathy, Deputy Commissioner, Operations and Code, Australian Building and Construction Commission

CROFT, Mr Simon, Executive Director, Building Policy, Housing Industry Association

DALE, Ms Erin, Assistant Commissioner, Strategic Border Command, Australian Border Force

GIBBON, Mr John, Acting First Assistant Secretary, Trade and Customs Division, Department of Home Affairs

GOVER, Mr David, Chief Executive Officer, Engineered Wood Products Association of Australasia

GRAMLICK, Mrs Tracey, Executive Director and Chief Executive Officer, Australian Window Association

HARRIS, Mr Rodney, Acting Manager, Building Industry Section, Department of Industry, Innovation and Science

HUTTON, Mr Joshua, Acting Assistant Secretary, Customs and Border Revenue Branch, Department of Home Affairs

MAHER, Miss Kate, Assistant Manager, Building Industry Section, Department of Industry, Innovation and Science

POWER, Mr Trevor, Head, Industry Growth Division, Department of Industry, Innovation and Science

Appendix 3

List of recommendations from the *Interim report:* *aluminium composite cladding*

Recommendation 1

3.65 The committee recommends the Australian government implement a total ban on the importation, sale and use of Polyethylene core aluminium composite panels as a matter of urgency.

Recommendation 2

4.21 The committee recommends that the Commonwealth government work with state and territory governments to establish a national licensing scheme, with requirements for continued professional development for all building practitioners.

Recommendation 3

4.45 The committee recommends that the Building Minister's Forum give further consideration to introducing nationally consistent measures to increase accountability for participants across the supply chain.

Recommendation 4

4.56 The committee strongly recommends that the Commonwealth government consider making all Australian Standards and codes freely available.

Recommendation 5

4.66 The committee recommends the Commonwealth government consider imposing a penalties regime for non-compliance with the National Construction Code such as revocation of accreditation or a ban from tendering for Commonwealth funded construction work and substantial financial penalties.

Recommendation 6

4.67 The committee recommends the Commonwealth government ensure the Federal Safety Commissioner is adequately resourced to ensure the office is able to carry out its duties in line with the new audit function and projected work flow.

Recommendation 7

4.74 The committee welcomes the Commonwealth government's decision to give further consideration to Director Identification Numbers and recommends that it expedites this process in order to prevent directors from engaging in illegal phoenix activity.

Recommendation 8

4.81 The committee recommends that state and territory governments work together to develop a nationally consistent statutory duty of care protection for end users in the residential strata sector.

Appendix 4

List of recommendations from the *Interim report: protecting Australians from the threat of asbestos*

Recommendation 1

2.49 The committee recommends that through the Council of Australian Governments, the Australian Government pursue a coordinated and consistent whole of government approach to strengthen federal and state legislation and regulations to address the illegal importation of asbestos.

Recommendation 2

2.50 The committee recommends that the Australian Government adequately fund the Asbestos Safety and Eradication Agency so it is able to deliver the next National Strategic Plan for Asbestos Management and Awareness and to carry out its other functions, both current functions and new functions set out in recommendations in this report.

Recommendation 3

2.62 The committee recommends that the Department of Immigration and Border Protection and Australian Border Force undertake an external review of their industry consultation arrangements with a view to strengthen and formalise the contribution from stakeholders. Ideally, these should be through formal meetings on a regular basis with those who are on the front line who are adversely impacted by illegal asbestos importation.

Recommendation 4

2.87 The committee recommends that the Australian Government continue to strongly advocate for the listing of chrysotile asbestos in Annex III of the Rotterdam Convention and support a change in the voting rules if required for this to be achieved.

Recommendation 5

2.88 The committee recommends that in the event that the Australian Government is unsuccessful in listing of chrysotile asbestos in Annex III at the 2019 Rotterdam Convention, the Australian Government should consider pursuing bilateral or multilateral asbestos treaties with importation disclosure requirements equivalent to an Annex III listing.

Recommendation 6

2.89 The committee recommends that the Australian Government in its course of the regular review of free trade agreements with other countries, include in the review provisions regarding asbestos containing materials.

Recommendation 7

2.90 The committee recommends that the Australian Government continue its support for asbestos bans internationally and promotes awareness of the risks of asbestos in the Asia-Pacific region.

Recommendation 8

3.26 The committee recommends that the Australian Government require mandatory Asbestos Awareness Training for a wide range of occupations in the construction industry and provide adequate funding for nationally accredited training for this purpose.

Recommendation 9

3.37 The committee recommends that the Department of Immigration and Border Protection and Australian Border Force consider the merits of developing and implementing a comprehensive education campaign for all importers of the risk and responsibilities regarding asbestos containing materials and the definition of asbestos containing materials used in other countries.

Recommendation 10

3.38 The committee recommends that the Asbestos Safety and Eradication Agency develop a one-stop-shop website to provide single point for participants across the supply chain to access information regarding the illegal importation of asbestos.

Recommendation 11

3.64 The committee recommends that the Australian Government review the Australian Border Force staff resourcing required to effectively monitor and prevent the illegal importation of asbestos.

Recommendation 12

3.65 The committee recommends that the Australian Government consider the merits of having a specialist unit within Australian Border Force to manage illegal asbestos importation.

Recommendation 13

3.87 The committee recommends that the Australian Government review the *Customs Act 1901* (and other relevant legislation) to address the challenges of enforcing the existing importation of asbestos offence, with the aim to close loopholes and improve the capacity of prosecutors to obtain convictions against entities and individuals importing asbestos. This review should include consideration of increasing the threshold required to use 'mistake of fact' as a legal defence.

Recommendation 14

3.88 The committee recommends that the Australian Government prioritise prosecution of illegal asbestos importation cases.

Recommendation 15

3.89 The committee recommends that the Australian Government review the quantum of penalties for breaches of Australia's importation ban with a view to increasing them.

Recommendation 16

4.19 The committee recommends that where an importer intends to import goods that have been deemed high risk of containing asbestos, the Australian Government require the importer, prior to the importation of the goods, to conduct sampling and testing by a NATA accredited authority (or a NATA equivalent testing authority in another country that is a signatory to a Mutual Recognition Arrangement).

Recommendation 17

4.20 The committee recommends that the Government examine the European Union's regulations and processes for testing of products for asbestos prior to import and determine if it is suitable to adapt them to benefit and enhance Australian requirements.

Recommendation 18

4.36 The committee recommends that the Australian Government consider placing additional mandatory requirements on procurers of high-risk products to have a due diligence system in place for the prevention of the import and use of asbestos containing materials.

Recommendation 19

4.40 The committee recommends that other states and territories pass similar legislation to Queensland's *Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017*.

Recommendation 20

4.60 The committee recommends that Commonwealth, state and territory governments work together to develop nationally consistent legal obligations to require the removal and/or disposal of illegally imported asbestos (if it is safe to do so following consideration of the hazards likely to be faced by the workers undertaking the work) and to make importers responsible for the cost of such removal and/or disposal of asbestos.

Recommendation 21

4.64 The committee recommends that the Australian Government review and clarify the role of the Federal Safety Commissioner with regards to asbestos containing materials in building products in line with the Commissioner's responsibilities.

Recommendation 22

4.73 The committee recommends that the Australian Competition and Consumer Commission conducts compulsory recalls where asbestos is found in consumer products, unless there are significant issues and risks associated with a compulsory recall, noting that legislative change may be required.

Recommendation 23

4.74 In circumstances where the Australian Competition and Consumer Commission becomes aware of a product containing asbestos and subsequently determines not to issue a compulsory recall of that product, the committee recommends that the Australian Competition and Consumer Commission shall within thirty days of that decision publish a statement of reasons.

Recommendation 24

4.75 The committee recommends that the Australian Government review the Australian Competition and Consumer Commission's public reporting of asbestos containing materials in consumer products, both in relation to informing the public where there are risks to safety, and also monitoring and aggregating reporting of incidents over time.

Recommendation 25

4.83 The committee recommends that the Australian Government establish a national public asbestos register.

Recommendation 26

4.84 The committee recommends that the Australian Government consider the merits of requiring importers and suppliers to hold mandatory recall insurance for potential asbestos containing materials.

Appendix 5

List of recommendations from *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*

Recommendation 1

That each jurisdiction requires the registration of the following categories of building practitioners involved in the design, construction and maintenance of buildings:

- Builder
- Site or Project Manager
- Building Surveyor
- Building Inspector
- Architect
- Engineer
- Designer/Draftsperson
- Plumber
- Fire Safety Practitioner

Recommendation 2

That each jurisdiction prescribes consistent requirements for the registration of building practitioners including:

- certificated training which includes compulsory training on the operation and use of the NCC as it applies to each category of registration;
- additional competency and experience requirements;
- where it is available, compulsory insurance in the form of professional indemnity and/or warranty insurance together with financial viability requirements where appropriate; and
- evidence of practitioner integrity, based on an assessment of fit-and-proper person requirements.

Recommendation 3

That each jurisdiction requires all practitioners to undertake compulsory Continuing Professional Development on the National Construction Code.

Recommendation 4

That each jurisdiction establishes a supervised training scheme which provides a defined pathway for becoming a registered building surveyor.

Recommendation 5

That each state establishes formal mechanisms for a more collaborative and effective partnership between those with responsibility for regulatory oversight, including relevant state government bodies, local governments and private building surveyors (if they have an enforcement role).

Recommendation 6

That each jurisdiction give regulators a broad suite of powers to monitor buildings and building work so that, as necessary, they can take strong compliance and enforcement action.

Recommendation 7

That each jurisdiction makes public its audit strategy for regulatory oversight of the construction of Commercial buildings, with annual reporting on audit findings and outcomes.

Recommendation 8

That, consistent with the International Fire Engineering Guidelines, each jurisdiction requires developers, architects, builders, engineers and building surveyors to engage with fire authorities as part of the design process.

Recommendation 9

That each jurisdiction establishes minimum statutory controls to mitigate conflicts of interest and increase transparency of the engagement and responsibilities of private building surveyors.

Recommendation 10

That each jurisdiction put in place a code of conduct for building surveyors which addresses the key matters which, if contravened, would be a ground for a disciplinary inquiry.

Recommendation 11

That each jurisdiction provides private building surveyors with enhanced supervisory powers and mandatory reporting obligations.

Recommendation 12

That each jurisdiction establishes a building information database that provides a centralised source of building design and construction documentation.

Recommendation 13

That each jurisdiction requires building approval documentation to be prepared by appropriate categories of registered practitioners, demonstrating that the proposed building complies with the National Construction Code.

Recommendation 14

That each jurisdiction sets out the information which must be included in performance solutions, specifying in occupancy certificates the circumstances in which performance solutions have been used and for what purpose.

Recommendation 15

That each jurisdiction provides a transparent and robust process for the approval of performance solutions for constructed building work.

Recommendation 16

That each jurisdiction provides for a building compliance process which incorporates clear obligations for the ongoing approval of amended documentation by the appointed building surveyor throughout a project.

Recommendation 17

That each jurisdiction requires genuine independent third party review for specified components of designs and/or certain types of buildings.

Recommendation 18

That each jurisdiction requires on-site inspections of building work at identified notification stages.

Recommendation 19

That each jurisdiction requires registered fire safety practitioners to design, install and certify the fire safety systems necessary in Commercial buildings.

Recommendation 20

That each jurisdiction requires that there be a comprehensive building manual for Commercial buildings that should be lodged with the building owners and made available to successive purchasers of the building.

Recommendation 21

That the Building Ministers' Forum agree its position on the establishment of a compulsory product certification system for high-risk building products.

Recommendation 22

That the Building Ministers' Forum develop a national dictionary of terminology to assist jurisdictions, industry and consumers to understand the range of terminology used to describe the same or similar terms and processes in different jurisdictions.

Recommendation 23

That the Building Ministers' Forum acknowledges that the above recommendations are designed to form a coherent package and that they be implemented by all jurisdictions progressively over the next three years.

Recommendation 24

That the Building Ministers' Forum prioritise the preparation of a plan for the implementation of the recommendations against which each jurisdiction will report annually.