

The Senate

Economics
References Committee

Non-conforming building products

Interim report: protecting Australians from
the threat of asbestos

November 2017

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Recommendations

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 a 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.

Acronyms

AARMS	Asbestos Audits & Environmental Audits Pty Ltd
ABF	Australian Border Force
ACCC	Australian Competition and Consumer Commission
ACMs	Asbestos-Containing materials
ACTU	Australian Council of Trade Unions
AMWU	Australian Manufacturing Workers' Union
ASEA	Asbestos Safety and Eradication Agency
AWU	Australian Workers' Union
CFMEU	Construction, Forestry, Mining and Energy Union
DIBP	Department of Immigration and Border Protection
ETU	Electrical Trades Union of Australia
FSC	Federal Safety Commissioner
HIA	Housing Industry Association
HWSA	Heads of Workplace Safety Authorities Imported Materials with Asbestos Working Group
IDC	Interdepartmental Committee
NATA	National Association of Testing Authorities, Australia
OH&S	Occupational Health and Safety
WHS	Work Health and Safety

Chapter 1

Introduction

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. The committee tabled an interim report, *Safety—'not just a matter of good luck'* on 4 May 2016. 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

1.2 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. The committee tabled its report, *Interim report: aluminium composite cladding* on 6 September 2017. In addition to this interim report on asbestos, the committee agreed to table its final inquiry report on 30 April 2018.

Conduct of the inquiry

1.3 The committee advertised the inquiry on its website and in *The Australian*. It also wrote to relevant stakeholders and interested parties inviting submissions.

1.4 The committee has 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.

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.

1.5 Public hearings were held on:

- 13 November 2015 in Canberra;
- 15 February 2016 in Melbourne;
- 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); and
- 17 October 2017 in Canberra (asbestos).

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

1.7 References to the Committee Hansard for the October 2017 hearings are to the Proof Hansard and page numbers may vary between the Proof and Official Hansard transcripts.



Mrs Vicki Hamilton, OAM, Chief Executive Officer; Secretary, Asbestos Council of Victoria/GARDS Inc showing Senator Ketter and former Senator Xenophon samples of products containing illegally imported asbestos including crayons and beaded jewellery.

Background

Committee comments from the 2016 interim report

1.8 The committee tabled an interim report, *Safety—'not just a matter of good luck'*, on 4 May 2016. The report raised concerns in relation to the illegal importation of asbestos:

The committee has major concerns relating to the importation of NCBPs [non-conforming building products]. Particularly the ability of Australia's enforcement agencies to effectively police Australian borders so that NCBPs are detected and prevented from entering Australia. At the moment, this area of enforcement appears to require substantial strengthening and should be a high priority for government.

...

The importation of banned materials, such as asbestos, raises very serious concerns about the capacity of Australian authorities to deal with this issue, particularly in light of our open and dynamic trade environment. The committee notes the important work of the Asbestos Safety and Eradication Agency and questions whether further resources are required for it to fulfil its current role.

The committee will further consider means by which foreign governments could be encouraged to ensure compliance certification carried out within their sovereign borders is bona fide. Mechanisms could range from formal representations through DFAT [Department of Foreign Affairs Defence and Trade] to more punitive approaches, such as restrictions on the importing of certified goods from countries where fraudulent certification is not being addressed.⁴

Recent discoveries of asbestos in imported building products

1.9 The committee's decision to adopt additional terms of reference on the illegal importation of products containing asbestos was in response to a number of high profile cases where asbestos had been found in imported building products in 2015 and 2016. These include:

- Chinese cement sheeting—Australian Portable Camps, South Australia—August 2015;
- Asbestos flooring installed in pre-fabricated switch rooms—Robin Johnson Engineering, South Australia—November 2015;
- Klingerit 200 CAF gasket jointing sheets—1 William Street, Brisbane—July 2016;
- Asbestos in unitised roof panels—Perth Children's Hospital—July 2016; and

4 Senate Economics References Committee, *Interim report, Safety—'not a matter of good luck'*, 4 May 2016, p. 16.

-
- Asbestos contaminated plant equipment—Nyrstar project, Port Pirie, South Australia—August 2016.⁵

1.10 The incidents at 1 William Street Brisbane and the Perth Children's Hospital both involved products supplied by Yuanda Australia.

Asbestos Importation Review

1.11 In late 2015, the Australian Border Force (ABF) Commissioner established an independent review to examine the effectiveness of the Department of Immigration and Border Protection's (DIBP) internal processes and procedures for managing asbestos at the border to ensure that these reflected best practice. KHG Borders Services, an independent consultancy company, was engaged to conduct the review. The Asbestos Importation Review (the review) found that the department's management of the asbestos border control was effective, but identified some opportunities for organisational and technical improvements.⁶

1.12 The review made 11 recommendations addressing three themes: structure and strategy; strengthening engagement; and enhancing border processes.⁷

1.13 DIBP accepted all the recommendations, including one in-principle (due to information technology systems implications). The department is implementing the recommendations as a priority. These activities include:

- delineating and clarifying operational and policy roles and responsibilities in managing asbestos issues between the DIBP and ABF;
- improving the way the department coordinates with partner agencies, including using and providing information on asbestos detections;
- enhancing risk profiling and targeting of high risk goods to monitor and detect illegal imports of asbestos;
- enhancing engagement with industry to promote voluntary compliance with the asbestos border control; and
- increasing international engagement on Australia's asbestos prohibition.⁸

Structure of this report

1.14 This report comprises four chapters, including this introductory chapter:

- Chapter 2 provides an overview of Australia's asbestos regulatory framework;

5 Asbestos Safety and Eradication Agency, *Submission 90*, pp. 5–6. The submission provides further detail on each of the incidents.

6 Department of Immigration and Border Protection, *Submission 108*, p. 10.

7 The full list of recommendation is available here: Department of Immigration and Border Protection, *Submission 108*, attachment 1, *Asbestos Importation Review Report*, March 2016, pp. 11–12.

8 Department of Immigration and Border Protection, *Submission 108*, pp. 10–11.

- Chapter 3 examines the ongoing issues in relation to the illegal importation of asbestos; and
- Chapter 4 looks at measures to increase accountability for the illegal importation of asbestos and to reduce the risk of exposure.

Chapter 2

Australia's asbestos regulatory framework

2.1 This chapter provides an overview of Australia's asbestos regulatory framework. It examines the legislative framework which governs the manufacture, use, reuse, import, transport, storage or sale of all forms of asbestos and asbestos-containing materials; before looking at the responsibilities of the various agencies across a broad range of areas relevant to asbestos control, including; workplace safety, border protection, environmental protection, public health and consumer safety. It then goes on to examine areas which were identified by submitters as having scope for improvement. Finally, noting that asbestos is not only an issue for Australia, the chapter will examine Australia's role internationally.

Australia's asbestos ban

2.2 Up until the mid-1980s, when bans concerning the use of asbestos started to be imposed, Australia was one of the highest users of asbestos and asbestos containing materials (ACMs) in the world. According to the Asbestos Safety and Eradication Agency (ASEA), Australia has the highest reported incidence per capita of asbestos-related disease in the world, including the highest incidence of mesothelioma.¹

2.3 A total ban on the manufacture, use, reuse, import, transport, storage or sale of all forms of asbestos and ACMs within Australia came into effect on 31 December 2003 under Commonwealth, state and territory work health and safety legislation. The ban is complemented by import and export prohibitions under the *Customs (Prohibited Imports) Regulations 1956* (PI Regulations) and the *Customs (Prohibited Exports) Regulations 1958*.

2.4 Regulation 4C of the PI Regulations prohibits the importation of asbestos, or goods containing asbestos, except in very limited circumstances, such as where the Minister for Employment has provided permission to import asbestos for the purpose of research, analysis or display.²

Types of asbestos

2.5 The importation and exportation of fibrous forms of asbestos is prohibited in Australia. This includes mineral silicate from the:

- Serpentine Group—chrysotile asbestos (white asbestos); and
- Amphibole Group—actinolite asbestos, amosite asbestos (brown and grey asbestos), anthophyllite asbestos, crocidolite (blue asbestos), tremolite asbestos.

1 Asbestos Safety and Eradication Agency, *Submission 90*, p. 5.

2 Australian Government Department of Employment, *Submission 91*, p. 3.

2.6 Australia considers all fibrous forms of asbestos to be highly toxic and carcinogenic to humans. Exposure to asbestos can cause cancer of the lung, larynx and ovary, mesothelioma (a cancer of the pleural and peritoneal linings) and asbestosis (fibrosis of the lungs).³

Penalties

2.7 Importers are responsible for ensuring that materials they import into Australia do not contain asbestos.⁴ Australian Border Force (ABF) investigates and may prosecute alleged breaches of the *Customs Act 1901* for the prohibited importation, or exportation, of asbestos.

2.8 For individuals, an offence of importing asbestos can, upon conviction, result in a maximum penalty of up to 1,000 penalty units or three times the value of the goods, whichever is greater. The penalty for a company convicted of the same offence is up to 5,000 penalty units or 15 times the value of the goods, whichever is greater. In the case of an infringement notice, the maximum penalty is 15 penalty units for an individual, or 75 penalty units for a company.⁵ Currently, the dollar amount of a penalty unit is \$210.⁶

Sources of illegally imported asbestos

2.9 Australia has a 'zero tolerance' importation prohibition meaning that all forms of asbestos and goods containing asbestos are prohibited with no allowance provided for trace levels of asbestos.⁷ Australia's major trading partners, including the United States of America, India, China, Canada and Indonesia, do not have export bans on all asbestos or ACMs. Canada recently announced its intention to impose import and export bans on asbestos.⁸ In some countries, including Russia and China, there are bans on the import and use of certain forms of asbestos, such as amphibole asbestos, however, other forms of asbestos such as chrysotile remain widely used.⁹ A list of countries with bans on all types of asbestos is available at Appendix 3.

2.10 Positive detections of imported items containing asbestos is not limited to building products, with asbestos being found in a wide range of products including children's crayons, gaskets, brake pads, prefabricated structural building materials, component parts of a vessel and protective wrapping of steel brackets.¹⁰ In

3 Australian Border Force, *Managing the risk of asbestos at the border*, p. 1, <http://www.border.gov.au/Importingandbuyinggoodsfromoverseas/Documents/asbestos-border-factsheet.pdf> (accessed 6 November 2017).

4 Australian Government Department of Employment, *Submission 91*, p. 3.

5 Department of Immigration and Border Protection, *Submission 108*, p. 9.

6 *Crimes Act 1914*, paragraph 4AA(1).

7 Australian Government Department of Employment, *Submission 91*, p. 3.

8 Department of Immigration and Border Protection, *Submission 108*, p. 5.

9 Australian Government Department of Employment, *Submission 91*, p. 3.

10 Department of Immigration and Border Protection, *Submission 108*, p. 5.

October 2017 a safety alert was released regarding asbestos found in imported acetylene cylinders.¹¹ See Appendix 4 for a list of goods identified by the Department of Immigration and Border Protection (DIBP) that might contain asbestos.

2.11 Goods containing asbestos have been detected by Australian authorities in shipments from a range of countries. These include:

- China
- Germany
- Indonesia
- Italy
- Japan
- New Zealand
- Singapore
- South Africa
- Taiwan
- The Netherlands
- United Kingdom
- United States of America
- Vietnam

2.12 The DIBP notes that the above list represents the country of shipment, not necessarily the country of manufacture.¹²

Coordination of agencies with asbestos responsibilities

2.13 Asbestos safety is a complex policy and operational area that requires coordinated efforts to be made by a number of Commonwealth, state and territory government agencies with responsibilities across a broad range of areas including; workplace safety, border protection, environmental protection, public health and consumer safety.

Department of Immigration and Border Protection

2.14 ABF is the operational arm of the DIBP. ABF enforces controls at the border on behalf of various government agencies through the PI Regulations. The PI

11 Asbestos Safety and Eradication Agency, 'Alert: Asbestos in acetylene cylinders', 25 October 2017, <https://www.asbestossafety.gov.au/article/alert-asbestos-acetylene-cylinders> (accessed 6 November 2017).

12 Department of Immigration and Border Protection, 'Asbestos', <http://www.border.gov.au/Busi/cargo-support-trade-and-goods/importing-goods/prohibited-and-restricted/asbestos> (accessed 9 November 2017).

Regulations cover a diverse range of goods including—but not limited to—drugs, firearms, weapons, objectionable material and industrial chemicals.¹³

2.15 ABF enforces Australia's ban on asbestos at the border. Since ABF's establishment on 1 July 2015, DIBP and ABF have significantly increased the strategic and operational focus on goods that pose a risk of containing asbestos. Activities by ABF at the border, and DIBP more broadly include:

- undertaking risk assessments on 100 per cent of cargo imported to Australia;
- commencement of an asbestos sampling programme to refine and confirm the robustness of alerts and profiles;¹⁴
- enhanced profiling and targeting of high-risk imports that may contain asbestos, resulting in a significant increase in profile alert matches to high-risk consignments and the number of tests conducted for asbestos;¹⁵
- an increased assurance approach, including establishment of a 'community protection question' which must be answered by importers, or their representatives on their import declaration, for imported goods at risk of containing asbestos;
- requiring the testing of goods that are suspected of containing asbestos;
- the immediate seizure of all goods that test positive to asbestos, with further investigation potentially resulting in penalties and prosecution;
- increased engagement and awareness raising about Australia's import prohibition with customs brokers and importers, international governments, customs agencies and suppliers; and
- increased engagement and coordination with Commonwealth, state and territory government agencies and regulators, including work health and safety regulators, to improve policy and operational approaches to managing Australia's asbestos ban.¹⁶

2.16 At a Supplementary Budget Estimates hearing on 23 October 2017, DIBP advised that over the past 12 months they have continued to increase their operational focus to deter and detect goods suspected of containing asbestos:

In 2016–17, we targeted more than 8,500 shipments, resulting in 63 positive detections. That's compared with the 1,100 shipments and 13 positive detections the previous year. Despite intensified and targeted effort,

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

14 Department of Immigration and Border Protection, *Submission 108*, p. 6.

15 Ms Linda Geddes, First Assistant Secretary, Traveller, Customs and Industry Policy Division, Department of Immigration and Border Protection, *Committee Hansard*, 30 January 2017, p. 32.

16 Department of Immigration and Border Protection, *Submission 108*, p. 6.

however, there has not been a proportionate increase in the number of positive detections.¹⁷

Department of Employment

2.17 The Department of Employment has broad responsibilities for developing policy to protect the safety of Australian workers. Asbestos presents a significant threat to Australian workers. The department has responsibility for developing policy in relation to the asbestos import and export bans to the extent that it supports the domestic workplace ban.¹⁸

Comcare

2.18 Comcare is the Commonwealth work health and safety (WHS) regulator. It is responsible for enforcing the *Work Health and Safety Act 2011* and *Work Health and Safety Regulations 2011* in workplaces covered by those laws (which include Commonwealth departments and agencies and private sector licensees). Comcare also has functions and responsibilities for managing asbestos-related claims under the *Safety Rehabilitation and Compensation Act 1988* and the *Asbestos-related Claims (Commonwealth Liabilities) Act 2005*.

2.19 Comcare's regulatory duties include responding to incidents where imported asbestos is discovered in workplaces. For example, Comcare responded to the discovery of asbestos in recently installed roof panels at the Perth Children's Hospital, where licensee John Holland Pty Ltd is the lead building contractor. Comcare engaged closely with Western Australian work health and safety and building regulators as part of a combined response to this incident.¹⁹

Safe Work Australia

2.20 Safe Work Australia is the independent body that leads the development of policy to improve WHS and workers' compensation arrangements across Australia. In addition to the development of model WHS laws relating to workplace asbestos, Safe Work Australia contracts a consortium led by the Cancer Institute NSW to manage the Australian Mesothelioma Registry (AMR). The AMR collects and reports data on new cases of mesothelioma diagnosis based on notifications from jurisdictional cancer registries, as well as information on asbestos exposure experiences through surveys and interviews of mesothelioma patients.

2.21 Safe Work Australia is not a work health and safety regulator and does not have any role in relation to the laws that prohibit the importation of ACMs into Australia.²⁰

17 Mr Michael Outram APM, Acting Commissioner, Australian Border Force, *Estimates Hansard*, Legal and Constitutional Affairs Legislation Committee, 23 October 2017, p. 5.

18 Australian Government Department of Employment, *Submission 91*, p. 6.

19 Australian Government Department of Employment, *Submission 91*, p. 6.

20 Australian Government Department of Employment, *Submission 91*, p. 6.

Australian Competition and Consumer Commission

2.22 The Australian Competition and Consumer Commission (ACCC) is the Commonwealth statutory authority responsible for enforcing laws that promote competition, consumer protection and fair trading in Australia.

2.23 One of the key aspects of the ACCC's role is to protect consumers by managing the consumer product safety provisions of consumer protection laws that focus on consumer goods. Another part of the ACCC's role is to enforce provisions that prevent false and misleading representations about goods.²¹

Asbestos Safety and Eradication Agency

2.24 The Asbestos Safety and Eradication Agency (ASEA) was established on 1 July 2013. ASEA replaced the Office of Asbestos Safety, which was established in September 2012 following the recommendation of the *Asbestos Management Review Report* to establish an independent national agency to guide the implementation of the national strategic plan to improve asbestos management in Australia.²²

2.25 ASEA is responsible for liaising with Commonwealth, state and territory governments to encourage, coordinate, monitor and report on the implementation of the National Strategic Plan for Asbestos Management and Awareness. To facilitate this function, ASEA works with Commonwealth, state and territory governments on asbestos safety, and commissions, monitors and promotes research about asbestos safety. The National Strategic Plan, launched in August 2015, represents an agreed national approach to tackling the threat of asbestos.²³

2.26 ASEA assists Commonwealth, state and territory regulators to respond to imported asbestos incidents through its participation in the Heads of Workplace Safety Authorities Imported Materials with Asbestos Working Group (HWSA Working Group).²⁴

Heads of Workplace Safety Authorities Imported Materials with Asbestos Working Group

2.27 The HWSA Working Group was established in 2013 following the discovery that motor vehicles with gaskets containing asbestos were being imported into Australia. The HWSA Working Group includes representatives from:

- ASEA;
- Commonwealth, state and territory WHS regulators;
- ACCC;
- the DIBP/ABF;

21 Australian Competition and Consumer Commission, *Submission 39*, p. 3.

22 Asbestos Safety and Eradication Agency, 'About us', <https://www.asbestossafety.gov.au/about-us> (accessed 3 November 2017).

23 Australian Government Department of Employment, *Submission 91*, p. 6.

24 Australian Government Department of Employment, *Submission 91*, p. 6.

-
- Safe Work Australia; and
 - WorkSafe New Zealand; and
 - the New Zealand Ministry for the Environment.

2.28 The HWSA Working Group's remit is to respond to incidents where imported goods that may contain asbestos have been identified in workplaces or in the community; and to share information with the DIBP and ABF to help them prevent further import incidents.²⁵

Rapid response protocol

2.29 The HWSA Working Group developed a rapid response protocol for responding to incidents which came into effect in 2014.²⁶ The protocol ensures that relevant information is shared by all government agencies and enables a nationally uniform enforcement approach to be undertaken in response to incidents. The protocol is designed to allow for quick communication to the community about the safe handling and disposal of goods that contain asbestos.²⁷

2.30 Imported asbestos incidents where the HWSA Working Group has enacted the rapid response protocol have included incidents when asbestos was detected in crayons and in cement fibre boards that were imported for use within Australian construction.²⁸

Asbestos Interdepartmental Committee

2.31 The Department of Employment and the DIBP co-chair an Interdepartmental Committee (IDC) to improve the coordination of asbestos policy and regulatory issues across the Commonwealth.

2.32 The IDC consists of a number of Commonwealth policy departments and agencies, reflecting the wide reach of asbestos issues across portfolio lines and the need for a coordinated approach to holistically address asbestos issues. The IDC includes:

- Department of Employment;
- Department of Immigration and Border Protection;
- Department of Foreign Affairs and Trade;
- Department of Industry, Innovation and Science;
- Department of the Environment and Energy;
- Department of Infrastructure and Regional Development;

25 Australian Government Department of Employment, *Submission 91*, p. 7.

26 Mr Robert Kelly, Director, Specialist Services, Health and Safety, WorkSafe Victoria, *Committee Hansard*, 14 July 2017, p. 79.

27 Australian Government Department of Employment, *Submission 91*, p. 7.

28 Australian Government Department of Employment, *Submission 91*, p. 7.

- Treasury;
- ACCC; and
- Department of Health.

2.33 Relevant Commonwealth agencies such as ASEA and Safe Work Australia will actively participate in the IDC. The IDC will also engage with relevant state and territory government agencies with responsibilities for asbestos issues, such as WHS, building and environmental regulators, and stakeholders with an interest in asbestos issues. The IDC first met in September 2016 and is scheduled to run for 12 months, meeting every 1–2 months.

2.34 The IDC aims to:

- enhance consultation and coordination of Commonwealth agencies' efforts in addressing policy and regulatory issues on asbestos;
- clarify agencies' roles and responsibilities in managing asbestos policy and regulatory issues across the supply chain, and
- identify risks and gaps in asbestos management across the supply chain and coordinate proposals to resolve these risks and gaps.²⁹

Work Health and Safety laws and asbestos

2.35 Model WHS laws and regulations were developed from 2008 to establish nationally harmonised laws that continued the existing domestic ban on asbestos and ACMs, but also harmonised requirements for identifying, managing and removing asbestos and ACMs from workplaces, including nationally consistent training and licensing for asbestos removalists.

2.36 The model WHS Act and Regulations have been adopted in all jurisdictions except Victoria and Western Australia, and commenced in most jurisdictions from 1 January 2012. Victoria and Western Australia have similar laws on the management of asbestos and ACMs in workplaces as the model laws.

2.37 In addition to these general duties under the model WHS Act, the model WHS Regulations specify additional requirements applying to asbestos. The model WHS laws are also supported by model codes of practice, guidance material and information sheets that deal specifically with asbestos.³⁰

Whole of government approach

2.38 As noted above, asbestos safety is a complex policy and operational area that requires coordinated efforts on a national scale. As such, a number of Commonwealth, state and territory government agencies have responsibilities for monitoring asbestos across a range of areas including; workplace safety, border protection, environmental protection, public health and consumer safety.

29 Australian Government Department of Employment, *Submission 91*, pp. 7–8.

30 Australian Government Department of Employment, *Submission 91*, p. 4.

2.39 Mr Michael Borowick, of the Australian Council of Trade Unions (ACTU) submitted that as responsibilities for various policy areas are so spread across a range of portfolios, there is a silo effect in which departments and agencies appear to be acting in isolation. Mr Borowick stated:

A whole-of-government approach would be some mechanism by which all the agencies and all the departments would be talking amongst themselves, and it wouldn't be just an interdepartmental committee, an IDC, because they typically don't involve senior bureaucrats. We'd be looking at something higher. I know you can't put everything in Prime Minister and Cabinet, but it needs some central thread. It needs some thread there and, at the moment, it's siloed. They're all doing their own thing. They've all got their own legislation. They're all answering to a different minister.³¹

2.40 Ms Carolyn Davis, Director of Work Health and Safety and Workers Compensation Policy at the Australian Chamber of Commerce and Industry and its representative on Safe Work Australia and the Asbestos Safety and Eradication Council, expressed concern that the considerable overlap between the various Commonwealth, state and territory authorities operating in this area has led to inefficiencies and confusion. She stated:

Even the available information published by relevant Government agencies can be contradictory so an interdepartmental committee that links these agencies is important; a single national document and website is urgently needed.³²

2.41 Similarly, the Master Builders' Association explained that there is a lack of clarity and information for building industry participants surrounding how the system is administered and the roles of the various regulators. It noted for example:

- there is no obligation on any one central or distinct agency to ensure that imported building products meet Australian requirements; and
- industry participants are frequently unsure as to who and/or how to report a problem with non-conforming products.³³

2.42 As such, the Master Builders' Association argued that 'the Commonwealth should take a lead role in driving greater collaboration between the regulators of building, consumer and customs law of all jurisdictions'.³⁴

2.43 The ACTU also supported a greater role for the Commonwealth arguing that:

...the Australian Government engage with the states and territories through the Council of Australian Governments, Safe Work Australia, and the Asbestos Safety and Eradication Council about strengthening the legislative

31 Mr Michael Borowick, Assistant Secretary, Australian Council of Trade unions, *Committee Hansard*, 17 October 2017, p. 4.

32 Ms Carolyn Davis, *Submission 118*, p. 6.

33 Master Builders' Association, *Submission 125*, p. 25.

34 Master Builders' Association, *Submission 125*, p. 25.

and other duties of persons that import, supply, sell, demolish and dispose of asbestos and asbestos-containing products, materials and structures.³⁵

2.44 The Australian Workers' Union (AWU) also supported a whole of government, harmonised approach be adopted to address the risk of illegal importation of ACMs. In its view, consideration should be given to developing an inter-governmental agreement to ensure 'responses are consistent, well resourced, timely and ultimately, effective'. The AWU suggested ASEA as the appropriate authority to develop a whole of government approach as it has the necessary expertise for this task.³⁶

2.45 At a Supplementary Budget Estimates hearing in October 2017, Mr Peter Tighe, Chief Executive Officer of ASEA raised concerns about current funding arrangements and the ability to deliver on future strategic plans:

It's quite clear, though, when looking at our operational budget, including a financial report that was done in relation to the agency some 18 months ago, that the costing for operation is probably double what is in appropriation. I don't think that even touches on the work that will need to be done in relation to establishing the next phase of plans. Whilst my appointment expires in August, I'm more concerned about whether the agency would be in a position to deliver the policy position that government wants to take forward. Unless we get some appropriation that exceeds what's currently earmarked, there will be some problems. I've taken a new policy proposal to the minister. I've laid that out. It's a pretty comprehensive submission. The department has that. We've been working with the department to date. It's in the hands of the minister—probably, ultimately, the Minister for Finance—as to what might be done in this area. We'd be happy to go through any scrutiny in relation to what the agency has delivered and what are projected to be the costs into the future.

...

The difficulty is the work that has to be done in relation to the development of the next national strategic plan, providing the evidence to the jurisdictions to support that plan and the work that is required by the group that I have in my office—we wouldn't be able to fulfil that. It would, basically, neutralise the agency, where we would have to reduce the staff dramatically to, probably, an executive officer and a chair. We still are required under our legislation to deliver certain things. I don't think we'd be able to meet the objects of our act if that money's not provided.³⁷

Committee view

2.46 The committee agrees with submitters that the considerable overlap between the various Commonwealth, state and territory authorities operating in this area has

35 Australian Council of Trade Unions, *Submission 127*, p. 13.

36 Australian Workers' Union, *Submission 123*, p. 3.

37 Mr Peter Tighe, Chief Executive Officer, Asbestos Safety and Eradication Agency, *Estimates Hansard*, Education and Employment Legislation Committee, 27 October 2017, pp. 5, 10.

led to inefficiencies and confusion. While the committee is cognisant that asbestos safety is a complex issue, it is concerned by reports that there is a lack of clarity and information for building industry participants surrounding how the system works.

2.47 The committee is focussed on ensuring Australia takes all steps necessary to reduce the risk of illegal importation of asbestos; and believes that greater collaboration and harmonisation between the regulators of building, consumer and customs law across all jurisdictions is critical to achieving this goal. The committee is of the view that in order to avoid confusion and to create a more efficient system, Australia needs to adopt a whole of government approach to address the risk of illegal importation of asbestos. The committee believes that the Commonwealth government is best placed to take the lead role in coordinating a consistent approach across all jurisdictions to address the illegal importation of asbestos and to ensure departments and agencies do not act in isolation.

2.48 The committee is also concerned about the ability of the ASEA to deliver the next National Strategic Plan for Asbestos Management and Awareness given its current level of funding. The committee believes that the work of the ASEA is well regarded by all stakeholders and on that basis, should remain a separate agency with adequate funding to carry out its work.

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.

Consultation with stakeholders

2.51 Evidence to the committee highlighted the importance of stakeholder engagement and consultation to effectively strengthen the federal and state legislation and regulations regarding asbestos to prevent further incidents of illegal importation of asbestos.

2.52 Ai Group held the view that more effort is necessary to enable organisations that make sourcing decisions to import products that have a higher risk of containing asbestos to work cooperatively with regulators and relevant stakeholders to identify:

- how others have dealt with these issues;
- the difficulties encountered in establishing that a product is definitely asbestos free; and

- what processes can assist organisations to manage the entire supply chain to minimise the risk that asbestos containing products will enter the country.³⁸

2.53 Ai Group suggested one option would be to increase the membership of the Trade and Goods Compliance Advisory Group (CAG), or some other mechanism. The CAG first met on 10 March 2016 and was developed 'as a collaborative forum with industry to co-design solutions for trade and goods compliance issues'. The CAG membership is comprised of representatives from the DIPB and ABF as well as industry members including representatives from the Customs Brokers and Forwarders Council of Australia, the Freight and Trade Alliance, the Australian Federation of International Forwarders and the Council of Asia Pacific Express Carriers, as well as ten non-industry association members.³⁹

2.54 Whichever mechanism for greater consultation and industry involvement is implemented, Ai Group considered National Association of Testing Authorities, Australia (NATA) should be involved to provide important information on the adequacy of testing and where appropriate 'ACTU would be relevant to help inform the union movement about the difficulties organisations are facing in meeting their legislative obligations in this complex area of trade'. Ai Group indicated that it was in discussion with the Australian Chamber of Commerce and Industry and the ACTU to identify how they can collectively contribute to improvements in this important area.⁴⁰

2.55 The Construction, Forestry, Mining and Energy Union (CFMEU) put forward that the appropriate governance and regulatory mechanisms should be developed to address the illegal importation of asbestos, and non-conforming building products more broadly, through consultation with governments, unions, industry and stakeholders. As such, the CFMEU supported the establishment of formal consultative mechanisms to enable the Australian Government to consult with key stakeholders about issues relating to the importation of asbestos.⁴¹

2.56 Similarly, the ACTU contended 'that compliance with Australia's customs laws could be enhanced if both the DIBP and ABF were to regularly and systematically consult with a range of stakeholders rather than with just the customs agents and their representatives'. In particular, the ACTU argued that there is a lack of transparency surrounding the priorities and activities of both the DIBP and ABF.⁴²

38 Ai Group, *Submission 120*, p. 20.

39 Department of Immigration and Border Protection, 'The Trade and Goods Compliance Advisory Group', <https://www.border.gov.au/Busi/Comp/Comp/compliance-advisory-group> (accessed 6 November 2017).

40 Ai Group, *Submission 120*, p. 20.

41 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 10.

42 Australian Council of Trade Unions, *Submission 127*, p. 145

2.57 The DIBP informed the committee that it 'welcomes engagement with industry, government and other interested parties on the management and enforcement of Australia's asbestos import prohibition at the border'.⁴³

2.58 However, the ACTU did not feel that this was necessarily the reality, informing the committee that it was denied the opportunity to contribute to the Asbestos Importation Review and that the Minister would not facilitate their involvement.⁴⁴ Mr Borowick noted that the unions were invited to be observers and make presentations at the IDC, in the year since the IDC was established, and only one union had attended a meeting and presented.⁴⁵

2.59 In addition, Mr Borowick made clear that the ACTU does not want an ad hoc arrangement; it wants a formal consultation mechanism to be established. He stated further:

We want measures that force Border Force and the ACCC to provide written reasons, published on their website, as to why they haven't recalled particular products. There's no accountability. There's no answerability. The way they work is a mystery. They're happy to sit back and say, 'Tell us what's on your mind now,' but they don't engage with us on the important issues, and that's because it's all ad hoc. If the committee could recommend structures that will endure and have real meaning, they're the best things that work.⁴⁶

Committee view

2.60 The majority of evidence to the committee highlighted the importance of stakeholder engagement and consultation to effectively strengthen the federal and state legislation and regulations regarding asbestos to prevent further incidents of illegal importation of asbestos. The committee notes that the current ad hoc arrangements for stakeholder consultation are insufficient to properly address this issue.

2.61 In order to effectively address the issue of illegally imported asbestos, the committee believes regulators need to work cooperatively with all relevant stakeholders. Indeed, the committee is of the view that the Australian Government should establish formal consultative mechanisms to enable input from key stakeholders about issues relating to the illegal importation of asbestos. Specifically, the committee believes that compliance with Australia's customs laws would be

43 Department of Immigration and Border Protection, *Submission 108*, p. 11.

44 Mr Michael Borowick, Assistant Secretary, Australian Council of Trade Unions, *Committee Hansard*, 17 October 2017, p. 7. A brief overview of the Asbestos Importation Review is provided at paragraphs 1.11–1.13.

45 Mr Michael Borowick, Assistant Secretary, Australian Council of Trade Unions, *Committee Hansard*, 17 October 2017, p. 7. A brief overview of the Asbestos Interdepartmental Committee (IDC) is provided at paragraphs 2.31–2.34.

46 Mr Michael Borowick, Assistant Secretary, Australian Council of Trade Unions, *Committee Hansard*, 17 October 2017, p. 7.

enhanced if the DIBP and ABF regularly and systematically consulted with a broad range of stakeholders, rather than with just the customs agents and their representatives.

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.

International cooperation

Rotterdam Convention

2.63 The World Health Organization and the International Labour Organisation both recognise that the most efficient way to eliminate asbestos-related disease is to stop the use of all types of asbestos.⁴⁷ Despite the evidence on the serious health risks related to asbestos, manufacture of asbestos-containing products continues. Maurice Blackburn Lawyers noted that in 2013, almost a million metric tons of asbestos was exported from Russia, China, Kazakhstan, Brazil and India.⁴⁸

2.64 The Rotterdam Convention is a multilateral environmental agreement on the import and export of certain hazardous chemicals. The Department of the Environment and Energy is the responsible agency administering the Rotterdam Convention. At present, while all the other main forms of asbestos are listed in Annex III of the Rotterdam Convention, chrysotile asbestos is not.⁴⁹ Annex III 'advice and consent' provision; meaning any country wishing to export any product containing a substance listed in Annex III must advise that it contains the substance, and the receiving country must consent to the importation.⁵⁰

2.65 Mr Steven Diston, from Electrical Trades Union of Australia (ETU) observed that asbestos is:

...not just an Australian issue. We cannot just roll out 'fortress Australia' and expect that the rest of the world can continue to deal with this. It is a worldwide issue. As long as this material is in supply chains around the world, it is going to keep coming back to haunt us. We are only going to have to deal with it more and more. Of all of the things that we can do on

47 World Health Organization, 'Asbestos: elimination of asbestos-related diseases', Fact sheet, reviewed August 2017, <http://www.who.int/mediacentre/factsheets/fs343/en/> (accessed 6 November 2017).

48 Maurice Blackburn Lawyers, *Submission 107*, p. 3.

49 Department of Health, National Industrial Chemicals Notification and Assessment Scheme, 'Rotterdam Convention', last updated 18 October 2017, <https://www.nicnas.gov.au/about-us/international-obligations/rotterdam-convention> (accessed 7 November 2017).

50 Australian Manufacturing Workers' Union, *Submission 97*, p. 3.

the world stage...we can have an international push to try and ban this product. Ultimately, it is money and vested interests that keep this product being used. It is the only reason. There are alternative products. You can see that, because we supposedly banned this product in Australia nearly two decades ago.⁵¹

2.66 The Australian Manufacturing Workers' Union (AMWU) argued that an essential first step towards the implementation of a global ban on the trade of asbestos would be the inclusion of chrysotile asbestos in Annex III of the Rotterdam Convention.⁵²

2.67 The AMWU argues that listing chrysotile asbestos in Annex III would facilitate the implantation of Australia's asbestos ban as the Australian government would need to be notified that products contained chrysotile asbestos.⁵³ Union Aid Abroad-APHEDA, the Australian union movement's global justice organisation, also supported the continued strong advocacy, especially to Asian countries, to support the listing of chrysotile.⁵⁴

2.68 Mr David Clement from Asbestowise, a community-based organisation providing information, education, advocacy, awareness and support to those in contact with asbestos and support to those suffering from an asbestos-related disease, noted the 'failure to list chrysotile as a dangerous substance under the Rotterdam convention, despite a concerted campaign by unions and civil society groups'.⁵⁵ Dr Kevin Purse from the Asbestos Diseases Society of South Australia pointed out that this is because the voting procedures are based on unanimity, which makes it possible for big asbestos producing countries to prevent chrysotile asbestos from being listed in Annex III.⁵⁶

2.69 The voting procedures for the Rotterdam Convention have acted as a considerable barrier to listing chrysotile asbestos in Annex III. The AMWU considered that the next step for the Australian government is to actively advocate for reforms to the voting procedures by:

Working with the process at the Rotterdam Convention Conference of the Parties to change the voting conventions to remove the requirement for a consensus and institute a seventy five percent majority ruling.⁵⁷

51 Mr Steven Diston, Organiser, Electrical Trades Union of Australia, *Committee Hansard*, 14 July 2017, p. 54.

52 Australian Manufacturing Workers' Union, *Submission 97*, p. 3.

53 Australian Manufacturing Workers' Union, *Submission 97*, p. 3.

54 Union Aid Abroad-APHEDA, *Submission 114*, p. 5.

55 Mr David Clement, President, Asbestowise, *Committee Hansard*, 14 July 2017, p. 70.

56 Dr Kevin Purse, President, Asbestos Diseases Society of South Australia, *Committee Hansard*, 31 July 2017, p. 15.

57 Australian Manufacturing Workers' Union, *Submission 97*, p. 3.

2.70 ASEA will work with the Department of the Environment and Energy on preparations for the 2019 Rotterdam Convention consideration of listing chrysotile asbestos in Annex III to the Convention.⁵⁸

International trade agreements

2.71 The use of asbestos is legal in all countries in the Asia-Pacific region with the exception of Australia, New Zealand, Japan, Korea, Brunei, Singapore, Hong Kong and Nepal.⁵⁹ As asbestos has been increasingly banned in countries around the world, asbestos products have been aggressively marketed throughout Asia. China and India are among the five countries with the highest consumption of asbestos.⁶⁰

2.72 Mr Clement from Asbestoswise warned that the likelihood of asbestos being illegally imported to Australia will increase in line with increasing trade with China and other Asian countries where asbestos has not been banned. He observed that further trade will be encouraged through the China free trade agreement and other agreements between Australia and Asian countries.⁶¹

2.73 Building and Wood Workers' International also expressed concerns that trade agreements may increase the risk of asbestos importation, stating:

The implementation of the China-Australia Free Trade Agreement (ChAFTA) has magnified the risk of imported construction materials containing asbestos. On top of this, the current negotiation of the Regional Comprehensive Economic Partnership (RCEP) agreement, an agreement that involves Australia and 15 other Asia-Pacific nations, the majority of which have not banned asbestos.⁶²

2.74 Maurice Blackburn Lawyers urged caution when agreeing to future trade agreements with countries that do not have comprehensive asbestos bans. It argued that the Australian Government should 'commit to ensuring that any future free trade agreements allow Australia sufficient discretion to regulate the importation of building products where they may pose a public health risk'.⁶³

2.75 With regards to the Regional Comprehensive Economic Partnership (RCEP), Building and Wood Workers' International maintained that the Australian Government should demand specific provisions to protect the rights of governments to regulate the use and importation of asbestos. It stated:

This should include an exemption of asbestos from the applicability of ISDS [Investor-State Dispute Settlement] provisions (as the TPP [Trans-

58 Asbestos Safety and Eradication Agency, *ASEA Matters*, Issue 7, Spring 2017, p. 4, https://www.asbestossafety.gov.au/sites/asbestos/files/2017/10/ASEA_matters_Spring_2017_final_web.pdf (accessed 7 November 2017).

59 Union Aid Abroad-APHEDA, *Submission 114*, p.

60 Mr David Clement, President, Asbestoswise, *Committee Hansard*, 14 July 2017, p. 71.

61 Mr David Clement, President, Asbestoswise, *Committee Hansard*, 14 July 2017, p. 70.

62 Building and Wood Workers' International, *Submission 113*, p. 3.

63 Maurice Blackburn Lawyers, *Submission 107*, p. 13.

Pacific Partnership] did for tobacco), as well as an explicit statement qualifying asbestos as a carcinogen, and language protecting countries that implement a ban from other potential challenges.⁶⁴

2.76 In light of the vast bulk of illegally imported asbestos coming to Australia having origins in China, the ACTU proposed that China-Australia Free Trade Agreement (ChAFTA), which came into force on 20 December 2016, be reviewed 'with the object of strengthening its provisions so as to prevent the importation into Australia of asbestos from China'.⁶⁵

Asbestos bans in the Asia-Pacific region

2.77 Dr Kevin Purse, Asbestos Diseases Society of South Australia, noted that while in some countries asbestos consumption has been decreasing, in other countries such as China, Indonesia and Vietnam it has been growing very substantially. He observed:

It is sort of like an action replay of what we had in the fifties and the sixties...Medical evidence quite often tends to get trumped by commercial interests. If you go to places like Russia and China, they will tell you that chrysotile asbestos, white asbestos, can be used safely. That was the same sort of approach which we had in our country back in the seventies. We were told that crocidolite, blue asbestos, and grey asbestos, amosite, were dangerous, but we could use chrysotile safely. So, like I say, it is very much an action replay. It is tragic because we are going to have so many more deaths in Asia and in other parts of the world.⁶⁶

2.78 Building and Wood Workers' International noted the need for better regional cooperation between Australia and the Asia-Pacific region to support the implementation of asbestos bans in other countries with less developed health and safety regulations. It considered that the continued use of asbestos in the region 'both in local construction projects and in the manufacturing of building materials that are exported around the region (including to Australia) is a significant concern for worker and public health'.⁶⁷

2.79 Mr John Mitchell from NATA noted:

I guess in an idealised world we'd have a greater uptake of Australia's position on asbestos. Basically, the more economies that adopt a nil tolerance of the stuff, the more, if you like, normalised asbestos-free manufacture would become. In the interim, we've just got to try very hard, through as many channels as possible, to get the message out that

64 Building and Wood Workers' International, *Submission 113*, p. 5.

65 Australian Council of Trade Unions, *Submission 127*, p. 9.

66 Dr Kevin Purse, President, Asbestos Diseases Society of South Australia, *Committee Hansard*, 31 July 2017, pp. 13–14

67 Building and Wood Workers' International, *Submission 113*, p. 5.

Australia's requirements are probably as good as any in the world in terms of protection and that we are serious about it.⁶⁸

2.80 The Asbestos Disease Support Society took the view that 'Australia needs to work with our near neighbours to assist knowledge of alternative safer products...It is our belief that this will decrease the products being made and therefore decrease the risk of asbestos imports into Australia.'⁶⁹ Union Aid Abroad-APHEDA considered that 'as long as asbestos is being used anywhere, it remains a risk everywhere'.⁷⁰

2.81 Union Aid Abroad-APHEDA noted that the prolonged latency period of around 25 years for asbestos-related disease means that impact of the increased asbestos consumption in the Asia-Pacific region is yet to be felt. It noted that without asbestos bans, countries in the region will soon find 'any economic development gains from the production of asbestos-related manufacturing and use will be overwhelmingly offset by the rising health costs of treatment and the burden of compensation to victims and families'.⁷¹

2.82 Union Aid Abroad-APHEDA advocated for:

- Bilateral and regional advocacy, including at the Asia-Pacific Economic Cooperation (APEC) and the Association of Southeast Asian Nations (ASEAN) Forums and other relevant inter-governmental meetings.
- Strong support for Australian Embassies worldwide to play a role at the country level, including preventing the use of ACMs in infrastructure and construction projects funded by the Australian aid program, following the lead of the Laos Australian Embassy which has banned the use of ACMs in Department of Foreign Affairs and Trade supported infrastructure projects in Laos.
- Continued support for the ASEA to fulfil its stated strategic goal of Australia playing a leadership role in a global campaign aimed at securing a total worldwide ban in the production and trade of asbestos and ACMs.⁷²

Committee view

2.83 Managing the risks associated with asbestos is not just an Australian issue, but an international issue. The committee is concerned and frustrated that despite evidence of the serious health risks related to asbestos, manufacture of asbestos-containing products continues, as does their importation to and use in Australia.

68 Mr John Mitchell, Manager, Government Relations, National Association of Testing Authorities, Australia, *Committee Hansard*, 3 October 2017, p. 34.

69 Asbestos Disease Support Society, *Submission 92*, p. 5.

70 Union Aid Abroad-APHEDA, *Submission 114*, p. 4.

71 Union Aid Abroad-APHEDA, *Submission 114*, p. 3.

72 Union Aid Abroad-APHEDA, *Submission 114*, p. 3.

2.84 While noting the complexities of the relevant voting procedures, the committee considers that an essential first step to the implementation of a global ban on the trade of asbestos would be the inclusion of chrysotile asbestos in Annex III of the Rotterdam Convention. The committee considers that there is an urgent need to ban chrysotile asbestos, and is of the view that if the Australian Government is unsuccessful in having chrysotile asbestos listed in Annex III, it should consider pursuing bilateral or multilateral asbestos treaties with importation disclosure requirements equivalent to an Annex III listing.

2.85 The committee is concerned that as asbestos has been increasingly banned in countries around the world, asbestos products have been aggressively marketed throughout Asia, increasing the likelihood of asbestos being illegally imported to Australia. The committee acknowledges concerns that the terms of trade agreements may increase the risk of illegal importation of asbestos and agrees with submitters that the Australian Government should demand specific provisions in trade agreements to protect the rights of governments to regulate the use and importation of asbestos. In this context, the committee considers that the Australian Government's regular review of free trade agreements with other countries presents a good opportunity for review of provisions regarding asbestos containing materials.

2.86 The committee is particularly concerned that in countries such as China, Indonesia and Vietnam asbestos consumption has been increasing, and believes it is imperative that Australia continues to work with our neighbours in the Asia-Pacific region to raise awareness of the risks of asbestos, and to support the implementation of asbestos bans in those countries with less developed health and safety regulations.

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.

Chapter 3

Ongoing issues

3.1 Despite implementing a total ban on the manufacture, use, reuse, import, transport, storage or sale of all forms of asbestos and asbestos-containing materials (ACMs) within Australia from 1 January 2004, evidence to the inquiry highlighted some ongoing issues that require attention.

3.2 This chapter explores concerns raised by stakeholders about the risk of asbestos-related disease, the reality that Australian workers remain the last line of defence in asbestos detection, and the apparent lack of enforcement of the asbestos importation ban.

Asbestos-related disease risk

3.3 As noted in the previous chapter, exposure to asbestos can cause mesothelioma, cancer and asbestosis (fibrosis of the lungs).¹ While historically asbestos-related diseases have been most prevalent among workers involved in asbestos mining, milling, and manufacturing (the 'first wave') and workers, such as labourers and tradespersons, who are the end-users of asbestos containing material (the 'second wave'). Maurice Blackburn Lawyers explained that in recent decades a third wave has emerged, people who have never worked in what would be considered high risk industries, developing asbestos-related diseases.² The third wave of asbestos-related disease is characterised by low dose exposure, primarily in non-occupational contexts, such home renovations, using or working with products not known to contain asbestos or environmental exposure.³ In addition, Maurice Blackburn Lawyers stated:

Australia was one of the largest consumers of asbestos, per capita, between the 1950s and 1980s. The result has been Australia has suffered the highest incidence of asbestos-related diseases, per capita, in the world. It is estimated that over 10,000 Australians have died from malignant mesothelioma since the 1980s, that another 15,000 will be diagnosed in coming decades, due to the long latency period of the cancer, and the fact that Australians continue to be exposed to asbestos.⁴

3.4 Professor Bill Musk, appearing as a member of the Australian Medical Association (WA) and with experience and expertise in the epidemiology and the clinical care of patients with asbestos related diseases, explained to the committee that 'one of the features of asbestos is that it is indestructible—that is how it gets its

1 Australian Border Force, *Managing the risk of asbestos at the border*, p. 1, <http://www.border.gov.au/Importingandbuyinggoodsfromoverseas/Documents/asbestos-border-factsheet.pdf> (accessed 6 November 2017).

2 Maurice Blackburn Lawyers, *Submission 107*, p. 4.

3 Maurice Blackburn Lawyers, *Submission 107*, p. 5.

4 Maurice Blackburn Lawyers, *Submission 107*, p. 10.

name—so once it gets into the lungs it tends to stay there and is very hard to remove, and as long as it is there it can cause disease'. Professor Musk observed that while not every person that breathes asbestos will get an asbestos-related disease. He noted that the asbestos fibres sit in the lungs and are:

...removed by the defence mechanisms of the lung at a ballpark rate of about five per cent per year, but that means at the end of every year 95 per cent of them are still there, and as long as they are there they can give rise to cancer, asbestosis or things called pleural plaques or pleural thickening on the outside of the lungs.⁵

3.5 Mr Ian Johnstone appeared before the committee as a member of the Asbestos Disease Support Society. Mr Johnstone was diagnosed with mesothelioma in 2016, after being exposed to asbestos during his 33 years in the construction industry in Melbourne, beginning in the 1970s. Mr Johnstone explained:

The reason for me being here today is to try and stop any further person contracting mesothelioma. In this day and age, that people can still be exposed to this product, knowing now what I have and that there is no cure for my problem—it is a disease not caused by me but by others. I was diagnosed in July of last year and it has put a tremendous strain upon my family. It has made our lives change completely. I wish that upon no-one in the future.⁶

3.6 Ms Amanda Richards of the Asbestos Disease Support Society outlined the changing demographics of those being diagnosed with asbestos related diseases in recent years:

Up until 18 months ago, it was...people who had worked with asbestos products or had been part of the mining industry. What we are seeing now is younger people coming through. In the last 12 months we have had a few people in their 30s and 40s come through, who have since passed away. Just before Christmas I was contacted by somebody who was only 22 who had been diagnosed with mesothelioma and was trying to understand how she could possibly have got the disease when she had never worked with it, did not live in a house with asbestos in it et cetera. I believe that the next wave is starting. Some people get it from their parents refurbishing homes, but the younger ones are coming through now.⁷

3.7 Another witness described the experience of workers discovering they have been exposed to asbestos. Mr Steven Diston of the Electrical Trades Union of Australia (ETU) explained:

5 Professor Arthur William (Bill) Musk, Member, Australian Medical Association (Western Australia), *Committee Hansard*, 9 March 2017, p.17.

6 Mr John McGregor (Ian) Johnstone, Member, Asbestos Disease Support Society, *Committee Hansard*, 30 January 2017, p. 2.

7 Ms Amanda Marion Richards, Chief Executive Officer, Asbestos Disease Support Society, *Committee Hansard*, 30 January 2017, p. 3.

I do not know if you have ever been to a job where guys have been exposed to asbestos, but basically you end up with an angry roomful of people who want answers, and there are not many answers you can give these people. We got in a specialist in asbestos law from Slater and Gordon, and she sat down with these people. The long and the short of it is that if you have been exposed to asbestos, cross your fingers and hope. You put your name down on the [national asbestos register]...Employers will often say, 'You can put us down as the employer,' but employers come and go. One of the biggest things is the absolute futility of it: once you are exposed it is too late; there is nothing that can be done for you; we do not have double lung transplants available. Asbestosis or mesothelioma is a terminal sentence. I have been exposed to asbestos a lot, and it is just cross your fingers.⁸

3.8 Mrs Vicki Hamilton, OAM, Asbestos Council of Victoria/GARDS reminded the committee 'there is no safe level to asbestos'. She described a 'tsunami of asbestos products coming into our country' which needs to be stopped to prevent unwitting exposure through products bought online or at a retailer.⁹

3.9 The risk of asbestos exposure to the broader population has increased due to the rise of online purchasing. The Asbestos Safety and Eradication Agency (ASEA) also noted the risk arising from the increase in demand for sourcing building products through online platforms such as the Chinese e-commerce company, Alibaba. Overseas merchants are easily able to import and sell their goods through this online business model to consumers around the world. The reliability of these products can be severely questioned as a quick search on the Alibaba website will identify a vast array of asbestos products.¹⁰ The Asbestos Council of Victoria/GARDS Inc raised similar concerns in relation to goods purchased through eBay.¹¹

3.10 In light of what we know of the dangers of exposure to asbestos, Maurice Blackburn Lawyers, argued that 'we have a moral obligation to protect future generations of Australians by actively taking steps to prevent the importation and use of non-conforming building materials containing asbestos'.¹²

Workers—the last line of defence

3.11 Given the serious health risks associated with exposure to asbestos, the committee is worried about the ongoing risk to workers since the asbestos importation ban was imposed in 2003. Of particular concern to the committee was evidence that products containing illegally imported asbestos are most often discovered by workers. For example, the asbestos at the Perth Children's Hospital and 1 William Street in

8 Mr Steven Diston, Organiser, Electrical Trades Union of Australia, *Committee Hansard*, 14 July 2017, p.54.

9 Mrs Vicki Hamilton, OAM, Chief Executive Officer; Secretary, Asbestos Council of Victoria/GARDS Inc, *Committee Hansard*, 14 July 2017, p. 67

10 Asbestos Safety and Eradication Agency, *Submission 90*, p. 6.

11 Asbestos Council of Victoria/GARDS Inc, *Submission 104*, p. 1.

12 Maurice Blackburn Lawyers, *Submission 107*, p. 10.

Brisbane was discovered by workers with relevant occupational health and safety (OH&S) and asbestos awareness training.¹³

3.12 Mr Thady Blundell, representing the Asbestos Disease Support Society and Turner Freeman Lawyers noted that the discovery of asbestos at 1 William Street 'came about because a worker did not like the look of the dust and was concerned that it contained asbestos. That led to inquiries being made and the material being tested...So it was by chance'.¹⁴ Mr David Meir, ETU, observed:

It is always the workers because they are the ones dealing with it. We bear the brunt of everything. We are the ones drilling the holes and going, 'Oh, that looks a bit suss; what's this?' They get their health and safety rep over if they have got one or they call in the union to suss it out. They say to their boss, 'What's this?' If the boss is diligent, he will say, 'Oh, we'd better stop that,' or he will say, 'Oh, don't worry about it; just get it done and paint over it'.¹⁵

3.13 Mr Simon Pisoni from the Communications Electrical Plumbing Union (SA) explained that it was also workers who discovered asbestos at the Nyrstar project in Port Pirie, South Australia. Mr Pisoni explained:

Definitely our members are made aware of the sort of material that you should be cautious of. There's always that base knowledge of recognising what could contain asbestos and then having the ability to raise it as a concern and have any material tested. Even though the building of the plant at Nyrstar will be a new plant and you'd expect that there wouldn't be any asbestos...the concern was raised and, to their credit, Nyrstar went through the proper process of taking a sample and having it tested. To their disgust, it was found that the cladding was asbestos.¹⁶

3.14 Mr Peter Tighe, Chief Executive Officer of ASEA, observed that the illegal importation of asbestos has created a new challenge for awareness training. He noted:

The problem is that new people that come into the trade in that area and since 2003, since we've had zero tolerance—have an assumption that any new work don't have any association with asbestos. But there is the legacy of asbestos.¹⁷

13 Asbestos Safety and Eradication Agency, *Submission 90*, p. 4

14 Mr Thady Blundell, Lawyer, Asbestos Disease Support Society, Turner Freeman Lawyers, *Committee Hansard*, 30 January 2017, p. 2.

15 Mr David Mier, Assistant National Secretary, Electrical Trades Union of Australia, *Committee Hansard*, 14 July 2017, p. 59

16 Mr Simon Pisoni, Assistant Branch Secretary, Electrical and Plumbing South Australia, Communications Electrical Plumbing Union, *Committee Hansard*, 31 July 2017, p. 4.

17 Mr Peter Tighe, Chief Executive Officer, Asbestos Safety and Eradication Agency, *Estimates Hansard*, Education and Employment Legislation Committee, 27 October 2017, p. 11.

3.15 Mr Dave Kirner, Construction, Forestry, Mining and Energy Union (CFMEU), shared Mr Tighe's concerns about the renewed importance of asbestos awareness training:

We're now playing a catch-up game because asbestos is reborn in the building industry. We're having to go and talk to workers...starting at the ground again and distributing stickers about asbestos and the union document 'Asbestos kills' so they understand it. I was speaking to a group of three young workers the other day, probably between 19 and 22, and I said, 'You probably don't know much about asbestos, but it's highly dangerous.' One of them said, 'My grandfather died from that.' So we are having to now go back and redo all that.¹⁸

3.16 In relation to asbestos found on tugboats, Mr Paul Garrett from the Maritime Union of Australia advised the committee that workers discovered asbestos on vessels after due diligence checks had given the all clear and the vessel had been returned to service.¹⁹

Asbestos awareness training

3.17 Workers are often the last line of defence when dealing with illegally imported asbestos. As such, the availability of asbestos awareness training for workers is essential.

3.18 The CFMEU informed the committee that it was not a matter of luck that led to the discovery of asbestos by CFMEU members and subsequent successful remediation at the 1 William Street site. The site delegate who first became suspicious that asbestos was present had undertaken nationally accredited Asbestos Awareness Training. It noted that 'identifying asbestos is a highly specialised task'.²⁰ The CFMEU advocated for introduction of 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'.²¹

3.19 Maurice Blackburn Lawyers expressed concern that 'the Australian population is becoming increasingly unaware of the precise dangers that asbestos poses, as well as how to identify or protect themselves from products which contain asbestos'.²² It noted the building products containing asbestos pose a health risk to workers, but also to the general population of Australia. It explained:

The issue is especially vexing as there is a growing 'information gap' amongst workers and the general public. In Australia, public awareness

18 Mr Dave Kirner, District Secretary Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union, South Australia, *Committee Hansard*, 31 July 2017, p. 11.

19 Mr Paul Garrett, Assistant Secretary, Sydney Branch, Maritime Union of Australia, *Committee Hansard*, 3 October 2017, p. 16.

20 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 24.

21 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 11.

22 Maurice Blackburn Lawyers, *Submission 107*, p. 10.

concerning the dangers of asbestos peaked in the 1980s and 1990s in the wake of campaigning by activists, trade unions, parliamentarians and the media to ban the use of asbestos.²³

3.20 The risk to the broader population of illegally imported asbestos is amplified by the rise of online purchasing.

3.21 Maurice Blackburn Lawyers was particularly concerned that there is a growing assumption that asbestos is a danger of the past.²⁴ Mr Steve Diston from the ETU held a similar view, he had found that apprentices are being desensitised to asbestos. He noted further:

But I tell you that one thing that would be bloody handy would be that, in all the apprenticeship training, any apprentice should have asbestos awareness as a unit of competency in their apprenticeship. I am a licensed electrician as well. If you spend any time on Facebook groups about electrical advice, at least once a week there will be someone posting a picture of a material, saying, 'Do you reckon this is asbestos or not?' because we do not get trained in it. Unless you are at a decent union workplace where it is pushed, you are just not going to get that training.²⁵

3.22 Maurice Blackburn Lawyers was of the view asbestos awareness training should be a mandatory requirement in government contracts, asserting that:

Commonwealth, state and territory governments should adopt a standard condition in any contract with private industry for major public projects, that contractors provide asbestos awareness training to workers (and provide the Government with proof of that training), where such projects will include the use of imported building materials.

Such training should involve training workers to identify possible asbestos materials on the building site, as well as what precautions should be taken to avoid exposure.²⁶

3.23 At a Supplementary Budget Estimates hearing in October 2017, Mr Peter Tighe, CEO of ASEA observed:

Employers in the industry and employee organisations in the industry are starting to require asbestos education as a fundamental in place. We just registered a course with ASQA [Australian Skills Quality Authority] for the utilities sector for training of awareness for all players in that area—that means direct employees and contractors. I think that responds to the information that you're probably hearing about the need for universal asbestos awareness programs for those people who may come across it in their normal occupational areas. The secondary one, though, is this need for those people who are going to run across it as a non-occupational

23 Maurice Blackburn Lawyers, *Submission 107*, p. 9.

24 Maurice Blackburn Lawyers, *Submission 107*, p. 9.

25 Mr Steven Diston, Organiser, Electrical Trades Union of Australia, *Committee Hansard*, 14 July 2017, p. 60.

26 Maurice Blackburn Lawyers, *Submission 107*, p. 12.

understanding about what is going on. Certainly, in the trades and in the apprenticeship area, we're finding from our building construction advisory committee that they would like to move ahead with some universal training.²⁷

Committee view

3.24 The committee understands that identifying asbestos is a highly specialised task. However, the committee is deeply concerned by evidence that Australians working in the building and construction industry are becoming increasingly unaware of the precise dangers that asbestos poses, as well as how to identify or protect themselves from products which contain asbestos.

3.25 In order to mitigate the risk of exposure to asbestos, particularly asbestos that may have been illegally imported but is yet to be discovered, the committee believes that mandatory nationally accredited asbestos awareness training should be introduced for a wide range of occupations in the construction industry. To this end, the committee encourages the Australian Government to ensure adequate funding is provided for this purpose.

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.

Inadvertent procurement

3.27 The WA Building Commission's audit report in September 2016 found that the presence of asbestos containing material in the Perth Children's Hospital revealed that awareness of the risk of inadvertent procurement of asbestos containing materials (ACMs) within the supply chain appears to be low.²⁸

3.28 ASEA submitted that Australia needs to develop a holistic approach to supply chain management in order to address the problems regulators are currently facing with regards to imported ACMs. Following discussions with a wide range of stakeholders, from customs brokers to manufacturers to government representatives and customs staff, ASEA was of the view that 'changes to the supply chain must start at its roots'. It noted that many of its stakeholders were seeking more information from ABF in order to ensure they were compliant.²⁹

3.29 ASEA considered that asbestos awareness programs targeted at designers, architects or planners could have resounding impacts through the supply chain. Noting

27 Mr Peter Tighe, Chief Executive Officer, Asbestos Safety and Eradication Agency, *Estimates Hansard*, Education and Employment Legislation Committee, 27 October 2017, p. 13.

28 WA Building Commission, *Summary of Interim Report: Perth Children's Hospital asbestos*, September 2016, p. 2.

29 Asbestos Safety and Eradication Agency, *Submission 90*, p. 5.

that by focussing on the design, quality standard and contractual stipulation stage quality non-compliance could be weeded out.³⁰

3.30 ASEA also noted the importance of sourcing, particularly as the market is so attached to the cheapest option.³¹ Ai Group also noted that procurement policy that places all emphasis on minimising cost will exacerbate the problem.³²

3.31 In addition, ASEA advised that customs brokers need to be highly aware of these issues and high risk products. Noting that they need to continually liaise with suppliers and clients to meet their due diligence requirements.³³

3.32 The Construction Products Alliance, a collective of public and private organisations that is working to promote awareness of non-conforming building products, emphasised the importance of educating industry, clients and consumers about the countries that have not banned asbestos and the associated risks.³⁴

3.33 Mairin OHS&E Consulting, an Australian company which provides health and safety consultancy services, suggested that asbestos awareness programs focused on the risk of illegal importation of asbestos could assist ABF with its workload by raising the level of general awareness and the ability to identify high risk products before they enter Australia. It noted that the published information that is currently available online can be difficult to locate.³⁵

3.34 Ms Carolyn Davis noted:

Developing and promoting nationally consistent information is important and needs to involve all stakeholders. Solutions that focus on one part of the supply chain have not worked. A one-stop-shop for everyone to access consistent trusted information is a step in the right direction. Nationally agreed guidance on a national website would increase public and industry awareness of and confidence in the available information. A unified approach is needed that can be used to promote overseas especially to those involved early in the supply chain.³⁶

Committee view

3.35 There is no doubt that there is a real risk of inadvertent procurement of asbestos containing building materials within the supply chain, and the committee is concerned about the apparent lack of awareness of this risk. The committee is of the view that in order to stop asbestos containing building materials at the contractual stipulation stage, asbestos awareness programs need to be provided across the supply

30 Asbestos Safety and Eradication Agency, *Submission 90*, p. 5.

31 Asbestos Safety and Eradication Agency, *Submission 90*, p. 5.

32 Ai Group, *Submission 120*, p. 10.

33 Asbestos Safety and Eradication Agency, *Submission 90*, p. 5.

34 Construction Product Alliance, *Submission 116*, p. 4.

35 Mairin OHS&E Consulting, *Submission 93*, p. 5.

36 Ms Carolyn Davis, *Submission 118*, p. 8.

chain (including for example to architects and designers) and not limited to building and construction industry workers. As ABF is the operational arm of the Department of Immigration and Border Protection (DIBP) who enforces the ban on the importation of asbestos, the committee believes that they are best placed to develop and implement such training.

3.36 The committee is concerned by evidence that there is a lack of awareness across the supply chain of the risk of inadvertently procuring building materials containing asbestos. The committee considers that raising the level of awareness and the ability to identify high risk products before they enter Australia is paramount to reducing the risk of inadvertently importing asbestos. The committee notes that the information that is currently available online regarding this risk can be difficult to locate and believes that consideration should be given to developing a single online portal for the purpose of educating building industry participants, importers and consumers about the risk of inadvertently procuring asbestos containing building materials within the supply chain.

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.

Enforcement of the asbestos importation ban

3.39 Mrs Hamilton from the Asbestos Council of Victoria/GARDS stated that since asbestos importation was banned in 2003, 'products containing asbestos have been flowing into our country with no checks'. She suggested:

We were foolish enough to think we could pass laws and everyone would obey them. No-one thought to do regular checks on products after the ban was initiated. We have only realised in recent times just what asbestos is in these products and how varied those products are and how wide-ranging they are, affecting all Australians, from the very young—children—right through to the old.³⁷

3.40 Mr Colin Brame from the Customs Brokers and Forwarders Council of Australia Inc. also noted that there were no measures put in place at the time of the ban to ensure it was enforced. He advised the committee that when the ban came into

37 Mrs Vicki Hamilton, OAM, Chief Executive Officer; Secretary, Asbestos Council of Victoria/GARDS Inc, *Committee Hansard*, 14 July 2017, p. 68.

force at the end of 2003, there were no industry wide notices advising of the changes, nor were there community protection questions put into the customs system for customs brokers to answer: 'do these goods contain asbestos?'³⁸

3.41 As such, customs brokers were not required to ask what due diligence had been done to ensure a product is asbestos free. Mr Brame explained that 'the law came out that there was nil asbestos into Australia but that did not flow into the customs side of things as a proactive question for us to follow up with importers and their suppliers'.³⁹

3.42 Mr Brame noted that it was not until August 2016 that ABF introduced the community protection question into the system, thirteen years after the ban was first imposed.⁴⁰

3.43 Mr Andrew Mantle of Asbestos Audits & Environmental Audits Pty Ltd (AARMS), a specialised asbestos surveying company, likened the current requirements to prevent the illegal importation of asbestos to asking 'the fox to guard the henhouse' noting:

At the moment, within Australia, whilst we have the regulations saying, 'A product has to be asbestos free or meet the Australian/New Zealand standard,' there is no testing of that product prior to its import into Australia. All we originally required was a declaration or some form of proof or documentation that states that the product is asbestos free.⁴¹

3.44 Mr Mantle considered that importers and companies were unlikely to undertake asbestos testing prior to import into Australia unless they had a shipment held at wharf by ABF.⁴² He explained that there is no mandatory requirement for importers to ensure products are asbestos free:

It is in the ABF leaflets that go out to the customs and trade brokers that they highly recommend that any products being imported must comply with the regulations, and that may require testing and further documentation. But to date,...I could not name five companies that are actively seeking to have building products tested or the factories in China audited to ensure that the products are asbestos free.⁴³

38 Mr Colin Brame, Director, Customs Brokers and Forwarders Council of Australia Inc., *Committee Hansard*, 30 January 2017, p. 43.

39 Mr Colin Brame, Director, Customs Brokers and Forwarders Council of Australia Inc., *Committee Hansard*, 30 January 2017, p. 43.

40 Mr Colin Brame, Director, Customs Brokers and Forwarders Council of Australia Inc., *Committee Hansard*, 30 January 2017, p. 44.

41 Mr Andrew Gordon Mantle, Managing Director, Asbestos Audits & Environmental Audits Pty Ltd, *Committee Hansard*, 3 October 2017, p. 27.

42 Mr Andrew Gordon Mantle, Managing Director, Asbestos Audits & Environmental Audits Pty Ltd, *Committee Hansard*, 3 October 2017, p. 26.

43 Mr Andrew Gordon Mantle, Managing Director, Asbestos Audits & Environmental Audits Pty Ltd, *Committee Hansard*, 3 October 2017, p. 30.

3.45 In relation to the incidents where products it had supplied were found to contain asbestos,⁴⁴ Mr Kevin Will from Yuanda Australia informed the committee that at 'no point previous were we ever asked to supply a certificate to say this product was not asbestos'.⁴⁵ He confirmed in a response to a question on notice that there was no such requirement imposed on Yuanda Australia.⁴⁶ Mr Will advised the committee that Yuanda Australia has now implemented its own testing regime 'which sees every batch of samples tested under procedures established by our Australian consultants, OccSafe. These test samples are then brought to Australia by a licensed importer in order to be tested in a NATA-accredited laboratory'.⁴⁷

3.46 Mr Michael Borowick, from the Australian Council of Trade Unions (ACTU) suggested that the apparent failure of enforcement of Australia's asbestos ban could also be due to a loss of momentum and shifting priorities of ABF. He posited:

I suppose there must have been a great deal of momentum in the lead-up to the ban being imposed in 2003. I wasn't involved at the time, but I'd say there would've been a whole number of things. Things had come together and there was momentum, and the Howard government at the time did the right thing....For some reason the momentum has dropped away. Perhaps, in terms of Border Force, the priority has been on people coming to Australia, drugs and guns, and asbestos hasn't been where the focus has been, and government hasn't given the appropriate direction to the relevant agencies to make it a priority.⁴⁸

3.47 Mairin OHS&E Consulting held a similar view:

It is our experience and view that in the sixteen (16) years since the ban came into effect there has been an overall growing complacency amongst importers and end-users on the risks associated with imported asbestos products entering Australian workplaces and homes. Policing and education on the extent of the asbestos importation problem by government departments (at both state and federal levels) during the same period, appears outwardly haphazard and under resourced with only a limited number of high profile cases being reported through popular media.⁴⁹

44 The incidents at 1 William Street Brisbane and the Perth Children's Hospital both involved products supplied by Yuanda Australia.

45 Mr Kevin Will, Managing Director, Yuanda Australia Pty Ltd, *Committee Hansard*, 30 January 2017, p. 25.

46 Yuanda Australia Pty Ltd: Answers to questions taken on notice from a public hearing on 30 January 2017 (received 20 February 2017).

47 Mr Kevin Will, Managing Director, Yuanda Australia Pty Ltd, *Committee Hansard*, 30 January 2017, p. 22.

48 Mr Michael Borowick, Assistant Secretary, Australian Council of Trade Unions, *Committee Hansard*, 17 October 2017, p. 5.

49 Mairin OHS&E Consulting PTY LTD, *Submission 93*, p. 1.

The tip of the iceberg

3.48 Mr Robert Kelly from WorkSafe Victoria provided evidence to the committee about recent use of the rapid response protocol to respond to incidents of asbestos.⁵⁰ He observed that in 2017, WorkSafe Victoria had seen an increase in reports of asbestos:

We are getting the calls more frequently, whether it is the gaskets, the brake pads or quad bikes.⁵¹

3.49 Mr David Clement of Asbestoswise expressed surprise at the number and range of incidents of asbestos, explaining:

That has slightly taken our breath away. On the argument that it is the tip of the iceberg, you look at how it has been identified: it has been identified by workers, by unions and by groups like [Asbestos Council of Victoria/GARDS]. In the case of the quad bikes, it was by a whistleblower. The majority of cases have not been identified by the authorities. I think what that tells us is that the tip of the iceberg may well be the case.⁵²

3.50 The ACTU also expressed the view that recent incidents 'in all likelihood represent the tip of the iceberg and the real incidence of illegal importation is masked by a combination of the lack of enforcement and the ineffectiveness of the ABF in detecting ACMs'.⁵³

3.51 Mr Daniel Morgan from Coffey, a company which provides asbestos services, expressed the view that asbestos was so widespread in building products that 'the only way to completely stop it would be to use a domestic product'. He explained:

I personally feel that it would be impossible to stop it from coming in. There are so many building materials that could potentially contain asbestos, not limited to fibre cement. It is in mastics, it is in sealants, it is in glues, it is in thermal insulation. We are asked on a regular basis to go overseas and do checks for some major corporations in Western Australia. We are heavily involved in the maritime industry, where we do find asbestos gaskets on new ships that are stopped from coming into Australian waters because of the asbestos onboard. I believe that a very, very rigorous inspection process would not stem the tide of asbestos coming onto our shores.⁵⁴

3.52 Mr Dave Kirner from the CFMEU considered the recent influx of illegally imported asbestos products to be the next wave of danger to workers:

50 Discussed in more detail in Chapter 2 at paragraphs 2.29–2.30.

51 Mr Robert Kelly, Director, Specialist Services, Health and Safety, WorkSafe Victoria, *Committee Hansard*, 14 July 2017, p. 79.

52 Mr David Clement, President, Asbestoswise, *Committee Hansard*, 14 July 2017, p. 70.

53 Australian Council of Trade Unions, *Submission 127*, p. 3.

54 Mr Daniel Morgan, Principal Consultant, Coffey, *Committee Hansard*, 9 March 2017, p. 24.

I don't think there's enough public awareness. The first wave was in manufacturing, then the building workers and then the home renovators, and now it's back. Sadly, the Royal Perth Hospital was a tier 1 major project. The materials were imported by a major builder, a major contractor, and that's where we're finding the problems as well. So, on asbestos, I think there's a lot of work to do.⁵⁵

Stopping asbestos at the border

3.53 As noted in Chapter 2, since ABF's establishment on 1 July 2015, the Department of Immigration and Border Protection (DIBP) and ABF have significantly increased the strategic and operational focus on goods that pose a risk of containing asbestos. These include:

- undertaking risk assessments;
- commencing a sampling programme;
- enhancing risk profiles, establishing of a 'community protection question' for importers;
- requiring the testing of goods that are suspected of containing asbestos; seizure of goods containing asbestos;
- raising awareness and engaging with customs brokers and importers,
- international governments, customs agencies and suppliers; and
- increased engagement and coordination across jurisdictions.⁵⁶

3.54 The Construction Product Alliance observed that 'the reality is that, for imported products, the Federal Customs (Border Force) has limited capacity to physically check, at the point of arrival into the country, the many thousands of products or materials that may contain asbestos'.⁵⁷

3.55 The committee is aware that a large number of imports arrive in Australia each year. In 2016–17, ABF processed a total of 41.9 million air cargo consignments and 3.2 million sea cargo reports.⁵⁸

3.56 A number of submitters were of the view that the DIBP and ABF were under-resourced for the task of preventing the illegal importation of asbestos. The ACTU welcomed ABF's recent focus on an established problem, after years of government inaction. It expressed concern that the resources available to the DIBP and ABF may

55 Mr Dave Kirner, District Secretary Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union, South Australia, *Committee Hansard*, 31 July 2017, p. 11.

56 See paragraph 2.15.

57 Construction Product Alliance, *Submission 116*, p. 3.

58 Department of Immigration and Border Protection, *Corporate Plan 2017–18*, p. 18, <https://www.border.gov.au/ReportsandPublications/Documents/corporate-plans/corporate-plan-2016-17.pdf> (accessed 7 November 2017).

not be sufficient to effectively monitor and prevent the illegal importation of asbestos.⁵⁹

3.57 Mr Geoff Fary, former Chair of the Asbestos Management Review (2010–12) and the Asbestos Safety and Eradication Council (2013–16) noted that as there is now a history of illegal importation of asbestos, it is possible to predict both the high risk countries of origin and the types of products likely to contain asbestos (i.e. East Asia and in building materials, motor vehicles etc). As such, Mr Fary suggested:

It shouldn't be beyond the resources and wit of the [ABF] to identify appropriate targets for comprehensive inspection, testing and analysis.⁶⁰

3.58 On the other hand, the Housing Industry Association (HIA) stated that while a complete ban on asbestos would appear to be the highest level of regulation, enforcement is extremely difficult. It considered that the 'reality is that Federal Customs (Border Force) has limited ability, and even more limited resources, to physically check products at the point of arrival into the country'.⁶¹

3.59 In order to prevent the illegal importation of asbestos, HIA considered the most important change would be to ensure that building product manufacturers, regardless of their country of origin, understand the expectations of the Australian government in relation to product conformance requirements.⁶²

3.60 Mairin OHS&E Consulting suggested a dedicated specialist unit within ABF could prove useful to identify high risk imports. It explained:

Border Force is on the frontline for interception of imported asbestos goods but on balance appears to be under resourced to do so. Given the extent of biological and chemical contraband that they are responsible for preventing entering Australia this is understandable.⁶³

3.61 The DIBP informed the committee that it does not have dedicated staff who specialise in identifying asbestos. Rather, resources are applied according to the ABF's risk assessment processes and staff resources are not allocated to specific risks for regulated goods.⁶⁴

Committee view

3.62 The committee notes the large number of imports arriving each week in Australia which may contain asbestos, and recognises the work of the DIBP and ABF to increase the strategic and operational focus on goods that pose a risk of containing

59 Australian Council of Trade Unions, *Submission 127*, p. 14.

60 Mr Geoff Fary, *Submission 94*, p. 2.

61 Housing Industry Association, *Submission 119*, p. 1.

62 Housing Industry Association, *Submission 119*, p. 3.

63 Mairin OHS&E Consulting, *Submission 93*, p. 5.

64 Department of Immigration and Border Protection: Answers to written questions taken on notice (QoNs 18–54) (received 20 October 2017), p. 32.

asbestos. However, the committee considers that increased resourcing would increase ABF's ability to physically check products at the point of arrival into Australia.

3.63 The committee is concerned that ABF does not have dedicated staff who specialise in identifying asbestos. While the committee understands that resources are applied according to ABF's risk assessment processes and staff resources are not allocated to specific risks for regulated goods, the committee believes that the establishment of a dedicated specialist unit within ABF has the potential to increase the identification of asbestos at the border.

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.

Prosecutions and Penalties

3.66 The committee heard 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. In responses to questions on notice provided in February 2017, the DIBP informed the committee that in recent years there have been three successful prosecutions for importing asbestos:

- In 2008, Alcan pleaded guilty to seven charges for importing equipment containing asbestos in breach of section 233(1) (b) of the Customs Act. The Court fined Alcan \$70,000 and costs of \$20,000.
- In 2012, the Court found an international engineering company, Clyde Bergemann Senior Thermal Pty Ltd (CBST), guilty of two counts of importing prohibited imports, namely chrysotile asbestos contrary to section 233(1) (b) of the Customs Act. The Court fined CBST \$64,000 including costs.
- In December 2014, the Court found a 50-year-old Australian man guilty of importing asbestos and fined him \$10,000 and costs of \$4,500.

3.67 In February 2017, the DIBP also noted that since ABF was established in 2015, four infringement notices for a total value of \$31,950 have been issued relating to asbestos. Three formal warning letters have been issued, with penalty action currently being considered for the remainder of the detections.⁶⁵

65 Department of Immigration and Border Protection: Answers to questions taken on notice from a public hearing on 30 January 2017 (QoNs 1-17) (received 24 February 2017), p. 7.

3.68 On 12 August 2017, it was reported that Yuanda Australia had received three infringement notices.⁶⁶ With reference to these infringement notices, Mr Borowick from the ACTU did not consider the penalties to be adequate, he stated:

The most notable incidence of asbestos importation to Australia in the last year has been that of Yuanda, a Chinese building products manufacturer. This asbestos was discovered on building sites throughout Australia, and there was evidence before the committee about that. After investigation Australian Border Force issued Yuanda with an infringement notice for each detection. An infringement notice cannot exceed \$15,750—a paltry amount for a company that has in excess of \$1 billion in revenue.⁶⁷

3.69 Mr Borowick also noted 'the ban hasn't had any real deterrent effect, and the reality is that you can import asbestos into Australia with impunity.'⁶⁸

3.70 The ACTU suggested that the quantum of penalties be reviewed, stating:

Given the appalling record on successful prosecutions and the insignificant quantum of penalties applied to guilty parties, it's no wonder the system fails to protect the community. \$90,000 is akin to a slap on the wrist for a multi-billion company like Rio Tinto Alcan (Rio). These sort of judgments against companies like Rio do nothing to encourage importers to perform due diligence on the contents of products being brought into Australia.⁶⁹

3.71 Master Builders' Australia also considered that increasing penalties would be a positive step and would send an important message to the community and building industry participants. It stated:

In much the same way that the Commonwealth has established significant penalties for those who seek to import narcotics and firearms, penalties for those who import ACMs should be set at a level that is an appropriate disincentive against such conduct. A penalty regime that deters non-compliances with the law will be a positive step and send an important signal to the community and building industry participants.⁷⁰

3.72 Similarly, Mr Geoff Fary considered that 'what is required is the political will to prosecute and substantially penalise those parties found to be in breach'. He commented:

Australia having a comprehensive regulatory ban on the importation of asbestos containing products will amount to little if there are no effective consequences in place should the ban be flouted...The sad and disgraceful history of the asbestos industry is replete with examples of innocent people

66 Natasha Bitá, 'Asbestos breaches earn a slap on wrist', *Courier Mail*, 12 August 2017, p. 9.

67 Mr Michael Borowick, Assistant Secretary, Australian Council of Trade unions, *Committee Hansard*, 17 October 2017, p. 2.

68 Mr Michael Borowick, Assistant Secretary, Australian Council of Trade unions, *Committee Hansard*, 17 October 2017, p. 2.

69 Australian Council of Trade Unions, *Submission 127*, p. 12.

70 Master Builders' Australia, *Submission 125*, p. 8.

contracting incurable terminal diseases as a consequence of the greed of others who have taken the chance of flouting the law. Lots of publicity and provision of information has little of the deterrent factor of prosecution and penalisation of those found to be in breach of our laws.⁷¹

3.73 HIA warned that 'complacency leads to lax practices', and argued for better enforcement of existing regulations.⁷² The Construction Product Alliance made a similar argument:

With the appropriate level of enforcement and education by the relevant regulatory agencies, the existing regulatory system does provide a sound basis for the supply and use of conforming building products in Australia. However, the effective enforcement of the regulatory structure has failed, in part through lack of commitment to take strong action, and also as a result of the system failing to keep pace with the changing nature of the building product supply chain that is now a global marketplace.⁷³

3.74 Maurice Blackburn Lawyers maintained that the Australian Government needs to be more active in enforcing penalties. In its view, it may be necessary to adopt 'a zero-tolerance approach to perpetrators, and or a commitment of greater resources to investigations and prosecutions'.⁷⁴

3.75 The ETU considered the small number of prosecutions for illegal importation of asbestos was evidence the current system is flawed and argued for an independent review of the legislation and regulations governing the importation of asbestos.⁷⁵

3.76 The ACTU believed the current regulatory framework 'is failing the community, as evidenced by continued detections of asbestos and ACMs in imported goods and the very limited number of full investigations and subsequent prosecutions since the prohibition was introduced in 2003'.⁷⁶

3.77 The ACTU highlighted that the independent review conducted by KGH Border Services found that the limited number of investigations and prosecutions was due to the difficulty to 'prosecute against the honest and reasonable mistake of fact defence, which is available in relation to the importation offence as a strict liability offence'. The ACTU noted that the KGH Review recommended that the department further prioritise the investigation to improve prosecution of offences related to asbestos importation.⁷⁷

3.78 The ACTU noted that the importation of asbestos or ACMs is a strict liability offence. It noted:

71 Mr Geoff Fary, *Submission 94*, p. 2.

72 Housing Industry Association, *Submission 119*, p. 2.

73 Construction Product Alliance, *Submission 116*, p. 4.

74 Maurice Blackburn Lawyers, *Submission 107*, p. 11.

75 Electrical Trades Union, *Submission 86*, p. 15.

76 Australian Council of Trade Unions, *Submission 127-suppl 1*, pp. 1–2.

77 Australian Council of Trade Unions, *Submission 127-suppl 1*, p. 2.

The difference between strict and absolute liability is that strict liability allows a defence of honest and reasonable mistake of fact to be raised while the application of absolute liability does not. Instances of absolute liability may also commonly involve displacement of the defence of mistake of fact by specialised statutory defences which narrow its scope, such as 'due diligence' or 'reasonable steps'.⁷⁸

3.79 The ACTU recommended changing the existing offence to an absolute liability offence by removing availability of the mistake of fact defence, as 'offences of absolute liability are generally considered more appropriate and will provide a more effective deterrent where the defendant is well-placed to take extra care to ensure that the offence is not committed.'⁷⁹ Alternatively, the ACTU recommended 'narrowing the operation of the honest and reasonable mistake of fact defence (for example, by introducing specialised statutory defences).'⁸⁰

3.80 Ai Group argued that prosecutions should be pursued in circumstances where there has been a deliberate attempt to import asbestos containing products, whilst promoting them to be asbestos free. It noted:

Ai Group acknowledges that there may be some circumstances where organisations knowingly and willingly import asbestos containing products for commercial gain, promoting it as a product that does not contain asbestos; this may include counterfeit products that claim to be a branded product or part.

These organisations should be prosecuted to the full extent of the law, be required to recall all products and be responsible for the costs associated with removal and disposal.⁸¹

3.81 However, Ai Group drew a clear distinction between circumstances where illegal asbestos importation was unintentional. In its view:

...the complexities associated with ensuring that an imported product does not contain asbestos can result in an organisation inadvertently importing asbestos containing products, even after they have exercised a high level of care to minimise the risk of this occurring.⁸²

3.82 The DIBP informed the committee that ABF makes decisions on whether or not to prosecute based on the Prosecution Policy of the Commonwealth, whether there is sufficient evidence to prove the offence, and whether there are reasonable prospects of a successful conviction.⁸³

78 Australian Council of Trade Unions, *Submission 127-supp 1*, p. 4.

79 Australian Council of Trade Unions, *Submission 127-supp 1*, pp. 5–6.

80 Australian Council of Trade Unions, *Submission 127-supp 1*, p. 6.

81 Ai Group, *Submission 120*, p. 16.

82 Ai Group, *Submission 120*, p. 16.

83 Department of Immigration and Border Protection: Answers to questions taken on notice from a public hearing on 30 January 2017 (QoNs 1–17) (received 24 February 2017), p. 7.

3.83 The DIBP noted that it is difficult to prosecute asbestos matters because of the availability of the mistake of fact defence. This allows an importer to avoid liability that flows from the prohibited importation by providing evidence that it has exercised due diligence. To do so, the company typically tries to show that it took all reasonable steps to prevent the infringement from occurring.⁸⁴

3.84 Mr Wayne Buchhorn from the DIBP provided the hypothetical example to demonstrate where the mistake of fact defence may be applied:

...if there were invoice evidence that stated that a product was asbestos free, that may satisfy the courts that the mistake of fact defence was available in that instance. So I would suggest it is a fairly high threshold to get over to prove that the company or the individual knew that they were importing asbestos.⁸⁵

Committee view

3.85 The committee notes 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. The committee also acknowledges the challenges of enforcing the existing importation of asbestos offence, and in this light, believes that a review of the relevant provisions of the *Customs Act 1901* (and other relevant legislation) should be conducted. The committee is particularly concerned that the mistake of fact defence is not operating as intended. In this context, while the committee acknowledges that there are complexities associated with ensuring that an imported product does not contain asbestos (see discussion on inadvertent procurement at 3.27 and due diligence at 4.21, it considers that the current threshold required to make out the mistake of fact defence should be increased.

3.86 The committee is concerned 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 believes that increasing the number of successful prosecutions and reviewing the quantum of penalties would have a significant deterrent effect on the illegal importation of asbestos.

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.

84 Department of Immigration and Border Protection: Answers to questions taken on notice from a public hearing on 30 January 2017 (QoNs 1–17) (received 24 February 2017), p. 7.

85 Mr Wayne Buchhorn, Assistant Commissioner, Investigations Division, Department of Immigration and Border Protection, *Committee Hansard*, 30 January 2017, p. 41.

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.

Chapter 4

Increasing accountability and reducing exposure

4.1 This chapter begins by examining the importance of product testing and the need for greater accountability and individual and corporate responsibility. It then looks at the adequacy of Australia's work health and safety legislation and the role of relevant regulators in reducing the risk of asbestos exposure for workers. Finally, the chapter will consider issues around recall powers for consumer products containing asbestos and concerns about the importation of ships containing asbestos.

Accountability

Testing

4.2 National Association of Testing Authorities, Australia (NATA) is the national authority for accreditation of testing laboratories and a peak authority for accreditation of inspection bodies. NATA accredits testing laboratories for the identification of asbestos related to air monitoring and in bulk materials. Laboratories that hold accreditation for testing products and materials for the Australian regulatory requirements undertake analyses in accordance with the Australian Standard AS 4964 *Methods for the qualitative identification of asbestos in bulk samples*.¹

4.3 NATA is a signatory to the two international arrangements that facilitate the acceptance of test and inspection reports across international borders:

- the global International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA); and
- the regional Asia Pacific Laboratory Accreditation Cooperation (APLAC) Mutual Recognition Arrangement.²

4.4 Importantly, in relation to this inquiry, NATA highlighted a range of issues and challenges with identifying asbestos in imported products, including:

- the difference in international requirements and vocabulary around what is considered 'asbestos-free';
- test sampling may not be representative of the products being imported;
- testing methods and reports may not reflect Australia's strict zero-tolerance requirements; and
- there are no rapid screening tests or instruments that can be used at the border for an immediate result.³

1 National Association of Testing Authorities, Australia (NATA), *Submission 109*, p. 1.

2 National Association of Testing Authorities, Australia (NATA), *Submission 109*, p. 1.

3 National Association of Testing Authorities, Australia (NATA), *Submission 109*, pp. 2–3.

4.5 NATA informed the committee that since mid-2015, it had received a significant increase in enquiries requesting information around asbestos testing issues.

4.6 In response to these enquiries, NATA stated that it had produced two Industry User Guides (with input from the Department of Immigration and Border Protection (DIBP) and the Asbestos Safety and Eradication Agency (ASEA)) on how to use the services of accredited infrastructure to achieve compliance with Australian regulations.⁴ NATA also advised the committee that it had

...presented a summary of testing issues to the Commonwealth's interdepartmental committee on asbestos, and we are currently collating additional information from our counterparts around the world on methodologies and the availability of accrediting and testing infrastructure.⁵

4.7 Mr Paul Goldsbrough from the Queensland Office of Industrial Relations noted the difficulties of dealing with illegally imported asbestos in building products after it has already come into the country and been installed. In his view 'it would be desirable to have a more robust, up-front testing regime for imported products so that we are not put in the position where it is appearing in our workplaces'.⁶

4.8 The Housing Industry Association (HIA) observed that where asbestos is found in a building product, it is likely to be within the product. This makes discovery more complicated as the asbestos can only be found through destructive testing, which is unlikely to occur before a potential problem has been identified. It noted:

Customs, and all other parties in the supply chain, continue to rely on testing and certification undertaken by the manufacturer of building products to verify they meet relevant standards. If this documentation arrives with the product it is taken on face value.

In each of the recent incidences of asbestos in commercial construction materials, this appears to be exactly what occurred. The manufacturer has provided certification that the product is 'asbestos free'. However once tested on site in Australia after the material has been used, this has been found to be incorrect.⁷

4.9 Mr Andrew Mantle from Asbestos Audits & Environmental Audits Pty Ltd (AARMS) considered that given the large number of imports arriving each week in Australia (over 10,000 containers), it is unrealistic to think ABF has the capacity to screen and inspect every container. In his view the responsibility should lie with the companies importing the products:

4 National Association of Testing Authorities, Australia (NATA), *Submission 109*, p. 3.

5 Mr Neil Shepherd, Sector Manager, Life Sciences, National Association of Testing Authorities, Australia, *Committee Hansard*, 3 October 2017, p. 31.

6 Mr Paul Goldsbrough, Executive Director, Safety, Policy and Workers Compensation Services, Office of Industrial Relations, Queensland Treasury, *Committee Hansard*, 30 January 2017, p. 21.

7 Housing Industry Association, *Submission 199*, p. 2.

I think that the issue relates to a demanding of companies to comply with proving their product is asbestos free prior to it entering into Australia; that's the real issue. The ABF have provided a very detailed guidance to the customs and trade bodies, that anyone importing plant and equipment into Australia must provide proof that the goods are asbestos free. But, from our experience, self-declarations from companies in China or laboratory certificates from laboratories in China are not worth the paper they're written on. It's very easy for a Chinese company to simply declare their product to be asbestos free, because, under the terms of asbestos free in China—six per cent or less asbestos—they are actually complying with the Chinese regulation; they just are not complying with the Australian regulation.⁸

4.10 The Customs Brokers and Forwarders Council of Australia Inc. also noted that it is the responsibility of the importers to ensure they meet the regulatory requirements. In particular, it noted that the regulatory burden for compliance should be placed on importers, not on licenced customs brokers.⁹

4.11 The committee notes that ABF's website advises that:

Importers should not assume that goods labelled 'asbestos free' are in fact free of asbestos or that testing of goods undertaken overseas certified 'asbestos free' meet Australia's border requirements. Some countries can lawfully label or test goods, declaring them asbestos free, if they are below a certain threshold.¹⁰

4.12 However, Mr Mantle from AARMS, pointed out that:

There is no forced requirement [for product testing]; it is suggested. It is in the ABF leaflets that go out to the customs and trade brokers that they highly recommend that any products being imported must comply with the regulations, and that may require testing and further documentation. But to date...I could not name five companies that are actively seeking to have building products tested or the factories in China audited to ensure that the products are asbestos free.¹¹

4.13 Most importantly, NATA notes that:

It must be highlighted at this point that the Australian Standard is not mandated. The requirement of the *Customs (Prohibited Imports) Regulations 1956* is that asbestos is not present and the subject of testing is

8 Mr Andrew Gordon Mantle, Managing Director, Asbestos Audits & Environmental Audits Pty Ltd, *Committee Hansard*, 3 October 2017, p. 26.

9 The Customs Brokers and Forwarders Council of Australia Inc., *Submission 137*, p. 2.

10 Australian Border Force, 'Asbestos', <http://www.border.gov.au/Busi/cargo-support-trade-and-goods/importing-goods/prohibited-and-restricted/asbestos> (accessed 7 November 2017).

11 Mr Andrew Gordon Mantle, Managing Director, Asbestos Audits & Environmental Audits Pty Ltd, *Committee Hansard*, 3 October 2017, p. 30.

not addressed. As such, there is no legal obligation to use AS 4964 and also no impediment to the use of another equivalent or better method.¹²

4.14 Mr Borowick from the ACTU considered:

The absence of mandatory testing has been a recipe for disaster, in our respectful view. The importation of non-complying products undermines the local industry and jobs because they are cheaper to manufacture and the local industry is denied the ability to compete on a level playing field and are put at a cost and competitive disadvantage.¹³

4.15 Mr Mantle from AARMS, noted that the European Union (EU), which like Australia, has a ban on the importation of all types of asbestos, could provide a model for testing requirements. He noted that 'from what I have seen of the EU requirements for certain processes, they are very intensive and very documented. They ensure a very high level of compliance'.¹⁴ He explained:

The EU have a range of regulations, and the EU have a number of very extensive testing organisations within China—their own people and their own staff—so European companies have operations within China. They are able to do this because the EU regulations force them to have this testing and these certifications done prior to delivery into Europe.¹⁵

Committee view

4.16 The committee acknowledges that where asbestos is contained in a building product, it is most likely to be bound within the product itself, making it difficult to discover without destructive testing.

4.17 Despite this, the committee believes that Australia needs a more robust, up-front testing regime for imported products than currently exists. Australia needs to strengthen its requirements to prevent the illegal importation of asbestos and to avoid Australian workers and the public being unnecessarily exposed to the risks of asbestos.

4.18 Noting that it is impossible for ABF to effectively screen and inspect all imported goods, the committee considers that at a minimum, where importers are importing materials that have been deemed a high risk of containing asbestos, it is appropriate for the Australian Government to require them to conduct laboratory testing to confirm they are not illegal prior to import. In implementing up-front testing requirements, the committee notes that the European Union has extensive testing requirements to support its asbestos importation ban which could provide a useful model for an Australian regime.

12 National Association of Testing Authorities, Australia (NATA), *Submission 109*, p. 4.

13 Mr Michael Borowick, Assistant Secretary, Australian Council of Trade unions, *Committee Hansard*, 17 October 2017, p. 3.

14 Mr Andrew Gordon Mantle, Managing Director, Asbestos Audits & Environmental Audits Pty Ltd, *Committee Hansard*, 3 October 2017, p. 28.

15 Mr Andrew Gordon Mantle, Managing Director, Asbestos Audits & Environmental Audits Pty Ltd, *Committee Hansard*, 3 October 2017, p. 27.

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 a 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.

Due diligence systems

4.21 The committee heard evidence regarding a number of incidents of illegally imported asbestos. One of these incidents was the discovery of asbestos at the new Perth Children's Hospital. In July 2016, during work undertaken on the new Perth Children's Hospital it was discovered that composite roof panels that were custom manufactured for the atrium roof were found to contain chrysotile asbestos following analysis by a NATA accredited laboratory. John Holland was the contractor for the Perth Children's Hospital. Yuanda Australia was subcontracted to import the panels, which were sourced by Yuanda China from various suppliers for assembly in its factory.¹⁶ It was taken at face value that the supporting certification documentation back through the supply chain demonstrating the panels were asbestos free was correct.¹⁷

4.22 The WA Building Commission's audit of building products at the Perth Children's Hospital found a range of contributing factors leading to the presence of asbestos in the roof panels including:

- the product was sourced through a complex supply chain, in an international market, with differing legislative requirements in relation to asbestos;
- all stakeholders relied on country-of-origin documentation without further testing in Australia; and
- none of the organisations in the supply chain for the roof panels had a system to require asbestos testing for components and materials that do or may contain fibrous materials.¹⁸

16 Asbestos Safety and Eradication Agency, *Submission 90*, pp. 4–5.

17 Mr Richard Dorham Mann, Executive Director, Strategic Projects and Asset Sales, Department of Treasury, Western Australia, *Committee Hansard*, 9 March 2017, p. 41.

18 WA Building Commission, *Summary of Interim Report: Perth Children's Hospital asbestos*, September 2016, p. 2.

4.23 As noted in the previous chapter, Yuanda Australia advised that it had changed its practices in response to the incident at Perth Children's Hospital and 1 William Street in Brisbane.¹⁹

4.24 John Holland also advised that it had implemented a number of changes. Mr Lindsay Albonico from John Holland advised:

John Holland has implemented a number of changes and processes to strengthen its quality-management system and processes, including but not limited to updating standard contract templates to include a requirement that all materials must be certified as asbestos-free. Specifically, this requires testing to be in accordance with AS4964 2004 method for the qualitative assessment of asbestos in bulk samples. In this instance of international procurement, overseas laboratories must be recognised as being equivalent to a NATA accredited laboratory.²⁰

4.25 The WA Department of Treasury also had a role in respect to the Perth Children's Hospital, as its strategic projects division is responsible for the oversight of the delivery of the government's major building projects. Mr Richard Mann from the WA Department of Treasury advised that the department had changed its practises in direct response to the discovery of asbestos at Perth Children's Hospital:

This incident has certainly alerted us to an enhanced risk of a recurrence in imported material. In direct response, we have now included a provision in all our contract templates that allows us to direct the contractor to undertake testing in Australia of any imported materials. That will be assessed on a risk basis, but any materials, for example, of a fibrous nature, such as cement fibre sheet, with a potential to contain asbestos material would be a higher priority for testing if the compliance documentation, including any test certificates, were not adequate to convince us that the material was conforming.²¹

4.26 Another incident of illegally imported asbestos involved South Australian company Robin Johnson Engineering. In late 2015 it was discovered that several batches of asbestos cement board were imported by Robin Johnson Engineering over several years and installed as flooring in prefabricated switch rooms, which have then been on-supplied to other 'persons conducting a business or undertaking' (PCBUs) in South Australia, New South Wales, Queensland, Victoria and the Northern Territory. The switch rooms commonly contain control equipment, cabling and other heavy low and high voltage electrical equipment.²²

4.27 Robin Johnson Engineering advised that they no longer rely on the certificates they receive and have 'much more onerous testing regimes, and we test anything that

19 See paragraph 3.45.

20 Mr Lindsay Robert Albonico, Project Director, John Holland Pty Ltd, *Committee Hansard*, 9 March 2017, p. 46.

21 Mr Richard Dorham Mann, Executive Director, Strategic Projects and Asset Sales, Department of Treasury, Western Australia, *Committee Hansard*, 9 March 2017, p. 41.

22 Asbestos Safety and Eradication Agency, *Submission 90*, p. 4.

could be contaminated with either asbestos or any other banned substances prior to them being shipped'.²³

Strengthening due diligence requirements

4.28 The above reports of individual organisations reviewing their own processes following the discovery of illegally imported asbestos, aligns with ASEA's view that due diligence needs to be reinforced when it comes to sourcing of products, suggesting:

An oversight arrangement should be used to strengthen and enforce everyone's compliance with due diligence requirements, an example being when a consultant is sent to supervise or monitor the work.²⁴

4.29 In particular, ASEA noted the significant risk posed by the failure of Australian companies to undertake due diligence before products are imported into Australia. ASEA explained:

For example, building materials imported into Australia from Chinese manufacturers and suppliers could contain ACMs, especially considering China is still a major producer of asbestos. In addition to mining asbestos, China imports approximately 50% of the world's mined asbestos, and has no legislative prohibitions on manufacturing or exporting chrysotile asbestos. Chinese manufacturers produce 11% of the global market's total supply of ACM. As a result, Australian companies must exercise a high level of due diligence, prior to the purchase of products from China that have the potential to contain ACM, to ensure that they do not breach provisions.²⁵

4.30 The CFMEU argued that the recent incidents exposed the weaknesses in due diligence systems of the companies' procurement processes.²⁶ It suggested looking to other industries for models of due diligence systems, such as those to prevent the importation of illegally imported timber, noting:

...the prohibition of the importation of illegally logged timber involves a high level legislative ban and also Regulations which outline the due diligence systems that importers must have in place.

These systems are liable to be audited from time to time (by in this instance the Department of Agriculture) in order to ensure that they are in compliance with requirements of the Regulations.²⁷

4.31 Engineered Wood Products Association of Australasia Ltd (EWPA) also identified the successful measures to deter the importation of timber products derived

23 Mr Robin Johnson, Managing Director, Robin Johnson Engineering, *Committee Hansard*, 31 July 2017, p. 33

24 Asbestos Safety and Eradication Agency, *Submission 90*, p. 5.

25 Asbestos Safety and Eradication Agency, *Submission 90*, p. 2.

26 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 31.

27 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 36.

from illegally logged forests in foreign countries as a potential model for other products.²⁸

4.32 The CFMEU noted that updates to the Commonwealth Procurement Rules that commenced on 1 March 2017 mean that:

...identifying applicable Australian Standards and verifying compliance will become a feature of the Commonwealth procurement system and it makes sense to put some thresholds in place and for the Government to use its procurement document for construction work to encourage the use of these thresholds being utilised for Commonwealth funded projects and within the private sector.²⁹

4.33 The CFMEU held the view that minimum thresholds for the due diligence required under the Commonwealth Procurement Rules should be mandatory for both Commonwealth procurement officers and procurement officers of building code compliant companies eligible for Commonwealth funding.³⁰ It recommended that:

The Australia Government, for identified high risk products from high risk countries and regions, including for products which are at risk of containing asbestos require procurers to have a stakeholder agreed due diligence system in place for the prevention of the import and use of nonconforming building products.³¹

Committee view

4.34 Evidence to the committee 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 recognises that importers, contractors and subcontractors cannot be relied upon to provide asbestos-free products and that more prescriptive due diligence is required to ensure asbestos is not inadvertently imported to Australia.

4.35 While the committee notes that updates to the Commonwealth Procurement Rules from 1 March 2017 have increased the minimum thresholds for the due diligence required under the Rules, it is concerned that the requirements are not mandatory. The committee considers that for identified products from high asbestos risk asbestos countries and regions; and for products which are at risk of containing asbestos, procurers should be required to have a stakeholder agreed due diligence system in place.

Recommendation 18

4.36 The committee recommends that the Australian Government consider placing additional mandatory requirements on procurers of high-risk products

28 Engineered Wood Products Association of Australasia Ltd (EWPAA), *Submission 101*, p. 4.

29 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 37.

30 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 37.

31 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 11.

to have a due diligence system in place for the prevention of the import and use of asbestos containing materials.

A model for best practice

4.37 The Queensland *Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017* (the act) was assented to on 31 August 2017. In its interim report on aluminium composite cladding, the committee considered that the Queensland legislation would go some way to ensuring accountability is spread more evenly across the supply chain from designers to manufacturers, importers, suppliers and installers and supports the act's intent. The committee also encouraged other jurisdictions to examine the act and consider developing similar approaches as a starting point to addressing this serious issue and recommended that the Building Minister's Forum give further consideration to introducing nationally consistent measures to increase accountability for participants across the supply chain.³²

4.38 The ACTU considered that the Queensland legislation provides a model for a best practice 'chain of responsibility' approach to ensuring products are fit for purpose. The ACTU recommended that the committee give consideration to 'incorporating aspects of the Queensland [Act] into federal legislation and/or taking steps to develop a uniform national model bill based on the Queensland [Act], to be adopted by the states and territories'. The ACTU supported the legislation as it:

- sets out clear statutory objects in respect of the regulation of building products;
- establishes a building products advisory committee that gives Minister, Queensland Building and Construction Commissioner and board advice about building products, with an emphasis on safety;
- requires the Queensland Building and Construction Commission to give relevant information to the health and safety regulator;
- clearly sets out the relationship between the Act and safety laws;
- requires a person in the supply chain who becomes aware of, or reasonably suspects, that a building product is a non-conforming building product, to notify the Queensland Building and Construction Commission; and
- empowers the Queensland Building and Construction Commission to direct a person to take remedial action in respect of a contravention of the act.³³

Committee view

4.39 The committee considers that the Queensland legislation would go some way to ensuring responsibility and accountability is spread more evenly across the supply chain from designers to manufacturers, importers, suppliers and installers. The

32 Senate Economics References Committee, *Interim report: aluminium composite cladding*, 6 September 2017, pp. 48–49.

33 Australian Council of Trade Unions, *Submission 127*, p. 11.

committee supports the intent of the Queensland *Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017* and believes that it provides a good starting model for best practice 'chain of responsibility' and should be adopted by other states and territories.

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*.

Work health and safety

Removal and remediation of asbestos

4.41 A number of submitters raised concerns about the removal of illegally imported asbestos and flagged the need to update workplace health and safety legislation. As noted in Chapter 2, all states and territories apart from Victoria and WA have adopted model workplace health and safety legislation.

4.42 Mr Goldsbrough from the Queensland Office of Industrial Relations advised that in response to recent incidents, Queensland's approach was:

...to direct businesses to submit a plan and a timeline for the removal of asbestos-containing materials. While we appreciate removal can be complex in certain circumstances, we are of the view that short-term methods such as signage and restricting access to affected worksites are not effective permanent solutions for managing the installation of asbestos-containing materials in contemporary buildings...It also has a significant potential to impact on the health and safety of the community, particularly in light of an increasing proportion of mesothelioma cases arising from non-occupational exposure. I suppose my take-home message is that as a regulator we have to be able to instil confidence in the community that we are able to manage this insidious issue.³⁴

4.43 Mr Goldsbrough made the observation:

The national model work health and safety laws which have been adopted in Queensland are silent on the issue of imported materials as work health and safety regulators relied on the importation ban and Australian Border Force to prevent the importation of asbestos. Essentially the work health and safety laws are geared to the in situ management or removal and so on.³⁵

34 Mr Paul Goldsbrough, Executive Director, Safety, Policy and Workers Compensation Services, Office of Industrial Relations, Queensland Treasury, *Committee Hansard*, 30 January 2017, p. 17.

35 Mr Paul Goldsbrough, Executive Director, Safety, Policy and Workers Compensation Services, Office of Industrial Relations, Queensland Treasury, *Committee Hansard*, 30 January 2017, p. 17.

4.44 The policy position of SafeWork SA is that asbestos installed post 2003 is illegal and must be removed. It outlined its approach as follows:

There may be circumstances where, recognising the significant work and downtime cost impact associated with the removal of these products, as well as safety concerns associated with the removal, SafeWork SA will consider it appropriate that a planned, staged approach to removal is implemented. Any staged approach must be approved by the regulator.³⁶

4.45 SafeWork SA informed the committee that it had found it difficult to react to recent incidents of illegally imported asbestos as model work health and safety legislation 'wasn't really designed to find the imports after the fact'.³⁷

4.46 With regards to the switchrooms containing asbestos which was imported by Robin Johnson Engineering, SafeWork SA advised that they were 'awaiting the outcome of the case with SafeWork New South Wales on the ability to have the asbestos removed from the particular switch rooms that were built'. Mr Chris McKie, SafeWork SA, understood the trial would be happening over the coming months.³⁸ Robin Johnson Engineering is challenging a SafeWork NSW order to remove contaminated flooring from a switchroom at the Taralga wind farm. Robin Johnson Engineering's argument is that removing the contaminated material would create a greater risk than leaving it in situ.³⁹

4.47 Worksafe Victoria advised that they had 'worked closely with the relevant businesses to ensure that the asbestos was removed by agreement, rather than using legislative enforcement measures'.⁴⁰ Unlike the model health and safety laws that have been adopted in most jurisdictions Victoria has its own legislation:

Under regulation 237 of the OH&S [Occupational Health and Safety] Regulations 2017, duty holders must ensure, so far as reasonably practicable, that any risk associated with the presence of asbestos is eliminated by removing that asbestos. This obligation applies in relation to asbestos installed before and after the prohibition in December 2003 where it poses a risk.⁴¹

36 SafeWork SA, *Submisison 89*, p. 4.

37 Mr Chris McKie, Chief Inspector, Compliance and Enforcement, SafeWork SA, South Australia, *Committee Hansard*, 31 July 2017, p. 42.

38 Mr Chris McKie, Chief Inspector, Compliance and Enforcement, SafeWork SA, South Australia, *Committee Hansard*, 31 July 2017, p. 42.

39 Angelique Donnellan, 'Asbestos removal demand being challenged by RJE over Taralga wind farm switch room material', *ABC Online*, 7 February 2017, <http://www.abc.net.au/news/2017-02-07/asbestos-removal-demand-being-fought-in-nsw-court/8248836> (accessed 7 November 2017).

40 Mr Robert Kelly, Director, Specialist Services, Health and Safety, WorkSafe Victoria, *Committee Hansard*, 14 July 2017, p. 77.

41 Mr Robert Kelly, Director, Specialist Services, Health and Safety, WorkSafe Victoria, *Committee Hansard*, 14 July 2017, p. 76.

4.48 Mr Robert Kelly from WorkSafe Victoria advised the committee that where there has been noncompliance with a prohibition against the manufacture, supply, storage, transport, sale and use of asbestos contained in Division 4 of the OH&S Regulations 2017, WorkSafe Victoria can use the enforcement tools under the *Dangerous Goods Act 1985 (Victoria)*. The new OH&S Regulations did not commence until 18 June 2017. When Mr Kelly addressed the committee on 14 July 2017 he advised that WorkSafe Victoria had:

...yet to use the prohibitions contained in the regulations to compel a duty holder to remove illegally imported asbestos that had been fixed or installed in the building or structure. The power to order such removal is yet to be tested.⁴²

4.49 Mr Kelly advised that 'WorkSafe is intending to clarify this and to put it beyond doubt that it can compel such removal'.⁴³ He explained further:

That is being proposed. At the moment, with the Dangerous Goods Act, the use of the word 'use' asbestos—we need to strengthen that, because it can become in situ once it is installed. So, yes, it is illegally imported but it has been used and it is now in situ. If it is in situ, the way the legislation is written is that, as long as it is not disturbed or does not pose a risk, it can stay. We want to strengthen the legislation so that it says that, if it is illegally imported asbestos and it is installed, we have the clear power to compel them to remove it.⁴⁴

4.50 The Australian Manufacturing Workers' Union (AMWU) also expressed concern that the current health and safety laws do not require the removal of in situ asbestos meaning that 'a company can install in 2016 a substance banned in 2003, but the health and safety regulators are limited in their regulatory response'. The AMWU stressed:

It is therefore essential, that health and safety laws are changed to enable jurisdictions to require the removal of illegal asbestos product – and the removal/remediation/safe disposal of the ACMs is to be paid for by the importer and supplier.⁴⁵

4.51 The ACTU considered that measures to require the removal of illegally imported asbestos would create a significant financial disincentive to breaching the importation ban. As such, it supported the introduction of new legal obligations to require:

42 Mr Robert Kelly, Director, Specialist Services, Health and Safety, WorkSafe Victoria, *Committee Hansard*, 14 July 2017, p. 77.

43 Mr Robert Kelly, Director, Specialist Services, Health and Safety, WorkSafe Victoria, *Committee Hansard*, 14 July 2017, p. 77.

44 Mr Robert Kelly, Director, Specialist Services, Health and Safety, WorkSafe Victoria, *Committee Hansard*, 14 July 2017, p. 78.

45 Australian Manufacturing Workers' Union, *Submission 97*, p. 7.

...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. If adopted, this measure will create huge financial disincentive to breaching the importation ban.⁴⁶

4.52 While Master Builders' Australia acknowledged building industry participants throughout the supply chain should play a role in identifying and eradicating asbestos containing materials, it held the view that 'builders and building surveyors should not be liable for any cost associated with the use of a product they have obtained in good faith and with regard to available information, if that product should not have been made available for use and/or imported in the first place'.⁴⁷ Master Builders' Australia considered that:

...where a product containing ACM has entered Australia since 2004, the entity responsible for its importation should held liable for all the ramifications of its entry, use, installation, discovery, removal and safe remediation. Once again, given the cost associated with addressing ACMs, making those importing the product fully responsible would send the right signal of deterrence and have the secondary benefit of increasing the level of voluntary compliance and other assessment mechanisms to ensure products are ACM free. It would be expected that if the level of financial risk was significant, importer investment in their own processes would become a more attractive proposition.⁴⁸

4.53 Safework SA submitted that the current regulatory frameworks could be improved with particular reference to establishing responsibility for remediation of sites where illegally imported products containing asbestos has been found.⁴⁹

4.54 Safework SA observed that 'disputation surrounding duty holder responsibilities along the chain may result in cost impacts for individuals and may be counter-productive to good health and safety outcomes'.

4.55 Of particular concern was the potential for a significant time lag between installation and discovery of asbestos. Safework SA explained that if the company involved in the import, supply and/or fabrication of the building products ceases to exist it could make it extremely difficult to determine who has responsibility for remedial action.⁵⁰

4.56 SafeWork Victoria shared this concern noting that:

By the time the asbestos may be discovered, enforcement and remedial action may be inadequate to deal with the scale of the problem. Maximum fines for regulatory breaches may be significantly less than the cost of

46 Australian Council of Trade Unions, *Submission 127*, p. 9.

47 Master Builders' Australia, *Submission 125*, p. 9.

48 Master Builders' Australia, *Submission 125*, pp. 8–9.

49 SafeWork SA, *Submission 89*, p. 5.

50 SafeWork SA, *Submission 89*, p. 5.

removing the asbestos containing material, which may make duty holders reluctant to comply, particularly if the asbestos is in situ and not posing any risk.⁵¹

Committee view

4.57 The committee understands 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 ever-present in Australia.

4.58 While the committee acknowledges that all states and territories, apart from Victoria and WA, have adopted model workplace health and safety legislation, the committee is concerned that where asbestos containing materials are discovered, Australia's work health and safety legislation may operate to result in unfair cost impacts for individuals and be counter-productive to good health and safety outcomes.

4.59 The committee believes that this 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 considers 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 is 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.

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.

Role of the Federal Safety Commissioner

4.61 The committee notes the Federal Safety Commissioner's (FSC) powers are limited to companies that choose to become accredited in order to undertake Commonwealth-funded work. However, as outlined in the interim report on aluminium composite cladding, the committee is interested in the capacity of the FSC to play a role in ensuring compliance with the National Construction Code of Commonwealth funded construction work.⁵²

51 Mr Robert Kelly, Director, Specialist Services, Health and Safety, WorkSafe Victoria, *Committee Hansard*, 14 July 2017, p. 78.

52 Senate Economics References Committee, *Interim report: aluminium composite cladding*, 6 September 2017, pp. 51–53.

4.62 The functions of the FSC are described in Section 38 of the *Building and Construction Industry (Improving Productivity) Act 2016* and include:

- promoting workplace health and safety (WHS) in relation to building work;
- auditing compliance with National Construction Code performance requirements in relation to building materials;
- administering the Australian Government building and construction industry WHS Accreditation Scheme;
- promoting the benefits of the WHS Accreditation Scheme; and
- disseminating information about the WHS Accreditation Scheme.⁵³

Committee view

4.63 The issue of asbestos containing materials in building products is directly relevant to workplace health and safety in the building and construction industry and the committee notes that the functions of the FSC include promoting workplace health and safety in relation to building work. Therefore, the committee believes there is scope for the FSC to play a greater role in protecting workers from the risks of asbestos containing materials in building products.

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.

Recall powers of consumer products containing asbestos

4.65 Where a safety problem in a consumer good is identified, government regulators, including the ACCC may determine that the product is unsafe and needs to be recalled. In this regard, the ACCC manages the public recalls.gov.au website which provides a list of various consumer goods subject to safety recall.⁵⁴

4.66 A number of submitters gave evidence to the committee calling for the ACCC to use its powers for mandatory recalls in cases of illegally imported asbestos. However, it is important to note that the ACCC does not have jurisdiction in respect of non-consumer goods under the product safety regime.⁵⁵ Mr Neville Matthew from the ACCC explained the agency's powers:

53 Office of the Federal Safety Commissioner, *Fact Sheet: Federal Safety Commissioner*, last updated 13 April 2017, <http://www.fsc.gov.au/sites/FSC/Resources/AZ/Documents/FederalSafetyCommissioner.pdf> (accessed 22 August 2017).

54 Australian Competition and Consumer Commission, *Submission 39*, p. 8.

55 Mr Timothy Grimwade, Executive General Manager, Consumer, Small Business and Product Safety, Australian Competition and Consumer Commission, *Committee Hansard*, 3 October 2017, p. 7.

Under the Consumer Law, a mandatory recall, which is a regulator initiated or minister initiated recall, is triggered when the minister is not satisfied that adequate steps have been taken in relation to a voluntary recall. Generally, there would be a voluntary recall first—and that's why we have a recall-monitoring team—but if that fails to adequately deal with the safety risk then we can recommend to the minister that he issue a compulsory recall.⁵⁶

4.67 Ms Renata Musolino from Asbestoswise did not believe that 'the ACCC is consistent in how it responds when asbestos is found in products'. Ms Musolino noted the example in 2012 of Great Wall and Chery vehicles, and Polaris quadbikes more recently, in which gaskets in the vehicles were found to contain asbestos. She noted:

There was no recall and we complained about that. The advice from the ACCC was to all people who may do services at that time to make sure that they replace the gaskets with non-asbestos containing [gaskets]. But these are work vehicles and vehicles out on farms. They may not get serviced for years and they may not get serviced by mechanics—they may be done at home. With the Polaris vehicles, there was also not a complete recall. They were banned for sale and they had to have them replaced when replaced—but 'safe to use in the meantime'. So a body like the ACCC needs to be far tougher and far more consistent—a good example of making it not worth their while to break the law.⁵⁷

4.68 In relation to Great Wall and Chery vehicles, the AMWU raised the risk to DIY maintenance workers and mechanics in the service and repair who did not receive the notice in 2012 will be potentially unnecessarily exposed. The AMWU submitted that:

The ACCC needs to have a broader range of sanctions available and must more effectively use its powers to issue compulsory recalls. Additionally ACCC must be required to publish a statement of reasons relating to any decision not to compulsorily recall asbestos containing products.⁵⁸

4.69 The ACTU argued that the ACCC should make greater use of its powers to compulsorily recall products which contain asbestos in order to limit the exposure of members of the Australian community to asbestos containing materials⁵⁹ In addition, the ACTU argued that there should be greater transparency surrounding the reasons behind ACCC decisions to conduct mandatory recalls:

In circumstances where the Australian Consumer and Competition Commission [ACCC] becomes aware of a product containing asbestos and subsequently determines not to issue a compulsory recall of that product,

56 Mr Neville Matthew, General Manager, Consumer Product Safety, Australian Competition and Consumer Commission, *Committee Hansard*, 3 October 2017, p. 3.

57 Ms Renata Musolino, Secretary, Asbestoswise, *Committee Hansard*, 14 July 2017, p. 71.

58 Australian Manufacturing Workers' Union, *Submission 97*, p. 7.

59 Australian Council of Trade Unions, *Submission 127*, p. 5.

the ACCC shall within thirty days of that decision publish a statement of reasons.⁶⁰

Committee view

4.70 In order to limit exposure of Australians to asbestos, the committee believes that the ACCC should make greater use of its compulsory recall powers in relation to products containing illegally imported asbestos and adopt a consistent approach when asbestos is found in products.

4.71 The committee is concerned that evidence to the inquiry indicated that where the ACCC does not recall a product containing illegally imported asbestos, information about such a decision is not made publicly available. The committee believes that where the ACCC makes a decision not to recall a product containing asbestos, both the public and industry would benefit from such knowledge. Indeed, the committee considers that where the ACCC makes a decision not to conduct a compulsory recall of a product that contains asbestos, it should publish its reasons so that the process is more transparent.

4.72 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.

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.

60 Australian Council of Trade Unions, *Submission 127*, p. 6.

National public asbestos register

4.76 A number of submitters supported the development of a national public asbestos register which lists products found to contain asbestos, suppliers and buildings where asbestos is located.

4.77 The Australian Institute of Building Surveyors submitted that while more needs to be done to minimise the impact of product safety recalls on the public and industry, it also suggests that the Government consider introducing the following regulatory amendments which in strengthening the safety recall will seek to introduce registration and tracking of high risk products like asbestos:

- i. Product tracking where manufactures, importers and suppliers of all high risk products, (such as electrical), are required to have processes and procedures in place to enable the tracking and tracing of product found to be faulty and/or not compliant to Australian Standards.
- ii. Register of high risk products where sellers of high risk products are required to maintain a register of products sold. For example, a register of electrical products that require installation by an electrician [installation by a licenced tradesperson]
- iii. Mandatory recall insurance where manufacturers, importers and suppliers of high risk products are required to have a process in place to fund the removal and replacement of any product found to be faulty and/or not compliant to Australian Standards.⁶¹

4.78 The CFMEU also proposes establishing a register recording importers and suppliers of non-conforming building products. The CFMEU went further, suggesting that 'those listed on the register be banned from further supply and importation into Australia'.⁶² While Asbestoswise suggested that the development and maintenance of a public register could serve as a further deterrent to the illegal importation of asbestos.⁶³

4.79 Maurice Blackburn Lawyers provided a detailed proposal for a national public register:

Maintenance of a public register of imported non-conforming building products containing asbestos and suppliers. A national public register should be kept which details imported building products which have been found to contain asbestos, as well as identifying who the supplier of the products was, and any buildings where the products may now be located (if the product has already been used in construction).

The register should be able to be updated by relevant Commonwealth, State and Territory Governments and Agencies, as well as allow for private

61 Australian Institute of Building Surveyors, *Submission 124*, p. 12.

62 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 9.

63 Asbestoswise, *Submission 156*, p. 3.

persons and companies to make submissions to add information to the register. The register should be accessible to the public and user friendly.⁶⁴

4.80 Maurice Blackburn Lawyers considered that such a register would serve the following purposes:

- Assist prospective importers by identifying building products which are known to contain asbestos;
- Assist prospective importers by identifying suppliers who are known to have supplied asbestos-containing materials in the past;
- Act as a deterrence to overseas suppliers by “naming and shaming” offenders who supply asbestos-containing materials; and
- Assist relevant members of the public in identifying buildings known to contain asbestos materials, such as tradespersons who may be contracted to perform work on the buildings (thereby putting themselves at risk of exposure to asbestos).⁶⁵

4.81 Maurice Blackburn Lawyers noted that such a register could be extended to include other imported non-conforming building materials which may pose a public health hazard and did not need to be limited to asbestos-containing materials.⁶⁶

Committee view

4.82 The committee notes that a number of submitters to the inquiry supported the development of a national public asbestos register which lists products found to contain asbestos, suppliers, and buildings where asbestos is located. As stated previously, the committee is focussed on ensuring Australia takes all steps necessary to reduce the risk of illegal importation of asbestos and thereby reduce the related disease risk. The committee believes that developing a national public asbestos register which lists products found to contain asbestos, suppliers and buildings where asbestos is located, may assist in reducing this risk by raising public and industry awareness.

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.

64 Maurice Blackburn Lawyers, *Submission 107*, p. 12.

65 Maurice Blackburn Lawyers, *Submission 107*, p. 12.

66 Maurice Blackburn Lawyers, *Submission 107*, p. 12.

Ships imported to Australia which contain asbestos

4.85 Among the range of products that the committee heard had been illegally imported to Australia, were ships. Mr Martin Byrne from the Australian Institute of Marine and Power Engineers explained:

The essence of our concerns relates not to the importation of asbestos materials as cargo in ships but, rather, to the occurrence of asbestos-containing materials in situ, in ships, in various locations, including in gaskets, flanges, insulation shields, lagging, gland packing and winch breaks. They're some of the major locations where we have experienced asbestos-containing materials being discovered.⁶⁷

4.86 Mr Paul Garrett from the Maritime Union of Australia advised the committee that the number of ships imported to Australia which contain asbestos 'has got to a point now where the workers make the joke that there has been that much asbestos brought in that the company should be charged for smuggling'. He elaborated the number and types of ships which had been imported:

One company that we deal with in harbour towage—and you've got to take into account that the asbestos ban came in on 31 December 2003—has imported 16 separate tugs since 2007 to replace their fleet under the general tonnage replacement plan. There have been more than 16 tugs, but the 16 tugs that have been imported from overseas have been built predominately in China or Vietnam and have had asbestos-containing material in their gaskets.⁶⁸

4.87 Mr Garrett noted further that:

You have to expect that every vessel that comes in these days contains asbestos because it's been built in Chinese yards to Chinese standards, which allow asbestos. In the absence of the Australian shipbuilding industry, this has become the norm.⁶⁹

4.88 Mr Byrne expressed concern regarding the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017, which was introduced in Parliament on 13 September 2017. Mr Byrne expressed concern that the bill may increase the risk of Australian workers being exposed to asbestos. Of particular concern was the proposal in the legislation to:

...exempt foreign-flagged vessels seeking dry docking facilities in Australia from importation. The motivation is well-founded, in that they are seeking to facilitate dry-docking works being done in Australian dry docks. So they are trying to boost business for Australian dry-docking facilities. However, by providing the exemption from importation they therefore circumvent the

67 Mr Martin Byrne, Federal Secretary, Australian Institute of Marine and Power Engineers, *Committee Hansard*, 3 October 2017, p. 11.

68 Mr Paul Garrett, Assistant Secretary, Sydney Branch, Maritime Union of Australia, *Committee Hansard*, 3 October 2017, p. 12.

69 Mr Paul Garrett, Assistant Secretary, Sydney Branch, Maritime Union of Australia, *Committee Hansard*, 3 October 2017, p. 12.

asbestos prohibition in the import regulations and, at the same time... because they are foreign-flagged vessels they are not subject to Australian OH&S legislation.⁷⁰

Committee view

4.89 The committee is deeply concerned by the reported prevalence of new ships being imported into Australia containing asbestos. The committee notes that the Rural and Regional Affairs and Transport Legislation Committee is currently examining the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017 (the bill) and is due to report on 4 December 2017. The committee draws to the attention of the Rural and Regional Affairs and Transport Legislation Committee the concerns raised during this inquiry that the bill may increase the risk of Australian workers being exposed to asbestos.

Next steps for the inquiry

4.90 Many of the concerns raised with the committee in relation to the illegal importation of asbestos and flammable aluminium composite cladding, the subject of the committee's previous interim report, have highlighted broader issues which apply equally to other types of non-conforming building products which have been drawn to the committee's attention.

4.91 The committee acknowledges the ongoing work of the Building Ministers' Forum and notes the release of its Senior Officers' Group's *Implementation plan: Strategies to address risks related to non-conforming building products* on 21 September 2017. The committee will continue to monitor the progress of the Building Ministers' Forum, and also its ongoing work on the issues of non-conforming and non-complaint building products. As the next step for the inquiry the committee will seek feedback from key stakeholders on the progress of Commonwealth, state and territory governments in addressing the serious issue of non-conforming building products. The committee will present its final report for the broader inquiry by 30 April 2018.

Senator Chris Ketter

Chair

70 Mr Martin Byrne, Federal Secretary, Australian Institute of Marine and Power Engineers, *Committee Hansard*, 3 October 2017, p. 18.

Dissenting Report by Coalition Senators

1.1 Coalition Senators are of the view that the majority interim report for this inquiry regarding asbestos was significantly overreaching in its recommendations.

1.2 Coalition Senators note that the Department of Immigration and Border Protection (DIBP) and Australian Border Force (ABF) already engage with a range of industry stakeholders to educate and raise awareness of the asbestos import/export prohibition, and that extensive materials are available online through the DIBP's website regarding this, and the ways in which importers can provide assurances to ABF that their goods do not contain asbestos.

1.3 Furthermore, Coalition Senators note evidence from ABF that they have significantly increased their operational efforts towards addressing the risk of asbestos since the ABF was stood up on 1 July 2015, with a substantial increase in the targeting and testing of high-risk goods, and that despite the significant increase in activity at the border, ABF has not seen a commensurate increase in the rate of detections.

1.4 Regarding recommendation 2, Coalition Senators note the funding increases that have recently been provided to the Asbestos Safety and Eradication Agency (ASEA) to better undertake its role.

1.5 In the 2016–17 Budget, the Government agreed to provide ASEA with additional funding of \$3.4 million over 2016–17 and 2017–18 in recognition of its significant underspend during its first two years of operation. Without the additional funding provided by the Government in the 2016-17 Budget, ASEA's funding for 2017-18 would be \$1.4 million less.

1.6 The additional funding provided by the Australian Government in the 2016–17 Budget was provided with the expectation that the additional funds would be used for the implementation of the National Strategic Plan for Asbestos Management and Awareness (NSP) and research to guide future work. This work is expected to be completed by June 2018.

1.7 Coalition Senators feel that recommendation 6 is not consistent with either Australia's track record on free trade agreement negotiations or its commitment to the regulation of dangerous goods.

1.8 Australia's Free Trade Agreements and World Trade Organization (WTO) commitments preserve Australia's ability to regulate dangerous goods. Nothing in these agreements requires Australia to lower safety standards and regulations.

1.9 All FTAs contain a Technical Barriers to Trade Chapter (TBT chapter), which recognise Australia's right to impose product standards and technical regulations to protect human health or safety. TBT chapter provisions ensure that trading partners apply technical regulations and standards equally to products originating domestically or from overseas. Thus ensuring that technical regulations are used for legitimate policy purposes, and not to restrict trade. TBT chapters also encourage regulatory convergence among trading partners, for example through the adoption of international standards. In addition to the TBT chapter, FTAs include general

exceptions which enable Australia to make measures to protect human health or safety, and animal or plant life.

1.10 Australia imposes restrictions on hundreds of products. These vary from import bans, for dangerous goods such as asbestos, to more narrow targeted measures such as import licensing measures that apply to dual use goods (where one use is safe but another is dangerous, the measure ensures the good is only used for the safe purpose), or certification procedures to ensure electrical equipment conforms to regulations to prevent fire or shock.

1.11 With regard to recommendation 21, Coalition Senators believe that the role of the Federal Safety Commissioner (FSC) in relation to asbestos containing materials in building products is already sufficiently clear, given the defined role of the FSC as an accreditor for certain building industry participants.

1.12 The Federal Safety Commissioner's WHS Accreditation Scheme criteria already represent the most stringent requirements in Australia for managing asbestos hazards on building sites. Companies accredited by the FSC are also required to comply with the National Construction Code as a condition of accreditation and undertake appropriate due diligence to avoid prohibited imports such as asbestos from coming on to building sites they control.

Senator Jane Hume

Deputy Chair

Senator the Hon Ian Macdonald

Senator for Queensland

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)

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.
- 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 ACT

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 VIC

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 QLD

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

09 March 2017, Perth WA**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 VIC**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 NSW

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 SA

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 NSW

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 ACT

Members in attendance: Senators Dastyari, Hume, Xenophon.

BOROWICK, Mr Michael, Assistant Secretary, Australian Council of Trade Unions

Appendix 3

Countries with bans on all types of asbestos

Asbestos has been banned in Australia since 2003. All other OECD countries, except for Canada, Mexico and the United States, have also banned asbestos.

Country	Date/year ban came into force
Algeria	14 October 2009
Argentina	1 January 2003
Australia	31 December 2003
Bahrain	1996
Brunei	Date to be determined
Chile	12 July 2001
Egypt	2005
European Union: Cyprus, Czech Republic, Estonia, Greece, Hungary, Lithuania, Malta, Romania, Portugal, Slovakia, Bulgaria, Spain, Luxembourg, Latvia, Ireland, United Kingdom, Belgium, France, Germany, Poland, Slovenia, Croatia, Italy, Finland, The Netherlands, Austria, Denmark, Sweden.	Commenced in 1983, with complete ban on all forms of asbestos in all 28 member states by 1 January 2005.
Gabon	between 2002 and 2004
Honduras	2004
Iceland	1983
Israel	2011
Japan	1 March 2012

Country	Date/year ban came into force
Jordan	16 August 2006
Korea	2009
Kuwait	1995
Norway	1984
Mauritius	2004
Moldova	late 2016 ban planned and confirmed
Mozambique	24 August 2010
New Caledonia	2007
New Zealand	1 October 2016
Norway	1984
Oman	2008
Qatar	2010
Saudi Arabia	1998
Serbia	2011
Seychelles	2009
South Africa	28 March 2008
Turkey	2010
Ukraine	June 2017
Uruguay	May 2002

Source: <https://www.asbestossafety.gov.au/countries-bans-all-types-asbestos>

Appendix 4

Goods that might contain asbestos

Asbestos has been used in a wide number of products due to its flexibility, tensile strength, insulation, chemical inertness and affordability and is still used outside Australia in many applications.

The following goods are considered a risk for containing asbestos and ACM:

- Asbestos bitumen products used to damp proof
- Asbestos rope
- Asbestos tape
- Brake linings or blocks
- Cement flat sheeting or panels
- Cement pipes, tubes or fittings
- Cement shingles or tiles (external or ceiling)
- Clutch linings or brake disc pads
- Crayons
- Diaphragms
- Ducts
- Electrical cloth and tapes
- Electrical panel partitioning
- Fire blankets
- Fire curtains
- Fire resistant building materials
- Friction materials for, or within, internal combustion and electric motor vehicles (for example, clutch linings, brake pads and shoes and gaskets)
- Furnaces
- Gas masks
- Gaskets or seals
- Gloves
- Heat resistant sealing or caulking compounds
- Heating equipment
- Products containing certain types of talc
- Lagging and jointing materials

- Mastics, sealants, putties or adhesives
- Mineral samples for display or therapeutic purposes
- Mixtures containing phenol formaldehyde resin or cresylic formaldehyde resin
- Pipe spools
- Raw materials from mining activities
- Sheet vinyl backing
- Sheeting
- Textured paints or coatings
- Tiles
- Yarn and thread, cords and string, whether or not plaited

Source: Department of Immigration and Border Protection, 'Asbestos', <http://www.border.gov.au/Busi/cargo-support-trade-and-goods/importing-goods/prohibited-and-restricted/asbestos> (accessed 9 November 2017).