

Submission 108 - Department of Immigration and Border Protection

The Department of Immigration and Border Protection made submission 56 to the inquiry into non-conforming building products in the 44th Parliament.

This document is intended as a supplementary submission to the original submission 56.

All submissions received in the 44th Parliament can be accessed via the following link:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Non-conforming_products/Submissions



Australian Government

Department of Immigration
and Border Protection

Submission: Inquiry into non- conforming building products

Senate Economics References Committee
Including the additional terms of reference - asbestos

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Introduction

The Department of Immigration and Border Protection (the Department) is responsible for Australia's immigration and customs border policy. The Department's mission is to protect Australia's border and manage the movement of people and goods across it.

This submission updates the previous August 2015 submission to the Economics References Committee's inquiry into non-conforming building products. This submission also responds to the Economics References Committee's additional terms of reference for asbestos.

The Department's role

The Department plays a critical role in preventing, deterring and detecting the unlawful entry of prohibited, restricted or regulated goods into Australia. The Australian Border Force (ABF), as the operational arm of the Department, enforces controls at the border on behalf of a large number of other government agencies. The controls cover a diverse range of goods, which include but are not limited to asbestos, drugs, firearms, weapons, explosives, drug precursor materials, nuclear material, tablet presses, objectionable material, sanctioned goods and industrial chemicals.

Non-conforming building products

Powers in relation to non-conforming building products

The Department does not have any legislative powers to ensure that imported building products conform to building standards or performance levels. Accordingly, the ABF does not examine or inspect imported building products at the border to assess compliance with standards.

The ABF has the power to detain goods where they are suspected of containing asbestos. This includes building products and a range of other goods.

Practicalities of enforcement at the border

The terms of reference for the Senate Inquiry include "possible improvements to the current regulatory frameworks for ensuring that building products conform to Australian standards, with particular reference to the effectiveness of ... **surveillance and screening of imported building products**". The Department does not consider the introduction of surveillance and screening at the border to be an effective response to minimising the risk that non-conforming building products pose to the Australian community.

The Department considers that the introduction of a border control (for example amendment to the Customs (Prohibited Imports) Regulations 1956 prescribing non-conforming building products as restricted or prohibited imports) would be difficult and impractical to effectively manage in a border environment. The reasons are as follows:

- An effective determination at the border that a product complied with a particular building standard would generally need to be informed by an understanding of the end-use of the product. ABF officers would be unable to reliably determine whether the building product will be used or installed correctly. Accordingly a border control cannot safeguard the community against the risk that building products are not ultimately used for their approved/certified purpose or installed incorrectly.

- Example one - a consignment of standard plasterboard is entered as being certified to exceed the Australian Standard (AS) 2588. The certification is confirmed and the plasterboard is released to the importer. The plasterboard is then used to construct an apartment block and is inappropriately used as a replacement for material that must be fire rated. Despite the imported product being certified as compliant with a relevant standard, the installation and use of that product presents a safety risk to the community.
- Example two - a consignment of piping is imported for use in a fire sprinkler system and is certified as meeting the required standard. The building contractor fails to install the pipe in the correct location in accordance with the building plan. Despite the product being certified as compliant with a relevant standard, the incorrect use of that product presents a safety risk to the community.
- The term "building product" covers a large variety of goods including (but certainly not limited to) glass/windows, steel, plasterboard, aluminium, cement, stone, wood/timber and panelling. These products can have a variety of uses, both as building products and in other common applications.

The tariff lines (i.e. the classification of goods for the purpose of duty and import control) covering products that could be considered as building products are numerous and likely to encompass in excess of 1,000 separate subheadings. It is not possible under the tariff system to differentiate goods used as building products and those used for other purposes. The routine surveillance and screening of imported "building products" would have a considerable impact on the Department's resources and would have the potential to divert resources away from addressing other operational priorities at the border.

- Imported building products in a non-finished form that may be considered "non-compliant" may undergo additional processing by Australian businesses to transform the products to comply with standards before being sold or installed. A border control that simply sought to prohibit non-compliant building products would operate as a blunt instrument and could hinder the legitimate value-add processing operations of Australian businesses.
- A determination that a product complies with particular standards will likely require relevant technical expertise and a range of equipment (not ordinarily present in the border environment) to identify and test products to confirm that they meet standards. These testing processes would increase the clearance times for imported goods, impose a range of regulatory costs on industry and significantly impact the resources of the Department.

Proposal - going forward

Notwithstanding the Department's view that the introduction of a border control would not be an effective mechanism to address the risk of non-compliant imported building products, the Department does consider that it can make an important contribution to the regulatory framework in this area.

The Department notes that the current regulatory framework for building products centres on the state and territory governments which have legislative powers that adopt the requirements set out in the National Construction Code and provide for building regulation and inspections. Given the reasons outlined above, the Department considers that determinations relating to the conformance of building products are more effective when assessed at the point of installation, rather than at the point of import.

The Commonwealth, states and territories agreed at the 19 February 2016 Building Ministers Forum to a data sharing arrangement for imported building products.

The arrangement provides that import data collected by the Department is released to nominated state and territory jurisdictional representatives to facilitate compliance and enforcement activities in relation to identified non-conforming building products. The arrangement is being piloted for 12 months (from April 2016), so that the Department may work with the nominated jurisdictional representatives to identify relevant data (that is, relevant imported building products of concern), and reporting frequency requirements, to best inform the representatives' compliance and enforcement activities. An information sharing framework is also being developed for consideration by relevant jurisdictions.

The Department has released four sets of import data on certain building products to jurisdictional representatives between April 2016 and December 2016. Data is released on a regular basis (every two months) and upon ad hoc requests by the relevant jurisdictional representatives.

The information sharing arrangement improves intergovernmental cooperation, and supports regulators in the states and territories to target their compliance and enforcement activities.

At the conclusion of the pilot period, the Department will consult with the jurisdictional representatives to discuss the forward approach for data sharing arrangements.

Asbestos

Australia's asbestos ban

Australia has very strict regulations on asbestos products. An Australia-wide ban on the manufacture and use of all types of asbestos and asbestos containing material (ACM) took effect on 31 December 2003. To support the domestic ban, the importation and exportation of asbestos or ACM (chrysotile and amphibole) to or from Australia is prohibited, unless a permission or exemption has been granted or a lawful exception applies (see Regulation 4C of the Customs (Prohibited Imports) Regulations 1956 and Regulation 4 of the Customs (Prohibited Exports) Regulations 1958 respectively).

Sources of illegally imported asbestos

Australia is one of only a few countries that prohibits imports and exports of asbestos. Some of Australia's major trading partners have banned or restricted the use of asbestos domestically, but do not have import or export prohibitions. Many countries still allow particular types of asbestos or ACM (for example, chrysotile) to be imported or used domestically.

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 ACM. China has an export ban on one type of asbestos only (amphibole asbestos), and Canada recently announced its intention to impose import and export bans on asbestos.

Positive detections of imported items containing asbestos have included crayons, gaskets, brake pads, prefabricated structural building materials, component parts of a vessel and protective wrapping of steel brackets.

Border controls and activities to enforce the asbestos import prohibition

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

- undertaking risk assessments on 100% of cargo imported to Australia;
- an increased number of profiles and alerts to identify high-risk goods that require intervention;
- commencement of an asbestos sampling programme to refine and confirm the robustness of alerts and profiles;
- 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.

While the ABF has substantially increased its operational and intervention focus, there has not been an equivalent proportionate increase in the overall number of positive detections. There were 13 positive detections of goods containing asbestos in the 2015-16 financial year compared with 10 in 2014-15 and seven in 2013-14 (see Figure 1).

The ABF operational processes for identifying goods at risk of containing asbestos are explained below.

Risk assessments

The ABF undertakes risk assessments on 100 per cent of cargo imported into Australia. All goods identified as high-risk are subject to further intervention. This risk-based approach to targeting goods at the border significantly reduces the likelihood of imports of products with asbestos entering the country. High-risk goods are identified based on risk profiles and alerts.

Targeting and profiling

Risk profiles and alerts are a critical tool used by the ABF to identify and target consignments and goods that are a high-risk of containing asbestos. The risk profiles and alerts for asbestos identify high-risk shipments, goods, countries of origin, suppliers and importers of concern, across cargo reports, self-assessed clearance declarations and full import declarations.

- as at 3 January 2017 the Department had 48 different asbestos profiles and alerts.

These profiles and alerts have been developed using historical detection data and referrals from industry, the public, other agencies and statutory authorities and international partners involved in asbestos management.

In the 2015-16 financial year there were 1,167 profile/alert matches to high-risk consignments, compared with 273 in 2014-15 and 157 in 2013-14 (see Figure 1).

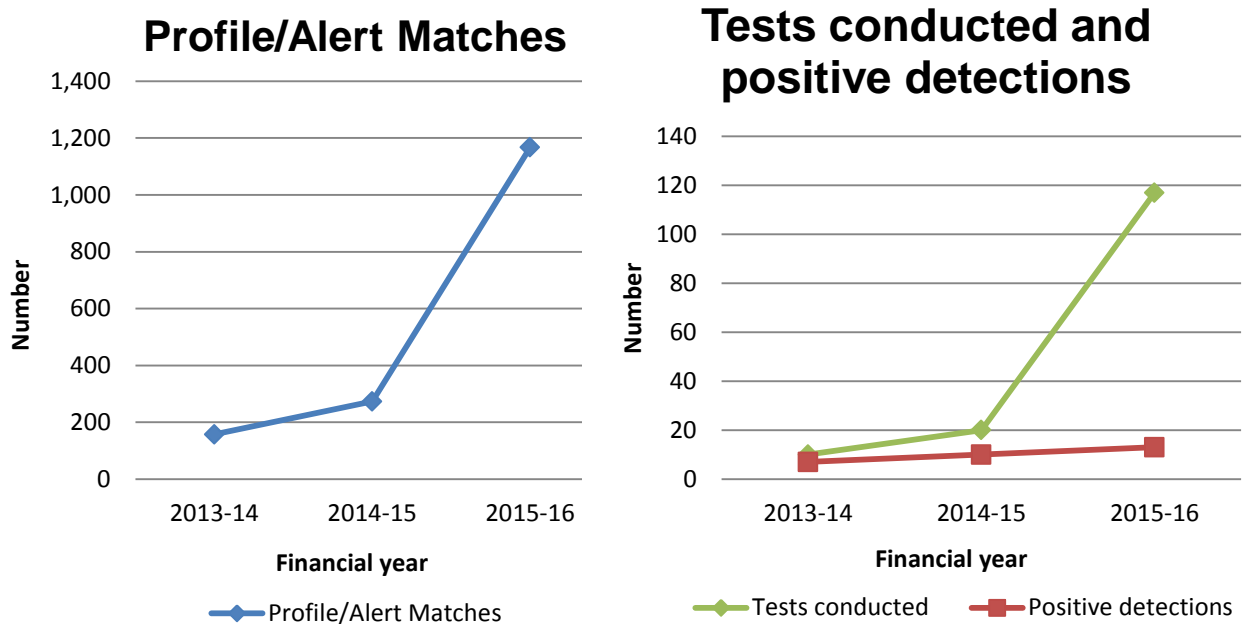


Figure 1 - Profile alerts, tests and detections of asbestos containing goods

Asbestos sampling programme

The ABF is committed to ensuring the appropriateness of its risk management and intervention decisions. As part of its increased operational focus on the risk of goods containing asbestos being imported into Australia via sea cargo, the ABF has implemented a six month sampling programme to complement existing targeting and intervention approaches. The programme is designed to randomly select consignments across a range of tariff classifications that cover a wide array of different categories of goods that may be at risk of containing asbestos. In selecting the sampling population, goods that are deemed not to present a risk of containing asbestos (e.g. livestock) are excluded.

All consignments that match the sampling profile are sent for testing, regardless of any certification or assurances the importer provides that the goods do not contain asbestos. This ensures sampling results are free from potential bias.

The results of the sampling programme are subject to ongoing analysis to determine if the programme needs to be adjusted to capture relevant goods and to ensure the sample sizes are appropriate. Ultimately, the results of the sampling programme will be used to develop more targeted risk profiles and alerts.

Assurances

Importers are responsible for ensuring that they do not import prohibited goods, including goods containing asbestos. Importers should be aware of varying definitions and standards applied in the country of origin in regards to the asbestos content of ACM. Some goods may be labelled as 'asbestos free' or 'non-asbestos' consistent with the national standards in the country of origin or supply; however, these goods may include small traces of asbestos which, for example, would not meet Australia's strict import prohibition requirements and domestic ban on the use of asbestos.

Importers need to be proactive and diligent in understanding the supply chain and production processes leading to the manufacture of the goods they intend to import. This includes ensuring claims by suppliers that goods are 'asbestos free', are accurate and meet Australia's import requirements. Trace elements or residual amounts of asbestos are not permitted.

When importing goods into Australia, the Department requires importers to answer a community protection question for goods at risk of containing asbestos. This declaration may result in the importer being requested to present additional documents to assure the ABF that the goods do not contain asbestos. If the documentation provided by the importer does not provide the ABF with sufficient assurance that the goods do not contain asbestos, then the ABF will request testing to determine if asbestos is present. Importers may also choose to have their goods tested for asbestos prior to importation into Australia.

Testing

Where goods are tested for asbestos content, testing certification (also called a laboratory testing report) must be provided to the ABF.

If an importer wishes to have their goods tested in Australia, they must seek permission prior to importation from the Minister for Employment, through the Asbestos Safety and Eradication Agency, to import a sample for analysis. Once permission has been granted, importers must then organise sampling and testing. Samples must be from the shipment to be imported and the testing must be undertaken by an Australian laboratory that is accredited by the National Association of Testing Authorities (NATA).

Where the testing is carried out overseas prior to shipping to Australia, the certification must be from an overseas testing laboratory accredited by the NATA equivalent testing authority in that overseas economy. The local testing authority must be a signatory to a Mutual Recognition Agreement with NATA.

Seizure of asbestos containing goods

If goods are suspected of containing asbestos, they will be held at the border and commercial and assurance documents will be requested. If the assurances provided are not sufficient, an examination will be requested and the importer will be required to have a sample of the goods tested in Australia. Testing is undertaken at the cost of the importer.

If the test is positive for asbestos, the goods will be seized by the ABF as prohibited imports and forfeited to the Crown. Information about importations that have been identified as containing asbestos or ACM, are referred to state and territory work health and safety regulators for further investigation. This includes details of the importer, the supplier and the goods.

If asbestos is found to have entered Australia without permission, the importer of the goods may be subject to investigation, penalties and/or prosecution for offences against the *Customs Act 1901*, in addition to other available offences under state or territory laws.

Penalties and prosecutions

The ABF uses a range of mechanisms to ensure compliance with the asbestos border controls, including:

- undertaking outreach and education to promote voluntary compliance;
- issuing warnings;
- issuing infringement notices under the *Customs Act 1901* (which impose administrative penalties in lieu of prosecution); and
- undertaking prosecution.

The ABF investigates and may prosecute alleged breaches of the *Customs Act 1901* for the prohibited importation, or exportation, of asbestos.

For individuals, an offence of importing asbestos can, upon conviction, result in a maximum penalty of up to 1,000 penalty units (currently \$180,000) 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 (\$900,000) 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 (\$2,700) for an individual, or 75 penalty units (\$13,500) for a company.

Engagement and awareness

The ABF is continuing to work closely with government and industry partners to educate and raise awareness of Australia's asbestos ban and border controls, to increase voluntary compliance by importers. The ABF engages industry and governments through a range of approaches.

The Department has established industry consultative committees, including the Compliance Advisory Group (CAG), which is a collaborative forum with customs brokers and freight forwarders, to co-design solutions for trade and goods compliance issues. The ABF presents at various industry fora throughout the calendar year, and conducts targeted asbestos awareness activities with importers and international suppliers.

The Department has also engaged with various state and territory health and safety groups through fora such as the Heads of Workplace Safety Authorities Imported Materials with Asbestos Working Group (HWSA WG), managed by the Asbestos Safety and Eradication Agency.

The Department also engages with unions on asbestos related matters including through face to face meetings and correspondence. For example, the Department recently met with the Australian Council of Trade Unions, the Australian Manufacturing Workers' Union and the Construction, Forestry, Mining and Energy Union to discuss regulatory and policy approaches to the management of asbestos at the border.

To further support industry in understanding its obligation to ensure imported goods do not contain asbestos, the ABF and the Department have developed communication materials, including:

- departmental notice 2016/30 – 'Assurances that imported goods do not contain asbestos';
- a fact sheet - 'Managing the risk of asbestos at the border'; and
- updated the asbestos page on the Department's website to include a list of goods considered a high risk of containing asbestos.

International engagement

The Department has increased international engagement on Australia's asbestos prohibition to clarify Australia's strict border requirements with representatives from countries that export, or may export, asbestos. For example, officers from the Department recently met with representatives from the United States of America, India, Taiwan and China to specifically discuss Australia's strict border control requirements relating to the importation of asbestos.

- To support increased awareness among potential suppliers of goods to the Australian market, the Embassy of the People's Republic of China in Australia has made available from their website the Department's 'Managing the risk of asbestos at the border' factsheet, which has been translated into Mandarin.
- The Department has provided the US Government with a factsheet on Australia's asbestos border controls. The US Government has agreed to inform potential exporters of Australia's asbestos prohibition by making the factsheet available through the American Chamber of Commerce in Australia and the Foreign Commercial Service.
- To raise awareness of Australia's asbestos import prohibition with Indian exporters, the Department, through its overseas post, will work with the Australia-India Business Council, the Federation of Indian Chambers of Commerce and Industry, the Confederation of Indian Industries as well as the Ministry for Commerce and the Indian Central Board of Excise who are relevant agencies responsible for asbestos policy.
- The Department has provided the Taipei Economic and Cultural Office (TECO) in Australia with a factsheet on Australia's asbestos border controls to be used to increase awareness among Taiwanese exporters. Asbestos was also discussed at the December 2016 bilateral economic trade meeting, where Taiwan reaffirmed its commitment to cooperate with the Department on asbestos matters.

The Department has also engaged with international customs agencies and suppliers through the ABF at overseas embassies and high commissions, to advise on Australia's asbestos import prohibition. For example, ABF officers in China have been working with China's General Administration of Quality Supervision, Inspection and Quarantine to educate local manufacturers and suppliers on the border controls Australia places on asbestos related importations.

Asbestos Importation Review

In late 2015, the ABF Commissioner established an independent review to examine the effectiveness of the Department's internal processes and procedures for managing asbestos at the border to ensure that these reflected best practice. 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.

The review made 11 recommendations addressing three themes: structure and strategy; strengthening engagement, and enhancing border processes. The Department accepted all the recommendations, including one in-principle (due to IT 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 Department and the 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.

A copy of the review is provided at Attachment A.

Policy coordination

The Department of Employment is the lead Commonwealth policy agency with responsibility for Australia's asbestos ban, with a focus on work place health and safety laws and asbestos in the workplace. The Minister for Employment, or an authorised delegate, is responsible for granting permission to import asbestos in limited circumstances for research or testing purposes.

The Department, together with the Department of Employment, is co-chairing and co-supporting an interdepartmental committee (IDC) to enable effective policy and regulatory coordination across Commonwealth agencies in managing asbestos issues across the supply chain. The aim of the IDC is to:

- enhance consultation and coordination on policy and regulatory issues on asbestos;
- clarify agencies' roles and responsibilities in managing asbestos policy and regulatory issues across the supply chain;
- identify and coordinate proposals to address risks and gaps in asbestos management across the supply chain; and
- collaborate in developing communications on asbestos issues.

IDC representation includes policy and regulatory agencies covering workplace safety, asbestos import and export, environment, consumer safety, building standards, health, international trade and infrastructure issues. The IDC meets every one to two months.

Ongoing improvements

The Department has undertaken a number of activities and introduced processes and procedures to improve the enforcement of Australia's asbestos ban at the border, as discussed above. The Department and the ABF are committed to a process of ongoing and continual improvement, where the activities undertaken to date are reviewed and refined, to ensure the effectiveness and appropriateness of Australia's border controls for asbestos so that they meet best practice.

As part of ongoing improvement, the Department will continue to undertake activities to meet all the specific recommendations of the Asbestos Importation Review. It will take appropriate action to address relevant risks, gaps and improvement opportunities identified through fora, such as the IDC on asbestos policy, the HWSA WG and the CAG. The Department will seek engagement with relevant international partners to raise awareness of the asbestos import prohibition. The Department also welcomes engagement with industry, government and other interested parties on the management and enforcement of Australia's asbestos import prohibition at the border.

Attachment A – Asbestos Importation Review

ASBESTOS IMPORTATION REVIEW REPORT

Reference Number: 1600018
March 2016



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Executive Summary

The health risks posed by exposure to asbestos are well known. Many countries, including China, Russia, Canada and Brazil, still produce and use asbestos as a cheap input for materials used to supply industries such as building and construction. They may also export asbestos and Asbestos Containing Material (ACM) across the globe, including some importations by Australia traders, albeit unwittingly. In 2003, Australia imposed a strict prohibition on the sale, use and import of asbestos.

However, detections of asbestos and ACM in imported goods have continued to occur in Australia. Asbestos has recently been detected in building and construction materials, children's crayons, automobile gaskets and spare-parts. The potential for asbestos contamination across a wide range of goods in Australia continues to be a sensitive issue affecting the national dialogue with the business community, workers' unions and the public at large, and remains of ongoing concern to the Australian Government.

As such, the Commissioner of the Australian Border Force (ABF) commissioned a review to examine the effectiveness of the Department of Immigration and Border Protection's (DIBP's) internal processes and procedures for managing the asbestos border control.

The review analysed the current end-to-end border processes for asbestos and found that this management was effective; but identified opportunities for organisational and technical improvements. The review also examined the DIBP's engagement with industry and other government agencies and identified opportunities for enhanced engagement. This report recommends raising awareness and knowledge in order to promote voluntary compliance and improving the overall effectiveness with a focus on refining available information, communication and education for the business community and the public.

An examination of Australia's broader asbestos regulatory framework was outside of the scope of this review. The report outlines some contextual factors, including those related to the broader regulatory framework, to the extent that these factors may influence the effectiveness of DIBP's administration of the asbestos border control.

List of Abbreviations

| Abbreviation | Title |
|---------------|---|
| ABF | Australian Border Force |
| AS 4964 | Australian Standard Method for the qualitative identification of asbestos in Bulk Standards |
| ATT Programme | Australian Trusted Trader Programme |
| DIBP | Department of Immigration and Border Protection |
| ACBPS | Australian Customs and Border Protection Service |
| ACCC | Australian Competition and Consumer Commission |
| ACM | Asbestos Containing Material |
| ASEA | Asbestos Safety and Eradication Agency |
| BMD | Border Management Division |
| CCB | Customs Compliance Branch |
| Customs Act | <i>Customs Act 1901</i> |
| CMP | Compliance Monitoring Program |
| DoE | Department of Employment |
| EDW | Enterprise Data Warehouse |
| EPS | Expanded Polystyrene Sandwich |
| FID | Full Import Declaration |
| HWSA | Heads of Workplace Safety Authorities |
| ICS | Integrated Cargo System |
| ICT | Information and Communication Technologies |
| NATA | National Association of Testing Authorities |
| ILAC | International Laboratory Accreditation Cooperation |
| | |
| PLM | Polarized Light Microscopy |
| SCG | Strategic Command Group |
| STCG | Strategic Tasking Coordination Group |
| TCIPD | Traveller, Customs and Industry Policy Division |
| WHS | Work, health and safety |

1 Background and Recommendations

1.1 Background

The review identified several challenges that may affect the DIBP's management of the asbestos border control, but fall outside of the scope of the review. The report outlines the following contextual factors, including those related to the broader regulatory framework, to the extent that they may impact the effectiveness of the DIBP's administration of the asbestos border control.

For most businesses involved in international trade, a rational cost/benefit analysis of investment in compliance is not justified by the incentives that government offer to promote voluntary compliance. Despite the critical effect of asbestos exposure to public health and safety, it remains a cheap and effective material for use in a wide range of goods. Asbestos continues to be widely used internationally, and is incorporated in goods manufactured by Australia's largest trading partners, such as China.

Due to the differing standards applied to asbestos regulation internationally, it may be inefficient for suppliers that sell to a range of markets, to ensure compliance with the Australia's strict import prohibition. The Australian prohibition relates to all forms of asbestos, but chrysotile is not internationally recognised as a dangerous form of asbestos. Countries that mine chrysotile maintain that it is safe, and continue to export it to a number of other countries, where it is still widely used in products that supply a range of industries¹.

The Australian prohibition also requires nil asbestos content in all goods, a position that is almost unique. Most customs administrations apply standards that provide for a maximum allowable limit of asbestos content. These standards are used by testing laboratories in the relevant jurisdiction, which certify that goods are asbestos free when they meet allowable content limits specified by that country's standards. In those circumstances, the overseas testing certificate is not evidence of compliance with Australian law.

There is also confusion about policy and regulatory responsibilities across Government in Australia and some ambiguity in the overarching legal framework that establishes Australia's strict prohibition. The Department of Employment (DoE) has policy responsibility for the legal framework that establishes the border control. The DIBP administers the import and export prohibitions at the border. The Asbestos Safety and Eradication Agency (ASEA) is responsible

¹ <http://www.mesothelioma.com/asbestos-cancer/asbestos-types/chrysotile.htm#ixzz41wY1TVH5>

for administering the import and export permission regime on behalf of the Minister for Employment. The Australian Competition and Consumer Commission (ACCC) and state and territory work, health and safety (WHS) regulators have a role in enforcement of the asbestos prohibition domestically. This cross-over between various Commonwealth and state and territory authorities can confuse the public's perception of the DIBP's role in asbestos regulation, and its ability to affect changes to the legal and policy frameworks that establish the prohibition. Clarification of the responsibilities and coordination efforts across Government would reduce this confusion and increase the effectiveness of the Government's response to asbestos issues.

The review has also identified that the regulations applied on import are different to those applied on export. Available information published by relevant Government agencies can also be contradictory when dealing with specific instances of asbestos detection. For example, the border prohibition is strictly enforced, and any detection of asbestos results in the seizure and disposal of the contaminated goods. However, if similar goods are already in the Australian market and do not pose an immediate threat to consumer health and safety, less constricted regulations may apply. This can create a barrier to voluntary compliance, as the expectations of industry are unclear. A consistent regulatory framework would alleviate the risk of ineffective administration of the asbestos border control, as it would improve the incentive for voluntary compliance.

Available technologies also limit the capability to administer the asbestos border control. Non-intrusive inspection equipment currently used by the DIBP, such as X-Ray scanning equipment, does not detect asbestos content. There are currently no proven field asbestos detection devices available on the market. The DIBP must direct an importer to sample and test all goods at risk of containing asbestos when the importer cannot provide an appropriate assurance that the goods are not contaminated. This process may prove costly for the importer, and an impediment to the timely release of goods.

1.2 Scope of the review

The purpose of the review is to examine the effectiveness of the DIBP's administration of the asbestos border control. The review seeks to ensure that the risk of imported asbestos and ACM entering the Australian market is effectively managed and reflects best practice.

The DIBP engaged KGH Border Services AB (KGH) to identify gaps or organisational risks and make recommendations to ensure that the administration of the asbestos border control by the DIBP reflects best practice. In making these recommendations, KGH examined:

- treatment of the asbestos import prohibition as a border risk;

- end-to-end border management of the asbestos border control, including (but not limited to):
 - identification, detection and compliance activities;
 - referrals processes;
 - supporting operational procedures;
 - quality assurance and reporting, including;
 - data collection on ABF asbestos detection and compliance;
 - information-sharing with key government agencies and bodies;
- procedures for asbestos handling, storage and disposal in compliance with relevant Commonwealth and State and Territory work, health and safety and environment laws;
- engagement with importers and other industry stakeholders to promote compliance with the prohibition;
- engagement with other government agencies to ensure effective regulation of asbestos across jurisdictions; and
- engagement with other international customs administrations to educate and share information to prevent and detect the importation of asbestos into Australia.

The review did not examine the legislative, policy or regulatory framework for managing the asbestos border risk, or the broader regulatory framework that establishes the Australia-wide ban on the sale and use of asbestos.

To assess current DIBP processes and procedures, KGH:

- analysed information and data collected throughout the review process from a range of the DIBP's and public sources. A list of the information considered for the purposes of the review at **Annex 1**; and
- conducted interviews and meetings with relevant DIBP staff, including front line ABF officers in the ABF's Victorian Regional Command over a three-week period while a KGH consultant was embedded with the DIBP. [REDACTED]

[REDACTED]

1.3 Key Findings

Structure and Strategy (Chapter 2)

1.3.1 Clear distribution of responsibilities in the integrated structure

Having undergone a recent major organisational merger, the DIBP is in a transition period of restructuring and reorganisation. Some functions of the DIBP Traveller, Customs and Industry Policy Division (TCIPD) and of the ABF Border Management Division (BMD) are overlapping or not clearly delineated. The determination and prioritisation of responsibilities for customs policy and operational processes and procedures should only improve during the post-integration period.

1.3.2 Creation of a dedicated customer service function and customer charter

The DIBP performs both enforcement and service delivery functions. While its enforcement functions are well known, there is no dedicated trade and goods customer service function. The establishment of this function may assist to encourage voluntary compliance with the asbestos border control, as it will provide industry an avenue to seek specific and targeted advice. The development of a Customer Charter will also clarify the organisation's expectations of traders engaging with the DIBP.

1.3.3 Strategic emphasis on the asbestos border control

The DIBP's Senior Executive set the strategic direction and operational priorities of the DIBP. The efforts of frontline personnel are directed to focus on strategic priorities by the DIBP's Senior Executive. In order to ensure uniform and consistent enforcement across Australia, emphasis on the asbestos control must come from the DIBP's Senior Executive, as appropriate. Notwithstanding the strategic importance of the asbestos border control, the Customs Compliance Branch (CCB) has made robust efforts to focus on asbestos-related issues through its activities.

Strengthening Engagement (Chapter 3)

1.3.4 Promote voluntary compliance through enhanced industry engagement

The DIBP should adopt a holistic approach that seeks opportunities to promote voluntary compliance with the asbestos border control. This would be through consistent and targeted engagement with industry and the public. This engagement would be supported through communication strategies reflecting a good understanding of the risks and barriers to compliance, gained from industry experience and research derived from a range of sources.

The Australian Trusted Trader (ATT) Programme represents an opportunity for DIBP to develop this understanding and to promote best practice principles. Improving information available on the DIBP's website would enhance industry engagement. This should include publishing targeted information for importers, exporters, supplier, manufacturers and service providers in foreign languages.

1.3.5 Maximise engagement with other government agencies

The DIBP currently shares trade data and information about detections of imported asbestos with other government agencies through the Heads of Workplace Safety Authorities (HWSA) Rapid Response Protocol. The DIBP also uses information from the Rapid Response Protocol to refine border profiles and targeting. There is, however, a gap in engagement with other government agencies on policy issues. Maximising opportunities to engage on both operational and policy issues should result in improved and consistent regulation across government, and positively impact industry behaviour.

1.3.6 Seek broader opportunities for international engagement

Better engagement with customs administrations of Australia's major trading partners is appropriate and critical. Such efforts are vital for reinforcing the exchange of intelligence and for disseminating information about compliance with Australian laws to overseas suppliers. This engagement should be supplemented by utilising other industry networks, such as the Australian Chambers of Commerce overseas.

Enhancing border processes (Chapter 4)

1.3.7 Modernisation of the automated customs management system

The DIBP currently uses a number of systems to process imports and exports, which are not always compatible with each other and require manual processing by ABF officers. Any improvement to fraud detection or other violations of border laws requires adequate reformation and modernisation of the DIBP's business processes and procedures. This could be facilitated by adopting an open, intelligence-led risk management system that is compatible with the latest technologies, such as mobile technology. This would complement the Government's digital transformation plan.

1.3.8 Enhance risk profiles management

The management of risk profiles would benefit from adopting an integrated system for managing the movement of goods. While there is a process for profile evaluation and management, the

DIBP should explore further opportunities to ensure that traders do not shift trade habits or reporting practices to avoid matches with existing profiles.

1.3.9 Promote voluntary compliance through the examination process

The CCB has worked hard to ensure a nationally consistent approach to the treatment of goods at risk of containing asbestos through the development of standard procedures since its establishment on 1 July 2015. These procedures should be further refined, adopting processes that seek every opportunity to provide information to assist voluntary compliance at all stages of document review and examination processes.

1.3.10 Sampling methodology

Asbestos is a volatile substance not uniformly dispersed and distributed in materials. Testing results depend on the reliability of sampling. The variations in asbestos dispersion in products can provide different results when samples are taken from different parts of the goods and a uniform approach to sampling for customs purposes is required.

1.3.11 Testing techniques

Australian testing capabilities do not support the total import prohibition of asbestos content. The testing standard applied by National Association of Testing Authorities (NATA) cannot absolutely certify the absence of asbestos, and further confirming testing techniques that exist outside of the Australian Standard may be required. While some of these techniques are available in Australia, no Australian laboratory is currently accredited by NATA to undertake them. Clear guidance on testing for customs purposes is required for external stakeholders.

1.3.12 Storage of samples

An importer is required to arrange testing by a NATA accredited laboratory if the ABF is not assured that the imported goods do not contain asbestos. Samples taken from goods that are subject to customs control remain in customs control, even if held in an independent laboratory for storage. This should be emphasised by ABF officers when an importer is advised that testing of the goods is required. It should be clearly outlined that the goods remain under customs control until clearance or disposal is directed by the ABF.

1.3.13 Disposal of seized asbestos or ACM

An importer is required to pay for storage and testing of goods up to the point that the goods are seized by the ABF. Once seized, the goods become the property of the Commonwealth and the cost of removal and disposal is incurred by the DIBP. Any deterrence intended by the prohibition

may be lost when the costs of removal and disposal of ACM detected at the border is paid by the DIBP, and not by the importer.

1.3.14 Referrals for investigation and prosecution

An incentive for voluntary compliance is to undertake and publicise enforcement actions that result from instances of non-compliance. A higher level of investigation of asbestos related cases is needed to support compliance activities of ABF officers. This would also encourage improvements in data collection management to ensure that the required evidence is properly gathered and managed with a view to ensuring successful prosecutions.

1.4 Recommendations

Overarching recommendations of the review are summarised in the table below.

| Structure and Strategy | |
|--|--|
| Recommendation 1 (section 2.1) | Optimise the delineation of policy, operations and industry engagement roles between the DIBP and the ABF. |
| Recommendation 2 (section 2.2) | Establish a dedicated trade and customs customer service function, in the form of a Trade Hub, and a Customer Service Charter that outlines the DIBP's service standards and its expectations of service providers, importing industries and the public when engaging with the organisation. |
| Recommendation 3 (section 2.3) | Emphasise the strategic importance of asbestos through further uniform and consistent enforcement operations, complemented by communication and engagement activities. |
| Strengthening Engagement | |
| Recommendation 4 (section 3.1) | Promote voluntary compliance through enhanced engagement with industry, the public and other stakeholders. |
| Recommendation 5 (section 3.2) | Enhance engagement with partner government agencies through improved exploitation of information related to asbestos detections at border and on domestic markets. |
| Recommendation 6 (section 3.3) | Enhance international cooperation by providing information to overseas suppliers and producers through peak Industry bodies, such as the Australian Chamber of Commerce. |
| Enhancing Border Processes | |
| Recommendation 7 (section 4.1) | As part of the Government's digital transformation plan, reform and modernise the Integrated Cargo System (ICS) to ensure maximum utilisation of information and communication technologies. |
| Recommendation 8 | Maximise targeting of high-risk goods by enhancing current risk profiling |

| | |
|---|--|
| (section 4.2) | processes. |
| Recommendation 9 (section 4.3) | Develop standard information survey forms, to provide to importers where shipments are identified as high-risk, that educate and clearly set out the process of assurance that is required. |
| Recommendation 10 (sections 4.4, 4.5, 4.6, 4.7) | Streamline and publish external guidance on: sampling methodology, testing techniques, samples' storage including legal frame, disposal of seized asbestos goods, where high-risk shipments are held for further investigation. |
| Recommendation 11 (section 4.8) | Where possible, further prioritise the investigation to improve prosecution of offences related to asbestos importation. |

2 Structure and Strategy

2.1 Clear distribution of responsibilities in the integrated structure

On 1 July 2015, the then Australian Customs and Border Protection Service (ACBPS) and the DIBP integrated into one Department, and its operational arm, the ABF, was established. The DIBP and the ABF continue to perform all functions and services of the former ACBPS.

The integrated DIBP provides the opportunity to leverage combined experience and capabilities to tackle the challenges facing Australia's borders.

The Commissioner of the ABF is the co-chair of the Executive Committee of the DIBP and the ABF Strategic Command Group (SCG). These two committees are responsible for developing high-level strategies and organisational priorities. The Strategic Tasking Coordination Group (STCG) is responsible for overseeing implementation of the enforcement strategies and compliance plans for the operational priorities set by the SCG. The BMD is responsible for developing these enforcement strategies and compliance plans. The CCB also manages alerts and profiles, develops ABF procedural instructions and standard operating procedures for frontline officers, and undertakes some industry and government engagement.

The TCIPD is currently responsible for developing policy statements related to the import and export of regulated goods (including prohibited and restricted goods), establishing community protection profiles, and managing high-level engagement with industry and other government agencies.

Post integration, some functional responsibilities of the TCIPD and of the BMD are overlapping or not clearly delineated. This includes engagement with relevant stakeholders and profile management in relation to asbestos.

Recommendation 1:

As part of the post integration process, optimise the distribution of functions currently undertaken by the TCIPD and the BMD, and ensure the functional split is publicised and understood across the organisation.

2.2 Creation of a dedicated customer service function and customer service charter

The DIBP performs both an enforcement function and a service delivery function. While the importance of the enforcement function is widely understood, customer service also plays an important role in the DIBP's ability to promote voluntary compliance. The DIBP responds to public general enquiries across the Department, but there is currently no dedicated customer service function that assists industry before, at and post-border on trade and customs issues.

A dedicated customer service function for trade and customs issues could be developed in the form of a Trade Hub, which provides information to the public as requested and offers a complaints and claims function. This Trade Hub may take the form of:

- a fully staffed and functional service delivery unit, which centralises all current service delivery functions for trade and customs issues; or
- automated unmanned online assistants, such as web site avatars.

Customer service is an important component of any border organisation, as it is a public reflection of the organisation's corporate culture. High-level customer service requires investment in staff training and regular monitoring of effectiveness through, for example, internal and external satisfaction surveys.

This important function is complemented by the creation of a Customer Service Charter that clearly articulates the organisation's service delivery standards and provides a set of expectations that the organisation has for the public. This will include expectations around voluntary compliance and proactive partnership between industry and government.

Recommendation 2:

Establish a dedicated trade and customs service function, in the form of a Trade Hub, and establish a Customer Service Charter that outlines the DIBP's service standards and its expectations of service providers, importing industries and the public when engaging with the organisation.

Any newly established customer service function must be integrated into the DIBP's internal and external communication strategy; to ensure consistent information is being provided to the ABF's personnel and to the public across Australia.

2.3 Strategic emphasis on the asbestos border control

Each year the SCG identifies the operational priorities for the ABF's compliance and enforcement focus. Those priorities are communicated at all levels of operations within the ABF, and relevant supporting areas of the DIBP.

One way to increase asbestos interceptions is to place strategic importance on the enforcement of asbestos at the border. This could be achieved by endorsement of Executive Management, through the organisational governance structure. Given the range of risks managed at the border, including risks associated with criminal and terrorist activities, the adoption of asbestos enforcement as a strategic priority may not be viable. Strategic emphasis could also be achieved by increasing the number of targeted compliance operations that focus on compliance with the asbestos control. To be most effective, these operations should be complemented by consistent communication and engagement activities that provide guidance to both internal and external stakeholders.

A consistent strategic message from the DIBP's Senior Executive will also ensure that asbestos enforcement is better harmonised across the regions. The ABF has commenced this work since the establishment of the CCB on 1 July 2015, where there is new emphasis on ensuring a consistent approach to border management across the regions. The asbestos border control has been a focus of CCB since integration and two compliance operations that target asbestos in specific high-risk goods commenced in financial year 2015/16. National procedural instructions were developed that provided consistent guidance for the ABF's frontline officers.

Recommendation 3:

Emphasise the strategic importance of asbestos through further enforcement operations, complemented by uniform and consistent communication and engagement activities.

3 Strengthening Engagement

3.1 Promote voluntary compliance through enhanced industry engagement

The DIBP's and the ABF's approach of industry engagement for trade and customs issues in parallel, is led primarily by the TCIPD and the CCB.

In November 2015, the DIBP published its *Industry Engagement Strategy 2020* for trade and customs issues. This strategy outlines the strategic objective of working in partnership with industry, to promote confidence in customs functions. This complements the DIBP's Migration Industry Engagement Strategy. The TCIPD has a dedicated team responsible for industry engagement on trade and customs issues and chairs a number of industry and government forums.

Additionally, the CCB has developed a strategy of engagement with industry on compliance issues. The CCB has established the Trade and Goods Compliance Advisory Group (CAG), which meets quarterly to discuss particular issues that industry face when importing and exporting. When further developed, the CAG will be in a better position to complement the DIBP's Industry Engagement Strategy 2020, by working in partnership with industry in order to better facilitate voluntary compliance. The outcomes of the CAG would be reported to the National Committee on Trade Facilitation, which is managed by the TCIPD. The work of this Group could be enhanced if further tools to measure business compliance were developed, reported to industry and used to shape future organisational communication and enforcement plans. An example of compliance measurement action may be the monitoring and reporting of the full import declaration (FID) number and the reasons for amendments.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A campaign was conducted to encourage compliance with the asbestos border controls, a range of communication methods may assist the dissemination of relevant information, including mobile alerts, social media and telephone based surveys.

To assist voluntary compliance, the DIBP is required to develop a detailed understanding of the risks and barriers to compliance in order to provide relevant information to industry and other relevant stakeholders. Research studies, as issued by universities, core field experts, or by Industry itself provides insights for the DIBP into these risks and barriers. Engagement with key

industries that trade in goods at risk of asbestos contamination will be useful to understand barriers to compliance and will also assist to develop a firm organisational knowledge base on the topic. Further details of how to increase the DIBP's knowledge base are outlined below.

3.1.1 Leveraging the Australian Trusted Trader Programme

A pilot phase of the DIBP's ATT Programme commenced in July 2015 and will be operational from 1 July 2016. To participate in the ATT Programme, a business has to demonstrate to the DIBP that it has established supply chain security processes and a history of trade compliance. This provides the DIBP with the necessary information to undertake simplified risk assessments, which enables consistent, faster and less costly release of goods. This provides overall benefits to the economy, by improving supply chain efficiency.

The process of accreditation includes a self-assessment questionnaire and a compliance audit of the business' governance structure, systems and procedures. This includes an assessment of how the business manages regulated goods. Goods at risk of asbestos contamination are not specifically addressed in the self-assessment questionnaire. However, the DIBP will assess the risk related of the business trading in goods that may contain asbestos, and may query business governance processes related to ensuring goods are not contaminated during the compliance audit. The DIBP will rely on historical trade data and the information provided in the self-assessment questionnaire when assessing the risk of asbestos contamination.

The ATT Programme represents the first opportunity the DIBP has to gain a detailed understanding of supply chains and business governance structures across a range of industries. From experience gained through ATT accreditations, the DIBP will be in a position to develop some best practice principles of supply chain management to share broadly with the overall trading community. This information could focus on governance processes that reduce the risk of asbestos contamination, and be shared as part of targeted communication with specific industries or more broadly on the border.gov.au web site to assist voluntary compliance.

3.1.2 Enhancement of the existing asbestos web page

The DIBP has a dedicated asbestos information page on the DIBP's website. This outlines helpful information about Australia's border control and the risks associated with exposure to asbestos. However, the available information does not draw attention to specific risks to traders, such as the types of goods at risk of asbestos contamination. There is also very little guidance about the process of assurance required by the ABF to facilitate the clearance of goods, or on the sampling and testing process.

Increased voluntary compliance will only occur where industry is provided with clear and consistent guidance on how to comply with regulations. More targeted information is required to address compliance issues with the asbestos border control. This will also ensure that this control is consistently administered across all regions. A robust asbestos information web page could include:

- information of the goods that are at risk of asbestos contamination,
- details of the information that is required to assure the ABF that the goods do not contain asbestos, so that traders may prepare this information prior to import and export,
- best practice case studies, possibly taken from the ATT Programme, so that traders can understand how to arrange governance structures to support voluntary compliance, and
- information for other stakeholders in the supply chain, including manufacturers and suppliers, communicated in other languages.

Recommendation 4:

Promote voluntary compliance through enhanced engagement with industry and other relevant stakeholders.

- Develop indicators and procedures for evaluating trade compliance, based on qualitative compliance performance indicators such as surveys,
- Work with industries that trade in goods at risk of asbestos contamination to develop industry expertise. This will assist with developing better profiles to detect asbestos at the border and to target communication that promotes voluntary compliance with stakeholders along the supply chain in the at risk industries,
- Engage more broadly with relevant stakeholders, including targeting new audiences such as business schools and vocational training centres to educate about compliance with the asbestos border control,
- Develop and promote best practice compliance principles for high-risk industries from experience gained through the ATT Programme. These principles can also be developed more broadly and shared on the border.gov.au web site,

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[REDACTED]

[REDACTED]

- Enhance existing web content to include targeted information for importers, suppliers and producers.

3.2 Maximise engagement with other government agencies

As outlined in Chapter 1, the DIBP administers the asbestos border control, but the policy lead is the DoE. DIBP also participates in the HWSA Imported Materials with Asbestos Working Group's Rapid Response Protocol. The purpose of the protocol is to share information between relevant regulatory authorities on asbestos detections and breaches. This assists with the compliance and enforcement efforts of Commonwealth, state and territory WHS regulators, and provides a source of information for the DIBP to better target at risk goods at the border. Regulators often report on action taken in response to information provided through the Rapid Response Protocol. This information could be used by the DIBP to develop case studies for use in industry communication and in compliance and enforcement plans.

While the HWSA Working Group was initially established to deal broadly with issues arising from imported materials, its primary function now appears to be to disseminate information arising under the Rapid Response Protocol. As such, there is no established inter-governmental forum for discussion of asbestos policy issues, nor is there the opportunity to develop consistent government responses to developing trends outside of known asbestos detections.

This gap in engagement with other government agencies has driven incorrect public perceptions of responsibility for asbestos issues in government. There may be a disjunct between the DIBP's development of policy approaches to address new and emerging asbestos border issues, which were not addressed in the asbestos regulatory framework when developed by the DoE. The DIBP would benefit from enhanced engagement on policy issues, to ensure consistency in asbestos regulation across government and to re-align community expectations about its role in asbestos regulation.

Recommendation 5:

Enhance engagement with partner government agencies by:

- Seeking opportunities to engage across government on policy issues,
- Better communicate current DIBP activities, as appropriate with government members of the Rapid Response Protocol,
- Continuing to exploit information on asbestos detections to enhance profiling of goods at the border,

- Seek opportunities to develop case studies based on information provided by other government agencies, to use in industry communication and in compliance and enforcement plans.

3.3 Seek broader opportunities for international engagement

A key focus of the DIBP's international engagement is to develop relationships with partner customs administrations, particularly to support information sharing and joint enforcement operations. The DIBP has developed a robust customs network and shares information across a number of border risks.

Assisting voluntary compliance requires engagement beyond customs networks. This is particularly the case for asbestos, where customs administrations in other countries that export asbestos or ACM legally, may not be inclined to share information with the DIBP that may inhibit its export industries. Voluntary compliance is better supported by targeting communication that assists suppliers and manufacturers in overseas markets to comply with Australian laws. This may include developing guidance on the Australian standards for asbestos and asbestos testing, and the assurances required on import in the language of the country of supply.

The CCB has commenced developing this material for key overseas markets, such as China. This information is disseminated through the ABF's posts abroad. However, this information may have more impact when provided directly to industry or trade organisations, such as Australian Chambers of Commerce overseas. The DIBP could explore opportunities for working directly with these organisations to ensure manufacturers and suppliers are adequately prepared to export to Australia. This could also be assisted through other diplomatic channels and networks developed by other relevant government agencies such as Austrade.

Recommendation 6:

Enhance international cooperation by providing information to overseas suppliers and producers through peak industry bodies, such as Australian Chambers of Commerce overseas.

4 Enhancing Border Processes

4.1 Modernisation of the automated customs management system

The ICS is an Internet Explorer-based EDI data processing system and is not designed to perform research, data management or advanced statistical functions. Officers simultaneously use other software and databases [REDACTED]

[REDACTED] to facilitate the clearance of goods, with access to each system granted according to ABF officer roles.

Reports of examinations (both documentary and physical) are recorded [REDACTED]. Preliminary import information transfers from ICS to a database [REDACTED] but beyond this, there is no interaction between the two systems. [REDACTED]

[REDACTED] Information and transfers from other systems [REDACTED] is accessed manually when required. [REDACTED]

Some functionality regularly highlighted as important tools for trade facilitation and clearance are missing in the ICS. For instance, the ICS does not currently have the capability to allow, partial release of goods, deferred duty payment or simplified customs clearance. The ICS also is not capable of integration with other technologies, such as mobile telephone technology. This capability would allow for the development of mobile-based interfaces, in line with the evolution of trade toward M-commerce (mobile phone based commerce).

The DIBP does not currently operate standardised reporting for sharing of enforcement outcomes across the regions. [REDACTED]

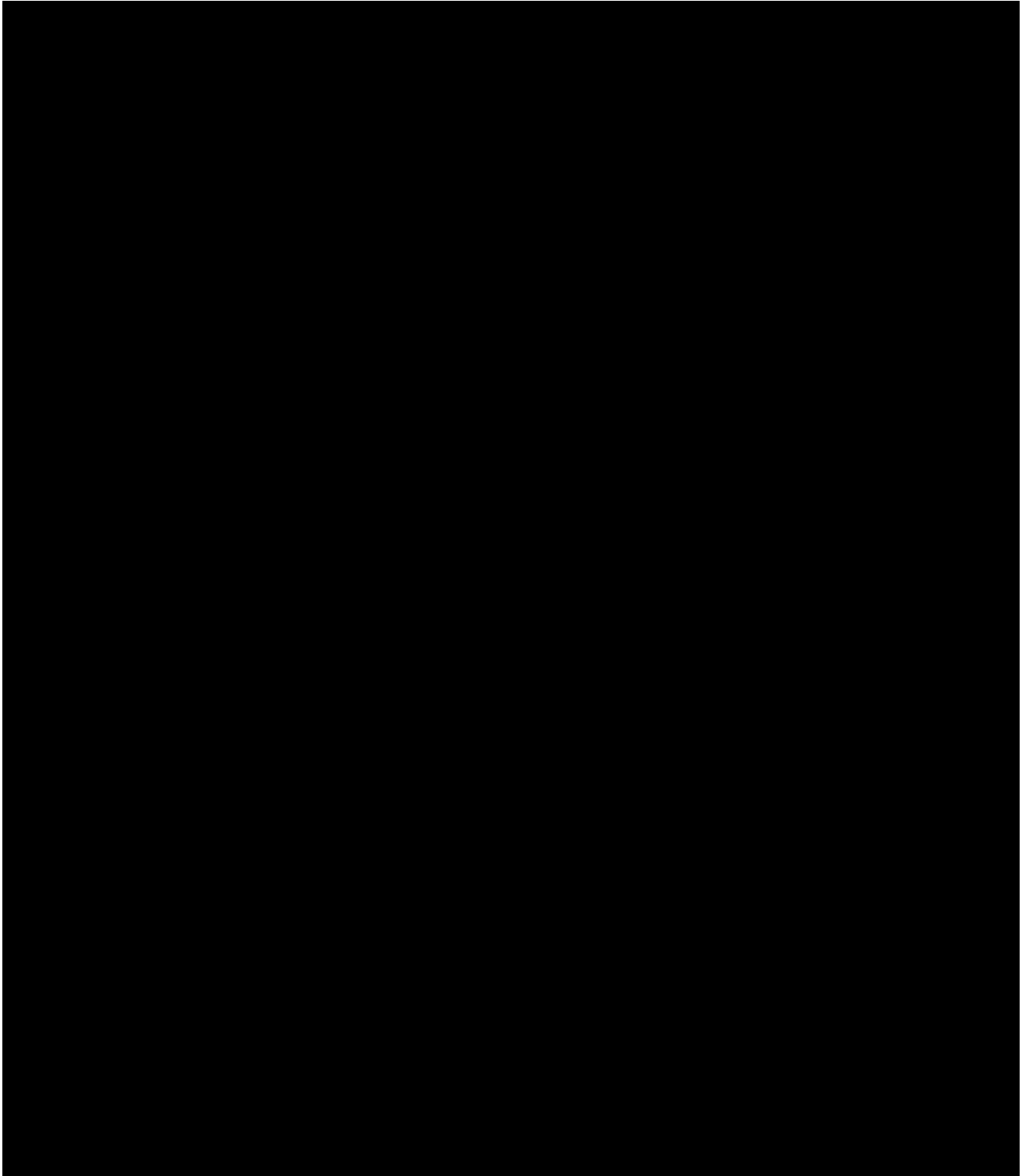
Recommendation 7:

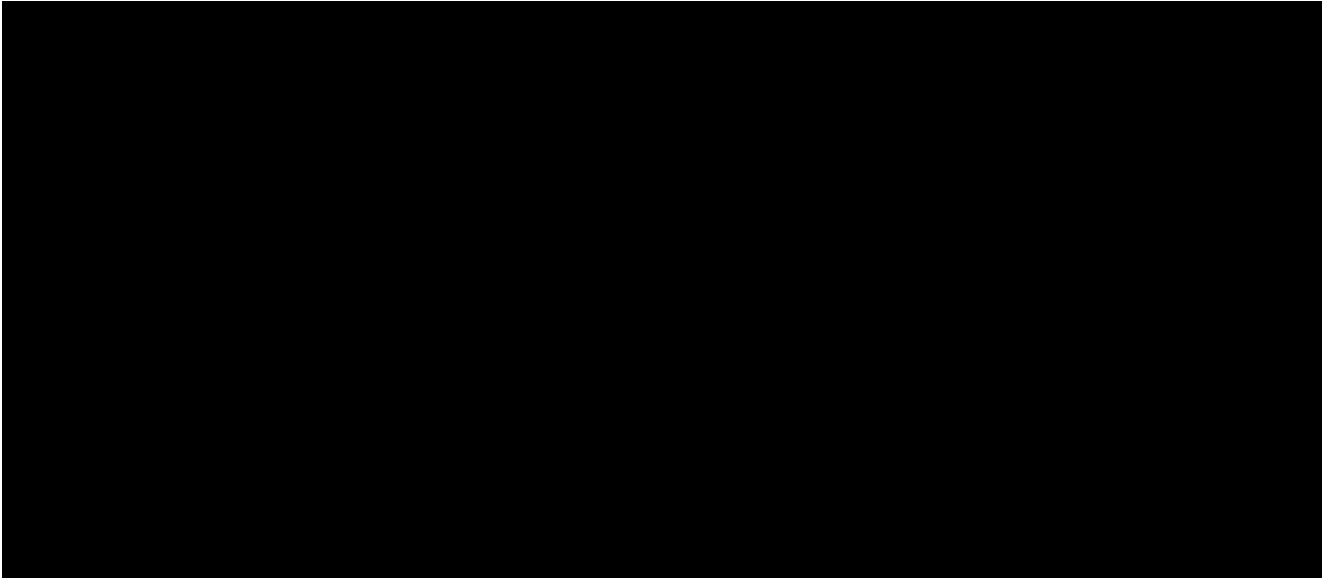
As part of Government's digital transformation plan, reform and modernise the ICS to ensure maximum utilisation of information and communication technologies,

- Such incentives could be incorporated into broader government initiatives, such as the development of a national Single Window, or governmental E-Commerce enhancement programmes,

- Any new system should ensure that the DIBP could adopt new and emerging technologies to facilitate customs clearance and provide an integrated IT environment that aligns with international best practice to meet both trade facilitation and risk management objectives.

4.2 Enhance risk profile management

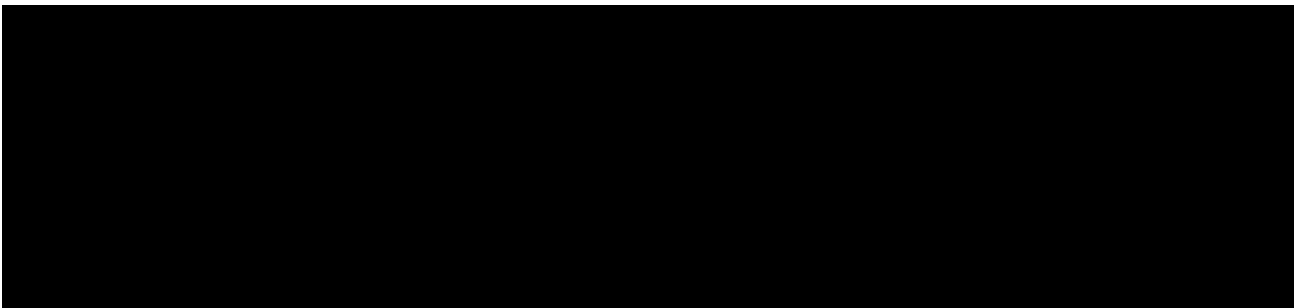




Recommendation 8:

Maximise targeting of high-risk goods by enhancing current risk profiling processes to ensure traders cannot change trade habits and reporting practices to avoid matches on existing profiles.

4.3 Promote voluntary compliance through the examination process



The current asbestos CPQ asks the importer whether the goods contain asbestos. The importer can only provide a yes or no answer to any CPQ. [REDACTED]



Following a profile match, an ABF officer may request that the importer or customs broker provide transaction-related documents such as bill of lading, invoice, commercial contract, import permission and any technical and testing certificates through the ICS. Sometimes, an importer presents an overseas laboratory certificate that shows a negative test result. However, the validity of such a certificate is questionable, as an “asbestos-free” result may not reflect testing to the Australian standards.

The ABF does not have a standard form or survey of questions to put to the importer at the time the cargo is initially referred for examination. A survey would inform the importer of the ABF's expectations around the assurance process, and would assist the ABF to identify goods that require further physical examination. Survey questions may include:

- Have a sample of these goods been tested for asbestos content?
- [If a yes response is given] Have the goods been tested in accordance with AS 4964?

The ABF accepts testing for asbestos content that has been done in accordance with Australian Standard Method for the qualitative identification of asbestos in Bulk Standards (AS 4964), Completion of this survey must be voluntary and the responses designed to assist ABF officers in determining what further action is required. No penalty would apply if an importer or customs broker does not complete the survey; but this could indicate that further examination of the goods may be required. A statistical analysis of collected answers would also inform level of compliance. The results could be used to improve the DIBP's engagement with industry and service providers by identifying the risks and barriers to voluntary compliance. This survey should be available on the DIBP's website, so that traders and service providers are aware of assurance requirements and can compile relevant documentation prior to import.

Following review and scrutiny of the received documentation, the ABF officer may decide either to release the goods or to re-route the cargo for further physical examination. [REDACTED]

[REDACTED] The ABF liaises with a hygienist nominated by the importer at this time and the ABF cargo exams team supervises the hygienist's sampling.

Following the sampling of the goods, the testing and confirming technique results are provided back to the ABF officer. The results might be negative, in which case the officer arranges for the release of the goods. Otherwise, if the testing is positive, the goods are seized and pass into the possession of the ABF for disposal. ABF also refers the matters to Investigation at this time for consideration of further action.

Following a positive detection where prosecution action is not pending, an information package about compliance with the asbestos border control could assist traders to ensure compliance for future imports. This may include a second level survey that could help the ABF understand the reasons of non-compliance by importers. This proactive engagement with industry would assist to

educate about supply chain risks and to share best practice principles to minimise future instances of asbestos importations.

Recommendation 9:

Develop standard information survey forms, to provide to importers where high-risk shipments are identified, that educate and clearly set out the process of assurance that is required.

Enhance voluntary compliance by publishing these forms on the DIBP's website.

Use survey responses to measure compliance and assess the causes of non-compliance so that better education and communication could be developed to assist voluntary compliance.

4.4 Sampling methodology

Where an ABF officer suspects that imported goods contain asbestos, and the importer or broker has not provided sufficient information to the contrary, the ABF officer directs the importer or broker to obtain testing of the goods by a NATA accredited laboratory. In order to test the goods, the laboratory assigns a competent person to undertake sampling. The assigned hygienist will thereafter contact the ABF officer with respect to the status of the sample.

Sampling methodologies used by a hygienist are related to the health and safety risks posed by the chemical and physical characteristics of the goods. However, asbestos may not be uniformly dispersed across the goods, due to its friability and the versatility of its use. This factor can lead to a false negative test result.

The reliability of sampling is critical to ensure sound testing and evidence methodologies are followed, where subsequent investigation and prosecution follow. A competent person takes samples in accordance with relevant WHS laws. The ABF does not have a standard guidance on sampling for customs purposes to provide the competent person.

A recent example is sampling taken with respect to children's crayons. The ABF requested that each colour crayon be sampled for testing to ensure the goods did not contain asbestos. Results confirmed the presence of asbestos in two colours only. If every colour had not been sampled, testing may have given a negative result and the goods released into the Australian market. The reliability of sampling would be enhanced if standard and binding practices that outline sampling requirements for customs purposes were developed.

Recommendation 10.1:

Develop external guidance that outlines sampling for customs purposes to disseminate to NATA accredited laboratories when the ABF requires testing of the goods at the border.

4.5 Testing techniques

AS 4964 specifies Polarized Light Microscopy (PLM) testing as the primary technique for identification because of its simplicity, low cost (approximately AUD \$200 to \$300), relevance and detection limits. The determination of principal refractive indices by Dispersion Staining (DS) on its own is not sufficient and needs to be used in conjunction with various other optical properties using PLM.

AS 4964 sets out relatively simple aspects of sampling for PLM testing that enables the identification of a large proportion of commercial samples. Where PLM testing fails to give an unequivocal identification, AS 4964 outlines that further confirming techniques could be used. These include: Infrared Spectroscopy, X-ray Diffraction, Scanning Electron Microscopy (SEM) or Transmission Electron Microscopy. For instance, PLM may detect unidentified fibres that need further techniques to confirm whether those fibres are asbestos. Confirming techniques such as SEM are more expensive, with an estimated cost of \$1500.

Testing certification that confirms that goods do not contain asbestos provides the ABF with sufficient assurance to facilitate the clearance of goods. WHS laws require that testing for asbestos to the Australian standard must be undertaken by a NATA accredited laboratory, or an overseas laboratory accredited by a NATA equivalent authority in the relevant jurisdiction.

One issue with overseas laboratories is the use of different standards when testing. This can result in samples with “unidentified fibres”, levels of “traces” or “residual amounts” of asbestos are certified as “asbestos-free” in accordance with the standard of the country of testing. “Asbestos-free” certification from overseas laboratories is therefore not necessarily reliable evidence of compliance with Australian laws. However, this testing may be relied on by importers in raising the “mistake of fact” defence against prosecution by the DIBP as it establishes that the importer has taken measures of due diligence to prevent the import of asbestos and ACM.

The International Laboratory Accreditation Cooperation (ILAC) facilitates the process of mutual recognition agreements between NATA and equivalent authorities overseas. This allows for the accreditation of overseas laboratories to the Australian Standard, but very few laboratories that

seek this accreditation. It would be beneficial for traders if more laboratories are accredited to test to the Australian Standard overseas.

Recommendation 10.2:

Develop external guidance to provide to laboratories that test for asbestos content for customs purposes. This would include making NATA accredited laboratories responsible for subcontracting any confirming technique that may be required in accordance with accredited norms, and in compliance with the *Customs Act 1901* (the Customs Act).

Promote this guidance internationally through Australian diplomatic channels and commercial bodies, such as the Australian Chamber of Commerce.

4.6 Storage of samples

An ABF officer forwards an Owner Notification when examination is required. This sets out the procedure for sampling, testing and storage, and specifies that the consignment must remain under customs control until the goods are cleared by an ABF officer in the ICS pursuant to section 30 of the Customs Act.

The importer must engage a NATA accredited laboratory to arrange for the collection of samples for testing, with permission of the ABF under section 71E of the Customs Act (or section 119AA for exported goods). These samples are stored by the laboratory after testing. Section 30 also applies to collected and tested samples held in the laboratory. Keeping samples in storage should be at the expense of the importer, who must remain legally responsible for the storage of the goods until final release or disposal. There is a risk that these stored samples may be disposed of by the laboratory without the ABF's permission. Should this occur, it would clearly complicate the already difficult task of evidence gathering for the ABF's investigations.

The samples are essential elements of evidence at the prosecution stage. To mitigate the risk of disposal without permission from the ABF, the Owner Notification should explicitly state that the samples remain under customs control pursuant to section 30 of the Customs Act. If asbestos is detected and the goods are seized for disposal, the laboratory should seek guidance from the ABF to confirm whether the samples should be returned to the ABF for disposal, or if evidence of disposal by the laboratory is sufficient.

Recommendation 10.3:

Amend the Owner Notification to explicitly state that samples stored by a laboratory after testing remains under customs control, pursuant to section 30 of the Customs Act, until a decision is made by the ABF to clear or dispose of the goods. Guidance developed for laboratories testing for customs purposes should also include this statement.

When disposal of the goods is required, the samples also become the property of the Commonwealth, and the ABF should direct laboratories on how to treat the stored samples.

4.7 Disposal of seized asbestos goods

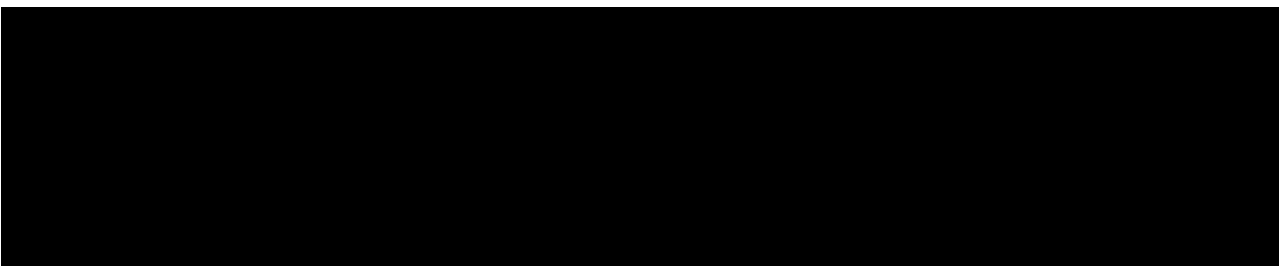
Once asbestos is identified, the goods are seized and must be disposed of within a given period in accordance with WHS requirements, and with regard to any perceived risk where the goods have physically deteriorated. Once the goods are seized, these are forfeited to the Crown. The goods become the property of the Commonwealth in accordance with the Customs Act and the expense of removal and disposal is attributed to the DIBP. Any deterrence intended by the prohibition may be diminished when the costs of removal and disposal of ACM detected at the border is paid by the DIBP, and not by the importer.

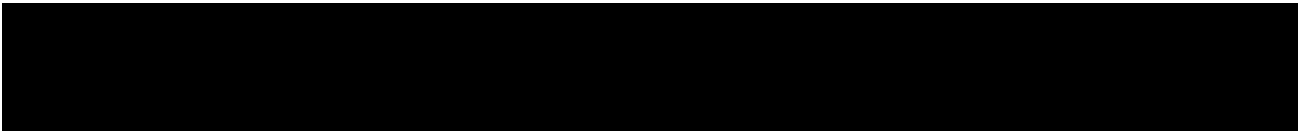
Recommendation 10.4:

Explore further options and opportunities regarding disposal cost recovery for ACM.

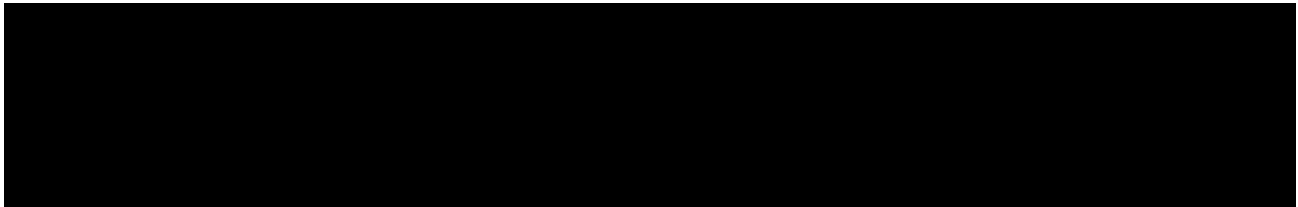
4.8 Referrals for investigation and prosecution

The current clearance and control process includes the scrutiny of the FID and the commercial documents, and physical examination when required. If violation of the regulations has been determined, the ABF officer refers the matter to the Investigation Division. The Investigation Division decides whether to pursue investigation based on a number of established criteria. If this referral is declined, no further investigation is undertaken. A penalty in the form of an Infringement Notice may be issued instead of prosecution.



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There have been a limited number of full investigations and subsequent prosecutions of asbestos related offences, as it is difficult for the DIBP to prosecute against a mistake of fact defence. This defence mitigates an importers liability when an importer can provide evidence that it has exercised due diligence to ensure the goods do not contain asbestos. To do so, the company typically tries to show that it took all reasonable steps to prevent the infringement from occurring. An overseas laboratory testing certificate showing an “asbestos free” result may be enough evidence for the Court to find that the importer has exercised the required level of due diligence, even where the testing is not done in accordance with Australian standards. Lack of available evidence, which can only be gathered by undertaking a full investigation, makes it difficult to develop strong prospects of successful prosecution.

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Recommendation 11:

Where possible, further prioritise the investigation to improve prosecution of offences related to asbestos importation. To assist with investigations and prosecutions, further appropriate information should be collected and managed at earlier stages of intervention.

5 Conclusion

Despite a challenging external legal environment, the management of the asbestos border control is effective. The DIBP has made considerable efforts to streamline technical processes and procedures related to the administration of the asbestos border control. The establishment of the CCB on 1 July 2015 has renewed the focus on standardising compliance and enforcement procedures across the regions, and increased awareness amongst the ABF's officers. The ABF has also established a proactive engagement plan for industry that promotes voluntary compliance. To support this, targeted guidance for suppliers, manufacturers and importers is being developed.

Continued efforts along these lines will ensure that the DIBP effectively administers the current framework for regulating asbestos and ACM at the border. The review has identified where further improvements can be made, acknowledging that most recommendations represent an enhancement to work that is currently underway.

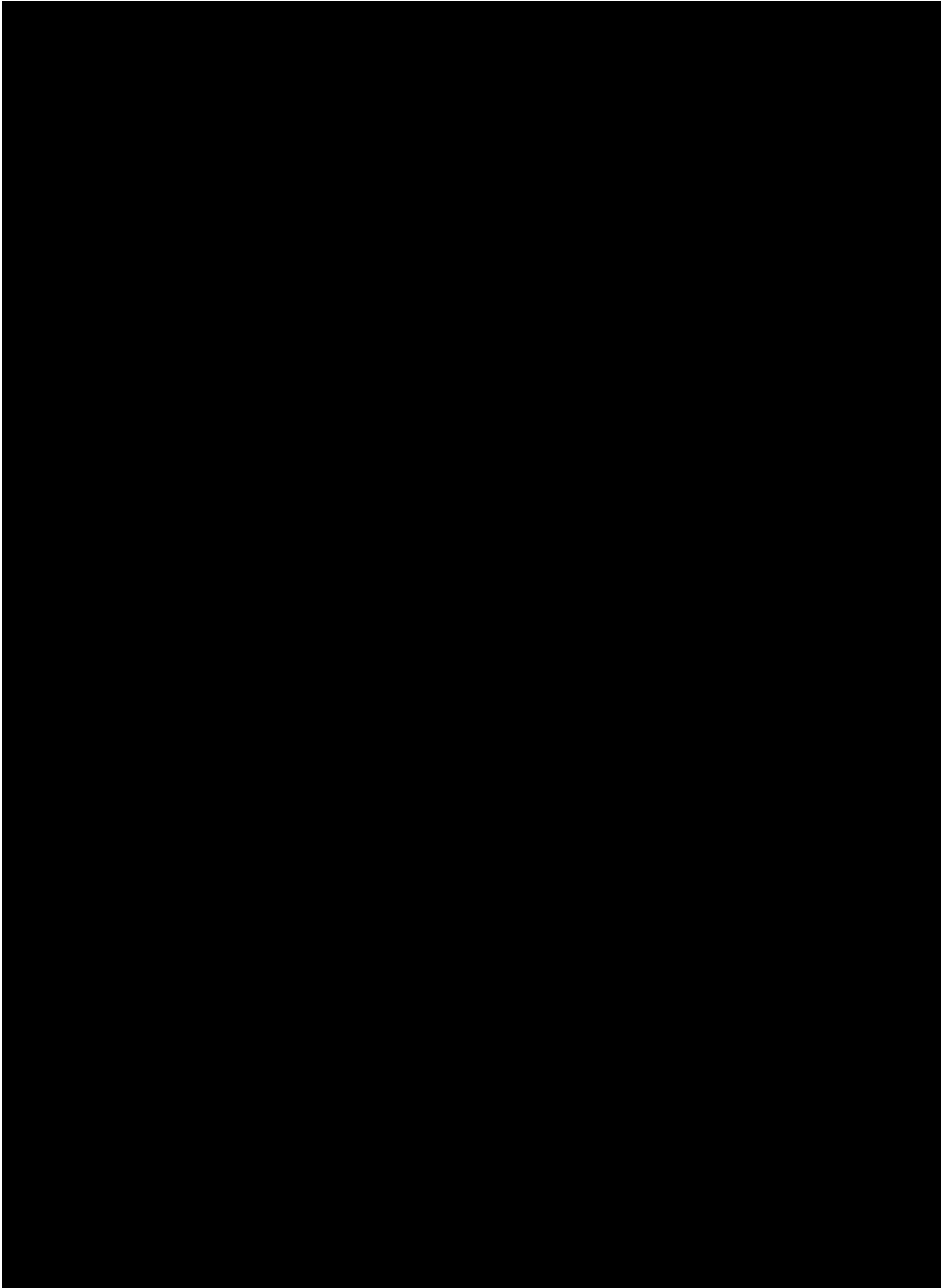
Any improvement to the administration of the asbestos border control requires a cooperative and partnership-oriented attitude between DIBP, other government agencies and industry. A strong, continuous and dedicated information, communication and education holistic approach is essential to protecting the Australian community and environment from dangerous goods.

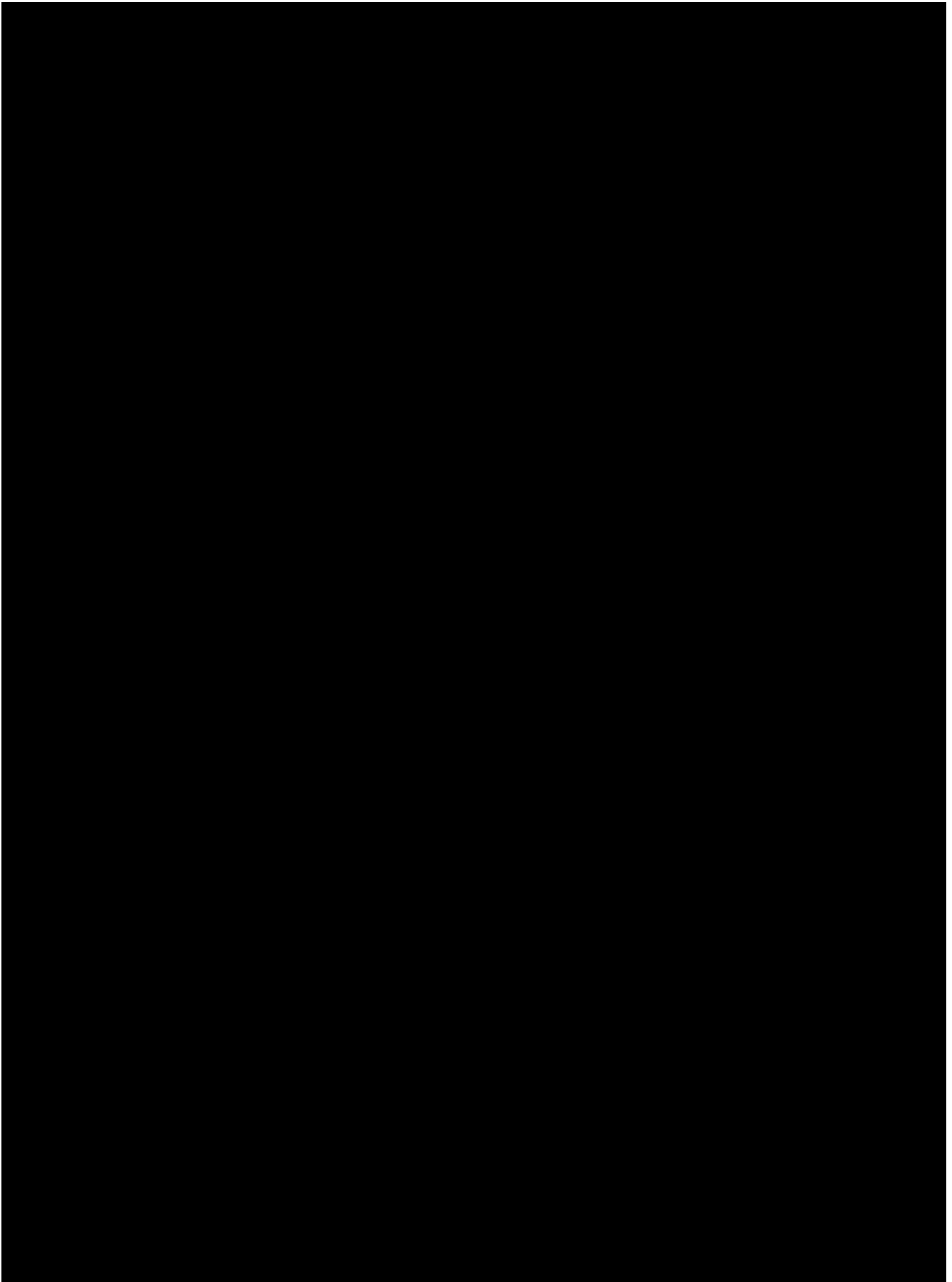
Annexes

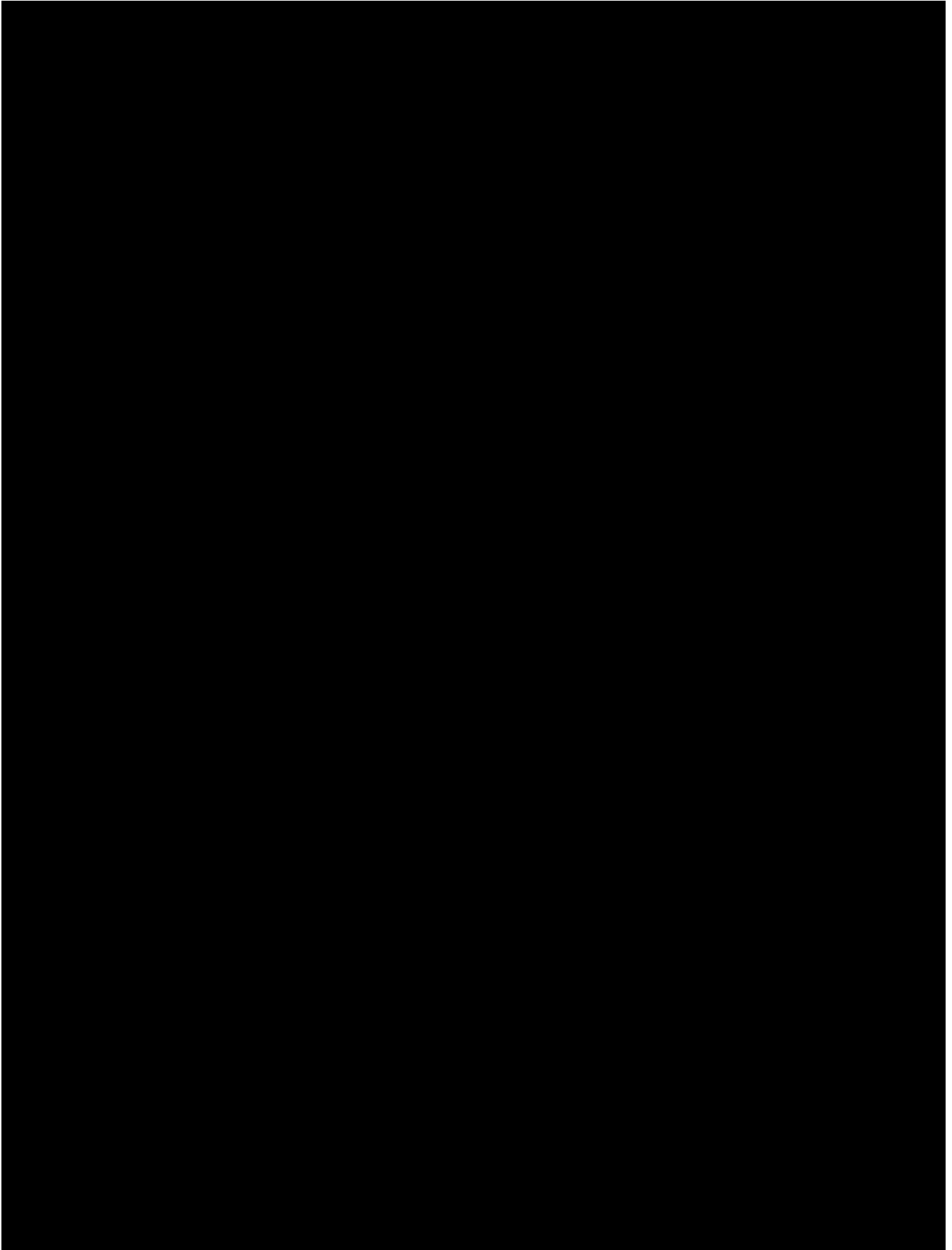
Annex 1: List of Collected Data and Documentation

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| "DIBP raising awareness on asbestos" – Lloyds List DCN, Australia |
| ACCC statement on Asbestos in crayons – (https://www.accc.gov.au/update/accc-statement-on-asbestos-in-crayons) |
| "Australian Customs unaware of imported asbestos products"- Asbestos association (www.asbestosassociation.com/author/dan) |
| ASEA Web Site, Consumer / Retailer Alert - Asbestos identified in crayons sold within Australia – (https://www.asbestossafety.gov.au/sites/asbestos/files/Consumer_and_Retailer_Alert-Asbestos_in_Crayons-Sept2015.pdf) |
| ASEA Web Site, Health and Safety Alert - Asbestos in Mineral Kits – (https://www.asbestossafety.gov.au/article/health-and-safety-alert-asbestos-mineral-kits) |
| ASEA Web Site, Imported Material with Asbestos Working Group – Rapid Response Protocol – (https://www.asbestossafety.gov.au/managing-importation-asbestos-australia) |
| ASEA Managing Import of Asbestos Containing Materials into Australia – (https://www.asbestossafety.gov.au/sites/asbestos/files/HWSA_fact_sheet_%20Importation_asbestos_goods_October2015.pdf) |
| ASEA National Strategic Plan for Asbestos Management and Awareness 2014-18 |
| NATA, Australia – Presentation Brochure |
| NATA – Working with NATA Accredited Laboratories for Export Testing |
| Australian Standards – Method for the qualitative Identification of Asbestos in Bulk Samples |
| ILAC – ILAC Mutual Recognition Arrangement |
| DIBP – Blueprint for Integration |
| DIBP Supplementary Estimates October 2015 |
| DIBP Policy Statement: Managing processes for Asbestos and Asbestos Containing Materials controlled at the Border – 13/11/2015 |
| DIBP Fact Sheet – Border Controls for Asbestos |
| DIBP Proposals of Changes to Border Asbestos Web Page |
| DIBP Fact Sheet – Titles and Workforce Classification |
| DIBP Organisation Structure Flow Chart |
| Customs Act 1901 |
| Industry Engagement Strategy 2020 |
| Customs (Prohibited Imports) Regulations 1956, |
| Customs (Prohibited Exports) Regulations 1958 |
| Work, Health and Safety Act 2011 |
| Work, Health and Safety Regulations 2011 |
| DIBP – Investigation Evaluation Grid |

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|--|
| DIBP Infringement Notice Scheme Guide and Operational Manual |
| DIBP Procedural Instruction, Border Process for Asbestos 15 January 2016 |
| DIBP – Communication and Information Package |
| DIBP Strategy 2020 |
| ABF Australian Trusted Trader Programme - Self Assessment Questionnaire Guide |
| ABF – Customs Compliance Branch – Web Page |
| |
| ABF Approach to Trade and Goods Compliance – Executive Summary |
| Statistics of DIBP Asbestos Annual Profile / Match alerts |
| Statistics of Permits of Imports of Asbestos Containing Goods issued annually by Department Of Employment |
| HWSA Imported Material with Asbestos Working Group – Rapid Response Protocol, Summary of Asbestos Related Cases referred in 2015 |







Annex 3: About KGH Border Services

KGH Border Services is an independent Swedish consultancy company, assisting government agencies all over the world with Strategies, Tactical Planning, Business Process Re-engineering, Reform/Modernization projects and Capacity Building.

We are experts on Customs Processes and Procedures including areas such as:

- Information and Communication Technology;
- System Integration;
- Trade Facilitation;
- Risk Management;
- Enforcement and Control Techniques including NII;
- Accreditation of Economic Operators (AEO);
- Mutual Recognition Agreements (MRA);
- Single Window and Trade Information Portals;
- One-Stop-Shop;
- Legal Reviews;
- Customs Unions;
- Education/Training;
- Human Development; and
- Implementation of Modernized Border Management.

We operate with an extensive global network of partners and international associated experts giving us a unique position to offer the latest state-of-the-art Customs solutions based on international standards and global best practices.

Our experts use the latest technology, international standards and best practices from all over the world, combined with their extensive experience of working in Governments as well as in international development projects. We are always focused on implementation and results. We know what works and we have a strong track record of leading and participating in successful development projects covering all continents. In addition, several of our experts have been

involved in the development of international standards as well as implementing the leading models on the ground.

We work with Governments, Customs administrations and the public sector in countries all over the world. We also work with international institutions like e.g. the United Nations, the European Union/European Commission, the World Customs Organization, the World Bank, IMF, OECD and the Swedish International Development and Cooperation Agency (SIDA).

We offer knowledge, skills and experience based on full-scale modern authority model and trade solutions for the future. Our proposed team has the competence, experience, networks and capacity to deliver state-of-the-art solutions. We will be your guide to the future of excellence. We have operational capacity, tested in a real time operational environment, for all areas of modernization and trade facilitation. We also know how to adjust and translate international standards and global best practices into the environment of a specific country, and how to integrate already existing systems with new solutions.

With more than 50 years of experience, KGH Group, with its Head Office in Gothenburg Sweden, and offices in all the key ports and border crossings in Europe, is today one of the leading companies in Europe facilitating border crossing activities for business and trade. KGH employs almost 700 customs experts, serves more than 13,000 clients, including 50 Governments, across and outside Europe.

Together with our clients and partners, we deliver results. Some people say that implementation is a challenge. We say, this is what we do well. Together we are ready to build the future. Nothing is impossible!



Figure 1 Summary of KGH Group Project experiences