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Committee Secretariat
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

RE: *Inquiry into the effects of non-conforming building products on the Australian building and construction industry*

Dear Committee Secretary

The Australian Workers' Union respectfully seeks leave to have its submission to the inquiry accepted even though the final date for submission was listed for January 18, 2017.

It proposes that its submission, whilst not strictly expeditious, is a worthwhile contribution and that its non-acceptance may have potential adverse health and safety consequences for its members working in the Australian building and construction industry.

EXECUTIVE SUMMARY

The potential consequences of exposure to asbestos products have been well documented. The legacy of those exposures has manifested itself in Australia by the devastating suffering and loss of life through asbestos related disease. Australia, in fact, holds an unenviable status as a world leader in reported asbestos related disease and deaths.

Economically, the financial burden of treating and caring for those that have contracted asbestos related disease is not insignificant. In the absence of effective measures that prevent the possible escalating consumption of asbestos containing building materials in Australia, the cost, both financially and socially will inevitably increase.

Importation of Asbestos has been banned in Australia since 2003. Despite this the prevalence of asbestos containing products entering Australia illegally appears to be increasing rather than stopped. This is a major concern for Australian Workers' Union members at risk of exposure when these products come into their workplaces.

The AWU proposes a targeted, focussed and strategic approach to dealing with the issue of importation of non-conforming building products.

It holds the very strong conviction that a zero tolerance approach to non-compliance with existing legislation be maintained and reinvigorated.

It recommends a three-tiered strategy.

- First, the adoption of a whole of government approach towards jurisdictional legislation and enforcement;
- Second, the utilisation of Australia's peak asbestos management agency, ASEA, to develop appropriate guidance and policy;
- Third the establishment of a dedicated task force to implement and enforce ASEA's guidance and policy recommendations.

TERMS OF REFERENCE

Part (a) of the ToR deals primarily with prevalence and sources of illegally imported products containing asbestos.

The AWU's view is that the context of "prevalence" is confounding within the context of the inquiry. Given that there is no known safe level of exposure to asbestos fibres the notion of prevalence connotes a marginalisation of the effects of the (illegal) importation of non-conforming building products on the Australian building and construction industry, should the prevalence (of importation) be quite low.

If this is the case then it is a misnomer. A ban in Australia on the importation of asbestos was initiated in 2003 for very good reasons. Potential exposure to asbestos fibres was seen as unacceptable irrespective of their "prevalence".

That is to say, legislatively, Australia adopted a position of **zero tolerance** on importation of asbestos products.

It is the view of the AWU that this position has not changed and that therefore appropriate measures should be adopted so as to maintain a zero tolerance position.

Part (b) of the ToR addresses the topic of the effect of illegally imported products containing asbestos on such things as supply chains, importers, manufacturers and fabricators as well as workplace and public safety.

The AWU's view is that given its stance in relation to "prevalence" and zero tolerance, it follows that *any* effect on businesses operating in Australia, their workers and the communities potentially effected by their operations becomes consequential.

Irrespective of the quantum, breadth or malignancy of the effect of illegally imported asbestos products it remains unacceptable for either the deliberate or inadvertent importation of such products.

Part (c) of the ToR focuses on possible improvements to current regulatory frameworks and the effectiveness of current arrangements in that regard.

The AWU's recommendations deal with those aspects.

RECOMMENDATIONS

Recommendation 1 – An Whole of Government approach.

The AWU's experience in dealing with the issue of imported building products containing asbestos has been one of frustration. Responses to requests for assistance in these matters can be determined by jurisdiction and its willingness to engage.

The AWU's analysis of the applicable legislation is that except for applicable penalties, Australia's standards and regulations are adequate.

Enforcement of compliance appears to be the main factor in regulatory failure and this has weakened our members' confidence in some regulators.

The AWU recommends that a whole of government, harmonised approach to the management of risk be adopted. An inter-governmental agreement should be considered so that jurisdictional responses are consistent, well resourced, timely and ultimately, effective.

The development of a whole of government approach should be assigned to an appropriate authority with specialised expertise in this regard.

The AWU believes that the Asbestos Safety and Eradication Agency (ASEA) is the appropriate authority for this task.

Recommendation 2 – Utilisation of ASEA to develop guidance, recommendations and policy and coordinate other agencies.

ASEA was established in 2013 to provide a national focus on asbestos issues. Its role encompasses workplace safety, environmental and public health concerns. The agency aims to ensure asbestos issues receive the attention and focus needed to drive change across all levels of government.

For that reason, the AWU's recommendation is that ASEA be assigned the responsibility of developing appropriate guidance and policy in relation to the matters dealt with by the Inquiry.

ASEA should coordinate the activity of other government agencies in preventing the importation of asbestos into Australia and the associated enforcement of penalties.

The AWU considers that ASEA would require appropriate additional funding to undertake this task effectively.

Consideration of appropriate policy would naturally incorporate the development of a recommendation regarding a Federal Government policy in relation to support (or otherwise) of global ban on asbestos production and export.

In addition, an integral issue in the development of such a policy should include a review of current enforcement practices and their efficacy. The review should reach appropriate conclusions and subsequent recommendations addressing any identified shortcomings.

Recommendation 3 – The establishment of a designated task force to implement any ASEA recommendations regarding enforcement.

Given the AWU's view that current Australian standards and regulations are adequate (except for applicable penalties), the genesis of this Inquiry appears to be a failure of enforcement.

Border Force's remit currently ascribes responsibility to it in relation to the illegal importation of non-conforming building products. The AWU's view is that Border Force is limited in its capacity to enforce this particular issue. This limitation is not as a result of resourcing but one of focus.

To that end, the AWU recommends the establishment of a designated strategic task force to deal with the illegal importation of non-conforming building products.

A strategic, focussed and targeted approach to enforcement should be of prime consideration for ASEA in its policy development in relation to issues dealt with by this Inquiry.

Personnel expertise, technology, enforcement bureaucracy and data analysis, amongst other matters, should be reviewed and assessed for adequacy in the adoption of a zero tolerance approach.

Recommendation 4 – A role for the Anti-Dumping Commission?

The AWU recommends that this Inquiry consider whether or not the Anti-Dumping Commission has a role to play in addressing the issues described within the Inquiry's ToR.

The AWU considers aspects of illegal importation of non-conforming building products a cause of material injury to Australian industry and therefore potentially subject to Australia's anti-dumping system.

The Anti-Dumping Commission has been established to administer Australia's anti-dumping and countervailing (anti-subsidy) system.

The Department of Industry, Innovation and Science Anti-Dumping Commission web page provides the following explanation¹:

Dumping occurs when an exporter sells goods to Australia at a price that is below the 'normal value' of the goods. The normal value will usually be the domestic price of the goods in the country of export. The margin of dumping is the amount by which that normal value exceeds the 'export price' of the goods.

Dumping is not prohibited under international trade agreements and it is not illegal.

Subsidisation occurs when imported goods benefit from government assistance in the country of export. It can be:

- *an export subsidy that encourages export performance*
- *a domestic subsidy that assists all of the production of the goods in the industry concerned including the export production.*

A 'countervailing duty' can be imposed to offset the amount of the subsidy where the subsidy is limited to a specific firm or group of firms or industries. Export subsidies, and subsidies contingent on the use of domestic over imported goods, are prohibited and are deemed to be specific.

Material injury is demonstrated through all relevant indices and factors that reflect the state of the industry. Typically these are:

- ***the volume of the dumped or subsidised imports***
- ***the price effects of these imports***
- ***the resulting economic effects such as profit, capacity utilization, and market share effects.***

The injury must be greater than that likely to occur in the normal ebb and flow of business.²

¹ <http://www.adcommission.gov.au/adssystem/Pages/default.aspx>

² Emphasis added

Material injury may be current material injury, threatened material injury, or material hindrance to the establishment of an industry.

It must be demonstrated that the dumped or subsidised imports are causing the material injury.

If this Inquiry were to establish that there is evidence of material injury to Australian industry as result of the dumping of non-conforming building products it should recommend that the Anti-Dumping Commission commence an investigation.

PENALTIES

At a minimum, companies found to be importing or dumping goods should face strong penalties for the purposes of general and specific deterrence. Companies that are found to be repeat offenders should be banned from having their products enter Australia.

This would be consistent with Australia's zero tolerance approach to the importation of asbestos as well as the need to protect workers and the general public from exposure to this dangerous product.

The AWU is available to provide further information and evidence upon request.

Yours sincerely

Daniel Walton
NATIONAL SECRETARY