

Submission 119 - Housing Industry Association

The Housing Industry Association made submission 30 to the inquiry into non-conforming building products in the 44th Parliament.

This document is intended as a supplementary submission to the original submission 30.

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



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Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Committee Secretary,

Inquiry into non-conforming building products – Additional terms of reference

On behalf of the Housing Industry Association (HIA), I would like to provide the following supplementary submission to the Committee in relation to the *Inquiry into non-conforming building products*. These comments are intended to respond to the additional terms of reference for the Committee adopted on 13 October 2016 in relation to the illegal importation of products containing asbestos and its impact on the health and safety of the Australian community.

The recent evidence of asbestos in a range of building materials used in commercial construction projects serves to highlight the need for all governments to work collectively to address the issue of non-conforming building products entering the Australian market place.

These incidents also serve to highlight that the regulatory framework currently in place in Australia is only as strong as the enforcement processes put in place by the relevant regulatory authorities.

However, it is appropriate to recognise that identifying the presence of a substance in a building product or material such as asbestos, is significantly different to the assessment of the technical performance of a building product or system against a technical standard.

The Committee will be aware that the Attorney General, through the ACCC, has a number of powers to control the sale of dangerous products in Australia.

The relevant Minister can declare a mandatory safety standard, or apply interim and permanent bans of certain products. A mandatory safety standard may be an Australian Standard or it may be some type of declaration.

In relation to asbestos all types of asbestos were prohibited in Australian workplaces from 31 December 2003. This ban is reflected in work health and safety (WHS) laws in all jurisdictions. The prohibition on the use of asbestos in Australia is supplemented by the [Customs \(Prohibited Imports\) Regulations 1956](#) (the Regulations), which bans the importation of all types of asbestos and products containing asbestos, except under limited circumstances.

On the face of it, there is no 'higher' level of regulation that could be applied beyond a complete ban on asbestos. However the reality is that Federal Customs (Border Force) has limited ability, and even more limited resources, to physically check products at the point of arrival into the country. Therefore the enforcement of these types of bans is extremely difficult.

Complicating this further, asbestos is a substance that will be contained inside the building product. Therefore it can only be found with testing, being destructive, expensive and unlikely to occur before a potential problem has been identified.

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

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

The recent incident in Western Australia was investigated by the Western Australian Building Commission. The builder and the supplier both took responsibility to remedy the breach and appropriate action was taken on site by the builder and by the relevant authorities when the potential breach was identified.

The onus must be on the manufacturer to be able to verify their materials are fit for purpose. The Western Australian Building Commission's investigation shows that the manufacturer, supplier and procurer (builder) all took the necessary steps to check the materials were fit for purpose. Yet the reality was that the manufacturer could not when questioned, ultimately confirm the provenance of the materials in question due to the nature of their manufacturing processes.

HIA's original submission to the Inquiry outlined a series of gaps and weaknesses in the current regulatory framework for the manufacture, supply and use of conforming building products in Australia. Our submission also confirmed that there are many elements of this framework that are appropriate.

The regulatory framework in Australia cannot provide a guarantee that non-conforming products will not enter the country at some point in time. The intention of the regulations must be to minimise the potential for this to occur and to ensure the appropriate checks and balances are in place to act as a deterrent to those wishing to intentionally place non-conforming products into the Australian market place.

As is often the case, complacency leads to lax practices. But more regulation is not always the solution. Better management of the regulations we have, better education and enforcement can have a much greater impact.

The presence of asbestos in any building products makes that product non-conforming under Australian laws. However where the material in question is a naturally occurring substance, such as asbestos, managing its presence becomes a more difficult exercise. The focus of the regulations for building products should be to capture products where a party intentionally uses asbestos containing material.

It is important to recognise that the regulation of asbestos is exacerbated by differences in the terms and definitions applied both within Australia and internationally to mean 'asbestos free'. These differences make it extremely complex for the importation of products where the underlying percentage of asbestos that is acceptable in a country of origin to call a product 'asbestos free' is inconsistent with the acceptable percentage in Australia.

HIA also understands that the testing infrastructure may not be in place within Australia to ensure that the extremely low levels of asbestos permitted under the relevant Australian Standard can be accurately measured.

Practically it is not possible to identify the sources of illegally imported products containing asbestos with sufficient certainty at the point of entry into Australia. However it may be possible to accurately identify those countries which have already banned the use of asbestos in all products and have a consistent definition of 'asbestos free' to Australia. Building products manufactured in countries with a consistent definition should give a higher degree of certainty that these products will meet Australian requirements. Those countries with differing approaches to the use of asbestos can then be identified and appropriate measures introduced to manage products entering Australia from these locations.

A complementary, or alternative, approach may be to determine whether there are specific product categories more likely to risk the inclusion of asbestos in their manufacture, such as gypsum based products and vehicle components. If this approach was taken it may be possible to improve the level of oversight at the point of entry to the country for these specific product categories.

It is suggested that the most practical approach to take in reducing the risk of asbestos is to improve the regulatory framework in each of the areas identified in HIA's original submission and to increase funding to enforce and manage its operation across all building products. Ensuring all building product manufacturers, regardless of their country of origin, understand the expectation of the Australian government in relation to product conformance, is the most important change that could occur.

If the risk to Australian construction workers from asbestos is the trigger for effective action to reduce the potential for non-conforming building products to enter the Australian building product supply chain then HIA hopes that the whole building industry can benefit from the findings of this Inquiry.

If you would like to discuss these comments in more detail, HIA would be pleased to meet with the Committee. I can be contacted on _____ or _____.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

Kristin Brookfield
Chief Executive Industry Policy