



## **Submission to the Inquiry into the effects of non-conforming building products on the Australian building and construction industry**

1. All forms of asbestos were prohibited in Australian workplaces from 31 December 2003. This ban is reflected in work health and safety (WHS) laws in all Australian 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 into Australia of all types of asbestos and products containing asbestos, except under limited circumstances.
  2. The importation of non-conforming building products is an issue of significant concern to the Asbestos Safety and Eradication Agency (the agency) and its key stakeholders. This is because the agency and its stakeholders consider 'non-conforming building products' to include products manufactured with asbestos, which have been illegally imported into Australia. Accordingly, reference to non-conforming products throughout this submission refers to a product that contains asbestos, which is imported in breach of the Regulations.
  3. The importation of non-conforming building products impacts the agency's ability to achieve its overarching objective, which is to eliminate asbestos-related disease within Australia.
    - This objective is outlined in the National Strategic Plan for Asbestos Management and Awareness 2014–18, available for download at <http://asbestossafety.gov.au/national-strategic-plan>
    - Non-conforming building products have an impact upon the agency's ability to meet its objective because the use of such products can result in exposure of Australian workers and/or members of the public to asbestos fibres, which in turn can lead to the development of asbestos-related disease.
  4. Despite the ban, asbestos has been detected in a wide range of goods and materials imported into Australia, including in building and construction materials such as cement compound board (see **Attachment A** for further details).
  5. The agency's mandate in this area is driven by outcome 3.6 of the National Strategic Plan "effective coordinated response when asbestos containing materials in imported products are identified".
- a. **the economic impact of non-conforming building products on the Australian building and construction industry;**
6. There are a number of economic impacts on the Australian building and construction industry that arise as a result of the importation of non-conforming building products. These impacts include:
    - The economic loss incurred by the importer in relation to the cost of testing products to confirm they are asbestos-free

- Testing may be undertaken at the Australian border at the request of the Department of Immigration and Border Protection, where goods are suspected of containing asbestos
    - The cost of any testing is borne by the importer.
  - Testing may also be undertaken by the importer as a precaution, to ensure workers will be safe from exposure to asbestos and to ensure compliance with the Regulations
- The economic loss incurred by the importer where goods have been found to contain asbestos and are required to be remediated or sent back to the country of origin
  - Where goods are held at the border for testing and subsequently confirmed to contain asbestos, the importer will be liable to pay for the cost of removing the asbestos or returning the goods to the country of origin.
- The economic loss incurred by the importer in relation to delays caused by products requiring testing and remediation.
  - Any cost incurred as a result of delays (for instance, for testing and remediation) will be borne by the importer.
  - This can result in significant costs to the importer where the quantity or size of the goods being imported is significant.
  - A previous incident involving the importation of pre-assembled switch rooms destined for Australia's resource exploration development industry, which were found to contain asbestos, required the importer to pay for space to hold the goods at the border, due to the large size of the equipment.

**b. the impact of non-conforming building products on:**

- i. industry supply chains, including importers, manufacturers and fabricators,
  - ii. workplace safety and any associated risks,
  - iii. costs passed on to customers, including any insurance and compliance costs;
  - iv. the overall quality of Australian buildings;
7. There have been a significant number of incidents involving the importation of asbestos-containing goods or materials into Australia, in breach of the Regulations.
8. While the incidents outlined in Attachment A include building and construction equipment and materials found to contain asbestos by the Department of Immigration and Border Protection at the border, as well as those identified by the Australian Competition and Consumer Commission and/or relevant work, health and safety regulators in their respective jurisdictions, it is likely that there have been further instances where building and construction equipment and materials containing asbestos have made their way into Australia's building and construction industry without detection by any regulator.
9. The impact of this is that there may be Australian buildings or structures constructed post 2003 (when the ban on importation took effect), which have used asbestos-containing materials without anyone's knowledge.
- The use of these asbestos-containing materials during construction would place workers and /or members of the public at risk of asbestos exposure, if the

asbestos-containing materials were disturbed, for example, by cutting, drilling and sanding etc.

- Further, the asbestos-containing materials would not be included in the building's asbestos register. Therefore, a worker or contractor working on the building or structure may disturb the asbestos-containing materials after construction is complete, placing themselves and other occupants at ongoing risk of exposure to asbestos fibres, without knowledge of the risk. As the use of the asbestos containing goods or materials is unknown, there would be no safety precautions put in place to mitigate the risk of asbestos exposure by either workers or occupants.

10. Accordingly, where imported asbestos-containing materials have been used in the construction of a building or structure, the health and safety of the occupants could be compromised by the risk of exposure to asbestos fibres.

11. In addition to health and safety risks, there is also a potential for higher costs to be passed onto customers and clients as a result of the use of non-conforming building products. This includes higher maintenance, refurbishment, demolition, disposal and insurance costs.

- For instance, if asbestos containing goods or materials are identified after the construction of a building or structure, there will be ongoing costs associated with reviewing the condition of the asbestos-containing materials and ensuring they remain safe.
- When it comes time for refurbishment or demolition of the building or structure, there may also be increased costs associated with removing the asbestos and disposing of it in a safe manner.
- Further, if a claim for workers' compensation were to be accepted for an asbestos-related disease that was developed as a result of exposure to non-conforming building products, then the business would incur the costs associated with increased workers' compensation premiums.

**c. possible improvements to the current regulatory frameworks for ensuring that building products conform to Australian standards, with particular reference to the effectiveness of:**

- i. policing and enforcement of existing regulations,
- ii. independent verification and assessment systems,
- iii. surveillance and screening of imported building products, and
- iv. restrictions and penalties imposed on non-conforming building products; and
- v. any other related matters.

12. Currently, the Regulations include penalties for any breaches. These penalties include fines of up to \$170,000. However the agency understands such penalties have not been commonly used as a deterrent.

13. The agency considers that an increased willingness to enforce the penalties available under the Regulations would assist in reducing the incidence of non-conforming building products being imported into Australia.

14. While many importers have contracts with overseas suppliers that stipulate their goods must be asbestos-free, experience has shown that certification by overseas manufacturers cannot always be relied upon.

- Accordingly, an increased understanding of Australia's import requirements relating to asbestos by overseas manufacturers and Australian importers would

assist in reducing the incidence of asbestos containing materials being imported into Australia.

15. Increased surveillance and screening of imported building products, with particular attention to those products previously found to contain asbestos as well as those products originating from countries where asbestos is known to be used in the manufacturing process, would assist in identifying non-conforming building products and ensuring they do not end up in an Australian buildings or structures, where they may expose occupants to asbestos fibres when they are disturbed.

## **Background – The formation of the Asbestos Safety and Eradication Agency**

### Asbestos Management Review

The Australian Government established the Asbestos Management Review in 2010. The Asbestos Management Review Report was released on 16 August 2012, and included 12 recommendations which addressed a range of issues related to asbestos in Australia, including:

- identification
- management
- transport, storage and disposal
- awareness and education
- improved data and information sharing
- the development of a national strategic plan and creation of a new statutory Australian Government agency to administer it
- medical research
- international leadership
- former compulsorily acquired property.

### Asbestos Safety and Eradication Agency

Following one of the recommendations of the Asbestos Management Review, the Asbestos Safety and Eradication Agency (ASEA) was established on 1 July 2013 to provide a national focus on asbestos issues.

ASEA's focus goes beyond workplace safety to encompass environmental and public health concerns. ASEA aims to ensure asbestos issues receive the attention and focus needed to drive change across all levels of government. This is achieved through the development and implementation of the National Strategic Plan for Asbestos Management and Awareness.

Under Section 9 of the *Asbestos Safety and Eradication Agency Act 2013* (Cth), the role of ASEA is to:

- encourage, coordinate, monitor and report on the implementation of the national strategic plan;
- provide advice to the Minister on matters of asbestos safety

- liaise with Australian, State, Territory, local and other governments about matters relating to the national strategic plan and asbestos safety, and
- commission, monitor, and promote research about asbestos safety.

## **Attachment A**

### **Incidents involving the importation of building equipment or materials found to contain asbestos**

- The below outlines those incidents involving the importation of building or construction materials found to contain asbestos.
- It should be noted that there have been a significant number of other incidents involving the importation of asbestos containing materials or goods, but these have not been listed because the imported goods or materials were not considered by the agency to be building or construction materials.
- The response to these types of incidents is coordinated through the HWSA Imported Materials with Asbestos Working Group, which is guided by a Rapid Response Protocol.
- The HWSA Imported Materials with Asbestos Working Group was established by the Heads of Workplace Safety Authorities (HWSA) in 2012. The Rapid Response Protocol enables government agencies to work cooperatively and efficiently across jurisdiction and portfolio lines when products have been identified as containing asbestos and there is concern such products may cross/have crossed state lines.
  - The Rapid Response Protocol ensures that pertinent information is shared by all government agencies with an interest in a particular incident and enables a nationally uniform compliance and enforcement approach to be undertaken in response to future incidents.

#### **2014**

1. In November 2014, cement compound board confirmed to contain chrysotile asbestos was imported into the ACT from China.
2. In June 2014, a type of boiler was identified as containing chrysotile asbestos. The boiler was one of six boilers designed and built in South Korea and imported into Australia in February 2008. One of the boilers imported into Australia deteriorated to the point where the metal structure failed at which time it was found to contain chrysotile asbestos.
3. Earlier in the same month, a NSW owner builder purchased a shed from a supplier on the internet. The shed was confirmed as containing chrysotile asbestos in the mastic sealing tape installed between the roof sheets.
4. In March 2014, a product by the name NUTPLUG, imported from China into Australia for use as a component of Loss Circulation Material, was identified as containing chrysotile asbestos. The Loss Circulation Material was for use during the operation of coal-gas drilling rig operation, to help prevent drilling fluids moving sideways.

#### **2012**

5. On 1 August 2012, pre-assembled electrical switch rooms imported into Australia from Indonesia for a LNG plant was confirmed to contain asbestos.

#### **2010**

6. In 2010, asbestos was detected in a range of imported equipment and components, primarily for use in Australia's resource exploration development industry.