

CFMEU

CONSTRUCTION

CFMEU CONSTRUCTION &
GENERAL DIVISION NATIONAL OFFICE



Senate Standing Committees on Economics
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Canberra ACT 2600

SUBMISSION TO THE INQUIRY INTO THE AUSTRALIAN MANUFACTURING INDUSTRY

1. The Construction & General Division of the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) is the major union in the Australian building and construction industries. We welcome the opportunity to provide a submission to the Senate Standing Committees on Economics inquiry into the Australian manufacturing industry.
2. This submission focusses on (g) of the inquiry's terms of reference; the role that government can play in assisting our domestic manufacturing industry. Specifically, we address the following areas where government policy continues to be inadequate:
 - a. the need to improve research and development;
 - b. lack of support for skills and training for the Australian workforce;
 - c. ineffective and misdirected government procurement practices;
 - d. the need to take stronger measures to ensure that supply chains are robust and free of modern slavery; and
 - e. the ongoing use of non-confirming building products in the Australian market, as a result of systemic failures in the regulatory landscape.

Improving Research and Development

3. The Australian Government can foster innovation and new export opportunities for our manufacturing industry through greater investment in research and development. Australia's expenditure on research and development, as a percentage of GDP, was 1.79% in 2017 compared with an OECD average of 2.35%.¹ Bringing our expenditure on research and development up to the OECD average would immediately stimulate the economy and create an environment to promote innovation.
4. To compliment increased research and development in our public institutions, government must also support these public institutions. This means restoring funding and providing funding certainty to Australian universities and organizations like the CSIRO. Increasing funding *only* to research and

¹ OECD (2021), *Main Science and Technology Indicators, Volume 2020 Issue 2*, OECD Publishing, Paris, <<https://doi.org/10.1787/Obd49050-en>> [Accessed 12 September 2021].

development neglects to acknowledge the delicate ecosystem of public institutions that includes educating, nurturing and developing the next generation of researchers.

Skills and Training

5. The Federal Government has a vital role to play in assisting our domestic manufacturing industry through funding and supporting public vocational education. However, since 2013 an estimated \$3 billion has been cut in federal funding to the vocational education sector.² Funding cuts along with increased competition in the sector has made it increasingly difficult for public providers like TAFEs to afford to run high-cost courses that lead to jobs in manufacturing industries. Increased investment and guaranteed funding in public vocational education would give institutions the certainty and agency to ensure their facilities, educators and course offerings are matched to future workforce needs in the broad manufacturing sector.
6. Governments can also assist the manufacturing industry by supporting apprenticeships. The Productivity Commission found that there is little evidence that employer subsidies boost apprentice numbers³, and it would appear unlikely that subsidies will have an effect on completions.
7. However, there is infinite scope for improving the *quality* of apprenticeships through investment in vocational education institutions; additional support to employers training apprentices; and improving the wages and conditions of apprentices.
8. The Federal Government must do more to encourage the engagement of apprentices and trainees in the manufacturing industry to ensure that we have the skilled workers for the future. This encouragement should include quotas for apprentices and trainees for companies who obtain work funded by any level of government (i.e. Local, State and Federal) to ensure that companies that tender for government work actual train workers for the industry. The Government should also consider the establishment of industry training funds similar to those that exist in some States and Territories in the building and construction industry, to ensure that all employers in the manufacturing industry contribute to training skilled workers.

Supply Chain Support

9. According to a recent Productivity Commission Interim Report on Vulnerable Supply Chains⁴:

"A supply chain is the process of transforming raw materials into goods that are delivered to final users, whether industries or consumers. Although the concept of a supply chain is thought of mainly in the context of manufacturing, all industries, including services such as utilities, construction and hospitals, rely on networks of suppliers."

10. The current Covid-19 crisis has highlighted how important supply chains are for an industry and how disruptions to supply chains can reduce productivity and increase costs. This is a major issue affecting the building and construction industry, not just in Australia but worldwide. Australian industry has become over-dependent on global supply chains.

² Aeufederal.org.au. 2021. *National survey reveals budget-cut impact to TAFE*. [online] Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/House/ITC/Gov-fundedInfrastructure/Submissions <<https://www.aeufederal.org.au/news-media/media-releases/2020/jul/090720>> [Accessed 12 September 2021].

³ Productivity Commission 2020, National Agreement for Skills and Workforce Development Review, Interim Report, Canberra.

⁴ <https://www.pc.gov.au/inquiries/completed/supply-chains/interim/supply-chains-interim.pdf>

11. Over the last ten years, Australia has become more reliant on importing building materials and equipment from overseas, particularly China.⁵ According to the Australian Construction Industry Forum (ACIF), Australia imports approximately 60% of its annual \$6 billion spent on construction materials from China.⁶
12. Imported materials used in building and construction now include timber for framing, steel, glass, clay, aluminium, screws, nuts and bolts, and cement. Imported building products include windows, cladding, taps, carpets, floor coverings, kitchen cupboards, cement fibreboards and panels, pre-fabricated housing kits, cut stone, tiles and even modular bathroom pods.
13. The two main reasons behind the increase in the use of imported materials and products are:
 - a. cheaper prices overseas due to lower levels of regulation, lower labour costs and economies of scale; and
 - b. free trade agreements which promote the importation of cheaper products.
14. Clearly the main benefit of using imports is cheaper prices, but the increase in the use of imported products and materials in the building and construction industry also has negative consequences. The increased use has resulted in a decline in the Australian manufacturing industry and corresponding job losses, and in the current period of the global Covid-19 pandemic it has also led to cost and supply fluctuations as companies are forced to compete on the global stage trying to source the same products and materials.⁷
15. Another major problem, which is addressed later in this submission, is overseas sourced materials not conforming to Australian Standards and regulatory requirements. This is not limited to cladding and asbestos containing products. In Australia defective plasterboard imported from China has caused concerns (the low grade fly ash waste used in the plaster composition has already created a multi-billion dollar liability issue in the U.S.) as the plasterboard allegedly emits several gases, including carbon disulfide, carbonyl sulfide and hydrogen sulfide. It causes metal to corrode, electrical equipment to break down, and galvanized nails and truss supports to rust out.⁸
16. To ensure that a construction project proceeds smoothly, an effective supply chain is essential. A proper supply chain not only provides benefits for individual companies (through better management of the construction project, more efficient use of supplies, a competitive edge, avoidance of common problems and improvement in the overall procurement process)⁹, but can also provide benefits to the whole economy especially where it is part of a strategy to develop a domestic value adding manufacturing industry.
17. Unfortunately Australia has gone backwards in developing its manufacturing base to add value to the raw materials it produces. For example with respect to the manufacture of aluminum, according to the July 2020 report “*A Fair Share for Australian Manufacturing: Manufacturing Renewal for the Post-COVID Economy*” By Dr. Jim Stanford (The Centre for Future Work at the Australian Institute):

⁵ <https://www.turnerandtownsend.com/en/perspectives/covid-19-and-the-impact-on-australian-construction-projects/>

⁶ <https://www.rsm.global/australia/insights/industry-insights/economic-impact-covid-19-property-and-construction-sector>

⁷ <https://thenewdaily.com.au/news/national/2021/09/12/home-builders-supply-shortages/>

⁸ <https://www.buildsafe.com.au/defective-imported-building-products/>

⁹ <https://www.ioscm.com/blog/the-importance-of-a-supply-chain-in-the-commercial-building-and-construction-industry/>

“Australia’s exports of raw unprocessed bauxite have grown substantially in recent years: rising over 50% between 2010 and 2019. However, raw bauxite is a low value commodity: it sells for around \$40 per tonne. Bauxite must be processed first into alumina (which sells for about \$500 per tonne), and then smelted into aluminium (recently selling for around \$2700 per tonne). Australian alumina refining has been stagnant, even as exports of raw bauxite boomed; in fact, alumina production declined slightly over the last decade (with one major refinery in Gove, NT closing in 2014). Meanwhile, aluminium smelting has declined significantly in Australia, with two smelter closures in the last decade – and the future of another (in Portland, Victoria) under threat. Meanwhile, the manufacture of more complex value-added aluminium products (such as auto parts, building materials, and electronic equipment) has also declined in Australia in recent years, alongside the general contraction in domestic manufacturing. Australia is thus increasingly concentrating its activity in this valuable, critical industry on the lowest-value rung of the economic ladder: raw extraction.”
(p.39)

18. The dire state of manufacturing in Australia is highlighted in the Harvard University Atlas of Economic Complexity¹⁰, which for 2019 state:

“Australia is a high-income country, ranking as the 8th richest economy per capita out of 133 studied. Its 25.4 million inhabitants have a GDP per capita of \$55,057 (\$52,203 PPP; 2019). GDP per capita growth has averaged 0.9% over the past five years, in line with regional averages.

Australia ranks as the 86th most complex country in the Economic Complexity Index (ECI) ranking. Compared to a decade prior, Australia's economy has become less complex, worsening 6 positions in the ECI ranking.

.....

Australia is less complex than expected for its income level. As a result, its economy is projected to grow slowly. The Growth Lab's 2029 Growth Projections foresee growth in Australia of 2.5% annually over the coming decade, ranking in the bottom half of countries globally.”

19. It will probably come as a surprise to many that countries such as Armenia, Cyprus, Jamaica, Kenya, Panama and El Salvador have a higher ranking than Australia.
20. Governments can and must do more to support the continued development of domestic supply chains both for economic reasons and social reasons (i.e. to eliminate modern slavery and promote sustainable industries). Both unions and employers in the building and construction industry support this approach. The Australian Construction Industry Forum, for example, is supportive of an emphasis on local supply chains:

“We would urge that there be a strong ‘Australian Made’ approach as a result of the impact of COVID-19. As we look to recovery, it will be critical that Australia does not have an over-reliance on any one country and/or overseas supply chain. Australia should focus on high-quality locally produced goods and services and further develop on-shore resources and capabilities with stimulus packages to boost development. Risk management strategies need to take into account being dependent on one or two sources of supply. To support this ‘Australian Made’ approach we recommend that specifiers and procurers favour products and materials derived from industry associations with certification schemes and authorities that comply with ISO/ IEC 17065:2013. Only products and materials that meet

¹⁰ <https://atlas.cid.harvard.edu/countries/14>

Australian Standards, ISO standards, WELS, WERS and other regulatory requirements should be specified and installed on projects. Stringent measures should be introduced to verify the testing and product compliance documentation of all imported building materials and products into Australia. As part of those stringency measures, we would expect a requirement for suppliers and installation contractors (including suppliers that market products as 'own brand') to have an independently audited Quality Assurance system in place that is recognised in Australia.”¹¹

21. In order to protect supply chains government intervention is warranted. As the Interim Productivity Commission report recognised:

“There may be conditions where government intervention in private sector risk management is justified, such as where the private and public net benefits of risk management diverge. In these cases government could implement a range of options — from providing better information to taking more direct ownership of risk management (such as maintaining government stockpiles, mandating or subsidising private stockpiles, or maintaining domestic production capacity.)” (p.69)

Government Procurement

22. One of the best ways of providing support to local supply chains is through procurement by governments and the private sector. Government intervention through procurement is not new and is widely used around the world. As noted by Dr. Stanford (The Centre for Future Work at the Australian Institute):

“Australian governments are massive purchasers of manufactured goods. Governments buy manufactured products for many purposes: including for infrastructure projects (in transportation, utilities, and other public facilities), major specialised equipment purchases (such as submarines and railway rolling stock), and to support public services like health care and education (which also need regular purchases of manufactured inputs). Estimates of total annual procurement purchases by Australian government range between \$100 and \$200 billion per year, or up to 10% of national GDP; much of that spending is on manufactured products. An obvious way to support domestic manufacturing is to ensure those expenditures generate the maximum possible boost to domestic industry.

...

Other countries regularly utilise domestic content targets in procurement to support domestic producers; the U.S. is particularly effective (despite its supposed commitment to 'free markets') in directing public spending to benefit U.S. manufacturing firms (through Buy America rules, defence procurement, Department of Energy grants, and more). Australia can clearly do the same, even within the (limited) constraints imposed by existing trade agreements. Domestic procurement strategies and rules are being utilised in Australian defence and shipbuilding contracts, but they need to be stronger. And the same logic should be applied to other procurement decisions (including in construction, transportation, and technology projects).¹²

23. Government Procurement can be leveraged to assist our domestic manufacturing industry. Governments should be strategic in procurement, not merely settling for the cheapest option on

¹¹ “Construction’s Bridge to Recovery”, Submission to Government Regarding Construction Industry Recovery from the COVID-19 Pandemic Situation, Australian Construction Industry Forum, June 2020

¹² Stanford, (p.67-68)

each project. Procurement policies should also take into account the effect supporting Australian manufacturing has on the broader economy.

24. Government Procurement targets and standards can encourage and incentivise businesses to develop new materials and products, which in turn can grow the economy and create new jobs. By including other factors in procurement policies such as sustainability measures, government can encourage innovation in new and emerging sustainable manufacturing processes.
25. There opportunities are, however, being squandered. In 2019 the Construction and General Division of the CFMEU released a report relating to infrastructure investment in Australia titled *Bad Customers: The billions going missing from infrastructure investment in Australia*¹³. This report, prepared by Equity Economics, describes the massive failures in the procurement processes for major building and infrastructure projects. The report estimates that these failures cost Australian taxpayers \$10.8 billion over the previous ten years, and may cost an additional \$5.0 billion over the three years ending in 2022. This is a direct result of state, territory and Commonwealth Governments not retaining adequate expertise in the procurement of infrastructure projects. A copy of the report can be found [here](#).
26. In the construction industry, the procurement code which applies to the construction industry – the *Code for the Tendering and Performance of Building Work 2016 (the 2016 Code)* – is patently ideological. It micromanages industrial relations by imposing prohibitions on the content of enterprise agreements so that employers are unable to freely negotiate (e.g. agree) with employees and their unions on a wide variety of matters that would be uncontroversial in any other industry¹⁴. For example, the industry regulator – the Australian Building and Construction Commission (**ABCC**) – has taken a view that the 2016 Code prevents employers from agreeing to enforceable ratios of apprentices to tradespeople. This has actively contributed to skills shortages, and has undermined attempts to train young, local workers. Indeed, since the commencement of the 2016 Code, there has only been a marginal increase of 1.02% in trade apprenticeships throughout Australia. We continue to call for the ideological 2016 Code to be immediately abolished.
27. Any effective procurement policy should:
 - a. give preference to local supplies, manufacturers and service providers and develop and promote the Australian manufacturing industry;
 - b. ensure environmentally sustainable outcomes in government buildings and infrastructure and prevent the use of non-conforming and non-complying building products;
 - c. require minimum numbers of apprentices, and maximises apprenticeship opportunities;
 - d. promote collective agreements that reflect and support best practice industrial relations and employment practices;
 - e. ensure compliance with work health and safety laws and encourage best practices;
 - f. take into account – when engaging employing entities - factors such as OHS records, corporate tax and industrial records, length and transparency of supply chains, and labour market testing;

¹³ <https://www.cfmmeu.org.au/sites/www.cfmmeu.org.au/files/uploads/bad-customers.pdf>

¹⁴ See the Construction & General Division of the CFMMEU's recent submission into procurement practices for government-funded infrastructure at

- g. ensure that any work which is to be sub-contracted is performed by bona fide contractors only via responsible contracting arrangements, so as to ensure secure supply chains and the fair treatment of workers within supply chains;
- h. prevent the victimisation of employees as a result of their choice to be a member of a union, and promotes the important and legitimate role of unions and union delegates;
- i. support and enhance the right of workers to join and fully participate in the activities of their union, including collective bargaining as well as promote the important and legitimate role of unions, union delegates and elected health and safety representatives in the workplace

RECOMMENDATION:

That the Federal Government mandate that companies that tender for government contracts must demonstrate that have in place supply chains that:

- a. give preference to local suppliers, manufacturers and service providers;*
- b. develop and promote the Australian manufacturing industry; and*
- c. are sustainable (i.e. minimise the environmental impacts and maximise the social well-being).*

RECOMMENDATION: *That the Code for the Tendering and Performance of Building Work 2016 be immediately abolished and replaced with a procurement policy which gives preference to local supplies, manufacturers and service providers and develop and promote the Australian manufacturing industry.*

Eradicating Modern Slavery in supply chains

28. Australia's manufacturing output and employment has fallen steadily as a share of the Australian economy for the past three decades. It currently accounts for about 6 percent of industry share of output.¹⁵ In 2016, the Reserve Bank of Australia reported that the increase of supply of manufactured goods from low cost sources abroad impaired the viability of many domestic manufacturers and also precipitated the closure of some manufacturing production.
29. Consequently, supply chain oversight has been an area of increased focus by the governments worldwide in recent years.¹⁶ The globalisation of supply chains to countries with low-cost labour has led to mounting concerns that the import of manufactured goods from developing countries is facilitating and encouraging the exploitation of workers in those countries. Asia and the Pacific, where the bulk of Australia's manufacturing imports are sourced,¹⁷ account for the highest prevalence of modern slavery in the world, where by 4 of every 1000 people are estimated to be victims of modern slavery.¹⁸
30. Modern slavery is an insidious form of labour exploitation that occurs in all parts of society, whether through debt bondage, deceptive recruitment, forced labour and the worst forms of child labour. As

¹⁵ The Reserve Bank of Australia, The Australian Economy and Financial Markets - September 2021, p 14 accessed <https://www.rba.gov.au/chart-pack/pdf/chart-pack.pdf>.

¹⁶ See for example *Modern Slavery Act 2015* (UK), a recently passed supply chain oversight bill in Germany *Lieferkettensorgfaltspflichtengesetz* (Germany) 11 June 2021, and Canada's recently tabled Bill S-126 *An Act to enact the Modern Slavery Act and to amend the Customs Tariff*.

¹⁷ Australian Bureau of Statistics, Australia's trade in goods with China in 2020, 3 September 2020 < <https://www.abs.gov.au/articles/australias-trade-goods-china-2020>>.

¹⁸ Walk Free Foundation, Global Slavery Index 2018.

of 2017 there were an estimated 40 million people who live in slavery globally, including an estimated 16 million exploited in global supply chains in the private economy.¹⁹

31. The manufacturing sector is an area of particular concern. The construction and manufacturing sectors makes up a combined estimated total of 32 percent of identified forced labour cases.²⁰ In the past, there has been particular attention given to the largely informal textile and footwear factories in South Asia where exploitation is rife and prevalent. However, there is also now growing awareness of exploitation in other high level manufacturing industries such as medical goods, and the electrics and electronic industry. These large scale operations are becoming increasingly exposed for common coercive labour practices such as the confiscation of immigration papers, threats of physical restraint and violence, as well as labour obtained through fraud and deception.²¹
32. In 2018, to improve oversight over global supply chains of companies that operate in Australia, the Australian Government passed the *Modern Slavery Act 2018* (Cth) (**Modern Slavery Act**). The Slavery Act requires businesses in Australia with revenue of more than \$100m to report annually on their efforts to identify and stop modern slavery in their operation and supply chains.²² Requisite reporting information includes the description of the risks of modern slavery within an entity's supply chain, the actions it is taking to control and assess those risks, and a description of the effectiveness of those actions. An entity needs to describe the risks directly and also indirectly present in its supply chain.²³ For example, an entity that it is a builder would need to not only report the risks that exist in the manufacture of its supplies, but also the sourcing of the raw materials such as steel or stone. As such, compliance with the Slavery Act involves comprehensive overview of a supply chain and as well as transparent line of sight on the working conditions of everyone person involved in its operations.
33. This poses a particular difficulty where an entity has a complex global supply chain, or where that entity's operations are entrenched in developing countries that often have less stringent occupational laws governing and enforcing workplace and civil rights. Where these factors exist in a supply chain it can be more difficult to accurately assess and come to a reasonable state of satisfaction that modern slavery risks can be identified and addressed. Proactive steps need to be taken by businesses to ensure that modern slavery is not embedded within its operations. However, as it stands, there is not much incentive to do this beyond that of public scrutiny.
34. Encouraging Australian businesses to bring their manufacturing supply chains back within Australia would bring better scrutiny to the working conditions of workers. Research shows that supplies in supply chains are more likely to comply with labour standards when located in countries that adhere to International Labour Organisation standards, have strong labour laws and high levels of press freedom, and whose buyers originate from countries with wealthy and socially conscious consumers.²⁴ Encouraging Australian manufacturing would firmly demonstrate that the Australian government is not only serious about supporting this critical industry but also that it is serious about tackling the scourge of modern slavery. For too long, Australian businesses have been incentivised to offshore operations to the lowest bidder and absolve themselves of the worst kinds of labour exploitation within their operations. Bringing manufacturing back within Australia would ensure that

¹⁹ International Labour Organisation and Walk Free Foundation, Global estimates of modern slavery: forced labour and forced marriage 2017, accessed https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf.

²⁰ Ibid p 11.

²¹ International Labour Organisation, Sectoral Studies on Decent Work in Global Supply Chains: Comparative Analysis of Opportunities and Challenges for Social and Economic Upgrading 2016.

²² *Modern Slavery Act 2018* (Cth) s 13.

²³ Ibid s 16.

²⁴ Toffel, M. W., Short, J. L., Quellet, M. *Codes in context: How states, markets, and civil society shape adherence to global labor standards*, 2015 in *Regulation and Governance*, Vol. 9, No. 3, pp. 205–223.

businesses are more accountable to the workers they profit from and to the Australian Government who is tasked with regulating them.

35. Further, bringing manufacturing back within Australia would also result in those workers who produce the goods Australians rely on to be protected by our comprehensive industrial and safety workplace laws, particularly the *Fair Work Act 2009* (Cth). Workers in these supply chains would benefit from minimum protections in industry awards and be able to create enterprise agreements, as well as enforce those terms in Australian courts, which are some of the highest standards in the world. Workers would be protected by the uniform work health and safety laws which help to ensure that businesses remain responsible and accountable for the safety of all workers at work in their operations, on the pain of criminal sanction. The role of regulators in the Fair Work Ombudsman and the respective Safework bodies would help ensure that those who build and assemble our goods are protected.
36. In this respect, the role of independent unions in improving working and safety conditions cannot be understated. Unions have won many of the protections all workers enjoy today, including the protection of workers compensation legislation, the 38 hour work week and 10 days paid personal leave within the national Employment Standards. Unions have an ongoing role in ensuring that safety standards are upheld in dangerous workplaces, particularly hazardous industries such as the manufacturing industry, through safety training and dedicated safety officers. Bringing manufacturing supply chains back within Australia would not only facilitate regulatory oversight, but also worker oversight by way of unions, encouraging and developing strong worker oriented industry cultures to address and overcome exploitation.
37. For too long, we have turned a blind eye and given an indifferent shrug to the plight of our most vulnerable workers, both in Australia and overseas. It is our moral imperative to ensure that the workers who manufacture our public transport vehicles, our medical supplies, and our building supplies have the respect, dignity and safety that all people deserve. Bringing manufacturing back within Australia is a forceful step in addressing this current state of inequality. Further, if the Australian government is serious about tackling the scourge of modern slavery, bringing manufacturing back within its regulatory purview is the best and most directly effective mechanism to effect it. The CFMMEU strongly encourages the Australian government to use all means to help bring about the revival of a strong, sustainable and safe Australian manufacturing industry for the benefit of workers and the community at large.

Non-Conforming Building Products

38. The ongoing importation of non-conforming building products (**NCBPs**) into Australia continues to be of great concern and distress to CFMEU members. These unsafe products undermine local manufacturing jobs and risk the health and safety of workers as well as the general public.
39. A non-conforming product or material is one that claims to be something it is not, and does not meet the required Australian standard for the material—for example, the use of inferior grade material, or a product that contains illegal materials such as asbestos. A non-compliant building product is one that has been used in a situation where its use does not comply with the requirements for such a material under the [National Construction Code](#) (NCC)²⁵.

²⁵ As defined in the *Non-confirming building products: the need for a coherent and robust regulatory regime* report of the Senate Standing Committees on Economics, 4 December 2018 at pg ix; available at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Non-conforming45th/Report

40. The risks posed by NCBPs have not just safety implications, but also health, economic, legal and social consequences. They affect a range of sectors including construction and manufacturing. Their use also results in an uneven playing field whereby companies (including importers, manufacturers and fabricators) that are 'playing by the rules' are undercut by the suppliers of non-conforming building products which are often (but not always) imported²⁶.
41. Back in 2013 the CFMEU was a member of the Project Advisory Committee of the Manufacturing Leaders Group which recommended that the Department of Industry commission the Australian Industry Group to analyse the prevalence of non-conforming products and materials in the Australian construction industry. That Project Advisory Committee undertook business surveys which found that:
- a. 92% of respondent businesses reported non-conforming products in their market sector; and
 - b. 45% reported that the situation had adverse impacts on revenue margins and employment numbers²⁷.
42. In July 2015 the Senate referred an inquiry into non-conforming building products to the Senate Economics References Committee for inquiry and report. The CFMEU made extensive submissions to these inquiries, which highlighted several alarming cases of the importation of NCBPs including (but not limited to) banned asbestos, flammable building cladding, faulty electrical cable and structurally unsound concrete precast panels amongst numerous other examples²⁸.
43. A short [Interim Report](#) was released by the Senate Committee in May 2016. The view of the Committee in the Interim Report is that there had been “a serious breakdown in the regulation and oversight of both non-conforming and non-compliant building products, which requires determined action”, and noted the “seriousness of the problem, the various areas of glaring weakness in the regulatory regime, including the certification process, and the disjointed regulation of the use of building products, both manufactured in Australia and overseas”²⁹.
44. The inquiry was resumed under the 45th Parliament³⁰, with further interim reports dedicated to the issues of the [importation of materials containing asbestos](#)³¹, and the use of [aluminium composite cladding](#)³². A Final Report entitled [Non-conforming building Products: the need for a coherent and](#)

²⁶ E.g. see the AiGroup Report *The quest for a level playing field: The non-conforming building product dilemma*, November 2013

²⁷ The Australian Industry Group, *The quest for a level playing field; The non-conforming building products dilemma*, November 2013, available online @ http://www.aigroup.com.au/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/LI_VE_CONTENT/Publications/Reports/2013/REPORT_NCP_FINAL.pdf

²⁸ See CFMEU submissions at

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/REFSManufacturing/Submissions

²⁹ Interim report at 18

³⁰ See Inquiry homepage here: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Non-conforming45th

³¹ This report made 26 recommendations addressing how best to combat the intentional and unintentional importation of asbestos in building and other materials, including complete machinery. See here:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Non-conforming45th/Interim_report_asbestos

³² The committee's report put forward eight recommendations to address the importation and use of ACP panels and strengthen the regulatory system including recommending banning the importation of ACP panels and a national licencing scheme for all trades and professionals. See here: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Non-conforming45th/Interim_report_cladding

[robust regulatory regime](#) was issued in December 2018. Some 16 months later, the Federal Government issued a short response to the Final Report³³.

45. Despite the lengthy and substantive work of the Committee, problems persist. Notably, the Federal Government rejected a number of important recommendations contained in the various Committee reports.
46. In relation to the illegal importation of asbestos, the following recommendations have been rejected by the Federal Government³⁴:
 - a. that the Australian Government consider the merits of having a specialist unit within Australian Border Force to manage illegal asbestos importation (recommendation 12);
 - b. the Australian Government prioritise prosecution of illegal asbestos importation cases (recommendation 14);
 - c. where an importer intends to import goods that have been deemed high risk of containing asbestos, the Australian Government require the importer, prior to the importation of the goods, to conduct sampling and testing by a NATA accredited authority (or a NATA equivalent testing authority in another country that is a signatory to a Mutual Recognition Arrangement) (recommendation 16);
 - d. the Australian Competition and Consumer Commission conducts compulsory recalls where asbestos is found in consumer products, unless there are significant issues and risks associated with a compulsory recall, noting that legislative change may be required (recommendation 22);
 - e. in circumstances where the Australian Competition and Consumer Commission becomes aware of a product containing asbestos and subsequently determines not to issue a compulsory recall of that product, the committee recommends that the Australian Competition and Consumer Commission shall within thirty days of that decision publish a statement of reasons (recommendation 23);
 - f. the Australian Government consider the merits of requiring importers and suppliers to hold mandatory recall insurance for potential asbestos containing materials (recommendation 26).
47. These recommendations need to be urgently reconsidered.
48. A number of other important recommendations made by the Senate Economics References Committee in the inquiry into NCBPs have merely been 'noted' by the Federal Government; progress on these issues continues to be hampered by delay and bureaucracy.
49. Only last year (2020), it was revealed that solid asbestos was uncovered in gaskets on 3 of the 4 new ferries ordered by Transdev for operation in Sydney. The asbestos was discovered only after the ferries were given a final fit-out following delivery from Indonesia, and came following warnings from

³³ See Government responses to here: https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Economics/Non-conforming45th/Government_Response

³⁴ See Government reports to the *Non-conforming building products – the need for a coherent and robust regulatory regime – Government Response*

the MUA about having the boats built overseas³⁵. The boats were ordered from the Australian ship-builder Birdon, who outsourced the work to Singapore, Indonesia and China who have all been flagged by the Australian Border Force on a warning list of national whose imports have had traces of asbestos fibres. This is only one example of the ongoing need to address the issue of the illegal importation of asbestos.

50. The Federal Government also “supported in part” the recommendation that the Australian Government require mandatory Asbestos Awareness Training for a wide range of occupations in the construction industry and provide adequate funding for nationally accredited training for this purpose. This “support in part”, however, amounts to nothing more than ongoing compliance with current WHS laws.
51. The importance of training cannot be gainsaid. In July 2016 a CFMEU delegate on a 41-story construction site in Brisbane (the “Executive Building” set to host 5,000 government workers) identified asbestos-laden building materials which were about to be installed. This material was imported from China and would have become a permanent part of the building. These materials were subsequently tested and proven to have a very high (40-50%) content of chrysotile asbestos. Had they been installed, would have exposed both the constructions workers, and the ongoing inhabitants of the building, to great risk. The reason why the CFMEU delegate was able to identify the asbestos was because the CFMEU had negotiated an enterprise agreement with the builder (Brookfield Multiplex) requiring all new employees to attend Asbestos Awareness training.
52. That same month, fragments of asbestos were also round in roof panels supplied by Chinese subcontractor Yuanda to lead contractor John Holland in the \$1.2b Perth Children’s Hospital (**PCH**) construction site. One worker on the PCH project described the level of dust that they were exposed to (when an angle grinder was used on the panels) as “*so thick that he could barely see his hands in front of his face at times*”³⁶. Again, this followed the CFMEU publicly raising concerns over the Yuanda products.
53. In relation to the importation of aluminium composite cladding, the Federal Government also rejected the recommendation that the Australian government implement a total ban on the importation, sale and use of Polyethylene core aluminium composite panels as a matter of urgency. These panels were a contributing factor to the rapid vertical spread of fire which engulfed Melbourne’s Lacrosse apartment building in November 2014. The fire engulfed 16 levels of the residential buildings in 15 minutes. A subsequent audit conducted by the Victorian Building Authority (**VBA**) found that ‘non-compliance in the use of external wall cladding materials is unacceptably high’³⁷. Similar combustible cladding also led to the horrific Grenfell Tower fires in the UK in 2017. These materials should be banned.
54. Independent research commissioned by the Construction & General Division of the CFMEU, conducted by Equity Economics in August 2019, found that over 3,400 residential apartment buildings have combustible cladding. The report – [*Shaky Foundations: The National Crisis in Construction*](#)³⁸ - also found that the cost of rectifying defects in apartment buildings constructed over the preceding ten years will amount to \$6.2 billion. Improving compliance with imported NCBPs would help to address this ongoing crisis.

³⁵ <https://www.9news.com.au/national/sydney-ferries-asbestos-found-new-boats-made-overseas/fb009706-217d-4bbe-b0fb-93ffe15aa4f7>

³⁶ <https://www.abc.net.au/news/2016-07-14/asbestos-found-in-perth-childrens-hospital-roof-panels/7628108>

³⁷ Victorian Building Authority, 'VBA Releases External Wall Cladding Audit Report', Media Release, 17 February 2016, http://www.vba.vic.gov.au/__data/assets/pdf_file/0015/39102/VBA-External-Wall-CladdingReport-VBA-Media-Release.pdf

³⁸ The Report is available here: <https://www.cfmmeu.org.au/sites/www.cfmmeu.org.au/files/uploads/CFMEU-Shaky-Foundations-FINAL.pdf>

55. Ongoing reform must be undertaken to ensure that NCBPs are eradicated. If this does not occur, Australian manufacturers will be less competitive and there will be ongoing risks to the safety of workers as well as to the Australian public. In particular, it is clear that there are ongoing serious problems relating to NCBPs related to the facts that:
- a. Australian buildings are (rightly) required to have higher environmental standards but this increases the prospect that imported goods will disingenuously state that they meeting the relevant standards when they are not. This has profound safety impacts on Australian workers as well as the general public; and
 - b. Australian manufacturers are increasingly disadvantaged by having to compete against products that do not conform to regulatory requirements and do not meet standards which apply to domestic business. That is, they are being undercut by other businesses that are prepared to put profit before safety.
56. Consistent with our previous submissions to the NCBP inquiry, the CFMEU also continues to call for safeguards to be put in place due to increasing imports of non-conforming building products, including as a result trade liberalization (in the form of free trade agreements) which have reduced barriers to entry for imported goods and resulted in associated decline of key sectors in the domestic manufacturing industry including the building products and materials sectors.

RECOMMENDATION: *The Federal Government must create an even playing field for Australian manufacturing by developing, funding and supporting an intelligence led, risk-based approach to standards compliance assurance on imported products. This must include sampling, testing and inspection as well as registration, accreditation and approval. Significant penalties must be applied for false and misleading conduct in relation to imported goods.*

RECOMMENDATION: *Any free trade agreements entered into by the Federal Government must include a binding requirement that goods sold to a purchaser located in Australia by an overseas entity comply with all applicable product standards that apply in Australia.*

17 September 2021