

**Department of Industry, Innovation and Science Response to Senate Economics Reference Committee Questions on Notice – Inquiry into Non-Conforming Building Products**

Questions:

1. Information and specs
  - a) Australian Standards
    - The Government Response to the Interim report on cladding at Recommendation 4 indicated support in principle for making all Australian Standards free. Are there any updates you can offer?
    - Has the Government come to a view on how best to deliver on this recommendation? If so, what is the view? If not, when will it be made?

The COAG Industry and Skills Council (CISC) Working Group has presented its report to CISC. The recommendations of the report were agreed. Those pertaining to standards access included recommendations to:

- maintain access to Australian Standards at national, state and territory libraries for non-commercial use;
- consider options for Governments to collectively negotiate for improved online access to standards for their own use and for public access on a cost-neutral basis; and
- include principles on standards distribution in the MoU between the Government and Standards Australia.

The Department of Industry, Innovation and Science (DIIS) is working with jurisdictions to progress these recommendations. In the first half of 2019 the Government will be better informed as to the outcomes of current negotiations between Standards Australia and SAI regarding the PLA and future distribution arrangements.

It is the Government's expectation that future distribution arrangements will deliver improved access to standards through non-exclusive terms for distribution and improved innovation in digital delivery of standards information across multiple platforms. It is expected that this in turn provides options for easier and lower cost access to the information consumers and businesses need.

Standards Australia have agreed to the Government request to include principles on standards distribution in their MoU with the Government.

The development of standards is not free. Industry; governments and others volunteer their time to the standards development process. Standards Australia recoups part of their costs for facilitating this development through royalties earned on the sale of standards. Free access to standards for all users would require government/s to seek to enter into an agreement with the standards distributor and fund the development and delivery of standards to the community. At present there are no plans for government/s to fully fund these costs but Governments are exploring ways to provide more universal access for consumers for non-commercial purposes.

2. Third party certification

- a) Shergold & Weir recommendation 21 calls for a compulsory product certification for high risk building products. "That the Building Ministers' Forum agrees its position on the establishment of a compulsory product certification system for high-risk building products."
- b) The report at page 36 states that:
  - "In July 2015 the BMF tasked the SOG to investigate options for a possible mandatory scheme for high-risk building products with life safety implications. In October 2017, the BMF subsequently tasked the SOG to provide further advice on the introduction of a compulsory third party product certification scheme for high-risk building products, a national register of those products and compulsory labelling for aluminium composite panels with a polyethylene core."
- c) Can you update me on the following two initiatives:
  - A compulsory third party product certification scheme for high-risk building products?
  - A national register of those products?
    - Is there a shortlist of products which are being considered for existence?
    - What products are they?

**As per Mr Harris' response in relation to this matter—on page 30 of the Hansard—work to examine the feasibility of a compulsory third party product certification scheme for high-risk building products and a national register for these products is being led by the Victorian Government (in consultation with the Western Australian Government), on behalf of the Senior Officers' Group (SOG).**

**This work is ongoing and the SOG will report back to the Building Ministers' Forum (BMF) in due course.**

- d) What work, if any, has the Department has carried out on Recommendation 16 of the asbestos report with a view to application to high risk building products generally?
  - "The committee recommends that 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 a another country that is a signatory to a Mutual Recognition Arrangement)."

**The recommendation referred to will be addressed by the Government's Response to the *Senate Committee's interim report: protecting Australians from the threat of asbestos*, prepared in consultation with the responsible Departments: the Department of Jobs and Small Business and the Department of Home Affairs.**

- e) And in a similar fashion, what work, if any, has the Department carried out on Recommendation 18 from the same report, with a view to expansion to high risk building products generally? (not just for the risk of asbestos)
- “The committee recommends that the Australian Government consider placing additional mandatory requirements on procurers of high-risk products to have a due diligence system in place for the prevention of the import and use of asbestos containing materials.”

**The recommendation referred to will be addressed by the Government’s Response to the *Senate Committee’s interim report: protecting Australians from the threat of asbestos*, prepared in consultation with the responsible Departments: the Department of Jobs and Small Business and the Department of Home Affairs.**

- f) And in a similar fashion, what work, if any, has the Department carried out on Recommendation 17 from the same report, with a view to expanding the scope to all high risk building products?
- “The committee recommends that the Government examine the European Union's regulations and processes for testing of products for asbestos prior to import and determine if it is suitable to adapt them to benefit and enhance Australian requirements.

**The recommendation referred to will be addressed by the Government’s Response to the *Senate Committee’s interim report: protecting Australians from the threat of asbestos*, prepared in consultation with the responsible Departments: the Department of Jobs and Small Business and the Department of Home Affairs.**

### 3. Rectification

#### a) Building database

- In order to better track down where products are installed – Shergold & Weir Recommendation 12 talks about the establishment of a building information database. Has any work been done to evaluate this? If so, what was the outcome so far? Has any work been carried out specifically for Commonwealth funded projects?

**The BMF will consider the recommendations of the ‘Building Confidence’ Report and will discuss their response at the next meeting on 10 August 2018.**

#### b) Recall insurance

- One potential solution raised by stakeholders has been the consideration for suppliers and importers of building products to carry recall insurance so they have the financial resources to rectify and issues that arise. Has any work

been done to evaluate this? If so, what was the outcome? Has any work been carried out specifically for Commonwealth funded projects?

**The Department is not aware of any work undertaken by jurisdictions to evaluate a proposal for recall insurance, including for specifically Commonwealth funded building projects.**

#### 4. Cladding standard

In December 2016, the Building Ministers' Forum agreed that the codes board would implement a comprehensive package of measures to help address the risks associated with non-compliant use of external wall cladding on high-rise buildings and the broader issue of non-compliant use of building products. The package of measures was to include referencing a contemporary and rigorous testing standard based on international best practice for full-scale testing of the fire performance of external facade systems;

- In October 2017 the BMF stated in its communique that :
  - “BMF Ministers recognise the public safety concern and clear risk arising around the use of cladding that does not comply with the National Construction Code (NCC). All Ministers agreed that they will use their available laws and powers to prevent the use of aluminium composite cladding with a polyethylene (PE) core for class 2, 3, or 9 buildings of two or more storeys, and class 5, 6, 7 or 8 of three or more storeys, until such time as they are satisfied that manufacturers, importers, and installers, working in collaboration with building practitioners, will reliably comply with:
  - -the newly established standard setting test against which fire retardant cladding products are deemed to be reasonable for use in high rise settings; and
  - -an established and implemented system of permanent labelling on cladding products to prevent substitution”

a) Can you update us on where the new testing standard is up to?

**The new standard for testing the fire safety of external walls of buildings, AS 5113:2016, sets out the procedures for the fire propagation testing and classification of external walls of buildings.**

**AS 5113:2016 was incorporated into the National Construction Code (NCC) via an out-of-cycle amendment to NCC 2016, and was adopted by the states and territories on 12 March 2018.**

**The new testing method is incorporated under a new Verification Method (CV3), which achieves equivalence to the Deemed-to-Satisfy Provisions by including additional fire safety measures within the building (e.g. enhanced fire sprinkler system) as a condition of using an AS 5113 tested wall assembly.**

#### 5. Cladding Audit Update

Following supplementary estimates, I was provided a table with CLADDING AUDITS AND REVIEWS ACROSS JURISDICTIONS which indicated that to date, and it was dated April 19 that there appear to be at least 3,125 buildings around Australia that are potentially clad noncompliantly- which is dated April 19.

- a) Dr Byrne also stated at Senate Estimates on the 5th of June that the Department are very happy on a regular basis to update that table as required.
- Are you in a position to be able to update the table and provide it for consideration of the Committee?

**The BMF will be discussing the status of cladding audits and reviews across jurisdictions at its next meeting on 10 August 2018. As such, it will not be possible to provide an updated table by 10 August 2018.**

## 6. Trade

The Department provided evidence to this inquiry in 2015 about the Trans-Pacific Partnership (TPP) Technical Barriers to Trade (TBT) Chapter and the additional commitments which encourage information sharing and engagement between TPP Parties, including additional procedures to review complaints and the treatment of conformity assessment bodies outside the importing TPP Party's territory.

The evidence stated:

- "TPP Parties are encouraged to enter into mutual recognition agreements for bodies responsible for setting standards and making assessments, and to improve transparency regarding the reasons for refusal of recognition of conformity. Importantly, the recognition of conformity assessment bodies from other Parties is not mandatory, and any conformity assessment bodies that Australia chooses to recognise must demonstrate they can meet the same accreditation processes and testing standards as Australian bodies."
- a) Can you provide advice on what organisations Australia currently has mutual recognition agreements and what form they are in?
- b) Will this chapter facilitate or potentially facilitate the easier importation of building products and materials into Australia?
- c) The Committee on Technical Barriers for Trade in the China Australia Free Trade Agreement in the case of Australia is the Department of Industry.
- a. When was the last time the Committee met and have China or Australia raised the issue of building products and materials?

**6a) Australia has mutual recognition arrangements relating to oversight and management of goods with:**

- New Zealand (Trans-Tasman Mutual Recognition Act 1997)
- Singapore (Australia-Singapore Mutual Recognition Agreement on Conformity Assessment 2001)

- the European Community (Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings between Australia and the European Community 1999)
- Liechtenstein, Iceland and Norway (Mutual Recognition Agreement on Conformity Assessment between the European Free Trade Area)

Australia's technical infrastructure bodies have MRA's with international organisations, of which countries we trade with are also signatories to.

NATA is Australia's national accreditation body for laboratories, reference material producers and proficiency testing providers. NATA holds an MRA with ILAC - the ILAC Mutual Recognition Arrangement (MRA). The International Laboratory Accreditation Co-operation (ILAC), is the international organisation for accreditation bodies operating in accordance with ISO/IEC17011 and involved in the accreditation of conformity assessment bodies including testing, calibration and medical testing (pathology) laboratories, inspection bodies, proficiency testing providers and reference materials producers.

The Joint Accreditation System of Australia and New Zealand (JAS-ANZ) provides internationally recognised accreditation services. It is the Australian Government appointed accreditation body for certification and inspection. JAS-ANZ provides accreditation assessment – assessment of certification and inspection bodies for conformity to JAS-ANZ assessment criteria. It on behalf of Australia and New Zealand holds mutual recognition arrangements with the following organisations:

- International Accreditation Forum
- International Laboratory Accreditation forum
- Pacific Accreditation Forum
- Asia Pacific Laboratory Accreditation Cooperation

6b) The objective of the TPP TBT chapter is to reduce technical barriers to trade where they are not necessary, enhance transparency, and promote greater regulatory cooperation. Necessary technical requirements are maintained including appropriate product standards and regulation for the purposes of promoting health and safety priorities and consumer protection.

6c) The last meeting of the China-Australia Free Trade Agreement Committee on Technical Barriers to Trade was held in Canberra on 19 May 2017. Matters relating to building products were not discussed. Arrangements are in train for the next meeting forecast to be held late in 2018.