

Answers to Questions Notice. Travis Wacey, CFMEU.

Please let me convey my sincerest apologies to the Committee for my tardiness in providing this detailed response arising from questions I undertook on notice when I appeared at a public hearing of the committee held in Melbourne on July 14, 2017.

I'd be happy to elaborate on matters in this response as required.

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Senator KIM CARR: Mr Wacey, you have made a statement that there is widespread fraud of these certificates. Did I hear you correctly?

Mr Wacey: Yes.

Senator KIM CARR: What is your evidence for that proposition?

Mr Wacey: One example is that we find something that is stamped as a certain product or comes with certain paperwork, certain certificates, saying something along the lines that this is compliant with a certain standard and has been certified under this testing regime by this testing authority, and subsequently someone makes an inquiry with that testing authority and it is found that the test never occurred; they have never heard of this distributor or manufacturer. So, we do have some evidence that we can provide to the committee about that.

Senator KIM CARR: Would you please do that? Now, you say this is widespread. You have discovered this on a number of occasions?

Mr Wacey: Yes.

One example of widespread fraud is in the windows and glass sector.

The Australian Industry group (AIG) in their 2013 report: *'The quest for a level playing field: the non-conforming products dilemma'* reported: The certification system breaks down when fraudulent third-party certificates are used:

"The *Australian Windows Association* is receiving a growing number of requests by Australian surveyors and state and territory building authorities for the validation of window and doors products that come with international certificates. The fact that many products have certificates isn't enough to ensure that the products are actually fit for their purpose. They may not have been tested correctly or even at all. Fraudulent documents are showing up regularly."¹

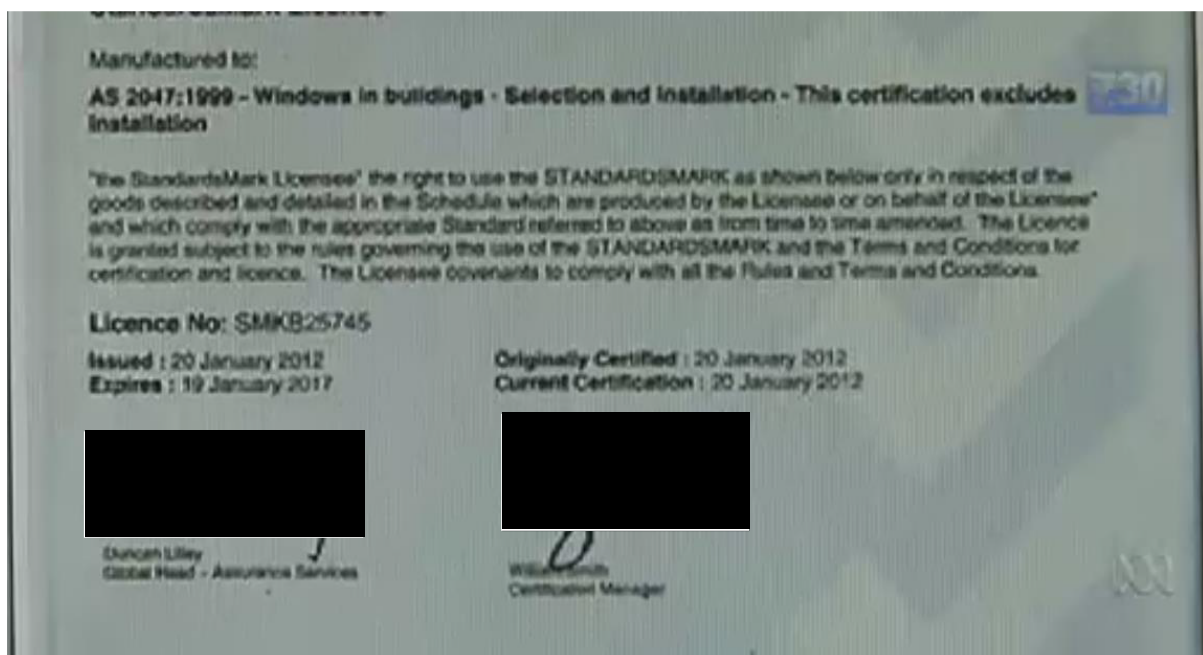
Tracey Gramlick, Chief executive of the *Australian Windows Association*, in an episode of *ABC 7.30* on Wed 24 Jun 2015 blew the whistle on fraudulent documentation and certificates, citing;

"A series of licence certificates that don't exist, so they're completely fraudulent"²

Ms Gramlick explained that the quantum of forged documents that she had come across included dozens of the SAI Global certificates, "there's a few of ours (fraudulent AWA certificates) and dare I say hundreds of test reports."

¹ http://steel.org.au/media/File/29276_Quest_for_a_level_playing_field_AiGroup.pdf

² <http://www.abc.net.au/7.30/the-battle-to-keep-potentially-lethal-building/6571336>



Screenshot of fraudulent document on the ABC 7.30 report

<http://www.abc.net.au/7.30/content/2015/s4261394.htm>

Ms Gramlick has additionally written to the committee and provided ample verified fraudulent documents provided to AWA by window companies, builders and certifiers and noted that there are many more.

She also outlined for the committee that:

“In the period 2014-2017 we have put on notice 70+ companies in Australia and China for falsely holding themselves to be AWA or WERS members on their websites. The AWA operates a mandatory audit and accreditation program for members that is run through our NATA accredited inspection agency. This is held in high regard by regulators and surveyors and so the misrepresentation is considered more than just reputational.

In 2014 the AWA contracted the services of an independent expert to carry out a forensic review of a series of test reports from testing laboratories in China. The errors contained varied from 38 (best) to 76 (worst) on a number of imported products. The AWA has worked closely with NATA on this issue and continues to do so, including auditing test laboratories on the China mainland.”

SAI global themselves in evidence to this inquiry conceded:

“The sheer number of products and the lack of a single database to be able to check batches shipments leave the process and subsequent product open to Economically Motivated Adulteration (EMA) where substitution occurs either in the manufacturing process or in the supply chain. The product verification can be further inhibited by fraudulent documentation.”

A competitor to SAI Global who runs CertMark International (the largest certifying body under the CodeMark Scheme in both Australia and New Zealand) reported similar problems to this inquiry:

“If I can go back to the example of the ModakBoard, the ModakBoard got certified based on an extremely high quality magnesium oxide board that was tested and certified in Australia by the CSIRO. The company that was supplying the ModakBoard to that client, that particular company, went to China and saw that that company manufactured various grades of board and actually found they had one that looked pretty similar, but wasn't fireproof. They actually ordered that board. We have documented evidence from that manufacturer in China that they advised them: 'It's not fireproof. If you're going to be selling it as that, it won't stand up to a major fire event.' That product came in on ships. It looked the same. They had fraudulently put the CodeMark stamp on it.”

Additionally, the Metropolitan Fire Brigade provided evidence that Codemark certificates have been revised without the knowledge of the manufacturer. This is a very serious matter as Codemark certificates usually outline the range of use or circumstances in which a product may be relied upon to be fit for purpose. For example Codemark certificates for Aluminium Composite Panels (ACPS) used for cladding usually outline the circumstances in which it can be used in a manner compliant with the National Construction Code which includes compliance with the manufacturer's installation instructions.



CERTIFICATE OF CONFORMITY

This is to certify that

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Subject to the following conditions and limitations:

1. Specification and installation of the product shall be in accordance with the following publications –
[REDACTED]
2. In the context of this certificate –
 - a. An external wall is defined as a building assembly satisfying all necessary Deemed-to-Satisfy Provisions for structure, fire, weatherproofing, sound transmission and insulation and energy efficiency.
 - b. An attachment to an external wall is an element that does not form part of the external wall assembly as required for note 2.a. above. This includes use where the attachment is an awning, canopy, external soffit, external privacy wall, balustrade, or the like.
3. Where the product is used in NCC Volume One Specification C1.1 Type A or Type B construction, the building is to have a sprinkler system that is designed and installed in accordance with NCC Volume One Specification E1.5. This includes sprinkler protection to balconies, awnings, canopies, and the like adjacent to areas where Alucobond PLUS is used as a component of, or as an attachment to, an external wall (such that the concessions provided in AS 2118.1–1999 (incorporating Amendment No.1) and AS 2118.4–2012 for these locations do not apply).
4. Use is permitted on building elements that satisfy the requirements of NCC Volume One Specification C1.1 for buildings required to be of Type C construction.
5. Use is permitted at locations above and adjacent to a required exit.
6. The scope of this certificate is limited to external applications. However, this does not exclude its compliant use in an internal application as permitted in the NCC Volume One Deemed-to-Satisfy Provision C1.10.
7. Electrical services within an external wall are to comply with AS/NZS 3000:2007.
8. Electrical and other services penetrations that create an opening in the external wall cavity are to be protected in accordance with NCC Volume One Deemed-to-Satisfy Provision C2.5 (a) (iii). This is notwithstanding the requirements for the protection of openings specified in NCC Volume One Deemed-to-Satisfy Provision C3.15 for an external wall having a fire resistance level (FRL).
9. Windows, doors and openings may be installed in the wall when the opening to the cavity is protected in accordance with NCC Volume One Specification C1.13 Clause 2 (e).
10. The following cavity protection requirements must be met when Alucobond PLUS is used as a component in an external wall assembly:
 - a. Any insulation within the wall cavity must be non-combustible as defined in NCC Volume One Part A Clause A1.1.
 - b. Any sarking-type materials must comply with NCC Volume One Specification C1.10.
 - c. Any opening formed by the service penetration is to be packed with a non-combustible material that will withstand thermal expansion and structural movement of the walling without the loss of seal against fire and smoke.
 - d. Cavity barriers complying with NCC Volume One Specification C1.13 must be provided in the following locations:
 - i. At every storey junction (horizontal).
 - ii. At junctions between rooms separated by fire resisting construction (vertical).
 - iii. At large openings such as doors and windows.

Limit of the scope of certification:
Certification applies only to those National Construction Code parts specifically mentioned. Parts omitted are not covered by the CodeMark certification. Omission should not be interpreted as either "the part does (or does not) apply to the specific building" or "the part does apply and the system does or does not conform". The building elements onto which the product is installed must be independently assessed for compliance against the relevant 2016 National Construction Code requirements.

End of the document

Conditions associated with a certificate of conformity with National Construction Code - Aluminium Composite Panel (Fire Resistant product) which include installation in accordance with the manufacturer's instructions.

The Building Products Innovation Council (BPIC) (which includes the AWA as a member) has deemed the problem of fraudulent certification so widespread they have outlined the need for far reaching reforms:

"NCC provisions should contain business rules or controls for fraud detection and prevention. An example would be a requirement for all testing authorities that issue a report on a product, to publicly publish a 'Summary Information Report' (that documents salient results but protects manufacturer IP) and/or links to an online register. Another example would be the introduction of standardised product labels/receipts required for all overseas and local product suppliers to identify manufacturing date (and batch number if applicable) and specific manufacturing facility from where a product is manufactured. This will result in building certifiers being able to reconcile the documentation they receive from contractors and builders with independently verifiable information provided by the testing bodies (registered by NATA or ILAC equivalent)."

The Australian Institute of Building Surveyors in evidence to the committee had a similar take on both the problem and the solution: Mr Troy Olds, Board Director, Australian Institute of Building Surveyors stated:

"CodeMark as it's designed to be used and operated, I think you can rely on it. But I think the problem with false documentation is companies, products and suppliers who are doctoring up documents and supplying them to the system which can't be controlled. If you could have a CodeMark system where it's all electronic, it's all online and a building surveyor can or a

product manufacturer or an architect or whatever could go onto that system and know that, in that one portal, it's 100 per cent right, then I think you could rely on that."

Mr David Mier (the Assistant National Secretary, Electrical Trades Union of Australia) outlined how Robin Johnson Engineering claimed they were deceived by the supplier because the supplier provided fraudulent documentation. A subsequent hearing in Adelaide was held where Robin Johnson Engineering corroborated this testimony testifying that they mistakenly relied on fraudulent certification claiming a product was asbestos free.

Evidence to this inquiry from the Housing Industry Association has concluded:

"Building product non-conformance comes in many forms. For the purposes of this Inquiry, it is considered the focus must be on the individual products and the supply chain that brings those products to market, and the process of design, approval and construction of buildings. Taking this approach this submission focuses on products that:

- do not conform with required Australian building regulations and technical standards including incorrect certification;
- are counterfeit copies of legitimate conforming products;
- are supplied with fraudulent certification or documents attesting to their conformance; and
- are substituted for the original product at the point of sale or installation....

...Many product sectors such as plumbing and sanitary ware, electrical fittings, windows, engineered wood and steel reinforcing have numerous examples of fraudulent certification and product marking being used. In most instances, these products also fail the primary test to be 'fit for purpose' and therefore safe to be used in building and construction work.

....Overarching these concerns remains the increasing incidence of fraudulent documentation and labelling from offshore testing bodies and manufacturers, who may or may not have undertaken adequate testing of products."

The Australian Steel Institute (ASI) has faced similar problems in the domestic steel market providing evidence to the committee that:

"The non-compliances are not limited to poor quality and bad workmanship but extend to deliberate fraudulent behavior with examples such as falsified test certificates, welds made with silicone rubber and then painted, attachment of bolt heads with silicon rather than a through bolt and water filled tube to compensate for underweight steelwork with fraudulent claims that their products meet particular Australian Standards."

One of ASI's members Arrium also reported in evidence to this committee:

- Non complying test certificates and
- Test Certificates/Product Labels not correlating to the batch of material used

The Engineered Wood Products Association of Australasia (EWPPAA) has provided similar evidence in regards to the engineered wood market stating:

“The EWPA is also seeing fraudulent certification of EWPS particularly in the area of formply. This is potentially very serious, as construction site managers who correctly undertake correct specification and inspection of formply as part of their due diligence in providing a safe working environment for employees and contractors are being misled by this product misrepresentation.”*³

The National Electrical and Communications Association (NECA) has provided evidence to this inquiry stating:

“Test certificates are generally accepted by importers as proof of a product’s legitimacy but in certain cases, certificates have been found to be illegitimate or counterfeit.”

The BPIC have also outlined fraudulent behaviour in the showers industry:

“The WELS Regulator has noted the increased supply of non-conforming showers into the Australian market from overseas manufacturers. These instances of non-conformance include showers supplied without flow controllers, with substituted flow controllers or flow controllers supplied separately. These products use more water than their WELS label indicates, therefore consumers are being provided with fraudulent information.”

The Australian Building Codes Board (ABCB) also acknowledged the problem in evidence provided to the committee:

“Fraudulent or misrepresented products have the potential to undermine building practitioner’s consideration of materials being fit for purpose.

As previously advised, the ABCB is not best placed to address the subject of non-conforming products, which range from not meeting necessary standards, to false and deceptive conduct, through to counterfeit materials and fraudulent certification; all of which can occur as part of the evidence of suitability process under the NCC.”

Despite the Master Builders Association of Australia (MBAA) saying in the public hearing that they were not aware of the suggestion that there is fraud going on in the certification process this contradicted the MBAA’s submission which identified that:

“Counterfeiting is also a problem with substandard products being labelled as meeting Australian Standards.”

The MBAA at the public hearing have committed to survey their members and provide a definitive response. We anticipate that if they do this it will be a case of correcting the record.

FINALLY I TAKE THE OPPORTUNITY TO INFORM THE COMMITTEE ABOUT THE ISSUE OF ALLEGED FRAUDELENT BEHAVIOUR BEING DETECTED IN THE ALUMINIUM COMPOSITE PANELS DOMESTIC MARKET.

³ *A further discussion related to these issues is provided in a different answer to a question on notice outlined below (pages 10-16)

ADVICE WAS PROVIDED TO MYSELF BY AN IMPORTER WHO HAS PARTICIPATED IN THIS INQUIRY CLAIMING THAT THEY HAVE SAMPLED PRODUCTS ON THE MARKET OF THEIR COMPETITORS WHICH CLAIM TO BE FIRE RESISTANT GRADES BUT ARE NOT.

Table 1: Type of Aluminium Composite Panels and their uses

Panel type	Fire rating	Use	Note
PE is a light composite material consisting of two aluminium cover sheets and a core made of polyethylene.	Flammable	This type of panel is restricted in its use to signage, low rise developments, factories and warehouses.	Restricted Use: Type C Construction Only
FR Panels. The designation FR refers to 'Fire Resistant' and as with A2 panels it has been tested to EN 13501: B-s1,d0.	B-s1,d0 Difficult to ignite	This type of panel may be used on high rise buildings. It must be attached to a fire rated wall. Although not strictly referred to as Non-combustible it has a very low spread of flame indices and will not contribute to the spread of flame.	ACCEPTABLE FOR USE ON HIGH RISE CONSTRUCTIONS
A2. This type of panel gets its name from a specific fire test (EN 13501: A2-s1,d0).	A2-s1,d0 Classified as Non-combustible	This type of panel may be used on high rise buildings. It must be attached to a fire rated wall.	ACCEPTABLE FOR USE ON HIGH RISE CONSTRUCTIONS
Aluminium-Core Composite Panel are classified as A1 or noncombustible.	A1 Non-combustible	This type of panel may be used on high rise buildings. It must be attached to a fire rated wall.	ACCEPTABLE FOR USE ON HIGH RISE CONSTRUCTIONS

The notable distinguishing feature which determines a panel either FR or A2 is that they contain, instead of a polyethylene core, (which 'PE' does) a core which contains either a minimum 70% mineral fibre content (FR) or a minimum 90% mineral fibre content (A2). The suggestion which has been made to me is that panels claiming to be either FR or A2 including through labelling and certificates actually are not and evidence of this is that they do not weigh the requisite weight which a core with that percentage of mineral fibre (either 70% or 90%) would weigh.

These are serious matters as the behaviour has the potential to accelerate in order to circumvent a more robust approach to regulation around the use of ACPS including recent commitments by the Building Ministers Forum for Ministers to:

"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.

- Using 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.”⁴

Further examples of fraudulent behaviour are outlined throughout this response.

Mr Wacey: There are sophisticated examples and there are unsophisticated examples. In one example it seems that it was a straight-out hacking exercise: they hacked into the third-party certifier's systems and were able to get their template for the certificate and just fill it in.

Senator KIM CARR: Are you saying to this committee that the regulators have done nothing about this— that this is known within the industry, that complaints have been made to the regulators and that nothing has been done about it? Is that the proposition you are suggesting?

Mr Wacey: Yes. I am not sure about the complaint about the hacking incident, in terms of whether it has been lodged, but it is certainly well known in the industry.

Senator KIM CARR: You are saying that there are complaints about the integrity of the third-party certification and that that is not being enforced? The concern has been expressed about the integrity of those arrangements and nothing has been done on that matter?

Mr Wacey: I assume, in this instance, that it has been raised by the third-party certifier, because when we subsequently went to them and said, 'What's with this certificate? Have you certified this particular product, because we have concerns about its conformity,' they said, 'Well, no, we haven't certified that particular product. We don't know how this has come about.' I assume it has been raised. I am happy to take it on notice and follow up with you.

Senator KIM CARR: Would you.

Mr Wacey: There is the issue of commercial retribution in this industry and people not making complaints due to the threat of that as well.

In February of this year Mr Rod Wilkie of Melbourne Testing Services reported to WorkSafe Victoria and industry stakeholders that he “came across a fraudulent set of test reports and certificates for a Kwick-stage scaffold system and other scaffolding components.” (Correspondence attached 1)

Mr Wilkie reported that the certificates appeared to be genuine documents however, when he checked the authenticity, he found the rightful owner to be an Australian (Melbourne) based Chinese company who had indeed commissioned the testing program in accordance AS/NZS 1576.

According to Mr Wilkie the fake documents as witnessed appear to be copies of the rightful owner's reports and certificates. The rightful owner's name and address had been altered to reflect another Chinese manufacturer from a different province and city.

As outlined by Mr Willkie:

⁴ <https://industry.gov.au/industry/IndustrySectors/buildingandconstruction/Documents/BMF-Communique-October-2017.pdf>

“It appears that the fraudsters have the full suite of (the rightful owner’s) test reports and certificates from the 2012/2013 series of tests. Some of the documents have telltale signs of re-editing and fraudulent activity. Furthermore it appears that uncertified scaffolding systems and components are here, and being used in Australia. It is clear that they are being manufactured and sold under the disguise of a reputable manufacturer who has demonstrated their duty of care and due diligence by testing and certifying in accordance with Australian Standards. In this case, the extent of the fraud covers complete, heavy duty scaffold systems, couplers, base jacks and other critical load bearing components.”

It is our understanding from conversations with the certifier that their reports and certificates are encrypted which means that the electronic versions have been hacked and the client details have been altered in that way to give the impression that the fraudster company have had their components tested and certified.

In the interests of not wanting fake documents spread so other parties can potentially misuse them in a similar fashion we provide copies of both the original versions of test reports and certificates from Melbourne Testing Services regarding scaffold parts and the fake versions to the Committee but request they are not made publicly available. (Attached 2-7)

In regards to this matter we also note what the BPIC have said about one of the causes of certification fraud becoming more widespread:

“Certification fraud is rapidly increasing with a growing number of fraudulent proprietary and certification documents appearing in the market. Modern digital scanning and printing technologies are making it easy to create authentic looking labels/certification, and making it almost impossible for consumers, contractors, builders and building surveyors to identify legitimate from illegitimate product/manufacture claims.”

We also note the evidence provided at a hearing into this inquiry by the Australian Institute of Building Surveyors (Dr Darryl O’Brien, National Technical Committee representative):

“In relation to testing and certification, I think that's more so where there might be evidence of fraudulent documentation, because the more that companies go online to make this material available and open and accountable the more it provides an opportunity for less scrupulous people, particularly overseas, to use that as a template to provide documentation that purports to show compliance.”

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Senator KIM CARR: Let me just be clear about this: you have actually raised these questions with the ACCC as well as the union.

Mr Wacey: Yes, we have met with them.

Senator KIM CARR: Directly—and you have been rebuffed.

Mr Wacey: Essentially, it did not meet their prosecution standard or list of priorities in terms of looking at major market distortions and that sort of thing.

CHAIR: Can you tell us who at the ACCC organisation you met with?

Mr Wacey: I can take that on notice and follow it up.

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The committee heard evidence that on the 26th of May 2015 the CFMEU wrote to State and Territory Premiers and Chief Ministers calling for an audit on the ACPS (cladding systems) used on high rise buildings. An example of correspondence is attached for the committee's further information (attached 8). Correspondence was also sent to Ms Karen Andrews as the Parliamentary Secretary responsible for the Building Ministers Forum at the time.

On June 2nd 2015 the CFMEU wrote again to all state and territory premiers this time about "another sub-standard imported product". The product of concern raised was Engineered Wood Products (EWPS) The latter correspondence highlighted the problem of imported structural plywood used in bracing, flooring and concrete formwork (formply); and composite Laminated Veneer Lumber (LVL) beams which are also used in formwork. (An example correspondence is attached 9)

The CFMEU enclosed with the correspondence a number of reports from the tests conducted on the different imported EWPS which showed failure to comply with the standards which the products were clearly labelled/marked as being in compliance with. The reports are attached. (attached 10-13)

The CFMEU also stated in the correspondence that:

"The Australian Competition and Consumer Commission (ACCC) have been alerted to this issue but have failed to take any meaningful action in response to fraudulent labelling of products despite its clear remit to do so."

We also wrote to the Minister responsible for the ACCC which at the time was Mr Bruce Billson.

By way of background, in August 2012 the Non-Government members of the Prime Ministers Manufacturing Taskforce in its report: *Smarter Manufacturing for a Smarter Australia* noted that:

"Australian manufacturers are increasingly finding that they are competing against products that do not conform to regulatory requirements and do not meet standards to which domestic businesses adhere. This places complying and conforming businesses at a cost and competitive disadvantage."

And recommended:

"That the Commonwealth Government... enters a dialogue with the ACCC and, through the State and Territory Governments, Offices of Fair Trading, to increase the priority given to addressing misleading claims of conformity with regulation and voluntary standards."

Following this, former Senator John Madigan in 2013 and subsequently explored with the ACCC why they had failed to prosecute following a complaint they received from the EWPAA and subsequently investigated in late 2011 and early 2012.

The EWPAA had discovered false and misleading claims being made by traders of some structural flooring and roofing plywood imported from Chile. The EWPAA demonstrated the problem to the

ACCC through testing that indicated that labelled stress grades associated with the products was inaccurate.⁵

In the course of the investigation by the ACCC:

- the trader ceased the sale of the plywood in question and conducted an internal investigation
- The trader informed the ACCC *they* had undertaken an investigation into its processes and obtained certification from SAI Global which indicated the product met the requirements for that grading at the time of shipping
- the product was no longer sold as F-14, but was downgraded to F-8.

The ACCC reported satisfaction with this outcome in the circumstances and closed its investigation. No penalties or prosecutions took place. There were no fines nor infringements. The ACCC did not make a public comment about the trader or the matter.

An alternative view to that taken by the ACCC who were satisfied with the outcome is that the action that the ACCC took in response to this investigation did not provide an appropriate deterrent to fraudulent behaviour in the industry and this is a reason why fraudulent behaviour has continued.

The ACCC in response to Senator Madigan stated:

Mr Gregson: “Our role in relation to standards is limited. Mr Ridgway can supplement this given that much of it is in his area. But we have responsibilities for those standards that are declared mandatory under the Competition and Consumer Act. They are a fairly small set of the Australian standards. Our role otherwise in relation to Australian standards kicks in where there may be representations that may be false or misleading about compliance with particular standards. We have looked at allegations of those types of matters where a company, for example, says, 'We comply with Australian standards,' whereas they may not. There are other factors we might take into account in those situations as well, including whether there are other specific industry regulators whose job it is to ensure standards within a particular industry.”

Mr Simms: “We deal with safety standards, but most of the standards are, 'Is the building built correctly?' or 'Are the materials appropriate?' We are not in the business of handballing responsibilities when they are ours. If they are ours, we will enforce them. But I think most of the stuff you are talking about is just not relevant to us...If somebody says, 'I guarantee I am complying with the standard,' and they basically are not then there is a role for us, but then we have to look at whether there is a regulator that has specific responsibility for that. Often they will be a state regulator...”

⁵ In the course of his investigations Senator Madigan also discovered that in July 2013, the ACCC received complaints regarding two matters. The first complaint related to a trader supplying Formply, and the second related to LVL beams, both involved allegations of misleading and deceptive representations regarding compliance with the relevant Australian Standard. Compliance Assessment Reports which contained NATA Accredited Testing that were provided to the ACCC indicated that the respective products did not comply with the relevant Australian Standard.

And finally, on notice:

“The Australian Competition and Consumer Commission (ACCC) only has a limited role in enforcing standards. Generally speaking our role is limited to those standards prescribed by regulation under the Competition and Consumer Act 2010. Those product safety standards relate to consumer products such as, for example, the labelling of children’s nightwear and the design, construction, performance and labelling requirements for baby walkers. There are many thousands of Australian or New Zealand standards currently published. On their own, these Standards have no legal status and there is no requirement for compliance by manufacturers, importers or suppliers. In many cases these are picked up in other legislation and regulatory requirements. In this case, these standards are enforced by sectoral regulators such as those set out below:

Sector	Regulatory responsibility
Building and construction	Australian Building Codes Board (administration) State building and planning regulatory authorities (enforcement)
Energy	Commonwealth and State energy authorities
Electrical appliances	State electrical regulators
Food	Australia New Zealand Food Authority
Health and community services	Commonwealth and State health authorities
Transport	Commonwealth and State road safety agencies
Water and waste services	Commonwealth and State environmental safety regimes

Concerns may arise under the Australian Consumer Law where false or misleading representations are made by suppliers that their products meet a standard and they do not. The ACCC would consider those concerns in accordance with its Compliance and Enforcement Policy.”

The Australian Industry Group in their report: *The quest for a level playing field, the non-conformance product dilemma* subsequently reported:

“Concerns may arise under the Australian consumer Law ACL where false or misleading representations are made by suppliers that their products meet a standard and they do not. The ACCC is not in a position to pursue every complaint it receives and focus on those circumstances that harm the competitive process or result in widespread consumer detriment. The ACCC Compliance and Enforcement Policy states:

“That current ACCC enforcement priority areas are in relation to conduct of significant public interest or concern; or conduct resulting in substantial consumer detriment; unconscionable conduct; conduct demonstrating a blatant disregard for the law; conduct involving issues of national or international significance; conduct involving a significant new or emerging market issue; conduct that is industry-wide or is likely to become widespread if the ACCC does not intervene...”

The ACCC has received complaints: regarding building products allegedly not complying with specified standards, despite supplier claims to the contrary; alleging that particular products in the building industry are not of acceptable quality; and alleging that particular products used in the building industry raise product safety concerns. Actions available to the ACCC include:

- resolution by administrative actions or litigation;
- education and information;
- recalls of unsafe consumer goods; and
- working with other agencies to implement these strategies.

The ACCC agrees that while they can investigate complaints of potential contraventions under the CCA, in some instances an issue raised by complainants will need to be addressed more broadly at the industry level.”

Following the CFMEU correspondence to State and Territory Ministers and the relevant Commonwealth Minister, the ACCC wrote to the CFMEU (attached 14) and invited us to discuss our concerns at a meeting.

A meeting occurred on August 28, 2015 at the ACCC’s Melbourne office at 10.00 am.

Attending the meeting from the CFMEU was myself and Alex Millar (Assistant National Secretary - CFMEU Forestry, Furnishing, Building Products and Manufacturing Division) We were going to be joined by acting CEO of the EWPA Andy McNaught however his plane out of Brisbane was cancelled. We were informed that Nigel Ridgway from the ACCC would attend but he didn’t. I believe the meeting was attended by Neville Matthew, Consumer Product Safety, and one other person from the commission by video conference.

Despite the focus on false and misleading claims which we presented clear evidence of in the form of the information contained in the test reports, the commission essentially repeated to us what they had previously told Senator Madigan and the AIG but more pointedly.

The take out message myself and Mr Millar took away was that that our issue was not a priority for the ACCC given the fact that there were alternative regulators in the building and construction industry who might have powers, State and Territory Offices of Fair Trading had powers and that they didn’t consider our issue to be worthy of follow up under their Compliance and Enforcement policy.

This is a concern due to the life and death implications of substandard engineered wood products, especially sub-standard fraudulently labelled formply and LVL beams.

The CFMEU and the EWPA are not alone in the experiences we have had with the ACCC regrading this issue. Another example followed the AWA in 2013 being informed that documents purportedly issued by them in the name of Fire Retardant Technologies P/L for *Firetard 20* were discovered in the market. The illegally produced and fabricated documents were claiming (without any evidence) that Western Red Cedar Timber treated by *Firetard* could adequately meet the bushfire resisting requirements of the *Construction in Bushfire Designated Areas Standard AS 3959*. In addition the AWA reported that a Certificate of Assessment purportedly issued by the CSIRO made similar claims about the product. The AWA also points out that they contacted the Department of Fair Trading NSW and the ACCC about the matter but that neither party took up the issue saying it was beyond their purview. The AWA cautioned that thousands of houses in bushfire designated areas across the nation were potentially impacted.⁶

Finally we note comments made by Mr Sims in the media since:

“MADELEINE MORRIS: Even at the highest levels, there's disagreement about whether it's the job of government or industry to fix the problem.

INNES WILLOX: At the end of the day, it's government that is responsible and there's a standards issue that has to apply here.

ROD SIMS: In our view, it clearly is the job of companies who are bringing this product in. Firstly, manufacturing it here, if it's being manufactured here, or if it's coming from overseas importing it. The companies involved in the value chain have got to make sure that what they're selling is safe, and of course, complies with building standards”.

The ACCC does have a role in encouraging compliance by stamping out false and misleading claims and fraudulent behaviour prevalent in the industry which includes fraudulent labelling and fraudulent certificates. They have the remit and powers to create a disincentive for this behaviour. They should prioritise prosecution to establish a deterrent. Under the Australian Consumer Law the maximum penalty for false or misleading and unconscionable conduct is \$1.1m for corporations and \$220 000 for individuals.⁷

If it is deemed by the Government that ACCC are not the appropriate body to drive a disincentive to this sort of the behaviour it is the onus of government to establish a body which is.

Senator XENOPHON: And there is a huge bun fight, to put it mildly, about legal liability, which is one of the issues, as to who is going to pay for it. Whether it is an insurer or a planning authority for allowing it in the first place or the importers, there is a legal dispute as to who pays for it. I want to go now briefly to new buildings. Because, further to the questions from the chair and Senator Carr that there are issues of fraud involved in certification, is it your union's view that there ought to be jail terms where there has been fraudulent, dodgy certification of building material in cases where it can put lives at risk?

Mr Wacey: I will take that on notice.

⁶ <https://view.joomag.com/windows-magazine-summer-2013/0489999001444352632?page=10>

⁷ <https://www.accc.gov.au/business/business-rights-protections/fines-penalties>

Yes.

In addition to the maximum fines outlined above which are available for false or misleading and unconscionable conduct available under the Australian Consumer Law outlined (\$1.1m for corporations and \$220 000 for individuals) we note that there are penalties under the criminal code for fraud.

We also note information provided by Comcare to the Committee:

“Under section 268 of the Work Health and Safety Act 2011, it is an offence to give false and misleading information.

The section notes that Part 7.4 of the Criminal Code Act 1995 (Criminal Code) contains offences dealing with false and misleading information and documents. It is an offence under section 137.1 of the Criminal Code to provide false or misleading information or that which omits any matter or thing that renders the information false or misleading to a Commonwealth entity; and person exercising powers or performing functions under or in connection with a law of the Commonwealth; or the information is given in compliance or purported compliance with a law of the Commonwealth. The penalty for this offence is 12 months imprisonment.

It is also an offence under section 137.2 of the Criminal Code to produce a document to another person knowing that the document is false or misleading; and that the document is produced in compliance or purported compliance with a law of the Commonwealth. The penalty for this offence is also 12 months imprisonment.”

Perhaps a “document produced in compliance or purported compliance with a law of the Commonwealth” could include documents which claim adherence to standards called up by the National Construction Code.

Senator XENOPHON: If you could. But on the question of asbestos, in your submission you say that there are fines for allowing asbestos into the country, notwithstanding that it has been banned since 31 December 2003—over 13 years now. Can you take on notice whether it is your view that there ought to be jail terms for those who knowingly or recklessly import asbestos products?

Mr Wacey: Yes, I am happy to take that on notice.

Under the [*Illegal Logging Prohibition Act 2012*](#) it is a criminal offence to import illegally logged timber and timber products into Australia. The Penalty: 5 years imprisonment or 500 penalty units, or both. This “high level prohibition” requires people to avoid *intentionally, knowingly or recklessly* importing illegally logged timber.

In addition to the high level prohibition there are “due diligence” requirements.

- The Act also requires importers of regulated timber products to conduct due diligence in order to reduce the risk that illegally logged timber is imported.

- Importers of regulated timber products must provide declarations, at the time of import, to the Customs Minister about the due diligence that they have undertaken.

In this regards a person commits an offence if:

- (a) The person imports a thing; and
- (b) The thing is a regulated timber product; and
- (c) The person does not comply with the due diligence requirements for importing the product and
- (d) The thing is not prescribed as exempt by the regulations for the purposes of this paragraph.

Penalty: 300 penalty units.

In addition a person commits an offence if:

- (a) The person imports a thing; and
- (b) The thing is a regulated timber product; and
- (c) the person does not make a declaration to the Customs Minister, in the manner and form prescribed by the regulations, about the person's compliance with the due diligence requirements for importing the product; and
- (d) The thing is not prescribed as exempt by the regulations for the purposes of this paragraph.

Penalty: 100 penalty units.

Describing the due diligence requirements, the EWPAA stated:

"Australia has stronger legislation in place to protect trees in foreign countries being illegally logged than legislation to protect the health and safety of its citizens from wilful or reckless importation of dangerous and/or mislabelled building products."

The prohibition of the import on illegally logged timber is important as there should be strong deterrents because illegal logging undermines legitimate operators in the timber industry including Australian operators and also causes devastating social, economic and environmental harm where the illegal logging takes place.

In saying that, the laws around *intentionally, knowingly or recklessly* importing illegally logged timber and also the detailed due diligence requirements are in sharp contrast to the weaker penalties for importing asbestos products and less robust regulation in terms of "Due Diligence" for import consignments at high risk of encompassing Asbestos Containing Materials. The CFMEU has provided evidence in regards to this reality throughout the inquiry.

Additional Matters Raised

Regarding matters raised in letter to the Chair of the Committee from the Hon Craig Laundy MP, Assistant Minister for Industry, Innovation and Science dated 17 August 2017

14 Jul 2017 (Re-established Committee)	CFMEU Mr Travis Wacey	<ul style="list-style-type: none">• Mr Wacey alleged that there is widespread fraudulence of certificates occurring. He suggested the CFMEU are aware of product suppliers who were producing false paperwork and certificates as evidence the product conformed to Australian Standards. He stated the third-party certifier computer systems had been hacked and the certificate template stolen and used it to falsify certificates.• He suggested the CFMEU had made an enquiry with that testing authority [not named] but they stated it hadn't been hacked and had never heard of the distributor or manufacturer.• The CFMEU stated they would provide the Committee with evidence at a later date.• The CFMEU stated they were not aware of any prosecutions. However, they were aware of examples that had been raised with the ACCC but claimed that ACCC may not have prosecuted due to list of priorities.• Mr Wacey stated the CFMEU had raised concerns with regulatory authorities [unnamed].• The CFMEU noted that there is an issue of commercial retribution in the industry, and people are not making complaints because of that threat. The CFMEU raised this matter with the ACCC and were told that it did not meet its list of 'priorities'.
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To the degree that the letter to the Chair of the Committee from the Hon Craig Laundy MP, Assistant Minister for Industry, Innovation and Science dated 17 August 2017 is accurate regarding evidence that I provided (and supposedly provided) at the committee's public hearing in Melbourne, I have elaborated on the issues in the answers above and associated attachments referenced throughout.

I trust that this clears up what are obviously some genuine misunderstandings arising from my evidence. For the record I didn't and don't claim to have raised the issue of people not making complaints because of commercial retribution with the ACCC at any point.

All attachments have been accepted by the
Committee as Confidential Documents