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Committee Secretary  
Senate Economics Legislation Committee  
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Canberra ACT 2600  
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Dear Committee

**RE: INQUIRY INTO NON CONFORMING BUILDING PRODUCTS**

Thank you for the opportunity to respond to the inquiry into the effects of non-conforming building products on the Australian building and construction industry to the Senate Economics References Committee and align our response with the terms of reference.

The AWA would highlight that this issue is not endemic to imported building products but across operating sectors internationally and locally.

**The impact of non-conforming building products on:**

**i. Industry supply chains, including importers, manufacturers and fabricators,**

In 2003, with almost 300 member companies the AWA received three requests a year to deal with product or installation issues, in 2013 with more than 600 member companies, the AWA received three requests a week. Year to date 2015, we have received up to six request a week. The issue is getting worse, not better and more compliant companies are closing as they can't compete.

Compliance and its enforcement in Australia have not kept pace with the rapid changes to our economy, global supply chains, and how or where products are manufactured or sourced.

There are a growing number of fraudulent documents that are hard for surveyors to identify and many overseas laboratories are now testing to Australian Standards but their reports have identified major testing and reporting flaws in addition to misuse.

Compliant manufacturing companies are experiencing eroded margins and reduced revenues due to the increasing presence of non-conforming products.

**ii. Workplace safety and any associated risks,**

The ability for windows and doors to withstand site wind pressures and resist water penetration is crucial to their longevity and amenity. The use of appropriate glass is crucial to human safety and vital for energy efficiency,

Failures can include glass breakage, excessive water damage, gross deflection, hot box effect – often leading to irreparable damage to the building envelope, people getting cut (even fatally) or running costs prohibitively high,

**iii. Costs passed on to customers, including any insurance and compliance costs,**

Companies testing to standards and undergoing audits realise much higher costs to comply than those that don't, with non-compliant products not being picked up until an event occurs. A standard window or glazed door system can cost between \$2000 - \$10,000 to type test to the Standard for structural integrity and water penetration resistance to meet NCC. Energy efficiency performance simulating to meet state and territory provisions can cost between \$2,000 - \$12,000 for a complete product range. Annual audits through the AWA scheme are subsidised by membership fees and cost members an extra \$450 per annum per site.

When a decision is based on price only and fitness for purpose and whole of life costs are not adequately taken into account when procuring window and doors, the impact can be negative on safety of the fabricators, installers, certifiers, consumers and the public and the long term asset value.

Referring to the APCC Procurement Guide 2014 and the Australian Industry Group Report, *The quest for a level playing field, The non-conforming building products dilemma*, 2013; productivity in the construction industry is critical to Australia's growth and the economy. The building and construction industry accounts for 7.8% of Australia's gross domestic product (GDP), and employs 9.1% of the workforce. The industry contributed \$99.4 billion to the Australian economy in the 2011–12 financial year.

At the end of June 2012, the building and construction industry generated \$305 billion in total income, incurred \$275.4 billion in total expenditure, and employed 950,000 persons. Construction products are estimated to comprise 30% of project costs; therefore, approximately \$82.62 billion dollars was spent on their procurement in 2011–12.

Reports indicate the costs associated with rework can be a significant portion of the profit margin of a project. One major builder estimated the average cost of rework due to non-conforming products was between 0.25% and 2.5% of the overall contract value. The industry is characterised by profit margins between 3% and 12%, and company insurance does not cover product failure and rework costs.

**iv. The overall quality of Australian buildings,**

The amount of non-conforming imported windows, doors and other glass and aluminium based products including curtain walls, balustrades and balconies products on the Australian market has reached significant proportions. Non-conforming product is most prevalent in the high rise residential and office market as windows and doors for those buildings tend to be consistent dimensions through all the levels lending this market to high volume importation on a per project basis by builders and import suppliers.

The industry has found it difficult to find any available figures for the total annualised cost of rectification to buildings in each state and territory and would recommend an audit be done to ascertain such information to underpin the severity of this issue. Estimates by building authorities in a diverse range of meetings would indicate it is in the billions of dollars.

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

**i. Policing and enforcement of existing regulations,**

There is already an industry shared broad consensus of the urgent need to reform the current system to provide specifiers, purchasers, installers and certifiers with a clear mechanism to determine whether products are fit-for-purpose as defined under the National Construction Code.

We have a robust National Construction Code with the BCA – so we don't need more regulation. We have Standards and verification paths and some associations, like ours, have accredited inspection agencies with mandatory audit processes.

The AWA believes what is not working for the building and construction industry includes:

- The current system,
- Voluntary industry compliance,
- Clear, consistent understanding of minimum requirements by all players,
- The increasing reliance on paperwork and decreasing reliance on site inspections,
- A receptacle for documented issues that can and will be dealt with by a body with authority.

The AWA believes what we need to pursue include:

- Policing of conformance to current regulated requirements,
- Penalties for not complying (knowingly procuring, installing and certifying non-conforming products),
- Responsibilities defined at point of sale and certification,
- Equity, or what we commonly term a level playing field,
- At a minimum, regulatory or government endorsement of existing third party accredited industry schemes.

The AWA is not convinced that mandatory certification is the complete answer. Not only is this difficult to achieve but it does not address fraudulent certification that is available. A growing number of associations already under such schemes consider this a sizeable issue, including plumbing (WELS), electrical and engineered wood products.

## **ii. Independent verification and assessment systems,**

Government endorsement and common labelling of existing third party product certification schemes that meet the following minimum requirements would offer a level of protection to purchasers and provide an industry driven mechanism:

- a) accredited through the JAS-ANZ;
- b) includes product conformity requirements for type or batch (ongoing) testing to Australian or International Standards as appropriate, as well as a process for ongoing, periodic auditing; and
- c) undertakes market surveillance to identify and weed out fraudulent activity.

## **iii. Surveillance and screening of imported building products,**

The AWA understands that this can be a difficult and expensive exercise and an option that would be optimal but other introduced mechanisms discussed in this letter may achieve the desired effect along with a comprehensive education program.

## **iv. Restrictions and penalties imposed on non-conforming building products,**

An effective method to reduce both non-compliant product and product with fraudulent certification is to have large pecuniary penalties for the deliberate sale or procurement of non-compliant products, or first use of non-compliant products where the products are imported by the user.

The Competition and Consumer Act exists and may be able to be extended to provide the legislative framework to enforce action against non-compliance based on misrepresentation of product in the building and construction sector. If the ACCC is the appropriate body to enforce this, resources would need to be adequate for it to effectively act in response to numerous complaints.

Effective action against non-compliant product by the ACCC could be funded from penalties recovered from prosecutions.

An alternative option could be a program akin to the state run options in the United States where buildings are inspected for product conformity and those found deliberately procuring, installing and certifying offending products are charged with legal action. There is no provision for a phoenix company under these rules and penalties can incur jail time. This has reduced the problem significantly and improved the quality of building stock. Monies retrieved are used to educate and test and maintain best practice. Known examples are in New York and Ohio.

#### **Other related matters.**

The Australian window industry collectively contributes close to \$5 billion to GDP annually and employs approximately 18,000 people. In recent years Australia's glazing and window industries have invested heavily in new plant, equipment, projects and staff training in response to government and market demands for more energy efficient buildings. We now have the capacity to not only compete with imports but to locally produce world-class high technology energy efficient window products.

With over 600 member companies, the AWA is the peak association representing window and glazing manufacturers and their suppliers. It is a co-operative; all members have one vote irrespective of size and financial contribution. The Association Business Plan is monitored and reviewed by an elected Board representing all states and territories of Australia.

We provide a National technical voice through representation on 20 Australian Standard Committees, the Building Code Committee, Residential and Commercial Building Regulation Committees and Committees for Mandatory Energy Requirements and keep the window industry informed via magazines, website, meetings, conferences and industry exhibitions and promote the industry through media outlets, trade exhibitions and presentations at industry conferences.

The AWA manages NATA accreditation and compliance programs for manufacturers, handles dispute resolution with consumers and manages the Window Energy Rating Scheme (WERS) that provides the industry with energy ratings for their fenestration systems.

The AWA continues to work relentlessly, representing the industry in as many forums and on as many work groups and committees as they practically can, on this issue.

We look forward to the outcomes of the inquiry.

Yours sincerely

Tracey Gramlick  
Executive Director