Chapter 4

Steel standards, certification and non-conforming products

4.1 This chapter outlines the background to steel standards and third-party certification in Australia, and discusses issues raised by submitters in relation to inconsistent standards and certification requirements expected of steel fabricated in Australia compared to imported steel.

4.2 The chapter also examines the financial and other impacts that, according to some inquiry participants, result from a lack of clarity on standards. It further looks at examples of non-compliant steel products, and outlines evidence given to this inquiry regarding the lack of monitoring and a reporting scheme for Australian companies to report non-complying products.

Senate inquiry into non-conforming building products

4.3 There is some overlap in this chapter with the concurrent Senate inquiry into non-conforming building products, due to report on 30 April 2018. This overlap includes, for example, the economic impact of non-conforming products on Australian industry.

4.4 However, this chapter focuses broadly on steel—not just steel used in the building industry—and the issues that submitters raised in this inquiry regarding, in particular, standards and certification of steel used in Australia.

Defining standards, certification and product conformity

4.5 Some of the primary concerns expressed by a range of inquiry participants related to standards, certification and product conformity in the steel industry and market. These three areas, while interrelated, have distinct functions.

4.6 The World Trade Organisation defines standards as follows:

> Standards are approved by a recognized body which is responsible for establishing rules, guidelines or characteristics for products or related processes and production methods. Compliance is *not mandatory*. They may also deal with terminology, symbols, packaging, marking and labelling requirements.[1]

4.7 Certification is 'a form of conformity assessment' carried out by a third party.[2] Certification indicates that a product 'is compliant with a mandatory standard like the

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1 World Trade Organisation, *The WTO Agreements Series: Technical Barriers to Trade*, 16 December 2013, p. 14, emphasis in original.

2 World Trade Organisation, *The WTO Agreements Series: Technical Barriers to Trade*, 16 December 2013, p. 15; Mr Tony Dixon, Chief Executive, Australian Steel Institute, *Committee Hansard*, 6 April 2016, p. 7.

Australian Standards or a voluntary third party certification scheme…which confirms that a required standard has been met'.[3]

4.8 Non-conforming products are 'products and materials that are not of acceptable quality, do not meet Australian standards, are not fit for their intended purpose, or contain false or misleading claims'.[4] These false or misleading claims may include falsified certification that a product conforms to a required set of standards when it does not.

4.9 Also relevant to this inquiry are non-compliant building products—that is, products that, while not necessarily non-conforming, are used in situations that do not comply with the requirements of the National Construction Code.[5] Evidence to this inquiry did not focus on non-compliant products, but some submitters and witnesses mentioned these in passing in relation to non-conforming products.

International obligations

4.10 Australia is obligated to adhere to the World Trade Organisation's Agreement on Technical Barriers to Trade (TBT), including the requirement that '[m]embers shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade'. The agreement states that technical regulations should 'fulfil a legitimate objective, taking account of the risks non-fulfilment would create', and they should 'not be more trade-restrictive than necessary'.[6]

4.11 Examples given in the TBT of legitimate objectives that could lead to the implementation of technical regulations include 'protection of human health or safety'. However, the agreement stipulates that the assessment of such risks should draw on, for example, 'available scientific and technical information, related processing technology or intended end-uses of products'.[7]

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3 Senate Economics References Committee, *Non-conforming building products interim report: Aluminium composite cladding*, September 2017, p. 25.

4 Senior Officers' Group, *Non-conforming building products*, http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx (accessed 27 September 2017). See also Senate Economics References Committee, *Non-conforming building products interim report: Aluminium composite cladding*, September 2017, p. 3.

5 Senate Economics References Committee, *Non-conforming building products interim report: Aluminium composite cladding*, September 2017, pp. 3–4.

6 World Trade Organisation Agreement on Technical Barriers to Trade, 1 January 1995, Article 2.2.

7 World Trade Organisation Agreement on Technical Barriers to Trade, 1 January 1995, Article 2.2.

Standards in Australia

4.12 Australian standards are developed and adopted by Standards Australia, the peak standards organisation.[8] These are then available for purchase through SAI Global Limited.[9]

4.13 Standards Australia is a not-for-profit and non-government body, comprised of governments, industry peak bodies and other stakeholders who contribute on a voluntary basis to the creation of standards in a variety of fields, including fabricated steel.[10]

4.14 Mr Adam Stingemore, the General Manager of Stakeholder Engagement and Public Affairs at Standards Australia, emphasised the non-mandatory nature of Standards Australia's work:

> [T]here is a great misunderstanding in the Australian community that Standards Australia is the standards police, that we get out there and inspect, licence, watch, audit and certify…We are not the police. We are not an enforcement agency. We are not an agency of government. We bring people together to set a particular level.[11]

4.15 Mrs Kareen Riley-Takos, the General Manager of Standards Development at Standards Australia, outlined that Standards Australia has no role in how its standards are certified or enforced:

> In terms of how we develop standards, we have this principle of impartiality, which means that we are not to define in our standards how compliance with the standards shall be achieved. That means that it can be a self-declaration or it could be a third-party certification or an independent body undertaking that certification. We do not define that in the document.[12]

4.16 Most steel fabricated in Australia complies with appropriate standards, whether on a voluntary basis or as required in contract terms and conditions. The Welding Technology Institute of Australia (WTIA) submitted that:

> …over 90% of steel structures fabricated in Australia [comply] with Australian standards and…a significant proportion is subject to independent

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8 Standards Australia, *What We Do*, http://www.standards.org.au/OurOrganisation/AboutUs/Pages/default.aspx (accessed 26 September 2017).

9 Standards Australia, *Search and buy a standard*, http://www.standards.org.au/SearchandBuyAStandard/Pages/default.aspx (accessed 9 October 2017).

10 Mr Adam Stingemore, General Manager, Stakeholder Engagement and Public Affairs, Standards Australia, *Committee Hansard*, 6 April 2016, p. 52.

11 Mr Adam Stingemore, General Manager, Stakeholder Engagement and Public Affairs, Standards Australia, *Committee Hansard*, 6 April 2016, pp. 54-55.

12 Mrs Kareen Riley-Takos, General Manager, Standards Development, Standards Australia, *Committee Hansard*, 6 April 2016, p. 56.

> inspection during manufacture, at completion and prior to commissioning. Nevertheless, all fabricated steel made in Australia will require a compliance certificate.[13]

4.17 However, despite widespread certification at the level of steel fabrication to the set of standards produced by Standards Australia, Mr Stingemore said that different states have different 'standards and specifications, and some enforce them and some do not'.[14]

4.18 In its submission, the WTIA claimed that Standards Australia's work was unduly influenced by Australia's international trade obligations, leading to decreased quality:

> The quality of technical Standards published by SA [Standards Australia] has fallen dramatically over the past 5 years…SA has become a puppet of the Federal bureaucracy rather than an organisation representing its members who in turn represent the industry. Much needed revision to important Standards now has to be funded by industry associations, whose members freely give their time to SA for development. These same members then purchase the Standards they have written from SAI Global at an onerous price. This approach has created enormous animosity, which SA seems to hope will simply go away.[15]

4.19 In response, Standards Australia submitted that the contention of decreased quality in its published standards had 'been provided without substantiation'. Standards Australia emphasised that it must 'align with public policy with respect to trade, as determined by the Government of the day', including the requirement of the TBT that 'Standards do not result in technical barriers to trade'. It also stated that the 'federal bureaucracy' is treated as any other stakeholder, and the organisation's objectives do not extend to representing its members but, rather, require it to 'facilitate consensus in alignment with our rules for the benefit of the Australian community'.[16]

4.20 The Senate inquiry into non-conforming products received evidence indicating that the cost of purchasing Australian Standards may deter companies from ensuring their products comply with relevant standards. In its interim report for the inquiry, the Economics References Committee recommended 'that the Commonwealth government consider making all Australian Standards and codes freely available'.[17]

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13 Welding Technology Institute of Australia, *Submission 40*, pp. 3–4.

14 Mr Adam Stingemore, General Manager, Stakeholder Engagement and Public Affairs, Standards Australia, *Committee Hansard*, 6 April 2016, p. 56.

15 Welding Technology Institute of Australia, *Submission 32*, p. 8.

16 Standards Australia, *Response to Submission 32 made by Welding Technology Institute of Australia*, pp. 1–2.

17 Senate Economics References Committee, *Non-conforming building products interim report: Aluminium composite cladding*, September 2017, pp. 49–51.

Imported steel and Australian standards

4.21 Evidence provided to this inquiry suggested that while most Australian steel has been certified as conforming to Australian standards, legal loopholes in contracts and gaps in regulatory regimes in some instances may allow imported fabricated steel to avoid complying with the same standard as steel made in Australia.

4.22 The Welding Technology Institute of Australia claimed that '[w]hen fabricated structural steel is inspected[,] as much as 80%, predominantly imported structures, is found to be non-compliant with Australian standards'.[18]

4.23 Some types of imported steel are covered by well-regarded third-party compliance schemes, such as the Australasian Certification Authority for Reinforcing and Structural Steels, and the National Structural Steelwork Compliance scheme for fabricated steel:

> Steel reinforcing and structural steel product manufactured in or imported into Australia is covered by a compliance scheme managed by the Australasian Certification Authority for Reinforcing and Structural Steels (ACRS). This scheme seeks to certify compliant structural and reinforcing steel by auditing at the steel mill level. We should clarify that this scheme covers 'mill gate' products and not manufactured or fabricated products.[19]

4.24 Some imported steel meets the standards of other countries which, it should be noted, may be the same or more comprehensive than Australian standards. Mr Mark Vassella, the Chief Executive of BlueScope Australia and New Zealand, gave evidence stating that '[s]teel can come into the country meeting a different standard…It can meet a JSA Japanese standard or it can meet a US standard…it complies to an external standard'.[20]

'Australian standards or equivalent'

4.25 However, the committee received evidence indicating that inconsistent application of standards requirements can be problematic. The use of the phrase 'Australian standards or equivalent', according to some witnesses and submitters, allows room for certification to standards that may pose a safety risk.

4.26 Mr Geoff Crittenden, the Chief Executive Officer of the WTIA, suggested that even where contracts specify that a product must conform to Australian standards, this requirement is often expressed in vague terms like 'to be built to an Australian standard or equivalent. What does that mean?'[21]

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18 Welding Technology Institute of Australia, *Submission 40*, p. 1.

19 Australian Steel Institute, *Submission 19*, p. 34.

20 Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, *Committee Hansard*, 1 April 2016, p. 4.

21 Mr Geoff Crittenden, Chief Executive Officer, Welding Technology Institute of Australia, *Committee Hansard*, 6 April 2016, p. 39.

4.27 Mr Tony Dixon, Chief Executive of the Australian Steel Institute, also highlighted that the vagueness of the phrase 'or equivalent' often found in legal documents 'leaves enough room to drive a truck through'.[22]

4.28 The Australian Industry Group observed that the resulting 'uneven approach to standards…often allows foreign suppliers to avoid the same quality and performance assessment that is applied to local producers'.[23]

4.29 Mr Ian Nightingale, the South Australian Industry Participation Advocate, also was of the opinion that inconsistent standards requirements is a major issue. Mr Nightingale argued:

> …there is a gap in Australia's certification of Australian standards. The advice I have received is that in the statement around Australia standards or equivalent there seems to be a fairly big hole around the word equivalent.[24]

4.30 He further outlined that he had advised the South Australian Government to avoid using the term 'or equivalent' when requiring Australian standards in its contracts:

> It is really a cracker trying to get through that equivalent argument rather than prescriptively meeting Australian standards…Because we use 'Australian standards or equivalent' because there are so many other mechanisms to meet Australian standards it leaves the door open. That is why the advice I gave the government was to look at another mechanism for certification.[25]

4.31 Mr Stingemore from Standards Australia argued that 'the equivalence issue, the use of trusted international standards in areas, is largely a matter of Commonwealth policy, not a matter of standards development'.[26]

4.32 In response to inconsistences in standards requirements, and reports of first-party certification, the Chief Executive of the Australian Steel Institute recommended that 'steel companies supplying need to be third-party certified to ensure that they supply to the standard, and the fabrication company needs to be third-party certified' to ensure that products meet Australian standards.[27]

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22 Mr Tony Dixon, Chief Executive, Australian Steel Institute, *Committee Hansard*, 6 April 2017, p. 7.

23 Australian Industry Group, *Submission 10*, p. 34.

24 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 19.

25 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, pp. 25–26.

26 Mr Adam Stingemore, General Manager, Stakeholder Engagement and Public Affairs, Standards Australia, *Committee Hansard*, 6 April 2016, p. 53.

27 Mr Tony Dixon, Chief Executive, Australian Steel Institute, *Committee Hansard*, 6 April 2017, p. 7.

4.33 When outlining the financial and safety impact that differing sets of standards had on the Australian steel industry, Mr Crittenden from the WTIA stated: 'I am…here to ask…that we all comply with the same set of rules'. He suggested that 'every piece of fabricated steel erected in Australia needs to comply with Australian standards' so that 'we are all working on a level playing field' in terms of competitiveness. The way to do this, he suggested, would be 'regulation to make every piece of fabricated steel imported into or manufactured in this country comply with the appropriate standards for pressure vessels and structural steel'.[28]

4.34 It should be noted that the *Code for the Tendering and Performance of Building Work 2016* requires Commonwealth funding entities to only enter into building contracts with preferred tenderers where code-covered businesses can prove that their products comply with Australian standards.[29] The 2017 Commonwealth Procurement Rules also require, if contracts are above a certain threshold, that if an Australian standard exists for particular goods or services being procured, 'tender responses **must** demonstrate the capability to meet the Australian standard, and contracts **must** contain evidence of the applicable standards'.[30] The issue of standards in government procurement is outlined further in chapter 5.

Allegations of knowingly falsifying standards certification

4.35 Besides vague interpretations of what 'equivalence' with Australian standards means, evidence that the inquiry received indicated that fraudulent standards certification was also a key area of concern for the Australian steel industry.

4.36 Mr Stingemore from Standards Australia noted that 'when you are dealing with issues of fraud, technical standards come nowhere near being able to deal with those issues'.[31]

4.37 The South Australian Industry Participation Advocate said that he had 'seen evidence from people in the steel industry where, quite clearly, the documentation is fraudulent at worst, and vague and misleading at best. That concerns me'.[32]

4.38 The Executive Director of the National Association of Steel-Framed Housing gave evidence that he had seen first-hand a forged compliance certificate:

> One of the issues we have had is with getting test certificates from overseas. I got some overseas steel test certificates from one member to see whether it was compliant, and it was missing the basic information like who made the

28 Mr Geoff Crittenden, Chief Executive Officer, Welding Technology Institute of Australia, *Committee Hansard*, 6 April 2016, p. 35.

29 Department of Industry, Innovation and Industry, *Submission 41*, p. 4.

30 Department of Finance, *Commonwealth Procurement Rules*, 1 March 2017, clause 10.10 (emphasis in original).

31 Mr Adam Stingemore, General Manager, Stakeholder Engagement and Public Affairs, Standards Australia, *Committee Hansard*, 6 April 2016, p. 52.

32 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 20.

steel. It looked like it had just been typed in…basically it was a counterfeit certificate.[33]

4.39 The Australian Steel Institute in its submission provided an example of a welding quality statement for an imported product, which 'promised' the welding was performed in accordance with the requirements of a particular Australian standard even though it had failed relevant tests (Figure 4.1).[34]

Figure 4.1: Weld quality statement accompanying goods manufactured overseas[35]

Source: Australian Steel Institute

Non-complying steel

4.40 The Australian Constructors Association drew attention to the importance of product conformance in its submission, making the point that '[s]teel products that are defective, or do not otherwise meet the relevant manufacturing standard, may potentially place many lives at risk'.[36]

33 Mr Kenneth Watson, Executive Director, National Association of Steel-Framed Housing Inc., *Committee Hansard*, 6 April 2016, p. 37.

34 Australian Steel Institute, *Submission 19*, Attachment 3.

35 Australian Steel Institute, *Submission 19*, Attachment 3.

36 Australian Constructors Association, *Submission 13*, p. 2.

4.41 The WTIA summarised the regulatory gap between the issuing of standards and checks of whether imported products comply with these standards:

> Australian Standards are as good, if not better, than any in the world but very few are supported by regulation and are therefore only applied on a voluntary basis. Without any compulsion to manufacture or procure products to a recognised Standard companies take the lowest cost option which is often detrimental to public safety.[37]

4.42 The WTIA provided the committee with figures suggesting that the extent of non-compliance in imported steel products is significant, stating: '[f]eedback from our members suggests up to 80 [per cent] of imported fabricated steel does not comply with Australian Standards'.[38]

4.43 Other parliamentary inquiries have also received evidence from witnesses and submitters expressing frustration that imported steel is not required to conform to the same standards as steel fabricated in Australia.

4.44 The Joint Select Committee on Government Procurement received evidence outlining the growing market penetration of non-conforming products, referring to an Australian Industry Group report based on a national survey.[39] This report found that 95 per cent of respondents in the steel product sector indicated that their market featured non-conforming products, 'with 64 [per cent] basing their assessment on building site product failure or visual inspections'.[40]

4.45 The Senate Foreign Affairs, Defence and Trade References Committee's inquiry into the impact of defence training activities and facilities on rural and regional communities heard evidence from the managing director of a local engineering company in Katherine, Mr Geoff Crowhurst, that:

> There are companies in Darwin that when we see them on a tender, we close that tender straightaway and do not go near it…We know that they will buy the steel out of China or overseas somewhere…There is a prime example that [an] INPEX server stack fell off the crane because the lift lines were not welded on properly and the whole stack hit the ground. You cannot get much more proof than that. But the outcome of that…was that they just got it made again by the same company. They had to make it again to the right standards. Why was it not given to an Australian company that would have done it to the right standards in the first place? We have all these rules and regulations that we have to comply to in the construction

37 Welding Technology Institute of Australia, *Submission 40*, p. 2.

38 Welding Technology Institute of Australia, *Submission 32*, p. 7.

39 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, pp. 43–44.

40 The Australian Industry Group, *The quest for a level playing field: The non-conforming building products dilemma*, November 2013, p. 11.

> space yet you can put stuff on a ship, bring it in and it has no checks and balances on it. Really, that there are two totally different tiers is crazy.[41]

4.46 However, Mr Crowhurst also noted that not all imported steel is of a poorer quality compared with Australian steel:

> [T]here's a perception out there that all steel from overseas doesn't marry up to the Australian [steel]. That's not true. A lot of the steel is coming out of a lot higher grade steel manufacturing facilities—a lot more state of the art than we are here in Australia. That's one of our problems. If you buy from the right place, the quality's there. The problem is that you can buy very low grade overseas as well. That product makes it in already in a finished form, and the checks and balances aren't done. That's the bit that's the problem coming in, not the raw product. The raw product, in most cases, is actually a good product.[42]

4.47 Best Bar Reinforcements in their submission also made a similar argument, stating that some imported steel conforms to Australian standards, and further contended that international standards are not necessarily inferior:

> Best Bar is aware of comments in the media regarding imports of low quality steel, however it is trite to think that all imported steel is low quality. As noted at the opening of this submission, the rebar imported by Best Bar from Singapore conforms to Australian Standards. However there are other international standards that require equivalent properties, characteristics and quality.[43]

Examples of non-conforming steel

4.48 The inquiry received a number of concerning allegations about non-conforming steel products. It should be noted that the Senate Economics References Committee inquiry into non-conforming building products received many more submissions on this issue, including from several organisations in the Australian steel industry.

4.49 The Australian Steel Institute argued that the safety risks caused by non-conforming steel products were considerable, and needed to be dealt with:

> [T]here have been numerous instances where non-compliant construction products have caused the collapse of buildings, motorway signs, glass panels and more. The risk of loss of life and severe injury should not be underestimated. The quality and compliance of construction projects is a major risk management issue which needs to be addressed. It is vital that we create an environment in Australia in which all stakeholders in the building and construction process, including the community, are assured

41 Mr Geoff Crowhurst, Managing Director, Crowhurst Goodline, *Committee Hansard*, Senate Foreign Affairs, Defence and Trade References Committee, 23 August 2017, p. 20.

42 Mr Geoff Crowhurst, Managing Director, Crowhurst Goodline, *Committee Hansard*, Senate Foreign Affairs, Defence and Trade References Committee, 23 August 2017, p. 20.

43 Best Bar Reinforcements, *Submission 22*, p. 4.

> that all construction products meet a minimum acceptable level of performance and are fit for the purpose to which they are intended.[44]

4.50 The WTIA reported that in the preceding three years, 'the number of reports of unsafe steel structures received by the WTIA from its Certified Welding Inspectors has increased exponentially'.[45] The main reasons for safety concerns were welding that was not fit for purpose or did not comply with recognised international standards. Examples that the WTIA gave of unsafe structures included:

- pedestrian, road and rail bridges;
- light poles and gantries used in road infrastructure;
- welded steel beams used in the construction industry;
- oil and gas industry safety structures; and
- caravans, domestic and commercial trailers and boat trailers.[46]

4.51 Mr Ian Waters, who appeared as a witness on behalf of 63 businesses, also told the committee about specific non-conforming products:

> We have had personal experience where businesses have imported overseas steel that does not comply…We had a large steel pipe with a partial hole in the wall thickness, about that big, filled up with body filler in China and then painted black, like the rest of the steel pipe. It was presented as a brand-new piece of pipe that was going to go into a pressurised water situation.[47]

4.52 The Australian Steel Institute outlined multiple examples of non-conforming steel that had been fraudulently certified as meeting Australian standards. These examples covered quality issues and what appeared to be deliberate fraud:

> Testing by the steel industry has also identified metallic coated and pre-painted steels that do not meet Australian Standards and regulations. Examples include substandard metallic coating and paint thicknesses and non-conforming levels of lead in paint.
>
> The non-compliances are not limited to poor quality and bad workmanship but extend to deliberate fraudulent behaviour 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.[48]

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44 Australian Steel Institute, *Submission 19*, p. 15.

45 Welding Technology Institute of Australia, *Submission 40*, p. 2.

46 Welding Technology Institute of Australia, *Submission 40*, p. 2.

47 Mr Ian Waters, on behalf of 63 businesses, *Committee Hansard*, 6 April 2016, p. 44.

48 Australian Steel Institute, *Submission 19*, p. 33.

Figure 4.2: Steel cracking on imported fabricated product[49]

Source: Australian Steel Institute

Figure 4.3: Diagonal chords on a bridge truss filled with water[50]

Source: Australian Steel Institute

49 Australian Steel Institute, *Submission 19*, Attachment 3.

50 Australian Steel Institute, *Submission 19*, Attachment 3.

4.54 The Australian Steel Institute provided the committee with photos of steel cracking on imported fabricated product (Figure 4.2), and diagonal chords on a bridge truss filled with water that were 'thought possibly to have been deliberate to build up the weight of the structure to have a mass within overall specification' (Figure 4.3).[51]

Impact on Australian businesses

4.55 The committee received evidence indicating that the impact on Australian businesses of imported non-compliant products is considerable. These impacts range from decreased competitiveness when competing for contracts, to lost revenue, to a corresponding decline in the quality of Australian steel, to increased whole-of-life costs involved in rectifying products found to be non-conforming.

4.56 Some submitters suggested that the costs involved in ensuring conformity to rigorous Australian standards may preclude Australian steel manufacturers from winning contracts because of an emphasis on upfront costs. For example, the Illawarra Business Chamber contended that:

> High volumes of non-compliant imports…are placing pressure on these domestic manufacturers. Australian steel companies are often locked out of lucrative contracts due to an undue emphasis on upfront costs, rather than whole of life costs. Competitors are able to offer a lower price point, in many cases due to savings achieved through not meeting the rigorous requirements of Australian Standards.[52]

4.57 Mr Vassella from BlueScope Steel also emphasised the cost burdens involved in conforming to Australian standards that international competitors are not always required to meet:

> Our contention is that all of the products we make meet Australian standards and the cost base that we incur to ensure that they meet those standards is not necessarily applied to our competitors.[53]

4.58 The Australian Industry Group provided figures from a report it published in 2013, in which 40 per cent of businesses 'reported lost revenue/margin and reduced employment numbers' because of non-conforming products.[54]

4.59 Further outlining the impact of non-conforming products on Australian businesses, the Australian Industry Group also reported, based on the same study, that businesses 'say they are downgrading their product quality and service offer in order to remain viable'.[55] It suggested that Australian steel manufacturers may have to cut corners to be cost competitive against competitors who do not have to meet Australian standards or obtain third-party certification:

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51 Australian Steel Institute, *Submission 19*, Attachment 3.

52 Illawarra Business Chamber, *Submission 5*, p. 3.

53 Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, *Committee Hansard*, 1 April 2016, p. 5.

54 Australian Industry Group, *Submission 10*, p. 38.

55 Australian Industry Group, *Submission 10*, p. 38.

> Relevant to this Committee's term of reference, there also is a price depressing effect from these imports that affects a sector of local fabricators that are forced to chase price at the expense of maintaining their quality systems and procedures.[56]

4.60 The Illawarra Business Chamber argued that ultimately non-conforming products place significant burdens on the Australian steel industry and the broader Australian economy:

> …poorly manufactured, nonconforming steel products place significant cost burdens on the purchaser. Failed products, components and infrastructure:
>
> - cause project delays due to the need to rework steel components
> - substantially increase the whole of life cost, due to the burden of increased maintenance and repairs.
>
> Where the purchaser of low quality steel products is the Australian Government, the cost is to the economy – and the public – as a whole.[57]

4.61 In addition, the Australian Industry Group highlighted the 'safety impact' of non-conforming products on workers, stating that many respondents reported 'that non-conforming steel products and structures can increase the risk of personal injury to employees and has the potential to affect long term building and structure safety'.[58]

Monitoring and reporting non-conforming products

4.62 Many submitters and witnesses to the inquiry stated that there is currently a regulatory gap between the creation of standards, who monitors conformity to these standards, and who businesses can contact to report non-conforming products.

4.63 The Australian Industry Group highlighted that 'the key failure points' in the regulatory system that businesses in the building conformance framework identified were 'gaps and/or weaknesses' that resulted from:

- inadequate surveillance, audit checks, testing, enforcement and an over-reliance on first party certification;
- inadequate clarity on the role of building certifiers; and
- a lack of clarity for stakeholders in terms of how and where to report NCP [non-conforming products].[59]

4.64 The WTIA outlined how goods that do not meet Australian standards are used in most cases without inspection:

> On major projects this is often discovered on arrival when the goods are inspected for compliance to the relevant code by a qualified Welding Inspector; in which case they are normally sent to a local fabrication

56 Australian Steel Institute, *Submission 19*, p. 33.

57 Illawarra Business Chamber, *Submission 5*, p. 3.

58 Australian Industry Group, *Submission 10*, p. 38.

59 Australian Industry Group, *Submission 10*, p. 39.

> company for remedial work. Unfortunately this is not a satisfactory solution as often the steel is not certified and contractors accept compromise, as often the only alternative is to start again. In the majority of cases low-medium value pressure vessels and structural steel modules are imported, erected, installed or sold without any inspection.[60]

4.65 However, the committee heard that even where non-conforming products were identified, there was confusion as to whom this should be reported to. The Australian Steel Institute emphasised that 'for structural steelwork there is currently no reliable system for surveillance of imported building products apart from product failure'.[61] It noted that even though builders and project managers may take responsibility for site inspection, they 'often do not have the skills or knowledge to understand compliance at a material or fabrication level'.[62]

4.66 The WTIA explained that often no one is willing to take responsibility for non-compliant products, leading to financial losses and safety issues:

> When product is inspected and found to be noncompliant many refuse to accept responsibility for rectifying the structure opting instead to take the risk or try and pass on liability to another part of the supply chain. The resulting merry go round is not only a significant cost to the economy it often remains unresolved leaving an unsafe structure in place.[63]

4.67 The Australian Steel Institute contended that the use of non-complying products in infrastructure projects is a source of frustration for its members because often they are unable to do anything about the issue besides rectify the product:

> [T]hey are unable to safely report non-compliant product due to confidentiality clauses in construction contracts and sensitivity of relationships in the building products supply chain which may cause them to lose future contracts.
>
> This makes continuous improvement or a 'Safety Alert' process impossible. The key to the success of reporting non-compliant product is the ability for anonymity of the person reporting, coupled with qualified review of the matter reported.[64]

4.68 As mentioned earlier, Standards Australia is not responsible for third-party certification of its standards or monitoring product non-conformance. However, the committee heard that people often try to report non-conforming products to Standards Australia in the absence of a reporting scheme. Mr Stingemore told the committee that:

> Someone will come to us and say, 'I've bought a dodgy widget, and there's a certificate here that says that it meets the standard'…We will say to them,

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60 Welding Technology Institute of Australia, *Submission 32*, p. 7.

61 Australian Steel Institute, *Submission 19*, p. 33.

62 Australian Steel Institute, *Submission 19*, p. 35.

63 Welding Technology Institute of Australia, *Submission 40*, p. 2.

64 Australian Steel Institute, *Submission 19*, p. 35.

> 'Go and talk to the fair-trading department in your state,' and then they will come back and say, 'They say that's not their job.' And then we say, 'Well, you might want to go and talk to the ACCC.' And then they go to talk to the ACCC, who say, 'Go and talk to the fair-trading department in your state,' and they come back to us. We actually have a call centre where we deal with these kinds of circumstances.[65]

4.69 The South Australian Industry Participation Advocate was of the opinion that 'our Commonwealth agencies do not have the resources, the time or the energy to investigate whether or not steel coming into this country is fully certified'.[66]

4.70 The Chief Executive of the Australian Steel Institute contended that it is unrealistic to expect Customs to examine whether imported products comply with Australian standards before they enter Australia:

> My view is that it is almost impossible for us to have Customs stop and check product at the borders. That is why we advocate third-party-certification programs to make sure that the suppliers have been certified such that their process delivers to the Australian standard, and therefore we advocate third-party-certification schemes, both for steel and for fabrication.[67]

4.71 On the question of how standards could be enforced, Mr Stingemore proposed:

> …getting the governments, plural, to move, because it is such a multifaceted beast that people are trying to deal with. The industry frustration that we see in our organisation around this issue is not getting any better. It is not directed at anybody or any agency or any government, but the challenges that are faced particularly within the construction sector at the moment with all of the trading conditions and the economic issues and this on top of it—it is a first-priority issue to be dealt with, and getting the right people in a room would be a good start.[68]

4.72 The South Australian Industry Participation Advocate gave evidence that the South Australian government now requires that:

> …all steel, the source of the steel, the mill…be certified by the Australasian Certification Authority for Reinforcing and Structural Steels. They do that globally. There are many steel mills globally that are accredited by this body, but equally so are BlueScope and OneSteel. What you can then be assured of is that the steel itself is certified by that particular body…What

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65 Mr Adam Stingemore, General Manager, Stakeholder Engagement and Public Affairs, Standards Australia, *Committee Hansard*, 6 April 2016, p. 55.

66 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, Committee Hansard, 5 April 2016, p. 20.

67 Mr Tony Dixon, Chief Executive, Australian Steel Institute, *Committee Hansard*, 6 April 2016, p. 7.

68 Mr Adam Stingemore, General Manager, Stakeholder Engagement and Public Affairs, Standards Australia, *Committee Hansard*, 6 April 2016, p. 56.

> the state government has now done is that the fabrication of steel will also be certified by the National Structural Steelwork Compliance Scheme. Again, it is available to other businesses overseas so we do not interfere with any free trade agreement issues, but it will assure the government that the fabricators that are delivering on government projects are delivering on a fair and competitive basis.[69]

4.73 The Australian Steel Institute recommended that as a first step compliance with Australian standards be made compulsory to resolve the current problems caused by inconsistent standards requirements:

> The implementation of a system that requires the supplier and all stakeholders in the construction chain to ensure that the products that they are selling are certified to comply with relevant standards and fit-for-purpose responsibilities within their scope will be good for Australia.[70]

4.74 They further outlined that they believe that 'for specific identified products or processes (such as welding, galvanizing and painting)', standards certification is not sufficient, and:

> …there should also be conformance testing—that is, a regime that tests whether Australian standards are in fact being met by product supplied and being used for a particular project.[71]

4.75 The WTIA also proposed that regulation be introduced 'to ensure that all fabricated steel manufactured locally or imported in Australia is fit for purpose by subjecting it to conformity assessment'. They expressed their willingness 'to ensure compliance to the proposed regulation by introducing a risk-based industry managed scheme through a suitably accredited third party compliance organisation'. They further suggested that compliance certificates be 'lodged on a national database'.[72]

Senior Officers' Group on non-conforming building products

4.76 On 31 July 2015, the Building Ministers' Forum (a ministerial-level body consisting of Commonwealth, State and Territory Ministers responsible for building and construction industries) established a Senior Officers' Group (SOG) 'to investigate and develop a national strategic response to the issues of non-conforming building products' (NCBPs).[73]

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69 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 19.

70 Australian Steel Institute, *Submission 19*, p. 33.

71 Australian Steel Institute, *Submission 19*, p. 35.

72 Welding Technology Institute of Australia, *Submission 40*, p. 1.

73 Department of Industry, Innovation and Science, *Building and construction*, https://industry.gov.au/industry/IndustrySectors/buildingandconstruction/Pages/default.aspx (accessed 29 September 2017). The SOG consists of senior officers from the Department of Industry, Innovation and Science and each State and Territory building regulator.

4.77 The SOG released its *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products* in September 2017, including a number of recommendations relevant to this inquiry. These recommendations included the following:

- Improve 'the regulatory framework to enhance the powers of building regulators to respond to incidents of NCBPs e.g. providing the ability to conduct audits of existing building work or take samples from a building for testing'[74]
- Establish 'a national forum of building regulators to facilitate greater collaboration and information-sharing between jurisdictions'[75]
- Improve 'collaboration between building and consumer law regulators and consistency in the application of the "false and misleading claims" aspect of the Australian Consumer Law'[76]
- Develop 'a "one-stop-shop" national website to provide a single point of information for consumers and building product supply chain participants, including examining arrangements for hosting and maintaining a website'[77]
- Develop 'mechanisms that ensure that, where all states and territories prohibit the use of a NCBP, evidence is provided to the Commonwealth enabling proportionate action to be taken based on the risk posed by the product'[78]
- Implement 'an information sharing arrangement where import data collected by the Department of Immigration and Border Protection can be provided to state and territory regulators to facilitate compliance and enforcement activities for NCBPs'[79]
- Initiate 'a review, with the ABCB [Australian Building Codes Board] and Standards Australia, of Australian Standards related to high risk building products referenced under the NCC [National Construction Code], including

74 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 2, p. 3.

75 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 3B, p. 5.

76 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 2, p. 3.

77 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 3D, p. 6.

78 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 4A, p. 7.

79 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 4B, p. 7.

assessing the costs and benefits of mandating third party certification and establishing a national register for these products.[80]

Committee view

4.78 The committee recognises that Australia is obligated, under its commitment to the World Trade Organisation's TBT agreement, not to prepare, adopt or apply technical regulations with the intention or effect of creating obstacles to international trade, beyond those necessary to avoid particular risks.

4.79 However, the committee considers that the current system, in which Australian fabricated steel generally is required to conform to Australian standards while imported steel often is not, has created an unequal playing field that has negatively impacted the Australian steel industry, in terms of both product safety and cost competitiveness.

4.80 This inquiry and other Senate inquiries have received evidence indicating that some imported products pose a considerable safety risk because they do not comply with Australian standards, or their certification certificates stating compliance are fraudulent.

4.81 Without a clear and enforceable requirement to adhere to Australian standards or to provide evidence of third-party certification, companies may cut corners and choose the cheapest methods to produce and supply steel.

4.82 Evidence provided to this inquiry demonstrates that a number of third party certification schemes to Australian standards operate globally, meaning that foreign companies providing steel to Australian markets are able to obtain this certification. The TBT allows space for technical regulations aimed to protect human health or safety, and third party certification schemes exist that would not preclude foreign companies from obtaining certification meeting Australian standards.

4.83 The committee notes the recent recommendation of the SOG group to initiate a review of Australian Standards related to high risk building products. This review would assess the costs and benefits of mandating third party certification, and look to establish a national register for these products.

4.84 The committee is of the view that the government should also investigate the possibility of making third-party certification of steel, where relevant standards are available, compulsory for structural and fabricated steel used in Australia.

Recommendation 2

4.85 The committee recommends that the Australian Government investigate the possibility of making third-party certification of steel compulsory for structural and fabricated steel used in Australia where relevant standards are available.

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80 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 5, p. 8.

4.86 The committee is also concerned about the impact on the steel industry of inconsistencies and differing standards regimes across jurisdictions. As such, the committee considers that the Commonwealth Government should continue to encourage state and territory governments to apply consistent standards across jurisdictions and different regulatory bodies.

Recommendation 3

4.87 The committee recommends that the Australian Government work with the states and territories to improve consistency in standards between different Australian jurisdictions and regulatory bodies, with a view to harmonising current standards requirements.

4.88 The committee notes that recommendations arising from the Senate inquiry into non-conforming building products are yet to be finalised. Dependent upon these recommendations, the committee further supports the recommendation from the SOG that mechanisms be developed to ensure that evidence is provided to the Commonwealth about non-conforming building products, including steel, and proportionate action is taken based on the risk posed by the product. Currently, reporting mechanisms are available through the Australian Building Codes Board, but submitters must provide various forms of identifying information. The committee is of the view that there should be an option for confidential reporting so that businesses are not accused of breaching contracts.

Recommendation 4

4.89 Subject to forthcoming recommendations from the Senate inquiry into non-conforming building products, the committee recommends that the Australian Government develop a confidential reporting mechanism through which industry and other stakeholders can report non-conforming steel products so that the Commonwealth Federal Safety Commissioner can take proportionate action based on the safety risk posed by the product.

4.90 Given the considerable gaps in the current regulatory framework, including lack of clarity surrounding what can be done once non-conforming steel is discovered and reported, the committee is of the opinion that a clearer regulatory framework should be developed that could include stricter penalties for non-conforming steel products. The Australian Government should consider compiling a database of these products, sharing this information with state and territory regulators, and implementing temporary bans on companies exporting non-conforming or fraudulently certified steel products to Australia.

4.91 The committee commends the recommendation of the SOG that a 'one-stop-shop' national website be established as a single point of information for consumers and building product supply chain participants, and notes that the Australian Building Codes Board now performs this function. However, this website does not provide steel-specific information.

Recommendation 5

4.92 Subject to forthcoming recommendations from the Senate inquiry into non-conforming building products, the committee recommends that the

Australian Government develop a clearer regulatory framework to deal with non-conforming steel products, with consideration given to stricter penalties for non-conforming products or products found to have fraudulent certifications, and the development of a public database of these products and their origin.

4.93 This inquiry heard that very little inspection of suspected non-conforming steel products takes place, partly because inspectors lack qualifications and partly because of the cost involved. The committee considers that the establishment of a confidential reporting system and a public database may not be enough to identify non-conforming steel posing a considerable safety risk.

4.94 Therefore, the committee proposes that the government convene a national steel forum consisting of representatives from industry, government and other stakeholders to investigate the possibility of establishing and funding an industry-managed steel compliance scheme that involves random independent conformity inspections.

Recommendation 6

4.95 The committee recommends that the Australian Government convene a national steel forum comprised of representatives from industry, government and other stakeholders to investigate the possibility of establishing and funding an industry-managed steel compliance scheme that involves random independent conformity inspections.