

The Senate

Economics

References Committee

Non-conforming building products

Interim report: aluminium composite cladding

September 2017

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ISBN 978-1-76010-640-9

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Printed by the Senate Printing Unit, Parliament House, Canberra.

Senate Economics References Committee

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Abbreviations

ABCB	Australian Building Codes Board
ACM	Aluminium Composite Material
ACP	Aluminium Composite Panel
AFAC	Australasian Fire and Emergency Service Authorities Council
AIBS	Australian Institute of Building Surveyors
BCA	Building Code of Australia
BMF	Building Ministers' Forum
BPIC	Building Products Innovation Council
BRF	Building Regulators' Forum
CFMEU	Construction, Forestry, Mining and Energy Union
COAG	Council of Australian Government
DIN	Director Identification Number
DTS	Deemed-to-Satisfy
FSC	Federal Safety Commissioner
IAG	Insurance Australia Group
ICA	Insurance Council of Australia
MBA	Master Builders Australia
MFB	Metropolitan Fire and Emergency Services Board
NCBP	Non-Conforming Building Products
NCC	National Construction Code
OCN	Owners Corporation Network
OFSC	Office of the Federal Safety Commissioner
PCA	Plumbing Code of Australia
PE	Polyethylene
SOG	Senior Officers Group
UK	United Kingdom
VBA	Victorian Building Authority
WHS	Workplace Health and Safety

Committee views and recommendations

Concerns about the National Construction Code

Committee view

3.38 The committee notes the concern from witnesses and submitters that the non-compliant use of cladding is widespread and that there have been extensive delays in developing and implementing policies to address non-compliance and non-conformity in the building industry.

3.39 As highlighted in Chapter 2, the committee notes that the Building Minister's Forum (BMF) has now released the Assessment of the Effectiveness of Compliance and Enforcement Systems for the Building and Construction Industry across Australia review's terms of reference and its timeline. The committee looks forward to following this review and learning about its outcomes.

3.40 The committee also welcomes the recent announcement that the National Construction Code (NCC) would be amended to reflect the Australian Building Codes Board's (ABCB) new comprehensive package of measures for fire safety in high rise buildings. The committee is hopeful that this amendment to the NCC, if delivered in a timely manner, will provide greater clarity and reduce the ambiguity around interpretation which has been identified by stakeholders.

3.41 Of particular concern to the committee, and stakeholders, is the long time lag between government responses to the Lacrosse fire in 2014 and any meaningful resolution between governments, the BMF, and the Senior Officers' Group (SOG) on possible steps forward. Furthermore, the committee notes that more disastrous fires have occurred internationally, but Australia has yet to implement any major reforms or communicate any course of action publically. Considering the prevalence of polyethylene (PE) core Aluminium Composite Panels (ACPs) across Australia, the committee considers it paramount that all governments focus attention on this issue before the next disaster occurs.

Mandatory third party certification, national register and product auditing

Committee view

3.50 Submitters and witnesses have raised concerns about the progress of the SOG Report's recommendations, which were due to be finalised in May 2017. The committee is concerned that progress appears to have stalled and there is no clearly identified timetable for implementation. The committee is of the view that the implementation plan should be released as soon as possible to assure stakeholders that progress is being made and again makes its point about the timeliness in response to these issues.

Proposal to ban Aluminium Composite Panels with a Polyethylene core

Committee view

3.63 The committee understands that under the NCC in its current form, there are compliant uses for PE core ACPs in low-rise buildings, as well as pathways through performance-based solutions to allow the use of PE core ACPs in high-rise buildings. The committee also understands that the signage industry uses PE core ACPs.

3.64 In light of the Grenfell Tower fire tragedy, the committee does not consider there to be any legitimate use of PE core ACPs on any building type. The committee believes that as there are safe non-flammable and fire retardant alternatives available there is no place for PE core ACPs in the Australian market. While Australian Border Force and suppliers of ACM are currently unable to determine whether an imported building product will be used in a compliant manner, the committee believes a ban on importation should be placed on all PE core ACPs. In addition, the sale and use of PE core ACPs should be banned domestically.

Recommendation 1

3.65 The committee recommends the Australian government implement a total ban on the importation, sale and use of Polyethylene core aluminium composite panels as a matter of urgency.

Greater coordination and a national approach to reform

Committee view

4.13 The committee acknowledges that greater enforcement of existing regulations is needed. However, current building regulations appear inadequate and are too easily evaded, largely due to existing deemed-to-satisfy and performance-based pathways, which provide avenues to circumvent Australian Standards in the NCC. The committee supports the BMF's decision to establish an independent review to assess the broader compliance and enforcement problems within the building and construction systems across Australia. The committee is encouraged by the fact that the terms of reference include developing recommendations for a national best practice model for compliance and enforcement to strengthen the effective implementation of the NCC. The committee believes consideration should also be given to an expanded national role for the Commonwealth government across all elements of the building and construction industry, starting with the BMF.

National licencing schemes

Committee view

4.20 The committee considers that a national licencing scheme for all trades and professionals involved in the building and construction industry including: building surveyors, building inspectors, builders and project managers, would improve compliance and provide greater consumer protection and public safety outcomes. A national licencing scheme, including requirements for continuing professional development would ensure that building practitioners have the necessary skills and knowledge to operate in the building industry's complex regulatory environment.

Recommendation 2

4.21 The committee recommends that the Commonwealth government work with state and territory governments to establish a national licensing scheme, with requirements for continued professional development for all building practitioners.

Need for greater on-site supervision and oversight

Committee view

4.39 The committee supports the implementation of nationally consistent mandatory on-site inspections throughout the construction process. Whether this is done through the reinstatement of the role of Clerk of Works or some other process is eventually a decision for governments. Either way, it is evident from the evidence received that there needs to be a central oversight role independent from industry to provide assurance to the public that structures are built according to the agreed national standards. The committee also endorses the inclusion of mandatory inspections by fire safety engineers and fire authorities to ensure buildings are compliant and public safety is upheld.

Addressing the need for greater accountability

Committee view

4.44 The committee agrees that responsibility for building compliance is currently weighted too heavily at the end of the supply chain. Consequently, measures need to be put in place to ensure greater accountability across the supply chain. The committee considers that the Queensland bill will go some way to ensuring accountability is spread more evenly across the supply chain from designers, manufacturers, importers, suppliers and installers and supports the bill's intent. The committee also encourages other jurisdictions to examine the bill and consider developing similar approaches as a starting point to addressing this serious issue.

Recommendation 3

4.45 The committee recommends that the Building Minister's Forum give further consideration to introducing nationally consistent measures to increase accountability for participants across the supply chain.

Availability of Australian Standards

Committee view

4.54 The committee is dismayed that building practitioners are expected to pay unreasonable sums of money to access Australian Standards which are required to ensure they comply with the NCC. In the committee's view, making Australian Standards freely available would have a significant impact on building compliance. More importantly it will reduce the overall cost of compliance and insurance and most significantly, it will reduce the cost and impact on future state and territory emergency, fire and medical services.

4.55 The committee understands that Standards Australia International (SAI) Global's contract with Standards Australia is coming up for renewal. The committee believes the Commonwealth government should give serious consideration to

engaging with Standards Australia to explore possible options to providing free access to Australian Standards, including reinstating online access to the Standards through Australian libraries.

Recommendation 4

4.56 The committee strongly recommends that the Commonwealth government consider making all Australian Standards and codes freely available.

Role of the Federal Safety Commissioner

Committee view

4.64 The committee considers that the Federal Safety Commissioner (FSC) has an important role in ensuring compliance with the NCC of Commonwealth funded construction work. The committee is concerned that the FSC does not appear to be adequately resourced to carry out its newly legislated function to audit compliance with NCC performance requirements in relation to building materials. Mr Edwards advised the committee that his office does not have the resources or the expertise to conduct audits

4.65 In addition, the committee believes that loss of accreditation to conduct Commonwealth funded work is not a strong enough penalty for non-compliance with the NCC. The committee is of the view that a stronger penalties regime should be imposed.

Recommendation 5

4.66 The committee recommends the Commonwealth government consider imposing a penalties regime for non-compliance with the National Construction Code such as revocation of accreditation or a ban from tendering for Commonwealth funded construction work and substantial financial penalties.

Recommendation 6

4.67 The committee recommends the Commonwealth government ensure the Federal Safety Commissioner is adequately resourced to ensure the office is able to carry out its duties in line with the new audit function and projected work flow.

Illegal phoenix activity in the building and construction industry

Committee view

4.73 The committee is concerned that it has been nearly two years since its report on insolvency in the construction industry was tabled and the Productivity Commission's report was released and considers that a Director Identification Numbers (DIN) initiative should be considered as a matter of urgency. A DIN initiative would go some way to preventing directors engaging in illegal phoenix activity. The committee also considers that the potential for a DIN initiative to assist credit reporting agencies in identifying individuals who engage in illegal phoenix activity is worth further investigation. The committee is encouraged by the government's willingness to give further consideration to DIN's, it is concerned by the lack of a clear timeframe for consideration.

Recommendation 7

4.74 The committee welcomes the Commonwealth government's decision to give further consideration to Director Identification Numbers and recommends that it expedites this process in order to prevent directors from engaging in illegal phoenix activity.

Increasing protections for end users

Committee view

4.80 The committee believes there needs to be a greater awareness and protection for consumers in the residential strata sector. The committee considers there is an urgent need to provide a statutory duty of care to cover the discovery of non-compliant or non-conforming building products for the increasing number of the Australian public who purchase residential apartments.

Recommendation 8

4.81 The committee recommends that state and territory governments work together to develop a nationally consistent statutory duty of care protection for end users in the residential strata sector.

Next steps for the committee

4.82 The committee anticipates that significant changes will arise from the reforms that the Commonwealth, state and territory governments will undertake as a result of this serious issue. The committee intends to keep a close eye on how these reforms are developed and the eventual timeliness of their implementation as this continues to be a significant shortcoming across all governments.

4.83 The committee urges, as a matter of the utmost importance, to work effectively together and to get the job done expeditiously. The committee will also continue to monitor the progress of the BMF, its review, and also its ongoing work on the issues of non-conforming and non-complaint building products. The committee will present an interim report on the illegal importation of asbestos on 31 October 2017 and its final report for the broader inquiry by 30 April 2018.

Chapter 1

Introduction

1.1 On 23 June 2015, the Senate referred the matter of non-conforming building products to the Economics References Committee for inquiry and report by 12 October 2015.¹ The committee was granted a number of extensions and the inquiry lapsed at the dissolution of the 44th Parliament. The committee tabled an interim report, *Safety—'not just a matter of good luck'* on 4 May 2016. On 11 October 2016, the Senate agreed to the committee's recommendation that this inquiry be re-adopted in the 45th Parliament.

1.2 Under its terms of reference, the committee was to inquire into:

- (a) the economic impact of non-conforming building products on the Australian building and construction industry;
- (b) the impact of non-conforming building products on:
 - (i) industry supply chains, including importers, manufacturers and fabricators,
 - (ii) workplace safety and any associated risks,
 - (iii) costs passed on to customers, including any insurance and compliance costs, and
 - (iv) the overall quality of Australian buildings;
- (c) 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,
 - (ii) independent verification and assessment systems,
 - (iii) surveillance and screening of imported building products, and
 - (iv) restrictions and penalties imposed on non-conforming building products; and
- (d) any other related matters.²

1.3 On 13 October 2016, as part of its broader inquiry, the committee resolved to inquire into the illegal importation of products containing asbestos. The committee adopted the following additional terms of reference for this part of the inquiry:

The illegal importation of products containing asbestos and its impact on the health and safety of the Australian community, with particular reference to:

1 *Journals of the Senate*, No. 100, 23 June 2015, p. 2766.

2 *Journals of the Senate*, No. 100, 23 June 2015, p. 2766.

- (a) the prevalence and sources of illegally imported products containing asbestos;
- (a) the effect of illegally imported products containing asbestos on:
 - (i) industry supply chains, including importers, manufacturers and fabricators, and
 - (ii) workplace and public safety and any associated risks;
- (b) possible improvements to the current regulatory frameworks for ensuring products containing asbestos are not illegally imported to Australia, with particular reference to the effectiveness of:
 - (i) policing, enforcement, surveillance and screening of imported products, including restrictions and penalties imposed on importers and end users of products containing asbestos;
 - (ii) preventing exposure and protecting the health and safety of workers and other people affected by the illegal importation of products containing asbestos,
 - (iii) establishing responsibility for remediation of sites where illegally imported products containing asbestos has been found;
 - (iv) coordination between Commonwealth, state and territory governments and the role of the Australian Government in coordinating a strategic approach to preventing the importation of products containing asbestos;
- (c) any other related matters.³

1.4 In light of the tragic fire at the Grenfell Tower in London in June 2017, the committee agreed to prepare an additional interim report on the implications of the use of non-compliant external cladding materials in Australia as a priority. On 17 August 2017, the Senate agreed to extend the reporting dates for the interim report on asbestos and the final reporting date.

1.5 The committee's reporting dates have changed as follows:

- 6 September 2017: Interim report—external cladding materials;
- 31 October 2017: Interim report—asbestos; and
- 30 April 2018: Final inquiry report.

Conduct of inquiry

1.6 The committee advertised the inquiry on its website and in *The Australian*. It also wrote to relevant stakeholders and interested parties inviting submissions.

3 *Journals of the Senate*, No. 12, 7 November 2016, p. 379. The committee presented an interim report on 18 October 2016 containing the additional terms of reference. The Senate adopted the additional terms of reference on 7 November 2017.

1.7 The committee has received 162 submissions, as well as a number of supplementary submissions. The submissions range from government departments and agencies, peak industry bodies, unions, individuals working in the industry and consumers.

1.8 Public hearings were held on:

- 13 November 2015 in Canberra;
- 15 February 2016 in Melbourne;
- 30 January 2017 in Brisbane (asbestos);
- 9 March 2017 in Perth (asbestos);
- 14 July 2017 in Melbourne (asbestos and cladding);
- 19 July 2017 in Sydney (cladding); and
- 31 July 2017 in Adelaide (asbestos and cladding).

1.9 References to the Committee Hansard for the July 2017 hearings are to the Proof Hansard and page numbers may vary between the Proof and Official Hansard transcripts.

Definition of non-conforming and non-complying building products

1.10 Although the terms of reference relate to non-conforming building products, the committee also received evidence relating to non-compliant building products.

- Non-conforming building products are 'products and materials that claim to be something they are not; do not meet required [Australian] standards for their intended use; or are marketed or supplied with the intent to deceive those who use them'.⁴
- Non-compliant building products are products that are 'used in situations where they do not comply with the requirements of the National Construction Code [NCC]. A building product can be both non-conforming and non-compliant'.⁵

1.11 The Australian Building Codes Board (ABCB) illustrated the distinction between non-conforming and non-compliant building products with the following example:

A building product that is labelled or described as being non-combustible but which is combustible is a non-conforming product. A building product that is combustible, and described as such, but is used in a situation where a

4 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 4, available at <http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx> (accessed 30 August 2017).

5 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 4, available at <http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx> (accessed 30 August 2017).

non-combustible product is required under the NCC, is not fit for purpose (it is a non-complying product).⁶

1.12 A product that is non-conforming and/or non-compliant can pose serious risks to the integrity of a building, the safety and welfare of those on the construction site and the ultimate inhabitants of the building. For example, the Building Ministers' Forum (BMF) recognises:

The issue of non-conforming building products (NCBP), whether domestically manufactured or imported is an important and complex issue. It can have life safety, health, economic, legal and social consequences.⁷

1.13 The issue of non-conforming building products affects a range of sectors—construction, manufacturing, imports and retail.

Structure of report

1.14 This report comprises four chapters, including this introductory chapter:

- Chapter 2 provides an overview of the November 2014 fire in Melbourne Dockland's Lacrosse apartment building and the Grenfell Tower fire in London; the issues which have been highlighted by these fires and the Commonwealth, state and territory responses.
- Chapter 3 focuses on a range of matters that have contributed to the issues of non-compliance and non-conformity in building products in Australia and the regulatory framework.
- Chapter 4 discusses accountability and enforcement in the building industry.

6 Australian Building Codes Board, *Submission 49*, p. 4.

7 Department of Industry Innovation and Science, 'Building Ministers' Forum', <https://industry.gov.au/industry/IndustrySectors/buildingandconstruction/Pages/default.aspx> (accessed 12 July 2017).

Chapter 2

Background to the inquiry

2.1 In November 2014, the Melbourne Dockland's Lacrosse apartment building fire in Victoria drew attention to the serious implications for fire safety of the use of non-compliant external cladding using Aluminium Composite Panels (ACP), made of Aluminium Composite Material (ACM) that contained a highly flammable polyethylene (PE) core. Three years later, on 14 June 2017, these issues were again brought into sharp focus by the London Grenfell Tower fire which had recently been clad in this material.

2.2 Australian Fire Safety Engineer, Mr Tony Enright stated in a recent ABC Four Corners program examining PE cladding that:

A kilogram of polyethylene will release the same amount of energy as a kilogram of petrol, and it gets worse than that because polyethylene is denser than petrol too, so that's about, a kilogram of polyethylene is like about one and a bit, one and a half litres of petrol. If you look at a one metre by one metre square section [of PE core ACP cladding] that will have about three kilograms, the equivalent of about five litres of petrol.¹

2.3 This chapter provides a summary of the Lacrosse apartment building fire, and the issues in the building industry that were highlighted by the subsequent analysis of the incident. The chapter will also provide an overview of the Grenfell Tower fire, including highlighting some of the broader fire safety and insurance implications of the recent fires in high rise buildings in Australia and internationally. Finally, the chapter includes a brief overview of the Commonwealth, state and territory governments' responses following the tragic Grenfell Tower fire. Chapter Three discusses the PE core ACPs and the issues associated with them.

Lacrosse apartment building fire—25 November 2014

2.4 On 25 November 2014, a fire occurred at the Lacrosse apartment building in Docklands, Melbourne. The fire started on an eighth floor balcony, and affected 'two floors below and extended upward to all floors in the building to the roof'.² The Metropolitan Fire and Emergency Services Board (MFB) found that the use of ACP cladding was a contributing factor to the rapid vertical spread of the fire. The CSIRO conducted tests on the cladding and found it to be combustible and non-compliant with National Construction Code (NCC) standards for use in buildings of three or more storeys.³

1 Debbie Whitmont, Patricia Drum, Anne Davies, 'Combustible', *ABC Four Corners*, 4 September 2017, <http://www.abc.net.au/4corners/stories/2017/08/31/4726881.htm> (accessed 5 September 2017).

2 Victorian Government, *Submission 57*, p. 3.

3 Victorian Government, *Submission 57*, p. 3.

2.5 The committee was advised that 'the imported combustible cladding installed at the Lacrosse building was tested by the CSIRO and found to be so combustible that the tests were abandoned after 93 seconds due to the potential for the equipment to be damaged'.⁴

2.6 The committee's initial interim report which also covered cladding, *Safety—'not a matter of good luck'*, noted that submissions raised concerns about the non-compliant use of building products, and highlighted the Lacrosse building fire as an example of the dangers associated with product non-compliance. Indeed, Mr Adam Dalrymple, then Director of Fire Safety, MFB, described this incident as one that alone could have 'claimed hundreds of lives if things had turned out a little differently'. He told the committee:

We were probably really lucky that did not happen on that occasion. What we are saying here is that fire safety really should not be a matter of good luck. The fire started on a balcony from an unextinguished cigarette—an innocuous type of thing, you would think. This set fire to the cladding, and the panelling itself allowed the fire to travel the full extent of the building—23 levels in 11 minutes. That is something we have never, really, seen before. We would say this should not have been allowed to happen.

...

In 31 years as a firefighter and 20 years as a fire safety specialist I have never seen a fire like this—in my lifetime—and I have made it my business to study fires of this nature, so we can get a better outcome for firefighters in the community. We have grave concerns about the use of non-compliant product and that it may result in disastrous loss of life, and we cannot tell you when the next event is going to happen. This is a modern building, constructed within the last five years. It has been a valid assumption, up until now, that newer buildings are relatively safe and probably safer than old ones. From a fire services perspective, right now, I cannot guarantee that and I cannot, categorically, state that that is a true fact.⁵

2.7 The MFB's post incident analysis report noted that the Lacrosse fire was a 'rare and challenging fire incident'. Over four hundred people were evacuated from the building with fire crews forced to enter every level and alert occupants of each apartment to ensure total evacuation as the building's electrical systems were compromised by the fire. The MFB's report observed that 'it was fortunate that the installed fire sprinkler system operated well above its designed capability preventing further internal spread'.⁶ The MFB noted that if not for the performance of the

4 Mr Sahil Bhasin, National Manager, Roscon Property Services, *Committee Hansard*, 19 July 2017, p. 53.

5 Mr Adam Dalrymple, Director, Fire Safety (now Acting Deputy Chief Officer), Metropolitan Fire Brigade, *Committee Hansard*, 13 November 2015, p. 65.

6 Metropolitan Fire and Emergency Services Board, *Post Incident Analysis Report, Lacrosse Docklands, 673-675 La Trobe Street, Docklands 25 November 2014, 27 April 2015*, pp. 5–6. See Metropolitan Fire and Emergency Services Board, *Submission 22, Attachment 1*.

sprinkler system and the quick and professional response by MFB fire-fighters, there 'could have been a greater likelihood of serious injury or even loss of life'.⁷

2.8 The Victorian Building Authority (VBA) launched an external wall cladding audit in Melbourne following the Lacrosse fire. The VBA Audit report, which was released on 17 February 2017, found that 'non-compliance in the use of external wall cladding materials is unacceptably high'.⁸ The VBA Audit also found:

- While the levels of non-compliance identified by the VBA were too high—they generally did not pose a risk to safety. Apart from the Lacrosse building, only one other building identified through the VBA Audit was deemed to pose a significant safety issue due to the non-compliant use of external wall cladding material;
- There are many types of external cladding material in use throughout the Victorian building industry but whether one is 'fit for purpose' over another is not always properly understood by architects, designers, engineers, building surveyors and builders;
- The National Building Code of Australia (BCA) requirements for external walls, including the suitability of materials, are inconsistently applied and poorly understood; and
- No single category of practitioner involved in the design, approval or construction of those building projects audited is consistently responsible for the non-compliant use of cladding.⁹

2.9 The VBA has taken disciplinary actions against the practitioners involved in the Lacrosse building fire—the cases are ongoing. The VBA referred the following practitioners responsible for the project to the Building Practitioners Board: the fire safety engineer, the registered builder and the relevant building surveyor. The architect's conduct was also referred to the Architects Registration Board of Victoria. The Architects Registration Board has determined not to proceed with any action against the architect.¹⁰

7 Metropolitan Fire and Emergency Services Board, *Post Incident Analysis Report, Lacrosse Docklands, 673-675 La Trobe Street, Docklands 25 November 2014*, 27 April 2015, p. 36.

8 Victorian Building Authority, 'VBA Releases External Wall Cladding Audit Report', *Media Release*, 17 February 2016, http://www.vba.vic.gov.au/_data/assets/pdf_file/0015/39102/VBA-External-Wall-Cladding-Report-VBA-Media-Release.pdf (accessed 22 April 2016).

9 Victorian Building Authority, *VBA External Wall Cladding Audit Report*, 17 February 2017, http://www.vba.vic.gov.au/_data/assets/pdf_file/0016/39103/VBA-External-Wall-Cladding-Report.pdf (accessed 21 August 2017), p. 2.

10 Mr Murray Smith, Acting Chief Executive Officer, Victorian Building Authority, *Committee Hansard*, 19 July 2017, p. 75. See Metropolitan Fire and Emergency Services Board, *Submission 22, Attachment 1*.

2.10 In addition to establishing the facts of the fire, remediation of the Lacrosse building remains another ongoing issue. Determining who is at fault and who is liable for the cost of remediation is going to remain a vexing issue not just for the Lacrosse building, but for many body corporates into the future who have PE core ACP cladding on their buildings. The Owners Corporation Network (OCN) told the committee that the cost of remediation to the owners of the Lacrosse apartment building is significant:

Owners of the Lacrosse tower are claiming more than \$15 million in damages from the builder saying combustible cladding installed on the apartment complex by the construction company was responsible for the spread of the blaze. Work has already cost \$6.5 million including almost \$700,000 to dry out the building. It is estimated it will cost another \$9 million to remove and replace the remaining unburnt cladding to comply with a council order.¹¹

Building Ministers' Forum

2.11 Under the Australian Constitution, governance of the built environment is the responsibility of state and territory governments. While the Australian Government does not have a formal role in the administration of building, plumbing and construction works, it assists at the policy level, in particular through the Council of Australian Governments (COAG) to facilitate agreement and adoption of the nationally consistent building regulations expressed primarily through the NCC. Licencing of trades and regulation of the construction is left to the relevant state and territory governments. Greater detail on the NCC is provided in Chapter 3, while licencing of trades and certification of works is dealt with in Chapter 4.

2.12 The Australian Government also convenes a body of Commonwealth, state and territory Ministers responsible for building and plumbing policy and regulation referred to as the Building Ministers' Forum (BMF). The Hon Craig Laundy MP, Assistant Minister for Industry, Innovation and Science, is the current Chair of the BMF; with the Department of Industry, Innovation and Science providing secretariat support.

2.13 The BMF oversees the implementation of nationally consistent building and plumbing regulation through the 2015 Intergovernmental Agreement for the Australian Building Codes Board (ABCB). The BMF meets annually or on a needs basis.¹²

2.14 In response to the Lacrosse fire and the subsequent VBA audit findings, the BMF agreed to work cooperatively to implement a range of measures to address safety issues associated with high risk building products, as well as the wider issue of non-compliance. The ABCB will support measures to address the risks specifically

11 Owners Corporation Network, *Submission 88.1*, pp. 2–3.

12 Department of Industry Innovation and Science, 'Building and Construction', <https://industry.gov.au/industry/IndustrySectors/buildingandconstruction/Pages/default.aspx> (accessed 12 July 2017).

associated with cladding used in high-rise buildings, as well as developing proposed additional actions to address the wider issue of non-compliant use of building products.¹³ This includes the ABCB working with the Senior Officers' Group (SOG) to review NCC requirements related to high risk building products, with a view to assessing the costs and benefits of mandating third party certification and establishing a national register for such products.¹⁴ The ongoing work of the BMF is discussed in more detail later in this chapter.

Grenfell Tower Fire—14 June 2017

2.15 On 14 June 2017, a fire broke out at Grenfell Tower, a 24 storey residential housing block in North Kensington, London, United Kingdom (UK). In a statement on 28 June 2017, the London Metropolitan Police confirmed that 80 people were dead or missing presumed dead following the fire. The tower, built in 1974, provided 129 social housing flats. On the night of the fire it was estimated to house 350 people.

2.16 The Grenfell Tower had just completed a major refurbishment in 2016 which included new exterior cladding, replacement windows, new heating systems and remodelling of the bottom four floors. The fire appeared to spread rapidly up the building and concerns have been raised over the recent renovations and the fire safety measures in place.¹⁵

2.17 The UK Government response to the Grenfell Tower fire has been wide ranging.¹⁶ On 28 July 2017, the UK Government announced an independent review of building regulations and fire safety. The review was established in light of the serious questions about the fire safety of high rise residential buildings following the Grenfell Tower fire, and subsequent government testing of ACP cladding from similar buildings across the country. The review is expected to present an interim report

13 Building Minister's Forum, *Communiqué*, 19 February 2016, all BMF Communiqués are available on the Department of Industry, Innovation and Science's 'Building and Construction' webpage: <https://industry.gov.au/industry/IndustrySectors/buildingandconstruction/Pages/default.aspx> (accessed 30 August 2017). The ABCB published a list of the measures undertaken on its website: 'Actions to be taken on Fire Safety in High Rise Buildings', 24 February 2016, <http://www.abcb.gov.au/News/2016/02/24/Actions-to-be-taken-on-Fire-Safety-in-High-Rise-Buildings> (accessed 30 August 2017).

14 Australian Building Codes Board, 'Actions to be taken on Fire Safety in High Rise Buildings', 24 February 2016, <http://www.abcb.gov.au/News/2016/02/24/Actions-to-be-taken-on-Fire-Safety-in-High-Rise-Buildings> (accessed 30 August 2017).

15 Ed Potton, Elena Ares and Wendy Wilson, 'Grenfell Tower fire: Response and tackling fire risk in high rise blocks', *House of Commons Library Briefing Paper Number 7993*, 31 July 2017, p. 4, available at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7993> (accessed 30 August 2017).

16 Department of Communities and Local Government, UK Government, 'Collection: Grenfell Tower', last updated 15 August 2017, <https://www.gov.uk/government/collections/grenfell-tower> (accessed 22 August 2017).

before the end 2017, and a final report no later than Spring (northern hemisphere) 2018.¹⁷

2.18 On 15 August 2017, the UK Government established the Grenfell Tower Inquiry under the *Inquiries Act 2006* to investigate the circumstances surrounding the fire at Grenfell Tower. The Chair of the inquiry, Sir Martin Moore-Bick, has indicated to the Prime Minister that he would like to produce an interim report by Easter 2018 but this is dependent on the progress of other related investigations.¹⁸

2.19 In the wake of the fire, Camden Council, one of the nearby London councils to the Grenfell Tower fire, announced it would remove combustible cladding from five of its tower blocks.¹⁹

Broader concerns around fire safety

2.20 In the Australian context, the Grenfell Tower fire has highlighted the need to hasten the momentum for regulatory reforms which were set in motion following the Lacrosse building fire in 2014.

2.21 At the committee's public hearing on 14 July 2017, Mr Adam Dalrymple, Acting Deputy Chief Officer, expressed the MFB's 'disappointment at the apparent lack of movement by regulators' since the Lacrosse fire in 2014. He observed:

Lacrosse for us was a bit of [a] wake-up call. Since then I believe that regulators have been rubbing the sleep out of their eyes. With this tragic event, everyone has woken up, albeit some 2½ years after we had a similar event in our own backyard.²⁰

2.22 Mr Dalrymple also highlighted the fact that the Grenfell and Lacrosse fires are not isolated incidents. At the hearing on 14 July 2017 he noted:

There have been 19 fires involving cladding worldwide since 2005. The death tolls range from none to 80, and there were a significant number of deaths in Grenfell, as we know. There has been some remedial action in various jurisdictions worldwide. That ranges from removal of cladding and changes to evacuation policy to even changes to fire service doctrine.²¹

17 Department of Communities and Local Government, UK Government, 'Press Release: Independent review of building regulations and fire safety', 28 July 2017, <https://www.gov.uk/government/news/independent-review-of-building-regulations-and-fire-safety> (accessed 22 August 2017).

18 Grenfell Tower Inquiry, 'Frequently asked questions', <https://www.grenfelltowerinquiry.org.uk/about/faqs/> (accessed 22 August 2017).

19 Robert Booth, Lisa O'Carroll, Jamie Grierson, David Pegg and Josh Halliday, 'Cladding to be removed in Camden as councils scramble to check tower blocks', *Guardian*, 22 June 2017, <https://www.theguardian.com/uk-news/2017/jun/22/grenfell-tower-camden-council-to-remove-cladding-from-five-tower-blocks> (accessed 5 September 2017).

20 Mr Adam Dalrymple, Acting Deputy Chief Officer, Metropolitan Fire and Emergency Services Board, *Committee Hansard*, 14 July 2017, p. 29.

21 Mr Adam Dalrymple, Acting Deputy Chief Officer, Metropolitan Fire and Emergency Services Board, *Committee Hansard*, 14 July 2017, p. 29.

2.23 Similarly, Mr Travis Wacey, from the Construction, Forestry, Mining and Energy Union (CFMEU) stressed that the Grenfell Tower fire tragedy was not only preventable but foreseeable—prior to the 2014 Lacrosse building fire, there were at least seven international fire events involving external facades constructed of highly combustible PE core ACP panels. Mr Wacey observed:

Of course what makes Grenfell more unjust for these victims is that the extent of the damage done and the extent of the lives ruined and the lives lost could have been mitigated, if not prevented. The word deathtrap gets bandied about quite a lot, but there is no doubt that, when you look at this case in detail, it would appear to be an appropriate description of the Grenfell Tower. So, the investigation continues, but the lack of sprinklers, inadequate alarm systems, flawed fire evacuation plans and procedures, and narrow exits are all part of this. Of course, playing an instrumental role in the extent of the tragedy is the speed and intensity of the fire due to the highly combustible nature of the aluminium composite panels used to clad the external walls and buildings.²²

2.24 The committee notes that the CFMEU advised it had written to the Commonwealth and state and territory governments in May 2015 seeking audits of the use PE core ACPs. The CFMEU has also advised its members to 'resist the installation of this sort of cladding in a non-compliant manner and provided information with regard to that to our members and delegates'.²³

2.25 Mr Phillip Dwyer, National President of the Builders Collective of Australia noted that for '20 years we've had aluminium cladding, and we estimate at least tens of thousands of buildings would be the number we've got in terms of cladding, if we are just talking about cladding. But we have so many other areas where non-compliance is just rife'.²⁴

2.26 The fires overseas and in the Lacrosse building have raised concerns not just about external cladding materials, but also fire safety in buildings more generally, such as correct design and operation of fire safety systems, maintenance, testing, and licensing. Ms Amanda Leck from the Australasian Fire and Emergency Service Authorities Council (AFAC) advocated for an examination of current regulatory controls in key areas to improve building safety outcomes and the performance of building practitioners. Ms Leck observed:

As we have seen overseas recently and also in the Lacrosse building in Melbourne, it is the fire and emergency services who must decide to send more firefighting appliances to some buildings because the risk to life is

22 Mr Travis Wacey, National Policy Research Officer, Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union, *Committee Hansard*, 14 July 2017, p. 2.

23 Mr Travis Wacey, National Policy Research Officer, Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union, *Committee Hansard*, 14 July 2017, p. 2.

24 Mr Phillip Dwyer, National President, Builders Collective of Australia, *Committee Hansard*, 19 July 2017, p. 52.

greater than if the building was constructed properly. It is the firefighters who must confront risks and try to assist scared, vulnerable, elderly and disabled residents. It is the senior officers who must make decisions about whether the risk at a fire is so great that firefighters must be withdrawn to protect their own safety, with residents consequently unable to be assisted as they otherwise would be. Change is needed so that the emergency services are not forced to make these decisions and the community does not bear the human and financial cost of regulatory failure.²⁵

Insurance implications

2.27 The Insurance Council of Australia (ICA) explained that the non-compliant use of building products such as external cladding materials 'critically undermines the ability for an insurer to rely upon the safety and performance of the building'. This directly impacts the insurer's ability to establish their risk exposure which, the ICA stated, influences the setting of insurance premiums.²⁶

2.28 Raising similar concerns, Insurance Australia Group (IAG) noted the non-compliant use of PE cladding has increased in recent years posing a fire risk much higher than other materials available, particularly when paired with equally combustible plastic foam insulation. IAG also commented that these materials are often being used in a way that does not conform with the NCC and Australian Standards, which was a particular concern to IAG as:

- This threatens the safety of our customers, employees and the broader community;
- It increases the fire risk of buildings placing upward pressure on premium cost for consumers; and
- Non-compliance is a hidden risk. If we cannot accurately assess risk, the uncertainty results in sub optimal outcomes for customers and insurers.²⁷

2.29 The OCN also noted there are insurance implications for existing buildings which discover non-compliant cladding material and do not disclose it to their building insurance company. Conversely, the OCN was aware of one building that did disclose and they are now unable to get building insurance. Leaving all the owners in that building 'jointly and severally liable for any debt'.²⁸

2.30 The Australian Institute of Building Surveyors (AIBS) expressed concern surrounding professional indemnity insurance:

25 Ms Amanda Leck, Director, Information and Community Safety, Australasian Fire and Emergency Service Authorities Council, *Committee Hansard*, 19 July 2017, p. 13.

26 Insurance Council of Australia, *Submission 152*, p. 2.

27 Insurance Australia Group (IAG), *Submission 160*, p. 1.

28 Mr Stephen Goddard, Spokesperson, and Ms Karen Stiles, Executive Officer, Owners Corporation Network, *Committee Hansard*, 19 July 2017, p. 44.

...an emerging area of concern for the regulatory system and consumers is the issue of professional indemnity insurance. The current public debate on external cladding is already having a negative impact, with AIBS recently being advised that some insurance companies are inserting exclusion clauses for external cladding and non-complying building products into their policies.²⁹

Australian government responses following the Grenfell Tower fire

2.31 On 19 June 2017, in response to a question raised in the Senate Chamber relating to the Grenfell Tower fire, Senator the Hon Arthur Sinodinos AO, Minister for Industry, Innovation and Science, indicated that the Government would write to the Senate Economics Committee asking that it examine the current state and territory regulatory frameworks as part of the inquiry into non-conforming building products.³⁰

2.32 On 21 June 2017 the Assistant Minister for Industry, Innovation and Science, the Hon Craig Laundy MP wrote to the Senate Economics Committee requesting the committee report its findings as early as possible to 'ensure we can protect and retain confidence in Australia's built environment and building and construction industries'.³¹

2.33 In a media release on 3 July 2017, the Hon Craig Laundy MP, noted that the Prime Minister had asked Premiers and Chief Ministers to urgently audit their high-rise buildings in regard to non-conforming combustible cladding. Mr Laundy also stated, that the BMF had agreed to engage an expert to examine broader compliance and enforcement issues:

It's essential that all governments work together to make sure our builders not only have the right products to do their job, but are also using the right products for the job, to ensure we can provide continued confidence in Australia's built environment.

I want to assure the public that the Australian Government will continue to encourage the states and territories to work with us to improve their compliance regimes to prevent further instances of noncompliant wall cladding impacting the safety of Australia's high-rise buildings.

Put simply, a Grenfell apartment block would not comply with Australia's National Construction Code. We need to ensure compliance with that Code so that such disasters do not occur in Australia.³²

29 Mr Timothy Tuxford, National President, Australian Institute of Building Surveyors, *Committee Hansard*, 19 July 2017, p. 20.

30 Senator the Hon Arthur Sinodinos, Minister for Industry, Innovation and Science, *Senate Hansard*, 19 June 2017, p. 4184.

31 See Appendix C.

32 The Hon Craig Laundy MP, Assistant Minister for Industry, Innovation and Science, 'Governments cooperating to ensure building safety', *Media Release*, 3 July 2017, <http://minister.industry.gov.au/ministers/laundy/media-releases/governments-cooperating-ensure-building-safety> (accessed 25 August 2017).

2.34 The BMF has since announced that Professor Peter Shergold AC and Ms Bronwyn Weir have been commissioned as the 'experts' to assess the compliance and enforcement problems within the building and construction systems across the country that are affecting the implementation of the NCC.³³ The terms of reference for the review and associated information is further discussed at paragraph 2.47.

2.35 The Hon Craig Laundy MP again wrote to the Senate Economic Committee on 17 August 2017, to raise further concerns about the validity of the claims made in relation to non-conformance and fraud that had been raised in evidence to the committee.³⁴

State and territory governments responses to the Grenfell Tower fire

2.36 A number of state and territory governments have announced audits of external cladding materials. However, it is worth noting that most of these audits are generally restricted to their respective central business districts and do not examine compliance in broader metropolitan areas.

- South Australia—the state government and the City of Adelaide have accelerated an audit of ACP cladding led by the Department of Planning, Transport and Infrastructure.³⁵ The cladding has been checked on 4,500 buildings of two storeys or more, with 77 buildings listed for further checks.³⁶
- Victoria—the state government will establish an expert taskforce to investigate the extent of non-compliant cladding on Victorian buildings. The Victorian Cladding Taskforce will be jointly chaired by former Premier and architect Mr Ted Baillieu, and former Deputy Premier and Minister for Planning, Mr John Thwaites. Key agencies on the taskforce include: Worksafe Victoria, the Metropolitan Fire Brigade, the Victorian Building Authority, the Municipal Association of Victoria and Emergency Management Victoria.³⁷
- Western Australia (WA)—the WA Building Commission commenced an initial audit following the 2014 Lacrosse building fire and has announced it is broadening its audit of ACPs following the Grenfell Tower fire in London.

33 The Hon Craig Laundy MP, Assistant Minister for Industry, Innovation and Science, 'Experts appointed to review building and construction safety issues', *Media Release*, 24 August 2017, <http://www.minister.industry.gov.au/ministers/laundy/media-releases/experts-appointed-review-building-and-construction-safety-issues> (accessed 25 August 2017).

34 See Appendix C.

35 The Hon John Rau, SA Attorney General, 'Building cladding audit to be accelerated', *news release*, 3 July 2017, <https://www.premier.sa.gov.au/index.php/john-rau-news-releases/7713-building-cladding-audit-to-be-accelerated> (accessed 25 August 2017).

36 Nathan Stitt, 'Cladding Audit identifies 77 Adelaide CBD buildings warranting fire safety inspections', *ABC Online*, 25 August 2017, <http://www.abc.net.au/news/2017-08-25/cladding-audit-identifies-77-adelaide-buildings-for-fire-checks/8842616> (accessed 1 September 2017).

37 The Hon Daniel Andrews MP, Premier of Victoria, 'Taskforce To Address Cladding In Victoria', *Media release*, 3 July 2017, <http://www.premier.vic.gov.au/taskforce-to-address-cladding-in-victoria/> (accessed 25 August 2017).

The new audit scope includes all high-risk, high-rise buildings in WA that have cladding attached. One WA building, Foyer Oxford in Leederville, was recently found to contain non-compliant cladding.³⁸

- Queensland—the state government has established an Audit Taskforce to conduct a targeted audit with a primary focus on buildings constructed between 1994 and 2004 using ACP cladding.³⁹ Potentially dangerous ACPs were found on the Princess Alexandra Hospital in Brisbane.⁴⁰
- Australian Capital Territory (ACT)—the ACT Government announced it would establish a taskforce to review the amount of flammable cladding used in Canberra.⁴¹
- New South Wales (NSW)—the Minister for Better Regulation, the Hon Matt Kean MP, announced a comprehensive response which would include a whole of government taskforce and new legislation to prohibit the sale and use of unsafe building products.⁴²
- Tasmania—the state government will conduct a further audit of buildings where non-compliant use of external cladding materials could result in an unacceptable risk to the community.⁴³

Ongoing work of the Building Ministers' Forum

2.37 As stated at paragraph 2.13, the BMF meets annually or on an ad hoc basis. Since the Lacrosse apartment building fire in November 2014 the BMF has met on the following dates:

- 31 July 2015;
- 19 February 2016;
- 14 December 2016;
- 21 April 2017;

38 WA Building Commission, 'State-wide cladding audit underway', *Media Release*, 4 July 2017.

39 Queensland Department of Housing and Public Works, 'Non-conforming building products', last updated 28 August 2017, <http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx> (accessed 30 August 2017).

40 Calla Wahlquist, 'Brisbane hospital could have highly flammable cladding, audit finds', *Guardian*, 30 June 2017, <https://www.theguardian.com/australia-news/2017/jun/30/brisbane-hospital-could-have-highly-flammable-cladding-audit-finds> (accessed 22 August 2017).

41 Finbar O'Mallon, 'Grenfell Tower fire compels ACT to establish building safety taskforce', *Canberra Times*, 4 July 2017, <http://www.canberratimes.com.au/act-news/grenfell-tower-fire-compels-act-to-establish-building-safety-taskforce-20170703-gx40bn.html> (accessed 22 August 2017).

42 The Hon Matt Kean MP, Minister for Better Regulation (NSW), 'Fire safety reforms to put consumers first', *Media Release*, 28 July 2017, <https://www.finance.nsw.gov.au/about-us/media-releases/fire-safety-reforms-put-consumers-first> (accessed 22 August 2017).

43 Tasmanian Government, *Submission 161*, p. 1.

- 30 June 2017; and
- 24 August 2017.⁴⁴

2.38 On 31 July 2015, shortly after this inquiry was referred, there was a meeting of the BMF. The BMF released a communique following its meeting, noting that it shared the concerns of industry about the 'health and safety risks posed by potentially non-conforming building products and materials making their way into the Australian building and construction supply chain and the non-compliant use of building products'.⁴⁵

2.39 To address the issue of non-conforming building products, the BMF established a Senior Officers' Group (SOG) which was tasked with reporting back to the BMF in six months on strategies to 'minimise the risks to consumers, businesses and the community associated with failure of building products to conform to relevant laws and regulations and at the point of import'.⁴⁶ The SOG comprises two senior officers from each state and territory as well as the Commonwealth.⁴⁷

2.40 With regard to non-compliant products, particularly in the wake of the Lacrosse building fire in Melbourne, and in order to 'ensure that community health and safety is effectively maintained', the BMF also agreed that the ABCB would investigate 'options for a possible mandatory scheme for high risk building products with life safety implications and report to Ministers within six months'.⁴⁸

Senior Officers' Group (SOG) report

2.41 On 19 February 2016, the BMF met to consider the SOG's report, which it endorsed. Following the meeting, the Queensland Minister for Housing and Public Works, the Hon Mick de Brenni MP, announced that 'for the first time we have a national approach to non-conforming building products'.⁴⁹

44 BMF Communiqués are available on the Department of Industry, Innovation and Science's 'Building and Construction' webpage: <https://industry.gov.au/industry/IndustrySectors/buildingandconstruction/Pages/default.aspx> (accessed 30 August 2017)

45 Building Ministers' Forum, *Communiqué*, 31 July 2015.

46 Building Ministers' Forum, *Communiqué*, 31 July 2015.

47 Queensland Department of Housing and Public Works, 'Non-conforming building products', last updated 28 August 2017, <http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx> (accessed 30 August 2017).

48 Building Ministers' Forum, *Communiqué*, 31 July 2015.

49 The Hon Mick de Brenni MP, Minister for Housing and Public Works, 'Collaborative national approach to improving building safety standards', Media statements, 25 February 2016, <http://statements.qld.gov.au/Statement/2016/2/25/collaborative-national-approach-to-improving-building-safety-standards> (accessed 22 April 2016).

2.42 In determining its recommendations, the SOG considered a range of information sources, including the submissions made to the Economics References Committee's inquiry.⁵⁰

2.43 The current secretariat for the SOG, the Queensland Department of Housing and Public Works, coordinated feedback on implementing the strategies in the SOG's report to address non-conforming building products. A consultation draft of the SOG's *Strategies to address risks related to non-conforming building products* report was released. The closing date for written submissions providing feedback on the SOG report's proposals was 11 April 2016.⁵¹

2.44 In its recommendations to the BMF, the SOG highlighted the importance of taking a measured and proportionate risk-based approach to addressing the issue of NCBPs and suggested a number of complementary strategies that should be considered as a package. Firstly, it noted the 'current legislative roles and responsibilities of the Commonwealth, states and territories, including the identified gaps and weaknesses, impacting on action in relation to NCBPs'.⁵² It made the following recommendations:

- Provide in-principle support for improvements to the regulatory framework to enhance the powers of building regulators to respond to incidences of NCBPs (e.g. providing the ability to conduct audits of existing building work or take samples from a building for testing).
- Provide in-principle support for improving Commonwealth, state and territory processes for addressing issues involving NCBPs by:
 - (a) establishing a national forum of building regulators to facilitate greater collaboration and information-sharing between jurisdictions;
 - (b) improving collaboration between building and consumer law regulators and consistency in the application of the 'false and misleading claims' aspect of the Australian Consumer Law;
 - (c) developing education strategies to better inform consumers and building industry participants and to encourage greater responsibility in the safe use of building products; and
 - (d) considering the establishment of a 'one-stop-shop' national website to provide a single point of information for consumers and building

50 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 4, available at <http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx> (accessed 30 August 2017).

51 Queensland Department of Housing and Public Works, 'Non-conforming building products', last updated 28 August 2016, <http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx> (accessed 30 August 2017).

52 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 17, available at <http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx> (accessed 30 August 2017).

product supply chain participants, including examining arrangements for hosting and maintaining a website.

- Provide in-principle support for:
 - (a) 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; and
 - (e) an information sharing arrangement where import data collected by the Department of Immigration and Border Protection (for the purposes of reporting, detecting and controlling the movement of goods across the Australian border) can be provided to state and territory regulators to facilitate compliance and enforcement activities in relation to NCBPs.
- Approve that the SOG and the ABCB work with Standards Australia to initiate a review of Australian Standards related to high risk building products referenced under the NCC, with a view to assessing the costs and benefits of mandating third party certification and establishing a national register for these products.
- Provide in-principle support for independent research to be undertaken, including manufacturer and random off-the-shelf product testing, to improve the evidence base relating to NCBPs.

2.45 It also recommended that the BMF:

- Note the value and importance of existing building industry initiatives, such as industry third party certification schemes, in identifying instances of building product non-conformity.⁵³

The BMF's response following the Grenfell Tower fire

2.46 On 30 June 2017, in response to the concerns raised as a result of the Grenfell Tower fire in London, the BMF agreed to commission an expert to report back as quickly as possible to examine the broader compliance and enforcement problems within the building and construction systems (for example: education, licensing, design, quality assurance, competencies of practitioners, importation) affecting the implementation of the NCC.⁵⁴

2.47 As noted at paragraph 2.34, on 24 August 2017, the BMF announced that Professor Peter Shergold AC and Ms Bronwyn Weir have been commissioned to conduct the review.⁵⁵

53 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, pp. 17–27, available at <http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx> (accessed 30 August 2017).

54 Building Ministers' Forum, *Communiqué*, 30 June 2017.

55 Building Ministers' Forum, *Communiqué*, 24 August 2017.

2.48 *The Assessment of the Effectiveness of Compliance and Enforcement Systems for the Building and Construction Industry across Australia* will provide an initial report to the BMF at its meeting in October 2017. A final report will be provided to the BMF as soon as possible after the October 2017 meeting. The terms of reference are as follows:

1. Examine compliance and enforcement problems within the building and construction systems across Australia that are affecting the implementation of the NCC, as they relate to:
 - a) roles, responsibilities and accountabilities of different parties;
 - b) education and training;
 - c) licensing and accreditation;
 - d) accuracy of design and documentation;
 - e) quality control and assurance;
 - f) competencies of practitioners;
 - g) integrity of private certification;
 - h) inspection regimes;
 - i) auditing and enforcement practices; and
 - j) product importation and chain of custody.
2. In undertaking the assessment, Professor Shergold and Ms Weir are to take into account the impact of recent building regulatory reviews and reforms undertaken and implemented by state and territory governments, including but not limited to:
 - a) Australian Capital Territory—Improving the ACT Building Regulatory System Review;
 - b) New South Wales—2016 Response to the Independent Review of the Buildings Professionals ACT 2005;
 - c) Queensland—2016 Building Plan Review;
 - d) Tasmania—2017 Building Regulatory Framework;
 - e) Victoria—2017 Building Regulations Sunset Review;
 - f) Western Australia—2016 Auditor General Report on Regulation of Builders and Building Surveyors; and
 - g) Senate Economics Committee Inquiry into Non-Conforming Building Products.
3. Based on the outcome of the assessment, consider strategies for improving compliance and enforcement practices and make

recommendations for a national best practice model for compliance and enforcement to strengthen the effective implementation of the NCC.⁵⁶

Progress on the work coming out of the BMF

Building Regulators' Forum (BRF)

2.49 The establishment of the Building Regulators' Forum (BRF) was a key recommendation arising from the SOG report. The BRF's first meeting was held on 13 July 2017. The Queensland Department of Housing and Public Work's advised the committee that, while building regulators have already been communicating regularly and sharing jurisdictional responses to the SOG's work, the BRF will formalise these interactions.⁵⁷

2.50 The newly-established BRF will provide more clearly defined membership, agreed priorities and information sharing arrangements, including focus on matters such as:

- sharing information on best practice regulation and enforcement activities;
- collaboration to deliver timely and coordinated responses to issues of national significance related to NCBPs and other matters as directed by the BMF; and
- consideration and triage of issues for escalation to relevant entities for response or to the BMF for consideration.

2.51 The VBA is the current Chair and Secretariat for the BRF. The committee understands that the VBA is finalising details for the BRF such as governance arrangements and an online information sharing mechanism to enable members to informally and confidentially collaborate outside of meetings and respond to issues as they arise.⁵⁸

One-stop-shop website for non-conforming building products

2.52 Commencing 1 July 2017, the BMF implemented a one-stop-shop website that will provide general information on non-conforming and non-compliant building products, and include the ability for the public to submit a complaint or enquiry about a product or material.⁵⁹

56 Building Minister's Forum, *Assessment of the Effectiveness of Compliance and Enforcement Systems for the Building and Construction Industry across Australia—Terms of reference*, <https://industry.gov.au/industry/IndustrySectors/buildingandconstruction/Documents/Terms-of-Reference.pdf> (accessed 24 August 2017).

57 Department of Housing and Public Works, answers to questions taken on notice from a public hearing on 14 July 2017, received 1 August 2017, pp. 2–3.

58 Department of Housing and Public Works, answers to questions taken on notice from a public hearing on 14 July 2017, received 1 August 2017, pp. 2–3.

59 The website can be found at: <http://www.abcb.gov.au/%20NCBP/Non-Conforming-Building-Products>

Comprehensive package of measures to improve fire safety in high rise buildings

2.53 On 14 December 2016, BMF agreed to a comprehensive package of measures to improve fire safety in high rise buildings. The comprehensive package of measures, which includes measures that the BMF previously requested the ABCB to implement at its meeting on 19 February 2016, seek to:

- Reference a contemporary and rigorous testing standard, developed based on international best practice, for full scale testing of the fire performance of external façade systems, which is particularly relevant for new and innovative systems.
- Provide rigorous, contemporary and clear Code requirements to improve application and compliance.
- Provide practitioners with the tools and supporting material to support Code compliance.
- Increase industry awareness of the need to be cognisant to the potential risks associated with non-compliance.
- Enhance on-site checking, auditing and enforcement.⁶⁰

2.54 At the BMF meeting on 30 June 2017, the ABCB was directed to expedite completing and adopting actions involving changes to the NCC from a comprehensive package of measures for fire safety in high rise buildings, developed following the Lacrosse Apartments fire in Melbourne.

NCC 2016 Volume One Amendment 1

2.55 On 14 August 2017, the ABCB announced that the NCC would be amended out-of-cycle prior to the next scheduled edition of the NCC in 2019. The key aspects of the amendment cover:

- A new Verification Method that adopts the external wall testing standard, AS 5113.
- Improving the evidence of suitability provisions.
- Clarifying the Deemed-to-Satisfy Provisions relating to the fire performance of external walls.
- Referencing an updated sprinkler standard, AS 2118.

2.56 Feedback on the public comment draft of the NCC 2016 Volume One Amendment 1 is due on 10 September 2017, with the amendment's anticipated adoption in March 2018.⁶¹

60 Australian Building Codes Board, 'Building Ministers agree to comprehensive package of fire safety measures', 20 December 2016, <http://www.abcb.gov.au/News/2016/12/19/Building-Ministers-agree-to-comprehensive-package-of-fire-safety-measures> (accessed 30 August 2017).

61 Australian Building Codes Board, *Public Comment Draft: NCC 2016 Volume One Amendment 1*, p.1. <http://www.abcb.gov.au/Resources/Publications/Consultation/NCC-2016-Volume-One-Amendment-1> (accessed 30 August 2017).

2.57 In early 2016, Standards Australia completed the development of *AS 5113, Fire propagation testing and classification of external walls of buildings* which will be included in the NCC 2016 Volume One Amendment 1.

2.58 The old standard for testing combustibility, AS 1530.1 was not considered to be appropriate for testing bonded laminated products such as ACPs.⁶² Mr Wade Martin, National Technical Manager of Halifax Vogel Group stated: 'There is no such thing as a panel that passes AS1530.1'.⁶³

2.59 The new standard sets out procedures for testing and classification of external walls according to their tendency to limit the spread of fire across their surface and between neighbouring buildings. It can be applied to external vertical surfaces and external wall systems. AS 5113 also integrates international standard test methods where practicable.⁶⁴

Senior Officers' Group (SOG) Implementation plan yet to be released

2.60 On 14 July 2017, the committee was advised by the BMF that the SOG implementation plan, which was due to be published by May 2017, was still being finalised.⁶⁵ At the time of writing—6 September 2017—the implementation plan has still not been release.

62 Australian Institute of Building Surveyors, *Submission 124, Supplementary*, p. 16.

63 Mr Wade Martin, National Technical Manager, Halifax Vogel Group Pty Ltd, *Committee Hansard*, 19 July 2017, p. 66.

64 Standards Australia, *Submission 147*, pp. 1–2.

65 Ms Liza Carroll, Director-General Department of Housing and Public Works, *Committee Hansard*, 14 July 2017, p. 21.

Chapter 3

Regulatory framework

3.1 The fires in the Grenfell Tower, and other high-rise buildings in Australia and internationally, linked to flammable external building cladding highlight a wide range of issues surrounding non-conforming and non-compliant building products.

3.2 This chapter examines a range of matters that have aggravated the issues of non-compliance and non-conformity in building products in Australia such as, product importation, reports of fraudulent certification and the risks associated with product substitution. The chapter discusses some of the proposed measures to address both the use of non-complaint and non-conforming building products more broadly. In particular, it looks at measures to address the use of Aluminium Composite Panels (ACPs) with polyethylene (PE) cores which have been identified as a major fire safety risk in modern buildings.

Aluminium Composite Panels

3.3 The fires in the Lacrosse and Grenfell buildings, as well as similar fires in Dubai and China, have all involved ACPs, made of highly combustible PE Aluminium Composite Material (ACM).

3.4 This type of panelling consists of two thin aluminium sheets bonded to a non-aluminium core, and are most frequently used for decorative external cladding or facades of buildings, and signage. They are classified as attachments in Australia and New Zealand, and it is a requirement of the Building Codes in both countries that the panels, 'irrespective of their fire classification', only be attached to fire rated walls. Such panels must demonstrate that they will not contribute to the spread of flame in the event of fire.¹

3.5 ACPs are manufactured with various cores ranging from a highly combustible PE core up to the non-combustible Aluminium honeycomb core. It is important to note that there is a difference in price and weight between the flammable PE cored material and the fire retardant and fire-proof cored material.²

3.6 The Australian Building Codes Board (ABCB) noted that ACP cladding is not the only external wall components that could be dangerous if used in a non-compliant manner. As such the National Construction Code (NCC) 'takes a blanket approach to

1 CertMark International, Advisory Notice No. 06/2017, 'Subject: Aluminium Composite Panels (ACP) - Fire Risk - Australia & New Zealand', additional information received 28 June 2017, p. 1.

2 CertMark International, Advisory Notice No. 06/2017, 'Subject: Aluminium Composite Panels (ACP) - Fire Risk - Australia & New Zealand', additional information received 28 June 2017, p. 1.

all external wall components, including assemblies (or systems) to reduce the spread of fire within and between buildings'.³

3.7 The table below explains the types of ACPs available and details their uses.⁴

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.	

3.8 The ABCB made the following observations in relation to the combustibility of external walls:

- With the exception of low-rise buildings (typically single storey residential buildings and two storey commercial, industrial and public buildings) and single dwellings, the NCC requires that external walls must be non-combustible if using a Deemed to Satisfy Solution. In this context, the NCC contains some concessions whereby, provided specified conditions are met, a multi-residential building of up to four storeys may be permitted to have combustible external walls.
- Non-combustibility of a material is determined by testing to Australian Standard AS 1530.1. The NCC also lists some low hazard combustible materials that can be used where a non-combustible material is required (such as fibre-cement sheeting).
- The NCC Deemed-to-Satisfy Provisions also require that any attachments to the external wall must not impair the fire performance of the external wall or create an undue fire risk to the

3 Australian Building Codes Board, *Submission 150*, p. 4.

4 CertMark International, Advisory Notice No. 06/2017, 'Subject: Aluminium Composite Panels (ACP) - Fire Risk - Australia & New Zealand', additional information received 28 June 2017, p. 1.

building's occupants as a result of fire spread or compromising fire exits. Permitted attachments are generally incidental in nature such as a sign, sunscreen, blind, awning, gutter or downpipe.

- If not following the Deemed-to-Satisfy compliance pathway, a Performance Solution for combustibility of external walls must be able to demonstrate that it will avoid the spread of fire in and between buildings, including providing protection from the spread of fire to allow sufficient time for evacuation.⁵

Increase in the number of products being imported from overseas

3.9 Since the 1990s, there has been a significant decline in Australia's manufacturing base. The effect of this decline has been a transition where the majority of products used in the Australian domestic building market are now imported from overseas.⁶ The prime risk identified with the importation of construction materials into Australia is the difficulty in establishing if the materials are compliant with the relevant Australian standards.

3.10 Certification of a product indicates that it is compliant with a mandatory standard like the Australian Standards or a voluntary third party certification scheme (like the CodeMark), which confirms that a required standard has been met. For certification to be effective a standard must be clear, information about the standard should be easily accessible, monitoring and auditing of material against the standard must be maintained and consumers must have confidence in the credibility and integrity of the certification system whether it is onshore or offshore. Furthermore, enforcement, including penalties for non-compliance, need to be maintained.

3.11 In its submission to the inquiry, the Australian Institute of Architects noted the 'enormous array of materials coming from international manufacturers'. It flagged the concern that the certification credentials of imported products are not always reliable. It noted that at this point in time, 'any person can import construction products and materials, and many of these would not understand the Australian Standards relating to the materials they import. Nor would many understand the implications of using the material inappropriately'.⁷

Reliability of certification documentation

3.12 The committee heard of numerous incidents where individuals and businesses believed that import materials compliance documentation was possibly suspect. Fraudulent or misleading product certification documentation enables non-compliant or non-conforming materials to be easily used or substituted on Australian building sites. For example, the Australian Institute of Building Surveyors (AIBS) stated that they had identified 'incorrect, fraudulent or inadequate documentation and certificates

5 Australian Building Codes Board, *Submission 150*, pp. 4–5.

6 Dr Darryl O'Brien, National Technical Committee representative, Non-Conforming Building Products, Australian Institute of Building Surveyors, *Committee Hansard*, 19 July 2017, p. 21.

7 Australian Institute of Architects, *Submission 157*, p. 2.

of adequacy' as one of the potential reasons 'why non-compliant external wall cladding has been installed on so many buildings in Australia over the past 30 years'.⁸

3.13 Mr Travis Wacey, national Policy Research Officer from the Construction, Forestry, Mining and Energy Union (CFMEU) also raised similar concerns about the prevalence of the use of fraudulent certification. Mr Wacey considered the issue to be widespread and provided an example of the types of fraudulent certification that has been found by the CFMEU:

The 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.⁹

3.14 Mr Wacey also highlighted the limited number of prosecutions in relation to fraudulent certification. He was aware of examples where false or misleading statements claiming conformity with a standard had been raised with the Australian Competition and Consumer Commission. However, he understood the 'examples might not have been prosecuted with reference to the list of priorities in terms of the agency'.¹⁰

3.15 Mr Murray Smith, Acting Chief Executive Officer, Victorian Building Authority (VBA), highlighted a recent case which had been prosecuted by Consumer Affairs Victoria involving a false certificate for a fire safety or separation wall—a product designed to prevent or delay the spread of fire.¹¹

3.16 Many in the industry told the committee that they felt that the problem of fraudulent documentation was significant, Mr Rodger Hills, Executive Officer, Building Products Innovation Council (BPIC), considered it was a 'massive problem within the industry'. Mr Hills noted that one of BPIC's members, the Australian Windows Association had 'literally thousands of documents that are fraudulent'.¹²

3.17 Mr Hills observed that in his experience:

8 Australian Institute of Building Surveyors, *Submission 124.1*, p. 3.

9 Mr Travis Wacey, National Policy Research Officer, Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union, *Committee Hansard*, 14 July 2017, p. 4.

10 Mr Travis Wacey, National Policy Research Officer, Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union, *Committee Hansard*, 14 July 2017, p. 5.

11 Mr Murray Smith, Acting Chief Executive Officer, Victorian Building Authority, *Committee Hansard*, 19 July 2017, pp. 75–76.

12 Mr Rodger Hills, Executive Officer, Building Products Innovation Council, *Committee Hansard*, 19 July 2017, p. 6.

A large part of it—I won't say all of it—is from imported products. The imported products, for whatever reason, can be tested to varying standards and not necessarily the standards that people think. The documentation could be completely fraudulent, with no testing done at all. There has been forging of NATA [National Association of Testing Authorities, Australia] certificates and forging of industry code certificates and things like that. It gets very difficult then for a building certifier or an engineer who is trying to check...If you look at the asbestos contamination in the Perth hospital, the builder had all of the proper information and all of what they believed to be relevant certification documentation, which turned out not to be correct.¹³

3.18 Likewise the Australian Institute of Architects submitted that 'fraudulent documents abound', noting that architects had reported that 'relying on the supplier/agent to supply the appropriate information and documentation can be difficult'. In its view:

To avoid fraudulent documentation, it appears that the only avenue for a higher degree of certainty is to request third party product certification. However, for the construction industry, the current patchwork system of assessment schemes is unwieldy. There is great disparity amongst the schemes as to the quality of assessment, level of auditing and checking for fraudulent documentation.¹⁴

The risks associated with product substitution

3.19 Along with deliberate misleading or fraudulent documentation or certification, non-compliance and non-conformity can be demonstrated through product substitution. When a similar, often inferior and, generally cheaper product is substituted it has the significant potential to underperform when compared to the original product specifications. Product substitution has been identified as perhaps the most significant contributing factor to the prevalence of non-compliant external cladding materials on Australian buildings.

3.20 Mr John Thorpe, Chief Executive Officer of CertMark International, noted that since the Lacrosse fire in 2014, his company has examined high-rise properties where the body corporate provided the building plans which specifically state that fire-retardant material was to be used and there has been a substitution for a PE. In CertMark International's experience:

Substitution occurs, from our perspective, when a builder, or somebody in involved in the purchasing process, is looking to save money. Basically, what's happened is there's been a tender go out for the building, a

13 Mr Rodger Hills, Executive Officer, Building Products Innovation Council, *Committee Hansard*, 19 July 2017, p. 7.

14 Australian Institute of Architects, *Submission 157*, p. 3.

company's won the tender and the first thing that happens is they look to find savings.¹⁵

3.21 Icon Plastics cautioned that product substitution was a 'major problem within the construction industry'. Of particular concern was:

...the continued substitution of compliant products in favour of lower cost non-compliant products and systems. This unfortunately is done mainly through the construction phase of the project. Either building companies or installers will substitute products to make the project more profitable for themselves.¹⁶

Concerns about the National Construction Code

3.22 Ignis Solutions told the committee that it considered the complexity and lack of clarity in the National Construction Code (NCC), to be a primary factor leading to the use of flammable cladding materials.¹⁷

3.23 The ABCB is a joint initiative of all levels of government in Australia. As such, the Board is a Council of Australian Government (COAG) codes and standards writing body that is responsible for the development and maintenance of the NCC, which comprises the Building Code of Australia (BCA) and the Plumbing Code of Australia (PCA). While the ABCB submission notes that it 'aims to establish minimum performance based and proportional codes, standards and regulatory systems that are consistent, as far as practicable, between states and territories', Mr Neil Savery, General Manager of the ABCB, emphasised that 'the ABCB is not a statutory authority; it has no regulatory powers, no powers of compliance'.¹⁸ These responsibilities lie with the relevant state and territory authorities.

3.24 As outlined, the code governing the built environment in Australia is the NCC. The NCC is a performance-based code, meaning there is no obligation to adopt any particular material, component, design factor or construction method. The Performance Requirements for the construction of all buildings can be met using either a Performance Solution (Alternative Solution), which can be done in consultation with the state and territory planning and design authorities or using a Deemed-to-Satisfy (DTS) Solution:

A Performance Solution is unique for each individual situation. These solutions are often flexible in achieving the outcomes and encouraging innovative design and technology use. A Performance Solution directly addresses the Performance Requirements by using one or more of the Assessment Methods available in the NCC.

15 Mr John Thorpe, Chief Executive Officer, CertMark International, *Committee Hansard*, 19 July 2017, p. 36.

16 Icon Plastics, *Submission 149*, p. 2.

17 Ignis Solutions, answers to written questions taken on notice received 10 August 2017, p. 2.

18 Mr Neil Savery, General Manager, Australian Building Codes Board, *Committee Hansard*, 14 July 2017, p. 37.

A Deemed-to-Satisfy Solution follows a set recipe of what, when and how to do something. It uses the Deemed-to-Satisfy Solutions from the NCC, which include materials, components, design factors, and construction methods that, if used, are deemed to meet the Performance Requirements.¹⁹

3.25 Prior to the introduction of the performance-based codes, building codes were very prescriptive, as Mr Norman Faifer, Immediate Past National President, Australian Institute of Building noted:

Before the Building Code of Australia was in, we had only one regime, and that was prescriptive, highly specified, in the book. If it was not in the book, it did not get a look. In order to provide innovation and inventiveness and allow some latitude to architectural design and construction techniques, we went to performance based. Opening the door to performance based product and solutions then opened up the regime of who certifies, who says that this is an approved method or product to use, under the performance based.²⁰

3.26 The Warren Centre for Advanced Engineering observed that the 'greater use of performance-based design appears to be threatened by inadequate regulatory and administrative weaknesses and a lack of attention to practitioner competence'. At the same time, it also considered that performance-based codes had provided many benefits to the building and construction industry, such as innovative buildings and cost effective construction projects.²¹

3.27 Ai Group recommended that the evidence of suitability provision in the NCC be reviewed as they felt that the provisions are too broad. It suggested rewriting the provisions to:

- differentiate between the varying levels of assurance (i.e. third party certification is more credible than self-declaration) and the types of building materials and systems that should align with these levels of assurance; and
- differentiate between material conformance and design conformance.²²

3.28 The AIBS, while supportive of the Code, maintained that the NCC needs to be revised to 'remove ambiguity of interpretation and provide greater clarity around the evidence of suitability provisions supporting performance based design and assessment'.²³ The AIBS also expressed its support for the BMF's resolution to improve industry wide understanding of the performance assessment process available within the NCC, noting:

19 Australian Building Codes Board, 'How it works' <http://www.abcb.gov.au/NCC/How-it-works> (accessed 30 August 2017).

20 Mr Norman Faifer, Immediate Past National President, Australian Institute of Building, *Committee Hansard*, 19 July 2017, p. 49.

21 The Warren Centre, *Submission 158*, p. 5.

22 Ai Group, *Submission 46*, p. 25.

23 Australian Institute of Building Surveyors, *Submission 124.1*, p. 7.

Building surveyors are often frustrated by the lack of understanding of the evidence of suitability requirements and performance assessment processes among design consultants and believe a widespread mandatory education program on these aspects of performance design is required to address the issue.²⁴

3.29 In relation to the code's effectiveness regarding flame retardant products, Mr Graham Attwood, Director of Expanded Polystyrene Australia, considered that there were loopholes in the NCC, that need to be 'tightened up' to ensure only flame retardant products are used in building and construction.²⁵ Mr Attwood stated:

There are loopholes in the Australian standards, and there are loopholes in the NCC, the National Construction Code, that allow certain product lines to fall into play. That may or may not be a conscious decision, but, in the whole building process, once an approval is given to construct a domestic or commercial building, the next stage on is to look at ways to minimise cost in the construction phase. Sometimes loopholes are found to actually implement and move away from this, while still supposedly compliant with the broad element of documentary compliance; however, the specific and detailed areas of, for instance, applying certain Australian standards to this particular code have got flaws and have got holes in them that need to be tightened up.²⁶

3.30 Furthermore, the AIBS provided a number of examples to emphasise its concerns about the lack of clarity in the NCC including the concern that 'Specification C1.1 Clause 2.4 [in the NCC] has been identified as providing for some degree of use of combustible elements on parts of building facades'.²⁷

3.31 The committee heard that performance-based pathways can enable a collective arrangement of adaptations, suggested by builders, such as additional sprinklers or fire walls to circumvent more prescriptive elements of the NCC. Ignis Solutions stated that the NCC currently has a performance-based pathway which permits the use of PE core ACPs in high rise buildings above the prescribed floor height limit for such panels. Additionally, Ignis Solutions also raised concerns in relation to wall fire safety compliance, stating that 'the NCC is fragmented, confusing, lacking in definitions, contradictory with conflicting prescriptive clauses and has no hierarchy between the conflicting prescriptive clauses'.²⁸

3.32 Mr Benjamin Hughes-Brown, Managing Director of Ignis Solutions explained:

24 Australian Institute of Building Surveyors, *Submission 124.1*, pp. 7–8.

25 Mr Graham Attwood, Director, Expanded Polystyrene Australia, *Committee Hansard*, 19 July 2017, p. 3.

26 Mr Graham Attwood, Director, Expanded Polystyrene Australia, *Committee Hansard*, 19 July 2017, pp. 3–4.

27 Australian Institute of Building Surveyors, *Submission 124.1*, p. 7.

28 Ignis Solutions, *Submission 153*, p. 4.

[The NCC] is contradictory, with no hierarchy of control for various clauses which compete with each other. The matter of fire safety and building compliance is too great to rely on one person. By way of example, let's take sarking used for external walls for weatherproofing. One part of the code requires it to have a flammability of less than five. This indicates that combustibility is permitted. Another part of the code says that the external wall must be non-combustible. How is this to apply for a consecutive nature? If it is used externally, does the clause that allows it to be used as combustible apply internally? Well, you don't put sarking on internal aspects of a building. And does it apply to only low-rise type C construction? There are no requirements for fire resistance in many applications for that. So what does the flammability requirement actually hold on that front? The Australian Building Codes Board has written a nine-page document to provide clarification on these two levels of clauses. A nine-page document to provide clarification certainly highlights that something is not right.²⁹

3.33 Ms Liza Carroll, Director-General, Queensland Department of Housing and Public Works, noted that the introduction in Queensland of a performance-based building code in 1996 informed the Queensland Government's decision to examine those buildings that were constructed between 1994 and 2004 as the initial scope for its cladding audit. Ms Carroll noted:

I think this goes to the kind of thing that happens within the Building Code, as I am sure you are aware, which is: is it non-flammable, non-combustible cladding or is it a performance solution so it can effectively replicate the standards that might be required? So there is a focus on: do some of these buildings have performance solutions and were they appropriately tested back then.³⁰

3.34 In addressing these and other concerns raised about the effectiveness of the NCC, Mr Savery of the ABCB stated that 'the performance based code is a highly sophisticated regulation and it needs properly qualified and trained individual assessors in order to understand how a performance based code works'. He observed:

In the early 1990s, we introduced a performance based code which is highly sophisticated regulation; it is not something that the average individual can necessarily understand. You need qualified, trained people to understand how a performance based code works. At the same time as that, private certification was incrementally introduced around the country. At the same time as that, we had a process around the country of deregulation or reduction in regulatory requirements around things like mandatory inspections. At the same time as all of that is happening, the world is

29 Mr Benjamin Hughes-Brown, Managing Director, Ignis Solutions, *Committee Hansard*, 19 July 2017, p. 28.

30 Ms Liza Carroll, Director-General Department of Housing and Public Works, *Committee Hansard*, 14 July 2017, p. 19.

changing around us. We have global supply chains. We have multinational companies operating.³¹

3.35 Mr Savery, having agreed with the committee on a number of statements regarding the lack of compliance in the system and the erosion of confidence through the gradual removal of elements such as mandatory inspections, also noted that there is considerable non-compliance occurring in the industry.

There is noncompliance occurring. We have got non-compliant products, but I would suggest to you that it does not end at non-compliant cladding.

...

Not just products; non-compliant construction. It is not just a product; the actual potential construction of a building³²

3.36 Mr Savery was asked 'who was responsible for the existence of these unsafe buildings' and whether they were a product of deregulation. Further, the committee asked Mr Savery if he believed the answer was to reregulate. Mr Savery informed the committee that this particular question was being considered by the BMF's expert review into the *Assessment of the Effectiveness of Compliance and Enforcement Systems for the Building and Construction Industry across Australia*.³³

3.37 Mr Hills from the Building Products Innovation Council (BPIC) believed the industry support a move to reregulation including 'nationally consistent approaches to training, licensing and banning of non-complying products and buildings'.³⁴

Committee view

3.38 The committee notes the concern from witnesses and submitters that the non-compliant use of cladding is widespread and that there have been extensive delays in developing and implementing policies to address non-compliance and non-conformity in the building industry.

3.39 As highlighted in Chapter 2, the committee notes that the BMF has now released the *Assessment of the Effectiveness of Compliance and Enforcement Systems for the Building and Construction Industry across Australia* review's terms of reference and its timeline. The committee looks forward to following this review and learning about its outcomes.

3.40 The committee also welcomes the recent announcement that the NCC would be amended to reflect the ABCB's new comprehensive package of measures for fire

31 Mr Neil Savery, General Manager, Australian Building Codes Board, *Committee Hansard*, 14 July 2017, p. 40.

32 Mr Neil Savery, General Manager, Australian Building Codes Board, *Committee Hansard*, 14 July 2017, p. 40.

33 Mr Neil Savery, General Manager, Australian Building Codes Board, *Committee Hansard*, 14 July 2017, p. 40.

34 Mr Rodger Hills, Executive Officer, Building Products Innovation Council, *Committee Hansard*, 19 July 2017, p. 9.

safety in high rise buildings. The committee is hopeful that this amendment to the NCC, if delivered in a timely manner, will provide greater clarity and reduce the ambiguity around interpretation which has been identified by stakeholders.

3.41 Of particular concern to the committee, and stakeholders, is the long time lag between government responses to the Lacrosse fire in 2014 and any meaningful resolution between governments, the BMF, and the SOG on possible steps forward. Furthermore, the committee notes that more disastrous fires have occurred internationally, but Australia has yet to implement any major reforms or communicate any course of action publically. Considering the prevalence of PE core cladding across Australia, the committee considers it paramount that all governments focus attention on this issue before the next disaster occurs.

Need for greater clarity of CodeMark Certificates of Conformity

3.42 The need for confidence in the conformity of Australian building products is paramount. Certificates of Conformity issued under the ABCB's voluntary CodeMark Scheme are evidence that a building material or method of design fulfils specific requirements of the NCC. Currently, there are a number of external wall products on the market displaying a CodeMark Certificate of Conformity, including some aluminium composite panels.³⁵

3.43 Icon Plastics highlighted the importance of clear product labelling in reducing the incidence of product substitution. It considered:

One quite simple way of stopping this type of practice is to have all products labelled with the appropriate standards and certificate number, the particular product has passed. All products would then be able to be visually checked as they arrive on construction sites, prior to installation. This would also be confirmed with copies of the test certificates either supplied by the manufacturer or the importer.³⁶

3.44 Mr Murray Smith, the VBA, drew the committee's attention to two critical weaknesses in the current building product certification system which were highlighted by the Lacrosse building fire:

...firstly, that there is no single organisation or regulator responsible for certifying products for compliance with relevant standards and, secondly, that, certificates of conformity with the Building Code of Australia performance requirements, where available, are not always explicit in respect of the range of uses and circumstances in which a product may be relied upon to be fit for purpose.³⁷

35 Australian Building Codes Board, *Submission 49*, p. 17.

36 Icon Plastics, *Submission 149*, pp. 2–3.

37 Mr Murray Smith, Acting Chief Executive Officer, Victorian Building Authority, *Committee Hansard*, 19 July 2017, pp. 75–76.

3.45 Mr Savery of the ABCB advised the committee that the CodeMark Scheme had been overhauled. Mr Savery also explained that there had already been a review in train prior to the Lacrosse fire which was then expedited further noting:

One of the key changes has been the introduction of a new certificate. It was deemed by the board that the existing certificate did not adequately describe to the practitioner what the limitations of the product were or what performance requirements of the code it satisfied. So the new certificates which have been road tested by the conformity assessment bodies—they are the bodies that issue the certificates—are more precise in terms of describing what the product complies with. A product will not comply with every requirement of the code; they will only be seeking to attest to certain parts of the code and what the actual limitations are in respect of that product.³⁸

Mandatory third party certification, national register and product auditing

3.46 The committee notes that the SOG report included recommendations to assess the costs and benefits of mandating third party certification and establishing a national register for high risk products (see paragraph 2.44).

3.47 Mr John Thorpe, Chief Executive Officer of CertMark International argued that the quickest way to address the use of high risk products would be to make the CodeMark Scheme mandatory, stating that 'I'm not saying everything needs a mandatory certification—decorative items that are non-flammable, obviously not—but that could be a move that could go ahead quite quickly'.³⁹

3.48 The Australian Institute of Architects also considered third party product certification to be only avenue to avoid fraudulent documentation and provide a higher degree of certainty. However, in its view, the 'current patchwork system of assessment is unwieldy. There is great disparity amongst the schemes as to the quality of assessment, level of auditing and checking for fraudulent documentation'. It also noted:

Third party certification from a testing laboratory that is properly recognised and accredited by NATA is essential, as is current certification schemes, and product registers coming under the one umbrella to ensure that minimum standards are upheld. The certification and testing regime should not be limited to imported products, but should apply to those manufacturers in Australia to ensure that all products comply with Australian standards.⁴⁰

3.49 AIBS advocated for random testing and auditing as well as developing a central product register:

38 Mr Neil Savery, General Manager, Australian Building Codes Board, *Committee Hansard*, 14 July 2017, p. 46.

39 Mr John Thorpe, Chief Executive Officer, CertMark International, *Committee Hansard*, 19 July 2017, p. 38.

40 Australian Institute of Architects, *Submission 157*, p. 3.

An ongoing and proactive system of random auditing and testing of high risk products undertaken by the testing bodies should be introduced, with significant penalties for those found to be involved in the supply or manufacture of non-conforming products. Once a product has been found to be compliant, all testing details and evidence of suitability should be made available via a central body responsible for the coordination and publication of that information, to ensure that the latest information is readily accessible to all involved in the design and assessment processes.⁴¹

Committee view

3.50 Submitters and witnesses have raised concerns about the progress of the SOG Report's recommendations, which were due to be finalised in May 2017. The committee is concerned that progress appears to have stalled and there is no clearly identified timetable for implementation. The committee is of the view that the implementation plan should be released as soon as possible to assure stakeholders that progress is being made and again makes its point about the timeliness in response to these issues.

Proposal to ban aluminium composite panels with a polyethylene core

3.51 Many who provided evidence to the committee believed that the complexity of the NCC and the ability to undertake 'Alternative Solutions' to items that would appear to most people to be non-negotiable, led them to advocate for a total ban of the highly flammable ACPs with a Polyethylene (PE) core in Australia.

3.52 The committee heard from three distributors of ACM panels during the inquiry. Two of the companies—SGI Architectural and Fairfax Architectural—supported a ban on PE core ACPs.

3.53 Mr Clint Gavin, National Sales Manager advised the committee that SGI Architectural fully supported a national ban on the importation of PE core ACPs. He noted that SGI Architectural had made a conscious decision in 1999 not to import PE core products, and are now only importing fire retardant products with a fire retardant non-combustible mineral filled composite core. Mr Gavin said that his decision was made despite the fact that SGI Architectural had lost business to companies who provide the cheaper PE core products.⁴²

3.54 Fairview also supported a ban of PE core ACPs due to the risk that they can 'inadvertently be substituted for the correct product'. Fairview indicated that it had ceased manufacturing PE core ACPs two years ago, although its remaining PE core stocks may still be sold if requested. Fairview advised the committee that it would write off its remaining stocks if a ban was issued.⁴³

41 Australian Institute of Building Surveyors, *Submission 124.1*, p.11.

42 Mr Clint Gavin, National Sales manager, SGI Architectural, *Committee Hansard*, 31 July 2017, p. 50.

43 Mr Andrew Gillies, Managing Director, Fairview Architectural, *Committee Hansard*, 19 July 2017, pp. 71–73.

3.55 Mr Bruce Rayment, Chief Executive Officer of Halifax Vogel Group, cautioned against a blanket ban as PE core ACPs are also widely used in the signage industry. Mr Raymont noted that the company was not able to confirm where its products had ended up, or whether they were used in a compliant manner.⁴⁴

3.56 Mr Thorpe, CertMark International, did not believe there was strong argument for being able to have a niche market for flammable products in the building industry. He concluded that 'the simplest way with PE flammable core materials, as with any flammable material that is in a building, is it should be banned; it should be kept out of the marketplace'.⁴⁵

3.57 Mr Smith from the VBA observed that banning PE core ACPs would 'make regulation a lot simpler'.⁴⁶

3.58 Similarly, Ignis Solutions submitted that there were 'no legitimate uses for PE core materials in Australian buildings be it cladding or signage, that cannot be cost and life safety effective with a fire retardant core panel'.⁴⁷

3.59 The committee was advised that there was not a significant price difference between PE core and fire retardant panels, particularly in light of the potential cost of millions of dollars for remediation of buildings found to be clad in PE core ACPs. The committee was informed that the price of a panel is approximately \$50 per square metre. Mr Rayment of Halifax Vogel Group advised that 'for us the difference in price between the polyethylene cored material and the fire-resistant material, at a wholesale price, is A\$3 a square metre'.⁴⁸

3.60 However, the CFMEU acknowledged the complexities surrounding the introduction of an import ban while there are still compliant uses of PE core ACPs.⁴⁹ The committee also notes that Australian Border Force has previously advised that it is not in a position to reliably determine whether an imported building product will be used or installed correctly.⁵⁰

3.61 Despite this complexity, the CFMEU suggested that if necessary, the Australian Government could introduce interim import bans on the product 'until systems were established to provide the public with confidence that products of this

44 Mr Bruce Rayment, Chief Executive Officer, Halifax Vogel Group Pty Ltd, *Committee Hansard*, 19 July 2017, p. 66.

45 Mr John Thorpe, Chief Executive Officer, CertMark International, *Committee Hansard*, 19 July 2017, p. 38.

46 Mr Murray Smith, Acting Chief Executive Officer, Victorian Building Authority, *Committee Hansard*, 19 July 2017, p. 85.

47 Ignis Solutions, answers to written questions taken on notice received 10 August 2017, p. 2.

48 Mr Bruce Rayment, Chief Executive Officer, Halifax Vogel Group Pty Ltd, *Committee Hansard*, 19 July 2017, p. 66.

49 Construction, Forestry, Mining and Energy Union, *Submission 128.1*, p. 18.

50 Department of Immigration and Border Protection, *Submission 56*, p. 4.

type were going to be used appropriately and compliantly only'.⁵¹ The CFMEU considered that such an action would be consistent with Australia's international obligations as the World Trade Organisation's Agreement on Technical Barriers to Trade states:

No country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate.⁵²

3.62 The Hon John Rau MP, Deputy Premier of South Australia stated:

We have the capacity, if there is completely unsafe building material—whether it be cladding or something else—at risk of coming into the country, to stop it at the border. Once it's in, once it's past the port and it's into the distribution network, chasing it, catching it and identifying it, particularly after it's been used, is an absolutely massive task and one for which, quite frankly, as far as I'm aware, nobody is adequately resourced. When I say 'nobody' I mean any level of government. So the obvious answer, it would seem to me, is to find effective mechanisms to root this material out at the point of entry into the country to the extent that we possibly can.⁵³

Committee view

3.63 The committee understands that under the NCC in its current form, there are compliant uses for PE core ACPs in low-rise buildings, as well as pathways through performance-based solutions to allow the use of PE core ACPs in high-rise buildings. The committee also understands that the signage industry uses PE core ACPs.

3.64 In light of the Grenfell Tower fire tragedy, the committee does not consider there to be any legitimate use of PE core ACPs on any building type. The committee believes that as there are safe non-flammable and fire retardant alternatives available there is no place for PE core ACPs in the Australian market. While Australian Border Force and suppliers of ACM are currently unable to determine whether an imported building product will be used in a compliant manner, the committee believes a ban on

51 Construction, Forestry, Mining and Energy Union, *Submission 128.1*, p. 18.

52 Construction, Forestry, Mining and Energy Union, *Submission 128.1*, p. 18.

53 The Hon John Rau MP, Deputy Premier of South Australia, *Committee Hansard*, 31 July 2017, p. 42.

importation should be placed on all PE core ACPs. In addition, the sale and use of PE core ACPs should be banned domestically.

Recommendation 1

3.65 The committee recommends the Australian government implement a total ban on the importation, sale and use of Polyethylene core aluminium composite panels as a matter of urgency.

Chapter 4

Accountability and enforcement

4.1 As noted in Chapter 2, the legal cases against the practitioners involved in the Lacrosse building fire, which occurred in 2014, have yet to be resolved. Nearly three years on, it is still unclear where legal and financial liability lies for this incident. While these issues remain unanswered, the building is still clad in the combustible cladding and there is no indication which party will be responsible for any remediation. There is clear need for a greater degree of accountability and enforcement for all building practitioners, as well as those involved in the building product supply chain.

Greater coordination and a national approach to reform

4.2 While the NCC provides a national overarching performance based framework for the built environment, in order to address the issues around non-compliant and non-conforming building products there remains a need for a nationally consistent approach to building regulation, inspections and auditing, including licencing and registration. This issue has been raised throughout the committee's inquiry and in particular in relation to the use of external Aluminium Composite Panel (ACP) cladding.

4.3 The necessity for cooperation across governments and industry to resolve these issues expeditiously was emphasised by Mr Timothy Tuxford, National President, Australian Institute of Building Surveyors (AIBS):

...the Australian public must be protected through safe, compliant buildings and that will only be achieved through buy-in by everyone involved in the building and construction industry working together to improve the system and the professional practices across the board.¹

4.4 Ignis Solutions considered that 'each state and territory should harmonise their building planning and construction regulations as well as licencing requirements for professional building designers, engineers as well as installers'.²

4.5 Mr Norman Faifer, Immediate Past National President, Australian Institute of Building, noted in relation to the regulatory framework:

...there are six states, two territories and a federal jurisdiction all overseeing building work and administering the Building Code of Australia. Each jurisdiction is a little bit different in what they want. Their criteria is a

1 Mr Timothy Tuxford, National President, Australian Institute of Building Surveyors, *Committee Hansard*, 19 July 2017, pp. 20–21.

2 Ignis Solutions, answers to written questions taken on notice received 10 August 2017, p. 4.

little bit different. Their licensing and their registration of builders and other practitioners in the industry are different.³

4.6 Mr Karl Sullivan, General Manager Risk and Disaster Planning for the Insurance Council of Australia highlighted the importance of a nationally consistent licencing:

The ability to have national compliance with licensing would be of great benefit to prevent somebody who has failed to build properly in, say, Queensland and has been found locally by the agencies there to have done that and has been penalised to then reappear in South Australia and start committing the same acts. So, some form of national compliance measures, which might involve national licensing, would certainly be of benefit.⁴

4.7 Mrs Denita Wawn, Chief Executive Officer of Master Builders Australia (MBA) believed the regulatory framework was an area of immediate concern noting there is 'inconsistency from jurisdiction to jurisdiction, with some inconsistencies within jurisdictions'.⁵

Need for greater enforcement of existing regulations

4.8 Mr Phillip Dwyer of the Builders Collective of Australia, a voluntary organisation, suggested that the reason Australia has 'such a ratbag building industry' is that existing regulation is not being enforced.⁶ Ignis Solutions considered that the enforcement and audit regime had failed 'at multiple levels'.⁷

4.9 The Australian Building Codes Board (ABCB) submitted that measures that have been developed through the Building Ministers' Forum (BMF) will go some way to help address the non-compliant use of external wall claddings and other products:

However, where deliberate decisions are taken on the part of those involved in the design and construction of buildings to use non-compliant products, the final recourse will be through enforcement actions by the appropriate authorities.⁸

4.10 Others like the Building Products Innovation Council (BPIC) have raised the issue of severe financial penalties that should be imposed across the supply chain where 'an organisation is knowingly selling non-compliant product, installing it, or importing it directly for use in Australia'. BPIC also recommended:

3 Mr Norman Faifer, Immediate Past National President, Australian Institute of Building, *Committee Hansard*, 19 July 2017, p. 47.

4 Mr Karl Sullivan, General Manager Risk and Disaster Planning, Insurance Council of Australia, *Committee Hansard*, 19 July 2017, p. 62.

5 Mrs Denita Wawn, Chief Executive Officer, Master Builders Australia, *Committee Hansard*, 14 July 2017, p. 45.

6 Mr Phillip Dwyer, National President, Builders Collective of Australia, *Committee Hansard*, 19 July 2017, p. 51.

7 Ignis Solutions, answers to written questions taken on notice received 10 August 2017, p. 2.

8 Australian Building Codes Board, *Submission 150*, p. 6.

...state-run schemes where buildings are inspected for product conformity and those found deliberately procuring, installing or certifying offending products are subject to legal action.⁹

4.11 Similarly, considering that there is a significant risk of loss of life with particular building types, the Australian Institute of Architects expressed concern that the issue of non-compliance in the construction industry is not taken as seriously as it should be. It argued where products have been substituted during building construction are found to be non-compliant, substantial fines should be imposed to provide a strong disincentive.¹⁰

4.12 The Australian Institute of Building noted the lack of national consistency in enforcing the NCC, observing:

Whilst there is a common Building Code of Australia/National Construction Code throughout Australia it is left to the states and territories to administer, regulate, enforce and discipline their part of the industry. There are both subtle and distinct differences in the administration of the Code, its enforcement and in the licensing and/or registration of building practitioners from state to state. WA is the only state that licences painters, Victoria is the only state that registers Quantity Surveyors and there are differences between states in the licensing/registration of domestic and commercial builders; all of which make it just that little more difficult to promulgate and enforce uniform laws and regulations.¹¹

Committee view

4.13 The committee acknowledges that greater enforcement of existing regulations is needed. However, current building regulations appear inadequate and are too easily evaded, largely due to existing deemed-to-satisfy and performance-based pathways, which provide avenues to circumvent Australian Standards in the NCC. The committee supports the BMF's decision to establish an independent review to assess the broader compliance and enforcement problems within the building and construction systems across Australia. The committee is encouraged by the fact that the terms of reference include developing recommendations for a national best practice model for compliance and enforcement to strengthen the effective implementation of the NCC. The committee believes consideration should also be given to an expanded national role for the Commonwealth government across all elements of the building and construction industry, starting with the BMF.

National licencing schemes

4.14 The committee heard from both submitters and witnesses that while plumbers and electricians are nationally licenced many other trades are not. While all Australian states and territories practice mutual recognition of Australian Quality Training

9 Building Products Innovation Council, *Submission 83.1*, p. 4.

10 Australian Institute of Architects, *Submission 157*, p. 3.

11 Australian Institute of Building, *Submission 151*, p. 6.

Framework trade qualifications, there is no requirement for other trades to be registered under a national licencing regime.

4.15 The committee understands that licencing requirements vary across jurisdictions and Queensland is the only state that has a specific licence requirement for wall cladding installers. It was suggested to the committee that Brisbane may have fewer buildings compared to other capital cities that have been clad with PE core ACPs as a result of this licencing requirement.¹²

4.16 Mr Radley de Silva, Executive Director, Master Builders Association of Victoria observed that part of the problem with building non-compliance is the lack of consistency across Australia:

To give an example referring to that, talking about subcontractors, there is no requirement for trade registration in Victoria. I do not have a building background, but I could walk out of here and put a belt on and call myself a subcontractor. But in other states and jurisdictions you are required to be registered.¹³

4.17 AIBS observed that everyone in the building industry, including 'regulators, suppliers and basically all professionals involved, including building surveyors' need to continually 'improve to keep pace with the modern building industry'.¹⁴ For its part in ensuring best practice among building surveyors into the future:

Right now, AIBS is developing a professional standards scheme for building surveyors. We expect this scheme will provide increased consumer protection and contribute to an improved building regulatory system in Australia. A professional standards scheme will further establish the competencies and skills required of a building surveyor. At present, it varies from state to state and in some jurisdictions are not clearly defined. However, for the scheme to be successful, it needs to be supported by all governments and regulators.¹⁵

4.18 The Australian Institute of Architects recommended introducing nationally consistent licensing for all building practitioners such as drafters, building designers, and project managers in order to provide greater consumer protections. It noted:

While this split of service delivery is set by the market, there is no level of consumer protection applied to the services provided by those building professionals who are engaged for projects that may be outside their level of expertise. There are also no ethical/behavioural rules, via a code of

12 Mr Clint Gavin, National Sales manager, SGI Architectural, *Committee Hansard*, 31 July 2017, p. 52.

13 Mr Radley de Silva, Executive Director, Master Builders Association of Victoria, *Committee Hansard*, 14 July 2017, p. 50.

14 Mr Timothy Tuxford, National President, Australian Institute of Building Surveyors, *Committee Hansard*, 19 July 2017, p. 20.

15 Mr Timothy Tuxford, National President, Australian Institute of Building Surveyors, *Committee Hansard*, 19 July 2017, pp. 20–21.

conduct or similar long held measure, which apply to building and design professionals other than architects.¹⁶

4.19 Engineers Australia noted that fire safety engineering is not subject to a nationally consistent licensing and registration regime. Queensland is currently the only jurisdiction with an established registration regime for engineers:

Engineers Australia has established the National Engineering Register (NER) which provides minimum entry levels matched to Engineers Australia's standards, mandates for levels of Continued Professional Development (CPD) and transparency for consumers and users of engineering services across the country. The NER however voluntary and it is recommended that state governments make use of it as part of new co-regulatory scheme.¹⁷

Committee view

4.20 The committee considers that a national licencing scheme for all trades and professionals involved in the building and construction industry including: building surveyors, building inspectors, builders and project managers, would improve compliance and provide greater consumer protection and public safety outcomes. A national licencing scheme, including requirements for continuing professional development would ensure that building practitioners have the necessary skills and knowledge to operate in the building industry's complex regulatory environment.

Recommendation 2

4.21 **The committee recommends that the Commonwealth government work with state and territory governments to establish a national licensing scheme, with requirements for continued professional development for all building practitioners.**

The role and independence of building surveyors

4.22 The committee repeatedly heard about the role and independence of building surveyors in ensuring buildings are built in compliance with the NCC and the relevant Australian Standards. Since the early 1990's state and local governments have progressively privatised once in-house building surveyor services. While some building surveyors are still employed by local governments most functions are fully privatised. At the same time the role of building surveyors was privatised there was a shift to deregulation.

4.23 Mr Scott Williams, Fire Protection Association Australia (FPA Australia) was not opposed to privatisation but explained:

...you can't have privatisation but then a hands-off approach from the government, from the enforcement agencies, to say, 'It'll be fine.' So, there must be surveillance, there must be auditing, there must be compliance and

16 Australian Institute of Architects, *Submission 157*, p. 6.

17 Engineers Australia, *Submission 146*, p. 6.

there must be consequences through that process for behaviours that don't support the process.¹⁸

4.24 Similarly, Mr Christopher Stoltz, President of Engineers Australia considered that the shift to privatisation of the role of building surveyors was not in itself a bad thing, 'provided we have got the checks and balances to make sure that, if you like, the auditors are audited and that the competencies are there to make the decisions that they're making'.¹⁹

4.25 The AIBS felt that following the shift to privatisation, governments across Australia had not done enough to support and strengthen the system while the regulatory framework became increasing complex and varied across jurisdictions.²⁰

4.26 The committee also heard concerns about the difficulties faced by building surveyors and their ability to maintain the independence of their role. For example, Mr Slavery, ABCB, acknowledged the difficult position building surveyors have been placed in:

I think this is really difficult, because I empathise with the building surveyors, whether they are private or municipal—because it is not uniformly private around the country. They are in a very difficult position because, on the one hand, they have been given a responsibility to protect the public interest—that is, the regulatory—and, on the other hand, they have been given a commercial relationship with the client.²¹

4.27 Engineers Australia expressed concern that building surveyors are not always independent:

...as the building surveyor is often acting as a member of the building team, they cannot be truly independent of the team. For example, the RBS [relevant building surveyor] in Victoria is required to be appointed by the owner, but if the owner is a developer that RBS is often chosen based on cost and the ability to get the project completed as quickly as possible, and often based on past experience.²²

Need for greater on-site supervision and oversight

4.28 A further issue raised during the committee's inquiry was the reduction in the level of independent supervision and quality assurance for building sites over the last few decades. In the past a Clerk of Works would be the overseer of all that was done on a construction site.

18 Mr Scott Williams, Chief Executive Officer, Fire Protection Association Australia, *Committee Hansard*, 19 July 2017, p. 16.

19 Mr Christopher Stoltz, President, Victoria Division, Engineers Australia, *Committee Hansard*, 19 July 2017, p. 30.

20 Australian Institute of Building Surveyors, *Submission 124.1*, p. 7.

21 Mr Neil Savery, General Manager, Australian Building Codes Board, *Committee Hansard*, 14 July 2017, p. 40.

22 Engineers Australia, *Submission 146*, p. 4.

4.29 Mr Neil Savery of the ABCB, noted too that there has been a process of deregulation in Australia since the 1990s which has led to a reduction in regulatory requirements around mandatory inspections.²³

4.30 Mr Timothy Tuxford of AIBS and Mr Christopher Stolz of Engineers Australia both expressed disappointment at the loss of the Clerk of Works who had the traditional oversight function in ensuring the quality and compliance of construction projects. Mr Tuxford explained what this role was and when it disappeared:

The Clerk of Works was largely engaged by the architect or the owner and was on site to look after the interests of the owner. They largely had a quality assurance role. They supervised what was happening on site. There was a deregulation of the Institute of Clerk of Works in about 1984.²⁴

4.31 Mr Stoltz noted that many of his members at Engineers Australia lament the demise of the Clerk of Works. He explained that 'the Clerk of Works was responsible to the owner of the building to make sure that the builder was building the building as it went up, using the materials, fitting the material and constructing the building according to the design'.²⁵

4.32 Mr Tuxford also noted that it is not the role of the present-day building surveyor to oversee all construction work.²⁶

4.33 FPA Australia explained the impact of deregulation, including the reduction of mandatory inspections, over the past 30 years:

The consequence of not upholding a regime of auditing and checking is obviously that you can then have opportunistic, unscrupulous behaviour of individuals through different processes, and that includes the sourcing and supply of products and the installation of products and right through the process of commissioning certification and even post-construction maintenance that we were talking about before. So, clearly there must be a level—and a high level—of auditing and compliance to uphold the whole integrity.²⁷

4.34 Engineers Australia highlighted the lack of consistency across jurisdictions for mandatory construction phase inspections:

While there is one Building Code in Australia there are eight separate Building Acts, each of which makes a determination on how many

23 Mr Neil Savery, General Manager, Australian Building Codes Board, *Committee Hansard*, 14 July 2017, p. 40.

24 Mr Timothy Tuxford, National President, Australian Institute of Building Surveyors, *Committee Hansard*, 19 July 2017, p. 26.

25 Mr Christopher Stoltz, President, Victoria Division, Engineers Australia, *Committee Hansard*, 19 July 2017, p. 30.

26 Mr Timothy Tuxford, National President, Australian Institute of Building Surveyors, *Committee Hansard*, 19 July 2017, p. 26.

27 Mr Scott Williams, Chief Executive Officer, Fire Protection Association Australia, *Committee Hansard*, 19 July 2017, pp. 15–16.

mandatory construction phase inspections are to be undertaken for each class of building. This leads to inconsistency across the country.

In some states there are mandatory requirements for building surveyors to inspect on site, while other jurisdictions leave the decisions to the building surveyor under a risk based analysis.²⁸

4.35 Engineers Australia also highlighted the importance of involving qualified professionals in the construction process:

In a system that puts cost ahead of professionalism we have created an industry where margins are thin and corners are cut. Professionals are left out of the process and decisions are being made by those who do not have the experience or knowledge to make them. This in turn leads to unacceptable and unnecessary risks being taken in the construction of people's homes.²⁹

4.36 Engineers Australia explained that the inspection stages of a building's construction are meant to be the point where defects are identified and exposed. However, there is no mandatory requirement for fire safety engineers to be included in final inspections. In particular, Engineers Australia noted that fire safety engineers who have undertaken the design of a safety measure are 'not necessarily included in the final stage inspection prior to the closing up of key structural and service components in the construction phase'.³⁰ Engineers Australia also submitted that fire safety measures need to be inspected by a properly trained, experienced and registered fire safety engineer before the final close up of walls and ceilings. This would reduce the chances that fire safety measures may have been installed that are not compliant with the code and in turn reduce the level of fire safety risks to the public.³¹

4.37 Ignis Solutions also submitted that fire safety engineers should be part of the overall building safety design with requirements for mandatory inspections at critical stages in construction.³² It stated:

The lack of consistency across Australia as well as the lack of professional engineers involvement in the buildings construction and occupation results in the project Certifier/Surveyor being responsible for the fire safety measures of any fire engineering report being implemented. Typically, a fire safety engineer would produce a fire engineering report with specific requirements then not be required to provide guidance or inspection during the construction and not provide final review prior to occupation of the building.³³

28 Engineers Australia, *Submission 146*, pp. 3–4

29 Engineers Australia, *Submission 146*, p. 3.

30 Engineers Australia, *Submission 146*, pp. 3–4

31 Engineers Australia, *Submission 146*, p. 5.

32 Ignis Solutions, *Submission 153*, p. 4.

33 Ignis Solutions, answers to written questions taken on notice received 10 August 2017, p. 2.

4.38 Ms Amanda Leck, Australasian Fire and Emergency Service Authorities Council (AFAC), recommended the ongoing involvement of fire authorities and fire safety officers 'in checking for compliance, whether that is every building or random inspections or whether that is at the time of compliance or subsequent audits'.³⁴ Ms Leck noted that state and territory officials had been critical of fire authorities in recent years and they were perceived as:

...increasing the regulatory burden, holding things up, costing the building industry more and so on. But it is our contention that, given that our role is very clearly to uphold public safety and given the issues we are currently experiencing, we should still be an essential part of that building commissioning and signing off the compliance.³⁵

Committee view

4.39 The committee supports the implementation of nationally consistent mandatory on-site inspections throughout the construction process. Whether this is done through the reinstatement of the role of Clerk of Works or some other process is eventually a decision for governments. Either way, it is evident from the evidence received that there needs to be a central oversight role independent from industry to provide assurance to the public that structures are built according to the agreed national standards. The committee also endorses the inclusion of mandatory inspections by fire safety engineers and fire authorities to ensure buildings are compliant and public safety is upheld.

Addressing the need for greater accountability

4.40 Mr Murray Smith, Acting Chief Executive Officer of the Victorian Building Authority (VBA), expressed the view that the responsibility for compliance and enforcement was too heavily weighted at the end of the supply chain:

Complex regulatory frameworks exist at both state and national levels that need to be considered in a holistic way. The issue of industry supply chains and import of goods into Australia need to be considered in addition to the regulation of the use of and building of construction projects. From the VBA's perspective, heavily weighting compliance and enforcement activities for these types of products at essentially the end of the supply chain, as currently is the case, is problematic and requires further thinking. Otherwise, our regulatory efforts will remain largely reactive rather than proactive.³⁶

4.41 Ms Liza Carroll, Director-General, Queensland Department of Housing and Public Works indicated that the Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters)

34 Ms Amanda Leck, Director, Information and Community Safety, Australasian Fire and Emergency Service Authorities Council, *Committee Hansard*, 19 July 2017, p. 16.

35 Ms Amanda Leck, Director, Information and Community Safety, Australasian Fire and Emergency Service Authorities Council, *Committee Hansard*, 19 July 2017, p. 14.

36 Mr Murray Smith, Acting Chief Executive Officer, Victorian Building Authority, *Committee Hansard*, 19 July 2017, pp. 75–76.

Amendment Bill 2017 had recently been introduced in Queensland. The purpose of the bill is to ensure that there are obligations on the entire chain of responsibility, so that a single building certifier is not left with the responsibility for building compliance.³⁷ The Queensland Department of Housing and Public Works informed the committee:

A key element of the Bill is to introduce responsibilities on participants of the building product supply chain (designers, manufacturers, importers, suppliers and installers) to ensure that a building product, so far as reasonably practicable, is safe and fit for its intended use.

The Bill also places a duty to exercise 'due diligence' on the executive officer of a company involved in the chain of responsibility for a building product, i.e. the executive officer for a company involved in the design, manufacture, import, supply or installation of a building product. The executive officer may be proceeded against and convicted for contravening this duty, whether or not the company has been proceeded against and convicted of contravening their duty.³⁸

4.42 Dr Darryl O'Brien, National Technical Committee representative from AIBS considered the proposed bill was a good starting point to address the need for greater accountability across the building industry and the supply chain. He noted the 'Queensland bill goes some way towards achieving this. It looks at a chain of responsibility that includes the product designer, the manufacturer, the supplier and the installer. If that could be picked up and harmonised across all states and territories'.³⁹

4.43 Mr Rodger Hills, Executive Officer from BPIC supported the Queensland government's bill as it was an attempt to 'spread the risk and the responsibility for compliance across the supply chain rather than leaving it to the very end'. Mr Hills considered the approach to be 'a very healthy, sane and intelligent way of going, and we are advocating that each state and territory should actually look at something like that'.⁴⁰

Committee view

4.44 The committee agrees that responsibility for building compliance is currently weighted too heavily at the end of the supply chain. Consequently, measures need to be put in place to ensure greater accountability across the supply chain. The committee considers that the Queensland bill will go some way to ensuring

37 Ms Liza Carroll, Director-General, Department of Housing and Public Works, *Committee Hansard*, 14 July 2017, p. 19.

38 Department of Housing and Public Works, answers to questions taken on notice from a public hearing on 14 July 2017, received 1 August 2017, p. 5.

39 Dr Darryl O'Brien, National Technical Committee representative, Non-Conforming Building Products, Australian Institute of Building Surveyors, *Committee Hansard*, 19 July 2017, p. 24.

40 Mr Rodger Hills, Executive Officer, Building Products Innovation Council, *Committee Hansard*, 19 July 2017, p. 6.

accountability is spread more evenly across the supply chain from designers, manufacturers, importers, suppliers and installers and supports the bill's intent. The committee also encourages other jurisdictions to examine the bill and consider developing similar approaches as a starting point to addressing this serious issue.

Recommendation 3

4.45 The committee recommends that the Building Minister's Forum give further consideration to introducing nationally consistent measures to increase accountability for participants across the supply chain.

Availability of Australian Standards

4.46 It was drawn to the attention of the committee that the cost of purchasing Australian Standards, which have been referenced in the NCC, act as a barrier to compliance. It was noted that Australian Standards currently 'cost a fortune and are not available for free online'.⁴¹

4.47 The Master Builders Australia (MBA) noted that the industry is required to comply with the NCC, which requires compliance with Australian Standards— known as 'Reference Standards'. There are over 100 primary 'Referenced Australian Standards' specified within the NCC and hundreds more 'Secondary Reference Standards'. The average cost of a Standard is \$120.00 per document which the MBA considers to be a significant barrier to compliance.

4.48 The MBA recommended that either governments subsidise the cost of regulated standards or make available to industry all referenced standards free to the user.

4.49 MBA pointed out that the decision to make the NCC and its Guide freely available had a significant impact on industry compliance levels. Until 2015, access to the complete NCC and its Guide cost over \$300 dollars a year. Once it became freely available to the number of registered users jumped from 12,000 to 140,000.⁴²

4.50 Mr Hills of BPIC also considered that people are less likely to use the standards if they have to purchase them because it is a cost burden. Mr Hills also noted that Standards Australia's practice of selling the standards back to the industry serves as a disincentive to voluntary industry participation in standards development.

The difficulty we have, I suppose, is that the people who advise the standards committees are all voluntary people who come together at their own cost, their only expense, and who give their IP and their expertise. That then gets turned into a standard and then the standard gets sold to the industry, and people have to purchase the standard...It appears to be that IP is being collected and hoovered up from industry, turned into a standard

41 Mr Norman Faifer, Immediate Past National President, Australian Institute of Building, *Committee Hansard*, 19 July 2017, p. 47.

42 Master Builders Australia, *Submission 125.1*, p. 6.

and then sold back to industry again. We believe there needs to be a streamlined process within Standards Australia.⁴³

4.51 Mr Graham Attwood, Director of Expanded Polystyrene Australia, agreed that the standards process should be improved:

There is a disincentive for industry groups to participate because of the cost and the efficiency involved in inputting and participating in developing Australian standards. There's certainly a disincentive. It's not the highest priority, and, relatively speaking, it's a cumbersome way of actually getting best practice into a strongly organised conformance mechanism. The efficiency is not strong, and I guess it's not seen to be a priority for many organisations who are there trying to survive on a day-to-day basis.⁴⁴

4.52 In March 2017, the Senate Standing Committee on Regulations and Ordinances (R and O Committee) noted that Australian parliamentary scrutiny committees have expressed ongoing concerns about 'the issue of access to material incorporated into the law by reference to external documents, such as Australian and international standards'.⁴⁵

4.53 In August 2017, the R and O Committee noted that, in general, the committee will be concerned 'where incorporated documents are not publicly and freely available, because persons interested in or affected by the law may have inadequate access to its terms'.⁴⁶ The R and O Committee also noted that there appeared to have been a breakdown in negotiations between SAI Global and National and State Libraries for continued community access to Australian Standards. As such, online access to Australian Standards may no longer be available at these libraries. The R and O Committee has also expressed concerns that 'only the National Library of Australia may hold a comprehensive collection of Australian Standards in hardcopy, and that even this collection may not be complete'.⁴⁷

Committee view

4.54 The committee is dismayed that building practitioners are expected to pay unreasonable sums of money to access Australian Standards which are required to ensure they comply with the NCC. In the committee's view, making Australian Standards freely available would have a significant impact on building compliance. More importantly it will reduce the overall cost of compliance and insurance and most

43 Mr Rodger Hills, Executive Officer, Building Products Innovation Council, *Committee Hansard*, 19 July 2017, p. 3.

44 Mr Graham Attwood, Director, Expanded Polystyrene Australia, *Committee Hansard*, 19 July 2017, p. 3.

45 Senate Standing Committee on Regulations and Ordinances, *Delegated Legislation: Monitor 3 of 2017*, 22 March 2017, p. 104.

46 Senate Standing Committee on Regulations and Ordinances, *Delegated Legislation: Monitor 8 of 2017*, 9 August 2017, p. 61

47 Senate Standing Committee on Regulations and Ordinances, *Delegated Legislation: Monitor 8 of 2017*, 9 August 2017, p. 62

significantly, it will reduce the cost and impact on future state and territory emergency, fire and medical services.

4.55 The committee understands that SAI Global's contract with Standards Australia is coming up for renewal. The committee believes the Commonwealth government should give serious consideration to engaging with Standards Australia to explore possible options to providing free access to Australian Standards, including reinstating online access to the Standards through Australian libraries.

Recommendation 4

4.56 The committee strongly recommends that the Commonwealth government consider making all Australian Standards and codes freely available.

Role of the Federal Safety Commissioner

4.57 The committee was interested in the capacity of the Federal Safety Commissioner (FSC) to play a role in ensuring compliance with the NCC of Commonwealth funded construction work, particularly in the context of the use of external cladding materials.

4.58 Established in 2005, the FSC works with industry and government stakeholders towards achieving the highest possible occupational health and safety standards on Australian building and construction projects. The Office of the Federal Safety Commissioner (OFSC) is part of the Department of Employment.

4.59 The functions of the FSC are described in Section 38 of the *Building and Construction Industry (Improving Productivity) Act 2016* and include:

- promoting workplace health and safety (WHS) in relation to building work;
- auditing compliance with National Construction Code performance requirements in relation to building materials;
- administering the Australian Government building and construction industry WHS Accreditation Scheme;
- promoting the benefits of the WHS Accreditation Scheme; and
- disseminating information about the WHS Accreditation Scheme.⁴⁸

4.60 The OFSC is a small office with 25 staff. The OFSC has expertise in the field of WHS on construction sites. It has no expertise in the regulation of building design, engineering, planning approval, material procurement processes and certifier processes for signing off on building materials and construction. The FSC's powers are limited to companies that choose to become accredited in order to undertake Commonwealth-funded work. There are currently approximately 420 accredited companies.

48 Office of the Federal Safety Commissioner, *Fact Sheet: Federal Safety Commissioner*, last updated 13 April 2017, <http://www.fsc.gov.au/sites/FSC/Resources/AZ/Documents/FederalSafetyCommissioner.pdf> (accessed 22 August 2017).

4.61 The *Building and Construction Industry (Improving Productivity) Act 2016* added a new function to the FSC—auditing compliance with National Construction Code performance requirements in relation to building materials. Mr Alan Edwards, the FSC, explained that this function relates to the non-compliant use of materials more so than non-conforming products. Following the passage of the legislation the FSC made compliance with the NCC a condition of accreditation. This means that accredited companies now risk losing Commonwealth funded work if they fail to comply with the performance specifications of building materials under the NCC.⁴⁹

4.62 Mr Edwards applauded moves by state and territory building regulators to conduct audits to identify the use of non-compliant cladding materials. He advised the committee that while he did not have the legislative powers or expertise to test compliant use of cladding materials or cover the whole industry, 'what I can do is to add some weight to ensure that, when these things are identified, my accredited companies rectify them.'⁵⁰

4.63 Mr Edwards advised the committee his office does not have the capacity or the expertise to conduct audits of the compliant use of cladding materials, and any such audits would be limited under the relevant legislation to accredited companies only. Mr Edwards advised:

[Accredited companies] are the only ones under the legislation I have any influence over, and the auditing I will be doing will be in response to problems identified by the regulators in the states and territories. So I will be auditing any noncompliance identified by others and auditing the responses those companies undertake.⁵¹

Committee view

4.64 The committee considers that the FSC has an important role in ensuring compliance with the NCC of Commonwealth funded construction work. The committee is concerned that the FSC does not appear to be adequately resourced to carry out its newly legislated function to audit compliance with NCC performance requirements in relation to building materials. Mr Edwards advised the committee that his office does not have the resources or the expertise to conduct audits

4.65 In addition, the committee believes that loss of accreditation to conduct Commonwealth funded work is not a strong enough penalty for non-compliance with the NCC. The committee is of the view that a stronger penalties regime should be imposed.

49 Mr Alan Edwards, Federal Safety Commissioner, Office of the Federal Safety Commissioner, *Committee Hansard*, 14 July 2017, pp. 10–11.

50 Mr Alan Edwards, Federal Safety Commissioner, Office of the Federal Safety Commissioner, *Committee Hansard*, 14 July 2017, p. 11.

51 Mr Alan Edwards, Federal Safety Commissioner, Office of the Federal Safety Commissioner, *Committee Hansard*, 14 July 2017, p. 12.

Recommendation 5

4.66 **The committee recommends the Commonwealth government consider imposing a penalties regime for non-compliance with the National Construction Code such as revocation of accreditation or a ban from tendering for Commonwealth funded construction work and substantial financial penalties.**

Recommendation 6

4.67 **The committee recommends the Commonwealth government ensure the Federal Safety Commissioner is adequately resourced to ensure the office is able to carry out its duties in line with the new audit function and projected work flow.**

Illegal phoenix activity in the building and construction industry

4.68 The committee is concerned that illegal phoenix activity in the building and construction industry has the potential to undermine any measures that are introduced to ensure greater accountability for non-compliance.

4.69 In its 2015 report, 'I just want to be paid': Insolvency in the Australian construction industry, the committee stated:

To register a company a person must lodge an application with ASIC. Under section 117(2) of the Corporations Act, the application must include the name and address of each director of the company. However, little is done to verify that information and consequently there is a lack of transparency surrounding the identity of company directors.

The inability of regulators and participants in the building and construction industry to identify and track individuals suspected of illegal activity is a significant cause of the incidence of illegal phoenix activity.

A lack of transparency around company directors means that regulators are slower in clamping down on illegal phoenix operators and therefore more innocent participants are caught up in schemes, suffering significant economic and social effects.⁵²

4.70 The committee's 2015 report included two recommendations in relation to Director Identification Numbers (DIN).

Recommendation 36

The committee recommends that section 117 of the *Corporations Act 2001* (Cth) be amended to require that, at the time of company registration, directors must also provide a Director Identification Number.

Recommendation 37

The committee recommends that a Director Identification Number should be obtained from ASIC after an individual proves their identity in line with the National Identity Proofing Guidelines.

52 Senate Economics References Committee, *'I just want to be paid': Insolvency in the Australian construction industry*, December 2015, pp. xxv–xxvi

4.71 On 14 June 2017, the Government tabled a response to the 2015 report in which it states:

These recommendations align with recommendation 15.6 of the Productivity Commission's Report on Business Set-up, Transfer and Closure. The Government will give further consideration to Director Identification Numbers as part of its ongoing work to combat illegal phoenix activity in Australia.⁵³

4.72 The Productivity Commission presented its final report for the inquiry into Business Set-up, Transfer and Closure to the government on 30 September 2015 and it was published on 7 December 2015.⁵⁴

Committee view

4.73 The committee is concerned that it has been nearly two years since its report on insolvency in the construction industry was tabled and the Productivity Commission's report was released and considers that a DIN initiative should be considered as a matter of urgency. A DIN initiative would go some way to preventing directors engaging in illegal phoenix activity. The committee also considers that the potential for a DIN initiative to assist credit reporting agencies in identifying individuals who engage in illegal phoenix activity is worth further investigation. The committee is encouraged by the government's willingness to give further consideration to DIN's, it is concerned by the lack of a clear timeframe for consideration.

Recommendation 7

4.74 The committee welcomes the Commonwealth government's decision to give further consideration to Director Identification Numbers and recommends that it expedites this process in order to prevent directors from engaging in illegal phoenix activity.

Increasing protections for end users

4.75 Engineers Australia considered that the current regulatory regime in Australia is letting consumers down as multi storey apartment buildings are not being constructed to the standards that the Australian public expects. It noted that 'people who purchase an apartment expect that—for the many hundreds of thousands of dollars they have invested—the quality of their apartment is fault free. Unfortunately, the system is not meeting those expectations'.⁵⁵

4.76 Mr Stephen Goddard, spokesperson for the Owner's Corporation Network (OCN) went further, stating:

53 Australian Government, *Australian Government response to the Senate Economics References Committee Report: Insolvency in the Australian Construction Industry*, May 2017, tabled 14 June 2017, p. 19.

54 Productivity Commission, 'Business Set-up, Transfer and Closure, Inquiry Report', <http://www.pc.gov.au/inquiries/completed/business/report> (accessed 31 August 2017).

55 Engineers Australia, *Submission 146*, p. 3.

There's a greater duty of care in the sale of a refrigerator than in the delivery of people's homes.⁵⁶

4.77 The number of people living in strata titled dwellings is growing, with two million people living in this type of dwelling in NSW alone. OCN noted that 'within 20 years it is expected that half of [NSW's] population will be living or working in a strata or community title scheme'.⁵⁷

4.78 The OCN explained that there is a 'disconnect between end user and builder' which is unique to the residential strata sector within the building industry. It explained that it is the developer, not the end user, who contracts with the builder and controls builder payment. If there is an issue with building compliance, the builder will have received full payment under the building contract by the time the strata plan is registered and the end user must then rely upon statutory warranties to recover the minimum constructions standards prescribed by the BCA.⁵⁸

4.79 The solution put forward by the OCN was consideration of 'a statutory duty of care extended to the end user, the victim, the person who buys into a strata building unable to see the invisible absence of fire dampers and fire collars and now the existence of flammable cladding'.⁵⁹

Committee view

4.80 The committee believes there needs to be a greater awareness and protection for consumers in the residential strata sector. The committee considers there is an urgent need to provide a statutory duty of care to cover the discovery of non-compliant or non-conforming building products for the increasing number of the Australian public who purchase residential apartments.

Recommendation 8

4.81 The committee recommends that state and territory governments work together to develop a nationally consistent statutory duty of care protection for end users in the residential strata sector.

Next steps for the committee

4.82 The committee anticipates that significant changes will arise from the reforms that the Commonwealth, state and territory governments will undertake as a result of this serious issue. The committee intends to keep a close eye on how these reforms are developed and the eventual timeliness of their implementation as this continues to be a significant shortcoming across all governments.

56 Mr Stephen Goddard, Spokesperson, Owners Corporation Network, *Committee Hansard*, 19 July 2017, p. 44.

57 Owners Corporation Network, *Submission 88.1*, p. 1.

58 Owners Corporation Network, *Submission 88.1*, p. 4.

59 Mr Stephen Goddard, Spokesperson, Owners Corporation Network, *Committee Hansard*, 19 July 2017, p. 42.

4.83 The committee urges, as a matter of the utmost importance, to work effectively together and to get the job done expeditiously. The committee will also continue to monitor the progress of the BMF, its review, and also its ongoing work on the issues of non-conforming and non-complaint building products. The committee will present an interim report on the illegal importation of asbestos on 31 October 2017 and its final report for the broader inquiry by 30 April 2018.

Senator Chris Ketter

Chair

Dissenting Report by Coalition Senators

1.1 Coalition Senators recognise there are genuine concerns about the use of combustible cladding in the built environment.

1.2 Government members of the committee recognise that the National Construction Code (NCC) is jointly overseen by state, territory and Commonwealth governments, and is adopted in state and territory laws.

1.3 Government members are concerned with compliance with the NCC, the state and territory enforcement of laws, and the system of private certification.

1.4 Coalition Senators acknowledge that the Australian Government has provided leadership by calling for a nation-wide audit of multi-storey buildings to determine the extent of the problem. Also through the Building Ministers' Forum (BMF) it has established an independent review to assess the broader compliance and enforcement problems within the building and construction system across Australia. It has also supported the expedition of the Australian Building Code Board's (ABCB) new comprehensive package of measures for fire safety in high rise buildings.

1.5 Coalition Senators support the intention behind the committee recommendations 2, 3 and 4, and note recommendation 6 and 7 and 8. Coalition Senators do not support recommendations 1 and 5.

1.6 Coalition Senators do not support recommendation 1. As noted in 3.55, polyethylene core aluminium composite products are used widely in the signage industry and other applications. Banning an individual product will not solve the issue; however consideration should be given to mechanisms to ensure better identification and evidence of suitability for use of these materials along the supply chain.

1.7 Coalition Senators support the intention behind recommendations 2 and 3. Recognising the autonomy of the states and territories, it is ideal to have consistent best practise legislation across the jurisdictions. It is noted that the independent review commissioned by the BMF will develop recommendations for a national best practise model. Consideration should be given to model law adopted across the jurisdictions and common training standards and competencies.

1.8 Coalition Senators also support the intention behind recommendation 4. Easier access to standards makes it easier to comply with the requirements. With recommendation 6, Government members note that the Federal Safety Commissioner is currently resourced to fulfil its statutory roles and functions. Government members also note recommendation 7 and 8, and whilst not specifically disagreeing, are concerned at the potential creation of additional layers of oversight and regulation that would duplicate existing state and territory mechanisms.

1.9 Government members disagree with recommendation 5 as the Commonwealth has limited powers to impose penalties but does recognise the ability for the Federal Safety Commissioner to revoke accreditation which is a major threat to companies accessing government funded projects.

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Senator Jane Hume

Deputy Chair

Senator the Hon Ian Macdonald

Senator for Queensland

Additional Comments by Senator Nick Xenophon

Buildings wrapped in petrol

1.1 I broadly support the recommendations of the Committee.

1.2 The cladding issue is a most serious public safety issue that requires urgent action. The issue was brought to the public's attention in November 2015 when the Lacrosse building in Docklands Melbourne caught fire. Since that time Government's, both Federal and State, have failed to adequately respond. This is embarrassing and pathetic.

1.3 Tragedy was avoided in the Lacrosse fire through luck alone¹. Mr Adam Dalrymple, then Director of Fire Safety, Metropolitan Fire and Emergency Services Board (MFB), described this incident as one that alone could have 'claimed hundreds of lives if things had turned out a little differently'. Unfortunately the June 2017 Grenfell Tower fire in London proved him correct.

1.4 I note that Australian Fire Safety Engineer, Mr Tony Enright stated in a recent ABC Four Corners program examining polyethylene cladding that:

A kilogram of polyethylene will release the same amount of energy as a kilogram of petrol, and it gets worse than that because polyethylene is denser than petrol too, so that's about, a kilogram of polyethylene is like about one and a bit, one and a half litres of petrol. If you look at a one metre by one metre square section [of PE core ACP cladding] that will have about three kilograms, the equivalent of about five litres of petrol².

1.5 Governments cannot dawdle along in relation to this issue. Lives are at risk. The recommendations in this report must not only be agreed to by Government, but a time frame for implementation of them must also be laid out. In the absence of the Council of Australian Government (COAG) process dealing with this issue within 90 days, the Commonwealth must consider unilateral action using powers constitutionally available to it.

Recommendation 1

1.6 That the Government response to this report includes implementation time frames.

1 Mr Adam Dalrymple, Director, Fire Safety (now Acting Deputy Chief Officer), Metropolitan Fire Brigade, *Committee Hansard*, 13 November 2015, p. 65.

2 Debbie Whitmont, Patricia Drum, Anne Davies, 'Combustible', *ABC Four Corners*, 4 September 2017, <http://www.abc.net.au/4corners/stories/2017/08/31/4726881.htm> (accessed 5 September 2017).

Senator Nick Xenophon
Nick Xenophon Team, South Australia

Appendix 1

Submissions and additional information

Submissions (44th Parliament)

- 1 Australasian Procurement and Construction Council Inc.
- 2 Product Presence Pty Limited
- 3 Mr Mark Whitby
- 4 Master Electricians Australia
- 5 Australian Window Association
- 6 SAI Global
- 7 Integrity Compliance Solutions
- 8 Plumbing Products Industry Group Inc
- 9 Nepean Building & Infrastructure
- 10 Asbestos Safety and Eradication Agency
- 11 Vinyl Council of Australia
- 12 Engineered Wood Products Association of Australasia
- 13 Commonwealth Scientific and Industrial Research Organisation (CSIRO)
- 14 Electrical Trades Union
- 15 Australasian Certification Authority for Reinforcing and Structural Steels Ltd (ACRS)
- 16 Australian Institute of Building
- 17 Insulation Australasia
- 18 Bureau of Steel Manufacturers of Australia (BOSMA)
- 19 Australian Steel Institute
- 20 Queensland Alliance
- 21 CplusC Architectural Workshop
- 22 Metropolitan Fire and Emergency Services Board
- 23 Fairview Architectural
- 24 Australian Glass and Glazing Association
- 25 Australian Institute of Building Surveyors
- 26 Expanded Polystyrene Australia
- 27 Australasian Fire and Emergency Service Authorities Council (AFAC)

- 28 Australian Cablemakers Association
- 29 Snap Fire Systems
- 30 Housing Industry Association
- 31 Fire Protection Association Australia
- 32 Lighting Council Australia
- 33 Construction Product Alliance
- 34 Office of the NSW Small Business Commissioner
- 35 Master Builders Australia
- 36 Insulation Council of Australia and New Zealand (ICANZ)
- 37 Dr Peter Haberecht
- 38 Unions NSW
- 39 Australian Competition & Consumer Commission (ACCC)
- 40 Ms Fiona O'Hehir
- 41 Arrium Steel
- 42 Australian Forest Products Association
- 43 Department of Industry and Science
- 44 Steel Reinforcement Institute of Australia (SRIA)
- 45 Standards Australia
- 46 Ai Group
- 47 Mr Stel Capetanakis
- 48 Mr David Chandler
- 49 Australian Building Codes Board
- 50 Confidential
- 51 Confidential
- 52 Confidential
- 53 Confidential
- 54 Ms Sonya Tissera-Isaacs
- 55 Queensland Government
- 56 Department of Immigration and Border Protection
- 57 Victorian Government
- 58 Mr Graeme Doreian
- 59 HPM Legrand
- 60 National Electrical and Communications Association (NECA)

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- 61 Insurance Australia Group (IAG)
 - 62 Wren Industries
 - 63 Ms Anne Paten
 - 64 Victorian Building Action Group Inc.
 - 65 Ms Beverley Loyson
 - 66 Name Withheld
 - 67 Dr Leon Jacob, Mr Peter Smithsons, Mr Phillip Davies & Mr Gerard McCluskey
 - 68 Dr Nathan Munz
 - 69 Confidential
 - 70 Amtron Valve Monitoring Device
 - 71 Mr Tony Coon
 - 72 Building Products Innovation Council
 - 73 ProductWise Pty Ltd
 - 74 Construction, Forestry, Mining and Energy Union (CFMEU)
 - 75 Waffle Pod Manufacturers of Australia

Submissions (45th Parliament)

- 76 Mr Tony Kennedy
- 77 Fairview
- 78 Product Presence Pty Ltd
- 79 Expanded Polystyrene Australia
- 80 Building Commission, Department of Commerce, Western Australia
- 81 Australian Construction Industry Forum
- 82 Australian Institute Of Marine And Power Engineers
- 83 Building Products Innovation Council
- 84 Plumbing Products Industry Group
- 85 Mr David Chandler & Dr Mary Hardie
- 86 Electrical Trades Union
- 87 Green Building Council of Australia
- 88 Owners Corporation Network of Australia Ltd
- 89 SafeWork SA
- 90 Asbestos Safety and Eradication Agency

- 91 Australian Government Department of Employment
- 92 Asbestos Disease Support Society
- 93 Mairin OHS&E Consulting Pty Ltd
- 94 Mr Geoff Fary
- 95 Australian Constructors Association
- 96 Australian Services Union
- 97 Australian Manufacturing Workers' Union
- 98 Timber Preservers' Association of Australia
- 99 ProductWise Pty Ltd
- 100 Waffle Pod Manufacturers of Australia Inc.
- 101 Engineered Wood Products Association of Australasia Ltd (EWPAA)
- 102 Queensland Proposal
- 103 Australian Window Association
- 104 Asbestos Council of Victoria/GARDS Inc.
- 105 Bureau of Steel Manufacturers of Australia
- 106 Australasian Fire and Emergency Service Authorities Council (AFAC)
- 107 Maurice Blackburn Lawyers
- 108 Department of Immigration and Border Protection
- 109 National Association of Testing Authorities, Australia (NATA)
- 110 Think Brick Australia
- 111 Concrete Masonry Association of Australia
- 112 Roofing Tile Association of Australia
- 113 Building and Wood Workers' International
- 114 Union Aid Abroad - APHEDA
- 115 Greencap
- 116 Construction Product Alliance
- 117 AWS Global Pty Ltd
- 118 Ms Carolyn Davis
- 119 Housing Industry Association
- 120 The Australian Industry Group (Ai Group)
- 121 Furniture Cabinet Joinery Alliance Ltd
- 122 Australian Nursing and Midwifery Federation
- 123 Australian Workers' Union

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- 124 Australian Institute of Building Surveyors
 - 125 Master Builders Australia
 - 126 Australian Steel Institute
 - 127 Australian Council of Trade Unions
 - 128 Construction, Forestry, Mining and Energy Union
 - 129 Ms Jacqueline Kriz
 - 130 Australian Council of Trade Unions (ACTU)
 - 131 Subcontractors Alliance
 - 132 The Australian Furniture Association (AFA)
 - 133 Confidential
 - 134 Victorian Trades Hall Council
 - 135 Confidential
 - 136 Victorian Building Action Group Inc.
 - 137 Customs Brokers and Forwarders Council of Australia Inc.
 - 138 Professor Andrew Lowe and Doctor Eleanor Dormontt
 - 139 The Termite Action Group (TAG)
 - 140 Community Debate
 - 141 Mr Graeme Doreian
 - 142 Asbestos Diseases Society of Australia Inc.
 - 143 Ms Leigh Evans
 - 144 Confidential
 - 145 Mr Lawrence Reddaway
 - 146 Engineers Australia
 - 147 Standards Australia
 - 148 Icon Plastics
 - 149 Mr Barry Harrington
 - 150 Australian Building Codes Board
 - 151 Australian Institute of Building (AIB)
 - 152 Insurance Council of Australia
 - 153 Ignis Solutions
 - 154 Alucobond Architectural (a division of Halifax Vogel Group Pty Ltd)
 - 155 Builders Collective of Australia
 - 156 Asbestoswise

- 157 Australian Institute of Architects
- 158 The Warren Centre
- 159 Master Plumbers and Mechanical Services Association of Australia (MP)
- 160 Insurance Australia Group (IAG)
- 161 Tasmanian Government
- 162 Confidential

Tabled documents (44th Parliament)

- 1 Document tabled by the Metropolitan Fire and Emergency Services Board (MFB) at a public hearing in Canberra on 13 November 2015.

Tabled documents (45th Parliament)

- 1 Construction, Forestry, Mining and Energy Union: Vale - Alan Whitehead, April 2005 (public hearing, Brisbane, 30 January 2017)
- 2 Yuanda Australia: Email from Workplace Health and Safety Queensland to Yuanda, 16 December 2016. Attachment - Preventing goods or materials containing asbestos being supplied to workplaces in Queensland, Queensland Office of Industrial Relations (public hearing, Brisbane, 30 January 2017)
- 3 Asbestos Diseases Society of Australia: Tabled by Mr Robert Vojakovic (public hearing, Perth, 9 March 2017)
- 4 Construction, Forestry, Mining and Energy Union: Tabled by Mr Mick Buchan (public hearing, Perth, 9 March 2017)
- 5 Coffey Services: Opening statement (public hearing, Perth, 9 March 2017)
- 6 Comcare: Opening statement (public hearing, Perth, 9 March 2017)
- 7 John Holland Pty Ltd: Opening statement (public hearing, Perth, 9 March 2017)
- 8 Construction, Forestry, Mining and Energy Union: Opening statement (public hearing, Melbourne, 14 July 2017)
- 9 Federal Safety Commissioner: Opening statement (public hearing, Melbourne, 14 July 2017)
- 10 Construction, Forestry, Mining and Energy Union: Tabled by Travis Wacey (public hearing, Melbourne, 14 July 2017)
- 11 Construction, Forestry, Mining and Energy Union: Tabled by Travis Wacey (public hearing, Melbourne, 14 July 2017)
- 12 Engineers Australia: Tabled by Mr Chris Stoltz (public hearing, Sydney, 19 July 2017)

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- 13 Victorian Building Authority: Opening statement (public hearing, Sydney, 19 July 2017)

Answers to questions on notice (44th Parliament)

- 1 Answers to questions on notice from a public hearing held in Canberra on 13 November 2015 received from the Metropolitan Fire and Emergency Services Board on 4 December 2015.
- 2 Answers to questions on notice from a public hearing held in Canberra on 13 November 2015 received from the Department of Industry, Innovation and Science on 12 December 2015.
- 3 Answers to questions on notice from a public hearing held in Canberra on 13 November 2015 received from the Department of Immigration and Border Protection on 15 December 2015.
- 4 Answers to questions on notice from a public hearing held in Canberra on 13 November 2015 received from the CSIRO on 18 December 2015.
- 5 Answers to questions on notice from a public hearing held in Canberra on 13 November 2015 received from the Australian Industry Group on 27 January 2016.
- 6 Answers to questions on notice from a public hearing held in Melbourne on 15 February 2016, received from the Victorian Government on 4 March 2016.
- 7 Answers to questions on notice from a public hearing held in Canberra on 13 November 2016 received from the ACCC on 10 March 2016.
- 8 Answers to questions on notice from a public hearing held in Melbourne on 15 February 2016, received from the Construction Product Alliance on 10 March 2016.
- 9 Answers to questions on notice from a public hearing held in Melbourne on 15 February 2016 received from Standards Australia on 7 March 2016.
- 10 Answers to questions on notice from a public hearing held in Melbourne on 15 February 2016, received from the Asbestos Safety and Eradication Agency on 18 March 2016.

Answers to questions on notice (45th Parliament)

- 1 Asbestos Disease Support Society: Answers to questions taken on notice from a public hearing on 30 January 2017 (received 17 February 2017)
- 2 Yuanda Australia Pty Ltd: Answers to questions taken on notice from a public hearing on 30 January 2017 (received 20 February 2017)
- 3 Queensland Office of Industrial Relations: Answers to questions taken on notice from a public hearing on 30 January 2017 (received 22 February 2017)

- 4 Department of Immigration and Border Protection: Answers to questions taken on notice from a public hearing on 30 January 2017 (received 24 February 2017)
- 5 Comcare: Answers to questions taken on notice from a public hearing on 9 March 2017 (received 29 March 2017)
- 6 John Holland Pty Ltd: Answers to questions taken on notice from a public hearing on 9 March 2017 (received 31 March 2017)
- 7 Department of Treasury, Government of Western Australia: Answers to questions taken on notice from a public hearing on 9 March 2017 (received 31 March 2017)
- 8 CFMEU: Answers to questions taken on notice from a public hearing on 9 March 2017 (received 12 April 2017)
- 9 Fairview Architectural: Answers to questions taken on notice from a public hearing on 19 July 2017 (received 25 July 2017)
- 10 Department of Housing and Public Works: Answers to questions taken on notice from a public hearing on 14 July 2017 (received 1 August 2017)
- 11 WorkSafe Victoria: Answers to questions taken on notice from a public hearing on 14 July 2017 (received 2 August 2017)
- 12 Fire Protection Association Australia: Answers to questions taken on notice from a public hearing on 19 July 2017 (received 4 August 2017)
- 13 Engineers Australia: Answers to written questions taken on notice (received 10 August 2017)
- 14 Expanded Polystyrene Australia: Answers to written questions taken on notice (received 10 August 2017)
- 15 Ignis Solutions: Answers to written questions taken on notice (received 10 August 2017)
- 16 Fairview: Answers to questions taken on notice from a public hearing on 19 July 2017 (received 16 August 2017)
- 17 CEPU Electrical Energy and Services Division: Answers to questions taken on notice from a public hearing on 31 July 2017 (received 17 August 2017)
- 18 Fairview: Answers to questions taken on notice from a public hearing on 19 July 2017 (received 1 August 2017)

Additional information (44th Parliament)

- 1 Document provided by the National Association of Testing Authorities (NATA) following the public hearing held in Canberra on 13 November 2015.
- 2 Document provided by the National Association of Testing Authorities (NATA) following the public hearing held in Canberra on 13 November 2015.

- 3 Document provided by the Housing Industry Association (HIA) following the public hearing held in Canberra on 13 November 2015.
- 4 Additional information provided by Dr Nathan Munz following a hearing held in Melbourne on 15 February 2016.

Additional information (45th Parliament)

- 1 Document provided by CertMark International on 28 June 2017 - Advisory Notice No. 06/2017, Aluminium Composite Panels (ACP) - Fire Risk - Australia & New Zealand
- 2 Document provided by Metropolitan Fire and Emergency Services Board on 14 July 2017 - Opening statement from a public hearing in Melbourne on 14 July 2017
- 3 Document provided by Metropolitan Fire and Emergency Services Board on 14 July 2017 - Victorian Cladding Taskforce TOR
- 4 Document provided by Metropolitan Fire and Emergency Services Board on 14 July 2017 - Excerpt: Fire Protection Research Foundation Report
- 5 Document provided by Asbestos Council of Victoria on 14 July 2017 - Opening statement from a public hearing in Melbourne on 14 July 2017
- 6 Document provided by Australian Institute of Building Surveyors on 19 July 2017 - Opening statement from a public hearing in Sydney on 19 July 2017
- 7 Document provided by Fire Protection Association Australia on 19 July 2017 - Opening statement from a public hearing in Sydney on 19 July 2017
- 8 Document provided by Australasian Fire and Emergency Service Authorities Council (AFAC) on 19 July 2017 - Opening statement from a public hearing in Sydney on 19 July 2017
- 9 Document provided by Victorian Cladding Taskforce on 19 July 2017 - Finalised Terms of Reference
- 10 Document provided by Fairview Architectural on 19 July 2017 - Opening statement from a public hearing in Sydney on 19 July 2017
- 11 Document provided by AMWU on 18 July 2017 - Asbestos imported in products
- 12 Document provided by Owners Corporation Network on 9 August 2017

Additional hearing information (44th Parliament)

- 1 Hansard correction received from the Housing Industry Association re a public hearing held in Canberra on 13 November 2015.

Additional hearing information (45th Parliament)

- 1 Hansard correction received from the Victorian Building Authority re a public hearing held in Sydney on 19 July 2017.

Correspondence (45th Parliament)

- 1 Two letters of correspondence received from the Queensland Government: 1. Department of Housing and Public Works (18 Nov 2016). 2. Office of Industrial Relations (17 Nov 2016).
- 2 Correspondence received from the Hon Richard Wynne MP, Minister for Planning, Victorian State Government (20 December 2016)
- 3 Correspondence received from the Hon Bill Johnston MLA, Minister for Mines and Petroleum; Commerce and Industrial Relations; Electoral Affairs; Asian Engagement, Western Australian State Government (31 July 2017)

Appendix 2

Public hearings and witnesses

13 November 2015, Canberra ACT

Members in attendance: Senators Edwards, Ketter, Madigan, Xenophon

BROOKFIELD, Ms Kristin, Senior Executive Director, Building Development and Environment, Housing Industry Association

BURGESS, Mr Mark, Executive Manager, CSIRO Services, Commonwealth Scientific and Industrial Research Organisation

BURN, Dr Peter, Head, Influence and Policy, Australian Industry Group

BYRNE, Dr Anne, General Manager, Manufacturing and Services Policy Branch, Department of Industry, Innovation and Science

CHANDLER, Mr Andrew, Assistant Secretary, Trade and Customs, Department of Immigration and Border Protection

CHESWORTH, Mr Peter, Acting Deputy Secretary, Department of Industry, Innovation and Science

DALE, Ms Erin, Commander, Customs Compliance, Australian Border Force

DALRYMPLE, Mr Adam, Director, Fire Safety, Metropolitan Fire Brigade

DAVIS, Mr Gary, Manager, Building Metals and Construction Section, Department of Industry, Innovation and Science

GOODWIN, Mr Shane, Managing Director, Housing Industry Association

GREGSON, Mr Scott, Executive General Manager, Consumer Enforcement, Australian Competition and Consumer Commission

HATCHER, Ms Emma, Director, Regulated Goods Policy, Department of Immigration and Border Protection

HUMPHREY, Mr David, Senior Executive Director, Business Compliance and Contracting, Housing Industry Association

NEWHOUSE, Mr Kevin, Group Manager, NCC Management and Product Certification, Australian Building Codes Board

PATEN, Ms Anne, President, Victorian Building Action Group

RIDGWAY, Mr Nigel, Executive General Manager, Consumer, Small Business and Product Safety Division, Australian Competition and Consumer Commission

SAVERY, Mr Neil, General Manager, Australian Building Codes Board

SMITH, Mr Zachary, ACT Branch Organiser, Construction and General Division, Construction, Forestry, Mining and Energy Union

SQUIRE, Mr Martin, General Manager, Trade and International Branch, Department of Industry, Innovation and Science

THOMSON, Mr James, Senior Adviser, Standards and Regulation, Australian Industry Group

WACEY, Mr Travis Kent, National Policy Research Officer, Forestry, Furnishing, Building Product and Manufacturing Division, Construction, Forestry, Mining and Energy Union

WOLFE, Mr Graham, Chief Executive, Industry Policy and Media, Housing Industry Association

YAXLEY, Mr Julian, Manager, Economics and Strategic Projects, Metropolitan Fire Brigade

ZIPPER, Dr Marcus, Director, CSIRO Services, Commonwealth Scientific and Industrial Research Organisation

15 February 2016, Melbourne VIC

Members in attendance: Senators Edwards, Ketter, Madigan, Xenophon

GINIVAN, Mr John, Acting Executive Director, Statutory Planning And Heritage, Department of Environment, Land, Water and Planning, Victoria

HARNISCH, Mr Wilhelm, Chief Executive Officer, Master Builders Australia

JACOB, Dr Leon, Private capacity

JONES, Mr Phil, General Manager, G James Glass and Aluminium

LE COMPTE, Mr Lindsay, Chair, Construction Products Alliance

MULHERIN, Mr Peter, Founder, ProductWise

MUNZ, Dr Nathan, Private capacity

OVERTON, Mr Warren, Chief Executive Officer, Australian Glass and Glazing Association

RICE, Mr Jamie, Assistant General Manager, G James Glass and Aluminium

RILEY-TAKOS, Ms Kareen, General Manager, Standards Development, Standards Australia

STINGEMORE, Mr Adam, General Manager, Stakeholder Engagement and Public Affairs, Standards Australia

TIGHE, Mr Peter, Chief Executive Officer, Asbestos Safety and Eradication Agency

30 January 2017, Brisbane QLD

Members in attendance: Senators Hume, Ketter, Xenophon

BLUNDELL, Mr Thady, Lawyer, Asbestos Disease Support Society, Turner Freeman Lawyers

BRAME, Mr Colin, Director, Customs Brokers and Forwarders Council of Australia Inc

BUCHHORN, Mr Wayne, Assistant Commissioner, Investigations Division, Department of Immigration and Border Protection

CHANDLER, Mr Andrew, Assistant Secretary, Trade and Customs Branch, Department of Immigration and Border Protection

DALE, Ms Erin, Commander, Customs Compliance Branch, Department of Immigration and Border Protection

GEDDES, Ms Linda, First Assistant Secretary, Traveller, Customs and Industry Policy Division, Department of Immigration and Border Protection

GOLDSBROUGH, Mr Paul, Executive Director, Safety, Policy and Workers Compensation Services, Office of Industrial Relations, Queensland Treasury

HUTCHINSON, Mr Joe, Site Delegate, Construction and General Division, Queensland/Northern Territory Branch, Construction, Forestry, Mining and Energy Union

JOHNSTONE, Mr John McGregor (Ian), Member, Asbestos Disease Support Society

MORRIS, Mr Stephen, Executive Director, Customs Brokers and Forwarders Council of Australia Inc

PARKER, Mr Bradley, National Assistant Secretary, Construction and General National Office, Construction, Forestry, Mining and Energy Union

RAMSAY, Mr Andrew, Workplace Health and Safety Coordinator, Construction and General Division, Queensland/Northern Territory Branch, Construction, Forestry, Mining and Energy Union

RICHARDS, Ms Amanda Marion, Chief Executive Officer, Asbestos Disease Support Society

WACEY, Mr Travis Kent, National Policy Research Officer, Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union

WILL, Mr Kevin, Managing Director, Yuanda Australia Pty Ltd

09 March 2017, Perth WA

Members in attendance: Senators Sterle, Xenophon

ALBONICO, Mr Lindsay Robert, Project Director, John Holland Pty Ltd

BENKESSER, Mr Robert Anthony, Safety Officer, Construction, Forestry, Mining and Energy Union

BROOKS, Mr Andrew John, Health, Safety, Environment and Quality Manager, John Holland Pty Ltd

BUCHAN, Mr Mick, State Secretary, Construction and General Division, Construction, Forestry, Mining and Energy Union

EASTON, Mr Frederick Spencer, Business Manager, Coffey

MANN, Mr Richard Dorham, Executive Director, Strategic Projects and Asset Sales, Department of Treasury, Western Australia

MORGAN, Mr Daniel, Principal Consultant, Coffey

MUSK, Professor Arthur William (Bill), Member, Australian Medical Association (Western Australia)

NAPIER, Mr Justin, General Manager, Regulatory Operations Group, Comcare

SUTCLIFFE, Mr Tony, Director, Regional Operations Western Australia, Regulatory Operations Group, Comcare

VOJAKOVIC, Mr Robert Dragutin, President, Asbestos Diseases Society of Australia Inc.

14 July 2017, Melbourne VIC

Members in attendance: Senators Kim Carr, Ketter, Xenophon

AYLWARD, Mr David, Shop Steward, Trades Union of Australia

BANNAM, Mr Clinton, Organiser, Australian Manufacturing Workers Union, Victoria

CARROLL, Ms Liza, Director-General, Department of Housing and Public Works

CHRISTIE, Mr Matt, Organiser, Australian Manufacturing Workers Union, Victoria

CLEMENT, Mr David, President, Asbestoswise

DALRYMPLE, Mr Adam, Acting Deputy Chief Officer, Metropolitan Fire and Emergency Services Board

de SILVA, Mr Radley, Chief Executive Officer, Master Builders Association of Victoria

DISTON, Mr Steven, Organiser, Electrical Trades Union of Australia

EDWARDS, Mr Alan, Federal Safety Commissioner, Office of the Federal Safety Commissioner

FINNIMORE, Mr Philip, Principal Adviser, Building Industry and Policy, Department of Housing and Public Works

HAMILTON, Mrs Vicki, OAM, Chief Executive Officer; Secretary, Asbestos Council of Victoria/GARDS Inc

KELLY, Mr Robert, Director, Specialist Services, Health and Safety, WorkSafe Victoria

McDONALD, Mr Matthew, Group Manager, Innovation and Analysis, Australian Building Codes Board

MIER, Mr David, Assistant National Secretary, Electrical Trades Union of Australia

MUSOLINO, Ms Renata, Secretary, Asbestoswise

NEWHOUSE, Mr Kevin, Group Manager, Australian Building Codes Board

RAFFERTY, Mr Max, National Manager, Technical Services, Master Builders Australia

ROBERTS, Mrs Dorothy, President, Asbestos Council of Victoria/GARDS Inc

ROSS, Ms Sarah, Education Officer and OHS Officer, Australian Manufacturing Workers Union, Victoria

SAVERY, Mr Neil, General Manager, Australian Building Codes Board

SMITH, Mrs Marie, Vice-President, Asbestos Council of Victoria/GARDS Inc

TIMMS, Mr Logan, Executive Director, Department of Housing and Public Works

WACEY, Mr Travis, National Policy Research Officer, Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union

WAWN, Mrs Denita, Chief Executive Officer, Master Builders Australia

19 July 2017 Sydney NSW

Members in attendance: Senators Kim Carr, Ketter, Xenophon

ATTWOOD, Mr Graham, Director, Expanded Polystyrene Australia

BARNETT, Dr Jonathan, Chair, Society of Fire Safety, Engineers Australia

BHASIN, Mr Sahil, National General Manager, Roscon Property Services

DWYER, Mr Phillip, National President, Builders Collective of Australia

FAIFER, Mr Norman, Immediate Past National President, Australian Institute of Building

GARDNER, Mr Ken, Chief Executive Officer, Master Plumbers and Mechanical Services Association

GENCO, Mr Joseph, Director, Technical and Regulation Division, Victorian Building Authority

GILLIES, Mr Andrew, Managing Director, Fairview Architectural

GILLIES, Mr Roy, Sales Manager, Fairview Architectural

GODDARD, Mr Stephen, Spokesperson, Owners Corporation Network
HEATHER, Mr Paul, National President, Australian Institute of Building
HILLS, Mr Rodger, Executive Officer, Building Products Innovation Council
HUGHES-BROWN, Mr Benjamin, Managing Director, Ignis Solutions Pty Ltd
IRELAND, Miss Talissa, Senior Client Liaison Officer, CertMark International
LECK, Ms Amanda, Director, Information and Community Safety, Australasian Fire and Emergency Service Authorities Council
LLEWELLYN, Mr Robert, Built Environment Consultant, Australasian Fire and Emergency Service Authorities Council
MARTIN, Mr Wade, National Technical Manager, Halifax Vogel Group Pty Ltd
McINTYRE, Mr Peter, Chief Executive Officer, Engineers Australia
O'BRIEN, Dr Darryl, National Technical Committee representative, Non-Conforming Building Products, Australian Institute of Building Surveyors
OLDS, Mr Troy, Board Director, Australian Institute of Building Surveyors
RATZ, Mr Laurie, Special Risks Manager, Insurance Council of Australia
RAYMENT, Mr Bruce, Chief Executive Officer, Halifax Vogel Group Pty Ltd
SMITH, Mr Murray, Acting Chief Executive Officer, Victorian Building Authority
STEWART, Mr Greg, Sales Manager, Fairview Architectural
STILES, Ms Karen, Executive Officer, Owners Corporation Network
STOLTZ, Mr Christopher, President, Victoria Division, Engineers Australia
SULLIVAN, Mr Karl, General Manager Risk & Disaster Planning, Insurance Council of Australia
THORPE, Mr John Charles, Chief Executive Officer, CertMark International
TUXFORD, Mr Timothy, National President, Australian Institute of Building Surveyors
WILLIAMS, Mr Scott, Chief Executive Officer, Fire Protection Association Australia

31 July 2017, Adelaide SA

Members in attendance: Senators Hume, Ketter, Xenophon

CARTLEDGE, Mr Aaron, State Secretary Construction and General, Construction, Forestry, Mining and Energy Union, South Australia

DOREIAN, Mr Graeme, Private capacity

DORMONTT, Dr Eleanor, Research Fellow, The Advanced DNA, Identification and Forensic Facility, University of Adelaide

GAVIN, Mr Clint, National Sales, Manager, SGI Architectural Pty Ltd

HOPGOOD, Mr Michael (Mick), SA Organiser, Australian Workers Union

JOHNSON, Mr Robin, Managing Director, Robin Johnson Engineering

KIRNER, Mr Dave, District Secretary Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union, South Australia

KWONG, Mr Chris, Manager, Development, Policy and Assessment, Development Division, Department of Planning, Transport and Infrastructure, South Australia

LAMPS, Mr Peter, SA Branch Secretary, Australian Workers Union

LOWE, Professor Andrew John, Chair, Plant Conservation Biology, The Advanced DNA, Identification and Forensic Facility, University of Adelaide

McKIE, Mr Chris, Chief Inspector, Compliance and Enforcement, SafeWork SA, South Australia

PISONI, Mr Simon, Assistant Branch Secretary, Electrical and Plumbing South Australia, Communications Electrical Plumbing Union

PURSE, Dr Kevin, President, Asbestos Diseases Society of South Australia

RAU, The Hon. John MP, Deputy Premier, South Australia

RENOUF, Mr Timothy, Managing Director, Wren Industries Pty Ltd

WARD, Mr Jim, National Director, Occupational Health and Safety, Australian Workers Union

WILCZYNSKI, Mr Joseph, Private capacity

Appendix 3

Correspondence received from Hon Craig Laundy MP, Assistant Minister for Industry, Innovation and Science

- Letter to the Chair from the Hon Craig Laundy MP, Assistant Minister for Industry, Innovation and Science dated 21 June 2017.
- Letter to the Chair from the Hon Craig Laundy MP, Assistant Minister for Industry, Innovation and Science dated 17 August 2017.

Letter to the Chair from the Hon Craig Laundry MP, Assistant Minister for Industry, Innovation and Science dated 21 June 2017.



The Hon Craig Laundry MP

Assistant Minister for Industry, Innovation and Science

MS17-001776

Senator Chris Ketter
Senate Standing Committees on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

21 JUN 2017

Dear Senator Ketter

I am writing in respect of the terms of reference to the Inquiry the Senate Economics References Committee (the Committee) is undertaking into non-conforming building products (the Inquiry).

Following the tragic loss of life at the Grenfell Tower in London, the Australian Government wishes to take all necessary steps to prevent a similar tragedy from occurring in Australia. As I am sure you appreciate, the implications of the non-compliant use of combustible wall cladding products are potentially devastating.

As the Chair of the Committee, I am aware you have indicated that you would like to use the Inquiry to hold a public hearing to specifically examine the use of non-compliant cladding material in Australia. On behalf of the government, I would like to express my support for such a hearing.

I believe the current terms of reference of the Inquiry would permit the Committee to consider the effectiveness of current regulator frameworks for ensuring building practitioners comply with the National Construction Code (NCC).

As the Chair of the Building Ministers' Forum (BMF) this is of significant importance, as the BMF has asked the Australian Building Codes Board to implement a number of measures through the NCC to improve fire safety in high-rise buildings, and help address the risks associated with the non-compliant use of external wall cladding.

I understand that the Committee has until 31 August 2017 to table the interim report on the illegal importation of asbestos containing products, and will release its final report by 31 October 2017.

However, I would like to request the Committee report on its findings as early as possible, to ensure we can protect and retain confidence in Australia's built environment and building and construction industries.

Yours sincerely

Craig Laundry

Letter to the Chair from the Hon Craig Laundry MP, Assistant Minister for Industry, Innovation and Science dated 17 August 2017.



The Hon Craig Laundry MP

Assistant Minister for Industry, Innovation and Science

MS17-002355

Senator Chris Ketter
Senate Standing Committee on Economics
Parliament House
CANBERRA ACT 2600

17 AUG 2017

Dear Senator

Chris,

I am writing in respect of a number of serious allegations that have been made about the conduct of practitioners in the building and construction industry, during the Senate Economics References Committee's (the Committee) inquiry into non-conforming building products.

As the Chair of the Building Ministers' Forum (BMF) this is of significant importance to me, as the safety and effectiveness of Australia's built environment is being called into question.

I have taken the liberty to document a number of the allegations with respect to non-conformance and fraud that have been made throughout the public hearings (enclosed). I urge you to follow up these allegations to ensure that the appropriate regulator is notified of the issues and that your report is as accurate as possible.

Following the tragic loss of life at the Grenfell Tower in London, the Australian Government and the BMF wishes to reassure the Australian community that our buildings are among the safest in world, and that State and Territory regulatory systems are robust in addition to being continually improved.

I understand that the Committee has until 31 August 2017 to table the interim report on the illegal importation of asbestos containing products, and will table its final report by 31 October 2017.

I would again like to request the Committee report on its findings as early as possible, to ensure we can protect and retain confidence in Australia's built environment and building and construction industries.

I have also copied this letter to my colleague Senator Jane Hume, in her capacity as Deputy Chair of the Economics References Committee.

Yours sincerely

Craig Laundry

Encl. (1)

CC. Senator Jane Hume

CC. Senate Economics Committee Secretariat

ATTACHMENT A

ALLEGATIONS & STATEMENTS MADE BY WITNESSES

Hearing Date	Witness	Allegation
13 Nov 2015 (Original Committee)	CSIRO Mr Mark Burgess Dr Marcus Zipper	<ul style="list-style-type: none"> Mr Burgess advised the Committee that in the past two years CSIRO has identified two specific cases of people fraudulently falsifying CSIRO test reports (to purport the products conform to Australian Standards). In one example, the product manufacturer was found to be innocent of any wrongdoing. The installer had altered the certificate in order to use the product outside of where it should be used. The installer was untraceable (small-scale installer). Action was taken in both circumstances. CSIRO wrote to a number of industry parties including ABCB to circulate the existence of the report and the manufacturer of the product. The CSIRO also then alerted the ACCC.
	Australian Industry Group (AIG) Dr Peter Burn Mr James Thomson	<ul style="list-style-type: none"> Mr Thomson discussed an example of a member [unnamed] who had discovered that there were counterfeit versions of their members companies power points, after noticing a sudden increase in returns because they were faulty. AIG needed to inform customers that the products were not its members despite being branded as such.
15 Feb 2016 (Original Committee)	Attended in Private Capacity Dr Nathan Munz	<ul style="list-style-type: none"> Dr Munz alleged an Australian based company (unnamed), that certified many local and overseas suppliers of safety glass, had issued a certificate for transportation safety glass to a non-existent entity at a false Australian address. A copy of the fraudulent certificate was submitted to the Senate Committee. Further action taken in this matter was not mentioned. Dr Munz stated glass with the conformance symbol and license number on the certificate is installed in trains operating in Perth, Adelaide and Melbourne. [It is unknown if Dr Munz was referring to the Australian Window Association conformity mark].
	Asbestos Safety and Eradication Agency Mr Peter Tighe	<ul style="list-style-type: none"> Mr Tighe submitted that there may have been forged certificates of compliance in the importation of products containing asbestos. A particular example was not provided. [In Mr Tighe's oral submission he stated that specific incidents were identified in ASEA's written submission; however, the written submission does not contain any examples].
30 Jan 2017 (Re-established Committee)	CFMEU Mr Bradley Parker	<ul style="list-style-type: none"> Mr Parker alleged there is an international pro-asbestos movement that is linked to the Russian mafia. He submitted that the mafia engages in intimidating and corrupt behaviour, particularly in South-East Asia. He noted that there were rumours of money crossing hands with international politicians and that there was a (then) recent international spying scandal involving a spy named Rob Moore infiltrating the anti-asbestos movement.

		<ul style="list-style-type: none"> • Mr Parker further stated that Rob Moore was subject to a UK court case and was employed by K2 Intelligence. • Mr Parker also recounted an incident in Vienna where he attended a 'global union federation on asbestos' which was disrupted by the Russian mob. He said that he was intimidated in the bar of the conference by the Russian mob and mentioned that another international attendee at the conference was 'roughed up' a couple of years before.
9 March 2017 (Re-established Committee)	CFMEU Mr Mick Buchan Mr Robert Anthony Benkesser	<ul style="list-style-type: none"> • Mr Buchan: made an allegation that counterfeit/fraudulent/forged documentation was being provided for illegal importation of asbestos. He alleged that the documentation said that the product itself contains no asbestos. • An example of documentation was not provided to the committee; however, Mr Buchan offered to provide the Committee with scaffold products that had come from offshore with forged documentation that CFMEU had seen.
	Coffey Mr Frederick Easton Mr Daniel Morgan	<ul style="list-style-type: none"> • Mr Morgan and Mr Easton stated they found falsified vessel clearance certificates where 'limpet' asbestos was found on board. • Mr Morgan and Mr Easton stated machinery from high risk nations (such as China, Vietnam, Malaysia and some European countries who receive their machinery from China) is frequently contaminated with asbestos, and the asbestos contamination is then transferred to the building products. • Coffey generally receive requests from Border Force to assess products, such as crayons, and therefore do not need to refer on for further action.
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'.

	Trade Union of Australia Mr David Aylward Mr Steven Diston Mr David Mier	<ul style="list-style-type: none"> • Mr Mier asserted that companies can easily get documentation from China to say that a material does not contain asbestos. Either the importing company can request a fraudulent certificate or the manufacturer will claim that the product does not contain asbestos without checking or will be aware and will provide the certificate anyway. • Mr Meir gave an example of works carried out on electrical tram substations built in Melbourne and Monarto in South Australia. • Mr Meir alleged Robin Johnson Engineering and Australian Portable Camps provided sheeting containing asbestos • <i>[Robin Johnson Engineering was subsequently invited to appear at the Adelaide Public Hearing on 31 July 2017].</i>
19 Jul 2017 (Re established Committee)	Building Products Innovation Council (BPIC) Mr Rodger Hills	<ul style="list-style-type: none"> • Mr Hills stated BPIC has a lot of qualitative data about fraudulent certificates. • Mr Hills asserted the Australian Window Association, has 'literally thousands of documents that are fraudulent'. • This has been brought to the attention of ACCC and police. Mr Hills stated that a large part of the problem is from imported products. Further claims that there has been fraudulent NATA certificates and forging of industry code certificates. • <i>[The Committee suggested they may seek to write to the Australian Window Association to ask for evidence of fraudulent documentation.]</i> • Mr Hills stated there were issues reporting such allegations to the ACCC and the police, claiming each will say that they do not have jurisdiction. • Mr Hills stated to his knowledge there has not been a criminal prosecution of fraud. • Mr Hills alleged there is corruption across a number of fields in Australia (became aware in his position as CEO of the Association of Building Sustainability Assessors). • He was unaware of bribery but there may be secret commissions (fraudulent documentation is produced to reduce or speed up the process). • Mr Hills stated he had reported this to the state regulator <i>[unnamed]</i>, however, the state regulator said that they did not have jurisdiction.
	Australasian Fire and Emergency Service Authorities Council (AFAC) Ms Amanda Leck Mr Robert Llewellyn	<ul style="list-style-type: none"> • Mr Llewellyn was asked by the Committee about counterfeit sprinklers. • Mr Llewellyn responded that the defect was a worldwide issue and involved the glass bulb not meeting specifications for it to correctly operate despite having an approval. • Mr Llewellyn stated that documentation was in the public domain and would be provided to the committee.
	CertMark International Miss Talissa Ireland Mr John Charles Thorpe	<ul style="list-style-type: none"> • Mr Thorpe referred to the example of ModakBoard which was certified based on an extremely high-quality magnesium oxide board that was tested and certified in Australia by the CSIRO. • The consumer then went to China and was told that they had been supplied with a similar looking board to the

		<p>product that had been tested however the board in their possession was not fireproof.</p> <ul style="list-style-type: none"> • The consumer alleged the supplier fraudulently put the CodeMark stamp on the substituted product. • Mr Thorpe also claimed that it was possible that the ALDI taps had fraudulent certificates.
	<p>Australian Institute of Building Mr Paul Heather Mr Norman Faifer</p>	<ul style="list-style-type: none"> • Mr Faifer asserted that he had witnessed fraudulent product certification. Stated that non-conformity is caused in part by language barriers. In some cases, false compliance certificates may not be picked up by the builder as they may not have the relevant experience to identify a fraudulent document. They would in good faith accept the expert's document. • Mr Heather is not aware of any prosecutions for the presentation of fraudulent documentation or certificates. • Mr Faifer also noted that issues may arise from using substituted material as the certification may or may not be genuine.
<p>31 Jul 2017 (Re-established Committee)</p>	<p>Robin Johnson Engineering (RJE) Mr Robin Johnson</p>	<ul style="list-style-type: none"> • <i>[RJE was invited to attend by the Committee, following the verbal submission from the Trade Union of Australia on 14 July 2017.]</i> • Mr Johnson provided an oral submission regarding his company's involvement in installing flooring into Siemens substations that was (later) found to contain asbestos. • Mr Johnson stated that his company relied on a certificate of compliance that indicated that the product did not contain asbestos. In this situation the composite material in the product was also identified in the documentation and did not list asbestos. • Mr Johnson stated RJE had engaged a NATA accredited testing laboratory, SGS, to test products prior to shipment. • Mr Johnson reported the certificates to the various state regulators and starting legal action <i>[unclear if this action is being pursued in Australia or China]</i> against the supplier, Feicheng Lutai.
	<p>Private Capacity Mr Wilczynski</p>	<ul style="list-style-type: none"> • Mr Wilczynski purchased double-glazed windows and doors and engaged builders to install them. Alleged the doors fell apart as they were not suitable for the Australian climate and the windows caused damage to the house due to the weight of the windows (cracks in walls, house is breaking at the veneer). • Certificates of compliance were not initially supplied, however, at a later stage some certificates were supplied for some of the products installed but not all. • Mr Wilczynski alleged that the certificates supplied were fraudulent. The products were manufactured by a Polish company named Drutex which claimed that it was not responsible. • A business partnership named Varmhus installed the products. However, after the partnership split Varmhus was wound up and one partner set up a new business named Oknalux.

		<ul style="list-style-type: none"> • Mr Wilczynski advised he started [or considered] a civil action against the partnership Varmhus. He also tried to report the conduct to the police who he said they would not investigate. • Mr Wilczynski then contacted the Premier (presumably of South Australia) who redirected the matter to the police who then redirected the matter to the Attorney-General's Department.
	University of Adelaide Professor Andrew Lowe	<ul style="list-style-type: none"> • Prof Lowe stated that falsification occurs in timber supply chains. He estimated that in the supply chains the University tests (routine DNA testing), they generally find between 30 to 50 per cent of timber is incorrectly identified in terms of the species that is being claimed.