

Executive summary

Confidence in the materials we use to build our domestic, commercial and public buildings is of paramount importance to all. Australians have a right to feel secure and safe in their built environment. As such, safety has always been a key motivator in the design and implementation of modern building regulations and construction codes. Often it is impossible for consumers and end users of building products to know whether a product is fit-for-purpose; trust is placed in those with the appropriate technical knowledge to ensure Australians are protected when they purchase or use building products, or that the appropriate product has been used in the place where they may work or live.

Recent failures, such as the importation of asbestos-containing building products and the 2014 Lacrosse apartment building fire in Melbourne's Docklands, have highlighted the need for continued vigilance of building materials used in Australia. This is to ensure that building products and building practices in general, conform with the relevant building regulations and standards to guarantee public safety, along with building integrity and investment confidence in Australian building and construction.

Non-conforming building products in Australia

This inquiry into non-conforming building products in Australia was brought about following a number of industry-led forums that highlighted the growing body of evidence of the use of non-conforming building materials in the Australian construction industry. The inquiry has examined a range of issues surrounding the production, sourcing and use of non-conforming and non-compliant building products.

A non-conforming product or material is one that claims to be something it is not, and does not meet the required Australian standard for the material—for example, the use of inferior grade material, or a product that contains illegal materials such as asbestos. A non-compliant building product is, one that has been used in a situation where its use does not comply with the requirements for such a material under the National Construction Code (NCC).

As the inquiry's terms of reference detail, significant issues were raised by stakeholders regarding the impact of non-conforming products in industry supply chains (including the importers of products and the manufacturers and fabricators of products), workplace safety and the variety of risks and costs that could be passed on to Australian customers. Alongside these issues, the committee took evidence relating to the use of non-compliant building materials. The inquiry also considered and examined the effectiveness of the current Australian building regulatory frameworks that are designed to ensure that building products conform to, and have been used or installed in compliance with, the relevant Australian Standards.

Inquiry's interim reports

Through the course of the inquiry, the committee has tabled three interim reports in relation to the issues raised by submitters and at public hearings as outlined in Chapter 1.

The interim reports were:

- *Interim report: Safety—'not a matter of good luck'*—4 May 2016;
- *Interim report: aluminium composite cladding*—6 September 2017; and
- *Interim report: protecting Australians from the threat of asbestos*—22 November 2017.

The first interim report, in May 2016, raised a range of concerns; including, the illegal importation of building products containing asbestos; the 2014 Lacrosse apartment fire in Melbourne and the use of non-compliant aluminium composite cladding; and the national recall of Infinity electric cable. The committee found that there had been a serious breakdown in the regulation and oversight of both non-conforming and non-compliant building products. In particular, the committee highlighted the weakness in the regulatory regime, including the certification process and the disjointed regulation of the use of building products, both manufactured in Australia and overseas. Based on the findings in the first interim report, the committee made one recommendation which was to continue the inquiry.

In September 2017, the committee tabled its second interim report—*Interim report: aluminium composite cladding*. This report focused on the issues raised around the use of polyethylene (PE) core Aluminium Composite Panels (ACPs) that had significantly contributed to the Lacrosse fire in Melbourne in 2014 and the tragic Grenfell Tower fire in London in 2017. The report found that deregulation and privatisation of building certification processes and the absence of proper regulatory controls, coupled with the increase in ACP product importation, led to the proliferation and installation of non-compliant building products. Importantly, the report was also critical of the lack of any timely government response to the Lacrosse fire, as well as any meaningful resolution between governments, the Building Ministers' Forum, and the Senior Officers' Group on possible steps forward in dealing with the proliferation of ACP panels. The committee's report put forward eight recommendations to address the importation and use of ACP panels and strengthen the regulatory system including recommending banning the importation of ACP panels and a national licencing scheme for all trades and professionals (See Appendix 3 for list of recommendations).

In November 2017, the committee tabled its third interim report titled, *Interim report: protecting Australians from the threat of asbestos*. Like its predecessor, this report concentrated on one topic, the illegal importation of asbestos. This report made 26 recommendations addressing how best to combat the intentional and unintentional importation of asbestos in building and other materials, including complete machinery (See Appendix 4 for list of recommendations).

Final inquiry report

This final report outlines many of the common issues across the prior three reports. It also supports the compliance concerns raised in the Building Ministers' Forum report, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, prepared by Professor Peter Shergold and Ms Bronwyn Weir, and draws attention to the progress being made in dealing with non-conforming products in some jurisdictions. Specifically, the committee was encouraged by the proactive work undertaken by the Queensland Government in their new legislation designed to strengthen the chain of responsibility for the importation and distribution of building materials. As such, Recommendation 6 of this report suggests that other jurisdictions also move to implement similar legislation to ensure responsibility and accountability is spread more evenly across supply chains.

Recommendation 6

3.86 The committee recommends that the Building Ministers' Forum give further consideration to introduce a nationally consistent approach that increases accountability for participants across the supply chain. Specifically, the committee recommends that other states and territories pass legislation similar to Queensland's *Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017*.

Where to next?

By and large, many of the 13 recommendations of this final report echo those recommendations put forward in the previous interim reports. The committee is cognisant that the Building Ministers' Forum is already moving on some of these issues as highlighted by the Shergold and Weir report. Nevertheless, the committee would encourage both the government and the Building Ministers' Forum to increase the level of momentum in implementing these recommendations and, moreover, those recommendations that have been raised previously. These include, expediting mandatory third party certification for high risk products, including a national register of non-compliant products if feasible, and the introduction of a national licencing scheme.

A simple change that the committee put forward previously, and one which it strongly believes would assist stakeholders, is to consider making all Australian Standards freely available. All forms of legal requirements should be freely available, where feasible, so that stakeholders can inform themselves adequately of their obligations under the relevant law.

Final report recommendations

The recommendations contained in this report are aimed at strengthening accountability and compliance and providing greater information to stakeholders, in turn, allowing stakeholders to make informed choices and ensuring the development of a coherent and robust regulatory regime for building materials in Australia.

The committee believes that the areas that would benefit from urgent action by the Building Ministers' Forum include the following recommendations: 1, 3, 5, 6 and 10.

Recommendation 1

3.69 The committee recommends that the Building Ministers' Forum develop improved consultative mechanisms with industry stakeholders. In addition, the Building Ministers' Forum should amend the terms of reference for the Senior Officers' Group and the Building Regulators Forum to include annual reporting requirements on progress to address non-conforming building products.

Recommendation 3

3.78 The committee calls on the Building Ministers' Forum to expedite its consideration of a mandatory third-party certification scheme for high-risk building products and a national register for these products.

Recommendation 5

3.80 The committee recommends that the Building Ministers' Forum, through the Senior Officers' Group, examine international approaches—including the European Union's regulations and processes—for testing of high-risk products prior to import and determine if they can be suitably adapted to benefit and enhance Australian requirements.

Recommendation 10

5.13 The committee gives in-principle support to Recommendation 12 of the Shergold and Weir Report '[t]hat each jurisdiction establishes a building information database that provides a centralised source of building design and construction documentation' so regulators are better placed to identify where non-compliant building products have been installed.

The committee has also identified a range of specific recommendations (numbers: 2, 4, 7, 8, 9, 11, 12, and 13) that it believes are best placed for government to progress and, as indicated earlier, a number of these have been proposed in earlier interim reports.

Recommendation 2

3.74 The committee recommends that the Australian Government develop a confidential reporting mechanism through which industry and other stakeholders can report non-conforming building products.

Recommendation 4

3.79 The committee recommends that where an importer intends to import goods that have been deemed high-risk, the Australian Government require the importer, prior to the importation of the goods, to conduct sampling and testing by a NATA accredited authority (or a NATA equivalent testing authority in another country that is a signatory to a Mutual Recognition Arrangement).

Recommendation 7

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

Recommendation 8

4.40 The committee strongly recommends that the Australian Government consider making all Australian Standards freely available.

Recommendation 9

5.10 The committee recommends that the Australian Government consult with industry stakeholders to determine the feasibility of developing a national database of conforming and non-conforming products.

Recommendation 11

5.22 The committee recommends the Australian 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 12

5.27 The committee recommends that the Australian Government consider the merits of requiring manufacturers, importers and suppliers to hold mandatory recall insurance for high-risk building products.

Recommendation 13

5.42 The committee recommends that the Australian Government review the *Customs Act 1901* (and other relevant legislation) to address the challenges of enforcing the existing importation of asbestos offence, with the aim to close loopholes and improve the capacity of prosecutors to obtain convictions against entities and individuals importing asbestos. This review should include consideration of increasing the threshold required to use 'mistake of fact' as a legal defence.

The committee strongly advocates that the Australian Government and Building Ministers' Forum move quickly to adopt and implement these recommendations to provide greater confidence in building products and to protect all Australians.

