

## Chapter 2

### Concerns raised by submissions

2.1 Many of the issues considered during the SOG's investigation into strategies to minimise risks associated with NCBPs, were replicated in submissions to the committee's inquiry. The committee received submissions from a range of government departments and agencies, peak industry bodies, unions, individuals working in the industry and consumers.

#### Lacrosse apartment building fire

2.2 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, Director, Fire Safety, Metropolitan Fire Brigade 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.<sup>1</sup>

2.3 Non-conforming and non-compliant products are issues critically important to all Australians. As Ms Anne Paten, Victorian Building Action Group, noted:

...it may not be that it affects you right now, but say your daughter goes across to play with someone's daughter at the Lacrosse building and that night it catches on fire. You thought, 'It had nothing to do with me; I don't care about the Lacrosse people,' but it does concern us all.<sup>2</sup>

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1 Mr Adam Dalrymple, Director, Fire Safety, Metropolitan Fire Brigade, *Committee Hansard*, 13 November 2015, p. 65.

2 Ms Anne Paten, President, Victorian Building Action Group, *Committee Hansard*, 13 November 2015, p. 39.

## Infinity Cable

2.4 The committee also took evidence on the installation of Infinity cable. According to the ACCC:

There is faulty electrical cabling in thousands of Australian homes and businesses. Time is running out before the cables become a fire or electrocution risk. Act now before it's too late—get your cable checked.<sup>3</sup>

2.5 The ACCC advised that electrical retailers and wholesalers have recalled Infinity and Olsent-branded electrical cables, warning that 'physical contact with the recalled cables could dislodge the insulation and lead to electric shock or fires'.<sup>4</sup>

2.6 In its recall notice, the ACCC reported that the cables were supplied in:

- NSW—2010-2013;
- ACT—2011-2013;
- Victoria, Queensland, South Australia and Western Australia—2012–2013; and
- Tasmania—2013.

2.7 Recall progress reports indicate that up to 22,000 homes, commercial and residential buildings in Australia could be affected.<sup>5</sup> Not only do these cables present a serious danger to the occupants of such buildings but the cost of remediation is high. Ai Group noted that the cost of the Infinity Cable recall has been estimated to be approximately \$80 million not including any estimates for the realisation of worst case risks (e.g. fire or electrocution) or adverse valuations to homes where cable either cannot be or can be only partially removed.<sup>6</sup>

2.8 HIA noted that the Electrical Equipment and Safety Scheme (EESS) was not operating at the time Infinity Cable entered the Australian supply chain:

It is impossible to know if the EESS would have identified the false testing information supplied with Infinity Cable. However the hallmarks of the EESS scheme, which require both the product and the supplier to be registered and require the supplier to vouch for the integrity of their

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3 Australian Competition and Consumer Commission, 'Infinity cable recall: act now before it's too late', <https://www.accc.gov.au/update/infinity-cable-recall-act-now-before-its-too-late> (accessed 30 April 2016).

4 Australian Competition and Consumer Commission, 'Infinity cable recall: act now before it's too late', <https://www.accc.gov.au/update/infinity-cable-recall-act-now-before-its-too-late> (accessed 30 April 2016).

5 Australian Competition and Consumer Commission, 'Infinity cable recall: act now before it's too late', <https://www.accc.gov.au/update/infinity-cable-recall-act-now-before-its-too-late> (accessed 30 April 2016).

6 Ai Group, *Submission 46*, p. 7.

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products, may have provided sufficient checks and balances preventing the cable entering the domestic supply chain.<sup>7</sup>

2.9 In the committee's view, this assumption needs to be tested.

2.10 The Ai Group expressed the view that the development of an Intergovernmental Agreement for the EESS should be expedited as 'a nationally harmonised regulatory scheme in the form of the EESS is the best defence against non-conforming product in the electrical sector'.<sup>8</sup> The committee notes that all state and territory electrical regulators, except for New South Wales, have signed the regulatory impact statement to participate in the new system.<sup>9</sup>

2.11 Again the overriding message from the installation of Infinity Cable is that 'fire safety really should not be a matter of good luck'.

### **Importation of non-conforming building products**

2.12 Submissions also highlighted the increased health and safety risks for workers as well as the public. For example, the Asbestos Eradication and Safety Agency noted that even though the importation into Australia of all types of asbestos and products containing asbestos is banned (except under limited circumstances) asbestos has been detected in a wide range of goods and materials imported into Australia, including in building and construction materials such as cement compound board.<sup>10</sup> This includes products that were supplied for export as 'asbestos-free' but which subsequent testing revealed to contain asbestos.<sup>11</sup>

2.13 The submission from the Construction, Forestry, Mining and Energy Union (CFMEU) similarly highlighted a reported rise in imports from China of materials containing asbestos, including plasterboard, automotive parts, and asbestos-tainted toys.<sup>12</sup>

2.14 The Department of Immigration and Border Protection informed the committee that under the *Customs (Prohibited Imports) Regulations 1956* (PI Regulations), the Australian Border Force (ABF) has the power to detain goods where they are suspected of containing asbestos, including building products and a range of other goods. The ABF's approach is to conduct 'intelligence led, risk-based targeted responses to goods arriving into Australia'.<sup>13</sup>

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7 Housing Industry Association, *Submission 30*, p. 56

8 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, p. 4.

9 Electrical Regulatory Authorities Council, 'EESS FAQ', [http://www.erac.gov.au/index.php?option=com\\_content&view=article&id=141&Itemid=590](http://www.erac.gov.au/index.php?option=com_content&view=article&id=141&Itemid=590) (accessed 2 May 2016).

10 Asbestos Eradication and Safety Agency, *Submission 10*, p. 1.

11 Asbestos Eradication and Safety Agency, *Supplementary submission 10*, p. 1.

12 Construction, Forestry, Mining and Energy Union, *Submission 74*, p. 5.

13 Department of Immigration and Border Protection, *Submission 56*, p. 3.

2.15 The Asbestos Eradication and Safety Agency considered that increased surveillance and screening of imported building products as well as a greater willingness to enforce the penalties available under the PI Regulations would assist in reducing the incidence of non-conforming building products being imported into Australia.<sup>14</sup>

2.16 The committee has major concerns relating to the importation of NCBPs. Particularly the ability of Australia's enforcement agencies to effectively police Australian borders so that NCBPs are detected and prevented from entering Australia. At the moment, this area of enforcement appears to require substantial strengthening and should be a high priority for government. In this regard, the committee notes that the Government imposed a ban on the use of asbestos in Australian workplaces from 31 December 2003. At the same time, restrictions on the importation of asbestos and asbestos containing goods came into force.<sup>15</sup> Since the adoption of supplementary legislation in February 2014, imposing infringements (Infringement Notice Scheme) on the importation of asbestos-containing products, only two infringements have been issued against importers of goods containing asbestos.<sup>16</sup>

2.17 The Asbestos Eradication and Safety Agency noted that the current PI Regulations include penalties for breaches of up to \$170,000.<sup>17</sup> The committee notes that the Department reported that, since 2009, only \$64,000 in fines, penalties and costs were imposed relating to asbestos importation offences.<sup>18</sup>

2.18 The importation of banned materials, such as asbestos, raises very serious concerns about the capacity of Australian authorities to deal with this issue, particularly in light of our open and dynamic trade environment. The committee notes the important work of the Asbestos Safety and Eradication Agency and questions whether further resources are required for it to fulfil its current role.

2.19 The committee will further consider means by which foreign governments could be encouraged to ensure compliance certification carried out within their sovereign borders is bona fide. Mechanisms could range from formal representations through DFAT to more punitive approaches, such as restrictions on the importing of certified goods from countries where fraudulent certification is not being addressed.

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14 Asbestos Eradication and Safety Agency, *Submission 10*, p. 1.

15 Asbestos Eradication and Safety Agency, *Submission 10*, p. 1.

16 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, p. 4.

17 Asbestos Eradication and Safety Agency, *Submission 10*, p. 3.

18 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, p. 4.

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## Additional concerns

2.20 Other submissions to the inquiry highlight concerns across a range of industry sectors. The Engineered Wood Products Association of Australia (EWPAA) submission stated that the engineered wood products sector is experiencing significant problems with product non-compliance, both in the construction phase (for example in relation to the structural performance of building and construction materials), through to the impact of materials in completed buildings on occupant health and safety (for example if structures do not perform their function to protect against storms and cyclones, through to the risk of formaldehyde emissions exposure).<sup>19</sup>

2.21 The Australian Window Association (AWA) submission stated that:

In 2003, with almost 300 member companies the AWA received three requests a year to deal with product or installation issues, in 2013 with more than 600 member companies, the AWA received three requests a week. Year to date 2015, we have received up to six requests a week. The issue is getting worse, not better and more compliant companies are closing as they can't compete.<sup>20</sup>

2.22 This observation about compliant companies being disadvantaged and forced to close by other businesses that are prepared to put profit before safety, highlights a further need for tackling the production and use of non-conforming building products. Also, it is apparent that a significant proportion of non-conforming products in Australia are coming from overseas entities. This leads to an uneven playing field, which harms Australian companies and destroys local jobs.

2.23 The array of compelling evidence provided to the committee suggests that the use of non-conforming building products is on the rise and is not limited to any one particular industry sector.

## Standards Australia

2.24 Evidence to the committee also raised concerns about the process of setting standards and the role of Standards Australia. Similar concerns were also raised during the committee's inquiry into the future of Australia's steel industry.

2.25 Standards Australia is the peak standards development body. It works with industry, government and community interests to develop and adopt voluntary, consensus-based Australian standards for the building and construction sector. Standards Australia emphasised that it is not its role to ensure compliance of products within Australia.<sup>21</sup> Standards Australia indicated that it had undertaken a great deal of work over the last ten years to implement the recommendations of the 2006 Productivity Commission research report *Standard Setting and Laboratory Accreditation*.<sup>22</sup> Consistent with the recommendations, Standards Australia advised

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19 Engineered Wood Products Association of Australia, *Submission 12*, p. 2.

20 Australian Windows Association, *Submission 5*, p. 1.

21 Standards Australia, *Submission 45*, p. 2.

22 Standards Australia, *Submission 45*, p. 3.

that it had developed 'significantly greater alignment with government, consumer and industry priorities in the work that we do', as well as focussing on 'ensuring that Australian Standards meet government, industry and community expectations'.<sup>23</sup>

2.26 Standards Australia informed the committee that 'there is a great misunderstanding in the Australian community that Standards Australia is the standards police, that we get out there and inspect, licence, watch, audit and certify'.<sup>24</sup>

2.27 The committee remains to be convinced that Standards Australia is succeeding in changing public and indeed industry expectations of its role and function. Having heard evidence from Standards Australia, the committee formed the view that Standards Australia needs to do more to dispel these expectations. This confusion about who is responsible for policing, auditing and certifying standards for building products and their installation underscores the need for a coherent and robust regulatory regime that:

- everybody understands;
- instils confidence in its effectiveness; and
- does not allow shoddy products and building practices to slip through the cracks undetected.

2.28 Witnesses provided evidence highlighting what they considered to be 'the hijacking of an Australian standard by commercial interests', at the expense of public safety concerns.<sup>25</sup> Similar concerns were raised as part of this inquiry in relation to insulation,<sup>26</sup> as well as in relation to steel during the committee's inquiry into the future of Australia's steel industry.<sup>27</sup>

### ***Committee view***

2.29 Clearly there has been a serious breakdown in the regulation and oversight of both non-conforming and non-compliant building products, which requires determined action. The committee notes progress already underway, especially the work of the SOG. Given the seriousness of the problem, the various areas of glaring 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, the committee has formed the view that it should continue its inquiry.

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23 Standards Australia, *Submission 45*, p. 3.

24 Mr Adam Stingemore, Senate Economics Reference Committee, Inquiry into the future of Australia's steel industry, *Committee Hansard*, 6 April 2016, p. 54.

25 Dr Nathan Munz, *Committee Hansard*, 15 February 2016, p. 4.

26 Wren Industries, *Supplementary Submission 64.2*, p. 2.

27 Welding Technology Institute of Australia, *Submission 32* to Senate Economics Reference Committee, Inquiry into the future of Australia's steel industry, p. 8.

**Recommendation 1**

**The committee recommends that the inquiry be extended until 30 September 2016.**

**Senator Chris Ketter  
Chair**

