

The Senate

Economics

References Committee

Non-conforming building products

Interim report

Safety—‘not a matter of good luck’

May 2016

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ISBN 978-1-76010-439-9

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

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Chapter 1

Introduction

Referral of inquiry

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 On 15 September 2015, the Senate granted an extension to the committee to report by 3 December 2015.² On 23 November 2015, the committee was granted a further extension to report by 16 March 2016³ and subsequently by 10 May 2016.⁴

1.2 Under its terms of reference, the committee was to give particular reference to:

- (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.⁵

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

2 *Journals of the Senate*, No. 116, 15 September 2015, p. 3120.

3 *Journals of the Senate*, No. 127, 23 November 2015, p. 3419.

4 *Journals of the Senate*, No. 146, 15 March 2016, p. 3944.

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

Conduct of inquiry

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

1.4 The committee received 75 submissions. The submissions and answers to questions on notice are listed at Appendix 1. On 13 November 2015, the committee held a public hearing in Canberra and on 15 February 2016 in Melbourne. A list of witnesses is at Appendix 2.

1.5 The committee has agreed to table this interim report and to request an extension to present a final report no later than 30 September 2016.

Acknowledgements

1.6 The committee thanks all those who assisted with the inquiry, especially those who made written submissions.

Background

1.7 The Australian building and construction industry accounts for around 8 per cent of Australia's gross domestic product and employs around 9 per cent of the workforce. The industry contributed \$108.4 billion to the Australian economy in the 2013–14 financial year. At the end of June 2014, the building and construction industry generated \$359 billion in total income and employed 1,073,000 persons.⁶

Definition of non-conforming building products

1.8 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 standards for their intended use; or are marketed or supplied with the intent to deceive those who use them'.
- 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'.⁷

1.9 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

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

7 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 4, <http://www.hpw.qld.gov.au/SiteCollectionDocuments/NonConformingBuildingProductsReport.pdf> (accessed 22 April 2016).

non-combustible product is required under the NCC, is not fit for purpose (it is a non-complying product).⁸

1.10 A product that is non-conforming and/or non-compliant can pose serious risks to the integrity of a building and 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.⁹

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

Context of the inquiry

1.12 Prior to the referral of this inquiry, industry had already taken steps to address the issue of non-conforming building products, including:

- In 2012, the Housing Industry Association held a national summit, *Building Products: A compliance free zone*, which raised the profile of product compliance as an industry issue.¹⁰
- In November 2013, Ai Group released a research report on non-conforming building products, *The quest for a level playing field: The non-conforming building product dilemma*. The Ai Group's report analysed the steel, electrical, glass, aluminium, engineered wood and paint sectors to gauge the scale of the problem and its causes. In brief, the report found that the product conformance framework—including the regulators, regulation, codes of practice and standards—does not operate effectively. This results in an uneven playing field whereby companies, including importers, manufacturers and fabricators that are 'playing by the rules' are adversely affected by suppliers of non-conforming building products.¹¹
- In March 2014, following the release of the report, Ai Group convened a forum, including government and industry stakeholders, to determine an action plan to address the matters identified in the report. The Construction Product Alliance was formed to facilitate industry involvement.¹²

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

9 Department of Industry Innovation and Science, 'Building Ministers' Forum', <http://www.industry.gov.au/industry/IndustrySectors/buildingmetalsandconstruction/Pages/Building-Ministers-Forum.aspx> (accessed 19 April 2016).

10 Housing Industry Association, *Submission 30*, p. 11.

11 Ai Group, *The quest for a level playing field: The non-conforming building product dilemma*, November 2013, p. 6.

12 Construction Product Alliance, *Submission 33*, p. 2.

- In September 2014, the Australasian Procurement and Construction Council (APCC) together with 30 key industry stakeholders developed and launched the *Procurement of Construction Products—A guide to achieving compliance*. The guide was produced in response to the increasing evidence of, and concerns about, the market penetration of non-conforming construction products, particularly for many 'safety critical' products.¹³

Lacrosse apartment building fire

1.13 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, engulfing 16 levels in 15 minutes'. The Metropolitan Fire Brigade found that the use of aluminium 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 standards for use in buildings of three or more storeys.¹⁴

1.14 The Victorian Building Authority (VBA) launched an external wall cladding audit in Melbourne following the Lacrosse fire. The audit found that 'non-compliance in the use of external wall cladding materials is unacceptably high'.¹⁵

1.15 This high profile incident drew attention to poor building practices.

Building Ministers' Forum

1.16 The building conformance framework for non-conforming building products centres primarily on the constitutional authority held by state and territory governments and enacted through their building legislation. As such, compliance and enforcement is ultimately a matter for each state and territory to review and address.¹⁶

1.17 The Commonwealth works collaboratively with the states and territories through the BMF. The BMF oversees the implementation of nationally consistent building and plumbing regulation through the Intergovernmental Agreement for the ABCB. The BMF meets annually or on a needs basis.¹⁷

1.18 On 31 July 2015, shortly after this inquiry started, 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-

13 Australasian Procurement and Construction Council, *Submission 1*, p. 1.

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

15 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).

16 Department of Industry and Science, *Submission 43*, pp. 2–3.

17 Department of Industry Innovation and Science, 'Building Ministers' Forum', <http://www.industry.gov.au/industry/IndustrySectors/buildingmetalsandconstruction/Pages/Building-Ministers-Forum.aspx> (accessed 19 April 2016).

conforming building products and materials making their way into the Australian building and construction supply chain and the non-compliant use of building products'.¹⁸

1.19 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'.¹⁹ The SOG comprises two senior officers from each state and territory as well as the Commonwealth.²⁰

1.20 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'.²¹

Senior Officers' Group report

1.21 In determining its recommendations, the SOG considered a range of information sources, including the submissions made to the committee's inquiry.²²

1.22 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 has

18 Building Minister's Forum, *Communiqué*, 31 July 2015, http://productalliance.com.au/~media/HIA%20Website/MiniSite/CPA/PDF/BMF_Communique31July2015.ashx (accessed 22 April 2016).

19 Building Minister's Forum, *Communiqué*, 31 July 2015, http://productalliance.com.au/~media/HIA%20Website/MiniSite/CPA/PDF/BMF_Communique31July2015.ashx (accessed 22 April 2016).

20 Queensland Department of Housing and Public Works, 'Non-conforming building products', last updated 29 March 2016, <http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx> (accessed 22 April 2016).

21 Building Minister's Forum, *Communiqué*, 31 July 2015, http://productalliance.com.au/~media/HIA%20Website/MiniSite/CPA/PDF/BMF_Communique31July2015.ashx (accessed 22 April 2016).

22 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 4, <http://www.hpw.qld.gov.au/SiteCollectionDocuments/NonConformingBuildingProductsReport.pdf> (accessed 22 April 2016).

been released. The closing date for written submissions providing feedback on SOG report's proposals was 11 April 2016.²³

1.23 In its consultation draft, the SOG explained that it considered available information and invited industry to present further evidence of NCBPs. It was able to identify examples of confirmed NCBPs, though these were not sufficient to demonstrate the extent of the issue. In its view:

...the resulting primarily anecdotal evidence was insufficient for the SOG to confidently assess the prevalence of NCBPs in the Australian building and construction industry supply chain, nor was it enough to assess the current impact of NCBPs.²⁴

1.24 Even so, the SOG made a number of pertinent observations, including that there were a number of barriers preventing the collection and reporting of data on NCBPs in Australia such as:

- contractual obligations or commercial relationships that may prevent or discourage reporting of NCBPs;
- fear of litigation from manufacturers or suppliers of NCBPs;
- confusion and misinformation about where to report NCBPs;
- lack of time, resources and support for building professionals to verify or report the non-conformity of building products or that claims made about products are false or misleading;
- lack of powers for state and territory building regulators to act on reports of suspected NCBPs under the current regulatory framework; and
- no central register or data collection framework, nor an information-sharing mechanism between state and territory building regulators.²⁵

1.25 Worryingly, the SOG also found that there was limited ability for any regulator to stop known NCBPs entering Australia and making their way into the building-product supply chain. Among its other findings, the SOG noted:

- there is a gap in the investigative and enforcement processes for building products whereby the state and territory building legislation primarily

23 Queensland Department of Housing and Public Works, 'Non-conforming building products', last updated 29 March 2016, <http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx> (accessed 22 April 2016).

24 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 10, <http://www.hpw.qld.gov.au/SiteCollectionDocuments/NonConformingBuildingProductsReport.pdf> (accessed 22 April 2016).

25 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 10, <http://www.hpw.qld.gov.au/SiteCollectionDocuments/NonConformingBuildingProductsReport.pdf> (accessed 22 April 2016).

provides for regulating the licensing and conduct of builders not building products;²⁶

- there is no central coordinating mechanism or forum for building regulation that could provide a central point of contact for building regulators or industry, nor a mechanism to encourage information-sharing and collaboration between jurisdictions;²⁷
- consumer law regulators have varying degrees of cooperation with building regulators and different approaches to the treatment of building products under the Australian Consumer Law;²⁸ and
- the current regulatory framework places a disproportionate burden on the end of the product supply chain for identifying NCBPs (builder, installer and building certifier/surveyor) and after a building product has already been paid for and/or installed.²⁹

1.26 The SOG's report also reflected concerns raised in the committee's inquiry that 'there is confusion regarding responsibilities and where to obtain information regarding NCBPs'.³⁰

1.27 In its recommendations to the BMF, it 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

26 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 11, <http://www.hpw.qld.gov.au/SiteCollectionDocuments/NonConformingBuildingProductsReport.pdf> (accessed 22 April 2016).

27 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 12, <http://www.hpw.qld.gov.au/SiteCollectionDocuments/NonConformingBuildingProductsReport.pdf> (accessed 22 April 2016).

28 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 13, <http://www.hpw.qld.gov.au/SiteCollectionDocuments/NonConformingBuildingProductsReport.pdf> (accessed 22 April 2016).

29 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 14, <http://www.hpw.qld.gov.au/SiteCollectionDocuments/NonConformingBuildingProductsReport.pdf> (accessed 22 April 2016).

30 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 16, <http://www.hpw.qld.gov.au/SiteCollectionDocuments/NonConformingBuildingProductsReport.pdf> (accessed 22 April 2016).

Commonwealth, states and territories, including the identified gaps and weaknesses, impacting on action in relation to NCBPs'.³¹ 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 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
 - (b) 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 Working Group of Senior Officers and the ABCB work with Standards Australia to initiate a review of Australian Standards related to high risk building products referenced under the National Construction Code, with a view to assessing the costs and benefits of mandating third party certification and establishing a national register for these products.

31 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 17, <http://www.hpw.qld.gov.au/SiteCollectionDocuments/NonConformingBuildingProductsReport.pdf> (accessed 22 April 2016).

- 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.

1.28 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.³²

1.29 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, announced that 'for the first time we have a national approach to non-conforming building products'.³³

1.30 The Ai Group welcomed the commitment made by the BMF to address non-conforming building products. It noted the 'increasing incidence of non-conforming product in the market place—including recent reports of up to 64 building sites with asbestos-tainted concrete fibre sheeting—show that the problem is only worsening'.³⁴

Non-compliant building products

1.31 In response to the Lacrosse fire and the subsequent VBA audit's 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 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.³⁵ This includes the ABCB working with the SOG to review NCC requirements related to high risk building products with a view to assessing the costs

32 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, pp. 17–27, <http://www.hpw.qld.gov.au/SiteCollectionDocuments/NonConformingBuildingProductsReport.pdf> (accessed 22 April 2016).

33 The Honourable Mick de Brenni, 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).

34 Ai Group, 'Welcome action ahead on non-conforming building products', *Media release*, 22 February 2016, <http://productalliance.com.au/~media/HIA%20Website/MiniSite/CPA/PDF/Building%20Ministers%20Non%20conforming%20products%20220216.ashx> (accessed 22 April 2016).

35 Building Minister's Forum, *Communiqué*, 19 February 2016, <http://productalliance.com.au/~media/HIA%20Website/MiniSite/CPA/PDF/Building%20Ministers%20Forum%20communiqué%2019022016.ashx> (accessed 22 April 2016). 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 22 April 2016).

and benefits of mandating third party certification and establishing a national register for such products.³⁶

1.32 The Victorian government raised concerns that Certificates of Conformity (with the Building Code of Australia performance requirements), 'are not always explicit in respect of the range of use or circumstances in which a product may be relied upon to be fit for purpose'.³⁷

1.33 As part of the actions to be taken by the ABCB following the BMF, the CodeMark Certificates of Conformity 'will be made clearer as to what particular products can be used for, as part of a package of improvements to the voluntary building product certification scheme'.³⁸

Information sharing

1.34 A further outcome of the latest BMF meeting was the acceptance of an offer from the Department of Immigration and Border Protection, with assistance from the Australian Competition and Consumer Commission, 'to establish relevant information sharing between the Commonwealth, states and territories with a resolution to fast track and report within two months'.³⁹

1.35 In response, the Ai Group applauded the move to improve information sharing between government agencies while reiterating its support for the Construction Product Alliance's call for the establishment of a confidential reporting system.⁴⁰

1.36 Ai Group considered it should be a priority to assess the feasibility of establishing a confidential reporting system, such as the Confidential Reporting of Structural Safety (CROSS) that is operated in the UK, to facilitate the reporting of non-conforming building products.⁴¹

36 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 22 April 2016).

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

38 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 22 April 2016).

39 Building Minister's Forum, *Communiqué*, 19 February 2016, <http://productalliance.com.au/~media/HIA%20Website/MiniSite/CPA/PDF/Building%20Ministers%20Forum%20communique%2019022016.ashx> (accessed 22 April 2016).

40 Ai Group, 'Welcome action ahead on non-conforming building products', *Media Release*, 22 February 2016, <http://productalliance.com.au/~media/HIA%20Website/MiniSite/CPA/PDF/Building%20Ministers%20Non%20conforming%20products%20220216.ashx> (accessed 22 April 2016).

41 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. 3.

Committee view

1.37 The committee commends the concerted effort industry stakeholders have made to bring this serious issue to the attention of Commonwealth, state and territory governments and ensure it is at the centre of the Building Ministers' Forum's agenda. The committee supports a coordinated national approach to addressing the complex issues around non-conforming building products and encourages the Commonwealth, state and territory governments to take definitive action. The committee is interested in the outcome of the consultation on the SOG report.

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.¹

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.²

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.³

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'.⁴

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.⁵ 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.⁶

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

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.

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

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'.⁸ 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.⁹

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.¹⁰ This includes products that were supplied for export as 'asbestos-free' but which subsequent testing revealed to contain asbestos.¹¹

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.¹²

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'.¹³

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 (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.¹⁴

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.¹⁵ 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.¹⁶

2.17 The Asbestos Eradication and Safety Agency noted that the current PI Regulations include penalties for breaches of up to \$170,000.¹⁷ 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.¹⁸

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.

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.

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).¹⁹

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.²⁰

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.²¹ 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*.²² Consistent with the recommendations, Standards Australia advised

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'.²³

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'.²⁴

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.²⁵ Similar concerns were raised as part of this inquiry in relation to insulation,²⁶ as well as in relation to steel during the committee's inquiry into the future of Australia's steel industry.²⁷

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.

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**

Appendix 1

Submissions received

Submission Number	Submitter
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)
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	Confidential
72	Building Products Innovation Council
73	ProductWise Pty Ltd
74	Construction, Forestry, Mining and Energy Union (CFMEU)
75	Waffle Pod Manufacturers of Australia

Appendix 2

Public hearings and witnesses

CANBERRA, 13 NOVEMBER 2015

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

MELBOURNE, 15 FEBRUARY 2016

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

