

Chapter 2

Australia's asbestos regulatory framework

2.1 This chapter provides an overview of Australia's asbestos regulatory framework. It examines the legislative framework which governs the manufacture, use, reuse, import, transport, storage or sale of all forms of asbestos and asbestos-containing materials; before looking at the responsibilities of the various agencies across a broad range of areas relevant to asbestos control, including; workplace safety, border protection, environmental protection, public health and consumer safety. It then goes on to examine areas which were identified by submitters as having scope for improvement. Finally, noting that asbestos is not only an issue for Australia, the chapter will examine Australia's role internationally.

Australia's asbestos ban

2.2 Up until the mid-1980s, when bans concerning the use of asbestos started to be imposed, Australia was one of the highest users of asbestos and asbestos containing materials (ACMs) in the world. According to the Asbestos Safety and Eradication Agency (ASEA), Australia has the highest reported incidence per capita of asbestos-related disease in the world, including the highest incidence of mesothelioma.¹

2.3 A total ban on the manufacture, use, reuse, import, transport, storage or sale of all forms of asbestos and ACMs within Australia came into effect on 31 December 2003 under Commonwealth, state and territory work health and safety legislation. The ban is complemented by import and export prohibitions under the *Customs (Prohibited Imports) Regulations 1956* (PI Regulations) and the *Customs (Prohibited Exports) Regulations 1958*.

2.4 Regulation 4C of the PI Regulations prohibits the importation of asbestos, or goods containing asbestos, except in very limited circumstances, such as where the Minister for Employment has provided permission to import asbestos for the purpose of research, analysis or display.²

Types of asbestos

2.5 The importation and exportation of fibrous forms of asbestos is prohibited in Australia. This includes mineral silicate from the:

- Serpentine Group—chrysotile asbestos (white asbestos); and
- Amphibole Group—actinolite asbestos, amosite asbestos (brown and grey asbestos), anthophyllite asbestos, crocidolite (blue asbestos), tremolite asbestos.

1 Asbestos Safety and Eradication Agency, *Submission 90*, p. 5.

2 Australian Government Department of Employment, *Submission 91*, p. 3.

2.6 Australia considers all fibrous forms of asbestos to be highly toxic and carcinogenic to humans. Exposure to asbestos can cause cancer of the lung, larynx and ovary, mesothelioma (a cancer of the pleural and peritoneal linings) and asbestosis (fibrosis of the lungs).³

Penalties

2.7 Importers are responsible for ensuring that materials they import into Australia do not contain asbestos.⁴ Australian Border Force (ABF) investigates and may prosecute alleged breaches of the *Customs Act 1901* for the prohibited importation, or exportation, of asbestos.

2.8 For individuals, an offence of importing asbestos can, upon conviction, result in a maximum penalty of up to 1,000 penalty units or three times the value of the goods, whichever is greater. The penalty for a company convicted of the same offence is up to 5,000 penalty units or 15 times the value of the goods, whichever is greater. In the case of an infringement notice, the maximum penalty is 15 penalty units for an individual, or 75 penalty units for a company.⁵ Currently, the dollar amount of a penalty unit is \$210.⁶

Sources of illegally imported asbestos

2.9 Australia has a 'zero tolerance' importation prohibition meaning that all forms of asbestos and goods containing asbestos are prohibited with no allowance provided for trace levels of asbestos.⁷ Australia's major trading partners, including the United States of America, India, China, Canada and Indonesia, do not have export bans on all asbestos or ACMs. Canada recently announced its intention to impose import and export bans on asbestos.⁸ In some countries, including Russia and China, there are bans on the import and use of certain forms of asbestos, such as amphibole asbestos, however, other forms of asbestos such as chrysotile remain widely used.⁹ A list of countries with bans on all types of asbestos is available at Appendix 3.

2.10 Positive detections of imported items containing asbestos is not limited to building products, with asbestos being found in a wide range of products including children's crayons, gaskets, brake pads, prefabricated structural building materials, component parts of a vessel and protective wrapping of steel brackets.¹⁰ In

3 Australian Border Force, *Managing the risk of asbestos at the border*, p. 1, <http://www.border.gov.au/Importingandbuyinggoodsfromoverseas/Documents/asbestos-border-factsheet.pdf> (accessed 6 November 2017).

4 Australian Government Department of Employment, *Submission 91*, p. 3.

5 Department of Immigration and Border Protection, *Submission 108*, p. 9.

6 *Crimes Act 1914*, paragraph 4AA(1).

7 Australian Government Department of Employment, *Submission 91*, p. 3.

8 Department of Immigration and Border Protection, *Submission 108*, p. 5.

9 Australian Government Department of Employment, *Submission 91*, p. 3.

10 Department of Immigration and Border Protection, *Submission 108*, p. 5.

October 2017 a safety alert was released regarding asbestos found in imported acetylene cylinders.¹¹ See Appendix 4 for a list of goods identified by the Department of Immigration and Border Protection (DIBP) that might contain asbestos.

2.11 Goods containing asbestos have been detected by Australian authorities in shipments from a range of countries. These include:

- China
- Germany
- Indonesia
- Italy
- Japan
- New Zealand
- Singapore
- South Africa
- Taiwan
- The Netherlands
- United Kingdom
- United States of America
- Vietnam

2.12 The DIBP notes that the above list represents the country of shipment, not necessarily the country of manufacture.¹²

Coordination of agencies with asbestos responsibilities

2.13 Asbestos safety is a complex policy and operational area that requires coordinated efforts to be made by a number of Commonwealth, state and territory government agencies with responsibilities across a broad range of areas including; workplace safety, border protection, environmental protection, public health and consumer safety.

Department of Immigration and Border Protection

2.14 ABF is the operational arm of the DIBP. ABF enforces controls at the border on behalf of various government agencies through the PI Regulations. The PI

11 Asbestos Safety and Eradication Agency, 'Alert: Asbestos in acetylene cylinders', 25 October 2017, <https://www.asbestossafety.gov.au/article/alert-asbestos-acetylene-cylinders> (accessed 6 November 2017).

12 Department of Immigration and Border Protection, 'Asbestos', <http://www.border.gov.au/Busi/cargo-support-trade-and-goods/importing-goods/prohibited-and-restricted/asbestos> (accessed 9 November 2017).

Regulations cover a diverse range of goods including—but not limited to—drugs, firearms, weapons, objectionable material and industrial chemicals.¹³

2.15 ABF enforces Australia's ban on asbestos at the border. Since ABF's establishment on 1 July 2015, DIBP and ABF have significantly increased the strategic and operational focus on goods that pose a risk of containing asbestos. Activities by ABF at the border, and DIBP more broadly include:

- undertaking risk assessments on 100 per cent of cargo imported to Australia;
- commencement of an asbestos sampling programme to refine and confirm the robustness of alerts and profiles;¹⁴
- enhanced profiling and targeting of high-risk imports that may contain asbestos, resulting in a significant increase in profile alert matches to high-risk consignments and the number of tests conducted for asbestos;¹⁵
- an increased assurance approach, including establishment of a 'community protection question' which must be answered by importers, or their representatives on their import declaration, for imported goods at risk of containing asbestos;
- requiring the testing of goods that are suspected of containing asbestos;
- the immediate seizure of all goods that test positive to asbestos, with further investigation potentially resulting in penalties and prosecution;
- increased engagement and awareness raising about Australia's import prohibition with customs brokers and importers, international governments, customs agencies and suppliers; and
- increased engagement and coordination with Commonwealth, state and territory government agencies and regulators, including work health and safety regulators, to improve policy and operational approaches to managing Australia's asbestos ban.¹⁶

2.16 At a Supplementary Budget Estimates hearing on 23 October 2017, DIBP advised that over the past 12 months they have continued to increase their operational focus to deter and detect goods suspected of containing asbestos:

In 2016–17, we targeted more than 8,500 shipments, resulting in 63 positive detections. That's compared with the 1,100 shipments and 13 positive detections the previous year. Despite intensified and targeted effort,

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

14 Department of Immigration and Border Protection, *Submission 108*, p. 6.

15 Ms Linda Geddes, First Assistant Secretary, Traveller, Customs and Industry Policy Division, Department of Immigration and Border Protection, *Committee Hansard*, 30 January 2017, p. 32.

16 Department of Immigration and Border Protection, *Submission 108*, p. 6.

however, there has not been a proportionate increase in the number of positive detections.¹⁷

Department of Employment

2.17 The Department of Employment has broad responsibilities for developing policy to protect the safety of Australian workers. Asbestos presents a significant threat to Australian workers. The department has responsibility for developing policy in relation to the asbestos import and export bans to the extent that it supports the domestic workplace ban.¹⁸

Comcare

2.18 Comcare is the Commonwealth work health and safety (WHS) regulator. It is responsible for enforcing the *Work Health and Safety Act 2011* and *Work Health and Safety Regulations 2011* in workplaces covered by those laws (which include Commonwealth departments and agencies and private sector licensees). Comcare also has functions and responsibilities for managing asbestos-related claims under the *Safety Rehabilitation and Compensation Act 1988* and the *Asbestos-related Claims (Commonwealth Liabilities) Act 2005*.

2.19 Comcare's regulatory duties include responding to incidents where imported asbestos is discovered in workplaces. For example, Comcare responded to the discovery of asbestos in recently installed roof panels at the Perth Children's Hospital, where licensee John Holland Pty Ltd is the lead building contractor. Comcare engaged closely with Western Australian work health and safety and building regulators as part of a combined response to this incident.¹⁹

Safe Work Australia

2.20 Safe Work Australia is the independent body that leads the development of policy to improve WHS and workers' compensation arrangements across Australia. In addition to the development of model WHS laws relating to workplace asbestos, Safe Work Australia contracts a consortium led by the Cancer Institute NSW to manage the Australian Mesothelioma Registry (AMR). The AMR collects and reports data on new cases of mesothelioma diagnosis based on notifications from jurisdictional cancer registries, as well as information on asbestos exposure experiences through surveys and interviews of mesothelioma patients.

2.21 Safe Work Australia is not a work health and safety regulator and does not have any role in relation to the laws that prohibit the importation of ACMs into Australia.²⁰

17 Mr Michael Outram APM, Acting Commissioner, Australian Border Force, *Estimates Hansard*, Legal and Constitutional Affairs Legislation Committee, 23 October 2017, p. 5.

18 Australian Government Department of Employment, *Submission 91*, p. 6.

19 Australian Government Department of Employment, *Submission 91*, p. 6.

20 Australian Government Department of Employment, *Submission 91*, p. 6.

Australian Competition and Consumer Commission

2.22 The Australian Competition and Consumer Commission (ACCC) is the Commonwealth statutory authority responsible for enforcing laws that promote competition, consumer protection and fair trading in Australia.

2.23 One of the key aspects of the ACCC's role is to protect consumers by managing the consumer product safety provisions of consumer protection laws that focus on consumer goods. Another part of the ACCC's role is to enforce provisions that prevent false and misleading representations about goods.²¹

Asbestos Safety and Eradication Agency

2.24 The Asbestos Safety and Eradication Agency (ASEA) was established on 1 July 2013. ASEA replaced the Office of Asbestos Safety, which was established in September 2012 following the recommendation of the *Asbestos Management Review Report* to establish an independent national agency to guide the implementation of the national strategic plan to improve asbestos management in Australia.²²

2.25 ASEA is responsible for liaising with Commonwealth, state and territory governments to encourage, coordinate, monitor and report on the implementation of the National Strategic Plan for Asbestos Management and Awareness. To facilitate this function, ASEA works with Commonwealth, state and territory governments on asbestos safety, and commissions, monitors and promotes research about asbestos safety. The National Strategic Plan, launched in August 2015, represents an agreed national approach to tackling the threat of asbestos.²³

2.26 ASEA assists Commonwealth, state and territory regulators to respond to imported asbestos incidents through its participation in the Heads of Workplace Safety Authorities Imported Materials with Asbestos Working Group (HWSA Working Group).²⁴

Heads of Workplace Safety Authorities Imported Materials with Asbestos Working Group

2.27 The HWSA Working Group was established in 2013 following the discovery that motor vehicles with gaskets containing asbestos were being imported into Australia. The HWSA Working Group includes representatives from:

- ASEA;
- Commonwealth, state and territory WHS regulators;
- ACCC;
- the DIBP/ABF;

21 Australian Competition and Consumer Commission, *Submission 39*, p. 3.

22 Asbestos Safety and Eradication Agency, 'About us', <https://www.asbestossafety.gov.au/about-us> (accessed 3 November 2017).

23 Australian Government Department of Employment, *Submission 91*, p. 6.

24 Australian Government Department of Employment, *Submission 91*, p. 6.

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- Safe Work Australia; and
 - WorkSafe New Zealand; and
 - the New Zealand Ministry for the Environment.

2.28 The HWSA Working Group's remit is to respond to incidents where imported goods that may contain asbestos have been identified in workplaces or in the community; and to share information with the DIBP and ABF to help them prevent further import incidents.²⁵

Rapid response protocol

2.29 The HWSA Working Group developed a rapid response protocol for responding to incidents which came into effect in 2014.²⁶ The protocol ensures that relevant information is shared by all government agencies and enables a nationally uniform enforcement approach to be undertaken in response to incidents. The protocol is designed to allow for quick communication to the community about the safe handling and disposal of goods that contain asbestos.²⁷

2.30 Imported asbestos incidents where the HWSA Working Group has enacted the rapid response protocol have included incidents when asbestos was detected in crayons and in cement fibre boards that were imported for use within Australian construction.²⁸

Asbestos Interdepartmental Committee

2.31 The Department of Employment and the DIBP co-chair an Interdepartmental Committee (IDC) to improve the coordination of asbestos policy and regulatory issues across the Commonwealth.

2.32 The IDC consists of a number of Commonwealth policy departments and agencies, reflecting the wide reach of asbestos issues across portfolio lines and the need for a coordinated approach to holistically address asbestos issues. The IDC includes:

- Department of Employment;
- Department of Immigration and Border Protection;
- Department of Foreign Affairs and Trade;
- Department of Industry, Innovation and Science;
- Department of the Environment and Energy;
- Department of Infrastructure and Regional Development;

25 Australian Government Department of Employment, *Submission 91*, p. 7.

26 Mr Robert Kelly, Director, Specialist Services, Health and Safety, WorkSafe Victoria, *Committee Hansard*, 14 July 2017, p. 79.

27 Australian Government Department of Employment, *Submission 91*, p. 7.

28 Australian Government Department of Employment, *Submission 91*, p. 7.

- Treasury;
- ACCC; and
- Department of Health.

2.33 Relevant Commonwealth agencies such as ASEA and Safe Work Australia will actively participate in the IDC. The IDC will also engage with relevant state and territory government agencies with responsibilities for asbestos issues, such as WHS, building and environmental regulators, and stakeholders with an interest in asbestos issues. The IDC first met in September 2016 and is scheduled to run for 12 months, meeting every 1–2 months.

2.34 The IDC aims to:

- enhance consultation and coordination of Commonwealth agencies' efforts in addressing policy and regulatory issues on asbestos;
- clarify agencies' roles and responsibilities in managing asbestos policy and regulatory issues across the supply chain, and
- identify risks and gaps in asbestos management across the supply chain and coordinate proposals to resolve these risks and gaps.²⁹

Work Health and Safety laws and asbestos

2.35 Model WHS laws and regulations were developed from 2008 to establish nationally harmonised laws that continued the existing domestic ban on asbestos and ACMs, but also harmonised requirements for identifying, managing and removing asbestos and ACMs from workplaces, including nationally consistent training and licensing for asbestos removalists.

2.36 The model WHS Act and Regulations have been adopted in all jurisdictions except Victoria and Western Australia, and commenced in most jurisdictions from 1 January 2012. Victoria and Western Australia have similar laws on the management of asbestos and ACMs in workplaces as the model laws.

2.37 In addition to these general duties under the model WHS Act, the model WHS Regulations specify additional requirements applying to asbestos. The model WHS laws are also supported by model codes of practice, guidance material and information sheets that deal specifically with asbestos.³⁰

Whole of government approach

2.38 As noted above, asbestos safety is a complex policy and operational area that requires coordinated efforts on a national scale. As such, a number of Commonwealth, state and territory government agencies have responsibilities for monitoring asbestos across a range of areas including; workplace safety, border protection, environmental protection, public health and consumer safety.

29 Australian Government Department of Employment, *Submission 91*, pp. 7–8.

30 Australian Government Department of Employment, *Submission 91*, p. 4.

2.39 Mr Michael Borowick, of the Australian Council of Trade Unions (ACTU) submitted that as responsibilities for various policy areas are so spread across a range of portfolios, there is a silo effect in which departments and agencies appear to be acting in isolation. Mr Borowick stated:

A whole-of-government approach would be some mechanism by which all the agencies and all the departments would be talking amongst themselves, and it wouldn't be just an interdepartmental committee, an IDC, because they typically don't involve senior bureaucrats. We'd be looking at something higher. I know you can't put everything in Prime Minister and Cabinet, but it needs some central thread. It needs some thread there and, at the moment, it's siloed. They're all doing their own thing. They've all got their own legislation. They're all answering to a different minister.³¹

2.40 Ms Carolyn Davis, Director of Work Health and Safety and Workers Compensation Policy at the Australian Chamber of Commerce and Industry and its representative on Safe Work Australia and the Asbestos Safety and Eradication Council, expressed concern that the considerable overlap between the various Commonwealth, state and territory authorities operating in this area has led to inefficiencies and confusion. She stated:

Even the available information published by relevant Government agencies can be contradictory so an interdepartmental committee that links these agencies is important; a single national document and website is urgently needed.³²

2.41 Similarly, the Master Builders' Association explained that there is a lack of clarity and information for building industry participants surrounding how the system is administered and the roles of the various regulators. It noted for example:

- there is no obligation on any one central or distinct agency to ensure that imported building products meet Australian requirements; and
- industry participants are frequently unsure as to who and/or how to report a problem with non-conforming products.³³

2.42 As such, the Master Builders' Association argued that 'the Commonwealth should take a lead role in driving greater collaboration between the regulators of building, consumer and customs law of all jurisdictions'.³⁴

2.43 The ACTU also supported a greater role for the Commonwealth arguing that:

...the Australian Government engage with the states and territories through the Council of Australian Governments, Safe Work Australia, and the Asbestos Safety and Eradication Council about strengthening the legislative

31 Mr Michael Borowick, Assistant Secretary, Australian Council of Trade unions, *Committee Hansard*, 17 October 2017, p. 4.

32 Ms Carolyn Davis, *Submission 118*, p. 6.

33 Master Builders' Association, *Submission 125*, p. 25.

34 Master Builders' Association, *Submission 125*, p. 25.

and other duties of persons that import, supply, sell, demolish and dispose of asbestos and asbestos-containing products, materials and structures.³⁵

2.44 The Australian Workers' Union (AWU) also supported a whole of government, harmonised approach be adopted to address the risk of illegal importation of ACMs. In its view, consideration should be given to developing an inter-governmental agreement to ensure 'responses are consistent, well resourced, timely and ultimately, effective'. The AWU suggested ASEA as the appropriate authority to develop a whole of government approach as it has the necessary expertise for this task.³⁶

2.45 At a Supplementary Budget Estimates hearing in October 2017, Mr Peter Tighe, Chief Executive Officer of ASEA raised concerns about current funding arrangements and the ability to deliver on future strategic plans:

It's quite clear, though, when looking at our operational budget, including a financial report that was done in relation to the agency some 18 months ago, that the costing for operation is probably double what is in appropriation. I don't think that even touches on the work that will need to be done in relation to establishing the next phase of plans. Whilst my appointment expires in August, I'm more concerned about whether the agency would be in a position to deliver the policy position that government wants to take forward. Unless we get some appropriation that exceeds what's currently earmarked, there will be some problems. I've taken a new policy proposal to the minister. I've laid that out. It's a pretty comprehensive submission. The department has that. We've been working with the department to date. It's in the hands of the minister—probably, ultimately, the Minister for Finance—as to what might be done in this area. We'd be happy to go through any scrutiny in relation to what the agency has delivered and what are projected to be the costs into the future.

...

The difficulty is the work that has to be done in relation to the development of the next national strategic plan, providing the evidence to the jurisdictions to support that plan and the work that is required by the group that I have in my office—we wouldn't be able to fulfil that. It would, basically, neutralise the agency, where we would have to reduce the staff dramatically to, probably, an executive officer and a chair. We still are required under our legislation to deliver certain things. I don't think we'd be able to meet the objects of our act if that money's not provided.³⁷

Committee view

2.46 The committee agrees with submitters that the considerable overlap between the various Commonwealth, state and territory authorities operating in this area has

35 Australian Council of Trade Unions, *Submission 127*, p. 13.

36 Australian Workers' Union, *Submission 123*, p. 3.

37 Mr Peter Tighe, Chief Executive Officer, Asbestos Safety and Eradication Agency, *Estimates Hansard*, Education and Employment Legislation Committee, 27 October 2017, pp. 5, 10.

led to inefficiencies and confusion. While the committee is cognisant that asbestos safety is a complex issue, it is concerned by reports that there is a lack of clarity and information for building industry participants surrounding how the system works.

2.47 The committee is focussed on ensuring Australia takes all steps necessary to reduce the risk of illegal importation of asbestos; and believes that greater collaboration and harmonisation between the regulators of building, consumer and customs law across all jurisdictions is critical to achieving this goal. The committee is of the view that in order to avoid confusion and to create a more efficient system, Australia needs to adopt a whole of government approach to address the risk of illegal importation of asbestos. The committee believes that the Commonwealth government is best placed to take the lead role in coordinating a consistent approach across all jurisdictions to address the illegal importation of asbestos and to ensure departments and agencies do not act in isolation.

2.48 The committee is also concerned about the ability of the ASEA to deliver the next National Strategic Plan for Asbestos Management and Awareness given its current level of funding. The committee believes that the work of the ASEA is well regarded by all stakeholders and on that basis, should remain a separate agency with adequate funding to carry out its work.

Recommendation 1

2.49 The committee recommends that through the Council of Australian Governments, the Australian Government pursue a coordinated and consistent whole of government approach to strengthen federal and state legislation and regulations to address the illegal importation of asbestos.

Recommendation 2

2.50 The committee recommends that the Australian Government adequately fund the Asbestos Safety and Eradication Agency so it is able to deliver the next National Strategic Plan for Asbestos Management and Awareness and to carry out its other functions, both current functions and new functions set out in recommendations in this report.

Consultation with stakeholders

2.51 Evidence to the committee highlighted the importance of stakeholder engagement and consultation to effectively strengthen the federal and state legislation and regulations regarding asbestos to prevent further incidents of illegal importation of asbestos.

2.52 Ai Group held the view that more effort is necessary to enable organisations that make sourcing decisions to import products that have a higher risk of containing asbestos to work cooperatively with regulators and relevant stakeholders to identify:

- how others have dealt with these issues;
- the difficulties encountered in establishing that a product is definitely asbestos free; and

- what processes can assist organisations to manage the entire supply chain to minimise the risk that asbestos containing products will enter the country.³⁸

2.53 Ai Group suggested one option would be to increase the membership of the Trade and Goods Compliance Advisory Group (CAG), or some other mechanism. The CAG first met on 10 March 2016 and was developed 'as a collaborative forum with industry to co-design solutions for trade and goods compliance issues'. The CAG membership is comprised of representatives from the DIPB and ABF as well as industry members including representatives from the Customs Brokers and Forwarders Council of Australia, the Freight and Trade Alliance, the Australian Federation of International Forwarders and the Council of Asia Pacific Express Carriers, as well as ten non-industry association members.³⁹

2.54 Whichever mechanism for greater consultation and industry involvement is implemented, Ai Group considered National Association of Testing Authorities, Australia (NATA) should be involved to provide important information on the adequacy of testing and where appropriate 'ACTU would be relevant to help inform the union movement about the difficulties organisations are facing in meeting their legislative obligations in this complex area of trade'. Ai Group indicated that it was in discussion with the Australian Chamber of Commerce and Industry and the ACTU to identify how they can collectively contribute to improvements in this important area.⁴⁰

2.55 The Construction, Forestry, Mining and Energy Union (CFMEU) put forward that the appropriate governance and regulatory mechanisms should be developed to address the illegal importation of asbestos, and non-conforming building products more broadly, through consultation with governments, unions, industry and stakeholders. As such, the CFMEU supported the establishment of formal consultative mechanisms to enable the Australian Government to consult with key stakeholders about issues relating to the importation of asbestos.⁴¹

2.56 Similarly, the ACTU contended 'that compliance with Australia's customs laws could be enhanced if both the DIBP and ABF were to regularly and systematically consult with a range of stakeholders rather than with just the customs agents and their representatives'. In particular, the ACTU argued that there is a lack of transparency surrounding the priorities and activities of both the DIBP and ABF.⁴²

38 Ai Group, *Submission 120*, p. 20.

39 Department of Immigration and Border Protection, 'The Trade and Goods Compliance Advisory Group', <https://www.border.gov.au/Busi/Comp/Comp/compliance-advisory-group> (accessed 6 November 2017).

40 Ai Group, *Submission 120*, p. 20.

41 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 10.

42 Australian Council of Trade Unions, *Submission 127*, p. 145

2.57 The DIBP informed the committee that it 'welcomes engagement with industry, government and other interested parties on the management and enforcement of Australia's asbestos import prohibition at the border'.⁴³

2.58 However, the ACTU did not feel that this was necessarily the reality, informing the committee that it was denied the opportunity to contribute to the Asbestos Importation Review and that the Minister would not facilitate their involvement.⁴⁴ Mr Borowick noted that the unions were invited to be observers and make presentations at the IDC, in the year since the IDC was established, and only one union had attended a meeting and presented.⁴⁵

2.59 In addition, Mr Borowick made clear that the ACTU does not want an ad hoc arrangement; it wants a formal consultation mechanism to be established. He stated further:

We want measures that force Border Force and the ACCC to provide written reasons, published on their website, as to why they haven't recalled particular products. There's no accountability. There's no answerability. The way they work is a mystery. They're happy to sit back and say, 'Tell us what's on your mind now,' but they don't engage with us on the important issues, and that's because it's all ad hoc. If the committee could recommend structures that will endure and have real meaning, they're the best things that work.⁴⁶

Committee view

2.60 The majority of evidence to the committee highlighted the importance of stakeholder engagement and consultation to effectively strengthen the federal and state legislation and regulations regarding asbestos to prevent further incidents of illegal importation of asbestos. The committee notes that the current ad hoc arrangements for stakeholder consultation are insufficient to properly address this issue.

2.61 In order to effectively address the issue of illegally imported asbestos, the committee believes regulators need to work cooperatively with all relevant stakeholders. Indeed, the committee is of the view that the Australian Government should establish formal consultative mechanisms to enable input from key stakeholders about issues relating to the illegal importation of asbestos. Specifically, the committee believes that compliance with Australia's customs laws would be

43 Department of Immigration and Border Protection, *Submission 108*, p. 11.

44 Mr Michael Borowick, Assistant Secretary, Australian Council of Trade Unions, *Committee Hansard*, 17 October 2017, p. 7. A brief overview of the Asbestos Importation Review is provided at paragraphs 1.11–1.13.

45 Mr Michael Borowick, Assistant Secretary, Australian Council of Trade Unions, *Committee Hansard*, 17 October 2017, p. 7. A brief overview of the Asbestos Interdepartmental Committee (IDC) is provided at paragraphs 2.31–2.34.

46 Mr Michael Borowick, Assistant Secretary, Australian Council of Trade Unions, *Committee Hansard*, 17 October 2017, p. 7.

enhanced if the DIBP and ABF regularly and systematically consulted with a broad range of stakeholders, rather than with just the customs agents and their representatives.

Recommendation 3

2.62 The committee recommends that the Department of Immigration and Border Protection and Australian Border Force undertake an external review of their industry consultation arrangements with a view to strengthen and formalise the contribution from stakeholders. Ideally, these should be through formal meetings on a regular basis with those who are on the front line who are adversely impacted by illegal asbestos importation.

International cooperation

Rotterdam Convention

2.63 The World Health Organization and the International Labour Organisation both recognise that the most efficient way to eliminate asbestos-related disease is to stop the use of all types of asbestos.⁴⁷ Despite the evidence on the serious health risks related to asbestos, manufacture of asbestos-containing products continues. Maurice Blackburn Lawyers noted that in 2013, almost a million metric tons of asbestos was exported from Russia, China, Kazakhstan, Brazil and India.⁴⁸

2.64 The Rotterdam Convention is a multilateral environmental agreement on the import and export of certain hazardous chemicals. The Department of the Environment and Energy is the responsible agency administering the Rotterdam Convention. At present, while all the other main forms of asbestos are listed in Annex III of the Rotterdam Convention, chrysotile asbestos is not.⁴⁹ Annex III 'advice and consent' provision; meaning any country wishing to export any product containing a substance listed in Annex III must advise that it contains the substance, and the receiving country must consent to the importation.⁵⁰

2.65 Mr Steven Diston, from Electrical Trades Union of Australia (ETU) observed that asbestos is:

...not just an Australian issue. We cannot just roll out 'fortress Australia' and expect that the rest of the world can continue to deal with this. It is a worldwide issue. As long as this material is in supply chains around the world, it is going to keep coming back to haunt us. We are only going to have to deal with it more and more. Of all of the things that we can do on

47 World Health Organization, 'Asbestos: elimination of asbestos-related diseases', Fact sheet, reviewed August 2017, <http://www.who.int/mediacentre/factsheets/fs343/en/> (accessed 6 November 2017).

48 Maurice Blackburn Lawyers, *Submission 107*, p. 3.

49 Department of Health, National Industrial Chemicals Notification and Assessment Scheme, 'Rotterdam Convention', last updated 18 October 2017, <https://www.nicnas.gov.au/about-us/international-obligations/rotterdam-convention> (accessed 7 November 2017).

50 Australian Manufacturing Workers' Union, *Submission 97*, p. 3.

the world stage...we can have an international push to try and ban this product. Ultimately, it is money and vested interests that keep this product being used. It is the only reason. There are alternative products. You can see that, because we supposedly banned this product in Australia nearly two decades ago.⁵¹

2.66 The Australian Manufacturing Workers' Union (AMWU) argued that an essential first step towards the implementation of a global ban on the trade of asbestos would be the inclusion of chrysotile asbestos in Annex III of the Rotterdam Convention.⁵²

2.67 The AMWU argues that listing chrysotile asbestos in Annex III would facilitate the implantation of Australia's asbestos ban as the Australian government would need to be notified that products contained chrysotile asbestos.⁵³ Union Aid Abroad-APHEDA, the Australian union movement's global justice organisation, also supported the continued strong advocacy, especially to Asian countries, to support the listing of chrysotile.⁵⁴

2.68 Mr David Clement from Asbestowise, a community-based organisation providing information, education, advocacy, awareness and support to those in contact with asbestos and support to those suffering from an asbestos-related disease, noted the 'failure to list chrysotile as a dangerous substance under the Rotterdam convention, despite a concerted campaign by unions and civil society groups'.⁵⁵ Dr Kevin Purse from the Asbestos Diseases Society of South Australia pointed out that this is because the voting procedures are based on unanimity, which makes it possible for big asbestos producing countries to prevent chrysotile asbestos from being listed in Annex III.⁵⁶

2.69 The voting procedures for the Rotterdam Convention have acted as a considerable barrier to listing chrysotile asbestos in Annex III. The AMWU considered that the next step for the Australian government is to actively advocate for reforms to the voting procedures by:

Working with the process at the Rotterdam Convention Conference of the Parties to change the voting conventions to remove the requirement for a consensus and institute a seventy five percent majority ruling.⁵⁷

51 Mr Steven Diston, Organiser, Electrical Trades Union of Australia, *Committee Hansard*, 14 July 2017, p. 54.

52 Australian Manufacturing Workers' Union, *Submission 97*, p. 3.

53 Australian Manufacturing Workers' Union, *Submission 97*, p. 3.

54 Union Aid Abroad-APHEDA, *Submission 114*, p. 5.

55 Mr David Clement, President, Asbestowise, *Committee Hansard*, 14 July 2017, p. 70.

56 Dr Kevin Purse, President, Asbestos Diseases Society of South Australia, *Committee Hansard*, 31 July 2017, p. 15.

57 Australian Manufacturing Workers' Union, *Submission 97*, p. 3.

2.70 ASEA will work with the Department of the Environment and Energy on preparations for the 2019 Rotterdam Convention consideration of listing chrysotile asbestos in Annex III to the Convention.⁵⁸

International trade agreements

2.71 The use of asbestos is legal in all countries in the Asia-Pacific region with the exception of Australia, New Zealand, Japan, Korea, Brunei, Singapore, Hong Kong and Nepal.⁵⁹ As asbestos has been increasingly banned in countries around the world, asbestos products have been aggressively marketed throughout Asia. China and India are among the five countries with the highest consumption of asbestos.⁶⁰

2.72 Mr Clement from Asbestoswise warned that the likelihood of asbestos being illegally imported to Australia will increase in line with increasing trade with China and other Asian countries where asbestos has not been banned. He observed that further trade will be encouraged through the China free trade agreement and other agreements between Australia and Asian countries.⁶¹

2.73 Building and Wood Workers' International also expressed concerns that trade agreements may increase the risk of asbestos importation, stating:

The implementation of the China-Australia Free Trade Agreement (ChAFTA) has magnified the risk of imported construction materials containing asbestos. On top of this, the current negotiation of the Regional Comprehensive Economic Partnership (RCEP) agreement, an agreement that involves Australia and 15 other Asia-Pacific nations, the majority of which have not banned asbestos.⁶²

2.74 Maurice Blackburn Lawyers urged caution when agreeing to future trade agreements with countries that do not have comprehensive asbestos bans. It argued that the Australian Government should 'commit to ensuring that any future free trade agreements allow Australia sufficient discretion to regulate the importation of building products where they may pose a public health risk'.⁶³

2.75 With regards to the Regional Comprehensive Economic Partnership (RCEP), Building and Wood Workers' International maintained that the Australian Government should demand specific provisions to protect the rights of governments to regulate the use and importation of asbestos. It stated:

This should include an exemption of asbestos from the applicability of ISDS [Investor-State Dispute Settlement] provisions (as the TPP [Trans-

58 Asbestos Safety and Eradication Agency, *ASEA Matters*, Issue 7, Spring 2017, p. 4, https://www.asbestossafety.gov.au/sites/asbestos/files/2017/10/ASEA_matters_Spring_2017_final_web.pdf (accessed 7 November 2017).

59 Union Aid Abroad-APHEDA, *Submission 114*, p.

60 Mr David Clement, President, Asbestoswise, *Committee Hansard*, 14 July 2017, p. 71.

61 Mr David Clement, President, Asbestoswise, *Committee Hansard*, 14 July 2017, p. 70.

62 Building and Wood Workers' International, *Submission 113*, p. 3.

63 Maurice Blackburn Lawyers, *Submission 107*, p. 13.

Pacific Partnership] did for tobacco), as well as an explicit statement qualifying asbestos as a carcinogen, and language protecting countries that implement a ban from other potential challenges.⁶⁴

2.76 In light of the vast bulk of illegally imported asbestos coming to Australia having origins in China, the ACTU proposed that China-Australia Free Trade Agreement (ChAFTA), which came into force on 20 December 2016, be reviewed 'with the object of strengthening its provisions so as to prevent the importation into Australia of asbestos from China'.⁶⁵

Asbestos bans in the Asia-Pacific region

2.77 Dr Kevin Purse, Asbestos Diseases Society of South Australia, noted that while in some countries asbestos consumption has been decreasing, in other countries such as China, Indonesia and Vietnam it has been growing very substantially. He observed:

It is sort of like an action replay of what we had in the fifties and the sixties...Medical evidence quite often tends to get trumped by commercial interests. If you go to places like Russia and China, they will tell you that chrysotile asbestos, white asbestos, can be used safely. That was the same sort of approach which we had in our country back in the seventies. We were told that crocidolite, blue asbestos, and grey asbestos, amosite, were dangerous, but we could use chrysotile safely. So, like I say, it is very much an action replay. It is tragic because we are going to have so many more deaths in Asia and in other parts of the world.⁶⁶

2.78 Building and Wood Workers' International noted the need for better regional cooperation between Australia and the Asia-Pacific region to support the implementation of asbestos bans in other countries with less developed health and safety regulations. It considered that the continued use of asbestos in the region 'both in local construction projects and in the manufacturing of building materials that are exported around the region (including to Australia) is a significant concern for worker and public health'.⁶⁷

2.79 Mr John Mitchell from NATA noted:

I guess in an idealised world we'd have a greater uptake of Australia's position on asbestos. Basically, the more economies that adopt a nil tolerance of the stuff, the more, if you like, normalised asbestos-free manufacture would become. In the interim, we've just got to try very hard, through as many channels as possible, to get the message out that

64 Building and Wood Workers' International, *Submission 113*, p. 5.

65 Australian Council of Trade Unions, *Submission 127*, p. 9.

66 Dr Kevin Purse, President, Asbestos Diseases Society of South Australia, *Committee Hansard*, 31 July 2017, pp. 13–14

67 Building and Wood Workers' International, *Submission 113*, p. 5.

Australia's requirements are probably as good as any in the world in terms of protection and that we are serious about it.⁶⁸

2.80 The Asbestos Disease Support Society took the view that 'Australia needs to work with our near neighbours to assist knowledge of alternative safer products...It is our belief that this will decrease the products being made and therefore decrease the risk of asbestos imports into Australia.'⁶⁹ Union Aid Abroad-APHEDA considered that 'as long as asbestos is being used anywhere, it remains a risk everywhere'.⁷⁰

2.81 Union Aid Abroad-APHEDA noted that the prolonged latency period of around 25 years for asbestos-related disease means that impact of the increased asbestos consumption in the Asia-Pacific region is yet to be felt. It noted that without asbestos bans, countries in the region will soon find 'any economic development gains from the production of asbestos-related manufacturing and use will be overwhelmingly offset by the rising health costs of treatment and the burden of compensation to victims and families'.⁷¹

2.82 Union Aid Abroad-APHEDA advocated for:

- Bilateral and regional advocacy, including at the Asia-Pacific Economic Cooperation (APEC) and the Association of Southeast Asian Nations (ASEAN) Forums and other relevant inter-governmental meetings.
- Strong support for Australian Embassies worldwide to play a role at the country level, including preventing the use of ACMs in infrastructure and construction projects funded by the Australian aid program, following the lead of the Laos Australian Embassy which has banned the use of ACMs in Department of Foreign Affairs and Trade supported infrastructure projects in Laos.
- Continued support for the ASEA to fulfil its stated strategic goal of Australia playing a leadership role in a global campaign aimed at securing a total worldwide ban in the production and trade of asbestos and ACMs.⁷²

Committee view

2.83 Managing the risks associated with asbestos is not just an Australian issue, but an international issue. The committee is concerned and frustrated that despite evidence of the serious health risks related to asbestos, manufacture of asbestos-containing products continues, as does their importation to and use in Australia.

68 Mr John Mitchell, Manager, Government Relations, National Association of Testing Authorities, Australia, *Committee Hansard*, 3 October 2017, p. 34.

69 Asbestos Disease Support Society, *Submission 92*, p. 5.

70 Union Aid Abroad-APHEDA, *Submission 114*, p. 4.

71 Union Aid Abroad-APHEDA, *Submission 114*, p. 3.

72 Union Aid Abroad-APHEDA, *Submission 114*, p. 3.

2.84 While noting the complexities of the relevant voting procedures, the committee considers that an essential first step to the implementation of a global ban on the trade of asbestos would be the inclusion of chrysotile asbestos in Annex III of the Rotterdam Convention. The committee considers that there is an urgent need to ban chrysotile asbestos, and is of the view that if the Australian Government is unsuccessful in having chrysotile asbestos listed in Annex III, it should consider pursuing bilateral or multilateral asbestos treaties with importation disclosure requirements equivalent to an Annex III listing.

2.85 The committee is concerned that as asbestos has been increasingly banned in countries around the world, asbestos products have been aggressively marketed throughout Asia, increasing the likelihood of asbestos being illegally imported to Australia. The committee acknowledges concerns that the terms of trade agreements may increase the risk of illegal importation of asbestos and agrees with submitters that the Australian Government should demand specific provisions in trade agreements to protect the rights of governments to regulate the use and importation of asbestos. In this context, the committee considers that the Australian Government's regular review of free trade agreements with other countries presents a good opportunity for review of provisions regarding asbestos containing materials.

2.86 The committee is particularly concerned that in countries such as China, Indonesia and Vietnam asbestos consumption has been increasing, and believes it is imperative that Australia continues to work with our neighbours in the Asia-Pacific region to raise awareness of the risks of asbestos, and to support the implementation of asbestos bans in those countries with less developed health and safety regulations.

Recommendation 4

2.87 The committee recommends that the Australian Government continue to strongly advocate for the listing of chrysotile asbestos in Annex III of the Rotterdam Convention and support a change in the voting rules if required for this to be achieved.

Recommendation 5

2.88 The committee recommends that in the event that the Australian Government is unsuccessful in listing of chrysotile asbestos in Annex III at the 2019 Rotterdam Convention, the Australian Government should consider pursuing bilateral or multilateral asbestos treaties with importation disclosure requirements equivalent to an Annex III listing.

Recommendation 6

2.89 The committee recommends that the Australian Government in its course of the regular review of free trade agreements with other countries, include in the review provisions regarding asbestos containing materials.

Recommendation 7

2.90 The committee recommends that the Australian Government continue its support for asbestos bans internationally and promotes awareness of the risks of asbestos in the Asia-Pacific region.

