

Senate Standing Committees on Economics
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Dear Committee,

Inquiry into the Australian Manufacturing Industry

Thank-you for the opportunity to appear before the Standing Committee at the public hearing on 6 December 2021. Please see below responses to questions that were put to the CFMMEU (Construction & General Division), on notice, both during the hearing and via email dated 8 December 2021.

SENATOR WALSH: ... do you have any evidence that you could share with the committee - and you would like to, it would be fine if you could take it on notice - on the general question of how government procurement can be used to boost manufacturing in the areas that I know your union represents, particularly in relation to building products?

1. The *Code for the Tendering and Performance of Building Work 2016 (2016 Code)* sets out the Commonwealth Government's expected standards of conduct for Commonwealth funded building work. It says nothing whatsoever about the manufacture of building products, and certainly does not seek to promote or prioritise the local manufacture of building products. It should be repealed.
2. The Commonwealth Procurement Rules (**CPR**) insufficiently assess the benefits of procuring Australian made products and services; instead they have been applied in a model which clearly prioritises lowest cost. As a result, Australian industry is often disadvantaged compared to overseas competitors who are not bound by the same standards that Australian manufacturers are (e.g. work health and safety standards, wage and entitlement standards, product safety standards and environmental sustainability standards).
3. Government procurement could be used to boost manufacturing by repealing and replacing these instruments with ones that include broader policy considerations which would not only ensure compliance with domestic standards, but also employ and train Australian workers.
4. Our written submission to this inquiry, at paragraphs [48] – [49], refers to solid asbestos being uncovered in gaskets on 3 of the 4 new ferries from an Australian ship-builder who outsourced work to Singapore, Indonesia and China. Since that submission was written, cracks have been found in the hulls of those same ferries as a result of welding defects¹. These incidents follow a series of other problems that have plagued the ferries, including defects in propellers and rudders, failure to cope with swells, and failure to pass under specific bridges where passengers were seated on the top deck. On 10 December 2021 it was reported that retired ferries have had to be brought back

¹ <https://www.smh.com.au/national/nsw/cracks-found-in-brand-new-sydney-harbour-ferry-20211206-p59fa2.html>

into service to maintain a reliable ferry service². This is the cost of failure in procurement processes.

5. NSW, as we understand it, does not have any local content requirements for government procurement. This means that – in addition to the above clear failures –the domestic manufacturing industry was undercut and Australian workers lost job opportunities and, consequently, opportunities to train and retain skilled workforces.
6. The CFMEU (C&G Division) recently made a submission to the House of Representatives’ Inquiry into procurement practices for government-funded infrastructure. A copy of that submission is available [here](#).

SENATOR KITCHING: Your submission has strong support for the Modern Slavery Act and I’m not sure whether you heard the discussion before about products being made in Xinjiang with slave labour, for example, solar panels and train carriages. Do you think that the current Act does a good enough job in preventing slavery in supply chains, particularly in those countries where independent monitoring is difficult to undertake? The Chair alluded to that in his questioning. For example, in areas where the ILO is refused unfettered and unmonitored on-the-ground access to sites and workers, how do we ensure there isn’t slavery in supply chains?

7. The implementation of the *Modern Slavery Act (MSA)* in 2018 was an important step towards addressing the scourge of modern slavery. Now that the end of the first full cycle of reporting has elapsed (on 30 June 2021), it is appropriate that a review be conducted of the effectiveness of the MSA and how it may be improved. We note that s.24 of the MSA requires a three-year review and we look forward to contributing that to that review.
8. The Australian Council of Superannuation Investors (**ACSI**) recently released a report entitled *Moving from paper to practice: ASX200 reporting under Australia’s Modern Slavery Act*³. That report analyses the first full reporting cycle and includes a number of concerning findings including (but not limited to) findings that:
 - a. a ‘race to the middle’ approach is taken by a majority of statements (where reporting seeks to satisfy the legal requirements of the MSA without disclosing more than key peers);
 - b. 33% of ASX200 companies’ statements are “potentially non-compliant with one or more of the MSA’s requirements”;
 - c. the quality of reporting is often focused on “paper over practice”, and frequently undermined by insufficient detail around the implementation of key actions such as policies, risk assessments or training;
 - d. few companies appeared to engage beyond Tier 1 suppliers without consideration of how they can use and expand their existing leverage with suppliers and other business partners;

² <https://www.northernbeachesreview.com.au/story/7545481/freshwater-class-ferry-to-go-back-to-work-amid-plagued-emerald-rollout/>

³ https://acsi.org.au/wp-content/uploads/2021/07/ACSI_ModernSlavery_July2021.pdf

- e. only 17% of statements identified actions taken by companies to ensure grievance mechanisms for vulnerable workers are trusted and accessible; and
 - f. few ASX200 companies are engaging with stakeholders to help inform their modern slavery risk management approach, such as civil society or vulnerable workers.
9. These matters are concerning and should be carefully considered in the statutory review on the MSA.
 10. More generally, it is worth remembering that the MSA is fundamentally imposing a limited reporting requirement; it allows third parties to access information about supply chains which might otherwise be private commercial information. While transparency is important, the MSA could be significantly strengthened by amendments requiring companies to take active steps to ensure that slavery is eliminated from its supply chains and incorporating those steps in the mandatory reporting cycle.
 11. A 2017 report commissioned by the International Trade Union Confederation (ITUC) highlighted the importance of “mandatory due diligence”:

The UNGPs introduced the concept of corporate human rights due diligence to describe the continual process that all companies should undertake to identify, prevent, mitigate and account for how they address their impact on human rights. This process includes four key steps: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed. Human rights due diligence requires direct engagement with stakeholders on the ground including people who are or may be affected by the company’s activities, trade unions, NGOs⁴.

12. While the MSA requires the Reporting Entities to “describe the actions taken by the reporting entity and any entity that the reporting entity owns or controls, to assess and address those risks, including due diligence and remediation processes”⁵, this is a limited reporting requirement. Other countries are taking steps to implement robust due diligence in practice beyond mere reporting. The US, for example, has an enforcement mechanism under its *Trade Facilitation Act* under which imported goods from high-risk countries that cannot demonstrate due diligence may be subject to exclusion or seizure by the US Customs and Border Protection agencies.
13. In relation to countries where independent monitoring is difficult to undertake, it is important that individuals, trade unions and NGOs be able to file complaints with relevant government authorities where modern slavery practices are identified. The current framework of the MSA does not directly support this important requirement and could be improved.
14. In terms of the framework of the MSA itself (and in advance of the formal review of the legislation), we note:

⁴ https://www.ituc-csi.org/IMG/pdf/modern_slavery_in_company_operation_and_supply_chain_final.pdf, at 19

⁵ At s.16(1)(d)

- a. there are currently no penalties for Reporting Entities under the MSA that fail to report, or make a false or misleading report. This seriously undermines the effectiveness of the reporting requirements and undermines deterrence;
- b. the MSA should be strengthened to include an independent oversight body to oversee and enforce the Act. The ACTU has previously called for the establishment of an Independent Commissioner⁶, and we support this proposal. As the ACTU has noted, the creation of such an office has proven crucial to ensuring proper monitoring and enforcement takes place in similar schemes overseas; and
- c. only companies and other entities which have fulfilled their reporting obligations under the MSA should be awarded public contracts.

SENATOR KITCHING: On another element of the procurement aspect of this inquiry, the Australasian Railway Association has cautioned against local procurement policies being state based. One of the examples was that New South Wales could restrict locally produced content from Victoria, or vice versa. Do you have any views on the distinction between state based and national based local procurement rules? And if state based local procurement is implemented in larger states, what challenges do you think this creates for smaller states and territories?

- 15. It is not clear to us, on the face of either the Australasian Railways Association written submission to this inquiry⁷, or the transcript of oral evidence, that there is any state or territory local content requirement in place which has the effect that ARA warn against. That is, we are not aware of any local content requirements that would require the establishment of manufacturing facilities across each of the Australian jurisdictions, or which would require a manufacturing facility to be established from scratch where no such capability exists. We are also not aware of any procurement policy that would specifically 'restrict' locally produced content from another jurisdiction (as opposed to requiring local content from within its own local jurisdiction). In our observation, local content policies merely seek to ensure that competitive local businesses are given a fair opportunity to compete for contracts.
- 16. Encouraging government agencies to work in partnership with regional and rural communities in particular not only helps build industry capability and capacity, it also secures broader economic and societal benefits. No harmonisation of procurement rules should work to prevent such encouragement.
- 17. The use of local labour (including apprentices and trainees) is particularly important. Training and employing local workers should be clear priority for every jurisdiction.

SENATOR SCARR: We'd be very interested to get your feedback on this issue of local content and how it sits with our trade obligations. Have you looked at that, particularly in terms of what we can do in this space whilst also continuing to comply with our international trade obligations? What room do we have to move in in that respect?

⁶ <https://www.actu.org.au/actu-media/media-releases/2018/actu-supports-changes-to-toughen-modern-slavery-bill>

⁷ Submission 108

It is an issue that is repeatedly raised, and quite often government agencies come back and say, 'We've got treaty obligations'. It's something in my mind that I would like to get to the bottom of in terms of how much room have we got to move in, given the international trade obligations we've already signed up to. What scope do we have to move in to promote local content whilst also complying with our international trade obligations?

18. The starting point, in our view, is asking whether Australia's current international trade obligations meet the best interests of ordinary Australians. The Australian government should make every effort to utilise its rights in the international trading framework to provide a level playing field for Australian Manufacturing. As the ACTU put it in their submission to this inquiry: *"the single most important objective of trade policy should be to deliver benefits to the Australian economy, communities and working people by increasing opportunities for local businesses and creating local jobs"*⁸.
19. Further, it is not good enough for the Coalition or Federal Government Departments to dismiss proposed improvements to procurement principles because of a presumption that international trade obligations mean that the government cannot preference local suppliers over overseas providers.
20. In 2017 the CFMEU and TCFUA jointly published a report titled *"In the National Interest: Supporting local jobs and industry through government purchasing"*⁹. The report argues that Australia has been trading away its right to support local industry in its free trade agreements, and that Australia is not making use of the exemptions it has negotiated. This is putting local suppliers at a direct disadvantage to those from countries who can and will fully exploit opportunities. For example, exemptions for small and medium enterprises (defined as having 200 or fewer employees) would apply to up to 97% of all Australian businesses¹⁰. A copy of the full report is available [here](#).
21. In any event, it is our view that it ought to be prohibited for trade agreements to include provisions that have the effect of restricting the Commonwealth's procurement arrangements such that the government is prevented from making preferences for Australian manufacturers and prevented from maximising the participation of domestic industry in government contracts.

Your submission has called on the federal government to develop, fund and support an intelligence led, risk-based approach to standards compliance assurance on imported products, with increased penalties for false and misleading conduct.

Q. How widespread is the problem of standards compliance with imported products? Is it broad-based, or do you find that there are particular countries where compliance is particularly challenging, or where current penalties seem to be ineffective?

⁸ Submission 117, at pg 46, available at <https://www.abf.gov.au/importing-exporting-and-manufacturing/prohibited-goods/categories/asbestos>

⁹ Available at https://www.cfmmeu.org.au/sites/www.cfmmeu.org.au/files/uploads/Research/In%20The%20National%20Interest_NOVEMBER_LR.pdf

¹⁰ Ibid; see executive summary and pages 19-20

22. As set out in our initial submission to the Inquiry, the ongoing importation of non-conforming building products is widespread and serious. It is broad-based.
23. The problem is by no means limited to the importation of asbestos. However, to give an idea of prevalence, data provided by Australian Border Force (**ABF**) for the Asbestos Safety and Eradication Agency indicates that for the 2020-2021 Financial Year¹¹:
- a. only 147 asbestos tests were conducted at the border; and
 - b. asbestos was detected in 27 – or 18.37% - of those tests.
24. The low number of tests conducted is certainly not indicative of the scale of the problem. The ABF data indicates that the detections were contained in vehicles or vehicle parts, however the problem is far more widespread. The CFMMEU's submissions to the Economics References Committee's 2015 inquiry into non-conforming building products noted a wide-ranging number examples of imported products containing asbestos, including building materials (such as plasterboard) but also a wide range of other products including (but not limited to) children's toys (such as crayons carrying Disney, Teenage Mutant Ninja Turtles and Power Rangers labels), a CSI-style science kit with 'forensic dusting powder' that contained asbestos, and a necklace made from cancer causing chrysotile asbestos¹².
25. According to ABF, countries from which goods containing asbestos have been detected include China, Germany, Indonesia, Italy, Japan, New Zealand, Singapore, South Africa, Taiwan, The Netherlands, United Kingdom, United States of America and Vietnam¹³. This is a non-exhaustive list which Border Force notes is subject to change. It is also important to note that this list represents the country of *shipment*, which is not necessarily the country of manufacture.
26. More generally, the AiGroup submission to that same enquiry stated:

Ai Group's Report found that 92% of all respondents to Ai Group's survey reported NCP in their supply chains. Local producers conforming to relevant standards and regulations can be at a competitive disadvantage when the price at which a competing product is sold reflects lower levels of attention to the quality that is required under Australia's conformance framework. Immediate business impacts of this uneven playing field are usually in the form of eroded margins and reduced revenues. According to this survey, that is happening to 45% of companies in this sector¹⁴.

(Emphasis added)

Regarding skills and training, a lot of submissions to this inquiry have argued that we need more apprenticeships, but your submission has gone a step further and argued that we also need to improve

¹¹ <https://www.asbestossafety.gov.au/importing-and-exporting-asbestos/illegal-asbestos-imports-safety-alerts#enforcement-at-the-border>. Note that multiple detections within one consignment or shipment is counted as a single detection within these statistics

¹² Submission 74, available at <https://www.abf.gov.au/importing-exporting-and-manufacturing/prohibited-goods/categories/asbestos>; also see Elizabeth Colman, 'Asbestos-tainted toys to trigger crackdown on importers', The Australian, 21/07/15, available at www.theaustralian.com.au/.../asbestos.../story-fn59niix-1227449777004

¹³ Submission 46, available at <https://www.abf.gov.au/importing-exporting-and-manufacturing/prohibited-goods/categories/asbestos>

¹⁴ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Non-conforming_products/Submissions

the quality of apprenticeships, through investment in vocational education institutions, additional support to employers training apprentices; and improving the wages and conditions of apprentices.

Q. Are there any specific measures which you would like to see introduced to help improve the quality of apprentices, and what scale of support do you think is required to meet the scale of the existing challenge?

27. One of the major problem areas is the recent growth in fully on-the-job training. Where an apprenticeship is delivered in this way, training always takes a back seat due to work pressures and apprentices rarely get the 4 hours per week that they should be given to allow them to do bookwork. When this occurs, the apprentices can quickly fall behind in the training and this has an obvious impact on completions.
28. There are also issues of the quality of the training being provided as some Registered Training Organisations (RTOs) rely on photographic/video evidence and statements of others rather than personally seeing the apprentice work. The other feature that tends to be missing with fully on-the-job training is access to the support networks provided by TAFE campuses. Ensuring that all apprenticeships have off-the-job training would clearly improve the quality of apprenticeships.
29. In regard to assistance to employers, one of the best way of assisting them would be to make training at TAFE free. Course fees are a constant bug-bear for employers and in recent years have risen sharply. Making TAFE free would be a more cost effective support mechanism for employers.
30. A further support measure which would encourage the take-up of adult apprenticeships would be a wage subsidy for the first 18 months for adult apprentices. Under the *Joinery and Building Trades Award 2020* there is a \$234 per week difference in the wage rate for a 1st year adult apprentice compared to a 1st year junior apprentice. The wage difference reduces with each year of the apprenticeship. Providing support to employers in the first year and a half of the apprenticeship would significantly reduce the disincentive to take on adult apprentices.