



## **Australian Government**

Senate Economics References Committee Inquiry into  
non-conforming building products

Australian Government response to the interim report:  
Protecting Australians from the threat of asbestos

AUGUST 2018

## BACKGROUND

On 23 June 2015, the Senate referred an inquiry into non-conforming building products to the Senate Economics References Committee, to examine:

- 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.*

The Inquiry lapsed following the dissolution of the Senate (44<sup>th</sup> Parliament) on 9 May 2016, for the general election on 2 July 2016.

On 11 October 2016, the Senate agreed to the Committee's recommendation that the Inquiry be re-adopted in the 45<sup>th</sup> Parliament.

On 13 October 2016, as part of its broader Inquiry into non-conforming building products, the Committee adopted additional terms of reference seeking submissions regarding the unlawful importation of products containing asbestos, and their impact on the health and safety of the Australian community.

Submissions to the Inquiry closed on 18 January 2017.

Following the Grenfell Tower fire in London, on 21 June 2017, the then Assistant Minister for Industry, Innovation and Science, the Hon Craig Laundy MP, wrote to the Chair of the Committee, Senator Chris Ketter, to request the Inquiry be used to conduct a public hearing to specifically examine the non-compliant use of cladding products in Australia.

The Committee agreed to prepare an additional interim report on the implications of the use of non-compliant external cladding materials in Australia as a priority. That report was released on 6 September 2017 and the Government's response was tabled on 14 February 2018.

The reporting date for the interim report on asbestos was 22 November 2017 and the reporting date for the final Inquiry report is 16 August 2018.

The Australian Government has given consideration to the findings and recommendations presented in the Committee's interim report on asbestos, and tables the following response for the Committee's consideration ahead of the final Inquiry report.

## GOVERNMENT RESPONSE

The Australian Government acknowledges the significant impact on the health and safety of the Australian community that may arise from exposure to asbestos. The Government supports the decision of the Committee to examine the issue of unlawfully imported goods containing asbestos as part of its broader Inquiry into non-conforming building products.

The Committee's interim report on asbestos includes 26 recommendations, with many directed at matters the Government has addressed or is considering. This includes:

- the coordinated, strategic approach to enforce Australia's strict asbestos prohibition at the border
- the whole of government coordination of activities to address unlawful asbestos imports
- strengthened asbestos-related regulations, including increased penalty levels
- the provision of increased funding for the Asbestos Safety and Eradication Agency (ASEA).

Commonwealth, state, territory and local governments are responsible for managing asbestos within their jurisdictions. This includes work health and safety (WHS), public health, consumer safety and environmental regulation. Australian governments work closely together to develop consistent regulatory and policy frameworks.

The Australian Government, through ASEA, works with governments at all levels to ensure there is a coordinated national approach to dealing with asbestos. The Government more than doubled ASEA's ongoing level of funding from 2018–19.

The Government shares the community's concerns over incidents of goods containing asbestos unlawfully imported into Australia and is committed to maintaining effective border control.

In September 2016, the Department of Jobs and Small Business (formerly the Department of Employment) and the Department of Home Affairs (formerly the Department of Immigration and Border Protection) established the Asbestos Inter-Departmental Committee (Asbestos IDC) to provide strategic direction to enable effective policy and regulatory coordination across Commonwealth agencies in managing asbestos issues across the supply chain.

The Government has progressed a range of initiatives to improve supply chain management and assurance pre, at and post border. The Australian Border Force (ABF) is managing goods that pose a risk of containing asbestos through a substantial increase in the targeting and testing of goods at the border.

Government agencies are also actively working with importers and industry to ensure they understand the requirements and their responsibilities under import laws. This includes the need to put in place assurance measures across the supply chain to ensure that asbestos does not reach Australia in the first place.

Australian Government agencies are also working together with state and territory WHS regulators to address incidents of unlawfully imported asbestos being installed in a workplace. Consideration is being given to the powers of inspectors to require the removal of the asbestos in this circumstance.

Commonwealth, state and territory governments have also established mechanisms to respond rapidly to the identification of unlawful asbestos importations, to prevent these goods from posing a risk to the community. A Rapid Response Protocol ensures that relevant government agencies share information and facilitate communication to the community about the safe handling and disposal of imported goods containing asbestos.

The Government recognises the importance of maintaining a strict prohibition on the import and use of asbestos and will continue to work collaboratively with all levels of government, industry and the community to address this issue.

## RESPONSE TO THE RECOMMENDATIONS

### Recommendation 1

*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.*

#### **Response – Noted**

The Government **notes** this recommendation.

The existing coordinated and consistent approach to addressing the unlawful importation of asbestos and appropriate mechanisms has strong support from all levels of government in Australia.

The responsibilities of Commonwealth, state and territory agencies are clear in relation to the prevention, detection and management of imports, which unlawfully contain asbestos. There is an effective regulatory framework in place, underpinned by a range of laws across the import supply chain at the Commonwealth, state and territory levels in the areas of public health, environment, WHS, importation, building regulation and consumer law.

The Government has established a range of policy and regulatory coordination mechanisms at ministerial and senior executive levels to ensure a coordinated and systematic approach across this framework. Commonwealth, state and territory ministers and senior officials responsible for WHS regularly meet to progress WHS issues, including asbestos-related issues.

The Asbestos IDC, which the Department of Jobs and Small Business and the Department of Home Affairs established in September 2016, provides strategic direction to enable effective policy and regulatory coordination across Commonwealth agencies in managing asbestos issues across the supply chain. The Asbestos IDC brings together Commonwealth agencies responsible for WHS, border protection, trade, environmental protection, public health and consumer safety. ASEA is also on the Asbestos IDC. The work of the Asbestos IDC has involved clarifying roles and responsibilities and identifying opportunities to strengthen the legislative framework. The Asbestos IDC undertakes consultation with employers and unions.

The Heads of Workplace Safety Authorities' (HWSA) Imported Materials with Asbestos Working Group also meets to discuss asbestos management issues. The working group includes representatives from the ABF, the Departments of Home Affairs and Jobs and Small Business, Safe Work Australia (SWA), ASEA, the Australian Competition and Consumer Commission (ACCC), all WHS regulators from the commonwealth, states, territories and New Zealand responsible for asbestos matters. The Working Group has established a Rapid Response Protocol to address instances of unlawfully imported asbestos, with communication channels to enable a swift response to contain and appropriately deal with those instances within Australia.

SWA, the national agency on work health and safety policy, also supports a coordinated and consistent approach to the regulation of asbestos in the workplace. SWA comprises membership from the Commonwealth, all states and territories, employers and unions. The model WHS laws, for which SWA is responsible, deal comprehensively with asbestos in the workplace, including through the implementation of a domestic ban on its use.

Australia has had a ban on the unauthorised manufacture, use, reuse, import, transport, storage or sale of all forms of asbestos and asbestos-containing materials since 31 December 2003. The ban was introduced under Commonwealth, state and territory work health and safety legislation and is complemented by import and export prohibitions under the *Customs (Prohibited Imports) Regulations 1956* (Cth) and the *Customs (Prohibited Exports) Regulations 1958* (Cth).

Regulation 4C of the *Customs (Prohibited Imports) Regulations 1956* (Cth) prohibits the importation of asbestos, or goods containing asbestos, except in very limited circumstances, such as where the Minister administering the *Work Health and Safety Act 2011* (Cth) has provided permission to import asbestos for the purpose of research, analysis or display. Regulation 4 of the *Customs (Prohibited Exports) Regulations 1958* (Cth) prohibits the exportation of asbestos, or certain goods containing asbestos, from Australia unless a permission or exemption has been granted or a lawful exception applies.

As noted in the response to Recommendation 15, the Department of Home Affairs is developing advice to government on changes to the offences and penalties for the unlawful import/export of asbestos detailed in customs legislation.

The Departments of Jobs and Small Business and Home Affairs are also considering amendments to the *Customs (Prohibited Imports) Regulations 1956* (Cth) and *Customs (Prohibited Exports) Regulations 1956* (Cth) at the recommendation of the Asbestos IDC. The proposed changes would improve consistency of the regulations with the model WHS laws and make other necessary updates.

As noted in the response to Recommendation 20, SWA is currently reviewing the power of regulators to deal with the removal and disposal of asbestos that has been unlawfully imported and then used in workplaces.

The comprehensive and coordinated approach the Government is taking to the enforcement and management of Australia's strict import/export prohibition and workplace ban on asbestos means that additional work through the Council of Australian Governments (COAG) is unnecessary.

## **Recommendation 2**

*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 the report.*

### **Response – Supported**

The Government **supports** this recommendation.

The Government provided ASEA with additional ongoing funding of \$1.7 million per annum, commencing in 2018–19, in the 2017 Mid-Year Economic and Fiscal Outlook (MYEFO). This more than doubles ASEA's base level of funding, from \$1.6 million, to \$3.3 million per annum.

The additional funding ensures ASEA can work effectively with state, territory and Commonwealth WHS regulators to implement the National Strategic Plan for Asbestos Management and Awareness to protect workers and the community from Australia's deadly asbestos legacy, as well as achieving an end to asbestos-related disease.

The funding will ensure that ASEA is well placed to coordinate the implementation of phase two of the National Strategic Plan with Comcare, the states and territories. The funding ensures the Agency can maintain an appropriate level of staffing and conduct research in priority areas to support effective policy and programs that reduce exposure to asbestos.

### **Recommendation 3**

*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.*

#### **Response – Noted**

The Government **notes** this recommendation.

An independent review of border processes for asbestos concluded in 2016. This review examined industry engagement undertaken at the time, and it identified opportunities for organisational and technical improvements. Following the review, there has been an increased focus on formalised consultation and engagement.

The Department of Home Affairs continues to enhance and update the information it publishes with respect to asbestos, and it engages directly with key stakeholders via a number of internal and external consultation fora, including through:

- the Trade and Goods Compliance Advisory Group
- the Building Ministers' Forum
- peak border industry bodies, such as the Customs Brokers and Forwarders Council of Australia (CBFCA), the Freight and Trade Alliance, the Australian Peak Shippers Association, and other industry representative bodies
- trade union groups through the Asbestos IDC.

The Department of Home Affairs' efforts complement those of other agencies, including through ASEA's work in driving a national focus on health and safety issues on asbestos. ASEA has broad stakeholder reach, including with state and territory regulators, unions, industry associations and asbestos support groups.

The Asbestos IDC coordinates a whole-of-government approach to the consultation and engagement that occurs with relevant stakeholders. The recommended external review of industry consultation arrangements would likely result in a duplication of effort given the current work of the Asbestos IDC and ASEA, and the 2016 independent review already undertaken.

### **Recommendation 4**

*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.*

#### **Response – Supported**

The Government **supports** this recommendation.

The Government will continue to advocate strongly for the listing of chrysotile asbestos in Annex III of the Rotterdam Convention. The Government is supportive of examining all mechanisms and implications of improving the effectiveness of the Convention, including changes to voting rules if required. The whole-of-government position for the Conference of the Parties planned for 2019 will be developed in advance of the Conference.

## **Recommendation 5**

*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.*

### **Response – Noted**

The Government **notes** this recommendation.

Should the listing of chrysotile asbestos in Annex III of the Rotterdam Convention be unsuccessful at the ninth meeting of the Conference of the Parties to the Rotterdam Convention planned for 2019, the Government will consider alternative approaches.

## **Recommendation 6**

*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.*

### **Response – Noted**

The Government **notes** this recommendation.

The recommendation does not reflect Australia's ongoing commitment to the regulation of dangerous goods or the provisions of existing free trade agreements. Australia's Free Trade Agreements (FTAs) and World Trade Organization (WTO) commitments already preserve Australia's ability to regulate dangerous goods. Nothing in these agreements requires Australia to lower safety standards and regulations.

Specifically, Australia's FTAs all contain a Technical Barriers to Trade (TBT) Chapter, reaffirming Australia's right to impose product standards and technical regulations to protect human health or safety. TBT chapter provisions ensure that trading partners apply technical regulations and standards equally to products originating domestically or from overseas.

TBT chapters also encourage regulatory convergence among trading partners, for example through the adoption of international standards – but such convergence is generally pursued outside of FTA review mechanisms as they relate to regional and international, rather than bilateral efforts (as per Recommendations 4 and 5).

In addition to the TBT chapter, FTAs also include general exceptions, which enable Australia to implement measures to protect human health or safety, and animal or plant life.

## **Recommendation 7**

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

### **Response – Supported**

The Government **supports** this recommendation.

The Government already advocates and supports asbestos bans internationally, as well as promoting awareness of asbestos risks.

The Australian Department of Foreign Affairs and Trade (DFAT) bans the use of asbestos containing materials in the Australian aid program. DFAT's policy on *Managing asbestos risk in the aid program* outlines its approach to managing asbestos-related hazards, including implementation of the ban on the use of asbestos-containing materials in all aid program activities and investments.



DFAT actively works with partner governments, aid donors and delivery partners to promote the sharing of knowledge and information on best practice for awareness, management and eradication of asbestos across the Asia-Pacific region.

DFAT also has mandatory safeguards in place to ensure the Australian aid program assesses and manages potential adverse environmental and social impacts. DFAT's *Environmental and social safeguard policy* seeks to protect the rights, health, safety of the environment, communities and people.

### **Recommendation 8**

*The Australian Government require mandatory Asbestos Awareness Training for a wide range of occupations in the construction industry and provide adequate funding for nationally accredited training for this purpose.*

#### **Response – Supported in part**

The Government **supports** this recommendation in part.

All Australian WHS laws impose a mandatory obligation on primary duty holders to provide information, training, instruction and supervision to ensure work is performed safely as part of their duty of care.

This broad duty is supported by specific regulations requiring the training of workers about asbestos. For example, the model WHS laws, developed by SWA and enacted by the Commonwealth and a majority of states and territories, require workers who may carry out work involving asbestos to be trained in the identification and safe handling of asbestos and asbestos containing materials. This includes workers in the construction industry. Victoria and Western Australia have not enacted the model laws but have similar arrangements in place (*Occupational Health and Safety Regulations 2017 (Vic)* and *Occupational Safety and Health regulations 1996 (WA)*).

Current requirements under model WHS laws allow for training to be tailored to the work being carried out. A number of nationally accredited training courses in asbestos awareness are already available and being delivered. Course participants or their employers fund participation in these courses and the Government considers this appropriate.

### **Recommendation 9**

*The Department of Immigration and Border Protection and Australian Border Force consider the merits of developing and implementing a comprehensive education campaign for all importers of the risk and responsibilities regarding asbestos containing materials and the definition of asbestos containing materials used in other countries.*

#### **Response – Noted**

The Government **notes** this recommendation.

The Department of Home Affairs and the ABF already undertake significant consultation and engagement to ensure awareness by importers of the assurances required to demonstrate that goods at the border do not contain asbestos. In addition to the resources on the Department of Home Affairs' website and in its publications, the Department has also made significant progress engaging and reaffirming industry and importer understanding of the necessity for compliance with Australia's strict prohibition on the importation of asbestos.

Furthermore, as referenced in the response to Recommendation 3, the Department of Home Affairs will continue to work through existing fora (such as Trade and Goods Compliance

Advisory Group and the Asbestos IDC) to ensure information, education and engagement across industry and individual importers continues to be consistent, timely and relevant.

### **Recommendation 10**

*The Asbestos Safety and Eradication Agency develop a one-stop-shop website to provide single point for participants across the supply chain to access information regarding the illegal importation of asbestos.*

#### **Response – Supported**

The Government **supports** this recommendation.

The Government supports measures to improve public access to information about asbestos.

ASEA updated its website on 2 February 2018 and provides access to a wide range of information about asbestos, including links to relevant agencies such as the Department of Home Affairs for more detailed advice. ASEA's website provides:

- comprehensive information about Australia's ban on importing asbestos, including a list of goods that are at risk of containing asbestos
- information on who to contact for asbestos issues, including links to state and territory WHS and environmental regulators
- consumer protection information including safety alerts and recall notices
- identification and disposal information including links to relevant government agencies in each state/territory
- information for homeowners
- general asbestos information including asbestos related research.

ASEA will continue to refine its website to ensure it provides up-to-date links to comprehensive information that meets the needs of the public.

### **Recommendation 11**

*The Australian Government review the Australian Border Force staff resourcing required to effectively monitor and prevent the illegal importation of asbestos.*

#### **Response – Noted**

The Government **notes** this recommendation.

The ABF continually reviews its allocation of resources across a range of border threats to ensure an appropriate response. To this end, the ABF has significantly increased its operational efforts towards addressing the risk of asbestos since the organisation commenced on 1 July 2015, including the targeting and testing of at-risk goods.

The ABF is confident that its response to unlawfully imported asbestos is proportionate to the risk, and the ABF will continue to review the commitment of resources to preventing and detecting asbestos importations as appropriate.

## **Recommendation 12**

*The Australian Government consider the merits of having a specialist unit within Australian Border Force to manage illegal asbestos importation.*

### ***Response – Not supported***

The Government **does not support** this recommendation.

The ABF is responsible for managing numerous risks to the Australian community and has an effective structure that is both flexible and adaptable to dealing with those risks, including managing prohibited goods such as asbestos, weapons and drugs. The stand-up of specialist units for individual prohibited items is not an efficient or effective way of enforcing border controls, given the significant volume and type of goods coming across the border each day.

The ABF already has in place assessment processes to identify goods that are at risk of containing asbestos. If the ABF determines that the goods require sampling for the purposes of laboratory testing, the importer is responsible for contracting a qualified professional to do so. This sampling and testing is under the supervision of, and not by, the ABF, and occurs in a manner that complies with jurisdictional WHS laws.

The ABF will continue to maintain its focus on asbestos and it will monitor and assess the level of resourcing required to ensure an appropriate operational response that is proportionate to the risk.

## **Recommendation 13**

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

### ***Response – Noted***

The Government **notes** this recommendation.

The Department of Home Affairs is preparing advice to support the review on changes to the offences and penalties for the unlawful import/export of asbestos, detailed in customs legislation, including in relation to the 'mistake of fact' defence.

## **Recommendation 14**

*The Australian Government prioritise prosecution of illegal asbestos importation cases.*

### ***Response – Not supported***

The Government **does not support** this recommendation.

The decisions to commence proceedings for offences against the Commonwealth occur on a case-by-case basis.

In determining whether to pursue prosecution, the Department of Home Affairs and the ABF take into account both the *Prosecution Policy of the Commonwealth* and the *Legal Services Directions 2017* (Cth).

Under the Prosecution Policy of the Commonwealth, a prosecution should commence only when there is a *prima facie* case, reasonable prospects of securing a conviction and the prosecution is in the public interest. The *Legal Services Directions 2017* place an obligation on the Commonwealth and Commonwealth agencies to act as a model litigant. In line with

this obligation, consideration as to whether litigation is the most suitable method of dispute resolution is also relevant.

### **Recommendation 15**

*The Australian Government review the quantum of penalties for breaches of Australia's importation ban with a view to increasing them.*

#### **Response – Noted**

The Government **notes** this recommendation.

Existing financial penalties for the unlawful importation of asbestos are:

- for an individual, a pecuniary fine of up to \$210,000 or three times the value of the goods, whichever is greater
- for a company, a pecuniary fine of up to \$1,050,000 or 15 times the value of the goods, whichever is greater.

The decision to impose a penalty following conviction, and the size of that penalty, is at the discretion of the Court.

In lieu of prosecution, the ABF may impose administrative sanctions, including financial penalties through issuance of an infringement notice under the *Customs Act 1901* (Cth).

### **Recommendation 16**

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

#### **Response – Not supported**

The Government **does not support** this recommendation.

Mandatory testing is not always an efficient and effective way of providing assurance that the goods are asbestos free. Mandatory testing is costly to industry, particularly for importers who are demonstrably compliant.

The ABF requires importers to have adequate assurance measures in place to demonstrate that the goods they are importing do not contain asbestos. The types of measures an importer may put in place may include, but are not exclusive to, testing. Assurance can include a combination of processes, such as the identification and removal of at-risk components before import (for example, brake pads in vehicles), which would remove the necessity to test; collation of evidence through demonstrated knowledge of the supply chain (including the manufacturing process) and building assurances into contractual arrangements with suppliers.

When goods arrive at the Australian border, if the ABF is not satisfied with the importer's level of assurance, the ABF will direct the importer to have the goods tested by a National Association of Testing Authorities (NATA) accredited laboratory.

### **Recommendation 17**

*The Government examine the European Union's regulations and processes for testing of products for asbestos prior to import and determine if it is suitable to adapt them to benefit and enhance Australian requirements.*

#### **Response – Supported**

The Government **supports** this recommendation.

The Government will advise the Senate Economics References Committee on the suitability of adapting the European Union's regulations and processes for testing for asbestos in Australia in its response to the Committee's final report.

### **Recommendation 18**

*The Australian Government consider placing additional mandatory requirements on procurers of high-risk products to have a due diligence system in place for the prevention of the import and use of asbestos containing materials.*

#### **Response – Noted**

The Government **notes** this recommendation.

The Government considers that existing guidance on due diligence for importers, and the mandatory requirements under WHS laws, are already sufficient.

For example, the model WHS laws in place in a majority of jurisdictions require a person conducting a business or undertaking (PCBU) to ensure, so far as is reasonably practicable, the health and safety of workers it engages, directs or influences, relevant to dealing with the risks posed by unlawfully imported asbestos. These duties include:

- providing and maintaining a working environment that, so far as is reasonably practicable, is safe and without risks to health
- providing and maintaining plant, structures and systems of work that, so far as is reasonably practicable, are safe and do not pose health risks.

PCBUs that design, manufacture, import or supply plant, structures or substances have specific 'upstream duties' under the model WHS laws. This reflects their ability to influence the safety of these products before they are used in the workplace. These PCBUs have a duty to ensure, so far as is reasonably practicable, that their products are without risk to health and safety when used at a workplace. This duty extends throughout the entire lifecycle of that product.

An officer of a PCBU is required to exercise due diligence to ensure that the PCBU complies with duties and obligations. It is unlikely that further regulation will achieve a measurable improvement in the issue of illegal asbestos importation.

## **Recommendation 19**

*The committee recommends that other states and territories pass similar legislation to Queensland's Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017.*

### **Response – Noted**

The Government **notes** this recommendation

While directed to state and territory governments due to their constitutional responsibility for the regulatory framework governing the built environment, the following information may be of interest to the Inquiry.

The *Building and Construction Legislation (Non-conforming Building Products – Chain of Responsibility and Other Matters) Amendment Act 2017* (Qld) (Queensland Amendment Act) amended legislation, primarily the *Building and Construction Commission Act 1991* (Qld) (Queensland Building Act) in a number of ways. The Queensland Amendment Act amended the Queensland Building Act to include an additional object in section 3(e) to: regulate building products to ensure the safety of consumers and the public generally; and persons involved in the production, supply or installation of building products are held responsible for the safety of the products and their use.

The Australian Government notes that the Queensland Amendment Act was not designed to address asbestos. The model WHS laws already comprehensively deal with the issue of asbestos. As noted in the Department of Jobs and Small Business' submission to the Inquiry and the response to Recommendation 18, PCBU's that design, manufacture, import or supply plant, structures or substances have specific 'upstream duties' under the model WHS laws. These PCBU's have a duty to ensure, so far as is reasonably practicable, that their products are without risk to health and safety when used at a workplace.

## **Recommendation 20**

*Commonwealth, state and territory governments work together to develop nationally consistent legal obligations to require the removal and/or disposal of illegally imported asbestos (if it is safe to do so following consideration of the hazards likely to be faced by the workers undertaking the work) and to make importers responsible for the cost of such removal and/or disposal of asbestos.*

### **Response – Supported**

The Government **supports** this recommendation in part.

Under the model WHS laws, all jurisdictional regulators have powers to deal with the removal and disposal of asbestos that has been unlawfully imported and then used in a workplace. SWA is currently reviewing these powers to determine whether they need to be strengthened. The issue is also being considered as part of the independent review of the model WHS laws which is due to report by the end of the year.

Should any issues with regulators' powers to deal with removal and disposal of asbestos be identified, amendments to the model WHS laws will be progressed through SWA's usual governance processes including consideration by Safe Work Australia Members and WHS ministers.

## **Recommendation 21**

*The Australian Government review and clarify the role of the Federal Safety Commissioner with regards to asbestos containing materials in building products in line with the Commissioner's responsibilities.*

### **Response – Noted**

The Government **notes** this recommendation.

The Government considers the role of the Federal Safety Commissioner (FSC) is already clear in the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

The FSC has a legislative function related to the compliance of building materials with the performance specifications of the National Construction Code (NCC), and is responsible for administering a WHS Accreditation Scheme for companies seeking to undertake Commonwealth funded building work.

The FSC's WHS Accreditation Scheme criteria already represent the most stringent requirements in Australia for managing asbestos hazards on building sites. Conditions of being an FSC accredited company include that the performance requirements of the NCC must be complied with, and that appropriate policies, procedures and safe work practices must be in place, including in relation to the management of high risk hazards (such as asbestos which may be present in existing buildings, structures and land). The FSC has the power to suspend or revoke a company's accreditation where a condition of accreditation has been breached.

## **Recommendation 22**

*The Australian Competition and Consumer Commission conducts compulsory recalls where asbestos is found in consumer products, unless there are significant issues and risks associated with a compulsory recall, noting that legislative change may be required.*

### **Response – Not supported**

The Government **does not support** this recommendation.

Division 3 of Part 3-3 of the Australian Consumer Law (ACL) presently allows the responsible minister (Commonwealth, state and territory consumer ministers) to issue a compulsory recall notice for consumer goods of a particular kind if certain threshold tests have been met.

The ACCC is the national consumer product safety regulator responsible for jointly administering and enforcing the ACL with state and territory consumer affairs agencies under a 'one law, multiple regulator model'. The ACCC takes a hazard and risk-based approach to intervention in consumer product safety matters. In addition to compulsory recalls, the ACL provides for a range of graduated regulatory interventions to address consumer product safety-related issues, including voluntary recalls of consumer goods and safety warning notices.

### Compulsory recalls

Under section 122(1) of the ACL it is at the discretion of the responsible minister to issue a compulsory recall notice for consumer goods of a certain kind if the minister is satisfied that legislative thresholds for regulatory intervention of this type have been met.

If the Commonwealth Minister proposes issuing a compulsory recall notice, section 132A of the *Competition and Consumer Act 2010* (Cth) (CCA) requires the Minister to issue a proposed recall notice. The proposed recall notice must include an invitation for anyone who supplies, or proposes to supply the consumer goods to request the ACCC to hold a conference

in relation to the proposed recall notice (section 132A(3)(e)). However, if it appears to the Commonwealth Minister that the consumer goods create an imminent risk of death, serious illness or serious injury, a recall notice can be issued without delay under section 132J of the CCA.

In the cases of Great Wall and Chery Vehicles, and Polaris youth quad bikes, the threshold tests for recommending that the Commonwealth Minister issue compulsory recall notices were not met. The suppliers took satisfactory voluntary action to address the hazard by removing the goods from the market and providing affected consumers with a remedy. The ACCC monitored the effectiveness of these recalls.

#### Voluntary recalls

The interim report states that the ACCC did not administer recalls for Great Wall and Chery Vehicles, and Polaris youth quadbikes. In each of the cases, the suppliers of these consumer goods voluntarily took action to recall these goods according to section 128 of the ACL - Notification requirements for a voluntary recall of consumer goods.

#### Safety warning notice

The ACL also provides for the responsible minister to publish a safety warning notice to the public about possible product-related risks to consumers (section 129 (1)). Safety warning notices have been published in relation to a number of product safety-related issues, including 'fire wallets' due to identified asbestos content and more recently for Polaris youth quad bikes where certain parts of some models may contain asbestos.

Once the investigation has been completed and a proposed ban notice or a proposed recall notice or a recall notice without delay has not been published or issued, the responsible minister must, as soon as practicable after the completion of the investigation, publish the results of the investigation (section 130(1) of the ACL). The responsible minister may also announce in this notice whether any action is proposed to be taken and if so, what action is proposed (section 130(2) of the ACL).

The ACCC publishes compulsory and voluntary recall notices, and safety warning notices on the Product Safety Australia website ([www.productsafety.gov.au](http://www.productsafety.gov.au)) to alert consumers on behalf of the Commonwealth Minister.

### **Recommendation 23**

*In circumstances where the Australian Competition and Consumer Commission becomes aware of a product containing asbestos and subsequently determines not to issue a compulsory recall of that product, the committee recommends that the Australian Competition and Consumer Commission shall within thirty days of that decision publish a statement of reasons.*

#### ***Response – Not supported***

The Government **does not support** this recommendation.

The ACCC does not consider that there is merit in publishing a statement of reasons if it determines not to recommend that the Commonwealth Minister issue a compulsory recall notice for consumer goods containing asbestos. This is because there would already be a voluntary recall or other risk communication and risk management strategy in place, meaning suppliers would be taking satisfactory action to meet their obligations to prevent those goods from causing injury to any person. A safety warning notice may also be in place. These interventions would seek to address the hazard and publicly inform consumers about any safety risks, therefore a statement of reasons would have no useful application.



## **Recommendation 24**

*The Australian Government review the Australian Competition and Consumer Commission's public reporting of asbestos containing materials in consumer products, both in relation to informing the public where there are risks to safety, and also monitoring and aggregating reporting of incidents over time.*

### **Response –Noted**

The Government **notes** this recommendation.

The ACCC prioritises the assessment of product safety issues, which have the potential to cause serious harm to consumers. The ACCC's product safety regime captures consumer goods, which are goods that are intended to be used, or are of a kind likely to be used, for 'personal, domestic or household use'. Where the ACCC has become aware of asbestos containing materials in consumer goods, it has publicly reported this to consumers.

The ACCC has in place monitoring procedures to ensure that appropriate further action can be taken where this is warranted. It is standard practice, for example, for the ACCC to undertake a risk assessment and trend analysis when it becomes aware of a hazard associated with a consumer good and to communicate any safety risks to consumers via the Product Safety Australia website.

## **Recommendation 25**

*The Australian Government establish a national public asbestos register.*

### **Response – Noted**

The Government **notes** this recommendation.

The language of the recommendation suggests a broad scope, potentially covering Australia's considerable asbestos legacy, although this Inquiry's focus on asbestos has been on unlawful imports.

ASEA and the Department of Home Affairs both provide lists on their websites of goods that could contain asbestos. The asbestos-containing materials in both lists may already exist in the built environment as legacy asbestos, or they may exist in goods that could be unlawfully imported into Australia in the future.

In addition, the ACCC publishes recall notices of unlawful imports that have been specifically identified. This information provides the public, importers, and others in the supply chain with the necessary information on products that may potentially contain asbestos.

The Government focuses on preventing the unlawful importation of goods containing asbestos and the ABF has significantly increased its efforts to target unlawful importation. The ABF continues to refine profiles and alerts to target asbestos, based on factors such as the nature of the goods, country of origin, overseas suppliers and importers of concern. However, sharing the details of these profiles, which could include information provided for other purposes, would not only raise privacy concerns, but would be counter-productive as suppliers may seek to protect their sales market in Australia – such as by changing their commercial operations – to counteract targeting of their goods at the Australian border.

Regarding legacy asbestos, ASEA has developed a National Asbestos Profile as recommended by the World Health Organisation and the International Labour Organization. The National Asbestos Profile includes comprehensive information about the use of asbestos in Australia, populations at risk from current and past exposures, and information on regulation, importation and risks.

The model WHS Regulations developed by SWA and enacted by the Commonwealth and a majority of states and territories, require preparation of an asbestos register where asbestos is identified at the workplace, or is likely to be present from time to time. The register must record the location, type and condition of the asbestos, must be regularly maintained, and be readily accessible by workers, their WHS representatives and others who carry out work in that workplace. This means that there is already a record of, and relevant information about, asbestos at a workplace for persons who may be affected by its presence. This ensures that the relevant people are aware of asbestos in the workplace and there is no additional benefit in making this information publicly available.

The Government considers the mechanisms in place to identify and manage both legacy asbestos and unlawful imports discussed above ensure that the relevant entities have the information they need to appropriately manage associated risks. Developing and maintaining a national register would be costly and time consuming, and make a questionable contribution to the management of asbestos given the range of measures already in place.

The Government will however consider any benefits that arise from the work of the Victorian Government in developing a comprehensive register of asbestos in government buildings and in planning its removal. This test case would inform discussions by jurisdictions on the feasibility of collaborating to develop a national register.

#### **Recommendation 26**

*The Australian Government consider the merits of requiring importers and suppliers to hold mandatory recall insurance for potential asbestos containing materials.*

#### ***Response - Not Supported***

The Government **does not support** this recommendation.

The Government notes that this recommendation is an adjunct to Recommendation 22, which the Government also does not support.

**List of contributing departments and agencies**

- Department of Jobs and Small Business
- Department of Home Affairs, including the Australian Border Force
- Department of Industry, Innovation and Science
- Department of Foreign Affairs and Trade
- Department of the Environment and Energy
- The Treasury
- Asbestos Safety and Eradication Agency
- Australian Competition and Consumer Commission
- Safe Work Australia

