

## Submission 90 - Asbestos Safety and Eradication Agency

The Asbestos Safety and Eradication Agency made submission 10 to the inquiry into non-conforming building products in the 44th Parliament.

This document is intended as a supplementary submission to the original submission 10.

All submissions received in the 44th Parliament can be accessed via the following link:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Non-conforming\\_products/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Non-conforming_products/Submissions)



Australian Government

Asbestos Safety and Eradication Agency

# Submission to the Senate Standing Committee on Economics Inquiry into non-conforming building products

January 2017

[www.asbestossafety.gov.au](http://www.asbestossafety.gov.au)



# SUBMISSION TO THE INQUIRY INTO NON-CONFORMING BUILDING PRODUCTS

An Australia-wide ban on the manufacture and use of all types of asbestos and asbestos-containing materials (ACMs) took effect on 31 December 2003. This ban is reflected in workplace health and safety laws in all jurisdictions.

Like Australia, all of the Organisation for Economic Co-operation and Development (OECD) countries, except for Canada, Mexico and the United States of America, have banned asbestos. However the United States are moving towards greater regulation and restriction of the known carcinogen and the Canadian Government announced on Thursday, 15 November 2016 a national ban on the import, export, manufacture and use of asbestos by 2018.

Despite being a prohibited import in Australia, asbestos is still widely used in some countries around the world and goods containing asbestos are still being located at the border and on worksites around Australia. There have been a number of incidents where ACMs have been imported into Australia.

This can be a result of unreliable certification provided by overseas manufacturers that the goods are asbestos-free. It can also occur because some countries regard products to be asbestos free if they contain asbestos below a certain level. Australia has a zero tolerance to asbestos and if unauthorised asbestos is found to have entered Australia, the importer of the goods may be subject to prosecution.

The importation into Australia of ACMs is prohibited under the *Customs (Prohibited Imports) Regulations 1956*. However, asbestos can be imported under very limited circumstances, including for the purpose of research, analysis or display where permission has been granted by the Minister administering the *Work, Health and Safety Act 2011*.

There is a significant risk posed by Australian companies who do not undertake due diligence before products are imported into Australia. For example, building materials imported into Australia from Chinese manufacturers and suppliers could contain ACMs,

especially considering China is still a major producer of asbestos. In addition to mining asbestos, China imports approximately 50% of the world's mined asbestos, and has no legislative prohibitions on manufacturing or exporting chrysotile asbestos. Chinese manufacturers produce 11% of the global market's total supply of ACM. As a result, Australian companies must exercise a high level of due diligence, prior to the purchase of products from China that have the potential to contain ACM, to ensure that they do not breach provisions.

Another factor relating to the importation of products containing asbestos is the general lack of knowledge which the agency has found with regards to how the importation of asbestos is regulated at the Australian border and the products which are at particular risk of containing asbestos.

## The illegal importation of products containing asbestos and its impact on the health and safety of the Australian community

The Asbestos Safety and Eradication Agency (the agency) has found a general lack of knowledge as to how the importation of asbestos is regulated at the Australian border and the products at particular risk of containing asbestos. Consequently the agency has been advised by the Australian Border Force that a factsheet will be developed explaining the roles of those involved in the management of asbestos in Australia.

The agency has raised incidents in previous submissions involving the importation of building equipment or materials found to contain asbestos such as expanded polystyrene (EPS) sandwich panels and high density board to name a few.

Since the most recent submission of 27 August 2015, there have been five major incidents which have gained public attention through media reports and relevant government inquiries. The agency believes that the importers of these products involved in the incidents have failed to ensure that Australian prohibitions and standards are met. The incidents involving the importation of building equipment or materials found to contain asbestos include:

### **Chinese cement sheeting – Australian Portable Camps, South Australia – August 2015**

In August 2015, it was detected that during the period of 2010 and 2011 Australian Portable Camps (APC), a South Australian based company imported over 8,000 pre-fabricated sheets into Australia. The sheeting was used for the construction of temporary housing in remote areas across a number of states and territories. The material was imported from a Shandong province based supplier, Feiching Lutai Science and Technology Company. The incident and company were involved in a thorough investigation by the workplace regulator, Safework SA. APC workers were informed of the situation and were provided with counselling services and health checks.

### **Asbestos flooring installed in pre-fabricated switch rooms – Robin Johnson Engineering – November 2015**

In late 2015 it was discovered that several batches of asbestos cement board were imported by a South Australian company, Robin Johnson Engineering (RJE) over several years and installed as flooring in pre-fabricated switch rooms, which have then been on-supplied to other PCBUs in South Australia, New South Wales, Queensland, Victoria and Northern Territory.

The switch rooms commonly contain control equipment, cabling and other heavy low and high voltage electrical equipment. The agency is aware that the cutting of penetrations and the installation of this equipment in the switch rooms has led to the disturbance of the ACM and the potential exposure of workers to asbestos fibres.

### **Klingerit 200 CAF gasket jointing sheets – 1 William Street, Brisbane – July 2016**

In July 2016, imported ACMs were identified and confirmed by analysis at the construction site of a new Queensland Government building at 1 William Street, Brisbane. The asbestos was discovered by workers with relevant OH&S and asbestos awareness training.

It was found in a wrap to brackets used in attaching fins to trusses on the building skirt. The brackets were delivered to the site in pre-packed bins from Yuanda China. It is understood that Yuanda fitted the gasket material to the steel spigots in China prior to exportation.

There were approximately 150 wrapped spigots which were removed from the site and quarantined by the Queensland regulator.

The purpose of this product was to stop heat transferring from the welding of the locating spigot to the fin support which was painted aluminium cladding and which lay on the face of the support.

### **Asbestos in unitised roof panels – Perth Children's Hospital – July 2016**

In July 2016, during work undertaken on the new Perth Children's Hospital it was discovered that composite roof panels that were custom manufactured for the atrium roof were imported by subcontractor Yuanda Australia and found to contain chrysotile asbestos by analysis from a NATA accredited laboratory. The unitised roof panel components were sourced by Yuanda China from various suppliers for assembly in its factory. Yuanda China used

an agent, Shenyang Dingyisheng Business Trading Co Ltd, to source asbestos-free fibre cement sheets from Zhejiang Headerboard Building Materials Co Ltd. However, it is not clear where the sheets that contained asbestos came from. This incident led to more than 450 people being added to the National Asbestos Exposure Register.

The WA Building Commission undertook a full audit of building products at the Perth Children's Hospital site and other sites where Yuanda building products have been supplied. Additionally they have produced a report on the discovery of asbestos within imported roof panel products used at the new hospital.

#### **Asbestos contaminated plant equipment – Nyrstar project, Port Pirie, South Australia – August 2016**

In August 2016, Nyrstar informed SafeWork SA that friable asbestos fibres were found in contaminated plant equipment imported from China over a 12 month period. The refurbishment is part of a \$563 million Port Pirie redevelopment project to modernise their multi-metals facility. The asbestos was found in a plaster coating of eight metal vessels for the Acid Plant section of the project, with the largest being 21.1 metres high and 8.8 metres in diameter. The vessels were constructed of various layers, including a metal mesh layer coated in a plaster containing chrysotile asbestos. The regulator SafeWork SA established an investigation and directed Nyrstar that the asbestos must be removed by an independent expert.

Additionally there have also been a number of incidents where breaches of work health and safety laws and the importation of products containing asbestos have made

their way through the border. Whilst they are not building products, they highlight the problem that goods containing asbestos are still being detected at the Australian border. The products include asbestos identified in crayons sold within Australia (September 2015), asbestos in mineral kits (November 2015) and asbestos in brake shoes and counterfeit brake pads (December 2015). Safety alerts for these matters can be found on the agency website at: <https://www.asbestossafety.gov.au/raising-awareness-about-asbestos-imports#safety-alerts>.

### **The effect of illegally imported products containing asbestos on industry supply chains, workplace and public safety**

ASEA believes that Australia is lacking a holistic approach to supply chain management, and a change is required to address the problems regulators are currently facing with regards to imported products containing asbestos (ACMs).

ASEA understands that there is no one-size-fits-all approach; however the fact is that Australia is now and will be for many years to come managing legacy issues relating to the wide use of asbestos. Australia has the highest reported per capita incidence of asbestos-related disease in the world, including the highest incidence of mesothelioma.

Having spoken to a wide array of stakeholders, from customs brokers to manufacturers to government representatives and customs staff, changes to the supply

chain must start at its roots. Stakeholders that ASEA has communicated with are seeking more information from the Australian Border Force (ABF) in order to be compliant.

More attention needs to be paid to the design, quality standard and contractual stipulation stages to weed out non-compliance. If designers, architects or planners were to undertake asbestos awareness programs, their ideas and attitudes could have resounding impacts down the supply chain.

This further emphasises the importance of tailoring awareness, that no one program is appropriate for everyone, and that the most effective programs are tailored and targeted, with the receiver in mind.

Sourcing is also a very important element because the market is so attached to the cheapest option; manufacturers often present a real question of reliability. Due diligence needs to be reinforced here. An oversight arrangement should be used to strengthen and enforce everyone's compliance with due diligence requirements, an example being when a consultant is sent to supervise or monitor the work.

Brokers also need to be highly aware of these issues and products that are at a higher risk. They need to be able to effectively filter their work, and liaise continually with suppliers and clients to meet their due diligence requirements.

The diagram marked as Attachment A of this submission was developed by the agency and shows how improvements can be made in the supply chain to ensure products containing asbestos are not illegally imported to Australia.

The focus should be on specific products that have the potential for containing asbestos. Attachment B is a document produced by Safe Work Australia which provides a non-exhaustive list of just how pervasive the use of asbestos can be. This list is intended for workers who may encounter asbestos in Australia, but also demonstrates how extensive a comprehensive list of all possible asbestos-containing materials would have to be.

## Possible improvements to the current regulatory frameworks for ensuring products containing asbestos are not illegally imported to Australia

In addition to the changes in supply chain management, more visible enforcement of the regulations, and consequences for breaching them, is necessary. Punitive measures must be enforced to ensure products that are brought to Australia don't contain ACMs.

Considering the legacy issues we already have in Australia and the fact that Australia has a zero tolerance policy on asbestos, any breach of the regulation should not go without consequence. Strict liability should be imposed on the supply chain to ensure compliance.

Significant risks have arisen following the increase in demand for sourcing building products through online platforms such as the Chinese e-commerce company, Alibaba. Overseas merchants are easily able to import and sell their goods through this online business model to consumers around the world. The reliability of these products can be severely questioned as a quick search on the Alibaba

website will identify a vast array of asbestos products.

The agency is aware of various state and territory WHS regulators that have issued notices to suppliers for the removal of the asbestos-containing material following the illegal importation and installation of products containing asbestos. The agency has been made aware of recent incidents where a supplier has challenged the notices in the Industrial Relations Commission.

It is the strong view of the agency that regulators should require the removal of this material. This is based on the premise that if the regulators do not require removal then it may be seen as an acceptance of breaches of regulations and would create a series of ongoing issues, including a second legacy period.

With regards to coordination between Australian Government, state and territory governments for a strategic approach to preventing the importation of products containing asbestos, the agency provides secretariat support for the Heads of Workplace Safety Authorities (HWSA) Imported Materials with Asbestos Working Group (working group). The HWSA working group is of particular importance as the group coordinates the Rapid Response Protocol (the protocol) which has increased awareness of import incidents among regulators and ensures a consistent response nationally when ACMs are identified.

As part of the agency's role to provide an effective coordinated response when ACMs in imported products are identified, the agency has worked collaboratively with the Department of Immigration and Border Protection and other government entities through the HWSA working group.

The working group is working closely with the Department of Immigration and Border Protection to prevent asbestos imports entering into Australia. To date a number of constructive teleconferences have occurred with updates being provided on key matters such as the incident relating to the company, Yuanda. Members of the working group include the Australian Border Force, the Department of Immigration and Border Protection, Australian Competition & Consumer Commission, Safe Work Australia, WorkSafe New Zealand, Ministry for the Environment New Zealand and all Australian state and territory jurisdictions.

## Other related matters

As part of the the agency's direct role under the *National Strategic Plan for Asbestos Management and Awareness 2014-18* (the National Strategic Plan) to provide an effective coordinated response when ACMs in imported products are identified, the agency provides information to importers on the application process for gaining permission to import or export asbestos and ACM.

The agency is responsible for providing advice to the Minister for Employment in relation to requests for permission to import asbestos, as the Minister has the ability to grant permission for the importation of samples of asbestos for the purposes of research, analysis or display, in some circumstances.

In order to provide its advice, the agency prepares a briefing to the Minister, providing recommendations as to whether it believes the permission should be granted. The recommendation to grant permission is given to assist the agency in achieving the outcomes under the National Strategic Plan.

The granting of a permit will assist the agency to achieve either the **ultimate aim** of the National Strategic Plan, to prevent exposure to asbestos fibres, in order to eliminate asbestos-related disease; or **certain outcomes** under the National Strategic Plan. Where the benefit of granting the permission is derived by Australia, the granting of permission generally assists ASEA in achieving the **ultimate aim**. The benefit would be derived by Australia where the granting of permission prevents ACMs being imported into Australia, thereby reducing the risk of exposure, and in turn the incidence of asbestos-related disease.

There are currently 25 companies who have ongoing permission to import asbestos samples into Australia. 17 of these permits will expire on 30 June 2017 and eight permits will expire on 31 December 2017.

The agency has recently sought advice from the Australian Government Solicitor (AGS) on the publication on the agency website of information about permissions granted under the *Customs (Prohibited Imports) Regulations 1956* for the importation of asbestos.

The reasoning behind publishing this information is to assist the agency in achieving the outcomes under the National Strategic Plan. The benefit being derived for Australia is that the general public are able to access a comprehensive list of laboratories/consultants that hold ongoing permission to import samples of goods or materials containing asbestos, for the purpose of research, analysis or display within Australia.

The granting of permission prevents ACMs being imported into Australia, thereby reducing the risk of exposure, and in turn the incidence of asbestos-related disease. A disclaimer will also clearly highlight that the listing of the permission is not an endorsement from the government for the business, consultant or for the quality of the laboratory.

The AGS has advised the agency that there is nothing in the *Asbestos Safety and Eradication Agency Act 2013*, the *Customs (Prohibited Imports) Regulations 1956* or the *Customs Act 1901* that would prevent publication of the names of laboratories or consultants that have been granted ongoing permission. The process for the agency from now is to seek consent from the holders of permits prior to the publication and establish an appropriate format to publish the information on the agency website.

## Attachments

### Attachment A

Supply Chain flow chart

### Attachment B

A list of goods that could potentially contain ACMs – Safe Work Australia

### Attachment C

Factsheet - Countries with bans on all types of asbestos

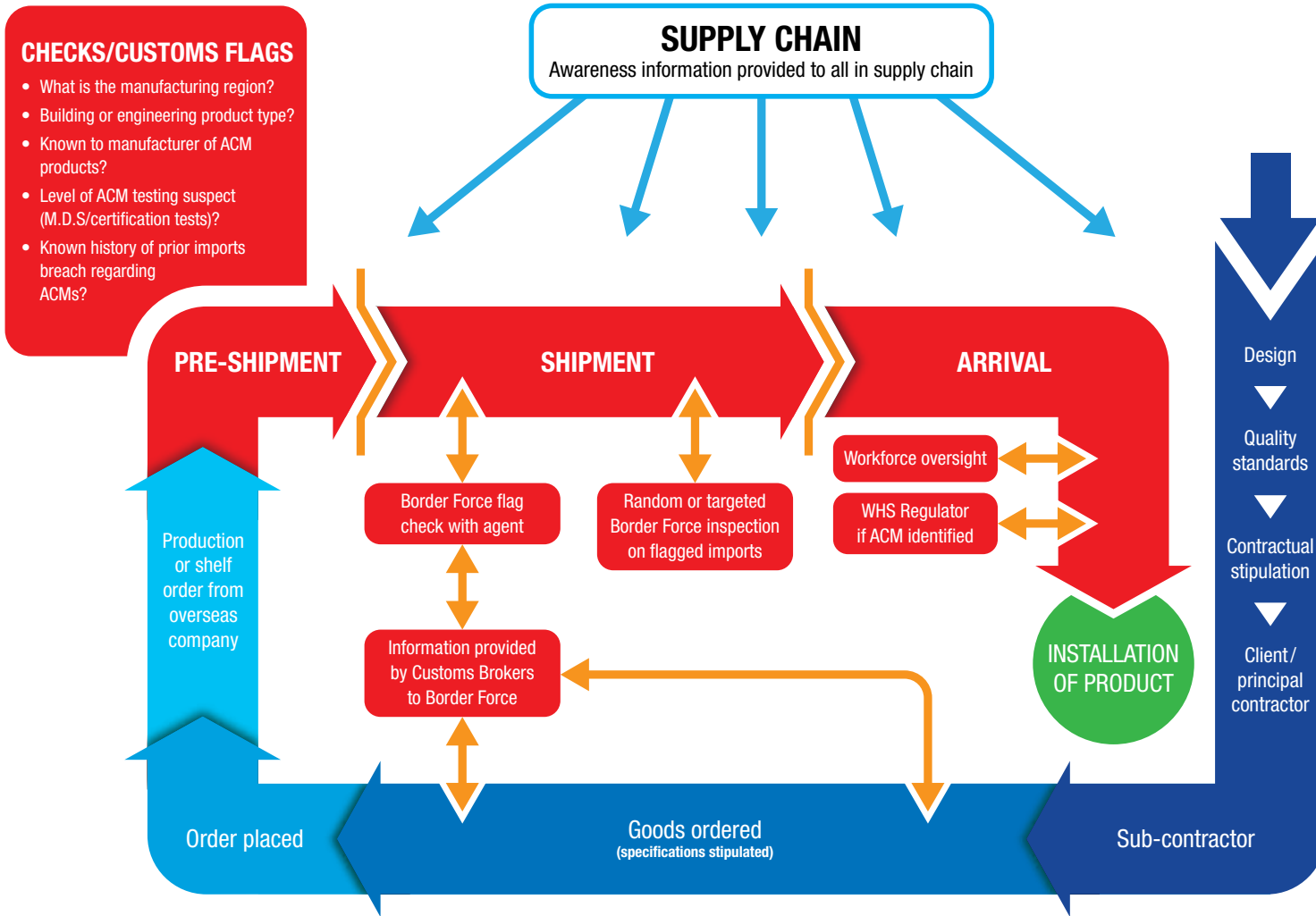
### Attachment D

ASEA submission – Inquiry into non-conforming building products – 3 August 2015

### Attachment E

ASEA supplementary submission – 27 August 2015

➤ Attachment A: Supply Chain Flow Chart



This supply chain diagram outlines the process in which a product is created for installation as part of a project, from the concept and design phase through to manufacturing and then installation.

At all stages of this supply chain, particularly the designer, manufacturer, importer, head contractor and all sub-contractors are required to be aware of Australian laws and regulations regarding the importation and use of asbestos-containing materials to ensure compliance.

The supply chain process is further complicated by the fact that most products are now manufactured outside of Australia and therefore, strict controls on materials and production are harder to verify or enforce.

The strict prohibition on asbestos-containing materials must be stipulated from the commencement or design stage and then fed through the process to production or shelf order stage, prior to shipment. Ensuring compliance with Australian regulations prior to shipment will minimise the need for inspection at Customs ports and delays in clearance of goods.

The checks/customs flags are the questions that need to be asked at the points throughout the supply chain process in identifying whether the products comply with regulations and quality standards, particularly materials used in production.

The next page provides a detailed explanation of each stage of this supply chain.



## Stages of the supply chain

### Design

At this early stage, those individuals who are involved in the design of projects which will likely lead to the use of products that may contain asbestos in their manufacture, should have a clear knowledge of Australia's prohibition on the use of this material and a knowledge of where ACMs may be present in imported materials and products.

### Quality standards / surveyors

The professionals working in this area of building and engineering should have the knowledge to ensure contracts that stipulate materials and procurement processes required in tenders, highlight that the use of ACMs in building and construction products are flagged as not meeting Australian construction standards and our nations policy on zero tolerance for the use of ACMs.

### Contractual stipulation

It should be clearly stated in construction contracts that the use of ACMs is prohibited and contractual penalties will apply for breaches of this prohibition including costs of removal and rectification work.

### Client / Principal contractor / Sub-contractor

There needs to be specific focus on this stage and in relation to education and knowledge of product risk and Australia's policy on asbestos and its use. Recent breaches indicate that at the contractor and sub-contractor level, material sourcing policies are clearly a problem. A concentrated effort must be made to ensure procurement policies include an understanding of high risk products and our government's policies on asbestos materials.

### Goods ordered / Goods placed

It is critical at this stage that when products are being sourced from overseas, Customs Brokers are able to recognise and advise their clients of high risk products and high risk source countries that may breach Australia's policy on the importation of ACMs. It is necessary that any importation arrangements that may require additional oversight because of likely risk factors be flagged with the Australia Border Force when initial paperwork for importation is lodged.

### Production or shelf order from overseas company / Pre-shipment

There needs to be a greater understanding of the manufacture and product use of ACMs internationally, with critical focus on our trading partners in Asia. Intelligence needs to be gathered on likely sources of products containing asbestos and imports that may emanate from high risk suppliers should be red flagged for compliance checks, with specific investigation of due diligence checks undertaken by importers.

### Shipment / Arrival

Those imports that have been identified as high risk or red flagged should be subject to greater compliance checks and testing on arrival. Those individuals found importing products without regard to Australia's policy on asbestos, should face the legal consequences for their actions in putting the general public's health and safety in danger.

### Installation of product

This is the final step in oversight of the supply chain. Recent incidents have shown how important it is for

those installing high risk products to be able to identify and manage any suspect materials or products. It is critically important that supervisors, tradespersons and building and construction workers have knowledge of ACMs and at risk imported products. They are the last gatekeeper in preventing a new legacy health risk from imported asbestos.

## ➤ Attachment B: Examples of asbestos-containing materials

This list of some of the main asbestos-containing materials is taken from the National Occupational Health and Safety Commission Code of Practice for the Safe Removal Of Asbestos (2nd Edition, 2005) available at: <http://www.safeworkaustralia.gov.au/NR/rdonlyres/1A198A7C-D0A7-40AD-964E-31673C695E92/0/AsbestosCode.pdf>

(This is not an exhaustive list)

### A

Air-conditioning ducts: exterior or interior acoustic and thermal insulation  
Arc shields in lift motor rooms or large electrical cabinets  
Asbestos-based plastics products - as electrical insulates and acid-resistant compositions or aircraft seat  
Asbestos ceiling tiles  
Asbestos-cement conduit  
Asbestos-cement electrical fuse boards  
Asbestos-cement external roofs and walls  
Asbestos-cement in the use of form work when pouring concrete  
Asbestos-cement internal flues and downpipes  
Asbestos-cement moulded products such as gutters, ridge cappings, gas meter covers, cable troughs and covers  
Asbestos-cement pieces for packing spaces between floor joists and piers  
Asbestos-cement (underground) pits, as used for traffic control wiring, telecommunications cabling, etc

Asbestos-cement render, plaster, mortar and coursework  
Asbestos-cement sheet  
Asbestos-cement sheet behind ceramic tiles  
Asbestos-cement sheet internal over exhaust canopies such as ovens, fume cupboards, etc.  
Asbestos-cement sheet internal walls and ceilings  
Asbestos-cement sheet underlays for vinyl  
Asbestos-cement storm drain pipes  
Asbestos-cement water pipes (usually underground)  
Asbestos-containing laminates (e.g. formica) used where heat resistance is required, e.g. ships  
Asbestos-containing pegboard  
Asbestos felts  
Asbestos marine board, e.g. marinate  
Asbestos mattresses used for covering hot equipment in power stations  
Asbestos paper used variously for insulation, filtering and production of fire resistant laminates  
Asbestos roof tiles  
Asbestos textiles  
Asbestos textile gussets in air-conditioning ducting systems  
Asbestos yarn  
Autoclave / steriliser insulation

### B

Bitumen-based water proofing such as malthoid, typically on roofs and floors but also in brickwork  
Bituminous adhesives and sealants  
Boiler gaskets

Boiler insulation, slabs and wet mix  
Brake disc pads  
Brake linings

### C

Cable penetration insulation bags (typically Telecom)  
Calorifier insulation  
Car body filters (not common)  
Caulking compounds, sealant and adhesives  
Cement render  
Chrysotile wicks in kerosene heaters  
Clutch faces  
Compressed asbestos-cement panels for flooring, typically verandas, bathrooms and steps for demountable buildings  
Compressed asbestos fibres (CAF) used in brakes and gaskets for plant and automobiles

### D

Door seals on ovens

### E

Electric heat banks - block insulation  
Electric hot water services - normally not asbestos but some millboard could be present  
Electric light fittings, high wattage, insulation around fitting (and bituminised)  
Electrical switchboards – see Pitch-based  
Exhausts on vehicles

**F**

Filler in acetylene gas cylinders  
Filters - beverage; wine filtration  
Fire blankets  
Fire curtains  
Fire-rated wall rendering containing asbestos with mortar  
Fire-resistant plaster board, typically on ships  
Fire-retardant material on steel work supporting reactors on columns in refineries in the chemical industry  
Flexible hoses  
Floor vinyl sheets  
Floor vinyl tiles  
Fuse blankets and ceramic fuses in switchboards

**G**

Galbestos™ roofing materials (decorative coating on metal roof for sound proofing)  
Gaskets - chemicals, refineries  
Gaskets - general  
Gauze mats in laboratories / chemical refineries  
Gloves - asbestos

**H**

Hairdryers - insulation around heating elements  
Header (manifold) insulation

**I**

Insulation blocks  
Insulation in electric reheat units for air conditioner systems

**L**

Laboratory bench tops  
Laboratory fume cupboard panels  
Laboratory ovens - wall insulation  
Lagged exhaust pipes on emergency power generators  
Lagging in penetrations in fireproof walls  
Lifts shafts - asbestos-cement panels lining the shaft at the opening of each floor, and asbestos packing around penetrations  
Limpet asbestos spray insulation  
Locomotives - steam; lagging on boilers, steam lines, steam dome and gaskets

**M**

Mastics  
Millboard between heating unit and wall  
Millboard lining of switchboxes  
Mortar

**P**

Packing materials for gauges, valves, etc., can be square packing, rope or loose fibre  
Packing material on window anchorage points in high rise buildings  
Paint, typically industrial epoxy paints  
Penetrations through concrete slabs in high rise buildings  
Pipe insulation including moulded sections, water-mix type, rope braid and sheet  
Pitch-based (e.g. zelemite, ausbestos, lebah) electrical switchboard  
Plaster and plaster cornice adhesives

**R**

Refractory linings  
Refractory tiles  
Rubber articles - extent of usage unknown

**S**

Sealant between floor slab and wall, usually in boiler rooms, risers or lift shafts  
Sealant or mastik on windows  
Sealants and mastics in air-conditioning ducting joints  
Spackle or plasterboard wall jointing compounds  
Sprayed insulation - acoustic wall and ceiling  
Sprayed insulation - beams and ceiling slabs  
Sprayed insulation - fire retardant sprayed on nut internally, for bolts holding external building wall panels  
Stoves - old domestic type; wall insulation

**T**

Tape and rope - lagging and jointing  
Tapered ends of pipe lagging, where lagging is not necessarily asbestos  
Tilux sheeting in place of ceramic tiles in bathrooms  
Trailing cable under lift cabins  
Trains - country - guards vans - millboard between heater and wall  
Trains - Harris cars - sprayed asbestos between steel shell and laminex

**V**

Valve, pump, etc. insulation

## ➤ Attachment C: Countries with bans on all types of asbestos

Asbestos has been banned in Australia since 2003. All other OECD countries, except for Canada, Mexico and the United States, have also banned asbestos.

Country	Date/year ban came into force
Algeria	14 October 2009
Argentina	1 January 2003
Australia	31 December 2003
Bahrain	1996
Brunei	Date to be determined
Chile	12 July 2001
Egypt	2005
European Union: Cyprus, Czech Republic, Estonia, Greece, Hungary, Lithuania, Malta, Romania, Portugal, Slovakia, Bulgaria, Spain, Luxembourg, Latvia, Ireland, United Kingdom, Belgium, France, Germany, Poland, Slovenia, Croatia, Italy, Finland, The Netherlands, Austria, Denmark, Sweden.	Commenced in 1983, with complete ban on all forms of asbestos in all 28 member states by 1 January 2005.
Gabon	between 2002 and 2004
Honduras	2004
Iceland	1983
Israel	2011
Japan	1 March 2012

Country	Date/year ban came into force
Jordan	16 August 2006
Korea	2009
Kuwait	1995
Mauritius	2004
Moldova	late 2016 ban planned and confirmed
Mozambique	24 August 2010
New Caledonia	2007
New Zealand	1 October 2016
Norway	1984
Oman	2008
Qatar	2010
Saudi Arabia	1998
Serbia	2011
Seychelles	2009
South Africa	28 March 2008
Turkey	2010
Uruguay	May 2002

## ➤ Attachment D: ASEA submission to the Inquiry into the effects of non-conforming building products on the Australian building and construction industry – 3 August 2015

1. All forms of asbestos were prohibited in Australian workplaces from 31 December 2003. This ban is reflected in work health and safety (WHS) laws in all Australian jurisdictions. The prohibition on the use of asbestos in Australia is supplemented by the Customs (Prohibited Imports) Regulations 1956 (the Regulations), which bans the importation into Australia of all types of asbestos and products containing asbestos, except under limited circumstances.
2. The importation of non-conforming building products is an issue of significant concern to the Asbestos Safety and Eradication Agency (the agency) and its key stakeholders. This is because the agency and its stakeholders consider 'non-conforming building products' to include products manufactured with asbestos, which have been illegally imported into Australia. Accordingly, reference to non-conforming products throughout this submission refers to a product that contains asbestos, which is imported in breach of the Regulations.
3. The importation of non-conforming building products impacts the agency's ability to achieve its overarching objective, which is to eliminate asbestos-related disease within Australia.
  - This objective is outlined in the National Strategic Plan for Asbestos Management and Awareness 2014-18, available for download at <http://asbestosafety.gov.au/national-strategic-plan>
- Non-conforming building products have an impact upon the agency's ability to meet its objective because the use of such products can result in exposure of Australian workers and/or members of the public to asbestos fibres, which in turn can lead to the development of asbestos-related disease.
4. Despite the ban, asbestos has been detected in a wide range of goods and materials imported into Australia, including in building and construction materials such as cement compound board (see Attachment A for further details).
5. The agency's mandate in this area is driven by outcome 3.6 of the National Strategic Plan "effective coordinated response when asbestos containing materials in imported products are identified".
  - a) **The economic impact of non-conforming building products on the Australian building and construction industry;**
6. There are a number of economic impacts on the Australian building and construction industry that arise as a result of the importation of non-conforming building products. These impacts include:
  - The economic loss incurred by the importer in relation to the cost of testing products to confirm they are asbestos free
    - Testing may be undertaken at the Australian border at the request of the Department of Immigration and Border Protection, where goods are suspected of containing asbestos
      - The cost of any testing is borne by the importer.
    - Testing may also be undertaken by the importer as a precaution, to ensure workers will be safe from exposure to asbestos and to ensure compliance with the Regulations
  - The economic loss incurred by the importer where goods have been found to contain asbestos and are required to be remediated or sent back to the country of origin
    - Where goods are held at the border for testing and subsequently confirmed to contain asbestos, the importer will be liable to pay for the cost of removing the asbestos or returning the goods to the country of origin.
  - The economic loss incurred by the importer in relation to delays caused by products requiring testing and remediation.
    - Any cost incurred as a result of delays (for instance, for testing and remediation) will be borne by the importer.
    - This can result in significant costs to the importer where the quantity or size of the goods being imported is significant.

- A previous incident involving the importation of pre-assembled switch rooms destined for Australia's resource exploration development industry, which were found to contain asbestos, required the importer to pay for space to hold the goods at the border, due to the large size of the equipment.

**b) The impact of non-conforming building products on:**

- industry supply chains, including importers, manufacturers and fabricators,**
- workplace safety and any associated risks,**
- costs passed on to customers, including any insurance and compliance costs;**
- the overall quality of Australian buildings;**

7. There have been a significant number of incidents involving the importation of asbestos-containing goods or materials into Australia, in breach of the Regulations.
8. While the incidents outlined in Attachment A include building and construction equipment and materials found to contain asbestos by the Department of Immigration and Border Protection at the border, as well as those identified by the Australian Competition and Consumer Commission and/or relevant work, health and safety regulators in their respective jurisdictions, it is likely that there have been further instances where building and construction equipment and materials containing asbestos have made their way into Australia's building and construction industry without detection by any regulator.

9. The impact of this is that there may be Australian buildings or structures constructed post 2003 (when the ban on importation took effect), which have used asbestos-containing materials without anyone's knowledge.
  - The use of these asbestos-containing materials during construction would place workers and / or members of the public at risk of asbestos exposure, if the asbestos-containing materials were disturbed, for example, by cutting, drilling and sanding etc.
  - Further, the asbestos-containing materials would not be included in the building's asbestos register. Therefore, a worker or contractor working on the building or structure may disturb the asbestos-containing materials after construction is complete, placing themselves and other occupants at ongoing risk of exposure to asbestos fibres, without knowledge of the risk. As the use of the asbestos containing goods or materials is unknown, there would be no safety precautions put in place to mitigate the risk of asbestos exposure by either workers or occupants.
10. Accordingly, where imported asbestos-containing materials have been used in the construction of a building or structure, the health and safety of the occupants could be compromised by the risk of exposure to asbestos fibres.
11. In addition to health and safety risks, there is also a potential for higher costs to be passed onto customers and clients as a result of the use of non-conforming

building products. This includes higher maintenance, refurbishment, demolition, disposal and insurance costs.

- For instance, if asbestos containing goods or materials are identified after the construction of a building or structure, there will be ongoing costs associated with reviewing the condition of the asbestos-containing materials and ensuring they remain safe.
- When it comes time for refurbishment or demolition of the building or structure, there may also be increased costs associated with removing the asbestos and disposing of it in a safe manner.
- Further, if a claim for workers' compensation were to be accepted for an asbestos-related disease that was developed as a result of exposure to non-conforming building products, then the business would incur the costs associated with increased workers' compensation premiums.

**c) Possible improvements to the current regulatory frameworks for ensuring that building products conform to Australian standards, with particular reference to the effectiveness of:**

- policing and enforcement of existing regulations,**
- independent verification and assessment systems,**
- surveillance and screening of imported building products, and**
- restrictions and penalties imposed on non-conforming building products; and**
- any other related matters.**

12. Currently, the Regulations include penalties for any breaches. These penalties include fines of up to \$170,000. However the agency understands such penalties have not been commonly used as a deterrent.
13. The agency considers that an increased willingness to enforce the penalties available under the Regulations would assist in reducing the incidence of non-conforming building products being imported into Australia.
14. While many importers have contracts with overseas suppliers that stipulate their goods must be asbestos-free, experience has shown that certification by overseas manufacturers cannot always be relied upon.
  - Accordingly, an increased understanding of Australia's import requirements relating to asbestos by overseas manufacturers and Australian importers would assist in reducing the incidence of asbestos containing materials being imported into Australia.
15. Increased surveillance and screening of imported building products, with particular attention to those products previously found to contain asbestos as well as those products originating from countries where asbestos is known to be used in the manufacturing process, would assist in identifying non-conforming building products and ensuring they do not end up in an Australian buildings or structures, where they may expose occupants to asbestos fibres when they are disturbed.

## Background: The formation of the Asbestos Safety and Eradication Agency

### Asbestos Management Review

The Australian Government established the Asbestos Management Review in 2010. The Asbestos Management Review Report was released on 16 August 2012, and included 12 recommendations which addressed a range of issues related to asbestos in Australia, including:

- identification
- management
- transport, storage and disposal
- awareness and education
- improved data and information sharing
- the development of a national strategic plan and creation of a new statutory Australian Government agency to administer it
- medical research
- international leadership
- former compulsorily acquired property.

### Asbestos Safety and Eradication Agency

Following one of the recommendations of the Asbestos Management Review, the Asbestos Safety and Eradication Agency (ASEA) was established on 1 July 2013 to provide a national focus on asbestos issues.

ASEA's focus goes beyond workplace safety to encompass environmental and public health concerns. ASEA aims to ensure asbestos issues receive the attention and focus needed to drive change across all levels of government. This is achieved through the development and implementation of the National Strategic Plan for Asbestos Management and Awareness.

Under Section 9 of the Asbestos Safety and Eradication Agency Act 2013 (Cth), the role of ASEA is to:

- encourage, coordinate, monitor and report on the implementation of the national strategic plan;
- provide advice to the Minister on matters of asbestos safety
- liaise with Australian, State, Territory, local and other governments about matters relating to the national strategic plan and asbestos safety, and
- commission, monitor, and promote research about asbestos safety.

## Attachment A to Agency submission of 3 August 2015

### Incidents involving the importation of building equipment or materials found to contain asbestos

- The below outlines those incidents involving the importation of building or construction materials found to contain asbestos.
- It should be noted that there have been a significant number of other incidents involving the importation of asbestos containing materials or goods, but these have not been listed because the imported goods or materials were not considered by the agency to be building or construction materials.
- The response to these types of incidents is coordinated through the HWSA Imported Materials with Asbestos Working Group, which is guided by a Rapid Response Protocol.
- The HWSA Imported Materials with Asbestos Working Group was established by the Heads of Workplace Safety Authorities (HWSA) in 2012. The Rapid Response Protocol enables government agencies to work cooperatively and efficiently across jurisdiction and portfolio lines when products have been identified as containing asbestos and there is concern such products may cross/have crossed state lines.

- The Rapid Response Protocol ensures that pertinent information is shared by all government agencies with an interest in a particular incident and enables a nationally uniform compliance and enforcement approach to be undertaken in response to future incidents.

#### 2014

1. In November 2014, cement compound board confirmed to contain chrysotile asbestos was imported into the ACT from China.
2. In June 2014, a type of boiler was identified as containing chrysotile asbestos. The boiler was one of six boilers designed and built in South Korea and imported into Australia in February 2008. One of the boilers imported into Australia deteriorated to the point where the metal structure failed at which time it was found to contain chrysotile asbestos.
3. Earlier in the same month, a NSW owner builder purchased a shed from a supplier on the internet. The shed was confirmed as containing chrysotile asbestos in the mastic sealing tape installed between the roof sheets.
4. In March 2014, a product by the name NUTPLUG, imported from China into Australia for use as a component of Loss Circulation Material, was identified as containing chrysotile asbestos. The Loss Circulation Material was for use during the operation of coal-gas drilling rig operation, to help prevent drilling fluids moving sideways.

#### 2012

5. On 1 August 2012, pre-assembled electrical switch rooms imported into Australia from Indonesia for a LNG plant was confirmed to contain asbestos.

#### 2010

6. In 2010, asbestos was detected in a range of imported equipment and components, primarily for use in Australia's resource exploration development industry.



## ➤ Attachment E: Supplementary submission – Inquiry into the effects of non-conforming building products on the Australian building and construction industry – 27 August 2015

1. On 3 August 2015, the Asbestos Safety and Eradication Agency (the agency) made a submission to the inquiry into the effects of non-conforming building products on the Australian building and construction industry.
2. Included in the agency's submission was an attachment outlining recent incidents involving the importation of building materials found to contain asbestos, in breach of the Customs (Prohibited Imports) Regulations 1956.
3. The agency wishes to make a supplementary submission to inform the inquiry of further incidents that have occurred involving imported building materials found to contain asbestos, since the submission was made.
4. These incidents are outlined below.

### **Further incidents involving the importation of building equipment or materials found to contain asbestos**

#### Expanded Polystyrene (EPS) Sandwich Panel

5. In early August 2015, a prohibition notice was issued by WorkCover NSW to a building site in NSW, following the discovery of asbestos in fibrous building panels that had been imported to construct a residential building.

6. The panels were imported from China and were thought to be asbestos-free, but subsequent testing by a laboratory accredited by the National Association of Testing Authorities (NATA) has shown they contain chrysotile asbestos.
7. The imported expanded polystyrene panels had been cut and significantly damaged on-site.
8. The builder was ordered to engage a licensed asbestos removalist to remediate the site and remove the remaining panels.
9. Further information in relation to this incident is available at <https://www.workcover.nsw.gov.au/news/safety-alert/asbestos-in-imported-building-products>

#### High Density Board

10. In mid-August 2015, the agency was informed of an incident involving samples of high density board or 'fiber reinforced cement board', imported into Australia from China.
11. Three samples of the high density compressed board (which had been supplied by the manufacturer for export as asbestos-free) were subsequently tested by a laboratory accredited by NATA, (COHLABS) which confirmed that one of the samples contained chrysotile asbestos.

- This is despite the importer being provided with a test report indicating the materials were asbestos-free.
  - Following the detection of asbestos in one of the original samples, the Chinese manufacturer provided new samples that it again claimed were asbestos-free. When these subsequent samples were tested by COHLABS, chrysotile asbestos was again detected in one of the three samples tested.
12. Given all three of the original samples were supposedly manufactured at the same processing plant and appear to have similar physical morphology under stereo-microscopy examination, it was recommended by the Australian NATA accredited laboratory who undertook the testing, that all of the High Density Compressed Board samples be treated as asbestos containing until further information is provided by the manufacturer.