



## Asbestos Interdepartmental Committee (IDC) – Meeting Minutes

Date: Wednesday 21 September 2016 (10:00-11:30am)

### (1) Meeting attendees and apologies

Department	IDC FAS representative (or proxy)
<p>Department of Immigration and Border Protection (DIBP)</p> <p>Meeting host</p>	<p><b>Andrew Chandler</b> (Co-Chair), A/g First Assistant Secretary (FAS) Traveller, Customs and Industry Policy (TCIP)</p> <p><b>Jane McClintock</b>, A/g Assistant Secretary, Trade and Customs Branch, TCIP</p> <p>§22(1)(a)(ii), Director, Regulated Goods Policy Section</p> <p>§22(1)(a)(ii), Assistant Director, Regulated Goods Policy Section</p> <p>§22(1)(a)(ii), Assistant Director, Regulated Goods Policy Section</p>
Department of Employment (Employment)	<p><b>Justine Ross</b> (Co-Chair), A/g Group Manager, Work, Health and Safety (WHS) Policy</p> <p>§22(1)(a)(ii), Director, Seacare and WHS Policy Section</p> <p>§22(1)(a)(ii), Assistant Director, Seacare and WHS Policy Section</p>
Department of Foreign Affairs and Trade (DFAT)	<p>§22(1)(a)(ii), Director, Trade Law Section</p> <p>§22(1)(a)(ii), Policy Officer, China Economic and Trade Section</p>
Department of Industry, Innovation and Science (DIIS)	<b>Trevor Power</b> , Head of Division, Sectoral Growth Policy
Department of the Environment and Energy (DoEE)	<b>Andrew McNee</b> , Assistant Secretary, Chemicals and Waste Branch, Environment Standards Division
Department of Infrastructure and Regional Development (Infrastructure)	<b>Alex Foulds</b> , Executive Director, Surface Transport Policy Division
The Treasury (Treasury)	<p><b>Lisa Elliston</b>, Principal Advisor, Market and Competition Policy Division</p> <p>§22(1)(a)(ii), Policy Analyst, Consumer Policy Unit</p>
Department of Health (Health)	<p><b>Masha Somi</b>, A/g FAS, Office of Health Protection</p> <p><b>Teresa Gorondi</b>, A/g Assistant Secretary, Health Protection Policy, Office of Health Protection</p> <p><b>Gillian Shaw</b>, Assistant Secretary, Best Practice Regulation, Health Systems Policy Division</p>

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*Apologies:* DIIS, **Chris Locke**, Head of Division, Portfolio Strategic Policy Division

### (2) Action items

Action items from the meeting are listed at **Attachment A**.

### (3) Agenda items and outcomes

#### (3.1) Agenda Item 1 – Welcome and apologies

- Mr Chandler, Co-Chair - DIBP, welcomed attendees to the first Asbestos IDC meeting involving Commonwealth agencies to enhance coordination on asbestos policy and regulatory issues.
- Ms Justine Ross, Co-Chair - Employment, provided opening remarks highlighting that asbestos policy issues were a shared responsibility across Commonwealth and state and territory agencies.

#### (3.2) Agenda Item 2 – Introduction

##### General

- Mr Chandler advised that the IDC was a senior executive forum that would provide strategic direction to enable effective policy and regulatory coordination across Commonwealth agencies in managing asbestos issues across the supply chain.
- Mr Chandler proposed that the IDC run for 12 months and be reviewed at the end of this period.
- Mr Chandler advised that the IDC's draft Terms of Reference (ToR) were intended to provide a clear understanding about the IDC's role and to clarify the IDC's accountabilities.
- Mr Chandler advised that there was no pre-identified work programme for the IDC, but that it would be the IDC's role to identify the activities that are needed to improve coordination and address policy gaps. The IDC agreed that it would need to consider developing a forward work programme.
- Ms Ross advised that gaps existed and that there was a need to consider the effectiveness of cross-government coordination. As an example of inconsistent approaches, Ms Ross noted that for imported crayons found to have contained asbestos, the Australian Competition and Consumer Commission (ACCC) did not consider the goods as hazardous and decided to not recall the goods. Ms Ross noted the varying treatment of asbestos-containing materials domestically.

##### ToR

- The IDC considered and endorsed the draft ToR with the following amendment:
  - the IDC's ToR be reviewed within three months (as suggested by Ms Somi, Health);
    - this would provide sufficient time to clarify agencies' roles and responsibilities and to develop a forward work program for the IDC; and
- The IDC agreed that the updated draft ToR should be circulated to Commonwealth regulators (e.g. the ACCC) and other relevant bodies that will be members of the IDC. The IDC agreed that significant concerns about these ToR, if raised by these bodies, would be addressed at the IDC's second meeting.

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Item No	Action Item	Responsible Agency	Timeframe
IDC 2016-01	Update draft ToR.	DIBP	COB 14/10/2016
IDC 2016-02	Circulate updated draft ToR to regulators and other relevant bodies for comment.	DIBP	COB 19/10/2016
IDC 2016-03	Revisit ToR in three months (from date of endorsement) to assess whether they are appropriate.	DIBP and Employment	End-January 2017

### (3.3) Agenda Item 3 – Roles and responsibilities of Commonwealth policy agencies in managing asbestos issues

- Members discussed their relevant roles and responsibilities in meaning asbestos policy and regulatory issues.

#### DIBP

Ms McClintock advised that:

- DIBP administers the asbestos import prohibition under the *Customs (Prohibited Imports) Regulations 1956*.
- The Australian Border Force (ABF) undertake a range of targeted border operations to detect, deter and take action against importers of goods containing asbestos. This includes intervention activities, using profiles and alerts on specific goods or country or origin.
- The ABF also undertakes domestic and international outreach and education activities to promote compliance with Australian import/export regulations through its Border Watch Program.
- DIBP supports compliance and enforcement activities by relevant WHS authorities, by providing relevant import data.

#### Employment

s22(1)(a)(ii)

advised that:

- Employment is responsible for WHS policy in relation to the Commonwealth WHS Act and the Commonwealth's adoption of the national model WHS laws.
- Employment is also responsible for developing policy on the harmonisation of WHS laws across Australia.
- Employment works closely with Commonwealth, state and territory WHS regulators, industry and unions in relation to the development and implementation of WHS laws.
- Employment has policy responsibility for the imposition of the asbestos import and export bans.

#### Treasury

Ms Elliston advised that:

- Treasury is responsible for Australian Consumer Law and that ACCC is one of its portfolio agencies. The ACCC is responsible for consumer product safety and for

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identifying and addressing consumer safety issues (e.g. issuing product recalls). The ACCC also has a direct enforcement role in relation to asbestos.

### Infrastructure

Mr Foulds advised that:

- Infrastructure is responsible for asbestos management on Norfolk Island and the Australian external territories, including for asbestos removal (e.g. in schools and hospitals).
- Asbestos related issues in airports and airport-owned land are managed by state and territory authorities.
- The Australian Maritime Safety Authority is responsible for managing asbestos in sea vessels.
- Infrastructure is involved, to a certain extent, in managing asbestos issues for vehicles (but that it does not complete any testing and domestic issues are referred to the ACCC).

### DoEE

Mr McNee advised that:

- DoEE is responsible for managing the *Hazardous Waste Act 1989* and international engagement in the Rotterdam Convention, as they relate to asbestos matters.
- DoEE is responsible for permitting the importation and exportation of asbestos that is deemed as hazard waste (with four permits, one for export and three for imports provided historically).
- Over the last decade an intense debate had taken place to list chrysotile asbestos to the hazardous substances under Annex 3 of the Rotterdam Convention. Australia has supported this proposal, but Russia and Canada have strongly opposed this proposal.
- The next convention meeting will be held in April 2017 and that the proposed change to Annex 3 is likely to be the most significant policy issue.

### DFAT

s22(1)(a)(ii)

advised that:

- DFAT's roles and responsibilities in relation to asbestos were limited. DFAT is interested in asbestos issues and how they impact trade and free trade agreements.

### DIIS

Mr Power advised that:

- DIIS has Commonwealth responsibility for standards and for building codes through developing model legislation for building regulators in states and territories. This model is facilitated through the Building Ministers' Forum.
- DIIS noted that asbestos is not specifically addressed in building codes.

### Health

Ms Shaw advised that:

- Health has no regulatory function in relation to asbestos, but is willing to engage with the IDC to consider any impacts (as a 'watching brief').

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### Other issues

- Mr Foulds suggested that the tables detailing roles and responsibilities of agencies in managing asbestos issues<sup>1</sup> should include relevant forums, working groups and international conventions.
- Mr Chandler noted that the roles and responsibilities diagram and related tables would be updated (to reflect IDC discussion) and circulated for final comment by IDC members.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2016-04	Roles and responsibilities diagram and related tables updated and circulated to IDC members for comment.	DIBP	COB 19/10/2016
IDC 2016-05	IDC members to provide feedback.	All	COB 24/10/2016

### **(3.4) Agenda Item 4 – IDC engagement**

#### Commonwealth agencies

- The IDC agreed that Commonwealth regulators and other bodies responsible for managing asbestos issues should be invited to be IDC members and should attend meetings where useful. This included; Safe Work Australia, ACCC, the Asbestos Safety and Eradication Agency (ASEA) and Comcare. The IDC did not identify any other relevant Commonwealth agencies for IDC membership.

#### State and territory agencies and industry

- The IDC agreed that it would be appropriate to invite relevant state and territory regulators to IDC meetings, as relevant and appropriate. For example, this would be on an issues basis. The IDC agreed to tailor IDC meeting agendas to ensure the regulators needs are met.
- The IDC agreed to invite WHS regulators to the next IDC meeting (given their extensive involvement in asbestos matters). Ms Ross advised that Employment would write to Heads of Workplace Safety Authorities (HWSA) seeking regulator representation to attend the next IDC meeting (e.g. SafeWork NSW and SafeWork VIC).
- The IDC agreed to consider the effectiveness of this approach in engaging with regulators over the next few months.
- The IDC agreed that it should use existing mechanisms to engage with industry representatives rather than create a new forum or inviting industry to attend each IDC meeting (noting this would not be effective or efficient). The IDC agreed that the Australian Industry Group and the Australian Chamber of Commerce and Industry could be appropriate industry representatives to discuss asbestos issues at future meetings.
- The IDC agreed that ASEA could act as a conduit in conveying the concerns of stakeholders, in particular unions and asbestos support groups, on asbestos issues.

<sup>1</sup> The IDC agreed that this diagram and related tables should form an attachment to the IDC's ToR.

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Item No	Action Item	Responsible Agency	Timeframe
IDC 2016-06	Seek WHS representatives from the HWSA to attend the next IDC meeting.	Employment	COB 07/10/2016
IDC 2016-07	Invite relevant WHS state and territory regulators to the second IDC meetings.	Employment	COB 14/10/2016

**(3.5) Agenda Item 5 – Update on Asbestos Importation Review – Implementation**

- s22(1)(a)(ii), DIBP, advised that the review found that the Department's management of the asbestos border control was effective, but identified some opportunities for organisational and technical improvements.
- s22(1)(a)(ii) noted that the review made 11 recommendations addressing three themes: structure and strategy; strengthening engagement, and enhancing border processes.
- s22(1)(a)(ii) advised that on 4 August 2016, DIBP published the report with minor redactions related to the ABF's targeting methods.
- s22(1)(a)(ii) advised that DIBP is implementing the review's recommendations as a priority.
- s22(1)(a)(ii) advised that DIBP was finalising the implementation planning arrangements, including governance. s22(1)(a)(ii) noted that the implementation process would occur over five phases, with the first four phases expected to be completed by September 2017. The delivery of the review's recommendations will complement the ABF's strengthened strategic and operational focus on goods at risk of containing asbestos.

**(3.6) Agenda Item 6 – Legislative Issues**

- Ms Ross advised the *Customs (Prohibited Imports) Regulations 1956* and the *Customs (Prohibited Exports) Regulations 1958* (the Regulations) required updating to better align with the model WHS laws and to incorporate technical updates.
- Ms Ross advised that the Regulations provided for a zero tolerance approach to asbestos, at the border. These means that even trace amounts of asbestos are not allowed which causes practical and technical issues.
- Ms Ross advised that under the Regulations imports of asbestos can be permitted, under strict and limited circumstances, if granted by the Minister of Employment. ASEA currently advises the Minister on applications to import asbestos.
- Ms Ross indicated that the IDC provides an opportunity to consider how the system for seeking exemptions from the import and export ban could be strengthened.
- Ms Ross noted that Employment is asking Safe Work Australia to examine whether work health and safety regulators have sufficient power to direct that imported asbestos-containing materials identified in a building be removed.
- Ms Ross also indicated that this IDC provides an opportunity for risks and gaps in the regulatory framework to be identified and solutions considered. For example, the

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pre-border certification process could be strengthened to ensure it is completed in accordance with Australian standards. Ms Ross noted that testing every consignment at the border or on work sites for asbestos was not practical or feasible.

- Ms Ross advised that a review of penalties for asbestos importation offences should be completed. This follows calls from unions and Senator Xenophon for increased penalties as a stronger deterrent.
- Mr Chandler advised that the ABF used a range of mechanisms to ensure better compliance outcomes for asbestos offences, including issuing warning, imposing penalties, undertaking outreach and education to promote voluntary compliance.
- Mr Chandler noted that the ABF's role in relation to penalties for asbestos offences also included investigating and prosecuting potential breaches of import regulations. Mr Chandler advised that in implementing the review's recommendations DIBP was considering ways to increase voluntary compliance, and improve its management of prosecutions.

#### (3.7) Agenda Item 7 – Other business

- Mr Power, DoEE recommended that the IDC engage on, and share, key talking points on asbestos in the lead up to Senate Estimates.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2016-08	DIBP / Employment to share key talking points in preparation for Senate Estimates.	DIBP and Employment	Before October Senate Estimates hearings

#### Next meeting

- Mr Chandler advised that the next IDC meeting will be hosted by Employment the end-October 2016.
- Mr Chandler advised that draft minutes of the IDC's first meeting will be circulated to members for comment (for endorsement at the IDC's next meeting).

Item No	Action Item	Responsible Agency	Timeframe
IDC 2016-09	Send draft minutes for IDC's first meeting to members for comment.	DIBP	COB 19/10/2016

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**Attachment A - Action items**

Item No	Action Item	Responsible Agency	Timeframe
IDC 2016-01	Update draft ToR.	DIBP	COB 14/10/2016
IDC 2016-02	Circulate updated draft ToR to regulators and other relevant bodies for comment.	DIBP	COB 19/10/2016
IDC 2016-03	Revisit ToR in three months (from date of endorsement) to assess whether they are appropriate.	DIBP and Employment	End-January 2017
IDC 2016-04	Roles and responsibilities diagram and related tables updated and circulated to IDC members for comment.	DIBP	COB 19/10/2016
IDC 2016-05	IDC members to provide feedback.	All	COB 24/10/2016
IDC 2016-06	Seek WHS representatives from the HWSA to attend the next IDC meeting	Employment	COB 07/10/2016
IDC 2016-07	Invite relevant WHS state and territory regulators to the second IDC meeting.	Employment	COB 14/10/2016
IDC 2016-08	DIBP / Employment to share key talking points in preparation for Senate Estimates.	DIBP and Employment	Before October Senate Estimates hearings
IDC 2016-09	Send draft minutes for IDC's first meeting to members for comment.	DIBP	COB 19/10/2016





## Asbestos Interdepartmental Committee (IDC) – Meeting Minutes

Date: Monday 24 October 2016 (10:00-11:30am)

### (1) Meeting attendees and apologies

Department	IDC FAS representative (or proxy)
<p>Department of Employment (Employment)</p> <p>Meeting host</p>	<p><b>Steve Kibble</b> (Co-Chair), Group Manager, Work Health and Safety (WHS) Policy</p> <p><b>Justine Ross</b>, Branch Manager, WHS Policy</p> <p>§22(1)(a)(ii), Director, Seacare and WHS Policy Section</p> <p>§22(1)(a)(ii), Assistant Director, Seacare and WHS Policy Section</p>
<p>Department of Immigration and Border Protection (DIBP)</p>	<p><b>Andrew Chandler</b> (Co-Chair), A/g First Assistant Secretary (FAS) Traveller, Customs and Industry Policy (TCIP)</p> <p><b>Jane McClintock</b>, A/g Assistant Secretary, Trade and Customs Branch, TCIP</p> <p>§22(1)(a)(ii), Director, Regulated Goods Policy Section</p> <p>§22(1)(a)(ii), Assistant Director, Restricted Goods Policy Section</p>
<p>Australian Border Force (ABF)</p>	<p><b>Erin Dale</b>, Commander, Customs Compliance Branch, Australian Border Force</p>
<p>Department of Foreign Affairs and Trade (DFAT)</p>	<p>§22(1)(a)(ii), Policy Officer, China Economic and Trade Section (teleconference)</p>
<p>Department of Industry, Innovation and Science (DIIS)</p>	<p><b>Anne Byrne</b>, General Manager, Industry Transition, Industry Growth Division</p> <p>§22(1)(a)(ii), A/g Manager, Building Industry, Industry Growth Division</p>
<p>Department of the Environment and Energy (DoEE)</p>	<p><b>Andrew McNee</b>, Assistant Secretary, Chemicals and Waste Branch, Environment Standards Division</p>
<p>Department of Infrastructure and Regional Development (Infrastructure)</p>	<p><b>Alex Foulds</b>, Executive Director, Surface Transport Policy Division</p>
<p>The Treasury (Treasury)</p>	<p><b>Lisa Elliston</b>, Principal Advisor, Market and Competition Policy Division</p> <p>§22(1)(a)(ii), Policy Analyst, Consumer Policy Unit</p>
<p>Department of Health (Health)</p>	<p><b>Masha Somi</b>, A/g FAS, Health Systems Policy, Office of Health Protection</p> <p><b>Teresa Gorondi</b>, A/g Assistant Secretary, Health Protection Policy, Office of Health Protection</p>

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Commonwealth, State and Territory Regulators	<p><b>Mr Justin Napier</b>, General Manager, Regulatory Operations, Comcare</p> <p>s22(1)(a)(ii), Director, Regulatory Policy, Comcare (observer),</p> <p><b>Greg Jones</b>, ACT Work Safety Commissioner, Worksafe ACT</p> <p>s22(1)(a)(ii), Director, Construction and Asbestos Services, Safe Work NSW</p> <p><b>Chris McKie</b>, Chief Inspector, Compliance and Enforcement Division, SafeWork SA</p> <p><b>Paul Goldsbrough</b>, Executive Director, Safety, Policy and Workers Compensation Division, Queensland Treasury</p>

**Apologies:** Health, **Sharon Appleyard**, FAS, Office of Health Protection; DIIS, **Trevor Power**, Head of Division, Sectoral Growth Policy Division; Infrastructure; **Andrew Johnson**, General Manager, Head of Division, Sectoral Growth Policy Division.

### (2) Action items

Action items from the meeting are listed at **Attachment A**.

### (3) Agenda items and outcomes

#### (3.1) Agenda Item 1 – Welcome and apologies

- Mr Steve Kibble opened the meeting, welcomed attendees and outlined the purpose of the meeting.
- Mr Kibble noted the Senate has agreed to re-establish the Inquiry into non-conforming building products with a term of reference now included on imported products containing asbestos.
- Mr Kibble noted that the Hon Greg Hunt MP, Minister for Industry, Innovation and Science wrote to Ministers Cash and Dutton on asbestos issues.
- Ms Anne Byrne confirmed that Minister Hunt had written noting that asbestos is a whole-of-government issue. Ms Byrne indicated that the correspondence is a result of the illegally imported asbestos being discovered at the Perth Children's Hospital and the Port Pirie smelter redevelopment and the impact of the discoveries on Minister Hunt's portfolio. The letter put forward some ideas for consideration including penalties, consultation and the consideration of new technologies to support the control of asbestos at the border. Ms Byrne indicated that her department is happy to work with Employment and DIBP on the issue.
- Mr Kibble invited the Department of Industry, Innovation and Science (DIIS) to address the next meeting in relation to the letter.

#### (3.2) Agenda Item 2 – Minutes, action items and Terms of Reference

- Minutes were agreed by members.
- Mr Andrew Chandler suggested members be given additional time to provide final comments on the draft Terms of Reference (ToR), including members individual roles and responsibilities.

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Item No	Action Item	Responsible Agency	Timeframe
IDC 2016-10	Members to provide final comments on the draft ToR, including on members roles and responsibilities.	All	Prior to third IDC meeting

**(3.3) Agenda Item 3 – Roles and responsibilities of Commonwealth policy agencies in managing asbestos issues**

- Mr Kibble invited agencies attending for the first time to outline their role and responsibilities in relation to asbestos.

Australian Consumer and Competition Commission (ACCC)

- Mr Neville Matthew noted that the ACCC has policy responsibility and regulatory oversight for the safety of consumer goods. The Australian Consumer Law (ACL) provides incentives for suppliers to voluntarily recall unsafe consumer goods. The ACL provides the Minister with the power to ban goods and publish information on recalls for consumers. The Minister also has the power to order recalls under certain circumstances such as if there is a risk of injury/illness for consumers and suppliers are not doing enough to manage that risk. Mr Matthew confirmed that the discovery of asbestos containing goods will not of itself trigger a mandatory recall of the product and that most goods are removed through the voluntary recalls.

Australian Border Force (ABF)

- Ms Erin Dale noted that the ABF is responsible for detection and intervention at the border and engages in ongoing development of profiles and alerts to strengthen the ability to detect asbestos containing goods pre and at the border. Ms Dale noted the ABF works closely with high risk countries (those that mine, manufacture and export asbestos containing goods and have been identified as having exported these goods to Australia previously) and other organisations such as the General Administration of Quality Supervision, Inspection and Quarantine China (AQSIQ) to educate suppliers in that country.
- Ms Dale indicated that it would be helpful to the ABF if there was clarity about the professional standards and requirements applied to hygienists when sampling goods at the border. Ms Dale also indicated that Customs Brokers and Forwarders are concerned about the due diligence they need to undertake to ensure the goods they report do not contain asbestos. The Department has provided material to Brokers to clarify their role in the supply chain. Ms Dale indicated that the Department is exploring various field testing technology for onsite testing of goods.
- Ms Ross noted that most assessors are used to identifying asbestos in homes and commercial buildings but not in goods at the border, and asked whether more information or guidance is required.
- s22(1)(a)(ii) agreed with concerns about the ability of hygienists to detect asbestos at the border. s22(1)(a)(ii) indicated that hygienists have the requisite knowledge in the workplace, but noted asbestos is often found in unusual components so not all hygienists would be aware of where to test. In addition, destructive testing is required in some circumstances and not all laboratories can do this. s22(1)(a)(ii) noted that more work may need to be done, especially in relation to bonded products.
- Mr Kibble asked Ms Dale if there was any evidence to suggest that the media reports of a tsunami of asbestos-containing goods entering Australia was correct.

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- Ms Dale noted that increased monitoring is not showing an increase in the identification of asbestos-containing goods at the border. The ABF has also introduced random sampling of shipments (irrespective of whether they have the required certification) and by all indications it appears that the current controls are effective.
- Ms Byrne noted that DIIS had oversight of Australian Standards, and would be happy to report back to the area of DIIS with responsibility. Ms Byrne also indicated that she would be happy to arrange for NATA to talk at the next meeting.

### Asbestos Safety and Eradication Agency (ASEA)

- Mr Peter Tighe indicated that ASEA had responsibility for the oversight of the National Strategic Plan for Asbestos Management and Awareness, which was endorsed by all Australian governments. ASEA also provide a coordination role and secretariat support for the Heads of Workplace Safety Authorities' Imported Materials with Asbestos Working Group. Mr Tighe noted that the Working Group's role is to manage the response once asbestos goods are identified in Australia.
- Mr Tighe noted that the Agency does not have any regulatory responsibility, but works closely with others across all levels of government and the community.
- Mr Tighe noted that ASEA works with members of the community, including builders and subcontractors through the Building, Construction and Demolition Sectors Committee. The committee provides advice to ASEA on issues relating to the management of asbestos in the building, construction and demolition sectors and the implementation of the National Strategic Plan.
- Mr Tighe indicated that ASEA deals with legacy asbestos rather than imported asbestos, but suggested that imported asbestos is finding its way into new buildings and that is causing concern. Mr Tighe claimed this is due to the decrease in manufacturing in Australia and the move to source cheaper goods overseas. Mr Tighe advised areas for further examination: greater targeting especially manufacturing in specific Chinese provinces; ABF should look for hygienists that are used to doing survey work for construction projects prior to demolition; refine target groups across the supply chain; work with the Department of Foreign Affairs and Trade to develop intelligence; and produce guidance for importers and Customs Brokers to support them in meeting their importation assurance responsibilities.
- Mr Chandler noted the department's outreach program with overseas governments and customs agencies (e.g. China).

### **(3.4) Agenda Item 4 and 5 – Asbestos supply chain issues relevant to WHS/WHS State and Territory Regulators**

- Mr Kibble noted that the IDC is looking into the management of asbestos that has entered supply chains after the asbestos importation ban was put in place, not legacy asbestos.
- Mr Kibble asked that WHS regulators provide the IDC with an overview of their role and views on whether they should have greater powers or enforcement action in relation to asbestos.

### Australian Capital Territory

- Mr Greg Jones advised that he is the ACT Work Safety Commissioner but also has responsibility for the ACT Environmental Protection Authority and the Building Registrar, as well as for Mr Fluffy issues. Mr Jones noted the ACT has a one-stop-shop for asbestos issues.

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- Mr Jones noted that there were three potential sites in the ACT where imported asbestos may have been used – however testing had come back negative for asbestos.
- Mr Jones noted the ACT's position is that where imported asbestos has been installed, the product is illegal and must be removed. In the ACT, forced removal is yet to be tested. The ACT will wait and see the outcome of the NSW appeal. Smaller goods (crayons, gaskets etc) are dealt with through fair trading who will publish recalls and bans.

### New South Wales

- s22(1)(a)(ii) advised that Safe Work NSW has a dedicated demolition and inspection team that has a lifecycle approach to asbestos.
- s22(1)(a)(ii) noted that Safe Work handles a number of legacy projects including in indigenous communities and undertake a proactive coordination approach with industry.
- s22(1)(a)(ii) raised the issue of the recently imported asbestos in building products. She advised that they are currently dealing with an appeal against a prohibition notice that ordered the removal of prohibited asbestos as part of the risk management plan from electrical substations. The importer s47G is appealing the decision on the basis that it is not reasonably practicable from a risk management perspective to remove the asbestos. The outcome of the appeal may indicate that there are gaps in the model WHS laws which need addressing.

### South Australia

- Mr Chris McKie advised that SA is waiting on the outcome of the s47G appeal. In the case of Nyrstar and the asbestos discovered in the acid plant vessels in Port Pirie, SafeWork SA s38
- Mr McKie also noted that there are ongoing investigations with SafeWork SA and ABF with regard to s47G.
- In both cases, SafeWork SA made the decision to order the removal of asbestos because it was illegally imported and it is in the best interests of the community for the asbestos to be removed.
- s47G and timeframes were short for removal.

### Queensland

- Mr Goldsbrough noted that even though the workplace ban on asbestos commenced in 2003, historically they have been managing asbestos in homes since 1987 – 88. Mr Goldsbrough advised that if a house was built before 1990, it is probable that asbestos is in the home, but if it was built after 2003 it is unlikely to be present.
- Mr Goldsbrough advised that all commercial properties must have an asbestos register if built before 2003, noting it is assumed that a property built after that date would have no asbestos because it can't be imported or used in Australia. Mr Goldsbrough claimed that recent incidences of imported asbestos being installed in new buildings underlines the premise on which the laws were constructed.

### Commonwealth

- Mr Justin Napier noted that Comcare has been dealing with legacy asbestos in infrastructure, in particular the Telstra pits as part of the NBN rollout, for which there has been a program in place for approximately four years to deal with the asbestos.



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- Mr Napier noted imported asbestos at the Perth Children's Hospital (PCH) for which John Holland, a licensee under the Comcare scheme, is the obligation holder under the WHS laws.
- Mr Napier advised that all the roof panels were removed from the PCH, but noted that not all the panels contained asbestos. The panels were removed voluntarily without a prohibition notice being issued.

### How to proceed

- Mr Kibble asked regulators if there was more the Commonwealth could do, for example, if the <sup>s47G</sup> appeal is successful, is there a need to revisit the WHS and customs laws and/or have a dedicated communication strategy.
- Ms Ross suggested there were two ways to address the issue – strengthen the laws so it is clear that illegally asbestos imports could be removed from workplaces through the issuing of improvement or prohibition notices; or accept that it is not reasonably practicable to remove the asbestos and manage it in-situ.
- Mr Goldsborough indicated a strong preference to strengthen the laws so it can be removed from workplaces.
- Mr McKie indicated that is also South Australia's preference.
- <sup>s22(1)(a)(ii)</sup> stated that in the case under appeal, <sup>s47G</sup> is arguing that once the asbestos is installed it is safer to manage it in-situ rather than remove it. <sup>s22(1)(a)(ii)</sup> suggested that <sup>s47G</sup> it will send a message to industry that it is worthwhile importing asbestos containing goods and installing them.
- Mr Goldsborough noted that the community recognises that legacy asbestos in homes cannot be removed without risk, but the community will not accept the risk of new asbestos containing materials in commercial buildings.
- <sup>s22(1)(a)(ii)</sup> also indicated a preference for strengthened laws so removal could be ordered.
- Ms Dale asked the ACCC about their role in the imported crayons containing asbestos.
- Mr Matthew noted the ACCC was not able to act in relation to the crayons as they did not pose an airborne risk or risk if ingested.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2016-11	IDC to examine ways to strengthen the model WHS laws.	Employment	Report back on progress at next meeting

### **(3.5) Agenda Item 6 – Stakeholder engagement**

#### Stakeholder engagement plan

- Mr Chandler noted that there are a broad range of government and non-government stakeholders with an interest in asbestos policy and regulation. It was agreed that a strategy should be developed by the secretariat that clearly sets out IDC engagement approaches with each group.
- Ms Byrne noted that there were different engagement fora already in place but we may need sharper messaging.
- Mr Tighe indicated that the messaging is starting to get out there – more guidance for those all down the supply chain would assist.



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- s22(1)(a)(ii) indicated that the HWSA Working Group was starting to flesh out how to respond to imported asbestos and there are systems in place once asbestos is identified post border, but it is important that importers ask for evidence that the product is asbestos free before it arrives.
- Mr Tighe at first suggested a new forum comprised of HIA, MBA, ACCi, AiGroup, unions could assist disseminate information but then later said the HWSA Working Group be an appropriate forum from which to engage with stakeholders.
- Ms Dale noted ABF's outreach program but identified a consumer information gap.

### Forward work program and stakeholder engagement

- Mr Kibble noted that a draft forward work program will be developed for consideration by members at future IDC meetings, including stakeholder engagement.
- Mr Chandler indicated that the IDC may need working groups for activities within the forward work program. Mr Chandler welcomed any interest in participation.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2016-12	Secretariat to develop a draft stakeholder engagement plan and draft forward work program for endorsement at the next IDC meeting.	DIBP and Employment	To be approved at next meeting
IDC 2016-13	DIIS to arrange appropriate areas (e.g. Australian Standards, NATA) to speak at next meeting.	DIIS	Prior to third IDC meeting

### **(3.7) Agenda Item 7 – Other business**

- Nil

### Next meeting

- The next meeting is scheduled for late November 2016 and will be hosted by the Department of Immigration and Border Protection.
- Members were advised that draft minutes of the IDC's second meeting will be circulated to members for comment (for endorsement at the IDC's next meeting).

Item No	Action Item	Responsible Agency	Timeframe
IDC 2016-14	Send draft minutes for IDC's second meeting to members for comment.	Employment	Prior to third IDC meeting

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Item No	Action Item	Responsible Agency	Timeframe
IDC 2016-10	Members to provide final comments on the draft ToR, including on members roles and responsibilities.	All	Prior to third IDC meeting
IDC 2016-11	Examine ways to strengthen the WHS laws.	Employment	Report back on progress at next meeting
IDC 2016-12	Secretariat to develop a draft stakeholder engagement plan and draft forward work program for discussion at the next IDC meeting.	DIBP and Employment	To be endorsed at next meeting
IDC 2016-13	DIIS to arrange appropriate areas (e.g. Australian Standards, NATA) to speak at next meeting	DIIS	Prior to third IDC meeting
IDC 2016-14	Send draft minutes for IDC's second meeting to members for comment.	Employment	Prior to third IDC meeting



## Asbestos Interdepartmental Committee (IDC) – Meeting Minutes

Thursday 15 December 2016 (3:30pm to 5:00pm)

### Agenda Item 1: Meeting attendees and apologies

Department	IDC FAS representative (or proxy)
Department of Employment (Employment)	<b>Justine Ross</b> (Co-chair), A/g Group Manager, Work Health and Safety Policy Group  §22(1)(a)(ii), Director, Seacare and WHS Policy Section
Department of Immigration and Border Protection (DIBP)	<b>Linda Geddes</b> (Co-chair), First Assistant Secretary, Traveller, Customs and Industry Policy Division.  <b>Andrew Chandler</b> , Assistant Secretary Trade and Customs Branch.  §22(1)(a)(ii), Director, Regulated Goods Policy.  §22(1)(a)(ii), Assistant Director, Regulated Goods Policy Section (Secretariat)  §22(1)(a)(ii), Senior Policy Officer, Trade and Customs Branch (Secretariat)
Australian Border Force (ABF)	<b>Erin Dale</b> , Acting Assistant Commissioner, Border Management Division, Australian Border Force  <b>Renae Hutchinson</b> , A/g Commander, Customs Compliance Branch
Department of Foreign Affairs and Trade (DFAT)	§22(1)(a)(ii), Director, China Economic and Trade Section
Department of Industry, Innovation and Science (DIIS)	<b>Martin Squire</b> , General Manager, Trade and International Branch.
Department of the Environment and Energy (DoEE)	<b>Andrew McNee</b> , Assistant Secretary, Chemicals and Waste Branch, Environment Standards Division
Department of Infrastructure and Regional Development (Infrastructure)	<b>Alex Foulds</b> , Executive Director, Surface Transport Policy Division
The Treasury (Treasury)	<b>Lisa Elliston</b> , Principal Advisor, Market and Competition Policy Division  §22(1)(a)(ii), Analyst, Consumer Policy Unit, Markets Group
Department of Health	<b>Sarah Norris</b> , A/g Assistant Secretary, Health Protection Policy

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(Health)	
Australian Competition and Consumer Commission (ACCC)	<b>Neville Matthew</b> , General Manager, Consumer Product Safety Branch
Asbestos Safety and Eradication Agency (ASEA)	s22(1)(a)(ii), Director and Chief Financial Officer (teleconference)
<b>Non members</b>	
National Measurement Institute	<b>Richard Coghlan</b> , Laboratory Services Manager
National Association of Testing Authorities (NATA)	<b>John Mitchell</b> , Manager Government Relations (Agenda Item 5 only)

**Apologies:**

- **Steve Kibble** (Co-Chair), Group Manager, Department of Employment
- **Peter Tighe**, CEO, Asbestos Safety and Eradication Agency

**Agenda Item 2: Minutes, Action Items and Terms of Reference**Previous minutes

- Mr Neville Matthew will send minor amendments to the minutes from the IDC's second meeting, out of session.
- The secretariat will circulate for IDC endorsement out of session.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2016-15	Secretariat to circulate revised minutes from second meeting for endorsement out of session.	DIBP. All to endorse.	Prior to fourth IDC meeting.

Action items

- Action items were noted by members.

Terms of reference

- Members endorsed the terms of reference and noted it will be reviewed in three months (Action Item IDC 2016-03).

**Agenda Item 3: ASEA Conference and Building Ministers' Forum**ASEA Conference

- Mr Nick Miller provided members with an overview of the recent International Conference on Asbestos Safety and Management, run by ASEA, in Adelaide on 13-15 November 2016.
- The programme, session and plenary presentations are available on the ASEA website.

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- ASEA invited members to submit any ideas on future conference topics.

### Building Ministers' Forum

- Ms Justine Ross, Ms Erin Dale and Mr Chandler provided members with an update on the asbestos agenda item at the recent Building Ministers' Forum held in Perth on 14 December 2016.
- The forum focussed on the Western Australian Building Commission's audit of Yuanda-supplied building products in Western Australia, with a focus on the interim audit report for the Perth Children's Hospital.
- Mr Chandler stated that the Western Australia Building Commissioner was complimentary of the DIBP/ABF response to the incident.
- Mr Martin Squire will table the Western Australian Building Commission's audit papers when available, at a future IDC meeting.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2016-16	DIIS to table the Western Australian Building Commission's audit papers when available.	DIIS	Future IDC meeting.

### **Agenda Item 4: Minister Hunt's Letter**

- Mr Squire stated that further information on Minister Hunt's three proposals was not available.
- Members noted that the draft forward work programme included consideration of all three of Minister Hunt's suggestions.
- DIBP and Employment advised that they support the IDC exploring new technologies to ensure greater asbestos supply chain transparency, and reviewing penalties for importing and using asbestos.
- DIBP and Employment advised they would be unlikely to support the establishment of a separate working group to advise Ministers. This function would be served by existing fora including the IDC, the Building Ministers' Forum and the Senate Inquiry into non-conforming building products.

### **Agenda Item 5: Asbestos testing and sampling processes, procedures and standards**

- Mr John Mitchell from the National Association of Testing Authorities (NATA) provided an overview of NATA's role, including asbestos testing and sampling processes, procedures and standards.
- Key issues are summarised below.

### General observations

- NATA has experienced a significant increase in enquiries from importers since the Department of Immigration and Border Protection Notice 2016/30 was published. There is improvement in the quality of enquiries received.
- NATA is providing a submission to the Senate Inquiry into non-conforming building products.

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- Vocabulary regarding asbestos controls creates problems:
  - ‘Asbestos free’ and ‘Asbestos Containing Materials’ do not have universal application (e.g. in the USA, goods will be considered ‘asbestos free’ if asbestos content is less than one per cent).

Importers need to know the basis of any declaration relating to the asbestos content of their goods.

### Sampling

- The sampling process is critical. Each sample must be representative of the sampled product.
- Sampling some products may be straightforward but for layered material, sampling can be complicated (for example crayons).
- Some NATA accredited laboratories will undertake sampling, others don't.
- Can have reasonable confidence in occupational hygienists, if they are a member of the Australian Institute of Occupational Hygienists (AIOH).

### Testing methods

- NATA accredited laboratories will test to Australian Standard 4964 (Polarised Light Microscopy) with a 0.1 to 0.01% detection limit.
- The Australian Standard is a qualitative method, detecting presence, not concentration.
- Standards Australia will review the Australian Standard and look to accredit ISO 22262-1.
- Overseas laboratories may be more willing to seek accreditation to the ISO, compared with the Australian Standard.
- Scanning Electron Microscopy (SEM) may be used to confirm the presence of asbestos where PLM reports unidentified fibres. There are currently no NATA accredited SEM laboratories in Australia.
- A list of importers that have been granted permission to import a sample to be tested for asbestos is available from the ASEA website.
- NATA has Mutual Recognition Arrangements with other international equivalents. In China this is the China National Accreditation Service (CNAS). Chinese laboratories may be accredited by CNAS, but importers must confirm whether accreditation is to the Australian Standard 4964, as the laboratory may be accredited by CNAS, but to another Australian standard, for a different product.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2016-17	ASEA to provide IDC members with links to the web address of importers who have been granted import permission.	ASEA (through the Secretariat)	Prior to the fourth IDC meeting.



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### Policy issues

- Australia's border prohibition requires all goods to have 'nil' asbestos content. Currently, there is no method that can test to 'nil'.
- If ISO standards are adopted and testing accuracy can be improved to 0.001%, then improved testing techniques may result in asbestos being found in existing installed materials that had previously tested negative.
- Surveillance of the supply chain creates an environment for good behaviour. This will only work if importers are aware of the consequences for not having adequate assurances of the supply chain.

### **Agenda Item 6: Forward Work Programme and Stakeholder Engagement Plan**

- Members commented on the draft Forward Work Programme and the following additions were agreed:
  - Explore opportunities to improve working relationships (including information sharing arrangements) with overseas regulatory authorities, in countries considered a risk of exporting asbestos to Australia (Mr Neville Matthews).
  - A strategy to increase the number of NATA accredited Australian laboratories (Ms Erin Dale).
  - Consider verification and auditing of accreditation schemes and accredited authorities.
- Members noted that a review of Australian consumer law is underway and the outcomes should be considered at a future IDC meeting.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2016-18	Include consideration of the 'Review of Australian Consumer Law' as future agenda item	Treasury/ ACCC	For future IDC meeting.

- Members were asked to consider and advise on stakeholder engagement mechanisms to support the IDC forward work programme.
- Members noted that the Maritime Union of Australia would be an interested union stakeholder as a result of asbestos containing materials in shipping.
- Members agreed that PM&C should be requested to participate in future IDC meetings once the forward work programme is agreed and the IDC is seeking to progress policy proposals.
- The secretariat will circulate an email to members on Friday 16 December 2016 with instructions to provide out of session comments on both documents.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2016-19	Secretariat to circulate email to members with instructions on how to provide comments out of session on the forward work programme and stakeholder engagement plan.	DIBP/ Employment	Friday 16 December 2016
IDC 2016-20	Secretariat to re-circulate forward work programme and stakeholder	DIBP/ Employment	Prior to fourth IDC meeting

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	engagement plan for consideration in expectation of endorsement at the fourth IDC meeting.		
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**Agenda Item 7: Other business**

- It was noted that DIBP, Employment and ASEA are providing submissions to the Senate Inquiry into non-conforming building products.
- It was agreed that the IDC reconvene in February or early March 2017. The agenda is to include endorsement of the forward work programme and the stakeholder engagement plan, and the preparation and approach to the upcoming Senate Inquiry hearings.
- Following the February/March meeting, the IDC will convene quarterly to allow sufficient time to progress forward work programme activities between meetings.

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### Asbestos IDC third meeting - Action items consolidated list

Item No	Action Item	Responsible Agency	Timeframe	Status
<b>Action Items from the first IDC meeting (21 September 2016)</b>				
IDC 2016-01	Update draft ToR.	DIBP	COB 14/10/2016	Complete
IDC 2016-02	Circulate updated draft ToR to regulators and other relevant bodies for comment.	DIBP	COB 14/10/2016	Complete
IDC 2016-03	Revisit ToR in three months (from date of endorsement) to assess whether they are appropriate.	DIBP and Employment	Fifth IDC Meeting.	In progress
IDC 2016-04	Roles and responsibilities diagram and table updated and circulated to IDC members for comment.	DIBP	COB 14/10/2016	Complete
IDC 2016-05	IDC members to provide feedback.	All	COB 19/10/2016	Complete
IDC 2016-06	Seek WHS representatives from the HWSA to attend the next IDC meeting	Employment	By CoB 07/10/2016	Complete
IDC 2016-07	Invite relevant WHS state and territory regulators to the second IDC meeting.	Employment	By CoB 14/10/2016	Complete
IDC 2016-08	DIBP / Employment to share key talking points in preparation for Senate Estimates.	DIBP and Employment	Before October Senate Estimates hearings	Complete
IDC 2016-09	Send draft minutes for IDC's first meeting to members for comment.	DIBP	COB 14/10/2016	Complete
<b>Action Items from the second IDC meeting (24 October 2016)</b>				
IDC 2016-10	Members to provide final comments on the draft ToR, including on members roles and responsibilities.	All	Prior to third IDC meeting	Complete
IDC 2016-11	Examine ways to strengthen the WHS laws.	Employment	Report back on progress at next meeting	Complete
IDC 2016-12	Secretariat to develop a draft stakeholder engagement plan and draft forward work program for discussion and endorsement.	DIBP and Employment	To be endorsed at next meeting	Complete
IDC 2016-13	DIIS to arrange appropriate areas (eg Australian Standards, NATA) to speak at next meeting	DIIS	Prior to third IDC meeting	Complete
IDC 2016-14	Send draft minutes for IDC's second meeting to members for comment.	Employment	Prior to third IDC meeting	Complete

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Item No	Action Item	Responsible Agency	Timeframe	Status
<b>Action items from third meeting (15 December 2016)</b>				
IDC 2016-15	Secretariat to circulate revised minutes from second meeting for endorsement out of session.	DIBP. All to endorse.	Prior to fourth IDC meeting.	complete
IDC 2016-16	DIIS to table the Western Australian Building Commission's audit papers when available.	DIIS	Future IDC meeting.	In progress
IDC 2016-17	ASEA to provide IDC members with links to the web address of importers who have been granted import permission.	ASEA (through the Secretariat)	Prior to the fourth IDC meeting.	Complete
IDC 2016-18	Include consideration of the 'Review of Australian Consumer Law' as future agenda item	Treasury/ ACCC	For future IDC meeting.	In progress
IDC 2016-19	Secretariat to circulate email to members with instructions on how to provide comments out of session on the forward work programme and stakeholder engagement plan.	DIBP/ Employment	Friday 16 December 2016	Complete
IDC 2016-20	Secretariat to re-circulate forward work programme and stakeholder engagement plan for consideration in expectation of endorsement at the fourth IDC meeting.	DIBP/ Employment	Prior to fourth IDC meeting	Complete

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Department of Employment

## Asbestos Interdepartmental Committee (IDC) – Meeting Minutes

Thursday 9 March 2017 (1:30pm to 3:00pm)

### Agenda Item 1: Welcome and apologies

Department	IDC FAS representative (or proxy)
Department of Employment (Employment)	<b>Steve Kibble</b> (Co-Chair), Group Manager, Department of Employment <b>Sarah Costelloe</b> , Acting Branch Head, Department of Employment s22(1)(a)(ii), Director, WHS Regulation Policy s22(1)(a)(ii), Assistant Director WHS Regulation Policy (Secretariat)
Department of Immigration and Border Protection (DIBP)	<b>Andrew Chandler</b> , (Co-Chair), Assistant Secretary Trade and Customs Branch s22(1)(a)(ii), Director, Regulated Goods Policy s22(1)(a)(ii), Senior Policy Officer, Trade and Customs Branch (Secretariat)
Australian Border Force (ABF)	<b>Erin Dale</b> , Acting Assistant Commissioner, Border Management Division, Australian Border Force
Department of Foreign Affairs and Trade (DFAT)	s22(1)(a)(ii), Policy Officer, China Economic and Trade Section
Department of Industry, Innovation and Science (DIIS)	<b>Anne Byrne</b> , Department of Industry, Innovation and Science
Department of the Environment and Energy (DoEE)	<b>Andrew McNee</b> , Assistant Secretary, Chemicals and Waste Branch, Environment Standards Division
Department of Infrastructure and Regional Development (Infrastructure)	s22(1)(a)(ii), (Proxy) Assistant Director, National Heavy Vehicle and Rail Regulation
The Treasury (Treasury)	<b>Emily Martin</b> , Principal Adviser, Consumer Policy
Department of Health (Health)	<b>Blair O'Connor</b> , A/g Assistant Secretary, Health Protection Policy

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Australian Competition and Consumer Commission (ACCC)	<b>Neville Matthew</b> , General Manager, Consumer Product Safety represented by <b>John Jamieson</b>
Asbestos Safety and Eradication Agency (ASEA)	<b>Peter Tighe</b> , CEO, Asbestos Safety and Eradication Agency, (teleconference) s22(1)(a)(iii), Director and Chief Financial Officer
<b>Non members</b>	
Australian Industry Group (AiG)	<b>Tracey Browne</b> , Manager – National Safety & Workers' Compensation Policy and Membership Services

**Apologies:**

- **Linda Geddes** Co-chair - First Assistant Secretary, Traveller, Customs and Industry Policy Division, DIBP
- **Sharon Appleyard** - First Assistant Secretary, Office of Health Protection, Health
- **Alex Foulds** - Executive Director, Surface Transport Policy Division, Infrastructure
- **Nicole Spencer** - A/g Executive Director, Policy and Research, Infrastructure

**Agenda Item 2: Minutes, Action Items and Terms of Reference**Previous minutes

- Comments received from IDC members on the draft minutes have been incorporated into the final minutes. The minutes were agreed by all members.

Action items

- Action Item IDC 2016-19 – has been actioned but not yet marked as complete.
- Action Item IDC 2016-03 –revising the Terms of Reference to be discussed under other business.
- Action Item IDC 2016-16 – an update on tabling the Western Australian Building Commission's audit papers was provided by DIIS. To date only the interim report is available. The final report will be tabled when finalised.

**Agenda Item 3: Forward Work Plan and Stakeholder Engagement Plan.**Forward Work Plan (FWP)

- Mr Andrew Chandler (DIBP) indicated that members' comments had been incorporated into the FWP and clarified that the role of the lead agencies was to consult with relevant stakeholders to ensure that the identified activities would be progressed.
- Ms Anne Byrne (DIIS) explained that in relation to the work to be undertaken on:
  - the review of asbestos testing and sampling processes by competent persons (item 2 of FWP), and
  - the investigation of new technologies for capabilities to test for asbestos (item 3 of FWP).

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DIIS would be happy to facilitate the initial interaction with CSIRO, NATA and other standard and conformance bodies, but feel that responsibility for these activities and the ongoing work should be led by DIBP and Employment. It was agreed that DIIS, DIBP and Employment would further discuss DIIS' concerns with the FWP and SEP out-of-session and agree on appropriate changes to the FWP and corresponding sections of the Stakeholder Engagement Plan (SEP).

- Mr Peter Tighe (ASEA) proposed that the timeline for the work associated with supporting awareness and voluntary compliance by industry with the asbestos ban across the supply chain (item 7 of FWP) be brought forward so as to commence in April 2017.
- The FWP was endorsed by members subject to further discussion between DIBP, Employment and DIIS.

#### Stakeholder Engagement Plan (SEP)

- Mr Steve Kibble (Employment) indicated that the SEP has been amended since the previous IDC meeting following further consideration of the work of the IDC. This plan will be updated following progress against the items in the FWP and engagement with stakeholders.
- The FWP was endorsed by members, with agreement to update as necessary, subject to further discussion between DIBP, Employment and DIIS.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-01	DIBP and Employment to consult further with DIIS on lead agency responsibilities under the FWP and SEP.	Employment, DIBP and DIIS.	
IDC 2017-02	Secretariat to send final FWP and SEP to IDC Members.	Employment	

#### **Agenda Item 4: Rotterdam Convention**

- Mr Andrew McNee (DoEE) provided an update on the processes for listing chrysotile asbestos in Annex III of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Convention). The next Conference of the Parties (COPs) to the Rotterdam Convention will be held 24 April to 5 May 2017.
- The Convention creates legally binding obligations for the implementation of the Prior Informed Consent procedure. This requires a party to the Convention to inform other parties of any national bans or restrictions of a listed substance, and requires an exporting country to take responsibility to ensure that no exports leave the country's territory when an importing country has made the decision not to accept the substance.
- Previous attempts to list chrysotile asbestos on the Rotterdam Convention have failed as the consent of all parties to the Convention is required for a substance to be listed in Annex III of the Convention.
- A small number of countries, including some which export asbestos such as the Russian Federation, continue to object to listing chrysotile asbestos. Because of this opposition it is believed by some that only through changes to voting arrangements for listing substances will future attempts to list chrysotile asbestos be likely.
- Other countries have opposed listing of other chemicals. Intersessional work on the effectiveness of the Convention in listing chemicals has led to a proposal being

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lodged by a group of African nations to reform the voting procedures for the CoP for the Convention. They are proposing that the Convention be amended so that agreement to list chemicals in Annex III be changed from consensus to a three-quarters majority.

- Australia has taken a strong leadership role in supporting the listing of chrysotile asbestos in Annex III to the Convention. Australia will arrange a forum prior to the meeting to focus on the critical issues, and expect strong support from stakeholders.

### Agenda Item 5: Other Business

- s22(1)(a)(iii) (ASEA) advised that the ASEA 2017 International Conference on Asbestos Awareness and Management is scheduled to be held in Canberra from 26 – 28 November 2017.
- Ms Erin Dale (ABF) indicated that the rapid response protocol continues to work well, and the ABF continues to work to stop asbestos imports through the areas of targeting high risk suppliers, countries of origin and specific products.
- Mr Kibble noted that the Senate inquiry into Non-Conforming Building Products was holding a second public hearing in Perth, WA on 9 March 2017. An interim report is scheduled for 28 April 2017 with the final report due on 25 May 2017.
- Mr Kibble also noted that DIIS has provided the IDC with a report prepared by NATA on its experience with a range of asbestos related issues through its Commonwealth and National Agency Standing Forum which will be distributed to members.
- Mr Kibble and Mr McNee also briefly discussed the asbestos thermochemical technology treatment process that destroys asbestos fibres producing a non-hazardous product suitable for use as road fill. A summary report will be provided to the IDC members once it has been provided to relevant Ministers.
- Mr Kibble noted that the Terms of Reference will be changed to reflect the change to the frequency of meetings from monthly or bi-monthly to quarterly, as previously discussed with IDC members. Any further proposed changes to the Terms of reference should be forwarded to the Secretariat.
- Ms Dale suggested CSIRO be invited to the next meeting. Mr Kibble indicated that the ACTU invitation to this meeting was to be held over until the next meeting.
- Mr Chandler noted that the next meeting is tentatively scheduled for 26 June 2017 and will be hosted by the Department of Immigration and Border Protection.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-03	Send report of the Senate Inquiry into Non-Conforming Building Products concerning asbestos imports to IDC members.	DIBP	
IDC 2017-04	NATA report to be forwarded to IDC members.	Employment	
IDC 2017-05	Distribute asbestos thermochemical technology summary information.	DoEE to provide to Employment to circulate.	

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IDC 2017-06	Invite ACTU to attend the next meeting.	Employment and DIBP	
IDC 2017-07	Invite CSIRO to attend an upcoming meeting.	Employment and DIBP	
IDC 2017-08	Send draft minutes for IDC's fourth meeting to members for comment.	Employment	

**Agenda Item 6: Industry Views**

- Mr Kibble introduced Ms Tracey Browne, the Manager of National Safety & Workers' Compensation Policy and Membership Services for the Australian Industry Group (AiG).
- Ms Browne provided an overview of AiG's views on asbestos imports:
  - there is no place for asbestos imports in Australia
  - it is especially important that the supply chains work well, and more work is required here to prevent the asbestos imports
  - it is important to identify when asbestos does enter Australia, where things go wrong so as to inform the broader business community, broaden the knowledge base that will help others in the future, and
  - in those instances when asbestos is incorporated into Australian infrastructure the relevant organisation should be required to recall the products and be responsible for the costs associated with removal and disposal. The cost of doing this will of itself be a deterrent.
- In regards to the testing of products to determine asbestos content, Ms Browne indicated that extending testing requirements may be problematic and not improve outcomes.
- The WHS and Customs regulatory frameworks provide clear obligations to reduce risk of imported asbestos.
- More education is needed for importers of building products and construction companies about importing from high risk countries and the nature of high risk products within the supply chain.
- The process to prevent asbestos imports needs to be solved collectively and the ABF is well placed to provide timely information on high risk countries and products to importers. A "watch list" indicating problem suppliers could be developed for industry.

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### Attachment A - Action items consolidated list

Item No	Action Item	Responsible Agency	Timeframe	Status
<b>Action Items from the first IDC meeting (21 September 2016)</b>				
IDC 2016-01	Update draft ToR.	DIBP	COB 14/10/2016	Complete
IDC 2016-02	Circulate updated draft ToR to regulators and other relevant bodies for comment.	DIBP	COB 14/10/2016	Complete
IDC 2016-03	Revisit ToR in three months (from date of endorsement) to assess whether they are appropriate.	DIBP and Employment	Fifth IDC Meeting.	In progress
IDC 2016-04	Roles and responsibilities diagram and table updated and circulated to IDC members for comment.	DIBP	COB 14/10/2016	Complete
IDC 2016-05	IDC members to provide feedback.	All	COB 19/10/2016	Complete
IDC 2016-06	Seek WHS representatives from the HWSA to attend the next IDC meeting	Employment	By CoB 07/10/2016	Complete
IDC 2016-07	Invite relevant WHS state and territory regulators to the second IDC meeting.	Employment	By CoB 14/10/2016	Complete
IDC 2016-08	DIBP / Employment to share key talking points in preparation for Senate Estimates.	DIBP and Employment	Before October Senate Estimates hearings	Complete
IDC 2016-09	Send draft minutes for IDC's first meeting to members for comment.	DIBP	COB 14/10/2016	Complete
<b>Action Items from the second IDC meeting (24 October 2016)</b>				
IDC 2016-10	Members to provide final comments on the draft ToR, including on members roles and responsibilities.	All	Prior to third IDC meeting	Complete
IDC 2016-11	Examine ways to strengthen the WHS laws.	Employment	Report back on progress at next meeting	Complete
IDC 2016-12	Secretariat to develop a draft stakeholder engagement plan and draft forward work program for discussion and endorsement.	DIBP and Employment	To be endorsed at next meeting	Complete
IDC 2016-13	DIIS to arrange appropriate areas (eg Australian Standards, NATA) to speak at next meeting	DIIS	Prior to third IDC meeting	Complete
IDC 2016-14	Send draft minutes for IDC's second meeting to members for comment.	Employment	Prior to third IDC meeting	Complete

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Item No	Action Item	Responsible Agency	Timeframe	Status
<b>Action items from third meeting (15 December 2016)</b>				
IDC 2016-15	Secretariat to circulate revised minutes from second meeting for endorsement out of session.	DIBP. All to endorse.	Prior to fourth IDC meeting.	Completed
IDC 2016-16	DIIS to table the Western Australian Building Commission's audit papers when available.	DIIS	Future IDC meeting.	DIIS to table at fifth IDC meeting
IDC 2016-17	ASEA to provide IDC members with links to the web address of importers who have been granted import permission.	ASEA (through the Secretariat)	Prior to the fourth IDC meeting. 2 Mar 2017	Completed
IDC 2016-18	Include consideration of the 'Review of Australian Consumer Law' as future agenda item	Treasury/ ACCC	For future IDC meeting.	Will be considered at Meeting 5 in Other business.
IDC 2016-19	Secretariat to circulate email to members with instructions on how to provide comments out of session on the forward work programme and stakeholder engagement plan.	DIBP/ Employment	16 Dec 2016	Completed
IDC 2016-20	Secretariat to re-circulate forward work programme and stakeholder engagement plan for consideration in expectation of endorsement at the fourth IDC meeting.	DIBP/ Employment	Prior to fourth IDC meeting 2 Mar 2017	Completed
<b>Action items from fourth meeting (9 March 2017)</b>				
IDC 2017-01	DIBP and Employment to consult further with DIIS on lead agency responsibilities under the FWP and SEP.	Employment, DIBP and DIIS.	Prior to fifth IDC meeting	Completed
IDC 2017-02	Secretariat to send final FWP and SEP to IDC Members.	Employment		
IDC 2017-03	Send report of the Senate Inquiry into Non-Conforming Building Products concerning asbestos imports to IDC members.	DIBP	Senate Inquiry granted extension: 31 Aug 2017 for interim report on extended ToRs for asbestos, and 31 Oct 2017 for final report.	Final report to be sent to members when tabled.
IDC 2017-04	NATA report to be forwarded to IDC members.	Employment	NATA report included in agenda for fifth meeting	

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Item No	Action Item	Responsible Agency	Timeframe	Status
IDC 2017-05	Distribute asbestos thermochemical technology summary information.	DoEE to provide to Employment to circulate.	Report to be distributed once it has been provided to relevant Ministers	
IDC 2017-06	Invite ACTU to attend the next meeting.	Employment and DIBP.	Prior to fifth IDC meeting	Unable to attend fifth meeting
IDC 2017-07	Invite CSIRO to attend an upcoming meeting.	Employment and DIBP.	CSIRO attending fifth IDC meeting	Completed
IDC 2017-08	Send draft minutes for IDC's fourth meeting to members for comment.	Employment		

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Australian Government  
Department of Immigration  
and Border Protection



Australian Government  
Department of Employment

### Agenda Item 1: Meeting attendees and apologies

Department	IDC FAS representative (or proxy)
Department of Immigration and Border Protection (DIBP)	<b>Andrew Chandler</b> , (Co-chair), A/g First Assistant Secretary, Traveller, Customs and Industry Policy Division <b>Joshua Hutton</b> , A/g Assistant Secretary Trade and Customs Branch §22(1)(a)(ii), A/g Director, Regulated Goods Policy §22(1)(a)(ii), Regulated Goods Policy (Secretariat) §22(1)(a)(ii), Regulated Goods Policy (Secretariat)
Australian Border Force (ABF)	<b>Jim Williams</b> , Assistant Commissioner, Border Management Division, Australian Border Force <b>Ben Hickey</b> , A/g Commander, Customs Compliance Branch
Department of Employment (Employment)	<b>Justine Ross</b> , (Co-chair), A/g Group Manager, Work Health and Safety Policy Group §22(1)(a)(ii), A/g Director, WHS Regulation Policy §22(1)(a)(ii), WHS Regulation Policy
Asbestos Safety and Eradication Agency (ASEA) (teleconference)	<b>Peter Tighe</b> , Chief Executive Officer §22(1)(a)(ii), Director and Chief Financial Officer
Safe Work Australia	§22(1)(a)(ii), Director, Chemicals Branch
Department of Foreign Affairs and Trade (DFAT)	§22(1)(a)(ii), Director, North Asia Division
Department of Industry, Innovation and Science (DIIS)	<b>Martin Squire</b> , General Manager, Trade and International Branch <b>Anne Byrne</b> , General Manager, Industry Transition Branch §22(1)(a)(ii), Manager, Building Industry Section §22(1)(a)(ii), Trade and International Branch
Department of the Environment and Energy (DoEE)	<b>Dr Sara Broomhall</b> , A/g Assistant Secretary, Environment Standards Division
Department of Health (Health)	<b>Sarah Norris</b> , A/g Assistant Secretary, Health Protection Policy Branch §22(1)(a)(ii), Director, Health Protection Policy Branch
Australian Competition and Consumer Commission (ACCC)	<b>Neville Matthew</b> , General Manager, Consumer Product Safety Branch

Released by Department of Home Affairs under the Freedom of Information Act 1982

Department of Infrastructure and Regional Development (DIRD) (teleconference)	s22(1)(a)(ii) , National Heavy Vehicle and Rail Regulation
<b>Non members</b>	
Commonwealth Scientific and Industrial Research Organisation (CSIRO)	s22(1)(a)(ii) , Director, Infrastructure Technologies and Testing Services

### Agenda Item 2: Minutes and Action Items

- DoEE will send minor amendments regarding the Rotterdam Convention out of session. Accepting this, the Minutes were endorsed.
- Completed action items were noted by IDC members.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-09	Secretariat to circulate minutes from fourth meeting, with minor amendment	DIBP	Prior to sixth IDC meeting

### Agenda Item 3: Amended Terms of Reference

- IDC members endorsed the minor amendment to the Terms of Reference reflecting a move to quarterly meetings.

### Agenda Item 4: Forward Work Plan (FWP) updates

#### Agenda Item 4(a) – FWP Item 2 - Review asbestos testing and sampling processes by 'competent persons' (i.e. hygienist), including professional standards and accreditation

- DIIS provided an overview of the NATA paper on sampling and testing of asbestos, noting the lack of harmonisation in terminology and testing methods used internationally, and a disconnect between the Australian zero tolerance ban and technological capability.
- DIIS advised a review of AS4964 by Standards Australia has been approved, but not commenced. There is an opportunity for DIIS to provide input to address issues such as laboratory reporting and conformity technologies.
- The IDC agreed that clarification of the differing international standards for testing and reporting asbestos content would assist importers and industry, as well as the ABF.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-10	Develop reference guide to international standards for asbestos reporting including content by weight or percentage	ASEA and SWA DIIS to contribute	Prior to sixth IDC meeting

- The IDC discussed issues around the lack of a standard for sampling for asbestos, including a lack of clear guidance in defining and accrediting appropriate persons to undertake sampling and an inconsistent national approach to sampling procedures and reporting.

- The ABF noted challenges presented by inconsistent or incomplete laboratory reports at the border.
- DIIS agreed to develop a definition/guide for sampling and to lead work to provide greater consistency in laboratory reporting as an action item, with assistance from DIBP and Employment.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-11	Develop appropriate sampling and reporting protocols, and the role of a competent person/hygienist in that process	DIIS DIBP / Employment to assist	TBA. Update to be provided at sixth meeting

Item 4(b) – FWP Item 3 - *Investigate new technologies for capabilities to test for asbestos.*

- The CSIRO provided a presentation on technologies to assist with the detection of asbestos. The presentation noted that there is no technology capable of determining zero asbestos content. It also canvassed next steps including scoping existing technologies, considering upscaling existing technologies for use at the border, and a CSIRO / ABF exercise to scope cross-business capability.
- The IDC discussed the feasibility of using single point technologies for detecting multiple border-controlled substances. It was agreed that identifying possible technologies and their potential for use in the border context would inform future resourcing decisions and build an evidence base to inform government.
- IDC members agreed to utilise respective stakeholder networks, in particular industry contacts, to scope available and potential technology for use at the border.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-12	Undertake landscaping exercise on available and potential technology for use at the border	DIIS and DIBP/ABF	TBA. Update to be provided at sixth meeting

Item 4(c) – FWP Item 5 - *Amend and update the Customs Prohibited Imports/Exports Regulations for asbestos, to be consistent with the Work Health and Safety legislation.*

- Employment updated the IDC on possible amendments to the asbestos border control within the *Customs (Prohibited Imports) Regulations 1956* and the *Customs (Prohibited Exports) Regulations 1958*, including the alignment of the definition of asbestos to the WHS legislation.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-13	Provide summary of proposed changes to Customs PI and PE Regulations	Employment	Once finalised by Employment.

Item 4(d) – FWP Item 6 - *Consider the adequacy of penalties and offences for the unlawful importation/exportation of asbestos.*

- DIBP provided an overview of existing offences and penalties for the unlawful import/export of asbestos and noted it would disseminate a discussion paper prior to the sixth meeting to consider alternative options.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-14	Circulate discussion paper on penalties and offences for unlawful import/export of asbestos	DIBP	Prior to sixth IDC meeting

Item 4(e) – FWP Item 7- Supporting awareness and voluntary compliance by industry with the asbestos ban across the supply chain.

- ASEA provided an overview of a 14 June 2017 seminar jointly hosted with the ACT Government on the risk of imported products containing asbestos, targeted at the building industry. ASEA noted the possibility of hosting the seminar in other jurisdictions.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-15	Provide forward schedule of future awareness raising seminars, for circulation to IDC.  Members to provide suggestions for additional awareness raising opportunities.	ASEA with contributions from IDC members	Prior to sixth IDC meeting

**Agenda Item 5: Other business**

- It was noted the Western Australia Building Commission final report of the Perth Children's Hospital audit has been published and is available online. A review of Consumer Law by the ACCC has been finalised.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-16	Circulate recommendations from the review of consumer law, out of session	ACCC	Prior to sixth IDC meeting

- DIBP noted key union representatives were unable to attend this meeting and been invited to an intersessional meeting in late July or early August. The IDC supported this approach and the IDC Secretariat will provide notification of arrangements.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-17	Invite unions to attend an intersessional meeting and advise IDC members of arrangements	DIBP	Scheduled for 22 August 2017
IDC 2017-18	Send draft minutes for IDC's fifth meeting to members for comment.	DIBP	Prior to sixth meeting

Meeting closed 1155 Hrs

## Asbestos IDC fifth meeting - Action items consolidated list

Item No	Action Item	Responsible Agency	Timeframe	Status
<b>Action Items from the first IDC meeting (21 September 2016)</b>				
IDC 2016-01	Update draft ToR.	DIBP	CoB 14/10/2016	Complete
IDC 2016-02	Circulate updated draft ToR to regulators and other relevant bodies for comment.	DIBP	CoB 14/10/2016	Complete
IDC 2016-03	Revisit ToR in three months (from date of endorsement) to assess whether they are appropriate.	DIBP and Employment	Fifth IDC Meeting.	Complete
IDC 2016-04	Roles and responsibilities diagram and table updated and circulated to IDC members for comment.	DIBP	CoB 14/10/2016	Complete
IDC 2016-05	IDC members to provide feedback.	All	CoB 19/10/2016	Complete
IDC 2016-06	Seek WHS representatives from the HWSA to attend the next IDC meeting.	Employment	By CoB 07/10/2016	Complete
IDC 2016-07	Invite relevant WHS state and territory regulators to the second IDC meeting.	Employment	By CoB 14/10/2016	Complete
IDC 2016-08	DIBP / Employment to share key talking points in preparation for Senate Estimates.	DIBP and Employment	Before October Senate Estimates hearings.	Complete
IDC 2016-09	Send draft minutes for IDC's first meeting to members for comment.	DIBP	CoB 14/10/2016	Complete
<b>Action Items from the second IDC meeting (24 October 2016)</b>				
IDC 2016-10	Members to provide final comments on the draft ToR, including on members roles and responsibilities.	All	Prior to third IDC meeting.	Complete
IDC 2016-11	Examine ways to strengthen the WHS laws.	Employment	Report back on progress at next meeting.	Complete
IDC 2016-12	Secretariat to develop a draft stakeholder engagement plan and draft forward work program for discussion and endorsement.	DIBP and Employment	To be endorsed at next meeting.	Complete
IDC 2016-13	DIIS to arrange appropriate areas (e.g. Australian Standards, NATA) to speak at next meeting.	DIIS	Prior to third IDC meeting.	Complete
IDC 2016-14	Send draft minutes for IDC's second meeting to members for comment.	Employment	Prior to third IDC meeting.	Complete
<b>Action items from third meeting (15 December 2016)</b>				

Item No	Action Item	Responsible Agency	Timeframe	Status
IDC 2016-15	Secretariat to circulate revised minutes from second meeting for endorsement out of session.	DIBP. All to endorse.	Prior to fourth IDC meeting.	Complete
IDC 2016-16	DIIS to table the Western Australian Building Commission's audit papers when available.	DIIS	Future IDC meeting	Complete
IDC 2016-17	ASEA to provide IDC members with links to the web address of importers who have been granted import permission.	ASEA (through the Secretariat)	Prior to the fourth IDC meeting	Complete
IDC 2016-18	Include consideration of the 'Review of Australian Consumer Law' as future agenda item.	Treasury/ ACCC	For future IDC meeting	Complete Refer 2017-15
IDC 2016-19	Secretariat to circulate email to members with instructions on how to provide comments out of session on the forward work programme and stakeholder engagement plan.	DIBP/ Employment	Friday 16 December 2016.	Complete
IDC 2016-20	Secretariat to re-circulate forward work programme and stakeholder engagement plan for consideration in expectation of endorsement at the fourth IDC meeting.	DIBP/ Employment	Prior to fourth IDC meeting.	Complete
<b>Action items from fourth meeting (9 March 2017)</b>				
IDC 2017-01	DIBP and Employment to consult further with DIIS on lead agency responsibilities under the FWP and SEP.	Employment, DIBP and DIIS	Prior to fifth IDC meeting	Complete
IDC 2017-02	Secretariat to send final FWP and SEP to IDC Members.	Employment	Prior to fifth IDC meeting	Complete
IDC 2017-03	Send report of the Senate Inquiry into Non-Conforming Building Products concerning asbestos imports to IDC members.	DIBP	31 August 2017	In progress
IDC 2017-04	NATA report to be forwarded to IDC members.	Employment	NATA report included in agenda for fifth meeting.	Complete
IDC 2017-05	Distribute asbestos thermochemical technology summary information.	DoEE to provide to Employment to circulate	Report to be distributed once it has been provided to relevant Ministers	In progress
IDC 2017-06	Invite ACTU to attend the next meeting.	Employment and DIBP	Prior to fifth IDC meeting	Complete
IDC 2017-07	Invite CSIRO to attend an upcoming meeting.	Employment and DIBP	CSIRO attending fifth IDC meeting	Complete



Item No	Action Item	Responsible Agency	Timeframe	Status
IDC 2017-08	Send draft minutes for IDC's fourth meeting to members for comment.	Employment	Prior to fifth IDC meeting	Complete
<b>Action items from fifth meeting (28 June 2017)</b>				
IDC 2017-09	Secretariat to circulate minutes from fourth meeting, with minor amendment	DIBP	Prior to sixth IDC meeting	completed
IDC 2017-10	Develop reference guide to international standards for asbestos reporting including content by weight or percentage	Employment, ASEA, SWA - DIIS to contribute	TBA. Update to be provided at sixth meeting	In progress
IDC 2017-11	Develop appropriate sampling and reporting protocols, and the role of a competent person/hygienist in that process	DIIS - DIBP / Employment to will assist	TBA. Update to be provided at sixth meeting	In progress
IDC 2017-12	Undertake landscaping exercise on available and potential technology for use at the border	DIIS and DIBP/ABF	TBA. Update to be provided at sixth meeting	In progress
IDC 2017-13	Provide summary of proposed changes to Customs PI and PE Regulations	Employment	Once finalised by Employment.	In progress
IDC 2017-14	Circulate discussion paper on penalties and offences for unlawful import/export of asbestos	DIBP	Prior to sixth IDC meeting	In progress
IDC 2017-15	Provide agenda of future awareness raising seminars meetings, for circulation to IDC.  Members to provide suggestions for additional awareness raising opportunities.	ASEA with contributions from IDC members	Prior to sixth IDC meeting	In progress
IDC 2017-16	Circulate recommendations from the review of consumer law, out of session	ACCC	Prior to sixth IDC meeting	In progress
IDC 2017-17	Invite key unions to attend an intersessional meeting and advise IDC members of arrangements	DIBP	Scheduled for 22 August 2017	In progress
IDC 2017-18	Send draft minutes for IDC's fifth meeting to members for comment.	DIBP	Prior to sixth meeting	In progress

## Asbestos IDC – Forward Work Plan/Activity 2: Actions Arising from the 28 June meeting

**Date:** 19 July at 12.00 pm

**Venue:** Industry House, Room 5.002

**Chair:** Nicole Henry, Manager Trade Facilitation (DIIS)

### Attendants:

DIBP: s22(1)(a)(ii)  
 ABF: s22(1)(a)(ii), Renae Hutchinson, s22(1)(a)(ii)  
 DoE: s22(1)(a)(ii), s22(1)(a)(ii)  
 Safe Work Australia: s22(1)(a)(ii), s22(1)(a)(ii)  
 NATA: Regina Robertson, John Mitchell, Neil Shepherd  
 DIIS: Anne Byrne, Martin v/d Molen, s22(1)(a)(ii)

### Agenda:

1. The development of guidelines/advice/standard for ABF officers to advise importers and/or manufacturers on how to conduct sampling to ensure test reports are not compromised by the sampling method.
2. The development of clear guidance by the ABF to importers and/or manufacturers on what testing reports need to address/state to provide consistent levels of reporting so that ABF officers can comply with their responsibilities under the Asbestos Import Regulation.
3. The review of Standards Australia AS4964-2004 and the potential issues for consultation with key Commonwealth Government stakeholders during the review process.

### Actions Arising

- 1) DIIS to raise with Standards Australia (SA) the need to give a higher priority to the review of AS4964 and to holding a workshop (second half 2017) to scope the issues to be reviewed.  
 Issues suggested to be raised included:
  - a. Sampling: improving clarity about who can conduct a sampling (qualification, experience); when, what and how to sample (from the batch of products imported), ensuring records match (of samples taken at the border with samples tested).
  - b. Test reports: ensuring consistent format and information provided to improve understanding by non-experts; documenting all necessary and relevant tests conducted (i.e. nil surprises by enforcement authorities).
  - c. Parties to prepare input for other aspects of AS4964 they consider should be reviewed in preparation for the proposed workshop as well as attendees to be invited.
- 2) DIBP/ABF, Employment/SWA and NATA to advise DIIS on technical experts and industry stakeholders to be invited to the workshop.
- 3) DIBP to consider appointing an independent expert to assist with the development of guidance material/advice for ABF personnel and importers/manufacturers on information regarding sampling (Ref 1a) and testing (Ref 1b) required to enhance industry compliance and reduce delays at the border.
  - a. Drafted guidance material may serve as input and/or case studies to the AS4964 review.
- 4) Employment/SWA, NATA and DIIS to provide names of possible candidates to DIBP.
- 5) NATA to explore with its overseas counterparts which of their standards align or can be aligned with AS4964. DIIS to then explore with ISO the potential of creating an international standard and reliable points of references for ABF personnel.
- 6) DIIS and DIBP to report on Actions 1-5 on progress made at the 6<sup>th</sup> IDC Meeting (Sept. 2017).

19 July 2017



Australian Government  
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Department of Employment

## Asbestos Interdepartmental Committee (IDC) – Meeting Minutes

Tuesday 22 August 2017 (12:30pm to 1:30pm)

History Room, Finlay Crisp Offices, 5 Constitution Avenue Civic

Attendee list at Attachment A

### Agenda Item 1: Welcome and apologies

Apologies: Michael Aird, CFMEU Construction & General Division

- DIBP opened the meeting by acknowledging the impact of asbestos-related diseases and that workers are disproportionately affected by this issue. DIBP also outlined recent bilateral engagement with the unions, the role and membership of the IDC and the issues it is examining in its Forward Work Plan.

### Agenda Item 2: Recommendations made by the unions to Senate Inquiry into non-conforming building products

APHEDA introduced themselves and played a short YouTube clip, *Facts about chrysotile (part 1)*, produced by the pro-asbestos Chrysotile Information Centre.

- The clip highlighted misinformation spread by pro-asbestos industry and lobby groups, including that chrysotile fibres dissolve within the lungs within 14 days.
- APHEDA then provided a presentation on work undertaken in the South East Asian region broadly, and within Vietnam specifically. In relation to South East Asia, APHEDA noted:
  - Three quarters of the global market for asbestos is in Asia. The pro-asbestos lobby strategically targets this market on a number of fronts:
    - Spreading misinformation such as that chrysotile is safe and attacking the credibility of scientific research and the World Health Organisation.
    - Promoting asbestos as a cheap and effective product, particularly for construction in developing countries.
    - Targeting key government decision makers through sponsored travel to producer countries such as Brazil, and possible use of bribery.
  - Vietnam, which currently imports 60,000 tonnes of asbestos annually, was presented as a case study. APHEDA has had a presence in Vietnam since 2010 and has worked to educate industry on asbestos and to support local asbestos-ban networks. The Vietnam Government is considering an asbestos ban by 2020 and APHEDA believes this would encourage similar bans across SE Asia. APHEDA advised that the global asbestos industry is pressuring the Vietnam Government through trade and diplomatic efforts, with possible influence exerted through the Russia-Vietnam Free Trade Agreement.
  - Acknowledging that they are partly government-funded, APHEDA sought continuing support from the Australian Government for these efforts.
  - The ACTU advised it has provided submissions to the Senate Inquiry into non-conforming building products and anticipated providing a supplementary submission, in addition to appearing at a public hearing in Canberra (which they have now done). The

ACTU provided an overview of concerns raised in its submission about illegally imported asbestos-containing materials.

- The ACTU stated it was pleased to see an over six-fold increase in border inspections and detections relating to asbestos. They also requested an update on the recommendations of the KGH (Asbestos Importation) Review Report.
- The CFMEU raised the concerns regarding prosecutions for asbestos offences, noting only two to three prosecutions over last 14 years, and asked for an update on the Yuanda matter. The CFMEU suggested that voluntary product recalls issued by the ACCC for asbestos containing goods should be made compulsory. The CFMEU also raised concerns about the validity of testing undertaken overseas, in particularly in China and noted that Robin Johnson Engineering (RJE) were testing their products in prior to import.
- The CFMEU echoed APHEDA's call for additional Government funding, noting that awareness raising in SE Asian countries was crucial.
- DIBP acknowledged the concerns raised by the unions, noting that Government will consider and respond to any recommendations made by the Senate Inquiry. DIBP also highlighted that the IDC is examining the adequacy of penalties and offences for asbestos.
- The ABF noted the comments by the unions on the Yuanda matter and stated that attention to their shipments will continue. The ABF also confirmed the previous reports of a second detection of asbestos in Yuanda-related goods in Brisbane last year. Yuanda paid the fines issued for three offences, however, the Department is unable to provide more detail on the penalty action.
- DIBP noted that there is a good exchange of information with the State and Territory agencies, especially when dealing with a post border incident – for example through the Rapid Response Protocol, where the ABF will initiate the RRP where necessary - this has resulted in recalls.
- The ABF outlined that risk profiles for asbestos are developed on the basis of detections (historical data), industry practice, researching supply chain and country of origin information, including world trade data, to inform the targeting at the border. The ABF also noted that there are less asbestos detections at the border for building products, and more in vehicle parts.
- DIBP noted that the Government already provides funding to APHEDA but that any additional funding would be a matter for the Department of Foreign Affairs and Trade.

### **Agenda Item 3: Other business**

No other business was discussed

### **Agenda Item 4: Close**

- Both co-chairs remarked that the IDC is always happy to engage with the unions, and thanked them for their participation.
- No action items arose from this meeting.

**Meeting closed 13:30 Hrs**

## Attachment A

## Attendee list

Department	IDC FAS representative (or proxy)
Department of Immigration and Border Protection (DIBP)	<b>Andrew Chandler</b> , (Co-chair), A/g First Assistant Secretary, Traveller, Customs and Industry Policy Division §22(1)(a)(ii), A/g Director, Regulated Goods Policy §22(1)(a)(ii), Regulated Goods Policy (Secretariat) §22(1)(a)(ii), Regulated Goods Policy (Secretariat)
Australian Border Force (ABF)	<b>Jim Williams</b> , Assistant Commissioner, Border Management Division, Australian Border Force <b>Wayne Buchhorn</b> , Assistant Commissioner, Enforcement Command <b>Stephen Hledik</b> , A/g Commander, Customs Compliance Branch <b>Renae Hutchinson</b> , Superintendent National Compliance Programme
Department of Employment (Employment)	<b>David Cains</b> , (Co-chair), A/g Branch Manager, Work Health and Safety Policy Branch §22(1)(a)(ii), A/g Director, WHS Regulation Policy §22(1)(a)(ii), Assistant Director, WHS Regulation Policy
Asbestos Safety and Eradication Agency (ASEA)	<b>Peter Tighe</b> , Chief Executive Officer (Teleconference) §22(1)(a)(ii), Director and Chief Financial Officer §22(1)(a)(ii), Assistant Director
Safe Work Australia (Teleconference)	§22(1)(a)(ii), Director, Hazards Branch §22(1)(a)(ii), Assistant Director, Hazards Branch
Department of Foreign Affairs and Trade (DFAT)	§22(1)(a)(ii), Director, North Asia Division
Department of Industry, Innovation and Science (DIIS)	<b>Martin Squire</b> , General Manager, Trade and International Branch <b>Anne Byrne</b> , General Manager, Industry Transition Branch §22(1)(a)(ii), Manager, Building Industry Section
Department of the Environment and Energy (DoEE)	<b>Andrew McNee</b> , Assistant Secretary, Chemicals and Waste Branch
Department of Health (Health)	§22(1)(a)(ii), Director, PFAS Coordination Unit, Health Protection Policy Branch
Department of Infrastructure and Regional Development	§22(1)(a)(ii), Director, Surface Transport Policy Division
Australian Competition and Consumer Commission (ACCC)	§22(1)(a)(ii), Director, Hazard Analysis & Management, Consumer Product Safety Branch

Union	Representative
Australian Council of Trade Unions (ACTU) – (Teleconference)	<b>Ben Maxfield</b> OHS and Workers Compensation Campaign Organiser
Construction, Forestry, Mining and Energy Union (CFMEU)	<b>Brad Parker</b> , National Assistant Secretary, Construction & General Division <b>Travis Wacey</b> , National Policy Research Officer, Forestry, Furnishing, Building Products and Manufacturing Division
APHEDA Union Aid Abroad	<b>Kate Lee</b> , Executive Officer <b>Philip Hazelton</b> , Campaign coordinator, Elimination of asbestos related diseases





## Asbestos Interdepartmental Committee (IDC) – Meeting Minutes

Date: Wednesday 27 September 2017 (2:30-4:00pm)

### (1) Agenda Item 1: Welcome and Apologies

Department	IDC FAS representative (or proxy)
Department of Employment (Employment)	<b>Justine Ross</b> (Co-Chair), A/g Group Manager, Work Health and Safety Policy Group s22(1)(a)(ii), A/g Director, Work Health and Safety Policy Branch s22(1)(a)(ii), Assistant Director, Work Health and Safety Policy Branch (Observer)
Department of Immigration and Border Protection (DIBP)	<b>Andrew Chandler</b> (Co-Chair), A/g First Assistant Secretary (FAS) Traveller, Customs and Industry Policy (TCIP) <b>Joshua Hutton</b> , A/g Assistant Secretary, Trade and Customs Branch s22(1)(a)(ii), Senior Policy Officer, Trade and Customs Branch s22(1)(a)(ii), Senior Policy Officer, Trade and Customs Branch
Australian Border Force (ABF)	<b>Jim Williams</b> , Assistant Commissioner, Border Management Division <b>Stephen Hledik</b> , A/g Commander, Customs Compliance Branch s22(1)(a)(ii), A/g Superintendent, Customs Compliance Branch
Department of Foreign Affairs and Trade (DFAT)	s22(1)(a)(ii), Deputy Director, China Economic and Trade Section
Department of Industry, Innovation and Science (DIIS)	<b>Martin Squire</b> , General Manager, Trade and International Branch s22(1)(a)(ii), Assistant Manager, Trade and International Branch s22(1)(a)(ii), Director, Building Industry Section, Industry Growth Division
Department of Infrastructure and Regional Development (DIRD)	<b>Alex Foulds</b> , Executive Director, Surface Transport Policy Division
Safe Work Australia (SWA)	<b>Sarah Costello</b> , A/g Branch Manager, Hazards Branch s22(1)(a)(ii), Director, Chemicals Policy, Hazards Branch
Australian Competition and Consumer Commission (ACCC)	<b>Timothy Grimwade</b> , Executive General Manager, Consumer Small Business and Product Safety Division <b>Neville Matthew</b> , General Manager, Consumer Product Safety Branch s22(1)(a)(ii), Director, Regulatory Reform, Consumer Product Safety Branch
Asbestos Safety and Eradication Agency (ASEA)	<b>Nick Miller</b> , A/g Chief Executive Officer (Teleconference)

Apologies: **Matthew Squire**, Department Infrastructure and Regional Development and **Peter Tighe**, Chief Executive Officer, ASEA

## Agenda Item 2: Minutes and Action Items

- The fifth IDC Minutes were endorsed by the IDC subject to DIIS amendments.
- The Minutes from the intersessional meeting with the unions are still being drafted, and will be circulated shortly.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-19	Secretariat to circulate finalised minutes for fifth IDC and draft minutes of intersessional meeting with unions	Employment / DIBP	Prior to seventh IDC meeting

## Agenda Item 3: Forward Work Updates

### Agenda Item 3(a) – FWP Item 2 – Testing and Sampling

- A meeting with Standards Australia will be scheduled for later in 2017 in Sydney to prioritise and scope the issues for inclusion in the review of AS4964.
- DIIS provided an update on the 19 July 2017 meeting of Commonwealth agencies focused on the development of guidance for use by ABF officers and for traders/industry.
- ABF reiterated the challenges presented by inconsistent or incomplete laboratory reports at the border and agreed to provide examples of the problems with current reports if required. The IDC agreed that a specific guideline should be developed to deal with the particular challenges being faced by DIBP/ABF. The guideline will advise importers and/or manufacturers on how to conduct sampling to ensure test reports are not compromised by the sampling method.
- Members discussed that there no single agency holds the policy responsibility and expertise on asbestos testing and sampling. SWA offered to work with DIBP and Employment to identify an expert consultant to assist in the development of this guideline. The IDC agreed that the engagement of an expert consultant would be useful given the inability to identify such expertise within Commonwealth agencies.
- DIIS also advised that CSIRO will present its findings on what existing and new technologies are available to better detect asbestos at the border at the next IDC meeting, with respect to Forward Work Plan Item 3.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-20	Problems with current reports to be shared with DIIS	DIBP	Prior to seventh IDC meeting
IDC 2017-21	Expert consultant to be identified to assist in the development of an asbestos sampling guideline for use by DIBP	DIBP and Employment SWA to assist	Prior to seventh IDC meeting

Agenda Item 3(b) – FWP Item 4 – WHS power to require the removal of illegally imported asbestos

- SWA noted that while the WHS framework is robust, there is a lack of clarity as to whether the model WHS laws give regulators an express power to require the removal of asbestos. SWA will seek the approval of its Members to consider whether technical amendments are needed to make this power explicit.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-22	SWA to consider recommending to its Members and Commonwealth, state and territory ministers that the model work health and safety laws be amended to make it clear that WHS regulators have the power to direct the removal of asbestos	SWA	December 2018
IDC 2017-23	SWA to update the IDC on progress on this issue.	SWA	At seventh IDC meeting

Agenda Item 3(c) – FWP Item 5 – Amendments to Customs Prohibited Imports/Exports Regulations for asbestos

- The Department of Employment updated Members on potential amendments to asbestos related provisions of the Customs Prohibited Import and Prohibited Export regulations. Proposed changes include: using a uniform definition of asbestos that is consistent with the WHS regulations; appropriate amendments to existing exceptions and exemptions, for example allowing the importation of asbestos waste from all Australian External Territories for lawful disposal.
- The Department of Employment noted that, while achieving consistency between import and export regulations is an objective, it is mindful not to create unnecessary administrative requirements.

Agenda Item 3(d) – FWP Item 6 – Discussion paper: Offences and Penalties for the Unlawful Importation/Exportation of Asbestos

- DIBP presented a draft discussion paper on strengthening offences and penalties for the unlawful importation/exportation of asbestos. DIBP noted that, as the majority of offences are committed unintentionally, the paper focuses on opportunities to expand the range of options for dealing with the unlawful importation/exportation of asbestos depending on the circumstances and nature of the offence.
- SWA and the Department of Employment provided feedback on part 6.5 of the paper, which suggested using work health and safety laws to prosecute importers of asbestos. Their advice was that WHS laws complement customs laws and should not be relied on as an alternative to offences under customs laws. SWA will work with DIBP on part 6.5 of the paper.
- It was noted that the Attorney-General's Department had expressed concerns with part 6.3 of the paper, which suggested increasing penalties for the unlawful importation/exportation of asbestos.
- The ACCC and DIBP agreed to explore a comprehensive strategy for promoting voluntary compliance with Australia's asbestos import prohibition.

- DFAT raised the possibility of using a new MOU with China on e-Commerce to raise the issue of asbestos imports with China. DIBP welcomed this suggestion.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-24	Input/views on discussion paper to be provided to DIBP	SWA, ACCC	Prior to seventh IDC meeting

Agenda Item 3(e) – FWP Item 7 – Supporting awareness and voluntary compliance by industry with the asbestos ban across the supply chain

- ASEA plans to hold a seminar in Queensland to raise awareness about the risk of imported products containing asbestos.
- ASEA suggested that National Industrial Chemicals Notification and Assessment Scheme (NICNAS) Customs Broker seminars be used to raise awareness of the asbestos import ban. ASEA proposed to discuss with DIBP what materials could be provided at these events.
- ASEA is conducting a mapping exercise to identify key supply chain stakeholders that it plans to provide at the next meeting of the IDC.

**Agenda Item 4: Senate Committee Inquiry into Non-Conforming Building Products**

- DIIS has established an IDC to prepare a government response to the interim report Senate Committee Inquiry into Non-Conforming Building Products on external cladding materials.
- The Asbestos IDC agreed to wait until the Senate Inquiry's interim report on asbestos is released to determine how a government response might best be coordinated.

**Agenda Item 5: Meeting of WHS Ministers**

- At the Meeting of Ministers on 11 August 2017, WHS Ministers agreed to meet again in late 2017 to discuss asbestos importation issues.
- DIBP has agreed to present at the meeting on what is being done at the border to enforce the prohibition and the particular challenges therein.
- The Department of Employment will provide an update on the outcomes of the Meeting of Ministers at the next meeting of this IDC.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-25	DIBP to brief state and territory ministers responsible for work health and safety on activities conducted at the border to detect and prevent asbestos imports	DIBP	At Meeting of WHS Ministers in December 2017

### Agenda Item 6: Development of Standard Talking Points

- The Department of Employment will develop standard talking points for IDC members to use.
- ASEA and DIBP agreed to provide their standard talking points to assist.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-26	Standard talking points to be developed and circulated to IDC members	Employment, with input from ASEA	Prior to seventh IDC meeting

### Agenda Item 7: Other Business

The next meeting of the IDC is to be hosted by DIBP.

IDC 2016-27	Circulate draft minutes for sixth IDC meeting to members for comment.	Employment	Prior to seventh IDC meeting
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## Asbestos IDC sixth meeting - Action items consolidated list

Item No	Action Item	Responsible Agency	Timeframe	Status
<b>Action Items from the first IDC meeting (21 September 2016)</b>				
IDC 2016-01	Update draft ToR.	DIBP	CoB 14/10/2016	Complete
IDC 2016-02	Circulate updated draft ToR to regulators and other relevant bodies for comment.	DIBP	CoB 14/10/2016	Complete
IDC 2016-03	Revisit ToR in three months (from date of endorsement) to assess whether they are appropriate.	DIBP and Employment	Fifth IDC Meeting.	Complete
IDC 2016-04	Roles and responsibilities diagram and table updated and circulated to IDC members for comment.	DIBP	CoB 14/10/2016	Complete
IDC 2016-05	IDC members to provide feedback.	All	CoB 19/10/2016	Complete
IDC 2016-06	Seek WHS representatives from the HWSA to attend the next IDC meeting.	Employment	By CoB 07/10/2016	Complete
IDC 2016-07	Invite relevant WHS state and territory regulators to the second IDC meeting.	Employment	By CoB 14/10/2016	Complete
IDC 2016-08	DIBP / Employment to share key talking points in preparation for Senate Estimates.	DIBP and Employment	Before October Senate Estimates hearings.	Complete
IDC 2016-09	Send draft minutes for IDC's first meeting to members for comment.	DIBP	CoB 14/10/2016	Complete
<b>Action Items from the second IDC meeting (24 October 2016)</b>				
IDC 2016-10	Members to provide final comments on the draft ToR, including on members roles and responsibilities.	All	Prior to third IDC meeting.	Complete
IDC 2016-11	Examine ways to strengthen the WHS laws.	Employment	Report back on progress at next meeting.	Complete
IDC 2016-12	Secretariat to develop a draft stakeholder engagement plan and draft forward work program for discussion and endorsement.	DIBP and Employment	To be endorsed at next meeting.	Complete
IDC 2016-13	DIIS to arrange appropriate areas (e.g. Australian Standards, NATA) to speak at next meeting.	DIIS	Prior to third IDC meeting.	Complete
IDC 2016-14	Send draft minutes for IDC's second meeting to members for comment.	Employment	Prior to third IDC meeting.	Complete
<b>Action items from third meeting (15 December 2016)</b>				



Item No	Action Item	Responsible Agency	Timeframe	Status
IDC 2016-15	Secretariat to circulate revised minutes from second meeting for endorsement out of session.	DIBP. All to endorse.	Prior to fourth IDC meeting.	Complete
IDC 2016-16	DIIS to table the Western Australian Building Commission's audit papers when available.	DIIS	Future IDC meeting	Complete
IDC 2016-17	ASEA to provide IDC members with links to the web address of importers who have been granted import permission.	ASEA (through the Secretariat)	Prior to the fourth IDC meeting	Complete
IDC 2016-18	Include consideration of the 'Review of Australian Consumer Law' as future agenda item.	Treasury/ ACCC	For future IDC meeting	Complete Refer 2017-15
IDC 2016-19	Secretariat to circulate email to members with instructions on how to provide comments out of session on the forward work programme and stakeholder engagement plan.	DIBP/ Employment	Friday 16 December 2016.	Complete
IDC 2016-20	Secretariat to re-circulate forward work programme and stakeholder engagement plan for consideration in expectation of endorsement at the fourth IDC meeting.	DIBP/ Employment	Prior to fourth IDC meeting.	Complete
<b>Action items from fourth meeting (9 March 2017)</b>				
IDC 2017-01	DIBP and Employment to consult further with DIIS on lead agency responsibilities under the FWP and SEP.	Employment, DIBP and DIIS	Prior to fifth IDC meeting	Complete
IDC 2017-02	Secretariat to send final FWP and SEP to IDC Members.	Employment	Prior to fifth IDC meeting	Complete
IDC 2017-03	Send report of the Senate Inquiry into Non-Conforming Building Products concerning asbestos imports to IDC members.	DIBP	31 August 2017	Complete
IDC 2017-04	NATA report to be forwarded to IDC members.	Employment	NATA report included in agenda for fifth meeting.	Complete
IDC 2017-05	Distribute asbestos thermochemical technology summary information.	DoEE to provide to Employment to circulate	Report to be distributed once it has been provided to relevant Ministers	In progress
IDC 2017-06	Invite ACTU to attend the next meeting.	Employment and DIBP	Prior to fifth IDC meeting	Complete

Item No	Action Item	Responsible Agency	Timeframe	Status
IDC 2017-07	Invite CSIRO to attend an upcoming meeting.	Employment and DIBP	CSIRO attending fifth IDC meeting	Complete
IDC 2017-08	Send draft minutes for IDC's fourth meeting to members for comment.	Employment	Prior to fifth IDC meeting	Complete
<b>Action items from fifth meeting (28 June 2017)</b>				
IDC 2017-09	Secretariat to circulate minutes from fourth meeting, with minor amendment	DIBP	Prior to sixth IDC meeting	Complete
IDC 2017-10	Develop reference guide to international standards for asbestos reporting including content by weight or percentage	Employment, ASEA, SWA - DIIS to contribute	TBA. Update to be provided at sixth meeting	In progress
IDC 2017-11	Develop appropriate sampling and reporting protocols, and the role of a competent person/hygienist in that process	DIIS - DIBP / Employment to assist	TBA. Update to be provided at sixth meeting	In progress (sampling now with DIBP/ Employment at Item 21)
IDC 2017-12	Undertake landscaping exercise on available and potential technology for use at the border	DIIS	TBA. Update to be provided at sixth meeting	In progress
IDC 2017-13	Provide summary of proposed changes to Customs PI and PE Regulations	Employment	Once finalised by Employment.	In progress
IDC 2017-14	Circulate discussion paper on penalties and offences for unlawful import/export of asbestos	DIBP	Prior to sixth IDC meeting	Complete
IDC 2017-15	Provide agenda of future awareness raising seminars meetings, for circulation to IDC.  Members to provide suggestions for additional awareness raising opportunities.	ASEA with contributions from IDC members	Prior to sixth IDC meeting	In progress
IDC 2017-16	Circulate recommendations from the review of consumer law, out of session	ACCC	Prior to sixth IDC meeting	In progress
IDC 2017-17	Invite key unions to attend an intersessional meeting and advise IDC members of arrangements	DIBP	Scheduled for 22 August 2017	Complete
IDC 2017-18	Send draft minutes for IDC's fifth meeting to members for comment.	DIBP	Prior to sixth meeting	Complete
IDC 2017-19	Secretariat to circulate finalised minutes for fifth IDC and draft minutes of intersessional meeting with unions	Employment	Prior to seventh IDC meeting	Complete
IDC 2017-20	Problems with current reports to be shared with DIIS	DIBP	Prior to seventh IDC meeting	Complete

Item No	Action Item	Responsible Agency	Timeframe	Status
IDC 2017-21	Expert consultant to be identified to assist in the development of an asbestos sampling guideline for use by DIBP	DIBP and Employment SWA to assist	Prior to seventh IDC meeting	In progress
IDC 2017-22	SWA to consider recommending to its Members and Commonwealth, state and territory ministers that the model work health and safety laws be amended to make it clear that WHS regulators have the power to direct the removal of asbestos	SWA	December 2018	In progress
IDC 2017-23	SWA to update the IDC on progress on this issue.	SWA	At seventh IDC meeting	In progress
IDC 2017-24	Input/views on penalties and offences discussion paper to be provided to DIBP	SWA, ACCC	Prior to seventh IDC meeting	Complete
IDC 2017-25	DIBP to brief state and territory ministers responsible for work health and safety on activities conducted at the border to detect and prevent asbestos imports	DIBP	At Meeting of WHS Ministers in December 2017	Meeting date TBA
IDC 2017-26	Standard talking points to be developed and circulated to IDC members	Employment, with input from ASEA	Prior to seventh IDC meeting	In progress
IDC 2016-27	Circulate draft minutes for sixth IDC meeting to members for comment.	Employment	Prior to seventh IDC meeting	In progress

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Department of Home Affairs



Australian Government  
Department of Jobs and Small Business

## Asbestos Interdepartmental Committee (IDC) – Meeting Minutes

Date: Monday 11 December 2017 (9:30-11:00am)

History Room, Finlay Crisp Offices, 5 Constitution Avenue Civic

### Agenda Item 1: Welcome and Apologies

Agency	Representative
Department of Home Affairs (Formerly Department of Immigration and Border Protection)	Andrew Chandler <b>(Co-Chair)</b> A/g First Assistant Secretary, Traveller, Customs and Industry Policy Division
Department of Jobs and Small Business (Formerly Department of Employment)	Justine Ross <b>(Co-Chair)</b> A/g Group Manager, Work Health and Safety Branch
Australian Border Force	Jim Williams, Assistant Commissioner, Border Management Division
	Stephen Hledik, A/g Commander, Customs Compliance Branch
Department of Home Affairs (Home Affairs)	David Coyles, A/g Assistant Secretary, Trade and Customs Branch
	s22(1)(a)(ii), Director, Regulated Goods Policy
	s22(1)(a)(ii), Assistant Director, Regulated Goods Policy
	s22(1)(a)(ii), IDC Secretariat
	s22(1)(a)(ii), IDC Secretariat
	s22(1)(a)(ii), IDC Secretariat
Department of Jobs and Small Business (DoJSB)	David Cains, A/g Branch Manager, Work health and Safety Policy Branch
	s22(1)(a)(ii), A/g Director, Work Health and Safety Policy Group
	s22(1)(a)(ii), Assistant Director, Work Health and Safety Policy Group
	s22(1)(a)(ii), Policy Officer, Work Health and Safety Policy Group
Department of Industry, Innovation and Science (DIIS)	Martin Squire, General Manager, Trade and International Branch
	s22(1)(a)(ii), Assistant Manager, Trade and International Branch
Department of the Environment and Energy	Dr Ed Cram, Director, Chemicals and Waste Branch
Prime Minister and Cabinet	Rachel Lloyd, Assistant Secretary, Taxation, Financial Sector & Employment Branch
Department of Health	s22(1)(a)(ii), Director, Chemicals Policy Section, Regulatory Policy Branch
Safe Work Australia	Sarah Costelloe, National Manager, Safe Work Australia
	s22(1)(a)(ii), Assistant Director, Chemicals Branch
	Neville Matthew, National Manager, Hazard Analysis & Management Consumer Product Safety

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Australian Competition and Consumer Commission (ACCC)	s22(1)(a)(ii) , Director, Regulatory Reform, Consumer Product Safety Branch
Department of Foreign Affairs and Trade	s22(1)(a)(ii) , Director, China Economic and Trade Section
Department of Infrastructure and Regional Development	Matthew Squire, A/g General Manager, Road Safety and Productivity
Asbestos Safety and Eradication Agency	Peter Tighe, CEO
	s22(1)(a)(ii) , Director and Chief Financial Officer

*Apologies:* No apologies received.

**Agenda Item 2: Minutes and Action Items**

- The Minutes from the sixth IDC held on 27 September 2017 were endorsed by the IDC.
- The Minutes from the intersessional meeting held on the 22 August 2017 with union representatives were endorsed by the IDC.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-28	Secretariat to circulate draft minutes for seventh IDC	Home Affairs / DoJSB	Prior to eighth IDC meeting in March 2018

**Agenda Item 3: Senate Economics References Committee Inquiry into Non-Conforming Building Products – Asbestos - Interim Report**

- The co-chairs indicated they were comfortable overall with the recommendations contained in the interim report as work has already been completed/is underway on a number of recommendations.
- DoJSB undertook to coordinate the whole-of-government response to the recommendations, and requested that all responses be cleared at portfolio Ministerial level, and forwarded to DoJSB by 12 January 2018. This will meet the three month indicative timeframe for Government responses to reports of this nature.
- DoJSB tabled a document listing the proposed IDC members as responsible for drafting a response with respect to each of the recommendations within the report.
- DoJSB will progress for endorsement by the Minister for Small and Family Business, the Workplace and Deregulation, for the Prime Minister to table the whole-of-government response.
  - Secretariat Note: since this discussion a change to the process of consolidating the Departmental responses has occurred.
  - Departmental responses were requested for return by 5 January 2018.
  - DoJSB will consolidate for the Minister responsible for Work Health and Safety to provide to all relevant Ministers for clearance ahead of providing to the Prime Minister for approval.
- DoJSB to be advised of any delays in providing responses to the recommendations by the due date.
- ACCC clarified which recommendations should be allocated to them and which should be allocated to the Treasury.

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**For Official Use Only****Agenda Item 4: Forward Work Updates**Agenda Item 4(a) – FWP Item 2 – Update on review of AS4964-2004 for asbestos testing and sampling process by 'competent person'.

- Roundtable in Sydney to be hosted on 13 December by Standards Australia to scope the review of AS4964-2004 and to achieve consensus on issues affecting the standard.
- DIIS will report to the next IDC on the outcomes of the roundtable and next steps.
- Home Affairs is proposing to develop a guidance document for use by importers and industry with respect to sampling of shipments for asbestos testing. Home Affairs intends to approach jurisdictions through HWSA Imported Materials with Asbestos Working Group for suggestions of appropriate candidates to develop the document.
- The time-frame for the actual input of the consultant is yet to be defined. Completion of the guidance document is envisaged as the end of the current financial year.
- It was raised that overseas testing is often done to the local standard of that country, not to the Australian Standard. However, based on work of NATA, there were laboratories in Germany and Singapore accredited to the Australian standard and capable of doing asbestos testing to the standard.

Agenda Item 4(b) – FWP Item 3 – Update on new technologies for capabilities to test for asbestos

- CSIRO are looking at the applicability of terahertz spectroscopy for the identification of asbestos. Based on literature and the CSIRO's work, the technology holds promise and, with further development, may assist the ABF at the border.
- IDC members agreed there were issues with new technology. ASEA indicated that it may involve development over the next ten years to develop a reliable hand-held device.
- DoJSB indicated there are legacy asbestos issues in Australia to consider, not just border issues. This may provide commercialisation opportunities for this project beyond government requirements.
- Home Affairs /ABF support continuing to look at this technology and obtaining direct responses to questions relating to the technology.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-29	Meeting with CSIRO and interested IDC members to progress this subject	Home Affairs	January 2018

Agenda Item 4(c) – FWP Item 4 – Options to strengthen work health and safety laws to require mandatory removal of asbestos

- Safe Work Australia attended the WHS Minister's forum on Tuesday 5 December 2017.
- There was unanimous endorsement of the need to amend the WHS laws to enable removal of asbestos following installation.
- This will be taken forward and progress will be reported to the next WHS Minister's meeting in February 2018.



**For Official Use Only**Agenda Item 4(d) – FWP Item 5 – Amendments to Customs Prohibited Imports/Exports Regulations for asbestos

- DoJSB are leading on this issue and noted that there are some complicated issues that need to be addressed before final drafting occurs.
- Home Affairs indicated that a bid for OPC resourcing had been submitted for March 2018, however this schedule is flexible.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-30	DoJSB and Home Affairs to coordinate on requirements for Regulation changes.	DoJSB/ Home Affairs	Prior to eighth IDC meeting in March 2018

Agenda Item 4(e) - FWP Item 6 – Discussion paper: Offences and Penalties for the Unlawful Importation/Exportation of Asbestos

- Home Affairs has progressed this agenda item and will seek to distribute a final draft to IDC member before the end of the year for out-of-session endorsement.
- Following further consultation with Home Affairs Legal Division, changes to the penalty regime can be effected through regulation change (*Customs Regulation 2015*) rather than a change to *the Customs Act 1901*.
  - Addressing the level of financial penalties through the INS for recidivists and intentional importations can be achieved by a change to Home Affairs internal policy settings rather than legislative change.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-31	Circulate revised discussion paper to IDC members before end of year	Home Affairs	December 2017
IDC 2017-32	Ministerial policy approval for change to penalty regime for the importation of asbestos	Home Affairs	First Quarter 2018

Agenda Item 4(f) – FWP Item 7 – Update on Asbestos Summit 2017

- ASEA provided a report on the Asbestos Summit held on 26-27 November 2017.
- ASEA has been working with customs brokers and freight forwarding representatives to achieve broader education within this sector.
- ASEA has written to the Queensland Building and Construction Commission to address the new supply chain responsibility legislation. The Queensland Government has reacted favourably to the suggestion of holding an education summit similar to the previous jointly-hosted ASEA/ACT Government summit held earlier this year, targeting the Queensland building and construction sector.

Item No	Action Item	Responsible Agency	Timeframe
IDC 2017-33	Mapping out relevant legislation and responsibilities for Commonwealth, state and territories, with respect to WHS and Building regulations	DIIS/SWA with input from DoJSB	Prior to eighth IDC meeting in March 2018

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**For Official Use Only****Agenda Item 4(g) – FWP Item 8 - Update on appropriate mechanisms for Ministers to receive stakeholder advice on the management of the asbestos ban across the supply chain**

- The meeting agreed there are adequate existing consultation and stakeholder engagement strategies.
- There have been numerous meetings with stakeholders to raise issues and concerns for Australian workers, including the IDC Intersessional meeting with Unions in August 2017. Each occasion has provided stakeholders with the opportunity to identify and discuss issues on asbestos entering Australia.
- The Asbestos IDC is the primary forum for addressing asbestos issues that require a whole-of-government coordinated response.
- The IDC agrees this item is complete and requires no further action.

**Agenda Item 5: A review of the IDC Terms of Reference**

- Mr Chandler suggested that taking into account the extension of the Senate Inquiry (and the full Report slated for publication on 30 April 2018), the IDC should continue, and recommended revisiting a review of the direction and work of the IDC post-Government response to the full Report.
  - Members agreed to this recommendation.
- Mr Chandler reminded members that all discussions and documents are considered official information and should not be disseminated beyond the IDC unless authorised.
  - Members noted this.
- The work of the IDC has progressed to the point where it is considering and discussing sensitive issues that should not be in the public domain until approved by relevant Ministers. A clause will be entered into the ToRs ensuring adherence to the Commonwealth's guidelines for handling, storage and disclosure of official information.
  - Members agreed.

**Agenda Item 6: Other Business**

- ASEA has been in contact with the Commonwealth Ombudsman with respect to an investigation that the Ombudsman is running regarding delays to the clearance of goods at the border. ASEA highlighted the work with ABF/Home Affairs that has occurred to address the risk of asbestos in imported goods.
- ABF indicated that the Commonwealth Ombudsman is carrying out an inquiry regarding delays in goods clearance at the border, and referenced the clearance of motor vehicles where there are concerns relating to asbestos.
  - The asbestos issue was raised as part of, but not central to, the broader inquiry.

**Agenda Item 7: Close**

Next IDC meeting will be hosted by DoJSB, suggested for late March 2018.

**Asbestos IDC seventh meeting - Action items consolidated list**

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Item No	Action Item	Responsible Agency	Timeframe	Status
<b>Action Items from the first IDC meeting (21 September 2016)</b>				
IDC 2016-01	Update draft ToR.	DIBP	CoB 14/10/2016	Complete
IDC 2016-02	Circulate updated draft ToR to regulators and other relevant bodies for comment.	DIBP	CoB 14/10/2016	Complete
IDC 2016-03	Revisit ToR in three months (from date of endorsement) to assess whether they are appropriate.	DIBP and Employment	Fifth IDC Meeting.	Complete
IDC 2016-04	Roles and responsibilities diagram and table updated and circulated to IDC members for comment.	DIBP	CoB 14/10/2016	Complete
IDC 2016-05	IDC members to provide feedback.	All	CoB 19/10/2016	Complete
IDC 2016-06	Seek WHS representatives from the HWSA to attend the next IDC meeting.	Employment	By CoB 07/10/2016	Complete
IDC 2016-07	Invite relevant WHS state and territory regulators to the second IDC meeting.	Employment	By CoB 14/10/2016	Complete
IDC 2016-08	DIBP / Employment to share key talking points in preparation for Senate Estimates.	DIBP and Employment	Before October Senate Estimates hearings.	Complete
IDC 2016-09	Send draft minutes for IDC's first meeting to members for comment.	DIBP	CoB 14/10/2016	Complete
<b>Action Items from the second IDC meeting (24 October 2016)</b>				
IDC 2016-10	Members to provide final comments on the draft ToR, including on members roles and responsibilities.	All	Prior to third IDC meeting.	Complete
IDC 2016-11	Examine ways to strengthen the WHS laws.	Employment	Report back on progress at next meeting.	Complete
IDC 2016-12	Secretariat to develop a draft stakeholder engagement plan and draft forward work program for discussion and endorsement.	DIBP and Employment	To be endorsed at next meeting.	Complete
IDC 2016-13	DIIS to arrange appropriate areas (e.g. Australian Standards, NATA) to speak at next meeting.	DIIS	Prior to third IDC meeting.	Complete
IDC 2016-14	Send draft minutes for IDC's second meeting to members for comment.	Employment	Prior to third IDC meeting.	Complete
<b>Action items from third meeting (15 December 2016)</b>				
IDC 2016-15	Secretariat to circulate revised minutes from second meeting for endorsement out of session.	DIBP. All to endorse.	Prior to fourth IDC meeting.	Complete

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Item No	Action Item	Responsible Agency	Timeframe	Status
IDC 2016-16	DIIS to table the Western Australian Building Commission's audit papers when available.	DIIS	Future IDC meeting	Complete
IDC 2016-17	ASEA to provide IDC members with links to the web address of importers who have been granted import permission.	ASEA (through the Secretariat)	Prior to the fourth IDC meeting	Complete
IDC 2016-18	Include consideration of the 'Review of Australian Consumer Law' as future agenda item.	Treasury/ ACCC	For future IDC meeting	Complete Refer 2017-15
IDC 2016-19	Secretariat to circulate email to members with instructions on how to provide comments out of session on the forward work programme and stakeholder engagement plan.	DIBP/ Employment	Friday 16 December 2016.	Complete
IDC 2016-20	Secretariat to re-circulate forward work programme and stakeholder engagement plan for consideration in expectation of endorsement at the fourth IDC meeting.	DIBP/ Employment	Prior to fourth IDC meeting.	Complete
<b>Action items from fourth meeting (9 March 2017)</b>				
IDC 2017-01	DIBP and Employment to consult further with DIIS on lead agency responsibilities under the FWP and SEP.	Employment, DIBP and DIIS	Prior to fifth IDC meeting	Complete
IDC 2017-02	Secretariat to send final FWP and SEP to IDC Members.	Employment	Prior to fifth IDC meeting	Complete
IDC 2017-03	Send report of the Senate Inquiry into Non-Conforming Building Products concerning asbestos imports to IDC members.	DIBP	31 August 2017	Complete
IDC 2017-04	NATA report to be forwarded to IDC members.	Employment	NATA report included in agenda for fifth meeting.	Complete
IDC 2017-05	Distribute asbestos thermochemical technology summary information.	DoEE to provide to DoJSB to circulate	Report to be distributed once it has been provided to relevant Ministers	In progress
IDC 2017-06	Invite ACTU to attend the next meeting.	Employment and DIBP	Prior to fifth IDC meeting	Complete
IDC 2017-07	Invite CSIRO to attend an upcoming meeting.	Employment and DIBP	CSIRO attending fifth IDC meeting	Complete

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Item No	Action Item	Responsible Agency	Timeframe	Status
IDC 2017-08	Send draft minutes for IDC's fourth meeting to members for comment.	Employment	Prior to fifth IDC meeting	Complete
<b>Action items from fifth meeting (28 June 2017)</b>				
IDC 2017-09	Secretariat to circulate minutes from fourth meeting, with minor amendment	DIBP	Prior to sixth IDC meeting	Complete
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IDC 2017-11	Develop appropriate sampling and reporting protocols, and the role of a competent person/hygienist in that process	DIIS - DIBP / Employment to assist	TBA. Update to be provided at sixth meeting	In progress (sampling now with DIBP/ Employment at Item 21)
IDC 2017-12	Undertake landscaping exercise on available and potential technology for use at the border	DIIS	TBA. Update to be provided at sixth meeting	In progress
IDC 2017-13	Provide summary of proposed changes to Customs PI and PE Regulations	Employment	Once finalised by Employment.	In progress
IDC 2017-14	Circulate discussion paper on penalties and offences for unlawful import/export of asbestos	DIBP	Prior to sixth IDC meeting	Complete
IDC 2017-15	Provide agenda of future awareness raising seminars meetings, for circulation to IDC.  Members to provide suggestions for additional awareness raising opportunities.	ASEA with contributions from IDC members	Prior to sixth IDC meeting	In progress
IDC 2017-16	Circulate recommendations from the review of consumer law, out of session	ACCC	Prior to sixth IDC meeting	In progress
IDC 2017-17	Invite key unions to attend an intersessional meeting and advise IDC members of arrangements	DIBP	Scheduled for 22 August 2017	Complete
IDC 2017-18	Send draft minutes for IDC's fifth meeting to members for comment.	DIBP	Prior to sixth meeting	Complete
IDC 2017-19	Secretariat to circulate finalised minutes for fifth IDC and draft minutes of intersessional meeting with unions	Employment	Prior to seventh IDC meeting	Complete
IDC 2017-20	Problems with current reports to be shared with DIIS	DIBP	Prior to seventh IDC meeting	Complete
<b>Action items from sixth meeting (27 September 2017)</b>				

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Item No	Action Item	Responsible Agency	Timeframe	Status
IDC 2017-21	Expert consultant to be identified to assist in the development of an asbestos sampling guideline for use by DIBP	DIBP and Employment SWA to assist	Prior to seventh IDC meeting	In progress
IDC 2017-22	SWA to consider recommending to its Members and Commonwealth, state and territory ministers that the model work health and safety laws be amended to make it clear that WHS regulators have the power to direct the removal of asbestos	SWA	December 2018	In progress
IDC 2017-23	SWA to update the IDC on progress on this issue.	SWA	At seventh IDC meeting	In progress
IDC 2017-24	Input/views on penalties and offences discussion paper to be provided to DIBP	SWA, ACCC	Prior to seventh IDC meeting	Complete
IDC 2017-25	DIBP to brief state and territory ministers responsible for work health and safety on activities conducted at the border to detect and prevent asbestos imports	DIBP	At Meeting of WHS Ministers in December 2017	Meeting date TBA
IDC 2017-26	Standard talking points to be developed and circulated to IDC members	Employment, with input from ASEA	Prior to seventh IDC meeting	In progress
IDC 2017-27	Circulate draft minutes for sixth IDC meeting to members for comment.	Employment	Prior to seventh IDC meeting	Complete
<b>Action items from seventh meeting (11 December 2017)</b>				
IDC 2017-28	Secretariat to circulate draft minutes for seventh IDC	Home Affairs /DoJSB	Prior to eighth IDC meeting in March 2018	In Progress
IDC 2017-29	Meeting with CSIRO and interested IDC members to progress this subject	Home Affairs	January 2018	Complete
IDC 2017-30	DoJSB and Home Affairs to coordinate on requirements for Regulation changes.	Home Affairs/ DoJSB	Prior to eighth IDC meeting in March 2018	In Progress
IDC 2017-31	Circulate revised discussion paper to IDC members before end of year	Home Affairs	December 2017	In Progress
IDC 2017-32	Ministerial policy approval for change to penalty regime for the importation of asbestos	Home Affairs	First Quarter 2018	In Progress
IDC 2017-33	Mapping out relevant legislation and responsibilities for Commonwealth,	DIIS/SWA with input from DoJSB	Prior to eighth IDC meeting in March 2018	In Progress



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Item No	Action Item	Responsible Agency	Timeframe	Status
	state and territories, with respect to WHS and Building regulations			



## Asbestos Interdepartmental Committee (IDC) – Terms of Reference (ToR)

### Context

Asbestos is a set of six naturally occurring silicate minerals that pose a significant health and safety risk to workers and the Australian community. On 31 December 2003, Australia banned the use of, manufacture and importation of all forms of asbestos. This ban was endorsed by the Workplace Relations Ministers' Council.

Managing asbestos issues across the import supply chain is a complex policy area that requires coordinated management pre, at and post border. Commonwealth, state and territory agencies manage these issues across a broad range of areas including; workplace safety, importation, environment, public health and consumer safety.

The Department of Employment (Employment) and the Department of Immigration and Border Protection (DIBP) are co-leading whole-of-government coordination of asbestos policy issues across the supply chain. This coordination will include Commonwealth policy and regulatory agencies and appropriate engagement with relevant state and territory authorities with responsibilities for managing asbestos.

### Role of the Asbestos IDC

The Asbestos IDC is a senior executive forum that will provide strategic direction to enable effective policy and regulatory coordination across Commonwealth agencies in managing asbestos issues across the supply chain.

The IDC will:

- Enhance consultation and coordination of Commonwealth agencies' efforts in addressing policy and regulatory issues on asbestos.
- Clarify agencies' roles and responsibilities in managing asbestos policy and regulatory issues across the supply chain.
- Identify risks and gaps in asbestos management across the supply chain and coordinate proposals to resolve these risks and gaps.
- Collaborate in developing communications on asbestos issues.

### IDC Members' accountabilities

IDC members will be accountable for:

- Proactively and regularly engaging with the IDC by:
  - contributing to collective responses on asbestos issues;
  - leading or contributing to proposals to resolve gaps or risks that are identified in managing asbestos across the supply chain; and
  - consulting members on policy and regulatory initiatives being undertaken by their respective agencies on asbestos management.
- Reporting on responsibilities within their policy and regulatory remits in managing asbestos issues.
- Engaging effectively with relevant state and territory regulators.

IDC agencies will be responsible for updating their senior executive on IDC coordination activities.

## Out-of-scope

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The IDC complements but does not replace the Heads of Workplace Safety Authorities "*Imported Materials with Asbestos Working Group*".

The IDC will not focus on addressing issues relating to asbestos that is already present in the country (including naturally occurring asbestos, 'in-situ' asbestos in commercial buildings and homes that was produced in Australia or imported prior to the implementation of the import ban).

## IDC Membership

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The IDC will be co-chaired by the Group Manager, Work Health and Safety Policy, Employment and the First Assistant Secretary, Traveller, Customs and Industry Policy Division (TCIP), DIBP. The following Commonwealth agencies will have equivalent members on the IDC:

### *Policy agencies*

- Employment
- DIBP
- Department of Foreign Affairs and Trade
- Department of Industry, Innovation and Science
- Department of the Environment and Energy
- Department of Infrastructure and Regional Development
- The Treasury
- Department of Health

### *Regulators and Other Agencies<sup>1</sup>*

- Australian Competition and Consumer Commission
- Safe Work Australia
- Asbestos Safety and Eradication Agency
- Comcare

IDC membership may be varied by agreement of both Chairs.

FAS representation will be required for IDC meetings, unless agreed otherwise in advance by either Chair.

## Engagement with state and territory regulators

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The IDC will engage with relevant state and territory authorities with responsibilities for asbestos issues (e.g. work health and safety, building and environmental regulators). The mechanism for this engagement will be determined by the IDC.

## Frequency and conduct of meetings

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The IDC will meet monthly or bimonthly for a period of twelve months. The frequency of meetings can be varied by agreement of both Chairs. Clearance of papers and reports can occur out of session through email, as required.

Employment and DIBP will provide co-secretariat support to the IDC on an alternating basis. This support will be provided by Work Health and Safety Policy Branch, Employment, and Trade and Customs Branch, DIBP.

The agency that 'hosts' an IDC meeting will be responsible for organising the meeting, preparing the agenda and meeting minutes (this will include consulting with IDC agencies, as appropriate). Service standards for circulating agenda and meeting minutes will be agreed by both Chairs.

## Review

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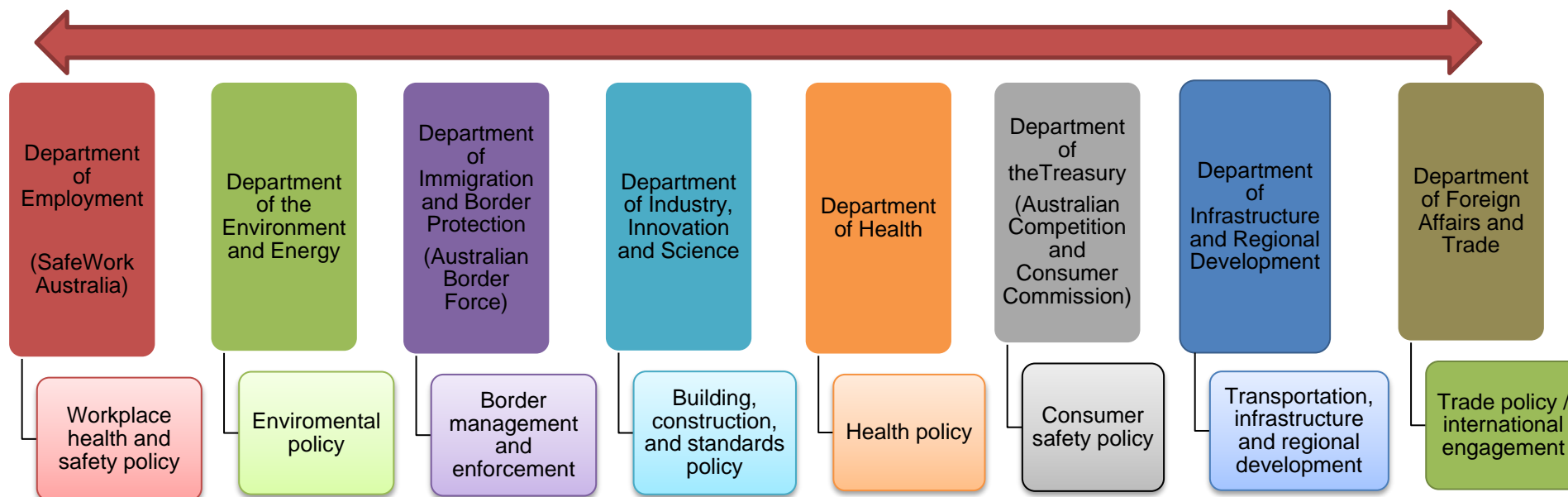
A review of the IDC will be undertaken twelve months after its establishment.

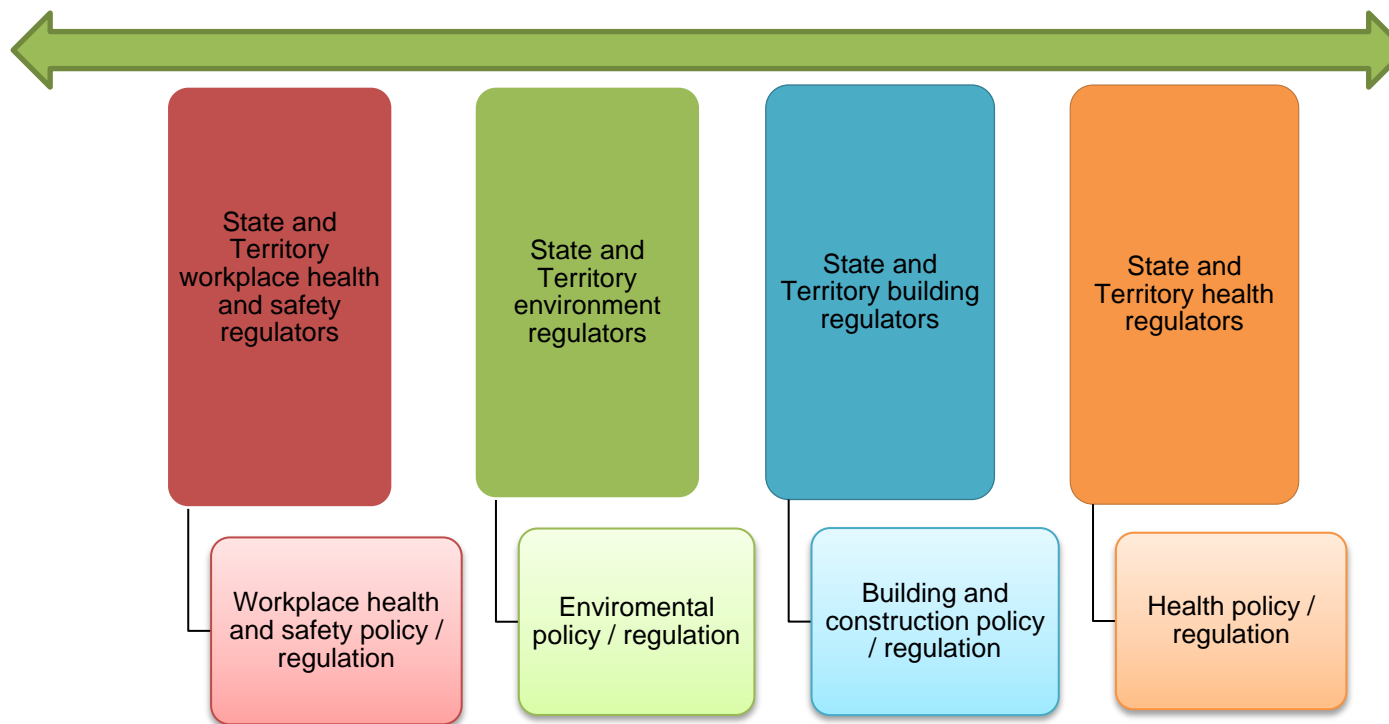
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<sup>1</sup> Membership of these agencies will be considered at the first IDC meeting.

## Attachment A – Roles and responsibilities

### A. Commonwealth policy agencies with an interest in Australia's regulatory framework for managing the asbestos risk



**B. State and Territory regulators involved in Australia's regulatory framework for managing the asbestos risk<sup>1</sup>**

<sup>1</sup> These regulators may have policy, regulatory and investigative functions.

**C. Commonwealth, State and Territory Government bodies involved in managing Australia's regulatory framework for asbestos<sup>2</sup>**

Bodies	International Conventions, Legislation and Regulations	Policy Responsibilities for Asbestos	Regulatory Responsibilities for Asbestos	Key Responsibilities
<b>Commonwealth</b>				
Department of Employment (Employment)	<i>Work Health and Safety Act 2011(Cth)</i> <i>Work Health and Safety Regulations 2011(Cth)</i>	Yes	No	<ul style="list-style-type: none"> <li>Policy responsibility for work health and safety (WHS) and asbestos, including the national workplace ban on asbestos.</li> <li>Policy sponsor for asbestos border controls.</li> <li>Minister for Employment gives permission to import/export asbestos in limited circumstances under the relevant prohibited import / export regulations.</li> </ul>
Safe Work Australia	Model Work Health and Safety Act 2011 – latest amendment Bill March 2016 <i>Safe Work Australia Act 2008 (Cth)</i>	Yes	No	<ul style="list-style-type: none"> <li>Coordinates and develops national WHS policies and strategies.</li> <li>Develops model WHS legislation.</li> </ul>
Comcare	<i>Work Health and Safety Act 2011 (Cth)</i> <i>Work Health and Safety Regulations 2011(Cth)</i>	No	Yes	<ul style="list-style-type: none"> <li>Responsible for workplace safety, rehabilitation and workers' compensation in the Commonwealth jurisdiction.</li> </ul>
Asbestos Safety and Eradication Agency <i>Portfolio agency under Department of Employment</i>	<i>Asbestos Safety and Eradication Agency Act 2013 (Cth)</i>	No	No	<ul style="list-style-type: none"> <li>Coordinates and monitors the implementation of the <i>National Strategic Plan on Asbestos Awareness and Management 2014-18</i>.</li> <li>Advises Minister for Employment on applications to import / export asbestos in limited circumstances under prohibited import/export regulations (function delegated by DoE).</li> <li>Secretariat for Heads of Workplace Safety Agency Imported Materials with Asbestos Working Group (HWSA IMAWG).</li> </ul>

<sup>2</sup> This table does not include roles of Local Councils or other cross-jurisdictional committee etc.



Bodies	International Conventions, Legislation and Regulations	Policy Responsibilities for Asbestos	Regulatory Responsibilities for Asbestos	Key Responsibilities
Department of Immigration and Border Protection (DIBP)	<i>Customs Act 1901</i> (Cth) <i>Customs (Prohibited Imports) Regulations 1956</i> (Cth) <i>Customs (Prohibited Exports) Regulations 1958</i> (Cth)	No	Yes	<ul style="list-style-type: none"> <li>Administers Australia's asbestos border controls to complement the domestic ban.</li> <li>Support compliance and enforcement activities of relevant WHS authorities through provision of import data (through HWSA IMAWG).</li> </ul>
Department of the Environment and Energy (DoEE)	<i>Hazardous Waste (Regulation of Exports and Imports) Act 1989</i> (Cth) <i>Basel Convention</i> <i>Rotterdam Convention</i> (Amphibole asbestos listed in <i>Annex III Chemicals</i> ) <i>Waigani Convention</i>	Yes <sup>3</sup>	Yes	<ul style="list-style-type: none"> <li>Policy lead on environmental protection policy.</li> <li>Ensure Australia meets international obligations relating to hazardous waste imports / exports.</li> <li>Represents Commonwealth Government at Basel, Rotterdam and the Waigani Conventions.</li> </ul>
Australian Competition and Consumer Commission (ACC) (under the Treasury)	<i>Competition and Consumer Act 2010</i> (Cth)	Yes	Yes	<ul style="list-style-type: none"> <li>Responsible for consumer safety.</li> <li>Regulatory powers include product recall and national ban.</li> </ul>
Department of Industry, Innovation and Science (DIIS)	N/a	Yes	No	<ul style="list-style-type: none"> <li>Policy lead on building and construction at commonwealth level.</li> <li>Policy lead on standards policy.</li> </ul>
Department of Foreign Affairs and Trade (DFAT)	N/a	Yes	No	<ul style="list-style-type: none"> <li>Policy lead on trade.</li> </ul>
Department of Infrastructure and Regional Development (DIRD)	N/a	Yes	No	<ul style="list-style-type: none"> <li>Policy lead on infrastructure, transportation and regional development.</li> </ul>

<sup>3</sup> Extent of policy responsibilities is not known.

Bodies	International Conventions, Legislation and Regulations	Policy Responsibilities for Asbestos	Regulatory Responsibilities for Asbestos	Key Responsibilities
<b>State and Territory</b>				
SafeWork NSW	<i>Work Health and Safety Act 2011 (NSW)</i> <i>Work Health and Safety Regulation 2011 (NSW)</i> Relevant Codes of Practice	Yes	Yes	<ul style="list-style-type: none"> <li>Regulatory powers under WHS legislation to address asbestos and ACMs once found to have entered Australian workplaces.</li> <li>Licensing and regulation of asbestos related occupations (Removal).</li> <li>Parties to HWSA IMAWG may initiate Rapid Response Protocol.</li> </ul>
WorkSafe Victoria	<i>Occupational Health and Safety Act 2004 (Vic)</i> Relevant Codes of Practice	Yes	Yes	
WorkCover Queensland	<i>Work Health and Safety Act 2011 (Qld)</i> <i>Work Health and Safety Regulation 2011 (Qld)</i> Relevant Codes of Practice	Yes	Yes	
SafeWork SA	<i>Work Health and Safety Act 2012 (SA)</i> <i>Work Health and Safety Regulations 2012 (SA)</i> Relevant Codes of Practice	Yes	Yes	
WorkSafe WA	<i>Work Health and Safety Bill 2014 (WA)</i> <i>Occupational Health and Safety Regulations 1996 (WA)</i> Relevant Codes of Practice	Yes	Yes	
NT WorkSafe	<i>Work Health and Safety (National Uniform Legislation) Act 2011 (NT)</i> <i>Work Health and Safety (National Uniform Legislation) Regulations 2011 (NT)</i> Relevant Codes of Practice	Yes	Yes	
WorkSafe Tasmania	<i>Work Health and Safety Act 2012 (Tas)</i> <i>Work Health and Safety Regulations 2012 (Tas)</i> Relevant Codes of Practice	Yes	Yes	
WorkSafe ACT	<i>Work Health and Safety Act 2011 (ACT)</i> <i>Work Health and Safety Regulation 2011 (ACT)</i> Relevant Codes of Practice	Yes	Yes	

Bodies	International Conventions, Legislation and Regulations	Policy Responsibilities for Asbestos	Regulatory Responsibilities for Asbestos	Key Responsibilities
State and Territory building agencies / regulators (cross over with WHS regulators)	Relevant State and Territory legislation	Yes	Yes	<ul style="list-style-type: none"> <li>Regulatory powers to address asbestos and ACM in building materials and sites (cross over with WHS regulators).</li> </ul>
State and Territory environmental protection / health agencies / regulators	Relevant State and Territory legislation	Yes	Yes	<ul style="list-style-type: none"> <li>Regulatory powers to address environment and health issues.</li> <li>Storage and disposal occupations licensed and regulated by environmental agencies.</li> </ul>

#### D. Forums and Working Groups involved in Australia's regulatory framework for asbestos

Forums and Working Groups	Members	Purpose
Heads of Workplace Safety Authorities (HWSA)	<p><i>Commonwealth agencies:</i></p> <ul style="list-style-type: none"> <li>Employment</li> </ul> <p><i>State and territory regulators:</i></p> <ul style="list-style-type: none"> <li>WorkSafe ACT</li> <li>Comcare</li> <li>Workcover NSW</li> <li>NT WorkSafe</li> <li>Workplace Health and Safety Queensland</li> <li>SafeWork SA</li> <li>WorkSafe Tasmania</li> <li>Worksafe Victoria</li> <li>WorkSafe WA</li> </ul>	HWSA provides a forum for Commonwealth, state and territory WHS regulators to cooperate and share information on WHS policy and regulatory issues, public education on WHS issues and the enforcement of WHS laws.
HWSA Imported Materials with Asbestos Working Group (IMWG)	<p><i>Commonwealth agencies:</i></p> <ul style="list-style-type: none"> <li>DIBP</li> <li>Employment</li> <li>ACCC</li> <li>Safe Work Australia (observer)</li> </ul>	The IMWG provides a forum for relevant Commonwealth, state and territory agencies to share information on imported materials containing asbestos that are discovered in workplaces or the community.

Forums and Working Groups	Members	Purpose
	<p><i>State and territory regulators:</i></p> <ul style="list-style-type: none"> <li>• SafeWork SA</li> <li>• WorkCover NSW</li> <li>• Workplace Health and Safety Queensland</li> <li>• WorkSafe Division of Department of Commerce WA</li> <li>• WorkSafe Tasmania</li> <li>• WorkSafe Victoria</li> <li>• WorkSafe ACT</li> <li>• NT WorkSafe</li> </ul> <p><i>Others:</i></p> <ul style="list-style-type: none"> <li>• Other interested parties may play an advisory role in the activities of the IMWG, as required.</li> </ul>	

#### E. Key international conventions related to asbestos

Convention	Purpose
Rotterdam Convention	The Rotterdam Convention is a multilateral agreement that specifies obligations on the import and export of certain hazardous chemicals. Signatory countries (including Australia) can make informed decisions about the chemicals they want to receive and to exclude those they believe they cannot manage safely. The prior informed consent (PIC) procedure applies to the chemicals listed in Annex III of the convention, which includes amphibole asbestos but does not include chrysotile asbestos.
Basel Convention	The Basel Convention on the Control of the Transboundary Movement of Hazardous Wastes and their Disposal classifies asbestos (including chrysotile) as a hazardous waste. The convention seeks to promote the environmentally sound management and disposal of such wastes through a consent-based system among its members.

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## Asbestos Policy and Regulation Interdepartmental Committee (IDC) Stakeholder Engagement Plan

Thursday 15 December 2016

Stakeholder Group	Relevant Department/ Agency	Stakeholders	Responsibilities/ Involvement/Issues	Past Engagement/ Statements	Future Engagement
<b>Heads of Workplace Safety Authorities (HWSA)</b>	Employment	Comcare, WorkSafe ACT, SafeWork NSW, NT Worksafe, Workplace Health and Safety Queensland, SafeWork SA, WorkSafe Tasmania, WorkSafe Victoria, WorkSafe WA.	<p>WHS regulators are responsible for the licensing and regulation of asbestos-related occupations and activities in workplaces. They have powers under WHS laws to address asbestos (and asbestos containing materials) in workplaces.</p> <p>HWSA has established an Imported Materials with Asbestos Working Group to share information and ensure coordinated national responses to incidents where imported asbestos is discovered in Australian workplaces.</p>	<p>HWSA members from Queensland, South Australia, the ACT, the Commonwealth, South Australia and NSW participated in the IDC meeting on 24 October.</p> <p>HWSA members raised issues with their ability to effectively address asbestos containing materials that have been installed in buildings. If the RJ Engineering appeal is successful, legislative change may be necessary.</p> <p>SA, Queensland and WA Ministers have called on the Government to take action to address asbestos importation.</p>	<p>Employment and Immigration and Border Protection will continue to monitor developments in WHS regulation of asbestos through participation in the HWSA Imported Materials with Asbestos Working Group.</p> <p>It may also be necessary to engage with HWSA when considering issues around the testing and certification of products for the presence of asbestos.</p>

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<b>Safe Work Australia (SWA)</b>	Employment	SWA Agency SWA Members from the Department of Employment, WorkSafe ACT, SafeWork NSW, NT Worksafe, Workplace Health and Safety Queensland, SafeWork SA, WorkSafe Tasmania, WorkSafe Victoria, WorkSafe WA, Australian Chamber, AiGroup, ACTU	SWA is responsible for maintaining the model work health and safety laws and regulations and developing national work health and safety policy. SWA is also a member of the HWSA Imported Materials with Asbestos Working Group.	SWA have been advised of the IDC. Some of the HWSA members who attended the IDC meeting on 24 October are also members of SWA. The SWA Agency will participate in future meetings when required.	If it is necessary to strengthen the model WHS laws to ensure that imported asbestos can be removed from workplaces, the IDC will engage with SWA to commence the process to amend the model WHS laws.
<b>Building Regulators</b>	Industry	Department of Housing and Public Works (Qld), Department of Planning and Infrastructure (NT), Department of Justice (Tas), Department of Planning, Transport and Infrastructure (SA), Department of Commerce (WA), Department of Planning and Environment (NSW), Victorian	Building regulators are responsible for setting and enforcing standards for the design and construction of buildings and other structures, which address structural adequacy, fire resistance and provisions for the health and amenity of occupants.  The regulatory powers of building regulators largely extend to addressing non-conforming and non-compliant building materials.	There has not been any direct engagement between the IDC and building regulators.  A number of state and territory governments made submissions to the Senate Committee Inquiry addressing issues with non-conforming building products. They did not address asbestos containing products.	The IDC will engage with building regulators to obtain information on how existing standards protect against building products containing asbestos and what powers building regulators have to address asbestos containing products if they are discovered at a building site.



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		Building Authority (Vic), Environment, Planning and Sustainable Development Directorate (ACT)	Asbestos containing products is a separate issue since they are a prohibited import.  In May 2016, the Senate Economics References Committee Inquiry into Non-conforming Building Products identified areas of weakness in the regulatory regime for non-conforming and non-compliant building products. The Building Ministers' Forum has previously recommended that regulators' powers should be enhanced to respond to incidents of non-conforming and non-compliant building products.		Building regulators can also provide advice on options to support assurance that building product supply chains are free of asbestos containing materials.
<b>Environment Regulators</b>	Environment	Environment Protection Authority (EPA) ACT, NSW EPA, Department of Lands, Planning and the Environment (NT), EPA Victoria, EPA SA, EPA WA, Department of Environment and Heritage Protection (Qld), EPA Tasmania	Environmental regulators are responsible for setting and enforcing laws and regulations on the disposal of hazardous waste, including asbestos. Storage and disposal occupations are licensed and regulated by environmental regulators.	There has not been any direct engagement between the IDC and environmental regulators, nor has there been any broader engagement from environmental regulators on asbestos in supply chains.	The IDC should engage with environmental regulators to better understand how prohibited imported asbestos is dealt with under environmental laws and ensure that environmental laws facilitate the disposal of asbestos containing materials identified in supply chains.

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<b>Consumer Safety Regulators</b>	Treasury/ ACCC	Consumer Affairs Victoria, NSW Fair Trading, Office of Fair Trading (Qld), Consumer Affairs and Fair Trading (Tas), Consumer and Business Services (SA), Consumer Protection (WA), NT Consumer Affairs, Fair Trading (ACT)	<p>Consumer safety regulators are responsible for enforcing the Australian Consumer Law, which is the national law for fair trading and consumer protection. The Australian Consumer Law sets out requirements for the recall of unsafe products and availability of recourse for buyers of unsafe products.</p> <p>Australian Consumer Law provides that a product containing asbestos is faulty and purchasers may seek a refund. It also enables consumer safety regulators to order the recall of unsafe products, although a product containing asbestos may not be deemed unsafe if there is no immediate risk of exposure to asbestos fibres.</p>	<p>There has not been any direct engagement between the IDC and consumer safety regulators other than with the ACCC as a member of the IDC.</p>	<p>The IDC will include the safety of consumer goods as an agenda item for a future meeting. The item will have regard to the outcomes of the current review of the Australian Consumer Law (ACL) which is being led by The Treasury and is considering if legislative changes are considered desirable. The item should also consider how the different components of the ACL currently operates in relation to imported consumer goods containing asbestos. Consideration could be given to whether there is adequate consumer and supplier understanding of the consumer guarantees regime and how it applies when consumers unknowingly buy products that contain asbestos.</p>
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					If legislative change is considered desirable, the ACCC could lead ongoing engagement with consumer safety regulators to develop changes.
<b>Standards Framework</b>	Industry	National Association of Testing Authorities (NATA)  Standards Australia	Standards Australia set out a range of requirements for products, including building products, and processes for the testing of products for the presence of asbestos. Standards Australia works with industry, government and community interests to develop and adopt voluntary, consensus-based standards. NATA supports this work by certifying laboratories as competent to test products consistently with these standards, providing consistently reliable testing, calibration, measurement and inspection data to government, industry and the wider community.	There has not been any direct engagement between the IDC and Standards Australia or NATA.  NATA has held a number of discussions with Employment, Immigration and Border Protection and other agencies about challenges with ensuring compliance with testing standards and issues with testing products for the presence of asbestos. During these discussions they have also raised challenges with overseas certification of products as asbestos free and with ensuring products are tested to Australian standards.	The IDC will invite Standards Australia and NATA to attend a meeting to outline existing standards, testing and certification processes for asbestos and develop a report on the procedures and frameworks used to support to sampling and testing of goods for asbestos at the border.  Standards Australia could also provide advice on how standards could be incorporated into any amendments to strengthen the Customs Import Regulations and the model WHS regulations.

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			There is currently no reference to asbestos testing standards in the Customs Prohibited Imports or Prohibited Exports Regulations. The model WHS regulations require samples of material potentially containing asbestos to be tested by a NATA-accredited laboratory.		
<b>Scientists</b>	Industry	CSIRO	<p>Unlike swab testing for drugs and explosives, currently, the only way to detect asbestos in products is through sampling and testing in a laboratory. Often sampling at the border will involve the destruction of a sample of the building product.</p> <p>At present there is a portable handheld asbestos analyser available that enables rapid in-field screening and identification of asbestos fibres (example: Thermo Scientific microPHAZIR AS).</p>	<p>There has not been any direct contact between the IDC and the CSIRO.</p> <p>Minister Hunt's letter to Minister Cash and Minister Dutton asked the Ministers to consider exploring how new technologies might be utilised to ensure greater supply chain transparency.</p> <p>The ABF has indicated a willingness to investigate and trial new and emerging technology, to improve detection at the border.</p>	The IDC will invite the CSIRO to attend a future meeting to obtain further information on potential new technologies that are being tested or explored to support border controls and the identification of asbestos in the workplace.
<b>Industry</b>	Employment	Australian Chamber of Commerce and	Industry associations represent the interests of Australian	There has not been any direct engagement between the IDC and	The IDC will invite industry associations to attend a future

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		<p>Industry (ACCI), Australian Industry Group (AiG)</p> <p>Master Builders Australia (MBA)*</p> <p>Housing Industry Association (HIA)*</p>	<p>employers, some of whom may be involved in the importation, supply or use of imported goods and in particular, building materials.</p> <p>They participate in a number of government bodies that consider issues relating to the health and safety of Australian workers, such as Safe Work Australia.</p>	<p>industry associations.</p> <p>AiG has previously raised concerns about “the inadequacy of Australia’s approach to ensuring the safety and quality of goods sold in Australia”, particularly for building products and in relation to asbestos, and called for greater enforcement of product standards from border controls to points of sale and building sites.</p> <p>ACCI has previously welcomed the release of Immigration and Border Protection’s Asbestos Importation Review and encouraged the Government to work with industry representatives to communicate consistent messages to stakeholders.</p>	<p>meeting to consider what assistance they can provide to raise awareness of the risks of asbestos importation among employers, improve supply chain assurances and ensure compliance with WHS laws and regulations concerning asbestos.</p> <p>If it is necessary to strengthen the model WHS laws to ensure that imported asbestos can be removed from workplaces, the IDC will engage with industry associations to discuss options to amend the model WHS laws.</p>
<b>Unions</b>	Employment	<p>Australian Council of Trade Unions (ACTU), Construction, Forestry, Mining and Energy Union (CFMEU), Electrical Trades Union (ETU), Australian</p>	<p>Unions represent the interests of Australian workers. They participate in a number of Government bodies that consider issues relating to the health and safety of Australian workers, such as Safe Work Australia.</p>	<p>There has not been any direct engagement between the IDC and unions. However, Employment and Immigration and Border Protection have met with ACTU, CFMEU and Australian Manufacturing Workers’ Union (AMWU) officials to discuss</p>	<p>The IDC will invite unions to a future meeting to obtain information about workers’ experiences of asbestos in supply chains. Unions can present IDC members with their views on issues with enforcement of the import</p>

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		Workers' Union (AWU)		<p>asbestos importation.</p> <p>The ACTU, CFMEU, ETU and AWU have made a number of public comments criticising the Government's approach to managing asbestos at the border and calling for more to be done to prevent asbestos importation.</p> <p>These included submissions to the Senate Committee Inquiry.</p>	<p>prohibition, model WHS laws and penalties for importing asbestos, and any options to resolve these issues, which may assist the IDC in its work on these matters.</p> <p>If it is necessary to strengthen the model WHS laws to ensure that imported asbestos can be removed from workplaces, the IDC will engage with unions to discuss options to amend the model WHS laws.</p>
<b>Border Industry (e.g. Customs Brokers)</b>	Immigration and Border Protection	Border industry peak bodies such as the Customs Brokers and Forwarders Council of Australia	Customs brokers, freight forwarders, carriers, licensed depot operators, amongst other border industries, act on behalf of owners of imported goods to facilitate the importation of goods into Australia.	<p>There has not been any direct engagement between the IDC and border industry representatives. However, Immigration and Border Protection have met with a number of border industry representatives to discuss asbestos importation.</p> <p>Customs brokers, as well as representatives from a spectrum of border industries, have raised</p>	<p>The IDC will invite border industry representatives to a future meeting to inform members about their role in the importation of goods and consider what assistance they can provide to raise awareness of the risks of asbestos importation among importers and improve supply chain</p>



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				concerns about their level of responsibility for ensuring that imported products do not contain asbestos. In particular, their concerns about potential liability if they are found to have facilitated the importation of a product containing asbestos.	assurances and ensure compliance with the asbestos importation ban.  Any options to update and strengthen the Customs Regulations to prevent asbestos entering supply chains could be discussed with customs brokers.
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## Asbestos Policy and Regulation Interdepartmental Committee (IDC) Forward Work Plan

Thursday 9 March 2017

### Objective of the Forward Work Plan

- The Forward Work Plan (FWP) identifies activities that the IDC will undertake to address asbestos policy and regulatory issues, gaps and risks.
- The activities will support IDC members to provide advice to Government, or complete tasks as set by Government.

### Process for establishing and addressing activities

#### *Identifying activities*

- Activities will be identified by Ministers, IDC members, stakeholders or other processes, such as the Senate Inquiry into non-conforming building products, and will have been agreed to by the IDC.
- The FWP will be updated from time to time, as required.

#### *Addressing activities*

- Agencies will lead activities consistent with their policy responsibilities.
- Relevant IDC members will work with lead agencies to undertake the activity. This may include establishing a working group.
- Each activity will be progressed in consultation with relevant stakeholders as identified by the Stakeholder Engagement Plan.
- Progress will be reported to and monitored by the IDC.

#### *Completion of activities*

- Findings and recommendations will be presented to and agreed by the IDC.
- The endorsed findings or recommendations will be used to advise Government Minister(s) where relevant.

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## Key – Activity Implementation Status

✓ Tick: The project has been completed	● Amber: One or more elements require substantial attention
● Green: The project is generally on track	● Red: Urgent and decisive action is likely to be required

Activity Indicator Summary		
1	●	Stakeholder Engagement Plan.
2	●	Review asbestos testing and sampling processes by 'competent persons' (i.e. hygienist), including professional standards and accreditation.
3	●	Investigate new technologies for capabilities to test for asbestos.
4	●	Options to strengthen work health and safety laws to require mandatory removal of asbestos.
5	●	Amend and update the Customs Prohibited Imports/Exports Regulations for asbestos, to be consistent with the Work Health and Safety legislation.
6	●	Consider the adequacy of penalties and offences for the unlawful importation/exportation of asbestos.
7	●	Supporting awareness and voluntary compliance by industry with the asbestos ban across the supply chain.
8	●	Consider the appropriate mechanisms for Ministers to receive stakeholder advice on the management of the asbestos ban across the supply chain (e.g. establish a working group of stakeholders, including unions).



No	Activity	Description	Responsibility	Timeframe	Status
1	Stakeholder Engagement Plan	Develop a Stakeholder Engagement Plan (the Plan) to provide a framework for IDC engagement with relevant industry associations, governments and other stakeholder groups that have a role in asbestos policy and regulation. This will assist in understanding issues and opportunities for improved asbestos policy and regulation. The Plan will also identify potential engagement fora that may be used by the IDC to communicate to stakeholders.	<b>DoE and DIBP</b> to co-lead  IDC members to contribute	March 2017	●
2	Review asbestos testing and sampling processes by 'competent persons' (i.e. hygienist), including professional standards and accreditation	<p>Review and report on the adequacy and consistency of procedures and frameworks used by hygienists and laboratories to support the sampling and testing of goods for asbestos. This may include consideration of:</p> <p><i>Sampling</i></p> <ul style="list-style-type: none"> <li>Whether the standards and practices are suitable for testing imported goods at the border.</li> <li>How to ensure that appropriate sampling and testing methods are consistently applied to all goods tested at the border or in the workplace.</li> </ul> <p><i>Testing</i></p> <ul style="list-style-type: none"> <li>NATA's recognition of overseas equivalents and their accreditation of individual laboratories, including the assurance process and approach to addressing non-compliance.</li> </ul> <p><i>Accreditation</i></p> <ul style="list-style-type: none"> <li>Options to increase the number of NATA-accredited Australian laboratories that can test for asbestos.</li> <li>Options to increase the number of international laboratories that can test to the Australian Standard.</li> <li>Adopting/accepting international standards for testing goods for asbestos (e.g. ISO Standard).</li> </ul>	<b>DoE and DIBP</b> to lead  DIIS to support and facilitate interactions with standards and conformance bodies.	June to December 2017	●
3*	Investigate new	Identify and assess new and emerging technologies that may assist with the detection of	<b>DoE and DIBP</b>	June to	●

	technologies for capabilities to test for asbestos.	asbestos.	to lead <b>DIIS</b> to coordinate with CSIRO	September 2017	
4	Options to strengthen Work Health and Safety laws to ensure asbestos removal.	Identify options to strengthen work health and safety legislation to ensure that unlawfully imported asbestos can be removed from workplaces through the issuing of improvement or prohibition notices.	<b>DoE</b> to lead	June to September 2017.	●
5	Amend and update the Customs Prohibited Imports/Exports Regulations for asbestos, to be consistent with the Work Health and Safety legislation.	Update the Customs Prohibited Imports/Exports Regulations to reflect the definitions in the model Work Health and Safety legislation.	<b>DoE</b> and <b>DIBP</b> to lead	March to July 2017	●
6*	Consider the adequacy of penalties and offences for the unlawful importation/exportation of asbestos.	<p>A review of the adequacy and effectiveness of existing penalty and offence provisions for the unlawful importation/exportation of asbestos. Where necessary, identify policy options for new or increased penalty provisions, reflecting the magnitude of the offence and the compliance effort involved.</p> <p>Review the adequacy and effectiveness of existing prosecutions for asbestos offences.</p> <p><i>Note: IDC members to contribute. Consult with Attorney General's Department. Relevant stakeholders to be engaged where appropriate.</i></p>	<p><b>DoE</b> and <b>DIBP</b> to lead.</p> <p>IDC members to contribute based on roles and responsibilities.</p>	March to June 2017	●

7	Supporting awareness and voluntary compliance by industry with the asbestos ban across the supply chain.	Explore options to promote industry and importer voluntary compliance by consulting, educating and providing information to support businesses that import goods.	<b>ASEA</b> to lead DoE and DIBP to support.  IDC members to contribute based on roles and responsibilities	July to December 2017	●
8*	Mechanisms to support comprehensive advice on asbestos controls to Ministers	Consider the appropriate mechanisms for Ministers to receive stakeholder advice on the management of the asbestos ban across the supply chain (e.g. establish a working group of stakeholders, including unions).	<b>DoE and DIBP</b> to lead.  IDC members to contribute based on roles and responsibilities	By the end of June 2017	●

\* Raised in correspondence from the Minister for Industry, Innovation and Science to the Minister for Immigration and Border Protection and the Minister for Employment, dated 5 October 2016.





## AGENDA

### Seminar

### Raising Awareness about the Risk of Imported Products containing Asbestos

**Date:** Wednesday, 14 June 2017

**Time:** 10.00am to 12.30pm (lunch to follow at completion)

**Location:** Master Builders Association - 1 Iron Knob Street, Fyshwick ACT 2609

Time	Speaker	Topic	Duration
10:00am – 10:05am	<b>Andrew Kefford PSM</b> Member Asbestos Safety and Eradication Council	<ul style="list-style-type: none"> <li>• Host of the Seminar / MC / Moderator.</li> </ul>	5 mins
10:05am – 10:15am	<b>Mick Gentleman, MLA</b> Minister for Planning and Land Management	<ul style="list-style-type: none"> <li>• Introduction and welcome.</li> </ul>	10 mins
10:15am – 10:35am	<b>Peter Tighe</b> Chief Executive Officer Asbestos Safety and Eradication Agency	<ul style="list-style-type: none"> <li>• Procurement practices for project designers, builders and principals.</li> <li>• The Senate Inquiry into non-conforming building products (NCBPs).</li> <li>• Permission to import samples for the purpose of analysis.</li> </ul>	20 mins
10:35am – 10:55am	<b>Erin Dale</b> Commander of Customs Compliance Branch Australian Border Force	<ul style="list-style-type: none"> <li>• Regulators' perspective and expectation.</li> <li>• Recent incidents involving the importation of building equipment or materials found to contain asbestos.</li> <li>• Due diligence.</li> <li>• Responsibility of importers and exporters.</li> </ul>	20 mins
10:55am – 11:05am	<b>Greg Jones</b> ACT Work Safety Commissioner	<ul style="list-style-type: none"> <li>• WorkSafe ACT's role in regulating and preventing the use of asbestos containing materials in the ACT.</li> <li>• WorkSafe ACT's education and compliance activities through the Territory's mandatory asbestos awareness training.</li> </ul>	10 mins
11:05am – 11:15am	<b>Andrew Parkinson</b> Director, Commercial Infrastructure ACT Procurement and Capital Works	<ul style="list-style-type: none"> <li>• Procurement controls implemented to prevent the use of products containing asbestos for ACT Government projects.</li> <li>• Contractual Industrial Relations and Employment obligations.</li> </ul>	10 mins
11:15am – 11:30am	<b>Katherine Morris</b> Partner Norton Rose Fulbright	<ul style="list-style-type: none"> <li>• Who makes up the supply chain?</li> <li>• Work Health and Safety (WHS) and building regulatory framework.</li> <li>• Industry perspective.</li> </ul>	15 mins
11:30am – 11:45am	<b>Short break (15 mins)</b>		
11:45am – 12:30pm	<b>Q&amp;A with panel of speakers - Andrew Kefford to moderate (45 mins)</b>		
From 12:30pm	<b>Lunch and networking</b>		

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# National Association of Testing Authorities, Australia



## Report to the Commonwealth Asbestos IDC Testing and Inspection Infrastructure

### Key Points

- AS 4964:2004 - Methods for the qualitative identification of asbestos in bulk samples specifies the use of polarised light microscopy (PLM) with dispersion staining (DS). It involves the identification of asbestos fibres by examining stained samples using a conventional microscope but under polarised light.
- The PLM/DS method is a standardised reference method in many countries, however, the reporting limits vary per country. AS 4964 reporting limit of asbestos particles is between 0.01 and 0.1% which is lower than in many other countries.
- Phrases such as “asbestos free”, “no asbestos detected” or “contains no asbestos” cannot be substantiated with absolute certainty. Similarly, the phrase “asbestos containing material” (ACM) is a defined term in some countries. For example, in the USA (OSHA) ACM is defined as material that contains “more than 1% asbestos”. The undefined, but implied opposite, might well be “non-ACM” or “asbestos free”.
- It is therefore important that importers, their agents and ABF Officers are well aware of the terminology and limits used in other economies and that the documentation from overseas suppliers specify the Australian requirements.
- The availability of services overseas for AS 4964 compliance testing appears very limited. NATA has so far found less than a handful of laboratories, including one in China, that are accredited for AS 4964 presumably due to a lack of demand for testing to AS 4964.
- Mutual Recognition Agreements (MRAs) are voluntary agreements between accreditation bodies. Acceptance of these MRAs is the up to the government regulator and/or industry of the importing economy through policy or regulation but there is no compulsion to do so.
- For imports to Australia, testing or inspection performed at a foreign facility accredited by a NATA MRA partner may not be automatically accepted in Australia, unless it is undertaken in accordance with Australia’s requirements i.e. in accordance with AS4964 and [Regulation 4C of the Customs \(Prohibited Imports\) Regulations 1956](#) (prohibition of importing fibrous forms of asbestos).
- The technical inability to measure the existence of zero asbestos in products represents a disconnect between policy and practice creating a dilemma for an agency such as the ABF in the border control of asbestos imports (and exports).
- The pragmatic approach adopted by the ABF allows for trade in a range of products to continue but it is not without risk. It is always possible that in testing samples asbestos maybe missed, especially if the material is not homogeneous. It is also a possibility that in the future a technique having a significantly lower limit of detection could be developed.
- The policy of prohibition in combination with the lack of international harmonisation of approaches makes on-going educating of all players throughout the supply chain an essential component of policy implementation.
- A review of the standard has been approved by Standards Australia but has not progressed. The review could assist in addressing the issues identified in this report.

## Background

### NATA's Role

NATA is a not-for-profit private sector organisation established in 1947 jointly by the Commonwealth and State governments to facilitate reliable testing services as a means of ensuring the quality of Australian manufactured products. Since that time, the scope of NATA's accreditation activities has expanded beyond products to include many services related to health, safety and environmental protection. There are currently over 3,400 facilities accredited in Australia and around forty off-shore.

Together with Standards Australia, the Joint Accreditation System of Australia and New Zealand and the National Measurement Institute, NATA is part of Australia's standards and conformance infrastructure which is comprehensively described in the DIIS publication *Australia's Standards and Conformance Infrastructure - An Essential Foundation*<sup>1</sup>.

A *Memorandum of Understanding*<sup>2</sup> (MOU) between the Commonwealth and NATA formally recognises NATA as:

- the national authority for laboratory accreditation; and
- a peak authority for the accreditation of inspection bodies.

Of NATA's undertakings under the MOU a number relate to ensuring that it maintains Mutual Recognition Arrangements (MRA) with equivalent accreditation bodies around the world. This assists Australia in meeting its WTO technical barriers to trade (TBT) obligations by facilitating the acceptance of test and inspection data from facilities accredited by an MRA signatory without the need to retest upon import.

The two MRAs specifically identified are those with the International Laboratory Accreditation Cooperation (ILAC) and the Asia Pacific Laboratory Accreditation Cooperation (APLAC)<sup>3</sup>.

A more detailed explanation of these MRAs is provided later under the section on Accredited infrastructure outside Australia.

### Asbestos related accreditation

NATA's history of accrediting testing laboratories involved in the identification of asbestos spans several decades. Early drivers for accreditation were primarily related to occupational/workplace health and safety rather than being product focussed.

In the last decade, NATA has also accredited a number of inspection bodies for asbestos related activities.

Laboratories are accredited for complying with the international standard ISO/IEC 17025 *General requirements for the competence of testing and calibration laboratories*, while inspection bodies must demonstrate compliance with ISO/IEC 17020 *Requirements for the operation of various types of bodies performing inspection*.

The types of asbestos related activities that can be accredited under each standard are as follows.

Laboratories (ISO/IEC 17025)	Inspection Bodies (ISO/IEC 17020)
<ul style="list-style-type: none"> <li>▪ Air monitoring and analysis</li> </ul>	<ul style="list-style-type: none"> <li>▪ Surveys of building/structures and sites</li> </ul>
<ul style="list-style-type: none"> <li>▪ Analysis of raw materials/manufactured products</li> </ul>	<ul style="list-style-type: none"> <li>▪ Clearance inspections</li> </ul>
<ul style="list-style-type: none"> <li>▪ Soil analysis</li> </ul>	<ul style="list-style-type: none"> <li>▪ Sampling and sampling plans</li> </ul>

### Becoming accredited

NATA accreditation involves the demonstration of a testing or inspection body's collective competence to perform specific tasks. This 'demonstration' takes place via an on-site assessment undertaken by a NATA

<sup>1</sup> <https://industry.gov.au/industry/IndustryInitiatives/TradePolicies/TechnicalBarrierstoTrade/Documents/StandardsandConformanceReport.pdf>

<sup>2</sup> <https://industry.gov.au/industry/IndustryInitiatives/TradePolicies/TechnicalBarrierstoTrade/Documents/NATAMOUsigned21May2013.pdf>

<sup>3</sup> Note – both ILAC and APLAC cover the accreditation inspection bodies, not only laboratories.

## Report to Commonwealth Asbestos IDC

lead assessor and one or more technical (peer) assessors with specific knowledge of the tests, measurements and inspection that are the subject of accreditation.

The criteria defined in the applicable standard include:

- staff knowledge, training and competence;
- equipment adequacy, calibration and maintenance;
- test/inspection methods;
- environment;
- proficiency testing;
- records systems;
- reporting practices; and
- management systems.

Once accredited, all facilities are subjects to surveillance visits by NATA lead assessors and full technical reassessment every three years.

Sanctions can be applied for non-compliance with accreditation criteria including shortened surveillance intervals, suspension and cancellation. Such sanctions may also come into play for behaviours that bring the accreditation system into disrepute.

One important point to note is that NATA accreditation is not a form of credentialing individuals. Individuals will most certainly be subject to questioning at assessment activities but this is not to provide them with an individual approval or qualification. Rather, in determining the collective competence of a facility, NATA will examine on a sampling basis whether those staff authorised by the laboratory or inspection body to undertake specific duties do actually have the requisite experience, knowledge and proficiency.

#### Difference between laboratory and inspection accreditation

The differences between the two accreditation programs are minimal in terms of process. Both entail the on-site peer assessment described above.

The skill sets applicable to testing and inspection activities are, however, quite different and so it is the technical focus of the assessment that differs.

Whatever the testing activities might be, laboratories will have:

- a set of processes to safely handle samples;
- procedures to prepare them for analysis;
- validated test methods in order to undertake the analysis; and
- reporting practices that will indicate whether or not asbestos is detected in the sample(s) being analysed.

It is these processes and the personnel's scientific/technical knowledge, experience and understanding of how they are validated and used that constitutes a major part of the NATA assessment.

Inspection bodies that deal with asbestos are primarily involved in on-site activities and so will have:

- procedures for surveying a site and assessing the presence and condition of contaminated materials;
- personnel possessing a sound knowledge of how asbestos has been used in the past in order to identify where it is likely to be found, in what form and what it will actually look like in situ; and
- reporting practices which may include survey reports, publication of/ update to an asbestos register, recommendations relating to the management of asbestos or a 'clearance to occupy'.

As such, NATA assessments under the inspection program have a greater focus on accumulated knowledge and experience and how this is applied to a particular location or construction.

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## Report to Commonwealth Asbestos IDC

Laboratories accredited for the analysis of asbestos in bulk materials can generally deal with a broad range of materials using the same methodologies – although the extraction techniques may vary depending on the medium. With inspection activities being so dependent on aspects such as context and industry practices over time, expertise in (for example) asbestos used in the construction industry does not translate to expertise in maritime applications and vice versa.

### Existing accreditations

What are the drivers for NATA accreditation? The case for obtaining and maintaining NATA accreditation is primarily established by one or more of the following:

- regulatory demand or preference for the use of accredited facilities;
- laboratory customers' demand for accreditation to manage their own risks;
- specifier/procurer expectation that goods will be supported by credible conformity assessment;

Whatever the driver(s), there must also be a viable business case which supports the capital costs and human resources necessary to have the necessary capability in the first place. Then there must be the supplementary case for the costs of accreditation.

It must be borne in mind that NATA accreditation is voluntary. NATA cannot compel any facility to obtain accreditation nor dictate what the scope of an application might be. A laboratory or inspection body may seek accreditation for all services it provides or a single activity.

There are currently sixty-five accredited laboratories that undertake analytical services for asbestos although only a little over half undertake testing relevant to products and raw materials with the remainder focussed on air-monitoring and/or asbestos in soils. This represents an approximate three-fold increase in the last thirty years, a growth that can be explained by a mix of population increase, OHS/WHS requirements for asbestos laboratories to be accredited and greater public awareness and focus on the health issues that surround asbestos.

The relatively linear rate of growth suggests there have not been any "crisis" points along the way. Despite the considerable media and political focus on asbestos in imported products in the past two years, NATA has not seen any abnormal increase in asbestos related accreditations.

There are also eight accredited inspection bodies which have all appeared between 2010 and 2014. NATA's laboratory accreditation program has far greater traction with both government and industry than does the inspection program and the use of a NATA-accredited laboratory is often the default conformity assessment pathway, particularly in sectors that are regulated.

The inspection accreditation program (developed in the early 1990's) is less well understood by stakeholders and also has considerably more competition. This competition is less from JAS-ANZ – which also offers inspection accreditation – but from other well embedded approaches to recognising expertise which are usually focussed on the individual rather than organisational/collective competence. A prime example of this is in the Workplace Health and Safety space where, with the exception of asbestos analysis (which is expected to be performed by a NATA-accredited laboratory), the regulations have a reliance on "competent persons" taking responsibility for scientific, technical and engineering based decision making.

The Australian Maritime Safety Authority recommends that owners of marine vessels use the services of an ISO/IEC 17020 accredited inspection body for asbestos surveys but to NATA's knowledge, this is the only area where inspection accreditation for asbestos related activities has regulatory recognition. Hence there is unfortunately a perceived lack of business drivers for accreditation covering an activity that could fulfil a useful role in managing asbestos related issues.

### **Samples for analysis**

Sampling is a core scientific/technical activity that is as important as any laboratory analyses. Samples used for laboratory analysis must be representative of the material or product being sampled. In the case of asbestos analysis, as well as making sure that the samples collected are representative of the material or product, there are many safety concerns to consider. It is also critical that the integrity of samples is maintained to avoid cross-contamination

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For all of these reasons, it has always been NATA's advice that, wherever possible, sampling should be performed by a person with appropriate expertise.

### Sampling expertise

Many (but not all) accredited laboratories will provide services to collect samples although this is not actually covered by their accreditation. A small number of accredited inspection bodies can also perform this service as part of their accreditation.

If the services of a laboratory or inspection body are not available, some occupational hygienists will also perform sampling. NATA's advice to enquirers is to seek a hygienist who is a member of the Australian Institute of Occupational Hygienists.

Clearly, these options are for samples collected in Australia. NATA is not familiar with the arrangements available in other economies and does not offer any clear advice to enquirers other than to attempt to confirm the sample taker's expertise.

## Australian testing methodology

Since 2004, all laboratories that hold NATA accreditation for testing bulk materials (including manufactured products) have been accredited to undertake analyses in accordance with the Australian Standard AS 4964:2004 - *Methods for the qualitative identification of asbestos in bulk samples*.

This standard specifies the use of polarised light microscopy (PLM) with dispersion staining. It involves the identification of asbestos fibres by examining stained samples using a conventional microscope but under polarised light. This method is a standardised reference method in many countries.

PLM with dispersion staining can be used to identify the three asbestos types that were commercially used in Australia (Chrysotile, Crocidolite and Amosite). The other three types - tremolite, actinolite and anthophyllite - were not generally used in this country.

Where AS 4964 differs from other nationally specified methodologies is that in addition to conventional PLM examination, it also invokes an additional process entitled "trace analysis" which is conducted by placing a small sub-sample of the material on a slide with a refractive index liquid and observing it under high magnification to detect any discrete respirable fibres or fibre bundles.

### Limitations of AS 4964

The Foreword of AS 4964 states a number of limitations of the methodology it describes. Of particular relevance to this discussion are two.

- *PLM is a qualitative technique only. That is, it is designed to detect the presence of asbestos but not quantify how much the sample contains.*
- *Most samples of tremolite, actinolite and anthophyllite show a wide range of optical properties and cannot be equivocally identified by PLM and dispersion staining. Where the presence of such fibres is found, it is necessary to use another confirmatory technique is necessary.*

The other important limitation despite the addition of the trace analysis process to the widely used PLM is that it only allows for the reporting of the presence of asbestos in the range 0.01% by weight for homogeneous materials or greater for materials where asbestos may not be uniformly distributed.

### Confirmatory techniques

In instances where the results of an analysis show fibres present that could be asbestos, the Standard requires these to be described in the test report as "mineral fibres of unknown type". It is also expected that this will be accompanied by a recommendation to use another confirmatory technique.

Appendix A of AS 4964 includes a discussion of some advantages and disadvantages of confirmatory techniques but it does not contain a definitive recommendation nor does it offer a recognised methodology to be used. On balance though, electron microscopy appears to be favoured.



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The use of either scanning electron microscopy (SEM) or transmission electron microscopy (TEM) used in conjunction with energy dispersive X-ray analysis (EDXA) facilitates:

- “seeing” much smaller fibres and their morphology than does PLM; and
- providing spectral analysis that facilitates matching the chemical composition with the various types of asbestos.

As such, these techniques offer significant advantages over optical techniques in some regards.

All analytical techniques have their advantages and disadvantages but in this case, the disadvantages make electron microscopy an unattractive methodology commercially.

The following table describes some of the strengths and weakness of the methods described in AS 4964 and the use of electron microscopy.

**Comparison of PLM vs SEM**

<b>AS 4964 PLM with dispersion staining and trace analysis</b>	<b>Electron microscopy with EDXA</b>
Can be used for the three common asbestos types (other types reported as mineral fibre of unknown type)	Can be used for all six asbestos types
Standardised and validated method used worldwide	There is no standardised method defined/referenced
Rapid – Analysis takes between 15 minutes and 1-hour	Can be time consuming – especially for non-homogeneous samples with very low concentration of asbestos fibres
Relatively inexpensive in both capital investment and cost of providing services	Far higher capital investment plus analysis time make cost of delivering service high.
Can resolve fibres down to 0.5 µm	Can resolve fibres down to 0.05 µm
Reporting limit between 0.01 and 0.1% (AS 4964)	Limit of detection <1% - may be higher than PLM if non-homogeneous as only small portions of the sample can be observed under high magnification.
Can be subject to interferences (many eliminated by pre-treatment)	Can be subject to interferences and errors in interpretation e.g. due to non-standard elemental ratios.

#### Availability of confirmatory techniques in Australia

No laboratory is currently NATA accredited for SEM asbestos analysis or other equivalent technique.

From an equipment perspective, suitable electron microscopy capability exists in Australia, and indeed, exists within accredited laboratories. This is therefore not the limiting factor for any of the capability to be accredited. The lack of a defined confirmatory technique in AS 4964 may be a contributing factor but from the anecdotal evidence, it would appear that the main limitation is a lack of a tangible business case. The proportion of samples tested using PLM with trace analysis which yields an indeterminate finding - “mineral fibres of unknown type” – is very small.

A limited number of non-accredited laboratories do provide their services for confirmatory testing where PLM identifies “mineral fibres of unknown type”. The fact that these facilities are not accredited does not necessarily mean that the quality of the actual analyses is inadequate but examples of (redacted) reports shown to NATA by the Australian Border Force suggest that the quality and appropriateness of the actual reporting is variable – ranging from comprehensive to unhelpful. This suggests that the development of a standardised methodology and accompanying reporting protocol – either as part of the review of AS 4964 or as a stand-alone document – would assist industry and government in having an improved level of confidence in testing outcomes.

### Current status of AS 4964

AS 4964 does provide a technically solid basis for product screening and is likely better than other standard methodologies used in other economies so far identified.

The consensus of NATA accredited laboratories and other industry experts is, however, that the document is dated, unnecessarily complicated and that the reporting requirements need to be overhauled.

The *Introduction* to ISO 22262-1 *Sampling and qualitative determination of asbestos in commercial bulk materials* (discussed in the next section) includes an historical commentary pointing to the fact that the three types of asbestos not used commercially in Australia have been used in other economies. As such, AS 4964: 2004 may have been designed 'for local conditions' and not with the testing of imported products as its focus.

A review of the standard has been approved by Standards Australia but NATA's understanding from NATA technical assessors on the committee is that this review has not been commenced more than a year later.

There is, however, one concern about how this review may be conducted. It is NATA's belief that any work to improve AS 4964 should include as broad a range of expertise as possible. The historical focus on PLM-based techniques as the primary methodology and occupational/workplace health and safety as the context does appear to have resulted in a high level of comfort with the methodology notwithstanding the deficiencies in the standard.

Additionally, the lack of prescription of confirmatory techniques such as electron-microscopy may have limited the development of expertise and experience in its use for asbestos analysis. While NATA does not keep data on the capabilities of NATA-accredited facilities that are not covered by the accreditation, anecdotal evidence from NATA's lead assessors suggests the majority of laboratories do not appear to have a capability for electron-microscopy, and hence, current expertise.

The 'comfort' with the existing methodology together with a lack of comprehensive expertise on a committee reviewing the standard could result in a less than ideal consideration of other techniques and standards.

NATA concludes that, while the update of the standard is not in itself a solution to managing the control of asbestos in imported products, improved clarity in the requirements – particularly around reporting and confirmatory techniques – would assist the laboratory infrastructure and those dependent upon these services.

## International arrangements for asbestos

### Standards and methodologies

As mentioned, PLM using dispersion staining is a technique that appears to be common to many other standards or testing methods around the world. It is the basis for the methods developed by both the US Occupational Safety and Health Administration (OSHA) and National Institute for Occupational Safety and Health (NIOSH) as well as being the starting point in ISO 22262-1.

The ISO Standard includes a statement that:

*"With appropriate matrix reduction procedures that are tailored to the nature of the sample, the limit of detection can be significantly lower than 0.01%."*

Further reading of the ISO standard, the commentary contained in AS 4964 and feedback from NATA's technical advisors suggests that this statement may be optimistic and/or need qualification. Unlike the Australian Standard though, the ISO does contain (normative) procedures for the use of both SEM-EDXA and TEM-EDXA as confirmatory techniques.

The PLM based methods referenced by OSHA do not offer a definitive statement of the limit of detection but it is implied that it may lie between 0.1 and 1.0%.

From NATA's current understanding, AS 4964 differs from other methodologies in that it is the only one that appears to have the trace analysis provisions. As such, technical feedback received by NATA suggests that

## Report to Commonwealth Asbestos IDC

the Australian methodology used by NATA accredited laboratories has one of the best limits of detection notwithstanding its lack of information on confirmatory techniques.

Despite this, NATA cannot with a high degree of confidence make a clear recommendation to the IDC regarding alternatives to AS 4964 and, as per the above discussion on the review of the Australian Standard, this needs to be examined by as broad a range of expertise as possible.

What is clear though is that:

- (a) there is a large number of factors relating to the sample type and composition which can make definitive identification of asbestos difficult;
- (b) it is apparent that there is no clear consensus amongst the scientific community on “the best” methodology to use for asbestos analysis;
- (c) determining the level of equivalence between qualitative testing techniques and methodologies is difficult in most disciplines but for asbestos - where there is no clear consensus between analysts – this is challenging; and
- (d) the aged nature of the Australian Standard and the delays in having it thoroughly reviewed and modernised is not assisting with policy or regulation.

#### MRAs – what is recognised?

Being a signatory to both of these arrangements involves a peer evaluation every four years. The ‘peers’ are experienced staff from other accreditation bodies and the evaluations typically involve six to eight evaluators spending several days at an accreditation body examining records, talking with staff and witnessing a range of assessment activities in the field. The criteria with which accreditation bodies must comply are primarily those of ISO/IEC 17011 *General requirements for accreditation bodies accrediting conformity assessment bodies*.

Two key points must be understood about these MRAs.

Firstly, the parties to accreditation body MRAs are the accreditation bodies themselves – they are not government to government agreements. As such, the actual acceptance of these MRAs is the domain of the government regulator and/or industry of the importing economy. While the MRAs may be written into policy or regulation and thus become formally recognised, there is no compulsion to do so.

Secondly, mutual recognition in the accreditation community refers to the accreditation bodies’ respective processes rather than to technical requirements and standards against which a product might be evaluated. Both the ILAC and APLAC MRAs do facilitate the acceptance of test, measurement and inspection data across borders by providing confidence that an accredited laboratory or inspection body has the competence and capability to perform specific conformity assessment activities. But the rules about what technical requirements are recognised in any particular economy remain solely the domain of the regulators and/or industry in that economy. There is no implied or actual compulsion for an importing economy to accept the technical standards – and hence the test/inspection reports – that apply in the country of export.

This means that in the case of imports to Australia in the context of asbestos, NATA has no expectation that testing or inspection performed at a foreign facility accredited by a NATA MRA partner would be accepted in Australia unless it is undertaken in accordance with a standard or method that is deemed acceptable by Australian regulatory and enforcement agencies.

#### Accredited infrastructure

NATA has a small number of off-shore accreditations but none are asbestos related.

Unfortunately there is no search facility on either the ILAC or APLAC websites below the level of accreditation body. To search for testing or inspection capability in a specific economy, it is necessary to go to the accreditation body’s website and use their search capability. Some have very effective search capabilities but many accreditation bodies only allow a general search of sector or type of activity e.g. chemical analysis. To find more detail, it is necessary to delve into individual scope of accreditation. Other less developed bodies have virtually no search functionality on their websites and it is necessary to approach the Accreditation Body directly.

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NATA's own (non-exhaustive) investigation of a number of websites that do provide relatively accessible information reveal that some MRA partners accredit laboratories for asbestos analysis in bulk materials and a subset of these accredit inspection bodies for survey type activities. The scopes of accreditation reveal a number of testing standards/methodologies in use which are usually the local national standard(s) or those of large importing economies, particularly the USA. As previously mentioned, most appear to adopt PLM with dispersion staining as the default technique.

Recognising the difficulty of searching for accredited infrastructure, it would appear that the availability of services for AS 4964 is very limited. For example, despite the volume of products coming from China – and industry concerns about products containing asbestos largely being focused there – NATA's MRA partner CNAS has only a single laboratory accredited to the Australian Standard.

Outside of China, NATA has so far found less than a handful of laboratories accredited for AS 4964.

So why are there so few accreditations?

Returning to the discussion of business driver for accreditation in Australia, foreign laboratories also need to have enough customer demand and work through-put to justify gaining accreditation for what (to them) is an obscure Standard. The lack of accreditations is a signal that there is a lack of demand for testing to the Australian Standard.

What would be the source of this demand?

The *Customs (Prohibited Imports) Regulations* make clear the restrictions on asbestos coming into Australia but they are not intended to lay down evidence rules for border controls. In this, the regulations are not a source of information on testing methodologies or applicable standards. Information on the DIBP website and that contained in Customs Notices identifies NATA as a source of information on available testing and inspection infrastructure but it does not specify a specific standard. As a consequence, there is no clear direction to an exporter, manufacturer or laboratory based in another economy to seek testing to AS 4964.

Hence, a demand for AS 4964 testing not only has to come from the laboratory's direct customers but it must propagate through the supply chain from customers who are adequately informed of the Australian context. It seems reasonable to assume that the longer and more complex the supply chain, the lower the likelihood that the laboratory's immediate customer will be adequately informed.

It is possible that if sales volumes of a product to Australia were sufficiently high, the supply chain would develop sufficient awareness of what was needed in asbestos management. Looking further into the CNAS accredited laboratories that test bulk samples for asbestos and those laboratories of other accreditation bodies in the region, the most common standards referenced in scopes of accreditation are NIOSH methods. This reflects the substantially higher sales volumes to the US. Another contributing factor may be that these methods have much higher visibility because they are specifically referenced in regulation.

## Reporting

ISO/IEC 17025 details a generic list of what needs to be included in a test report but does not give any asbestos specific detail. Some asbestos specific standards, test methods and codes of practice have tailored reporting requirements. Despite mandatory requirements, there is usually little prescription of reporting format – meaning that accredited laboratories may use a fair level of discretion in terms of layout.

For identification of asbestos in bulk samples, AS 4964 has a section on reporting which requires an explicit statement that the analytical method used is PLM with dispersion staining. There is also a list of non-mandatory items around the sample description, sampling procedures/sample preparation and the sample's history. While not being mandatory, the inclusion of this information represents good laboratory reporting practice. It is also consistent with the reporting requirements of ISO/IEC 17025.

Additionally, AS 4964 has a range of statements to be used in the conclusion of the report if there are inconclusive results.

An issue that has been identified by the ABF that caused some concern is that the reporting requirements prescribed by the standards are the minimum content. Some laboratories add notes and caveats around certain items which, while being factual, have made it difficult to make a 'pragmatic' decision on a

consignment of goods. While the matter is under consideration, the review of AS 4964 reporting requirements would be a good starting point to address this issue.

#### Reports from MRA partner accredited laboratories

It is reasonable to expect that a test report from an off-shore ISO/IEC 17025 accredited laboratory for testing conducted to AS 4964 will appear similar to one from a NATA accredited laboratory. As identified above, however, there are few such entities.

It is more likely that reports from MRA partner accredited facilities will be for tests conducted in accordance with the standards of methods applicable in either:

- the country of export; or
- a major trading partner other than Australia.

As such, reports would similarly be expected to meet the relevant reporting requirements.

As discussed, if the limit of detection of a non-AS 4964 method is substantially higher, a 'no asbestos detected' statement needs careful consideration and be properly understood by Australian importers or their agent. Unless a report being examined states explicitly (and credibly) the method's limit of detection, making any judgement on whether the result has 'equivalence' to an AS 4964 test is not practical for the non-expert.

This also becomes an issue for ABF officers who need to understand that not all 'no asbestos detected' results in test reports are equal.

## Terminology

Asbestos – particularly chrysotile - is still used commercially in parts of the world for its structural or thermal purposes. The amount (by weight) added to a product can have a bearing on some of the terminology that is applied to the product.

Phrases such as "asbestos free" or "contains no asbestos" cannot be substantiated with absolute certainty as per the earlier discussion of limitations on analytical techniques. In practice a phrase such as "asbestos free" may not be used in a technical sense but rather to state that within a regulatory or industry context, the product does not contain more than the allowable limit.

Similarly, the phrase "asbestos containing material" (ACM) is a defined term in some regulatory regimes. For example, the US OSHA defines ACM as material that contains "more than 1% asbestos". The undefined opposite but implied term for the entrepreneur might well be "non-ACM" or "asbestos free".

As such, it is important that importers and their agents are well aware of the terminology used in other economies and that this is front-of-mind when specifying the need to meet Australian requirements and in acquiring appropriate documentation from their suppliers.

## Policy – dealing with the science

All analytical techniques have limitations and none can "measure" zero.

Many chemical tests can detect very low amounts of a substance – down to a few parts per billion in many cases. Indeed the ABF itself uses real-time analysers at the border to test for prohibited substances and many of these can detect in this range. Even so, the efficacy of all techniques is finite in that at some low level, the sensitivity of the process being used will be insufficient to make detection.

Fortunately, the presence of prohibited chemical substances below the limits of the analytical technique may not be an issue because there is too little of the substance to actually represent a hazard. Even if the imperfect nature of the technique is known by the population, numbers are of such a small magnitude that the majority of people feel comfortable. After all, a result that says there is, for example, less than 5 parts per billion of a substance present in a sample sounds like a very small quantity.

On the other hand, an asbestos analysis undertaken in accordance with AS 4964 is not a chemical analysis but an identification of asbestos fibres from visual examination of their optical and physical properties. As



## Report to Commonwealth Asbestos IDC

well as the limitations of the methods described in AS 4964, the ability to determine the presence or absence of asbestos fibres is also dependent on the skill and knowledge of the testing officer.

In the context of regulatory policy that is essentially absolute in its prohibition of asbestos, the inability to measure zero represents not only a disconnect between policy and practice but an obvious dilemma for an agency such as the ABF in the border control of asbestos in imports (and exports).

The question most often asked is 'what evidence is acceptable at the border when there can be none that can categorically state that there is no asbestos present?'

While it is not NATA's role to interpret policy, informal advice provided to the ABF and other agencies has been to look towards the best methodology available – which appears to be AS 4964 at this stage – and take a reported result of 'no asbestos detected' as being a reasonable level of evidence on which to permit entry at the port (or export as the case may be).

Clearly, the pragmatic approach by the ABF allows for trade in a range of products to continue although not without some risk. Testing samples is clearly not 100% screening and it is possible that asbestos content may be missed, especially if the material is not homogeneous. Downstream retesting by an interested party – such as competitor – may identify asbestos content.

It is also a possibility (although not a likelihood in the short term) that in the future, a technique having a significantly lower limit of detection could be developed. This could be used to demonstrate that products or materials already in-service are not actually "asbestos free".

Although NATA is always open to accrediting improved and validated new technologies when they arise, NATA is not in a position to drive such developments.

The simple reality is that the science around asbestos analysis falls far short of the policy desire to ensure that all products contain no asbestos whatsoever.

## Industry and supply chain education

The lack of a clear scientific remedy to the policy of prohibition in combination with the lack of international harmonisation of approaches necessitates the ongoing educating all players through the supply chain.

There has already been progress on information resources. These include:

- Asbestos pages on the DIBP website;
- Customs Notices;
- Significant amounts of information on the ASEA website;
- NATA's Industry User Guides (IUG) 7 and 7.1 on asbestos.

Much of this has been developed with interagency collaboration to ensure that the messages delivered are consistent and accurate. The development of NATA's IUGs has benefited enormously from information provided by various agencies and guidance and priority issues.

The challenge from NATA's perspective is to be able to push this information through a complex supply chain or network which exhibits difficulties around language, Australia's small market and what appears to an attitude with some players along the lines of 'what's good enough for them is good enough for you' or 'but we've always done it that way'.

NATA has appreciated the opportunity to input to this IDC and we will continue in our attempts to assist within our scope of activities and (modest) sphere of influence.





# Presentation to Asbestos IDC

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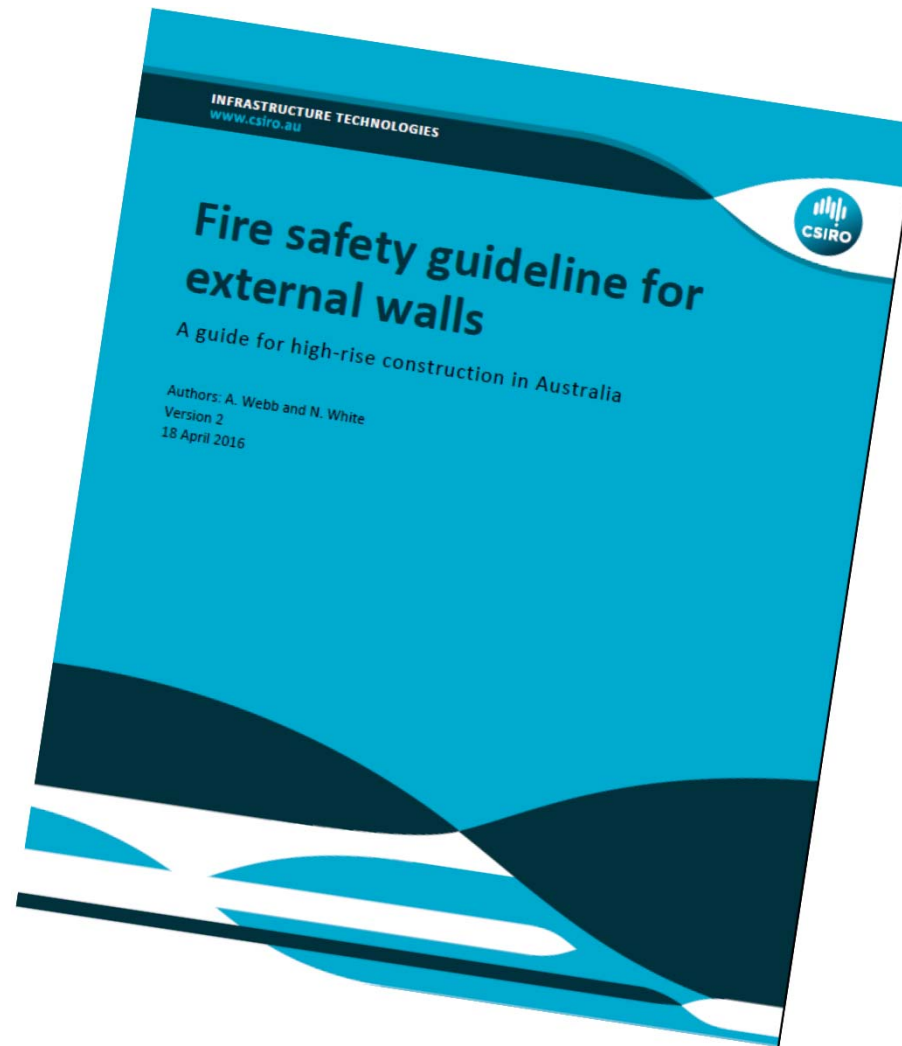
| Director, Infrastructure Technologies

28 June 2017

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# Introduction



# Problem

## From the CSIRO Perspective

- Limited laboratory based analytical techniques
  - No definitive recommendations made in AS 4964
  - Electron microscopy (SEM/TEM) and X-Ray Diffraction (XRD) proposed...
  - But, detection limits do not support a zero tolerance hurdle
- Translation to field based analysis
  - Polarised light microscopy (PLM) and SEM/XRD are lab based techniques
  - Initial review of capability has not identified a viable in-situ technique
  - Field sampling and sample preparation are material dependent and may present risk to personnel
  - Naturally occurring forms may not be homogeneous in specimens (Labagnara et al 2012)

# Problem

## From the CSIRO Perspective

- Where to look
  - For in-situ occupational hygiene analysis, expert understanding of the historical use of ACMs is required (knowing where to look for asbestos is a recognised capability) – Australian Institute of Occupational Hygienists 2015
  - Focus on intentionally used asbestos forms (white/brown/blue); rather than as a naturally occurring accessory mineral – Australian Institute of Occupational Hygienists 2015
  - Border Protection cannot draw on historical usage for import controls

*The simple reality is that the science around asbestos analysis falls far short of the policy desire to ensure that all products contain no asbestos whatsoever (NATA 2017)*

# Current Capability #1

## Historic involvement in building science

- Dr S K Brown (retired fellow, consulting to CSIRO) worked extensively in asbestos in buildings.
  - Publications include occupational and environmental exposure
  - Evaluation of cleaning, painting, encapsulants
  - Evaluation of erosion and suppression of fibres.
  - Contributed the asbestos chapter in Encyclopaedia of Building Technology (Prentice Hall)
  - Contributed the asbestos chapter in Indoor Air Quality Handbook (McGraw-Hill)
  - Authored review of the ACT Domestic Asbestos Program (1991)
  - Assessed the asbestos removal program (Mr. Fluffy) in 1994
  - Consulted to ACT Asbestos Taskforce; itemising asbestos products and methods for identification (2005 and review of technical developments in 2010)

# Current Capability #2

## Analytical Capability

- Capability for the methods discussed in AS 4964
  - Optical microscopy
  - Electron Microscopy, SEM and TEM
  - X-Ray Diffraction
- While asbestos analysis is provided under the overall analytical capability, it is not a key focus of the laboratory
  - CSIRO does not currently have the requisite sample preparation equipment including controlled management of asbestos fibres, cryogenic grinding of bulk materials, etc.
  - Laboratory is not currently NATA accredited for asbestos determination



# Current Capability #3

## Sensing and Sorting

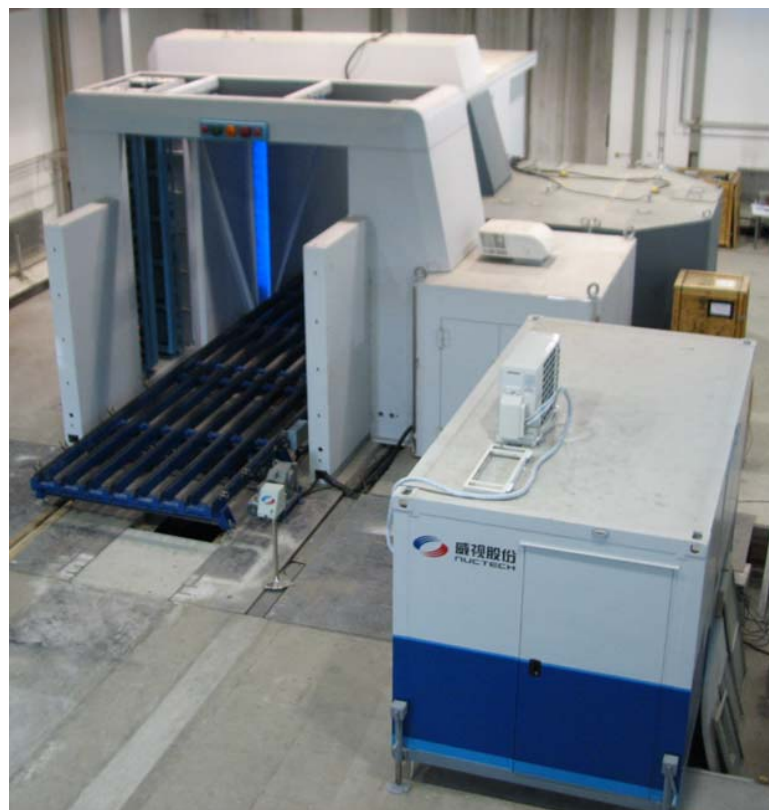
- X-ray analyser for minerals processing plant
  - Combines XRF (x-ray fluorescence) and XRD (x-ray diffraction)
  - Measures selected elements and minerals in crushed ore; transported as slurry (40% ore, 60% water)
  - Analyser installed directly in plant for real-time analysis and process control
- Method
  - X-rays directed into the slurry analyser tank with diffracted and fluorescence x-rays measured to provide elemental and mineralogical analysis
  - Uses energy dispersive (ED) diffraction not wavelength dispersive (WD) as used in analytical labs. Not as accurate, but advantages are:
    - Simpler and cheaper apparatus
    - Little or no sample preparation required; can use directly on process line
    - rapid analysis possible



# Current Capability #3

## Sensing and Sorting

- Development of on-line analysis systems for security industries
- Air Cargo scanner
  - World first technology
  - Commercialised with Nuctech (China)
- Density and compositional analysis using neutron and X-ray transmission technique
  - System contains neutron generator, dual x-ray sources, and 1000s of miniature detectors
  - Creates image of Cargo containers in approx. 2minutes, as cargo is passed through unit
  - Used to detect contraband



# Looking Forward

## Challenges and Opportunities

- Current Challenges
  - CSIRO does not offer a unified capability on asbestos or its analysis.
  - The three areas of expertise discussed (building, laboratory analysis and large scale process control) have not previously collaborated.
  - Expertise on asbestos in building and construction is narrow, reliant on a single casual staff member.
  - The challenge of what to measure includes supply chain management and operational aspects of Border Protection outside of CSIRO expertise.
- Opportunities
  - Existing CSIRO capability appears relevant to the challenges faced by the Interdepartmental Committee on Asbestos.
  - CSIRO expertise from lab based analytical techniques through to on-line process analysis 'at scale' is unique and applicable to the identified problems.

# Suggested Next Steps

- Technology Landscaping
  - Audit of potential asbestos containing materials, characterised by material type and use.
  - Review of analytical techniques with respect to their applicability to asbestos.
  - Report on detection limits and analytical limitations of current techniques.
  - Review of large scale and process based analytical processes.
- Suggested Approach
  - Form cross business unit capability in CSIRO.
  - Partner with Border Protection staff to consider both analytical and operational factors.
- Risk
  - Current indications suggest no technique will deliver zero tolerance
  - Landscaping may well find no viable analysis solution

# Thank you

Infrastructure Technologies

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# Can THz detect Asbestos?

**Dr Cathy Foley** | Deputy Director and Science Director  
24 October 2017

**MANUFACTURING**  
[www.csiro.au](http://www.csiro.au)



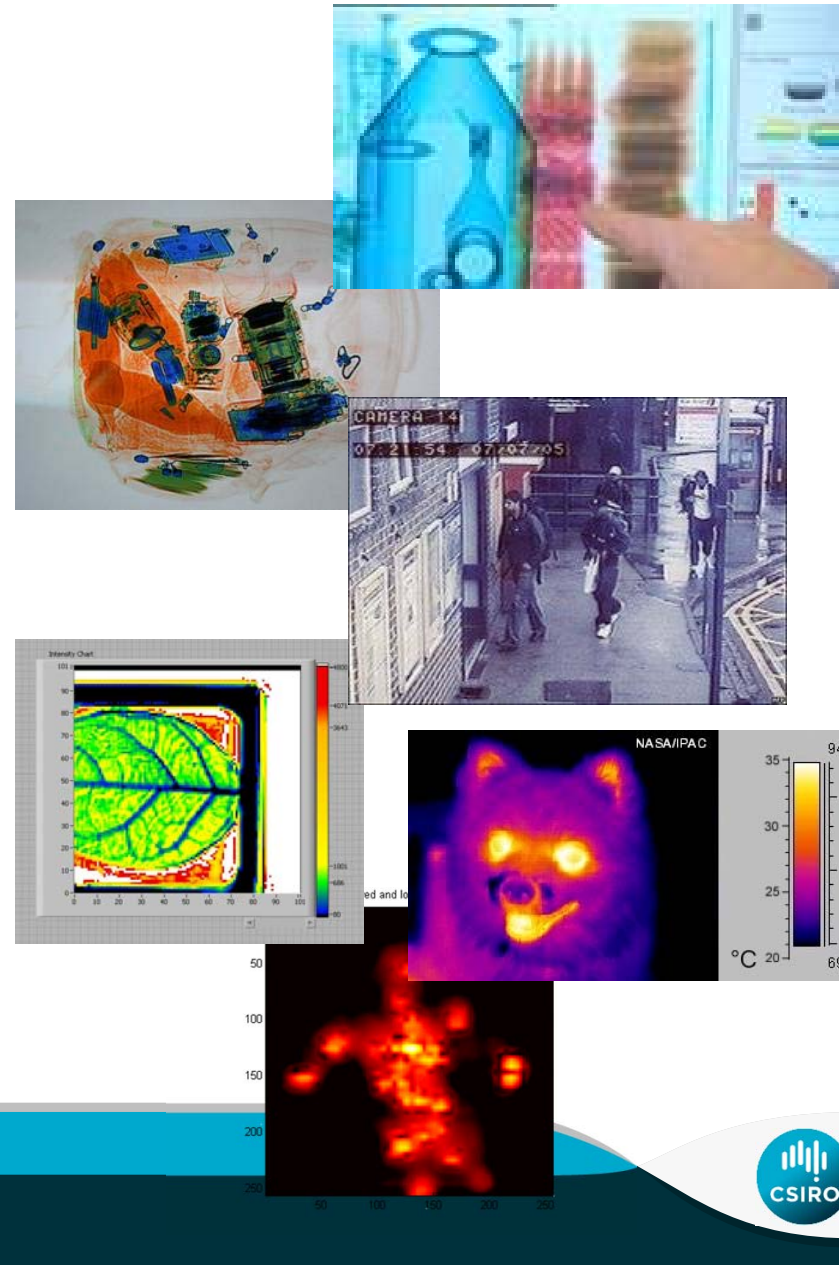
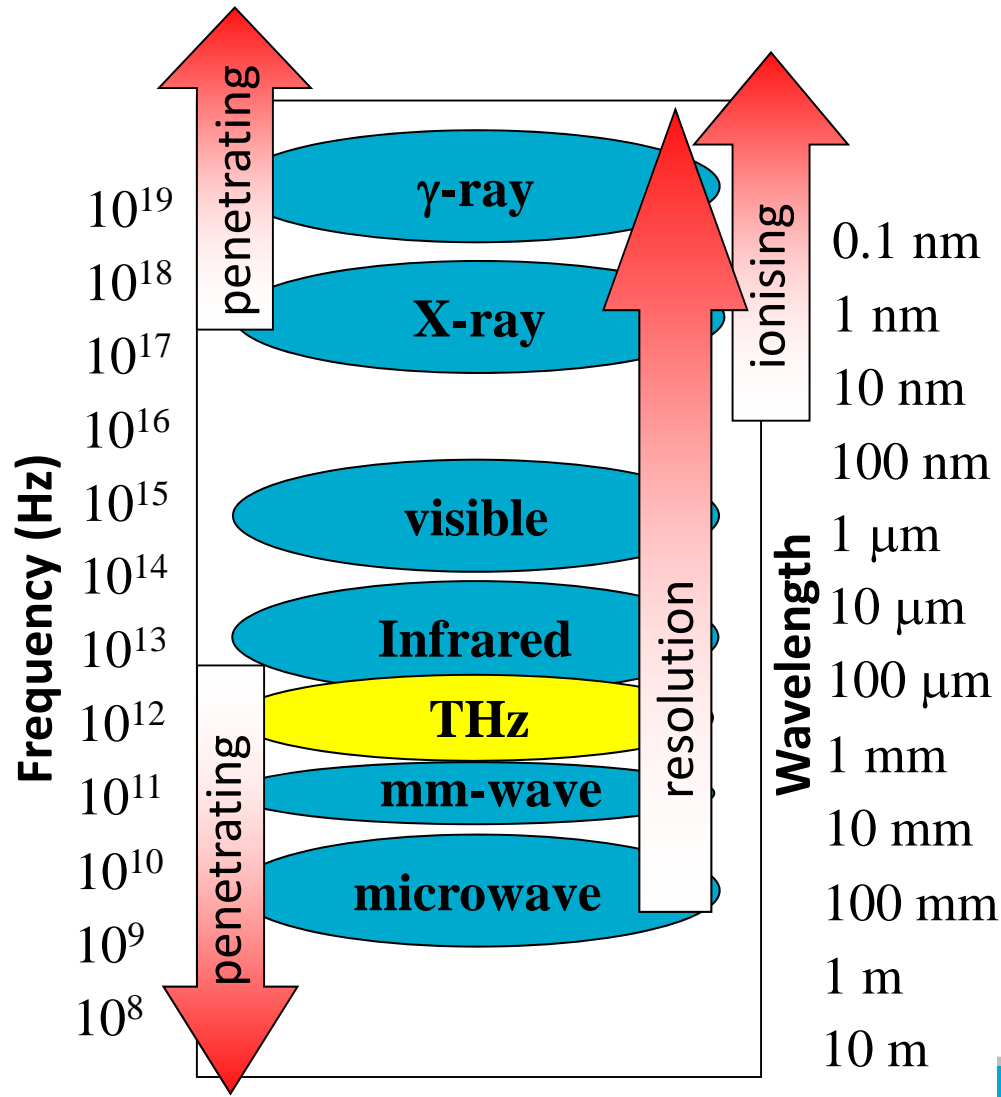


# Use THz Frequency – two ways

- Imaging – single frequency
- Spectroscopy – across a frequency band



# THz – emerging science & technology



# THz

- Can “see through” non-metal materials
- Is absorbed by polar molecules such as water
- Imaging
  - Spatial variation of THz at a single frequency
  - Can “see through” clothing, plastic, paper
- Spectroscopy
  - Frequency variation of the THz intensity transmitted or reflected resulting from the THz interaction with the materials present.
  - The spectroscopy signature is unique for the different materials present.
  - This can be used to identify the presence of different materials.
  - Identification of materials is possible through plastic, paper and other non metal materials.



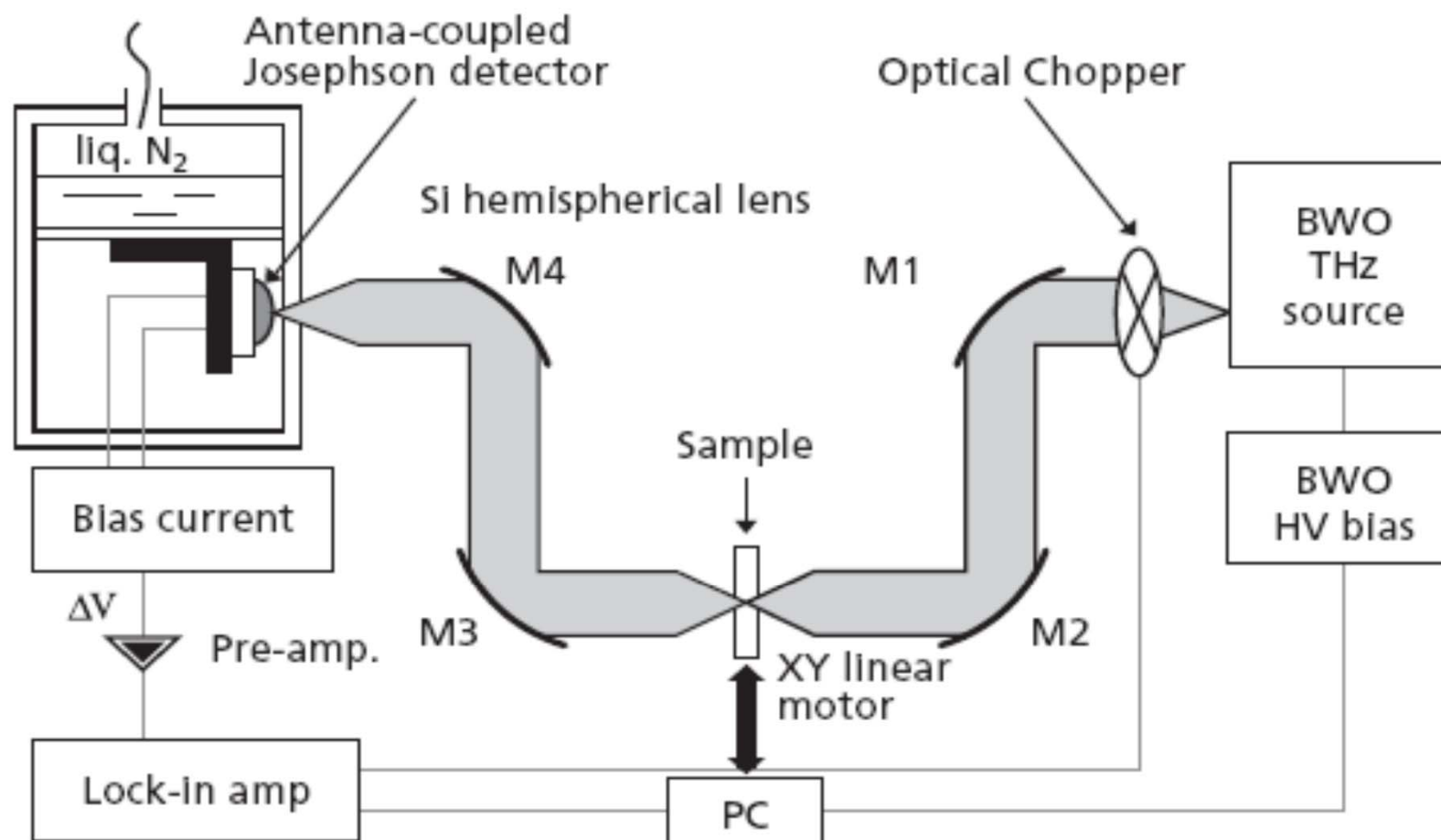
# Method

- Active system that requires THz radiation onto the item to be imaged or scanned.
- THz radiation after the interaction with an object can be detected after transmission through or reflection from the object.
- Spectroscopy where you scan over a frequency range can obtain a signature. (Note this can also be used to build up an image. We have not done this.)
- Single frequency THz radiation can be used spatially to build up an image. Currently we have undertaken imaging by moving the sample with a single detector.
- Scan time could be reduced by using a detector array. Arrays are underdevelopment.
- Note that THz radiation does not penetrate metal or water.

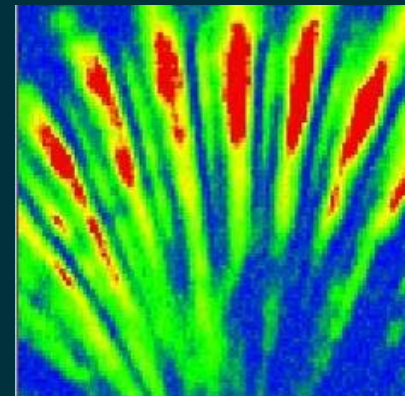
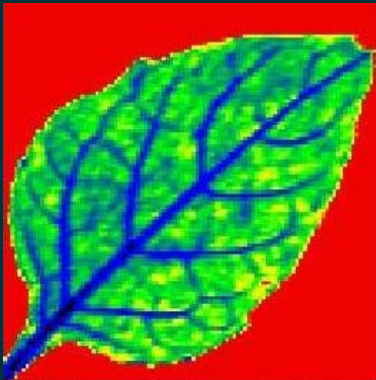
# THz transmission imaging system

## – a quasi-optical scheme

Backward wave oscillator (BWO)  
to generate tuneable CW radiation



# Imaging

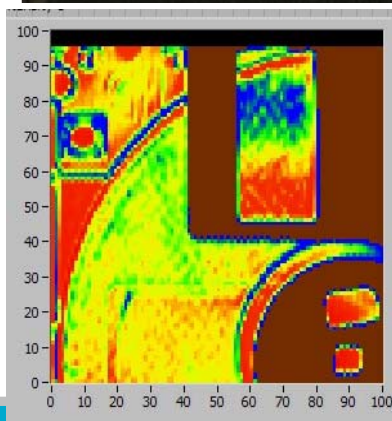
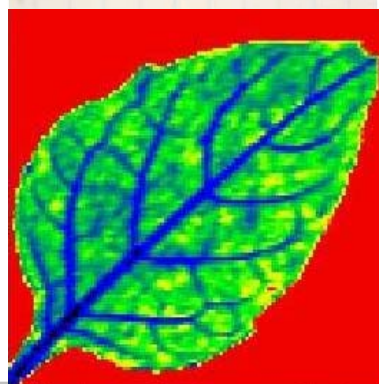




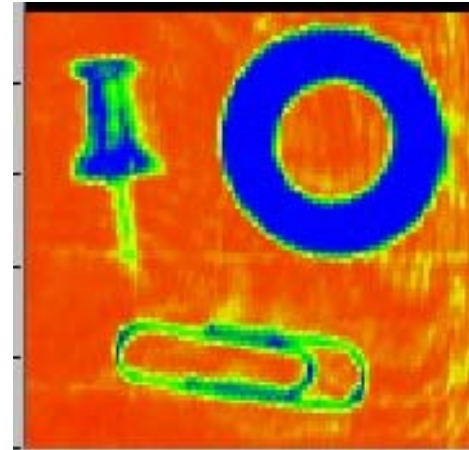
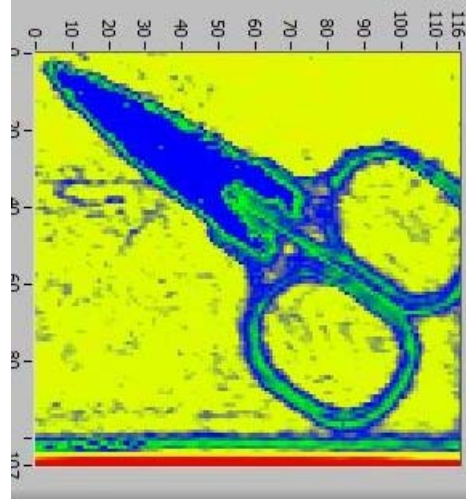
# THz images

An area of 5 cm x 5 cm scanned at a typical resolution of 0.5 mm gives an image size of 100 x100 or 10,000 pixels. Used a single detector and moved the object

20 minutes to obtain scan



# More images



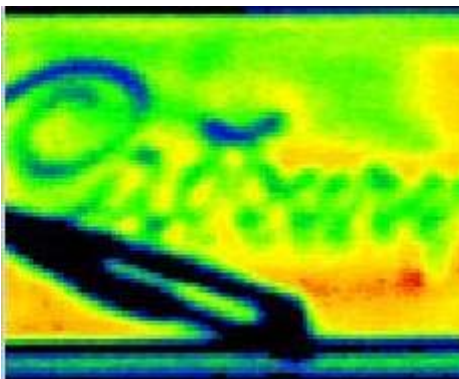


# 200 GHz vs 600 GHz images

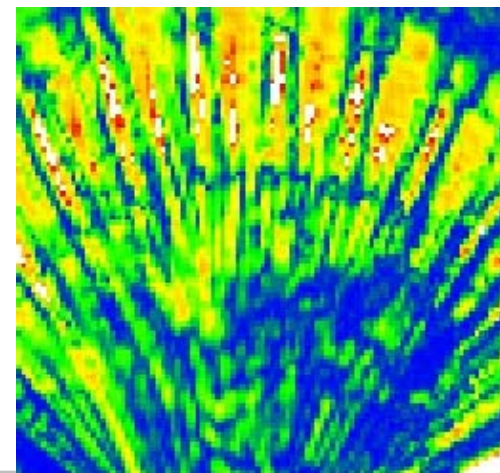
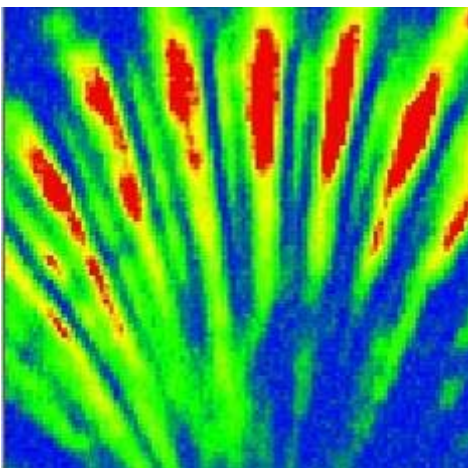
Optical photos



200 GHz images



600 GHz images



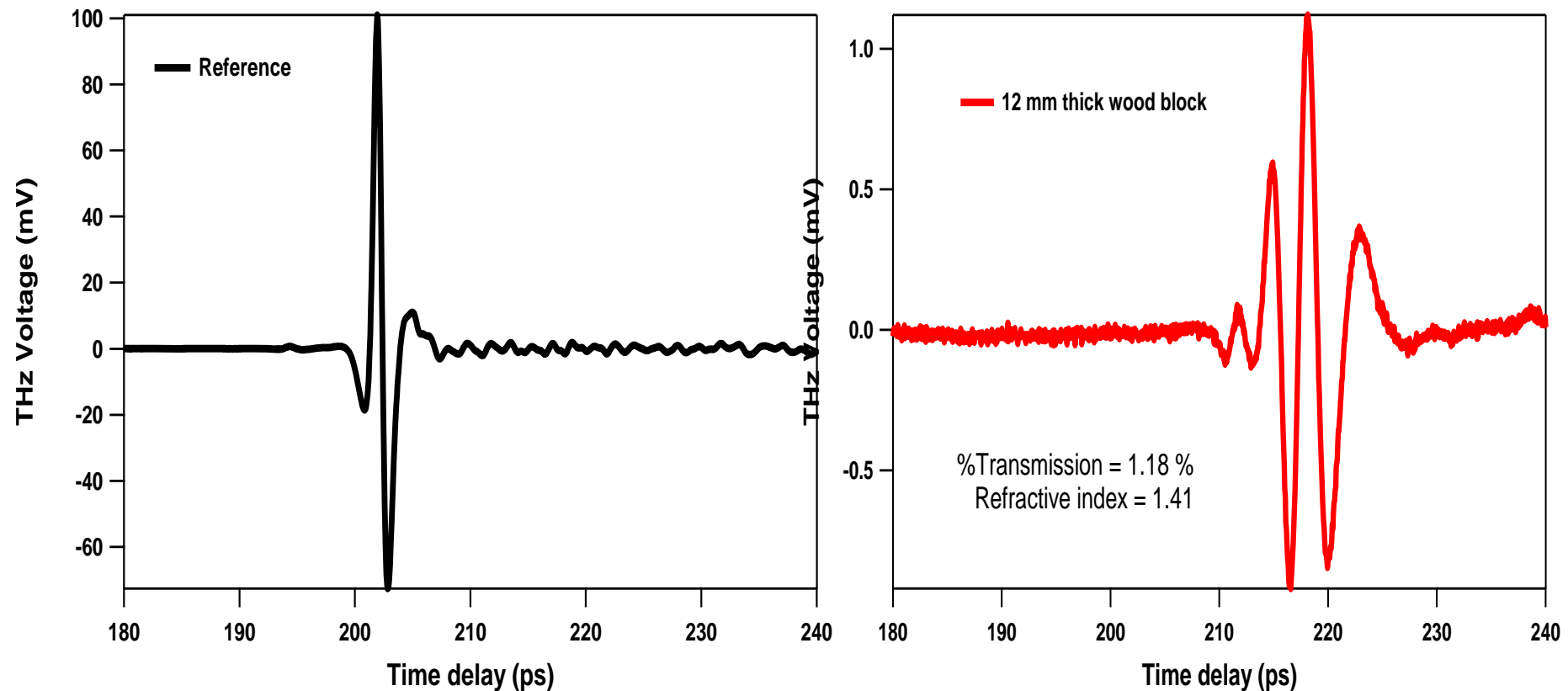
# THz imaging

- Our systems with lower frequencies (e.g. our 200-600 GHz systems) could potentially detect the borers inside the wood products depending on the thickness of the wood.
- Transmission is less if sample contains water (THz is absorbed by water)
- Resolution to sub mm
- If there were an array of detectors, could under scan quickly but speed to scan would need to be developed.
- Need to set up test for reflection
- Stand off distance is 20-30 cm
- Could have a shut that samples pass through or robotic arm to hold the system to have “hand held”

# Spectroscopy



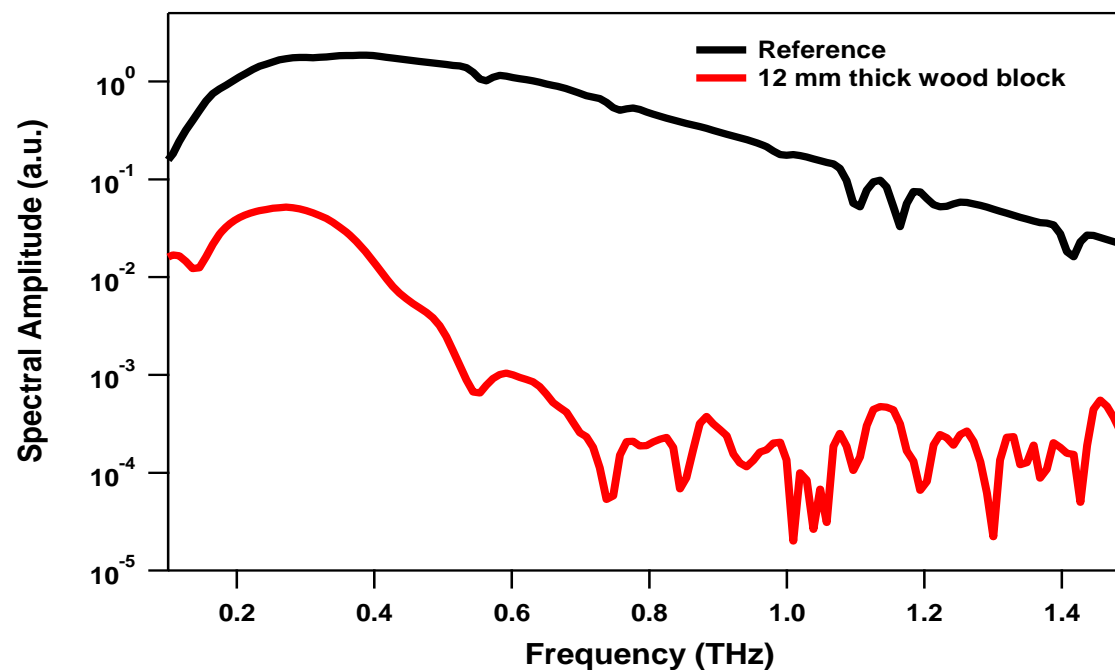
# THz TDS measurement for 12 mm thick Wood block – Transmission measurements single scan



Comment: **1.2%** overall transmission through 12 mm thick wood block

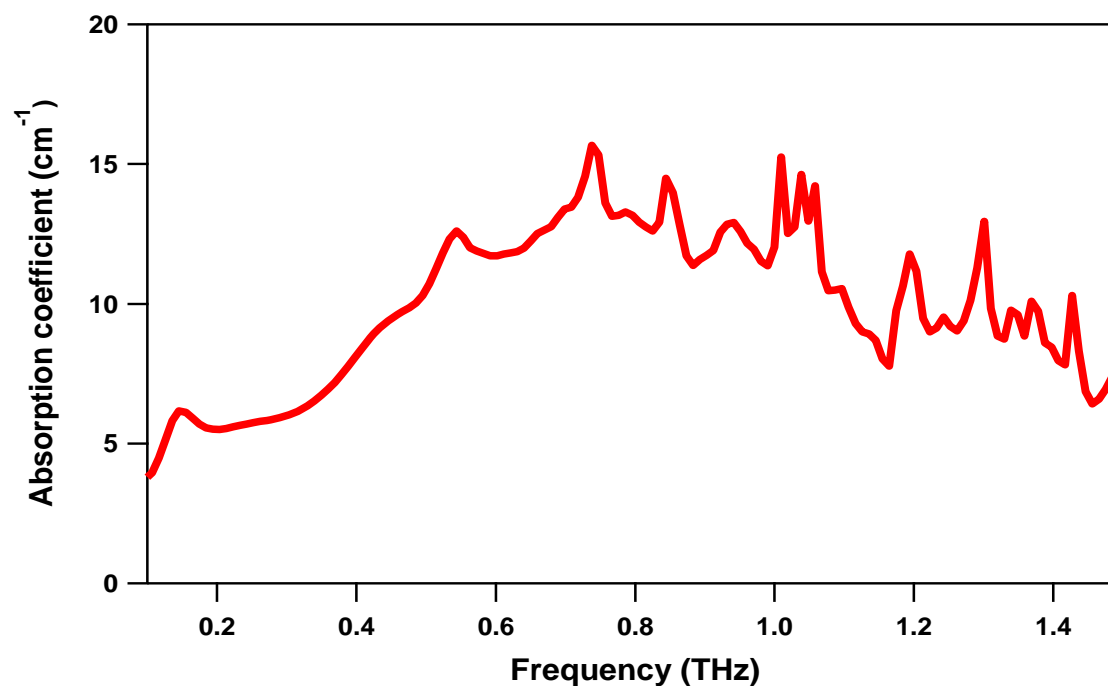


# Transmission Frequency spectra



Comment: Frequencies below **0.7 THz** are accessible using current set up. Higher frequencies can be achieved using strong THz signal

# Transmission Absorption coefficient

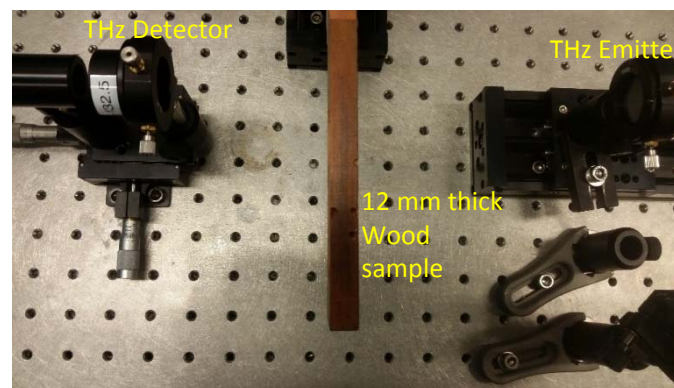
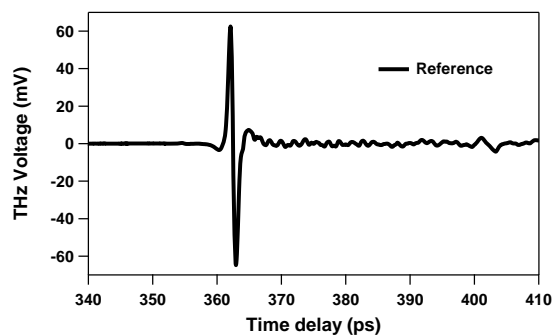


**Comment: The absorption coefficient is considerably low and matches well with previously published results**

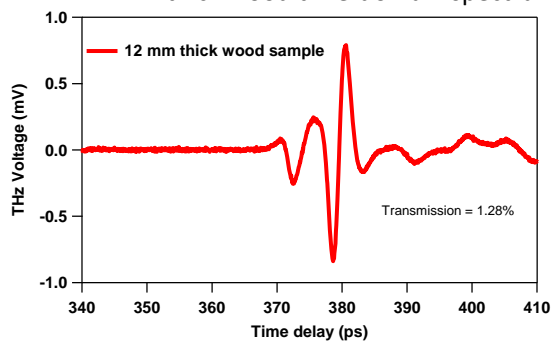
# THz Transmission no plastic

Wood sample - THz transmission measurement

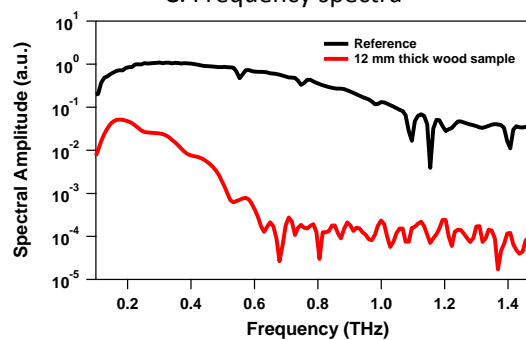
A. Reference time-domain spectrum



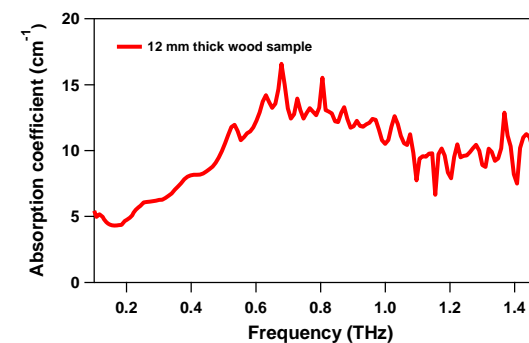
B. 12 mm thick wood time-domain spectrum



C. Frequency spectra



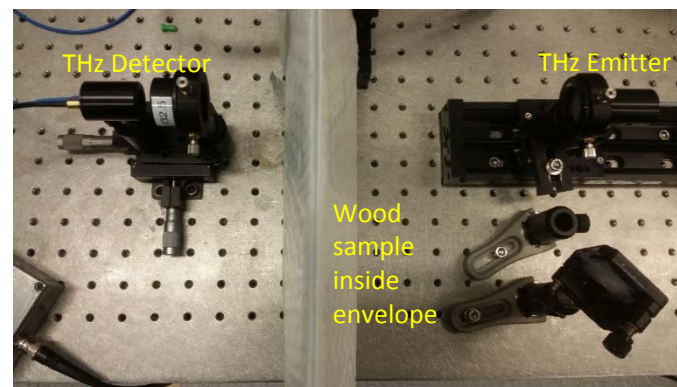
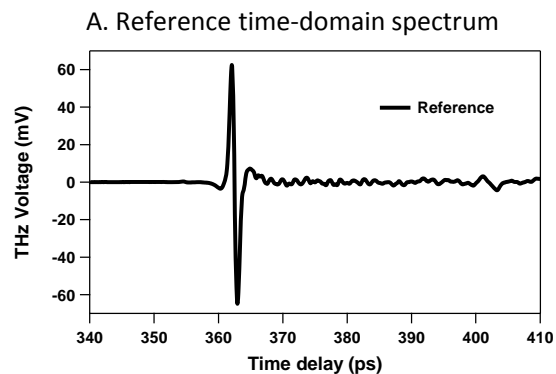
D. Absorption spectrum for wood sample



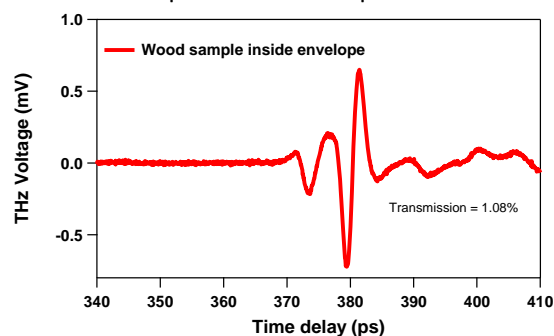
Note: 1.28% transmission

# Transmission in plastic

Wood sample inside bubble-wrap envelope - THz transmission measurement

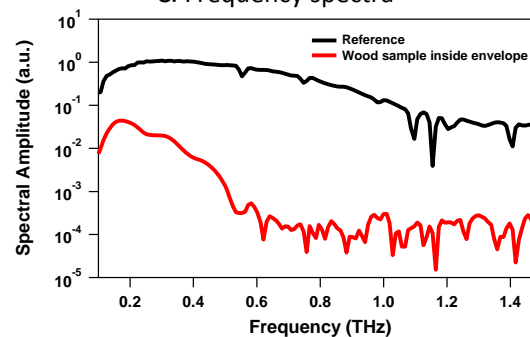


B. Wood sample inside envelope time-domain spectrum

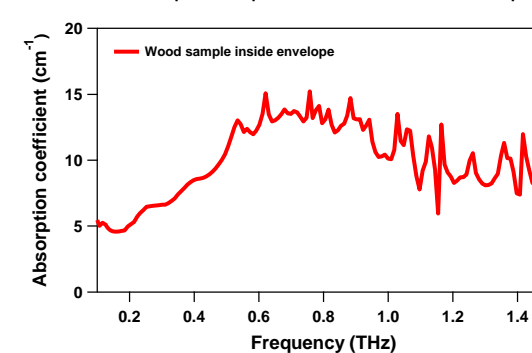


Note: 1.08% transmission

C. Frequency spectra

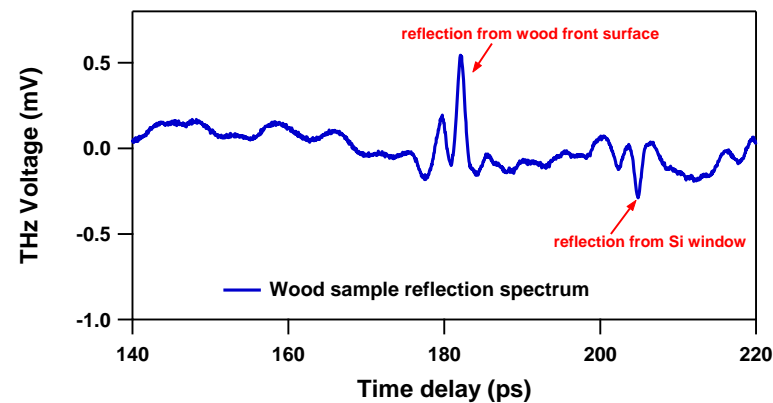
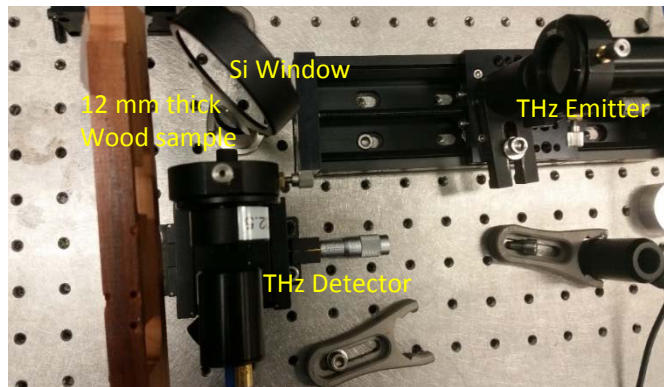


D. Absorption spectrum for wood sample

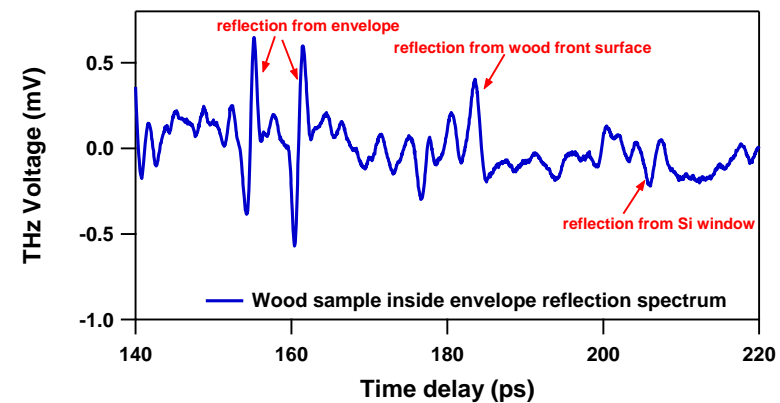
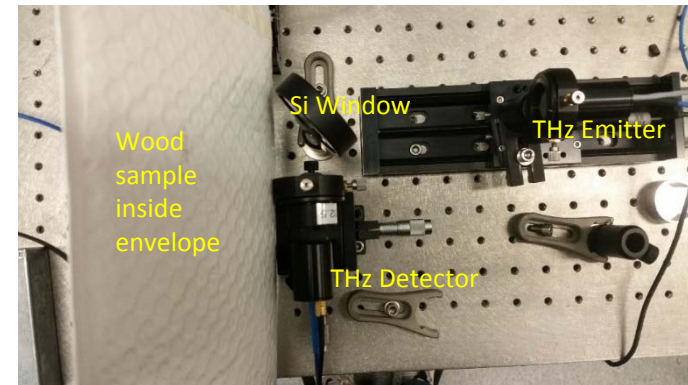


# Reflection no plastic and plastic covered

12 mm thick wood sample – THz reflection measurement



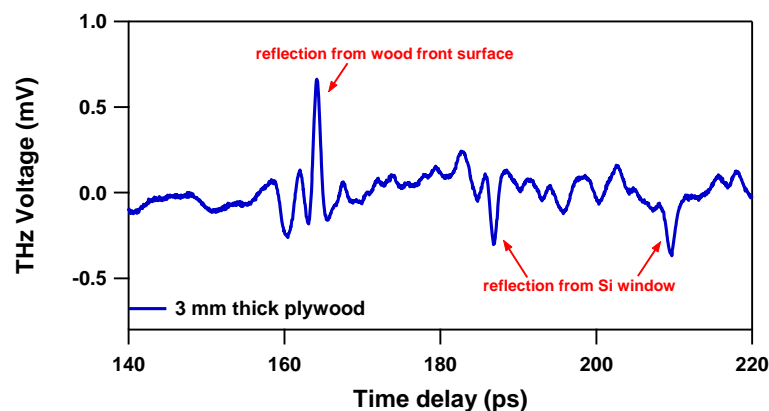
12 mm thick wood sample inside envelope– THz reflection measurement



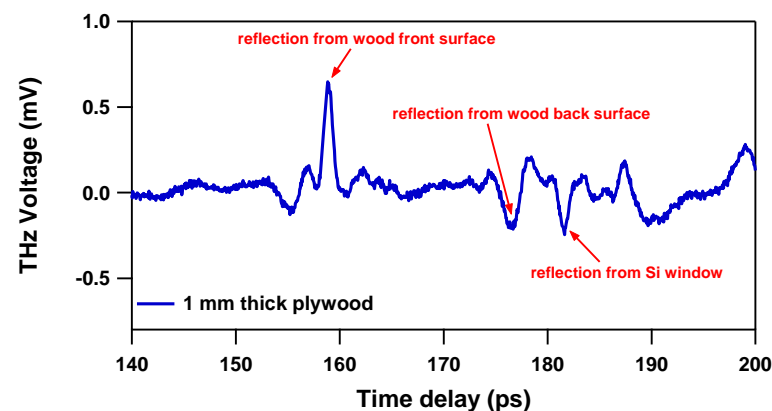
Plastic covered can be corrected for phase and plastic presence

# Reflection 3 mm and 1 mm wood sample no plastic

3 mm thick wood sample – THz reflection measurement



1 mm thick wood sample – THz reflection measurement





## Properties of Building and Plastic Materials in the THz Range

From the literature

R. Piesiewicz

&amp; C. Jansen &amp; S. Wietzke &amp; D. Mittleman &amp; M. Koch &amp; T. Kürner

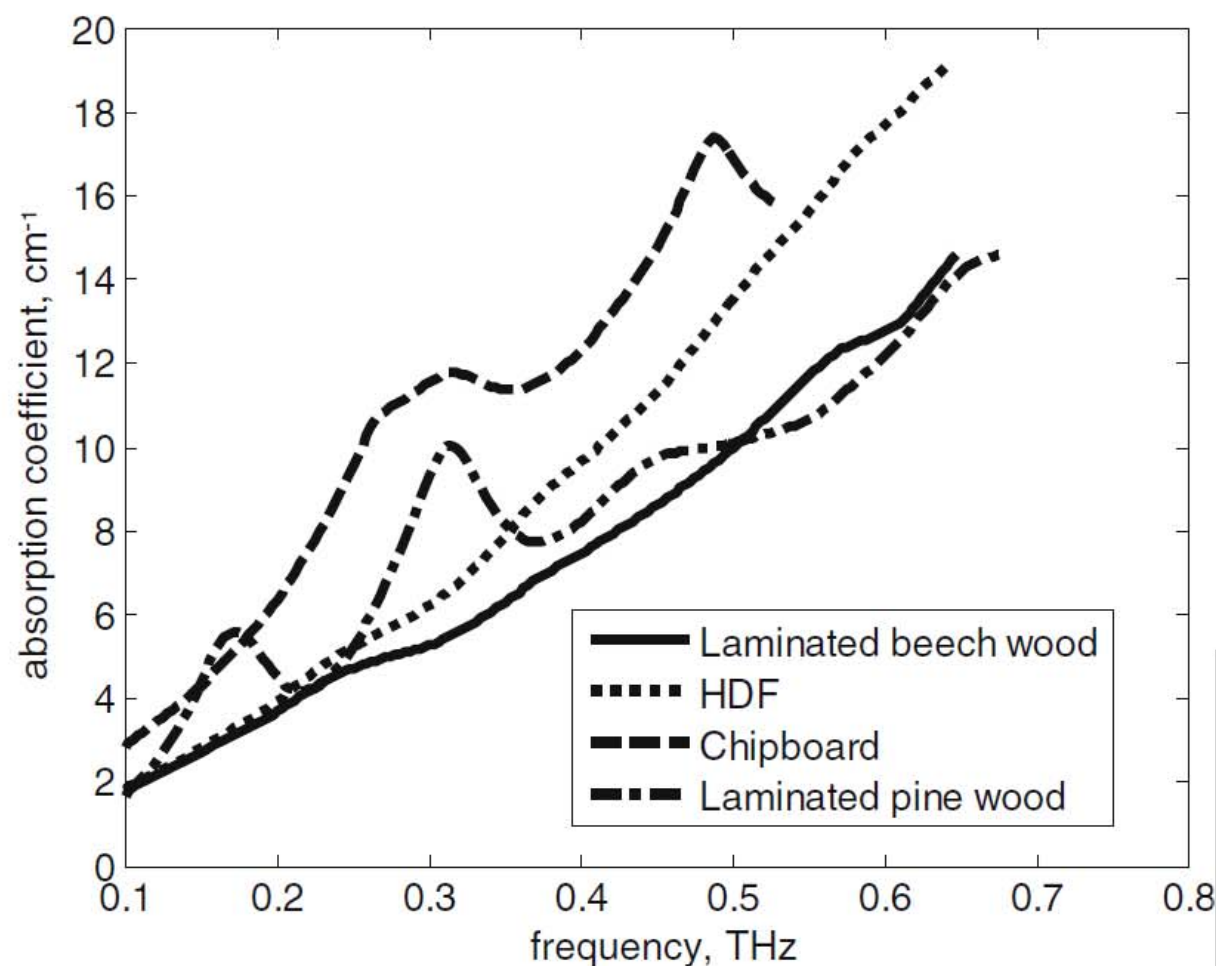
Int J Infrared Milli Waves DOI 10.1007/s10762-007-9217-9

**Table 1** List of measured materials.

Material type	Sample number	Sample name	$x, y$ in mm	$d, \sigma$ in mm
Wood	W1	Laminated beech wood (glued wood)	40, 40	5.08, 0.047
	W2	Lumber-core plywood (fir)	40, 40	5.21, 0.02
	W3	High-Density Fiberboard (HDF)	40, 40	3.56, 0.028
	W4	Chipboard	40, 40	4.99, 0.033
	W5	Medium-Density Fiberboard (MDF)	40, 40	4.91, 0.02
	W6	Fir wood	40, 40	5.32, 0.027
	W7	Laminated pine wood (glued wood)	40, 40	4.92, 0.305
Brick	B1	Sand-lime brick	40, 40	7.17, 0.14
	B2	Clay brick	40, 40	7.18, 0.061
	B3	Gypsum plaster (Rigips without cardboard)	40, 40	8.20, 0.13
Plastic	P1	Polystyrene (PS)	40, 40	1.49, 0.002
	P2	Polycarbonate (PC)	40, 40	3.65, 0.0
	P3	Glass fiber-reinforced laminate	60, 60	2.81, 0.004
	P4	Polyvinyl chloride (PVC)	60, 60	6.13, 0.028
	P5	High-Density Polyethylene (HDPE)	65, 65	6.17, 0.0
	P6	Clear cast acrylic (plexiglass)	60, 60	5.26, 0.099
	P7	Polyamide 6 (PA 6)	60, 60	2.09, 0.01
	P8	Polyamide 66 (PA 66)	60, 60	2.08, 0.006
Glass	G1	Glass (typical window pane)	40, 40	2.92, 0.0

# Various wood densities – form the literature

**Fig. 5** Absorption coefficients of wood samples: laminated beech wood, HDF, chipboard, laminated pine wood.



# Asbestos form the literature

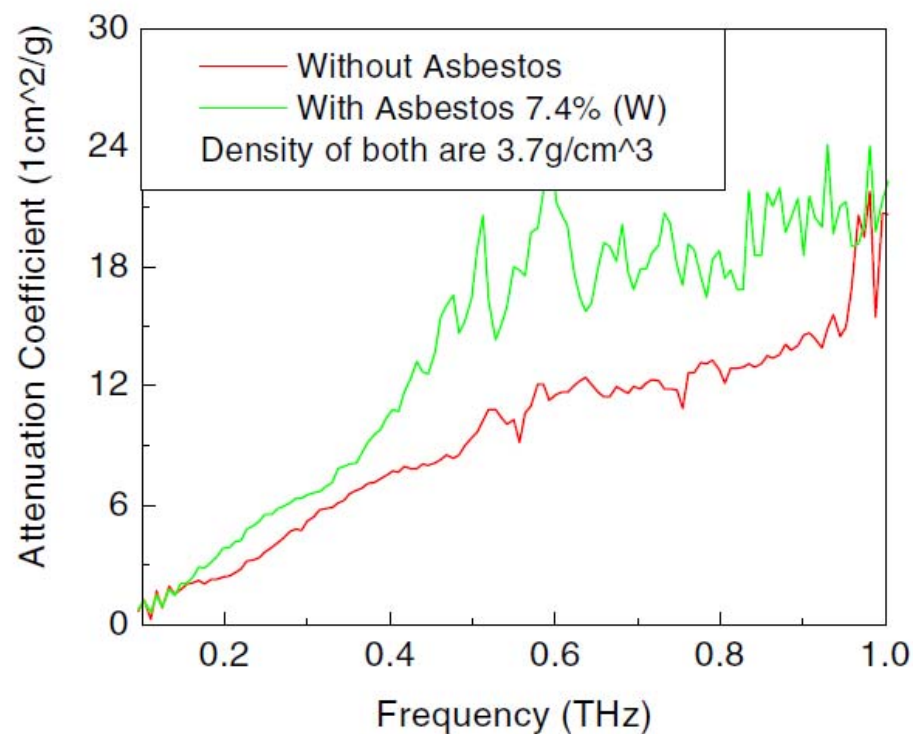


Fig 1.35. THz spectrum of concrete samples.

# Comments

- THz time domain spectroscopy can identify Asbestos (from the literature)
- Reference samples can be tested through plastic and paper packaging
- Limited THz data exists on asbestos containing materials including Chrysotile, Grunerite and Riebeckite
- Need for better definition of the use cases and potential samples physical size and type.
- Need for reference samples to do preliminary testing
- References indicate that concrete with and without asbestos is identifiable is not clear if this is definitive.
- Literature review suggest that asbestos have unique signatures when tested at these frequencies but with no details provided.

# Next steps

- Feasibility study including testing of samples
- If successful, development of the prototype demonstration system suitable for trialling in Boarder Force Premises (TRL 5)
- This would need to include data analytics to provide a yes or no to the presence of asbestos. Could be achieved in collaboration with DATA61 of CSIRO.

The Senate

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Economics

References Committee

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Non-conforming building products

Interim report: protecting Australians from  
the threat of asbestos

November 2017

Released by Department of Home Affairs  
under the *Freedom of Information Act 1982*



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## Senate Economics References Committee

### Members in the 45<sup>th</sup> Parliament

Senator Chris Ketter ( <i>Chair</i> )	Queensland, ALP
Senator Jane Hume ( <i>Deputy Chair</i> )	Victoria, LP
Senator Sam Dastyari	New South Wales, ALP
Senator the Hon Ian Macdonald ( <i>from 15 February 2017</i> )	Queensland, LP
Senator Jenny McAllister	New South Wales, ALP
Senator Nick Xenophon ( <i>to 31 October 2017</i> )	South Australia, NXT
Senator Peter Whish-Wilson ( <i>from 14 November 2017</i> )	Tasmania, AG
Senator Cory Bernardi ( <i>from 5 December 2016 to 15 February 2017</i> )	South Australia, AC

### Senators participating in this inquiry

Senator the Hon Kim Carr	Victoria, ALP
Senator John Madigan ( <i>44<sup>th</sup> Parliament</i> )	Victoria, IND
Senator Glenn Sterle	Western Australia, ALP

### Members in the 44<sup>th</sup> Parliament

Senator Chris Ketter ( <i>Chair</i> )	Queensland, ALP
Senator Sean Edwards ( <i>Deputy Chair</i> )	South Australia, LP
Senator Matthew Canavan ( <i>to 23 February 2016</i> )	Queensland, NATS
Senator Sam Dastyari	New South Wales, ALP
Senator Jenny McAllister	Victoria, ALP
Senator Dean Smith ( <i>from 23 February 2016</i> )	Western Australia, LP
Senator Nick Xenophon	South Australia, IND

### Secretariat

Mr Mark Fitt, Secretary  
 Ms Penny Bear, Senior Research Officer  
 Ms Hannah Dunn, Administrative Officer

PO Box 6100  
 Parliament House  
 Canberra ACT 2600

Ph: 02 6277 3540  
 Fax: 02 6277 5719  
 E-mail: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

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## Recommendations

### Recommendation 1

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

### Recommendation 2

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

### Recommendation 3

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

### Recommendation 4

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

### Recommendation 5

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

### Recommendation 6

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

### Recommendation 7

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



### **Recommendation 8**

**3.26** The committee recommends that 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.

### **Recommendation 9**

**3.37** The committee recommends that 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.

### **Recommendation 10**

**3.38** The committee recommends that 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.

### **Recommendation 11**

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

### **Recommendation 12**

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

### **Recommendation 13**

**3.87** The committee recommends that 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.

### **Recommendation 14**

**3.88** The committee recommends that the Australian Government prioritise prosecution of illegal asbestos importation cases.

### **Recommendation 15**

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

## **Recommendation 16**

**4.19** The committee recommends that 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 a another country that is a signatory to a Mutual Recognition Arrangement).

## **Recommendation 17**

**4.20** The committee recommends that 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.

## **Recommendation 18**

**4.36** The committee recommends that 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.

## **Recommendation 19**

**4.40** 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*.

## **Recommendation 20**

**4.60** The committee recommends that 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.

## **Recommendation 21**

**4.64** The committee recommends that 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.

## **Recommendation 22**

**4.73** The committee recommends that 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.

**Recommendation 23**

**4.74** 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.

**Recommendation 24**

**4.75** The committee recommends that 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.

**Recommendation 25**

**4.83** The committee recommends that the Australian Government establish a national public asbestos register.

**Recommendation 26**

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

## Acronyms

AARMS	Asbestos Audits & Environmental Audits Pty Ltd
ABF	Australian Border Force
ACCC	Australian Competition and Consumer Commission
ACMs	Asbestos-Containing materials
ACTU	Australian Council of Trade Unions
AMWU	Australian Manufacturing Workers' Union
ASEA	Asbestos Safety and Eradication Agency
AWU	Australian Workers' Union
CFMEU	Construction, Forestry, Mining and Energy Union
DIBP	Department of Immigration and Border Protection
ETU	Electrical Trades Union of Australia
FSC	Federal Safety Commissioner
HIA	Housing Industry Association
HWSA	Heads of Workplace Safety Authorities Imported Materials with Asbestos Working Group
IDC	Interdepartmental Committee
NATA	National Association of Testing Authorities, Australia
OH&S	Occupational Health and Safety
WHS	Work Health and Safety

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# Chapter 1

## Introduction

1.1 On 23 June 2015, the Senate referred the matter of non-conforming building products to the Economics References Committee (the committee) for inquiry and report by 12 October 2015.<sup>1</sup> The committee was granted a number of extensions and the inquiry lapsed at the dissolution of the 44<sup>th</sup> Parliament. The committee tabled an interim report, *Safety—'not just a matter of good luck'* on 4 May 2016. On 11 October 2016, the Senate agreed to the committee's recommendation that this inquiry be re-adopted in the 45<sup>th</sup> Parliament.

1.2 Under its terms of reference, the committee was to inquire into:

- (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.<sup>2</sup>

1.3 On 13 October 2016, as part of its broader inquiry, the committee resolved to inquire into the illegal importation of products containing asbestos. The committee adopted the following additional terms of reference for this part of the inquiry:

The illegal importation of products containing asbestos and its impact on the health and safety of the Australian community, with particular reference to:

---

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

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



- (a) the prevalence and sources of illegally imported products containing asbestos;
- (b) the effect of illegally imported products containing asbestos on:
  - (i) industry supply chains, including importers, manufacturers and fabricators, and
  - (ii) workplace and public safety and any associated risks;
- (c) possible improvements to the current regulatory frameworks for ensuring products containing asbestos are not illegally imported to Australia, with particular reference to the effectiveness of:
  - (i) policing, enforcement, surveillance and screening of imported products, including restrictions and penalties imposed on importers and end users of products containing asbestos;
  - (ii) preventing exposure and protecting the health and safety of workers and other people affected by the illegal importation of products containing asbestos,
  - (iii) establishing responsibility for remediation of sites where illegally imported products containing asbestos has been found;
  - (iv) coordination between Commonwealth, state and territory governments and the role of the Australian Government in coordinating a strategic approach to preventing the importation of products containing asbestos;
- (d) any other related matters.<sup>3</sup>

1.2 In light of the tragic fire at the Grenfell Tower in London in June 2017, 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. The committee tabled its report, *Interim report: aluminium composite cladding* on 6 September 2017. In addition to this interim report on asbestos, the committee agreed to table its final inquiry report on 30 April 2018.

### **Conduct of the inquiry**

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

1.4 The committee has received 164 submissions, as well as a number of supplementary submissions. The submissions range from government departments and agencies to peak industry bodies, unions, individuals working in the industry and consumers. A list of submissions to the inquiry is at Appendix 1.

---

3 *Journals of the Senate*, No. 12, 7 November 2016, p. 379. The committee presented an interim report on 18 October 2016 containing the additional terms of reference. The Senate adopted the additional terms of reference on 7 November 2016.

1.5 Public hearings were held on:

- 13 November 2015 in Canberra;
- 15 February 2016 in Melbourne;
- 30 January 2017 in Brisbane (asbestos);
- 9 March 2017 in Perth (asbestos);
- 14 July 2017 in Melbourne (asbestos and cladding);
- 19 July 2017 in Sydney (cladding);
- 31 July 2017 in Adelaide (asbestos and cladding);
- 3 October 2017 in Sydney (asbestos); and
- 17 October 2017 in Canberra (asbestos).

1.6 The names of witnesses who appeared at the hearings are at Appendix 2.

1.7 References to the Committee Hansard for the October 2017 hearings are to the Proof Hansard and page numbers may vary between the Proof and Official Hansard transcripts.



*Mrs Vicki Hamilton, OAM, Chief Executive Officer; Secretary, Asbestos Council of Victoria/GARDS Inc showing Senator Ketter and former Senator Xenophon samples of products containing illegally imported asbestos including crayons and beaded jewellery.*

## Background

### *Committee comments from the 2016 interim report*

1.8 The committee tabled an interim report, *Safety—'not just a matter of good luck'*, on 4 May 2016. The report raised concerns in relation to the illegal importation of asbestos:

The committee has major concerns relating to the importation of NCBPs [non-conforming building products]. Particularly the ability of Australia's enforcement agencies to effectively police Australian borders so that NCBPs are detected and prevented from entering Australia. At the moment, this area of enforcement appears to require substantial strengthening and should be a high priority for government.

...

The importation of banned materials, such as asbestos, raises very serious concerns about the capacity of Australian authorities to deal with this issue, particularly in light of our open and dynamic trade environment. The committee notes the important work of the Asbestos Safety and Eradication Agency and questions whether further resources are required for it to fulfil its current role.

The committee will further consider means by which foreign governments could be encouraged to ensure compliance certification carried out within their sovereign borders is bona fide. Mechanisms could range from formal representations through DFAT [Department of Foreign Affairs Defence and Trade] to more punitive approaches, such as restrictions on the importing of certified goods from countries where fraudulent certification is not being addressed.<sup>4</sup>

### *Recent discoveries of asbestos in imported building products*

1.9 The committee's decision to adopt additional terms of reference on the illegal importation of products containing asbestos was in response to a number of high profile cases where asbestos had been found in imported building products in 2015 and 2016. These include:

- Chinese cement sheeting—Australian Portable Camps, South Australia—August 2015;
- Asbestos flooring installed in pre-fabricated switch rooms—Robin Johnson Engineering, South Australia—November 2015;
- Klingerit 200 CAF gasket jointing sheets—1 William Street, Brisbane—July 2016;
- Asbestos in unitised roof panels—Perth Children's Hospital—July 2016; and

4 Senate Economics References Committee, *Interim report, Safety—'not a matter of good luck'*, 4 May 2016, p. 16.

- Asbestos contaminated plant equipment—Nyrstar project, Port Pirie, South Australia—August 2016.<sup>5</sup>

1.10 The incidents at 1 William Street Brisbane and the Perth Children's Hospital both involved products supplied by Yuanda Australia.

### ***Asbestos Importation Review***

1.11 In late 2015, the Australian Border Force (ABF) Commissioner established an independent review to examine the effectiveness of the Department of Immigration and Border Protection's (DIBP) internal processes and procedures for managing asbestos at the border to ensure that these reflected best practice. KHG Borders Services, an independent consultancy company, was engaged to conduct the review. The Asbestos Importation Review (the review) found that the department's management of the asbestos border control was effective, but identified some opportunities for organisational and technical improvements.<sup>6</sup>

1.12 The review made 11 recommendations addressing three themes: structure and strategy; strengthening engagement; and enhancing border processes.<sup>7</sup>

1.13 DIBP accepted all the recommendations, including one in-principle (due to information technology systems implications). The department is implementing the recommendations as a priority. These activities include:

- delineating and clarifying operational and policy roles and responsibilities in managing asbestos issues between the DIBP and ABF;
- improving the way the department coordinates with partner agencies, including using and providing information on asbestos detections;
- enhancing risk profiling and targeting of high risk goods to monitor and detect illegal imports of asbestos;
- enhancing engagement with industry to promote voluntary compliance with the asbestos border control; and
- increasing international engagement on Australia's asbestos prohibition.<sup>8</sup>

### **Structure of this report**

1.14 This report comprises four chapters, including this introductory chapter:

- Chapter 2 provides an overview of Australia's asbestos regulatory framework;

5 Asbestos Safety and Eradication Agency, *Submission 90*, pp. 5–6. The submission provides further detail on each of the incidents.

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

7 The full list of recommendation is available here: Department of Immigration and Border Protection, *Submission 108*, attachment 1, *Asbestos Importation Review Report*, March 2016, pp. 11–12.

8 Department of Immigration and Border Protection, *Submission 108*, pp. 10–11.

- Chapter 3 examines the ongoing issues in relation to the illegal importation of asbestos; and
- Chapter 4 looks at measures to increase accountability for the illegal importation of asbestos and to reduce the risk of exposure.

## Chapter 2

### Australia's asbestos regulatory framework

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

#### Australia's asbestos ban

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

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

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

#### Types of asbestos

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

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

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

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



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

### ***Penalties***

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

2.8 For individuals, an offence of importing asbestos can, upon conviction, result in a maximum penalty of up to 1,000 penalty units or three times the value of the goods, whichever is greater. The penalty for a company convicted of the same offence is up to 5,000 penalty units or 15 times the value of the goods, whichever is greater. In the case of an infringement notice, the maximum penalty is 15 penalty units for an individual, or 75 penalty units for a company.<sup>5</sup> Currently, the dollar amount of a penalty unit is \$210.<sup>6</sup>

### **Sources of illegally imported asbestos**

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

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

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

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

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

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

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

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

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

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



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

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

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

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

### **Coordination of agencies with asbestos responsibilities**

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

#### ***Department of Immigration and Border Protection***

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

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

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

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

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

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

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

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

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

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

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

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

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

### ***Department of Employment***

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

### ***Comcare***

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

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

### ***Safe Work Australia***

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

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

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

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

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

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

### ***Australian Competition and Consumer Commission***

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

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

### ***Asbestos Safety and Eradication Agency***

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

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

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

### ***Heads of Workplace Safety Authorities Imported Materials with Asbestos Working Group***

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

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

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

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

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

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

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

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

*Rapid response protocol*

2.29 The HWSA Working Group developed a rapid response protocol for responding to incidents which came into effect in 2014.<sup>26</sup> The protocol ensures that relevant information is shared by all government agencies and enables a nationally uniform enforcement approach to be undertaken in response to incidents. The protocol is designed to allow for quick communication to the community about the safe handling and disposal of goods that contain asbestos.<sup>27</sup>

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

*Asbestos Interdepartmental Committee*

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

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

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

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

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

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

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

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

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

2.34 The IDC aims to:

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

### ***Work Health and Safety laws and asbestos***

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

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

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

### **Whole of government approach**

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

...

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

### ***Committee view***

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

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

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

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

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

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

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

### **Recommendation 1**

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

### **Recommendation 2**

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

### **Consultation with stakeholders**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Committee view**

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

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

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

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

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

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

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

### Recommendation 3

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

### International cooperation

#### *Rotterdam Convention*

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



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

### ***International trade agreements***

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

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

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

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

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

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

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

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58 Asbestos Safety and Eradication Agency, *ASEA Matters*, Issue 7, Spring 2017, p. 4, [https://www.asbestossafety.gov.au/sites/asbestos/files/2017/10/ASEA\\_matters\\_Spring\\_2017\\_final\\_web.pdf](https://www.asbestossafety.gov.au/sites/asbestos/files/2017/10/ASEA_matters_Spring_2017_final_web.pdf) (accessed 7 November 2017).

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

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

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

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

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

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

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

### ***Asbestos bans in the Asia-Pacific region***

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

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

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

2.79 Mr John Mitchell from NATA noted:

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

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

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

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

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

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

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

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

2.82 Union Aid Abroad-APHEDA advocated for:

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

### ***Committee view***

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

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

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

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

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

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

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

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

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

#### **Recommendation 4**

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

#### **Recommendation 5**

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

#### **Recommendation 6**

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

#### **Recommendation 7**

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

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## Chapter 3

### Ongoing issues

3.1 Despite implementing a total ban on the manufacture, use, reuse, import, transport, storage or sale of all forms of asbestos and asbestos-containing materials (ACMs) within Australia from 1 January 2004, evidence to the inquiry highlighted some ongoing issues that require attention.

3.2 This chapter explores concerns raised by stakeholders about the risk of asbestos-related disease, the reality that Australian workers remain the last line of defence in asbestos detection, and the apparent lack of enforcement of the asbestos importation ban.

#### Asbestos-related disease risk

3.3 As noted in the previous chapter, exposure to asbestos can cause mesothelioma, cancer and asbestosis (fibrosis of the lungs).<sup>1</sup> While historically asbestos-related diseases have been most prevalent among workers involved in asbestos mining, milling, and manufacturing (the 'first wave') and workers, such as labourers and tradespersons, who are the end-users of asbestos containing material (the 'second wave'). Maurice Blackburn Lawyers explained that in recent decades a third wave has emerged, people who have never worked in what would be considered high risk industries, developing asbestos-related diseases.<sup>2</sup> The third wave of asbestos-related disease is characterised by low dose exposure, primarily in non-occupational contexts, such home renovations, using or working with products not known to contain asbestos or environmental exposure.<sup>3</sup> In addition, Maurice Blackburn Lawyers stated:

Australia was one of the largest consumers of asbestos, per capita, between the 1950s and 1980s. The result has been Australia has suffered the highest incidence of asbestos-related diseases, per capita, in the world. It is estimated that over 10,000 Australians have died from malignant mesothelioma since the 1980s, that another 15,000 will be diagnosed in coming decades, due to the long latency period of the cancer, and the fact that Australians continue to be exposed to asbestos.<sup>4</sup>

3.4 Professor Bill Musk, appearing as a member of the Australian Medical Association (WA) and with experience and expertise in the epidemiology and the clinical care of patients with asbestos related diseases, explained to the committee that 'one of the features of asbestos is that it is indestructible—that is how it gets its

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

2 Maurice Blackburn Lawyers, *Submission 107*, p. 4.

3 Maurice Blackburn Lawyers, *Submission 107*, p. 5.

4 Maurice Blackburn Lawyers, *Submission 107*, p. 10.



name—so once it gets into the lungs it tends to stay there and is very hard to remove, and as long as it is there it can cause disease'. Professor Musk observed that while not every person that breathes asbestos will get an asbestos-related disease. He noted that the asbestos fibres sit in the lungs and are:

...removed by the defence mechanisms of the lung at a ballpark rate of about five per cent per year, but that means at the end of every year 95 per cent of them are still there, and as long as they are there they can give rise to cancer, asbestosis or things called pleural plaques or pleural thickening on the outside of the lungs.<sup>5</sup>

3.5 Mr Ian Johnstone appeared before the committee as a member of the Asbestos Disease Support Society. Mr Johnstone was diagnosed with mesothelioma in 2016, after being exposed to asbestos during his 33 years in the construction industry in Melbourne, beginning in the 1970s. Mr Johnstone explained:

The reason for me being here today is to try and stop any further person contracting mesothelioma. In this day and age, that people can still be exposed to this product, knowing now what I have and that there is no cure for my problem—it is a disease not caused by me but by others. I was diagnosed in July of last year and it has put a tremendous strain upon my family. It has made our lives change completely. I wish that upon no-one in the future.<sup>6</sup>

3.6 Ms Amanda Richards of the Asbestos Disease Support Society outlined the changing demographics of those being diagnosed with asbestos related diseases in recent years:

Up until 18 months ago, it was...people who had worked with asbestos products or had been part of the mining industry. What we are seeing now is younger people coming through. In the last 12 months we have had a few people in their 30s and 40s come through, who have since passed away. Just before Christmas I was contacted by somebody who was only 22 who had been diagnosed with mesothelioma and was trying to understand how she could possibly have got the disease when she had never worked with it, did not live in a house with asbestos in it et cetera. I believe that the next wave is starting. Some people get it from their parents refurbishing homes, but the younger ones are coming through now.<sup>7</sup>

3.7 Another witness described the experience of workers discovering they have been exposed to asbestos. Mr Steven Diston of the Electrical Trades Union of Australia (ETU) explained:

5 Professor Arthur William (Bill) Musk, Member, Australian Medical Association (Western Australia), *Committee Hansard*, 9 March 2017, p.17.

6 Mr John McGregor (Ian) Johnstone, Member, Asbestos Disease Support Society, *Committee Hansard*, 30 January 2017, p. 2.

7 Ms Amanda Marion Richards, Chief Executive Officer, Asbestos Disease Support Society, *Committee Hansard*, 30 January 2017, p. 3.

I do not know if you have ever been to a job where guys have been exposed to asbestos, but basically you end up with an angry roomful of people who want answers, and there are not many answers you can give these people. We got in a specialist in asbestos law from Slater and Gordon, and she sat down with these people. The long and the short of it is that if you have been exposed to asbestos, cross your fingers and hope. You put your name down on the [national asbestos register]...Employers will often say, 'You can put us down as the employer,' but employers come and go. One of the biggest things is the absolute futility of it: once you are exposed it is too late; there is nothing that can be done for you; we do not have double lung transplants available. Asbestosis or mesothelioma is a terminal sentence. I have been exposed to asbestos a lot, and it is just cross your fingers.<sup>8</sup>

3.8 Mrs Vicki Hamilton, OAM, Asbestos Council of Victoria/GARDS reminded the committee 'there is no safe level to asbestos'. She described a 'tsunami of asbestos products coming into our country' which needs to be stopped to prevent unwitting exposure through products bought online or at a retailer.<sup>9</sup>

3.9 The risk of asbestos exposure to the broader population has increased due to the rise of online purchasing. The Asbestos Safety and Eradication Agency (ASEA) also noted the risk arising from 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.<sup>10</sup> The Asbestos Council of Victoria/GARDS Inc raised similar concerns in relation to goods purchased through eBay.<sup>11</sup>

3.10 In light of what we know of the dangers of exposure to asbestos, Maurice Blackburn Lawyers, argued that 'we have a moral obligation to protect future generations of Australians by actively taking steps to prevent the importation and use of non-conforming building materials containing asbestos'.<sup>12</sup>

### **Workers—the last line of defence**

3.11 Given the serious health risks associated with exposure to asbestos, the committee is worried about the ongoing risk to workers since the asbestos importation ban was imposed in 2003. Of particular concern to the committee was evidence that products containing illegally imported asbestos are most often discovered by workers. For example, the asbestos at the Perth Children's Hospital and 1 William Street in

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

9 Mrs Vicki Hamilton, OAM, Chief Executive Officer; Secretary, Asbestos Council of Victoria/GARDS Inc, *Committee Hansard*, 14 July 2017, p. 67

10 Asbestos Safety and Eradication Agency, *Submission 90*, p. 6.

11 Asbestos Council of Victoria/GARDS Inc, *Submission 104*, p. 1.

12 Maurice Blackburn Lawyers, *Submission 107*, p. 10.

Brisbane was discovered by workers with relevant occupational health and safety (OH&S) and asbestos awareness training.<sup>13</sup>

3.12 Mr Thady Blundell, representing the Asbestos Disease Support Society and Turner Freeman Lawyers noted that the discovery of asbestos at 1 William Street 'came about because a worker did not like the look of the dust and was concerned that it contained asbestos. That led to inquiries being made and the material being tested...So it was by chance'.<sup>14</sup> Mr David Meir, ETU, observed:

It is always the workers because they are the ones dealing with it. We bear the brunt of everything. We are the ones drilling the holes and going, 'Oh, that looks a bit suss; what's this?' They get their health and safety rep over if they have got one or they call in the union to suss it out. They say to their boss, 'What's this?' If the boss is diligent, he will say, 'Oh, we'd better stop that,' or he will say, 'Oh, don't worry about it; just get it done and paint over it'.<sup>15</sup>

3.13 Mr Simon Pisoni from the Communications Electrical Plumbing Union (SA) explained that it was also workers who discovered asbestos at the Nyrstar project in Port Pirie, South Australia. Mr Pisoni explained:

Definitely our members are made aware of the sort of material that you should be cautious of. There's always that base knowledge of recognising what could contain asbestos and then having the ability to raise it as a concern and have any material tested. Even though the building of the plant at Nyrstar will be a new plant and you'd expect that there wouldn't be any asbestos...the concern was raised and, to their credit, Nyrstar went through the proper process of taking a sample and having it tested. To their disgust, it was found that the cladding was asbestos.<sup>16</sup>

3.14 Mr Peter Tighe, Chief Executive Officer of ASEA, observed that the illegal importation of asbestos has created a new challenge for awareness training. He noted:

The problem is that new people that come into the trade in that area and since 2003, since we've had zero tolerance—have an assumption that any new work don't have any association with asbestos. But there is the legacy of asbestos.<sup>17</sup>

13 Asbestos Safety and Eradication Agency, *Submission 90*, p. 4

14 Mr Thady Blundell, Lawyer, Asbestos Disease Support Society, Turner Freeman Lawyers, *Committee Hansard*, 30 January 2017, p. 2.

15 Mr David Mier, Assistant National Secretary, Electrical Trades Union of Australia, *Committee Hansard*, 14 July 2017, p. 59

16 Mr Simon Pisoni, Assistant Branch Secretary, Electrical and Plumbing South Australia, Communications Electrical Plumbing Union, *Committee Hansard*, 31 July 2017, p. 4.

17 Mr Peter Tighe, Chief Executive Officer, Asbestos Safety and Eradication Agency, *Estimates Hansard*, Education and Employment Legislation Committee, 27 October 2017, p. 11.

3.15 Mr Dave Kirner, Construction, Forestry, Mining and Energy Union (CFMEU), shared Mr Tighe's concerns about the renewed importance of asbestos awareness training:

We're now playing a catch-up game because asbestos is reborn in the building industry. We're having to go and talk to workers...starting at the ground again and distributing stickers about asbestos and the union document 'Asbestos kills' so they understand it. I was speaking to a group of three young workers the other day, probably between 19 and 22, and I said, 'You probably don't know much about asbestos, but it's highly dangerous.' One of them said, 'My grandfather died from that.' So we are having to now go back and redo all that.<sup>18</sup>

3.16 In relation to asbestos found on tugboats, Mr Paul Garrett from the Maritime Union of Australia advised the committee that workers discovered asbestos on vessels after due diligence checks had given the all clear and the vessel had been returned to service.<sup>19</sup>

### ***Asbestos awareness training***

3.17 Workers are often the last line of defence when dealing with illegally imported asbestos. As such, the availability of asbestos awareness training for workers is essential.

3.18 The CFMEU informed the committee that it was not a matter of luck that led to the discovery of asbestos by CFMEU members and subsequent successful remediation at the 1 William Street site. The site delegate who first became suspicious that asbestos was present had undertaken nationally accredited Asbestos Awareness Training. It noted that 'identifying asbestos is a highly specialised task'.<sup>20</sup> The CFMEU advocated for introduction of 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'.<sup>21</sup>

3.19 Maurice Blackburn Lawyers expressed concern that 'the Australian population is becoming increasingly unaware of the precise dangers that asbestos poses, as well as how to identify or protect themselves from products which contain asbestos'.<sup>22</sup> It noted the building products containing asbestos pose a health risk to workers, but also to the general population of Australia. It explained:

The issue is especially vexing as there is a growing 'information gap' amongst workers and the general public. In Australia, public awareness

18 Mr Dave Kirner, District Secretary Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union, South Australia, *Committee Hansard*, 31 July 2017, p. 11.

19 Mr Paul Garrett, Assistant Secretary, Sydney Branch, Maritime Union of Australia, *Committee Hansard*, 3 October 2017, p. 16.

20 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 24.

21 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 11.

22 Maurice Blackburn Lawyers, *Submission 107*, p. 10.

concerning the dangers of asbestos peaked in the 1980s and 1990s in the wake of campaigning by activists, trade unions, parliamentarians and the media to ban the use of asbestos.<sup>23</sup>

3.20 The risk to the broader population of illegally imported asbestos is amplified by the rise of online purchasing.

3.21 Maurice Blackburn Lawyers was particularly concerned that there is a growing assumption that asbestos is a danger of the past.<sup>24</sup> Mr Steve Diston from the ETU held a similar view, he had found that apprentices are being desensitised to asbestos. He noted further:

But I tell you that one thing that would be bloody handy would be that, in all the apprenticeship training, any apprentice should have asbestos awareness as a unit of competency in their apprenticeship. I am a licensed electrician as well. If you spend any time on Facebook groups about electrical advice, at least once a week there will be someone posting a picture of a material, saying, 'Do you reckon this is asbestos or not?' because we do not get trained in it. Unless you are at a decent union workplace where it is pushed, you are just not going to get that training.<sup>25</sup>

3.22 Maurice Blackburn Lawyers was of the view asbestos awareness training should be a mandatory requirement in government contracts, asserting that:

Commonwealth, state and territory governments should adopt a standard condition in any contract with private industry for major public projects, that contractors provide asbestos awareness training to workers (and provide the Government with proof of that training), where such projects will include the use of imported building materials.

Such training should involve training workers to identify possible asbestos materials on the building site, as well as what precautions should be taken to avoid exposure.<sup>26</sup>

3.23 At a Supplementary Budget Estimates hearing in October 2017, Mr Peter Tighe, CEO of ASEA observed:

Employers in the industry and employee organisations in the industry are starting to require asbestos education as a fundamental in place. We just registered a course with ASQA [Australian Skills Quality Authority] for the utilities sector for training of awareness for all players in that area—that means direct employees and contractors. I think that responds to the information that you're probably hearing about the need for universal asbestos awareness programs for those people who may come across it in their normal occupational areas. The secondary one, though, is this need for those people who are going to run across it as a non-occupational

23 Maurice Blackburn Lawyers, *Submission 107*, p. 9.

24 Maurice Blackburn Lawyers, *Submission 107*, p. 9.

25 Mr Steven Diston, Organiser, Electrical Trades Union of Australia, *Committee Hansard*, 14 July 2017, p. 60.

26 Maurice Blackburn Lawyers, *Submission 107*, p. 12.



understanding about what is going on. Certainly, in the trades and in the apprenticeship area, we're finding from our building construction advisory committee that they would like to move ahead with some universal training.<sup>27</sup>

### **Committee view**

3.24 The committee understands that identifying asbestos is a highly specialised task. However, the committee is deeply concerned by evidence that Australians working in the building and construction industry are becoming increasingly unaware of the precise dangers that asbestos poses, as well as how to identify or protect themselves from products which contain asbestos.

3.25 In order to mitigate the risk of exposure to asbestos, particularly asbestos that may have been illegally imported but is yet to be discovered, the committee believes that mandatory nationally accredited asbestos awareness training should be introduced for a wide range of occupations in the construction industry. To this end, the committee encourages the Australian Government to ensure adequate funding is provided for this purpose.

### **Recommendation 8**

**3.26 The committee recommends that 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.**

### **Inadvertent procurement**

3.27 The WA Building Commission's audit report in September 2016 found that the presence of asbestos containing material in the Perth Children's Hospital revealed that awareness of the risk of inadvertent procurement of asbestos containing materials (ACMs) within the supply chain appears to be low.<sup>28</sup>

3.28 ASEA submitted that Australia needs to develop a holistic approach to supply chain management in order to address the problems regulators are currently facing with regards to imported ACMs. Following discussions with a wide range of stakeholders, from customs brokers to manufacturers to government representatives and customs staff, ASEA was of the view that 'changes to the supply chain must start at its roots'. It noted that many of its stakeholders were seeking more information from ABF in order to ensure they were compliant.<sup>29</sup>

3.29 ASEA considered that asbestos awareness programs targeted at designers, architects or planners could have resounding impacts through the supply chain. Noting

27 Mr Peter Tighe, Chief Executive Officer, Asbestos Safety and Eradication Agency, *Estimates Hansard*, Education and Employment Legislation Committee, 27 October 2017, p. 13.

28 WA Building Commission, *Summary of Interim Report: Perth Children's Hospital asbestos*, September 2016, p. 2.

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



that by focussing on the design, quality standard and contractual stipulation stage quality non-compliance could be weeded out.<sup>30</sup>

3.30 ASEA also noted the importance of sourcing, particularly as the market is so attached to the cheapest option.<sup>31</sup> Ai Group also noted that procurement policy that places all emphasis on minimising cost will exacerbate the problem.<sup>32</sup>

3.31 In addition, ASEA advised that customs brokers need to be highly aware of these issues and high risk products. Noting that they need to continually liaise with suppliers and clients to meet their due diligence requirements.<sup>33</sup>

3.32 The Construction Products Alliance, a collective of public and private organisations that is working to promote awareness of non-conforming building products, emphasised the importance of educating industry, clients and consumers about the countries that have not banned asbestos and the associated risks.<sup>34</sup>

3.33 Mairin OHS&E Consulting, an Australian company which provides health and safety consultancy services, suggested that asbestos awareness programs focused on the risk of illegal importation of asbestos could assist ABF with its workload by raising the level of general awareness and the ability to identify high risk products before they enter Australia. It noted that the published information that is currently available online can be difficult to locate.<sup>35</sup>

3.34 Ms Carolyn Davis noted:

Developing and promoting nationally consistent information is important and needs to involve all stakeholders. Solutions that focus on one part of the supply chain have not worked. A one-stop-shop for everyone to access consistent trusted information is a step in the right direction. Nationally agreed guidance on a national website would increase public and industry awareness of and confidence in the available information. A unified approach is needed that can be used to promote overseas especially to those involved early in the supply chain.<sup>36</sup>

### ***Committee view***

3.35 There is no doubt that there is a real risk of inadvertent procurement of asbestos containing building materials within the supply chain, and the committee is concerned about the apparent lack of awareness of this risk. The committee is of the view that in order to stop asbestos containing building materials at the contractual stipulation stage, asbestos awareness programs need to be provided across the supply

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

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

32 Ai Group, *Submission 120*, p. 10.

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

34 Construction Product Alliance, *Submission 116*, p. 4.

35 Mairin OHS&E Consulting, *Submission 93*, p. 5.

36 Ms Carolyn Davis, *Submission 118*, p. 8.

chain (including for example to architects and designers) and not limited to building and construction industry workers. As ABF is the operational arm of the Department of Immigration and Border Protection (DIBP) who enforces the ban on the importation of asbestos, the committee believes that they are best placed to develop and implement such training.

3.36 The committee is concerned by evidence that there is a lack of awareness across the supply chain of the risk of inadvertently procuring building materials containing asbestos. The committee considers that raising the level of awareness and the ability to identify high risk products before they enter Australia is paramount to reducing the risk of inadvertently importing asbestos. The committee notes that the information that is currently available online regarding this risk can be difficult to locate and believes that consideration should be given to developing a single online portal for the purpose of educating building industry participants, importers and consumers about the risk of inadvertently procuring asbestos containing building materials within the supply chain.

### **Recommendation 9**

**3.37 The committee recommends that 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.**

### **Recommendation 10**

**3.38 The committee recommends that 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.**

### **Enforcement of the asbestos importation ban**

3.39 Mrs Hamilton from the Asbestos Council of Victoria/GARDS stated that since asbestos importation was banned in 2003, 'products containing asbestos have been flowing into our country with no checks'. She suggested:

We were foolish enough to think we could pass laws and everyone would obey them. No-one thought to do regular checks on products after the ban was initiated. We have only realised in recent times just what asbestos is in these products and how varied those products are and how wide-ranging they are, affecting all Australians, from the very young—children—right through to the old.<sup>37</sup>

3.40 Mr Colin Brame from the Customs Brokers and Forwarders Council of Australia Inc. also noted that there were no measures put in place at the time of the ban to ensure it was enforced. He advised the committee that when the ban came into

37 Mrs Vicki Hamilton, OAM, Chief Executive Officer; Secretary, Asbestos Council of Victoria/GARDS Inc, *Committee Hansard*, 14 July 2017, p. 68.

force at the end of 2003, there were no industry wide notices advising of the changes, nor were there community protection questions put into the customs system for customs brokers to answer: 'do these goods contain asbestos?'<sup>38</sup>

3.41 As such, customs brokers were not required to ask what due diligence had been done to ensure a product is asbestos free. Mr Brame explained that 'the law came out that there was nil asbestos into Australia but that did not flow into the customs side of things as a proactive question for us to follow up with importers and their suppliers'.<sup>39</sup>

3.42 Mr Brame noted that it was not until August 2016 that ABF introduced the community protection question into the system, thirteen years after the ban was first imposed.<sup>40</sup>

3.43 Mr Andrew Mantle of Asbestos Audits & Environmental Audits Pty Ltd (AARMS), a specialised asbestos surveying company, likened the current requirements to prevent the illegal importation of asbestos to asking 'the fox to guard the henhouse' noting:

At the moment, within Australia, whilst we have the regulations saying, 'A product has to be asbestos free or meet the Australian/New Zealand standard,' there is no testing of that product prior to its import into Australia. All we originally required was a declaration or some form of proof or documentation that states that the product is asbestos free.<sup>41</sup>

3.44 Mr Mantle considered that importers and companies were unlikely to undertake asbestos testing prior to import into Australia unless they had a shipment held at wharf by ABF.<sup>42</sup> He explained that there is no mandatory requirement for importers to ensure products are asbestos free:

It is in the ABF leaflets that go out to the customs and trade brokers that they highly recommend that any products being imported must comply with the regulations, and that may require testing and further documentation. But to date,...I could not name five companies that are actively seeking to have building products tested or the factories in China audited to ensure that the products are asbestos free.<sup>43</sup>

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38 Mr Colin Brame, Director, Customs Brokers and Forwarders Council of Australia Inc., *Committee Hansard*, 30 January 2017, p. 43.

39 Mr Colin Brame, Director, Customs Brokers and Forwarders Council of Australia Inc., *Committee Hansard*, 30 January 2017, p. 43.

40 Mr Colin Brame, Director, Customs Brokers and Forwarders Council of Australia Inc., *Committee Hansard*, 30 January 2017, p. 44.

41 Mr Andrew Gordon Mantle, Managing Director, Asbestos Audits & Environmental Audits Pty Ltd, *Committee Hansard*, 3 October 2017, p. 27.

42 Mr Andrew Gordon Mantle, Managing Director, Asbestos Audits & Environmental Audits Pty Ltd, *Committee Hansard*, 3 October 2017, p. 26.

43 Mr Andrew Gordon Mantle, Managing Director, Asbestos Audits & Environmental Audits Pty Ltd, *Committee Hansard*, 3 October 2017, p. 30.

3.45 In relation to the incidents where products it had supplied were found to contain asbestos,<sup>44</sup> Mr Kevin Will from Yuanda Australia informed the committee that at 'no point previous were we ever asked to supply a certificate to say this product was not asbestos'.<sup>45</sup> He confirmed in a response to a question on notice that there was no such requirement imposed on Yuanda Australia.<sup>46</sup> Mr Will advised the committee that Yuanda Australia has now implemented its own testing regime 'which sees every batch of samples tested under procedures established by our Australian consultants, OccSafe. These test samples are then brought to Australia by a licensed importer in order to be tested in a NATA-accredited laboratory'.<sup>47</sup>

3.46 Mr Michael Borowick, from the Australian Council of Trade Unions (ACTU) suggested that the apparent failure of enforcement of Australia's asbestos ban could also be due to a loss of momentum and shifting priorities of ABF. He posited:

I suppose there must have been a great deal of momentum in the lead-up to the ban being imposed in 2003. I wasn't involved at the time, but I'd say there would've been a whole number of things. Things had come together and there was momentum, and the Howard government at the time did the right thing....For some reason the momentum has dropped away. Perhaps, in terms of Border Force, the priority has been on people coming to Australia, drugs and guns, and asbestos hasn't been where the focus has been, and government hasn't given the appropriate direction to the relevant agencies to make it a priority.<sup>48</sup>

3.47 Mairin OHS&E Consulting held a similar view:

It is our experience and view that in the sixteen (16) years since the ban came into effect there has been an overall growing complacency amongst importers and end-users on the risks associated with imported asbestos products entering Australian workplaces and homes. Policing and education on the extent of the asbestos importation problem by government departments (at both state and federal levels) during the same period. appears outwardly haphazard and under resourced with only a limited number of high profile cases being reported through popular media.<sup>49</sup>

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44 The incidents at 1 William Street Brisbane and the Perth Children's Hospital both involved products supplied by Yuanda Australia.

45 Mr Kevin Will, Managing Director, Yuanda Australia Pty Ltd, *Committee Hansard*, 30 January 2017, p. 25.

46 Yuanda Australia Pty Ltd: Answers to questions taken on notice from a public hearing on 30 January 2017 (received 20 February 2017).

47 Mr Kevin Will, Managing Director, Yuanda Australia Pty Ltd, *Committee Hansard*, 30 January 2017, p. 22.

48 Mr Michael Borowick, Assistant Secretary, Australian Council of Trade Unions, *Committee Hansard*, 17 October 2017, p. 5.

49 Mairin OHS&E Consulting PTY LTD, *Submission 93*, p. 1.

## The tip of the iceberg

3.48 Mr Robert Kelly from WorkSafe Victoria provided evidence to the committee about recent use of the rapid response protocol to respond to incidents of asbestos.<sup>50</sup> He observed that in 2017, WorkSafe Victoria had seen an increase in reports of asbestos:

We are getting the calls more frequently, whether it is the gaskets, the brake pads or quad bikes.<sup>51</sup>

3.49 Mr David Clement of Asbestoswise expressed surprise at the number and range of incidents of asbestos, explaining:

That has slightly taken our breath away. On the argument that it is the tip of the iceberg, you look at how it has been identified: it has been identified by workers, by unions and by groups like [Asbestos Council of Victoria/GARDS]. In the case of the quad bikes, it was by a whistleblower. The majority of cases have not been identified by the authorities. I think what that tells us is that the tip of the iceberg may well be the case.<sup>52</sup>

3.50 The ACTU also expressed the view that recent incidents 'in all likelihood represent the tip of the iceberg and the real incidence of illegal importation is masked by a combination of the lack of enforcement and the ineffectiveness of the ABF in detecting ACMs'.<sup>53</sup>

3.51 Mr Daniel Morgan from Coffey, a company which provides asbestos services, expressed the view that asbestos was so widespread in building products that 'the only way to completely stop it would be to use a domestic product'. He explained:

I personally feel that it would be impossible to stop it from coming in. There are so many building materials that could potentially contain asbestos, not limited to fibre cement. It is in mastics, it is in sealants, it is in glues, it is in thermal insulation. We are asked on a regular basis to go overseas and do checks for some major corporations in Western Australia. We are heavily involved in the maritime industry, where we do find asbestos gaskets on new ships that are stopped from coming into Australian waters because of the asbestos onboard. I believe that a very, very rigorous inspection process would not stem the tide of asbestos coming onto our shores.<sup>54</sup>

3.52 Mr Dave Kirner from the CFMEU considered the recent influx of illegally imported asbestos products to be the next wave of danger to workers:

50 Discussed in more detail in Chapter 2 at paragraphs 2.29–2.30.

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

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

53 Australian Council of Trade Unions, *Submission 127*, p. 3.

54 Mr Daniel Morgan, Principal Consultant, Coffey, *Committee Hansard*, 9 March 2017, p. 24.



I don't think there's enough public awareness. The first wave was in manufacturing, then the building workers and then the home renovators, and now it's back. Sadly, the Royal Perth Hospital was a tier 1 major project. The materials were imported by a major builder, a major contractor, and that's where we're finding the problems as well. So, on asbestos, I think there's a lot of work to do.<sup>55</sup>

### Stopping asbestos at the border

3.53 As noted in Chapter 2, since ABF's establishment on 1 July 2015, the Department of Immigration and Border Protection (DIBP) and ABF have significantly increased the strategic and operational focus on goods that pose a risk of containing asbestos. These include:

- undertaking risk assessments;
- commencing a sampling programme;
- enhancing risk profiles, establishing of a 'community protection question' for importers;
- requiring the testing of goods that are suspected of containing asbestos; seizure of goods containing asbestos;
- raising awareness and engaging with customs brokers and importers,
- international governments, customs agencies and suppliers; and
- increased engagement and coordination across jurisdictions.<sup>56</sup>

3.54 The Construction Product Alliance observed that 'the reality is that, for imported products, the Federal Customs (Border Force) has limited capacity to physically check, at the point of arrival into the country, the many thousands of products or materials that may contain asbestos'.<sup>57</sup>

3.55 The committee is aware that a large number of imports arrive in Australia each year. In 2016–17, ABF processed a total of 41.9 million air cargo consignments and 3.2 million sea cargo reports.<sup>58</sup>

3.56 A number of submitters were of the view that the DIBP and ABF were under-resourced for the task of preventing the illegal importation of asbestos. The ACTU welcomed ABF's recent focus on an established problem, after years of government inaction. It expressed concern that the resources available to the DIBP and ABF may

55 Mr Dave Kirner, District Secretary Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union, South Australia, *Committee Hansard*, 31 July 2017, p. 11.

56 See paragraph 2.15.

57 Construction Product Alliance, *Submission 116*, p. 3.

58 Department of Immigration and Border Protection, *Corporate Plan 2017–18*, p. 18, <https://www.border.gov.au/ReportsandPublications/Documents/corporate-plans/corporate-plan-2016-17.pdf> (accessed 7 November 2017).



not be sufficient to effectively monitor and prevent the illegal importation of asbestos.<sup>59</sup>

3.57 Mr Geoff Fary, former Chair of the Asbestos Management Review (2010–12) and the Asbestos Safety and Eradication Council (2013–16) noted that as there is now a history of illegal importation of asbestos, it is possible to predict both the high risk countries of origin and the types of products likely to contain asbestos (i.e. East Asia and in building materials, motor vehicles etc). As such, Mr Fary suggested:

It shouldn't be beyond the resources and wit of the [ABF] to identify appropriate targets for comprehensive inspection, testing and analysis.<sup>60</sup>

3.58 On the other hand, the Housing Industry Association (HIA) stated that while a complete ban on asbestos would appear to be the highest level of regulation, enforcement is extremely difficult. It considered that the 'reality is that Federal Customs (Border Force) has limited ability, and even more limited resources, to physically check products at the point of arrival into the country'.<sup>61</sup>

3.59 In order to prevent the illegal importation of asbestos, HIA considered the most important change would be to ensure that building product manufacturers, regardless of their country of origin, understand the expectations of the Australian government in relation to product conformance requirements.<sup>62</sup>

3.60 Mairin OHS&E Consulting suggested a dedicated specialist unit within ABF could prove useful to identify high risk imports. It explained:

Border Force is on the frontline for interception of imported asbestos goods but on balance appears to be under resourced to do so. Given the extent of biological and chemical contraband that they are responsible for preventing entering Australia this is understandable.<sup>63</sup>

3.61 The DIBP informed the committee that it does not have dedicated staff who specialise in identifying asbestos. Rather, resources are applied according to the ABF's risk assessment processes and staff resources are not allocated to specific risks for regulated goods.<sup>64</sup>

### ***Committee view***

3.62 The committee notes the large number of imports arriving each week in Australia which may contain asbestos, and recognises the work of the DIBP and ABF to increase the strategic and operational focus on goods that pose a risk of containing

59 Australian Council of Trade Unions, *Submission 127*, p. 14.

60 Mr Geoff Fary, *Submission 94*, p. 2.

61 Housing Industry Association, *Submission 119*, p. 1.

62 Housing Industry Association, *Submission 119*, p. 3.

63 Mairin OHS&E Consulting, *Submission 93*, p. 5.

64 Department of Immigration and Border Protection: Answers to written questions taken on notice (QoNs 18–54) (received 20 October 2017), p. 32.

asbestos. However, the committee considers that increased resourcing would increase ABF's ability to physically check products at the point of arrival into Australia.

3.63 The committee is concerned that ABF does not have dedicated staff who specialise in identifying asbestos. While the committee understands that resources are applied according to ABF's risk assessment processes and staff resources are not allocated to specific risks for regulated goods, the committee believes that the establishment of a dedicated specialist unit within ABF has the potential to increase the identification of asbestos at the border.

### **Recommendation 11**

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

### **Recommendation 12**

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

### **Prosecutions and Penalties**

3.66 The committee heard from a range of submitters that there is a need for a greater focus on enforcement, including prosecution and penalties, to effectively deter the illegal importation of asbestos. In responses to questions on notice provided in February 2017, the DIBP informed the committee that in recent years there have been three successful prosecutions for importing asbestos:

- In 2008, Alcan pleaded guilty to seven charges for importing equipment containing asbestos in breach of section 233(1) (b) of the Customs Act. The Court fined Alcan \$70,000 and costs of \$20,000.
- In 2012, the Court found an international engineering company, Clyde Bergemann Senior Thermal Pty Ltd (CBST), guilty of two counts of importing prohibited imports, namely chrysotile asbestos contrary to section 233(1) (b) of the Customs Act. The Court fined CBST \$64,000 including costs.
- In December 2014, the Court found a 50-year-old Australian man guilty of importing asbestos and fined him \$10,000 and costs of \$4,500.

3.67 In February 2017, the DIBP also noted that since ABF was established in 2015, four infringement notices for a total value of \$31,950 have been issued relating to asbestos. Three formal warning letters have been issued, with penalty action currently being considered for the remainder of the detections.<sup>65</sup>

<sup>65</sup> Department of Immigration and Border Protection: Answers to questions taken on notice from a public hearing on 30 January 2017 (QoNs 1-17) (received 24 February 2017), p. 7.

3.68 On 12 August 2017, it was reported that Yuanda Australia had received three infringement notices.<sup>66</sup> With reference to these infringement notices, Mr Borowick from the ACTU did not consider the penalties to be adequate, he stated:

The most notable incidence of asbestos importation to Australia in the last year has been that of Yuanda, a Chinese building products manufacturer. This asbestos was discovered on building sites throughout Australia, and there was evidence before the committee about that. After investigation Australian Border Force issued Yuanda with an infringement notice for each detection. An infringement notice cannot exceed \$15,750—a paltry amount for a company that has in excess of \$1 billion in revenue.<sup>67</sup>

3.69 Mr Borowick also noted 'the ban hasn't had any real deterrent effect, and the reality is that you can import asbestos into Australia with impunity.'<sup>68</sup>

3.70 The ACTU suggested that the quantum of penalties be reviewed, stating:

Given the appalling record on successful prosecutions and the insignificant quantum of penalties applied to guilty parties, it's no wonder the system fails to protect the community. \$90,000 is akin to a slap on the wrist for a multi-billion company like Rio Tinto Alcan (Rio). These sort of judgments against companies like Rio do nothing to encourage importers to perform due diligence on the contents of products being brought into Australia.<sup>69</sup>

3.71 Master Builders' Australia also considered that increasing penalties would be a positive step and would send an important message to the community and building industry participants. It stated:

In much the same way that the Commonwealth has established significant penalties for those who seek to import narcotics and firearms, penalties for those who import ACMs should be set at a level that is an appropriate disincentive against such conduct. A penalty regime that deters non-compliances with the law will be a positive step and send an important signal to the community and building industry participants.<sup>70</sup>

3.72 Similarly, Mr Geoff Fary considered that 'what is required is the political will to prosecute and substantially penalise those parties found to be in breach'. He commented:

Australia having a comprehensive regulatory ban on the importation of asbestos containing products will amount to little if there are no effective consequences in place should the ban be flouted...The sad and disgraceful history of the asbestos industry is replete with examples of innocent people

66 Natasha Bitu, 'Asbestos breaches earn a slap on wrist', *Courier Mail*, 12 August 2017, p. 9.

67 Mr Michael Borowick, Assistant Secretary, Australian Council of Trade unions, *Committee Hansard*, 17 October 2017, p. 2.

68 Mr Michael Borowick, Assistant Secretary, Australian Council of Trade unions, *Committee Hansard*, 17 October 2017, p. 2.

69 Australian Council of Trade Unions, *Submission 127*, p. 12.

70 Master Builders' Australia, *Submission 125*, p. 8.

contracting incurable terminal diseases as a consequence of the greed of others who have taken the chance of flouting the law. Lots of publicity and provision of information has little of the deterrent factor of prosecution and penalisation of those found to be in breach of our laws.<sup>71</sup>

3.73 HIA warned that 'complacency leads to lax practices', and argued for better enforcement of existing regulations.<sup>72</sup> The Construction Product Alliance made a similar argument:

With the appropriate level of enforcement and education by the relevant regulatory agencies, the existing regulatory system does provide a sound basis for the supply and use of conforming building products in Australia. However, the effective enforcement of the regulatory structure has failed, in part through lack of commitment to take strong action, and also as a result of the system failing to keep pace with the changing nature of the building product supply chain that is now a global marketplace.<sup>73</sup>

3.74 Maurice Blackburn Lawyers maintained that the Australian Government needs to be more active in enforcing penalties. In its view, it may be necessary to adopt 'a zero-tolerance approach to perpetrators, and or a commitment of greater resources to investigations and prosecutions'.<sup>74</sup>

3.75 The ETU considered the small number of prosecutions for illegal importation of asbestos was evidence the current system is flawed and argued for an independent review of the legislation and regulations governing the importation of asbestos.<sup>75</sup>

3.76 The ACTU believed the current regulatory framework 'is failing the community, as evidenced by continued detections of asbestos and ACMs in imported goods and the very limited number of full investigations and subsequent prosecutions since the prohibition was introduced in 2003'.<sup>76</sup>

3.77 The ACTU highlighted that the independent review conducted by KGH Border Services found that the limited number of investigations and prosecutions was due to the difficulty to 'prosecute against the honest and reasonable mistake of fact defence, which is available in relation to the importation offence as a strict liability offence'. The ACTU noted that the KGH Review recommended that the department further prioritise the investigation to improve prosecution of offences related to asbestos importation.<sup>77</sup>

3.78 The ACTU noted that the importation of asbestos or ACMs is a strict liability offence. It noted:

71 Mr Geoff Fary, *Submission 94*, p. 2.

72 Housing Industry Association, *Submission 119*, p. 2.

73 Construction Product Alliance, *Submission 116*, p. 4.

74 Maurice Blackburn Lawyers, *Submission 107*, p. 11.

75 Electrical Trades Union, *Submission 86*, p. 15.

76 Australian Council of Trade Unions, *Submission 127-suppl 1*, pp. 1–2.

77 Australian Council of Trade Unions, *Submission 127-suppl 1*, p. 2.

The difference between strict and absolute liability is that strict liability allows a defence of honest and reasonable mistake of fact to be raised while the application of absolute liability does not. Instances of absolute liability may also commonly involve displacement of the defence of mistake of fact by specialised statutory defences which narrow its scope, such as 'due diligence' or 'reasonable steps'.<sup>78</sup>

3.79 The ACTU recommended changing the existing offence to an absolute liability offence by removing availability of the mistake of fact defence, as 'offences of absolute liability are generally considered more appropriate and will provide a more effective deterrent where the defendant is well-placed to take extra care to ensure that the offence is not committed'.<sup>79</sup> Alternatively, the ACTU recommended 'narrowing the operation of the honest and reasonable mistake of fact defence (for example, by introducing specialised statutory defences).'<sup>80</sup>

3.80 Ai Group argued that prosecutions should be pursued in circumstances where there has been a deliberate attempt to import asbestos containing products, whilst promoting them to be asbestos free. It noted:

Ai Group acknowledges that there may be some circumstances where organisations knowingly and willingly import asbestos containing products for commercial gain, promoting it as a product that does not contain asbestos; this may include counterfeit products that claim to be a branded product or part.

These organisations should be prosecuted to the full extent of the law, be required to recall all products and be responsible for the costs associated with removal and disposal.<sup>81</sup>

3.81 However, Ai Group drew a clear distinction between circumstances where illegal asbestos importation was unintentional. In its view:

...the complexities associated with ensuring that an imported product does not contain asbestos can result in an organisation inadvertently importing asbestos containing products, even after they have exercised a high level of care to minimise the risk of this occurring.<sup>82</sup>

3.82 The DIBP informed the committee that ABF makes decisions on whether or not to prosecute based on the Prosecution Policy of the Commonwealth, whether there is sufficient evidence to prove the offence, and whether there are reasonable prospects of a successful conviction.<sup>83</sup>

78 Australian Council of Trade Unions, *Submission 127-suppl 1*, p. 4.

79 Australian Council of Trade Unions, *Submission 127-suppl 1*, pp. 5–6.

80 Australian Council of Trade Unions, *Submission 127-suppl 1*, p. 6.

81 Ai Group, *Submission 120*, p. 16.

82 Ai Group, *Submission 120*, p. 16.

83 Department of Immigration and Border Protection: Answers to questions taken on notice from a public hearing on 30 January 2017 (QoNs 1–17) (received 24 February 2017), p. 7.



3.83 The DIBP noted that it is difficult to prosecute asbestos matters because of the availability of the mistake of fact defence. This allows an importer to avoid liability that flows from the prohibited importation by providing evidence that it has exercised due diligence. To do so, the company typically tries to show that it took all reasonable steps to prevent the infringement from occurring.<sup>84</sup>

3.84 Mr Wayne Buchhorn from the DIBP provided the hypothetical example to demonstrate where the mistake of fact defence may be applied:

...if there were invoice evidence that stated that a product was asbestos free, that may satisfy the courts that the mistake of fact defence was available in that instance. So I would suggest it is a fairly high threshold to get over to prove that the company or the individual knew that they were importing asbestos.<sup>85</sup>

### *Committee view*

3.85 The committee notes evidence received from a range of submitters that there is a need for a greater focus on enforcement, including prosecution and penalties to effectively deter the illegal importation of asbestos. The committee also acknowledges the challenges of enforcing the existing importation of asbestos offence, and in this light, believes that a review of the relevant provisions of the *Customs Act 1901* (and other relevant legislation) should be conducted. The committee is particularly concerned that the mistake of fact defence is not operating as intended. In this context, while the committee acknowledges that there are complexities associated with ensuring that an imported product does not contain asbestos (see discussion on inadvertent procurement at 3.27 and due diligence at 4.21, it considers that the current threshold required to make out the mistake of fact defence should be increased.

3.86 The committee is concerned by the apparent lack of enforcement of the importation ban since it came into force on 31 December 2003, and considers that there needs to be a greater focus on prosecutions for importing asbestos. The committee believes that increasing the number of successful prosecutions and reviewing the quantum of penalties would have a significant deterrent effect on the illegal importation of asbestos.

### **Recommendation 13**

**3.87 The committee recommends that 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.**

84 Department of Immigration and Border Protection: Answers to questions taken on notice from a public hearing on 30 January 2017 (QoNs 1–17) (received 24 February 2017), p. 7.

85 Mr Wayne Buchhorn, Assistant Commissioner, Investigations Division, Department of Immigration and Border Protection, *Committee Hansard*, 30 January 2017, p. 41.



**Recommendation 14**

**3.88** The committee recommends that the Australian Government prioritise prosecution of illegal asbestos importation cases.

**Recommendation 15**

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

## Chapter 4

### Increasing accountability and reducing exposure

4.1 This chapter begins by examining the importance of product testing and the need for greater accountability and individual and corporate responsibility. It then looks at the adequacy of Australia's work health and safety legislation and the role of relevant regulators in reducing the risk of asbestos exposure for workers. Finally, the chapter will consider issues around recall powers for consumer products containing asbestos and concerns about the importation of ships containing asbestos.

#### Accountability

##### *Testing*

4.2 National Association of Testing Authorities, Australia (NATA) is the national authority for accreditation of testing laboratories and a peak authority for accreditation of inspection bodies. NATA accredits testing laboratories for the identification of asbestos related to air monitoring and in bulk materials. Laboratories that hold accreditation for testing products and materials for the Australian regulatory requirements undertake analyses in accordance with the Australian Standard AS 4964 *Methods for the qualitative identification of asbestos in bulk samples*.<sup>1</sup>

4.3 NATA is a signatory to the two international arrangements that facilitate the acceptance of test and inspection reports across international borders:

- the global International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA); and
- the regional Asia Pacific Laboratory Accreditation Cooperation (APLAC) Mutual Recognition Arrangement.<sup>2</sup>

4.4 Importantly, in relation to this inquiry, NATA highlighted a range of issues and challenges with identifying asbestos in imported products, including:

- the difference in international requirements and vocabulary around what is considered 'asbestos-free';
- test sampling may not be representative of the products being imported;
- testing methods and reports may not reflect Australia's strict zero-tolerance requirements; and
- there are no rapid screening tests or instruments that can be used at the border for an immediate result.<sup>3</sup>

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1 National Association of Testing Authorities, Australia (NATA), *Submission 109*, p. 1.

2 National Association of Testing Authorities, Australia (NATA), *Submission 109*, p. 1.

3 National Association of Testing Authorities, Australia (NATA), *Submission 109*, pp. 2–3.

4.5 NATA informed the committee that since mid-2015, it had received a significant increase in enquiries requesting information around asbestos testing issues.

4.6 In response to these enquiries, NATA stated that it had produced two Industry User Guides (with input from the Department of Immigration and Border Protection (DIBP) and the Asbestos Safety and Eradication Agency (ASEA)) on how to use the services of accredited infrastructure to achieve compliance with Australian regulations.<sup>4</sup> NATA also advised the committee that it had

...presented a summary of testing issues to the Commonwealth's interdepartmental committee on asbestos, and we are currently collating additional information from our counterparts around the world on methodologies and the availability of accrediting and testing infrastructure.<sup>5</sup>

4.7 Mr Paul Goldsbrough from the Queensland Office of Industrial Relations noted the difficulties of dealing with illegally imported asbestos in building products after it has already come into the country and been installed. In his view 'it would be desirable to have a more robust, up-front testing regime for imported products so that we are not put in the position where it is appearing in our workplaces'.<sup>6</sup>

4.8 The Housing Industry Association (HIA) observed that where asbestos is found in a building product, it is likely to be within the product. This makes discovery more complicated as the asbestos can only be found through destructive testing, which is unlikely to occur before a potential problem has been identified. It noted:

Customs, and all other parties in the supply chain, continue to rely on testing and certification undertaken by the manufacturer of building products to verify they meet relevant standards. If this documentation arrives with the product it is taken on face value.

In each of the recent incidences of asbestos in commercial construction materials, this appears to be exactly what occurred. The manufacturer has provided certification that the product is 'asbestos free'. However once tested on site in Australia after the material has been used, this has been found to be incorrect.<sup>7</sup>

4.9 Mr Andrew Mantle from Asbestos Audits & Environmental Audits Pty Ltd (AARMS) considered that given the large number of imports arriving each week in Australia (over 10,000 containers), it is unrealistic to think ABF has the capacity to screen and inspect every container. In his view the responsibility should lie with the companies importing the products:

4 National Association of Testing Authorities, Australia (NATA), *Submission 109*, p. 3.

5 Mr Neil Shepherd, Sector Manager, Life Sciences, National Association of Testing Authorities, Australia, *Committee Hansard*, 3 October 2017, p. 31.

6 Mr Paul Goldsbrough, Executive Director, Safety, Policy and Workers Compensation Services, Office of Industrial Relations, Queensland Treasury, *Committee Hansard*, 30 January 2017, p. 21.

7 Housing Industry Association, *Submission 199*, p. 2.

I think that the issue relates to a demanding of companies to comply with proving their product is asbestos free prior to it entering into Australia; that's the real issue. The ABF have provided a very detailed guidance to the customs and trade bodies, that anyone importing plant and equipment into Australia must provide proof that the goods are asbestos free. But, from our experience, self-declarations from companies in China or laboratory certificates from laboratories in China are not worth the paper they're written on. It's very easy for a Chinese company to simply declare their product to be asbestos free, because, under the terms of asbestos free in China—six per cent or less asbestos—they are actually complying with the Chinese regulation; they just are not complying with the Australian regulation.<sup>8</sup>

4.10 The Customs Brokers and Forwarders Council of Australia Inc. also noted that it is the responsibility of the importers to ensure they meet the regulatory requirements. In particular, it noted that the regulatory burden for compliance should be placed on importers, not on licenced customs brokers.<sup>9</sup>

4.11 The committee notes that ABF's website advises that:

Importers should not assume that goods labelled 'asbestos free' are in fact free of asbestos or that testing of goods undertaken overseas certified 'asbestos free' meet Australia's border requirements. Some countries can lawfully label or test goods, declaring them asbestos free, if they are below a certain threshold.<sup>10</sup>

4.12 However, Mr Mantle from AARMS, pointed out that:

There is no forced requirement [for product testing]; it is suggested. It is in the ABF leaflets that go out to the customs and trade brokers that they highly recommend that any products being imported must comply with the regulations, and that may require testing and further documentation. But to date...I could not name five companies that are actively seeking to have building products tested or the factories in China audited to ensure that the products are asbestos free.<sup>11</sup>

4.13 Most importantly, NATA notes that:

It must be highlighted at this point that the Australian Standard is not mandated. The requirement of the *Customs (Prohibited Imports) Regulations 1956* is that asbestos is not present and the subject of testing is

8 Mr Andrew Gordon Mantle, Managing Director, Asbestos Audits & Environmental Audits Pty Ltd, *Committee Hansard*, 3 October 2017, p. 26.

9 The Customs Brokers and Forwarders Council of Australia Inc., *Submission 137*, p. 2.

10 Australian Border Force, 'Asbestos', <http://www.border.gov.au/Busi/cargo-support-trade-and-goods/importing-goods/prohibited-and-restricted/asbestos> (accessed 7 November 2017).

11 Mr Andrew Gordon Mantle, Managing Director, Asbestos Audits & Environmental Audits Pty Ltd, *Committee Hansard*, 3 October 2017, p. 30.

not addressed. As such, there is no legal obligation to use AS 4964 and also no impediment to the use of another equivalent or better method.<sup>12</sup>

4.14 Mr Borowick from the ACTU considered:

The absence of mandatory testing has been a recipe for disaster, in our respectful view. The importation of non-complying products undermines the local industry and jobs because they are cheaper to manufacture and the local industry is denied the ability to compete on a level playing field and are put at a cost and competitive disadvantage.<sup>13</sup>

4.15 Mr Mantle from AARMS, noted that the European Union (EU), which like Australia, has a ban on the importation of all types of asbestos, could provide a model for testing requirements. He noted that 'from what I have seen of the EU requirements for certain processes, they are very intensive and very documented. They ensure a very high level of compliance'.<sup>14</sup> He explained:

The EU have a range of regulations, and the EU have a number of very extensive testing organisations within China—their own people and their own staff—so European companies have operations within China. They are able to do this because the EU regulations force them to have this testing and these certifications done prior to delivery into Europe.<sup>15</sup>

**Committee view**

4.16 The committee acknowledges that where asbestos is contained in a building product, it is most likely to be bound within the product itself, making it difficult to discover without destructive testing.

4.17 Despite this, the committee believes that Australia needs a more robust, up-front testing regime for imported products than currently exists. Australia needs to strengthen its requirements to prevent the illegal importation of asbestos and to avoid Australian workers and the public being unnecessarily exposed to the risks of asbestos.

4.18 Noting that it is impossible for ABF to effectively screen and inspect all imported goods, the committee considers that at a minimum, where importers are importing materials that have been deemed a high risk of containing asbestos, it is appropriate for the Australian Government to require them to conduct laboratory testing to confirm they are not illegal prior to import. In implementing up-front testing requirements, the committee notes that the European Union has extensive testing requirements to support its asbestos importation ban which could provide a useful model for an Australian regime.

12 National Association of Testing Authorities, Australia (NATA), *Submission 109*, p. 4.

13 Mr Michael Borowick, Assistant Secretary, Australian Council of Trade unions, *Committee Hansard*, 17 October 2017, p. 3.

14 Mr Andrew Gordon Mantle, Managing Director, Asbestos Audits & Environmental Audits Pty Ltd, *Committee Hansard*, 3 October 2017, p. 28.

15 Mr Andrew Gordon Mantle, Managing Director, Asbestos Audits & Environmental Audits Pty Ltd, *Committee Hansard*, 3 October 2017, p. 27.

## Recommendation 16

**4.19** The committee recommends that 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 a another country that is a signatory to a Mutual Recognition Arrangement).

## Recommendation 17

**4.20** The committee recommends that 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.

## Due diligence systems

**4.21** The committee heard evidence regarding a number of incidents of illegally imported asbestos. One of these incidents was the discovery of asbestos at the new Perth Children's Hospital. 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 found to contain chrysotile asbestos following analysis by a NATA accredited laboratory. John Holland was the contractor for the Perth Children's Hospital. Yuanda Australia was subcontracted to import the panels, which were sourced by Yuanda China from various suppliers for assembly in its factory.<sup>16</sup> It was taken at face value that the supporting certification documentation back through the supply chain demonstrating the panels were asbestos free was correct.<sup>17</sup>

**4.22** The WA Building Commission's audit of building products at the Perth Children's Hospital found a range of contributing factors leading to the presence of asbestos in the roof panels including:

- the product was sourced through a complex supply chain, in an international market, with differing legislative requirements in relation to asbestos;
- all stakeholders relied on country-of-origin documentation without further testing in Australia; and
- none of the organisations in the supply chain for the roof panels had a system to require asbestos testing for components and materials that do or may contain fibrous materials.<sup>18</sup>

<sup>16</sup> Asbestos Safety and Eradication Agency, *Submission 90*, pp. 4–5.

<sup>17</sup> Mr Richard Dorham Mann, Executive Director, Strategic Projects and Asset Sales, Department of Treasury, Western Australia, *Committee Hansard*, 9 March 2017, p. 41.

<sup>18</sup> WA Building Commission, *Summary of Interim Report: Perth Children's Hospital asbestos*, September 2016, p. 2.



4.23 As noted in the previous chapter, Yuanda Australia advised that it had changed its practices in response to the incident at Perth Children's Hospital and 1 William Street in Brisbane.<sup>19</sup>

4.24 John Holland also advised that it had implemented a number of changes. Mr Lindsay Albonico from John Holland advised:

John Holland has implemented a number of changes and processes to strengthen its quality-management system and processes, including but not limited to updating standard contract templates to include a requirement that all materials must be certified as asbestos-free. Specifically, this requires testing to be in accordance with AS4964 2004 method for the qualitative assessment of asbestos in bulk samples. In this instance of international procurement, overseas laboratories must be recognised as being equivalent to a NATA accredited laboratory.<sup>20</sup>

4.25 The WA Department of Treasury also had a role in respect to the Perth Children's Hospital, as its strategic projects division is responsible for the oversight of the delivery of the government's major building projects. Mr Richard Mann from the WA Department of Treasury advised that the department had changed its practises in direct response to the discovery of asbestos at Perth Children's Hospital:

This incident has certainly alerted us to an enhanced risk of a recurrence in imported material. In direct response, we have now included a provision in all our contract templates that allows us to direct the contractor to undertake testing in Australia of any imported materials. That will be assessed on a risk basis, but any materials, for example, of a fibrous nature, such as cement fibre sheet, with a potential to contain asbestos material would be a higher priority for testing if the compliance documentation, including any test certificates, were not adequate to convince us that the material was conforming.<sup>21</sup>

4.26 Another incident of illegally imported asbestos involved South Australian company Robin Johnson Engineering. In late 2015 it was discovered that several batches of asbestos cement board were imported by Robin Johnson Engineering over several years and installed as flooring in prefabricated switch rooms, which have then been on-supplied to other 'persons conducting a business or undertaking' (PCBUs) in South Australia, New South Wales, Queensland, Victoria and the Northern Territory. The switch rooms commonly contain control equipment, cabling and other heavy low and high voltage electrical equipment.<sup>22</sup>

4.27 Robin Johnson Engineering advised that they no longer rely on the certificates they receive and have 'much more onerous testing regimes, and we test anything that

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19 See paragraph 3.45.

20 Mr Lindsay Robert Albonico, Project Director, John Holland Pty Ltd, *Committee Hansard*, 9 March 2017, p. 46.

21 Mr Richard Dorham Mann, Executive Director, Strategic Projects and Asset Sales, Department of Treasury, Western Australia, *Committee Hansard*, 9 March 2017, p. 41.

22 Asbestos Safety and Eradication Agency, *Submission 90*, p. 4.

could be contaminated with either asbestos or any other banned substances prior to them being shipped'.<sup>23</sup>

### ***Strengthening due diligence requirements***

4.28 The above reports of individual organisations reviewing their own processes following the discovery of illegally imported asbestos, aligns with ASEA's view that due diligence needs to be reinforced when it comes to sourcing of products, suggesting:

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.<sup>24</sup>

4.29 In particular, ASEA noted the significant risk posed by the failure of Australian companies to undertake due diligence before products are imported into Australia. ASEA explained:

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.<sup>25</sup>

4.30 The CFMEU argued that the recent incidents exposed the weaknesses in due diligence systems of the companies' procurement processes.<sup>26</sup> It suggested looking to other industries for models of due diligence systems, such as those to prevent the importation of illegally imported timber, noting:

...the prohibition of the importation of illegally logged timber involves a high level legislative ban and also Regulations which outline the due diligence systems that importers must have in place.

These systems are liable to be audited from time to time (by in this instance the Department of Agriculture) in order to ensure that they are in compliance with requirements of the Regulations.<sup>27</sup>

4.31 Engineered Wood Products Association of Australasia Ltd (EWPAA) also the identified the successful measures to deter the importation of timber products derived

23 Mr Robin Johnson, Managing Director, Robin Johnson Engineering, *Committee Hansard*, 31 July 2017, p. 33

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

25 Asbestos Safety and Eradication Agency, *Submission 90*, p. 2.

26 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 31.

27 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 36.

from illegally logged forests in foreign countries as a potential model for other products.<sup>28</sup>

4.32 The CFMEU noted that updates to the Commonwealth Procurement Rules that commenced on 1 March 2017 mean that:

...identifying applicable Australian Standards and verifying compliance will become a feature of the Commonwealth procurement system and it makes sense to put some thresholds in place and for the Government to use its procurement document for construction work to encourage the use of these thresholds being utilised for Commonwealth funded projects and within the private sector.<sup>29</sup>

4.33 The CFMEU held the view that minimum thresholds for the due diligence required under the Commonwealth Procurement Rules should be mandatory for both Commonwealth procurement officers and procurement officers of building code compliant companies eligible for Commonwealth funding.<sup>30</sup> It recommended that:

The Australia Government, for identified high risk products from high risk countries and regions, including for products which are at risk of containing asbestos require procurers to have a stakeholder agreed due diligence system in place for the prevention of the import and use of nonconforming building products.<sup>31</sup>

### ***Committee view***

4.34 Evidence to the committee found that recent incidents of illegal importation of asbestos in building products have highlighted the weakness in the due diligence systems of importers and contractors. The committee recognises that importers, contractors and subcontractors cannot be relied upon to provide asbestos-free products and that more prescriptive due diligence is required to ensure asbestos is not inadvertently imported to Australia.

4.35 While the committee notes that updates to the Commonwealth Procurement Rules from 1 March 2017 have increased the minimum thresholds for the due diligence required under the Rules, it is concerned that the requirements are not mandatory. The committee considers that for identified products from high asbestos risk asbestos countries and regions; and for products which are at risk of containing asbestos, procurers should be required to have a stakeholder agreed due diligence system in place.

### **Recommendation 18**

**4.36 The committee recommends that the Australian Government consider placing additional mandatory requirements on procurers of high-risk products**

28 Engineered Wood Products Association of Australasia Ltd (EWPAA), *Submission 101*, p. 4.

29 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 37.

30 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 37.

31 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 11.

**to have a due diligence system in place for the prevention of the import and use of asbestos containing materials.**

### **A model for best practice**

4.37 The Queensland *Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017* (the act) was assented to on 31 August 2017. In its interim report on aluminium composite cladding, the committee considered that the Queensland legislation would go some way to ensuring accountability is spread more evenly across the supply chain from designers to manufacturers, importers, suppliers and installers and supports the act's intent. The committee also encouraged other jurisdictions to examine the act and consider developing similar approaches as a starting point to addressing this serious issue and recommended that the Building Minister's Forum give further consideration to introducing nationally consistent measures to increase accountability for participants across the supply chain.<sup>32</sup>

4.38 The ACTU considered that the Queensland legislation provides a model for a best practice 'chain of responsibility' approach to ensuring products are fit for purpose. The ACTU recommended that the committee give consideration to 'incorporating aspects of the Queensland [Act] into federal legislation and/or taking steps to develop a uniform national model bill based on the Queensland [Act], to be adopted by the states and territories'. The ACTU supported the legislation as it:

- sets out clear statutory objects in respect of the regulation of building products;
- establishes a building products advisory committee that gives Minister, Queensland Building and Construction Commissioner and board advice about building products, with an emphasis on safety;
- requires the Queensland Building and Construction Commission to give relevant information to the health and safety regulator;
- clearly sets out the relationship between the Act and safety laws;
- requires a person in the supply chain who becomes aware of, or reasonably suspects, that a building product is a non-conforming building product, to notify the Queensland Building and Construction Commission; and
- empowers the Queensland Building and Construction Commission to direct a person to take remedial action in respect of a contravention of the act.<sup>33</sup>

### **Committee view**

4.39 The committee considers that the Queensland legislation would go some way to ensuring responsibility and accountability is spread more evenly across the supply chain from designers to manufacturers, importers, suppliers and installers. The

32 Senate Economics References Committee, *Interim report: aluminium composite cladding*, 6 September 2017, pp. 48–49.

33 Australian Council of Trade Unions, *Submission 127*, p. 11.

committee supports the intent of the Queensland *Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017* and believes that it provides a good starting model for best practice 'chain of responsibility' and should be adopted by other states and territories.

## Recommendation 19

**4.40 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*.**

## Work health and safety

### *Removal and remediation of asbestos*

4.41 A number of submitters raised concerns about the removal of illegally imported asbestos and flagged the need to update workplace health and safety legislation. As noted in Chapter 2, all states and territories apart from Victoria and WA have adopted model workplace health and safety legislation.

4.42 Mr Goldsbrough from the Queensland Office of Industrial Relations advised that in response to recent incidents, Queensland's approach was:

...to direct businesses to submit a plan and a timeline for the removal of asbestos-containing materials. While we appreciate removal can be complex in certain circumstances, we are of the view that short-term methods such as signage and restricting access to affected worksites are not effective permanent solutions for managing the installation of asbestos-containing materials in contemporary buildings...It also has a significant potential to impact on the health and safety of the community, particularly in light of an increasing proportion of mesothelioma cases arising from non-occupational exposure. I suppose my take-home message is that as a regulator we have to be able to instil confidence in the community that we are able to manage this insidious issue.<sup>34</sup>

4.43 Mr Goldsbrough made the observation:

The national model work health and safety laws which have been adopted in Queensland are silent on the issue of imported materials as work health and safety regulators relied on the importation ban and Australian Border Force to prevent the importation of asbestos. Essentially the work health and safety laws are geared to the in situ management or removal and so on.<sup>35</sup>

34 Mr Paul Goldsbrough, Executive Director, Safety, Policy and Workers Compensation Services, Office of Industrial Relations, Queensland Treasury, *Committee Hansard*, 30 January 2017, p. 17.

35 Mr Paul Goldsbrough, Executive Director, Safety, Policy and Workers Compensation Services, Office of Industrial Relations, Queensland Treasury, *Committee Hansard*, 30 January 2017, p. 17.



4.44 The policy position of SafeWork SA is that asbestos installed post 2003 is illegal and must be removed. It outlined its approach as follows:

There may be circumstances where, recognising the significant work and downtime cost impact associated with the removal of these products, as well as safety concerns associated with the removal, SafeWork SA will consider it appropriate that a planned, staged approach to removal is implemented. Any staged approach must be approved by the regulator.<sup>36</sup>

4.45 SafeWork SA informed the committee that it had found it difficult to react to recent incidents of illegally imported asbestos as model work health and safety legislation 'wasn't really designed to find the imports after the fact'.<sup>37</sup>

4.46 With regards to the switchrooms containing asbestos which was imported by Robin Johnson Engineering, SafeWork SA advised that they were 'awaiting the outcome of the case with SafeWork New South Wales on the ability to have the asbestos removed from the particular switch rooms that were built'. Mr Chris McKie, SafeWork SA, understood the trial would be happening over the coming months.<sup>38</sup> Robin Johnson Engineering is challenging a SafeWork NSW order to remove contaminated flooring from a switchroom at the Taralga wind farm. Robin Johnson Engineering's argument is that removing the contaminated material would create a greater risk than leaving it in situ.<sup>39</sup>

4.47 Worksafe Victoria advised that they had 'worked closely with the relevant businesses to ensure that the asbestos was removed by agreement, rather than using legislative enforcement measures'.<sup>40</sup> Unlike the model health and safety laws that have been adopted in most jurisdictions Victoria has its own legislation:

Under regulation 237 of the OH&S [Occupational Health and Safety] Regulations 2017, duty holders must ensure, so far as reasonably practicable, that any risk associated with the presence of asbestos is eliminated by removing that asbestos. This obligation applies in relation to asbestos installed before and after the prohibition in December 2003 where it poses a risk.<sup>41</sup>

36 SafeWork SA, *Submisison* 89, p. 4.

37 Mr Chris McKie, Chief Inspector, Compliance and Enforcement, SafeWork SA, South Australia, *Committee Hansard*, 31 July 2017, p. 42.

38 Mr Chris McKie, Chief Inspector, Compliance and Enforcement, SafeWork SA, South Australia, *Committee Hansard*, 31 July 2017, p. 42.

39 Angelique Donnellan, 'Asbestos removal demand being challenged by RJE over Taralga wind farm switch room material', *ABC Online*, 7 February 2017, <http://www.abc.net.au/news/2017-02-07/asbestos-removal-demand-being-fought-in-nsw-court/8248836> (accessed 7 November 2017).

40 Mr Robert Kelly, Director, Specialist Services, Health and Safety, WorkSafe Victoria, *Committee Hansard*, 14 July 2017, p. 77.

41 Mr Robert Kelly, Director, Specialist Services, Health and Safety, WorkSafe Victoria, *Committee Hansard*, 14 July 2017, p. 76.



4.48 Mr Robert Kelly from WorkSafe Victoria advised the committee that where there has been noncompliance with a prohibition against the manufacture, supply, storage, transport, sale and use of asbestos contained in Division 4 of the OH&S Regulations 2017, WorkSafe Victoria can use the enforcement tools under the *Dangerous Goods Act 1985 (Victoria)*. The new OH&S Regulations did not commence until 18 June 2017. When Mr Kelly addressed the committee on 14 July 2017 he advised that WorkSafe Victoria had:

...yet to use the prohibitions contained in the regulations to compel a duty holder to remove illegally imported asbestos that had been fixed or installed in the building or structure. The power to order such removal is yet to be tested.<sup>42</sup>

4.49 Mr Kelly advised that 'WorkSafe is intending to clarify this and to put it beyond doubt that it can compel such removal'.<sup>43</sup> He explained further:

That is being proposed. At the moment, with the Dangerous Goods Act, the use of the word 'use' asbestos—we need to strengthen that, because it can become in situ once it is installed. So, yes, it is illegally imported but it has been used and it is now in situ. If it is in situ, the way the legislation is written is that, as long as it is not disturbed or does not pose a risk, it can stay. We want to strengthen the legislation so that it says that, if it is illegally imported asbestos and it is installed, we have the clear power to compel them to remove it.<sup>44</sup>

4.50 The Australian Manufacturing Workers' Union (AMWU) also expressed concern that the current health and safety laws do not require the removal of in situ asbestos meaning that 'a company can install in 2016 a substance banned in 2003, but the health and safety regulators are limited in their regulatory response'. The AMWU stressed:

It is therefore essential, that health and safety laws are changed to enable jurisdictions to require the removal of illegal asbestos product – and the removal/remediation/safe disposal of the ACMs is to be paid for by the importer and supplier.<sup>45</sup>

4.51 The ACTU considered that measures to require the removal of illegally imported asbestos would create a significant financial disincentive to breaching the importation ban. As such, it supported the introduction of new legal obligations to require:

42 Mr Robert Kelly, Director, Specialist Services, Health and Safety, WorkSafe Victoria, *Committee Hansard*, 14 July 2017, p. 77.

43 Mr Robert Kelly, Director, Specialist Services, Health and Safety, WorkSafe Victoria, *Committee Hansard*, 14 July 2017, p. 77.

44 Mr Robert Kelly, Director, Specialist Services, Health and Safety, WorkSafe Victoria, *Committee Hansard*, 14 July 2017, p. 78.

45 Australian Manufacturing Workers' Union, *Submission 97*, p. 7.

...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. If adopted, this measure will create huge financial disincentive to breaching the importation ban.<sup>46</sup>

4.52 While Master Builders' Australia acknowledged building industry participants throughout the supply chain should play a role in identifying and eradicating asbestos containing materials, it held the view that 'builders and building surveyors should not be liable for any cost associated with the use of a product they have obtained in good faith and with regard to available information, if that product should not have been made available for use and/or imported in the first place'.<sup>47</sup> Master Builders' Australia considered that:

...where a product containing ACM has entered Australia since 2004, the entity responsible for its importation should held liable for all the ramifications of its entry, use, installation, discovery, removal and safe remediation. Once again, given the cost associated with addressing ACMs, making those importing the product fully responsible would send the right signal of deterrence and have the secondary benefit of increasing the level of voluntary compliance and other assessment mechanisms to ensure products are ACM free. It would be expected that if the level of financial risk was significant, importer investment in their own processes would become a more attractive proposition.<sup>48</sup>

4.53 Safework SA submitted that the current regulatory frameworks could be improved with particular reference to establishing responsibility for remediation of sites where illegally imported products containing asbestos has been found.<sup>49</sup>

4.54 Safework SA observed that 'disputation surrounding duty holder responsibilities along the chain may result in cost impacts for individuals and may be counter-productive to good health and safety outcomes'.

4.55 Of particular concern was the potential for a significant time lag between installation and discovery of asbestos. Safework SA explained that if the company involved in the import, supply and/or fabrication of the building products ceases to exist it could make it extremely difficult to determine who has responsibility for remedial action.<sup>50</sup>

4.56 SafeWork Victoria shared this concern noting that:

By the time the asbestos may be discovered, enforcement and remedial action may be inadequate to deal with the scale of the problem. Maximum fines for regulatory breaches may be significantly less than the cost of

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

47 Master Builders' Australia, *Submission 125*, p. 9.

48 Master Builders' Australia, *Submission 125*, pp. 8–9.

49 SafeWork SA, *Submission 89*, p. 5.

50 SafeWork SA, *Submission 89*, p. 5.

removing the asbestos containing material, which may make duty holders reluctant to comply, particularly if the asbestos is in situ and not posing any risk.<sup>51</sup>

### ***Committee view***

4.57 The committee understands that the removal of asbestos can be expensive, time consuming and dangerous; and while the aim of Australia's regulatory framework is to stop asbestos at the border, recent incidents highlight the reality that asbestos containing materials remain ever-present in Australia.

4.58 While the committee acknowledges that all states and territories, apart from Victoria and WA, have adopted model workplace health and safety legislation, the committee is concerned that where asbestos containing materials are discovered, Australia's work health and safety legislation may operate to result in unfair cost impacts for individuals and be counter-productive to good health and safety outcomes.

4.59 The committee believes that this legislation needs to be strengthened to specifically provide that where illegally imported asbestos is discovered, it is mandatory that it be removed and disposed of, providing it is safe to do so; and that the costs of any such removal and disposal will be borne by the importer of the illegal asbestos. In addition, the committee considers that in cases where illegally imported asbestos is not discovered during installation, mechanisms should be developed to clearly establish who has legal responsibility for remediation of sites. The committee is particularly concerned about cases where at the time asbestos is discovered, the companies involved in the illegal importation of the asbestos, supply or fabrication have ceased to exist.

### **Recommendation 20**

**4.60 The committee recommends that 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.**

### ***Role of the Federal Safety Commissioner***

4.61 The committee notes the Federal Safety Commissioner's (FSC) powers are limited to companies that choose to become accredited in order to undertake Commonwealth-funded work. However, as outlined in the interim report on aluminium composite cladding, the committee is interested in the capacity of the FSC to play a role in ensuring compliance with the National Construction Code of Commonwealth funded construction work.<sup>52</sup>

51 Mr Robert Kelly, Director, Specialist Services, Health and Safety, WorkSafe Victoria, *Committee Hansard*, 14 July 2017, p. 78.

52 Senate Economics References Committee, *Interim report: aluminium composite cladding*, 6 September 2017, pp. 51–53.

4.62 The functions of the FSC are described in Section 38 of the *Building and Construction Industry (Improving Productivity) Act 2016* and include:

- promoting workplace health and safety (WHS) in relation to building work;
- auditing compliance with National Construction Code performance requirements in relation to building materials;
- administering the Australian Government building and construction industry WHS Accreditation Scheme;
- promoting the benefits of the WHS Accreditation Scheme; and
- disseminating information about the WHS Accreditation Scheme.<sup>53</sup>

### ***Committee view***

4.63 The issue of asbestos containing materials in building products is directly relevant to workplace health and safety in the building and construction industry and the committee notes that the functions of the FSC include promoting workplace health and safety in relation to building work. Therefore, the committee believes there is scope for the FSC to play a greater role in protecting workers from the risks of asbestos containing materials in building products.

### **Recommendation 21**

**4.64 The committee recommends that 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.**

### **Recall powers of consumer products containing asbestos**

4.65 Where a safety problem in a consumer good is identified, government regulators, including the ACCC may determine that the product is unsafe and needs to be recalled. In this regard, the ACCC manages the public recalls.gov.au website which provides a list of various consumer goods subject to safety recall.<sup>54</sup>

4.66 A number of submitters gave evidence to the committee calling for the ACCC to use its powers for mandatory recalls in cases of illegally imported asbestos. However, it is important to note that the ACCC does not have jurisdiction in respect of non-consumer goods under the product safety regime.<sup>55</sup> Mr Neville Matthew from the ACCC explained the agency's powers:

53 Office of the Federal Safety Commissioner, *Fact Sheet: Federal Safety Commissioner*, last updated 13 April 2017, <http://www.fsc.gov.au/sites/FSC/Resources/AZ/Documents/FederalSafetyCommissioner.pdf> (accessed 22 August 2017).

54 Australian Competition and Consumer Commission, *Submission 39*, p. 8.

55 Mr Timothy Grimwade, Executive General Manager, Consumer, Small Business and Product Safety, Australian Competition and Consumer Commission, *Committee Hansard*, 3 October 2017, p. 7.

Under the Consumer Law, a mandatory recall, which is a regulator initiated or minister initiated recall, is triggered when the minister is not satisfied that adequate steps have been taken in relation to a voluntary recall. Generally, there would be a voluntary recall first—and that's why we have a recall-monitoring team—but if that fails to adequately deal with the safety risk then we can recommend to the minister that he issue a compulsory recall.<sup>56</sup>

4.67 Ms Renata Musolino from Asbestoswise did not believe that 'the ACCC is consistent in how it responds when asbestos is found in products'. Ms Musolino noted the example in 2012 of Great Wall and Chery vehicles, and Polaris quadbikes more recently, in which gaskets in the vehicles were found to contain asbestos. She noted:

There was no recall and we complained about that. The advice from the ACCC was to all people who may do services at that time to make sure that they replace the gaskets with non-asbestos containing [gaskets]. But these are work vehicles and vehicles out on farms. They may not get serviced for years and they may not get serviced by mechanics—they may be done at home. With the Polaris vehicles, there was also not a complete recall. They were banned for sale and they had to have them replaced when replaced—but 'safe to use in the meantime'. So a body like the ACCC needs to be far tougher and far more consistent—a good example of making it not worth their while to break the law.<sup>57</sup>

4.68 In relation to Great Wall and Chery vehicles, the AMWU raised the risk to DIY maintenance workers and mechanics in the service and repair who did not receive the notice in 2012 will be potentially unnecessarily exposed. The AMWU submitted that:

The ACCC needs to have a broader range of sanctions available and must more effectively use its powers to issue compulsory recalls. Additionally ACCC must be required to publish a statement of reasons relating to any decision not to compulsorily recall asbestos containing products.<sup>58</sup>

4.69 The ACTU argued that the ACCC should make greater use of its powers to compulsorily recall products which contain asbestos in order to limit the exposure of members of the Australian community to asbestos containing materials<sup>59</sup> In addition, the ACTU argued that there should be greater transparency surrounding the reasons behind ACCC decisions to conduct mandatory recalls:

In circumstances where the Australian Consumer and Competition Commission [ACCC] becomes aware of a product containing asbestos and subsequently determines not to issue a compulsory recall of that product,

56 Mr Neville Matthew, General Manager, Consumer Product Safety, Australian Competition and Consumer Commission, *Committee Hansard*, 3 October 2017, p. 3.

57 Ms Renata Musolino, Secretary, Asbestoswise, *Committee Hansard*, 14 July 2017, p. 71.

58 Australian Manufacturing Workers' Union, *Submission 97*, p. 7.

59 Australian Council of Trade Unions, *Submission 127*, p. 5.



the ACCC shall within thirty days of that decision publish a statement of reasons.<sup>60</sup>

### *Committee view*

4.70 In order to limit exposure of Australians to asbestos, the committee believes that the ACCC should make greater use of its compulsory recall powers in relation to products containing illegally imported asbestos and adopt a consistent approach when asbestos is found in products.

4.71 The committee is concerned that evidence to the inquiry indicated that where the ACCC does not recall a product containing illegally imported asbestos, information about such a decision is not made publicly available. The committee believes that where the ACCC makes a decision not to recall a product containing asbestos, both the public and industry would benefit from such knowledge. Indeed, the committee considers that where the ACCC makes a decision not to conduct a compulsory recall of a product that contains asbestos, it should publish its reasons so that the process is more transparent.

4.72 The committee acknowledges concerns raised by stakeholders about the potential impacts of product safety recalls on the public and industry, and is of the view that consideration should be given to introducing mandatory recall insurance to reduce the economic impact of such recalls.

### **Recommendation 22**

**4.73 The committee recommends that 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.**

### **Recommendation 23**

**4.74 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.**

### **Recommendation 24**

**4.75 The committee recommends that 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.**

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60 Australian Council of Trade Unions, *Submission 127*, p. 6.



## National public asbestos register

4.76 A number of submitters supported the development of a national public asbestos register which lists products found to contain asbestos, suppliers and buildings where asbestos is located.

4.77 The Australian Institute of Building Surveyors submitted that while more needs to be done to minimise the impact of product safety recalls on the public and industry, it also suggests that the Government consider introducing the following regulatory amendments which in strengthening the safety recall will seek to introduce registration and tracking of high risk products like asbestos:

- i. Product tracking where manufactures, importers and suppliers of all high risk products, (such as electrical), are required to have processes and procedures in place to enable the tracking and tracing of product found to be faulty and/or not compliant to Australian Standards.
- ii. Register of high risk products where sellers of high risk products are required to maintain a register of products sold. For example, a register of electrical products that require installation by an electrician [installation by a licenced tradesperson]
- iii. Mandatory recall insurance where manufacturers, importers and suppliers of high risk products are required to have a process in place to fund the removal and replacement of any product found to be faulty and/or not compliant to Australian Standards.<sup>61</sup>

4.78 The CFMEU also proposes establishing a register recording importers and suppliers of non-conforming building products. The CFMEU went further, suggesting that 'those listed on the register be banned from further supply and importation into Australia'.<sup>62</sup> While Asbestoswise suggested that the development and maintenance of a public register could serve as a further deterrent to the illegal importation of asbestos.<sup>63</sup>

4.79 Maurice Blackburn Lawyers provided a detailed proposal for a national public register:

Maintenance of a public register of imported non-conforming building products containing asbestos and suppliers. A national public register should be kept which details imported building products which have been found to contain asbestos, as well as identifying who the supplier of the products was, and any buildings where the products may now be located (if the product has already been used in construction).

The register should be able to be updated by relevant Commonwealth, State and Territory Governments and Agencies, as well as allow for private

61 Australian Institute of Building Surveyors, *Submission 124*, p. 12.

62 Construction, Forestry, Mining and Energy Union, *Submission 128*, p. 9.

63 Asbestoswise, *Submission 156*, p. 3.

persons and companies to make submissions to add information to the register. The register should be accessible to the public and user friendly.<sup>64</sup>

4.80 Maurice Blackburn Lawyers considered that such a register would serve the following purposes:

- Assist prospective importers by identifying building products which are known to contain asbestos;
- Assist prospective importers by identifying suppliers who are known to have supplied asbestos-containing materials in the past;
- Act as a deterrence to overseas suppliers by “naming and shaming” offenders who supply asbestos-containing materials; and
- Assist relevant members of the public in identifying buildings known to contain asbestos materials, such as tradespersons who may be contracted to perform work on the buildings (thereby putting themselves at risk of exposure to asbestos).<sup>65</sup>

4.81 Maurice Blackburn Lawyers noted that such a register could be extended to include other imported non-conforming building materials which may pose a public health hazard and did not need to be limited to asbestos-containing materials.<sup>66</sup>

#### *Committee view*

4.82 The committee notes that a number of submitters to the inquiry supported the development of a national public asbestos register which lists products found to contain asbestos, suppliers, and buildings where asbestos is located. As stated previously, the committee is focussed on ensuring Australia takes all steps necessary to reduce the risk of illegal importation of asbestos and thereby reduce the related disease risk. The committee believes that developing a national public asbestos register which lists products found to contain asbestos, suppliers and buildings where asbestos is located, may assist in reducing this risk by raising public and industry awareness.

#### **Recommendation 25**

**4.83 The committee recommends that the Australian Government establish a national public asbestos register.**

#### **Recommendation 26**

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

64 Maurice Blackburn Lawyers, *Submission 107*, p. 12.

65 Maurice Blackburn Lawyers, *Submission 107*, p. 12.

66 Maurice Blackburn Lawyers, *Submission 107*, p. 12.

## **Ships imported to Australia which contain asbestos**

4.85 Among the range of products that the committee heard had been illegally imported to Australia, were ships. Mr Martin Byrne from the Australian Institute of Marine and Power Engineers explained:

The essence of our concerns relates not to the importation of asbestos materials as cargo in ships but, rather, to the occurrence of asbestos-containing materials in situ, in ships, in various locations, including in gaskets, flanges, insulation shields, lagging, gland packing and winch breaks. They're some of the major locations where we have experienced asbestos-containing materials being discovered.<sup>67</sup>

4.86 Mr Paul Garrett from the Maritime Union of Australia advised the committee that the number of ships imported to Australia which contain asbestos 'has got to a point now where the workers make the joke that there has been that much asbestos brought in that the company should be charged for smuggling'. He elaborated the number and types of ships which had been imported:

One company that we deal with in harbour towage—and you've got to take into account that the asbestos ban came in on 31 December 2003—has imported 16 separate tugs since 2007 to replace their fleet under the general tonnage replacement plan. There have been more than 16 tugs, but the 16 tugs that have been imported from overseas have been built predominately in China or Vietnam and have had asbestos-containing material in their gaskets.<sup>68</sup>

4.87 Mr Garrett noted further that:

You have to expect that every vessel that comes in these days contains asbestos because it's been built in Chinese yards to Chinese standards, which allow asbestos. In the absence of the Australian shipbuilding industry, this has become the norm.<sup>69</sup>

4.88 Mr Byrne expressed concern regarding the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017, which was introduced in Parliament on 13 September 2017. Mr Byrne expressed concern that the bill may increase the risk of Australian workers being exposed to asbestos. Of particular concern was the proposal in the legislation to:

...exempt foreign-flagged vessels seeking dry docking facilities in Australia from importation. The motivation is well-founded, in that they are seeking to facilitate dry-docking works being done in Australian dry docks. So they are trying to boost business for Australian dry-docking facilities. However, by providing the exemption from importation they therefore circumvent the

67 Mr Martin Byrne, Federal Secretary, Australian Institute of Marine and Power Engineers, *Committee Hansard*, 3 October 2017, p. 11.

68 Mr Paul Garrett, Assistant Secretary, Sydney Branch, Maritime Union of Australia, *Committee Hansard*, 3 October 2017, p. 12.

69 Mr Paul Garrett, Assistant Secretary, Sydney Branch, Maritime Union of Australia, *Committee Hansard*, 3 October 2017, p. 12.

asbestos prohibition in the import regulations and, at the same time... because they are foreign-flagged vessels they are not subject to Australian OH&S legislation.<sup>70</sup>

### ***Committee view***

4.89 The committee is deeply concerned by the reported prevalence of new ships being imported into Australia containing asbestos. The committee notes that the Rural and Regional Affairs and Transport Legislation Committee is currently examining the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017 (the bill) and is due to report on 4 December 2017. The committee draws to the attention of the Rural and Regional Affairs and Transport Legislation Committee the concerns raised during this inquiry that the bill may increase the risk of Australian workers being exposed to asbestos.

### **Next steps for the inquiry**

4.90 Many of the concerns raised with the committee in relation to the illegal importation of asbestos and flammable aluminium composite cladding, the subject of the committee's previous interim report, have highlighted broader issues which apply equally to other types of non-conforming building products which have been drawn to the committee's attention.

4.91 The committee acknowledges the ongoing work of the Building Ministers' Forum and notes the release of its Senior Officers' Group's *Implementation plan: Strategies to address risks related to non-conforming building products* on 21 September 2017. The committee will continue to monitor the progress of the Building Ministers' Forum, and also its ongoing work on the issues of non-conforming and non-complaint building products. As the next step for the inquiry the committee will seek feedback from key stakeholders on the progress of Commonwealth, state and territory governments in addressing the serious issue of non-conforming building products. The committee will present its final report for the broader inquiry by 30 April 2018.

**Senator Chris Ketter**

**Chair**

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70 Mr Martin Byrne, Federal Secretary, Australian Institute of Marine and Power Engineers, *Committee Hansard*, 3 October 2017, p. 18.

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under the *Freedom of Information Act 1982*

## Dissenting Report by Coalition Senators

1.1 Coalition Senators are of the view that the majority interim report for this inquiry regarding asbestos was significantly overreaching in its recommendations.

1.2 Coalition Senators note that the Department of Immigration and Border Protection (DIBP) and Australian Boarder Force (ABF) already engage with a range of industry stakeholders to educate and raise awareness of the asbestos import/export prohibition, and that extensive materials are available online through the DIBP's website regarding this, and the ways in which importers can provide assurances to ABF that their goods do not contain asbestos.

1.3 Furthermore, Coalition Senators note evidence from ABF that they have significantly increased their operational efforts towards addressing the risk of asbestos since the ABF was stood up on 1 July 2015, with a substantial increase in the targeting and testing of high-risk goods, and that despite the significant increase in activity at the border, ABF has not seen a commensurate increase in the rate of detections.

1.4 Regarding recommendation 2, Coalition Senators note the funding increases that have recently been provided to the Asbestos Safety and Eradication Agency (ASEA) to better undertake its role.

1.5 In the 2016–17 Budget, the Government agreed to provide ASEA with additional funding of \$3.4 million over 2016–17 and 2017–18 in recognition of its significant underspend during its first two years of operation. Without the additional funding provided by the Government in the 2016-17 Budget, ASEA's funding for 2017-18 would be \$1.4 million less.

1.6 The additional funding provided by the Australian Government in the 2016–17 Budget was provided with the expectation that the additional funds would be used for the implementation of the National Strategic Plan for Asbestos Management and Awareness (NSP) and research to guide future work. This work is expected to be completed by June 2018.

1.7 Coalition Senators feel that recommendation 6 is not consistent with either Australia's track record on free trade agreement negotiations or its commitment to the regulation of dangerous goods.

1.8 Australia's Free Trade Agreements and World Trade Organization (WTO) commitments preserve Australia's ability to regulate dangerous goods. Nothing in these agreements requires Australia to lower safety standards and regulations.

1.9 All FTAs contain a Technical Barriers to Trade Chapter (TBT chapter), which recognise 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. Thus ensuring that technical regulations are used for legitimate policy purposes, and not to restrict trade. TBT chapters also encourage regulatory convergence among trading partners, for example through the adoption of international standards. In addition to the TBT chapter, FTAs include general



exceptions which enable Australia to make measures to protect human health or safety, and animal or plant life.

1.10 Australia imposes restrictions on hundreds of products. These vary from import bans, for dangerous goods such as asbestos, to more narrow targeted measures such as import licensing measures that apply to dual use goods (where one use is safe but another is dangerous, the measure ensures the good is only used for the safe purpose), or certification procedures to ensure electrical equipment conforms to regulations to prevent fire or shock.

1.11 With regard to recommendation 21, Coalition Senators believe that the role of the Federal Safety Commissioner (FSC) in relation to asbestos containing materials in building products is already sufficiently clear, given the defined role of the FSC as an accreditor for certain building industry participants.

1.12 The Federal Safety Commissioner's WHS Accreditation Scheme criteria already represent the most stringent requirements in Australia for managing asbestos hazards on building sites. Companies accredited by the FSC are also required to comply with the National Construction Code as a condition of accreditation and undertake appropriate due diligence to avoid prohibited imports such as asbestos from coming on to building sites they control.

**Senator Jane Hume**

**Deputy Chair**

**Senator the Hon Ian Macdonald**

**Senator for Queensland**

# Appendix 1

## Submissions and additional information

### *Submissions (44<sup>th</sup> Parliament)*

- 1 Australasian Procurement and Construction Council Inc.
- 2 Product Presence Pty Limited
- 3 Mr Mark Whitby
- 4 Master Electricians Australia
- 5 Australian Window Association
- 6 SAI Global
- 7 Integrity Compliance Solutions
- 8 Plumbing Products Industry Group Inc
- 9 Nepean Building & Infrastructure
- 10 Asbestos Safety and Eradication Agency
- 11 Vinyl Council of Australia
- 12 Engineered Wood Products Association of Australasia
- 13 Commonwealth Scientific and Industrial Research Organisation (CSIRO)
- 14 Electrical Trades Union
- 15 Australasian Certification Authority for Reinforcing and Structural Steels Ltd (ACRS)
- 16 Australian Institute of Building
- 17 Insulation Australasia
- 18 Bureau of Steel Manufacturers of Australia (BOSMA)
- 19 Australian Steel Institute
- 20 Queensland Alliance
- 21 CplusC Architectural Workshop
- 22 Metropolitan Fire and Emergency Services Board
- 23 Fairview Architectural
- 24 Australian Glass and Glazing Association
- 25 Australian Institute of Building Surveyors
- 26 Expanded Polystyrene Australia
- 27 Australasian Fire and Emergency Service Authorities Council (AFAC)

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- 28 Australian Cablemakers Association
  - 29 Snap Fire Systems
  - 30 Housing Industry Association
  - 31 Fire Protection Association Australia
  - 32 Lighting Council Australia
  - 33 Construction Product Alliance
  - 34 Office of the NSW Small Business Commissioner
  - 35 Master Builders Australia
  - 36 Insulation Council of Australia and New Zealand (ICANZ)
  - 37 Dr Peter Haberecht
  - 38 Unions NSW
  - 39 Australian Competition & Consumer Commission (ACCC)
  - 40 Ms Fiona O'Hehir
  - 41 Arrium Steel
  - 42 Australian Forest Products Association
  - 43 Department of Industry and Science
  - 44 Steel Reinforcement Institute of Australia (SRIA)
  - 45 Standards Australia
  - 46 Ai Group
  - 47 Mr Stel Capetanakis
  - 48 Mr David Chandler
  - 49 Australian Building Codes Board
  - 50 Confidential
  - 51 Confidential
  - 52 Confidential
  - 53 Confidential
  - 54 Ms Sonya Tissera-Isaacs
  - 55 Queensland Government
  - 56 Department of Immigration and Border Protection
  - 57 Victorian Government
  - 58 Mr Graeme Doreian
  - 59 HPM Legrand
  - 60 National Electrical and Communications Association (NECA)

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- 61 Insurance Australia Group (IAG)
  - 62 Wren Industries
  - 63 Ms Anne Paten
  - 64 Victorian Building Action Group Inc.
  - 65 Ms Beverley Loyson
  - 66 Name Withheld
  - 67 Dr Leon Jacob, Mr Peter Smithsons, Mr Phillip Davies & Mr Gerard McCluskey
  - 68 Dr Nathan Munz
  - 69 Confidential
  - 70 Amtron Valve Monitoring Device
  - 71 Mr Tony Coon
  - 72 Building Products Innovation Council
  - 73 ProductWise Pty Ltd
  - 74 Construction, Forestry, Mining and Energy Union (CFMEU)
  - 75 Waffle Pod Manufacturers of Australia

***Submissions (45<sup>th</sup> Parliament)***

- 76 Mr Tony Kennedy
- 77 Fairview
- 78 Product Presence Pty Ltd
- 79 Expanded Polystyrene Australia
- 80 Building Commission, Department of Commerce, Western Australia
- 81 Australian Construction Industry Forum
- 82 Australian Institute Of Marine And Power Engineers
- 83 Building Products Innovation Council
- 84 Plumbing Products Industry Group
- 85 Mr David Chandler & Dr Mary Hardie
- 86 Electrical Trades Union
- 87 Green Building Council of Australia
- 88 Owners Corporation Network of Australia Ltd
- 89 SafeWork SA
- 90 Asbestos Safety and Eradication Agency

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- 91 Australian Government Department of Employment
  - 92 Asbestos Disease Support Society
  - 93 Mairin OHS&E Consulting Pty Ltd
  - 94 Mr Geoff Fary
  - 95 Australian Constructors Association
  - 96 Australian Services Union
  - 97 Australian Manufacturing Workers' Union
  - 98 Timber Preservers' Association of Australia
  - 99 ProductWise Pty Ltd
  - 100 Waffle Pod Manufacturers of Australia Inc.
  - 101 Engineered Wood Products Association of Australasia Ltd (EWPAA)
  - 102 Queensland Proposal
  - 103 Australian Window Association
  - 104 Asbestos Council of Victoria/GARDS Inc.
  - 105 Bureau of Steel Manufacturers of Australia
  - 106 Australasian Fire and Emergency Service Authorities Council (AFAC)
  - 107 Maurice Blackburn Lawyers
  - 108 Department of Immigration and Border Protection
  - 109 National Association of Testing Authorities, Australia (NATA)
  - 110 Think Brick Australia
  - 111 Concrete Masonry Association of Australia
  - 112 Roofing Tile Association of Australia
  - 113 Building and Wood Workers' International
  - 114 Union Aid Abroad - APHEDA
  - 115 Greencap
  - 116 Construction Product Alliance
  - 117 AWS Global Pty Ltd
  - 118 Ms Carolyn Davis
  - 119 Housing Industry Association
  - 120 The Australian Industry Group (Ai Group)
  - 121 Furniture Cabinet Joinery Alliance Ltd
  - 122 Australian Nursing and Midwifery Federation
  - 123 Australian Workers' Union

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- 124 Australian Institute of Building Surveyors
  - 125 Master Builders Australia
  - 126 Australian Steel Institute
  - 127 Australian Council of Trade Unions
  - 128 Construction, Forestry, Mining and Energy Union
  - 129 Ms Jacqueline Kriz
  - 130 Australian Council of Trade Unions (ACTU)
  - 131 Subcontractors Alliance
  - 132 The Australian Furniture Association (AFA)
  - 133 Confidential
  - 134 Victorian Trades Hall Council
  - 135 Confidential
  - 136 Victorian Building Action Group Inc.
  - 137 Customs Brokers and Forwarders Council of Australia Inc.
  - 138 Professor Andrew Lowe and Doctor Eleanor Dormontt
  - 139 The Termite Action Group (TAG)
  - 140 Community Debate
  - 141 Mr Graeme Doreian
  - 142 Asbestos Diseases Society of Australia Inc.
  - 143 Ms Leigh Evans
  - 144 Confidential
  - 145 Mr Lawrence Reddaway
  - 146 Engineers Australia
  - 147 Standards Australia
  - 148 Icon Plastics
  - 149 Mr Barry Harrington
  - 150 Australian Building Codes Board
  - 151 Australian Institute of Building (AIB)
  - 152 Insurance Council of Australia
  - 153 Ignis Solutions
  - 154 Alucobond Architectural (a division of Halifax Vogel Group Pty Ltd)
  - 155 Builders Collective of Australia
  - 156 Asbestoswise



- 157 Australian Institute of Architects
- 158 The Warren Centre
- 159 Master Plumbers and Mechanical Services Association of Australia (MP)
- 160 Insurance Australia Group (IAG)
- 161 Tasmanian Government
- 162 Confidential
- 163 Mr John Hipper
- 164 Gordon Gould Ipson Architects

***Tabled documents (44<sup>th</sup> Parliament)***

- 1 Document tabled by the Metropolitan Fire and Emergency Services Board (MFB) at a public hearing in Canberra on 13 November 2015.

***Tabled documents (45<sup>th</sup> Parliament)***

- 1 Construction, Forestry, Mining and Energy Union: Vale - Alan Whitehead, April 2005 (public hearing, Brisbane, 30 January 2017).
- 2 Yuanda Australia: Email from Workplace Health and Safety Queensland to Yuanda, 16 December 2016. Attachment - Preventing goods or materials containing asbestos being supplied to workplaces in Queensland, Queensland Office of Industrial Relations (public hearing, Brisbane, 30 January 2017).
- 3 Asbestos Diseases Society of Australia: Tabled by Mr Robert Vojakovic (public hearing, Perth, 9 March 2017).
- 4 Construction, Forestry, Mining and Energy Union: Tabled by Mr Mick Buchan (public hearing, Perth, 9 March 2017).
- 5 Coffey Services: Opening statement (public hearing, Perth, 9 March 2017).
- 6 Comcare: Opening statement (public hearing, Perth, 9 March 2017).
- 7 John Holland Pty Ltd: Opening statement (public hearing, Perth, 9 March 2017).
- 8 Construction, Forestry, Mining and Energy Union: Opening statement (public hearing, Melbourne, 14 July 2017).
- 9 Federal Safety Commissioner: Opening statement (public hearing, Melbourne, 14 July 2017).
- 10 Construction, Forestry, Mining and Energy Union: Tabled by Travis Wacey (public hearing, Melbourne, 14 July 2017).
- 11 Construction, Forestry, Mining and Energy Union: Tabled by Travis Wacey (public hearing, Melbourne, 14 July 2017).

- 12 Engineers Australia: Tabled by Mr Chris Stoltz (public hearing, Sydney, 19 July 2017).
- 13 Victorian Building Authority: Opening statement (public hearing, Sydney, 19 July 2017).
- 14 AIMPE: Magazine article referred to at the public hearing (public hearing, Sydney, 3 October 2017).

***Answers to questions on notice (44th Parliament)***

- 1 Answers to questions on notice from a public hearing held in Canberra on 13 November 2015 received from the Metropolitan Fire and Emergency Services Board on 4 December 2015.
- 2 Answers to questions on notice from a public hearing held in Canberra on 13 November 2015 received from the Department of Industry, Innovation and Science on 12 December 2015.
- 3 Answers to questions on notice from a public hearing held in Canberra on 13 November 2015 received from the Department of Immigration and Border Protection on 15 December 2015.
- 4 Answers to questions on notice from a public hearing held in Canberra on 13 November 2015 received from the CSIRO on 18 December 2015.
- 5 Answers to questions on notice from a public hearing held in Canberra on 13 November 2015 received from the Australian Industry Group on 27 January 2016.
- 6 Answers to questions on notice from a public hearing held in Melbourne on 15 February 2016, received from the Victorian Government on 4 March 2016.
- 7 Answers to questions on notice from a public hearing held in Canberra on 13 November 2016 received from the ACCC on 10 March 2016.
- 8 Answers to questions on notice from a public hearing held in Melbourne on 15 February 2016, received from the Construction Product Alliance on 10 March 2016.
- 9 Answers to questions on notice from a public hearing held in Melbourne on 15 February 2016 received from Standards Australia on 7 March 2016.
- 10 Answers to questions on notice from a public hearing held in Melbourne on 15 February 2016, received from the Asbestos Safety and Eradication Agency on 18 March 2016.

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**Answers to questions on notice (45th Parliament)**

- 1 Asbestos Disease Support Society: Answers to questions taken on notice from a public hearing on 30 January 2017 (received 17 February 2017).
- 2 Yuanda Australia Pty Ltd: Answers to questions taken on notice from a public hearing on 30 January 2017 (received 20 February 2017).
- 3 Queensland Office of Industrial Relations: Answers to questions taken on notice from a public hearing on 30 January 2017 (received 22 February 2017).
- 4 Department of Immigration and Border Protection: Answers to questions taken on notice from a public hearing on 30 January 2017 (received 24 February 2017).
- 5 Comcare: Answers to questions taken on notice from a public hearing on 9 March 2017 (received 29 March 2017).
- 6 John Holland Pty Ltd: Answers to questions taken on notice from a public hearing on 9 March 2017 (received 31 March 2017).
- 7 Department of Treasury, Government of Western Australia: Answers to questions taken on notice from a public hearing on 9 March 2017 (received 31 March 2017).
- 8 CFMEU: Answers to questions taken on notice from a public hearing on 9 March 2017 (received 12 April 2017).
- 9 Fairview Architectural: Answers to questions taken on notice from a public hearing on 19 July 2017 (received 25 July 2017).
- 10 Department of Housing and Public Works: Answers to questions taken on notice from a public hearing on 14 July 2017 (received 1 August 2017).
- 11 WorkSafe Victoria: Answers to questions taken on notice from a public hearing on 14 July 2017 (received 2 August 2017).
- 12 Fire Protection Association Australia: Answers to questions taken on notice from a public hearing on 19 July 2017 (received 4 August 2017).
- 13 Engineers Australia: Answers to written questions taken on notice (received 10 August 2017).
- 14 Expanded Polystyrene Australia: Answers to written questions taken on notice (received 10 August 2017).
- 15 Ignis Solutions: Answers to written questions taken on notice (received 10 August 2017).
- 16 Fairview: Answers to questions taken on notice from a public hearing on 19 July 2017 (received 16 August 2017).
- 17 CEPU Electrical Energy and Services Division: Answers to questions taken on notice from a public hearing on 31 July 2017 (received 17 August 2017).
- 18 Fairview: Answers to questions taken on notice from a public hearing on 19 July 2017 (received 1 August 2017).

- 19 SA Government: Answers to questions taken on notice from a public hearing on 31 July 2017 (received 25 August 2017).
- 20 Australian Window Association: Answers to written questions taken on notice (received 29 August 2017).
- 21 Australasian Fire and Emergency Service Authorities Council (AFAC): Answers to questions taken on notice from a public hearing on 19 July 2017 (received 12 September 2017).
- 22 National Association of Testing Authorities, Australia: Answers to questions taken on notice from a public hearing on 3 October 2017 (received 11 October 2017).
- 23 Safety, Rehabilitation and Compensation Commission: Answers to questions taken on notice from a public hearing on 3 October 2017 (received 13 October 2017).
- 24 Australian Competition & Consumer Commission: Answers to questions taken on notice from a public hearing on 3 October 2017 (received 17 October 2017).
- 25 CFMEU: Answers to questions taken on notice from a public hearing on 14 July 2017 (received 13 October 2017).
- 26 Department of Immigration and Border Protection: Answers to written questions taken on notice (QoNs 18-54) (received 20 October 2017)
- 27 University of Adelaide: Answers to questions taken on notice from a public hearing on 31 July 2017 (received 2 November 2017)

***Additional information (44<sup>th</sup> Parliament)***

- 1 Document provided by the National Association of Testing Authorities (NATA) following the public hearing held in Canberra on 13 November 2015.
- 2 Document provided by the National Association of Testing Authorities (NATA) following the public hearing held in Canberra on 13 November 2015.
- 3 Document provided by the Housing Industry Association (HIA) following the public hearing held in Canberra on 13 November 2015.
- 4 Additional information provided by Dr Nathan Munz following a hearing held in Melbourne on 15 February 2016.

***Additional information (45<sup>th</sup> Parliament)***

- 1 Document provided by CertMark International on 28 June 2017 - Advisory Notice No. 06/2017, Aluminium Composite Panels (ACP) - Fire Risk - Australia & New Zealand.
- 2 Document provided by Metropolitan Fire and Emergency Services Board on 14 July 2017 - Opening statement from a public hearing in Melbourne on 14 July 2017.

- 3 Document provided by Metropolitan Fire and Emergency Services Board on 14 July 2017 - Victorian Cladding Taskforce TOR.
- 4 Document provided by Metropolitan Fire and Emergency Services Board on 14 July 2017 - Excerpt: Fire Protection Research Foundation Report.
- 5 Document provided by Asbestos Council of Victoria on 14 July 2017 - Opening statement from a public hearing in Melbourne on 14 July 2017.
- 6 Document provided by Australian Institute of Building Surveyors on 19 July 2017 - Opening statement from a public hearing in Sydney on 19 July 2017.
- 7 Document provided by Fire Protection Association Australia on 19 July 2017 - Opening statement from a public hearing in Sydney on 19 July 2017.
- 8 Document provided by Australasian Fire and Emergency Service Authorities Council (AFAC) on 19 July 2017 - Opening statement from a public hearing in Sydney on 19 July 2017.
- 9 Document provided by Victorian Cladding Taskforce on 19 July 2017 - Finalised Terms of Reference.
- 10 Document provided by Fairview Architectural on 19 July 2017 - Opening statement from a public hearing in Sydney on 19 July 2017.
- 11 Document provided by AMWU on 18 July 2017 - Asbestos imported in products.
- 12 Document provided by Owners Corporation Network on 9 August 2017.
- 13 Document provided by Asbestos Audits, Removals & Management Services on 2 October 2017 - High Risk imported goods containing asbestos and ACM.
- 14 Document provided by Safety, Rehabilitation and Compensation Commission on 3 October 2017 - Opening statement from a public hearing in Sydney on 3 October 2017.

***Additional hearing information (44th Parliament)***

- 1 Hansard correction received from the Housing Industry Association re a public hearing held in Canberra on 13 November 2015.

***Additional hearing information (45th Parliament)***

- 1 Hansard correction received from the Victorian Building Authority regarding a public hearing held in Sydney on 19 July 2017.

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***Correspondence (45<sup>th</sup> Parliament)***

- 1 Two letters of correspondence received from the Queensland Government:  
1. Department of Housing and Public Works (18 Nov 2016). 2. Office of Industrial Relations (17 Nov 2016).
- 2 Correspondence received from the Hon Richard Wynne MP, Minister for Planning, Victorian State Government (20 December 2016).
- 3 Correspondence received from the Hon Bill Johnston MLA, Minister for Mines and Petroleum; Commerce and Industrial Relations; Electoral Affairs; Asian Engagement, Western Australian State Government (31 July 2017).
- 4 Correspondence received from Mr Martin Hoffman, Secretary of Department of Finance, Services and Innovation, New South Wales State Government (5 September 2017).



Released by Department of Home Affairs  
under the *Freedom of Information Act 1982*

## Appendix 2

### Public hearings and witnesses

*13 November 2015, Canberra ACT*

**Members in attendance:** Senators Edwards, Ketter, Madigan, Xenophon

BROOKFIELD, Ms Kristin, Senior Executive Director, Building Development and Environment, Housing Industry Association

BURGESS, Mr Mark, Executive Manager, CSIRO Services, Commonwealth Scientific and Industrial Research Organisation

BURN, Dr Peter, Head, Influence and Policy, Australian Industry Group

BYRNE, Dr Anne, General Manager, Manufacturing and Services Policy Branch, Department of Industry, Innovation and Science

CHANDLER, Mr Andrew, Assistant Secretary, Trade and Customs, Department of Immigration and Border Protection

CHESWORTH, Mr Peter, Acting Deputy Secretary, Department of Industry, Innovation and Science

DALE, Ms Erin, Commander, Customs Compliance, Australian Border Force

DALRYMPLE, Mr Adam, Director, Fire Safety, Metropolitan Fire Brigade

DAVIS, Mr Gary, Manager, Building Metals and Construction Section, Department of Industry, Innovation and Science

GOODWIN, Mr Shane, Managing Director, Housing Industry Association

GREGSON, Mr Scott, Executive General Manager, Consumer Enforcement, Australian Competition and Consumer Commission

HATCHER, Ms Emma, Director, Regulated Goods Policy, Department of Immigration and Border Protection

HUMPHREY, Mr David, Senior Executive Director, Business Compliance and Contracting, Housing Industry Association

NEWHOUSE, Mr Kevin, Group Manager, NCC Management and Product Certification, Australian Building Codes Board

PATEN, Ms Anne, President, Victorian Building Action Group

RIDGWAY, Mr Nigel, Executive General Manager, Consumer, Small Business and Product Safety Division, Australian Competition and Consumer Commission

SAVERY, Mr Neil, General Manager, Australian Building Codes Board

SMITH, Mr Zachary, ACT Branch Organiser, Construction and General Division, Construction, Forestry, Mining and Energy Union

SQUIRE, Mr Martin, General Manager, Trade and International Branch, Department of Industry, Innovation and Science

THOMSON, Mr James, Senior Adviser, Standards and Regulation, Australian Industry Group

WACEY, Mr Travis Kent, National Policy Research Officer, Forestry, Furnishing, Building Product and Manufacturing Division, Construction, Forestry, Mining and Energy Union

WOLFE, Mr Graham, Chief Executive, Industry Policy and Media, Housing Industry Association

YAXLEY, Mr Julian, Manager, Economics and Strategic Projects, Metropolitan Fire Brigade

ZIPPER, Dr Marcus, Director, CSIRO Services, Commonwealth Scientific and Industrial Research Organisation

***15 February 2016, Melbourne VIC***

**Members in attendance:** Senators Edwards, Ketter, Madigan, Xenophon

GINIVAN, Mr John, Acting Executive Director, Statutory Planning And Heritage, Department of Environment, Land, Water and Planning, Victoria

HARNISCH, Mr Wilhelm, Chief Executive Officer, Master Builders Australia

JACOB, Dr Leon, Private capacity

JONES, Mr Phil, General Manager, G James Glass and Aluminium

LE COMPTE, Mr Lindsay, Chair, Construction Products Alliance

MULHERIN, Mr Peter, Founder, ProductWise

MUNZ, Dr Nathan, Private capacity

OVERTON, Mr Warren, Chief Executive Officer, Australian Glass and Glazing Association

RICE, Mr Jamie, Assistant General Manager, G James Glass and Aluminium

RILEY-TAKOS, Ms Kareen, General Manager, Standards Development, Standards Australia

STINGEMORE, Mr Adam, General Manager, Stakeholder Engagement and Public Affairs, Standards Australia

TIGHE, Mr Peter, Chief Executive Officer, Asbestos Safety and Eradication Agency

**30 January 2017, Brisbane QLD**

**Members in attendance:** Senators Hume, Ketter, Xenophon

BLUNDELL, Mr Thady, Lawyer, Asbestos Disease Support Society, Turner Freeman Lawyers

BRAME, Mr Colin, Director, Customs Brokers and Forwarders Council of Australia Inc

BUCHHORN, Mr Wayne, Assistant Commissioner, Investigations Division, Department of Immigration and Border Protection

CHANDLER, Mr Andrew, Assistant Secretary, Trade and Customs Branch, Department of Immigration and Border Protection

DALE, Ms Erin, Commander, Customs Compliance Branch, Department of Immigration and Border Protection

GEDDES, Ms Linda, First Assistant Secretary, Traveller, Customs and Industry Policy Division, Department of Immigration and Border Protection

GOLDSBROUGH, Mr Paul, Executive Director, Safety, Policy and Workers Compensation Services, Office of Industrial Relations, Queensland Treasury

HUTCHINSON, Mr Joe, Site Delegate, Construction and General Division, Queensland/Northern Territory Branch, Construction, Forestry, Mining and Energy Union

JOHNSTONE, Mr John McGregor (Ian), Member, Asbestos Disease Support Society

MORRIS, Mr Stephen, Executive Director, Customs Brokers and Forwarders Council of Australia Inc

PARKER, Mr Bradley, National Assistant Secretary, Construction and General National Office, Construction, Forestry, Mining and Energy Union

RAMSAY, Mr Andrew, Workplace Health and Safety Coordinator, Construction and General Division, Queensland/Northern Territory Branch, Construction, Forestry, Mining and Energy Union

RICHARDS, Ms Amanda Marion, Chief Executive Officer, Asbestos Disease Support Society

WACEY, Mr Travis Kent, National Policy Research Officer, Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union

WILL, Mr Kevin, Managing Director, Yuanda Australia Pty Ltd

***09 March 2017, Perth WA*****Members in attendance:** Senators Sterle, Xenophon

ALBONICO, Mr Lindsay Robert, Project Director, John Holland Pty Ltd

BENKESSER, Mr Robert Anthony, Safety Officer, Construction, Forestry, Mining and Energy Union

BROOKS, Mr Andrew John, Health, Safety, Environment and Quality Manager, John Holland Pty Ltd

BUCHAN, Mr Mick, State Secretary, Construction and General Division, Construction, Forestry, Mining and Energy Union

EASTON, Mr Frederick Spencer, Business Manager, Coffey

MANN, Mr Richard Dorham, Executive Director, Strategic Projects and Asset Sales, Department of Treasury, Western Australia

MORGAN, Mr Daniel, Principal Consultant, Coffey

MUSK, Professor Arthur William (Bill), Member, Australian Medical Association (Western Australia)

NAPIER, Mr Justin, General Manager, Regulatory Operations Group, Comcare

SUTCLIFFE, Mr Tony, Director, Regional Operations Western Australia, Regulatory Operations Group, Comcare

VOJAKOVIC, Mr Robert Dragutin, President, Asbestos Diseases Society of Australia Inc.

***14 July 2017, Melbourne VIC*****Members in attendance:** Senators Kim Carr, Ketter, Xenophon

AYLWARD, Mr David, Shop Steward, Trades Union of Australia

BANNAM, Mr Clinton, Organiser, Australian Manufacturing Workers Union, Victoria

CARROLL, Ms Liza, Director-General, Department of Housing and Public Works

CHRISTIE, Mr Matt, Organiser, Australian Manufacturing Workers Union, Victoria

CLEMENT, Mr David, President, Asbestoswise

DALRYMPLE, Mr Adam, Acting Deputy Chief Officer, Metropolitan Fire and Emergency Services Board

de SILVA, Mr Radley, Chief Executive Officer, Master Builders Association of Victoria

DISTON, Mr Steven, Organiser, Electrical Trades Union of Australia

EDWARDS, Mr Alan, Federal Safety Commissioner, Office of the Federal Safety Commissioner

FINNIMORE, Mr Philip, Principal Adviser, Building Industry and Policy,  
Department of Housing and Public Works

HAMILTON, Mrs Vicki, OAM, Chief Executive Officer; Secretary, Asbestos Council  
of Victoria/GARDS Inc

KELLY, Mr Robert, Director, Specialist Services, Health and Safety, WorkSafe  
Victoria

McDONALD, Mr Matthew, Group Manager, Innovation and Analysis, Australian  
Building Codes Board

MIER, Mr David, Assistant National Secretary, Electrical Trades Union of Australia

MUSOLINO, Ms Renata, Secretary, Asbestoswise

NEWHOUSE, Mr Kevin, Group Manager, Australian Building Codes Board

RAFFERTY, Mr Max, National Manager, Technical Services, Master Builders  
Australia

ROBERTS, Mrs Dorothy, President, Asbestos Council of Victoria/GARDS Inc

ROSS, Ms Sarah, Education Officer and OHS Officer, Australian Manufacturing  
Workers Union, Victoria

SAVERY, Mr Neil, General Manager, Australian Building Codes Board

SMITH, Mrs Marie, Vice-President, Asbestos Council of Victoria/GARDS Inc

TIMMS, Mr Logan, Executive Director, Department of Housing and Public Works

WACEY, Mr Travis, National Policy Research Officer, Forestry, Furnishing, Building  
Products and Manufacturing Division, Construction, Forestry, Mining and Energy  
Union

WAWN, Mrs Denita, Chief Executive Officer, Master Builders Australia

### ***19 July 2017 Sydney NSW***

**Members in attendance:** Senators Kim Carr, Ketter, Xenophon

ATTWOOD, Mr Graham, Director, Expanded Polystyrene Australia

BARNETT, Dr Jonathan, Chair, Society of Fire Safety, Engineers Australia

BHASIN, Mr Sahil, National General Manager, Roscon Property Services

DWYER, Mr Phillip, National President, Builders Collective of Australia

FAIFER, Mr Norman, Immediate Past National President, Australian Institute of  
Building

GARDNER, Mr Ken, Chief Executive Officer, Master Plumbers and Mechanical  
Services Association

GENCO, Mr Joseph, Director, Technical and Regulation Division, Victorian Building  
Authority



GILLIES, Mr Andrew, Managing Director, Fairview Architectural  
GILLIES, Mr Roy, Sales Manager, Fairview Architectural  
GODDARD, Mr Stephen, Spokesperson, Owners Corporation Network  
HEATHER, Mr Paul, National President, Australian Institute of Building  
HILLS, Mr Rodger, Executive Officer, Building Products Innovation Council  
HUGHES-BROWN, Mr Benjamin, Managing Director, Ignis Solutions Pty Ltd  
IRELAND, Miss Talissa, Senior Client Liaison Officer, CertMark International  
LECK, Ms Amanda, Director, Information and Community Safety, Australasian Fire and Emergency Service Authorities Council  
LLEWELLYN, Mr Robert, Built Environment Consultant, Australasian Fire and Emergency Service Authorities Council  
MARTIN, Mr Wade, National Technical Manager, Halifax Vogel Group Pty Ltd  
McINTYRE, Mr Peter, Chief Executive Officer, Engineers Australia  
O'BRIEN, Dr Darryl, National Technical Committee representative, Non-Conforming Building Products, Australian Institute of Building Surveyors  
OLDS, Mr Troy, Board Director, Australian Institute of Building Surveyors  
RATZ, Mr Laurie, Special Risks Manager, Insurance Council of Australia  
RAYMENT, Mr Bruce, Chief Executive Officer, Halifax Vogel Group Pty Ltd  
SMITH, Mr Murray, Acting Chief Executive Officer, Victorian Building Authority  
STEWART, Mr Greg, Sales Manager, Fairview Architectural  
STILES, Ms Karen, Executive Officer, Owners Corporation Network  
STOLTZ, Mr Christopher, President, Victoria Division, Engineers Australia  
SULLIVAN, Mr Karl, General Manager Risk & Disaster Planning, Insurance Council of Australia  
THORPE, Mr John Charles, Chief Executive Officer, CertMark International  
TUXFORD, Mr Timothy, National President, Australian Institute of Building Surveyors  
WILLIAMS, Mr Scott, Chief Executive Officer, Fire Protection Association Australia

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**31 July 2017, Adelaide SA**

**Members in attendance:** Senators Hume, Ketter, Xenophon

CARTLEDGE, Mr Aaron, State Secretary Construction and General, Construction, Forestry, Mining and Energy Union, South Australia

DOREIAN, Mr Graeme, Private capacity

DORMONTT, Dr Eleanor, Research Fellow, The Advanced DNA, Identification and Forensic Facility, University of Adelaide

GAVIN, Mr Clint, National Sales, Manager, SGI Architectural Pty Ltd

HOPGOOD, Mr Michael (Mick), SA Organiser, Australian Workers Union

JOHNSON, Mr Robin, Managing Director, Robin Johnson Engineering

KIRNER, Mr Dave, District Secretary Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union, South Australia

KWONG, Mr Chris, Manager, Development, Policy and Assessment, Development Division, Department of Planning, Transport and Infrastructure, South Australia

LAMPS, Mr Peter, SA Branch Secretary, Australian Workers Union

LOWE, Professor Andrew John, Chair, Plant Conservation Biology, The Advanced DNA, Identification and Forensic Facility, University of Adelaide

McKIE, Mr Chris, Chief Inspector, Compliance and Enforcement, SafeWork SA, South Australia

PISONI, Mr Simon, Assistant Branch Secretary, Electrical and Plumbing South Australia, Communications Electrical Plumbing Union

PURSE, Dr Kevin, President, Asbestos Diseases Society of South Australia

RAU, The Hon. John MP, Deputy Premier, South Australia

RENOUF, Mr Timothy, Managing Director, Wren Industries Pty Ltd

WARD, Mr Jim, National Director, Occupational Health and Safety, Australian Workers Union

WILCZYNSKI, Mr Joseph, Private capacity

***3 October 2017, Sydney NSW***

**Members in attendance:** Senators Hume, Ketter, Xenophon.

BAXTER, Ms Michelle, Commissioner, Safety, Rehabilitation and Compensation Commission

BYRNE, Mr Martin, Federal Secretary, Australian Institute of Marine and Power Engineers

CROSS, Mr Michael, National Safety and Training Officer, Maritime Union of Australia

GARRETT, Mr Paul, Assistant Secretary, Sydney Branch, Maritime Union of Australia

GAULD, Mr Trevor, Commissioner, Safety, Rehabilitation and Compensation Commission

GREGSON, Mr Scott, Executive General Manager, Consumer Enforcement, Australian Competition and Consumer Commission

GRIMWADE, Mr Timothy, Executive General Manager, Consumer, Small Business and Product Safety, Australian Competition and Consumer Commission

MANTLE, Mr Andrew Gordon, Managing Director, Asbestos Audits & Environmental Audits Pty Ltd

MATTHEW, Mr Neville, General Manager, Consumer Product Safety, Australian Competition and Consumer Commission

MITCHELL, Mr John, Manager, Government Relations, National Association of Testing Authorities, Australia

SHEPHERD, Mr Neil, Sector Manager, Life Sciences, National Association of Testing Authorities, Australia

SHERRIFF, Mr Barry, Chairperson, Safety, Rehabilitation and Compensation Commission

***17 October 2017, Canberra ACT***

**Members in attendance:** Senators Dastyari, Hume, Xenophon.

BOROWICK, Mr Michael, Assistant Secretary, Australian Council of Trade Unions

## Appendix 3

### 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
Norway	1984
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
Ukraine	June 2017
Uruguay	May 2002

Source: <https://www.asbestossafety.gov.au/countries-bans-all-types-asbestos>

## Appendix 4

### Goods that might contain asbestos

Asbestos has been used in a wide number of products due to its flexibility, tensile strength, insulation, chemical inertness and affordability and is still used outside Australia in many applications.

The following goods are considered a risk for containing asbestos and ACM:

- Asbestos bitumen products used to damp proof
- Asbestos rope
- Asbestos tape
- Brake linings or blocks
- Cement flat sheeting or panels
- Cement pipes, tubes or fittings
- Cement shingles or tiles (external or ceiling)
- Clutch linings or brake disc pads
- Crayons
- Diaphragms
- Ducts
- Electrical cloth and tapes
- Electrical panel partitioning
- Fire blankets
- Fire curtains
- Fire resistant building materials
- Friction materials for, or within, internal combustion and electric motor vehicles (for example, clutch linings, brake pads and shoes and gaskets)
- Furnaces
- Gas masks
- Gaskets or seals
- Gloves
- Heat resistant sealing or caulking compounds
- Heating equipment
- Products containing certain types of talc
- Lagging and jointing materials



- Mastics, sealants, putties or adhesives
- Mineral samples for display or therapeutic purposes
- Mixtures containing phenol formaldehyde resin or cresylic formaldehyde resin
- Pipe spools
- Raw materials from mining activities
- Sheet vinyl backing
- Sheeting
- Textured paints or coatings
- Tiles
- Yarn and thread, cords and string, whether or not plaited

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

## Department of Employment Tasking of Interim Report Recommendations 12/12/2018

## Senate inquiry - Interim Report - Asbestos

Recommendation	Topic	Lead agency	Other agencies
1	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 through the Council of Australian Governments.	DoE	SWA, DIBP, DoE, DIIS (BMF)
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 this report.	DoE	
3	That 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.	DIBP	DIIS, DoE (ASEA)
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.	DoEE	DoE
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.	DoEE	DoE, DIBP, DFAT
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.	DFAT	DoE, DoEE
7	The Australian Government continue its support for asbestos bans internationally and promotes awareness of the risks of asbestos in the Asia-Pacific region.	DFAT	DoE (ASEA)
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.	SWA	DoE
9	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.	DIBP / ABF	DoE (ASEA)
10	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.	DoE	DIBP ASEA
11	The Australian Government review the Australian Border Force staff resourcing required to effectively monitor and prevent the illegal importation of asbestos.	DIBP / ABF	
12	The Australian Government consider the merits of having a specialist unit within Australian Border Force to manage illegal asbestos importation.	DIBP / ABF	
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.	DIBP	AGD
14	The Australian Government prioritise prosecution of illegal asbestos importation cases.	AGD	DPP, DIBP/ABF
15	The Australian Government review the quantum of penalties for breaches of Australia's importation ban with a view to increasing them.	DIBP	AGD, SWA
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 a another country that is a signatory to a Mutual Recognition Arrangement).	DIBP/ABF	DIIS
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.	DIIS	DIBP

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## Department of Employment Tasking of Interim Report Recommendations 12/12/2018

## Senate inquiry - Interim Report - Asbestos

Recommendation	Topic	Lead agency	Other agencies
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.	DoE	SWA DIBP
19	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.	DIIS	State and territory WHS, SWA, BMF,
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.	SWA	DIBP, DoE
21	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.	DoE	
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.	ACCC	
23	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.	ACCC	
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.	Treasury	ACCC
25	The Australian Government establish a national public asbestos register.	DoE	SWA
26	The Australian Government consider the merits of requiring importers and suppliers to hold mandatory recall insurance for potential asbestos containing materials.	ACCC	DIBP

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Australian Government  
Department of Home Affairs

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# Discussion Paper: Offences and Penalties for the Unlawful Importation / Exportation of Asbestos

Prepared for the  
Asbestos Inter-Departmental Committee  
January 2018

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# 1. Purpose

As part of the Asbestos Inter-Departmental Committee's (IDC) Forward Work Plan, item 6 commits the IDC to consider the adequacy of penalties and offences for the unlawful importation/exportation of asbestos.

A number of submissions to the Senate Standing Committee on Economics' inquiry into non-conforming building products, including those by union stakeholders, have raised that the current framework for asbestos importation does not provide sufficient deterrence and called for stronger penalties.

This paper provides information on the current penalty framework for asbestos importation and exportation offences, and discusses options that could be considered to strengthen that framework and provide a greater deterrence.

# 2. Introduction

Asbestos and goods containing asbestos are prohibited from being imported into, and exported from, Australia, unless:

- a permission or exemption has been granted by the Minister responsible for the *Work Health and Safety Act 2011*;
- a lawful exception is provided for in the *Customs (Prohibited Imports) Regulations 1956* (Cth) (PI Regulations); or,
- a lawful exception is provided for in the *Customs (Prohibited Exports) Regulations 1958* (Cth) (PE Regulations) applies.

The role of the Department Home Affairs (Home Affairs) is to enforce the border prohibition to support the domestic ban on asbestos. It also undertakes a range of compliance and intervention activities at the border, and prior to the border, designed to deter and prevent asbestos or goods containing asbestos from entering or leaving Australia.

As there are no domestic manufacturers of asbestos, or goods containing asbestos, for export, Home Affairs' compliance activities focus more on the greater risk to the Australian community of the importation of asbestos. However, as offences and penalties for those prohibited goods specified in the PI Regulations and PE Regulations are set out in the *Customs Act 1901* (Cth) (Customs Act), any changes to the Customs Act or the Customs Regulation 2015 (Cth) (Customs Regulation) will apply to both the importation and exportation of asbestos.

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### 3. Border Offences and Penalties

Section 3 provides an overview of the existing offences and penalties for the unlawful importation/exportation of asbestos.

#### Unlawful importation/exportation of asbestos

Pursuant to regulation 4C of the PI Regulations, it is currently a strict liability offence<sup>1</sup> to import asbestos contrary to section 233(1)(b) of the Customs Act, unless a permission or exemption has been granted, or a lawful exception applies. Similar provisions relating to the exportation of asbestos are in regulation 4 of the PE Regulations.

#### Penalty for importing/exporting asbestos

For asbestos importation/exportation offences, the courts may impose pecuniary penalties on individuals of up to 1,000 penalty units<sup>2</sup> (\$210,000) or three times the value of the goods, whichever is greater. Where a body corporate is convicted of the same offence, the court may impose a pecuniary penalty of up to 5,000 penalty units (\$1,050,000) or 15 times the value of the goods, whichever is greater.

### 4. Prosecutions

Section 4 provides an overview of prosecutions for unlawful importations/exportations of asbestos.

#### Prosecutions for unlawful importation

There have been three successful Commonwealth prosecutions by the Commonwealth Director of Public Prosecutions (DPP), supported by the then Australian Customs and Border Protection Service/Department of Immigration and Border Protection, in respect to the importation of asbestos in the last nine years:

- In 2008, Alcan Pty Ltd pleaded guilty to seven charges of importing equipment containing asbestos. The Court applied a \$70,000 fine as well as awarded costs of \$20,000.
- In 2012, the Court found Clyde Bergemann Senior Thermal Pty Ltd guilty of two counts of importing prohibited imports namely, chrysotile asbestos. The Court applied a \$64,000 fine including costs.
- In December 2014, the Court found an Australian man guilty of importing asbestos and fined him \$10,000 and awarded costs of \$4,500.

Another prosecution commenced in 2017 in Western Australia and is currently before the courts.

<sup>1</sup> A strict liability offence is an offence which does not require proof of intent.

<sup>2</sup> One penalty unit is currently valued at \$210 (as at 1 July 2017) pursuant to section 4AA of the *Crimes Act 1914*.

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### Framework for prosecutions

In determining whether to prosecute, Home Affairs must give consideration to both the Prosecution Policy of the Commonwealth and the Legal Services Directions 2017.

Under the Prosecution Policy of the Commonwealth, a prosecution should only commence when there is a reasonable prospect of conviction. The Legal Services Directions specify that a prosecution should not commence unless there is sufficient evidence to prove the offence, and litigation is the most suitable method of dispute resolution.

These considerations are important given that the 'mistake of fact' defence is available for strict liability offences.

### 'Mistake of fact' defence

Pursuant to section 6.1(1)(b) of the *Criminal Code Act 1995* (Cth) (Criminal Code), the defence of 'mistake of fact' under section 9.2 is available for strict liability offences. This defence allows importers/exporters to avoid criminal responsibility by providing evidence that, at or before the time of import/export, they considered whether or not certain facts existed, and were under a mistaken but reasonable belief about those facts and, had those certain facts existed, the conduct would not have constituted an offence. For example, if a person considered whether a good contained asbestos prior to importation, and honestly and reasonably believed it did not, then the 'mistake of fact' defence could be established in relation to the importation of asbestos. Failure to consider the existence of the facts does not constitute a reasonable 'mistake of fact'. Section 9.2 requires a 'mistaken belief' about facts, and ignorance about a fact is not sufficient.

The 'mistake of fact' defence allows importers/exporters to potentially avoid liability by providing the court with evidence they took reasonable steps to satisfy themselves that their goods were asbestos-free. The accused only needs to point to sufficient evidence on the balance of probabilities to show that the defence may apply. Where a 'mistake of fact' defence is applied, the onus is on the prosecution to negate the defence beyond reasonable doubt, by establishing that the belief was not honestly held or was unreasonable in the circumstances.

Taking into consideration the framework for prosecutions and, given importation/exportation of asbestos is currently a strict liability offence that allows for a 'mistake of fact' defence, this impacts on Home Affairs and DPP's decision on whether to commence proceedings when asbestos is detected.

## 5. Infringement Notices

Section 5 provides an overview of Home Affairs' Infringement Notice Scheme in relation to unlawful importations/exportations of asbestos.

### Framework for infringement notices

The Australian Border Force (ABF) can issue infringement notices as an alternative to initiating court proceedings.

Where there are reasonable grounds to believe an offence has been committed, the ABF can issue, under section 243X(1) of the Customs Act, an infringement notice as an alternative to prosecution. Penalties that are currently applied through an infringement notice are either:

- One quarter of the maximum fine that a court could impose on the individual or body corporate as a penalty for that offence; or
- 15 penalty units (\$3,150) for an individual and 75 penalty units (\$15,750) for a body corporate.

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Payment of an infringement notice is not an admission of guilt, but will discharge any liability for the alleged contravention – see section 141 of the Customs Regulation.

**Table 1: Infringement Notice Action July 2014 through June 2017**

	2014/15	2015/16	2016/17
<b>Number of positive detections for asbestos</b>	10	13	63
<b>Number of infringement notices served</b>	2	3	20
<b>Value of infringement notices issued</b>	\$5,300	\$23,850	\$124,200

## Non-compliance with infringement notices

Entities can request withdrawal of an infringement notice, commence proceedings in the Federal Court of Australia over the infringement, or elect not to pay the infringement notice (i.e. the penalty is not an enforceable liability).

Should an infringement notice not be paid by the statutory timeframe, then the ABF may choose to pursue prosecution to address the alleged contravention.

## 6. Discussion

Efforts to increase education and awareness activities to encourage voluntary compliance ultimately result in a lowered health risk to the Australian public. Voluntary compliance also frees up ABF resources to target importers with a proven track record of non-compliance, or newly identified products or sectors that have not previously been the focus of compliance activities. Education and awareness activities are however only part of the solution. Strengthening offences and penalties will complement education and awareness activities and create an effective deterrent for the import/export of asbestos.

The following section of this paper explores a broad suite of possible options to provide for stronger penalties for repeat offenders, or those who show intent to break the law, while continuing to allow for less strict penalties for prima facie cases of unintentional import/export. With this approach, agencies will have proportionate enforcement responses at their disposal, which can then be better matched to the particular circumstances of an offence.

### Option 1 – Strengthening border offences

#### Change the importation/exportation of asbestos from a 'strict' to 'absolute' liability offence

Under an absolute liability offence, an importer/exporter could be held liable simply because their goods contain asbestos. Inserting a provision into section 233 of the Customs Act to make asbestos importation/exportation an absolute liability offence would remove the availability of the 'mistake of fact' defence.

A change to an absolute liability offence would increase the prospects of a successful prosecution where the evidence supports this approach.

Another option under this approach is to develop an absolute liability offence for asbestos importation and exportation in addition to the current strict liability offence, but with lower penalties. The current strict liability

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offence for importing a prohibited import would be retained and an absolute liability offence added to the regime, but have lower penalties than the strict liability offence. An example may be half of the current maximum penalty. Then, if an importer/exporter was prosecuted for the strict liability offence, and successfully established the mistake of fact defence, they would still be liable for the absolute liability offence if prosecuted as an alternative offence.

### Issues with changing the importation/exportation of asbestos from a 'strict' to 'absolute' liability offence

As there is no lawful domestic market for asbestos, it is highly likely that most importations of asbestos, or goods containing asbestos, are unintentional or negligent. Home Affairs' empirical evidence, collected through analysis of the circumstances surrounding detections, supports this position. Unintentional importation is most likely to occur due to a lack of awareness of the asbestos content in goods, and the situation is further exacerbated by differing international standards. Therefore, if we follow the assumption that many imports/exports are unintentional, a change from a strict to absolute liability offence would not necessarily have the full impact on achieving compliance through a strong deterrence. An increase in penalty would not change the fact the importer was unaware of the presence of asbestos in their goods.

Applying absolute liability in this case could also run against the basic legal principle that absolute liability is only to be used for certain offences in which it is necessary for individuals engaged in potentially hazardous or harmful activity to exercise extreme, and not merely reasonable, care.

Similar offences set out in the Criminal Code that could be considered as more harmful than the importation/exportation of asbestos are not wholly absolute liability offences, for example, trafficking controlled drugs and firearms or firearm parts into Australia (sections 303.2 and 361.2 Criminal Code, respectively). Therefore, in isolation, a change from strict to absolute may not provide for a proportionate, or flexible, penalty response and is not the preferred course of action.

## Option 2 – Strengthening border penalties

### Increasing existing penalties for the importation and exportation of asbestos

As Tier 1/Tier 2 goods have a combination of both strict and absolute liability offence elements, consideration may be given to amending the Customs Regulation to make asbestos a Tier 1/Tier 2 good. This would provide a strong deterrent to importers/exporters as it would enable Home Affairs/DPP to, on top of the existing 1,000 penalty units, seek a penalty of imprisonment from the courts when prosecuting intentional or repeat offenders:

- **A Tier 1 good pursuant to Part 1, Schedule 7 of the Customs Regulation** (penalty for importing/exporting a Tier 1 good is imprisonment for five years or 1,000 penalty units, or both) – existing Tier 1 goods include growth hormones, performance enhancing drugs, and non-narcotic drugs.
- **A Tier 2 good pursuant to Part 2, Schedule 7 of the Customs Regulation** (penalty for importing/exporting a Tier 2 good is imprisonment for 10 years or 2,500 penalty units, or both) – existing Tier 2 goods include firearms, munitions and warfare items, and child abuse material.

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While the offence of importing/exporting Tier 1/Tier 2 goods has some absolute liability elements<sup>3</sup>, the 'mistake of fact' defence is still available in relation to whether the person intentionally imported/exported the goods, and if the person was reckless to the fact that they imported Tier 1/Tier 2 goods.

Alternatively, a separate standalone fault-based offence for asbestos could be created – this would involve developing an offence for asbestos importation/exportation that has a 'fault' element, for example such an offence may be importing asbestos or goods containing asbestos, knowing or reckless as to whether the goods are or contain asbestos.

The Attorney-General's Department (AGD) has advised that a fault-based offence could have an imprisonment penalty applied. This would require significant investigation on viability and development.

Further, the penalty amount for the importation of asbestos could be increased under the Infringement Notice Scheme. Without amending the Customs Act or consequential regulations, Home Affairs could amend its internal policy on issuing an infringement notice up to the maximum permissible penalty unit amount, currently:

- \$52,500 for individuals ; or
- \$262,500 for body corporates.

### Issues with seeking imprisonment as a penalty

Even though the ability to seek an imprisonment penalty from a court would encourage compliance should asbestos become a Tier 1/Tier 2 good, this may attract criticism from the Senate Standing Committee on Regulations and Ordinances. This is due to the harsh penalties available to be given to offenders who unknowingly import asbestos, and the precedent it may set for other goods prohibited from being imported into, or exported from, Australia.

If Home Affairs were to pursue this, it would need to provide sufficient justification in explanatory materials, referencing similar offences. Examples of similar offences that could be referenced include:

1. Importation/exportation of performance enhancing drugs, non-narcotic drugs and other goods – up to five years imprisonment and/or 1,000 penalty units.
2. Importation/exportation of firearms, munitions and military warfare items of any kind – up to 10 years imprisonment and/or 2,500 penalty units.
3. Importation of specimens or regulated live specimens under the Convention on International Trade in Endangered Species of Wild Fauna and Flora – up to 10 years imprisonment and/or 1,000 penalty units.
4. Importation of food that does not meet applicable standards or poses a risk to human health - up to 10 years imprisonment.
5. Importation/exportation of border controlled drugs or border controlled plants - up to 10 years imprisonment and/or 2,000 penalty units.

### Issues with increasing existing penalties in the Infringement Notice Scheme

Changing the internal policy settings to increase the penalties for importers/exporters of asbestos under the Infringement Notice Scheme would not be without risk. The main risk is industry pushback. While the legal framework around the importation/exportation of asbestos would not change, the potential amount issued by

<sup>3</sup> - the importation was prohibited under the Customs Act absolutely (i.e. it is not contestable that asbestos is in the Act); or

- the importation was prohibited under the Customs Act unless the approval of a particular person had been obtained and, at the time of the importation, that approval had not been obtained.

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ABF in an infringement notice could significantly increase. This would be an issue for industry as most importations/exportations of asbestos are unintentional and smaller in scale (e.g. an individual importing a motor scooter with asbestos in the brake pads).

To mitigate this risk, tiers within the internal policy settings could be used whereby penalties could be set that are proportionate to the facts of the individual case. A tiered system that allows for proportionality has the added benefit of mitigating against the risk that the process becomes bogged down in administrative/judicial review process, or reaches a point where it becomes commonplace for importers to refuse to pay notices.

### Option 3 – Publicly naming importers

#### Publishing information on asbestos detections

The public “naming and shaming” of importers of asbestos or goods containing asbestos has been suggested in a number of submissions to the Senate Inquiry into non-conforming building products as an effective deterrent to further asbestos importations.

#### Issues with publishing information on asbestos detections

Careful examination of the circumstances in which an importer could be publicly named would need to be undertaken. Under the *Privacy Act 1988* (Cth) and *Australian Border Force Act 2015* (Cth), there are restrictions to naming importers on a public register. Additionally, payment or non-payment of an infringement notice is not an admission of guilt to the offence.

If importation is generally unintentional, a name and shame initiative may not meet the intended outcome of providing a deterrent factor. Therefore, there would not appear to be much benefit in considering this option.

### Option 4 – Prosecuting under domestic law

The domestic regulation of asbestos in Australia comprises of a number of regimes including work health and safety (WHS), public health, environmental, and consumer protection laws. The coverage provided by these regulatory regimes provides robust and comprehensive protections from the risks of exposure to asbestos. These measures complement the existing regulatory framework under the Customs Act and act as a broader deterrent to asbestos importation.

#### Duties under WHS laws

Model WHS laws developed by Safe Work Australia have been enacted in all jurisdictions except Victoria and Western Australia, however all jurisdictions require careful management of asbestos. There are specific regulations dealing with the management of asbestos in the model laws. The Australian Capital Territory has not adopted the *Work Health Safety Regulations 2011* (Cth) (WHS Regulations) for asbestos, however the overarching duties remain.

Section 24 of the *Work Health and Safety Act 2011* (Cth) (WHS Act) places a duty on persons who conduct a business or undertaking (PCBUs) who import certain goods into Australia to ensure those imported goods do not pose risks to the health and safety of persons in workplaces or when work is carried out. The intention of section 24 is to ensure importers meet the same WHS requirements imposed on local manufacturers (section 23).

Notably, the provisions for asbestos contained in Chapter 8 of the WHS Regulations do not place any duties strictly on importers. However, the WHS Regulations prohibit PCBUs from carrying out, or directing or allowing a worker to carry out work involving asbestos unless under limited exceptions. For the purposes of the WHS Regulations, work involves the manufacture, supply, transport, storage, removal, use, installation, handling, treatment, and disposal of asbestos. This ensures that if asbestos is imported illegally, it is not possible to legally use the asbestos.



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### Penalties under WHS laws

For a category 1 offence (reckless conduct), the maximum penalty for breaches of the WHS Act can be between \$300,000 for an individual (other than PCBU) or \$600,000 for a PCBU and/or five years imprisonment. The maximum penalty for a body corporate for a category 1 offence is \$3 million. In such cases WHS penalties could be substantially higher than penalties for unlawfully importing asbestos under the Customs Act.

### Issues with using WHS laws to address illegal importation issues

The duty under section 24 of the WHS Act does not go to the actual act or physical presence of asbestos in the import/export—this is a matter for Customs laws. WHS laws also do not apply where certain imported goods are not used in workplaces or are not used to carry out work.

Further, prosecuting a category 1 offence in section 31 of the WHS Act could be difficult as in most circumstances importation of asbestos has been considered inadvertent and workers or other people in workplaces are unlikely to be exposed to asbestos.

Where imported asbestos is detected post border it may be possible for action to be taken under both the Customs Act and WHS laws to provide a strong deterrent to the small pool of potential future serious offenders, increase voluntary compliance amongst the majority of importers, and reinforce Australia's commitment to robust, comprehensive and effective regulation of asbestos.

Enforcement of WHS laws is the responsibility of each individual state and territory work health and safety regulators who have adopted the regime. Not all state and territories have adopted the regime, and some have only adopted the regime in part. The decision to prosecute and possible penalties would only be based on the nature and severity of the breach of the WHS laws, rather than any matters to do with importation. As a result, penalties may not be as severe as those applied under Customs laws.

## 7. Conclusion

The above options are not an exhaustive nor mutually exclusive list and Home Affairs welcomes any further points from other agencies that should be considered under item 6 of the Forward Work Plan.

Home Affairs has considered the following principles when analysing the deterrence and enforcement options:

1. Firstly, offences that are unintentional in nature should not be met with full prosecution and enforcement proceedings where an appropriate alternative penalty would be sufficient.
2. Secondly, with a broader suite of punitive options available, should an importer intentionally disregard the importation ban, Commonwealth agencies should have the tools to impose a penalty that not only punishes for the offence, but also acts as a deterrent for others that may consider importing asbestos.
3. Lastly, the Government's response should be proportionate and flexible to encourage voluntary compliance and use finite resources in the most efficient and effective way possible; noting that importations of asbestos are highly likely to be unintentional.

On this basis, Home Affairs puts forward that a combination of making asbestos a Tier 1 good, consideration of increasing penalties under the Infringement Notice Scheme for the importation/exportation of asbestos, wide-ranging and coordinated outreach, and potential prosecution under the WHS Act as a complementary measure, may deliver the desired result of awareness, deterrence and voluntary compliance.

Once IDC members agree upon how to strengthen offences and penalties, an enforcement policy could be developed and applied on a case-by-case basis, with action tailored to the offence, such as:

- For first time unintentional offenders, that were not aware that their goods contained asbestos, an infringement notice may be sufficient.

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- For first time offenders that were aware their goods contained asbestos, and did not have it removed, an infringement notice with a maximum penalty, or prosecution under the Customs Act seeking a fine, may be appropriate.
- For repeat offenders that were aware their goods contained asbestos, but disregarded the ban, prosecution under the Customs Act seeking the maximum permissible fine and/or imprisonment.
- For businesses or body corporates an infringement notice with a maximum penalty, or prosecution in all instances seeking up to 5,000 penalty units per offence.

Home Affairs considers that once agreed, an appropriate suite of offences and penalties, applied under the above-mentioned approach would achieve the desired compliance and deterrent effect and allow an increased range of enforcement actions and stronger penalties to be brought to bear on a more flexible case-by-case basis.

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**Australian Government**  
**Department of Jobs and Small Business**



**Australian Government**  
**Department of Home Affairs**

## **Asbestos Interdepartmental Committee (IDC) Forward Work Plan**

*Working document: September 2018*

### **Objective of the Forward Work Plan**

- The Forward Work Plan (FWP) identifies activities that the IDC will undertake to address asbestos policy and regulatory issues, gaps and risks.
- The activities will support IDC members to provide advice to Government, or complete tasks as set by Government.

### **Process for establishing and addressing activities**

#### *Identifying activities*

- Activities will be identified by Ministers, IDC members, stakeholders or other processes, such as the Senate Inquiry into non-conforming building products, and will have been agreed to by the IDC.
- The FWP will be updated from time to time as required.

#### *Addressing activities*

- Agencies will lead activities consistent with their policy responsibilities.
- Relevant IDC members will work with lead agencies to undertake the activity. This may include establishing a working group.
- Each activity will be progressed in consultation with relevant stakeholders as identified by the Stakeholder Engagement Plan.
- Progress will be reported to and monitored by the IDC.

#### *Completion of activities*

- Findings and recommendations will be presented to and agreed by the IDC.
- The endorsed findings or recommendations will be used to advise Government Minister(s) where relevant.

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**FOR OFFICIAL USE ONLY****Summary - Activity Implementation Status**

Activity Indicator Summary		
1	✓	Stakeholder Engagement Plan.
2	●	Review asbestos testing and sampling processes by 'competent persons' (i.e. hygienist), including professional standards and accreditation.
3	✓	Investigate new technologies for capabilities to test for asbestos.
4	✓	Options to strengthen work health and safety laws to require mandatory removal of asbestos.
5	●	Amend and update the Customs Prohibited Imports/Exports Regulations for asbestos, to be consistent with the Work Health and Safety legislation.
6	✓	Consider the adequacy of penalties and offences for the unlawful importation/exportation of asbestos.
7	●	Identifying appropriate forums and mechanisms to support awareness and voluntary compliance by industry with the asbestos ban across the supply chain.
8	✓	Consider the appropriate mechanisms for Ministers to receive stakeholder advice on the management of the asbestos ban across the supply chain (e.g. establish a working group of stakeholders, including unions).
9	●	Senate Inquiry into non-conforming building products.

✓ Tick: The project has been completed	● Amber: One or more elements require substantial attention
● Green: The project is generally on track	● Red: Urgent and decisive action is likely to be required

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## Activity Description and Status

No	Activity	Description	Responsibility	Timeframe	Status
1	Stakeholder Engagement Plan	Develop a Stakeholder Engagement Plan (the Plan) to provide a framework for IDC engagement with relevant industry associations, governments and other stakeholder groups that have a role in asbestos policy and regulation. This will assist in understanding issues and opportunities for improved asbestos policy and regulation. The Plan will also identify potential engagement fora that may be used by the IDC to communicate to stakeholders.	Department of Jobs and Small Business (Jobs and Small Business) and Department of Home Affairs (Home Affairs) to co-lead  IDC members to contribute	March 2017	✓
2	Review asbestos testing and sampling processes by 'competent persons' (i.e. hygienist), including professional standards and accreditation	<p>Review and report on the adequacy and consistency of procedures and frameworks used by hygienists and laboratories to support the sampling and testing of goods for asbestos. This may include consideration of:</p> <p><i>Sampling</i></p> <ul style="list-style-type: none"> <li>There is no non-technical Australian guidance for sampling, particularly for imported goods. To ensure appropriate sampling takes place, a published guide was needed to assist importers/exporters with meeting border requirements for the testing process.</li> </ul> <p><i>Testing</i></p> <ul style="list-style-type: none"> <li>Recognition by the National Association of Testing Authorities (NATA) of overseas equivalents and their accreditation of individual laboratories, including the assurance process and approach to addressing non-compliance.</li> </ul> <p><i>Accreditation</i></p> <ul style="list-style-type: none"> <li>Options to increase the number of NATA-accredited Australian laboratories that can test for asbestos.</li> </ul>	Jobs and Small Business, Home Affairs.  Department of Industry, Innovation and Science (DIIS) to support	Sampling Guidance October 2018	●

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No	Activity	Description	Responsibility	Timeframe	Status
		<ul style="list-style-type: none"> <li>Options to increase the number of international laboratories that can test to the Australian Standard.</li> </ul> Adopting/accepting international standards for testing goods for asbestos (e.g. ISO Standard).			
3*	Investigate new technologies for capabilities to test for asbestos.	Identify and assess new and emerging technologies that may assist with the detection of asbestos.	Jobs and Small Business, Home Affairs <b>and DIIS</b> to co-lead. Home Affairs pursuing with CSIRO	June 2017 to January 2018	●
4	Options to strengthen Work Health and Safety laws to ensure asbestos removal.	Identify options to strengthen work health and safety legislation to ensure that unlawfully imported asbestos can be removed from workplaces through the issuing of improvement or prohibition notices.	Jobs and Small Business to lead	June to September 2017.	✓
5	Amend and update the Customs Prohibited Imports/Exports Regulations for asbestos, to be consistent with the Work Health and Safety legislation.	Update the Customs Prohibited Imports/Exports Regulations to reflect the definitions in the model Work Health and Safety legislation.	Jobs and Small Business and Home Affairs to co-lead	March to July 2018	●
6*	Consider the adequacy of penalties and offences for the unlawful importation/exportation of asbestos.	A review of the adequacy and effectiveness of existing penalty and offence provisions for the unlawful importation/exportation of asbestos. Where necessary, identify policy options for new or increased penalty provisions, reflecting the magnitude of the offence and the compliance effort involved.  Review the adequacy and effectiveness of existing prosecutions for asbestos offences.	Jobs and Small Business and Home Affairs to co-lead.  IDC members to contribute based on	March to June 2017 - completed	●

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No	Activity	Description	Responsibility	Timeframe	Status
		<i>Note: IDC members to contribute. Consult with Attorney General's Department. Relevant stakeholders to be engaged where appropriate.</i>	roles and responsibilities		
7	Identifying appropriate forums and mechanisms to support awareness and voluntary compliance by industry with the asbestos ban across the supply chain.	Explore options to promote industry and importer voluntary compliance by consulting, educating and providing information to support businesses that import goods.	ASEA to lead Jobs and Small Business and Home Affairs to support. IDC members to contribute based on roles and responsibilities	Ongoing (forums to be scheduled as required)	
8	Mechanisms to support comprehensive advice on asbestos controls to Ministers	Consider the appropriate mechanisms for Ministers to receive stakeholder advice on the management of the asbestos ban across the supply chain (e.g. establish a working group of stakeholders, including unions).	Jobs and Small Business and Home Affairs to co-lead. IDC members to contribute based on roles and responsibilities	By the end of June 2017	
9	Senate Inquiry into non-conforming building products.	Discuss outcomes of the committee's final report (due 19 September 2018) and whether a Government response is required	Jobs and Small Business and Home Affairs IDC members to contribute as appropriate	November 2017 to November 2018	

\* Item 3 was raised in correspondence from the then Minister for Industry, Innovation and Science to the then Minister for Immigration and Border Protection and the Minister for Employment, dated 5 October 2016.

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## Asbestos Interdepartmental Committee (IDC) Stakeholder Engagement Plan

This Stakeholder Engagement Plan complements the Forward Work Plan. Successful completion of the Forward Work Plan will require IDC members to effectively engage with stakeholders. This Plan outlines the stakeholders IDC members will engage with, the responsibilities and interests of these stakeholders, what part of the Forward Work Plan engaging with these stakeholders will contribute to completing and how IDC members will engage with these stakeholders.

The Asbestos IDC Stakeholder Engagement Plan is a 'living document'. It can be updated following progress against the items on the Forward Work Plan and consultation with stakeholders.

Stakeholder	Department/ Agency	Responsibilities/Involvement/Issues	Forward Work Plan Item	Engagement
<b>Heads of Workplace Safety Authorities (HWSA)</b> Comcare, WorkSafe ACT, SafeWork NSW, NT Worksafe, Workplace Health and Safety Queensland, SafeWork SA, WorkSafe Tasmania, WorkSafe Victoria, WorkSafe WA.	Department of Jobs and Small Business	<p>WHS regulators are responsible for the licensing and regulation of asbestos-related occupations and activities in workplaces. They have powers under WHS laws to address asbestos (and asbestos containing materials) in workplaces.</p> <p>HWSA Imported Materials with Asbestos Working Group responds to incidents where imported asbestos is discovered in workplaces.</p> <p>Work health and safety members from Queensland, South Australia, the ACT, the Commonwealth, and NSW participated in the IDC meeting on 24 October.</p> <p>At this meeting, work health and safety members raised issues with their ability to effectively address asbestos containing materials that have been installed in buildings. Changes to WHS Regulations may be necessary.</p>	<p>(4) Options to strengthen work health and safety laws to require mandatory removal of asbestos.</p> <p>(5) Amend and update the Customs Prohibited Imports/Exports Regulations for asbestos, to be consistent with the Work Health and Safety legislation.</p> <p>(6) Consider the adequacy of penalties and offences for the unlawful importation and exportation of asbestos.</p>	<p>Departments of Jobs and Small Business (Jobs and Small Business) and the Department of Home Affairs (Home Affairs) will continue to engage with HWSA on the effectiveness of existing WHS and Customs Regulations through existing representation on the HWSA Imported Materials with Asbestos Working Group.</p>

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Stakeholder	Department/ Agency	Responsibilities/Involvement/Issues	Forward Work Plan Item	Engagement
<b>Safe Work Australia (SWA)</b> SWA Agency SWA Members from the Department of Jobs and Small Business, WorkSafe ACT, SafeWork NSW, NT Worksafe, Workplace Health and Safety Queensland, SafeWork SA, WorkSafe Tasmania, WorkSafe Victoria, WorkSafe WA, Australian Chamber of Commerce and Industry (ACCI), AiGroup, Australian Council of Trade Unions (ACTU)	Department of Jobs and Small Business	SWA is responsible for maintaining the model work health and safety laws and regulations and developing national work health and safety policy.	(4) Options to strengthen work health and safety laws to require mandatory removal of asbestos (6) Consider the adequacy of penalties and offences for the unlawful importation and exportation of asbestos.	If it is necessary to strengthen the model WHS laws or regulations to ensure that imported asbestos can be removed from workplaces and/or increase penalties for asbestos offences, Jobs and Small Business will engage with SWA through its representation of the Commonwealth on SWA and SWA sub-committees.
<b>Industry groups</b> Department of Housing and Public Works (Qld), Department of Planning and Infrastructure (NT), Department of Justice (Tas), Department of Planning, Transport and Infrastructure (SA), Department of Commerce (WA), Department of Planning and Environment (NSW), Victorian Building Authority (Vic), Environment, Planning and	Industry	Building regulators are responsible for enforcing standards for the design and construction of buildings and other structures, which address structural adequacy, fire resistance and provisions for the health and amenity of occupants. The regulatory powers of building regulators largely extend to addressing non-conforming and non-compliant building materials (not prohibited imports).	(7) Supporting awareness and voluntary compliance by industry with the asbestos ban across the supply chain.	DIIS, through the Building Ministers' Forum Secretariat, will engage with building regulators and provide the IDC with information on the powers of building regulators to address building products containing asbestos discovered on a building site within their individual jurisdictions. Building regulators can also be consulted on options to support assurance that building product supply chains

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Stakeholder	Department/ Agency	Responsibilities/Involvement/Issues	Forward Work Plan Item	Engagement
Sustainable Development Directorate (ACT)				are free of asbestos containing materials.
<b>Environment Regulators</b> Environment Protection Authority (EPA) ACT, NSW EPA, Department of Lands, Planning and the Environment (NT), EPA Victoria, EPA SA, EPA WA, Department of Environment and Heritage Protection (Qld), EPA Tasmania	Environment	Environmental regulators are responsible for setting and enforcing laws and regulations on the disposal of hazardous waste, including asbestos. Storage and disposal occupations are licensed and regulated by environmental regulators.	No Forward Work Plan items at this time.	Environment will engage with state and territory environmental regulators through existing consultation mechanisms to ensure that environmental laws facilitate the disposal of imported asbestos containing materials identified in supply chains.  If any issues are identified, Environment will bring these issues back to the IDC for consideration of an additional Forward Work Plan item.
<b>Consumer Safety Regulators</b> Consumer Affairs Victoria, NSW Fair Trading, Office of Fair Trading (Qld), Consumer Affairs and Fair Trading (Tas), Consumer and Business Services (SA), Consumer Protection (WA), NT Consumer Affairs, Fair Trading (ACT)	Treasury/ ACCC	Consumer safety regulators are responsible for enforcing the Australian Consumer Law (ACL), which is the national law for fair trading and consumer protection. The ACL sets out requirements for the recall of unsafe products and availability of recourse for buyers of unsafe products (which can include products containing asbestos).  Consumer Affairs Australia and New Zealand is leading a Review of the ACL which is considering the effectiveness of the provisions of the ACL, including the product safety regime. A final report will be provided to Consumer Affairs Ministers by 31 March 2017.	No Forward Work Plan items at this time.	If the Review makes any recommendations for amendments to the product safety framework that could affect the management of consumer goods containing asbestos, Treasury/ACCC will raise these with the IDC for consideration of an additional Forward Work Plan item.

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Stakeholder	Department/ Agency	Responsibilities/Involvement/Issues	Forward Work Plan Item	Engagement
		The safety of consumer goods will be included as an agenda item for the fifth IDC meeting (expected in May). Treasury/ACCC will outline how the different components of the ACL currently operate in relation to imported consumer goods containing asbestos.		
<b>Standards Framework</b> National Association of Testing Authorities (NATA) Standards Australia The Australian Institute of Occupational Hygienists.	Industry	Standards Australia works with industry, government and community interests to develop and adopt voluntary, consensus-based standards, including standards for building products and processes for the testing of products for the presence of asbestos.  NATA supports this work by certifying laboratories as competent to test products consistently with these standards, providing consistently reliable testing, calibration, measurement and inspection data to government, industry and the wider community.  NATA presented to the IDC on Thursday 15 December 2016 outlining the existing standards, testing and certification processes for asbestos.  The review of AS 4964 -2004 is currently being scoped by Standards Australia.	(2) Review asbestos sampling and testing processes by 'competent persons' (i.e. hygienist), including professional standards and accreditation.	Jobs and Small Business, Home Affairs and DIIS will engage with NATA through existing mechanisms on the development of a report on the procedures and frameworks used to support sampling and testing of goods for asbestos at the border.  Jobs and Small Business, Home Affairs and DIIS will also engage with Standards Australia on the benefits and impacts of testing to international standards (ISO).
<b>Scientists</b> CSIRO	Industry	Unlike swab testing for drugs and explosives, currently, the only proven way to detect asbestos in products is through sampling and testing in a laboratory. Often sampling at the border will involve the destruction of a sample of the building product.	(3) Investigate new technologies for capabilities to test for asbestos.	Jobs and Small Business, Home Affairs and DIIS will engage with CSIRO to follow the progress of new technologies that are being tested or explored to support identification of asbestos at

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Stakeholder	Department/ Agency	Responsibilities/Involvement/Issues	Forward Work Plan Item	Engagement
		Minister Hunt's letter to Minister Cash and Minister Dutton asked the Ministers to consider exploring how new technologies might be utilised to ensure greater supply chain transparency. Scientists from organisations such as the CSIRO are well place to contribute.		the border and in the workplace.  CSIRO attended the fifth IDC meeting on 28 June to update the IDC on these technologies.
<b>Industry</b> Australian Chamber of Commerce and Industry (ACCI) Australian Industry Group (AiG) Master Builders Australia (MBA)* Housing Industry Association (HIA)*	Department of Jobs and Small Business	Industry associations represent the interests of Australian employers, some of whom may be involved in the importation, supply or use of imported goods and in particular, building materials. They participate in a number of government bodies that consider issues relating to the health and safety of Australian workers, such as Safe Work Australia.  A number of employer and building industry associations made submissions to the Senate Committee Inquiry into Non-Conforming Building Products. The recommendations in these submissions will be considered by the IDC during the course of its work.  Tracey Browne from the Australian Industry Group presented to the IDC on 9 March 2017, outlining the challenges that exist in complying with the asbestos importation ban and commenting on the role of products testing and the collective role in preventing asbestos imports.	(4) Options to strengthen work health and safety laws to require mandatory removal of asbestos.  (7) Supporting awareness and voluntary compliance by industry with the asbestos ban across the supply chain.	If any amendments to the model WHS laws or regulations are considered necessary, Jobs and Small Business will engage with industry associations through the existing Safe Work Australia process for considering amendments to the model laws.
ACTU, Construction, Forestry, Mining and Energy Union (CFMEU), Electrical Trades Union (ETU), Australian Workers'	Department of Jobs and Small Business	Unions represent the interests of Australian workers. They participate in a number of Government bodies that consider issues relating to	(4) Options to strengthen work health and safety laws to require mandatory removal of asbestos.	An intercessional IDC meeting with unions was held on 22 August 2017. Unions gave an update on work they are doing to contribute to minimising



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Stakeholder	Department/ Agency	Responsibilities/Involvement/Issues	Forward Work Plan Item	Engagement
Union (AWU), Maritime Union of Australia, Australian Manufacturing Workers' Union (AMWU).		<p>the health and safety of Australian workers, such as Safe Work Australia.</p> <p>The ACTU and a number of unions made submissions to the Senate Committee Inquiry into Non-conforming Building Products. The recommendations in these submissions will be considered by the IDC during the course of its work.</p>	(6) Consider the adequacy of penalties and offences for the unlawful importation and exportation of asbestos.	<p>international trade in asbestos and discussed the key recommendations in their submissions, in particular those relating to strengthening WHS laws, stricter requirements for testing imported goods potentially containing asbestos and increasing penalties for importing asbestos.</p> <p>If any amendments to the model WHS laws or regulations are considered necessary, Jobs and Small Business will engage with unions through the existing Safe Work Australia process for considering amendments to the model laws.</p>
<p><b>Border Industry (e.g. Customs Brokers)</b></p> <p>Border industry peak bodies such as the Customs Brokers and Forwarders Council of Australia</p>	Home Affairs	Customs brokers, freight forwarders, carriers, licensed depot operators, amongst other border industries, act on behalf of owners of imported goods to facilitate the importation of goods into Australia.	<p>(5) Amend and update the Customs Prohibited Imports/Exports Regulations for asbestos, to be consistent with the Work Health and Safety legislation.</p> <p>(6) Consider the adequacy of penalties and offences for the unlawful importation and exportation of asbestos.</p>	<p>Home Affairs will engage with Customs brokers through the Trade and Customs Compliance Advisory Group.</p> <p>If any amendments to Customs Regulations are considered necessary, Home Affairs will consult with border industry representatives through existing consultation mechanisms, including:</p>

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Stakeholder	Department/ Agency	Responsibilities/Involvement/Issues	Forward Work Plan Item	Engagement
			(7) Supporting awareness and voluntary compliance by industry with the asbestos ban across the supply chain.	<ul style="list-style-type: none"> <li>• Compliance Advisory Group</li> <li>• National Committee for Trade Facilitation</li> <li>• Trade and Customs Legislation Working Group.</li> </ul>
<b>Asbestos Advocacy Groups</b> Asbestos Council of Victoria (GARDS), Asbestos Disease Support Association (ADSS), SA Asbestos Coalition	Various	Asbestos Advocacy Groups that have a policy and regulatory interest in health issues, border prohibitions, Australia's domestic asbestos ban and other asbestos management issues.	No Forward Work Plan items at this time.	Parties identified here have made asbestos related submissions to the Senate Inquiry into Non-conforming Building Products.  Where it is appropriate, the IDC will engage with relevant stakeholders for activities on the forward work plan.
<b>Miscellaneous</b> Australian Nursing and Midwifery Federation, Maurice Blackburn Lawyers Pty Ltd, Building and Wood Workers' International, Union Aid Abroad, Greencap, Construction Product Alliance, Australian Institute of Building Surveyors	Various	Other parties with an interest in asbestos policy and regulation.	No Forward Work Plan items at this time.	Parties identified here have made asbestos related submissions to the Senate Inquiry into Non-conforming Building Products.  Where it is appropriate, the IDC will engage with relevant stakeholders for activities on the forward work plan.



## **Asbestos Interdepartmental Committee (IDC) – Terms of Reference (ToR)** **September 2018**

### **Context**

Asbestos is a set of six naturally occurring silicate minerals that pose a significant health and safety risk to workers and the Australian community. On 31 December 2003, Australia banned the use of, manufacture and importation of all forms of asbestos. This ban was endorsed by the Workplace Relations Ministers' Council.

Managing asbestos issues across the import supply chain is a complex policy area that requires coordinated management pre, at and post border. Commonwealth, state and territory agencies manage these issues across a broad range of areas including; workplace safety, importation, environment, public health and consumer safety.

The Department of Jobs and Small Business (Jobs and Small Business) and the Department of Home Affairs (Home Affairs) are co-leading whole-of-government coordination of asbestos policy issues across the supply chain. This coordination will include Commonwealth policy and regulatory agencies and appropriate engagement with relevant state and territory authorities with responsibilities for managing asbestos.

### **Role of the Asbestos IDC**

The Asbestos IDC is a senior executive forum that will provide strategic direction to enable effective policy and regulatory coordination across Commonwealth agencies in managing asbestos issues across the supply chain.

The IDC will:

- Enhance consultation and coordination of Commonwealth agencies' efforts in addressing policy and regulatory issues on asbestos.
- Clarify agencies' roles and responsibilities in managing asbestos policy and regulatory issues across the supply chain.
- Identify risks and gaps in asbestos management across the supply chain and coordinate proposals to resolve these risks and gaps.
- Collaborate in developing communications on asbestos issues.

### **IDC Members' accountabilities**

IDC members will be accountable for:

- Proactively and regularly engaging with the IDC by:
  - contributing to collective responses on asbestos issues;
  - leading or contributing to proposals to resolve gaps or risks that are identified in managing asbestos across the supply chain; and
  - consulting members on policy and regulatory initiatives being undertaken by their respective agencies on asbestos management.
- Reporting on responsibilities within their policy and regulatory remits in managing asbestos issues.
- Engaging effectively with relevant state and territory regulators.
- Adherence to prescribed Commonwealth guidelines on the handling, storage and disclosure of official information, including all documents circulated within the IDC.

IDC agencies will be responsible for updating their senior executive on IDC coordination activities.

## Out-of-scope

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The IDC complements but does not replace the Heads of Workplace Safety Authorities “*Imported Materials with Asbestos Working Group*”.

The IDC will not focus on addressing issues relating to asbestos that is already present in the country (including naturally occurring asbestos, ‘in-situ’ asbestos in commercial buildings and homes that were produced in Australia or imported prior to the implementation of the import ban).

## IDC Membership

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The IDC will be co-chaired by the Group Manager, Work Health and Safety Policy Group, Jobs and Small Business and the First Assistant Secretary, Trade and Customs Division (TCD), Home Affairs. The following Commonwealth agencies will also have equivalent members on the IDC:

### *Policy agencies*

- Department of Foreign Affairs and Trade
- Department of Industry, Innovation and Science
- Department of the Environment and Energy
- Department of Infrastructure, Regional Development and Cities
- The Treasury
- Department of Health

### *Supporting portfolio agencies*

- Australian Competition and Consumer Commission
- Safe Work Australia
- Asbestos Safety and Eradication Agency
- Comcare
- Australian Border Force (ABF)

IDC membership may be varied by agreement of both Chairs.

SES Band 2 representation will be required for IDC meetings, unless agreed otherwise in advance by either Chair.

## Engagement with state and territory regulators

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The IDC will engage with relevant state and territory authorities with responsibilities for asbestos issues (e.g. work health and safety, building and environmental regulators). The mechanism for this engagement will be determined by the IDC.

## Frequency and conduct of meetings

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The IDC will meet quarterly. The frequency of meetings can be varied by agreement of both Chairs. Clearance of papers and reports can occur out of session through email, as required.

Jobs and Small Business and Home Affairs will provide co-secretariat support to the IDC on an alternating basis. This support will be provided by Work Health and Safety Policy Branch, Jobs and Small Business, and Customs and Border Revenue Branch, Home Affairs.

The agency that ‘hosts’ an IDC meeting will be responsible for organising the meeting, preparing the agenda and meeting minutes (this will include consulting with IDC agencies, as appropriate). Service standards for circulating agenda and meeting minutes will be agreed by both Chairs.

## Review

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A review of these ToR should be completed by the IDC within six months from the date of endorsement to ensure that they are appropriate.

A review of the IDC will be undertaken every twelve months, or as agreed by members.

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## Asbestos IDC: Stocktake on activities in the Forward Work Plan September 2018

Description and Status	Responsibility	Timeframe	Status
<b>1. Stakeholder Engagement Plan</b>			
<p><b>Activity Description</b></p> <p>Develop a Stakeholder Engagement Plan (the Plan) to provide a framework for IDC engagement with relevant industry associations, governments and other stakeholder groups that have a role in asbestos policy and regulation. This will assist in understanding issues and opportunities for improved asbestos policy and regulation.</p> <p><b>Progress</b></p> <p>The IDC agreed a Stakeholder Engagement Plan in March 2017.</p> <p>Progress includes engagement with:</p> <ul style="list-style-type: none"> <li>• Industry representatives presented the view on asbestos imports to the IDC in March 2017.</li> <li>• Union representatives attended special IDC in August 2017 to share their key concerns and expand on issues they raised with the Senate Committee on non-conforming building products.</li> <li>• State and territory regulators through HWSA on options to strengthen WHS laws on removal of asbestos, to align the Customs Prohibited Imports 1958 and Prohibited Exports 1958 Regulations with WHS laws and expand the penalties in the Customs Regulations 2015</li> <li>• Safe Work Australia to progress the strengthening of the WHS law on removal.</li> <li>• Standards authorities, including NATA and Standards Australia. The outcome is a shared understanding of sampling and testing of goods, and agreement to explore updating the existing standard or adopting the international ones.</li> <li>• Scientists to explore new technologies for capability to test for asbestos. The outcome is an awareness and understanding of existing capability.</li> </ul> <p><b>Next Steps</b></p> <ul style="list-style-type: none"> <li>• Engage with industry, unions and brokers on proposed amendments to the Customs Prohibited Import/Export regulations.</li> </ul>	<p>Department of Jobs and Small Business (Jobs and Small Business) and Department of Home Affairs (Home Affairs) to co-lead</p> <p>IDC members to contribute</p>	March 2017	✓

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<b>2. Review asbestos testing and sampling processes by 'competent persons' (i.e. hygienist), including professional standards and accreditation</b>			
<p><b>Sub-activity Description - Sampling</b></p> <p>There is no non-technical Australian guidance for sampling, particularly for imported goods. To ensure appropriate sampling takes place, a published guide was needed to assist importers/exporters with meeting border requirements for the testing process.</p> <p><b>Progress</b></p> <ul style="list-style-type: none"> <li>Department of Home Affairs (Home Affairs) has developed guidance for sampling for asbestos testing to assist owners who are intending to import or export goods across the Australian border which may contain asbestos. Correct and representative sampling of goods is critical to an accurate outcome from testing. The guide provides the owner of the goods with an overview of the information required to enable the professional who is undertaking the sampling process to make informed decisions when undertaking the sampling. It also encourages importers/exporters to carry out the necessary research about the goods, to inform the assurance they later provide to the ABF. Home Affairs has consulted with key IDC stakeholders out of session.</li> </ul> <p><b>Next Steps</b></p> <ul style="list-style-type: none"> <li>Home Affairs to circulate a draft of the guidance to the IDC for comment at October 2018 meeting. They will then consult with industry.</li> </ul>	<p>Jobs and Small Business, Home Affairs.</p> <p>Department of Industry, Innovation and Science (DIIS) to support</p>	<p>Sampling Guidance October 2018</p>	
<b>3. Investigate new technologies for capabilities to test for asbestos</b>			
<p><b>Activity Description</b></p> <p>Identify and assess new and emerging technologies that may assist with the detection of asbestos.</p> <p><b>Progress</b></p> <ul style="list-style-type: none"> <li>The CSIRO gave a presentation in January 2018 on terahertz spectroscopy and the possibilities and limitations regarding the identification of asbestos. This technology would require significant financial investment by government and/or industry. For it to be viable for the ABF it would need to be capable of detecting a range of other compounds (e.g. tobacco, chemicals) as well as</li> </ul>	<p>Jobs and Small Business, Home Affairs and DIIS to co-lead. Home Affairs pursuing with CSIRO</p>	<p>June 2017 to January 2018</p>	<p>Released by Department of Home Affairs under the Freedom of Information Act 1982</p>

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<p>physically deployable to a range of relevant ABF work areas. From go-ahead for any project undertaken, Home Affairs estimate a three to five year period before the technology could be applied at the border.</p> <ul style="list-style-type: none"> <li>○ This technology contains risk of being overlapped during development, by a better alternative, and/or</li> <li>○ Not meeting full border requirements.</li> </ul> <p>The investigation established that the current technological landscape would not provide a viable outcome suited to border requirements in the near future.</p> <p><b>Next Steps</b></p> <ul style="list-style-type: none"> <li>• Maintain a holding pattern to monitor technology developments.</li> <li>• Home Affairs remain approachable to the Industry portfolio (which includes CSIRO) should they wish to: <ul style="list-style-type: none"> <li>○ suggest/explore any identified viable technologies</li> <li>○ access ABF examination facilities to inform of requirements/conditions; and</li> <li>○ work on literature reviews.</li> </ul> </li> </ul>			
<b>4. Options to strengthen Work Health and Safety laws to ensure asbestos removal</b>			
<p><b>Activity Description</b></p> <p>Identify options to strengthen work health and safety legislation to ensure that unlawfully imported asbestos can be removed from workplaces through the issuing of improvement or prohibition notices.</p> <p><b>Progress</b></p> <ul style="list-style-type: none"> <li>• SWA discussed a proposal to extend the model WHS laws or provide an express power to allow a regulator to issue a notice to direct the removal of illegally installed asbestos (post 2003).</li> <li>• At SWA Members' meeting of 9 August 2018, Members agreed to pursue legislative amendments to the Model WHS Act.</li> </ul> <p><b>Next Steps</b></p> <ul style="list-style-type: none"> <li>• SWA to pursue and develop legislative amendments to the Model WHS Act with further consultation on the detail of the amendments to be provided.</li> </ul>	Jobs and Small Business to lead	June 2017 to August 2018	<p>✓</p> <p>Released by Department of Home Affairs under the Freedom of Information Act 1982</p>


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Description and Status	Responsibility	Timeframe	Status
<ul style="list-style-type: none"> <li>Final decision will be made by relevant WHS ministers.</li> </ul>			
<b>5. Amend and update the Customs Prohibited Imports/Exports Regulations for asbestos, to be consistent with the Work Health and Safety legislation</b>			
<b>Activity Description</b> Update, streamline and strengthen the asbestos provisions within the Customs Prohibited Imports/Exports Regulations including: <ul style="list-style-type: none"> <li>Aligning definitions to the model Work Health and Safety legislation</li> <li>addressing identified gaps</li> <li>updating legislative references, and</li> <li>streamlining how asbestos is referenced</li> </ul> <b>Progress</b> <ul style="list-style-type: none"> <li>Minister for Jobs, Industrial Relations and Women to consider proposed amendments. Once approved the Minister will provide policy authority to amend these regulations.</li> </ul> <b>Next Steps</b> <ul style="list-style-type: none"> <li>Home Affairs will commence drafting amendment changes once Jobs and Small Business has gained authority from the Minister.</li> <li>Drafted amendments to be circulated to the IDC through the consultation process.</li> <li>Routine reporting on progress of this item.</li> </ul>	Jobs and Small Business and Home Affairs to co-lead	March to Dec 2018	
<b>6. Consider the adequacy of penalties and offences for the unlawful importation/exportation of asbestos</b>			
<b>Activity Description</b> Review the adequacy and effectiveness of existing penalty and offence provisions for the unlawful importation/exportation of asbestos. Where necessary, identify policy options for new or increased penalty provisions, reflecting the magnitude of the offence and the compliance effort involved.  Review the adequacy and effectiveness of existing prosecutions for asbestos offences.	Jobs and Small Business and Home Affairs to co-lead.  IDC members to contribute based on	March to June 2017 - completed	


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<p><i>Note: IDC members to contribute. Consult with Attorney General's Department. Relevant stakeholders to be engaged where appropriate.</i></p> <p><b>Progress</b></p> <ul style="list-style-type: none"> <li>Home Affairs has received Ministerial policy approval to make asbestos a Tier 1 good. This expands the penalties available to a court beyond just pecuniary penalties to include imprisonment for the more egregious border offences.</li> </ul> <p><b>Next Steps</b></p> <ul style="list-style-type: none"> <li>Home Affairs will provide information about the amendment on their website and through their stakeholder fora</li> </ul>	roles and responsibilities		
<b>7. Identifying appropriate forums and mechanisms to support awareness and voluntary compliance by industry with the asbestos ban across the supply chain</b>			
<p><b>Activity Description</b></p> <p>Explore options to promote industry and importer voluntary compliance by consulting, educating and providing information to support businesses that import goods.</p> <p><b>Progress</b></p> <ul style="list-style-type: none"> <li>ASEA has held asbestos compliance forums in the Australian Capital Territory and Queensland, attendees included regulatory authorities, asbestos associations and victim support groups.</li> </ul> <p><b>Next Steps</b></p> <ul style="list-style-type: none"> <li>ASEA to conduct further asbestos compliance forums.</li> <li>Jobs and Small Business to discuss partnering opportunity with ASEA.</li> </ul>	<p>ASEA to lead</p> <p>Jobs and Small Business and Home Affairs to support.</p> <p>IDC members to contribute based on roles and responsibilities</p>	Ongoing (forums to be scheduled as required)	
<b>8. Mechanisms to support comprehensive advice on asbestos controls to Ministers</b>			
<p><b>Activity Description</b></p>	Jobs and Small Business and Home Affairs to co-lead.	By the end of June 2017	

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<p>Consider the appropriate mechanisms for Ministers to receive stakeholder advice on the management of the asbestos ban across the supply chain (e.g. establish a working group of stakeholders, including unions).</p> <p><b>Progress</b></p> <ul style="list-style-type: none"> <li>Complete: A range of forums exist to ensure Ministers receive stakeholder advice on managing asbestos across the supply chain. These include established practice within relevant agencies (including through Ministerial correspondence and briefing), the National Workplace Relations Consultative Council (NWRCC) and the functions of the Asbestos IDC itself....</li> </ul>	IDC members to contribute based on roles and responsibilities		
9. Senate Inquiry into non-conforming building products			
<p><b>Activity Description</b></p> <p>Ensure a coordinated and considered whole-of-government response to asbestos related recommendations of the Senate Inquiry into non-conforming building products.</p> <p><b>Progress</b></p> <ul style="list-style-type: none"> <li>The Government's response to the interim report was tabled on 22 August 2018.</li> </ul> <p><b>Next Steps</b></p> <ul style="list-style-type: none"> <li>Respond to asbestos related recommendations in the committee's final report (due 19 September 2018)</li> </ul>	<p>Jobs and Small Business and Home Affairs</p> <p>IDC members to contribute as appropriate</p>	Nov 2017 to Nov 2018	

Unclassified

## **Australian Government: Talking Points about Asbestos for Interdepartmental Committee Members**

### **High level**

- The Australian Government is strongly committed to a coordinated national approach to dealing with asbestos.
- In August last year, the Government launched a National Strategic Plan for Asbestos Management and Awareness (National Strategic Plan). The National Strategic Plan has been agreed by the Commonwealth and all state and territory governments. The National Strategic Plan represents an agreed national approach to asbestos management and awareness.
- Australia has one of the strictest asbestos importation bans in the world to protect Australian workers and the community from asbestos. The ban supports the equally strict workplace ban on asbestos.
- Commonwealth agencies and regulators, and state and territory work health and safety regulators are working together to address issues in the asbestos importation supply chain.
- Commonwealth agencies and regulators, and state and territory work health and safety regulators are also working together to respond to incidents where imported asbestos is discovered in workplaces or the community to protect workers and the public from exposure to asbestos fibres.

### **Asbestos importation review**

- In late November 2015, the Australian Border Force Commissioner commissioned an independent review to examine the Department of Immigration and Border Protection's internal processes in managing Australia's asbestos border control to ensure that these reflected best practice.
- The review found that DIBP's management of the asbestos border control was effective, but identified some opportunities for organisational and technical improvements.
- The Department is implementing the review's recommendations as a priority.

### **Whole-of-government coordination**

- To improve coordination across Commonwealth agencies on asbestos policy issues and effectively manage the complexity of asbestos risks across the supply chain, an asbestos Interdepartmental Committee has been created and will run for the next 12 months.
- The IDC is co-led by the Department of Employment and DIBP to coordinate asbestos policy across relevant Commonwealth agencies.
- The IDC representation includes policy and regulatory agencies covering workplace safety, import / export, environment, consumer safety, building standards, health, international trade and infrastructure issues.

### **What is the role of the Asbestos Safety and Eradication Agency**

- The Asbestos Safety and Eradication Agency's role is to liaise with governments at all levels to coordinate, monitor and report on the implementation of the National Strategic Plan.

Unclassified

- The Agency chairs the Heads of Workplace Safety Authorities Imported Materials with Asbestos Working Group. The Working Group provides a forum for Australian Government agencies and Commonwealth, state and territory government work health and safety regulators to work together to respond to incidents where imported goods that may contain asbestos have been identified in workplaces or the community.
- The Agency has significant expertise on asbestos safety issues that will assist the IDC with its work. The IDC will collaborate with the Agency during the course of its operation.

**State and Territory responsibility**

- Responsibility for the management and removal of asbestos containing materials in homes and in the community rests with state and territory governments.