

Master Builders Australia

Supplementary Submission to the Senate  
Standing Committee on Economics  
Non-Conforming Building Products

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## CONTENTS

1	Introduction .....	4
2	Background.....	4
3	PART 1 .....	5
4	ASBESTOS .....	5
5	General Observations .....	6
6	Border Enforcement Processes .....	6
7	Importer Responsibility.....	8
8	Asbestos Management, Removal and Control .....	10
9	Asbestos Eradication .....	13
10	Disposal of Asbestos.....	15
11	National Asbestos Exposure Register .....	17
12	Establishment of Commonwealth Contaminated Sites Register .....	18
13	Domestic Premises .....	19
14	Non-residential Premises .....	21
15	PART 2.....	22
16	Central Issues: Non-Conforming Building Products .....	22
17	Concerns about Non-Conforming Building Products.....	22
18	Better enforcement, clarity and information .....	24
19	Greater emphasis on importers, suppliers and manufacturers.....	26
20	Better tools to ensure the right product is used.....	27
21	Consistency of information and certification tools .....	27

## RECOMMENDATIONS

<b>Recommendation 1 (see page 8)</b>	Future Government investment in screening technology should be targeted towards hardware and equipment that allows for the detection of multiple elements. In this way, cargo can be screened for a wider range of illicit materials including ACMs.
<b>Recommendation 2 (see page 9)</b>	The Commonwealth should consider increasing the penalty for importation of ACMs to ensure it provides appropriate deterrent value.
<b>Recommendation 3 (see page 9)</b>	The Commonwealth should consider making the importer of ACMs responsible for the entire cost of removal, replacement, remediation and disposal of ACMs where they have been imported after 2004.
<b>Recommendation 4 (see page 10)</b>	Building industry participants should not be liable for any cost or negative consequence arising from the existence of an ACM in circumstances where the relevant product was obtained in good faith and reasonable steps to determine suitability can be demonstrated, for any product imported after 2004.
<b>Recommendation 5 (see page 15)</b>	The Commonwealth consider ways to better inform the community about asbestos that is in-situ including education about the relatively small risk associated with ACMs in a stable latent environment.
<b>Recommendation 6 (see page 16)</b>	Master Builders recommends that State and Territory Governments invest resources in improving information about where ACMs may be disposed of legally, with a view to providing greater levels of access.
<b>Recommendation 7 (see page 17)</b>	<p>a) Master Builders recommends that the States and Territories adopt a nationally consistent asbestos disposal fee of nil to discourage the illegal dumping of ACMs.</p> <p>b) Master Builders recommends that the States and Territories increase penalties for those found guilty of illegal dumping and adopt a consistent penalty regime.</p>
<b>Recommendation 8 (see page 18)</b>	<p>a) Master Builders recommends that it becomes a requirement for employers to be given notification, in writing, as soon as one of their past or present employees submits a registration to the National Asbestos Register.</p> <p>b) Master Builders recommends that employers should be informed of their right to contest any registrations.</p> <p>c) Master Builders recommends that the name of the register be changed to the Asbestos Exposure (Self-Reporting) Register, to reflect the no-evidence requirement for entries.</p>
<b>Recommendation 9 (see page 19)</b>	a) Master Builders considers that the creation of a Commonwealth register of contaminated sites should be established as a matter of urgency.

	b) Upon its establishment, Master Builders recommends that such a register be easily accessible to any entity that has been engaged by the Commonwealth to undertake building and construction work.
<b>Recommendation 10 (see page 20)</b>	Master Builders recommends that the statutory requirements for training for the identification and working with asbestos should be replicated for owner builders.
<b>Recommendation 11 (see page 20)</b>	Master Builders recommends a Government funded education programme be introduced to encourage home owners who plan to renovate a pre-1990 home to engage a licensed asbestos removalist to identify and, if required, remove asbestos from the home.
<b>Recommendation 12 (see page 21)</b>	Master Builders recommends that there be a statutory requirement for property owners of non-residential premises to determine whether ACMs may be present in the event that works, other than minor maintenance or minor works, are commissioned at an eligible property and that consideration be given to the removal of ACMs and, at the least, the register be updated.
<b>Recommendation 13 (see page 25)</b>	The Commonwealth should conduct a 'stock-take' of resources provided by, and the priorities in approach of, the States and Territories to ensuring compliance with the NCC.
<b>Recommendation 14 (see page 25)</b>	Agencies charged with monitoring and compliance activities should be provided additional resourcing to allow an extension of their work to include the examination of products to ensure they are not NCPs.
<b>Recommendation 15 (see page 25)</b>	The Commonwealth should take a lead role in driving greater collaboration between the regulators of building, consumer and customs law of all jurisdictions.
<b>Recommendation 16 (see page 25)</b>	One existing agency (not an additional agency) should be responsible for monitoring NCPs.
<b>Recommendation 17 (see page 25)</b>	There should be one central or integrated reporting system that allows building industry participants, government agencies and other persons to report NCPs as they are identified and access related information.
<b>Recommendation 18 (see page 26)</b>	The development of relevant advisory notes and a National Product Assurance Handbook.
<b>Recommendation 19 (see page 26)</b>	The development of guidance material on how to meet the evidence of suitability requirements under the NCC.
<b>Recommendation 20 (see page 26)</b>	The development of an information portal that consolidates existing information about certified products and their appropriate use. A one-stop-shop in the form of a national website would be an important first step.
<b>Recommendation 21 (see page 27)</b>	Placing a requirement for greater information at the point of sale. For example, through labelling or technical information sheets for at least those building products that have an impact on safety or

	the structural integrity of a building. These steps would increase information for builders and building surveyors and increase responsibility on suppliers.
<b>Recommendation 22 (see page 27)</b>	A comparable consistent framework to ensure third party certification is robust, transparent and which facilitates early enforcement. This approach could be particularly well suited for products that affect the safety and/or structural integrity of a building.

## 1 Introduction

- 1.1 This supplementary submission is made on behalf of Master Builders Australia Ltd.
- 1.2 Master Builders Australia (Master Builders) is the nation's peak building and construction industry association which was federated on a national basis in 1890. Master Builders Australia's members are the Master Builder State and Territory Associations. Over 127 years the movement has grown to over 32,000 businesses nationwide, including the top 100 construction companies. Master Builders is the only industry association that represents all three sectors, residential, commercial and engineering construction.
- 1.3 The building and construction industry is an extremely important part of, and contributor to, the Australian economy and community. It is the second largest industry in Australia, accounting for 8.1 per cent of gross domestic product, and around 9 per cent of employment in Australia. The cumulative building and construction task over the next decade will require work done to the value of \$2.6 trillion and for the number of people employed in the industry to rise by 300,000 to 1.3 million.

## 2 Background

- 2.1 Master Builders welcomes the opportunity to provide a submission to the Senate Economics References Committee Inquiry into Non-Conforming Building Products (the Inquiry) in response to the additional terms of reference into the illegal importation of products containing asbestos.
- 2.2 On 11 October 2016, the Senate agreed to the committee's recommendation that the inquiry be re-initiated in this Parliament and confirmed it would take and receive all correspondence and evidence submitted during the previous parliamentary term.
- 2.3 This submission is lodged in two parts. The first part deals with the illegal importation of asbestos and the second supplementary comments on non-confirming products to that provided to Committee when it first initiated an inquiry dated 5 August 2015 (**Attachment A**). This part of the submission should be read in conjunction with the earlier submission.

### 3 PART 1

#### 4 ASBESTOS

4.1 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 determined that it would report on this matter by 28 April 2017. 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:*

- 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.*

4.2 The following section of this submission sets out relevant policy positions held by Master Builders' with respect to building products that contain asbestos and general related commentary on the subject more broadly.



## 5 General Observations

- 5.1 As detailed later herein, Australia has placed a ban on the importation of any product that contains asbestos. Master Builders fully supports the ban. Therefore, since 2004, there should technically be no building products that have been imported into Australia that contain asbestos. However, experience has shown this is not the case and Asbestos Containing Materials (ACMs) do make it past the border.
- 5.2 It is difficult for any accurate observation to be made by industry or their representatives about many of the matters described by the Committee in its terms of reference. It is close to impossible to observe, for example, that provision of information about the impact of illegally imported building products that contain ACMs if it is not known that the product contains ACMs in the first instance.
- 5.3 In those circumstances, many of the matters we set out hereunder relate to Master Builders' recommendations to address ACMs that currently exist or are suspected to exist that were put in situ prior to 2004.
- 5.4 We adopt this approach because, with a few limited exceptions, there should be no need to distinguish between ACMs that have been illegally imported and those that were previously lawfully imported when considering the resultant impact on the community and the approach adopted to their safe removal. That is, ACMs have the same impact and risk level irrespective of how they arrived in Australia.
- 5.5 In terms of other Committee considerations, ACMs should be treated in much the same way as other NCPs. As such, the recommendations herein about NCPs and in our previous submission generally should have equal application to ACMs.

## 6 Border Enforcement Processes

- 6.1 It would be of course preferable were existing processes adopted by regulators to test for ACMs be significantly expanded and involve the screening of a greater proportion of product.
- 6.2 However, Master Builders notes that it is unrealistic and cost prohibitive to expect that 100% of product imported will be appropriately screened by

Government. This is particularly the case given that border protection agencies are responsible for checking a huge volume of air and sea cargo for illicit materials that the government has determined to be of a greater immediate risk to the community, such as narcotics and firearms.

- 6.3 Master Builders notes that in 2008, it was estimated that the then Customs agency had the resources to x-ray only five percent of sea cargo arriving in Australia - and of that five percent, only one-tenth was physically inspected.<sup>1</sup>
- 6.4 Recurrent funding levels for customs agencies were subsequently adjusted downwards causing a commensurate impact on sea cargo inspection numbers reduced to be below 100,000 per annum. Air cargo inspections fell by around 75%.
- 6.5 While appropriations for border agencies have subsequently been restored, and technological advancements have improved making inspections more efficient, it is not the case that all cargo entering Australia is inspected for illicit product such as narcotics and firearms nor is it realistic to expect they will be with limited resources.
- 6.6 Master Builders notes the report of KGH Border Services from March 2016 "Asbestos Importation Review Report" and subsequent related commentary. Much of this commentary centred on the proportion of imported materials inspected for ACMs which was suggested to be "less than 5 percent" according to some sources.<sup>2</sup>
- 6.7 However in context, this proportion is akin to what has at times been the general inspection rate for narcotics and firearms. It is appropriate that the Government and its agencies maintain its focus on products that pose a greater degree of imminent risk to the community, such as narcotics and firearms.
- 6.8 There are two pertinent points to therefore draw from the above observations.
- First, there should be a greater emphasis on those who import building products to ensure they do not contain ACMs.

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<sup>1</sup> Evidence to Joint Parliamentary Committee on the Australia Crime Commission, Commonwealth Parliament, Sydney, 29 September 2008, 15 (Jeffrey Buckpitt, Australian Customs Service) at <http://www.aph.gov.au/hansard/joint/commtee/J11296.pdf>

<sup>2</sup> <http://www.theaustralian.com.au/national-affairs/foreign-affairs/no-time-to-stop-imports-of-asbestos-border-guards/news-story/e3e4cf6843655dfd9e79f6c699ca6475>

- Secondly, wherever possible, future Government investment in screening technology should be targeted towards hardware and equipment that allows for the detection of multiple elements. In this way, cargo can be screened for a wider range of illicit materials including ACMs.

6.9 We expand on the second point immediately hereunder and note that this is one area in which there ought to be a distinction made between ACMs that exist in Australia lawfully and those that have arrived subsequent to the 2004 ban.

<b>Recommendation 1</b>	<b>Future Government investment in screening technology should be targeted towards hardware and equipment that allows for the detection of multiple elements. In this way, cargo can be screened for a wider range of illicit materials including ACMs.</b>
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## 7 Importer Responsibility

- 7.1 As a general proposition, however, Master Builders' takes the view that the onus should be on the entity that is responsible for the importation of a product to ensure that it does not contain ACMs in the first instance<sup>3</sup>. In other words, whoever it is that brings the product into Australia should be responsible for ensuring that products imported are ACM free.
- 7.2 To ensure that importers take appropriate steps to ensure materials are ACM free, the Government should consider increased penalties for importers in breach of the law. 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 dis-incentive 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.
- 7.3 Further, 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

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<sup>3</sup> Subject to obvious caveats such as having relied on information/certification where available and otherwise acted reasonably in taking steps to ensure compliance

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.

- 7.4 It is Master Builders' 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.
- 7.5 This is consistent with the approach adopted elsewhere in our domestic economy. For example, if a new vehicle is sold in Australia and is then found to not meet requisite standards that apply to vehicle emissions, the owner of the vehicle is not held responsible for the cost of repairs/alterations to ensure compliance; it falls instead to either the importer/distributor and/or dealer.
- 7.6 To this end, builders and building surveyors should be treated in much the same way as consumers broadly. They should not hold any liability in circumstances where they have in good faith made an informed decision to obtain and install a product that contains ACMs and was therefore made available to them in illegal circumstances. A consumer is not held liable for the ramifications of (for example) a toy given to a child that is dangerous (contains small objects) or toxic (uses lead paint) except where they have done so against the specific advice where provided by the importer/manufacture.
- 7.7 That said, Master Builders' does acknowledge that building industry participants right through the supply and installation chain can and should play a role in identifying and eradicating ACMs safely (addressed later hereunder and noted below with respect to NCPs).

<b>Recommendation 2</b>	<b>The Commonwealth should consider increasing the penalty for importation of ACMs to ensure it provides appropriate deterrent value.</b>
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<b>Recommendation 3</b>	<b>The Commonwealth should consider making the importer of ACMs responsible for the entire cost of removal, replacement, remediation and disposal of ACMs where they have been imported after 2004.</b>
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<b>Recommendation 4</b>	<b>Building industry participants should not be liable for any cost or negative consequence arising from the existence of an ACM in circumstances where the relevant product was obtained in good faith and reasonable steps to determine suitability can be demonstrated, for any product imported after 2004.</b>
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## 8 Asbestos Management, Removal and Control

- 8.1 Master Builders continues to support best practice for asbestos management, control and removal.
- 8.2 It has long been established that ACMs have the potential to cause cancers such as lung, laryngeal and ovarian cancer, as well as other asbestos related diseases.<sup>4</sup>
- 8.3 ACMs have been found in insulation and flooring materials, wall and roof sheeting, brake linings, paints, rope, gas mask filters, fire proofing, pipes and lagging.<sup>5</sup> Asbestos was widely used in Australia between 1945 and 1980. Asbestos mining then ceased in 1983 and its use was phased out in 1989 after the significant dangers of using the product were discovered.<sup>6</sup>
- 8.4 ACMs are categorised into two groups, friable and non-friable asbestos. Non-friable asbestos products are those mixed with bonding materials such as cement. If undisturbed and in good condition, non-friable ACMs are unlikely to cause harm.
- 8.5 In contrast, friable asbestos is a material that can be reduced to a powder form by hand pressure when dry. As a result, the risk of the inhalation of airborne asbestos fibres and the contraction of asbestos-related diseases is greatly increased.
- 8.6 Prior to its ultimate ban in 2004, Australia was one of the world's largest users of asbestos per capita.<sup>7</sup> As a result, Australia continues to have among the highest rates of mesothelioma in the world.<sup>8</sup>

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<sup>4</sup> Safe Work Australia, *Asbestos-related disease indicators*, May 2014 at page 1

<sup>5</sup> Australian Mesothelioma Registry, *Mesothelioma in Australia 2013*, 3rd Annual Report at page 1

<sup>6</sup> Australian Government, Australian Institute of Health and Welfare - <http://meteor.aihw.gov.au/content/index.phtml/itemId/525752> viewed 8 May 2015.

<sup>7</sup> Safe Work Australia, *Asbestos-related disease indicators*, May 2014 at page 1

<sup>8</sup> Ibid

- 8.7 Studies have demonstrated that asbestos related diseases such as asbestosis and mesothelioma have been linked to both occupational and non-occupational exposure to ACMs.<sup>9</sup>
- 8.8 Mesothelioma is a fatal cancer that affects the tissue surrounding vital organs such as the heart, lungs and abdomen.<sup>10</sup> The disease ordinarily has an incubation time of between 20 and 40 years following exposure. Once symptoms become present, however, the onset of the disease is rapid. Following diagnosis of mesothelioma, patients usually only survive 6 to 18 months.<sup>11</sup>
- 8.9 Data compiled by Safe Work Australia indicates that approximately 600 Australians are diagnosed with mesothelioma annually, with roughly the same number of victims dying from the disease each year.
- 8.10 Asbestosis is a form of lung disease directly caused by the inhalation of asbestos fibres. Unlike mesothelioma, asbestosis symptoms are present sooner, in most cases within 10 years of exposure. Once diagnosed, however, the disease progresses more slowly than mesothelioma. If diagnosed, a patient with asbestosis has a much higher chance of developing other asbestos-related diseases such as mesothelioma and lung cancer.<sup>12</sup>
- 8.11 The number of individuals diagnosed with asbestosis is significantly less than for those with mesothelioma. In 2011, there were 102 accepted asbestosis related compensation claims, with 125 deaths recorded the same year as a result of the disease;<sup>13</sup> see Figure 2.
- 8.12 The vast majority of individuals affected by the two diseases are men.<sup>14</sup>
- 8.13 The occupations that account for the greatest number of mesothelioma cases have changed over the years from work that involved direct contact with airborne asbestos fibres during the mining, milling and manufacture of ACMs, to other end-users of ACMs.

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<sup>9</sup> Ibid

<sup>10</sup> Ibid at page 4

<sup>11</sup> Ibid

<sup>12</sup> Ibid at page 8

<sup>13</sup> Ibid

<sup>14</sup> Ibid

- 8.14 At present, the main source of exposure to asbestos fibres is as a result of buildings being maintained, renovated or demolished.<sup>15</sup> Obviously this factor means that asbestos management and control is of increasing importance to the building and construction industry.
- 8.15 Exposure to ACMs does not automatically guarantee the development of asbestos related diseases and there is still much unknown about why certain individuals are more likely to be susceptible; however the dangers of asbestos remain of major concern to the building and construction industry. Despite this, a study commissioned by the Asbestos Safety and Eradication Agency (ASEA) has found that there is still a need to improve the amount of information provided about ACMs and their potential dangers to all sections of the community.<sup>16</sup>
- 8.16 Master Builders is committed to reducing the incidence rate of exposure to asbestos and fatalities in the building and construction industry and continues to support the *How to Manage and Control Asbestos in the Workplace Code of Practice* and the *How to Safely Remove Asbestos Code of Practice (Code of Practice)*.<sup>17</sup>
- 8.17 In addition, some of Master Builders' strategic policies in preventing occupational disease more effectively include:
- advocating for consistent disposal fees and regularisation of costs per tonne, levied by way of a fee for disposal, with zero fees being the preferred model;
  - seeking higher penalties for illegal dumping of asbestos waste;
  - advocating for the remediation of the national asbestos exposure register; and
  - encouraging all Australian governments to embark on a more rigorous education and awareness campaign highlighting the dangers of both occupational and non-occupational exposure to ACMs.

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<sup>15</sup> Safe Work Australia, *Asbestos-related disease indicators*, May 2014 at page 1

<sup>16</sup> Colmar Brunton, *Asbestos Safety and Eradication Agency- Asbestos Awareness Research*, 28 October 2014 at pg 8

<sup>17</sup> Safe Work Australia, *How to Manage and Control Asbestos in the Workplace Code of Practice*, December 2011 and *How to Safely Remove Asbestos Code of Practice*, December 2011.

8.18 All of these policies are discussed below.

## 9 Asbestos Eradication

9.1 ASEA has a revised National Strategic Plan for Asbestos Management and Awareness (The Plan).<sup>18</sup>

9.2 In preparing the Plan, ASEA undertook consultation with State and Territory governments and relevant stakeholders, including Master Builders. The Plan focusses on implementing a new approach to asbestos management and awareness to support a common strategy across the country in preventing asbestos related disease.

9.3 In addition to key strategies that include awareness, best practice, identification, research and international leadership, the Plan includes a strategy in relation to the removal of ACMs.

9.4 The previous National Strategic Plan for Asbestos Awareness and Management included the proposed wholesale removal of asbestos regardless of its condition. Master Builders did not, and continues to not, support the wholesale removal of asbestos no matter its condition.<sup>19</sup> Instead, Master Builders argues that such an approach would result in unnecessary risks to workers and would not pass a relevant cost-benefit analysis.

9.5 Master Builders maintains the view that the risks posed by asbestos depend on the nature and condition of the materials and the potential for exposure. Left undisturbed, non-friable bonded asbestos material in good condition does not pose a risk to health. As the Code of Practice makes clear: '*although the ultimate goal of this prohibition is for all workplaces to be free of asbestos, it is only when these materials are being replaced or where they present a health risk that non-asbestos alternatives must be used*'.<sup>20</sup> Given the large number of buildings that contain ACMs, a national program of removal would also create a significant disposal issue as there are limited designated asbestos disposal sites. This creates a risk of illegal dumping, particularly when coupled with high fees and charges for disposal, as discussed further in this policy.

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<sup>18</sup> Australian Government, Asbestos Safety and Eradication Agency, National Strategic Plan for Asbestos Awareness and Management - <https://asbestossafety.gov.au/national-strategic-plan> - viewed 23 June 2015

<sup>19</sup> Master Builders Australia, *National Asbestos Management Control and Removal Policy 2013*, at page 2

<sup>20</sup> Safe Work Australia, *How to Manage and Control Asbestos in the Workplace Code of Practice*, p 7.



- 9.6 Master Builders supports amendments to the Plan that consider the practicality of removing ACMs and those that apply an evidence based approach to removing asbestos from the built environment.
- 9.7 ASEA's revised removal strategy which identifies priority areas where ACMs may be present, rather than pursuing the previous mandate of their blanket removal, is a more sound approach. The Plan now seeks to identify environments where ACMs may be at risk of deterioration or are in poor condition, to be included as part of an action plan for safe removal in accordance with the Code of Practice.<sup>21</sup>
- 9.8 The ACT requires all non-friable asbestos to be removed by a licensed 'Class A' asbestos removalist. A person holding a Class A licence can remove any amount of friable, non-friable ACMs and both forms of asbestos contaminated dust or debris (ACD).<sup>22</sup>
- 9.9 The changes in the ACT mean that a person conducting a business or undertaking (PCBU),<sup>23</sup> must engage an accredited removalist when contracting to undertake demolition or refurbishment of a structure containing asbestos.
- 9.10 Model Work Health and Safety Regulations set-out a framework for the management of ACMs in the workplace. For example, workers in the ACT at risk of encountering asbestos are now required to undertake training in the safe handling of asbestos.<sup>24</sup> The requirement that all non-friable asbestos now be removed by a Class B removalist,<sup>25</sup> creates unnecessary costs and practical obstacles to licensed builders who are trained to deal with asbestos as part of their business and who, of necessity, must be trained to recognise its potential presence.
- 9.11 Under the Model Work Health Safety Regulations, asbestos removal licences are recognised across each jurisdiction.<sup>26</sup> In the ACT, however, a licensee that has been accredited in another State or Territory must also first notify Work Safe ACT prior to undertaking any asbestos removal work.<sup>27</sup> The notification requirement in the ACT contradicts the purpose of the mutual recognition

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<sup>21</sup> Safe Work Australia, *How to Safely Remove Asbestos; Code of Practice*, December 2011

<sup>22</sup> Regulation 485 of the *Model Health and Safety Regulations*.

<sup>23</sup> Section 5 of the *Model Work Health and Safety Act* defines a person conducting a business or undertaking, as either an employer, corporation, association, partnership, sole trader or volunteer organisation, who conduct/s business, alone or with others, not necessarily for profit or gain.

<sup>24</sup> Section 445 of the *Work Health and Safety Regulation 2011 (ACT)*

<sup>25</sup> Section 487 of the *Work Health and Safety Regulation 2011 (ACT)*

<sup>26</sup> Regulation 488 of the *Model Work Health and Safety Regulations*

<sup>27</sup> See section 488(1A) of the *Work Health and Safety Regulation 2011 (ACT)*

scheme in relation to the licencing of asbestos removalists and should be amended to reflect the model laws.

- 9.12 Many structures will continue to exist with ACMs incorporated, ACMs which pose no threat unless disturbed. It would be better if awareness of the consequences of disturbing ACMs were more widely known and became an integral part of each builder's practices when undertaking work rather than denying them that opportunity under the guise of WHS.
- 9.13 The issues of licensing aside, the removal of ACMs during renovations or when the material has deteriorated will see the amount of asbestos in the community reduce over time. This corresponds with the aspirational goal of the removal of asbestos from the built environment over a reasonable period of time proposed by the Master Builders Board.

<p><b>Recommendation 5</b>     <b>The Commonwealth consider ways to better inform the community about asbestos that is in-situ including education about the relatively small risk associated with ACMs in a stable latent environment.</b></p>
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## 10 Disposal of Asbestos

- 10.1 All State and Territory legislation requires both friable and non-friable asbestos to be disposed of at a site authorised to accept asbestos waste.<sup>28</sup> However, not all waste disposal facilities are permitted to accept ACMs. Under the relevant legislation, operators of waste facilities are required to obtain a license from the environment protection authority in their jurisdiction to allow them to accept ACMs at their site.<sup>29</sup>
- 10.2 The assessment and removal of asbestos is costly and, in some instances, requires notice or pre-booking before acceptance adding to administrative cost.
- 10.3 The availability of asbestos disposal sites varies between jurisdictions. For example, in Victoria there are 30 asbestos waste disposal sites, which are located in both metropolitan and regional areas. In New South Wales there are many landfill facilities in metropolitan and regional areas that accept asbestos

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<sup>28</sup> Regulation 472(1)(b) *Model Work Health and Safety Regulations*

<sup>29</sup> See for example, section 48 of the *Protection of the Environment Operations Act 1997* (NSW). Application forms for a license to accept asbestos waste are available on the NSW Environment Protection Authority's website - <http://www.epa.nsw.gov.au/licensing/licenceforms.htm>

waste - both from householders and commercial operators. However, in the Northern Territory there are only three waste disposal sites that are licensed to accept asbestos waste.

- 10.4 The costs to dispose of asbestos also vary considerably depending upon where the disposal facility is located. In Queensland, for example, some council waste disposal sites do not charge for the disposal of ACMs in order to discourage illegal asbestos dumping. This approach is supported and encouraged by Master Builders.
- 10.5 It is also difficult to obtain information about which sites accept asbestos waste and those which do not. For example, ASEA's online database has limited information on where asbestos is able to be deposited and the links provided to each State and Territory authority do not easily disclose the relevant information.<sup>30</sup> This is an area where improvement in information is required.
- 10.6 The cost of disposing of asbestos is one factor leading to inappropriate practices which places workers in the construction industry and the public at risk. Consideration should be given to making disposal of ACMs free of charge.
- 10.7 Some local councils have trialled free asbestos waste collection programmes for small quantities of non-friable ACMs.<sup>31</sup> Although Master Builders supports the notion of local governments subsidising the disposal of ACMs, we do not endorse initiatives that encourage untrained residents to handle or dispose of any form of ACMs.
- 10.8 In each State and Territory, those who handle, disturb, remove and/or dispose of materials containing asbestos must take all reasonable steps to minimise any associated risks.<sup>32</sup> The penalties, however, for the illegal disposal of asbestos are inconsistent across the jurisdictions and range from \$6,500 to \$5 million and up to 7 years imprisonment for an individual.

<b>Recommendation 6</b>	<b>Master Builders recommends that State and Territory Governments invest resources in improving information about where ACMs may be disposed of legally, with a view to providing greater levels of access.</b>
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<sup>30</sup> <https://asbestossafety.gov.au/search-disposal-facilities>, viewed 8 May 2015

<sup>31</sup> See for example - Local Government NSW, Asbestos Collection and Education Program – Holroyd City Council <http://www.lgsa.org.au/files/imce-uploads/127/asbestos-education-program-holroyd.pdf> viewed 23 June 2015

<sup>32</sup> Regulation 420 *Model Work Health and Safety Regulations*

<b>Recommendation 7</b>	<p><b>a) Master Builders recommends that the States and Territories adopt a nationally consistent asbestos disposal fee of nil to discourage the illegal dumping of ACMs.</b></p> <p><b>b) Master Builders recommends that the States and Territories increase penalties for those found guilty of illegal dumping and adopt a consistent penalty regime.</b></p>
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## 11 National Asbestos Exposure Register

- 11.1 Master Builders notes the establishment of the national asbestos exposure register but does not support the register in its current form.<sup>33</sup> Currently, any worker who believes they have been exposed to asbestos is able to register their name, details of their employment, and how they believe they were exposed to asbestos by completing a form without any consultation with their employer. This raises the possibility of employers being faced with claims in the future without any knowledge of the potential exposure or the ability to contest the registration.
- 11.2 Master Builders advocates for the requirement that employers be notified of registrations onto the register to enable the employer to manage the alleged asbestos exposure. For employers to meet their work health and safety duties, employees should report any hazards or incidents to their employer promptly. Master Builders recommends that it becomes a requirement for employers to be provided with a notification of the national asbestos exposure registration as soon as one of their past or present employees submits it. Registration should be contestable where a disagreement about alleged exposure occurs.
- 11.3 The Committee should consider what, if any, utility the register serves. Enquiries of the agency have revealed that the register does not provide an authoritative record of potential exposure to ACMs. Master Builders has been advised that it is simply a database for the purposes of future longitudinal studies on purported exposure to ACMs. ASEA has advised that when an entry is made on the register the individual is also asked to report the potential exposure to the relevant regulatory body in their State or Territory. However, this is not a mandated procedure and its voluntary status is unsatisfactory.

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<sup>33</sup> Australian Government, Asbestos Safety and Eradication Agency, *National Asbestos Exposure Register*, <https://submissions.employment.gov.au/empforms/NAER/pages/form>, viewed 20 January 2017

- 11.4 Master Builders recommends that the name of the register be changed to the Asbestos Exposure (Self-Reporting) Register, due there to being a no-evidence requirement when entries are made.

<b>Recommendation 8</b>	<p>a) Master Builders recommends that it becomes a requirement for employers to be given notification, in writing, as soon as one of their past or present employees submits a registration to the National Asbestos Register.</p> <p>b) Master Builders recommends that employers should be informed of their right to contest any registrations.</p> <p>c) Master Builders recommends that the name of the register be changed to the Asbestos Exposure (Self-Reporting) Register, to reflect the no-evidence requirement for entries.</p>
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## 12 Establishment of Commonwealth Contaminated Sites Register

- 12.1 The National Commission of Audit made a range of recommendations to Government in relation to potential future opportunities for improved Commonwealth asset management.<sup>34</sup> One of the recommendations included a centralised public register of Commonwealth land, as well as the development of a costing for the remediation of all Commonwealth property.
- 12.2 The Commission found that the Commonwealth's pool of assets is vast and diverse; however there was no complete whole-of-government register of Commonwealth owned property.<sup>35</sup>
- 12.3 The Commission also found that management of the Commonwealth estate presented numerous challenges that included issues such as contamination and underinvestment in repairs and maintenance.<sup>36</sup>
- 12.4 Master Builders considers that the creation of a centralised register of contaminated Commonwealth land should be a priority and urges that the Commonwealth Government implement the initiative in line with the Commission's recommendations. Master Builders also seeks that such a register be freely accessible to any company that has been engaged by the Commonwealth. This step will save builders' costs and, potentially, their lives.

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<sup>34</sup> Australian Government, *National Commission of Audit, chapter 10.2, Management of the Commonwealth property portfolio*, 31 March 2014.

<sup>35</sup> Ibid

<sup>36</sup> Ibid

- 12.5 It should be noted that a number of States and Territories maintain various on-line contaminated sites registers that identify where and when asbestos has been identified in government owned departmental facilities.<sup>37</sup> Given the magnitude of the Commonwealth's asset portfolio, a centralised and easily accessible register is essential to ensure not only that works are undertaken safely and in accordance with the law, but to allow contractors to accurately tender for construction work under a Commonwealth contract.

<b>Recommendation 9</b>	<p>a) Master Builders considers that the creation of a Commonwealth register of contaminated sites should be established as a matter of urgency.</p> <p>b) Upon its establishment, Master Builders recommends that such a register be easily accessible to any entity that has been engaged by the Commonwealth to undertake building and construction work.</p>
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### 13 Domestic Premises

- 13.1 Home renovation continues to be the largest non-occupational cause of malignant mesothelioma.<sup>38</sup> Although the main source of exposure to asbestos fibres are demolition workers undertaking renovation and demolition of old buildings, home owners renovating their own homes are now also at increasing risk from ACMs.<sup>39</sup> A survey commissioned by ASEA revealed that DIY home renovators often choose to undertake their own demolition work, with 58% preferring to undertake all of the work themselves, rather than engaging a trained professional.<sup>40</sup>
- 13.2 ASEA's report also found that DIY work was often undertaken in a dangerous manner, in that about half of the work that was the subject of the study did not involve any risk assessment of ACMs being present.<sup>41</sup> These findings amplify the need for more awareness to be generated about the dangers of working with asbestos.
- 13.3 While Master Builders supports efforts to educate home owners about the risks of disturbing asbestos, Master Builders believes that the education should

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<sup>37</sup> See for example Queensland Government, Education Department Asbestos Registers - <http://education.qld.gov.au/asbestos/register.html> – viewed 23 June 2015 and NSW Government Education and Communities, Schools asbestos register - <http://www.dec.nsw.gov.au/about-us/supplying-to-us/asbestos-register> - viewed 23 June 2015

<sup>38</sup> Safe Work Australia, *Asbestos-related disease indicators*, May 2014 at page 2

<sup>39</sup> Ibid

<sup>40</sup> Asbestos Safety and Eradication Agency, *Asbestos Awareness Research*, 28 October 2014 at page 11

<sup>41</sup> Ibid

encourage home owners to engage appropriate experts to identify and, if required, remove asbestos. When small quantities are found, licensed builders should be able to assist, rather than just Class A licensed removalists.

- 13.4 Master Builders also believes that owner-builders should be required to undertake asbestos awareness training because of the growing incidence of non-occupational exposure to asbestos in this sector of the housing industry. Employers are required to provide awareness and handling training for workers under regulation 445 of the model WHS Regulations and this should be replicated for owner builders.
- 13.5 Where a home owner wishes to undertake renovations, and the home owner suspects that the building may contain asbestos, they should seek expert advice before commencing renovations. Any work involving the removal of asbestos, including under an owner builder permit, should only be permitted to be carried out by a person licensed to remove asbestos or, where the quantities are small, by a licensed builder.
- 13.6 Like the inconsistencies that exist in relation to the disposal of ACMs, there are also discrepancies across the jurisdictions, in relation to the requirements of owner-builders in dealing with asbestos. Tasmania, Queensland, NSW and the ACT require owner-builders to undertake a training course and obtain certification.<sup>42</sup> The courses include some content relating to hazardous materials; however owner-builder certification in those jurisdictions does not require applicants to complete a specific asbestos awareness course.

**Recommendation 10** Master Builders recommends that the statutory requirements for training for the identification and working with asbestos should be replicated for owner builders.

**Recommendation 11** Master Builders recommends a Government funded education programme be introduced to encourage home owners who plan to renovate a pre-1990 home to engage a licensed asbestos removalist to identify and, if required, remove asbestos from the home.

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<sup>42</sup> See section 30B(1)(g) *Building Act 2000* (TAS), section 44B(1)(b) *Queensland Building and Construction Commission Act 1991* (QLD), section 31(2)(d) *Home Building Act 1989* (NSW), section 13(1) *Construction Occupations (Licensing) Regulation 2004* (ACT).

## 14 Non-residential Premises

- 14.1 Master Builders is concerned that there is currently no obligation for building owners to be aware of, or disclose the presence of, asbestos unless the building is occupied as part of the conduct of a business or undertaking.
- 14.2 Under regulation 425 of the model WHS Regulations,<sup>43</sup> a person with the management or control of a workplace must maintain an asbestos register identifying the type, condition and location of the asbestos and the date of construction of properties that were constructed before 31 December 2003 (Eligible Premises). Regulation 425, however, does not apply to residential property, a position with which we agree.
- 14.3 If the works are not classified as minor routine maintenance work or other minor work,<sup>44</sup> there should be a statutory obligation placed on non-residential property owners to actively determine whether there is a possibility that ACMs may be present at any Eligible Premises and whether they should be removed as part of the relevant work. At the least, the register must be updated at that time. In other words, where renovation or alteration of a building is to occur, this should be a trigger for the register to be updated before work commences.

<b>Recommendation 12</b>	<b>Master Builders recommends that there be a statutory requirement for property owners of non-residential premises to determine whether ACMs may be present in the event that works, other than minor maintenance or minor works, are commissioned at an eligible property and that consideration be given to the removal of ACMs and, at the least, the register be updated.</b>
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<sup>43</sup> Regulation 425 *Model Work Health and Safety Regulations*

<sup>44</sup> In accordance with Safe Work Australia's, *How to Manage and Control Asbestos in the Workplace Code of Practice*, December 2011 and *How to Safely Remove Asbestos Code of Practice*, December 2011, minor maintenance work includes; 'routine work that is small scale, often short in duration and may be unscheduled. This work may require the partial dismantling of a structure or plant and may include the removal of asbestos or ACM such as gaskets or brake components, for example a piece of plant to remove an asbestos-containing gasket, a passenger lift or press machine to remove an asbestos-containing brake component, or a piece of plant for the purpose of cleaning or repair.'



## 15 PART 2

### 16 Central Issues: Non-Conforming Building Products

16.1 Master Builders Australia has identified five issues that are central to the use and existence of non-conforming building products (NCPs). These are:

- NCPs are a major concern to the building and construction industry;
- Addressing NCPs does not require more regulation. Instead, existing regulation requires better enforcement, improved industry awareness, greater clarity and more regulator enforcement;
- The 'front-end' of the chain (manufacturers & suppliers) must adopt more responsibility for ensuring NCPs do not enter Australia and, where they have, the front-end must bear the onus of removing them from sale;
- Building contractors need better tools to ensure they use the right product in the right place to ensure they are fit for purpose - addressing both non-conformance and non-compliance; and
- Governments must ensure they actively work with industry in coordinating and overseeing the existing array of information/certification tools in a transparent manner to enhance compliance and enforcement levels. This would also allow building contractors to access the necessary verification of complying products that can be used with ease and confidence.

16.2 Each of these issues is addressed herein. We further identify specific solutions that should be considered as complementary elements of a broad package of solutions to resolving the use of NCPs.

### 17 Concerns about Non-Conforming Building Products

17.1 Master Builders defines NCPs as building products that:

- do not meet Australian regulatory or technical standards;
- are not of acceptable quality, or fit for purpose;
- are supplied with fraudulent, false or misleading claims; or

- are counterfeit.
- 17.2 To be a conforming product, a building product needs to be fit for the purpose of its intended use consistent with the relevant provisions of the National Construction Code (NCC) and in accordance with relevant Australian Standard (Standards). The NCC details what is required to demonstrate a building product is suitable.
- 17.3 Those who hold responsibility to obtain building approval are required to verify that the building products they intend to use will meet the relevant standards. In most cases this will be the builder or head contractor. In doing so (in much the same way as all consumers) it is expected that products available to the market are fit for purpose in accordance with the NCC.
- 17.4 However, there are a number of problems with this approach.
- First, suppliers of building products have no responsibility under the NCC to ensure this is the case and therefore it cannot be assumed that the availability of a product for sale meets NCC requirements.
  - Second, there is little or no information at the point of sale to assist informing builders as to whether or not a product is a conforming product for the purpose to which it is intended to be used.
  - Third, if a builder oversees the installation of an NCP then they become responsible to replace or remove it. Such responsibility exists even in circumstances where there was evidence that the produce was fit for purpose or available for sale at a domestic level to both builders and consumers generally.
- 17.5 The practical effect of the problems identified above is that the builder holds a level of responsibility that is not commensurate to the associated level of risk. That is, they are responsible even if they have taken all practical and reasonable steps to ensure a product is properly used and is not an NCP.
- 17.6 This creates a liability on the builder that is unfairly onerous and disproportionate to the level of responsibility that exists for others in the supply chain. This is particularly the case given a building may use tens of thousands of different building products.

- 17.7 Such a disparity does not exist elsewhere in the domestic economy. For example, it is not the responsibility of a consumer to ensure that a vehicle they purchase from a dealership meets Australian design rules and Standards, and/or meets roadworthy rules required for registration purposes. This responsibility is held by the importer or manufacturer of the vehicle and/or the distributor.
- 17.8 By addressing the lack of accountability and obligations that are required of other parties in the supply chain, a gap of responsibility will be addressed.
- 17.9 It is therefore Master Builders' view that the current emphasis on builders and building surveyors in dealing with NCPs is unfair, impracticable, and focussed on the wrong part of the supply chain.
- 17.10 Instead, regulators and law-makers should adopt a broader view to ensure that responsibility and liability is shared more equally. This will reduce NCP prevalence and ensure products are specified correctly as fit for purpose. As such, Master Builders strongly recommends a hierarchy of risk approach in assessing the gaps in the system and the prioritisation of resolving those gaps.

## 18 Better enforcement, clarity and information

- 18.1 The current regulatory and compliance framework for building and construction products is robust and comprehensive. New regulation is not necessary. Rather, the preferred approach of this Inquiry should be to identify ways to make the existing system far more effective by greater enforcement, clarity and information throughout the supply chain.

### **Enforcement**

- 18.2 Concerns with the existing system include:
- With the exception of the potential for asbestos in building products, border protection and customs agencies do not currently assess imported building products for building conformance.
  - The enforcement of the NCC relies on the states and territories with different resourcing levels and priorities.
  - There is insufficient attention by regulators for compliance at the design stage, manufacturing or point of sale.

**Recommendation 13**    **The Commonwealth should conduct a 'stock-take' of resources provided by, and the priorities in approach of, the States and Territories to ensuring compliance with the NCC.**

**Recommendation 14**    **Agencies charged with monitoring and compliance activities should be provided additional resourcing to allow an extension of their work to include the examination of products to ensure they are not NCPs.**

### **Clarity**

18.3    At present, building industry participants suffer from a lack of information and clarity as to how the existing system is administered and the associated role of regulators. For example:

- There is no obligation on any one central or distinct agency to ensure that imported building products meet Australia requirements.
- Industry participants are frequently unsure as to who and/or how to report a problem with NCPs.

**Recommendation 15**    **The Commonwealth should take a lead role in driving greater collaboration between the regulators of building, consumer and customs law of all jurisdictions.**

**Recommendation 16**    **One existing agency (not an additional agency) should be responsible for monitoring NCPs.**

**Recommendation 17**    **There should be one central or integrated reporting system that allows building industry participants, government agencies and other persons to report NCPs as they are identified and access related information.**

- Improve collaboration between building, consumer law and customs regulators
- Adopt an integrated system of reporting to identify NCP

## Product Information

18.4 Information throughout the supply chain to ensure that a building product *is* a conforming product has a number of issues. The main two are that either the information does not exist and/or is not readily available, or, where it is available, it is inconsistent.

18.5 Information gaps include:

- There appears to be no information available to, or education of, those who import building products insofar as their obligations and the operation of the compliance and enforcement system in Australia.
- There is limited guidance available to local manufacturers as to when they are required to comply with the NCC and what evidence should be supplied to the market
- There is a common lack of guidance information on how to use a building product in practice and no information about what is the best evidence or way to educate a consumer as to how a product should be used. Were this information made mandatory and done so in a way that is produced consistently, industry participants would be better placed to address NCPs.

**Recommendation 18**     **The development of relevant advisory notes and a National Product Assurance Handbook.**

**Recommendation 19**     **The development of guidance material on how to meet the evidence of suitability requirements under the NCC.**

**Recommendation 20**     **The development of an information portal that consolidates existing information about certified products and their appropriate use. A one-stop-shop in the form of a national website would be an important first step.**

## 19 Greater emphasis on importers, suppliers and manufacturers

19.1 Remedy following use of NCPs at the end of the building process is too late.

- 19.2 Master Builders believes that more focus required on manufacturers, importers and suppliers to ensure NCPs are not put on sale or made available in the first place.
- 19.3 There is currently no requirement for a supplier to ensure that a product conforms to the NCC or to provide information to a purchaser (other than those products captured by the WELS Scheme or the EESS).

<b>Recommendation 21</b>	<b>Placing a requirement for greater information at the point of sale. For example, through labelling or technical information sheets for at least those building products that have an impact on safety or the structural integrity of a building. These steps would increase information for builders and building surveyors and increase responsibility on suppliers.</b>
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## 20 Better tools to ensure the right product is used

- 20.1 All stakeholders (industry and government) must work individually and collaboratively to improve education and awareness all of those along the supply chain. Master Builders is committed to ongoing education of its members and working with other industry partners and government to improve knowledge in the industry.

## 21 Consistency of information and certification tools

- 21.1 Evidence of suitability is a critical component of being able to clearly identify a building product is fit for purpose or is a complying product under the NCC.
- 21.2 Currently, there is no single system which identifies products as being safe and fit for purpose. Many manufacturers and product industry associations have established an array of third party product certification schemes of varying quality and scope to assist in meeting the evidence of suitability requirements under the NCC but this has created a patchwork system that is unwieldy and inconsistent.

<b>Recommendation 22</b>	<b>A comparable consistent framework to ensure third party certification is robust, transparent and which facilitates early enforcement. This approach could be particularly well suited for products that affect the safety and/or structural integrity of a building.</b>
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21.3 Key elements of any such scheme should at least:

- define minimum standards performance benchmarks for product conformity and testing;
- have broad product coverage;
- be simple and easy to navigate; and
- include auditing and surveillance functions.

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