



Australian Government

Australian Government response to the
Senate Economics References Committee Report:

Australia's steel industry: forging ahead

February 2019

Australian Government Response

The Australian Government (the Government) recognises the important role the steel industry plays in supporting the Australian economy and the challenges it is experiencing, including pressure from low prices impacted by global excess capacity.

In 2017-18, Australia produced 5.7 million tonnes of crude steel.¹ However, Australia is a small producer on the global scale, contributing only 0.4 per cent to total global steel production.²

Despite moderate cyclical growth in global steel demand in 2016 and 2017, the Australian steel industry is still experiencing sustained pressure from low international steel prices, impacted by global excess capacity. The overall trend in world steel demand is expected to remain weak in the coming years, with long-term global demand estimated to be around 1 per cent annually.³

Recognising the challenges facing the Australian steel industry due to excess capacity, the Government is participating in the Global Forum on Steel Excess Capacity (the Forum), established by G20 Leaders in September 2016 to address excess capacity issues in the global steel market.

In terms of other international developments, in response to an investigation under Section 232 of the United States (US) *Trade Expansion Act* of 1962, on 23 March 2018 the US imposed tariffs of 25 per cent on certain steel products and 10 per cent on certain aluminium products. Presidential Proclamations of 22 March 2018, 30 April 2018 and 31 May 2018 provided Australia with an exemption from the tariffs.

The Government is also committed to ensuring that Australia's anti-dumping regime remains effective and delivers a level playing field for Australian manufacturers and producers, while supporting business growth, employment and competitiveness. Recent operational changes have been made to guarantee the system's on-going effectiveness, including a new investigations model and an active, risk-based approach to circumvention.

As of 31 December 2018, there are 49 anti-dumping measures in place on 16 steel products from 18 countries, comprising 59 per cent of all anti-dumping measures. Of these 49 measures, 20 apply to products produced by Liberty Steel (formerly the Arrium Group) and 11 apply to products produced by BlueScope. As of 31 December 2018, steel products are the subject of 60 per cent of current anti-dumping investigations.

The Government has also taken action to ensure that the Australian steel industry, and the manufacturing sector more broadly, can adapt to the challenging global trading environment. These actions include:

- facilitating industry growth and innovation through the implementation of the National Innovation and Science Agenda (NISA). The NISA recognises that innovation is a driving force for productivity growth and job creation and it assists both existing and new business to create and seize the opportunities made possible by technological and scientific advances;
- the introduction of the *Code for the Tendering and Performance of Building Work 2016 (Cth)*, which sets out requirements for building industry participants that seek to be, or are, involved in Commonwealth funded building work, including the need to provide information on the extent to which domestically sourced and manufactured materials will be used to undertake the building work;

¹ Resource and Energy Quarterly, Department of Industry, Innovation and Science (2018)

² World Steel Association, [Steel Statistical Yearbook](#), 2017

³ Federal Ministry for Economic Affairs and Energy (Germany), [Global Forum on Steel Excess Capacity Report](#), 30 November 2017

- the update of the Commonwealth Procurement Rules to support the Government’s commitment to ensure equitable access to government contracts for Australian businesses, in particular small business, including consideration of the economic benefits of a procurement to the Australian economy for procurements valued above \$4 million; and
- working with the states and territories, via the Council of Australian Governments (COAG) Energy Council, to improve energy security and reduce energy costs.

As set out in the Government’s response to the interim report into the future of Australia’s Steel Industry⁴, the Government has already provided significant support to the former Arrium Group, and the wider community while the company was in voluntary administration, including:

- financing the instalment of new beneficiation equipment at the Whyalla operations through a completed loan of \$49.2 million;
- bringing forward a project for the Australian Rail Track Corporation (ARTC) to upgrade 1,200 kilometres of rail between Adelaide and Tarcoola using Whyalla made steel; and
- providing \$20 million in funding for the Upper Spencer Gulf region to diversify the economy, stimulate long term growth and provide sustainable employment.

The Government welcomes the sale of Arrium to GFG Alliance (GFG) and the announcement by GFG of its plans to transform the Whyalla Steelworks, including to improve the energy efficiency of the steelworks. The Government will continue to work constructively with GFG to explore potential options to support its Whyalla Transformation Plan and ensure a sustainable and globally-competitive steel industry in Whyalla.

The Government has also committed to \$75 billion in transport infrastructure funding and financing from 2017-18 to 2026-27 to enable the delivery of transformational projects that will reduce congestion, improve the liveability of our cities, connect regional communities and create new jobs and opportunities, including in the Australian steel industry. For instance, the Liberty Steel Whyalla Steelworks has been awarded the contract to supply Australian steel for the first section of the iconic Melbourne to Brisbane Australian Inland Rail project.⁵ The Government has also committed to use Australian steel in future defence shipbuilding projects, where possible.

The remainder of this document provides the Government’s response to each of the 28 recommendations from the Senate Economics Reference Committee’s report into the steel industry, which was tabled on 1 December 2017.

⁴ Australian Government, [Australian Government Response to the Senate Economics References Committee report: Future of Australia’s Steel Industry – Interim Report](#), February 2017

⁵ Minister for Infrastructure and Transport, Media Release - Aussie steel on track for Inland Rail, 7 December 2017

Recommendation 1

The committee recommends that the Australian Government develop a bipartisan solution to high energy costs that will reduce energy prices and secure supply for steel manufacturers.

The Australian Government **notes** this recommendation.

The Government is implementing recommendations from the Australian Competition and Consumer Commission (ACCC) Retail Electricity Pricing Inquiry. The Government is looking to introduce reforms aimed at boosting competition in generation, lowering supply chain costs, increasing reliability and improving the National Electricity Market's (NEM) operation. Many of these wholesale and network reforms will benefit large energy users like steel manufacturers. These reforms include:

- The Government backing investment in new power generators to improve competition. Underwriting new electricity generation will attract new investment in the wholesale electricity market, increasing supply and reducing wholesale electricity prices.
 - The Government released a consultation paper in October 2018 and a registration of interest process was held over December 2018 to January 2019. The program is planned to commence in the first quarter of 2019 with a formal Request for Proposals.
- The Government progressing further wholesale market reforms recommended by the ACCC through the COAG Energy Council. This includes recommendations to provide the Australian Energy Regulator (AER) with powers to address wholesale market manipulation, expand the AER's market monitoring power to include the contract market, and to consider a limit on the ownership of electricity generation assets of no more than 20 per cent of the generation market. In addition to the ACCC reforms, the Government has directed the ACCC to monitor retail prices, wholesale bids and market competition out to 2025. Under this public inquiry, the ACCC will prepare six-monthly reports to the Treasurer reporting on its findings including any identified unacceptable outcomes and further areas of reform.

As a part of these reforms, the Government has indicated that where the ACCC identifies unacceptable outcomes, a graduated range of enforcement remedies and responses will be available for use as appropriate (proportional and targeted to the conduct of concern). These enforcement measures will include ACCC-issued public warning notices and infringement notices, court-ordered civil penalties, court-enforceable undertakings, and Treasurer imposed contracting orders. The Treasurer imposed orders will be based on the recommendation of the ACCC and prior to such recommendation being made, the relevant corporation will be given an opportunity to explain or rectify the conduct.

The Government is also working with state and territory governments to progress a Retailer Reliability Obligation (RRO). An RRO will ensure sufficient resources will be available to meet demand in the NEM, particularly in regions with limited access to dispatchable generation. If the right investment does not come forward to address forecast supply shortfalls, this would trigger an obligation on electricity retailers to demonstrate they can meet their share of peak demand.

The Government has taken strong action to ensure gas prices go down and gas supply goes up. It has put in place the Australian Domestic Gas Security Mechanism to ensure there is a sufficient supply of natural gas to meet the forecast needs of energy users within Australia. The Treasurer has directed the ACCC to monitor the supply and pricing of gas. The Government is also providing \$2.5 million in the 2018-19 Budget to continue to improve the operation of the gas market. These measures complement the large COAG Energy Council Gas Market Reform Package announced in 2016 and augmented in 2017 that has progressed strongly. Highlights of the reforms being developed with the states and territories on significant energy market reforms via the COAG Energy Council include:

- improvements to the Gas Bulletin board managed by the Australian Energy Market Operator to improve transparency and liquidity in the gas market;
- Information Disclosure and Arbitration Rules under the National Gas Law. There has already been positive feedback that these reforms are putting downward pressure on the cost of shipping gas;
- A capacity trading platform that will form part of the Gas Supply Hub trading exchange and will allow shippers to trade secondary capacity ahead of the nomination cut-off time; and
- A day-ahead auction for contracted but un-nominated capacity.

Recommendation 2

The committee recommends that the Australian Government investigate the possibility of making third-party certification of steel compulsory for structural and fabricated steel used in Australia where relevant standards are available.

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

The Government recognises that there are already a number of voluntary certification processes in place for steel (both structural and fabricated). It would not be appropriate for the Government to mandate third-party certification processes. Rather, it is up to the market to determine the appropriateness of certification for each structural or fabricated product.

Mandatory certification would impose a new and unnecessary regulatory burden on business. The Government is working to reduce the complexity of regulation for Australian businesses by streamlining regulatory and compliance requirements to ensure businesses can focus on growing, creating more jobs and developing new products and market opportunities.

Recommendation 3

The committee recommends that the Australian Government work with the states and territories to improve consistency in standards between different Australian jurisdictions and regulatory bodies, with a view to harmonising current standards requirements.

The Australian Government **notes** this recommendation.

In 2016, the Department of Industry, Innovation and Science published a best practice guide to using standards and risk assessments in policy and regulation available at:

<https://www.industry.gov.au/regulation-and-standards/developing-and-applying-standards>

The guide provides step-by-step instructions on how to use standards and risk assessments in policy including: appropriate policy settings, standards and risk assessment selection, assessment of performance and outcomes, and adoption into policy frameworks.

Building on this work, the COAG Industry and Skills Council (CISC) has considered and accepted options to improve the way jurisdictions collect and share information relating to all standards referenced in legislation. Improvements in data collection and sharing will provide for more consistent approaches to updating legislation when referenced standards are revised. It will also assist with greater harmonisation of legislative requirements between jurisdictions.

Recommendation 4

Subject to forthcoming recommendations from the Senate inquiry into non-conforming building products, the committee recommends that the Australian Government develop a confidential reporting mechanism through which industry and other stakeholders can report non-conforming steel products so that the Commonwealth Federal Safety Commissioner can take proportionate action based on the safety risk posed by the product.

The Australian Government **notes** this recommendation.

Responsibility for ensuring compliance with the National Construction Code (NCC) resides with the state and territory building regulators.

On 30 June 2017, the Building Ministers' Forum (BMF) launched the non-conforming building product webpage on the Australian Building Codes Board (ABCB) website (www.abcb.gov.au). The webpage was developed in consultation with state and territory building jurisdictions and key industry stakeholders, and provides information on:

- the requirements for compliance and conformance;
- individual responsibility;
- how to ensure that a product conforms;
- what to do with suspect non-conformance; and
- how to lodge a query or report a suspected non-conforming building product.

Any query or report lodged through this webpage is confidential and directed to the relevant state or territory building regulator for appropriate remedial action, including referral to the appropriate occupational, health and safety regulator.

The Federal Safety Commissioner (FSC) takes appropriate remedial action with FSC-accredited building companies in response to any advice about potential or actual non-compliance relevant to its functions, including from state and territory regulators. This includes the legislative function related to auditing compliance of building materials with the performance specifications of the NCC.

The Government will consider and respond to the final report of the Senate inquiry into non-conforming building products in due course.

Recommendation 5

Subject to forthcoming recommendations from the Senate inquiry into non-conforming building products, the committee recommends that the Australian Government develop a clearer regulatory framework to deal with non-conforming steel products, with consideration given to stricter penalties for non-conforming products or products found to have fraudulent certifications, and the development of a public database of these products and their origin.

The Australian Government **notes** this recommendation.

It is important to note that the State and Territory governments have responsibility for regulating building and construction activities in their respective jurisdictions, which includes penalising non-compliant with the NCC and the inappropriate use of non-conforming building products.

The Government, through the BMF, is working with the states and territories to stamp out the use of non-conforming building products.

In April 2017, the BMF agreed on a set of example legislative provisions that can be used by jurisdictions and regulators to address non-conforming building products in Australia. These were used in the development of Queensland's *Building Construction (Non-conforming Building Products – Chain of Responsibility and Other Matters) Amendment Act 2017* which sets a model for jurisdictions to consider.

The purpose of the Queensland legislation is to, among other matters:

- confer responsibilities on the building product supply chain to ensure building products, so far as reasonably practicable, conform to mandatory standards;
- expand the obligations of building practitioners (licensee's) to notify the Queensland building regulator of work health and safety issues; and
- widen grounds for the Queensland building regulator to take disciplinary action against licensees.

It is also worth noting, on 24 August 2017, the BMF announced that Professor Peter Shergold AC and Ms Bronwyn Weir would examine the broader compliance and enforcement problems within the building and construction systems that affect the effective implementation of the NCC.

The BMF is committed to strengthening the effective implementation of the NCC and the work undertaken by Professor Shergold and Ms Weir is another important step on that path.

On 27 April 2018, the BMF released Professor Shergold and Ms Weir's final report "*Building Confidence – Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*" (the Building Confidence Report).

The Building Confidence Report provides the BMF with a comprehensive package of reforms intended to strengthen the effective implementation of the NCC.

The BMF is now working to implement a national best practice model for compliance and enforcement consistent with the recommendations of the Building Confidence Report.

The Government will consider and respond to the final report of the Senate inquiry into non-conforming building products in due course.

Recommendation 6

The committee recommends that the Australian Government convene a national steel forum comprised of representatives from industry, government and other stakeholders to investigate the possibility of establishing and funding an industry-managed steel compliance scheme that involves random independent conformity inspections.

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

As outlined in the response to recommendation 2, the Government does not believe that it would be appropriate to mandate third-party certification processes. As such, the Government does not support the convening of a national steel forum on compliance scheme matters.

Recommendation 7

The committee recommends that the Australian Government maximise the use of locally made steel in Commonwealth funded projects.

The Australian Government **notes** this recommendation.

The Commonwealth Procurement Framework does not discriminate against suppliers based on the origin of their goods or services, and the Commonwealth Procurement Rules (CPRs) are not intended to target specific categories of goods or services, nor specific industries.

The Australian Industry Participation (AIP) policy, which is a procurement-connected policy (PCP) has the key objective of ensuring that Australian entities have full, fair and reasonable opportunity to bid for the supply of goods or services for a project. Project proponents are specifically questioned about their steel procurement intentions and reminded of the need to ensure Australian steel supply chain participants – manufacturers, detailers and fabricators – are provided with opportunities to participate. Project proponents are also asked for a rationale for any steel items for which the proponent has identified no opportunities for Australian suppliers.

On 9 March 2016, the Prime Minister committed to bringing forward a project for the ARTC to upgrade rail line between Adelaide and Tarcoola using locally made steel. This upgrade will improve the productivity of the rail network.

The Government has also made public announcements that Australian steel will be used in future defence shipbuilding projects, where possible. The Government has announced that Australian steel will be used as part of the Offshore Patrol Vessel project⁶.

The Commonwealth's ability to impose the requirements of the CPRs on states and territories is largely dependent on the nature of the funds transfer or payment arrangements, and which entity is receiving the funds. Arrangements can include grants, intergovernmental agreements or memoranda of understanding.

State and territory government procurements are governed by their own procurement frameworks. These frameworks, while similar to the Commonwealth, are designed to be used in the relevant jurisdiction.

⁶ Prime Minister, Minister for Defence and Minister for Defence Industry, [Joint Media Release – Hundreds of Australian Jobs created in Offshore Patrol Vessel project](#), 25 November 2017

Recommendation 8

The committee recommends that the Australian Government develop an overarching steel policy that would form the basis for decision-making and initiatives affecting the industry.

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

Australia has amongst the world's most open economic settings, supported by an effective anti-dumping system. Consistent with this, the Government's industry policy supports a business environment that encourages innovation and enables growth for globally competitive industries.

The Government has taken action to ensure that the Australian steel industry, and the manufacturing sector more broadly, can adapt to the challenging global trading environment. Detail of these initiatives are set out in the Introduction.

Recommendation 9

The committee recommends the establishment of a national Steel Supplier Advocate, which will:

- provide strategic advice to the Australian Government on the challenges and opportunities facing the industry;
- assist Australian steel manufacturers to win major contracts and identify opportunities to improve competitiveness; and
- work with state government counterparts to plan for the sector and develop future industry initiatives.

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

Departmental experience with a national Steel Supplier Advocate funded by the previous government showed there is already effective strategic advocacy from within the sector itself by industry groups, such as the Australian Steel Institute. This included support for Australian steel manufacturers through a variety of approaches including through anti-dumping mechanisms. Where the previous Steel Supplier Advocate identified a support gap was in the willingness and capability of steel supply chain businesses to form alliances and joint ventures to tender for work packages. The previous Steel Supplier Advocate then developed a standardised joint venture agreement proposal and worked with steel supply chain businesses to have it adopted. The initiative was given greater emphasis by this Government's establishment of the Supply Chain Facilitation program within the Entrepreneurs' Programme.

There are a number of Government entities currently advocating in the interests of Australian industry, including the Australian Industry Participation Authority, the Australian Small Business and Family Enterprise Ombudsman and the Centre for Defence Industry Capability.

These entities are focused on supporting industry growth, facilitating innovation and supporting Australian businesses in building their own capacity and capability to succeed. These entities will continue to work with businesses to enable them to be well equipped to participate within the Government procurement market.

As previously outlined, the Government's industry policy is to support a business environment that enables growth for globally competitive industries. To achieve this, the Government has introduced a range of industry wide policies and programs to boost science and commercialisation, encourage business investment and innovation, improve business capability, and streamline regulation.

Recommendation 10

The committee recommends that the Australian Government reconsider its decision to reject Recommendation 1 of the Joint Standing Committee on Government Procurement report and request the Department of Finance revise clause 10.9(c) of the Commonwealth Procurement Rules to require all goods purchased by the Australian Government to comply with Australian standards unless none are applicable or it is inappropriate to do so.

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

As set out in the Government response to the Joint Select Committee on Australian Government Procurement report⁷, the CPRs already allow the adoption of Australian standards in certain circumstances. Use of international standards enables Australian businesses to meet one standard and sell to multiple international markets as well as within Australia.

Australian standards rarely differ from internationally recognised standards, and when they do, it is in response to particular issues where it is both necessary and justifiable. Amending the CPRs to require all procurements undertaken by the Government to comply with Australian Standards unless none are applicable is also likely to be inconsistent with Australia's international trade obligations.

In addition, Australian suppliers may face technical barriers to trade if producing goods or services to meet Australian standards should they differ from international standards.

Recommendation 11

The committee recommends that the Australian Government reconsider its decision to reject Recommendation 4 of the Joint Standing Committee on Government Procurement report and commit to enhancing the procurement-connected policy for Australian Industry Participation plans so that good procurement practices are implemented down through the supply chain, so that both prime and sub-contractors:

- implement best practice terms and conditions; and
- are contractually obligated to report on those terms and conditions.

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

As set out in the Government response to the Joint Select Committee on Government Procurement report⁸, AIP Plans require a successful tenderer for procurements valued at \$20 million or more to outline the actions they will take to provide Australian suppliers with full, fair and reasonable opportunity to supply to the project. The requirements of AIP Plans flow to any subcontracted parties, and therefore the intent of this recommendation is met in regard to supplier opportunities. However, AIP Plans do not relate to the contractual terms and conditions between businesses.

The Government supports businesses to structure their commercial relationships as they see fit. To regulate business to business relationships may limit the flexibility of suppliers to compete within the market and could affect the ability of suppliers to innovate throughout the supply chain. More broadly, contracts entered into by the Government already require contractors to act lawfully and in accordance with relevant regulations. The Government does not support the introduction of onerous reporting requirements on suppliers required to implement this recommendation. Introduction of such

⁷ Australian Government, [Government response to the inquiry into the Commonwealth procurement framework](#), 14 November 2017

⁸ *Ibid*

a measure would also increase the regulatory burden and compliance costs for both suppliers and Commonwealth entities.

Recommendation 12

The committee recommends that the Australian Government reconsider its response to Recommendation 8 of the Joint Standing Committee on Government Procurement report and ensure that, in negotiating future trade or World Trade Organisation agreements, Australia does not enter into any commitments that undermine the Australian government's ability to support Australian businesses.

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

As set out in the Government response to the Joint Select Committee on Government Procurement report⁹, the Government enters into commitments in trade agreements that are aimed at supporting Australian business, in particular to open up new market access opportunities internationally and to put in place a framework of rules and standards that support transparency and competition on a level playing field.

Recommendation 13

The committee recommends that, in light of the evidence provided to this inquiry by the Australian Steel Institute relating to the steel industry's Environmental Sustainability Charter, the Australian Government reconsider its decision to reject Recommendation 3 of the Joint Standing Committee on Government Procurement report and facilitate the introduction of a procurement connected policy requiring Commonwealth agencies to evaluate the whole-of-life environmental sustainability of goods and services to be procured.

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

As set out in the Government response to the Joint Select Committee on Government Procurement report¹⁰, the CPRs already require, as part of the value for money assessment, consideration of the environmental sustainability of the goods and services being procured (such as energy efficiency and environmental impact) and whole-of-life costs (including the initial purchase price, maintenance and consumable costs as well as disposal costs).

There is no evidence to show that existing requirements within the CPRs for consideration of environmental sustainability and whole-of-life costs are not adequate. Reintroduction of a procurement-connected policy for such considerations will reintroduce significant red tape for suppliers and entities without appreciable benefits. Introduction of such a measure would also increase the regulatory burden and compliance costs for both suppliers and Commonwealth entities.

⁹ *Ibid*

¹⁰ *Ibid*

Recommendation 14

The committee recommends that the Australian Government better utilise the small and medium-sized enterprise provisions in free trade agreements.

The Australian Government **notes** this recommendation.

The Government supports a Commonwealth Procurement Framework that requires non-discrimination, allowing all suppliers, regardless of origin, to compete on their merits. This opens up comparable access to overseas markets for Australian businesses. This is further demonstrated by the Government's ongoing support of the AIP National Framework, which encourages a national approach to maximise Australian industry participation in projects both domestically and internationally.

There are already several Government entities advocating in the interests of Australian businesses, including the AIP Authority, and the Australian Small Business and Family Enterprise Ombudsman.

These entities and the Department of Finance will continue to work closely to ensure all Commonwealth entities are aware early in procurement processes of their obligations to provide full, fair and reasonable opportunity for Australian businesses, including small and medium-sized enterprises (SMEs), to compete for major public projects.

The Government is committed to sourcing at least 10 per cent of procurement by value from SMEs. This commitment is routinely exceeded.

The Government also recently announced an additional 35 per cent target for SME participation in contracts up to \$20 million.

Recommendation 15

The committee recommends that the Department of Finance reconsider its current procurement implementation guidelines, noting the concerns of the Joint Standing Committee on Government Procurement that the current guidance may undermine the intent of the new Commonwealth Procurement Rules, specifically clause 10.30 relating to economic benefit.

The Australian Government **notes** this recommendation.

As set out in the Government response to the Joint Select Committee on Government Procurement report¹¹, the Department of Finance is undertaking a review of the new rules in the CPRs which commenced in March 2017.

¹¹ Australian Government, [Government response to the inquiry into the Commonwealth procurement framework](#), 14 November 2017

Recommendation 16

The committee recommends that relevant entities should be required to make reasonable enquiries to determine standards compliance in all Commonwealth funded projects involving steel, not just those above relevant thresholds.

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

The CPRs are not intended to target specific categories of goods or services, nor specific industries. To reduce the cost of tendering, Commonwealth agencies need to retain flexibility to apply relevant standards and standards compliance requirements proportional to the scope, value and risk of each procurement.

Payments to the states and territories are subject to intergovernmental agreements. Intergovernmental agreements are not procurements and therefore are not subject to the CPRs. State and territory government procurements are governed by their own procurement frameworks. These frameworks, while similar to the Commonwealth, are designed to be used in the relevant jurisdiction.

Under the *Building and Construction Industry (Improving Productivity) Act 2016*, the FSC administers the *Building and Construction Industry Work Health and Safety Accreditation Scheme* (the WHS Accreditation Scheme).

Under the WHS Accreditation Scheme, only builders accredited by the FSC can enter into head contracts for building work that is funded directly or indirectly by the Government, subject to certain financial thresholds.

As such, the WHS Accreditation Scheme enables the Government to use its market influence, as a client and provider of capital, to improve WHS across the building and construction industry.

The Government notes the FSC made the compliance of building products with the Performance Requirements of the NCC a condition of accreditation in January 2017. The FSC has the power to suspend or revoke the WHS accreditation of companies that fail to meet the NCC's Performance Requirements. This creates a major commercial imperative for compliance amongst those companies seeking to access Commonwealth funded construction projects.

Recommendation 17

The committee recommends that the Australian Government review the level of funding to the Australian Industry Participation Authority to ensure it is adequate, and that compliance with Australian Industry Participation plans should be monitored and audited.

The response to this recommendation is in two parts.

1. The Australian Government **does not support** the section of the recommendation that the Government review the level of funding to the AIP Authority to ensure it is adequate.

Ongoing funding to implement the *Australian Jobs Act 2013* was announced in the 2015-16 Mid-Year Economic and Fiscal Outlook (MYEFO). This departmental appropriation has also enabled the AIP Authority to continue providing advice on the preparation of AIP plans for Commonwealth Government procurements, grants, Clean Energy Finance Corporation (CEFC) and Northern Australia Infrastructure Facility (NAIF) investments.

2. The Government **notes** the section of the recommendation that compliance with AIP plans should be monitored and audited.

For the *Australian Jobs Act 2013*, compliance reports are submitted to the AIP Authority every six months to monitor and audit compliance with approved AIP plans during the project's construction phase and for new facilities, during the first two years of the project's operations phase. The AIP Authority may impose consequences for non-compliance with the *Australian Jobs Act 2013* including adverse publicity notices, naming a relevant person and seeking performance and restraining injunctions. A five year review of the implementation of the *Australian Jobs Act 2013* was completed in November 2018 and tabled in the Senate on 18 January 2019. Tabling in the House of Representatives will occur when sitting resumes. The review includes how compliance reports are monitored and reviewed.

For Commonwealth Government procurements, grants, loans and investments, procuring agencies are responsible for compliance by approving an implementation report due within 14 months of contract award, then annually for multi-year projects, and forwarding the approved reports to the AIP Authority. The procuring agency may be able to enforce consequences for non-compliance if the requirement for submission of an implementation report has been incorporated into the contract between the two parties.

Recommendation 18

The committee recommends that the Australian Government restore the requirement in legislation for all tenderers for Commonwealth projects to submit Australian Industry Participation plans, not just the successful tenderer.

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

This is not relevant to the *Australian Jobs Act 2013*.

There is no legislation covering the requirement for AIP plans to apply to certain Commonwealth procurements, for such a requirement to be made or restored. AIP requirements apply to Commonwealth procurement through a procurement-connected policy.

The 2015 clarification to the procedural guidance from 'tenderers' to prepare and implement an AIP plan was to clarify that only 'successful tenderers' must prepare and implement an AIP plan. This procedure remains within the scope of the current policy that AIP plans are 'prepared and implemented' for Government procurements, as per the 2009 Australian Government Procurement Statement. The procedural guidance relates to when in a tender process AIP plans can be prepared, and is not a change in the policy. Flexibility in the timing of when a plan is required means that unsuccessful tenderers do not face the unnecessary regulatory burden of preparing AIP plans when they are not awarded contracts.

Recommendation 19

The committee recommends that the Australian Government review the thresholds for Australian Industry Participation plans, with a view that they should be significantly reduced to take into account recent changes in industry.

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

The threshold for a major project to require an AIP plan under the *Australian Jobs Act 2013* is set at \$500 million. This threshold ensures opportunities for Australian businesses to participate in major projects are made available while limiting the regulatory requirements to larger project proponents. The recent increase in the number of major projects with an AIP plan under the Act, including from the renewable energy and mining and resources sectors, confirms the current threshold is appropriate.

The number of Jobs Act AIP plans approved by the AIP Authority was 7 in 2015, 8 in 2016, 13 in 2017 and 25 in 2018. There were 53 major projects at 31 December 2018 with an approved AIP plan.

The AIP threshold (A\$20 million and above) for Commonwealth Government procurements, grants, CEFC loans and NAIF investments is not impacted by any changes to industry. The recent uptake of AIP plans would suggest the current threshold is appropriate.

The total number of AIP plans approved by the AIP Authority for Commonwealth Government procurements, grants, CEFC loans and NAIF investments was 14 in 2015, 4 in 2016, 30 in 2017 and 19 in 2018.

Recommendation 20

The committee recommends the Australian Government ensure that the Anti-Dumping Commission is adequately resourced so that it can operate in a timely and effective manner and defend Australian industry against unfair and anti-competitive trade practices.

The Australian Government **notes** this recommendation.

The Government acknowledges the importance of ensuring the Anti-Dumping Commission (the Commission) is resourced appropriately to ensure effective administration of Australia's anti-dumping regime. The Commission is adequately resourced and funded through the Department of Industry, Innovation and Science's budget appropriation.

Recommendation 21

The committee notes that in adequately resourcing the Anti-Dumping Commission, it would be preferential for officials to have private sector experience prior to gaining employment within the Commission.

The Australian Government **notes** this recommendation.

Recruitment actions to fill positions in the Commission must comply with Australian Public Service policies and guidelines including the *Public Service Act 1999*, the *Public Service Regulations 1999* and the *Australian Public Service Commissioner's Directions 2016*. Multiple factors are taken into the consideration of applicants for positions in the Commission, including qualifications and prior private sector experience.

Recommendation 22

The committee recommends that responsibility for safeguards inquiries should be transferred from the Productivity Commission to the Anti-Dumping Commission, in line with international best practice.

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

Global safeguard measures are emergency measures to address surges of imports which cause serious material injury and are due to unforeseen developments. World Trade Organization (WTO) rules set down very strict conditions for the application of safeguard measures.

The Productivity Commission remains Australia's competent authority to investigate whether safeguard measures are justified under WTO rules.

Recommendation 23

The committee recommends that the Australian Government introduce a mechanism for applicants involved in anti-dumping investigations to nominate the form of duty to be applied, which can be recommended to the Minister by the Anti-Dumping Commissioner.

The Australian Government **notes** this recommendation.

The Department of Industry, Innovation and Science has recently consulted interested stakeholders on the merits of allowing parties to make submissions on the form of duties. This was part of the department's work in seeking feedback on the effectiveness of the anti-dumping system and potential improvements from key users of the system, including the International Trade Remedies Forum (ITRF). The Government will consider this issue amongst others as part of deciding if further improvements to the anti-dumping system are warranted.

Recommendation 24

The committee recommends the establishment of a working group of the International Trade Remedies Forum to reform the anti-dumping handbook.

The Australian Government **notes** this recommendation.

The Dumping and Subsidy Manual (the Manual) is regularly updated by the Commission. The Commission's practice is to consult with relevant industry stakeholders including the ITRF when updating the Manual.

Recommendation 25

The committee recommends that the Australian Government consider establishing a legal aid system to expand access to the Australian anti-dumping system by affected industry stakeholders, particularly small and medium-sized enterprises.

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

The Government currently provides the International Trade Remedies Advisory (ITRA) Service *free of charge* to assist all Australian SMEs access and understand the anti-dumping and countervailing system.

Recommendation 26

The committee recommends that the working group proposed in Recommendation 23 within the International Trade Remedies Forum also consider ways in which the anti-dumping system can be reformed to be more user-friendly for small and medium-sized enterprises and the fabricated steel sector.

The Australian Government **notes** this recommendation.

In 2016, the Commissioner of the Anti-Dumping Commission established a sub-committee of the ITRF with a particular focus on SME access. The sub-committee comprised relevant representatives from Australian industry and Government agencies, including industry bodies representing the fabricated steel sector. The sub-committee recommended a number of operational changes to the Commission to improve SME access, including reviewing anti-dumping system documentation. The minutes of ITRF meetings provide a summary of its work.¹²

Recommendation 27

The committee recommends that the Australian Government look at ways to better facilitate access to data held by the government to assist companies seeking to access the anti-dumping system.

The Australian Government **notes** this recommendation.

Following the May 2017 ITRF meeting, a sub-committee of the ITRF with a particular focus on access to import data was established to consider ways to improve trade data access for parties interacting with the anti-dumping system. The sub-committee is comprised of representatives from relevant industry stakeholders and Government agencies, including the Australian Bureau of Statistics. The sub-committee is currently considering the issue of access to import data and will make recommendations to the relevant minister, in due course.

¹² Anti-Dumping Commission, [International Trade Remedies Forum Minutes, 2016-17](#)

Recommendation 28

The committee recommends that the Australian Government should continue to oppose the introduction of a 'public interest test' in the levying of duties.

The Australian Government **notes** this recommendation.

The Government is not currently considering introducing a 'public interest test' in relation to the anti-dumping system.