



Submission in Response to the

**Building Ministers' Forum Senior Officers' Group Report:
*Strategies to Address Risks Related to Non-Conforming Building
Products***

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1.0 BPIC General Response to the Report

This submission supports the conclusions and intent of the report into Non-Conforming Building Products (NCBPs) – *STRATEGIES TO ADDRESS RISKS RELATED TO NON-CONFORMING BUILDING PRODUCTS* and Building Products Innovation Council (BPIC) commends the Building Ministers’ Forum Senior Officers’ Group for its efforts in addressing many of the industry’s concerns.

BPIC is a national peak body representing Australia’s leading building products industries and related services. As such we have a considerable stakeholding in the issues being considered by the BMF and its subsequent findings.

BPIC is submitting the following comments on behalf of its member organisations, Australia’s leading building products industries and related services, many of whom have also submitted their own individual responses.

BPIC notes that there appears to be a lack of alignment between some of the commentary of the report and the subsequent recommendations. There also appear to be several areas of concern to the industry that do not appear to have been covered by the report, and these issues are discussed in more detail under the heading **3.0 Further Action Required**, below.

2.0 BPIC Response to the Report Recommendations

In response to the recommendations of the *Strategies to Address Risks Related to Non-Conforming Building Products Report*, BPIC makes the following comments:

BMF SOG Report Recommendation 1 - *Note the current legislative roles and responsibilities of the Commonwealth, states and territories, including the identified gaps and weaknesses, impacting on action in relation to NCBPs.*

BPIC Response

BPIC concurs with the findings of the report in relation to deficiencies in the existing regulatory framework.

BMF SOG Report Recommendation 2 - *Provide in-principle support for improvements to the regulatory framework to enhance the powers of building regulators to respond to incidences of NCBPs e.g. providing the ability to conduct audits of existing building work or take samples from a building for testing.*

BPIC Response

BPIC commends the recognition of the need for an improved regulatory framework. However, powers without a trigger for implementation will result in low levels of activity.

Some associations already identify suspected NCBPs, source them through various means, and test them. This work is done at the expense of the association, and with no capacity to bring swift and appropriately punitive action. That is, high cost with little prospect of a meaningful outcome.

The recommendation has the potential to significantly strengthen this work if it is able to be done in partnership with delegated industry associations who are actively trying to identify NCBPs.

In particular BPIC sees the essential elements of an effective regulatory regime as comprising:

- Harmonised and updated national Building Acts to incorporate the necessary legislative power for regulators to take/delegate pecuniary action against NCBP perpetrators.
- Building regulators to be properly and adequately resourced to enable them to effectively implement proposed new powers. Financial resources required for audit and product testing could be achieved through a self-funding model (from audits and fines), and delegated associations with the capacity to conduct such work in addition to the regulators, provided with funding to offset the costs of policing.
- The “cop on the beat” - either the regulator or delegated associations - must be highly visible and take proactive action without fear or favour. Any pecuniary actions taken should be well publicised in trade magazines and other media as part of a comprehensive awareness campaign.
- Regulatory action should be linked to relevant manufacture, importation or building licences and certificates to ensure that all available monetary and operational action may be taken against those who do not meet their legal responsibilities. This should include a review of the effectiveness of existing penalty/compliance regimes to ensure that penalties actually act as a deterrent.

BMF SOG Report Recommendation 3 - Provide in-principle support for improving Commonwealth, state and territory processes for addressing issues involving NCBPs by:

3a. Establishing a national forum of building regulators to facilitate greater collaboration and information-sharing between jurisdictions.

BPIC Response

BPIC fully supports such a forum, however it needs to include not just regulators but other parties and peak bodies (such as BPIC) that have established a legitimate presence and interest in combating NCBPs. To allay any concerns of “undue industry influence”, meetings with industry could take place in separate sessions at national forums as occurred in July 2015 when industry was invited to attend the BMF meeting prior to the formal discussion by Ministers.

3b. Improving collaboration between building and consumer law regulators and consistency in the application of the 'false and misleading claims' aspect of the Australian Consumer Law.

BPIC Response

BPIC fully supports this recommendation and notes that consumer law or other legislative models should be amended to ensure that regulators are not restricted to “consumer” based products as at present but should have jurisdiction over all building products whether or not they are used by, or developed for, consumers.

3c. Developing education strategies to better inform consumers and building industry participants and to encourage greater responsibility in the safe use of building products.

BPIC Response

BPIC fully supports this recommendation and notes this work is already being done by some associations and extends beyond product conformity and provides education about product compliance. The recognition in the report of the work that has been done by a number of industry associations is appreciated. Formal recognition by regulators to encourage these efforts to continue is critical, to maintaining industry momentum and increasing efforts by sectors not currently offering the same level of support to their members. BPIC suggests that government regulators be empowered to endorse educational strategies and programs developed and delivered by industry associations and/or or alliances.

3d. Considering the establishment of a 'one-stop-shop' national website to provide a single point of information for consumers and building product supply chain participants, including examining arrangements for hosting and maintaining a website.

BPIC Response

BPIC notes that a national website providing information about product conformity is a sensible initiative as a first step. This should be developed with the intention of developing an app that would make information more accessible and potentially provide greater depth of information by product in user-friendly format.

What is not addressed by this initiative is the bar that needs to be met for products to claim conformity. That bar is currently as low as first party self declaration to an Australian standard with no requirement for producing to any second or third party any evidence that the requirements of that standard have (and continue) to be met.

Such an initiative needs to have a robust framework in place for establishing the bona fides of products that would appear on it.

Consistent with this single online point of reference and in parallel with showcasing conforming products, should be the investigation of the feasibility for industry, consumers and other stakeholders to provide information on non-conforming products on a confidential basis for dissemination to, and use by, all regulatory agencies.

BMF SOG Report Recommendation 4 - Provide in-principle support for:

4a. Mechanisms that ensure that, where all states and territories prohibit the use of a NCBP, evidence is provided to the Commonwealth enabling proportionate action to be taken based on the risk posed by the product.

BPIC Response

BPIC fully supports this recommendation and notes that this activity should also include public notification in respect of what action has been taken.

4b. An information sharing arrangement where import data collected by the Department of Immigration and Border Protection (for the purposes of reporting, detecting and controlling the movement of goods across the Australian border) can be provided to state and territory regulators to facilitate compliance and enforcement activities in relation to NCBPs.

BPIC Response

BPIC fully supports this recommendation and notes that action also needs to be taken to:

- Develop a system for addressing NCBPs imported directly to Australia through internet purchases.
- Control high-risk products that may be NCBPs at the border/point of import.
- Publicly identify (name and shame) importers of non-conforming product.
- Maintain a surveillance regime of importers of known NCBPs including regular mandatory reporting on what due diligence they have undertaken to ensure that products are fit-for-purpose.
- Enable prohibition action to be taken swiftly against high-risk NCBPs without enforcers needing to wait for all jurisdictions to unanimously agree to prohibiting any product.

- Ensure that parties engaged in point of sale activities (including online direct-to-customer outlets) only sell products that have been certified.

BMF SOG Report Recommendation 5 -Approve that the Working Group of Senior Officers and the Australian Building Codes Board work with Standards Australia to initiate a review of Australian Standards related to high risk building products referenced under the National Construction Code, with a view to assessing the costs and benefits of mandating third party certification and establishing a national register for these products.

BPIC Response

BPIC fully supports this recommendation and notes that only a diverse group comprised of regulators, ABCB, industry, JASANZ, NATA and Standards Australia can be effective here. BPIC also notes that the phrase “high-risk” shouldn’t just apply to the safety aspects of buildings (structural failure, combustion, etc), but should also apply to health and amenity issues that significantly negatively impact on consumers/homeowners (damp-proofing, condensation, air-tightness, etc).

BPIC is reassured to learn that the Australian Building Codes Board (ABCB) already has a project underway to review the evidence of suitability provisions in the NCC, which require that a product must be fit for purpose in its intended use, with a view to considering options that include mandatory accredited third party certification of cladding materials. A project to develop a handbook to assist industry to understand the types of schemes and choices of product certification that can be accepted will also provide a useful step as interim guidance until decisions are made in relation to potential mandatory requirements.

In relation to the costs and benefits of third party certification, BPIC believes that the participants in this review should be expanded to include peak industry bodies (such as BPIC), regulators and other key stakeholders such as JASANZ and NATA, and that the review should address the interrelationship between Australian and international standards for relevant products.

BMF SOG Report Recommendation 6 - Provide in-principle support for independent research to be undertaken, including manufacturer and random off-the-shelf product testing, to improve the evidence base relating to NCBPs.

BPIC Response

BPIC fully supports this recommendation and notes that industry must be involved in scoping this. One of the difficulties of providing quantitative evidence is obtaining appropriate samples of suspect material (particularly if it is in-situ or site access is restricted). If this recommendation were to be applied, legislative/regulatory power would be required to enter and seize/sample suspect product for material testing.

BMF SOG Report Recommendation 7 - Note the value and importance of existing building industry initiatives, such as industry third party certification schemes, in identifying instances of building product non-conformity.

BPIC Response

BPIC fully supports this recommendation and notes that government should do more than just ‘note’ that industry accreditation programs exist. In addition they should actively use them in all government procurement processes. As well, associations require further support to be able to develop voluntary third party certification schemes (industry based and otherwise) in those sectors where schemes are not

currently operating to capture a larger number of building products that are essential to building integrity, as opposed to a just a 'high risk' approach.

BMF SOG Report Recommendation 8 - Approve the release of a consultation draft of this report for stakeholder consultation following the Building Ministers' Forum's endorsement of the Working Group of Senior Officers' recommendations.

BPIC Response

BPIC applauds this move as it is an important component of industry involvement in future regulatory initiatives and maximises the benefits to be achieved from appropriate consultation.

3.0 Further Action Required

BPIC would like to point out that the report does not address a number of concerns and recommendations raised by the building industry over the last few years, and suggests that working groups should be formed to oversee the following activities to ensure realistic outcomes, including:

- How to prevent online and offshore purchase from circumventing proposed POS (Point of Sale) stringencies.
- Developing a confidential reporting system with full anonymity and whistleblower protections for users.
- Development of a multi-stakeholder advisory committee to oversee the recommendations of the report and all NCBP issues generally.
- The 'partnership' concept between the SOG and industry organisations which this response document recommends will be crucial to the success of any strategy to tackle NCBPs. We note that some individuals on the governmental side who have a strict view of the issue of conformity assessment, but appear to lack an appreciation of all the practical implications. To enable a successful outcome from the recommendations of the report, strict views and inflexible options on both sides will have to be modified or set aside to achieve an outcome supported by all in the supply chain.

4.0 Actions by the ABCB

BPIC notes that the Australian Building Codes Board is already responding to some of the industry's concerns in relation to NCBPs with the following actions:

- Review NCC requirements related to high risk building products with a view to assessing the costs and benefits of mandating third party certification.
- Establishing a national register for such products.
- Review the evidence of suitability provisions in the NCC, which require that a product must be fit for purpose in its intended use, with a view to considering options that include mandatory accredited third party certification of cladding materials.
- Develop a Product Assurance Handbook so the requirements of the evidence of suitability provisions of the NCC are understood.
- CodeMark Certificates of Conformity will be made clearer as to what particular products can be used for, as part of a package of improvements to the voluntary building product certification scheme.
- In consultation with industry, advise on the practicality and feasibility of improved voluntary product compliance labelling.

- Working with the States and Territories to consider measures to enhance national regulatory harmonisation.

5.0 The Role of BPIC

The Building Products Innovation Council (BPIC) is a national peak body representing Australia's leading building products industries and related services in:

Steel	Gypsum Board
Concrete	Insulation
Wood	Roof Tiles
Windows & Glass	Clay Bricks
Concrete Masonry	Cement
Housing Industry	Insulated Panels

BPIC's members and associated companies directly employ over 200,000 Australians with more than 470,000 employed indirectly. Their collective industries are worth over \$54B in annual production to the Australian economy. The Council is a not for profit organisation governed by a Board of Directors comprised of representatives from its member organisations.

The Council's primary objective is to provide coordinated representation of the building products industry to interested parties including Government, the construction industry, and the general public. We also provide a forum for discussion and information sharing and policy formulation among major product categories in the building industry.

BPIC's mission is to:

- Promote the efficient production and use of building products within a nationally consistent regulatory environment.
- Develop policy and make submissions or representations to governments, industry and the community on agreed technical standards, codes and regulatory issues of mutual concern to Members.

The Council works to fulfill these aims by gathering and supplying practical and current industry information on behalf of BPIC member organisations. This industry-wide approach to responding to regulatory issues, helps to ensure that Governments are informed of potential problems in the building industry and are provided with appropriate industry-considered responses.

BPIC also encourages investment in skills formation, product development and industry research by helping to identify and remove regulatory impediments to innovation. We commission research into technical codes, standards and regulations as well as matters of mutual interest to the building products industry, and promote the capabilities of the building products industry through industry-run forums, exhibitions and conventions.