Recommendations to the

Queensland Building and Construction Commission

Summit on Non-Conforming Building Products

Prepared by:

Building Products Innovation Council

Rodger Hills - Executive Officer
PO BOX 417
RANDWICK NSW 2031
Phone – 0438 740 240
Email – eo@bpic.asn.au

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BPIC Recommendations – Improvements to building supply chain systems and practices

- Implement the Queensland *Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Bill 2017*.
- Mandate site inspections of buildings by qualified building inspectors.
- Work with BRANZ to develop electronic product/material traceability system.
- Work with South Australian Government to scale up Electronic Building Passport concept for use across Queensland.
- Queensland consumer affairs agency to collect non-conforming products information as part of their dispute resolution processes.
- Queensland Government endorsement of existing third party product certification schemes that comply with ISO/IEC 17065:2013.
- In addition to the requirement for demonstration of compliance with Australia standards, evidence should also be provided that manufacturers/suppliers (including suppliers that market products as 'own brand') have an independently audited Quality Assurance system in place that is recognised in Australia and that as a minimum meets the following requirements:
    - Testing or inspection of samples from the open market every 2-3 years (having passed completely through the supply chain and been subjected to all handling, transport and assembly stresses).
    - Product labels/receipts to identify manufacturing date and specific manufacturing facility from where product is produced.
    - Testing or inspection of samples from the factory/production facility.
    - Regular and documented quality system audits.
    - Independent assessment of the production process or service.
- Queensland building regulator to revisit the benefits of national harmonisation of the administrative framework for building approvals.
- Empower industry organisations like EWPAA, and AWA that already have market surveillance mechanisms in place, such that they can formalize a testing regime for all products within their sector, perhaps funded by a portion of penalties imposed on NCP suppliers or from a 1% levy on all construction (e.g. BRANZ in New Zealand).
- Introduce a reliable level of identification of the source of imported product inputs through a compulsory labeling (traceability) requirement.
- Recall powers across Jurisdictional regulators need to be standardised.
- Severe financial penalties need to be imposed where it is proven that an organisation is either selling non-compliant product, installing it, or where they are importing it directly for use in Australia. Large fines for NCPs could pay for the cost of random product audits, testing and enforcement.

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- Encourage Australian product manufacturers to create detailed "or equivalent" performance specifications for their products, and encourage designers and specifiers to use them in specifications. Encourage professional bodies to develop anonymous reporting system and remedial processes for poor project documentation by their members.

- Encourage testing authorities that issue a report on a product, to publicly publish a 'Summary Information Report' (that documents salient results but protects manufacturer IP) and links to an online register. This will result in building certifiers being able to reconcile the documentation they receive from contractors and builders with independently verifiable information provided online by the testing bodies (registered by NATA or ILAC equivalent).

- Concise, detailed and Plain English installation procedures should be a mandatory component of all Required Information and product compliance documentation.

BPIC Recommendations – QBCC/QFES Cladding Audit Considerations

- Since the purpose of the audit is to protect public health and safety and since qualified inspectors will be sent to buildings, they should investigate all the other instances of dangerous non-compliant and non-conforming issues that might be present on a site (faulty glazing, substandard waterproofing, mould outbreaks, dangerous wiring, etc.). An audit focusing on cladding only, could substantially weaken a building/unit owner's or strata committee's position in respect of a building defect claim, if the defendant can show that a QBCC inspector visited a site to check on the cladding, but did not document any other conformity issues in a building.

- Assessment of product risk should be based on a proven methodology. BPIC recommends that described in the NZ Department of Building and Housing guide: *Product Assurance Framework to Support Building Code Compliance* (see **Attachment 1**). The table below is a quick guide to determining non-conforming and non-complying product risk.

Consequence → **↓ Likelihood**	Insignificant	Minor	Significant	Major
Rare	**Low**	**Low**	**Medium**	**High**
Unlikely	**Low**	**Low**	**Medium**	**High**
Possible	**Low**	**Medium**	**High**	**High**
Likely	**Medium**	**Medium**	**High**	**High++**

- Audits need to produce meaningful situation and conformance data that will help inform future policy decisions. Therefore if a conformity issue is found (be it for cladding, glazing, electrical, etc) the information in **Attachment 2** should be obtained as a minimum. Such information will also help the QBCC to clearly identify how compliance or noncompliance was derived in relation to the audit itself or the

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requirements of the NCC. It is also vital that all terminology used in an audit including assumptions, interpretation and application of the NCC should be consistent with industry practice, to avoid the potential of incorrect or misleading results and conclusion about conformity and compliance.

- Audits need to identify parties responsible for any non-conformance or non-compliance found in order for the QBCC to prosecute, so that the cost of rectification is not unfairly borne by innocent victims – the building owners. But care needs to be exercised because the way building defect claims are structured, cladding and most other building systems would currently be categorised as a "non-major" defect, meaning owners only have a short time from the building's completion in which to claim the costs of its rectification. Otherwise they must, by law, repair the defects and do so at their own expense. A major defect, which has a longer claims window, must by definition render the building or part of it uninhabitable. However, even the Lacrosse building has been ruled safe for occupation by Melbourne's city council and the unfortunate Lacrosse unit owners are facing around $15m to remediate their non-compliant cladding - approx $50,000 per apartment.

- Prosecutions through the magistrates court and punishments through the licencing system are essential, otherwise the QLD government risks sending the wrong message to those responsible for the use of non-compliant products, that they can continue in a business-as-usual manner because nobody is being held to account.

- In relation to NCBPs (Non-Conforming Building Products), the QBCC should prosecute (through the magistrates court) any manufacturer, testing/certification body, importer, importing agent, supplier, architect/designer or specifier found to have provided, enabled or specified NCBPs to be used on a building, regardless of when that building was constructed, and independently of the current building defects system.

- In relation to non-compliant building products, the QBCC, should use its considerable coercive powers (through the licensing system) to:

    - Compel builders/installers to disclose any other buildings where they have used or potentially may have used, non-compliant or non-conforming products.

    - Compel builders to immediately rectify all non-conformances and non-compliances found, at no cost to the building owners.

    - Require production of documents from designers, specifiers, installers, builders and building certifiers relating to any types of non-conforming and non-complying products used in order to determine which parties in the product supply chain bear responsibility.

- The Queensland government should lobby the federal government for funding to provide free or subsidised building inspection and non-compliance testing services to residents who suspect or find out their buildings are at risk.

- As data comes into the QBCC about any imported NCBP products from particular manufactures/suppliers, it should encourage Border Force to target containers coming into the country from those manufactures/suppliers and inspect them at the border before they enter the building supply chain.

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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 (listed in the footer of this document) in:

Steel	Gypsum Board	Concrete	
Insulation	Timber Products	Roof Tiles	Glass
Windows	Clay Bricks	Concrete Masonry	
Cement	Housing Industry	Insulated Sandwich 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. BPIC is a not for profit organisation governed by a Board of Directors comprised of representatives from its member organisations.

BPIC'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 to help improve building and construction standards. We also provide a forum for discussion, 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.
- Promote the innovative use of building products.

BPIC works to fulfill these aims by gathering and supplying practical and current industry information on behalf of BPIC member organisations and other organisations and companies that are not members but follow BPIC through various means. 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.

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Attachment 1 – Sample Risk Assessment Framework

Source: *Using the Product Assurance Framework to Support Building Code Compliance* – NZ Department of Building and Housing 2010

10.3 Sample Risk Assessment Framework

When deciding which assurance option is most appropriate for your product, you may find the following framework useful.

The framework looks at the likelihood of your product failing[5], and what the consequences might be if it did. The combination of these two factors will give an indication of the level of risk. In turn, this will indicate what level of product assurance is likely to be required.

The range of Low risk through to Extreme risk would then suggest the level and robustness of the proof required to demonstrate product assurance and, where required, Building Code compliance.

Likelihood of Failure Guide	
Rare	Only in very exceptional circumstances
Unlikely	Would not be expected to happen in durability lifetime of product
Possible	May happen at end of durability lifetime of product
Likely	Might happen in durability lifetime of product

Consequence of Failure Guide	
Insignificant	No risk of harm to building users Failure does not impact on any other components (eg, hot water system heating element fails, resulting in no hot water)
Minor	Might cause harm to building users Failure is visible, quickly apparent and isolated (eg, UV exposure causes guttering or downpipe to fail)
Significant	Causes injury or illness (eg, scalding when hot water system tempering valve fails) Causes gradual/hidden failure of another component (eg, failed sealant causes water ingress resulting in damage)
Major	Potential loss of life (eg, collapsing roof beam) Causes catastrophic failure of another component (eg, movement of concrete slab cutting off services)

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Attachment 2 – Sample Audit Conformance Data

Date	14/10/2017
Building Type	Residential/Retail/Gym/Carpark
Building Permit Number	77730
Address/Location	106 Georges Street, Fortitude Valley
Builder	Grobuild
Architect/Specifier	Tribble and Tribble
Product/Sub-Assembly 1	
Non-conforming electrical wiring.	
Risk Assessment Level	High
Applicable Australian Standard and NCC Compliance Documentation	AS/NZS 5000.2:2006 and AS/NZS 3000:2007 Electrical installations
Product Supplier	Masters Home Improvement
Product Installer	JC Budge and Co
Certification Authority	Bangen Crashen Test Lab
Product Manufacturer - Name	Infinity Cable Co Pty Ltd
Location of Manufacture	China
Product/Brand Name	Infinity / Olsent
Part/Batch/Serial Number (or other identifier)	All low voltage electrical cables of all sizes, configurations and models that are polymeric insulated and PVC sheathed/insulated sold between 2011 - 2013
Product/Sub-Assembly 2	
Non-compliant glass balustrades on external balconies	
Risk Assessment Level	High
Applicable Australian Standard and NCC Compliance Documentation	AS 2208: 1996 Safety glazing materials in buildings
Product Supplier	Bunnings
Product Installer	I.C. Cleerley & Bros
Certification Authority	G James Glass and Aluminum
Product Manufacturer - Name	Viridian
Location of Manufacture	Australia
Product/Brand Name	DuraClean coated shower screen

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