



**BUILDING
PRODUCTS
INNOVATION
COUNCIL**

Submission to the
Queensland Department of Housing and Public Works

Queensland Building Plan Consultation

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Introduction

The Queensland Government is seeking public input into its Queensland Building Plan (the Plan) consultation. The Building Products Innovation Council (BPIC) has prepared the following submission on behalf of its members and the wider building product manufacturing sector to inform this consultation.

Over the last decade there has been deterioration in the integrity of the building supply chain due to a combination of factors. These factors include:

- The ease of purchasing online has brought into the market a plethora of products from both domestic and international sources. Buyers sourcing for example, small quantities or new products. However many do not have the knowledge to ensure products they purchase are 'fit-for-purpose'. Once these products are in the supply chain, the provenance is often lost and seeking a remedy when a problem arises becomes extremely difficult.
- The onus of compliance falling heavily on the shoulders of building certifiers who are often ill-equipped or lack the necessary training to identify all of the technical compliance requirements for all of the products and materials in a building. Building certifiers rely on subcontractors to provide 'certificates' to verify that work meets the relevant standards. By accepting such documents they are passing the responsibility on to the subcontractors. Yet there are minimal systems in place to ensure that the subcontractors are qualified to provide such a document, let alone that the work in fact complies.
- The closure of the CSIRO Building, Construction and Engineering Division and its associated testing capabilities (beyond just fire safety) 15 years ago. Without the independent facilities and expertise provided by that CSIRO division, manufacturers, especially overseas suppliers and those local manufacturers with modest turnovers, have had to self-test their products (first and second party testing), which of course is not an independently verifiable process.
- A rapidly growing number of suppliers and buyers are using code and verification weaknesses (either unwittingly or deliberately) to substitute or provide substandard products. This activity is compounded by the fact that ignorance of code and variation requirements has become a valid defence with regard to non-conforming building products violations.
- The desire by some developers, builders and key purchasing decision makers to reduce construction costs may also conflict with their obligation to deliver compliant and safe buildings.
- A greatly reduced level of oversight of the construction process by skilled, experienced and independent regulatory authorities to ensure good results.
- Lack of strong and meaningful penalties for those who knowingly use and/or specify NCBPs (Non-Conforming Building Products).

The building products industry strongly supports the Queensland Government's Building Plan consultation. In particular, BPIC has been calling for state building regulators to become more active in policing the conformity of products and compliance of professionals in the building industry for some time, and the Plan proposals are a significant step towards achieving those outcomes.

The building products industry in Australia is and has always been self-reliant and self-funded. The building products industry is confident that the measures outlined in the Plan and the following recommendations made by BPIC will help create a level playing field in the Queensland building industry for all participants. This of course will in turn lead to good outcomes for consumers and tax payers, as well as strengthen the Queensland economy.

BPIC Recommendations

5. Building Certification

Queensland Government Proposals:

Based on the results of previous consultation, a range of measures are proposed to improve the current building certification framework. Some of the key proposals include to:

- Enable owners to obtain more inspections and call for a final inspection if issues arise between the certifier and the builder.
- Add restrictions on the use of ‘competent persons’ and a requirement for a certifier to physically attend mandatory inspections.
- Introduce new mandatory inspections for fire separation in duplexes and townhouses.
- Allow local government to have sole responsibility for taking enforcement action, so certifiers are no longer able to do this.
- Protecting consumers and ensuring the integrity of the building by tightening up the rules for engaging a certifier.
- Increase auditing of building certifiers.
- Require that all waterproofing be done by a licensed person regardless of value.
- Introduce a new ‘cab rank’ type model for assigning building certifiers. This would involve consumers or builders approaching the Queensland Building and Construction Commission (QBCC), responsible for regulating and licensing building certifiers, to be assigned a building certifier.

BPIC Recommendations:

5.1 BPIC strongly supports these proposals and suggests the following:

- 5.1.1** With the intention for certifiers to physically attend mandatory inspections, ensure that the wording is such that “physically” means at the actual point and specific time where the work is to be inspected (i.e. mere physical presence on the site, drive-by, or drone over-flight will not suffice). The wording should also ensure that if the inspections are delegated by the certifier that an appropriately qualified/licenced person undertakes the delegated work. Of course, when checking materials compliance on site, a realistic minimum sampling size should be set and adhered to by certifiers in order to avoid instances of ‘Type testing’ or ‘golden sampling’. Wording should also encourage certifiers to adopt digital technologies such as barcode/RFID scanning of products/packaging/delivery documents on-site to ensure products are as specified in the bill of quantities. Thought also should be given to developing a standardized as-built inspection checklist that all certifiers must use, such as the one developed and successfully piloted across twenty LGAs by NEEBP (National Energy Efficient Building Project).
- 5.1.2** Require certifiers to upload product certification/sign-off documentation onto a free and publicly accessible website. By making the product certification

documentation relating to projects transparent, the building products industry would be able to monitor activity and self-police erroneous data or flag it for action by the QBCC. The document repository could be created from scratch. Alternatively the Electronic Building Passport pilot created by NEEBP (The National Energy Efficient Building Project), the South Australian Department of State Development, and Pitt&Sherry would also be a logical place for the capture and interrogation of such information. Such a website would also allow insurers that ability to identify inadequately certified projects and to adjust premiums accordingly. Insurance industry access to such a website would help in resisting cost-based purchasing decisions which don't have adequately documented suitability.

- 5.1.3 Along with the introduction of new mandatory inspections for fire separation in duplexes and townhouses, also include apartment buildings. The outcome of fire separation deficiencies in unit buildings has the potential to be far direr and affect more people than either duplexes or townhouses.
- 5.1.4 Introduce mandatory inspections for installation quality and compliance to code requirements and Australian Standards. 'Installation' certificates need to be issued only by persons qualified to do so.
- 5.1.5 In addition to increased audits of building certifiers, there should be both remedial and punitive processes in place for certifiers found to be sub-standard professionally. These processes need to accommodate the fact that it is very difficult to hold professionals accountable because a number of simple tactics can be used to frustrate any punitive or remedial measures. These range from claiming ignorance of the full legal implications of their role, to lodging counterclaims against auditing bodies for lost business revenue while proceedings are underway, to dragging out the appeal process, to producing biased witnesses on their behalf and so forth. There is also the difficulty of obtaining unambiguous, objective evidence of wrong-doing especially in any scheme where 'professional judgement' is exercised (what one professional thinks is a substandard assessment or poor conduct, might be perfectly fine to another professional).
- 5.1.6 The intention to allow local government to have sole responsibility for taking enforcement action is supported by BPIC on the understanding that:
 - LGAs are provided with the necessary funding from State coffers to appropriately recruit, remunerate and equip professionals within Councils to perform these functions.
 - There is robust inter-council consistency of procedures and decisions, with oversight from QBCC (or other appropriate entity).
- 5.2 BPIC's building product association members also strongly support a systematic allocation of building certifiers by the QBCC in order to overcome conflict of interest issues associated with builders able to self-select certifiers. BPIC suggests that:
 - 5.2.1 Along with the introduction of a new "cab rank" model of certifier allocation to projects, there should be a standardised fee structure for certification services that applies state-wide. Such a mechanism needs to take into account travel-time to site and project complexity considerations that will vary considerably from project to project and from region to region.

- 5.2.2 Certifier allocation could also be on the basis of certifier ability/skills (e.g. NSW A1, 2, 3, 4, 5).
- 5.2.3 Whilst there might initially be delays for property owners, these should resolve rapidly as the industry adjusts to the new regime. Inevitably checking and testing takes time. In fact, speed up building approval and sign-off was one of the justifications for creating a private certifier regime. But if the cost of this move has been the proliferation of non-conforming building products, sub-standard product installation and general poor quality building, then it can be argued that the public cost of swifter approvals has been too high.
- 5.2.4 The most appropriate entity to be responsible for allocating certifiers to projects should be the QBCC, provided that certifiers are required to have fully up-to-date information regarding their services, expertise, licences, insurances and so forth made available to the QBCC. Additionally:
- A mechanism should be developed to encourage clients of certifiers to provide the QBCC with objective and verifiable information about the performance and professionalism of certifiers in real-time. This would allow the QBCC to monitor the ongoing performance of certifiers and not rely solely on occasional, randomised audits. However such a system needs to be designed taking into account that clients are more likely to provide negative feedback on the conscientious certifier who gives them grief, while being unlikely to give feedback on the lax certifier who makes life easy for them. The efforts of conscientious certifiers are of critical importance in addressing broad conformity and compliance issues, and QBCC needs to do all that it can to encourage and support these individuals.
 - As recommended by the Wallace Report, BPIC would wish to see increased mandatory CPD, with topics defined by industry associations and the QBCC, annual audits of individual certifiers against their license requirements, including auctioning of complaints raised against certifiers.

6. Non-Conforming Building Products

Queensland Government Proposals:

Strengthen the QBCC's powers to ensure buildings are safe and products that are used meet the relevant standards. To do this, it is proposed that the QBCC has the power to:

- Audit and investigate buildings that are not active building sites.
- Enter a building and take samples of a building product for testing or seize evidence.
- Require parties other than building industry licensees, such as a retailer or manufacturer, to produce information about alleged NCBPs.
- Declare a building or building site unsafe.
- Direct rectifications of an unsafe building or building site if other attempts to compel a responsible party have failed.
- Where appropriate, prosecute offences relating to supplying or installing a NCBP.

- Apply to charge a cost recovery fee for any evidence gathering and testing of proven NCBPs as testing can be expensive.
- Enshrine the Queensland Building and Construction Product Committee (or similar) in legislation under the Queensland Building and Construction Commission Act.
- Provide the Minister or the QBCC with the power to ban or prohibit a NCBP.

BPIC Recommendations:

6.1 BPIC strongly supports these proposals and suggests:

- 6.1.1** In addition to being able to enter a building and take samples of building products for testing or seize evidence, there should be the facility to perform in-situ performance testing of products and materials to confirm standards conformity and fitness for purpose application. It is well-known that products often perform quite differently under laboratory test-bed conditions than they do in-situ. This needs to be considered carefully when decisions are made about the type of conformity checking required.
- 6.1.2** QBCC (that has responsibility for apartment building defects and disputes) should be required to collect non-conforming products information as part of their dispute resolution processes.
- 6.1.3** The power to direct rectifications of building work should extend beyond just safety issues and should, as a minimum, encompass any area of QLD Building Code and National Construction Code non-compliance. The power to require rectification of non-compliant building work and/or non-conforming building products should extend to all building types, not just those covered currently by the Home Warranty Scheme.
- 6.1.4** Queensland Government endorsement and common labelling of existing national third party certification schemes that comply with ISO/IEC 17065:2013 requirements.
- 6.1.5** QBCC revisits the benefits of national harmonisation of the administrative framework for building approvals.
- 6.1.6** QBCC enters into an MOU with CSIRO (or other qualified NATA registered facility), to provide expertise and testing facilities equivalent to the disbanded CSIRO Building, Construction and Engineering Division.
- 6.1.7** In requiring parties, other than building industry licensees, to produce information about alleged NCBPs, ensure that the reporting process is anonymous and includes full whistle-blower/good-samaritan protections for reporters.
- 6.1.8** Empower industry organisations that already have market surveillance mechanisms in place, such that they can formalise a testing regime for all products within their sector, with funding provided by a portion of penalties imposed on NCP suppliers or from a 1% levy on all construction in Queensland (e.g. BRANZ in New Zealand).
- 6.1.9** Strengthen the product recall powers of the Queensland Government and impose severe financial penalties where it is proved that an individual or organisation is knowingly selling, installing or importing non-conforming products for use in the

State. Penalties should not be limited to those knowingly trading in NCBPs, they should also extend to those who ignorantly trade in them. BPIC suggests the development of a high-profile due diligence framework to be put in place to ensure that participants in the supply chain are not able to claim ignorance as an excuse for trading in NCBPs.

6.1.10 Consider schemes where buildings are randomly inspected for product conformity and those individuals and companies found deliberately procuring, installing or certifying offending products are subject to legal action that includes full cost-recovery for all aggrieved parties including the government.

6.2 In relation to the power to ban or prohibit NCBPs, BPIC believes that this should be the remit of Queensland’s building regulator and not the Minister. Experience from other sectors demonstrates that ministerial intervention is often fraught with political concerns/expediency, time delays and either over or under reaction to the circumstances.

9. Licensing Reforms

Queensland Government Proposals:

The Queensland Government is investigating improvements to simplify QBCC licences, modernise the present licensing framework, increase mobility of services across jurisdiction and cut costs for licensees and consumers, by reviewing the following licencing framework areas:

- The functions of the Service Trades Council and if these should be expanded to include allied trades, such as fire protection and mechanical services.
- Increasing the monetary threshold for when a licence is required.
- Increasing the monetary threshold for the Queensland Home Warranty Scheme.
- Whether Type A gas work licensing functions should be transferred to the QBCC.
- Whether a mechanical services licence should be introduced.
- The regulation of the supply of medical gas.
- Licensing of energy assessors.
- Licensing of plumbing and drainage apprentices.
- Whether the provisional plumbing licence should be removed.
- Consolidating the functions and powers of the QBCC.
- Streamlining existing licensing and technical requirements to reflect modern industry practice.
- Mobility of trade services through Automatic Mutual Recognition.
- Designs for the introduction of a continuing professional development scheme.

BPIC Recommendations:

9.1 BPIC generally supports these areas of review and suggests:

9.1.1 The QBCC investigate practical ways within the licencing system to prevent the scourge of ‘phoenixing’ in the industry. This would:

a) Take pressure off the Queensland Home Warranty Scheme as reports indicate that the majority of claims are currently accounted for by business insolvency.

b) Protect good operators and tradespeople who are doing the right thing.

In relation to the licencing of companies, BPIC would like to see stronger punitive mechanisms that tie responsibilities to directors even after a company becomes insolvent and/or individual directors become bankrupt.

9.1.2 Licencing processes should also include QA audits of licencees along with associated remedial and punitive processes in place for those found to be sub-standard professionally. These processes need to accommodate the fact that it is very difficult to hold tradespeople accountable because a number of simple tactics can be used to frustrate any punitive or remedial measures. These range from claiming ignorance of the full legal implications of their role, to lodging counterclaims against auditing bodies for lost business revenue while proceedings are underway, to dragging out the appeal process, to producing biased witnesses on their behalf and so forth. There is also the difficulty of obtaining unambiguous, objective evidence of wrong-doing especially in any scheme where ‘professional judgement’ is exercised (what one tradesperson thinks is a substandard work, might be perfectly fine to another tradesperson).

9.1.3 Licencing processes should also include auditing of financial accounts when licences are renewed, in order for the QBCC to assess the financial wellbeing of licensees.

9.2 BPIC does not support raising the current financial threshold of when a licence is required:

9.2.1 The current financial threshold of when a licence is required is already too high and lets through too much work that needs to be covered. Also it can raise significant safety concerns.

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	Quantity Surveyors
Insulation	Timber Products	Roof Tiles	
Windows & Glass	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.

Contributions

BPIC wishes to thank the following non-BPIC organisations that support this submission and that provided valuable advice and generously shared their knowledge and experience with BPIC:

- **Owners Corporation Network**
- **Vinyl Council of Australia**
- **Consult Australia**