



**BUILDING
PRODUCTS
INNOVATION
COUNCIL**

Submission to the
Queensland Department of Housing and Public Works
in Response to the

Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Bill 2017

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BPIC General Response to the Bill

This submission supports the introduction of the *Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Bill 2017* (the **Bill**), which is proposed to control and eliminate Non-Conforming Building Products (NCBPs) by conferring responsibilities on building product supply chain participants.

The Building Products Innovation Council (BPIC) commends the Queensland Department of Housing and Public Works (the Department) for its efforts in addressing industry's concerns and is pleased to note that many of the provisions of the Bill adopt concepts that have been recommended by the BPIC for some time. It is also pleasing to note that the Department undertook such an extensive industry and community consultation on these matters (Queensland Building Plan consultation from November 2016 to March 2017) prior to drafting the Bill.

While BPIC and the broader building product manufacturing industry support both the intent and content of the Bill, there are concerns that some of the processes suggested in it for controlling the occurrence of NCBPs in the building supply chain may be too complex or costly to work effectively in the real world.

NCBPs in buildings endure long after a building site has ceased to be a 'workplace' and products that pose no safety threat during construction can quite easily do so after building completion. Also those with a duty of care to workers may find it difficult to assess products for their potential to be unsafe, due to the products being procured prior to their arrival in a workplace, or in a form or part of an assembly that does not allow for inspection. We point this out because it brings into question the Bill's reliance on workplace safety reporting as a completely effective means to control NCBPs.

BPIC notes that the Bill is partly in response to BMF-SOG Recommendation 2, which involves improving the regulatory framework to enhance the powers of building regulators to respond to incidences of NCBPs. Because the intention is for the QBCC to be responsible for investigating potential instances of NCBPs, along with any appropriate responses to the situation, BPIC believes that the Queensland Building and Construction Commission Act 1991 (QBCC Act) is the best place for the amendments to be made, rather than say, the Building Act. Under the amendments, the NCBP investigatory powers and functions of the QBCC Act, Building Act 1975 and the Plumbing and Drainage Act 2002 will be consolidated and streamlined into a central reference point, that is, the QBCC Act. This will provide appropriate consistency and certainty for those being investigated.

Furthermore amendments to the QBCC Act will overcome several of the main weakness in existing building legislation. Specifically the failure of the Building Act 1975 to control the occurrence and spread of NCBPs, as a result of:

- a) Relying on implied warranties and not placing any explicit responsibilities on parties in the building supply chain (other than building certifiers) to comply with building legislation, Standards or the National Construction Code (NCC) as a primary duty.
- b) Relying too heavily on building certifiers, who are generally ill-equipped to identify all of the technical compliance requirements for all of the products and materials in a building, as the only mechanism for compliance enforcement.

Over the last decade BPIC has seen a deterioration in the integrity of the building and infrastructure supply chain facilitated largely by the continued reliance by all parties on outdated, inefficient and easily exploited/corrupted, paper-based procurement practices. This Bill presents Queensland with the perfect opportunity to bring all players in the building supply chain into the 21st century by embracing digital product data, digital procurement and digital verification technologies. Furthermore such technologies offer internationally aligned compliance solutions, that can cope with the ever-increasing number of imported products finding their way into buildings and infrastructure projects.

In conclusion, BPIC and the building product manufacturing industry supports the amendments proposed in the Bill because they define clear responsibilities for all participants in the building supply chain, and create clear policing/enforcement mechanisms to ensure compliance. BPIC would add that for the Bill to achieve its intended objective, additional powers, information and actions may need to be provided and we have outlined these in the following submission.

Note – Text highlighted in GREEN and italicised is new content proposed by BPIC. Text highlighted in RED and strikethrough is content BPIC proposes to be deleted, and text in BLACK Times New Roman font is original Amendment Bill text.

Clause 4 Amendment of s 3 (Objects of Act)

One of BPIC's concerns is the Bill's focus on 'safety' as the primary measure of a product's unsuitability for purpose and the primary trigger for all actions under the proposed Bill. An overt concern about 'safety' to the exclusion of all other product attributes that contribute to a product being non-conforming, will fail to capture the bulk of products causing such misery to owners and tenants. Furthermore it is unlikely in any way to stem the incidence of building defect claims across the State. Likewise holding persons in the building supply chain responsible only for the safety of building products, ignores the compliance, insurance and damages risk that NCBPs create.

BPIC Recommended Changes to Draft Bill:

It is recommended that Clause 4 be amended as follows:

Section 3—

insert—

(e) to regulate building products to ensure—

(i) the safety of consumers and the public generally; and

(ii) that everything installed into a building or temporary structure complies with relevant legislation and Standards; and

(iii) persons involved in the production, supply or installation of building products are held responsible for the safety and regulatory compliance of the products and their use; and

(iv) persons involved in the production, supply or installation of building products are held responsible for preventing property from being destroyed, damaged or otherwise compromised by the use or installation of building products.

Clause 5 Replacement of s 20B (Committees)

BPIC supports the idea of careful oversight of the regulatory compliance of building products and materials. However we are concerned that a body such as the Building Products Advisory Committee proposed in the Bill will encounter a number of significant hurdles, such as:

- Ability of the Committee to deal with the volume of work – There will be thousands of individual products that will need to be reviewed as per the Evidence of Suitability (A2) provisions of the National Construction Code (NCC) under a deemed-to-satisfy environment where each product has the potential to be used throughout Queensland. In addition, the move to a performance based NCC will result in the Committee being required to arbitrate on the use of unique products for individual building projects. Delays in either deemed-to-satisfy or performance based assessment of building products could affect building starts and

completion times across the industry. An obvious and far more cost-effective solution would be to draw on the body of knowledge and expertise developed by industry associations with certification schemes and authorities that comply with ISO/IEC 17065:2013. Accessing these existing (and future) third party product certification schemes would significantly reduce the workload of the Committee.

- Ability to adequately staff the Committee - One of the most disturbing outcomes associated with changes in the global building products supply chain allowing imported products and materials to undercut domestic supplies, is the reduction in building product innovation and testing being done in Australia by local manufacturing companies. With less products developed and tested in Australia, there has been a relentless impoverishment of the industry's technical expertise. The industry is now facing a chronic shortage of expert building product knowledge. Therefore finding appropriately experienced and qualified people to provide the level of rigor and investigative expertise required by the Committee will be problematic.
- The cost of appropriately operating the Committee – In order to determine suitability of particular building products for particular uses the Committee will need to check and verify product documentation, determine each product's interaction with other building products and the structure it is to be used in, as well as potentially commission independent product testing. This is all extremely costly activity requiring expertise that will most likely need to be contracted out, especially in the case of products being used in performance-based solutions, where existing compliance documentation is unlikely to be available and only independent testing will determine the product's suitability. Again, drawing on existing (and future) third party product certification schemes would significantly reduce the cost to the Queensland government of determining the suitability of materials.
- Acceptance of public risk – Once the Committee advises the Minister, commissioner and board on the suitability of particular building products for particular uses, that advice becomes a matter of public record and could place the Department in a difficult position if a product that has been passed by the Committee, subsequently fails in a real-world situation.
- Acting on advice – It is unclear from the Bill what requirements there are for the Minister, commissioner, or Board to act on the advice of a Building Products Advisory Committee. Without specific empowerment/action requirements it is conceivable that any or all the advice generated by the Committee could be ignored. This would undermine the intention of the Bill, not to mention call into question the effectiveness and cost of an advisory body.
- Politicising of approval process – If a Commissioner answering to a Minister has ultimate control over approval of building products, there is risk of commercial lobbying, political interference/expediency and/or arbitrary policy back-flipping based on party ideology in the future. For example, those with vested interests lobbying for approval of flammable cladding because the costs of alternatives (in their view) are too high. This is already a problem on some standards committees, especially those overseeing a list of 'approved products', where the decision to include new products (or remove existing products) is influenced by intense lobbying of representative bodies involved in the committee and the individual members of the standards committee.

Should the Department wish to pursue the concept of Building Products Advisory Committee as intended in the Bill, we suggest that its powers be expanded to ensure that 'safety' is not its only concern with regard to building products, and that the incorporation of individual products into sub-assemblies and the interaction of those sub-assemblies do not create risks to consumers and the public.

BPIC Recommended Changes to Draft Bill:

It is recommended that Clause 5 be amended as follows:

Section 20B—

omit, insert—

20B Committees

- (1) The Building Products Advisory Committee is established.
- (2) The Building Products Advisory Committee—
 - (a) consists of the members prescribed by regulation; and
 - (b) has a primary function of giving the Minister, commissioner and board advice about the following matters—
 - (i) the suitability of particular building products, *including building sub-assemblies*, for particular uses;
Examples of things that under subsection 20B (2) (b) (i) are building sub-assemblies –
 - *ventilation ductwork*
 - *glazed cladding*
 - *suspended concrete slab*
 - *fabricated steelwork*
 - (ii) *the suitability of product certification and installation information regarding particular building products for particular uses;*
 - (iii) the safety, *regulatory compliance and failure risk* of particular building products, whether or not they are associated with an existing building;
 - (iv) the safety *regulatory compliance and failure risk* of a building with which a non-conforming building product has been associated;
 - (v) *the minimum promotion and public communication requirements* for the safe use *regulatory compliance and failure risk* of building products in the building industry;
 - (vi) how to raise awareness of non-conforming building products;
 - (vii) action under this Act that may be appropriate for dealing with non-conforming building products; ~~and~~
 - (viii) *how to encourage the adoption of digitised technical building product data as an effective means to control and eliminate non-conforming building products, and*
 - (c) has any other functions prescribed by regulation; and
 - (d) has all the powers *and resources* necessary for performing its functions, including obtaining expert advice from industry bodies and other persons.
 - (e) *works with those industry associations with certification schemes and authorities that comply with ISO/IEC 17065:2013, to carry out the activities referred to in subsection (2) (b).*
 - (f) *works with those industry associations and organisations that facilitate the exchange of technical building product data via digital protocols and formats to enable the determination of the provenance of building products, as well as the verification of their compliance for an intended use, and to carry out the activities referred to in subsection (2) (b).*
- (3) *The board, commissioner or the Minister, must act on the reasonable advice of the Building Products Advisory Committee, in a timely manner and as stipulated by any regulation for prescribing the requirements of subsection (3).*
- (4) *The board, commissioner, the Minister, and the Building Products Advisory Committee must conform to all lobby and probity regulation in the discharge of their duties under this Act.*

Clause 6 Amendment of s 20J (Role of the commissioner)

BPIC supports this clause and suggests minor modifications that will empower those in the product supply chain to better meet their responsibilities.

BPIC Recommended Changes to Draft Bill:

It is recommended that Clause 6 be amended as follows:

- (2) Section 20J(1)—
insert—
 - (ia) publishing information about building products, including, for example—
 - (i) the uses for which particular building products are not suitable; and
 - (ii) how ~~to use particular building products~~ to ensure their use is safe and complies with relevant legislation *and Standards*.
 - (iii) *how to verify legitimate product certification and installation information and identify information that is fraudulent.*

Clause 7 Amendment of s 20K (Relationship between commissioner and board)

BPIC supports this clause.

Clause 8 Insertion of new ss 28A and 28B

BPIC supports this clause and suggests minor modifications that will empower the QBCC to be more effective in discharging its responsibilities.

BPIC Recommended Changes to Draft Bill:

It is recommended that Clause 8 be amended as follows:

28B Exchange of information between commission and relevant agencies

- (2) An information-sharing arrangement may relate only to information—
 - (a) that helps—
 - (i) the commission perform the commission's functions under this Act; or
 - (ii) the relevant agency perform its functions; or
 - (b) the disclosure of which is reasonably necessary for protecting the health or safety of a person or property, *or*
 - (c) *the disclosure of which helps protect a person or property from fraudulently labelled products or misleading claims about products; or*
 - (d) *the disclosure of which is reasonably necessary for the prevention of property from being destroyed, damaged or otherwise compromised.*

Clause 9 Amendment of s 48 (Cancellation or suspension of licence)

BPIC supports this clause and suggests modifications that will enable the regulator to better control the use of building products and hold those in the supply chain accountable for their actions. To action BPIC's recommendation in its submission to the Queensland Building Plan consultation and for alignment with legislation in other jurisdictions, BPIC recommends that this clause also include measures to stamp out 'phoenixing'; where a company closes down leaving large unpaid debts, only to re-emerge as a new company trading under a different name.

BPIC Recommended Changes to Draft Bill:

It is recommended that Clause 9 be amended as follows:

- (2) Section 48—
insert—
- (ha) building or other work on a building site under the licensee's control may have—
 - (i) caused the death of, or grievous bodily harm to, a person; or
 - (ii) involved a serious risk to the health or safety of a person; or
 - (iii) *used building products that have the potential after the building is commissioned, to cause the death of, or grievous bodily harm to, a person or involve a serious risk to the health or safety of a person, or result in property destruction, damage or compromise.*
 - (k) *the licensee or, in the case of a holder that is a partnership, any partner of that holder, becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or*
 - (l) *the licensee is a corporation and it has become the subject of a winding up order under the Corporations Act 2001 of the Commonwealth or has been voluntarily wound up, or*
 - (m) *the licensee is a corporation and it has been deregistered under Chapter 5A of the Corporations Act 2001 of the Commonwealth, or*
- (4) Section 48—
insert—
- (3) *The holder of a licence must, within 7 days after becoming aware of the occurrence in relation to the licence of any event or circumstance referred to in subsection (1) (k), (l) or (m), notify the Commission in writing of the event or circumstance and include in the notification the full names and addresses of all Directors and Public Officers responsible for running the corporation for a 12 month period up to and including the event or circumstance referred to in subsection (1) (k), (l) or (m).*

Clause 10 Insertion of new s 54A

This clause is a duplication of powers already existing within the Work Health and Safety Act 2011 and the Electrical Safety Act 2002. Including such a clause in the Bill has the potential to confuse contractors, make compliance complex and as a result, provide a legal loophole should the Queensland Government wish to prosecute an offence. BPIC would only support this clause if the following modifications were made.

BPIC Recommended Changes to Draft Bill:

It is recommended that Clause 10 be amended as follows:

- (1) This section applies if a licensee becomes aware of either of the following (each a safety matter)—

- (a) a notifiable incident *resulting from a failure or risk of failure of a building product (including temporary structures associated with construction)* has occurred on a building site under the licensee's control or on which the licensee is carrying out building work;
- (b) a person carrying out building or other work on a building site under the licensee's control, or on which the licensee is carrying out building work, has contravened or is contravening—
 - (i) a notice or injunction *relating to a building product (including temporary structures associated with construction)* under the Work Health and Safety Act 2011, part 10; or
 - (ii) a notice or injunction *relating to a building product (including temporary structures associated with construction)* under the Electrical Safety Act 2002, part 11A.

Clause 11 Insertion of new pt 6AA

BPIC supports this clause and suggests modifications that will clarify and better define terms used in the Bill.

BPIC Recommended Changes to Draft Bill:

It is recommended that 74AA Definitions for part be amended as follows:

non-compliance risk means a risk that the association of a building product with a building for an intended use does not, or will not, comply with the relevant regulatory provisions *and Standards*.

substituted product means a building product other than that originally specified or requested, used in place of the one originally specified or requested.

temporary structure means any structure that is not attached to a permanent foundation and/or used to aid the construction of a building, and which is removed when the designated time period, activity, or use for which the temporary structure was erected has ceased (e.g. scaffolding, formwork, hoardings, etc).

It is recommended that 74AB What is a building product and a non-conforming building product be amended as follows:

- (1) A building product is any material or other thing associated with, or that could be associated with, a building *including a temporary structure*.
- (2) A building product is a non-conforming building product for an intended use if—
 - (a) the association of the product with a building or temporary structure for the use—
 - (i) is not, or will not be, safe; or
 - (ii) does not, or will not, comply with the relevant regulatory provisions *and Standards*; or
 - (iii) *does, or will cause, property destruction, damage or compromise*.
 - (b) the product does not perform, or is not capable of performing, for the use to the standard it is represented to perform by or for a person in the chain of responsibility for the product.
 - (c) *the product does not perform, or is not capable of performing, for the length of time it is represented to perform for or for a person in the chain of responsibility for the product*.
 - (d) *its certification/authentication/test information or installation instructions are not verifiably legitimate or are inadequate*.

It is recommended that 74AC Relationship with safety laws be deleted in its entirety for the same reasons as Clause 10 (see comments above).

It is recommended that 74AE Who is a person in the chain of responsibility for a building product be amended as follows:

A person, *either natural or juridical (company, body corporate, etc)*, is a person in the chain of responsibility for a building product if—

- (a) the person—
 - (i) designs, manufactures, *attests/certifies/authenticates, advertises/recommends/promotes,* imports or supplies the building product; and
 - (ii) knows, or is reasonably expected to know, the product will or is likely to be associated with a building *or temporary structure*; or
- (b) the person *specifies, substitutes or* installs the product in a building *or temporary structure* in connection with relevant work.

It is recommended that 74AG Additional duty relating to accompanying information be amended as follows:

- (1) A person in the chain of responsibility for a building product who designs the product must ensure, ~~so far as reasonably practicable,~~ that, if the person gives the design to another person who is to give effect to the design, the design is accompanied by the required information for the product, *and that where relevant Australian regulatory provisions and Standards exist, the design of the product complies with these provisions and Standards., or in the absence of relevant Australian regulatory provisions and Standards, the design meets the high quality and durability standards reasonably expected by Australian consumers, or other performance/service requirements set by relevant industry associations.*
- (2) *A person in the chain of responsibility for a building product who attests/certifies/authenticates the product must ensure that, if the person gives the test/certificate/authentication to another person, that they are duly authorised under relevant Australian regulatory provisions to undertake such tests/certifying/authentication and that the product is accompanied by the required information for the product, including verifiable information that it complies with all relevant Australian regulatory provisions and Standards.*
- (3) *A person in the chain of responsibility for a building product who substitutes one product for another product that has already been specified or agreed to, must ensure, so far as reasonably practicable, that when the person gives the substituted product to another person, the substituted product is accompanied by the required information for the product, and that where relevant Australian regulatory provisions and Standards exist, the substituted product complies with these provisions and Standards., or in the absence of relevant Australian regulatory provisions and Standards, the substituted product complies with the performance and service requirements that applied to the original specified or requested product.*
- (4) A person in the chain of responsibility for a building product who *advertises/recommends/promotes,* manufactures, imports or supplies the product must ensure, so far as reasonably practicable, that when the person gives the product to another person the product is accompanied by the required information for the product *and that where relevant Australian regulatory provisions and Standards exist, the product complies with these provisions and Standards., or in the absence of relevant Australian regulatory provisions and Standards, the product meets the high quality and durability standards*

reasonably expected by Australian consumers, or other performance/service requirements set by relevant industry associations.

- (5) For subsection (1), (2), (3) and (4), a person **gives** a building product to another person if the person—
 - (a) sells, supplies or otherwise transfers the building product to the other person; or
 - (b) facilitates the sale, supply or transfer of the building product to the other person.
- (6) *A person who substitutes or installs a building product in a building must ensure, so far as is reasonably practicable, that the product is substituted or installed strictly in accordance with the manufacturer's or supplier's instructions.*
- (7) *A person who substitutes or installs a building product in a building must ensure, so far as is reasonably practicable, that the product is not a non-conforming building product for an intended use.*
- (8) A person who *specifies, substitutes or* installs a building product in a building must ensure, so far as is reasonably practicable, that the owner *and/or occupants and tenants* of the building ~~is~~ *are* given *required* information about the product prescribed by regulation *and Standards* for this subsection.
- (9) A regulation, for subsection (1), (2), (3) and (4) *and* subsection (8), definition *required information*, may prescribe the following requirements for information about a building product—
 - (a) matters that must be included or provided for in the information;
 - (b) matters that must not be included or provided for in the information;
 - (c) the form *and transmission method* in which the information must be given;
 - (d) *the timing or sequence in which the information must be given;*
 - (e) *the relevant recipients who must receive the information.*

It is recommended that 74AI Duty of executive officer of company be amended as follows because it is beyond the government's remit to decide what private (company) resources should or should not be marshaled. However it is appropriate for government to specify a satisfactory outcome that a company must achieve and that is adequately covered in subsection (3)(d):

~~(3)(c) to ensure the company has, and uses, appropriate resources to remove or minimise the risks mentioned in paragraph (b)(ii); and~~

It is recommended that 74AL Duty to notify non-conforming building product be amended as follows:

- (1) Subsection (2) applies if a person in the chain of responsibility for a building product becomes aware, or reasonably suspects, that –
 - (a) the building product is a non-conforming building product for an intended use, *or*
 - (b) *the building product for an intended use, is not being installed as per the manufacturer's or supplier's instructions.*
- (1A) *Subsection (2) does not apply if a person in the chain of responsibility for a building product who attests/certifies/authenticates the product becomes aware, or reasonably suspects, that the building product is a non-conforming building product for an intended use as part of the testing/certification/authentication process and immediately notifies the product designer, manufacturer or supplier.*
- (4) Subsection (5) applies if the commission is satisfied—

- (a) the building product is or may be a non-conforming building product for an intended use; *or*
 - (b) there are safety risks arising from the product being a non-conforming building product for the intended use; *or*
 - (c) *the non-conforming building product does, or will cause, property destruction, damage or compromise.*
- (5) The commission may, by written notice given to a person in the chain of responsibility for the building product, direct the person to take stated action within a stated period to remove or minimise the ~~safety~~ risks.

It is recommended that 74AM Duty to notify notifiable incident be deleted in its entirety as it appears to duplicate the provisions of 74AL (2) and (3).

It is recommended that 74AV Application of division be amended as follows:

- (1) This division applies to a building product if—
- (a) the Minister is satisfied the product—
 - (i) is a non-conforming building product for ~~all intended~~ *a risk-in-context* uses; ~~and or~~
~~(ii) is not reasonably expected to be used for any other use; or~~
Examples of things that under subsection 74AV (1) (a) (i) are building products that are risk-in-context i.e. in one context might be fit-for-purpose and in a different context not fit-for-purpose –
 - *Australian Standards compliant plain shank flat head galvanised nails marketed, sold or supplied as being appropriate/intended for cyclonic roof fastening.*
 - *Watermark approved low pressure plumbing valve marketed, sold, or supplied as being appropriate/intended for high pressure plumbing application.*
 - (ii) *is, on a wide scale or normally, not being installed strictly in accordance with the manufacturer's or supplier's instructions, or*
 - (b) the Minister is satisfied—
 - (i) the product has been, ~~or~~ *is proposed to be, or in the absence of specific advice to the contrary could reasonably be assumed to be,* associated with a building *or temporary structure* for an intended use; and
~~(ii) the product is a non-conforming building product for the intended use; and~~
 - (ii) there are safety risks arising from the product being a non-conforming building product for the intended use *or the product does, or will cause, property destruction, damage or compromise.*

It is recommended that 74AW Minister may make recall order be amended as follows:

- (4) In this section—
- responsible person, for a building product, means—
- (a) a person who designed, manufactured, *advertised/recommended/promoted*, imported or supplied the product; or

- (b) if the product has been associated with a building *or temporary structure*—the person who *specified, substituted or* installed the product.

It is recommended that 74AZ Nature of recall order be amended as follows:

- (3) The recall order remains in force until the end of 2 years after the order *is fully complied with* ~~made~~ unless sooner revoked by the Minister.

It is recommended that 74AZA Supplier or installer must help responsible person be amended as follows:

Examples of reasonable help by supplier—

- ceasing the supply of the recalled building product
- putting up *easily read* signs *(in English and Italian, Greek, Cantonese, Arabic, Vietnamese or other language as may be required)* about the recall *in a prominent place* at the supplier's place of business *and announcing the recall prominently on the homepage (in English and Italian, Greek, Cantonese, Arabic, Vietnamese or other language as may be required) of the supplier's website, social media sites, relevant trade publications and all technical/promotional literature.*
- providing ~~a~~ *convenient, no-cost*, collection points for recalled building products *close to places where the products were installed or used.*
- identifying *and* ~~or~~ contacting persons supplied with the recalled building product
- *responsibly recycling recalled products, or safely disposing of them if recycling is not possible.*

Offence proceedings in Magistrates Court

The power to enter seize, stop work, suspend /cancel licences is admirable, but it only allows the QBCC to take punitive action against the licensees it regulates. Therefore a different mechanism is required to pursue other miscreants in the chain of responsibility. BPIC recommends that the Bill incorporates some of the Offence and Enforcement powers articulated in the Queensland Planning Act 2016 specifically, the **Offence proceedings in Magistrates Court**:

001 Proceedings for offences

- (1) *Proceedings (offence proceedings) for an offence against this Act—*
- (a) *are to be taken in a summary way; and*
- (b) *must start—*
- (i) *within 6 years after the offence is committed; or*
- (ii) *within 1 year after the offence comes to the complainant's knowledge.*
- (2) *However, only the enforcement authority may bring a proceeding for an offence under Part 6AA Building products; or*
- (3) *In a complaint starting offence proceedings, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.*

002 Proceedings brought in a representative capacity

- (1) *A person may bring offence proceedings in a representative capacity, if the person has the consent of—*

- (a) *for proceedings brought on behalf of a body of persons or a corporation—the members of its controlling or governing body; or*
- (b) *for proceedings brought on behalf of an individual—the individual.*

Note—

For proceedings by a local government, see the Local Government Act, section 237 or the City of Brisbane Act, section 218.

- (2) *The person on whose behalf the offence proceedings are brought may contribute to, or pay, the legal costs and expenses incurred by the person bringing the proceedings.*

003 Enforcement orders

- (1) *After hearing offence proceedings, a Magistrates Court may make an order (an enforcement order) for the defendant to take stated action within a stated period.*

Examples of action that an order may require—

- *cease manufacture, sale, promotion or supply of a building product or material*
- *order destructive and/or other testing of a building product or material*
- *to stop the installation of a building product or material in a development*
- *to demolish or remove part of a development incorporating a building product or material*
- *to restore, as far as practicable, premises to the condition the premises were in immediately before a building product or material was used*
- *to do, or not to do, another act to ensure a building product or material complies with all regulatory requirements and Standards*
- *if the court reasonably believes building products or materials are dangerous, to repair or rectify the property, to secure the property, or to fence the property off to protect people*
- *to stop a stated use of a building product or material*
- *to require refund of purchase and delivery costs of sub-standard building products*
- *to require compensation of costs associated with removal and rectification associated with sub-standard building products*

- (2) *The enforcement order may be in terms the court considers appropriate to secure compliance with this Act.*

Example—

The order may require the defendant to provide security for the reasonable cost of taking the stated action, or a restraint on the defendant from removing any assets located in or outside Australia or from disposing of, dealing with, or diminishing the value of, those assets, which might reasonably pay for the costs of taking the stated action.

- (3) *An enforcement order must state the period within which the defendant must comply with the order.*
- (4) *An enforcement order may be made under this section in addition to the imposition of a penalty or any other order under this Act.*

- (5) *A person must not contravene an enforcement order.*

Maximum penalty—4500 penalty units or 2 years imprisonment.

- (6) *Unless a court orders otherwise, an enforcement order—*

- (a) *attaches to the building product, material or premises; and*
- (b) *binds the manufacturer, importer, supplier, property owner, their successors in title and any other associated party.*

Maximum penalty—200 penalty units.

- (7) *A person may apply to the court for an order (a compliance order) that states the enforcement order has been complied with.*
- (8) *If a person gives a notice that a compliance order has been made, and a copy of the compliance order, to the registrar of titles, the registrar must remove the record of the making of the enforcement order from the appropriate register.*
- (9) *If the enforcement order is not complied with within the period stated in the order, the enforcement authority may—*
 - (a) *take the action required under the order; and*
 - (b) *recover the reasonable cost of taking the action as a debt owing to the authority from the defendant.*

004 Order for compensation

- (1) *This section applies if a Magistrates Court—*
 - (a) *finds a defendant guilty of an offence under this Act;*
 - (b) *finds that, because of the offence, another person has—*
 - (i) *suffered loss of income; or*
 - (ii) *suffered a reduction in the value of, or damage to, property; or*
 - (iii) *incurred expenses to replace or repair property or prevent or minimise, or attempt to prevent or minimise, the loss, reduction or damage.*
- (2) *The court may order the defendant to pay the other person compensation for the loss, reduction or damage suffered or the expenses incurred.*
- (3) *An order may be made under this section in addition to the imposition of a penalty and any other order under this Act.*

005 Order for investigation expenses

- (1) *This section applies if—*
 - (a) *a Magistrates Court finds—*
 - (i) *a defendant guilty of a building offence; and*
 - (ii) *an enforcement authority has reasonably incurred expenses in taking a sample or conducting an inspection, test, measurement or analysis to investigate the offence; and*
 - (b) *the enforcement authority applies for an order for the payment of the expenses.*
- (2) *The court may order the defendant to pay a reasonable amount for the expenses to the enforcement authority if the court considers it would be just to do so in the circumstances.*

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.