



Submission to the
Senate Economics Reference Committee

Non-Conforming Building Products Inquiry

Submitted by:

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Contents

1.0	Abstract.....	1
2.0	Summary and Key Recommendations.....	1
3.0	The Role of BPIC	4
4.0	Background.....	5
a)	Economic impact of non-conforming building products on the Australian building and construction industry.....	5
b)	Impact of non-conforming building products on:	7
i.	Industry supply chains.....	7
ii.	Workplace safety and any associated risks.....	8
iii.	Costs passed on to customers, including any insurance and compliance costs.....	8
iv.	Overall quality of Australian buildings	9
c)	Possible improvements to the current regulatory frameworks:.....	9
i.	Policing and enforcement of existing regulations.....	9
ii.	Independent verification and assessment systems.....	11
iii.	Surveillance and screening of imported building products	12
iv.	Restrictions and penalties imposed on non-conforming building products.....	12
d)	Related matters.....	13
5.0	Conclusion.....	13
6.0	References	13

1.0 Abstract

This submission strongly supports the Senate Inquiry into Non-Conforming Product (NCP) as the prevalence of building products not meeting relevant Australian standards and codes has increased significantly and in step with increased global sourcing and purchasing practices in recent years.

The Building Products Innovation Council (BPIC) is submitting these 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 welcomes the opportunity to comment on the negative impact that NCPs are having on the Australian building industry such as loss of jobs, expensive and unproductive rework, and the construction of poor quality buildings. This submission makes 19 recommendations to the Inquiry that it believes will profoundly reduce the incidence of NCPs entering the supply chain and ending up in buildings.

Keywords: non-conforming, fit-for-purpose, recall insurance, independent verification, NCP, BPIC

2.0 Summary and Key Recommendations

On 23 June 2015, the Senate referred an inquiry into non-confirming building products to the Senate Economics References Committee for inquiry, with particular reference to the impact of non-conforming building products on the Australian building and construction industry, possible improvements to the current regulatory frameworks for ensuring that building products conform to Australian standards, and other related matters.

The Building Products Innovation Council (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 Inquiry and its subsequent findings.

Over the last decade there has been a shift in the building products supply chain to an increased use of offshore sources along with a decreased level of local manufacturing of these products. Further, the ease of purchasing online has brought into the market a plethora of less educated buyers (sourcing small quantities), who do not have the knowledge to ensure products are 'fit for purpose'. There are also numerous examples of local manufacturers cheating the system. 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 problem also has its roots in 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.

BPIC believes that the management of the building product supply chain must be achieved nationally as building products are not affected by state and territory borders. BPIC also acknowledges that the problem of Non-Conforming Products (NCPs) is not merely a case of accidental or poor production. In most cases manufacturers seek to use the data management weaknesses to deliberately substitute or provide substandard product.

This has a significantly negative and widespread impact on both the building industry and building owners alike. Not only does a non-level playing field hurt complying businesses, but it creates downstream costs that are ultimately borne by building owners and taxpayers.

BPIC is suggesting that the main contributors to this situation are:

- A regulatory system that allows for easy passing off of fraudulent materials or supply of NCP.
- Ineffective surveillance for NCP.

- A lack of, or lack of use of, existing third party certification systems.
- A lack of effective reporting and enforcement of existing standards requirements.
- An uneven playing field for importers compared with local producers on non-compliant product requirements that substantially disadvantage local supply.

In response BPIC is recommending to the Inquiry that the following potential actions could be taken to mitigate the problem:

- Improve policing and enforcement of existing regulations
 1. Extend the scope of the definition of consumer goods to include building products, which are used in residential building work giving the ACCC authority to act.
 2. Seek jurisdictions to mandate inspections of buildings by qualified building inspectors during construction.
 3. Establish a National register that documents issues that can be dealt with by a body with authority to act on NCP issues.
 4. Map out and eliminate overlapping non-conformance responsibilities between the Commonwealth, State/Territory and Local Governments.
 5. State and territory consumer affairs agencies to collect non-conforming products information as part of their dispute resolution processes.
- Strengthen independent verification and assessment systems
 6. Establish an Independent Compliance Body within the ACCC to investigate documented and serious NCP complaints and prosecute where appropriate.
 7. Government endorsement and common labelling of existing third party product certification schemes that meet minimum Australasian Procurement and Construction Council (APCC) requirements.
 8. Re-establish the CSIRO Building, Construction and Engineering Division along with its associated testing facilities.
 9. Promote the ABCB to prepare guidance information on the types of evidence of suitability and the building products that should be aligned with each type of evidence based on their risk.
 10. State and Territory building regulators to revisit the benefits of national harmonisation of the administrative framework for building approvals.
- Boost surveillance and screening of imported building products
 11. Federal agencies with responsibilities to manage the importation of building products are required to monitor or seek evidence that a building product meets relevant Australian technical standards.
 12. Throughout the surveillance process introduce anonymity for those reporting NCP along with qualified review of the matter reported.
 13. Empower industry organisations that already have market surveillance mechanisms in place, such that they can formalize 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 (e.g. BRANZ in New Zealand).
 14. Introduce a reliable level of identification of the source of imported product inputs through compulsory labeling (traceability).
 15. Standardise recall powers across Jurisdictional regulators.

- Impose severe restrictions and penalties on non-conforming building products
 16. Impose severe financial penalties where it is proved that an organisation is knowingly selling non-compliant product, installing it, or importing it directly for use in Australia.
 17. Consider state-run schemes where buildings are inspected for product conformity and those found deliberately procuring, installing or certifying offending products are subject to legal action.
- Take other related action
 18. Establish a National Register of Certified Construction Products (NRCCP) to inform the industry and building professionals.
 19. Promote Australian product manufacturers to create detailed “or equivalent” performance specifications for their products with designers and specifiers encouraged to use them.

3.0 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.

4.0 Background

On 23 June 2015, the Australian Senate referred specific matters (described below) to the Senate Economics References Committee (Committee) for inquiry and report by 3 December 2015. The industry was invited to make submissions on the matters referred to the Committee, specifically:

- a) The economic impact of non-conforming building products on the Australian building and construction industry.
- b) The impact of non-conforming building products on:
 - i. Industry supply chains, including importer, manufacturers and fabricators.
 - ii. Workplace safety and any associated risks.
 - iii. Costs passed on to customers, including any insurance and compliance costs.
 - iv. The overall quality of Australian buildings.
- c) Possible improvements to the current regulatory frameworks for ensuring that building products conform to Australian standards, with particular reference to the effectiveness of:
 - i. Policing and enforcement of existing regulations.
 - ii. Independent verification and assessment systems.
 - iii. Surveillance and screening of imported building products.
 - iv. Restrictions and penalties imposed on non-conforming building products.
- d) Any related matter.

The following points provide BPIC's comments on the above matters and for the purpose of this submission the Non-Conforming Products (NCPs) are taken to be products that purport to be something they are not and are marketed or supplied with the intent to deceive those who intend using it.

a) Economic impact of non-conforming building products on the Australian building and construction industry

The economic impacts of NCPs are significant and include a grossly uneven market where complying businesses are trying to compete against manufacturers that are selling non-conforming, inferior (and potentially dangerous) products and operating without important insurances such as recall insurance. Not only are the costs to complying manufacturers considerable (testing, documentation, labelling, warranty insurance, etc), but they also suffer the following handicaps when competing with NCP products:

- Lost sales, delayed sales and reduced revenue.
- Reduced margins and profit.
- Reduced market share and reduced growth in an expanding market segment.
- Decreased productivity.
- Reduced employment numbers.
- Reduced product innovation, features and quality (including shortened product lifetimes).
- Negative consumer sentiment towards complying products caused by the poor performance (deteriorate rapidly, fail prematurely or are unsafe) of NCPs in the same market.

Consumer Costs

Apart from being low-quality, NCPs may also be defective and put at risk the structure, safety and integrity of the building that it is put in. Often their existence in the building is only discovered in certain situations such as where damage to the building results from the product or where the poor durability of the product is revealed through its inability to resist reasonable wear and tear.

On rarer and more serious occasions NCPs will only be identified as a result of damage caused to the health of the building's occupants, or where there has been structural or fire safety failure, accidents, injuries or even death (faulty cabling causing building fires, for example). The discovery of NCPs can also occur when a regulatory body (such as the ACCC) initiates a product recall. In this instance, considerable costs will still be involved due to the need for the product to be identified and removed from affected buildings and replaced by suitable product which conforms to standards.

Once it has been established that NCP has been used, time and resources will be consumed in identifying the precise buildings affected and the locations in those buildings where the defective product is present. This may require extensive investigation through the records of suppliers, importers, retailers, builders and others as well as the use of specialist skilled service providers. Then remedial works will be required to remove or rectify the effects of the NCP. The work involved could range from minor amendments to major structural repairs, and in extreme situations, the demolition and reconstruction of the affected buildings.

There may also be associated costs such as building owners being deprived of using some or all of their buildings, and the perception that the building is somehow deficient could damage its market value. Where those responsible for producing and supplying NCPs cannot be traced or no longer exist in a legal sense, building owners may be forced to pay for remedial works themselves. When situations like this occur, the reputation of all parties involved in residential construction suffers and the risk of market failure outcomes increases.

Brand Reputation Costs

Consumer misperceptions about the causes and consequences of problems caused by NCPs can inflict economic damage on the reputation of the entire supply chain with purchasers of building products unwittingly being put at risk of using defective product in work they undertake. This means inferior NCPs getting mixed in with legitimate conforming building products, with the result that sales and demand for good quality product suffers.

More broadly, the final output of the residential building sector is undermined by the infiltration of NCPs. This has similarly unfavourable reputational effects for all of those engaged in the sector, with reputable and compliant operators suffering from the mistaken perception that they partook in sub-standard building work.

NCPs may also breach intellectual property laws and lead to damaging outcomes for the manufacturers and suppliers of conforming building product, undermining the long-term viability of the building materials sector of the economy.

Health and Safety Costs

With the exception of fires, defective products present the risk of innumerable classes of injury, including laceration from broken or poorly-designed glazing product, the risk of falls arising from defective product giving way or collapsing (such as formwork) and so forth. NCPs can also present threats to the long-term health of those coming into contact with it. This can result from the use of hazardous / dangerous materials in the product, which possess carcinogenic properties, the capacity to damage the respiratory system, or inflict other serious health damage.

Rectifying building work that has used a non-conforming building product, whether knowingly or not is time consuming, costly and unproductive. It is essential that minimising the risk of nonconforming building products entering the supply chain is undertaken by identifying them and removing them before the point of sale.

b) Impact of non-conforming building products on:

i. Industry supply chains

The impact of non-conforming building products on the building industry has been a significant concern for BPIC and its member organisations for many years. BPIC member testing of product purported to meet Australian/New Zealand Standards has shown alarming levels of non-compliance of mostly imported product when compared to companies producing to a credible product certification program. This has resulted in the realisation that there has been a failure to effectively and robustly support the supply chain for building products. In our opinion this is the result of:

- The complexity of the supply chain for building products.
- The ease with which the obligation for checking compliance can be shifted up and down the supply chain and resultant lack of accountability of each party within the supply chain.
- The lack of information available to manufacturers on the legislation, regulations and methods to demonstrate a product's compliance with the National Construction Code.
- The absence of a regulatory body with overarching responsibility for verifying that a building product complies with the National Construction Code.
- A failure to identify which government agencies should be responsible along the stages of the supply chain.
- The lack of political will to address the problem of non-conforming products entering or being manufactured in Australia.
- A failure to separate the intention to provide a regulatory framework that supports conforming building products with protectionism interpretations (the desire not to be seen to be putting up trade barriers to the Australian market under international trade obligations).

Building products traditionally pass downstream in the supply chain from manufacturer or importer to a wholesaler who distributes both directly to trade buyers and to retailers. In recent years this picture has changed, with major retailers both importing directly and selling goods manufactured in Australia as their own brand products, thus taking on the liabilities of a manufacturer. With the rise of large retail supply chains, there are more and more instances of products being ordered by suppliers to conform with the supplier's requirements rather than the manufacturer's instructions and regulatory obligations. In some cases the supplier explicitly claims to be the manufacturer ('own brand'). In other cases, the manufacturer produces a distinct product which is only sold through that supplier chain (so suppliers can give 'price guarantees'). Suppliers are therefore more likely now to be in a position to directly affect safety considerations, along with all other aspects of the products they sell.

Improved ease of import, declining availability from Australian manufacturers, international design trends and intensifying competitive pressures has also led to more instances of 'one off' direct imports of small quantities (e.g. one shipping container load) of particular building products by builders and project managers for use on a particular project. Such imports often come from suppliers with whom no ongoing commercial relationship exists or is contemplated, and whose quality compliance performance is often not unknown or unknowable. Under these circumstances, it is not surprising that greater potential exists for non-compliant, mislabeled, and counterfeit building products to enter Australia undetected. **Liability for unsafe building products, however, is significantly different to liability for unsafe consumer products, as the supplier (as distinct from the manufacturer/importer) has no statutory liability when building products are bought by builders rather than consumers.**

In 2003, the Australian Window Association (AWA) received just three requests a year to deal with product issues. In 2013 that had increased to more than three requests a week. Year to date 2015, the AWA has received up to six request a week. The problem is getting rapidly worse, not better and compliant

companies are closing as they can't compete. There are also a growing number of fraudulent proprietary documents that are making it hard for surveyors to identify legitimate from illegitimate product/manufacture claims. While many overseas laboratories are testing to Australian Standards their reports have identified major testing and reporting flaws in addition to misuse.

There is a price depressing effect from the presence of NCPs that affects compliant companies. Manufacturers are forced to chase price at the expense of maintaining their quality systems and procedures. The knock-on effect is that many manufacturers are unable to maintain a reasonable profit and reinvest in their businesses and R&D suffers as a result.

Unfortunately the scope and scale of the impacts on the industry are not being objectively reported anywhere and in fact the problem is often hidden by the practice of subcontractors and engineers involved in rectification of NCPs being muffled through contractors demanding confidentiality agreements signed under the threat of not receiving further work.

Ultimately the most fundamental problem is the fact that the majority of building products do not require any form of approval or have any requirement to attest to their performance and fitness for purpose prior to being offered for sale. In many instances, a conforming and a non-conforming product can look and feel the same. Establishing compliance at the point of sale is impractical without manufacturer compliance documentation, product approval, form; certification or similar.

ii. Workplace safety and any associated risks

NCPs can pose serious and life threatening risks to consumers and the broader community. The potential for NCPs to cause physical harm or loss of life is one of the most significant consequence of NCP penetration in the Australian building market.

Designers and engineers use the published properties of products to design building systems that are strong enough for the loads experienced during construction and building operation. If inferior NCPs are used instead this clearly poses a significant risk not only to construction workers but to owners and tenants through the chance of catastrophic failure.

This is very much the case with the ability for windows and doors to withstand site wind pressures and resist water penetration. The use of appropriate glass is crucial to human safety and vital for energy efficiency. Failures can include glass breakage, excessive water damage, gross deflection, hot box effect – often leading to irreparable damage to the building envelope, people getting cut (even fatally) or prohibitively high running costs.

Another insidious issue is the risk to worker and occupant health through the use of hazardous / dangerous raw materials in the manufacture of NCPs (e.g. formaldehyde emissions from low-quality and cheaply produced engineered wood products).

Of particular concern is the hazard NCPs pose for the 'DIY' market where product can be purchased 'off the shelf' and installed by unskilled labour. General consumers are unlikely to understand the standards required for safety and performance so it is easy for NCPs to enter the market through these channels.

iii. Costs passed on to customers, including any insurance and compliance costs

According to the AWA, reports indicate the costs associated with rework can be a significant portion of the profit margin of a project. One major builder estimated the average cost of rework due to NCPs was between 0.25% and 2.5% of the overall contract value. The industry is characterised by profit margins between 3% and 12%, and company insurance does not cover product failure and rework costs.

Additionally, the use of NCPs increases the frequency and severity of property claims which can impact the cost of insurance premiums in the long term. With NCPs increasing the incidence of fires, water leaks, and

other building failures that result in costs incurred to repair and replace property, the inevitable result is increased premiums passed on to the broader community.

If builders or owners discover NCPs on a project, the costs incurred by taking legal action to correct non-compliance are also often very expensive and time consuming through the current regulatory framework. There is a lack of confidence that disputes will be handled satisfactorily and this provides a major disincentive to address and reduce the instance of noncompliance.

Buildings with major NCP issues are potentially not habitable or even saleable until expensive rectification is carried out.

Over and above all these project-specific costs are the significant taxpayer costs required to fund mandatory recalls and replacement when manufacturers go bankrupt or is not able to be legally pursued due to international agreements.

iv. Overall quality of Australian buildings

BPIC believes that many buildings are not performing as intended due to the unwitting or intentional use of NCPs, which means that building owners are not getting what they have paid for. In many cases they are also habiting a building with significantly reduced service life due to premature failure of products and subsequent early replacement/rectification. This low-quality situation also means reduced building performance in other areas such as energy efficiency, comfort, damp-proofing etc (not just costs and the risk of injury).

It is important to note that NCPs do not just show up here and there on a building. The AWA's experience indicates that NCPs often show up in bulk situations. For example, non-conforming glazing product is most prevalent in the high rise residential and office markets, as windows and doors for these buildings tend to be consistent dimensions through all the levels. This is an ideal market situation favouring high volume NCP importation on a per project basis by builders and import suppliers.

Fierce competition and lack of policing of codes and standards in the construction sector continues to drive down building quality (of both product and installation) in the pursuit of lower prices. NCPs offer a convenient means for cheaper construction to be realized.

c) Possible improvements to the current regulatory frameworks:

i. Policing and enforcement of existing regulations

Australian Competition and Consumer Commission (ACCC)

BPIC believes that Australia has very good product standards via either the Australian or joint Australian/New Zealand standards system. These reflect the product characteristics necessary to provide safe and reliable performance and the National Construction Code (NCC) references many of these. The Competition and Consumer Act (2010) also seemingly addresses misleading product information, such as a brand not truly representing the properties of a product.

However the ACCC's approach to misleading and deceptive conduct is retrospective. Investigation is limited to actions after a 'potential' breach has occurred. The ACCC has no direct role in managing the conduct of a supplier at the point of entry to the supply chain or at the point of sale, other than the deterrent threat of ACCC action.

Typically, any enforcement action will arise only sometime after installation, when a building owner complains that a product has failed to perform in accordance with its represented qualities and characteristics. The ACCC then has to prove that the person who made the representations did not believe the representations were true at the time they were made, or was reckless as to whether they

are true or not. In many cases this is difficult to prove. The ACCC has no facilities for testing products, and rely on a complaints-driven process which, in the case of complaints requiring scientific testing of building products, often places significant costs on the aggrieved party, regardless of the outcome.

Under the Act, building products do not generally fall within the scope of a consumer good. Therefore the ACCC has effectively no authority to take action in relation to non-conforming building products, either by instigating a recall or adopting a safety standard.

Policing of Regulatory Controls

BPIC members are most frustrated by the failure to police existing regulations to prevent the use of non-compliant building products. Existing enforcement regimes are managed by each state and vary widely between them. There is no inspection/policing processes to confirm that the works undertaken do in fact comply.

In each Jurisdiction, the onus of compliance appears to fall very heavily on the shoulders of building certifiers who are ill-equipped 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.

Another aspect affecting the ability to police NCP contraventions is that there are a large number of small importers of building products. Many of these have very limited paid up capital or assets and disappear if significant product quality issues arise. This makes prosecution difficult and not cost effective.

The combination of lack of surveillance, difficulty and slow speed of legal remedies and lack of meaningful penalties for selling NCPs mean that potential profit from importing non-compliant product far outweighs the risk of penalties for selling misrepresented product.

BPIC recommends that:

- 1. The scope of the definition of consumer goods should be expanded to include building products, which are used in residential building work. The ACCC would then have authority to act. This change could include mirroring the adoption of reference standards in the NCC as safety standards under the Act. The ACCC would also then have authority to carry out a recall of products found to be defective either before or after installation in a building. When the ACCC does take action against a manufacturer, the range of loss and damage compensable under the Act should be extended to include the cost of removing, replacing or making safe the unsafe product itself. The recent Infinity Cable recall shows the extensive reach that failure of one single product can have and the ability to recover the costs of rectification from the appropriate party should be possible.**
- 2. Each Jurisdiction should mandate site inspections of buildings by qualified building inspectors.**
- 3. A receptacle or national register should be created for documented issues that can and will be dealt with by a body with authority to act on NCP issues.**
- 4. Map out and eliminate the incidence of overlapping non-conformance responsibilities between the Commonwealth, State/Territory and Local Governments, including consolidation of responsibilities or tasks.**
- 5. State and territory consumer affairs agencies to collect non-conforming products information as part of their dispute resolution processes.**

ii. Independent verification and assessment systems

Whilst Australian standards are called up in the building codes, and thus by reference must be adhered to, the method of demonstrating compliance is poorly articulated or enforced. The problems the industry faces include:

- Companies ‘self-certifying’ that their products are compliant without any independent testing.
- Certification being provided by third parties who are themselves questionable in regard to the quality and rigour of their process.
- Fraudulent certification documentation being provided by some manufacturers.
- Companies selling into our market with no certification, and being able to do so due to ill-informed consumers and merchants taking advantage of this situation.
- Companies selling into our market with appropriate international testing and independent product assessment, but where they have not accounted for subtleties or specifics in Australian regulation and building environment.
- Building products can be difficult to identify once removed from their packaging and installed, with thermal insulation materials an example.

While mandatory certification would seem to be an obvious answer to these issues, it has not proven to be effective in the electrical and plumbing sectors due to an increase in fraudulent certification.

BPIC recommends that:

6. **An Independent Compliance Body is set up within the ACCC to investigate documented and serious complaints and prosecute where appropriate. It is suggested that an Independent Compliance Body be self-funded directly from the significant infringement penalties for convictions.**
7. **Re-establish the CSIRO Building, Construction and Engineering Division along with its associated testing facilities.**
8. **There be Government endorsement and common labelling (including permanent etching/marking products that cannot be removed) of existing third party product certification schemes that meet the following minimum Australasian Procurement and Construction Council (APCC) requirements:**
 - a) **Accredited through the JAS–ANZ.**
 - b) **Includes product conformity requirements for type or batch (ongoing) testing to Australian or International Standards as appropriate, as well as a process for ongoing, periodic auditing.**
 - c) **Undertakes market surveillance to identify and weed out fraudulent activity.**
 - d) **In addition to third party testing for the release onto the Australian market of new products, there must also be follow-up randomized sample testing to ensure that raw product changes, manufacturing tolerance creep, wear and tear of production machinery and manufacturing process alterations have not diminished the performance of the finished products. This will avoid the “golden sample” situation, where a manufacturer presents a compliant product for testing but the mass-produced material does not reach this same standard.**
 - e) **Link product certification with trade licencing/accreditation to ensure that industry professionals/companies purchase compliant product**
 - f) **All Government contracts stipulate the use of industry backed third party compliance schemes for key structural product areas (e.g. structural steel) where available.**
9. **The ABCB to prepare guidance information on the types of evidence of suitability and the building products that should be aligned with each type of evidence based on their risk.**
10. **State and Territory building regulators to revisit the benefits of national harmonisation of the administrative framework for building approvals.**

iii. Surveillance and screening of imported building products

Whilst there are a number of federal agencies with responsibilities to manage the importation of building products, there is no obligation on any one agency to monitor or seek evidence that a building product meets relevant Australian technical standards. Without specific obligations to confirm a product meets relevant standards, these agencies also have limited authority to monitor and take action should a non-conforming product enter the Australian market. This creates a situation where the product must enter the market before any action can be taken using other powers available to other authorities, such as the Australian Competition and Consumer Commission or state consumer protection authorities.

It is also BPIC's view that identification of NCPs must be non-discriminatory and apply to all building products, both domestically produced and imported.

Furthermore it is clear that designers and specifiers are being continuously pressured to approve substituted foreign materials and material standards where there is a cost saving to their contractor. BPIC members express frustration at being unable to safely report NCP due to confidentiality clauses in construction contracts and sensitivity of relationships in the building products supply chain. This makes continuous improvement or a 'Safety Alert' process impossible.

BPIC recommends that:

- 11. Federal agencies with responsibilities to manage the importation of building products are required to monitor or seek evidence that a building product meets relevant Australian technical standards.**
- 12. Throughout the surveillance process introduce anonymity for those reporting NCP along with qualified review of the matter reported.**
- 13. Empower industry organisations such as BPIC members (like EWPA) that already have market surveillance mechanisms in place, such that they can formalize a testing regime for all products within their sector and funded by a portion of penalties imposed on NCP suppliers or from a 1% levy on all construction (e.g. BRANZ in New Zealand).**
- 14. Introduce a reliable level of identification of the source of imported product inputs through compulsory labeling (traceability).**
- 15. Recall powers across Jurisdictional regulators need to be standardised.**

iv. Restrictions and penalties imposed on non-conforming building products

It is BPIC's belief that the current product certification and screening systems in place through the Australian Competition and Consumer Commission (ACCC) and the National Construction Code (NCC) are ineffective in preventing non-conforming building products.

There is no effective discouragement or penalty for contractors to seek conforming product where the non-conforming product is cheaper. When failure occurs, the current industry practice is to employ the local industry to undertake rectification works under confidentiality contracts. These confidentiality contracts restrict the opportunity for disclosure of important safety information which would be in the public interest.

BPIC recommends that:

- 16. Severe financial penalties need to be imposed where it is proved 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.**
- 17. Consideration is given to a program akin to the state-run options in the United States where buildings are inspected for product conformity and those found deliberately procuring, installing and certifying offending products are charged with legal action. There is no provision for a phoenix company under these rules, and penalties can incur jail time. The United Kingdom also helps point the way forward with a confidential reporting scheme previously known worldwide as CROSS, now**

known as **Structural Safety**. This is an authority that operates confidential reporting on structural safety scheme, allowing stakeholders to report anonymously on unsafe building products and practices in structures. Site inspections and whistleblowing options enhance prospects for identifying NCPs and have been proven to work effectively overseas.

d) Related matters

Currently there is no central data management of the building products supply chain for comparative purposes, central management of certified products, or central management or registration of distributors or resellers. Further, even if non-conforming product is found it is difficult to communicate to consumers which actual product is recalled; or to trace or manage recalls.

In a similar vein, information available to designers and specifiers is often limited and/or contradictory. This leads to a situation where an “or equivalent” option can be noted against a preferred complying product in a specification, yet no details are listed as to what the performance metrics of the equivalent product should be. This opens the door for contractors to use NCPs intentionally or otherwise since, as far as the project specification is concerned, there are insufficient details to categorically rule out NCPs.

BPIC recommends that:

18. **A National Register of Certified Construction Products (NRCCP) is created to inform the industry and building professionals. This national register should also contain information regarding the purposes for which a product may be used, thus avoiding incidents where a AS / ISO conforming product is used in a non-compliant manner.**
19. **Australian product manufacturers create detailed “or equivalent” performance specifications for their products, and that designers and specifiers are encouraged to document them in specifications with some type of anonymous reporting system through their professional bodies for poor project documentation.**

5.0 Conclusion

BPIC calls on the Senate Inquiry and Government to help address the critical problem of non-conforming building products in the construction industry.

As recent experience shows, relying on companies especially overseas manufacturers and importers to supply data that backs their claims, and relying on the threat of vague penalties if they are misleading, is not an effective system. Company and product claims need to be independently tested.

The building products industry in Australia is and has always been self-reliant and self-funded. BPIC’s arguments and recommendations above are not in any way a veiled attempt at protectionism and we are definitely not seeking trade restrictions, tariffs, subsidies or any form of corporate welfare.

What we are arguing for is a level playing field in the building industry for all participants and that cheats and those clearly gaming the system be indentified and heavily penalised. BPIC’s highest priority strategies have been selected and are provide in the “Summary and Key Recommendations” section above.

6.0 References

Prime Minister’s Manufacturing Taskforce Report of non-government members (August 2012)

Structural Steel Industry Review - Compliance Sustainability and Value for TMR (12 August 2011)

Inpex Report: Capabilities of the Australian steel industry to supply major projects in Australia (April 2010)

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The Australian Industry Group, *The quest for a level playing field, The non-conforming building products dilemma* (2013)

New Zealand Department of Building and Housing publication, *Using the Product Assurance Framework to support building code compliance - A guide for manufacturers and suppliers of building products* (April 2010)