

# NON-CONFORMING BUILDING PRODUCTS ARE NOW EVERYONE'S RESPONSIBILITY

## Important changes to laws on Non-Conforming Building Products

### **Building and Construction Legislation (Non-Conforming Building Products - Chain of Responsibility) Amendment Bill 2017**

In August 2017, the Queensland Government passed new laws which affect the building and construction industry.

The laws place greater responsibility on everyone in the building product supply chain, to ensure that products used on buildings are fit for their intended purpose.

For example, this means that if a supplier sells a building product that is unfit for its intended purpose, the supplier could be liable for compliance enforcement action.

The laws now ensure everyone in the building product supply chain is accountable.

The intent of the new laws is to improve the safety of Queensland buildings.

### **Non-conforming building products (NCBP)**

**Non-conforming building products** and materials are those that do not meet the required standards for the use in which they are intended.

This is a nation-wide issue that not only affects everyone in the building and construction industry, but all community members who live, work, study and play in the built environment around us.

A non-conforming building product is a building product that:

- Is not, or will not be safe; or
- Does not, or will not, comply with the relevant regulatory provisions; or
- 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.

### **What is a building product?**

- A building product is any material or other thing associated with, or that could be associated with a building or the construction of a building.
- It is not intended to capture any products which are not considered to form part of building or plumbing work and not all products purchased are building products. For example, stoves would not be considered building products. The intention is to capture products that are used, or could be reasonably used, in the construction of the building and are regulated to ensure

that they comply with the requirements of the building assessment provisions, including plumbing assessments and Notifiable Works.

### **Complaints about Non-Conforming Building Products**

Complaints can be made to the QBCC about non-conforming building products.

To make a complaint about a non-conforming building product please submit a request online by visiting the QBCC website.

Complaints can be submitted anonymously. It's important to note however, that the QBCC will have greater investigate capacity when more information about a product is received.

### **What are my responsibilities?**

The new laws make everyone in the building product supply chain, including designers, importers, manufacturers, suppliers and installers responsible for ensuring that all building products conform to relevant standards and are safe.

Part of this increased accountability is the new requirement for building products to have appropriate information that outlines the purpose they're intended for, and for this information to be supplied throughout the supply chain.

### **Workplace Health and Safety changes**

The new laws also place greater responsibility on all QBCC licensees to report unsafe situations on building sites. Licensees must notify the QBCC of any activity that may present a work health safety issue, and in serious incidences where a licensee is convicted of a work health and safety offence the QBCC now has the power to suspend or cancel the license.

### **Increased investigative powers**

The new laws have expanded the investigative powers of the QBCC, when it comes to non-conforming building products. Previously, QBCC inspectors could only enter active building sites to gather evidence, but there are now provisions for the QBCC to enter any place as part of investigations into suspected non-conforming building product use. The changes also enable the QBCC to seize products for testing.

### **How will the QBCC determine who has a duty and**

Page 1 of 2

## therefore accountable?

The QBCC will conduct an investigation to determine who in the chain of responsibility has contravened their duty.

It is possible for more than one person in the chain of responsibility to have the same duty concurrently.

The new laws are consistent with other legislation such as Work Health Safety and Electrical Safety that also apply duties regimes.

## What information can a person in the chain of responsibility rely on from others higher up?

Each person in the chain of responsibility must ensure that so far as reasonably practicable, a product is not a NCBP for an intended use.

When provided a document or information from another person in the chain of responsibility, a person must satisfy themselves as far as reasonably practicable that the product is not a NCBP.

Reasonably practicable is defined in the *Queensland Building and Construction Commission Act 1991* (The QBCC Act) and the Department of Housing and Public Works and the QBCC will work with industry to prepare practice standards to assist people to comply with their duty.

Also, more than one person can have the same duty. As such, just because one person has discharged their duty in the supply chain, it does not mean that the next person in line does not need to consider complying with their duty.

## What information will the installer need to provide for a completed building?

The new requirements are additional to the current building regulatory system whereby the building certifier, builder and subcontractor work together to collect and assess documentation to ensure that a building complies with the building assessment provisions.

There is now an obligation on the installer to provide 'accompanying information' (new section 74AG(4)) to the owner of the building. The accompanying information will be prescribed by regulation.

The intent of this section is to ensure that manufacturing instructions or any other information relevant to the product are provided to each person in the chain of responsibility so that they may ascertain the designer or manufacturers intended use and installation to avoid the product from being non-conforming.

An example of information may be the manufacturer instructions for external cladding or a product statement describing its use.

If it has been established that there has been a breach of duty, disciplinary action can be undertaken which may involve the suspension or cancellation of a licence.

## How does it affect the Queensland Home Warranty Scheme and Domestic Building Contracts?

The Scheme provides consumers with insurance cover for residential construction work where a licensee fails to complete residential construction work or performs and then fails to rectify defective residential construction work.

A consumer is not currently entitled to assistance under the Scheme for loss caused by or contributed to by a defective product and this will continue to be the case under the legislative changes.

However, for incomplete and defective work claims, a consumer would not necessarily be excluded from receiving assistance solely due to the presence of an NCBP - it would depend on all circumstances giving rise to the claim.

Consumers can continue to seek reparations through a number of other avenues. A person who claims under the Scheme may also pursue the builder or at-fault party civilly e.g. where a pay-out under the Scheme does not meet the cost of rectification.

Also, schedule 1B of The QBCC Act provides for an implied warranty in all domestic building contracts that the building materials used are good and suitable for purpose. Breach of a warranty (which has a duration of six (6) years and six (6) months for structural defects and one year for non-structural) gives a right to claim damages and the consumer may start proceedings in court.

## How to report non-conforming building products

To report a suspected Non-conforming building product please use one of the forms available on [qbcc.qld.gov.au/non-conforming-building-products](http://qbcc.qld.gov.au/non-conforming-building-products)

## More information

For more information please visit [www.qbcc.qld.gov.au](http://www.qbcc.qld.gov.au) or call **139 333**.