



IMPLEMENTATION PLAN

*STRATEGIES TO ADDRESS RISKS RELATED TO
NON-CONFORMING BUILDING PRODUCTS*
SENIOR OFFICERS' GROUP

SEPTEMBER 2017

IMPLEMENTATION PLAN

Contents

Introduction	2
Status of SOG Report Recommendations	3
Recommendation 1	3
Recommendation 2	3
Recommendation 3a	4
Recommendation 3b	5
Recommendation 3c	5
Recommendation 3d	6
Recommendation 4a	7
Recommendation 4b	7
Recommendation 5	8
Recommendation 6	9
Recommendation 7	9
Recommendation 8	10

Introduction

Building and construction can be complex. Even ‘simple’ buildings are comprised of many thousands of building products and materials. Choosing and using the right materials and products is important whether a building project is a small renovation, major alteration or a completely new build.

All building work in Australia must meet certain performance and legal requirements. This ensures buildings are safe, healthy and durable, which means we can all have confidence in their performance.

However, concerns about the risk of non-conforming building products (NCBPs) have been raised. These are products that claim to be something they are not, do not meet required standards for their intended use, or are marketed or supplied with the intent to deceive those who use them.

WHAT HAS THE BUILDING MINISTERS’ FORUM DONE TO ADDRESS NCBPs?

Recognising these concerns, the national Building Ministers’ Forum (BMF) established a Senior Officers’ Group (SOG), chaired by the Queensland Department of Housing and Public Works, on 31 July 2015 to provide recommendations to address NCBPs.

The SOG, comprised of senior officers from the Commonwealth, states and territories, found the extent of NCBPs in Australia is largely unknown and there are limited powers for addressing the issue of NCBPs in the current building regulatory system, which focuses on the end of the supply chain.

On 19 February 2016, the BMF endorsed a range of strategies recommended by the SOG (the SOG report).

All jurisdictions will continue to work together to deliver the strategies outlined in this Implementation Plan, including across the regulatory areas of building, consumer law and border protection (importation). Partnering with industry on actions such as education initiatives will also be vital to success.

Industry, consumers and homeowners can be assured that the issue of NCBPs is being taken very seriously and that action is underway to address the challenges involved.

WHAT IS THE SENIOR OFFICERS’ GROUP IMPLEMENTATION PLAN?

On 21 April 2017, Ministers agreed to publish an Implementation Plan to inform building industry participants, homeowners and other interested stakeholders of the ongoing work of the SOG and encourage continued participation in implementing responses to NCBPs.

This Implementation Plan:

- outlines key actions to deliver each of the recommendations
- details jurisdictions responsible for implementation of each recommendation
- describes next steps.

Status of SOG Report Recommendations

RECOMMENDATION 1

Note the current legislative roles and responsibilities of the Commonwealth, states and territories, including the identified gaps and weaknesses, impacting on action in relation to NCBPs (information only)

Introduction

The SOG found that the current building regulatory system in Australia does not provide an overarching framework for identifying and addressing NCBPs.

Current status

Building regulator powers are focussed primarily on active building sites and practitioners. While some regulators, such as electrical safety regulators, have powers to compel documents, undertake inspections or instigate recalls in response to identified issues, building regulators generally do not have these powers.

Next steps

This issue is addressed through recommendation 2.

RECOMMENDATION 2

Improving the regulatory framework to enhance the powers of building regulators to respond to incidences of NCBPs e.g. providing the ability to conduct audits of existing building work or take samples from a building for testing (Queensland lead)

Introduction

Agreement was given for the SOG to investigate ways to improve state and territory regulatory frameworks to identify and address NCBPs. The outcomes for recommendation 2 are a set of example legislative provisions that can be used by jurisdictions and regulators to address NCBPs in Australia.

Current status

Work on this recommendation has coincided with the release of the Queensland Government's *Queensland Building Plan*¹ (QBP) discussion paper and subsequent consultation on the proposal to increase the Queensland building regulator's powers to better address NCBPs.

On 25 May 2017², Queensland introduced legislation to its Parliament that improves the Queensland building regulator's powers and imposes obligations on all participants in the building product supply chain within Queensland.

¹ queenslandbuildingplan.engagementhq.com

² *Building and Construction Legislation (Non-conforming Building Products – Chain of Responsibility and Other Matters) Amendment Bill 2017* (the Bill)

Next steps

On 24 August 2017, the Queensland Parliament considered and passed the Bill, which will commence on proclamation.

These laws are based on principles agreed by the BMF, and can be used by jurisdictions as model laws to be adopted or revised as appropriate to accommodate their existing regulatory structure. They also provide a mechanism to check against their regulatory system and building regulator powers.

While some of the powers and enforcement measures contained within the legislation may already exist in some jurisdictions, the Bill can act as a 'best practice' approach to impose obligations on participants of the building product supply chain and improve jurisdictional ability to address and detect NCBPs in Australia.

RECOMMENDATION 3A

Establishing a national forum of building regulators to facilitate greater collaboration and information-sharing between jurisdictions (Victoria lead)

Introduction

While national forums exist for other regulators such as electricity and consumer law regulators to help government agencies work more cooperatively and efficiently across jurisdictions and portfolios, there has been no similar forum for building regulators. While established forums exist through the Australian Building Codes Board (ABCB) for jurisdictions and building regulators to collaborate, these forums are focused on the development and maintenance of the National Construction Code (NCC).

Current status

A Building Regulators' Forum (BRF) has now been established to enable building regulators to:

- share information on best practice regulation and enforcement activities
- collaborate to deliver timely and coordinated responses to issues of national significance related to NCBPs and other matters as directed by the BMF
- consider and triage issues for escalation to relevant Commonwealth entities for response or the BMF for consideration.

Given the links between recommendations 3a, 3b and 4a, it has also been agreed to incorporate these recommendations under a single implementation plan for the BRF.

Next steps

The first meeting of the BRF was held on 13 July 2017. Attendees at the meeting included building regulators or their senior representatives from all states and territories and an appropriate senior official from the Commonwealth.

Work is underway on finalising details such as governance arrangements and an online information sharing mechanism to enable members to informally collaborate outside of meetings and respond to issues as they arise.

RECOMMENDATION 3B

Improving collaboration between building and consumer law regulator and consistency in the application of the 'false and misleading claims' aspect of the Australian Consumer Law (ACL) (Commonwealth lead)

Introduction

Consumer law regulators can play a valuable role when NCBPs are captured under the consumer law. While building products are not generally considered 'consumer goods' under the ACL, it is unlawful for a business to make false or misleading representations about goods or services (including building products) when supplying, offering to supply, or promoting them.

Current status

The Productivity Commission (PC), in its recent consumer law investigation, recommended creating mechanisms to improve working relationships between ACL and specialist regulators, including building regulators. Improved collaboration between ACL and building regulators will help identify potential issues that require a coordinated jurisdictional response across both regulatory areas.

Next steps

A Building and Consumer Law Working Group will be established under the auspices of the BRF to collaborate on best practice regulation and enforcement activities on NCBP matters.

The Commonwealth will facilitate building regulator engagement with the Compliance and Dispute Resolution Advisory Committee (CDRAC) to the Consumer Affairs Australia and New Zealand, which is the SOG equivalent in the Consumer Affairs framework.

An online information sharing mechanism is being investigated to enable building and consumer law regulators to collaborate and respond to NCBP related issues as they arise.

RECOMMENDATION 3C

Developing education strategies to better inform consumers and building industry participants and to encourage greater responsibility in the safe use of building products (New South Wales (NSW) lead)

Introduction

An education strategy is important to encourage greater responsibility and inform consumers, building industry participants and the building product supply chain about respective roles and responsibilities and the need to ensure safe and fit for purpose building products.

It can also be a vehicle to publicise the various strategies and reforms associated with the work of the BMF on NCBPs and will work in conjunction with the national website.

Current status

Targeted consultation undertaken in late 2016 with industry and government stakeholders revealed broad support for a national online awareness campaign hosted by a national website.

Feedback also showed interest in developing a resource that includes aspects such as the responsibilities building product supply chain participants, the building industry regulatory framework and requirements of the NCC, and how other regulatory areas such as consumer law interact with the building regulatory system.

Next steps

NSW continues to develop an education resource and communications plan with key messages for different audiences in the building product supply chain for use by jurisdictions as soon as possible.

RECOMMENDATION 3D

Developing a 'one-stop-shop' national website to provide a single point of information for consumers and building product supply chain participants, including examining arrangements for hosting and maintaining a website (Commonwealth lead)

Introduction

No overarching website or network hub exists with information such as a list of building regulators, government and industry building product schemes, or how to report NCBPs. In contrast, similar regulatory systems have a general website with information and links to relevant Commonwealth, state and territory regulators, e.g. the Australian Competition and Consumer Commission's website.

Current status

Targeted consultation in late 2016 with jurisdictions and industry stakeholders suggested that a user-friendly website should be hosted on the Australian Building Codes Board (ABCB) website and provide links to key information.

Suggestions were also made for possible future functions for the website, including information on the BRF (see recommendation 3a), a subscription mechanism and register of building products subject to an information notice or recall in a state or territory.

Next steps

On 30 June 2017, the Commonwealth launched the national NCBP webpage³ providing information on NCBPs, key links to the NCBP webpages of each state and territory building jurisdiction, and a mechanism for industry and consumers to report suspected NCBPs.

The one-stop-shop NCBP webpage, hosted on the ABCB website, was developed in consultation with state and territory building jurisdictions and key industry stakeholders. Additional webpage functions are being considered, subject to agreement by the BMF.

³ www.abcb.gov.au/NCBP/Non-Conforming-Building-Products

RECOMMENDATION 4A

Developing mechanisms that ensure that, where all states and territories prohibit the use of a NCBP, evidence is provided to the Commonwealth enabling proportionate action to be taken based on the risk posed by the product (Queensland lead)

Introduction

Identifying NCBPs at the time of import is difficult due to a range of factors. Instead, to enable a quick and nationally coordinated approach when required, the SOG recommended that mechanisms be developed to allow states and territories to notify the Commonwealth regarding NCBPs.

Current status

Feedback was sought from jurisdictions on several proposed options in late 2016. It was agreed that this mechanism will be incorporated as an element of the BRF.

The mechanism considers factors such as how states and territories will be alerted to instances when a NCBP is identified and banned (noting that building regulators currently do not have this ability to ban, see recommendations 1 and 2), how to share information with jurisdictions and the Commonwealth and how actions taken on a NCBP can be published, for example on the national website (see recommendation 3d).

Next steps

Queensland will continue developing the agreed mechanism and accompanying documentation which will support the operations of the BRF as established in recommendation 3a.

RECOMMENDATION 4B

Implementing an information sharing arrangement where import data collected by the Department of Immigration and Border Protection (DIBP) can be provided to state and territory regulators to facilitate compliance and enforcement activities for NCBPs (Commonwealth lead)

Introduction

Regulators currently have limited ability to stop known NCBPs entering Australia and making their way into the building product supply chain. Goods, including building products, are usually imported without an intended purpose specified (beyond what is listed in the tariff description).

The DIBP collects customs data from import declarations and ensures any sharing of this official information complies with relevant legislative and privacy provisions.

The DIBP and its enforcement arm, the Australian Border Force (ABF), does not have legislative powers to ensure imported building materials conform to building standards or performance levels and can't reliably determine at the border whether the building product will be used or installed correctly. The DIBP also can't prevent entry of a good into Australia unless it is prohibited under legislation, even if it has been subject to a national recall.

Current status

Since early 2016, the DIBP has conducted a pilot import data sharing arrangement with state and territory building regulators on certain building products. Where regulators have identified a NCBP, information sharing will assist states and territories to determine who else may have imported the product and in what quantities.

Next steps

The DIBP has completed a review of the pilot project, which included consulting with jurisdictions. The outcomes of the review will inform ongoing data sharing arrangements.

RECOMMENDATION 5

Initiating a review, with the ABCB and Standards Australia, of Australian Standards related to high risk building products referenced under the NCC, including assessing the costs and benefits of mandating third party certification and establishing a national register for these products (Victoria lead)

Introduction

At present, 162 primary Australian Standards are referenced in the NCC and over 3000 secondary referenced standards. The secondary standards typically contain product and testing standards.

Currently no framework exists to determine what constitutes a high risk building product and which referenced standards relate to such products. This recommendation will help the building industry, consumers and regulators determine whether a product is conforming, through potentially mandating third party certification and establishing a national register for these products.

Current status

Interconnections and interdependencies occur between this and other recommendations, such as those relating to the national website and independent research.

Victoria is developing a methodology for determining high risk building products and analysing the adequacy of existing methods to demonstrate conformity and establish third party certification schemes.

Next steps

Victoria will be working with Standards Australia and the ABCB regarding the identification of high risk building products.

Engagement is expected to occur shortly with targeted existing third-party certification scheme administrators. This is part of work on developing potential policy options and a feasibility analysis for a mandatory third-party certification scheme for high risk building products referenced in the NCC.

RECOMMENDATION 6

Undertaking independent research, including manufacturer and random off-the-shelf product testing, to improve the evidence base relating to NCBPs (Western Australia (WA) lead)

Introduction

Based on primarily anecdotal evidence presented during consultations, the SOG concluded that NCBPs exist in the Australian building and construction industry supply chain.

However, the SOG found it difficult to quantify the extent and impacts of NCBPs. While valuable information exists about the economic, commercial, social and legal impacts of individual NCBPs, independent quantitative analysis of overall consequences is required.

Current status

WA undertook a competitive tender process to select a suitable researcher to clearly determine the scale, nature and prevalence of problems, causative issues and factors relating to NCBPs.

A Request for Quote (RFQ) document for the research project tender was published in January 2017. An evaluation panel (with a suitable industry representative) had independently and objectively assessed the tender submissions.

Next steps

An independent research team has been appointed to undertake the project, with strategic direction provided by a SOG NCBPs Research Project Steering Committee (comprised of representatives from WA, Victoria, Queensland and the Commonwealth).

RECOMMENDATION 7

Note the value and importance of existing building industry initiatives, such as industry third party certification schemes, in identifying instances of building product non-conformity (information only)

Introduction

This recommendation recognises the value of existing industry schemes that may address NCBP issues, such as industry third party certification schemes.

Current status

Industry has an important role in preventing NCBPs making their way into the Australian building product supply chain and being used in building and construction.

As outlined in the SOG report, existing, essentially self-regulatory industry schemes provide several positive benefits, for example:

- Industry has the most experience and understanding of building products and relevant requirements.

- Participating manufacturers or suppliers may be seen more favourably by retailers and/or consumers.
- Confidence may be improved in an industry where a scheme operates.
- Industry has greater scope to influence and raise standards without regulatory intervention.

Next steps

This recommendation requires no further action from the SOG.

RECOMMENDATION 8

Approve the release of a consultation draft of the SOG report for stakeholder consultation following the Building Ministers' Forum's endorsement of the Working Group of Senior Officers' recommendations (information only)

Introduction

A consultation version of the SOG report was published on 23 March 2016 with feedback requested on implementation of the eight recommendations by 11 April 2016.

Current status

The SOG received 34 submissions from stakeholders regarding the consultation version of the SOG report.

This feedback has been taken into consideration in the development of implementation strategies and ongoing delivery of the SOG report recommendations.

Next steps

This recommendation requires no further action from the SOG.

MORE INFORMATION

Building Ministers' Forum webpage:

www.industry.gov.au/industry/IndustrySectors/buildingandconstruction/Pages/default.aspx

National webpage on NCBPs:

www.abcb.gov.au/NCBP/Non-Conforming-Building-Products

SOG webpage:

www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx

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