

NON-CONFORMING BUILDING PRODUCTS ARE EVERYONE'S RESPONSIBILITY

IMPORTANT LAWS ON NON-CONFORMING BUILDING PRODUCTS

EFFECTIVE NOVEMBER 2022

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

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

The laws placed 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 laws is to improve the safety of Queensland buildings. Refer to Part 6AA of the *Queensland Building and Construction Commission Act 1991* (the QBCC Act) for legislation relating to building products, including defined terms.

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 using our general enquiry form, or call us on 139 333, or you can email ncbp@qbcc.qld.gov.au.

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

If you are a person in the chain of responsibility by law you must report a NCBP including if you suspect a notifiable incident occurred as a result of a NCBP and if you don't it is an offence. Therefore it is in your best interest to include your details.

Refer to s.74AL and s.74AM of the QBCC Act for more information.

What are my responsibilities?

The laws make everyone in the building product supply chain, including designers, importers, manufacturers, suppliers, installers and architects or engineers who, in designing a building, specifies that a building product the subject of the order be associated with the building, are responsible for ensuring that all building products conform to relevant standards and are safe.

Part of this increased accountability is the 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.

Investigative powers

The QBCC can enter any place (as per legislation) as part of investigations into suspected non-conforming building product use. QBCC can also seize products for testing.

How will the QBCC determine who has a duty and 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 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 when supplied or given a building product?

When you are supplied or given a building product from a person in the chain of responsibility, you must receive relevant product information (known as 'required information'). If you do not receive this information you should ask for it.

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.

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.

'Reasonably practicable' is defined in the *Queensland Building and Construction Commission Act 1991* (the QBCC Act).

'Required information' for a building product, means information about the product that-

- (a) for each intended use of the product, states or otherwise communicates the following-
 - (i) the suitability of the product for the intended use and, if the product is suitable for the intended use only in particular circumstances or subject to particular conditions, the particular circumstances or conditions;
 - (ii) instructions about how the product must be associated with a building to ensure it is not a non-conforming building product for an intended use;
 - (iii) instructions about how the product must be used to ensure it is not a non-conforming building product for the intended use; and
- (b) complies with the requirements for information if prescribed by regulation.

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.

The Department of Energy and Public Works has produced a Code of Practice which can be located at www.epw.qld.gov.au/__data/assets/pdf_file/0019/4654/nonconformingbuildingproductscodeofpractice.pdf, which will assist industry in complying with NCBP laws.

What information will the installer need to provide for a completed building? Will it relate to the building certification?

The 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' (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 manufacturer's 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.

Suspension and Cancellations

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 continues to be the case.

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.

If you are concerned about a non-conforming building product you can make a complaint about it to the QBCC.

Non-conforming building product complaints can be resolved through our complaint resolution processes.

- If you are a home owner or contractor and the house is under construction you might want to consider our early dispute resolution service, this service offers a facilitation-based approach to resolving disputes while construction is still underway.
- If you a building owner and believe there is a defect then our defective building work complaint process may assist.
- For all other non-conforming product complaints please submit a request online using our general enquiry form or by contacting us on 139 333.

How to report NCBPs

To report a suspected Non-conforming building product please use one of the forms available on qbcc.qld.gov.au/complaints-disputes/report-non-conforming-building-product-incident

For more information please visit qbcc.qld.gov.au or call 139 333.

Disclaimer

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If you have any questions as to how the NCBP laws apply to you, you should obtain appropriate independent professional advice regarding how to discharge your duties under the QBCC Act and achieve compliance with the relevant regulatory provisions for building products. This is especially important if you (or your company) intend to later rely upon that advice to demonstrate satisfaction of your duties under Part 6AA of the QBCC Act or other legislative obligations.