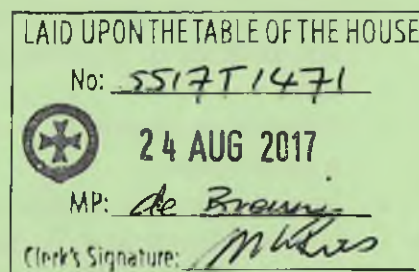


Building and Construction Legislation (Non-conforming Building Products – Chain of Responsibility and Other Matters) Amendment Bill 2017

Explanatory Notes

For



Amendments to be moved during consideration in detail by the Honourable Mick de Brenni MP, Minister for Housing and Public Works and Minister for Sport

Short title

The short title of the Bill is the Building and Construction Legislation (Non-Conforming Building Products – Chain of Responsibility and Other Matters) Amendment Bill 2017.

Objectives of the amendments and reasons for them

The objectives of the proposed amendments are to:

1. Clarify that the Queensland Building and Construction Commission (QBCC) can share information that helps it perform its duties.
2. Ensure consistency with other duties based regimes (e.g. the *Electrical Safety Act 2002* (ESA)) regarding the definition of 'safe'.
3. Clarify that representations of a building product relate to the product's compliance with the relevant regulatory provisions.
4. Ensure the Minister has relevant protections when making a recall order.
5. Allow the Minister to prescribe codes of practice in subordinate legislation in line with other duties based regimes (e.g. electrical safety and workplace health and safety).
6. Ensure clarity regarding the extraterritoriality of the legislation.

Achievement of policy objectives

The objectives are achieved by making the following amendments:

- Amending clause 8 to clarify the QBCC has the ability to share and receive information to assist them in performing their functions under the *Queensland*

Building and Construction Commission Act 1991 (QBCC Act) and other Acts that confer responsibilities and roles on the QBCC.

- Amending clause 11 to clarify the definition of 'safe' and bring it into line with the definition contained in the ESA.
- Amending clause 11 to clarify that persons in the chain of responsibility for a building product must not make misrepresentations about the conformance or compliance of building products to relevant regulatory provisions for an intended use.
- Amending clause 29 to ensure the Minister has relevant protections when making a recall order.
- Inserting a new section in clause 11 to provide that the Minister is able to make codes of practice under subordinate legislation, similar to other duties based regimes, to provide guidance to those in the chain of responsibility for a building product in discharging their duty.
- Inserting a new section in clause 11 to clarify that, as duty-based legislation, it is intended to apply extraterritorially.

Alternative ways of achieving policy objectives

There are no alternative way to achieve the policy objectives.

Estimated cost for government implementation

There are no additional anticipated financial costs for Government arising from the amendments to be moved during consideration in detail.

Consistency with fundamental legislative principles

The amendment is consistent with fundamental legislative principles.

Consultation

Consultation has been undertaken with the Department of the Premier and Cabinet and the Office of the Queensland Parliamentary Counsel.

The amendments have been informed by community, industry and government stakeholder feedback on the Bill, including through submissions to the Public Works and Utilities Parliamentary Committee and at the public hearing of the Committee on 10 July 2017.

Notes on provisions

Amendment 1 amends clause 8 new section 28B(2)(a)(i) to clarify that the QBCC has the ability to share and receive information to assist them to perform functions under the QBCC Act and other acts that confer responsibilities and roles on the QBCC such as the *Plumbing and Drainage Act 2002*.

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

Section 7 of the QBCC Act provides that the QBCC has any function given to it under another Act and section 28B(2)(a)(i) provides that the QBCC can share information that helps the QBCC perform their functions under the Act. However, it has been identified that this new section could be ambiguous and not sufficiently clear.

This amendment provides greater clarity in this regard to place the QBCC's information sharing ability beyond doubt.

Amendment 2 amends clause 11 section 74AA to insert a definition for *code of practice*.

Amendment 3 amends clause 11 new section 74AA, which provides definitions for a new part in the QBCC Act regarding the regulation and associated requirements for building products.

The current definition in new section 74AA provides for a definition of 'safe'. This definition is based on the definition of 'free from electrical risk' in the *Electrical Safety Act 2002* (ESA) (refer to section 10(4)).

A higher test had been applied to the minimisation of risk of injury or illness. This is not in line with the definition in the ESA and could prove too cumbersome for persons to comply with.

To address this issue, the word 'practicable' has been replaced with 'reasonably practicable'. This amendment is required to ensure that the test regarding safe is not impossible to comply with for persons with a duty.

Amendment 4 introduces new section 74ABA to ensure that, without doubt, the Bill applies extraterritorially.

It is intended that, over time, other states and territories will adopt similar laws that are complementary to the Bill. The insertion of a new provision in the Bill regarding extraterritoriality will ensure that there is no doubt about the intention about the extraterritoriality of the laws.

Amendment 5 amends clause 11 to introduce new sections 74ADA and 74ADB to provide the Minister with the ability to make codes of practice. Codes of practice will provide for how a person in the chain of responsibility can discharge their duty. Similar to the ESA, codes of practice standards will be prescribed in subordinate legislation.

The department and QBCC have prepared documentation to assist persons within the chain of responsibility to understand how to comply with their duty. It has been identified that other duties based regimes (e.g. electrical safety and workplace health and safety) provide the relevant Minister with the ability to prescribe this documentation under regulation. Under each of these regimes, codes of practice are considered to be subordinate legislation.

Prescribing codes of practice in regulation will provide clarity to persons who have a duty regarding ways to comply with or discharge their duty. It will also provide a benchmark across the supply chain.

New section 74ADB will ensure that codes of practice can be used as evidence in court to assist with determination about whether a duty has been contravened.

Amendment 6 amends clause 11 new section 74AK regarding representations about building products.

The Bill creates an offence to make a representation regarding the intended use of a building product that does not comply with the requirements in Regulation. The intent of this provision was to ensure that where a misrepresentation is made or allowed to be made by a person in the supply chain about the compliance of a product with a particular relevant regulatory provision, the QBCC could take action.

The provision is centred around representations being made about the intended use of a product and does not currently link to the relevant regulatory provisions. It was also identified that although this provision creates an offence, it is difficult to prescribe detail that allows for the intent to be achieved.

Amendments have been made to section 74AK to provide that representations must not be made about the intended use of a building product complying with the relevant regulatory provisions if it indeed does not.

These amendments will better address the desired intent and relates misrepresentations to compliance with the relevant regulatory provisions (for example, this will include Australian Standards that are referenced in the National Construction Code). This is to ensure that persons in the chain of responsibility do not make misrepresentations about the conformance or compliance of building products to relevant regulatory provisions.

Amendment 7 amends clause 29 which amends the existing section 114 regarding protections.

The Bill amends existing section 114 of the QBCC Act to provide protection for the Minister when making a warning statement, however the Bill also provides the Minister with the power to make recall orders. These powers are designed to raise public awareness of a non-conforming building product, enforce compliance by affected participants of the building product supply chain and withdraw a product or batch from the marketplace for safety reasons.

Both recall orders and warning statements require the Minister to undertake a show cause process prior to issuing. They are also subject to judicial review and any decision can be reconsidered by the Minister on application.

This amendment will provide the Minister with relevant protections under section 114 of the QBCC Act when making a recall order.

In making this amendment, the definition of *publication act* has been renamed to *public interest act* to ensure that the definition properly captures the actions.

Amendment 8 amends clause 31 to insert code of practice into the existing QBCC Act schedule 2 (Dictionary).