



Australian  
Institute of  
Architects

## Australian Institute of Architects

Response to the Building and  
Construction Legislation  
(Non-conforming Building  
Products -Chain of  
Responsibility and other  
matters) Amendment Bill  
2017

### **Submission to**

Public Works and Utilities Committee

**June 2017**

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## SUBMISSION BY

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## PURPOSE

- This submission is made by the Qld Chapter of the Australian Institute of Architects (the Institute) in response to the Bill titled,  
  
Building and Construction Legislation (Non-conforming Building Products – Chain of Responsibility and Other Matters) Amendment Bill 2017
- This submission has been prepared by the Queensland Chapter of the Australian Institute of Architects.
- At the time of this submission the President of the Queensland Chapter is Bruce Wolfe FRAIA.

## INFORMATION

### ***Who is making this submission?***

- The Australian Institute of Architects (the Institute) is an independent voluntary subscription-based member organization with approximately 12,305 members, of which 6,840 are architect members. Members are bound by a Code of Conduct and Disciplinary Procedures.
- The Institute, incorporated in 1929, is one of the 96 member associations of the International Union of Architects (UIA) and is represented on the International Practice Commission.

### ***Where does the Institute rank as a professional association?***

- At approximately 12,400 members, the Institute represents the largest group of non-engineer design professionals in Australia.



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The Australian Institute of Architects welcomes this Bill and it is considered to be a great improvement for the building industry in that it gives the QBCC powers to seize, test and recall non-compliance building products and to issue warning statements about non-compliance products that come to the QBCC notice.

The Institute is aware of the prevalence of non-conforming building products which have continued to rate as a major concern for the building industry. Maintaining consumer safety in the use of building products in buildings is paramount for the building industry.

The Institute would have preferred that the proposed legislation remove non-conforming building products at the point of sale. The responsibility for ensuring that a building product is fit-for-purpose as defined under the National Construction Code should be placed solely with those who sell the building products. Requiring all in the building chain to confirm that building products to be used on a project, are conforming building products will significantly increase the work load of designers, certifiers, builders and installers to obtain and verify the accuracy of product documentation supplied by manufactures and suppliers. Under this arrangement everyone pays the cost of additional work at each and every step in the supply chain. From a practical point of view, it will increase the paperwork to demonstrate that one's duty has been performed and all required information for each product, its intended use and its installation has been collected. The cost for this additional work will have to be passed onto building owners.

We are of the view that the proposed legislation should have considered the following aspects that could assist all in building chain with their responsibilities:

1. Common labelling of existing third-party product certification schemes that meet the following minimum requirements:
  - a. Accredited through JAS-ANZ;
  - b. Includes product conformity requirements for type or batch (on going) testing to Australian or International Standards as appropriate, as well as a process to ongoing, periodic auditing;

For the construction industry, the current patchwork system of assessment schemes is unwieldy. There is great disparity amongst the schemes as to the quality of assessment, level of auditing and checking for fraudulent documentation.

2. The development of new schemes within an overall certification system, both by government and industry, should be supported and encouraged until we have a comprehensive system that covers all the key product types. Ideally the development of a third-party certification system that sets out the technical information in a standardised format would be welcomed as it would make it easier to establish if a product is a conforming building product. It is suggested that a regulation be produced to encourage this development.
3. More needs to be done to police compliance at the point-of-sale.

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4. The Australian Standards covering safety critical or structural product standards for use in Australian buildings should be revised to include definitive product compliance and identification of conforming products.

### **Comments on Specific Items in the Bill**

#### **1. 74AA Definition of 'safe'.**

The wording of this definition is considered to be too general. It is proposed that 'safe' be defined as a 'notifiable incident' in the *Work Health and Safety Act 2011* which is clearly understood by all in the building industry.

#### **2. 74AB What is a 'building product'.**

The inclusion of the statement 'other thing associated with, or could be associated with a building' in the definition of a building product is considered to be too general as will include every small item such as nails, screws etc. This could become a problem depending on the wording in the Regulation that nominates the products whose documentation is to be collected.

#### **3. 74AC (1) Relationship with safety laws.**

This section states that "if a provision of this division and a provision of a safety law deal with the same thing ... a person must comply with both provisions". In cases where a provision of a safety law applies then it should be the only one that is to be complied with.

#### **4. 74AD Principles applied to duties.**

This section states that:

- (a) A person may have more than 1 duty;
- (b) More than 1 person can concurrently have the same duty;
- (c) If more than 1 person has a duty for the same matter, each person is responsible for the person's duty in relation to the matter.

This seems to suggest that when you have a design team (involving a number of professionals) working on the design of a project then each person on the team is responsible for their part of the work. This is an unworkable arrangement. When developing a major building design, the design normally goes through a number of design changes so it would be very difficult to determine what part of a design each person did. When a design team is involved, a better arrangement would be to require that the person responsible overall for the project to be the person with the duty.

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## 5. 74AE Chain of responsibility.

Although architects are not nominated in the proposed legislation, the Institute considers that architects are members of the *chain of responsibility* for a project.

Where an architect commits an offence under this legislation the Institute understands that under the amendment in this legislation to Section 3 (11) of the *BUILDING ACT 1975* which gives enforcement action to QBCC relating to building work, the architect can be fined by the relevant authority. In this situation, where disciplinary action is also required to be undertaken against the architect who has been fined for the offence, this matter should be referred to the Board of Architects of Queensland which has very wide disciplinary powers.

## 6. 74AG Additional duty relating to accompanying information.

In 74AG (5) it is noted that a regulation will be produced at a later date to indicate the prescribed *required information* that is to be collected to show that a building product is a conforming building product.

It is hoped that the Institute will be given the opportunity to comment on the wording of this proposed regulation. This is an area where everyone in the chain of responsibility could be saddled with enormous unnecessary bureaucratic workload that does not support the aims of the proposed legislation. In a major project, this could involve extensive documentation to be collected.

There are a range of products that should be exempt at the design stage from documentation collection to show that the products are conforming building products, for example:

- (1). Generic building materials (bricks, concrete blocks, timber, reinforced concrete, steel, nails, screws, etc.) where these items are specified to comply with their relevant standards.
- (2). Standard building items (basins, w.c. pedestals, baths, shower trays, kitchen cupboards items, etc) where these items are specified to comply with their relevant standards and are to be installed in buildings.

It is acknowledged that product documentation will be required:

- (1). Where fire ratings are required; and
- (2). Where safety issues are clearly involved.

## 7. 74AK Duty about representations about building products

It is not clear from a legal point of view in this legislation, the extent that a person in the design stage of a project is expected to reasonably rely on the accuracy of representations and information provided by manufacturers or suppliers. This aspect needs to be clarified.

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**8. 74AL Duty to notify non-conforming building product**

Requiring two notifications of *notifiable incident* to two Qld regulators can result in unnecessary duplication and confusion in the required action to be taken. It is suggested that where a notification of a safety law applies, then only one notification be required.

The duty to notify non-conforming building products should be time bound. One should not be expected to retain records of projects (especially building products used in a project) for an indefinite period.

**9. 74AL Duty to notify non-conforming building products  
74AM Duty to notify notifiable incident**

It suggested these two sections should be combined into one section.

**10. Division 4 - Ministerial recall orders**

It is not clear how the decision will be made to determine who will be responsible for a recall.

**END**