

Article Information

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A New Month, A New 'Non-Conforming Building Products' Regime

On 24 August 2017, the Queensland Government passed amendments to the Queensland Building and Construction Commission Act 1991 (Qld) (QBCC Act) which created a new regime to address 'non-conforming building products' and amended reporting and investigative requirements regarding work health and safety matters.

*These changes and accompanying regulation took effect on **1 November 2017**.*[\[1\]](#)

Why were the amendments introduced?

The amendments now give the QBCC greater powers to investigate and enforce 'non-conforming building products', and work health and safety matters. These changes are a response to recent significant events including the Melbourne Lacrosse Tower fire (in respect of non-conforming building products) and the Coroner's findings into a 2015 workplace fatality.

A building product's 'intended use' is now critical in determining whether it is 'non-conforming', and with it attracts certain duties. This has been described as the closing of a "loophole" in respect of liability for selling and installing building products which are not fit for purpose.[\[2\]](#)

Who is affected by the amendments?

The amendments will affect:

1. All **QBCC licensees**;
2. **Product designers, manufacturers, importers, and suppliers**;
3. **Contractors / subcontractors** installing building products;
4. **Executive officers** of companies in the chain of responsibility;
5. **Occupiers** of buildings where non-conforming building products are, or are suspected to have been, used; and
6. **'Persons in control'** of buildings where non-conforming building products are present.

Key changes

The following key amendments have been made to the QBCC Act:

1. The grounds on which QBCC licensees may be subjected to disciplinary action, or have their licences cancelled or revoked, have been broadened.
2. New obligations to report work health and safety incidents to the QBCC have been introduced.
3. New information-sharing arrangements between the QBCC and other agencies including local government, health and safety regulators, and State and Commonwealth agencies have been introduced.
4. QBCC inspectors have been granted expanded powers of entry, including to enter finished buildings and places of business of QBCC licensees and persons in the chain of responsibility.
5. The amendments introduce the concept of a 'person in the chain of responsibility', being a person that:
 - a) designs, manufactures, imports or supplies the building product, and knows (or is reasonably expected to know) the product will or is likely to be associated with a building; or
 - b) installed the product in a building in connection with relevant work.

6. New duties in respect of ‘non-conforming building products’ have been imposed on ‘persons in the chain of responsibility’, such as the duty to ensure that a product is not a ‘non-conforming product’ for its intended use.
7. A duty has also been imposed on executive officers (being directors, company secretaries and management) of a company in the chain of responsibility to exercise due diligence to ensure the company complies with its duties. The QBCC Act sets out a list of ‘reasonable steps’ that may be taken to exercise due diligence. Executive officers may now be found to have breached this duty, regardless of whether or not the company has been convicted of an offence under the QBCC Act.
8. A ‘Building Products Advisory Committee’ has been established to give the Minister and QBCC Board advice about the suitability, safety and actions to be taken in respect of building products.
9. The Minister now has the power to issue recall orders in respect of building products or statements warning that products may be non-conforming for certain intended uses.
10. Contractors will be required to provide certain handover and certification documentation to owners. Although the extent of this obligation is unclear at this stage, contractors should be guided by the definition of ‘required information’ under section 74AG of the QBCC Act.

New Code of Practice

A ‘Code of Practice’ will also be published to provide guidance about the duties relating to non-conforming building products. A consultation draft of the Code of Practice is available [here](#).

The Code of Practice is intended to provide technical advice on how to achieve compliance with the new ‘building product’ provisions under the QBCC Act. Importantly, the Code of Practice can be used as evidence in court proceedings (in respect of ‘building product’ offences) as to whether a person has complied with their duties under the QBCC Act.

Recommendations

Now that the amendments are in force, we recommend that parties take stock and ensure they fulfil their statutory obligations under the QBCC Act. In particular:

1. Product designers, manufacturers, importers, suppliers, and contractors should review their duties under the amended QBCC Act and consider whether their current processes are compliant. Relevant considerations for these persons should include:
 - a) What information are you required to give and to whom?
 - b) How will you record and distribute the ‘required information’ in relation to building products?
 - c) Who in the organisation is responsible for considering Ministerial recall orders and making submissions on them? Similarly, who is responsible for ‘showing cause’ against a Ministerial warning statement?
 - d) How are you monitoring recall orders issued by other States and Territories?
 - e) What is your process for notifying the QBCC, if you suspect or know a building product is non-conforming for its intended use?
2. QBCC licensees, persons in the chain of responsibility, and other persons who may be affected by a QBCC inspector’s powers of entry should understand their rights and obligations in such a scenario and have a plan in place if a QBCC inspector requests entry to their premises.
3. QBCC licensees should review their processes for reporting safety incidents and ensure these are updated to reflect reporting requirements to the QBCC.
4. Executive officers of companies in the chain of responsibility should consider keeping a record of training and other actions they have taken to fulfil their ‘due diligence’ duty.

It’s time to get cracking and these changes are now active across the industry. If you require any assistance with these changes, please do not hesitate to contact us.

[1] See the *Building and Construction Legislation (Non-conforming Building Products—Chain of*

Responsibility and Other Matters) Amendment Act 2017 (Qld) and the *Queensland Building and Construction Commission and Other Legislation (Nonconforming Building Products) Amendment Regulation 2017* (Qld).

[2] Queensland, *Hansard*, Legislative Assembly, 24 August 2017, 2554 (Stephen Bennett).