

NON-CONFORMING BUILDING PRODUCTS

BUILDING PRODUCT DESIGNERS, MANUFACTURERS, IMPORTERS, SUPPLIERS, ARCHITECTS AND ENGINEERS

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Introduction

The use of non-conforming building products in the buildings in which we work, live and play, puts lives and property at risk. On 1 November 2017, the Queensland Parliament commenced laws to cover the sale and use of building products.

These laws amended the *Queensland Building and Construction Commission Act 1991* (QBCC Act) and created a **chain of responsibility** for building products.

This means that all parties involved in the building product supply chain, from the manufacturers and importers to the suppliers and installers, and in some cases architects and engineers are held accountable for building products that are not compliant or safe for their intended use.

Information about the building product and its intended use must be provided by each person in the supply chain (known as the '**chain of responsibility**') to the next person in the chain.

What is a non-conforming building product?

A building product is regarded as non-conforming if it is unsafe, does not comply with the relevant regulatory provisions (e.g. the National Construction Code), or its performance does not meet, or is incapable of meeting, the claimed standard or performance.

This includes, but is not limited to, where a product is used in situations where it does not comply with the specific requirements of the National Construction Code. This non-compliant use of a product could be through deliberate substitution, not knowing the requirements or through unintended error.

What do the NCBP laws mean for me?

The laws mean that everyone in the supply chain including designers, manufacturers, importers and suppliers of a building product, and sometimes architects and engineers, have a responsibility to ensure the building product in question is safe and compliant for its intended use.

You must ensure you receive the product i.e. the 'required information' from the person before you in the chain and you are also required to do all that is possible to do to pass that product information down to the next person in the chain.

A company's executive officer must ensure the company complies with the NCBP laws by taking reasonable steps to:

- Acquire and keep up to date knowledge of matters about the safe use of building products
- Gain an understanding of the nature of the company's business activities relating to building products and safety risks and non-compliance risks associated with them



- Ensure the company has and uses appropriate resources and processes to manage risks and to comply with the company's duties

What information should be supplied with the product?

It is illegal to supply a building product with labelling, packaging or promotional material which makes untrue or misleading claims about the building product and how its intended use meets the relevant building standards.

It is important that you are informed about how a product can be used in a way that complies with the relevant standards or laws and communicate this effectively to your customers.

All building products need to be accompanied by information, known as 'required information' that communicates the following:

- The suitability of the product for its intended use by stating the product's intended use. Demonstrate the product legitimately meets the relevant Australian Standards, for example, Evidence of Suitability that satisfies the National Construction Code (NCC).
- The limitations and conditions in which the product can be safely used, e.g. in internal areas or not above certain heights
- Instructions as to how the product should be installed, e.g. the type of fastener, adhesive or mounting system to ensure National Construction Code compliance
- Instructions on how the product must be used to remain compliant with the NCC, e.g. cladding that can only be used below certain heights must have this specified.

What questions should I ask the designer, manufacturer or importer?

- Is the product compliant with the National Construction Code for its intended use?
- What is the product's intended use?
- Does the product meet the relevant Australian Standards?
- Has the product been tested by a NATA or ILAC MRA accredited laboratory?
- Is there any documentation available to demonstrate that the building product conforms with the relevant regulations?
- Are there any conditions or restrictions that apply to the safe use of the product?

What will happen if I don't comply with the laws?

It takes many thousands of products to complete a building and most people involved in the design, manufacture, supply and installation of these products do the right thing.

But the use of non-conforming products puts lives at risk so the Queensland Government has taken steps to ensure that risk is minimised.

The laws enhance the powers of the QBCC so that the Commission can take disciplinary action across the supply chain for offences relating to NCBPs.

What do I do if I become aware of a NCBP?

All suspected NCBPs must be reported to the QBCC as soon as practicable but within 2 days after becoming aware or reasonably suspecting a NCBP, unless the person has a reasonable excuse.

If you become aware of, or suspect that, the use of a non-conforming product has caused death, injury or illness, you must notify the QBCC within two days unless there is a reasonable excuse.

Where can I go to report, get help or for more information about NCBPs?

More information on the building product laws can be obtained from the Queensland Building and Construction Commission (QBCC) at qbcc.qld.gov.au/complaints-disputes/report-non-conforming-building-product-incident or email: ncbp@qbcc.qld.gov.au.

Information on whether products comply with the National Construction Code can be found at the Australian Building Codes Board website abcb.gov.au/NCBP/Non-conforming-building-products

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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.