

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

## **Explanatory Notes**

### **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*.

### **Policy objectives and the reasons for them**

The objectives of the Bill are to:

1. confer responsibilities on the building product supply chain participants that ensure a building product, so far as reasonably practicable, is not a non-conforming building product
2. enable the Queensland Building and Construction Commission (QBCC) to ensure buildings are safe and better align its powers with those of other Queensland safety regulators
3. facilitate safety on building and construction sites by requiring QBCC licensees to notify the QBCC about activities on a site that might present a work health and safety issue
4. require the QBCC to report to regulatory agencies about work health and safety issues, where there is a serious injury or death
5. enable the QBCC to enter into information sharing arrangements with other regulatory agencies, particularly in relation to work health and safety issues
6. widen grounds for the QBCC to take disciplinary action against a licensee, to include convictions relating to laws that can impact on health and safety or if the licensee's work on a building site may have caused a death, grievous bodily harm, or a serious risk to the health or safety of a person.

#### *Non-conforming building products*

The objective of the Bill is to promote the safety of Queensland's buildings by introducing duties on supply chain participants for building products to ensure building products are safe and enabling the Government, through the administering Minister and Queensland's building regulator, the QBCC, to investigate and effectively respond to incidents of non-conforming building products.

Non-conforming building products are building products and materials that:

- are claimed to be something they are not
- do not meet the required standards for the use in which they are intended or
- are marketed or supplied with the intent to deceive those who use them.

Non-conforming building products pose a significant risk to health and life safety, as their use threatens the integrity of a building, putting all those who enter and use the building or building site potentially at risk. The use of non-conforming building products within a building can also impose significant costs on owners to rectify damages or undertake remedial actions. Other

consequences can also impact the construction, manufacturing, trade (imports) and retail sectors.

Two recent national examples have highlighted this issue: the Melbourne Lacrosse Tower fire in 2014 and the recall of Infinity and Olsent-branded cables in 2015, both of which had the potential to cause loss of life or serious injury. A contributing cause to the rapid vertical spread of fire at the Lacrosse Tower was the combustible external aluminium wall cladding on the side of the building. The Infinity and Olsent-branded cables were found to have poor quality insulation (plastic coating) which degrades at a faster rate and therefore fails to meet electrical safety standards. While fortunately there was no loss of life in the Lacrosse Tower fire, Infinity cables continue to pose risks.

These incidents triggered two national reviews and extensive consultation into the shortcomings of the current mechanisms available to address the use of non-conforming building products: a Senate Economics Committee inquiry and a Building Ministers' Forum (BMF) report<sup>1</sup>. The BMF is comprised of the Commonwealth, state and territory Ministers responsible for building and plumbing matters. The Senate inquiry is ongoing. The Queensland Government has also further investigated and consulted on options to address non-conforming building products through the *Queensland Building Plan: A discussion paper for industry and consumers*.

These reviews and consultation have concluded that the current building regulatory system does not provide an effective overarching framework for identifying and addressing non-conforming building products.

On 19 February 2016<sup>2</sup>, the BMF agreed in-principle that improvements should be made to state and territory building regulatory frameworks to enable building regulators to effectively respond to incidences of non-conforming building products.

This extensive analysis and consultation has informed the Bill. Consideration was also given to other Queensland industry regulatory systems that are similarly concerned with life safety matters, such as the fair trading, electrical safety and workplace health and safety frameworks.

There is limited ability to effectively regulate building products at present at either the national or state level. Building regulators are considered specialist regulators, as opposed to the generalist product regulator, the Australian Consumer Law regulators. However, building regulator powers are focused primarily on active building sites and building industry licensees. Further, the current building regulatory system does not have any mechanism to trace building products through the supply chain from manufacture to installation. Many building products are available widely on the market to the public as they are suitable for a range of uses. Globalisation of the supply chain has also compounded challenges to ensure building products are suitable for their intended use.

The Bill will address these inadequacies by imposing obligations on building product supply chain participants and clarifying that the QBCC can investigate and ensure building products are safe and fit for the intended use.

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<http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx>

<sup>2</sup> <https://industry.gov.au/industry/IndustrySectors/buildingandconstruction/Documents/BMF-Communique.pdf>

The current building regulatory framework disproportionately focuses on the end of the supply chain. There are clear inadequacies in the regulatory regime currently applying to the building product supply chain, with heavy responsibility placed on installers and building licensees to ensure a product and its performance is safe and fit for purpose, rather than appropriately allocating responsibility to other participants in the supply chain such as manufacturers and suppliers. Installers and building licensees are largely reliant on supporting material from earlier in the supply chain, such as information provided by the importer, manufacturer or seller. The Bill will address this inequity by establishing obligations on the entire building product supply chain.

Presently, the limitations of the QBCC powers are inconsistent with those of other Queensland industry regulators, such as the Electrical Safety Office and the Workplace Health and Safety Office, despite the significant risks associated with non-conforming building products. Present powers are also inconsistent with regulatory powers available to Federal Government regulators, such as those provided by the *Regulatory Powers (Standard Provisions) Act 2014*. Consultation has revealed that there is a significant gap between community expectation and the reality of current building regulator powers. The Bill will address this inconsistency by imposing obligations on the building product supply chain and improving the powers available to the QBCC to carry out its functions.

#### *Building workplace safety*

In 2015, 20 year old Jason Garrels died of electrocution because of an incident on a building site. The Central Coroner recommended that “if the law does not already provide that the principal contractor, and building contractor are obliged to notify the QBCC of any death or serious injury on site, then the law needs to be amended to impose this obligation on them.”

Following the Coroner’s findings, the Department of Housing and Public Works and the Office of Industrial Relations (OIR) examined methods to improve information sharing between the agencies. This included an amendment to the Electrical Safety Regulation 2013 to improve information sharing about notifiable incidents between the OIR and the QBCC, and OIR providing the QBCC with information about Serious Notifiable Incidents.

It is considered that more can be done to facilitate safety on building and construction work sites and to meet the Coroner’s recommendation. The Bill will achieve this by increasing the role of the QBCC in reporting work health safety issues, enabling the QBCC to consider these issues and expanding the grounds upon which the QBCC may take disciplinary action against a licensee, or suspend or cancel a licence. The grounds will include where a licensee has been convicted of an offence relating to work health and safety laws or where the licensee’s work on a building site may have caused the death of a person or grievous bodily harm or a serious risk to the health or safety of a person.

## **Achievement of policy objectives**

#### *Non-conforming building products*

The policy objectives of the Bill will be achieved by amending the *Queensland Building and Construction Commission Act 1991* (QBCC Act) to:

- Establish obligations on building product supply chain participants that confer responsibilities and ensure a building product, so far as reasonably practicable, is not a non-conforming building product.
- Enable the QBCC to investigate and address instances of non-conforming building products.

- Strengthen the QBCC's powers to ensure buildings are safe and better align its powers with those of other Queensland regulators, such as the Electrical Safety Office and the Workplace Health and Safety Office.

The Bill will introduce obligations on all building product supply chain participants to ensure building products are fit for their intended purpose and safe and extend the remit of the QBCC to include building products.

This positive accountability mechanism through a series of obligations for all building product supply chain participants will allow the QBCC to effectively address a point of failure in the supply chain. This measure is considered the fairest and most practical method of ensuring responsibility for building products is appropriately addressed. It is also expected to lead to higher building product standards, greater attention in the construction industry, more effective regulatory enforcement and ultimately safer buildings.

The Bill provides for investigation powers for the QBCC to investigate and address instances of non-conforming building products. The investigation powers provided in the Bill include powers to search and seize products and material, as well as inspect, examine and test anything on the premises. The Bill also provides for enforcement provisions such as the acceptance and enforcement of undertakings relating to compliance with provisions, as well as appropriate penalties.

As the QBCC is enabled to respond to incidents of non-conforming building products and accountability for all participants in the building product supply chain is significantly improved, Government will be able to uphold the public interest and safety of Queenslanders.

Once enacted in Queensland, it is also expected that other jurisdictions will review the introduced provisions and consider how to adapt this to suit their respective building regulatory systems. This has received in-principle support from the Building Ministers from other states and territories. Benefits include the potential for nationally consistent legislation in each state and territory regarding industry obligations and the ability for building regulators to effectively address instances of non-conforming building products.

The Building Ministers are considering complementary measures to support jurisdictional legislative amendments, including the establishment of a national building regulators forum to provide cross-jurisdictional advice about the identification and eradication of non-conforming building products.

#### *Building workplace safety*

The policy objectives of the Bill will be achieved by:

- Amending the QBCC Act to provide a positive obligation on QBCC licensees to notify the QBCC about any activity on a site that might present a work health safety issue.
- Providing in the QBCC Act that QBCC licensees have a positive obligation to notify the QBCC that if the licensee believes that a person has failed to comply with an order or notice issued by the Electrical Safety Office.
- Amending the QBCC Act to enable the QBCC to enter into an information sharing arrangement with other regulatory agencies, in particular work health and safety regulators. Information can be shared if the information helps the QBCC or the other agency perform its functions or disclosure of the information is reasonably necessary to protect the health or safety of a person or property.

- Amending the QBCC Act to provide a positive obligation on the QBCC to report to health and safety agencies about a notifiable incident. A notifiable incident is the death or serious injury to a person or an incident that exposes a person to risk of serious injury or illness.
- Expanding the grounds upon which the QBCC may take disciplinary action against a licensee, or suspend or cancel a licence, to include where a licensee has been convicted of an offence relating to work health and safety laws or if the licensee's work on a building site may have caused the death of a person, grievous bodily harm or a serious risk to the health or safety of a person.

## **Alternative ways of achieving policy objectives**

### *Non-conforming building products*

The policy objectives can only be achieved through legislative amendment.

The Australian building construction industry is governed by a complex legislative framework consisting of requirements imposed by the Commonwealth, states and territories and local governments. The requirements relating to building products and materials include the National Construction Code (NCC), which sets the minimum level of construction requirements and requires materials used in construction to be suitable for use, Australian Standards and jurisdictional laws. Responsibility for the NCC rests with the State and Territory Governments.

In Queensland, the *Building Act 1975* gives effect to the NCC and the QBCC is the regulator overseeing building and construction licensees. Legislative change is needed to clarify the remit of the QBCC to include building products and provide appropriate powers to investigate and address instances of non-conforming building products.

### *Building workplace safety*

Present legislative provisions allow information sharing in some circumstances. However, it is considered that a more comprehensive legislative framework is needed to increase the range of information that can be shared to improve the health and safety on work sites. As it would not be possible for this to occur on a purely administrative basis, legislative change is required.

Currently the QBCC can take disciplinary action, and suspend or cancel a licence if grounds for disciplinary action exist. Although the QBCC may consider a breach of the QBCC Act in deciding whether to take disciplinary action, it is unable to take into consideration convictions under laws that relate to safety in the workplace. Also, it cannot specifically consider work that a licensee may have undertaken that caused death or grievous bodily harm to a person or may involve serious risk to the health or safety of a person. Legislative change is needed to allow the QBCC to consider these matters.

## **Estimated cost for government implementation**

### *Non-conforming building products*

The Bill is not expected to significantly impose greater costs on businesses, as they should already ensure that building products are safe, fit for the intended use and comply with the relevant building assessment provisions.

The Bill is expected to have some impact on the QBCC, particularly in relation to resourcing, if there are several instances of non-conforming building products requiring investigation. Enforcement of the new provisions will demonstrate to industry and consumers the seriousness of the risks associated with the use of non-conforming building products and act as a deterrent to manufacturers and suppliers. To support implementation of the Bill, an engagement program will be delivered by the QBCC using existing engagement channels. The QBCC is funded from own source revenue (insurance and licence revenue) and the costs of implementation will be borne by the QBCC.

#### *Building workplace safety*

Any costs arising from implementation of these legislative amendments will be met from existing QBCC and agency and departmental resources.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

#### *Non-conforming building products*

### **Enhanced powers for building products**

The Bill provides the QBCC with a range of powers to address the issue of non-conforming building products and their associated risks.

These powers include the power to enter places, both with consent and under a warrant. Entry may also be made outside these circumstances but is limited to public places, places of business of licensees, places of business of persons in the chain of responsibility for building products and building sites. Generally speaking, the power to enter these places is limited to when the places are open for entry. Additionally, an inspector may only enter for a compliance purpose, and cannot enter any residence without a warrant or consent. These entry powers will allow QBCC inspectors to ensure compliance early in the supply chain as well as maintain safety during the installation stage of a product's life-cycle. Without these powers, the QBCC will essentially remain limited to accessing building sites and focussing its investigatory capacity on building sites and licensees.

Powers after entry will also allow an inspector to search an entered place and search for or seize documents and other evidence of offences, as well as non-conforming building products and dangerous places. They will also be empowered to direct and even undertake remedial action to make a place safe in emergency situations. Safeguards have been included and these powers are generally similar to those provided for under similar safety legislation. The powers will allow QBCC inspectors to effectively discharge their responsibilities as a safety regulator.

An inspector may also require a person to provide their name and address and to give reasonable help (e.g. to produce information or a document) from a person at the site. While a person can be compelled to provide this reasonable help, even if it would tend to incriminate them, evidential immunity is provided. Evidential immunity is also provided for persons who are compelled to attend before an inspector and answer questions, even if their answers would tend to incriminate them. These provisions have been included to ensure inspectors can obtain answers to questions, establish the causes for breaches and assist licensees and persons in the chain or responsibility in improving their practices and promoting safety outcomes.

The current provisions of the QBCC Act in relation to document production and certification requirements have been replicated and expanded in the Bill. This includes the current abrogation of privilege against self-incrimination without corresponding evidential immunity. The expansion, however, is limited by the definition of a compliance purpose, which includes ascertaining whether or not the Act has been complied with. This power could be used to require documents that a licensee or person in the chain of responsibility for a building product is required to keep under the Act. It is also important to note that the Act primarily regulates licensees, who, by participating in the statutory regime to date (through obtaining a licence) have generally accepted the enforcement provisions and thus waived the benefit of the privilege against self-incrimination. To claim privilege in relation to such records would also thwart the purpose of the legislation, which is ultimately to ensure a safe and fair construction industry in Queensland

The Bill extends these investigation powers to be able to effectively include matters relating to the investigation of building products. Extending these powers is reasonable, necessary and proportionate to achieve the objective of regulating building products to ensure the safety of building industry participants, homeowners, consumers and the public. Adequate safeguards and limitations on the use of regulatory powers in the Bill ensures that such lawful interferences are not arbitrary or at risk of abuse.

Most powers exercised by the QBCC and its inspectors will be appealable to the Queensland Civil and Administrative Tribunal (QCAT) following internal review. In emergency situations where grave safety concerns have been identified, however, QCAT will be prevented from issuing a stay on a decision of the QBCC or its inspectors. Such prohibitions on stays have been reserved for the most serious of situations, including when the Commissioner has issued a stop work notice, when an inspector has seized a dangerous place, or when an inspector has directed remedial action to make a place safe. In order to balance the interests of safety and those of the person's the subject of an order, QCAT has been empowered to hear such appeals by way of an expedited hearing.

### **Creation of offences**

The Bill creates new offences for contravening the obligations placed on participants in the building product supply chain to prevent and address non-conforming building products. It also replicates and expands on the current offences in the QBCC Act for failing to comply with an order or direction of the QBCC and its inspectors.

These new offences are justified for the following reasons:

- It is reasonable and proper that the QBCC, as the building regulator, regulates the use of building products in a building or place. The Bill introduces the chain of responsibility for building products. Offences are required to act as a deterrent and encourage compliance with these new provisions.
- Other mechanisms such as a Ministerial warning statement will further encourage compliance with the chain of responsibility.
- The offences are well defined. The Bill details the obligations placed on persons in the chain of responsibility for building products to ensure the products are safe and conforming. The steps required to comply with the legislation and situations that create offences are also clearly outlined.
- The penalties for the offences are proportionate and relevant. The penalties have been benchmarked against existing penalties in similar workplace safety-related legislative frameworks with a similar purpose of protecting the public from harm arising from unsafe situations.

- The offence provisions do not impose strict liability. For example, it will be a defence for a person charged with a breach of a duty that the person took reasonable precautions and care in the circumstances.

## **Penalties**

The purpose of the penalties as set out in the Bill is to establish a deterrent effect for related offences, allow courts to apply meaningful and appropriate penalties and to emphasise to the community the seriousness of the offences under this legislation.

The penalties in the Bill are proportionate and relevant to the seriousness of the conduct, as there is a risk to personal safety and potential loss of life arising from breaches. They are also maximum penalties and still allow a court to impose lesser penalties where appropriate.

While there are existing penalties in the QBCC Act, the Bill introduces additional penalties as an enforcement mechanism and to ensure a credible level of deterrence for violations when a non-conforming building product is used in a building, supplied, imported, manufactured and/or designed. For example, the penalty relating to failing to comply with a direction to remedy takes into account the potential life safety implications associated with a person who has a duty and fails to remedy the situation despite a direction from the QBCC.

A number of penalties are higher than those currently imposed by the QBCC Act. These are considered justified as being closer to other safety-based legislations such as Queensland's Electrical Safety and Work Health and Safety Frameworks. As the QBCC's role is transitioning from an administrative regulator to a safety-based regulator, the increase in penalties is considered both necessary and appropriate. It is important to note that these maximum penalties will also be of comparatively low value, when compared to the budgets of many building projects. Specifically, OQPC noted that the following maximum penalties would require particular justification:

- 1000 penalty units for a breach of a person's duty in relation to non-conforming building products (section 74AJ).
- 1000 penalty units for contravening a direction to take remedial action in relation to a non-conforming building product (section 74AN).

It is important to note that these penalties are less than the penalty for a category two offence against the duty provisions in the *Work Health and Safety Act 2011* and the *Electrical Safety Act 2002* (1500 penalty units). This is despite the fact that all three offences have public safety implications and can significantly impact personal safety. However, as the above offences cover a broad range of conduct, including relatively minor infringements, the quantum of 1000PU was determined, as a maximum penalty, with a court being empowered to impose lesser penalties where appropriate.

All other maximum penalties have been justified in the relevant notes on provisions.

## **Ministerial powers**

The Bill grants the Minister powers to issue a recall order and to publish a warning statement about a non-conforming building product.

The Minister's powers to issue recalls and publish warning statements 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. These powers are intended to protect industry, workers, consumers, building residents and the community. The recall powers in particular are



designed to protect building practitioners who, through no fault of their own, purchase a non-conforming building product. To provide redress in such situations, the recall order may state what a responsible person, such as a supplier, must do to recall the building product. This can include prescribing actions such as repairing a building product to render it conforming, replacing a non-conforming product with conforming one or providing a refund for the non-conforming building product.

The Minister's powers to recall and to issue warnings are not expected to be used routinely or often and have a robust framework to ensure their appropriate use. For example, the Minister is required to issue a show cause notice to an affected party prior to issuing a recall order, inviting the person to show cause as to why the order should not be made. As such, prior to a recall being made or a warning being issued the principles of natural justice are to be upheld.

Before making a recall order, the Minister must also satisfy themselves that the product that is proposed to be the subject of a recall is a non-conforming building product for all its uses or that its proposed association with a building will expose persons to safety risks.

The issuing of a Ministerial recall order or warning statement will also be subject to judicial review and any decision can be reconsidered by the Minister on application.

The Ministerial recall power is modelled on Division 2B of the *Electrical Safety Act 2002* and Division 3 of the *Competition and Consumer Act 2010*. In each instance, the Minister has been provided with an ability to recall products, particularly if there are community safety concerns. Under the *Competition and Consumer Act 2010*, a Minister may also, under a recall order, require that a supplier replace, repair or provide a refund for the recalled goods. Given the threat to life-safety that non-conforming building products can cause, as well as the substantial cost implications for building practitioners, it is considered essential that such recall powers be afforded to the Minister for non-conforming building products.

### **Immunity from civil liability**

The Bill extends immunity to the QBCC Commissioner and the Minister from action taken against them for issuing a warning about a non-conforming building product and for any commercial or business reputational damage placed on a person within the chain of responsibility.

The QBCC Act already provides for immunity for the State, the QBCC, the QBCC Commissioner and relevant officers for any reputational harm caused by publicising a warning. The amendments in the Bill extend that protection where a warning statement has been made in relation to a non-conforming building product. It is considered that these provisions are suitably justified on the basis of the potential high risk associated with the use of non-conforming building products and their consistency with both other legislation and existing protections within the QBCC Act. Ultimately, warning statements will form a key component of the amendments to address non-conforming building products and their associated health and safety risks. The statements will raise community awareness about the risks associated with non-conforming building products and will inform a duty holder's obligations in relation to particular products.

### *Building workplace safety*

New section 28A imposes an obligation on the QBCC to provide relevant information about a notifiable incident (i.e. a death or serious injury) to a "health and safety regulator". A health and safety regulator is defined to include the work health and safety regulator and the electrical safety regulator, as well as agencies responsible for administering the *Public Health Act 2005*.

A regulation may also prescribe additional entities. While a regulation may expand the number of bodies to which the QBCC must provide information, this expansion is limited to those entities that perform a similar function to the QBCC and the health and safety regulators listed in the Bill. As such, there is limited ability for a regulation to prescribe an entity outside Parliament's intention. The amendment also provides flexibility to ensure that relevant parties are provided with information about deaths and serious injuries on building workplaces, which can then be used to improve safety outcomes, encourage better practices and potentially save lives.

New section 28B allows the QBCC to enter into information sharing arrangements with relevant agencies to help the QBCC or the relevant agency perform their functions. A relevant agency is defined to include Queensland Government departments, health and safety regulators (as defined above), local governments and an agency of the Commonwealth or another state prescribed by a regulation. While a regulation may expand the number of bodies with which the QBCC may share information, this expansion is limited to agencies of the Commonwealth or other states. As such, there is limited ability for a regulation to prescribe an entity outside Parliament's intention. The amendment will also allow for a coordinated national approach to be taken on the issue of building workplace safety, which will promote positive safety outcomes across Australia and in Queensland.

Clauses 9 and 13 of the Bill propose to expand the grounds upon which the QBCC may suspend or cancel a licence, or take disciplinary action against a licensee. In addition to an offence against a range of Acts (including the *Plumbing and Drainage Act 2002* and the *Electrical Safety Act 2002*), it is proposed that the QBCC may suspend or cancel a licence if a licensee is convicted of an offence against another Act prescribed by regulation. The Bill specifies, however, that the offence must be in relation to building work and it is therefore considered there is limited ability for a regulation to prescribe an Act outside Parliament's intention.

### **Disclosure of information**

The information-sharing obligations and arrangements introduced by sections 28A and 28B respectively may inevitably involve the disclosure of personal information and commercial in confidence information. However, the disclosure is limited to only to public sector agencies, that are prescribed in these sections and it is expected that confidentiality provisions will apply to these agencies. As outlined, the amendments are intended to facilitate a multi-agency approach to improve work health safety on building and construction sites.

New section 110 introduces requirements for the confidentiality of information, with penalty provisions applying. The new section provides for certain circumstances that may warrant the giving of access or disclosure of information, such as immediate safety reasons relating to the use of a non-conforming building product necessitating a public statement or warning or a requirement by a court or tribunal to produce a document or answer questions. Information may also be disclosed to a Minister. New section 110 mirrors the confidentiality provisions of the administering Acts of other health and safety regulators and the exceptions, including the ability to disclose information to a Minister, are considered necessary to enable persons, such as departmental and QBCC officers or a Minister, to effectively administer the QBCC Act and further its policy objectives.

## **Consultation**

### *Non-conforming building products*

The issues and potential strategies relating to non-conforming building products have been the subject of extensive review, analysis and consultation over the past two years through two national reviews and the Queensland Building Plan discussion paper consultation process.

On 23 June 2015, the Senate referred an inquiry into non-conforming building products to the Senate Economics References Committee for inquiry and report. The reporting date has been extended several times and is now due to report by 31 October 2017, with an interim report by 31 August 2017<sup>3</sup>. The Queensland Government provided a submission on 17 August 2015. A total of 75 submissions have been received by the Senate inquiry on the matter with respondents ranging from affected homeowners, building industry participants, Governments, unions and large industry peak bodies and organisations. Two public hearings have also been held.

Key issues raised for the Senate's consideration include workplace and public safety risks associated with non-conforming building products, consumer impacts, economic effects on local businesses, disproportionate responsibility on the end of the building product supply chain, and the level and consistency of enforcement. The Senate published an interim report 'Safety – 'not a matter of good luck'', which was released in May 2016 and was consistent with the BMF report.

In response to wider concerns about the use and potential impacts of non-conforming building products, on 31 July 2015 the BMF established a Senior Officers' Group (SOG) to investigate and develop strategies. The Queensland Government has been leading this work as Chair and Secretariat of this group.

Two separate consultation processes have been undertaken by the SOG. Targeted consultation with key industry groups involved in the building product supply chain occurred in October/November 2015. Further public and targeted consultation occurred in March/April 2016 with the release of the consultation version of the BMF report into non-conforming building products. Research and feedback showed:

- building regulator powers focus primarily on active building sites and practitioners
- the importance of addressing the entire building product supply chain
- building regulators generally do not have investigative and enforcement powers in relation to building products, particularly in comparison to similar regulators.

For example, the Australian Competition and Consumer Commission, during targeted consultation with the SOG and in its Senate inquiry submission, also identified the gap in state and territory building regulatory powers, noting stakeholder concerns that building regulators do not have sufficient or consistent investigative and enforcement powers to address non-conforming building products.

This informed the basis of the BMF's key findings that:

- the extent of building product non-conformity in Australia is largely unknown
- the current building regulatory system does not provide an effective overarching framework for identifying and addressing non-conforming building products
- the current building regulatory framework disproportionately focuses on the end of the supply chain.

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<sup>3</sup> [http://www.apf.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Non-conforming45th](http://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Economics/Non-conforming45th)

The Queensland Government has further investigated and consulted on proposals to address non-conforming building products. On 30 November 2016, the Queensland Government released the *Queensland Building Plan: A discussion paper for industry and consumers* for consultation.

One of the ten key discussion areas contained policy proposals to enhance the QBCC's powers to effectively address instances of non-conforming building products. Analysis and stakeholder feedback showed:

- a severe limitation for the QBCC to detect, respond to and manage non-conforming building products prior to installation in buildings
- common misperceptions about the current inability of the QBCC to investigate and address non-conforming building products
- a public expectation that the QBCC should investigate and respond to non-conforming building products
- the importance of addressing the entire building product supply chain.

Overall, the extensive consultation indicated that, particularly in the interests of public safety, building industry participants, stakeholders, homeowners and the community support proposals to impose duties on participants in the building product supply chain. There was also support for the QBCC to possess the necessary powers to investigate and address instances of non-conforming building products.

#### *Building workplace safety*

There is a history of strong public concern and clearly expressed expectations that the QBCC requires proper access to the relevant information about failures to comply with workplace health and safety requirements when deciding whether to grant or renew licences.

## **Consistency with legislation of other jurisdictions**

#### *Non-conforming building products*

The Bill is specific to the State of Queensland as Queensland is leading the way with reforms of this nature.

Building Ministers from other jurisdictions have provided in-principle support to review their building regulatory frameworks to address non-conforming building products. The provisions within the Bill are expected to be considered as part of these reviews. This may assist in achieving greater consistency across jurisdictions and enable building regulators to collaborate and effectively address instances of non-conforming building products. This is the subject of ongoing cooperative work in the context of the BMF.

The introduction of new building regulatory legislation in Queensland will improve consistency with other Queensland regulators such as the fair trading, workplace health and safety and electrical safety regulators. It will also move into general alignment with regulatory powers available to Commonwealth regulators, such as the powers provided under the *Regulatory Powers (Standard Provisions) Act 2014*. This Act contains a framework for general regulatory powers that can be exercised by agencies and regulators across the Commonwealth by being called up through primary legislation.

#### *Building workplace safety*

The provisions in this Bill relating to building workplace safety are specific to Queensland.

## **Notes on provisions**

**Part 1 Preliminary** contains clauses 1 and 2.

*Clause 1* specifies the short title of the Bill being cited as the *Building and Construction Legislation (Non-conforming Building Products – Chain of Responsibility and Other Matters) Amendment Bill 2017*.

*Clause 2* provides that the Bill will commence on proclamation.

**Part 2 Amendment of Queensland Building and Construction Commission Act 1991** contains the remainder of the clauses.

*Clause 3* provides that this part amends the *Queensland Building and Construction Commission Act 1991* (QBCC Act).

*Clause 4* amends the objects of the QBCC Act to empower the QBCC to regulate building products. This will achieve improved consumer and public safety and fairness for building industry licensees by imposing duties on all participants of the building product supply chain and providing the QBCC with the ability to appropriately address instances of non-conforming building products throughout the building product supply chain.

*Clause 5* establishes an advisory committee on building products.

The committee's primary function is to assist the Minister, the Board of the QBCC and the Commissioner to effectively and efficiently perform their functions in relation to building products. It is intended to facilitate a coordinated investigation and response to non-conforming building products across multiple regulators if needed.

The committee is empowered to provide timely, independent and expert advice regarding building products and their safety or suitability. Matters may be referred to the committee by the Commissioner, the QBCC's Board or administering Minister or be generated by the committee.

The committee may invite other individuals or organisations such as content experts or relevant industry bodies as necessary to assist with investigations or development of responses to non-conforming building products. The committee may also liaise with other relevant committees or regulators in other jurisdictions to address or coordinate matters relating to non-conforming building products.

The committee has already been administratively established by the QBCC in 2015 as a forum for Queensland Government regulators to share information and collaborate when a potential non-conforming building product has been identified. Current members of the committee include the QBCC, Queensland Office of Fair Trading, Electrical Safety Office, Australian Competition and Consumer Commission, Petroleum and Gas Inspectorate and Queensland Fire and Emergency Services. The clause provides that this committee is legislatively enshrined with members to be prescribed by regulation.

*Clause 6* extends the role of the Commissioner of the QBCC so the Commissioner may respond to incidents and matters relating to non-conforming building products.

Section 1 inserts provisions to enable the Commissioner to monitor, investigate and enforce compliance with new Part 6AA (Building products), including contraventions of this Part.

Section 2 inserts provisions to enable the Commissioner to publish information about building products.

Section 3 renumbers sections 20J(da) to (l) to reflect the insertions.

*Clause 7* provides that certain decisions made by the Commissioner must be made independently of the Board:

- a decision to give information to a health and safety regulator under section 28A (Exchange of information between QBCC and other regulators)
- a decision to give a direction under section 74AN (Power to require remedial action)
- a decision about a building product undertaking under Part 6AA, division 3 (Enforceable undertakings relating to building products)
- a decision to issue a stop work notice under section 108AI (Commissioner may issue stop work notice).

*Clause 8* inserts new sections 28A (Commission must give particular information to health and safety regulator) and 28B (Exchange of information between commission and relevant agencies). New section 28A introduces a mechanism to facilitate the sharing of information between the QBCC and a health and safety regulator that relates to a *notifiable incident*, which is defined as 'the death or serious injury of a person' or 'an incident that exposes a person to a risk of serious injury or illness'.

A health and safety regulator will include a regulator under the *Work Health and Safety Act 2011* and the *Electrical Safety Act 2002*, the chief executive of the department administering the *Public Health Act 2005*, a chief executive officer of a local government (but only in relation to their functions under the *Public Health Act 2005*) or an entity that has functions similar to the QBCC and the agencies listed above and that is prescribed by regulation.

New section 28B allows the QBCC to enter into an information sharing arrangement with a relevant agency, including a chief executive of a department, a health and safety regulator or a local government.

The new provision also enables the QBCC to enter into an information agreement with an agency of the Commonwealth or another State, for example if the information will help the agency to perform its functions or the disclosure is reasonably necessary for the purpose of protecting the health or safety of a person or property. An agency of the Commonwealth or another State may include, for example, border protection agencies or other building regulators.

It is expected that the agencies who receive the information will be required to deal with the information in a confidential manner and in accordance with applicable legislative frameworks.

*Clause 9* amends section 48 (Cancellation or suspension of licence). The amendment allows the QBCC to cancel or suspend a licence if the licensee is convicted of an offence under the QBCC Act or an offence against a *relevant act*, which includes the *Plumbing and Drainage Act 2002*, the *Work Health and Safety Act 2011*, the *Electrical Safety Act 2002*, the *Public Health Act 2005* or another Act prescribed by regulation. Cancellation or suspension is also possible if building or other work on a building site under the licensee's control may have caused death or grievous bodily harm to a person or involved a serious risk to the health or safety of a person. This provides that the QBCC will be able to consider workplace health and safety issues associated with building work when deciding whether to cancel or suspend a licence.

*Clause 10* inserts new section 54A (Notification of particular safety matters). This section provides new requirements for notification of particular safety matters by licensees. It requires a licensee who becomes aware that a notifiable incident has occurred on a building site which is under that licensee's control or where the licensee is carrying out building work, to give the QBCC notice of the safety matter. A notifiable incident means death or serious injury or illness or a person, or an accident that exposes a person to a risk of serious injury or illness. The notice must be given in the fastest way possible in the circumstances, by telephone or in writing. If required by the QBCC, the person must provide written notice of the safety matter within 48 hours of being required to do so.

New section 54A also provides that if a licensee who becomes aware that a person who is carrying out building or other work on a building site under the licensee's control, or a site where the licensee is carrying out building work, has contravened a notice or injunction under part 10 of the *Work Health and Safety Act 2011* or part 11A of the *Electrical Safety Act 2002*, the licensee must notify the QBCC of the safety matters in the fastest way possible. This timeframe reflects the serious consequences of these safety matters and will allow the QBCC to take appropriate action.

The maximum penalty for a contravention is 80 penalty units (PU).

## **Part 6AA Building Products**

*Clause 11* inserts a new Part 6AA, which contains new sections 74AA to 74AZD to provide for legislative amendments relating to building products.

New sections 74AA and 74AB provide definitions of key terms used in this Part. New sections 74AC to 74AM establish the duties and related offences for a person in the chain of responsibility for a building product. New section 74AN provides for a power to require remedial action if a duty relating to building products has been contravened. New sections 74AO to 74AU provide for enforceable undertakings relating to building products. New sections 74AV to 74AZA provide for recall orders. New sections 74AZB to 74AZD provide for warning statements.

New section 74AA provides definitions for the key terms used in this Part to assist in the interpretation and implementation of the Bill.

'Associated with' in relation to a building is defined to mean incorporated into, or connected to, a building by the carrying out of relevant work, which is also defined.

'Reasonably practicable' is defined and is the standard that has been generally accepted as an appropriate qualifier of duties. This qualifier is well known and has been consistently defined and interpreted by the courts.

It represents what can reasonably be done in the circumstances, i.e. when complying with duties under the Act and any associated regulations. To determine what is (or was at a particular time) reasonably practicable in relation to managing risk, a person must take into account and weigh up all relevant matters, including:

- the likelihood of the relevant hazard or risk occurring
- the degree of harm that might result
- what the person knows or ought reasonably to know about the hazard or risk and the ways of eliminating or minimise the risk
- the availability and suitability of ways to eliminate or minimise the risk.

After taking into account these matters, only then can there be consideration of the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

'Representation' is defined as a claim, promise, publication, statement or other representations made in any way, including for example in advertising material, packaging or a product statement. The representation may be, for example but not limited to, regarding the standard or quality of a product, nature of the product, materials, suitability for uses to which the product might reasonably be used, testing processes or testing outcomes.

'Relevant regulatory provisions' is defined to mean the provisions associated with the definition of relevant work.

'Relevant work' means building work under the *Building Act 1975*, other than work mentioned in section 5(2) of that Act or plumbing or drainage work under the *Plumbing and Drainage Act 2002* directly connected to a building.

In relation to '*building product*' as defined in new section 74AB, it is considered that the term includes any products that are or will be associated with or installed for the purposes of a building. In the context of plumbing or drainage products, this includes products that are external to a building, for example a pipe that carries water from a water meter at the boundary of a lot to a building that is located a distance within the boundary is considered to be associated with the building. Equally, an onsite sewerage treatment system that treats sewerage from a building will be considered to be associated with a building. It is considered that this construction is consistent with the intent of the legislation to protect consumers. Any other interpretation would exclude a substantial portion of products that are installed external to a building but are integral to the operation of plumbing and drainage work for a building. It also reflects the fact that the majority of plumbing and drainage products that are installed external to a building are capable of being installed within a building.

New section 74AB defines the key concepts of a building product and a non-conforming building product. The definition for *non-conforming building product* has been developed through close consideration of the definition adopted by the BMF. This definition provides that a non-conforming building product is a product or material or other thing associated with, or that could be associated with, a building that:

- claims to be something it is not
- does not meet the required standards for the use in which it is intended or
- is marketed or supplied with the intent to deceive those who use it.

**Division 2** of new Part 6AA introduces duties relating to building products. The purpose of this division is to introduce obligations on all building product supply chain participants by requiring reasonable actions to ensure building products are fit for the intended purpose, safe and compliant with relevant building assessment provisions.

Currently, there are no provisions that address duty of care requirements on the building product supply chain to ensure products and materials used in building work are safe. There are requirements placed on QBCC licensees to ensure that building work is not defective and of the appropriate standard, however this obligation does not extend to the use of non-conforming building products. While it is generally the responsibility of the builder and certifier to determine a building product's suitability when the product is used in construction, they are largely reliant on supporting material such as that provided by the importer, manufacturer or seller.



Division 2 enables the QBCC to effectively address a point of failure in the entire building product supply chain and pursue a broader range of offenders, rather than being limited to those at the end of the building product supply chain.

Subdivision 1 of Division 2 introduces new sections 74AC and 74AD relating to general provisions about duties

New section 74AC clarifies the relationship between Division 2 and other safety legislation. In circumstances where a provision of this division and a provision of a safety law deals with the same thing, and it is impossible to comply with both provisions, the safety law takes precedence and this division ceases to have operative force.

New section 74AD provides the general principles applying to duties for a person in the chain of responsibility for a building product. In formulating these principles, the Bill makes it clear that:

- a person with concurrently held duties retains responsibility for the duty and must ensure that the duty is met
- the capacity to influence or control the matter applies to both actual and practical influence or control
- the capacity to influence connotes more than just mere legal capacity and extends to the practical effect the person can have on the circumstances
- where a duty holder has a very limited capacity, that factor will assist in determining what is 'reasonably practicable' for them in complying with their duty.

The provisions of the Bill do not permit, directly or indirectly, any duty holders to avoid their health and safety responsibilities. Proper and effective coordination of activities between duty holders can overcome concerns about duplication of effort or no effort being made.

Subdivision 2 of Division 2 introduces new sections 74AE to 74AI outlining duties for a person in the chain of responsibility for a building product.

New section 74AE establishes the definition of a person in the chain of responsibility for a building product. This is a person who 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, as well as a person who installs the building product into the building in connection with relevant work.

The articulation of a person in the chain of responsibility ensures that the persons captured by this definition are within the scope of the intended objectives of the Bill; that is, to establish obligations on building product supply chain participants to ensure that, as far as reasonably practicable, a building product is not a non-conforming building product.

New section 74AF sets out the primary duty that relates to a person in the chain of responsibility for a building product. The primary duty is that each person in the chain of responsibility must, so far as reasonably practicable, ensure that the product is not a non-conforming building product for an intended use.

Designers, manufacturers, importers, suppliers and installers of building products can influence the safety, compliance and performance of these products before they are used or installed or while they are installed. They are required to ensure, so far as is reasonably practicable, that products that are designed, made, imported, supplied and installed are safe, fit for their intended purpose and comply with relevant building assessment provisions. In the early stages of a building product supply chain, there may be greater scope to ensure

compliance and have regard to any additional information such as a warning statement regarding a type of product or how the product is intended to be used.

For example, a building product designer must, in fulfilling a contract to design a particular building product for use in a building, and as far as reasonably practicable, ensure that the building product is safe, comply with relevant building assessment provisions, perform (or is capable of performing) for that use to the standard it is represented to perform and have regard for any additional information.

Similar to the meaning of ‘supply’ as outlined in section 6 of the *Work Health and Safety Act 2011*, suppliers of building products are those that directly or indirectly supply a product, such as the sale, re-sale, transfer, lease or hire of a product in a company that owns the product.

The penalty for a contravention of this section is outlined in new section 74AJ (Failing to comply with duty).

New section 74AG provides for an additional duty for a person in the chain of responsibility that, as far as reasonably practicable, a building product is accompanied by required information about how the product must be associated with a building and intended to be used. ‘*Required information*’ for a building product is defined as information about a product that communicates certain information including the suitability and any instructions about the intended use of the product.

The required information must also comply, as far as reasonably practicable, with any requirements prescribed by regulation including the form of the information. This will ensure a person in the chain of responsibility, the consumer and other relevant affected parties will have relevant and accurate information regarding the building product, manner in which it is to be installed, its intended use and the standard it has been made to and any other relevant information. New section 74AK (Duty about representations about building products) provides for an additional offence and associated penalty under this section.

New section 74AH places an additional duty on a person in the chain of responsibility of a building product to comply with the requirements relating to recalls for that product. Division 4 of this new Part provides the nature and circumstances of a recall order, including a corresponding recall order, however called, under a law of another State providing for the recall of a building product from use. The penalty for a contravention of this section is outlined in new section 74AJ (Failing to comply with duty).

New section 74AI places a duty to exercise ‘due diligence’ on the executive officer of a company involved in the chain of responsibility for a building product, i.e. the executive officer for a company involved in the design, manufacture, import, supply or installation of a building product. The executive officer may be proceeded against and convicted of an offence under this section whether or not the company has been proceeded against and convicted of an offence under this division. Council of Australian Government (COAG) principles and the *Directors’ Liability Reform Amendment Act 2013* were considered in the drafting of this section.

Under Queensland law, a reference to a ‘person’ includes a reference to a ‘corporation’ or company, which can be held directly liable for their conduct. Executive officer means a director for, or a person concerned with the management of, a company. Due diligence places a positive responsibility on an executive officer to take reasonable steps to ensure the company complies with the duty under this Part. The potential for significant safety and economic risks to the community associated with non-conforming building products warrant the placement of this duty. New section 74AJ (Failing to comply with duty) provides for the penalty provisions.

Subdivision 3 introduces offences relating to duties prescribed within the Bill. A penalty system serves both as an incentive to ensure corporate compliance and as a deterrent to executive officers that fail to exercise due diligence. The penalties therefore reflect the seriousness of any breaches.

New section 74AJ creates an offence for a person in the chain of responsibility for a building product that breaches a duty under subdivision 2. The maximum penalty for a contravention by a person is 1000PU. It is considered that a penalty must be greater than those currently imposed by disciplinary action (as outlined in section 74D) and provide a sufficient deterrent. This approach to contraventions of duties appears to be common practice across similar safety regulatory frameworks outlined in the *Work Health and Safety Act 2011* and the *Electrical Safety Act 2002*.

New section 74AK creates an offence for a person in the chain of responsibility for a building product to make a representation, or permit a representation to be made, about the intended use of the product that does not comply with requirements for the representation prescribed by regulation. The prescribed representation must not be false or misleading and may include certain requirements, for example, supporting information regarding the intended use of the building product or exact wording, setting and type size required for the representation.

To provide a sufficient deterrent, the maximum penalty for a contravention is 1000PU, which is consistent with the penalties contained in section 151 of the *Competition and Consumer Act 2010* relating to the supply or possible supply of goods with false or misleading representations. The penalty acknowledges the importance of ensuring representations are not false or misleading, as subsequent participants in the supply chain for a building product rely on these representations.

New section 74AL creates a duty for a person in the chain of responsibility, if there is a reasonable suspicion or knowledge that a building product is a non-conforming building product for an intended use, to notify the QBCC. If the person is aware of a notifiable incident that was, or may have been caused by the product for any of the intended uses, the QBCC must also be notified of this. The notification to the QBCC must occur as soon as practicable but within two days, unless there is a reasonable excuse.

This duty ensures that the QBCC is made aware of a suspected or known non-conforming building product. Subsection 4 provides that the circumstances may warrant further investigation or involvement by the QBCC. If action is warranted, subsections 5 and 6 provide that the QBCC may, by written notice, direct a person in the chain of responsibility for the product to take stated actions to mitigate or remove the safety risk posed by the suspected or known non-conforming building product. For example, the QBCC may isolate an entire building or a section of a building site or place for a set period of time to minimise any safety risks. A penalty of 50PU applies to a contravention, which is consistent with a similar provision (section 38 (Duty to notify of notifiable incidents)) in the *Work Health and Safety Act 2011*.

New section 74AM creates a duty for a person within the chain of responsibility for a building product to notify the QBCC after becoming aware of or suspects a notifiable incident caused or may have been caused by the product. The notification to the QBCC must occur as soon as practicable but within two days, unless there is a reasonable excuse. A penalty of 100PU applies to a contravention, which is consistent with a similar provision (section 38 (Duty to notify of notifiable incidents)) in the *Work Health and Safety Act 2011*.

New section 74AN provides that the QBCC may require remedial action if the QBCC reasonably believes a person is contravening a duty under subdivision 2 or has contravened a such duty and it is likely that the contravention will continue or be repeated.

Subsection (2) provides that the QBCC can direct, by written notice, the person in the chain of responsibility to remedy the contravention and take steps to prevent the contravention from continuing or being repeated.

Subsection (3) provides that the period in the QBCC's direction must be at least 28 days unless the QBCC is satisfied that that one of the following could occur, if the direction is not required to be complied with in a shorter period:

- a substantial loss will be incurred by, or a significant hazard will be caused to the health and safety, of a person because of the contravention or
- the contravention will cause a significant hazard to public safety or the environment generally.

This ensures that a direction to remedy takes into account factors such as the seriousness of the contravention or the likely contravention.

Subsection (4) makes it an offence for a person to fail or refuse to comply with the direction. An offence carries a maximum of 1000PU applies, which reflects the serious nature of failing or refusing to comply with a direction to remedy, is greater than those currently imposed by disciplinary action (as outlined in section 74D) and provides a sufficient deterrent. A maximum penalty that is in line with the cost to remedy will ensure that a person who contravenes the provision will not choose to pay a penalty rather than perform remedial action as directed. A similar approach to contraventions of duties appears to be common practice across similar safety regulatory frameworks outlined in the *Work Health and Safety Act 2011* and the *Electrical Safety Act 2002*.

A direction to require remedial action is intended to take effect immediately upon being issued and ordinarily continues to operate until the QBCC is satisfied that the matters have been remedied.

The direction to undertake remedial action regarding non-conforming building products is separate to the power for the QBCC to direct rectification or remedy of building work in section 72 of the QBCC Act. Section 72 provides the ability for the QBCC to issue a requirement to remedy or rectify defective or incomplete *building work* (i.e. not related to a building product) relevant to domestic building work or consequential damage to a residential property adjacent to a building site.

**Division 3** of new Part 6AA provides the ability and procedures for the QBCC to accept, vary and withdraw a written undertaking in relation to building products. An enforceable undertaking is a voluntary, written agreement given by a person which requires that person to take specified actions to "make good" a situation. The regulator has discretion whether or not to accept the undertaking as an alternative to prosecution. Enforceable undertakings can be a flexible, responsive, cost effective and tailored enforcement alternative where this may enable a better overall regulatory outcome.

New section 74AO provides that the QBCC may accept a written undertaking, called a *building product undertaking*, given by a person in relation to a contravention or alleged contravention of this new Part 6AA relating to non-conforming building products. The building product undertaking is not an admission of guilt by the person.

The QBCC may generally consider a building product undertaking if:

- the QBCC has obtained sufficient admissible evidence to establish a prima facie breach has occurred relating to new Part 9 (Building products)

- the person in relation to a contravention or alleged contravention of this Part agrees to the undertaking on terms which would be acceptable to the QBCC
- the QBCC considers the undertaking to be an appropriate regulatory outcome, having regard to the significance and impact or likely impact of the issues or building product.

Other factors the QBCC may consider when deciding whether or not to accept a building product undertaking as an appropriate regulatory outcome can include:

- whether the person or organisation makes a positive commitment to address or stop the alleged contravention
- any actions the person or organisation has already commenced to address or stop the alleged contravention
- whether the person or organisation entering into the undertaking is likely to comply with the conditions of the undertaking
- whether the person or organisation is prepared to acknowledge that the QBCC has reason to be concerned about the alleged contravention
- the nature of the alleged contravention and regulatory impact of the undertaking compared with other forms of enforcement remedy
- the prospects for a speedy resolution of the matter.

New section 74AP requires the QBCC to give a written notice to the person seeking to make a building product undertaking of the QBCC's decision to accept or not accept the undertaking and any reasons. The QBCC may choose not to accept an offer of undertaking where commencing other proceedings would secure a complete settlement, rectification or another outcome not available through an undertaking. Any notice and accompanying reason in accepting the undertaking must be published on the QBCC's website.

New section 74AQ provides that a building product undertaking takes effect and becomes enforceable when the QBCC gives the decision to accept the undertaking to the person who made the undertaking, or at a later date stated by the QBCC. Similar to new section 74AP, this decision must be given in writing.

New section 74AR establishes an offence for a person who contravenes a building product undertaking they have made. A maximum penalty of 500PU associated with the offence is consistent with similar penalties contained in section 219 (Compliance with WHS undertaking) in the *Work Health and Safety Act 2011* and section 52 (Compliance with electrical safety undertaking) in the *Electrical Safety Act 2002*.

In addition to the offence, new section 74AS enables the QBCC to apply to the Magistrates Court when a person has contravened a building product undertaking. If the court is satisfied that the person has contravened the undertaking, it may:

- direct the person to comply with the undertaking
- discharge the undertaking
- impose any penalty, including costs of the proceeding, including legal costs, and the reasonable costs of the QBCC in investigating the contravention and monitoring compliance with the building product undertaking in the future.

New section 74AT provides that a person who has made a building product undertaking may, with the agreement of the QBCC, at any time withdraw or vary the undertaking. This can only occur in relation to the contravention or alleged contravention to which the undertaking relates. If the requirements of the building product undertaking cannot be met, then the undertaking

should either be withdrawn (in which case, a prosecution may commence for the contravention) or varied. The QBCC must publish the withdrawal or variation of the building product undertaking on its website.

New section 74AU outlines the proceedings in relation to a contravention or alleged contravention in relation to a building product undertaking (for this section, ‘*proceedings*’ includes disciplinary action under Part 6A Disciplinary proceedings of the QBCC Act). This section establishes that:

- proceedings may not proceed for a contravention if a building product undertaking is in effect
- proceedings may not proceed for a contravention if a person has discharged the building product undertaking
- the QBCC may accept a building product undertaking for a contravention before proceedings for the contravention has been finalised. The intention is that before a person has been convicted of an offence, they may seek to enter an undertaking, i.e. to avoid a conviction
- if the QBCC accepts the undertaking, all reasonable steps must be taken to discontinue the proceeding.

**Division 4** introduces new sections 74AV to 74AZA and establishes a Ministerial power and associated procedures, including a show cause process, to recall a batch or type of building product in certain circumstances and ensure that responsible persons must comply with the recall order.

New section 74AV provides that the Minister may act in the following circumstances regarding a building product that the Minister believes is non-conforming:

- for all intended uses and it is reasonably expected that the product will not to be used for any other use or
- there are safety risks arising from being a non-conforming building product for its intended use.

The section also defines a reference to *building products* in this division as ‘a particular batch or type of building product’.

New section 74AW confers a power on the Minister to recall a particular batch or type of building product in certain circumstances that the Minister believes is non-conforming.

Subsection (1) establishes that the Minister may make a recall order to a ‘responsible person’ (designer, manufacturer, importer or installer) who must action the requirements of the order. The order is subject to a show cause process as provided in section 74AX. The Minister can take into consider any representations or information made by a person as part of the show cause process.

Subsection (2) clarifies that the order may relate to the building product, even if a recall relating to the product has previously been voluntarily undertaken or if the building product has been associated with a building, e.g. it has already been installed or incorporated into the building. The subsection also references section 74AH for duties relating to the recall order. A breach of section 74AH carries a maximum penalty of 1000PU as provided in section 74AJ.

Subsections (3) and (4) clarify that the order may be made in relation to two or more responsible persons for the product.

New section 74AX requires the ‘responsible person’ to be advised in writing of the Minister’s intention to make a recall order and provided an opportunity to show cause before a decision regarding whether or not to make the order is made by the Minister. This upholds the principles of natural justice and helps to ensure a recall order is subject to a fair and equitable decision.

Subsection (2) provides that should the ‘responsible person’ wish to show cause why the order should not be made, that this must be done in writing to the Minister within 7 days of receipt of the Ministers’ correspondence providing the opportunity to show cause.

Subsection (3) states that the Minister must take any written show cause response by a ‘responsible person’ into consideration when making a decision regarding whether or not to proceed with the making of the recall order. This subsection does not limit the Minister, after taking the show cause submission into consideration, from making a recall order that imposes lesser requirements on the ‘responsible person’ than originally proposed.

Subsection (4) provides that the show cause process does not apply to a responsible person in relation to a product there is a recall order relating to the product made under law in another State. This enables a timely and appropriate response when due process has been undertaken in another State.

New section 74AY states that if the Minister decides to make a recall order, the order must be in writing and given to each ‘responsible person’ to whom the order applies. The QBCC must publish information about the recall order in a newspaper that has state-wide distribution and on the QBCC’s website. The information is intended to alert the public about the risk identified in the recall order.

New section 74AZ provides details about the nature of a recall order, including the reasons for the recall, duration and minimum requirements each ‘responsible person’ must meet to comply with the recall order. These include for example:

- The way (including method and medium) a ‘responsible person’ must provide information to other persons about the building product, risk and for how long (including specifying intervals or frequency) this information is to be provided. For example the recall order may specify the type and frequency of advertising to be undertaken to inform the community about the recall.
- The information a ‘responsible person’ must provide to other persons about the product and risk surrounding the product that is the subject of the recall, including what the other person should do to reduce the risk. Other persons may include any person in the chain of responsibility for the product, consumers, homeowners and the general public.
- The action to be undertaken by a ‘responsible person’ to eliminate the risk posed by the product to persons and property, For example, the recall order may provide for options to repair, replace, remove or modify the product or areas surrounding the product to make safe, provide a refund for the product or may direct a particular course of action.
- The information to be provided to the QBCC by a ‘responsible person’ to enable effective monitoring of the progress of the recall. The information will also assist in monitoring the ‘responsible person’s’ compliance with and reporting against the requirements of the recall order.

Subsection (2) clarifies that the costs for complying with and implementing the requirements of a recall order and associated actions are to be borne by each relevant ‘responsible person’. This includes costs incurred by a supplier or installer who provides reasonable help to the ‘responsible person’ as part of a recall under new section 74AZA.

Subsection (3) clarifies that a recall order expires after two years unless revoked earlier by the Minister. This is consistent with section 24AA of the *Acts Interpretation Act 1954*.

Subsection (4) provides that another recall order may be made (a new recall order) relating to the same product after a previous recall has ceased. For example, if after a recall has expired after two years, and the Minister believes there are still sufficient grounds to mandate a new recall order being made, then the Minister may make the new order.

It is an offence for a 'responsible person' to not comply with a recall order under new section 74AH (Additional duties relating to recall orders). A breach of section 74AH carries a maximum penalty of 1000PU as provided in section 74AJ (Failing to comply with duty).

New section 74AZA requires that a supplier or installer of a building product the subject of a recall order must, if asked by the 'responsible person' and provided with a copy of the recall order, give the 'responsible person' reasonable help in relation to the recall order. Examples of reasonable help are provided as guidance. A penalty of 50PU applies to a contravention, which is consistent with similar provisions in the *Electrical Safety Act 2002* (section 40K (Supplier must help responsible person)).

**Division 5** introduces new sections 74AZB to 74AZD and establishes a Ministerial power and associated procedures to publish a warning statement regarding a batch or type of building product in certain circumstances.

New section 74AZB provides that the Minister may act in the following circumstances regarding a building product that the Minister believes is non-conforming:

- for an intended use
- when associating the building product with a building in a particular way will make the product a non-conforming building product for an intended use or
- if the building product is associated with a building for a particular use, using the product in a particular way will make the product a non-conforming building product for the use.

The section also defines a reference to *building products* in this division as 'a particular batch or type of building product'.

New section 74AZC enables the Minister to publish a warning statement and outlines the relevant procedures.

Subsection (1) confers a power on the Minister to publish a warning statement regarding a particular batch or type of building product in certain circumstances.

Subsection (2) clarifies that a warning statement for a product may be published, even if a voluntary or Ministerial recall relating to the product has been undertaken or the product has been associated with a building.

Subsection (3) states that the warning statement may be published in a newspaper that has state-wide distribution, on the QBCC's website and in any other way the Minister considers appropriate. For example, this may include a national website established for consolidating information regarding non-conforming building products investigated and addressed by States, Territories and the Commonwealth.

New section 74AZD provides that each person in the chain of responsibility for a product whose identity is known or reasonably ascertainable is advised of the Minister's intention and reasons to publish a warning statement and provided an opportunity to show cause before a decision regarding whether or not to make the statement is published by the Minister. A copy of the proposed warning statement must also be provided.



Subsection (2) provides that should the person in the chain of responsibility for the product wish to show cause why the warning statement should not be published, that this must be done in writing to the Minister within 7 days of receipt of the Ministers' correspondence providing the opportunity to show cause.

Subsection (3) states that the Minister must take any written show cause response by the person in the chain of responsibility for the product into consideration when making a decision regarding whether or not to proceed with the publishing of the warning statement.

*Clause 12* inserts new provisions in section 74A (Commission may investigate grounds for taking disciplinary action) to enable an investigator to exercise powers under Part 9 (Inspectors) for an investigation under new Part 6AA (Building Products). The new provisions also clarify that information can be obtained from any entity (e.g. building industry participants, consumers, or a department or agency of the Commonwealth or another State) for an investigation under this part.

*Clause 13* amends section 74B to extend grounds for taking disciplinary action against licensees or former licensees to include:

- contravention of a relevant Act in relation to building work carried out under the licence
- circumstances involving building work that may have caused the death of, grievous bodily harm or involve a serious risk to the health or safety of a person
- failure to comply with a direction of the QBCC to rectify building work that is defective or incomplete, or to remedy consequential damage
- failure to comply with a direction given by the QBCC under section 74AN.

The clause also defines the '*relevant Act*' to include the *Fair Trading Act 1989*, the *Plumbing and Drainage Act 2002*, the *Work Health Safety Act 2011*, the *Electrical Safety Act 2002* and the *Public Health Act 2005*.

*Clause 14* inserts new provisions in Section 74C(1) (Proper grounds for taking disciplinary action against person not a licensee) to extend the grounds for taking disciplinary action against a person who is not licensed by the QBCC.

*Clause 15* inserts new provisions in section 86 (Reviewable decisions) which outlines the decisions of the QBCC under the QBCC Act that are reviewable decisions.

*Clause 16* amends section 86F (Decisions that are not reviewable decisions) to include a decision to give information to a health or safety regulation under section 28A.

*Clause 17* inserts new provisions in section 87A (No stay by QCAT of particular decisions of commission) which outlines the decisions of the QBCC under the QBCC Act that are not able to be stayed by QCAT if a person applies to the tribunal for a review. It is intended that these provisions are limited to emergency cases involving health and safety risks.

*Clause 18* inserts a provision in section 92 (Tribunal may conduct public examination) to include investigations whether a person has contravened a duty relating to building products under new Part 6AA or a direction or requirement of an inspector under part 9 relating to a building product that is, or suspected to be, a non-conforming building product for an intended use.

*Clause 19* amends section 95 (Expedited hearing of domestic building disputes) to add certain decisions of the QBCC to QCAT's jurisdiction to expedite hearings if they should involve undue hardship and less complex issues.

*Clause 20* omits the operation of section 97B. Removing this jurisdiction is intended to provide the QBCC with the ability to take action in a timely manner when the situation arises to protect public health and safety, rather than through QCAT.

*Clause 21* inserts a new Division 1 Preliminary, new section 103G (Definitions for part) and Division 2 General provisions about inspectors about inspectors in Part 9 (Inspectors). The purpose for the new Divisions is to create a more structured approach to the Part.

New section 103G provides definitions for the part.

New section 103H provides references to exercise of powers by an inspector. If a provision of this part refers to the exercise of a power by an inspector and there is no reference to a specific power, the reference is to the exercise of all or any inspectors' powers under this part or a warrant, to the extent the powers are relevant.

New section 103I clarifies that a reference to a document includes reference to reproductions from an electronic document. This includes an image or writing produced from an electronic document or not yet produced, but reasonable capable of being produced, from an electronic document, with or without the aid of another article or device.

*Clause 22* inserts a new Division 3 Entry of places by inspectors, new Division 4 General powers of inspectors after entering places, new Division 5 Other information-obtaining powers of inspectors to allow for entry to places by inspectors, new Division 6 Seizure by inspectors and forfeiture, new Division 7 Additional powers for building products and new Division 8 Other provisions.

**Division 3** outlines matters relating to entry of places by inspectors through section 105 in subdivision 1 (Entry of places by inspectors), sections 105A to 105D in subdivision 2 (Entry by consent) and sections 105E to 105J in subdivision 3 (Entry under warrant).

These powers include the power to enter places with consent and the power to enter under a warrant. Entry may also be made outside these circumstances but is limited to public places, places of business of QBCC licensees, places of business of persons in the chain of responsibility for building products, and building sites. Generally, the power to enter these places is limited to when the places are open for entry. Additionally, an inspector may only enter for a compliance purpose, and cannot enter any residence without a warrant or consent. These entry powers will allow QBCC inspectors to ensure compliance early in the supply chain as well as maintain safety during the installation stage of a product's life cycle. Without these powers, the QBCC will essentially remain limited to accessing building sites and focussing its investigatory capacity on building sites and QBCC licensees.

Subdivision 1 provides for a power to enter places.

New section 105 provides general powers to enter places and outlines how an inspector can enter a place, defines place of business, the conditions of entry and re-entry and if the power to enter is under a warrant.

Subdivision 2 applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 105(1)(a).

New section 105A applies when an inspector asks an occupier for consent for the inspector or another inspector to enter the place under section 105(1)(a).

New section 105B allows incidental entry for access in areas where the public is generally allowed to enter when they wish to contact the owner of the place.

New section 105C outlines what the inspector must tell the occupier before asking for consent to enter the place.

New section 105D is for consent acknowledgement and subsection (1) outlines that if consent to enter is granted the inspector may ask the occupier to sign an acknowledgement of the consent. Subsection (2) outlines what must be included in the acknowledgement. Subsection (3) ensures the inspector gives a copy of the acknowledgement to the occupier. Subsection (4) provides that if an issue about entry arises, the onus of proof is on the person seeking to enter the place that the occupier consented.

Subdivision 3 provides a power for entry under a warrant. This is intended to provide the QBCC with the necessary powers to respond to non-conforming building product matters, particularly those that involve risks to health and safety of persons and possible loss of life. This judicial oversight is a safeguard to the exercise of powers involving an interruption to a person's privacy if they did not consent to entry by an inspector.

New section 105E enables an inspector to apply to a magistrate for a warrant for a place.

New section 105F provides that the magistrate may issue the warrant only if they are satisfied there are reasonable grounds. The section also provides for certain requirements to be outlined in the warrant.

New section 105G allows the application to the magistrate to be made through a number of mediums other than a written application, e.g. electronically, should the circumstances deem it necessary. However, the application may not be made before the inspector prepares the written statement but may be made before the written application is sworn.

New section 105H requires the magistrate to be satisfied of certain circumstances and both the magistrate and inspector follow additional processes if the application for a warrant is made through means other than a written application.

New section 105I provides that a warrant is not invalidated by a defect in the warrant or compliance with this subdivision.

New section 105J requires an inspector to make a reasonable attempt or undertake certain things before entering a place under a warrant, such as identify themselves and give the person an opportunity to allow immediate entry. Exemption is provided if the inspector believes on reasonable grounds that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.

**Division 4** outlines the general powers of inspectors after entering places. New sections 105K to 105N provide the powers of entry into places by inspectors including section 105L (General powers), section 105M (Power to require reasonable help) and 105N (Offence to contravene help requirement). These powers after entry will allow an inspector to search an entered place and search for or seize documents and other evidence of offences, as well as request reasonable help to exercise a general power. The powers will allow QBCC inspectors to effectively discharge their responsibilities as a safety regulator.

New section 105K provides that the powers under this division may be exercised if an inspector enters a place under sections 105(1)(a), (c), (d) or (e).

New section 105L outlines the general powers available to an inspector after entering a place.

New section 105M provides that an inspector may require an occupier or person at the place to give the inspector reasonable help to exercise a general power, including for example to produce a document or give information. In making the help requirement, the inspector must give the person an offence warning for the requirement.

New section 105N makes it an offence for a person, of whom a help requirement has been made, not to comply with the requirement unless there is a reasonable excuse. A maximum penalty of 50PU applies and this is considered a sufficient deterrent, though section 138B(2) of the *Electrical Safety Act 2002* provides a higher penalty for a similar offence.

**Division 5** outlines other information-obtaining powers of inspectors.

New sections 105O to 105U provide additional provisions for inspectors to obtain information. This includes the power to require a name and address, and important powers to require the production of documents and power to require a person to provide information. These are considered important, particularly in cases that involve risks to health and safety of persons and possible loss of life.

Although some of these powers abrogate a person's privilege against self-incrimination, in most cases, a limited immunity from prosecution has been provided for information obtained using these powers. This is consistent with the broad intent of the Bill, which is to ensure that, as the QBCC transitions from an administrative regulator to a safety regulator, it is empowered to work with industry and facilitate the early and accurate flow of information between parties. This will, in turn, allow industry to learn from the information and encourage improved management and prevention strategies, particularly in relation to non-conforming building products. This will facilitate the QBCC and industry working collaboratively towards improving industry's compliance culture and reducing the safety concerns associated with non-conforming building products.

The current provisions of the QBCC Act in relation to document production and certification requirements have been replicated and expanded in the Bill, including the current abrogation of privilege against self-incrimination without corresponding evidential immunity. The expansion, however, is limited by the definition of a compliance purpose, which includes ascertaining whether or not the Act has been complied with. This power could be used to require documents that a licensee or person in the chain of responsibility for a building product is required to keep under the Act. It is also important to note that the Act primarily regulates licensees, who, by virtue of participating in the statutory regime to date (through obtaining a licence) have generally accepted the enforcement provisions and thus waived the benefit of the privilege against self-incrimination.

New section 105O is reproduced from existing section 106 in the QBCC Act and provides an ability for an inspector make a *personal details requirement*, which is to require a person, if there is reasonable suspicion of an offence, to provide certain personal details, including evidence of their name and address in certain circumstances. The inspector must give the person an offence warning when making a personal details requirement.

New section 105P is also derived from existing section 106 in the QBCC Act and makes it an offence for a person, of whom a personal details requirement has been made, to not comply

with the requirement unless the person has a reasonable excuse. There is no change from the existing maximum of 50PU that applies to a contravention.

New section 105Q allows an ability and outlines the process for an inspector to require and inspect and certify a document relevant to a compliance purpose or investigation (called a *document production requirement* and *document certification requirement* respectively).

New section 105R is reproduced from existing section 106B in the QBCC Act and provides that non-compliance of a document production requirement without a reasonable excuse carries a maximum penalty of 200PU. There is no change in penalty from what is currently prescribed.

New section 105S is reproduced from existing section 106C in the QBCC Act and provides that non-compliance of a document certification requirement without a reasonable excuse carries a maximum penalty of 100PU. There is no change in penalty from what is currently prescribed.

New section 105T provides the ability and outlines the process for an inspector to require information or attendance by a person to answer questions or produce documents if the inspector reasonably believes that the person may be able to give information about an offence against a relevant Act.

New section 105U makes it an offence to contravene an information or attendance requirement unless the person has a reasonable excuse. A maximum 50PU applies to the contraventions in the section. There are similar requirements in section 141 (Power to require production of documents and answers to questions) in the *Electrical Safety Act 2002*.

**Division 6** outlines the circumstances and process for seizure by inspectors and forfeiture. Strong governance arrangements will be developed by the QBCC to administer this Division, for example to address circumstances such as appeals for a seized thing.

Subdivision 1 provides an inspector with the power to seize evidence, a non-conforming building product or dangerous places, after entry to a place. They will also be empowered to direct and undertake remedial action to make a place safe in emergency situations. These powers will allow QBCC inspectors to effectively discharge their responsibilities as a safety regulator and are generally similar to those provided for under similar safety legislation. It is intended that the QBCC develop strong governance arrangements around the use of this power, for example that the use of this power occurs when other attempts to remedy a situation fails.

New section 106 enables an inspector, who enters a place without the consent of an occupier of the place and without a warrant, may seize a thing at the place if the inspector reasonable believes the thing is evidence of an offence against a relevant Act.

New section 106A relates to seizing evidence at a place that may be entered only with consent or warrant.

New section 106B empowers an inspector who has entered a place under this part to seize a product at the place that the inspector reasonably believes:

- is or proposed to be associated with a building for an intended use and the product is a non-conforming building product for the use
- the product is the subject of a recall order under new Part 6AA, Division 4 (Ministerial recall orders) or a corresponding recall order.

New section 106C empowers an inspector who has entered a place under this part, to seize the building site, part of the place, building, structure or other thing if the inspector reasonably believes that it is hazardous to a degree likely to cause death or a serious injury or illness to a person. It is expected that the QBCC has responsibility for the place/structure while it is seized and applies any of their other powers and uses appropriate safeguards to minimise or eliminate the hazards. This section is applied to subsequent provisions from section 106D to 106N.

New section 106D empowers an inspector to seize a place, part of a place, building, structure or other thing, and exercise powers relating to it, despite a lien or other security of the thing claimed by another person. However, the seizure does not affect the other person's claim to the lien or other security against a person other than the inspector or a person acting under the direction or authority of the inspector.

Subdivision 2 outlines the powers of an inspector to support seizure and related offences.

New section 106E outlines the power to secure a seized thing. Having seized a place, part of a place, building, structure or other thing under this division, an inspector may do certain things such as take reasonable action to restrict access to it, move it from the place of seizure, or leave it at the place where it was seized and take reasonable action to restrict access to it. Examples regarding the reasonable action to restrict access are provided.

New section 106F makes it an offence to contravene the seizure requirement unless there is a reasonable excuse. A penalty of 50PU applies to a contravention. There are similar provisions in section 141G in the *Electrical Safety Act 2002*.

New section 106G makes it an offence to interfere or tamper with a seized thing without an inspector's approval or reasonable excuse. It is also an offence to enter a place, part of a place or building that has been restricted under section 106E or tamper with anything used to restrict access without an inspector's approval or reasonable excuse. A penalty of 100PU applies to these contraventions, which is consistent with similar provisions in section 141G in the *Electrical Safety Act 2002*.

Subdivision 3 provides safeguards for seized things. Steps and processes are outlined for a seized thing under this division, unless an inspector reasonably believes there is no-one apparently in possession of the thing or it has been abandoned, or because of the condition, nature and value of the thing, it would be unreasonable to require the inspector or Commissioner to comply with this section.

New section 106H outlines steps for a receipt and information notice for a seized place, part of a place, building, structure or other thing if an inspector has seized it.

New section 106I outlines the circumstances and steps for access to seized things. If practicable and reasonable, until a seized thing is forfeited or returned, an inspector must allow a person access to inspect it and copy it if it is document.

New section 106J outlines the circumstances and steps to allow the return of seized things, such as the Commissioner is required to return the seized thing as soon as they stop being satisfied there are reasonable grounds for retaining it.

Subdivision 4 provides the sections relating to forfeiture.

New section 106K provides that the Commissioner may decide a seized thing is forfeited to the State if an inspector:

- after making reasonable inquiries, cannot find an owner
- after making reasonable efforts, cannot return it to an owner
- reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.

However, the inspector is not required to make inquiries if it would be unreasonable to try to find an owner or return the seized thing to an owner. Regard must also be had to other matters including the thing's condition, nature and value in deciding whether it is reasonable to make inquiries.

New section 106L outlines the circumstances and steps relating to an information notice about a decision to forfeit a seized thing.

Subdivision 5 deals with property forfeited or transferred to the State.

New section 106M sets out the circumstances when a place, part of a place, building, structure or other thing becomes the property of the State.

New section 106N sets out the steps regarding how the place, part of a place, building, structure or other thing may be dealt with once it becomes the property of the State.

**Division 7** introduces additional powers for building products.

New section 106O provides for the power and sets out the circumstances and steps to have products or samples examined. A penalty of 100PU applies to a contravention, which is similar to the tampering with evidence offence and associated penalty in section 141G in the *Electrical Safety Act 2002*.

The section also provides that the QBCC may recover, as a debt, the reasonable costs of conducting an examination of a product, or a sample of or from a product, under this section from a person in the chain of responsibility for the product who has failed to comply with a duty under new Part 6AA, division 2 in relation to the product.

New section 106P provides for the ability and sets out the process for directions relating to the use of a product if it is associated with a building or other structure and if the product or its use is hazardous to a degree likely to cause death or serious injury or illness to a person. A penalty of 100PU applies to a contravention. This is similar to the provision and associated penalty relating to Electrical Safety Protection Notices under section 147 of the *Electrical Safety Act 2002*.

New section 106Q provides for the ability and sets out the process for directions relating to actions at a place if an inspector reasonable believes certain circumstances, or the presence of a product at a place, will involve an immediate risk of serious injury or illness. For example, an inspector may reasonably believe external glazing either in, or on site to be put in a medium rise building, contains nickel sulphide which is likely to cause serious injury if it ruptures causing the glass to fragment and fall. A direction may be applied to have the person in control of the site provide temporary overhead protection from potential falling glass or have it removed from the structure or site immediately. A penalty of 100PU applies to a contravention of this section. This is similar to the provision and associated penalty relating to Electrical Safety Protection Notices under section 147 of the *Electrical Safety Act 2002*.

New section 106R provides a power for an inspector to take remedial action in certain circumstances. For instance, taking the external glazing example outlined above for section 106Q, if a person in control of the site failed to comply with a direction the inspector would take the action to erect a protective structure. The section also outlines the process relating to when the QBCC may recover, as a debt, the reasonable costs of any remedial action taken under this section.

**Division 8** provides new section 107 (Evidential immunity for individuals complying with particular requirements) of the Bill. In effect, evidence of and evidence derived from the information or documents supplied under new sections 105M (Inspector may require reasonable help of person at a place) and 105T (Power to require information, attendance and answers to questions) will not be admissible in any proceeding to the extent it incriminates a person. An exception exists for proceedings related to the false or misleading nature of the information.

New section 105Q (Power to require production of document) is not subject to the evidential immunity provision as this power currently exists under the QBCC Act. New sections 105Q, 105R and 105S replicate and expand the current provisions of the QBCC Act in relation to document production and certification (sections 106A, 106B and 106C). This includes the current abrogation of privilege against self-incrimination without corresponding evidential immunity. The expansion, however, is limited by the definition of a compliance purpose, which includes ascertaining whether or not the Act has been complied with. This power could be used to require documents that a licensee or person in the chain of responsibility for a building product is required to keep under the Act. It is also important to note that the Act primarily regulates licensees, who, by virtue of participating in the statutory regime to date (through obtaining a licence) have generally accepted the enforcement provisions and thus waived the benefit of the privilege against self-incrimination. To claim privilege in relation to such records would also thwart the purpose of the legislation, which is ultimately to ensure a safe and fair construction industry in Queensland.

*Clause 23* amends section 107A (Obstructing inspectors). These amendments broaden and clarify the intent of this section to provide for an offence if a person obstructs an inspector or someone helping an inspector exercising a power under this Act.

*Clause 24* amends the title of Part 9B and inserts a new division heading for injunctions.

*Clause 25* inserts a new division heading and new section 108AI to enable the Commissioner to issue stop work orders. The QBCC, as an independent regulator, will manage the issue of stop work orders administratively. Stop work orders is an effective and timely action to serious safety matters, particularly where attempts by an inspector to resolve a situation have not proven effective or are not available. The section provides for a show cause process prior to the stop work order being issued and an appeal mechanism is also available. A penalty of 500PU applies to a contravention of a stop work notice under this section. This is a slight modification to the process though retaining the same penalty as the existing provision in the QBCC Act relating to stop orders (section 97B).

*Clause 26* amends section 108B (False or misleading statement). A reference to 'the commission' is deleted and replaced with 'an official'.

*Clause 27* amends section 108C (False or misleading document). References to 'the commission' are replaced with 'an official' or 'the official'. A definition is provided for 'an official' as meaning the QBCC or an inspector performing a function or exercising a power under this Act.



*Clause 28* inserts a new section 110 to provide for confidentiality of information. A penalty of 100PU applies if a person contravenes certain confidentiality requirements. There are similar provisions and penalty outlined in section 193 (Confidentiality of information) of the *Electrical Safety Act 2002*.

The new section also provides that certain circumstances may warrant the giving of access or disclosure of information, for example immediate safety reasons relating to the use of a non-conforming building product necessitating a public statement or warning or a requirement by a court or tribunal to produce a document or answer questions.

*Clause 29* amends section 114 (Protection) by inserting 'Minister' after 'State' in subsection (1) to provide that the State, Minister, Commissioner nor a relevant officer does not incur any civil liability for an honest act or omission, other than a publication act, in the performance or purported performance of functions under this Act or the *Building Act 1975*.

The clause also amends the definition of 'publication act' to include a disclosure or publication made by the Commissioner or the Minister under sections 20J(1)(i), 20J(1)(k) and section 74AZC respectively. It is considered that disclosures of this nature are undertaken in good faith and are in the public interest to protect the safety of building industry participants, users of buildings, consumers and the general community. Additional processes have been established (for example the show cause process) to ensure that the Minister and Commissioner undertake due diligence during decision making processes prior to a publication act.

*Clause 30* inserts a new Part 14 that provides for transitional provisions for the *Building and Construction Legislation (Non-conforming Building Products – Chain of Responsibility and Other Matters) Amendment Act 2017*.

*Clause 31* amends Schedule 2 (Dictionary) to incorporate words and phrases used throughout the Bill.

In particular, the current definition of a 'building site' has been clarified to remove reference to 'domestic' building work under Schedule 1B, section 1(a). This amends the definition introduced on 1 July 2015 as part of a range of amendments to repeal the *Domestic Building Contracts Act 2000*. Consequently, this may have restricted the QBCC's powers to investigate possible breaches of the Act. Prior to 1 July 2015, the definition of 'building site' applied to places where any building work, not just domestic building work, was carried out.

**Part 3** amends the *Pest Management Act 2001*.

*Clause 32* provides that the Bill amends the *Pest Management Act 2001*.

*Clause 33* amends section 14 (Suitability of person to hold licence) under the *Pest Management Act 2001* to update references to relevant new or amended sections in this Bill.

**Part 4** provides for other amendments.

*Clause 34* references Schedule 1 that contains minor and consequential amendments to other Acts.