



Australian
Competition &
Consumer
Commission

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Dear Committee Secretary

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

The ACCC makes this submission in response to the Public Works and Utility Committee's call for submissions on the *Building and Construction Legislation (Non-conforming Building Products – Chain of Responsibility and Other Matters) Amendment Bill 2017*.

The ACCC supports the proposed bill and considers it to be an opportunity for Queensland to lead change on building product regulation that will significantly improve the safety of building products and increase confidence amongst consumers and those in the building industry. In particular, the ACCC endorses the proposals to enhance the responsibilities and powers of the Queensland Building and Construction Commission (QBCC) to ensure buildings are safe, and improve information sharing and reporting arrangements between QBCC and other safety regulators.

It is important up front to clarify for the Committee that the ACCC does not have a role in assessing the conformance of building products to standards or the National Construction Code, or their suitability for use in construction. The ACCC does not have legislative or regulatory responsibility for building activity or building products and reiterates the position put forward in its submission to the *Senate Inquiry into Non-Conforming Building Products* in 2015.¹

The ACCC's consumer protection role

The ACCC's role in relation to consumer product safety is to seek to identify unsafe, or potentially unsafe, consumer goods and prevent or stop their supply and/or remove them from the market. The ACL defines 'consumer goods' as those goods that are intended to be used, or of a kind likely to be used, for 'personal, domestic or household use'.² While there may be some circumstances where building products are captured by this definition (such as where a consumer purchases a building product for 'DIY' domestic use), in most cases they will not. Building products are typically supplied to trade customers and, where this is the case, likely fall outside the remit of the ACL's product safety regime.

¹ ACCC Submission to the Senate Economics References Committee Inquiry into non-conforming building products, 2015, <http://www.aph.gov.au/DocumentStore.ashx?id=8d78fc39-d4d4-4311-9a3e-351b1e6d23d7&subId=400368>.

² Competition and Consumer Act 2010 (Cth), Schedule 2, Chapter 1, Section 2.

The ACCC is a whole of economy regulator that promotes competition and fair trading in markets to benefit consumers, businesses and the Australian community. One of the ACCC's key roles is to seek to ensure consumers can confidently participate in markets. Through the administration of the Australian Consumer Law (ACL), the ACCC aims to prevent misleading behaviour, unconscionable dealings and remove unsafe consumer goods from the marketplace. Given the breadth of these functions, the ACCC takes a risk-based approach to its enforcement and compliance activities having regard to the ACCC's Compliance and Enforcement Policy³.

Consistent with the Government's Statement of Expectations⁴, the ACCC also seeks to avoid regulatory duplication. Where a matter is captured by a specialist regime, such as a building regulator, the ACCC will refer it to that agency for consideration. The ACCC does not hold the same level of technical expertise as specialist building regulators, including that required to assess building product conformity to standards or the suitability of products for installation in buildings; nor is it our responsibility.

Complaints in relation to false or misleading claims in respect of building products are infrequently raised with the ACCC. However, such complaints usually concern claims of compliance with a particular regulation, standard or the National Construction Code. Where these matters concern allegedly unsafe or non-conforming building products, they are unlikely to be pursued for enforcement action by the ACCC. This is as it is more appropriate that they be considered by building regulators for compliance under building-specific regulation.

Unsafe or non-conforming building products

The supply chain for building products has evolved and diversified, with more products being imported, often directly by builders for particular projects in smaller lots. In the absence of independent third party testing and supply chain vigilance, simply specifying physical or compliance requirements in purchasing contracts is unlikely to provide appropriate assurance that the products are safe and compliant. Reliance on self-certification is also problematic, particularly when overseas manufacturers or suppliers are not well known to the importer and supply is not part of an ongoing arrangement. These issues are exemplified by the national recall of Infinity and Olsent (Infinity) branded cables, which is ongoing.

In the Infinity matter the cable was non-compliant and unsafe for all anticipated domestic and commercial uses. While electrical safety regulators ordinarily manage recalls of electrical products, including cable, the ACCC agreed to work closely with specialist safety regulators in this matter for two key reasons:

- The supply of the cable was national, with around half through Masters Home Improvement so many of its sales were directly to consumers.
- A nationally coordinated and consistent response could not have been otherwise delivered given the differing electrical safety and building regulatory regimes of the states and territories.

The Productivity Commission (PC) in its Final Report on the study of Consumer Law Enforcement and Administration, released in April of this year, also examined the matter involving Infinity cables. The PC stated that a lack of harmonisation and regulatory powers in electrical and building regulators led to the ACCC being relied on to coordinate a national

³ See ACCC (2017) Compliance and Enforcement Policy, available at: <https://www.accc.gov.au/publications/compliance-and-enforcement-policy>.

⁴ Australian Government Statement of Expectations – Australian Competition and Consumer Commission, http://www.treasury.gov.au/~media/Treasury/Policy%20Topics/Public%20Policy%20and%20Government/Statements%20of%20Expectations/Downloads/PDF/ACCC_Statement_of_expectations.ashx

recall. As such, the PC found that there is a case to revitalise or follow through on efforts to reform building regulation across the country.⁵

The Lacrosse Tower fire in 2014 pointed to another challenging issue for building and safety regulators. It was considered that a particular form of cladding, Alucobest, had increased the fire risk of the building. Alucobest is a lightweight, aluminium composite panel with polyethelene in its centre. It was not fire-rated and, post incident, the Alucobest cladding was tested by the CSIRO and found not to comply with the combustibility requirements of the building code for a high-rise building, contributing to the spread of the fire. However, it was identified to be a potentially compliant material if used in other situations. Therefore in this case, a building product that would be unsafe for a particular purpose was installed (for that purpose) without detection. The Senate Standing Committee on Economics considered these cases in their interim report into Non-Conforming Building Products in 2016, stating that the overriding message from the installation of Infinity Cable is that “fire safety should not be a matter of good luck”.⁶

The ACCC agrees that there is a need to improve the regulatory powers available to building regulators and there should be national consistency across Australia. Regulators need to have appropriate tools to take action against suppliers supplying unsafe building products, enforce compliance with regulations and the ability to compel product recalls and remediation.

The proposed Bill

The ACCC supports the Bill’s proactive regulatory approach in conferring responsibilities on all building supply chain participants, so far as it is reasonably practicable, to ensure building products are safe and accompanied by appropriate information. It is apparent, as in the case of Infinity cables, that building products, once installed, are difficult to recall and remediate, resulting in intensive regulator intervention to ensure effectiveness. Placing a positive safety obligation on the supply chain will help ensure that manufacturers, importers and/or suppliers are able to control and detect safety defects before products enter the market.

The ACCC also supports the enabling of the QBCC to investigate, and Government to more effectively respond to, unsafe building products through expansion of compliance and enforcement powers of the QBCC directly, and the powers of the administering Minister. The ability of the QBCC to access regulatory tools such as enforceable undertakings and broadened powers of entry, combined with the Minister’s ability to issue a warning statement or recall action means that the Government can take swift and effective preventative action. This is further enhanced by the increased information sharing requirements, mandatory reporting of notifiable incidents, and the ability of the QBCC to take disciplinary action.

Yours sincerely



Delia Rickard
Deputy Chair

⁵ Productivity Commission, *Consumer Law Enforcement and Administration Overview*, 2017, p187: <http://www.pc.gov.au/inquiries/completed/consumer-law/report/consumer-law-overview.pdf>

⁶ Senate Standing Committee on Economics, *Non-conforming building products Interim Report Safety – ‘not a matter of good luck’*, 4 May 2016, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Non-conforming_products/Interim_Report

