




Speech By
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MEMBER FOR BURNETT

Record of Proceedings, 24 August 2017

**BUILDING AND CONSTRUCTION LEGISLATION (NON-CONFORMING
BUILDING PRODUCTS-CHAIN OF RESPONSIBILITY AND OTHER MATTERS)
AMENDMENT BILL**

 **Mr BENNETT** (Burnett—LNP) (9.51 pm): From the outset, I point out that we will support the objectives of the bill in their entirety and the amendments that we have seen and had the opportunity to discuss. The prevalence of nonconforming building products is a major concern for the Queensland building and construction industry. Submitters to the committee highlighted that the proposed legislation addresses a current gap in enforcement in providing for a building product regulator.

Consumer products are well provided for under Australian Consumer Law, as is the construction of buildings under the Queensland Building and Construction Commission Act 1991 and the Building Act 1975, which calls up the National Construction Code, the NCC. The community and industry expect that all building products sold are fit for purpose; however, this expectation is not always met. This legislation moves towards meeting that expectation.

It was explained to the committee that over the last decade we have seen a deterioration in the integrity of the building and infrastructure supply chain mainly due to the reliance by all parties on outdated, inefficient and easily exploited, paper based or non-transparent procurement practices. This bill presents Queensland with the perfect opportunity to bring all stakeholders in the building supply chain up to date by utilising digital product data, digital procurement and, more importantly, digital verification technologies. These technologies are going to be essential to offer internationally aligned compliance solutions that can cope with the ever-increasing number of imported products being used in Queensland building and infrastructure projects.

It is important to provide some clarity and highlight the importance of this legislation. An example of the problems caused by a nonconforming product is the Infinity electrical cable experience. According to the Australian Competition and Consumer Commission, Infinity and Olsent branded Infinity cables installed in up to 22,000 homes and commercial premises failed to meet electrical safety standards due to poor quality insulation—that is, the plastic coating. Testing found the insulation on the TPS and Orange Round range of cables become brittle prematurely, which may present a safety hazard if the cables are disturbed and the insulation breaks. Cables exposed to prolonged high temperatures will break down faster.

Another example of the problems with noncompliant product was the Lacrosse fire in Melbourne. In the Lacrosse fire event it seems that a product that may have been manufactured in accordance with a specific standard—in this case external cladding—was subsequently incorporated into a building in a manner or for a purpose that did not comply with relevant codes or standards. Following the fire, the Victorian Building Authority undertook an audit of 170 buildings in Melbourne. The audit report notes that in the case of the Lacrosse building fire, the Metropolitan Fire Brigade identified that it was noncompliant use that caused the fire. There are current issues around dangerous materials in Queensland that we acknowledge have been addressed in the minister's second reading speech tonight. We need to pass these reforms to address those concerns.

The LNP members of the committee support the overarching framework provided in the bill, as it: creates a chain of responsibility; imposes specific duties on all parties in the supply chain; imposes appropriate penalties when parties fail to meet their duties; and provides the Queensland Building and Construction Commission, the QBCC, and the minister with the necessary range of powers to enable them to target all parties in the supply chain. However, as is the case with all legislation there are some provisions that raise concerns.

As the bill is currently drafted, there is potential for the regulatory structure to become overwhelmed as many investigations into minor issues or commercial matters may require many months, if not years, and significant money to establish whether an issue exists and who may be responsible for it. The legislation includes provisions concerning safety that may duplicate existing controls defined in the workplace health and safety legislation. We are concerned that two regulators sharing jurisdiction for the same incident may form different conclusions.

There are definitions concerning safety that need to be provided and made consistent with other regulations. For example, there is no definition of 'serious risk' even though it can lead to a loss of a licence. A nonconforming building product is vaguely defined as one that 'is not safe' and then specifically defined as one that 'meets the relevant regulatory provisions'. Safety underpins the relevant regulatory provision. This duplication appears unnecessary and could result in confusion.

The architects, building designers and engineers who specify building products must be explicitly included in the chain of responsibility. Information requirements need to be practical and workable, recognising that 4,000 building products can be installed in an average home. For installers or contractors, the duty to provide product information to owners should link to the existing building certification process.

In determining who is held accountable in the event of a breach, it needs to be clear that the parties can rely on the undertakings of those further up the chain. It will be important that the QBCC is appropriately resourced to properly undertake this role. It is unreasonable to expect licence holders to cross-subsidise a product compliance regime. Further to that, given the likely significant cost, it is necessary that an RIS be undertaken.

Nonconforming building products in buildings last long after a building site has ceased to be a workplace, and products that pose no safety threat during construction can quite easily do so after building is completed. Also those with a duty of care to workers may find it difficult to assess products for their potential to be unsafe, due to the products being procured prior to their arrival in a workplace or in a form or part of an assembly that does not allow for inspection. This is raised and pointed out because it brings into question the bill's reliance on workplace safety reporting as a completely effective means to control nonconforming building products.

I will now move to certain areas of the bill and raise suggested amendments to the QBCC Act that would overcome several of the main issues in existing building legislation. I highlight specifically the failure of the Building Act 1975 to control occurrences and the spread of nonconforming building products as a result of relying on implied warranties and not placing any explicit responsibilities on parties in the building supply chain—other than the building certifiers—to comply with building legislation, standards or the National Construction Code as a primary duty. Relying too heavily on building certifiers, who generally are ill equipped to identify all the technical compliance requirements for all of the products and materials in a building, as the only mechanism for compliance is not enforcement.

LNP members support the expanded objective to regulate building products, but point out some concerns that the bill focuses on safety as the primary measure of a product's unsuitability for purpose and the primary trigger for all actions under the proposed bill. It raises concerns that safety, to the exclusion of all other product attributes or structure that may contribute to a product potentially being nonconforming, will not capture the bulk of the products being consumed.

We also support the introduction of the Building Products Advisory Committee. In tackling the problem of nonconforming building products, the sharing of information is vital and must be brought together in a central point. Industry holds much of that information. We assume that they will be part of the implementation of any action. They should therefore be represented on that committee.

LNP members support the exchange of information amongst regulators and relevant agencies provided that current proceedings are not affected and that privacy considerations are addressed. It would be preferred if minor modifications could empower the QBCC to be more effective in fulfilling their responsibilities.

We support the role of the commissioner having power to 'publish information about building products'. This information must be timely and widely communicated. Too often the regulator is aware of a product that is not fit for purpose and because that information is not shared it continues to be

installed. There is a consistent message that the industry, especially in the product supply chain, needs to do better in fulfilling their responsibilities to verify legitimate product certification and installation information.

We agree with a definition of nonconforming building product that links the product with its intended use. Separating a product from how it is intended to be used has been a loophole that has allowed products that are not fit for purpose to be sold and installed.

The 'chain of responsibility' is the right approach, as it clearly provides obligations to building product manufacturers, suppliers, importers et cetera. The providers of building projects need to be held to the same standard as licence holders. The role of specifiers—architects, building designers and engineers—needs to be explicitly defined in the chain of responsibility. As the legislation is currently drafted, these important roles are not included. We would also like to better understand how the chain of responsibility will work in cases where building products are brought in from outside Queensland. The industry operates in a global market, and there are very few building products that have their entire supply chain in Queensland.

Under section 74, each person in the chain of responsibility has an equal and shared responsibility for ensuring 'a product is not a nonconforming building product for an intended use'. Within the chain, accountability must be clearly allocated. Those in the chain must be able to rely on the undertakings of those further up the chain. Accountability needs to be allocated to the first person in the chain who breaches their duty. Installers or contractors at the end of the chain should not continue to bear the brunt of the responsibility even when they have undertaken due diligence and relied on information in good faith.

The additional duty relating to accompanying information is an important requirement and something that has been missing in many cases where there has been a product failure. The bill recognises the different information requirements of those in the chain of responsibility and the owner of the building. The distinction is important. Information requirements for licensed contractors or installers are already comprehensively addressed by way of the building certification process. This already provides the necessary information to building owners and should continue. On the other hand, new measures to ensure manufacturers and suppliers are also providing appropriate information are necessary. The exact nature of the 'required information' must be practical and reliable. For the contractor or installer this needs to link into the certification process. For the manufacturer it needs to be generated by an independent third party. This has not been detailed in the bill and we ask that it be given further consideration.

Individual licence holders are already held to account. The same should apply across the chain. The expectation on executive officers to follow a process of 'due diligence' is reasonable. The legislation is silent on the extent that a person in the chain can rely on representations provided to them from those also in the chain. This is a critical omission that needs to be addressed. Those in the chain must be able to rely on the undertakings of those further up the chain.

We support the duty to notify the commission if it becomes aware or has reason to suspect that a building product is a nonconforming building product for an intended use. As the responsible person has a duty to provide this information within two days, we would expect that the commission has a similar obligation to act on the information in a timely manner. It is important that nonconforming building products are not only found early but also removed from the supply chain early.

We also support the requirement that a regulator be notified in the case of a 'notifiable incident'. In the interests of good outcomes, this should be to either the commission or Work Safe Queensland. Requiring two notifications to two Queensland regulators will, at best, create what we believe is unnecessary duplication and, at worst, create conflict and confusion in the required action. This duty needs to be time bound. A person in the chain cannot be expected to maintain records of their projects for an indefinite period.

We welcome the expanded powers for the commission to direct anyone in the chain of responsibility to remove or minimise safety risks and not just licensed contractors. We support the expanded powers for the commission to direct anyone in the chain of responsibility and not just licensed contractors to get on with the job of removing or minimising safety risks.

While division 4 details that a recall order may be made against '2 or more responsible persons', it does not set out how the commission will determine who will be accountable for a recall. Only those who have breached their responsibilities under the duties should be held responsible for a recall. LNP members appreciate the need to provide 'reasonable help' to the responsible person in the event of a recall. It is important that privacy considerations are addressed so that there is no conflict in responsibilities.

We support the exchange of information amongst regulators and relevant agencies provided current proceedings are not affected. We support the expansion of the cancellation or suspension of a licence provision to include any 'relevant Act in relation to building work carried out under the licence'. We would seek clarification as to what is regarded as an 'offence' under each of these acts. For example, is a provisional improvement notice or a prohibition notice under the Work Health and Safety Act 2011 regarded as an 'offence' and therefore grounds for losing a licence?

The second proposed change to section 48 is a concern. Contractors should not be at risk of having their licence suspended or cancelled unless there has been a case proven against them. The principle of natural justice should prevail. The current draft of the bill does not provide this protection but rather allows the regulator to cancel or suspend the licence of whoever is in control of that site if any work occurs on the site that results in death, grievous bodily harm or serious risk. The term 'serious risk', we believe, must be defined or preferably amended to be consistent with related terms across the relevant legislation.

Notification of particular safety matters should be occurring once to one regulator. Requiring two notifications, as alluded to, is an unnecessary duplication and is likely to lead to confusion. We support the expansion of the disciplinary action provision to include a 'relevant Act in relation to building work carried out under the licence'. The second proposed change to section 74B is a concern and the principle of natural justice should prevail.

In conclusion, I welcome the proposed amendments. I look forward to the minister's contribution on some of those matters that I have raised. I acknowledge those who submitted to the committee. As the minister read out a list of them, I will not duplicate it. I think it is good to acknowledge the committee members and the way they have gone about this. This is important legislation. We are happy to work with the minister and the government to get this legislation through the parliament. It is important for Queensland, and we support the passage of the bill.