

Response to questions from Senate Economics References Committee

The following questions were asked on Friday, 14 July 2017 at the public hearing in Melbourne for the Senate Economics References Committee (Committee) inquiry into the effects of non-conforming building products on the Australian building and construction industry.

The questions were directed to representatives from the Department of Housing and Public Works (DHPW).

QUESTION 1

The question appears on page 19 and 21 of the Hansard transcript:

Senator Chris Ketter, Senator for Queensland and Chair of the Committee, asked how many times have the Senior Officers Group met face-to-face since 2015 and when is the next scheduled meeting?

ANSWER

- At their meeting on 31 July 2015, the Building Ministers' Forum (BMF) established the Senior Officers Group on non-conforming building products (SOG).
- The SOG is comprised of senior officers from each state and territory and the Commonwealth.
- The SOG has formally met fourteen times since 31 July 2015 and a list of meeting dates is available below. Members of the SOG regularly collaborate informally outside these meetings.
- The next SOG face-to-face meeting is anticipated to be scheduled later this year prior to the next BMF meeting.

Date	Location
29 September 2015	Brisbane, Queensland
6 November 2015	Brisbane, Queensland
24 November 2015	Melbourne, Victoria
7 April 2016	Teleconference
28 July 2016	Brisbane, Queensland
21 December 2016	Teleconference
11 January 2017	Teleconference
25 January 2017	Teleconference
10 February 2017	Teleconference
27 February 2017	Teleconference
15 March 2017	Teleconference
29 March 2017	Teleconference
31 May 2017	Teleconference
21 July 2017	Teleconference

QUESTION 2

The question appears on page 20 of the Hansard transcript.

Senator Nick Xenophon, Senator for South Australia, requested any meeting minutes or other relevant material relating to the inaugural Building Regulators' Forum meeting on 13 July 2017.

ANSWER

- The formation of the Building Regulators' Forum (BRF) was a key recommendation arising from the Senior Officers' Group (SOG) report on non-conforming building products (NCBPs).
- The national Building Ministers' Forum (BMF) formed the SOG on 31 July 2015 to investigate and develop strategies to address NCBPs.
- The SOG is comprised of senior officers from all states and territories and the Commonwealth. Since inception, Queensland (Department of Housing and Public Works (DHPW)) has been the Chair and Secretariat, and Victoria (Department of Environment, Land, Water and Planning) the Deputy Chair.
- On 19 February 2016, the BMF endorsed the SOG's proposed recommendations, including recommendation 3a that proposed establishing a national forum of building regulators.
- National forums exist for other regulators such as electricity and consumer law regulators to help government agencies work more cooperatively and efficiently across jurisdictions and portfolios, however, there has been no similar forum for building regulators.
- While established forums exist through the Australian Building Codes Board (ABCB) (e.g. the Board, Building Codes Committee and Plumbing Codes Committee) for jurisdictions and building regulators to meet, share and collaborate, these forums are focused on the development and maintenance of the National Construction Code.
- Building regulators have been communicating regularly and sharing information about jurisdictional responses to NCBPs throughout the course of the SOG's work, such as during attendance at these regulator meetings of the ABCB and the Senior Officers' meetings that are held prior to each meeting of the BMF (these are distinct from the SOG).
- The newly-established BRF will provide a formal context for these interactions, with a more clearly defined membership, agreed priorities and information sharing arrangements, including focus on matters such as:
 - sharing information on best practice regulation and enforcement activities;
 - collaboration to deliver timely and coordinated responses to issues of national significance related to NCBPs and other matters as directed by the BMF; and
 - consideration and triage of issues for escalation to relevant entities for response or to the BMF for consideration.

- The State of Victoria has been tasked with developing and establishing the BRF. The State of Queensland, through DHPW and the Queensland Building and Construction Commission (QBCC), provided assistance for the inaugural meeting that was held in Brisbane on 13 July 2017.
- Attendees at the first BRF meeting included building regulators or their senior representatives from all states and territories and an appropriate senior official from the Commonwealth.
- It is understood that the Victorian Building Authority (VBA), as the current Chair and Secretariat for the BRF, is finalising details for the BRF such as governance arrangements and an online information sharing mechanism to enable members to informally and confidentially collaborate outside of meetings and respond to issues as they arise.

QUESTION 3

The question appears on page 27 of the Hansard transcript.

Senator Kim Carr, Senator for Victoria, asked if anyone has ever been prosecuted for certifying that a building is compliant when it is not?

ANSWER

- Building certifiers are responsible for certification of buildings in Queensland. This means they are responsible for ensuring that the building work that has been undertaken complies with the relevant and applicable building code requirements such as the National Construction Code.
- In Queensland, building certifiers are licensed by the Queensland Building and Construction Commission (QBCC).
- The *Building Act 1975* establishes the system for licensing building certifiers in Queensland and contains offences and disciplinary provisions that empower the QBCC to take action against building certifiers.
- The QBCC has no record of a prosecution of a building certifier in Queensland for not complying with the provisions in the *Building Act 1975*.
- However, the QBCC has taken disciplinary action against building certifiers under section 204 of the *Building Act 1975*.
- The QBCC can take disciplinary action against a building certifier should they believe that they have displayed unsatisfactory conduct and/or professional misconduct.

QUESTION 4

The question appears on page 27 of the Hansard transcript.

Senator Nick Xenophon, Senator for South Australia asked if a company has done a project and then it is wound up and moves onto another project, is there a capacity for the directors of that company that has been wound up to be held responsible for any non-compliance?

ANSWER

- In Queensland, the Queensland Building and Construction Commission (QBCC) administers the provisions of the *Queensland Building and Construction Commission Act 1991* (QBCCA).
- Under the QBCCA, if a licensed contractor has defaulted before all residential construction work is completed, the consumer may be eligible for assistance under the Queensland Home Warranty Scheme. If the QBCC pays a claim under the Scheme, it may then recover the payment, as a debt, from the at-fault contractor. Further information on this Scheme is found at: <http://www.qbcc.qld.gov.au/home-warranty-insurance/what-covered-how-do-i-make-claim>.
- In addition, the QBCCA contains provisions designed to deter phoenix activities and prevent those responsible for poor financial management from running a business in the building industry.
- For example, if a person becomes bankrupt, enters into an agreement under relevant bankruptcy laws, or is responsible for a company failure, they will be prevented from holding a QBCC contractor or nominee supervisor licence, or being in a position of control or influence for a QBCC-licensed company for a certain period of time. Further information can be found at: <http://www.qbcc.qld.gov.au/contractor-offences/exclusion-due-bankruptcy-or-liquidation>.
- The QBCC also investigates complaints of defective building work. If the QBCC finds that building work is defective, incomplete or has caused consequential damage, they may issue a direction to rectify to the person who carried out the building work. Generally, the direction must be given no longer than six years and three months after the defective work was performed. If the person is not currently licensed, they must arrange for the work to be carried out by a licensed contractor.
- Failing to comply with a direction to rectify is an offence under the QBCCA and is also grounds for disciplinary action. Types of disciplinary action the QBCC may take include directing the person to pay, within a stated period, the building owner an amount sufficient to rectify the building work. Appeals and further enforcement can be made through the Queensland Civil and Administrative Tribunal (QCAT).
- In addition, the *Building and Construction Legislation (Non-Conforming Building Products – Chain of Responsibility and Other Matters) Amendment Bill 2017* (the Bill) was

introduced into the Queensland Parliament on 25 May 2017 and is currently with the Public Works and Utilities Parliamentary Committee for inquiry and report by 7 August 2017.

- A key element of the Bill is to introduce responsibilities on participants of the building product supply chain (designers, manufacturers, importers, suppliers and installers) to ensure that a building product, so far as reasonably practicable, is safe and fit for its intended use.
- The Bill also 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 for contravening this duty, whether or not the company has been proceeded against and convicted of contravening their duty.
- 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. An executive officer means a director for, or a person concerned with the management of, a company. This due diligence places a positive responsibility on an executive officer to take reasonable steps to ensure the company complies with their duty in relating to building products.

QUESTION 5

The question appears on page 28 of the Hansard transcript.

Senator Chris Ketter, Senator for Queensland, and Senator Nick Xenophon, Senator for South Australia asked when will there be a result from the investigation of the Queensland Building and Construction Commission into the Aldi taps and the lead level issues, and will there be a result from Queensland government’s point of view?

ANSWER

- Testing commissioned by the Queensland Building and Construction Commission (QBCC) has identified that the Aldi Spiral Spring Mixer “Easy Home” brand model tap (“Tap”) sold by Aldi in late June 2017 may be a non-conforming building product.
- On 7 July 2017, the QBCC requested Aldi advise what action it intends to take. Aldi informed that it was commissioning testing of the Tap and would respond to QBCC by 31 July 2017.
- Aldi has provided its testing results to the QBCC.
- The QBCC also commissioned further testing. The results are expected by 5 September 2017.
- On 26 July 2017, Aldi published a press release stating that their testing demonstrates compliance with the relevant standard. The QBCC has forwarded those results to Queensland Health and await their advice.

- With the benefit of the results of the further testing, the QBCC expects to be able to agree an appropriate response to this issue with Aldi.