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Secretariat

Senior Officers Group (Non-conforming Building Products)

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Dear Group Members

**Subject: Feedback on the strategies to address non-conforming building products**

Thank you for the invitation to provide feedback on the Senior Officers' Group report on strategies to address risks relate to non-conforming building products (NCBP's).

We are an alliance of industry groups in Queensland, that have been working together to address this very important issue for our industry. We have been working to tackle this problem from many angles and you will see that the work being undertaken in Queensland compliments the national work being undertaken in parallel by our national arms of respective organisations who have also made submissions.

The prevalence of non-conforming products is a major concern for the Queensland building and construction industry. We hold concerns for consumer safety and seek to better support our industry in meeting its obligation to provide buildings that are safe and fit-for-purpose.

As an alliance, we share a broad consensus of the urgent need to reform the current system to provide specifiers, purchasers, installers and building surveyors with a clear mechanism to determine whether products are fit-for-purpose as defined under the National Construction Code. More must be done to remove non-conforming products at the point of sale and to proactively identify and remove from our buildings non-conforming products that slip through the net.

We welcome the Governments' commitment to tackling this issue and believe that working together, we can send out a message of 'not on our watch'.

We note that the Building Ministers agreed to a number of strategies aimed at addressing the risks association with non-conforming building products and that the Seniors Officers Group has now been tasked with preparing an implementation roadmap for those recommendations.

We provide the following to assist in that process.

### **Recommendation 1**

Note the current legislative roles and responsibilities of the Commonwealth, state and territories, including the identified gaps and weaknesses, impacting on action in relation to NCBP's.

The lack of an effective and overarching framework for identifying and addressing non-conforming products is key concern for industry.

Regulatory silos have created real problems. Even in this paper which seeks to address them, the scope is drawn around 'non-conforming *building* products' omitting products that will be used in buildings but may not be 'building products' from consideration. Take the example of electrical products. While not a 'building product' they go into buildings and as we have learned from the case of Infinity Cable, a builder is ultimately liable for rectification in the case of failure.

Going forward it will be important to better understand the regulatory framework of the whole building supply chain. The current analysis is focused on building regulation but is less thorough with respect to product regulation. In particular, we would welcome a more detailed analysis of Australian Consumer Law.

### **Recommendation 2**

Provide in-principle support for improvements to the regulatory framework to enhance the power of building regulators to respond to incidences of NCBP's e.g. providing the ability to conduct audits of existing building work or take samples from a building for testing.

It is clear that there needs to be improvements to the regulatory framework around non-conforming products. We are less clear about why it is proposed to have the building compliance framework do the work of the manufacturers' compliance framework.

While removing non-conforming products wherever they are found is important, it would be more effective to tackle the building supply chain at the front end. That is before they are sold and definitely before they are installed. Auditing completed buildings without taking steps to prevent non-conforming products entering the supply chain will be tackling the problem 'after the horse has bolted'.

The Australian Competition and Consumer Commission (ACCC) recently undertook a regulatory mapping exercise with respect to construction product conformity. We expect therefor that the ACCC and the other identified regulatory agencies are now in a position to better co-ordinate product compliance at point-of-sale. In implementing improvements in the regulatory framework, this should be the starting point.

A particular area of attention should be the product safety recall system. The Infinity Cable recall revealed significant inadequacies in the way product safety recalls are managed across

Australia. There is a need for better product racking, sale registers for high risk products and mandatory recall insurance.

Further consideration should also be given to increasing the penalties for non-compliance, in particular deliberate misrepresentation. There are examples in the United States of self-funding surveillance programs that could prove useful in Australia.

We would also argue that regulators need to be properly and adequately resourced to enable them to effectively implement the proposed powers.

### **Recommendation 3**

Provide in-principle support for improving Commonwealth, state and territory processes for addressing issues involved NCBP's by:

- a. establishing a national forum of building regulators to facilitate greater collaboration and information-sharing between jurisdictions
- b. improving collaboration between building and consumer law regulators and consistency in the application of the 'false and misleading claims' aspect of the Australian Consumer Law
- c. developing education strategies to better inform consumer and building industry participants and to encourage greater responsibility in the safe use of building products
- d. considering the establishment of a 'one-stop-shop' national website to provide a single point of information for consumers and building product supply chain participants, including examining arrangements for hosting and maintaining a website.

#### Information sharing & collaboration

Centralised information is an important first step and over time facilitate the development of a rigorous system for controlling non-conforming products. In particular, we welcome improved collaboration between building and consumer law regulators. We welcome improved information sharing that will lead to identified non-conforming products being quickly located and removed from the supply chain.

Industry should be seen as a central to any national forum. Industry has the firsthand experience and will ultimately be responsible for addressing problems that arise. We stand ready to provide the market intelligence for the building and consumer law regulators.

#### Education

With respect to education strategies for the building industry participants, members of the Queensland alliance are proactive in this area. We regularly communicate with members as to the presence and dangers of non-conforming products. We stand ready to continue this role.

Our experience has shown that the industry is well aware of its responsibility "in the safe use of building products". What is less clear is how they can go about ensuring that the products they procure are fit-for-purpose. Any education program will therefore be more effective if the

tools provided to specifiers, purchasers, installers and building surveyors to select conforming products are first improved.

### One-stop-shop

For the construction industry, the current patchwork system is unwieldy. At last count, the Australasian Procurement and Construction Council<sup>1</sup> reported on 34 different schemes and sources of information to establish product conformity. There is then, the great disparity amongst the schemes as to the quality of assessment, level of auditing and checking for fraudulent documentation.

The complexity of the existing arrangements make it impossible to navigate with confidence. Similarly, it is unreasonable and unrealistic to expect that those in the construction industry will be able to test and evaluate each product that they are responsible for procuring. Construction would come to a halt.

A one-stop-shop in the form of a national website will be an important first step in bringing the current system together as a coherent whole. We recommend therefore that you undertake this task as a priority and prior to embarking on an education program.

The website is also an opportunity to make the existing Government information schemes more accessible, in particular the “Procurement of Construction Products: A guide to achieving compliance” by the Australasian Procurement and Construction Council and the technical information developed by the Australian Technical Infrastructure Committee. This is valuable advice for all the building industry and not just those working on public infrastructure.

We stand ready to contribute a user’s perspective to this effort and direct members to the new resource.

### **Recommendation 4**

Provide in-principle support for:

- a. mechanisms that ensure that, where all states and territories prohibit the use of a NCBP, evidence is provided to the Commonwealth enabling proportionate action to be taken based on the risk posed by the product
- b. an information sharing arrangement where import data collected by the Department of Immigration and Border Protection (for the purposes of reporting, detecting and controlling the movement of goods across the Australian border) can be provided to state and territory regulators to facilitate compliance and enforcement activities in relation to NCBP’s.

### Enhance intelligence

While the first priority should be to stop non-conforming products from entering the building supply chain there will be cases that slip through the best laid net. We therefore support the principles of ‘proportionate action’ and the widespread reporting of instances of non-conforming products.

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<sup>1</sup> Procurement of Construction Products: A guide to achieving compliance, 2<sup>nd</sup> Edition, December 2015

We recommend that the Government consider a centralised, confidential reporting system to identify and report failures of construction products in Australia.

The Queensland Government has recently established the Queensland Building & Construction Product Committee. The Committee is currently the only centralised reporting mechanism for non-conforming products in Queensland (maybe even Australia) and as such it has the potential to serve as a tool in capturing and sharing instances of non-conforming products. We hope it will eventually come to play an essential role in ensuring that instances of non-conforming products are reported and addressed in Queensland. Queensland is not a closed market however, and to be fully effective we need to be able to share and act on information across all Australian and even international jurisdictions.

There is an opportunity to model any proposed scheme on the international CROSS (Confidential Reporting on Structural Safety) scheme operating out of the United Kingdom. The scheme, international in scope, collects, analyses and publishes reports about failures and the safety of structures so that engineers can learn from the experiences of others. Names of authors are confidential and identifying features are removed. When a trend is detected, action is taken to influence changes in culture and, when possible, in UK standards or legislation. A search of the CROSS database already returns examples of product failures that have occurred in Australia. Engineers Australia has undertaken research into the application of CROSS in an Australia context and is happy to share its findings.

The Australian Government already operates a confidential reporting scheme for the aviation industry. REPCON is the Aviation Confidential Reporting Scheme run by the Australian Transport Safety Bureau. It could serve as an example for a similar scheme covering construction product failures.

#### Import data

Better sharing of import data is similarly, welcome where it can prevent non-conforming products entering the supply chain and facilitate their quick removal in cases where they are identified. Any response will need to also address the instances of non-conforming products imported directly via the internet.

It is important to remember however, that not all non-conforming products are imported. There are reports of local manufacturers reducing standards to meet the growing competition. What is important is that information on all non-conforming products is shared quickly and that decisive action is taken, regardless of the country of origin.

#### **Recommendation 5**

Approve that the Working Group of Senior Officers and the Australian Building Codes Board work with Standards Australia to initiate a review of Australian Standards related to high risk building products reference under the National Construction Code, with a view to assessing the costs and benefits of mandating third party certification and establishing a national register for these products.

#### Review of Australian Standards

Currently, many Australian Standards, including those referenced in the National Construction Code, include only 'informative', broad guidance for demonstrating product compliance. Currently two thirds of product Standards are 'unregulated' which means that there is no requirement in the standard to test a product to ensure that it meets the standard. The Standards should be explicit and 'normative' in the case of safety critical or structural products. For these products, it would mean the introduction of third party certification and would impose a cost that is already being carried by reputable manufacturers.

Australian Standards have an existing review process. It is important that the Working Group include not only manufacturers as industry in this process but also the construction industry who specify, purchase, install and certify products that go into buildings to ensure that issues of product compliance are appropriately addressed. Any review should also address the interrelations between Australian and international standards.

There may also be an opportunity to improve the conformance framework through changes to the National Construction Code (evidence of suitability) and Workplace Health and Safety Codes. We suggest that this be considered in more detail.

#### National Register

Yes a single source of information on product conformity is important to specifiers, purchasers, installers and building surveyors. This issue links back to the 'one-stop-shop' and national website under Recommendation 3.

We hold that a single national register will always be too large a task for any one actor, Government included. We note that the Senior Officers Group has sought to make this task manageable by limiting it to 'high risk' products. We believe that you will find that there is little that goes into a building that does not have a critical role. A bolt may hold a roof in place, a tap could be lined with lead.

Product manufacturers through their respective industry associations are already providing a wealth of product conformity information. As discussed earlier there are already 34 product conformity information sources and schemes in place.

We recommend, therefore, that a better focus for Governments' efforts is to draw the current disjointed system together by providing a common front end (the 'one-stop-shop') and endorse the existing schemes which can demonstrate that they meet an acceptable standard of assessment (perhaps JAS-ANZ accreditation), ensure that proper auditing is in place and then look to opportunities to fill the gaps. Building a national register will then become the more manageable task of aligning and monitoring the quality of the wealth of industry registers.

#### **Recommendation 6**

Provide in-principle support for independent research to be undertaken, including manufacturer and random off-the-shelf testing, to improve the evidence base relation to NCBP's.

It would be important that any research genuinely captured the full extent of the problem for industry. We often hear that members just ‘get on with fixing it’ rather than reporting problems to a currently non-existent body. So long as builders are most likely to be held responsible for the rectification of any non-conforming products and there is little or no assistance nothing can be achieved in drawing attention to problem.

The research also needs a risk assessment component. For example, a survey of the extent of non-conforming products before Infinity Cable would have missed what became overnight a large problem. Any research should therefore include an assessment of the nature of the supply chain for the specific product. Australian Industry Group did some work on which products types were more likely to have non-conforming products that could prove valuable here.

We have previously [surveyed members](#) and provided this information to Government. We are in a position to undertake an updated survey should that assist and stand ready to cooperate in any other way that we can.

#### Recommendation 7

Note the value and importance of existing building industry initiatives such as industry third party certification schemes in identifying instance of building product non-conformity.

While many of us have come to the problem recently, there are those who have been working to tackle non-conforming for over twenty years. In this time an incredible patchwork of resources has evolved to address different parts of the wider problem. These resources are the best opportunity we have for making a start in tackling the problem.

Therefore, in noting the value and importance of existing building industry initiatives we ask that you also recognise the opportunity.

There is a role for Government to ensure that the current suite of individual certification schemes work within an overall product certification system that has a regulated framework, is better coordinated and is easier to assess the validity of compliance. There is a role for Government to ensure that the individual schemes are meeting an agreed minimum benchmark and to make it easier to recognise when that benchmark has been met.

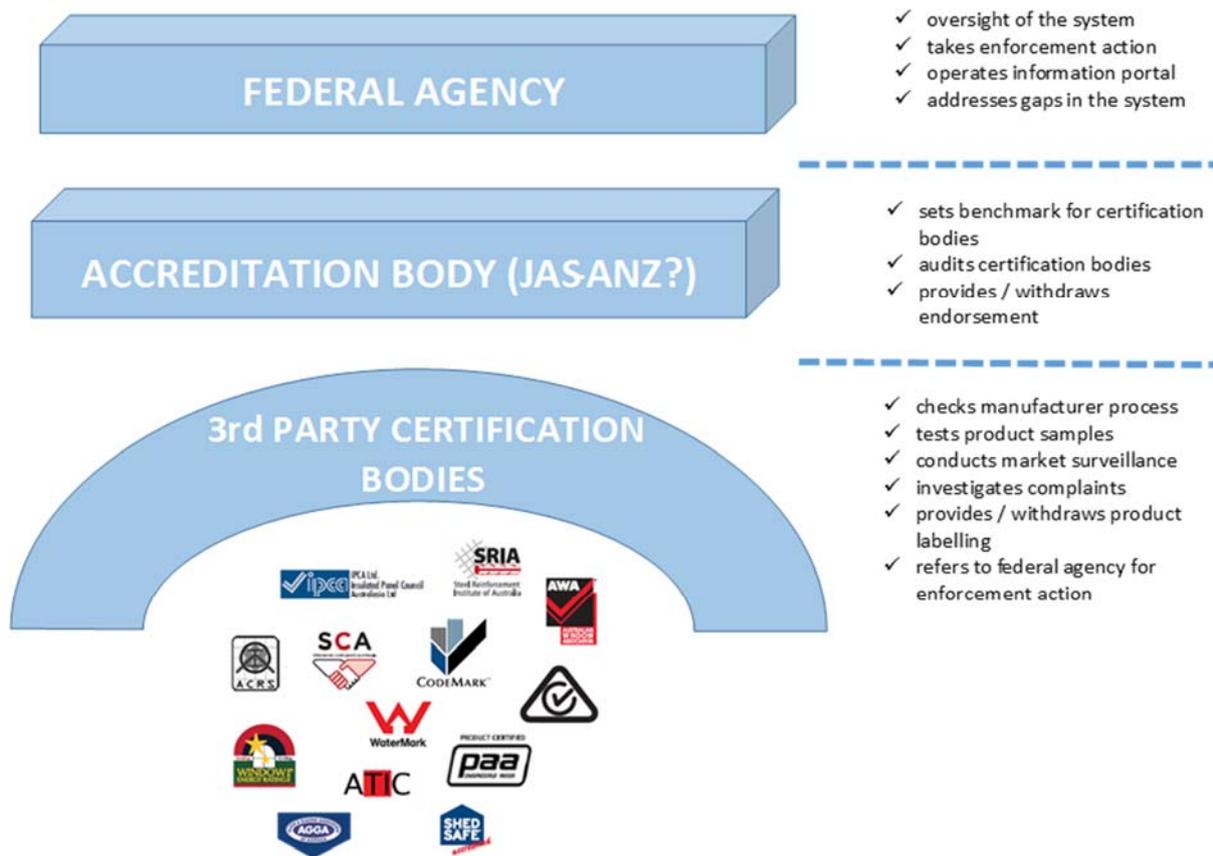
It is for this reason that we continue to advocate for Government endorsement and common labelling of existing third party product certification schemes that meet the following minimum requirements:

- a. accredited through the JAS–ANZ;
- b. includes product conformity requirements for type or batch (ongoing) testing to Australian or International Standards as appropriate, as well as a process for ongoing, periodic auditing; and
- c. undertakes market surveillance to identify and weed out fraudulent activity.

This framework could be given a lot of weight by requiring third party certification of products used on Government projects.

The development of new schemes within an overall certification system, both by Government and industry, should be supported and encouraged until we have a comprehensive system that covers all the key product types. CodeMark, WaterMark and the Electrical Equipment Safety System should be seen as being part of the overall product certification system and should be resourced to provide effective certification for the products that they cover.

Such an approach is illustrated in the following diagram:



Thank you for your efforts on this important problem. We look forward to continuing to work with you towards an effective response and an end to non-conforming products in Australian buildings.

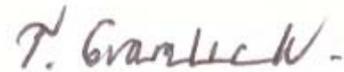
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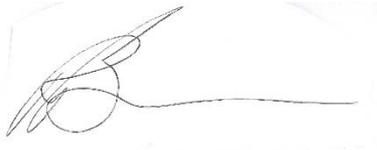
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