



Submission to the Australian Building Codes Board

National Building Product Assurance Framework

Prepared by:

Building Products Industry Council

Rodger Hills - Executive Officer

PO BOX 3037

WESTON CREEK ACT 2611

Phone – 0438 740 240

Email – eo@bpic.asn.au

June 2021

Contents

Contents	2
Introduction	3
Consultation Questions and BPIC Responses.....	3
The Role of BPIC.....	16

Introduction

The Building Products Industry Council (**BPIC**) makes the following response to *the National Building Product Assurance Framework* [Framework] consultation. Furthermore, BPIC and its extensive industry base wholeheartedly support the intentions and actions outlined in the Framework and encourage the ABCB Board and Building Ministers to expedite its recommendations as quickly as possible, preferably for inclusion in NCC 2022.

Consultation Questions and BPIC Responses

1. Do you agree with the definitions for the preferred terms detailed in the Glossary? If not, what preferred term do you disagree with and why? How should they be changed?

BPIC Response:

- 1. Yes – The proposed defined terms are appropriate, however further clarification regarding the definitions might be useful:**

Building product is any material or other thing associated with, or that could be associated with, a building, *including temporary structures and other aids to construction*.

Non-conforming building product is a product or material that claims to be something it is not; does not meet required standards for its intended use *and intended duty cycle*;

An additional definition may also be useful:

Substituted product is a building product other than that originally specified or requested, used in place of the one originally specified or requested.

2. Do you agree with the description of the issues relating to the NCC Evidence of Suitability provisions? Are there other issues to be considered?

BPIC Response:

- 2. Yes – However the impacts of variations in state regulations are understated. Whilst the general ‘themes’ are relatively consistent, in practice the outcomes differ considerably due to**

variations between state regulations with regard to building surveyor roles and accountability, reporting and oversight.

3. Do you agree with the proposal to set minimum and consistent information requirements across each evidence of suitability pathway (Proposal 1.A) If not, why?

BPIC Response:

3. Yes - This would provide a structure to ensure that all evidence of suitability pathways result in product information that is derived, verified and presented in a harmonised way. However, the use of the term 'Product Technical Statement' captures a nomenclature that is currently applicable in the Australia/New Zealand region. Internationally, this form of standardised product information is known as a 'Product Data Template' (PDT) and there are a number of ISO standards related to BIM (Building Information Modelling) that set out clear guidelines about how construction product technical information should be compiled and exchanged so it is both human and machine readable. These standards include:

- **EN 17412-1:2020 - Building Information Modelling - Level of Information Need - Part 1: Concepts and Principles.**
- **ISO/FDIS 23386 - Building information modelling and other digital processes used in construction — Methodology to describe, author and maintain properties in interconnected data dictionaries.**
- **ISO/FDIS 23387 - Building information modelling (BIM) — Data templates for construction objects used in the life cycle of any built asset — Concepts and principles.**

It would seem prudent to align the nomenclature intended for the National Building Product Assurance Framework with existing and well recognised international standards and practises. Such alignment would also ensure that the Framework fosters the adoption of digital conformance checking processes and software as well as the broader adoption of BIM across the industry.

We wish to note that there is a difficulty in forcing single or individual building products to make a 'Declaration of NCC Compliance'. In fact, there is a strong argument for not requiring individual building products to have NCC compliance statements in their PTS documentation. The reason being is that the NCC is not concerned with individual building products, only building elements

(walls, floors, roofs, etc). As an example, while a door hinge may comply with Australian Standards referenced in the NCC, a hinge cannot in itself comply with the NCC. There is no means for a door hinge to comply with the NCC until such time as it is fitted to a door panel, and the door panel fitted into a frame to become a door assembly. Only once individual building product components become a system (like a door assembly) can compliance with the NCC be demonstrated. Likewise, aluminium window extrusions, panes of glass and strip seals may comply with standards referenced in the NCC, but they do not comply with the NCC until they are assembled into a recognised NCC element - a window. There are also instances where individual building products can have two or more applications in a building and trying to force a statement of compliance could lead to confusing and potentially misleading documentation. Such an example is a piece of steel rebar. The rebar might be used in a slab, in a footing, as starter bars and reinforcing for a concrete block wall. There is no way for the supplier to determine in advance where in the building their products will end up, so requiring a '*Declaration of NCC Compliance*' is not practical.

Another consideration is that much of the information required in Proposal 1.A is already captured in other existing recognised formats (ACRS certificates, CodeMark certificates, etc). Forcing suppliers to recreate this existing information in a PTS/PDT format is going to take time and money, for little or no objective benefit.

It would seem prudent to allow suppliers with existing documentation that already has the necessary components the Framework is calling for, to be allowed to continue using such documentation and only require products that do not have such information to develop a PTS/PDT. For products that can only be compliant with the NCC when they are combined into a system or building element, these should be required to show the NCC referenced standard they comply with and certification that they comply with those standards, instead of needing to make "Declaration of Conformance" and "Basis of Declaration" statements.

4. Do you agree with the proposed changes to increase the rigour across each evidence of suitability pathway? (Proposal 1.B) If not, why?

BPIC Response:

4. Yes – This would not only reduce the arbitrariness of the existing system (in relation to rigour), but would provide a very much needed harmonisation of rigour levels so that there are no loop holes or pathways of least resistance for compliance.

One reservation that BPIC does have is with giving test reports a 10 year life. Due to the high industry cost incurred for testing products it would seem prudent to insist that suppliers review test reports at least every 5 year s. If there have been manufacturing (including new models of the same product, or production changes, or new raw material inputs, or tolerance creep), technological or regulatory changes (including referenced standard or NCC clause changes) or other circumstances that could alter the content and accuracy of the initial test report, only then should a new test report be required. However if no such changes have occurred, the supplier should be allowed to re-issue the original test report with a declaration that it has been duly reviewed and certified as being current and accurate.

5. If any, what are the issues with requiring a statutory declaration being provided as part of another form of documentary evidence (Proposal 1.B)?

BPIC Response:

5. BPIC supports the intention to require statutory declarations to close a well-known compliance loop hole. Statutory declarations are legally enforceable and carry significant penalties for false or misleading information. While engineers and other ‘professional’ practitioners are used to this sort of legal liability and probably have appropriate management processes and insurance to mitigate their exposure to risk, the same is not necessarily the case for smaller contractors or individual tradespeople who have up until now, not needed to consider legal and regulatory liability flowing from their assurances/declarations/certifications. Statutory declarations should include a requirement for the practitioner to state that they have no conflict of interest. Generic disclaimers should be avoided, as they only create more confusion. For more ‘technical’ reports where a registered/licenced/accredited professional is the generator of the documentation, the statutory declaration should require an explanation of how they reached the stated conclusion/s, including their qualification and expertise. Their report should clearly state all their assumptions and limitations. Ultimately the intention to require statutory declarations should reduce the incidence of ‘cowboys’ operating within the compliance space.

6. Please provide feedback on the further comprehensive changes to the evidence of suitability that are proposed (Proposal 1.C), including other changes that should be considered.

BPIC Response:

6. BPIC supports the proposed (Proposal 1.C) changes 1 to 7. In particular BPIC supports a hierarchy to the Evidence of Suitability provisions. It provides building practitioners with a structured and meaningful approach to individual situations and allows them to evaluate the evidence against a risk profile. However a hierarchy needs some fine tuning to be effective as this issue is multifaceted. There should be more weight given to the evidence required at the top of the hierarchy. The integrity of the evidences should be strengthened based on their position on the hierarchy level. This will provide more assurance to certifiers and enable them to confidently rely on the information they contain. Education also plays a key role here. Certifiers need to be familiar with the expected level of information in each evidence pathway and should not feel free to reject any evidence subjectively and with no reason. Furthermore, guidance as to what products or systems (as discussed in 1C) should be provided to inform this process.

However, for materials that have high-risk applications such as reinforcing steels you cannot go down a hierarchy tiered process to the lower levels as this will allow non-conforming material into the built environment. A further complication to any hierarchical approach is that some products may need to demonstrate compliance with two or more Evidence of Suitability pathways in order to meet different Performance Solutions (say fire, energy efficiency, wind load and structural requirements for windows).

Mandatory declaration of the relevant skills/knowledge/qualifications of the relevant party should be considered for all evidence of suitability pathways. Compliance statements are commonly made by unqualified individuals and building surveyors have little basis to go on as to the authenticity and/or validity of the statement. This is addressed under the QBCC Form 15/16 approach and should be considered for all jurisdictions.

In addition BPIC suggests the development of a Standard that provides a structure to ensure that all Product Technical Statements (PTS) of construction products, services and processes are derived, verified and presented in a harmonised way.

7. Are the proposed changes to the Evidence of suitability handbook appropriate? (Proposal 1.D) Are there other changes that will improve its usefulness?

BPIC Response:

7. BPIC supports the proposed (Proposal 1.D) changes and notes that these changes in the Handbook could be made in the interim period before a PTS Standard is developed and cover associated issues that such a Standard possibly would not cover. The updated Handbook should also cover the issue of substituted products and how these should be dealt with to confirm fitness for purpose.

8. Are the identified challenges with establishing product conformity accurately detailed and are there other challenges that should be considered?

BPIC Response:

8. BPIC's opinion is that the Framework has accurately identified most of the challenges with establishing product conformity. However emphasis needs to be placed on ensuring effective building design and specification so it embraces conformity requirements. Presently product conformity is viewed as a 'construction' and 'certification' stage issue and not a key component of product selection and specification.

9. If any, what are the issues with respect to the availability of building product information that should be addressed?

BPIC Response:

9. No comment.

10. Do you agree with the proposal to require all products intended to be associated with a building be accompanied by a mandatory minimum level of information (Proposal 2.A)? Should the requirement be broadened to "could reasonably be used in a building"? Alternatively, should the requirement be limited to products intended to be used in higher risk applications, such as structural and fire related applications?

BPIC Response:

10. BPIC supports the proposal that all products that “could reasonably be used in a building including temporary structures and other aids to construction,” be required to be accompanied by a mandatory minimum level of information (Proposal 2.A).

11. Do you agree that the required information should be based on the example provided by Product Technical Statements? If no, what would be the right information?

BPIC Response:

11. Yes – BPIC supports the proposal that required information should be in the form of Product Technical Statements (PTS). Acceptable documentation within a PTS may, for example, include 3rd Party Product Certification from a JAS-ANZ accredited CAB &/or a Test Certificate from an ILAC accredited laboratory. A PTS communicates verifiable, accurate, non-misleading technical and conformity information for products and their applications, thereby supporting scientifically based, fair choices and stimulating the potential for market-driven (as opposed to regulatory driven) construction compliance.

Since Building Surveyors are already the main compliance gatekeepers in the construction process, the goal should be to give them the necessary concise building product information in PTS format to allow them to make timely, accurate and effective compliance determinations on projects. To achieve this outcome, the PTS format and information rules need to limit the volume and complexity of PTS information being funnelled to Building Surveyors and only focus on information that proves products, materials and forms of design are compliant. This may mean moving away from the idea of every single building product requiring a PTS to a model where building systems or whole building elements are detailed. Or it might mean that individual products and materials that can be used in a number of ways in a building (and therefore meet different NCC performance requirements) need only have a simplified PTS that does not need to mention NCC compliance, whilst ensuring that once the product is used for a specific Performance Solution, its corresponding NCC compliance is required.

We note however that there are certain product types (e.g. steel reinforcing) that rely on a test certificate from a NATA or ILAC accredited laboratory coupled with a Certificate of Conformance from a JAS-ANZ accredited CAB before a product can be used. Also there are products that can only generate full compliance documentation after they have been used in a project (e.g.

aggregates, cement and pre-mix concrete). In both situations these industries have an existing, robust and simple compliance regime that does not suit a PTS format. The best solution in both of these situations would be to require a PTS for the finished product (e.g. slab, wall, footing, etc), not the individual components that go into these structures.

12. Have all the costs to manufacturers and suppliers from requiring Product Technical Statements been considered.

BPIC Response:

12. BPIC acknowledges that the most obvious costs have been captured by the discussion paper. Increased and ever changing compliance documentation is a real cost to business and should not be trivialised or underestimated.

13. Is there value in facilitating the development of industry conformance schemes (Proposal 2.B)? Are there additional services these schemes could offer that would support compliance?

BPIC Response:

13. Yes – BPIC supports the proposal (Proposal 2.B). Many existing industry compliance schemes have been up and running and proven over a long time frame (e.g. ACRS which was started in 1997 and running as an independent CAB for the past 20 years). Furthermore, encouraging schemes to provide multi-faceted responses with services that reach beyond conformity assessment is a worthy goal. These attributes are already incorporated in many existing schemes.

It should be noted however that although industry has proven to be capable of setting up credible, well run compliance schemes but they take a lot of effort. These schemes are run on a cost recovery basis but initially require significant investment by the likes of industry associations to establish. Modest contribution by government to the establishment cost of these types of initiatives would greatly assist with wider adoption of comparable initiatives.

14. Do you agree with the proposal for minimum product conformance assessment for certain manufactured building products (Proposal 2.C)? Are there additional triggers that should be considered? Are there additional assessment paths to determine conformance?

BPIC Response:

14. Yes - BPIC supports the proposal (Proposal 2.C) on the proviso that the terms “high-risk applications” and “likelihood of incorrect application or a history of misapplication” are fully articulated and quantified in any new conformity mechanism to avoid confusion over the eligibility of materials, products, systems and designs for this alternative compliance pathway.

An additional trigger would be where there is no existing Australian or ISO Standard against which to test or validate the product.

Manufacturers of products and materials used in high-risk applications (fire, structural, waterproofing, seismic, marine, cyclonic, etc) should be required to undertake in-situ product and sub-assembly testing (with adjustments to allow for reasonable site tolerances and conditions) to confirm that the ‘as-built’ performance of products match or exceed their performance when tested in isolation.

15. Do you agree that there is a need for improved product labelling and/or traceability?

BPIC Response:

15. Yes

16. What are the gaps/shortcomings in the existing labelling requirements? Are there particular products, classes of products that need priority attention?

BPIC Response:

16. BPIC is of the opinion that the discussion paper has competently articulated the gaps/shortcomings in the existing labelling requirements. In answer to the second question, there should be a priority placed on revising standards for products that have high-risk applications such as in fire, structural, waterproofing, seismic, marine and cyclonic applications.

17. Do you support mandating labelling requirements in accordance with SA TS 5344:2019 across building product standards (Proposal 3.A)?

BPIC Response:

17. Yes - BPIC supports the proposal (Proposal 3.A) to extend labelling requirements to all referenced building product standards. Such a move would encourage those committees responsible for updating NCC referenced standards to determine the most appropriate labelling and traceability options for the products and materials covered within their standard, avoiding

inferior 'one-size-fits-all' options. The more challenging part as highlighted by the discussion paper is how to make labelling permanent and visible throughout the life of the building which needs further investigation.

18. What opportunities are available with digital technologies to enhance building product traceability (Proposal 3.B)?

BPIC Response:

18. - BPIC supports the efforts proposed in 3.B regarding improved product traceability.

19. What else can be done to improve product labelling and traceability? Are there examples where it is being done well?

BPIC Response:

19. BPIC notes that we should not ignore the potential to develop digital conformance data that mirrors the conformance data in PTS documentation. BPIC has produced an Industry Guide in association with buildingSMART Australasia, that demonstrates how existing IFC (Industry Foundation Class) standard elements match with specific PTS conformance elements (Product, Type, Properties, Conformance to AU and NZ requirements, Referenced Standards, Conditions of Use, and so forth) such that product conformance data can be both machine readable and easily verified by automated compliance checking software. In this manner product conformance data can be scanned in or appended to BIM objects (digitised products).

20. The options under consideration in this part would require regulatory impact assessment and that costs would be offset against current costs to rectify problems with some products. With that in mind, do you have information that might help point to the types of costs or benefits involved?

BPIC Response:

20. No Comment

21. Is there is a need to improve research, surveillance and information sharing across the product assurance system?

BPIC Response:

21. Yes.

22. Will the tasks listed at Proposal 4.A will help achieve improved oversight and coordination of the product assurance system? Are there additional tasks that should be considered?

BPIC Response:

22. Yes – BPIC agrees that the tasks listed at Proposal 4.A will help achieve improved oversight and coordination of the product assurance system. The problem is, how are these initiatives to be funded and who implements and manages each one? Ideally some of the tasks in the list could be appended to existing tasks carried out by existing bodies/agencies, but more work is need to flesh this proposal out.

23. Is there value in having a central information portal and, if so, what information should it contain (Proposal 4.B)?

BPIC Response:

23. Yes - BPIC sees merit in a centralised building product information portal modelled on CROSS and REPCON. But, there are a number of hurdles to overcome. Firstly it could be misused by certain parties to discredit or make spurious or vexatious claims about other parties or particular products. Secondly it is hard to motivate people to make genuine reports due to a fear of being identified (e.g. by divulging specific information available only to a small number of people, or divulging commercial-in-confidence information in breach of NDAs). Thirdly, people who feel aggrieved enough to report something, wish to see action taken, but a report might take weeks or months to thoroughly investigate and due to the confidential nature to the system, no direct pecuniary action can be taken anyway. In both the CROSS and REPCON systems the information reported is used to develop statistics about the respective industry and provide a set of ‘don’t do this’ learnings that can be shared with the industry.

24. What additional guidance and training would assist with ensuring that products are appropriately supplied and specified (Proposal 4.C)?

BPIC Response:

24. BPIC supports the Proposal 4.C, but notes a few areas that need further consideration. Alternative products to those that are specified at the design stage of a building as part of an appropriate Evidence of Suitability process can be substituted without any effective mechanism

to ensure the alternative has the same properties, performance and credentials as the original specified product. This situation is exacerbated by the practice of using the terms 'or similar' and 'or equivalent' on documentation where the critical performance metrics of the specified products are not listed and there is no way for alternative or substituted products to be evaluated against original fit-for-purpose compliance criteria. Therefore BPIC recommends that all guidance and training should cover the issue of substituted products and how these should be dealt with to confirm fitness for purpose, and the correct way for practitioners to develop 'or equivalent' performance specifications.

Furthermore, for critical products or high-risk applications of products, BPIC would like to see the progressive introduction of an across the board terminology change that provides for engineers/designers to note that some of all or their design cannot be built using 'similar' or 'alternative' materials to what has been specified. We suggest a term such as 'must not be substituted', which has an element of penalty or legal enforceability for anyone that does so without having sought and received written permission. At the very least, it would flag that product or performance solution as having a higher importance than others in the project.

25. Do you agree with the description of the current compliance and enforcement regime?

BPIC Response:

25. Yes - BPIC believes that the conformance infrastructure is a prescriptive one and having greater oversight and enforcement would improve compliance and increase the role of Government in advising and supporting the industry in doing the right thing.

26. Do you support additional enforcement on the supply of building products (Proposals 5.A & 5.B)? Do you see any barriers to their implementation?

BPIC Response:

26. Yes – BPIC is broadly supportive of Proposals 5.A and 5.B because they will broaden the accountability of all those involved in the construction supply chain. A model based on tried and tested legislation such as Queensland Chain of Responsibility seems to be appropriate for consideration as part of the Framework, however, key aspects such as industry education and transition period to apply any changes that are proposed and these should also be subjected to a RIS.

While the building products sector is supportive of the proposal for greater enforcement, history has shown a conspicuous and ongoing lack of funding and resources at the jurisdictional level dedicated to this purpose. Apart from the activities related to flammable cladding and some sporadic action related to asbestos in panels, most jurisdictions have consistently failed to enforce the existing legislation related to product conformity. While we encourage the introduction of a National Building Product Assurance Framework and proposed changes to the NCC Evidence of Suitability (NCC EoS) rules, the industry thinks it unlikely that there is enough political will to properly oversee and police the system.

27. Are there any other measures that would improve enforcement and compliance of building products?

BPIC Response:

27. In the light of the anticipated absence of appetite on the part of jurisdictions to properly enforce building product conformity (refer to Answer 26 previously), BPIC suggests that as much as possible of the National Building Product Assurance Framework be developed as a market-driven and self-regulating system.

28. Are there any final comments that you have on the scope and implementation of a National Building Product Assurance Framework?

BPIC Response:

28. BPIC believes that the National Building Product Assurance Framework is the best and most comprehensive attempt so far to improve the building product conformity regime in Australia.

The Role of BPIC

The Building Products Industry Council (BPIC) is a national peak body representing Australia’s leading building products industries and related services (listed in the footer of this document) in:

Steel	Gypsum Board	Concrete	
Insulation	Timber Products	Roof Tiles	Glass
Windows	Clay Bricks	Concrete Masonry	
Cement	Tiles	Insulated Sandwich Panels	

BPIC’s members and associated companies directly employ 243,300 people and a further 796,500 indirectly [August 2020]. About 262,000 firms make up the sector and manufacturing, fabrication and installation activity accounts for \$67.3 billion in economic activity [year to June 2020]. BPIC is a not for profit organisation governed by a Board of Directors comprised of representatives from its member organisations.

BPIC’s primary objectives are to:

- Promote public and regulatory confidence, growth and innovation in the building product sector.
- Promote and support improved, robust and nationally consistent building and construction product:
 - Legislation, regulation, codes and standards.
 - Labelling and traceability systems.
 - Procurement framework.
 - Market surveillance mechanisms as well as third-party product certification schemes.
 - Substitution controls, non-conforming product controls and controls on the correct use of products.
 - Environmental performance, impact and sustainability assessment framework.
 - Health, safety and comfort framework.

It achieves these outcomes through advocacy to government, industry and the community, and by showcasing the economic and social benefits of conforming building and construction products.

BPIC also encourages investment in skills formation, product development and industry research by helping to identify and remove regulatory impediments to innovation.