3 August 2015

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Email: economics.sen@aph.gov.au

Dear Committee

Subject: Non-conforming building products: Queensland proposal

Thank you for the opportunity to provide a submission to the inquiry on non-conforming building products in the Australian building and construction industry.

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 colleagues who have also made submissions to this inquiry.

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.

As an alliance, we share a broad consensus of the urgent need to reform the current system to provide specifiers, purchasers, installers and certifiers 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.

Collectively we need to send out a message of 'not on our watch'.

Ideally this would be a system consisting of:

A. A third party product certification system that is robust, transparent, easy to navigate, covers all product types and extends to auditing, surveillance and enforcement.
B. A strong enforcement regime so products found not to meet Australian regulatory requirements are quickly removed from sale and/or can be effectively located and recalled.
C. Equity with a level playing field, for products manufactured both locally and overseas.

We recognise that this is not just a Queensland problem but a significant national issue that cannot be resolved overnight. We therefore argue in favour of a pragmatic approach that is focused, in the first instance, on actions that are achievable in the short-term and will have the greatest impact.

To this end we have developed the *Queensland Proposal* that we believe will go a long way towards addressing the problem of non-conforming products in our industry.

QUEENSLAND PROPOSAL

We do not need more regulation. There is a good, robust National Construction Code and Australian Standards. The Australian government has developed quality conformance infrastructure setting out accreditation and verification paths using the Joint Accreditation System of Australia and New Zealand (JAS-ANZ) and the National Association of Testing Authorities (NATA).

Industry is already doing a lot towards addressing the problem in building an extensive array of third party product certification schemes of varying quality and scope. Some industry associations even have accredited inspection and auditing processes.

We therefore recommend the federal government consider the following immediate next steps towards a solution:

1. 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.

   For the construction industry the current patchwork system of assessment schemes is unwieldy. There is great disparity amongst the schemes as to the quality of assessment, level of auditing and checking for fraudulent documentation.

   While there are very good schemes, users of the system cannot say with confidence which of the existing schemes undertakes testing to the appropriate standard and which have strong enough checks to counter misinterpretation and fraud. The

complexity of the existing arrangements also make it impossible to navigate with confidence. Much needs to be done 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.

There is a role for government to ensure that the individual 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.

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

2. 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.

    We therefore welcome the work of the Australian Building Codes Board (ABCB) in reviewing the contribution that CodeMark and WaterMark can make to a certification system and ask that it continue.

3. We ask that the government consider a centralised, confidential reporting system to identify and report failures of all structural and safety critical 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 in 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 would be 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 and could serve as an example for a similar scheme covering construction product failures.

4. More needs to be done to minimise the impact of a product safety recall on the public and industry. The Infinity cable recall revealed significant inadequacies in the way product safety recalls are managed across Australia.

    We therefore ask that the government consider the following regulatory steps:

    a. Product tracking where manufacturers, importers and suppliers of all high risk products, such as electrical, are required to have processes and procedures in place to enable the tracking and tracing of product found to be faulty and/or not compliant to Australian Standards.
    b. Register of high risk products where sellers of high risk products are required to maintain a register of products sold. For example, a register of electrical products that require installation by an electrician.
    c. Mandatory recall insurance where manufacturers, importers and suppliers of high risk products are required to have a process in place to fund the removal and replacement of any product found to be faulty and/or not compliant to Australian Standards.

    Together these will improve the recall system and act as a deterrent for non-licensed installers. They will counter the business costs of not being able to find these products that are recalled. For this reason reputable suppliers will often already be carrying these costs.

5. More needs to be done to police product compliance at the point-of-sale.

    Policing of conformance to current regulated requirements should be clarified for all stakeholders so that the agency responsible is known to the industry and their policy in relation to enforcement is widely publicised. The Australian Competition and Consumer Commission (ACCC) is currently undertaking a regulatory mapping exercise with respect to construction product conformity. Once this exercise has been completed, we would expect that the ACCC and the other identified regulatory agencies would be able to better co-ordinate product compliance at point-of-sale.

Further consideration should also be given to increasing the penalties for non-compliance, in particular deliberate misrepresentation. We ask that you consider the introduction of surveillance programs such as those used in some jurisdictions in the United States.

6. We ask that government better promote existing government information and schemes.

   Each of the signatories is working with their respective membership to improve understanding of the risk, liability and mitigation with respect to non-conforming products. The government needs to be doing the same. There are already existing resources that can be shared more widely with industry, in particular:

   a. Australasian Procurement and Construction Council (APCC) recently published "Procurement of Construction Products: A guide to achieving compliance" as an overview of conformity schemes and aid for industry stakeholders.
   b. Technical information developed by the Australian Technical Infrastructure Committee (ATIC). This is valuable advice for all the building industry and not just those working on public infrastructure.

7. The Australian Standards covering safety critical or structural product standards for use in Australian buildings should be revised to include definitive product compliance and identification of conforming products.

   Currently, many standards, including those referenced in the National Construction Code, include only 'informative', broad guidance for demonstrating product compliance. The Standards must be explicit and 'normative' in the case of safety critical or structural products.

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

While we recognise that this is an intractable problem, we believe that together these actions will provide us with some important tools to better protect our industry and the buildings we provide.

We wish you all the best with your important work on this issue and welcome the opportunity to discuss these ideas further.
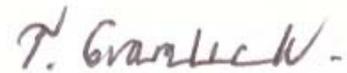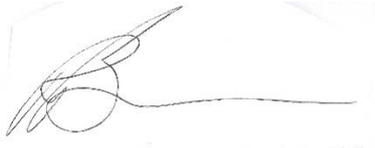

Kind regards

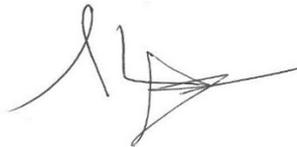**Grant Galvin**
Executive Director
Master Builders Queensland

Ian McEwan
General Manager Queensland
Engineers Australia

Tracey Gramlick
Executive Director
Australian Window Association

Russell Brandon
Executive Director
Building Designers Association
of Queensland Inc.

Stacy Kennedy
Chapter President, QLD
Australian Institute of Building
Surveyors

Scott Gibson
Chairman
Insulation Australasia

Gary Veenstra
State Manager, Queensland
Master Electricians Australia

Ernie Kretschmer
Technical Services Manager
Master Plumbers Association
of Queensland

Judith Gilmore
Queensland Manager
Australian Institute of Architects

John Gardner
State Manager – QLD/NT
Australian Steel Institute

Warren Overton
Chief Executive Officer
Australian Glass and Glazing
Association

Rod McInnes
Chief Executive
Timber Queensland