

Submission
No 67

**INQUIRY INTO REGULATION OF BUILDING
STANDARDS, BUILDING QUALITY AND BUILDING
DISPUTES**

Organisation: Building Products Industry Council

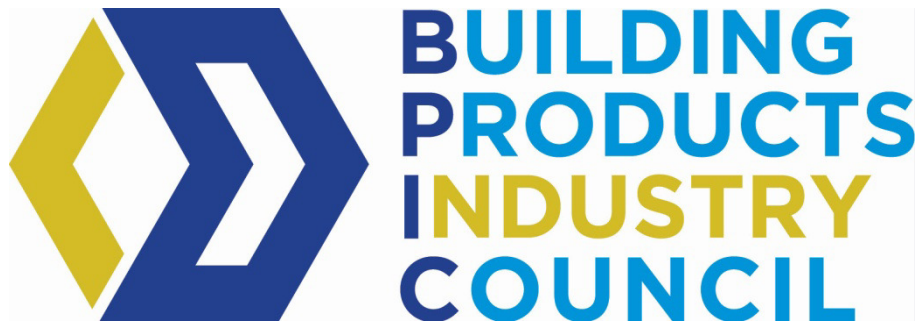
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**Submission to the NSW Legislative Council - Public Accountability
Committee**

INQUIRY INTO THE REGULATION OF BUILDING STANDARDS, BUILDING QUALITY AND BUILDING DISPUTES

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Introduction

The Building Products Industry Council (**BPIC**) supports the *Inquiry into the Regulation of Building Standards, Building Quality and Building Disputes* (the **Inquiry**) by the NSW Legislative Council - Public Accountability Committee (the **Committee**). In particular we ask that the Committee undertake an investigation as to why the NSW Government has ignored the recommendations of its own investigations as well as those by industry, into building conformity problems stretching back for years. Had such recommendations been instigated, we believe that the current crisis around building certification, poor building standards, inadequate consumer protections, limitations on building insurance and building defects could have been avoided or at least substantially mitigated.

From industry's perspective there have been three pivotal, but missed, occasions where the NSW Government has had the opportunity to ensure its building regulatory functions performed to the standard expected by the electorate.

The first was the extensive consultation that was done as part of the *Independent Review of the Building Professionals Act 2005* by Michel Lambert (the **Lambert Review**) in 2015.

The second was the aborted inclusion of building product chain of responsibility clauses in the Building Products (Safety) Bill (the **Safety Bill**) in 2017.

The third was the lack of take-up by Ministers Kean and Roberts in April 2018 to instigate via the Building Ministers' Forum, a National Discussion Paper and Summit to map out an agreed program of national reform for building regulations and administration.

Despite repeated attempts by many parties in the industry to get to the bottom of why these three vital instances of building regulatory reform were not actioned, no satisfactory explanation has ever been forthcoming from the NSW Government.

Unfortunately neither the public nor industry are privy to the machinations of the NSW Government, so BPIC respectfully requests that the Commission investigate these matters in order to determine the basis for the Government's failure to act and its potential culpability in the current crisis, as well to uncover a clear building regulatory reform pathway that has already largely been mapped out. In making this request, BPIC provides the following context and background related to these issues.

Lambert Review

In 2014, Andrew Wallace - Barrister-at-Law published his consultation into the Queensland Building Act and building certification, concluding that:

“There is one consistent theme which permeates the 122 recommendations contained within this report and that is the need for increased accountability, not just for building certifiers, but for all building and construction industry stakeholders.”

A year later and after extensive public and industry consultation Michael Lambert come to a similar conclusion in his review of the NSW building regulatory system. He also identified that NSW lacked:

- A NSW Building Commission to consolidate all the fragmented administrative functions related to building regulation across the state.
- Sufficient resourcing of building regulation and certification processes.
- A Building Act to consolidate building regulation that is currently spread across various parts of the EP&A Act, the HB Act and the Plumbing and Drainage Act 2011.
- Licensing of commercial builder and building work in addition to the existing registration of residential builders.

The Lambert Review was an exhaustive and detailed investigation that is directly relevant to the Commission’s Inquiry and listed no less than 12 major initiatives the government needed to undertake as a matter of urgency. His report taken as a whole was as damning of the NSW building regulatory regime as Andrew Wallace’s was of the Queensland regime. The difference is that the Queensland government took notice of Wallace’s findings and began to institute a wholesale overhaul of its building system. Whereas the NSW Government failed to implement a single recommendation of Lambert’s report.

Now four years later, we are seeing the tragic legacy of the NSW Government’s inaction and lack of accountability to the NSW public in the form of Mascot Towers, the Opal Tower and other defective buildings that have yet to come to the public’s attention.

Building Products (Safety) Bill 2017

In mid-2017 the Queensland government introduced the *Non-Conforming Building Products—Chain of Responsibility Bill* after intense public and industry consultation. While the bill wasn't perfect, it did for the first time in Australia place a legally enforceable "duty of care" on all parties in the building supply chain to ensure that building products are safe and fit for their intended use.

In October the Building Ministers' Forum (BMF) agreed the powers set out in Queensland's legislation set a model for all jurisdictions to consider.

On October 6, 2017 an exposure draft of the Building Products (Safety) Bill 2017 was discussed at confidential meeting between the NSW Department of Finance and industry (Building Products Industry Group, Housing Industry Association, Master Builders Association, Engineers Australia, Strata Community, Fire Protection Association Australia, Institute of Architects and the Property Council).

What NSW had achieved was taking the Queensland legislation and all of industry's subsequent comments and inputs and consolidating this into a robust, fair, workable and effective piece of legislation that everyone agreed at the meeting would be pivotal in tackling the incidence of Non-Conforming Building Products.

However the industry was stunned on November 16, 2017 when the Bill was given its first reading in Parliament. What Cabinet had done was introduce a heavily edited version of the Bill that was incapable of delivering on the government's commitment to the BMF, to the industry, to the NSW public and incredibly, to its own 10 point plan to tackle building non-compliance.

BPIC and other organisations wrote to Minister Kean and Minister Roberts, the opposition and the Chair of the BMF calling for the urgent reinstatement of over 80 missing clauses in the Bill (see **Attachment 1 – Reinstated Safety Bill Clauses**). However even last minute efforts by the opposition, Greens and independents could not stop the Bill from being rushed through the lower and upper houses on the same day on November 22, 2017.

Not only was this a tragedy for the voting public of NSW and proper governance of the NSW building regulatory system, but it was a pivotal national opportunity that was lost. Given that the BMF had already provided its support for the Queensland legislation to be used as a template, we believe that other jurisdictions would have rolled out similar legislation if NSW had done so.

An Action Plan for Building Regulatory Reform

From the 21st to the 22nd of February 2018, a Building Regulatory Reform Summit was held in Canberra that brought together Australia's leaders and strategists in building control to identify opportunities and weaknesses in the current building regulatory framework. Facilitated by the Building Products Industry Council (BPIC) on behalf of the wider building industry, the Summit explored the views and concerns of over 40 government, industry and community organisations involved with or affected by the building control system.

The Summit concluded that the current building regulatory framework was no longer fit for purpose to prevent a major catastrophic disaster such as the 2017 Grenfell Tower fire which broke out in Central London causing 71 deaths and over 70 injuries. Participants were able to map out the problems besetting the Australian building control system and committed to working together to find practical ways to fix the issues, with the first action being the publication of a White Paper, titled: *"Rebuilding Confidence: An Action Plan for Building Regulatory Reform"*.

In developing the White Paper, BPIC was conversing with Dame Judith Hackitt and her research team who were developing a final report for the UK parliament into the Grenfell tragedy. From that dialogue, it appeared there were many regulatory and systemic issues in common between Australia and England's building regulatory system.

Concurrently BPIC was also conversing with Bronwyn Weir as she and Peter Shergold developed their Building Confidence report.

In the lead up to the BMF April 2018 meeting, BPIC wrote to each Building Minister including Minister Kean and Minister Roberts, personally requesting that they review the White Paper and that they develop a National Discussion Paper and Summit to map out an agreed program of national reform for building regulations and administration.

Although acknowledgement of receipt of our correspondence to the NSW Ministers was received, no formal response has been forthcoming from either Minister and the opportunity for NSW to begin tackling the issue before they became a crisis was squandered.

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 over 200,000 Australians with more than 470,000 employed indirectly. Their collective industries are worth over \$54B in annual production to the Australian economy. BPIC is a not for profit organisation governed by a Board of Directors comprised of representatives from its member organisations.

BPIC’s primary objective is to provide coordinated representation of the building products industry to interested parties including Government, the construction industry, and the general public to help improve building and construction standards. We also provide a forum for discussion, information sharing and policy formulation among major product categories in the building industry. BPIC’s mission is to:

- Promote regulatory reform to ensure that products meet minimum standards, code compliance, and are used in the manner for which they are intended.
- 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.

BPIC works to fulfill these aims by gathering and supplying practical and current industry information on behalf of BPIC member organisations and other organisations and companies that are not members but follow BPIC through various means. This industry-wide approach to responding to regulatory issues, helps to ensure that Governments are informed of possible problems in the building industry and are provided with appropriate industry-considered responses. BPIC also encourages investment in skills formation, product development and industry research by helping to identify and remove regulatory impediments to innovation.

References

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