



2 August, 2018

## Product Assurance Review: Submission

### Preamble:

BIF is starting from a position that legislation and regulation needs updating in order to keep pace with change in the New Zealand building products marketplace. Products, materials and systems are appearing in the built environment with insufficient demonstration that they are compliant with the New Zealand Building Code. Current regulation lacks a clear requirement to claim and demonstrate compliance with relevant provisions of the Code in a manner that is transparent for consumers and Building Consent Authorities. On-line trading, greater ease of access by entrepreneurs to offshore suppliers and counterfeiting of declarations by overseas suppliers have all contributed to this changed environment.

The BIF objective is a regulatory system that will provide a greater level of assurance to consumers that products, materials and systems used in both commercial and residential construction will meet relevant New Zealand Building Code requirements when used according to the manufacturer's applicable technical literature and stated scope of use. We seek to balance the risk of non-compliance with the cost of providing evidence of compliance.

### Amendments to the Building Act 2004

Currently Section 14G of the Building Act states:

#### ***14G Responsibilities of product manufacturer or supplier***

- (1) In subsection (2) product manufacturer or supplier means a person who manufactures or supplied a building product and who states that the product will, if installed in accordance with the technical data, plans, specifications, and advice prescribed by the manufacturer, comply with the relevant provisions of the Building Code.*
- (2) A product manufacturer or supplier is responsible for ensuring that the product will, if installed in accordance with the technical data, plans, specifications, and advice prescribed by the manufacturer, comply with the relevant provisions of the Building Code.*

## **We seek to:**

- Have incorporated into the Building Act an obligation on the manufacturer or importer of a building product to make a clear claim in relation to compliance of the building product with relevant provisions of the Building Code, if installed in accordance with the technical data, plans, specifications and advice prescribed by the manufacturer or importer.
- Require the product manufacturer or importer to sufficiently demonstrate that the product will, if installed in accordance with the technical data, plans specifications and advice prescribed by the manufacturer or importer, comply with the relevant provisions of the Building Code, including compliance with any regulations made under this section of the Act.
- Make it clear that in making demonstrations of compliance manufacturers or importers should consider the consequence of failure to comply with NZBC.
- Have the responsibilities accorded designers (specifiers) and builders as contained in Section 14 of the Building Act also incorporated into the Act as obligations rather than guidance.
- Have provision made in the Act for the Regulator to have the power to establish a list requiring products or systems to meet certain criteria or to be subject to a higher level of assurance than the minimum required under the revised Section 14G. The Regulator should be required to take advice from appropriate industry experts established as a specialist advisory panel with power to co-opt specific expertise as may be necessary. The specialist advisory panel may also recommend products to be on the list. The list should be dynamic and be reviewed at least annually.

(**Note:** This list is to deal with high risk products considered to be those which are critical to public/life safety and the structural integrity of a build, either commercial or residential, where the Chief Executive and/or panel might have concerns that additional or specific measures of assurance are required).

## **Advantages of change:**

The advantage of such changes is that they remove the ability of a manufacturer or importer to claim in the event of non-conformance that no assertion of compliance with the New Zealand Building Code was claimed and therefore escape the scope of the Fair Trading Act and the unsubstantiated representations regime. A key element is that there should be no doubt that on-line trading, street markets and other “entrepreneurial” activity are covered. The requirement to demonstrate to a level commensurate with risk that a product is compliant with relevant provisions of the Code will strengthen assurance.

Transferring the responsibilities of designers, owner-builders, builders and BCAs from Section 14 to make these obligations mandatory and enforceable, rather than advisory, would, in our view, effectively ensure that that risk/liability in the building chain is allocated to those who are naturally responsible for that risk.

All manufacturers and importers having an obligations to declare the compliance of their products will enhance confidence of designers and builders in their acceptance of risk/liabilities.

### **We look for:**

- 1) **Education:** It is suggested that, In association with passage of amending legislation along the lines suggested, MBIE should conduct an educational programme utilising materials emphasising the requirement for a such a mandatory declaration and emphasising to specifiers, builders (both residential and commercial) and consumers that they should seek evidence prior to specification/purchase that such a declaration as required in the amended Section 14G has been made.

Such a programme should also attention all parties including specifiers, builders, designers and engineers to the obligations attached to specification or use of products that do not have such a declaration, and other liabilities that their work incurs. Guidance to product manufacturers and importers on compliance with the Building Code is available on the MBIE website.

- 2) **Enhanced enforcement:** It is our belief that the measures proposed will strengthen the existing system if adequately enforced. We believe that a lack of enforcement is giving rise to doubts about commitment of the Crown to ensuring the adequacy of the current system. Provision will also need to be made for “notices to fix” and fines/penalties for breaches of the revised Section 14. We suggest that the Building Levy be drawn on to fund a specialist and active enforcement unit either as a section of MBIE or an attachment to the Commerce Commission.

### **Summary:**

It is our view that the legislative change we propose and the associated education measures, especially in regard to liabilities, would, if accompanied by evidence of a will to enforce existing provisions of the Act and associated conformance regulations, result in a higher level of confidence among BCA’s and consumers in the product assurance system.

*Bruce Kohn*

**Bruce Kohn**  
**Chief Executive**