

5 April 2023

WLF Accounting & Advisory
Level 1, 160 Collins Street
HOBART TAS 7000
Attention: The Residential Lift Co Pty Ltd ACN 125 017 683

Dear Ms Collins and Ms Jensen

NOTICE OF ACCEPTANCE OF BUILDING PRODUCT UNDERTAKING

The Queensland Building and Construction Commission (**Commission**) has received a building product undertaking (**Undertaking**), pursuant to section 75AO(1) of the *Queensland Building and Construction Commission Act 1991* (Qld) (**QBCC Act**) from The Residential Lift Co Pty Ltd (ACN 125 017 683) (**RESiLIFT**) in connection with a matter relating to an alleged contravention of part 6AA of the QBCC Act. The Undertaking is in relation to the following building products, namely residential lifts, designed, manufactured and supplied by RESiLIFT:

1. The Mirage;
2. The Miracle; and
3. The Miracle Max.

(Collectively, **Products**)

In accordance with the Undertaking, RESiLIFT undertakes to implement a remedial measure to resolve the Commission's concerns about the risk of falling from the Products. The remedial measure focusses on communications, including raising the awareness of fall risk, interim risk mitigation measures and the development, certification and retrofit/installation of a barrier to all currently installed Products (at no cost to the owner) and all future installations of the Products.

The required steps and timeframes under the Undertaking are split into three phases:

1. Communication phase;
2. Certification phase; and
3. Retrofit phase.

Decision

Pursuant to section 74AP of the QBCC Act, the Commission must give RESiLIFT written notice of the Commission's decision to accept or not accept the Undertaking and the reasons for the decision.

The Commission's decision is to accept the Undertaking from RESiLIFT.

Date building product undertaking takes effect

The Undertaking is enforceable under part 6AA of the QBCC Act and does not constitute an admission of guilt by RESiLIFT for the contravention or alleged contravention to which the Undertaking relates.

The Undertaking takes effect and becomes enforceable on the day this written notice is given to RESiLIFT, being 5 April 2023.

The Products and the risk

RESiLIFT is a Tasmanian family owned and operated business that designs, manufactures and distributes residential lifts under the brand name RESiLIFT. There are three models for the Products, being Mirage, Miracle and Miracle Max.

RESiLIFT distributes the Products through a network of distributors who sell, assemble part of the lifts and install them for their own customers.

The intention behind the Products was to create a simple, affordable product that could be easily retrofitted into people's homes allowing them to age in place as their mobility needs increase.

The Products were specifically designed to be doorless to provide maximum accessibility and avoid risk of entrapment and include various safety precautions to compensate for this feature.

However, the Commission raised concerns that being doorless presents other risks, namely a risk that a passenger can fall out of the lift when in operation. The Commission is of the view that the risk of falling from a height exceeding one metre means the Products are not safe and are therefore non-conforming building products (**NCBPs**) as defined under the QBCC Act, as all risks of injury to a person have not been removed, so far as reasonably practicable. This is supported by P2.5.2 of volume 2 of the National Construction Code in that where people could fall one metre or more through an opening or due to a sudden change of level within a building a barrier must be provided which meets certain requirements. RESiLIFT held a contrary view, but has agreed to remove this risk in Queensland.

Background

On 7 November 2020, the Commission received a complaint after two (2) deaths occurred in a residential home in North Queensland, which potentially involved the Products. The complaint alleged the relevant Product did not comply with the National Construction Code because it had no barrier/door installed. The incident is the subject of an ongoing coronial inquiry.

The Commission understands 64 units of the Products were supplied in Queensland between June 2020 and June 2021, with a total of 391 units installed across the State.

On 15 December 2020, the Commission commenced a comprehensive investigation into the Products as possible NCBPs, with the following occurring:

1. On 13 August 2021, the Commission informed RESiLIFT by way of letter that it had formed a preliminary view based on its investigation to date that the Products

were NCBPs and invited RESiLIFT to make written submissions, which was done by RESiLIFT;

2. On 19 January 2022, the Commission produced an audit report which considered whether the Products may be NCBPs, as defined in the QBCC Act. The report found the Products to be NCBPs due to the lack of barrier/door to prevent a person from falling out of the lifts;
3. On 20 June 2022, the Commission informed RESiLIFT of its finding that the Products were NCBPs and that compliance and enforcement action under part 6AA of the QBCC Act was being considered;
4. On 15 August 2022, the Minister for Energy, Renewables and Hydrogen and for Public Works and Procurement issued a statutory show cause notice to RESiLIFT and Ezyhomelift Pty Ltd (**Ezyhomelift**) (RESiLIFT's Queensland distributor), informing the companies the Minister proposed to make a recall order and requested the companies give reasons why the Minister should not make the proposed recall order within seven (7) days of receipt of the show cause notice;
5. On 23 August 2022, legal representatives for each company requested an extension of time to respond, which was given until 13 September 2022;
6. On 13 September 2022, submissions were received from each company and subsequently considered by the Commission;
7. On 18 November 2022, representatives for the Commission (with its independent expert engineer) met with representatives of RESiLIFT and Ezyhomelift to view one of the Products in operation. The information obtained from this meeting and report prepared by an expert engineer were used to brief the Minister in determining the next steps regarding the matter;
8. On 21 December 2022, the Commission invited RESiLIFT to submit a building product undertaking in accordance with part 6AA, division 3 of the QBCC Act to resolve the matter. The Commission also requested a communication plan to be developed, including a warning letter be sent to each owner of the Products;
9. On 16 January 2023, RESiLIFT confirmed it would provide a building product undertaking and it would include a commitment that the requirements of the building product undertaking would be carried out by RESiLIFT or an authorised distributor or installer;
10. On 23 January 2023, RESiLIFT provided to the Commission a draft letter and a communication plan to contact all lift owners about the risks associated with the Products and the proposed remedial measure. The communication plan and letter informed all lift owners of the risk of falling from the lift, that they should avoid using the lift unless necessary, that RESiLIFT is required to retrofit the lifts with a door (at no cost to consumers) and keep lift owners updated on the progress of the certification of the lift door and when it will be installed;

11. On 30 January 2023 and 10 March 2023, the Commission provided feedback on the communication plan to RESiLIFT with changes to be made to the letter to lift owners;
12. On 31 January 2023, RESiLIFT submitted a draft building product undertaking;
13. On 2 March 2023, the Commission provided feedback and suggested changes to RESiLIFT on the draft building product undertaking;
14. On 10 March 2023, RESiLIFT submitted an amended draft building product undertaking and the Commission provided further comments back to RESiLIFT on 17 March 2023; and
15. On 3 April 2023, RESiLIFT provided a final version of the proposed building product undertaking for the Commission's consideration.

Findings of material questions of fact

On 7 November 2020, the Commission received a complaint from a lift contractor about his concerns regarding the Products after the death of two individuals who had fallen from a lift in their home on or about 4 November 2020 in Ayr, Queensland, in the following circumstances:

1. The lift involved in the incident was one of RESiLIFT's Products;
2. The standing platform of the lift was found, at the scene of the incident, to have stopped approximately 1.1m above a bare concrete floor;
3. The individuals who passed away had fallen from the lift;
4. The fall from the lift was the cause of death for one of the individuals;
5. The lift involved in the incident was doorless, namely it did not have a door installed on the passenger car, the lift shaft or on the lower level. A common design feature for all of the Products is that the lift is doorless.

The Products are NCBPs (i.e. "non-confirming building products") as defined by the QBCC Act on the basis that the intended use of the Products in association with a building for the use as a residential lift is not, or will not be, safe, as all risks of injury to a person have not been removed, so far as reasonably practicable or, if it is not reasonable practicable to remove a risk of injury to a person, the risk has not been minimised so far as reasonably practicable.

RESiLIFT is—

1. A '*person in the chain of responsibility*' under section 74AE of the QBCC Act as a person who designs, manufactures and supplies the Products; and
2. A person who has a duty in relation to the Products under part 6AA, division 2, subdivision 2 of the QBCC Act.

The Products were designed, manufactured and supplied without doors.

RESiLIFT is alleged to have contravened part 6AA of the QBCC Act, including—

1. Section 74AJ (Failing to comply with duty) for failing to comply with section 74AF (Primary duty of person in the chain of responsibility) by failing to ensure the Products are not NCBPs for an intended use; and
2. Section 74AK (Duty about representations about building products) by making representations that the Products complied with Australian Standard 1735.15 (Lifts, escalators and moving walks) when they did not.

Reasons for the decision

The Commission has decided to accept the Undertaking and its terms for the following reasons:

1. RESiLIFT cooperated with the Commission's investigation by answering questions and providing material;
2. RESiLIFT voluntarily ceased the sale and installation of new Products in Queensland while the matter was investigated;
3. RESiLIFT has committed to devoting such resources as are necessary to implement the remedial measure that will eliminate the risk of falling, so far as reasonably practicable, and ensure the Products are no longer NCBPs;
4. A decision to proceed with a recall order (if made) would be associated with a real risk that the financial burden of the recall order would result in the financial collapse of both RESiLIFT and Ezyhomelift. This would have resulted in 391 lift owners in Queensland being left with a lift that produced an ongoing risk of falling in circumstances where it was unlikely that remedial action would be undertaken unless it was funded by lift owners;
5. Certain lift owners rely exclusively on the Products to be able to stay in their residence due to mobility issues and the lifts are a key part of their daily life and independence. If the Products were removed or could not be used, some owners would have no choice but to move from their present residence which may result in a loss of quality of life, independence or poorer overall outcome for them. Providing RESiLIFT the opportunity to install the remedial measure as part of the Undertaking prevents this from occurring;
6. The Products are capable of being modified so they are safe and comply with the QBCC Act by removing the risk of fall, so far as reasonably practicable;
7. RESiLIFT have agreed in the Undertaking to design, certify and install the remedial measure in a way that addresses the Commission's concerns;
8. All future sales and installations of the Products in Queensland will include the remedial measure;
9. The required actions in the Undertaking remedy the contravention or alleged contravention of part 6AA of the QBCC Act; and

10. Based on all the above factors, the Commission is of the view that accepting the Undertaking is the appropriate step to take and will result in the best outcome for current and future lift owners.

Material considered by the Commission in making the decision

In reaching the decision, the Commission had regard to the following evidence or other material upon which the decision is based:

1. The QBCC Act;
2. The 7 November 2020 complaint in relation to the Products;
3. Correspondence between RESiLIFT and Ezyhomelift (and their legal representatives) in relation to the Products;
4. NCBP Audit Report dated 19 January 2022 by NCBP Auditor Phillip Morton, including the material relied on in producing the report and/or referred to in that report;
5. The discussion with representatives from the Commission (including the independent expert engineer), RESiLIFT and Ezyhomelift on 18 November 2022;
6. Report by Richard Billett of Field Engineers dated 24 November 2022;
7. Ministerial briefing notes in relation to the Products;
8. Autopsy reports of the two individuals involved in the incident on or about 4 November 2020; and
9. Queensland Police Service's reports to the coroner regarding the deaths of the two individuals who fell from the Product, including the photographs of scene.

Additional information

Pursuant to section 74AQ of the QBCC Act, the Undertaking takes effect and becomes enforceable when written notice of the Commission's decision to accept the Undertaking is given to RESiLIFT.

It is an offence against section 74AR of the QBCC Act to contravene the Undertaking.

Pursuant to section 74AP(2) of the QBCC Act, the Commission will publish on its website notice of the decision to accept the Undertaking and the reasons for the decision.

Pursuant to section 74AS of the QBCC Act, if the Commission considers that RESiLIFT has contravened the Undertaking, the Commission may apply to a Magistrates Court for an order directing RESiLIFT to comply with the Undertaking or discharge the Undertaking.

Pursuant to section 74AT of the Act, RESiLIFT may at any time, with the written agreement of the Commission, withdraw from or vary the Undertaking. However, the Undertaking cannot be varied to provide for a matter relating to a different contravention or alleged contravention of part 6AA of the QBCC Act. Notice of withdrawal or variation of the Undertaking must be published on the Commission's website.

Yours faithfully,

Chris McCahon

Assistant Commissioner
Service Trades and Regulatory
Queensland Building and Construction Commission

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And

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