

ADVISORY NOTICE

BUILDING

12/14

Advisory Notices are issued to assist in the interpretation of the Development Act 1993

October 2014

TECHNICAL:

Non-conforming building products

This Advisory Notice provides information about the use of non-conforming building products. This is a significant issue affecting all jurisdictions in Australia.

BACKGROUND

In 2006, Advisory Notice 07/06 was issued warning of compliance issues with some plywood products, structural steel bolts and some imported smoke alarms and window assemblies.

Twelve months ago BRANZ issued a warning regarding forged Fire Test Reports.

In November 2013 the Australian Industry Group released a report indicating that 92% of company respondents to a survey (across the building and construction sector), reported non-conforming products in their supply chains. Furthermore, 45% of businesses surveyed reported lost revenue, reduced margins or lower employment numbers due to non-conforming products.

DISCUSSION

Non-conforming building products are a significant national issue for several reasons:

- Imported products are being sold that are not compliant with Australian Standards
- Improper product substitution on building sites
- Fraudulent claims regarding product compliance

In South Australia it is a breach of the *Development Act 1993* (s45) if -

“... any item or materials incorporated into any building ... do not comply with the Building Rules ... and the failure to comply is attributable to an act or omission of a person who designed, manufactured, supplied or installed the item or materials ... and where it was reasonable, in the circumstances to rely on the advice, skills or expertise of that person ...”

Product certification schemes

The Australian Building Codes Board operates two product certification schemes:

- CodeMark for building products – this is a voluntary scheme. A CodeMark certificate is automatically accepted as showing compliance with the National Construction Code (regulation 105, Accreditation of building products).
- WaterMark for plumbing products – this has a high level of industry acceptance and enforcement.

The issue impacts not just on the safety and compliance of buildings but also on the economic viability and potential for future investment in products supplied to the industry.



Compliance with the Building Rules is an important component in making sure that only conforming products and materials are used in buildings. This occurs at two points in the process;

- During the assessment of an application
- During any inspections undertaken during construction

There is a need to be vigilant when assessing an application against the Building Rules and to closely scrutinise any information provided. The product CodeMark certificate must be checked to confirm that the product is being used in circumstances that are covered by the certificate.

Product substitution on the building site

Caution must be exercised when a replacement product is offered on a construction site with what appears to be an identical but considerably cheaper product. The substitute product should not be accepted without a thorough examination of the supporting technical data and test results to ensure that it is an equivalent product and in accordance with the development approval.

An inspection of new building work should ensure that it is being constructed in accordance with the approval. This includes any components or materials that were specified in the approval and are necessary for compliance with the Building Rules. Importantly, specified products forming part of the approval should not be substituted until thoroughly checked for equivalent performance. These particular products have been specified for a reason, be it:

- Fire resistance
- Insulation value (Including the type of glass in window assemblies)
- Water resistance
- Structural properties

A substitute product must be regarded as potentially in breach of the approval if it causes the building to not be in accordance with the Building Rules. If there is any doubt about the acceptability of a substitute product then it should be referred back to the building surveyor who assessed the application. In particular, if the specified product is CodeMark compliant and the substitute product is not, then the substitute must be regarded as highly suspect.

Procurement of Construction Products

The Australasian Procurement and Construction Council have released a document titled *Procurement of Construction Products – A guide to achieving compliance* which discusses product conformity in relation to the NCC. The document can be viewed [here](#).

Misleading Advertising

Any instances of misleading advertising should be reported to Consumer and Business Services who are able to take action.

Further information

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