



INFORMATION SHEET

BUILDING SERVICES

Ref: NAT MAT 12-12

BUILDER'S LEGAL AND STATUTORY OBLIGATIONS IN VERIFYING AND USING CONFORMING BUILDING PRODUCTS

The purpose of this information sheet is to provide builders with information on their obligations in verifying and using conforming building products.

Builders have a range of obligations in using “conforming building products” to ensure construction is undertaken to conform to the Building Code of Australia (BCA), warranty obligations are met and any contractual requirements are achieved. Meeting these obligations can assist in: protecting a builder's professional reputation; delivering a quality job; reduces the chance for call backs to rectify works and minimises the risk of legal proceedings.

Background

The BCA is a performance-based code, which means a designer has numerous options to demonstrate conformance with any particular Part of the document. In the BCA Volume 2 (Housing Provisions) each Part has a Performance Requirement and the means to conform to the Performance Requirement can be through either the Deemed to Satisfy (DTS) provision or an Alternative Solutions. The DTS provision provides two pathways – either an Acceptable Construction Manual (ACM) or Acceptable Construction Practice (ACP), in some cases both exist.

The BCA can contain references to Australian Standards, which are produced by Standards Australia, a non-government organisation. The mere fact that a standard is published does not mean you have to automatically conform to it. Standards may become mandatory when they are referenced in legislation or are referred to in the building contract, plans or specifications. However, it is important to note that in some instances the legislation may only refer to a part of a Standard and not the whole document. Further, Standards that are not referenced in the BCA, in whole or part, or not specified in the contract documents may in fact have little or no relevance in the design and subsequent construction of the building. You should however, be aware of the existence of non-referenced Standards that may still represent evidence of a reasonable or industry standard for workmanship or product guarantee purposes.

Conformance with the Building Code of Australia

A building permit states that the work is to conform with the BCA, yet many practitioners, from designers, to builders, to those enforcing or checking conformance, fail to understand how the code operates.

A designer must make a decision on what option to use in the building design and use either the ACM, which is typically where Australian Standards come in, use the ACP, or an Alternative Solution, which may use ACP or ACM as documentary evidence of its consistency to achieve the same performance outcome.

The benefit of using the ‘deemed to satisfy’ options (both an ACP and an ACM) is that they reflect

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tried and proven construction methods developed over many years and conformance with the BCA can be satisfied without having to use any other form of verification.

Where an alternative solution is sought, then evidence of suitability will need to be obtained by the builder, to demonstrate how the alternative solution meets the relevant performance criteria.

The methods used to provide evidence are presented in the BCA Vol 2 Clause 1.2.2 *Evidence of suitability* (a) which details the type of evidence that is required to demonstrate that a product meets a performance requirement or deemed to satisfy solution through one or combination of:

- (i) *A report issued by a Registered Testing Authority.*
- (ii) *A current certificate of conformity or a current certification of Accreditation.*
- (iii) *A certificate from a professional engineer or other appropriately qualified person.*
- (iv) *A current certificate issued by a product certification body that has been accredited by the Joint Accreditation Scheme of Australia and New Zealand (JAS-ANZ).*
- (vi) *Any other form of documentary evidence that correctly describes the properties and performance.*

Where building elements rely on the ACM (primarily Australian Standards) to demonstrate acceptable performance then the materials used need to be supported with documentary evidence to verify conformance. This may take a number of forms including conformance labelling, stamping and certificates. Some building elements that can be designed to meet Australian Standards include but are not limited to footings and slabs, construction steel, windows, timber framing and masonry products.

The onus is on the builder to ensure that they have ordered and used products that conform with the BCA, where required to. There are a few things to keep in mind:

- When ordering products stipulate the supply of conforming products and state the necessary Australian Standard where required;
- Order your products from a reputable manufacturer or supplier that you can develop a long term relationship with;
- On receipt of products check that the order has not been substituted without your approval and check that the necessary documentary evidence has been supplied; and
- Provide evidence to the building certifier of a product's conformance with the BCA performance requirements, where requested.

Statutory Warranty

All Australian states and territories have legislation that implies warranties for contracts for domestic building work, including products and materials used. Under these laws a builder must not only warrant that the building works are carried out in a proper and workmanlike manner and in accordance with plans and specifications, but also, all materials that are supplied for use in the work will be good and suitable for the purpose which they are used. This also applies to work undertaken by a subcontractor and products and/or materials independently supplied.

Consumer protection laws also contain similar provisions that cover domestic building contracts for faulty and/or defective products and/or materials.

A builder is able to exclude liability for products and materials (including workmanship) from a building contract where the owner supplies items and/or engages trades directly. However, it is not possible for a builder to exclude liability for products, materials and work within their responsibility and control.

Contractual Agreements

A builder has an obligation to construct works in accordance with any contract specifications, which makes up a building contract. It is possible for contract specifications to exceed the BCA requirements, but it must meet the prescribed standards set out in the BCA as a minimum. To avoid and keep disputes to a minimum it is a good idea to expressly state in the contract whether there are any items that will exceed the BCA standards that are intended to be used.

Supply and Install contracts

Where a builder engages a contractor for the supply and install of a product as part of the contract the rules remain the same - the product should be fit for purpose and meet the BCA requirements. The onus is on the builder to ensure the product conforms to the BCA, where required.

Installation of supplied products

Where a builder is provided with a product to install by the client and this is detailed in the contract, the onus is on the builder to ensure the product conforms to the BCA, where required, prior to installing the product.

The builder should explain to the client that they will need to obtain proof such as certificates, reports or test results that verify the product conforms to the BCA in order for it to be installed.

If conformance cannot be verified then the builder should advise the client that the works cannot progress until this is rectified and adequate information on conformance can be obtained.