

AWNING, SUNSHADE, CANOPY, BLIND OR SHADING HOOD AND NON-CONFORMING BUILDING PRODUCTS

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Importers, retailers and installers of building products such as awnings, sunshades, canopies, blinds or shade hoods are each a **person in the chain of responsibility** and must ensure the **building products** they import, supply or install, are not **non-conforming building products**. This includes ensuring the **building product** meets **relevant regulatory provisions** which, under the *Queensland Building and Construction Commission Act 1991* (QBCC Act) includes the *Building Act 1975* (Building Act). The Building Act empowers the **Building Code of Australia** (BCA), which is Volume One and Volume Two of the **National Construction Code** (NCC).

Under Queensland's non-conforming building product laws, a **building product** is any material or other thing **associated with**, or that could be **associated with**, a building.

A building product is a **non-conforming building product** for an **intended use** if it is:

- not, or will not be, safe; or
- does not, or will not, comply with the **relevant regulatory provisions**; or
- the product does not perform, or is not capable of performing, for the use to the standard it is represented to perform by or for a **person in the chain of responsibility** for the product.

Development Approvals

Home and building owners need to be aware that in many situations a development approval may be required by local government under the *Planning Act 2016* where the limitations provided in the Building Regulation 2021, Schedule 1 are exceeded. For example, for Class 10 buildings or structures such as an awning, sunshade, canopy, blind or shading hood, a development approval may be required where it exceeds:

- more than 10m² in **plan area**;
- more than 2.4m in height;
- mean height is more than 2.1m, worked out by dividing its total elevational area facing a boundary by its horizontal length facing the boundary; or
- any side is longer than 5m.

A development approval ensures that the requirements of local government and the **relevant regulatory provisions** are met.

Evidence of Suitability

Evidence of suitability are various forms of documentary evidence that can be used for the purpose of demonstrating that the materials, products, plumbing products, forms of construction or design meet the relevant **Performance Requirements** or **Deemed-to-Satisfy Provisions** to not be a **non-conforming building product**.

All building products, imported into, or manufactured in Australia, must have evidence of suitability as prescribed in the NCC 2022 Section A Governing Requirement, Part A5 Documentation of design and construction, subsection A5G1 - Suitability, provides "a building and plumbing or drainage installation must be constructed using materials, products, plumbing products, forms of construction and designs fit for their intended purpose to achieve the relevant requirements of the NCC."

A material, product, plumbing product, form of construction or design is fit for purpose if it is supported by evidence of suitability in accordance with NCC Part A5G2 and A5G3 or A5G4 as appropriate, and constructed or installed in an appropriate manner.

For more information refer to the NCC parts:

- **A5G2 Evidence of suitability—Volumes One, Two and Three [2019: A5.1]**
- **A5G3 Evidence of suitability—Volumes One and Two (BCA) [2019: A5.2]**
- **A5G4 Evidence of suitability—Volume Three (PCA) [2019: A5.3]**

The Australian Building Codes Board (**ABCB**) have produced a Handbook for Evidence of Suitability. The Handbook provides a framework for guidance in selecting the appropriate forms of evidence using a risk-based approach.

Performance Requirements

NCC **Performance Requirements** for an awning, sunshade, canopy, blind or shading hood vary depending on the class of building on which they are to be installed. Performance Requirements for unit complexes and commercial buildings (Class 2-9 buildings) are contained within NCC Volume One, whereas Performance Requirements for detached housing, town housing and sheds (Class 1 and 10 buildings) are provided in NCC Volume Two. Professional advice should be sought if in doubt as to the class of building where the awning, sunshade, canopy, blind or shading hood is to be installed.

The Performance Requirements for structural reliability and resistance is the same in both NCC Volume One (B1P1) and Volume Two (H1P1). That is, a building or structure must:

- perform adequately under all reasonably expected design actions;
- withstand extreme or frequently repeated design actions;
- be designed to sustain local damage; and
- avoid causing damage to other properties.

An inexhaustive list of actions to be considered for the above is provided for in the NCC, which include but are not limited to, dead loads, liquid pressure, thermal effects, wind, earthquake, etc.

These Performance Requirements are deemed to be complied with if the determination of the actions have been certified by a **professional engineer** or other **suitably qualified person** in accordance with AS/NZS 1170 series for Class 2-9 buildings, or AS 4055 for Class 1 or 10 buildings.

Calculations in accordance with AS/NZS 1170 is a professional engineering service, and as such must be carried out by a **professional engineer**. Any engineer wanting to undertake professional engineering services in or for Queensland is legally required to be a Registered Professional Engineer of Queensland (**RPEQ**) with the Board of Professional Engineers of Queensland (**BPEQ**).

NCC Volume One (Class 2-9 buildings) has additional **Performance Requirements** for fire safety. In particular, for the spread of fire (C1P2): “a building must have elements which will, to the degree necessary, avoid the spread of fire.” The degree necessary is dependent on factors such as the function or use of the building, the number of storeys, its proximity to other property, etc.

Different types of fire-resisting construction are specified in C2D2. For example; Type A construction is the most fire-resistant and Type C the least fire-resistant. For further information see NCC Volume One, Table C2D2: Type of construction required.

For Type A or B construction, C2D10 requires the external walls, including the façade covering, to be non-combustible. Ancillary elements must not be fixed to external walls that are required to be non-combustible unless a requirement under C2D14 is met. For an awning, sunshade, canopy, blind or shading hood, this means either it is itself non-combustible, or it:

- (i) meets the relevant requirements of Table S7C7 as for an internal element: and
- (ii) serves a storey—
 - (A) at ground level; or
 - (B) immediately above a storey at ground level; and
- (iii) does not serve an exit, where it would render the exit unusable in a fire.

Table S7C7 requires the awning, sunshade, canopy, blind or shading hood to have a Spread-of-Flame Index (**SFI**) not in excess of 9, and a Smoke-Development Index (**SDI**) not in excess of 8 if the SFI is more than 5. SFI and SDI must be determined in accordance with AS/NZS 1530.3.

As can be seen, the NCC requirements for an awning, sunshade, canopy, blind or shading hood can be complex and dependent on where the product is to be installed. If in doubt, professional advice should be sought.

A **person in the chain of responsibility** must ensure the **building products** they import, manufacture, supply, install, or design are not **non-conforming building products**, or otherwise risk incurring significant penalties. This includes ensuring the **building product** meets **relevant regulatory provisions** such as those contained in the NCC.

Definitions

A **building product**¹ is any material or other thing associated with, or that could be associated with, a building.

Associated with², in relation to a building, means incorporated into, or connected to, a building by the carrying out of **relevant work**.

A building product is a **non-conforming building product**³ for an intended use if—

- a) the association of the product with a building for the use—
 - (i) is not, or will not be, safe; or
 - (ii) does not, or will not, comply with the **relevant regulatory provisions**; or
- b) the product does not perform, or is not capable of performing, for the use to the standard it is represented to perform by or for a person in the chain of responsibility for the product.

Intended use⁴, for a building product, means a use for which the building product it intended to be, or is reasonably likely to be, associated with a building.

Relevant regulatory provisions⁵ means —

- a) in relation to relevant work mentioned in the definition **relevant work**, paragraph (a)—the building assessment provisions under the *Building Act 1975*; or
- b) in relation to relevant work mentioned in the definition **relevant work**, paragraph (b) or (c) - the *Plumbing and Drainage Act 2018*.

Relevant work⁶ means —

- a) building work under the *Building Act 1975* other than work mentioned in section 5(2) of that Act; or
- b) plumbing work under the *Plumbing and Drainage Act 2018* directly connected to a building; or
- c) drainage work under the *Plumbing and Drainage Act 2018* directly connected to a building.

A person is a **person in the chain of responsibility**⁷ for a building product if—

- a) the person—
 - (i) designs, manufactures, imports or supplies the building product; and
 - (ii) knows, or is reasonably expected to know, the product will or is likely to be associated with a building; or
- b) the person installs the product in a building in connection with relevant work; or
- c) the person is an architect or engineer who, in designing a building, specifies that the product be associated with the building.

1. QBCC Act, section 74AB(1).
 2. QBCC Act, section 74AA.
 3. QBCC Act, section 74AB(2).
 4. QBCC Act, section 74AA.
 5. QBCC Act, section 74AA.
 6. QBCC Act, section 74AA.
 7. QBCC Act, section 74AE.

Performance Requirement⁸ means – a requirement which states the level of performance which a ‘performance solution’ or ‘Deemed-to-Satisfy solution’ must meet.

Performance Solution⁹ means - a method of complying with the **Performance Requirements** other than by a **Deemed-to-Satisfy Solution**.

Deemed-to-Satisfy Solution¹⁰ means - a method of satisfying the **Deemed-to-Satisfy Provisions**.

Deemed-to-Satisfy Provisions¹¹ means - provisions which are deemed to satisfy the **Performance Requirements**.

Plan area¹², of the class 10 building or structure, means the area contained within its extremities after the building work has been completed, including overhangs and, if the class 10 building or structure is existing, its existing area.

Useful link

ABCB Handbook – Evidence of suitability

<https://www.abcb.gov.au/resource/handbook/evidence-suitability-handbook>

Disclaimer

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If you have any questions as to how the NCBP laws apply to you, you should obtain appropriate independent professional advice regarding how to discharge your duties under the *Queensland Building and Construction Commission Act 1991* (QBCC Act) and achieve compliance with **relevant regulatory provisions** for building products. This is especially important if you (or your company) intend to later rely upon that advice to demonstrate satisfaction of your duties under Part 6AA of the QBCC Act or other legislative obligations.

8. NCC 2022 Volume One, schedule 1 Definitions, Glossary.

9. NCC 2022 Volume One, schedule 1 Definitions, Glossary.

10. NCC 2022 Volume One, schedule 1 Definitions, Glossary.

11. NCC 2022 Volume One, schedule 1 Definitions, Glossary.

12. Building Regulation 2021, schedule 1, section 13(4).