

IMPORTED BUILDING PRODUCTS TESTED OUTSIDE OF AUSTRALIA

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An importer is a **person in the chain of responsibility** and must ensure the **building products** they import or supply, are not **non-conforming building products** (NCBP). This includes ensuring the **building product** meets **relevant regulatory provisions** and a duty to provide **required information** for the product.

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**, including the National Construction Code 2022 (NCC); 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.

The **relevant regulatory provisions** under the *Queensland Building and Construction Commission Act 1991* (QBCC Act) include the *Building Act 1975* (Building Act) and *Plumbing and Drainage Act 2018* (PD Act) which respectively incorporate Volume One and Volume Two of the NCC as the **Building Code of Australia** (BCA), and Volume Three of the NCC as the **Plumbing Code of Australia** (PCA). A **building product** must comply with the NCC as a **relevant regulatory provision**.

Required information, for a **building product**, includes information about the product that for each intended use of the product, states or otherwise communicates, among other things, the **suitability** of the product for the intended use. All building products, imported into, or manufactured in Australia, must have evidence of suitability as prescribed in the NCC.

A5G1 - Suitability

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 2022 Part A5G2 and A5G3 or A5G4 as appropriate and constructed or installed in an appropriate manner.

For more information refer to the NCC 2022 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]

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.

Notably, under A5G3 and A5G4, one form of evidence of suitability may be a report provided by an **Accredited Testing Laboratory**. An **Accredited Testing Laboratory** can be one of the following:

- a. an organisation accredited by the National Association of Testing Authorities Australia (**NATA**) to undertake the relevant tests.
- b. an organisation outside Australia accredited to undertake the relevant tests by an authority recognised by NATA through a mutual recognition agreement.
- c. an organisation recognised as being an Accredited Testing Laboratory under legislation at the time the test was undertaken.

According to NATA's website:

NATA is one of around 100 accreditation bodies world-wide that are signatories to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA), which supports the mutual evaluation and acceptance of each other's accreditation systems.

Many laboratories outside of Australia are accredited to undertake testing to the NCC 2022 referenced Standards. The Standards that each laboratory is accredited to complete tests for are listed under their scope of accreditation published on the accrediting bodies' website. Testing by a non-accredited laboratory may be undertaken, however, the test report cannot be accepted under evidence of suitability Part A5G3(1)(d) nor Part A5G4(1)(a), (2)(a), (4)(b) of the NCC 2022.

Another form of evidence of suitability is contained at Part A5G3(1) (f) of the NCC 2022 namely a form of documentary evidence, such as but not limited to a **Product Technical Statement**, that demonstrates that a material, product, form of construction or design fulfils specific requirements of the BCA; and sets out the basis on which it is given and the extent to which relevant standards, specifications, rules, codes of practice or other publications have been relied upon to demonstrate it fulfils specific requirements of the BCA.

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.

Impact on Deemed-to-Satisfy Provisions and Performance Requirements

The **Deemed-to-Satisfy Provisions** are forms of construction or materials which are well known and provide a reliable outcome. The NCC 2022 references documents (such as Australian Standards), and provides accepted forms of construction, materials, and test methods, which must be complied with to satisfy the **Deemed-to-Satisfy Provisions**, Specifications and Verification Methods.

New or innovative products often do not have a **Deemed-to-Satisfy Provision** available. This is usually because there is no NCC 2022 referenced standard for the product or materials. In these circumstances, testing to other standards or a report from a professional engineer or other appropriately qualified person may be required to demonstrate the **Performance Requirement** has been satisfied.

Testing undertaken outside of Australia is often undertaken in accordance with Standards other than NCC 2022 referenced Australian Standards, such as European or American Standards. This does not eliminate such testing; however, a **Deemed-to-Satisfy** pathway would no longer be available and a **Performance Solution** to satisfy the **Performance Requirement** is required.

It should be noted that the acceptance of any form of evidence of suitability, other than a current CodeMark Certificate of Conformity, and for approving a **Performance Solution**, is at the discretion of the appropriate authority. The appropriate authority is typically the building surveyor or building certifier with the statutory responsibility to determine building compliance.

Further Information

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** which includes accompaniment of **required information** such as the evidence of suitability as provided for by the NCC 2022.

Definitions

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

Associated with,² in relation to a building, means incorporated into, or connected to, a building by the carrying out of **relevant work**.

Relevant work³ 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 building product is a **non-conforming building product**⁴ 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 use⁵, for a building product, means a use for which the building product is intended to be, or is reasonably likely to be, associated with a building.

Relevant regulatory provisions⁶ 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*.

Required information⁷, for a building product, means information about the product that —

- (a) for each intended use of the product, states or otherwise communicates the following—
 - (i) the suitability of the product for the intended use and, if the product is suitable for the intended use only in particular circumstances or subject to particular conditions, the particular circumstances or conditions;
 - (ii) instructions about how the product must be associated with a building to ensure it is not a non-conforming building product for the intended use;

1. QBCC Act, section 74AB(1).

2. QBCC Act, section 74AA.

3. QBCC Act, section 74AA.

4. QBCC Act, section 74AB(2).

5. QBCC Act, section 74AA.

6. QBCC Act, section 74AA.

7. QBCC Act, section 74AG(7).

- (iii) instructions about how the product must be used to ensure it is not a non-conforming building product for the intended use;
- (b) complies with the requirements for the information, if any, prescribed by regulation for this definition.

A person is a **person in the chain of responsibility**⁸ 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.

Accredited Testing Laboratory⁹ means one of the following—

- (a) An organisation accredited by the National Association of Testing Authorities Australia (NATA) to undertake the relevant tests.
- (b) An organisation outside Australia accredited to undertake the relevant tests by an authority recognised by NATA through a mutual recognition agreement.
- (c) An organisation recognised as being an Accredited Testing Laboratory under legislation at the time the test was undertaken.

Performance Requirement¹⁰ means – a requirement which states the level of performance which a **Performance Solution** or **Deemed-to-Satisfy Solution** must meet.

Performance Solution¹¹ means - a method of complying with the Performance Requirements other than by a **Deemed-to Satisfy Solution**.

Deemed-to-Satisfy Solution¹² means - a method of satisfying the Deemed-to-Satisfy Provisions.

Deemed-to-Satisfy Provisions¹³ means - provisions which are deemed to satisfy the Performance Requirements.

Product Technical Statement¹⁴ means - a form of documentary evidence stating that the properties and performance of a building material, product or form of construction fulfil specific requirements of the NCC, and describes—

- (a) the application and intended use of the building material, product or form of construction; and
- (b) how the use of the building material, product or form of construction complies with the requirements of the NCC Volume One and Volume Two; and
- (c) any limitations and conditions of the use of the building material, product or form of construction relevant to (b).

Useful links

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. QBCC Act, section 74AE.

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

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

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