

18 August 2017

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The Insurance Council of Australia Limited (ICA) is pleased to make this submission to the Victorian Cladding Taskforce, on non-conforming wall cladding products or Non-Conforming Building Products (NCBP).

From the insurance industry perspective, this issue has been previously identified as an emerging risk and many insurers have incorporated this risk within their individual underwriting guidelines.

Executive Summary

- The current Australian regulatory regime in relation certification and identification of non-conforming building products needs to be reviewed and adjusted to ensure that only properly tested and compliant materials are used in all buildings
- The ICA believes, there should be consideration of a national approach to policing and enforcement of existing regulations, including a national audit of buildings to detect and quantify the current level of exposure to NCBP, but in its absence any state based enforcement would be welcomed.

Insurance – Measuring risk, assisting recovery and signaling a need for adaptation

The general insurance industry provides financial risk offset and recovery services for Australian businesses, families and individuals – calculating the probabilities of damage, offering insurance cover¹ and then compensation when damage occurs.

Importantly, private insurance mechanisms also produce a price signal or financial incentive that can motivate adaptive activity to reduce exposures. Where exposures increase beyond the commercial appetite of global insurance markets to provide cover, a critical price signal is delivered. In these extreme cases those in the community who face an ‘uninsurable’ risk are forced to adapt by absorbing the risk potential within their own finances (self-insurance), or by undertaking risk mitigation activity to reduce exposures – move locations, mitigate the risk, or modify built structures to increase resilience.

Policing and enforcement advice and recommendations.

The ICA contends that the current regimes involving private certification within the building industry can be open to unacceptable failures.

The ICA believes there should be an independent specification and plan review process, including an inspection regime scheduled to coincide with critical stages of construction development. These regimes should conclude in a final certification process that precludes

¹ For insurable events

any potential for non-compliance and product substitution. Whilst likely to be an unpopular suggestion, giving rise to complaints about increased costs and impacts on building timeframes, a robust and independent compliance regime will ultimately save lives and costly rectifications where non-compliance is only detected in a building some time after occupation has commenced.

The ICA understands that there are examples where suitable powers already exist. The Queensland Building Construction Commission (QBCC) has the power to enter premises and building sites for purpose of examining documentation, including chain of supply documentation and taking samples of products for testing if necessary. A system to readily identify non-conforming building products, such as panel marking, would also assist in identifying sub-standard and non-conforming products.

A system to readily identify NCBP, such as code or trade marking, would also assist in identifying sub-standard and non-conforming products, especially if combined with suitably accessible reference sources, education and inspection regimes both at the time of manufacture, importation, purchase or arrival on-site.

Independent verification and assessment systems

It is important to ensure building material testing procedures are stringent enough to provide confidence that certification is a reasonable measure of quality and compliance. Building material testing should also reflect how the building product would behave in-situ and not in an artificial or isolated environment.

The ICA believes that assessment or product compliance and suitability should be administered and controlled in Australia. Whilst lacking any centralized capacity, there are a range of commercial entities throughout Australia who have the capability to conduct appropriate testing and certification of compliance with Australian standards of imported products.

The ICA also contends that the “Evidence of Suitability” in the National Construction Code (NCC) is open to misapplication and in need of amendment or clarification. “Evidence of Suitability” is;

“Any other form of documentary evidence that correctly describes the properties and performance of the material or form of construction and adequately demonstrates its suitability for use in the building”.

The ICA is concerned that there is no qualification on the type of documentation, who can prepare the documentation and what, if any, performance measures must be used. The ICA believes that this requirement is too wide and too open to abuse.

CONCLUSION

The ICA recognizes that the identification and use of non-conforming building products is a complex issue and it is pleased to assist the Taskforce in its inquiry. The ICA believes that the continued use of these products and the associated risks will increase the likelihood for increased insurance premiums as well as other associated costs.

Furthermore the ICA and its members believe that a review of the current regulatory regime is necessary to ensure that only compliant and properly certified materials are used in building construction.

Finally the ICA contends that the most appropriate way forward is through a national approach to building material certification, compliance and regulatory enforcement, but in its absence any state based enforcement would be welcomed.

For further information and comment please feel free to contact Karl Sullivan, General Manager, Risk and Disaster Planning on ksullivan@insurancecouncil.com.au

Yours sincerely



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