Position Statement

Product compliance and evidence of suitability

Version 1
Approved for release July 2014
FIRE PROTECTION ASSOCIATION AUSTRALIA
1.0 **Position Statement**

FPA Australia advocates the following in relation to product compliance and evidence of suitability for fire protection products used in Australia:

**Fit for purpose**

1. Fire protection products required to be installed by legislation and/or installed in pursuit of life safety, property protection and environmental protection, must be "fit for the purpose for which they are intended" to achieve minimum safety standards and to maintain consumer confidence. Products must comply with all relevant legislation including, but not limited to, building, work health and safety, and consumer laws.

**Testing**

2. Testing of fire protection products is critical to demonstrating their performance. FPA Australia’s position in relation to each of the legislated evidence of suitability pathways currently available for fire protection products in Australia, is that these are only supported where products are:
   
   (a) Tested to ACCC Mandatory Standards (where applicable) and relevant Australian Standards; or
   
   (b) Tested to equivalent or more onerous International Standards, where equivalence is based on:
       
       (i) the accreditation status of the laboratory being appropriate for the test being conducted;
       
       (ii) test conditions, specimen configuration and equipment being identified;
       
       (iii) test duration being confirmed;
       
       (iv) performance and test results being validated;

**Certification**

3. FPA Australia’s position in relation to the certification of products for use in Australia is that they should only be certified if:

   (i) tested in accordance with point 2 above, or
   
   (ii) when varied to a minor degree from a product that has been tested in accordance with point 2 above, where this variation is specifically assessed and documented.

**Technical competence**

4. Products for use in Australia should be tested or certified by an organisation able to demonstrate both product specific technical capacity and testing or certification competence relevant to the product being assessed. Such capacity and competence
Product compliance and evidence of suitability

FPA Australia aims to promote the protection of life, property and the environment from fire and related emergencies.

<table>
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<th><strong>Position Statement PS05</strong></th>
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<tr>
<td>Product compliance and evidence of suitability should be able to be independently confirmed.</td>
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**Documentation**

5. Easily identifiable evidence that the performance of product has been evaluated in accordance with a recognised pathway is critical to ensuring compliance with relevant legislation, standards and specifications. Documentation provided as evidence of product compliance, should clearly and transparently indicate what recognised pathway has been adopted and what specific performance criteria or standard the product meets or exceeds including any associated conditions.

**Accessing international markets & maintaining local performance standards**

6. Acceptance of products manufactured overseas in accordance with Australia’s WTO (World Trade Organisation) obligations must be balanced with ensuring that the products are suitable for Australian conditions.

   Australia, as a signatory of the WTO agreement - Reduction of Technical Barriers to Trade is obliged to support product import and export opportunities. However, Australia should exercise section 2.2 of the agreement more actively and establish prescribed evidence of suitability criteria for imported and locally produced fire protection products to maintain consistent local performance and safety standards and prevent deceptive practices.

7. Prescribed evidence of suitability criteria should be established specifically for fire protection products by establishing a national product scheme. The rigour applied in demonstrating that a product is "fit for purpose" should be commensurate with the risk (probability x consequence) should the product fail.

**Enforcement**

8. The ACCC (Australian Consumer and Competition Commission) should exercise specific powers and responsibilities to investigate reported product failures in the field, product non-compliance and product compliance complaints resulting in fines and/or removal of product from sale as necessary.
2.0 Introduction

This position statement has been prepared by FPA Australia to advocate the Association’s position on product compliance in the fire protection industry and discuss the types of evidence of suitability that can currently be sought to demonstrate product compliance. This position statement also advocates ways to improve product compliance processes and outcomes in the future.

3.0 Audience

This position statement is intended for:

(i) FPA Australia members

(ii) Fire protection product manufacturers, suppliers, distributors and installers

(iii) Project and product certifiers including building surveyors and certification bodies

(iv) Designers, including fire safety engineers

(v) National, state and territory regulators.

4.0 Background

FPA Australia has developed this position statement to advocate improvements in Australia’s approach to product compliance due to concerns raised by FPA Australia members and other key stakeholders in the fire protection and broader construction industry.

Significant concerns relate to the diverse options available for demonstrating product compliance and the inconsistency of the rigour which can be applied to the development and approval of evidence of suitability under each of these options. Some of the less robust options have the potential to be abused and this poses a risk to the community. Testing product to recognised standards is a necessary investment in quality assurance that should always form part of preparing evidence of suitability.

Australia has migrated from a local and controlled product compliance market to a more dynamic and flexible compliance landscape that is predicated on supporting free-trade and providing export opportunities for Australian manufacturers. Australia, as a signatory to the WTO (World Trade Organisation) agreement on reducing technical barriers to trade is obliged, where possible, to accept overseas products in the Australian market. This has introduced the need for reciprocal acceptance of local and foreign product approval however it has also introduced difficulties in ensuring foreign products meet local performance standards.

As a result, the Australian market is now trading in products that may, or may not, have been demonstrated to necessarily satisfy the same performance criteria.
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FPA Australia aims to promote the protection of life, property and the environment from fire and related emergencies.

While the WTO Agreement has created greater market competition and flexibility, it has also resulted in reduced consistency and confidence in product compliance. This lack of consistently prescribed performance criteria has:

- undermined the notion of a level playing field
- made product comparison extremely difficult for the consumer
- increased the potential of product failure, jeopardising community safety.

FPA Australia advocates that there is a strong need to simplify and strengthen the governance of product compliance and evidence of suitability options in Australia and to develop national schemes for fire products sold and used in Australian. Such schemes must implement a level of rigour to the determination of product compliance commensurate with the risk of product failure. In lieu of a nationally consistent approach this Position Statement details the elements that FPA Australia consider should be included wherever possible when using the current pathways available to demonstrate product compliance.

5.0 Why is Product Compliance & Evidence of Suitability Important?

Fire protection products must be fit for the purpose for which they are intended to operate reliably. Many fire protection products are required to operate infrequently but must perform first time, every time in the event of a fire or emergency to mitigate significant impacts on life safety, property protection and the environment. Product compliance is essential to achieving fire safety objectives.

Product compliance is also a legal requirement. The primary building legislation in each state and territory outlines the requirements and available compliance pathways. Work Health and Safety legislation requires designers and manufacturers to reduce health and safety risks so far as is reasonably practicable. The Australian Consumer Law also establishes expectations for product performance and to provide a guarantee of fitness for purpose by the supplier to the purchaser. In addition to these benchmarks, contractual arrangements between parties typically carry an expectation for compliance with legislation and may also stipulate aspects of work or products that are expected to exceed minimum performance requirements.

Evidence of suitability documentation is essential to demonstrate and provide confidence that products meet required performance benchmarks. Evidence of suitability documentation is used to confirm that a material, form of construction or design (i.e. product) will achieve required or expected performance criteria.

By establishing uniform acceptance criteria, evidence of suitability can also be used in the evaluation and comparison of different products. Robust evidence of suitability documentation can also assist in managing liability and is essential to support international trade of a product.

Producing evidence of suitability and demonstrating compliance is critically important to deliver performance expectations.
Product compliance and evidence of suitability

6.0 Current Options for Compliance

Different industry stakeholders may be familiar with one or more options for evidence of suitability in isolation of others. The following illustration provides a summary of the current legislative pathways available to demonstrate evidence of suitability in Australia.

![Diagram showing pathways for evidence of suitability in Australia]

Each of these pathways contain various control measures or requirements that vary the associated rigour of assessment. This provides flexibility and choice but can reduce outcome consistency and allow for variable product performance to be acceptable.

In the interests of consistency and maintaining local performance benchmarks, FPA Australia only supports the use of each of these pathways when, as a minimum, products are:

(a) Tested to ACCC Mandatory Standards (where applicable) and relevant Australian Standards; or

(b) Tested to equivalent or more onerous International Standards, where equivalence is based on:
   (i) the accreditation status of the laboratory being appropriate for the test being conducted
   (ii) test conditions, specimen configuration and equipment being identified
   (iii) test duration being confirmed
   (iv) performance and test results being validated.
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FPA Australia considers that testing is fundamental to demonstrating product compliance and that ACCC Mandatory Standards and relevant Australian Standards establish local performance benchmarks. It is accepted that there are equivalent or more onerous International Standards that imported products may have been tested to. In this case there is no need to re-test to local Standards subject to this equivalence being demonstrated.

Where certification of products is undertaken, FPA Australia considers that wherever possible this should be based on a test as described above or comparison to tested product.

Ensuring products are tested to recognised standards introduces a level of consistency to the application of the current evidence of suitability pathways.

The person or organisation issuing the test certificate or certification must be able to demonstrate product specific technical capacity and certification competence and these attributes should be independently confirmed.

The following sections of this document discuss in further detail each of the evidence of suitability pathways available and other associated issues.

7.0 Primary Building Legislation

Some jurisdictions have an established Building Regulations Advisory Committee (BRAC) and/or other prescribed persons or bodies that may provide accreditation that a building product satisfies the requirements of the regulations in that jurisdiction. This accreditation is considered to be evidence of suitability, however it only applies to the installation of the product in the state or territory that provided the accreditation.

Each state and territory government has individual legislation and associated regulation that controls the following activities in their jurisdiction:

- the construction of new buildings
- alterations and additions to existing buildings
- use of buildings
- maintenance of buildings and installed equipment and systems.

As such, each jurisdiction sets its own requirements for:

- The minimum fire safety measures required to be installed and the level of performance or standard required to be achieved by these fire safety measures
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- The type of evidence acceptable to demonstrate that individual products will comply and achieve the required level of performance or standard (i.e. the acceptable evidence of suitability)

Each jurisdiction’s legislation may set these requirements within their legislation, in addition or isolation to a reference to the Building Code of Australia (BCA) or Australian Standards. Primary building legislation can provide the power for government to accredit products as meeting the requirements of legislation and generally prescribe that accreditation by a State or Territory government must be accepted. However assessment for such accreditation may not necessarily include consistent requirements for testing or certification by a competent person or body and these aspects are at the discretion of government.

Where there is no applicable building legislation, i.e. building work that is not classifiable under the Building Code of Australia, the general requirements of Work Health and Safety laws, Australian Consumer Law and contractual obligations remain applicable. Complying with one of the pathways available under building legislation may satisfy the requirements of these more general requirements.

Care should also be taken to ensure products meet the requirements of plumbing legislation and electrical legislation where applicable. The Plumbing Code of Australia has specific requirements for evidence of suitability and state and territory legislation also references compliance with AS/NZS 3500 – Plumbing and Drainage series. State and territory legislation also references AS/NZS 3000 Electrical installations (known as the Australian/New Zealand Wiring Rules).

### 8.0 Building Code of Australia

As there is no single federal legislative regime for building construction in Australia, the Building Code of Australia (BCA) is adopted by states and territories to achieve nationally consistent, minimum necessary standards of relevant health, safety (including structural safety and safety from fire), amenity and sustainability for building construction.

The BCA is adopted through reference in each state and territory’s legislation. Therefore the BCA’s evidence of suitability options provide national product compliance options.

### 8.1 Compliance with the BCA

In order to comply with the BCA, building solutions must satisfy the Performance Requirements contained therein. Compliance with the Performance Requirements can be achieved by complying with the prescriptive Deemed-to-Satisfy provisions, formulating an Alternative Solution or a combination of these options.

Clause A0.9 of the BCA provides the following four Assessment Methods for determining that a building solution complies with the Performance Requirements. One
or more of these Assessment Methods must be used when assessing an Alternative Solution (refer to Clause A0.8(a)).

Assessment methods:

(i) **Provide documentary evidence of suitability in accordance with clause A2.2 confirming product performance.**

(ii) Use of a Verification Method which may involve a test, inspection, calculation or other method.

(iii) Compare the proposed building solution with the Deemed-to-Satisfy Provisions to determine equivalence.

(iv) Provide expert judgement from a person who has the necessary qualifications or experience to determine compliance.

Providing documentary evidence of suitability in accordance with clause A2.2 has two advantages:

1. It can be used to determine that a building solution complies with the BCA Performance Requirements via supporting an Alternative Solution; or

2. It can also be used to simply demonstrate that the Deemed-to-Satisfy Provisions are met.

When used to demonstrate that the Deemed-to-Satisfy Provisions are met, evidence of suitability can be used repetitively for an individual product. This makes clause A2.2 compliance attractive for product suppliers and installers. The documentary evidence used to satisfy clause A2.2 is portable evidence and can be applied to the nominated product, wherever it might be installed (subject to conditions and acceptance by the Authority Having Jurisdiction). The other Assessment Methods are project specific options requiring variables other than product performance to be considered to determine if a proposed building solution is acceptable. These variables may include but are not limited to, building size, use, location, construction and occupant characteristics.

Where an Alternative Solution is assessed using one or more of the other Assessment Methods, documentary evidence complying with clause A2.2 may also serve as evidence that components or products to be used as part of this Alternative Solution are suitable, therefore supporting the holistic assessment of the Alternative Solution.

Figure 2 below outlines the relationship between compliance, building solution options and accepted Assessment Methods as required by the BCA.
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8.2 BCA A2.2(a) Evidence of suitability - overview

Clause A2.2 “Evidence of Suitability” of Volume One of the BCA (replicated by clause 1.2.2 of Volume Two of the BCA) establishes options for manufacturers or suppliers of products to provide different forms of documentary evidence to support a claim that a material, form of construction or design is suitable and fit for purpose. Figure 3 outlines these options.

There is no hierarchy associated with these options. The BCA simply provides options for different forms of evidence that is considered to be acceptable, therefore providing flexibility to product suppliers as to which option they choose to satisfy. The extent to
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which the documentary evidence of suitability complies with one of these options is ultimately at the discretion of the Authority Having Jurisdiction (AHJ) to accept. However some options are acceptable automatically as detailed in this document.

Each option has various controls that affect the robustness of that option. A brief overview of each option, including these controls, is covered in sections 8.3 through 8.7 of this document.

In addition to the above, A2.2(b) of the BCA discusses options to provide evidence to support that a calculation method complies with an ABCB protocol. In relation to fire protection products, such calculation methods apply to determining the Fire Resistance Level (FRL) of a building element in accordance with Specification A2.3 or the fire hazard properties of a building component or assembly in accordance with Specification A2.4.
8.3 BCA A2.2(a) evidence of suitability – Option 1

“A report issued by a Registered Testing Authority, showing that the material or form of construction has been submitted to the tests listed in the report, and setting out the results of those tests and any other relevant information that demonstrates its suitability for use in the building.”

This option incorporates two important controls:

1. The report must be issued by a Registered Testing Authority

“Registered Testing Authority” is a defined term in the BCA, meaning:

(a) an organisation registered by the National Association of Testing Authorities (NATA) to test in the relevant field; or

(b) an organisation outside Australia registered by an authority recognised by NATA through a mutual recognition agreement; or

(c) an organisation recognised as being a Registered Testing Authority under legislation at the time the test was undertaken.”

Using a Registered Testing Authority ensures that the organisation has the technical competence to undertake the testing and that the testing will be undertaken in an appropriate, professional and consistent manner.

2. The product must have been tested to a relevant test standard

The test conducted needs to be the one specified by the BCA or another test considered appropriate to demonstrate compliance, in order for this form of documentary evidence to be considered for acceptance by the AHJ.

Similarly, as NATA accredits laboratories for specific standards they can test to, it is important to ensure that the lab is accredited to test to the relevant test standard.
8.4 **BCA A2.2(a) evidence of suitability – Option 2**

“A current Certificate of Conformity or a current Certificate of Accreditation.”

The BCA defines Certificate of Conformity as “a certificate issued under the ABCB scheme for products and systems certification stating that the properties and performance of a building material or method of construction or design fulfil specific requirements of the BCA”. For building products this scheme is known as CodeMark. The CodeMark scheme is accredited by the Joint Accreditation System of Australia and New Zealand (JAS-ANZ).

A Certificate of Accreditation is “a certificate issued by a State or Territory accreditation authority stating that the properties and performance of a building material or method of construction or design fulfil specific requirements of the BCA.”

This covers product accreditation by a State or Territory Building Regulatory Advisory Committee (BRAC) and/or other prescribed persons or bodies that have power under local legislation to determine that products meet the specific requirements of the BCA and other relevant regulations. The inclusion of the Certificate of Accreditation option in the BCA provides a link to the primary building legislation options discussed in section 7.0 of this document.

Unlike the other options in Clause A2.2 of the BCA, State and Territory legislation generally prescribes that product accredited via a Certificate of Conformity issued by ABCB or a Certificate of Accreditation issued by a State or Territory accreditation authority must be accepted. Acceptance of these options is therefore automatic from the Authority Having Jurisdiction’s perspective.
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8.5 BCA A2.2(a) evidence of suitability – Option 3

“A certificate from a professional engineer or other appropriately qualified person which—

(A) Certifies that a material, design, or form of construction complies with the requirements of the BCA; and

(B) Sets out the basis on which it is given and the extent to which relevant specifications, rules, codes of practice or other publications have been relied upon.”

This option allows for a certificate to be provided confirming a product is suitable based on informed opinion and judgement and may or may not include a reference to a standard test or certification process.

This approach relies on an assessment by a professional engineer or other appropriately qualified person to determine suitability and does not include a requirement to conform to any process for doing this. This introduces an aspect of discretion; however, this is balanced by the requirement to set out the basis on which the certificate was issued and to what extent that relevant documents were relied upon.

A definition of a professional engineer is provided in the BCA and means a person who is:

“(a) If legislation is applicable — a registered professional engineer in the relevant discipline who has appropriate experience and competence in the relevant field; or

(b) if legislation in not applicable—

(i) a Corporate Member of the Institution of Engineers, Australia; or

(ii) eligible to become a Corporate Member of the Institution of Engineers, Australia, and has appropriate experience and competence in the relevant field.”

However, “other appropriately qualified person” is not defined. This is therefore left to the Authority Having Jurisdiction considering the associated documentary evidence provided under this option to determine what other qualifications would be appropriate.

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<tr>
<th>Positive Aspects</th>
<th>Issues to be aware of</th>
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<tbody>
<tr>
<td>• Allows for engineering judgement</td>
<td>• When “appropriately qualified person” is used, the qualifications, competency, skills and knowledge of the person should be documented</td>
</tr>
<tr>
<td>• May be used nationally</td>
<td>• Check for application of a standard testing or certification process</td>
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8.6 **BCA A2.2(a) evidence of suitability – Option 4**

“A current certificate issued by a product certification body that has been accredited by the Joint Accreditation System of Australia and New Zealand (JAS-ANZ).”

JAS-ANZ provides an independent assessment of the certification processes adopted by a Certification Body (also known as Conformance Assessment Body (CAB)). Product certification issued by a Certification Body that has been accredited by JAS-ANZ confirms that independent evaluation of product has been undertaken to meet multiple elements affecting product performance as part of a certification scheme. Also, JAS-ANZ accreditation confirms that this has been undertaken by a competent Certification Body applying prescribed and consistent processes outlined in the certification scheme that has been accredited.

ISO/IEC Guide 67 establishes six different product certification systems that include various elements of assessment that a Certification Body may undertake depending on the type of product certification scheme. Table 1 below outlines the elements that Certification Bodies apply jointly, or in part as accredited by JAS-ANZ when evaluating the conformity of a product and these can vary between certification schemes.

**Table 1 – ISO/IEC Guide 67 Product Certification System Requirements**

<table>
<thead>
<tr>
<th>Element</th>
<th>Measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selection</td>
<td>Sampling as applicable</td>
</tr>
<tr>
<td>Determination of Characteristics</td>
<td>As applicable, by: Testing, Inspection, Design appraisal, Assessment services</td>
</tr>
<tr>
<td>Review</td>
<td>Evaluation</td>
</tr>
<tr>
<td>Decision on Certification</td>
<td>Granting, maintaining, extending, suspending, withdrawing</td>
</tr>
<tr>
<td>Licensing (attestation)</td>
<td>Granting, maintaining, extending, suspending, withdrawing the right to use certificates or marks</td>
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<tr>
<td>Surveillance</td>
<td>As applicable by: (a) Testing or inspection of samples from the open market (b) Testing or inspection of samples from the factory (c) Quality system audits combined with random tests or inspections (d) Assessment of the production process or service</td>
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<tr>
<th>Positive Aspects</th>
<th>Issues to be aware of</th>
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<tr>
<td>• Application of a certification process that has been independently accredited by JAS-ANZ</td>
<td>• Check what quality assurance elements are incorporated in the certification scheme being applied</td>
</tr>
<tr>
<td>• Certification includes additional quality assurance controls, beyond testing</td>
<td>• Check that certification includes the application of a standard test</td>
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<tr>
<td>• The Certification Body should be able to demonstrate product specific technical capacity and competence</td>
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<tr>
<td>• May be used nationally</td>
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8.7 BCA A2.2(a) evidence of suitability – Option 5

“Any other form of documentary evidence that correctly describes the properties and performance of the material.”

This option provides maximum flexibility in formulating evidence of suitability to demonstrate product compliance.

Two main ways of providing documentary evidence to meet option 5 recognised by FPA Australia are:

1. **Product Assessment Schemes**

   An example of such a scheme is the ActivFire conformity assessment scheme administered by CSIRO. ActivFire is currently not JAS-ANZ accredited but is a conformity assessment scheme (Certification Scheme) that has protocols in place to independently evaluate products to verify conformance to relevant criteria including laboratory testing and assessment. Product approvals via schemes like ActivFire confirm that the product has been verified as meeting specified requirements as detailed in the listing.

2. **Listing**

   Some Australian Standards referenced by the BCA that relate to fire safety include a requirement for product components to be listed by recognised testing and approval bodies such as:

   (i) FM – Factory Mutual
   (ii) UL - Underwriters Laboratories
   (iii) LPC – Loss Prevention Council
   (iv) VdS – Verband der Schadenverhutung

   Listing of products by these organisations confirms that test and evaluation processes have been undertaken. It is important to note, however, that care should be taken to ensure these agencies listings are based on reports from test houses that are accredited to test to the relevant equipment standard and that the listing supports the use of the product as it is proposed or required to be installed meeting Mandatory Standards, Australian Standards or equivalent or more onerous International Standards.

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<table>
<thead>
<tr>
<th>Positive Aspects</th>
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<tbody>
<tr>
<td>Ultimate flexibility</td>
<td>• No specific requirements for testing or certification</td>
</tr>
<tr>
<td>Allows for use of product assessment schemes and product listed by recognised testing and approval bodies</td>
<td>• No specific requirements to demonstrate testing capacity or competence</td>
</tr>
<tr>
<td></td>
<td>• Check for rigour of assessment</td>
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Although the phrase “any other form of documentary evidence” in Option 5 allows these types of evidence to be accepted by an AHJ, it remains a broad statement. FPA Australia considers that this statement:

(a) is prone to abuse by unethical persons; and

(b) is misunderstood or poorly applied by members of the industry who have not been educated about what is appropriate; and

(c) Lacks transparency and places considerably more responsibility on both providers of this type of documentary evidence and those AHJ’s considering accepting it, to identify the compelling reasons that support its validity and provide confidence that the associated product will achieve the performance criteria expected.

This option in clause A2.2 provides the ultimate support for the WTO Agreement to reduce technical barriers to trade. However it has the most potential to be exploited by unethical practices.

8.8 BCA A2.2(b) evidence of suitability – calculation methods – fire resistance

Clause A2.3 of the BCA discusses requirements for determining fire-resistance of building elements. This clause is supported by Specification A2.3 of the BCA which provides options for determining compliance by calculation and prescribes the ABCB protocols for the methods of calculation.

Aside from a building element being listed in Table 1 of Specification A2.3 or tested or compared to a product that has been tested, Specification A2.3 allows for the determination of a Fire Resistance Level (FRL) by calculation based on the performance of a prototype in the Standard Fire Test. The Specification also establishes protocols for applying the calculation method to building elements, these include:

(a) Acceptable variations from the tested prototype taking into account size, span, conditions of support and cross-section and components; and

(b) Demonstrating how an FRL would be achieved if the building element was subject to the regime of the Standard Fire Test in relation to structural integrity (including deflection), integrity and insulation; and
(c) Calculations must take into account:

“(i) the temperature reached by the components of the prototype and their effects on strength and modulus of elasticity; and

(ii) appropriate features of the building element such as support, restraint, cross-sectional shape, length, height, span, slenderness ratio, reinforcement, ratio of surface area to mass per unit length, and fire protection; and

(iii) features of the prototype that influenced its performance in the Standard Fire Test although these features may not have been taken into account in the design for dead and live load; and

(iv) features of the conditions of test, the manner of support and the position of the prototype during the test, that might not be reproduced in the building element if it is exposed to fire; and

(v) the design load of the building element in comparison with the tested prototype.”

A2.2(b) requires that evidence to support the use of the calculation method complying with these protocols mentioned above, is in the form of one or a combination of the following:

“(i) A certificate from a professional engineer or other appropriately qualified person which—

(A) certifies that the calculation method complies with a relevant ABCB protocol; and

(B) sets out the basis on which it is given and the extent to which relevant specifications, rules, codes of practice and other publications have been relied upon.

(ii) Any other form of documentary evidence that correctly describes how the calculation method complies with a relevant ABCB protocol.”
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9.0 Australian Standards

It is only a legal requirement to comply with an Australian Standard if it is directly referenced in legislation, regulation or by contract. Otherwise, Australian Standards are voluntary. However, even when voluntary, many manufacturers choose to abide by standards as they:

- Facilitate trade and market exchange
- Provide certainty to buyers and sellers trading products as to the level of performance
- Limit ambiguity as to product specification and buyer requirements.

Australian Standards may be integrated in the evidence of suitability compliance framework in a number of ways:

(i) Australian Standards for product testing are recognised as the preferred test standard by various pieces of legislation and the Building Code of Australia.

(ii) Australian Standards for product design and performance are directly referenced by legislation, regulation and the Building Code of Australia.

(iii) Australian Standards for product or system components can require listing of products by recognised listing agencies as discussed in Section 8.7 above.

Therefore, in many circumstances, evidence of suitability that demonstrates compliance with Australian Standards will provide direct evidence of product compliance with the requirements of legislation or the BCA.

10.0 ACCC & Mandatory Standards

In addition to the voluntary standards developed by Standards Australia, government may declare mandatory standards that specify minimum requirements to ensure consumer protection.

Mandatory standards are legally binding and require goods to comply with particular performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging rules.

Non-compliance with mandatory standards constitutes a breach of the Australian Consumer Law. Accordingly where products are required to comply with mandatory standards, associated evidence of suitability must clearly confirm that compliance with these requirements is met.

11.0 Documentation

As discussed there are a range of options for formulating evidence of suitability in terms of the methodology applied to determining product performance. With this range of options comes varying documentation confirming product compliance. Documentation can include, reports, certificates, listings, evaluations, assessments and other forms of documentation that correctly describe the properties and performance of product.
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This range of documentation options can make it difficult for product manufacturers, suppliers, users and approval authorities to quickly determine compliance.

FPA Australia advocates that documentation provided as evidence of product compliance should clearly and transparently indicate what recognised pathway has been adopted to confirm product performance and what specific performance criteria the product meets or exceeds including any associated conditions.

12.0 World Trade Organisation Agreement - Reducing Technical Barriers to Trade

Global economic forces have an increasing impact on the production and supply of goods and services. In order to balance competing objectives associated with demand, capability, cost, market share and acceptance, countries often enter into trading agreements or policies to formally acknowledge and reciprocate the appropriateness of both exported and imported goods and services between markets. Australia’s most significant trade agreement is its membership of the World Trade Organisation (WTO).

The WTO describes itself as follows:

“The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world’s trading nations and ratified in their parliaments. The goal is to help producers of goods and services, exporters, and importers conduct their business.”

One of the WTO agreements is the Agreement on Technical Barriers to Trade. The objective of this Agreement is defined as follows:

“The Agreement on Technical Barriers to Trade tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles, while also providing members with the right to implement measures to achieve legitimate policy objectives, such as the protection of human health and safety, or the environment.”

Australia’s acceptance of this WTO Agreement, via the Council of Australian Governments (COAG), has influenced the development of the evidence of suitability options for product compliance. In particular, Australia’s acceptance of this WTO Agreement has provided flexibility to adopt a range of forms of evidence, including certain international documentation.

Figure 4 below illustrates how the WTO Agreement influences Australian evidence of suitability controls.
Product compliance and evidence of suitability

FPA Australia aims to promote the protection of life, property and the environment from fire and related emergencies.

However, while the Agreement on Technical Barriers to Trade confirms that international trade is encouraged, Members of the Agreement (countries) can include restrictions to achieve legitimate risk reduction objectives locally. Section 2.2 of the Agreement states the following:

“Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, inter alia: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, inter alia: available scientific and technical information, related processing technology or intended end-uses of products.”

Prevention of deceptive practices and protection of human health and safety and the environment remain the key reasons for establishing evidence of suitability controls in relation to the fire safety product industry.

FPA Australia advocates that these provisions within the WTO Agreement should be exercised more actively in Australia by establishing prescribed evidence of suitability criteria for imported and locally produced fire protection products to maintain consistent local performance and safety standards.
Product compliance and evidence of suitability

FPA Australia aims to promote the protection of life, property and the environment from fire and related emergencies.

13.0 Enforcement

FPA Australia encourages stakeholders to provide evidence of product failure to enable the ACCC to exercise specific powers and responsibilities to further investigate reported product failures in the field.

Evidence of product failure should be provided directly to the ACCC or FPA Australia.

14.0 Disclaimer

The opinions expressed in this correspondence reflect those of FPA Australia however are subject to change based on receipt of further information regarding the subject matter. You should interpret the technical opinion or information provided carefully and consider the context of how this opinion / information will be used in conjunction with the requirements of regulation (state and/or federal); relevant standards, codes or specifications; certification; accreditation; manufacturer’s documentation and advice; and any other relevant requirements, instructions or guidelines. FPA Australia does not accept any responsibility or liability for the accuracy of the opinion / information provided, nor do they accept either directly or indirectly any liabilities, losses and damages arising from the use and application of this opinion / information.

15.0 References


2. WTO Agreement on Technical Barriers to Trade – Published by the World Trade Organization, Geneva, Switzerland.

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