Dear Dr Dermody,

I am pleased to provide to the Senate Economics References Committee Inquiry into non-conforming building products, the attached submission on behalf of the State of Victoria.

The use of non-compliant building products is of concern to all tiers of government, the construction industry, business and the community. Recognising this, Building Ministers at their meeting on 31 July 2015 agreed that the Australian Building Codes Board will investigate options for a possible mandatory scheme for high risk products with life safety implications. This is a positive step towards the introduction of a more robust system of product certification for certain products.

The Senate Economics References Committee Inquiry provides an opportunity to explore the wider impacts of non-conforming building products on the economy and I look forward to the receiving report findings when released.

Yours sincerely

HON RICHARD WYNNE MP
Minister for Planning

6/18/2015
Senate Economics References Committee
Inquiry into non-conforming building products
Submission from the State of Victoria

Recommendations

Victoria recommends that in relation to possible improvements to the current regulatory frameworks for ensuring that building products conform to Australian standards, the Inquiry considers:

1. The introduction of a mandatory certification scheme under which Certificates of Conformity (with the Building Code of Australia performance requirements) are explicit in respect of the range of use or circumstances in which a product may be relied upon to be fit for purpose;

2. The two models proposed by Victoria for the introduction of a mandatory certification scheme: either mandatory Codemark certification or the adoption of a mandatory National Building Products Accreditation Scheme; and

3. The need to accredit testing bodies to support a mandatory certification scheme.

The Victorian context

The building and construction industry is a significant contributor to the Australian and Victorian economies. Recent data from the Australian Bureau of Statistics indicates that approximately 23 percent of Australia’s construction employment is located in Victoria. The building and construction industry is Victoria’s fifth largest employer, employing approximately eight percent of the Victorian labour force.

In 2013/14 the building and construction industry contributed 6.3 percent of the Victorian GSP. Nationally the construction industry contributed eight percent of Australia’s GDP. Victoria’s share of gross value added for the construction industry in Australia is approximately 17.4 percent for the 2013/14 financial year.

The July 2015 CommSec State of the States Report finds that construction work is higher than decade averages and is driving productivity and growth across other sectors, driven by population growth and housing demand.
There are a multiplicity of agencies and participants involved across jurisdictions in the supply chain for building products, resulting in a highly complex and high risk environment compounded by a lack of transparency and confidence that products are fit for purpose in their end use. As a result the use of non-conforming products is one of national significance that requires leadership at a national level to ensure that building products are appropriately assessed for their purpose and intended use.

Economic growth, rapid development and related population intensification has transformed the housing landscape of many Australian capital cities. This has been characterised by the emergence of high rise residential developments which carry a very different fire risk profile than that of the traditional single detached dwelling. The use of non-combustible materials in high rise buildings and the need to ensure that proper materials are used in the correct circumstances are important considerations for all state and territory governments.

The potential impact of non-conforming products on the economy, the safety and amenity of our buildings, the safety of occupants and attending emergency services personnel in the event of an emergency response such as a fire is too great to ignore.

In the current environment the building and construction industry, building product wholesalers and retailers and consumers of building products and services cannot be confident that current certification methods provide the necessary level of assurance of safety. Complex regulatory frameworks exist at both state and national levels that need to be considered in a holistic way. The issue of industry supply chains and import of goods into Australia needs to considered in addition to the regulation of use and building construction.

This submission is informed by the Victorian experience with the Lacrosse building fire and observations made in the Melbourne Fire Brigade (MFB) report in regard to fire safety standards in high rise buildings and by actions that Victoria is pursuing at the national level through the Building Ministers’ Forum to drive improvements in the regulatory framework. A short summary of the Lacrosse Building fire at Melbourne Docklands is provided as context to Victoria’s views on the need for a national approach to ensure that only conforming building products are used in the right circumstances.

The Lacrosse building fire highlighted two critical weaknesses in the current building product certification system. Firstly, that there is no single organisation or regulator responsible for certifying products as being compliant with relevant standards; and secondly, that Certificates of Conformity (with the Building Code of Australia performance requirements) where available, are not always explicit in respect of the range of use or circumstances in which a product may be relied upon to be fit for purpose.
A Victorian case study

Lacrosse building fire

On 25 November 2014 a fire occurred at the Lacrosse building apartment building in Docklands, Melbourne. The three year old, 23 storey apartment building contains Class 2 residential apartments (a total of 312), Class 6 Restaurants/Retail and Class 7a Ancillary car parking (effective building height of 58.7 metres). The general structure of the building comprises suspended reinforced concrete floor slabs and reinforced concrete load bearing walls. Panel wall systems are used for external cladding and also include lightweight internal wall systems.

The fire, which started on an eighth floor balcony, impacted two floors below and extended upward to all floors in the building to the roof, engulfing 16 levels in 15 minutes. The alert was raised with the Metropolitan Fire Brigade at 2.24am on Tuesday 25 November 2014.

The MFB investigation into the fire found a contributing factor to the rapid vertical fire spread to be the use of a composite aluminium/polyethylene external cladding product named Alucobest. Following indicative testing by the CSIRO the cladding product was found to be combustible and non compliant with National Construction Code standards for use in buildings of three or more storeys. The rapid spread of the fire also compromised the Emergency Warning and Intercommunication System, disabling the system in parts of the building before it had time to activate.

It is estimated that the fire caused in excess of $5 million in damages to the building. Eighteen fire-affected apartments remain uninhabitable, however 285 other apartments are occupied. These costs do not reflect the costs incurred in providing emergency housing nor the costs that may result from any further remediation that may be necessary.

It is understood that some residents are considering a class action against the owners of the building.

Mandatory Certification

The National Construction Code sets minimum standards for construction. To meet that minimum standard, materials and products need to be ‘fit for purpose’. This can sometimes be complex to demonstrate or to confirm the information source when a product is supplied through international channels. The validation of international materials is an onerous task that is currently undertaken by the building surveyor (or building certifier) at the end of the supply chain and often after building has commenced. Yet determination of whether high risk building products are ‘fit for purpose’ is critical to achieving life safety in buildings.

The ABCB CodeMark building product certification scheme provides a nationally accepted voluntary process to allow new and innovative building products to be assessed for compliance with the Building Code of Australia (BCA). However, a voluntary system is only able to capture a limited number of products and does not provide the level of necessary assurance that products have been appropriately tested for the purpose for which they are to be used. Of the estimated 100,000 plus building products in the Australian marketplace, only some 130 are CodeMark assessed.
It is understood that the Alucobest product used on the Lacrosse building had not been tested to demonstrate its non-combustibility, nor had it gained a Certificate of Conformity under the ABCB CodeMark scheme for products and systems certification. This example raises issues around the need for mandatory product certification, the requirement for a sound and unambiguous fit for purpose assessment of certain high risk building products and a mechanism to prevent product substitution.

Several approaches could be adopted, the first being simply to strengthen the CodeMark Certificate of Conformity process. The CodeMark Certificate of Conformity is issued by a Conformity Assessment Body and specifies that the properties and performance of a building material or method of construction or design fulfil specific requirements of the BCA. Reviewing the CodeMark scheme rules to require explicit, clear and unambiguous reference to provisions of the NCC to which the certificate relates would improve clarity around what the Certificate of Conformity is certifying compliance with.

Making CodeMark certification mandatory for high risk building products with a life safety consideration would further reinforce the integrity of the product compliance process. Endorsing a mandatory assessment and certification for all products that have a life safety consideration similar to WaterMark where the evidence to demonstrate suitability may be from the current pathways listed in the BCA would improve certainty and reliability around the use of such products. It is noted that the ABCB is working to implement an enhanced CodeMark building product certification however that approach is still based on voluntary participation.

Alternatively, consideration could be given to the adoption of a mandatory National Building Products Accreditation Scheme for all building products. It is important that there are explicit restrictions on the use of certain building products in inappropriate circumstances. Further, to ensure that building work includes only appropriate building products, there is a need for a mechanism for product suppliers, builders and building surveyors to be readily able to determine whether products are compliant for use in the relevant circumstances. A mandatory scheme could be adopted at a national level, building on the existing voluntary CodeMark scheme, and modelled on radio communications compliance labelling requirements or a similar scheme to WaterMark which is based around the licensing of a trademark by approved certifiers.

A national scheme, embedded within Commonwealth legislation could empower an appropriate body to issue a notice to declare building products or classes of building products to be subject to the mandatory scheme and required to bear a compliance label.

This could commence with setting criteria to define high risk life safety products. Some building products involving life safety could be subject to more rigorous testing and evidentiary requirements, while other products that are less risky could have less burdensome requirements.

A national body could accredit testing bodies (for example NATA or JAS-ANZ). Testing bodies could also be located overseas if a mutual recognition agreement was in place (similar to the Australia-EU Mutual Recognition Agreement on Conformity Assessment).
By strengthening the approach to certification, provisions could also be established to make it an offence for the manufacturer or importer to import or supply building products that are subject to the mandatory scheme without the compliance label, or with a compliance label but without having made a declaration of conformity. The ACCC (or another appropriate federal regulator) could have primary responsibility for prosecuting contraventions, reflecting the leading role that federal agencies have in regulating international trade, corporations and interstate commerce.

**A National Approach**

The Building Ministers’ Forum meeting of 31 July 2015 provided an opportunity for states and territories and the Commonwealth to collectively discuss the issues of non-conforming building products and materials. Resulting from this discussion was the establishment of a senior officers working group to report to Building Ministers on strategies to minimise risks to consumers, businesses and the community associated with failure of building products to conform with relevant laws. This is an important first step in establishing a cohesive national approach that can benefit consumers and industry.

Building Ministers also agreed that the ABCB will investigate and report within six months on options for a possible mandatory scheme for high risk building products with life safety implications. A copy of the Communique is attached.

These actions will address issues of product conformity with Australian standards once products are within the Australian marketplace. Complementing this approach by improved surveillance and screening at the point of entry will further strengthen the regulatory environment. To be most effective, changes at the national level will need each state and territory to have in place an appropriate and robust approval and regulatory framework.