

Australian Window Association
Pymble Corporate Centre
Building 1, Level 1, Suite 1
20 Bridge Street Pymble NSW 2073
[REDACTED]



28 August 2017

Mr Mark Fritt
Committee Secretary
PO Box 6100
Parliament House
Canberra ACT 2600
E: economics.sen@aph.gov.au

Dear Mr Fritt

RE: INQUIRY INTO NON CONFORMING BUILDING PRODUCTS

I refer to your correspondence dated 26 July 2017 regarding the committee's public hearing on 19 July 2017, at which Mr Rodger Hills of the Building Products Innovation Council referred to fraudulent certification documents that were in the possession of the Australian Window Association.

I am writing to you to provide a definitive sample of the fraudulent certification documents in our possession. I would comment, however, that Mr Hill's statement to the fact that the AWA is in possession of "literally thousands" of documents is rather ambitious and was not made by the AWA. He may be referring to the fact that the AWA has been involved with product conformity and compliance for over 10 years now and has been involved in numerous actions that have resulted in many thousands of windows and glazing being removed from and replaced in building across Australia.

I attach, for your reference, a sample of verified fraudulent documents provided to us by window companies, builders and certifiers and note there are many more, in addition to other actions taken in conjunction such as:

- In the period 2014-2017 we have put on notice 70+ companies in Australia and China for falsely holding themselves to be AWA or WERS members on their websites. The AWA operates a mandatory audit and accreditation program for members that is run through our NATA accredited inspection agency. This is held in high regard by regulators and surveyors and so the misrepresentation is considered more than just reputational.
- In 2014 the AWA contracted the services of an independent expert to carry out a forensic review of a series of test reports from testing laboratories in China. The errors contained varied from 38 (best) to 76 (worst) on a number of imported products. The AWA has worked closely with NATA on this issue and continues to do so, including auditing test laboratories on the China mainland. This has done little to stem the amount of reports coming through. The size of the files prohibits me attaching them here.

I would be happy to provide more information or discuss this further.

Yours sincerely

[REDACTED]

Tracey Gramlick
Executive Director & CEO



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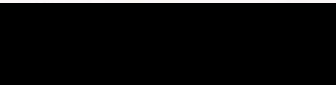
AS/NZS 2208:1996 - Safety glazing materials in buildings

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Licence No: SMK40452

Issued : 2 October 2015
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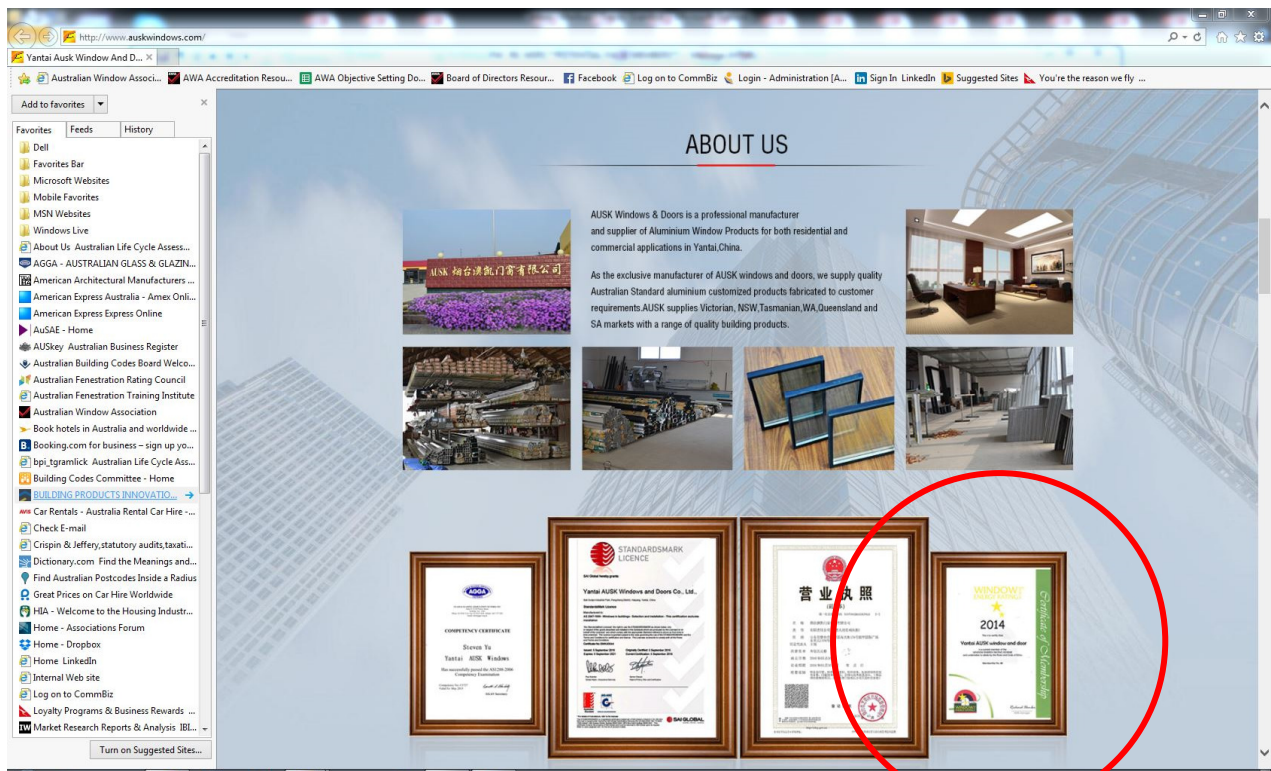
Originally Certified : 2 October 2015
Current Certification : 2 October 2015



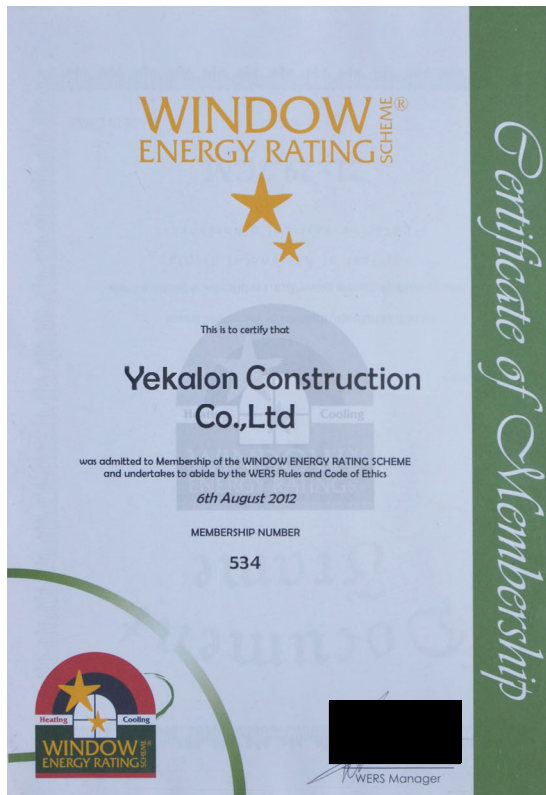
Heather Mahon
Acting Head of Policy, Risk and Certification



Typical example: the AWA has an arrangement with SAI Global to access their database and check the authenticity of licenses. When one is found to be falsified it is passed onto them for their action. This is the most recent document – a certifier sending it to us for validation in July 2017.



An example of a website notified to us by a builder in June 2017. Not only is the certificate a fake, it is well outside the current accreditation year (annually done). The company has simply ignored any request to have it removed.



Imported product certificate supplied in 2015 as verification. It is a membership certificate only and is a fraudulent document. They have never been WERS or AWA members.



Provided by a builder in 2015 who was checking the claims after not being able to find the company on the AWA website listing. Not only is the AWA certificate fraudulent, the SAI Global accompanying document was also found to be fraudulent.

Our ref:SSU:EJO:12732

Your ref:

12 July 2013

Attn: Tracey Gramlick
Australian Windows Association
By email: [REDACTED]

Dear Tracey,

RE: ADVICE IN RELATION TO BRANZ FRAUDULENT CERTIFICATES

INSTRUCTIONS

We confirm that you have provided the following instructions:

- To provide you with a brief overview of the applicable legal rights, remedies available by the various parties involved in the use of the product Firetard 120 manufactured by Fire Retardant Company Pty Ltd ('the Company').
- Advice as to the immediate and future steps to be taken by the AWA in responding to the information regarding Firetard 120.
- Providing draft correspondence that we recommend be sent to members, building contractors and consumers alerting them to issues relating to Firetard 120 and further information.

BACKGROUND

- You have recently been informed by BRANZ and the Commonwealth Scientific and Industrial Research Organisation ('CSIRO') that documentation allegedly produced by them is false. The documents make representations as to the quality and standards of the product Firetard 120.

- As a result, Firetard 120 may not meet AS/NZS 3837 performance specifications for treated Western Red Cedar and, as far as you are aware, there is no independent verification as to the quality and standard of Firetard 120 for the purpose of bushfire-resistance when applied to Western Red Cedar.
- At this stage the AWA should take a cautious approach about making any statements that the Firetard 120 does not work, as there is no independent evidence to make such conclusions.
- On a preliminary basis, the members should be informed about the information provided by BRANZ and the CSIRO and advised that the AWA is unaware if any re-examination of the product is being undertaken to determine if it does meet Australian standards.
- The members should also be informed to temporarily discontinue use of the product subject to further clarification as to whether Firetard 120 meets Australian standards.
- In light of this, our strongest recommendation is to recast the correspondence received from BRANZ and the CSIRO to building contractors and consumers and consider the methods of mitigating the risk and loss. **Members should not delay** in this as there are possible risks of criminal negligence in the event of loss of property or life because of potential failure of Firetard 120 and also loss of consumer's insurance coverage because buildings may not meet building codes or standards.

PROPOSED CORRESPONDENCE

- We have provided draft correspondence we recommend be sent to AWA members, building contractors and consumers to update them on Firetard 120.
- The purpose of this correspondence is to ensure that all relevant parties are informed of the situation and **consideration of alternative actions that can be taken to mitigate any potential loss.**

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POTENTIAL ACTIONS

1. Consumers (building owners) may have a right to the following action against:

1. Building Contractors for breach of contract, action in negligence, contraventions of State Fair Trading legislation, State Building legislation and the Australian Consumer Law.
2. Window Manufacturers for an action in negligence, contravention (and offences) of consumer guarantees and safety provisions found in State Fair Trading legislation and the Australian Consumer law.
3. The Company and/or its Directors for action in negligence, contravention of consumer guarantees, and product safety provisions (and offences) found in State Fair Trading legislation and the Australian Consumer law, and potential breach of Commonwealth Criminal Code and the Australian Corporations law.

2. Building contractors may have a right to the following action against:

1. Window Manufacturers for breach of contract, action in negligence, contravention (and offences) of consumer guarantees and safety provisions in State Fair Trading legislation and Australian Consumer Law.
2. The Company and/or its Directors for action in negligence, contravention of product safety provisions (and offences) found in State Fair Trading legislation and the Australian Consumer law, and potential breach of Commonwealth Criminal Code and the Australian Corporations law.

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All correspondence to

PO Box 1440

Buddina QLD 4575

ABN 59 131094016

3. The window manufacturers may have a right to the following action against:
 1. The Company and/or its Directors for breach of contract and action in negligence, contravention of consumer guarantees, and product safety provisions (and offences) found in State Fair Trading legislation and the Australian Consumer law, and potential breach of Commonwealth Criminal Code and the Australian Corporations law.
4. BRANZ and CSIRO may also be liable for action against them in negligence and breaches of Australian Consumer Law.

FURTHER STEPS

- Our short investigations show there may be alternative products on the market that may be suitable alternatives to Firetard 120. It is recommended the AWA consider instructing us, or directly liaising with BRANZ and the CSIRO for the purpose of further investigation into Firetard 120 and consideration of replacement products to be recommended to AWA members and consumers.
- We recommend the AWA investigate if BRANZ or CSIRO are intending on testing Firetard 120 and if not then AWA consider either funding or requesting a member apply to have Firetard 120 urgently tested to verify if it does meet the AS/NZS 3837 standards before making any representations as to its fitness for the purpose of bushfire resistance. The AWA should be aware of liability that may result from funding the testing of Firetard 120 and seek further detailed advice before adopting this option.
- Should the Firetard 120 be found to be non-compliant with Australian Standards then further consideration of the legal consequences will need to be investigated.
- We understand the AWA has contacted the Australian Competition and Consumer Commission (ACCC) regarding safety concerns with Firetard 120. We also recommend AWA immediately contact:

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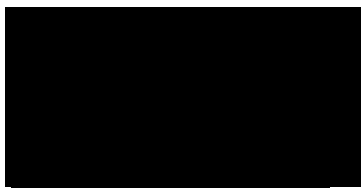
- the Australian Building Codes Board (ABCB); and
- The various State Offices of Fair Trading.

SUMMARY

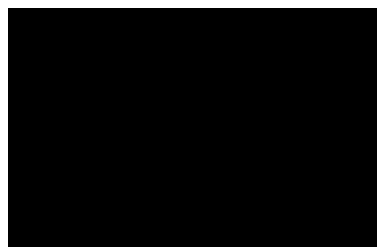
- Urgently investigate testing of Firetard 120 for compliance with Australian standards and certification and see if results prove it is fit for the purpose of bushfire resistance.
- We have included two letters to consumers, one that states certification of Firetard 120 is being investigated within a particular time frame and in the alternative that no testing is to be undertaken.

If you have any questions, please do not hesitate to contact our office.

Yours Sincerely,



Shane Ulyatt
Solicitor
Greenhalgh Pickard Solicitors



John Greenhalgh
Solicitor Director
Greenhalgh Pickard Solicitors

For queries regarding this matter, please contact [REDACTED]

[REDACTED]
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