



PLANNING circular

BUILDING SYSTEM

Act and Regulation changes

Circular BS 06–006

Issued 23 June 2006

Related

CodeMark—new certification scheme for building products and systems

This Circular advises of changes to the *Environmental Planning and Assessment Act 1979* (EP&A Act) and *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) to give effect to a new certification scheme for building products and systems in NSW, known as ‘CodeMark’.

Introduction

The new CodeMark scheme for the certification of building products and systems replaces the previous Australian Building Products and Systems Certification Scheme administered directly by the Australian Building Codes Board (ABCB), which is no longer in operation. Under CodeMark, provision has been made for accredited third-party certification bodies to evaluate and certify products and systems to ensure they meet specified requirements of the Building Code of Australia (BCA). The overall responsibility for managing the CodeMark scheme remains with the ABCB.

To give effect to CodeMark in NSW, a number of legislative changes to the EP&A Act and EP&A Regulation have been required. The changes, which come into effect on 23 June 2006, are explained below.

Amendments to the EP&A Act

The EP&A Act has been amended by the *Building Professionals Act 2005* (Schedule 3) to recognise that accreditation of building products and systems under the CodeMark scheme provides proof of compliance with the BCA.

Also, sections 79C(4), 85A(4) and 109F(2) of the EP&A Act have been amended to use the terminology ‘building product or system’ in lieu of the previous terminology, to clarify the scope of the certification scheme referred to in the EP&A Regulation. These sections of the EP&A Act provide that when a product or system is accredited in accordance with the EP&A Regulation, consent authorities cannot refuse to issue development consents, construction certificates or complying development certificates

on the grounds that a building product or system does not comply with a requirement of the BCA.

Amendments to the EP&A Regulation

Part 12 of the EP&A Regulation (clauses 224 and 225) has been amended to reference the new CodeMark scheme and to provide savings provisions for building products and systems where a certificate of conformity has already been issued or an application lodged for a certificate of conformity under the previous scheme (but only for the currency of the certificate).

Clause 224 of the EP&A Regulation provides that for the purposes of issuing development consents, and construction or complying development certificates, a building product or system is accredited if, and only if, it is issued with a certificate of conformity in accordance with the CodeMark scheme, managed by the ABCB.

Clause 225 provides that any building product or system for which a certificate of conformity was issued or an application lodged under the previous ABCB scheme, will be taken to be accredited in accordance with the clause 224 (as amended), for the period of time that the certificate of conformity is valid.

The CodeMark scheme

The CodeMark scheme is managed in Australia by the ABCB and in New Zealand by the Department of Building and Housing. The Joint Accreditation System of Australia and New Zealand (JAS-ANZ) accredits certification bodies, which in turn evaluate applications for certification in Australia against the requirements of the BCA. CodeMark certification bodies may issue certificates of conformity where

the applications are approved, and may also suspend or withdraw certificates of conformity, as the case requires.

Details of the CodeMark scheme, including the CodeMark Scheme Rules, CodeMark certification bodies in Australia, and CodeMark certified products are available from the ABCB's website, www.abcb.gov.au

Certificates of conformity

Obtaining a certificate of conformity under the CodeMark scheme is not mandatory in NSW. The scheme is intended for the benefit of producers and users, as a means of ensuring products or systems comply with the relevant provisions of the BCA and are accepted by consent and certifying authorities as meeting BCA requirements.

Certificates of conformity issued by CodeMark certification bodies are valid for three years (unless withdrawn or suspended) and would describe, among other things, the relevant BCA provisions against which the certificate is issued and any conditions or limitations.

Before relying on a certificate of conformity, users of products and systems should be mindful of the information on the certificate, including the provisions of the BCA against which the product or system has been assessed, the conditions or limitations, and certificate's currency.

Certificates of conformity for products and systems continue to be referenced as evidence of suitability under the BCA in Clauses A2.2 of Volume One and 1.2.2 of Volume Two.

Further information

The relevant legislation—the EP&A Act and EP&A Regulation, and the *Building Professionals Act 2005*, which amends the EP&A Act—may be accessed on the NSW Parliamentary Counsel Office's website at www.legislation.nsw.gov.au

Enquiries

General enquiries regarding the changes to the EP&A Act and EP&A Regulation, may be made to the Department on 9228 6529.

Note: This circular and others issued by the Department of Planning are available on the Department's website: www.planning.nsw.gov.au/planningsystem/practice notes.asp.

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Important note

This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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