Making NCC Evidence of Suitability Claims

Many decision-makers in the construction supply chain have a vital interest in the NCC conformity claims made by manufacturers and suppliers. They use these claims as a key factor to decide what products to specify, what products to procure, and what Evidence of Suitability (EoS) needs to be presented to meet building regulatory requirements. EoS claims are only useful for them when they are true, accurate, in easy-to-understand language and appropriately verifiable. False, misleading or incomplete claims of product conformity also unfairly disadvantage businesses that are making genuine claims.

When making EoS claims, you can use these five principles to help you comply with your building regulatory obligations, and ensure that any claims you make create trust in your business and allow construction decision-makers to make informed decisions.

Principle 1: Make accurate and truthful claims

Accuracy and verification

Any product conformity claims you make should be accurate, relevant, verifiable, true and factually correct. If your claim is not true or is only partially true, you should either change the claim or not make the claim at all. If products are provided to you by a third party (e.g. components for a more complex product, or where products manufactured by others are marketed by you as 'own brand'), you should ensure any product conformity claims you make about those products are accurate and truthful, as if you had made them yourself. This may involve undertaking reasonable steps to verify supporting information provided to you by your suppliers, or as necessary to provide "Required Information" under Chain of Responsibility legislation. It is also good practice to regularly review any claims you make to ensure that they are correct and up to date.

Do not overstate the level of NCC or Standards compliance

Product conformity claims will often be made guaranteeing compliance with the NCC and/or a Standard. When determining the type of evidence to support the use of a product or system is fit for its intended purpose to achieve a Performance Requirement, a Deemed to Satisfy Provision, or a Standard, the relevant quantified

performance level(s) or attribute(s) must be specified on all evidence. This includes test reports, Product Technical Statements and Certificates of Conformity. For example: NCC H1P1 is the Performance Requirement that relates to structural reliability and resistance, however a quantified performance level or attribute could be the specific wind load a product, element or building is required to meet.

Do not overstate the level of product conformity testing

Product conformity claims will often be based on testing. However the tests conducted may only form part of the evidence required to fully comply with Australian or International Standards. Where this is the case, any claims of conformity should state the precise tests or assessments and parts of the Standard conformed to, and not present the claim as blanket conformity to the Standard.

Where products are tested in isolation, as individual components and not as part of systems or fabric assemblies constructed on site, this limitation should be clearly stated in any claims of conformity. Whilst testing materials in isolation provides a logical and level comparison between products, it does not allow for dynamic interactions, or build tolerances when different products are fixed together into systems.

When testing products to an Australian or International Standard, a clear distinction needs to be made and communicated to construction decision-makers, between physical tests performed on a product, and results that are simply extrapolated mathematically from those or other physical tests.

Do not exaggerate product conformity by 'Golden Sampling'

Golden sampling is the practice of submitting either:

- An initial conforming product (or perhaps a prototype) for testing which is not reflective of subsequent production, for reasons that might include changes in supply of materials or components, design changes, or changes made to production processes.
- A conforming product for testing out of a range of similar product lines that do not reach this same standard, but which appear to be identical or closely resemble the compliant product.

This practice not only misleads construction decision-makers into believing that you have a stronger basis for your claim than is really the case, but it sets up a highly risky scenario where your mass-produced item might fail to achieve the performance that construction decision-makers expect of it. This could lead to product failure, occupant risk, economic loss and litigation.

Principle 2: Make sure your evidence backs up your claims

You must be able to substantiate any product conformity claim you make with clear evidence, whether the claim is made as EoS, on your packaging, in your advertising, through your employees, or in other ways.

When choosing evidence to support your claims, keep the following in mind:

- Your evidence may come from third parties (such as suppliers). When making product conformity claims, do not rely solely on claims made by your suppliers or other third parties, but instead take reasonable steps to verify any information you want to rely on.
- If you have conducted laboratory testing to support your claim, whether or not those tests are specified in a Standard, make sure the laboratory test regime reflects the conditions that will normally be experienced by building practitioners using your product as well as any limitations that might apply regarding the use of the product (refer Principle 4).
- Compliance tests may not directly relate to a current batch of specified or supplied material, product or form of construction. In such cases, there should be a verifiable means linking the relevance of a compliance test report to the product or system of interest. While this can typically be achieved through a process of formal product certification, in the absence of such certification, or in addition to it, other approaches might be appropriate, proportionate to the risk associated with the product or system. Where considered necessary, such approaches might include ongoing surveillance testing (consistent with AS ISO/IEC 17020 or AS ISO/IEC 17065 requirements) of certain product attributes, production monitoring or other controls.

Always ensure continuous and ongoing product compliance, backed up by evidence that is demonstrably reflective of the currently supplied product; it's not simply a one-off achievement.

Principle 3: Do not exaggerate claims or hide important information

Completeness of information

In many cases, giving consumers incomplete information is also misleading. This can be the case if you provide some information but leave out important details which might contradict or qualify the product conformity or fitness for purpose claim.

For example, highlighting the positive aspects of your product, service, or business while omitting information about the negative aspects can give construction decision-makers the impression that your business, product, or service has better performance or wider fitness for purpose than it really does.

It is good practice to be transparent about your product conformity claims and policies, and the information you are relying on to support them. In doing so, it can be helpful to consider the information that construction decision-makers and, potentially consumers, need to form their own conclusions about the performance of your product.

Small print shouldn't hide the truth

You cannot rely on disclaimers, disclosures or clarifications buried in small print, or otherwise not displayed prominently enough compared to your headline claim, as an excuse for making misleading product conformity claims. Any information that you provide in small print or qualifications should not conflict with the overall message of your claims.

When making product conformity claims, it is good practice to only use small print to provide supporting information. If you do need to make a disclaimer or qualification, you can reduce the risk of giving an overall impression that is misleading by prominently displaying this near the headline statement.

Principle 4: Explain any limitations or qualifications on your claims

Where and how the product or system works

Some product conformity claims may only be true under certain conditions. For example, a roof fastener may only keep sheeting on in winds that are non-cyclonic, or it may corrode quickly in a marine environment. Other claims may only be realised if certain steps are carried out, such as installation/pairing with some products but not others.

These types of claims can be misleading if the conditions or required steps are not clearly stated or are unlikely to be realised during ordinary construction use. Some examples of where this may occur include where:

- A claim is true when the product is tested in laboratory conditions, but these conditions are unlikely to occur in standard building construction.
- A claim is accurate in some locations where the product is sold, but not in others.
- The technology or infrastructure needed for the claim to be fulfilled is not readily available. For example, a product may require a special/proprietary adhesive or installation tool that is not easily procured.

Therefore you should consider:

- How building practitioners normally use the product or system.
- The normal conditions where the product or system is usually sold.
- Any access to infrastructure, technology and resources that are required for the product conformity benefits to be realised.
- If certain actions, facilities or resources are required for the product to be conforming, you should clearly and prominently explain to construction decision-makers what needs to happen to achieve this. If possible, you should incorporate this as part of the claim.

Consider the service life of your product or system

Products and system have different product conformity impacts across different stages of their life cycle and also the design life of the building they are used in. There may be different product conformity impacts associated with the initial installation of a product compared to its ongoing use. For example, a product may be perfectly compliant with the NCC at initial installation, but its performance may reduce over time. It is important to indicate at what points and for how long a product or system will remain NCC compliant during its service life, and indeed how long that service life is. There is great risk for specifiers and other construction decision-makers when selecting products for long-term and/or difficult to reach parts of a building that do not have a service life equal to or better than the design life of the structure.

Therefore, you should consider which impacts are relevant to the claims you want to make and ensure that the overall impression conveyed about your product's durability is not misleading.

Principle 5: Visual elements should not give the wrong impression

Avoid visual hype

The visual elements of your marketing, products and packaging also convey certain things to construction decision-makers. This includes the use of certain colours (e.g. orange), images (e.g. smiling construction workers) and symbols (e.g., ticks and thumbs-up).

Images and visual elements should be used with care, as they may be interpreted by construction decision-makers as making a broader claim of a product conformity benefit than actually exists, or over-emphasizing one claim over another.

Third-party labels and certifications

Having your product conformity benefits verified or certified by an independent, robust third-party scheme can build construction decision-maker trust in your brand. However, construction decision-makers may also be unfamiliar with local or international product certification schemes. When using a logo from such a scheme, consider the overall impression created and whether any further information or explanation is required to ensure consumer construction decision-makers are not misled and that the logo/certificate is current.

For example, you should not use a certification logo in a way that implies:

- That you have been certified for an aspect of your product, service, or business which you have not. Such as, if your business has been recognised for certain management or governance practices, you should not imply that this confers assurance that products will comply with technical standards; or if only one of your production facilities is recognised under a product certification, you should not imply that production from other facilities is also covered; or if a specific test capability is accredited you should do not imply that your entire laboratory is.
- That your product certification covers all aspects of a related Standard or NCC Performance Requirements, when in fact it only meets one or a limited number of aspects.
- That your product has been independently certified if this is not the case. Such as, if your certification is self-assessed, or you have a material connection to the certifying body.
- That the certification means certain product conformity benefits have been certified as having been achieved when they have not.