

ICC-ES Rules of Procedure for CodeMark Australia Certifications

1.0 PURPOSE

The purpose of these rules is to set forth procedures governing ICC Evaluation Service, LLC (ICC-ES), issuance, maintenance and renewal of CodeMark Australia certifications for construction and building products.

The main purpose of the CodeMark Australia scheme, is to assist those enforcing the National Construction Code Volumes 1 and 2 – Building Code of Australia (BCA) to determine whether a given product complies with applicable requirements and meet “Evidence of Suitability” requirements of the BCA. A certification is not to be construed as representing a judgment about aesthetics or any other attributes not specifically addressed in the Certificate of Conformity, nor as an endorsement, assurance, or guarantee, or recommendation for use of the subject of the certification. A Certificate of Conformity is one of several options available for meeting “Evidence of Suitability” requirements of the BCA. However, unlike other Evidence of Suitability options, Certificates of Conformity receive mandatory acceptance under Australia State and Territory building control legislation.

2.0 BASIS OF EVALUATION

Evaluation of data is in accordance with the CodeMark Australia Scheme rules; the requirements of the Building Code of Australia; the requirements of the relevant Australia State or Territory legislation; and any written directions from JASANZ, as the CodeMark Australia Scheme Administrator.

3.0 APPLICATIONS

Applications for new certifications or renewals, and for changes to existing certifications, shall be filed on forms provided for that purpose. The applicant must have the rights to the materials, products, or methods of construction on which a certification is sought and must have the legal rights to all evidence and data. Applications for new certifications that are held for more than 30 days without receipt of the application/evaluation fee or supporting documentation are subject to cancellation unless such term is extended by the ICC-ES president or their designated representative.

4.0 DATA TO BE SUBMITTED IN SUPPORT OF CERTIFICATIONS

4.1 General

Applications for new certifications and for changes to existing certifications shall be accompanied by full details of the product/system intended for evaluation, the product's manufacturing, the product's intended use, the Product Quality Plan, and the specific BCA provisions the product/system complies with.

ICC-ES will review the information submitted, including examining the product/system, its uses and installation (including, if applicable, conducting a construction site visit) to determine the on-site application of the product/system. Examination of a product/system shall enable verification that the submitted specification and claims are capable of being evaluated, and shall assist in determining the appropriate method of evaluation.

Once an agreement on the scope of the application has been achieved, ICC-ES will provide an evaluation plan and an approximate timeframe and cost for the evaluation plan completion.

Initial, on-site assessments are used to verify that the applicant's manufacturing quality management system, production process and batch release testing ensure the certified product will not change from the product described in the original qualifying data. ICC-ES has the option to request that quality documentation be provided.

4.2 Test Reports

Laboratory tests shall be performed at the expense of the applicant by a testing laboratory, as follows:

- a) an organisation accredited by the National Association of Testing Authorities, Australia (NATA) to undertake the relevant tests; or
- b) an organisation outside Australia accredited by an authority to undertake the relevant tests and is recognised by NATA through a mutual recognition agreement; or
- c) an organisation recognised as being an accredited testing laboratory under legislation at the time the test was undertaken.

The organisation must have a scope of accreditation covering the testing requirements of the applicable specification.

4.3 Inspections at Manufacturing Facilities

See Section 9.0 of these rules for information concerning inspections, including provisions for initial inspections, and for surveillance inspections, of the facilities designated to manufacture the products covered in the certification.

4.4 Additional Information

ICC-ES may require the applicant to conduct further tests and/or provide additional information considered relevant to the product evaluation.

5.0 ISSUANCE OF A CERTIFICATION

5.1 General:

5.1.1 ICC-ES will review the data submitted; request additional information necessary to evaluate the product; and prepare a final certification (certificate of conformity), provided ICC-ES requirements as communicated in staff letters have been satisfied.

5.1.2 The applicant will be notified when the certification is issued. The certification will also be made available on the ICC-ES website. See Section 13.0 of these rules for permitted uses of any certification.

5.1.3 The CodeMark Australia Scheme Owner (Commonwealth of Australia):

a. does not make any representations, warranties or guarantees, and accepts no legal liability whatsoever arising from or connected to, the accuracy, reliability, currency or completeness of any material contained within a Certificate of Conformity; and

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b. disclaims to the extent permitted by law, all liability (including negligence) for claims of losses, expenses, damages and costs arising as a result of the use of a certified product referred to in a Certificate of Conformity.

5.2 Changes to Certification Requirements:

In the event of significant changes to the applicable scheme, specification, standards, or policies, affected clients will be notified and will be given a grace period to show compliance with the changes in accordance with the applicable specification, standard, or policy. In the absence of a specified grace period, it shall be no more than one year from the time the changes are adopted by ICC-ES unless this period is extended by the ICC-ES president or their designated representative.

If ICC-ES receives a written direction from the Scheme Administrator (JASANZ) of an amendment to the BCA or to the CodeMark Australia Scheme Rules, ICC-ES will, within 3 months of the notification of amendments to the BCA or the Rules coming into effect, respectively, ensure that all current Certificate Holders receive the changes in writing, including setting out what action each Certificate Holder must take to ensure that compliance is achieved with the amended BCA or amended Rules.

6.0 FEES

6.1 New Certification Application:

6.1.1 Each new application shall be accompanied by the application fee set forth in the applicable published ICC-ES fee schedule. All fees shall be paid in U.S. funds. This fee is not refundable unless authorized by the president or their designated representative. Upon completion of the evaluation, the applicant will be invoiced for additional fees, as described in the fee schedule.

6.1.2 The new certification shall be valid for three years from the date of issue.

6.1.3 Applications that are open for one year without the issuance of a certification are subject to additional fees or to cancellation, as determined by the ICC-ES president or their designated representative.

6.2 Renewal:

6.2.1 An application for renewal shall be filed prior to the expiration date of the certification if continued recognition is desired. Certifications shall be renewed every three years or when there have been changes to the products covered by the certification.

6.2.2 An application for renewal shall be accompanied by applicable renewal fees as set forth in the ICC-ES fee schedule.

6.3 Application to Revise Certifications:

A certification holder may request to revise their certification at any time during the renewal period or when the certification is active. Revisions may include technical or editorial changes, and/or adding models to, or deleting models from a certification. Revisions shall not extend the expiration date of the existing certification. Fees for revisions are as set forth in the fee schedule.

6.4 Inspections: The fees for initial, surveillance and renewal inspection activities, as defined in Section 9.0, are as set forth in the fee schedule. The applicant shall reimburse ICC-ES or its representative for all expenses related to qualifying inspection activities. If the inspector is unable to gain entry to a manufacturing facility covered by the certification, the approved user shall agree to pay ICC-ES the inspection fee as shown in the ICC-ES fee schedule. The certification holder is responsible for covering the costs associated with shipping selected samples to an accredited laboratory as part of a surveillance and renewal inspections, and having the samples tested.

7.0 MODIFICATION OF CERTIFIED PRODUCTS

Certification holders must notify ICC-ES prior to modifying products covered by the certification. Product modifications include significant changes in the manufacturing process, change in manufacturer, change in raw material specifications, or significant changes to the quality control program. Certification holders shall also notify ICC-ES when significant changes occur regarding the certification holder. Significant changes include company name change, change of address, change of ownership, or change in legal status. When deemed necessary by ICC-ES, the certification holder must discontinue use of the CodeMark Australia certificate until a certification revision addressing the changes has been issued.

8.0 PRODUCT IDENTIFICATION

8.1 Certification Holder's Name, Registered Trademark, or Registered Logo:

The certified products shall be permanently identified with the certification holder's name. The certification holder's registered trademark or registered logo is permitted in lieu of their name when a facsimile of the registered trademark or registered logo is included in the certification. The certification shall include additional identification provisions when required by the applicable code, scheme or standard.

8.2 ICC-ES Mark of Conformity:

The certification holder shall mark the certified product with the ICC-ES mark of conformity (mark). If the certification holder reasonably believes that such marking will affect the aesthetic appearance of the certified product, ICC-ES will consider issuing a written permit allowing the approved user (1) to affix the ICC-ES mark to be applied on other items acceptable to ICC-ES, such as on packaging or installation instructions, and/or (2) to affix the ICC-ES mark by means of a label or sticker, acceptable to ICC-ES, to be placed at a location or on an area of the certified product which is not exposed or visible to the consumer.

ICC-ES will not consider any product, which would otherwise be a certified product, to be certified if it does not somehow bear the ICC-ES mark.

8.3 Certificate Number:

The ICC-ES CodeMark certificate of conformity number may be placed on the certified product, or on the product's packaging or installation instructions.

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8.4 CodeMark Australia Mark of Conformity Details:

8.4.1 The certificate holder may use or display the CodeMark Australia mark of conformity, with the symbol ©, on:

- a. Certificates of Conformity;
- b. Certified products, and the packaging or labels associated with those certified products; and
- c. Stationery, documents or advertising materials associated with certified products.

8.4.2 The certificate holder must use the CodeMark Australia mark of conformity only with the certificate number issued by ICC-ES.

8.4.3 The CodeMark Australia mark of conformity must be applied either:

- a. directly to the certified product by stamping, printing, moulding or etching; or
- b. to the certified product packaging, labelling or advertising material.

8.4.4 A certificate holder may apply in writing to JASANZ for approval to:

- a. use the CodeMark Australia mark of conformity without the certificate number;
- b. apply the CodeMark Australia mark of conformity in a different manner to that described in Section 8.4.3; or
- c. vary the acceptable format of the CodeMark Australia mark of conformity.

If JASANZ grants approval, the certificate holder must use the CodeMark Australia mark of conformity in accordance with that approval.

8.4.5 A certificate holder may include an additional statement typically used on product packaging and marketing literature with the CodeMark Australia mark of conformity. Acceptable examples are:

- "This Product is marked with the CodeMark Australia Scheme Mark of Conformity. This indicates that the conformity of our Product is based upon technical documentation and review of our Product Quality Plan to monitor our ability to consistently produce the Product in compliance with the requirements of [insert relevant provisions] of the BCA."

- "Compliance of this Product with the requirements of [insert relevant provisions] of the BCA is monitored by ICC-ES, as the CodeMark Australia Scheme Certification Body."

9.0 INSPECTIONS OF MANUFACTURERS

Initial inspections are required for new certification applications and for additional manufacturing facilities being added to an existing certification. The initial inspection will be conducted by ICC-ES or its designated representative. As an alternative, at the discretion of ICC-ES, the approved user may retain a third-party inspection agency that has a contractual relationship with ICC-ES and that is accredited by a signatory to the ILAC MRA as meeting the provisions of ISO/IEC Standard 17020, *General Criteria for the*

Operation of Various Types of Bodies Performing Inspection.

As a minimum, the quality objectives must ensure that certified products released in the marketplace are the same as those that are submitted for certification, meet the Certificate of Conformity requirements and are expressed in measurable terms.

The purpose of the initial inspection is to determine whether the manufacturer's Product Quality Plan and production process have been successfully implemented and/or to verify that the manufactured product is the same as the product presented for certification.

As a condition of maintaining the CodeMark Australia certification, the certificate holder shall grant ICC-ES or its designated representative the right to conduct surveillance and renewal inspections of manufacturing facilities, to verify compliance with the CodeMark Australia Scheme's certification requirements.

ICC-ES, its designated representative, or the third-party inspection agency shall review the following elements at the manufacturing facilities, as applicable: effectiveness of corrective actions taken in response to nonconformances found during previous inspections; changes in the quality system that may affect certified products; any changes in processes or materials; complaint records regarding listed products; markings on the product and in product literature; raw materials; and equipment calibration.

ICC-ES or its designated representative shall make every effort to visit manufacturing locations during normal business hours. At the manufacturing facility, the certificate holder shall assign an appropriate representative to accompany the ICC-ES inspector or ICC-ES's designated representative, to grant access to applicable manufacturing and storage locations, to review applicable records and documents, to select samples randomly for testing, and to accommodate the inspector with any other related inspection services as necessary. If the inspector selects samples for testing by a laboratory meeting the requirements noted in Section 4.2, the certificate holder shall authorize the laboratory to send a copy of the test results directly to ICC-ES for review.

In general, the decision to choose samples for testing by a laboratory meeting the requirements noted in Section 4.2, is at the discretion of the inspector and may depend on the availability of the certified products during the inspection. However, sampling and testing may be mandatory in the event of the following: modification of the certified products as defined in Section 7.0; complaints or legal actions pending related to the compliance of the certified products; the standard governing the certified products having undergone a revision; or these Rules of Procedure, the CodeMark Australia scheme or ICC-ES policies having changed in such a way as to require retesting.

Even in the absence of such circumstances, however, there shall be Post Manufacture or Supply Chain Surveillance at least once in the three-year cycle of the Certificate of Conformity for each certified product. The nature and extent of Post Manufacture or Supply Chain

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Surveillance is to be determined by the results of the initial certification and any previous surveillance of the certified product.

Additionally, ICC-ES shall undertake Post Manufacture or Supply Chain Surveillance if directed by JASANZ if the product has been found to be contrary to the information stated on the Certificate of Conformity.

The certificate holder shall agree that if such testing shows the product failing to meet the requirements of the applicable standard, ICC-ES may remove the product from the certification.

10.0 REVOCATION OR MODIFICATION OF CERTIFICATIONS WITH RIGHT TO A HEARING

10.1 A CodeMark Australia Certificate of Conformity, and the authorization to use the ICC-ES mark of conformity, may be revoked or modified for cause. "Cause" shall include:

- a. failure of the product during testing or inspection to conform with the standard/specification upon which the certification was based.
- b. failure to comply with any characteristics of and/or conditions to the issuance of the certification;
- c. making changes to the product without first obtaining approval by ICC-ES;
- d. any misstatement, whether intentionally or unintentionally made, in the certification application or in any data submitted in support thereof;
- e. failure to comply with any provision of the application form;
- f. failure to pass any test required by ICC-ES; or any other grounds considered as adequate cause in the judgment of ICC-ES.

10.2 Before ICC-ES revokes or modifies any certification, the approved user shall be given reasonable notice and an opportunity to file an appeal pursuant to the ICC-ES Rules of Procedure for Appeals Concerning Evaluation Reports and Listings.

11.0 SUSPENSION/REVOCATION/CANCELLATION OF CODEMARK AUSTRALIA CERTIFICATIONS WITHOUT RIGHT TO A HEARING

11.1 A CodeMark Australia Certificate of Conformity may be canceled or withdrawn upon ICC-ES receiving a written request to do so from the approved user. A file for a new certification may be closed upon receipt of a written request from the applicant.

11.2 Notwithstanding anything in these rules to the contrary, any CodeMark Australia certification or use of the CodeMark Australia mark of conformity may be suspended for a period not to exceed 90 days, revoked, or canceled by the ICC-ES president or their designated representative, without notice or a hearing, for any of the following reasons:

- a. Fees, costs or charges, having not been received by ICC-ES by ICC-ES of a written demand for payment;

- b. Failure of the approved user to maintain a current quality program;

- c. Failure to perform any test, or furnish any material or data, required by ICC-ES within the specified time limit;

- d. Failure to renew the certification within the required period after a change to the relevant certification requirements (See Section 5.2);

- e. Failure of the certificate holder to correct nonconformances and/or submit a plan for correction. Critical nonconformities must be actioned by the certificate holder by the close-out date.

- f. Receipt of information that the product has been modified in violation of Section 7.0 of these rules;

- g. Denial of ICC-ES access to manufacturing facilities for purposes of inspecting and evaluating quality procedures;

- h. Failure to comply with these rules, including any rule for maintaining CodeMark Australia certifications as adopted or amended from time to time by ICC-ES;

- i. If the approved user becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or makes any arrangement or composition with its creditors or if a company enters into liquidation (whether compulsory or voluntary, but not including voluntary liquidation for the purpose of reconstruction) or has a receiver appointed to its business;

- j. Breach of the conditions of the Certificate of Conformity;

11.2.1 The certification may be suspended for any of the reasons noted in Section 11.2, where the issue can be resolved within 30 days.

11.2.2 The certification may be revoked/canceled for any of the reasons noted in Section 11.2, where the issue is not resolved within 30 days.

11.3 Notwithstanding anything in these rules to the contrary, any certification may be suspended by action of the ICC-ES Board of Managers for such period or periods as the Board determines, without notice or a hearing, for the following reason: failure of the product, material, method of construction or equipment to perform properly or conform with the specifications upon which the certification was based, either condition presenting a threat to public safety or property.

12.0 PROPRIETARY DATA

Data in any certification file or application file is considered proprietary. The data may be disclosed by ICC-ES upon written consent of the approved user or, with notice to the approved user, pursuant to a subpoena issued by a court or other governmental agency of competent jurisdiction. Proprietary data may also be disclosed to a staff member of ICC-ES or the International Code Council (ICC), or an authorized representative of ICC-ES having a legitimate interest therein; or any member of the ICC-ES Board of Managers. Additionally, upon the written consent of the approved user, any Governmental Member of ICC may be granted access in the interest of public safety or

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preservation of property as it relates to enforcement of building and other applicable laws.

From time to time, ICC-ES records and files are audited by national and international bodies on a random basis to establish conformance with international accreditation and conformity assessment standards. It is understood that, by executing a certification application, approved users grant ICC-ES the authority to allow such access.

13.0 PERMITTED USE OF CERTIFICATIONS, THE CODEMARK AUSTRALIA MARK OF CONFORMITY, THE ICC-ES NAME AND ICC-ES MARK OF CONFORMITY

13.1 Upon completion of a new certification, a renewal or an interim revision to an existing certification, the approved user will be provided with an authorization letter from ICC-ES that covers the use of the ICC-ES name and the certification itself, as well as guidance on communications associated with the certification. Additionally, ICC-ES will issue a CodeMark Australia Certificate, which contains conditions that shall be observed by the approved user. If it is determined that identifications are being applied to materials or products that do not comply with the current certification, are being applied before authorization or applied after a certification has been closed, ICC-ES will immediately disseminate a notice of violation of these ICC-ES Rules of Procedure and take any and all actions necessary to secure compliance with the rules.

13.2 No approved user shall use the ICC-ES mark of conformity until authorized by ICC-ES.

13.3 The then-current certification as provided to the approved user by ICC-ES and also available on the ICC-ES website, may be reproduced in its entirety by the approved user in the approved user's literature, advertising, or promotional materials. No reference to ICC-ES, the certification, the CodeMark Australia mark of conformity, the CodeMark Australia Certificate Number, or the ICC-ES mark of conformity shall be included with such reproduction in a manner which could be misleading.

13.4 In lieu of reproducing the entire certification in literature, advertising, or promotional materials, the approved user may use references and statements such as: "See ICC-ES CodeMark Certificate No. _____ (insert current number) at icc-es.org". It is the approved user's responsibility not to misrepresent the certification in any way, and to secure ICC-ES approval in advance whenever there is a question about the use of the ICC-ES name and/or ICC-ES certification. Approved users are expressly prohibited from using the ICC-ES name, ICC-ES mark of conformity, CodeMark Australia mark of conformity or CodeMark Australia Certificate to claim or imply product recognition beyond the recognition specified in the certification. Approved users are also expressly prohibited from using, in advertising, promotional, and informational materials, any language that would likely mislead the public about their certifications. ICC-ES reserves to itself the right to interpret what would constitute misleading language.

13.5 The following provisions govern the use of the ICC-ES mark of conformity on products and in advertising, promotional, and informational materials:

13.5.1 Use of the ICC-ES mark of conformity is prohibited in any manner and in any media without authorization from ICC-ES. Use of or reference to any certification after suspension or cancellation is also prohibited.

13.5.2 The CodeMark Australia mark of conformity, CodeMark Australia Certificate Number and the ICC-ES mark of conformity may be used *only* on or in connection with products, components, methods, and materials that are covered in currently valid certifications. Use of the ICC-ES mark of conformity is not a replacement or substitute for product identification provisions in the relevant certification. In no circumstances may the ICC-ES mark of conformity, CodeMark Australia mark of conformity or CodeMark Australia Certificate Number be used to imply ICC-ES approval of aesthetics or any other attributes not specifically addressed in the certification.

13.5.3 The ICC-ES mark of conformity may not be altered in any way, although it may be enlarged or reduced. Black is the basic color of the ES Listing mark. Other colors may be used only when authorized in writing by ICC-ES.

13.6 It is the responsibility of the approved user not to misrepresent in any way the status, conditions, or terms of the relevant ICC-ES certification, and not to use the certification in such a manner as to bring ICC-ES into disrepute. It is also the approved user's responsibility to secure ICC-ES approval in advance whenever there is a question about how the ICC-ES mark of conformity and/or name is to be used.

13.7 In the event a approved user seeks cancellation of a certification, or informs ICC-ES that production at a recognized manufacturing facility has ceased or is being transferred to a different facility, then the approved user shall (a) promptly provide ICC-ES with written confirmation that manufacturing of products bearing the ICC-ES mark of conformity has ceased at the previously recognized facility; and (b) permit ICC-ES, upon request, to send a representative to inspect the facility in order to verify that the manufacturing of products bearing the mark has ceased.

13.8 The above does not excuse compliance with any ICC-ES requirement as a condition of securing or maintaining a certification concerning identification, reference to standards or inspection, or other information to be affixed to or labeled upon products.

13.9 Violation of these rules, regarding use of the ICC-ES name and ICC-ES mark of conformity, as determined by ICC-ES, must cease immediately upon notification of the violator by ICC-ES. Failure to respond to the notification may lead to suspension or revocation of the certification under these rules. ICC-ES also reserves the right to note violations in the public notices and publications of ICC-ES and its parent company, ICC, and on the ICC-ES website.

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14.0 COMPLAINT PROCEDURE

All complaints related to a certification should be submitted in writing to the attention of the ICC-ES Quality System Department. The certification holder will be notified of the complaint and, if a response is needed to address the complaint, ICC-ES will so inform the certification holder. After notice, the certification holder will have 30 calendar days in which to respond. After such time, if no response is received, the certification in-question will be subject to cancellation.

ICC-ES shall undertake Post Manufacture or Supply Chain Surveillance if directed by JASANZ if any Certified Product complaints are received or the product has been found to be contrary to the information stated on the Certificate of Conformity.

15.0 APPEALS

For details on appeals, see the ICC-ES Rules of Procedure for Appeals Concerning Evaluation Reports and Listings. ▀

Effective: January 29, 2025