



AD:AD
Our ref:
Your Ref:

**Australian
Competition &
Consumer
Commission**

Level 3
500 Queen Street
Brisbane Qld 4000

PO Box 10048
Adelaide Street
Post Office
Brisbane Qld 4000

Tel: (07) 3835 4666
Fax: (07) 3832 0372

www.accc.gov.au

Mr Adrian La Manna
Secretary
Termite Management Committee (BD-074)
Standards Australia
20 Bridge St
Sydney NSW 2000

Dear Mr La Manna

I understand that Mr Andrew Campbell representing the Termite Action Group (TAG) addressed the Standards Australia Termites Committee on 11 February 2009. Mr Campbell has provided me with a copy of the minutes of that meeting and has pointed out that those minutes record that "The committee asked for a letter from the ACCC stating there (sic) dissatisfaction of the word "barrier" and their reasoning for it. This letter was to be sent to Standards not TAG for action."

I understand this request arose in the context of a discussion in which Mr Campbell expressed his concerns with the use of the word 'barrier' to describe physical systems for the risk management of termites. Mr Campbell has asked me to provide the committee with the letter referred to above.

I should explain the context in which I have expressed concerns with respect to this issue. TAG has complained to the Australian Competition and Consumer Commission (ACCC) about the use of the word 'barrier' to describe physical termite management systems by various termite management system suppliers. Mr Campbell has argued that the word 'barrier', in its ordinary and common usage, means anything that bars the way. In this case, he argues that consumers would expect a termite 'barrier' to bar the access of termites to a dwelling. He states that termites can easily and quickly bridge the physical termite management systems. The systems, if installed correctly and not suffering post construction damage, do force the termites to bridge the system in a way that allows detection if the consumer is vigilant in his or her monitoring of the dwelling, but they do not bar access by termites.

In this context, the ACCC looked at representations made by various physical termite management systems and considered whether it was possible to properly argue in Court that a representation to the effect that the system was a 'barrier' was misleading or deceptive in breach of section 52 of the Trade Practices Act 1974 (TPA). After careful consideration, I concluded that it would be difficult to argue that the termite



management systems were not ‘barriers’ when they were defined as ‘barriers’ by an Australian Standard. In taking that view I recognised the importance and status of Australian Standards in the commercial world.

Mr Campbell does not necessarily agree with my assessment. He has steadfastly argued that the ACCC is allowing the Australian Standard to mislead consumers and has urged me to seek responses from Standards Australia on questions that highlight the problems with the standard.

I believe I can summarise the issues Mr Campbell has raised with the following questions.

1. Is it correct to assume that in a typical 'slab-on-ground' construction that the concrete slab would form the largest single component of a physical termite management system?
2. Is it correct to assume that in practical termite management well over 95% of termite attacks emanate from the perimeter of a dwelling on typical 'slab-on-ground' constructions?
3. Is any Physical Termite Management System referred to in AS 3660.1 as “Physical Barriers” able to prevent termites ‘bridging’ their system?
4. Is there a Physical Termite Management System, referred to in AS 3660.1 as “Physical Barriers”, that provides a warranty that covers termites ‘bridging’ their system?
5. Is the contention made by TAG that, “Termites are capable of ‘bridging’ physical barriers within hours”, a correct statement?
6. The further contention made by TAG is that there have been several cases brought to their attention, where there has been termite ingress into dwellings that are still in the construction phase. Is it possible for this to be able to occur?
7. Are Termite Inspections generally an ‘Annual Event’ or do they occur either more or less frequently?
8. Do Physical Termite Management Systems, referred to in AS 3660.1 as “Physical Barriers”, generally require the application of chemical termiticides when either ‘bridging’ or ‘breaching’ of the system by termites occurs?
9. Does the AS 3660 Series address the ‘Durability’ of these Physical Termite Management Systems, referred to in AS 3660.1 as “Physical Barriers”, anywhere in the Standards?
10. Is the suggestion made by TAG that, “It is common for Physical Termite Management Systems to be ‘cut, torn, degraded or modified’ by on-site tradespersons such as plumbers, bricklayers, carpenters, builders, etc.” a fair summation of what occurs on-site?

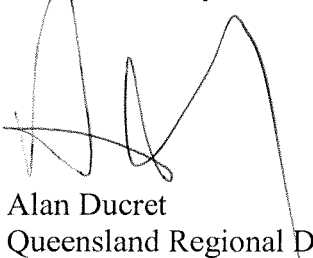
11. If these Physical Termite Management Systems referred to in AS 3660.1 as “Physical Barriers” require regular inspection to check that there is no ‘bridging’ occurring, would these systems be more correctly identified as “Termite Monitoring Systems” as opposed to “Termite Barriers”.
12. Given that Physical Termite Management Systems are built into the construction of a dwelling and are sandwiched between bricks and mortar then extend through the internal cavity to where they are either attached/parged to the slab edge or continue under the timber bottom plate, is there any means by which the system can be inspected to ascertain whether it is intact?
13. If it is not possible to inspect the system, is it correct to assume that any termite inspection on a dwelling with a physical termite management system installed relies entirely upon the system being intact?
14. Is it correct to assume that inspections currently conducted by pest technicians are conducted on this basis?

I would be most interested in your views on these questions and the issue overall. It seems to me that there are a range of concerns that flow from the problem, including:

- The degree to which consumers understand the way in which these systems work and what they must do in terms of monitoring to make them effective;
- The degree to which consumers understand the physical requirements of termite protection in terms of keeping garden beds clear of their dwelling, and other maintenance requirements, in order to heighten efficacy of the systems;
- The degree to which warranties fail to apply where systems are bridged and whether consumers have any appreciation of this; and
- Whether a better descriptor than ‘barrier’ can be found to describe these systems? Mr Campbell suggests they should be called monitoring systems.

I would be pleased to discuss these concerns with you or with members of the committee.

Yours faithfully



Alan Ducret
Queensland Regional Director
1 September 2009

Cc Mr Andrew Campbell