Building (Overseas Building Products, Standards, and Certification Schemes) Amendment Bill

Government Bill

As reported from the Transport and Infrastructure Committee

Commentary

Recommendation

The Transport and Infrastructure Committee has examined the Building (Overseas Building Products, Standards, and Certification Schemes) Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

This bill would amend the Building Act 2004 to remove barriers to overseas building products being used in New Zealand's building product market. It would do so by:

- allowing the Minister for Building and Construction, by notice, to recognise overseas product standards and certification schemes
- introducing a building product specifications instrument to streamline the citing of international standards that can be used with an acceptable solution or verification method (issued under section 22 of the principal Act) to establish compliance with the building code
- requiring building consent authorities to accept building products and methods certified under an overseas product certification scheme and recognised by the chief executive of the Ministry of Business, Innovation and Employment by notice.

We note that this new regime would not replace local certification schemes but would instead create a new option for builders and consumers. Regardless of whether people are using recognised overseas product certifications, they would still be subject to the building code and the Building Act.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Interpretation

Clause 4 of the bill as introduced would insert definitions into section 7(1) of the principal Act, to guide its interpretation. We recommend amending the proposed definitions by:

- clarifying that "overseas standards organisation" means an international, national, or regional organisation with functions similar to the NZ Standards Organisation
- adding the term "NZ Standards Organisation", as defined in section 4(1) of the Standards and Accreditation Act 2015
- replacing the term "standards organisation" with "NZ Standards Organisation"
- clarifying that "standards certification organisation" means an organisation that administers or operates under a standards certification scheme.

Clarifying regulation-making powers

Section 402 of the principal Act is a general regulation-making power provision. Clause 16 of the bill as introduced would amend section 402 to provide that the Governor-General may, by Order in Council on the recommendation of the Minister, make regulations prescribing criteria for recognition of building products or methods that have been certified overseas.

This recognition is provided for under proposed new sections 272HA(2) and 272HB(2). Section 272HA provides for the recognition of building products or building methods certified under overseas product certification schemes. Section 272HB provides for the recognition of overseas standards and domestic and overseas standards certification schemes.

We discuss below our proposed changes to these provisions.

Comments from the Regulations Review Committee

The Regulations Review Committee wrote to us about the regulation-making powers contained in the bill. The committee noted that it is unusual for decision-making criteria to be included in secondary legislation, as proposed in new section 272HA(2). The regulations would effectively alter the scope of the primary legislation without explicitly amending it.

The bill's Departmental Disclosure Statement states that prescribing the decision-making criteria through secondary legislation was a deliberate policy choice to allow flexibility. It notes that as new information becomes available, there may be a need to change decision-making criteria. Using secondary legislation to make urgent changes was considered the best legislative option.

The Regulations Review Committee agreed with this reasoning, and accepted that proposed clause 16 is appropriate given the context of the technical specifications required to build and maintain safe infrastructure. We agree, and are satisfied with the proposed regulation-making power. We note that the Regulations Review Committee would expect to review any Order in Council prescribing the decision-making criteria for new section 272HA as part of its routine scrutiny of secondary legislation.

Proposed amendments

While we agree that the regulation-making powers are appropriate, we suggest some amendments to proposed sections 272HA(2) and 272HB to make them clearer.

In the bill as introduced, section 272HB(1) states that the Minister may, by notice, recognise in whole or in part any standards or groups of standards issued by an overseas standards organisation. We recommend that this be amended to state only "group of standards", to clarify the focus of this policy.

We also recommend amending proposed sections 272HA(2) and 272HB(2), and inserting new section 272HB(2A). Our changes to proposed section 272HA(2) would make clear that, in addition to being satisfied that overseas products and methods meet prescribed criteria, the chief executive must also be satisfied that the overseas product certification scheme itself meets any prescribed criteria. Changes to proposed section 272HB(2), including the insertion of subsection (2A), would clarify that the Minister must be satisfied that the overseas standards organisation, and the standards certification organisation, meet any prescribed criteria.

Advice from building advisory panel

Section 171(1) of the principal Act allows for the ministry's chief executive to seek advice on matters specified in secondary legislation from a building advisory panel, established under section 172. Clause 10 of the bill as introduced would amend section 171 to include building product specifications as one of these matters.

We understand that the building advisory panel is a statutory board with public appointments. The panel is made up of building industry representatives from local government, offsite manufacturing, design, and engineering, among others.

We consider that the building advisory panel would be a useful authority to consult on issues relating to recognition of building products or methods certified under overseas product certification schemes, as set out in sections 272HA and 272HB. We therefore recommend inserting new section 171(1)(aa) and (ab) to explicitly allow the chief executive to seek advice from the panel about decisions and recognitions made under sections 272HA or 272HB.

Other matters: liability and consumer protection

During our consideration of the bill, we raised concerns about who would be liable if something were to go wrong due to the use of products certified overseas. We were particularly mindful of the leaky buildings crisis of the 1990s and early 2000s, which was caused by major regulatory shortcomings.

The settings that applied during the leaky buildings crisis were set out in the Building Act 1991. These settings have since been superseded by the Building Act 2004 and subsequent amendments, which adapted regulatory settings in several ways, including:

- introducing a licensing and registration regime to ensure competence and appropriate disciplinary settings
- adding extra controls and feedback mechanisms to ensure code compliant building work
- creating stronger consumer protection mechanisms for residential work, including implied warranties, defect repair periods, pre-contract disclosure requirements, and mandatory written contracts for residential building work over $30,000
- requiring accreditation for building consent authorities, which sets out the minimum policies, procedures, and systems that an authority must have
- requiring building consent authorities to register with the ministry
- establishing the ministry as a central regulator, rather than having this role sit with the much smaller Building Industry Authority
- strengthening product assurance, such as through CodeMark, and introducing building product information requirements.

Advisers told us that the changes to the Building Act, as well as regulations and other legislation, have added controls in the building and construction regulatory system to prevent failures like the leaky buildings from happening again. We hope that this will be sufficient to prevent faulty materials being used as a result of overseas certifications.

We note that the bill provides good-faith liability protection for local governments (as building consent authorities) for products certified overseas and recognised by the ministry. Those products must be accepted by building consent authorities. These authorities will continue to be responsible for checking to ensure applications for building consents comply with the Building Code, and that building work has been carried out in accordance with the consent.

We are very conscious of the huge financial cost to local government of leaky buildings and other product failures through joint and several liability, so we welcome this good-faith liability protection.

However, we hope that any issues caused by products allowed through this certification scheme do not leave the end consumer unsupported in finding recourse. We do

note that mechanisms currently exist for consumer recourse, and these are not being changed.

We understand that the Government is conducting a wider review of the building consent system, which we understand will have the scope to include a review of liability settings across the whole building system. We consider this work extremely important and look forward to seeing what comes out of this review. We hope to see some sort of regime established to provide greater certainty to consumers and building consent authorities. This could include requirements around contractual arrangements and mediation processes to avoid litigation in the first instance.

Other matter: sector capacity

Another area raised during our consideration of the bill was the building sector's ability to implement the changes at an appropriate speed.

We heard from several submitters who recommended that the ministry engage with sector experts and professional bodies to develop the criteria for recognising standards and standard certification schemes. We note that the ministry intends to consult with the public (including industry) on draft criteria for the recognition of standards, standard certification schemes, and products. We hope to see comprehensive consultation with industry experts, to ensure that schemes are understood and able to be implemented by the industry.

Appendix

Committee process

The Building (Overseas Building Products, Standards, and Certification Schemes) Amendment Bill was referred to the committee on 26 September 2024.

We called for submissions on the bill with a closing date of 14 November 2024. We received and considered submissions from 44 interested groups and individuals. We heard oral evidence from 9 submitters at hearings in Wellington and via videoconference.

Advice on the bill was provided by the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clauses 13 and 16.

Committee membership

Andy Foster (Chairperson)

Dan Bidois (from 29 January 2025)

Hon Julie Anne Genter

Mariameno Kapa-Kingi

Cameron Luxton

Hon Kieran McAnulty (from 12 March 2025)

Grant McCallum (until 29 January 2025)

Tom Rutherford (until 29 January 2025)

Stuart Smith (from 29 January 2025)

Tangi Utikere

Arena Williams (until 12 March 2025)

Related resources

The documents we received as advice and evidence are available on the Parliament website.

Key to symbols used in reprinted bill

As reported from a select committee

<u>text inserted unanimously</u>

~~text deleted unanimously~~

Hon Chris Penk

Building (Overseas Building Products, Standards, and Certification Schemes) Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Building (Overseas Building Products, Standards, and Certification Schemes) Amendment Act **2024**.

2 Commencement

(1) This Act comes into force on the day after Royal assent.

(2) However, the following sections come into force on a date or dates set by Order in Council:

(a) **section 5(2)**:

(b) **section 6**:

(ba) **section 10(2)**:

(c) **section 12**:

(d) **section 13**:

(e) **section 14** (to the extent that it inserts **section 390(1)(ce) and (cf)** into the Building Act 2004):

(f) **section 15(2) and (3)**.

(3) Any part of this Act that has not come into force 2 years after Royal assent comes into force then.

(4) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

3 Principal Act

This Act amends the Building Act 2004.

Part 1
Amendments to Parts 1 and 2 of principal Act

4 Section 7 amended (Interpretation)

In section 7(1), insert in their appropriate alphabetical order:

building product specifications means building product specifications issued under **section 25B**

NZ Standards Organisation has the same meaning as in section 4(1) of the Standards and Accreditation Act 2015

overseas standards organisation means an ~~overseas~~ international, national, or regional organisation with functions similar to the ~~standards organisation~~ NZ Standards Organisation

standards certification organisation means an organisation that ~~assesses a building product against a standard~~ administers or operates under a standards certification scheme

standards certification scheme means a scheme under which a building product is assessed against a standard

~~**standards organisation** has the same meaning as in section 4(1) of the Standards and Accreditation Act 2015~~

5 Section 11 amended (Role of chief executive)

(1) After section 11(a), insert:

(aa) issues building product specifications and ensures that the matters required to be published and kept available under **section 25C** are published and kept available; and

(2) After section 11(kb), insert:

(kba) issues notices under **section 272HA**; and

(kbb) provides advice to the Minister on decisions to be made under **section 272HB**; and

(kbc) ensures that the matters required to be published and kept available under **section 272HC** are published and kept available; and

Amendments relating to compliance with building code

6 Section 19 amended (How compliance with building code is established)

(1) After section 19(1)(da), insert:

(db) any recognition by the chief executive under **section 272HA** of any building products or building methods, or group of building products or building methods, that are certified under an overseas product certification scheme (if every relevant limitation and condition of the recognition is complied with):

(2) After section 19(2)(b), insert:

(c) may have regard to any recognition by the Minister under **section 272HB** of any—

(i) ~~standards or~~ groups of standards issued by an overseas standards organisation; or

(ii) standards certification schemes ~~issued by~~ that a standards certification organisation that is based in New Zealand or overseas administers or operates under.

7 Section 25 amended (Content of acceptable solution or verification method)

(1) After section 25(2), insert:

(2A) An acceptable solution or a verification method may refer to building product specifications.

(2) In section 25(3), replace "Material" with "Other material".

8 New sections 25B and 25C inserted

After section 25A, insert:

25B Building product specifications for use in complying with acceptable solutions or verification methods

(1) The chief executive may, by notice, issue building product specifications that may be referred to in an acceptable solution or a verification method.

(2) Building product specifications may include specifications for building products in relation to any of the following:

(a) manufacture:

(b) fabrication:

(c) testing:

(d) quality control:

(e) physical properties:

(f) performance:

(g) installation:

(h) maintenance.

(3) The chief executive may, by notice, amend or revoke building product specifications at any time.

(4) Sections 29, 30, and 409 do not apply if any amendments need to be made to an acceptable solution or a verification method—

(a) to refer to building product specifications; or

(b) because of the amendment or revocation of building product specifications.

25C Public notification and availability

(1) The chief executive must ensure that, promptly after making a notice under **section 25B(1) or (3)**, notice of its making is published in the *Gazette*.

(2) The notice in the *Gazette* must include the following information:

(a) a statement that a notice was made under **section 25B(1) or (3)** (as applicable) by the chief executive:

(b) the title of the notice made under **section 25B(1) or (3)**:

(c) the date on which the notice under **section 25B(1) or (3)** was made:

(d) the Ministry's Internet site where the notice made under **section 25B(1) or (3)**, and the related building products specifications, are published.

(3) The chief executive must also ensure that—

(a) each notice made under **section 25B(1) or (3)** is publicly available on the Ministry's Internet site; and

(b) promptly after the building product specifications are issued by notice under **section 25B(1)**, those specifications are made publicly available on the Ministry's Internet site; and

(c) even after the building product specifications have been amended or revoked by notice under **section 25B(3)**, a digital copy of them in their original form continues to be publicly available on the Ministry's Internet site; and

(d) promptly after the building product specifications are amended by notice under **section 25B(3)**, each of the following is made publicly available on the Ministry's Internet site:

(i) a digital copy of the amendment:

(ii) a digital copy of the building product specifications in their up-to-date form.

Part 2
Amendments to other provisions of principal Act

Amendments relating to functions, duties, and powers of chief executive generally

9 Section 169 amended (Chief executive must monitor ~~correct~~ current and emerging trends in building design, etc, and must report annually to Minister)

Replace section 169(1)(a) with:

(a) the building code, acceptable solutions, verification methods, and building product specifications:

10 Section 171 amended (Chief executive may seek advice from building advisory panel)

(1) Replace section 171(1)(a)(i) with:

(i) the building code, acceptable solutions, verification methods, and building product specifications:

(2) After section 171(1)(a), insert:

(aa) decisions to be made under **section 272HA or 272HB**:

(ab) recognitions under **section 272HA or 272HB**:

11 Section 175 amended (Chief executive may publish guidance information)

In section 175(1), after "the guidance of—", insert:

(aaa) each person living or incorporated in New Zealand who—

(i) is the manufacturer or importer of a building product; or

(ii) sells a building product by wholesale or otherwise distributes the building product by wholesale; and

Amendments relating to product certification

12 Section 262 amended (Requirements for product certification accreditation body)

Repeal section 262(2) and (3).

13 New sections 272HA to 272HC and cross-headings inserted

After section 272H, insert:

Recognition of building products or building methods certified under overseas product certification scheme

272HA Recognition of building products or building methods certified under overseas product certification scheme

(1) The chief executive may, by notice, recognise 1 or more, or 1 or more groups of, building products or building methods that are certified under an overseas product certification scheme.

~~(2) **Subsection (1)** applies only if the chief executive is satisfied that the building products or building methods meet the prescribed criteria.~~

(2) **Subsection (1)** applies only if the chief executive is satisfied that—

(a) the building products or building methods meet any criteria prescribed for the purposes of this paragraph; and

(b) the overseas product certification scheme meets any criteria prescribed for the purposes of this paragraph.

(3) A person who uses building products or building methods that are (or are in a group that is) recognised under **subsection (1)** must, for the purposes of this Act, be treated as having complied with all provisions of the building code that are relevant to the intended use.

(4) **Subsection (3)** applies only to the extent that the person complies with any limitations or conditions of the recognition that are set out in the notice.

(5) A notice under **subsection (1)** is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Recognition of standards issued by overseas standards organisations, and standards certification schemes

272HB Recognition of overseas standards and ~~domestic and international~~ of standards certification schemes

(1) The Minister may, by notice, recognise, in whole or in part, any—

(a) ~~standards or~~ groups of standards issued by an overseas standards organisation; or

(b) standards certification schemes ~~issued by~~ that a standards certification organisation that is based in New Zealand or overseas administers or operates under.

~~(2) **Subsection (1)** applies only if the Minister is satisfied that the standards or groups of standards, or standards certification schemes, meet the prescribed criteria.~~

(2) **Subsection (1)(a)** applies only if the Minister is satisfied that—

(a) the groups of standards or the part concerned meet any criteria prescribed for the purposes of this paragraph; and

(b) the overseas standards organisation meets any criteria prescribed for the purposes of this paragraph.

(2A) **Subsection (1)(b)** applies only if the Minister is satisfied that—

(a) the standards certification schemes or the part concerned meet any criteria prescribed for the purposes of this paragraph; and

(b) the standards certification organisation meets any criteria prescribed for the purposes of this paragraph.

(3) The Minister may at any time, by notice, amend or revoke a notice of recognition made under **subsection (1)**.

272HC Public notification and availability

(1) The chief executive must ensure that, promptly after a notice is made under **section 272HB(1) or (3)**, notice of its making is published in the *Gazette*.

(2) The notice must include the following information:

(a) a statement that a notice was made under **section 272HB(1) or (3)** (as applicable) by the Minister:

(b) the title of the notice made under **section 272HB(1) or (3)**:

(c) the date on which the notice under **section 272HB(1) or (3)** was made:

(d) the Ministry's Internet site where the notice made under **section 272HB(1) or (3)**, and the related notice of recognition, are published.

(3) The chief executive must also ensure that—

(a) promptly after a notice of recognition is made under **section 272HB(1)**, that notice is made publicly available on the Ministry's Internet site; and

(b) even after a notice of recognition is amended or revoked, a digital copy of it in its original form continues to be publicly available on the Ministry's Internet site; and

(c) promptly after a notice of recognition is amended, each of the following is publicly available on the Ministry's Internet site:

(i) a digital copy of the amendment:

(ii) a digital copy of the notice of recognition in its up-to-date form.

Amendments relating to civil proceedings and offences

14 Section 390 amended (Civil proceedings may not be brought against chief executive, employees, etc)

After section 390(1)(cc), insert:

(cd) any person ~~employed or~~ engaged by the chief executive to assist the chief executive in relation to decisions to be made under section 22(1) or **25B**; and

(ce) any person ~~employed or~~ engaged by the chief executive to assist the chief executive in relation to decisions to be made under **section 272HA**; and

(cf) any person ~~employed or~~ engaged to assist the chief executive to provide advice to the Minister in relation to decisions to be made under **section 272HB**; and

15 Section 392 amended (Building consent authority not liable)

(1AAA) In section 392(1), after "following documents", insert "or matters".

(1) After section 392(1)(a), insert:

(aa) any building product specifications:

(2) After section 392(1)(d), insert:

(da) a ~~notice issued~~ recognition by the chief executive under **section 272HA**:

(3) After section 392(4), insert:

(5) No civil proceedings may be brought against a building consent authority for anything done or omitted to be done in good faith in reliance on a claim made by a manufacturer, importer, retailer, or wholesaler given under Part 4B that the relevant building product has been—

(a) manufactured in accordance with a standard, or performs or will perform in accordance with a standard, that the Minister has recognised under **section 272HB**; and

(b) certified as meeting the standard referred to in **paragraph (a)** under a standards certification scheme that the Minister has recognised under **section 272HB**.

Amendment relating to regulation-making powers

16 Section 402 amended (Regulations: general)

After section 402(1)(u), insert:

(uaa) prescribing the criteria—

(i) to be applied by the chief executive under **section 272HA(2)**; or

(ii) to be applied by the Minister under **section 272HB(2) or (2A)**:

Amendment relating to incorporation of material by reference

17 Section 405 amended (Incorporation of material by reference into certain instruments, solutions, and methods)

After section 405(4)(b), insert:

(ba) any building product specifications; and

Legislative history

5 September 2024	Introduction (Bill 76–1)
26 September 2024	First reading and referral to Transport and Infrastructure Committee

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