

14 November 2024

SUBMISSION TO: THE TRANSPORT AND INFRASTRUCTURE SELECT COMMITTEE

SUBMISSION ON: THE BUILDING (OVERSEAS BUILDING PRODUCTS, STANDARDS, AND CERTIFICATION SCHEMES) AMENDMENT BILL

SUBMITTER CONTACT INFORMATION

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The Building Research Association of New Zealand (BRANZ) welcomes the opportunity to provide feedback on the Building (Overseas Building Products, Standards, and Certification Schemes) Amendment Bill (the Bill).

BRANZ is supportive of the Bill, however risks do exist with new overseas products being used for building and construction in New Zealand. We feel these risks can be mitigated with some adjustments to the Bill and careful development of the regulations and criteria that will underpin it.

Our feedback here provides:

- Background detail about BRANZ,
- A high-level description of how New Zealand's building products standards and certification system is unique,
- General feedback on the proposed approach outlined in the Bill,
- Feedback on specific Bill clauses, and
- A summary of specific clause feedback.

ABOUT BRANZ

BRANZ's primary role is as an independent science and research organisation, established by the Building Research Levy Act 1969. BRANZ is the only national research institution focused exclusively on building and construction.

Our current strategic and research investment priorities are in four main areas:

- Affordability – Housing is affordable for people to build, maintain and live in.
- Resilience – Buildings protect people from earthquakes, fire, extreme weather and climate change.
- Sustainability – Buildings are environmentally designed, built, maintained and recycled.
- Quality – Buildings are safe, warm, dry and fit for future generations.

Alongside research, BRANZ offers commercial, independent, science-based testing and assurance services. BRANZ has over 50 years of expertise in assessing both domestic and international products entering the market. BRANZ is a 'product certification body', under section 263 of the Building Act 2004, accredited by the Joint Accreditation System of Australia and New Zealand (JAS-ANZ). This accreditation is required so we can certify products under the Ministry of Business, Innovation and Employment's CodeMark scheme.

BRANZ's scientists, technicians and product auditors draw on their extensive materials-testing expertise to assess a wide range of building products. They work in world-class testing facilities that can replicate, accelerate or exceed the conditions that Kiwi houses can expect to face during their lifetime.

Among their responsibilities, BRANZ experts assess certifications and evidence from overseas tests against New Zealand's regulatory requirements and environment. This ensures products will meet our current building standards and perform as they're supposed to. It is critical that the products we build with are safe, resilient and fit for purpose given the unique challenges we face from our climate, high UV levels and earthquakes.

BRANZ does not set New Zealand's building standards or approve products for use here. Instead, BRANZ's independent team works with product manufacturers, importers and authorities to provide robust scientific evidence of whether new materials will be safe and durable if used in New Zealand's buildings and whether they meet the requirements of the Building Code.

DESCRIPTION OF NEW ZEALAND'S CURRENT SYSTEM

New Zealand's methods of building, ways of using products and training of our workforce combine in a unique way. The methods used in New Zealand and how we use building products and systems reflect New Zealand's Building Code. Likewise, the Standards we refer to are designed or selected to ensure that the Building Code is met. This jurisdiction-based approach is not unique to New Zealand - it is a standard model, used by most countries globally.

There are many ways set out in section 19 of the Building Act 2004 to prove that a product, system or method meets the expectations of the Building Code. For example, a product could have a current registered product certificate (e.g. CodeMark), or a method could follow an acceptable solution or verification method. As the Building Code is performance-based, the various ways to prove Building Code compliance must be robust enough to provide confidence to everyone involved. That is, the architects and designers, developers, builders and tradespeople, the occupants, as well as the financiers, the insurers and local government.

Everyone is relying on the pathways to Building Code compliance to ensure that designs, products, building systems, installations and builds perform how they should.

The way some products are used in New Zealand can be unique. This means that overseas products may not have been tested for how they are used in New Zealand, and they may not have evidence to demonstrate compliance with our Building Code in this aspect. For example, cladding systems in overseas jurisdictions do not typically incorporate a cavity, as they do in

New Zealand, and this would limit their application here to buildings with a very low weathertightness risk.

GENERAL FEEDBACK ON PROPOSED APPROACH OUTLINED IN THE BILL

Ensure new compliance pathways are commensurate with current pathways

BRANZ is highly supportive of new products, materials and building methods being used in New Zealand – as long as they meet or exceed our Building Code and there are clear lines to New Zealand-based accountability and responsibility.

As a framework to do this, the Bill is setting out pathways to New Zealand Building Code compliance for overseas products, standards and certification schemes. Any new pathway needs to be commensurate with and equally robust as current pathways. If not, companies (often New Zealand companies) could be unfairly disadvantaged for choosing domestic compliance pathways for their products/materials/methods. This is because products meeting local standards could face stricter criteria than those following international standards.

Still-to-be drafted regulations underpinning the Bill's changes will also need to be proportionate to current regulations. For example, ensuring regulations are robust enough to deal with the likes of:

- product recalls,
- auditing of product manufacturing,
- descriptions of manufacturer, importer and installer responsibilities.
- traceability of landed product,
- complaint handling and tracking,

Shifting liability

It is important that these changes happen in concert with other legislative and regulatory changes to support those people made more vulnerable to risk, i.e. building owners.

BRANZ understands that risk and liability settings are currently under review in other pieces of work to reform the system and would like to see the changes proposed by this Bill timed to align. The changes proposed by this Bill will need regulations and criteria crafted and that work could be complex and take time. For example, requirements will need to be set out for **standards certification organisations** and **standards certifications schemes**, (both new terms with interpretations to be inserted into the Building Act via this Bill, clause 4).

It will also be important that the regulations and criteria take into consideration the hierarchy of risk certain products will have over others. For example, some products can cause significant loss of life and money if they fail and/or are harder to replace; others less so.

Complexities in accepting other jurisdictions' standards and products

Standards from different jurisdictions may have differing requirements of the same product. To complicate further, when a product's requirements do align from one jurisdiction to another, the methods defined may produce results that are not consistent or cannot validly be compared with each other. One example is membranes for outdoor use that have equivalent standards, but the UV requirements are unique to New Zealand and therefore require additional testing to prove they will meet the Code, even though they are classed as equivalent standards overseas. Appropriate technical expertise will be required to make comparisons.

At times, in order to reach a conclusion about whether or how a product aligns to different standards, the test data from each test regime being compared may need to be accessed for that particular product. This could add further layers of complexity and cost to the process.

There will be instances where there is no linear comparator between product certificates from other jurisdictions and New Zealand's, as the metrics assessed for those different certifications are very different. A particular example is our Building Code requirements under the B2 durability clause, which are clearly set out in New Zealand Standards such as *NZS 3602:2003 Timber and wood-based products for use in building*. No other country sets 50, 15 and 5 year requirements for durability, so comparison to this metric would be challenging and may require citing with additional requirements. Items such as timber posts, beams or studs may be imported that have no way of meeting the durability requirements set out in this Standard.

Need to consider capacity to implement and maintain changes

The changes that will flow from the Bill will require significant and multi-skilled expertise. BRANZ highlights here that there will need to be a significant shift in the technical expertise, capacity and effort by regulators to undertake and maintain the regulatory instruments and criteria which are to follow. This will have an initial and ongoing fiscal impact on the regulatory system which will need to be balanced with the goals of the Bill.

A particular example is the building product specification instrument (Bill clause 8, inserting new section 25B). This will require investment and effort as the entire industry, including those issuing building consents, will be relying on it. It will need constant, consistent, rigorous updating, with an upfront investment and commitment to its ongoing support and maintenance.

SPECIFIC CLAUSE FEEDBACK

Note: New text is suggested within square brackets and suggested deletions are struck through.

BRANZ REF	AMENDMENT BILL CLAUSE	BRANZ COMMENT	EXPLANATION, EXAMPLE, CROSS-REFERENCE
1	<p>Clause 4 – Section 7 amended (Interpretation) In section 7(1), insert in their appropriate alphabetical order: standards certification organisation means an organisation that assesses a building product against a standard standards certification scheme means a scheme under which a building product is assessed against a standard</p>	<p>We recommend clarifying and defining more clearly the terms to be inserted at 7(1): standards certification organisation and standards certification scheme</p> <p>These terms should reference others used in the Building Act 2004.</p>	<p>For example and avoiding confusion, the term standards organisation, which is also to be inserted, cross references the meaning found in section 4(1) of the Standards and Accreditation Act 2015: standards organisation means— (a) the NZ Standards Organisation: (b) an international, national, or regional organisation with functions similar to the NZ Standards Organisation.</p> <p>These terms are also used in Clause 13, new section 272HB Recognition of overseas standards and domestic and international standards certification schemes</p>
2	<p>Clause 6 – Section 19 amended (How compliance with building code is established)</p> <p>(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</p>	<p>We recommend an interpretation for the term product certification scheme be provided.</p> <p>This term should reference others used in the Building Act 2004, for example, product certificate and product certification scheme rules.</p>	<p>The term ‘product certification scheme’ is also used in: Clause 13 - New section 272HA to be inserted: 272HA Recognition of building products or building methods certified under overseas product certification scheme</p>

	methods, that are certified under an overseas product certification scheme (if every relevant limitation and condition of the recognition is complied with):		(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.
3	<p>Clause 6 - Section 19 amended (How compliance with building code is established)</p> <p>(2) After section 19(2)(b), insert:</p> <p>(c) may have regard to any recognition by the Minister under section 272HB of any—</p> <p>(i) standards or groups of standards issued by an overseas standards organisation; or</p> <p>(ii) standards certification schemes issued by a standards certification organisation that is based in New Zealand or overseas.</p>	<p>We recommend that in section 19(2)(c)(i) the word ‘overseas’ is replaced with ‘accredited’, for example:</p> <p>(c) may have regard to any recognition by the Minister under section 272HB of any—</p> <p>(i) standards or groups of standards issued by an overseas [accredited] standards organisation;</p>	<p>This would provide assurance about the organisation’s quality and would be neutral as to whether the organisation was based overseas or in New Zealand.</p> <p>This recommendation is repeated for Clause 13, new section 272HB (1)(a)</p>
4	<p>Clause 6 - Section 19 amended (How compliance with building code is established)</p> <p>(2) After section 19(2)(b), insert:</p> <p>(c) may have regard to any recognition by the Minister under section 272HB of any—</p>	<p>We note that the Minister is being given these responsibilities instead of the chief executive, and not afforded protection against civil proceedings, as provided to the chief executive under section 390.</p>	<p>The content in section 19(2)(c) is regulatory and would seem to fall within the role of the chief executive described in the Building Act 2004, specifically:</p> <p>11 Role of chief executive</p> <p>Under this Act, the chief executive--</p>

	<p>(i) standards or groups of standards issued by an overseas standards organisation; or</p> <p>(ii) standards certification schemes issued by a standards certification organisation that is based in New Zealand or overseas.</p>		<p>...</p> <p>(q) carries out any other functions and duties specified in this Act; and</p> <p>(r) carries out any functions that are incidental and related to, or consequential upon, the functions set out in paragraphs (a) to (q).</p> <p>Unless provided in other legislation, the Minister is not afforded protection against civil proceedings as provided to the chief executive under section 390.</p> <p>This comment also applies to Clause 13 – New section 272HB Recognition of overseas standards and domestic and international standards certification schemes</p>
5	<p>Clause 8 – New sections 25B and 25C inserted</p> <p>After section 25A, insert:</p> <p>25B Building product specifications for use in complying with acceptable solutions or verification methods</p> <p>(1) The chief executive may, by notice, issue building product specifications that may be referred to in an acceptable solution or a verification method.</p>	<p>We recommend that the wording in 25B (2) be changed to reflect that information relating to items (a) to (h) <u>must</u> be included in a building product specification, if it applies to that product, noting that it is not always applicable.</p> <p>For example, the changed wording could be as follows, where new text is within []:</p> <p>“Building product specifications may [must, where applicable,] include specifications for</p>	

	<p>(2) Building product specifications may include specifications for building products in relation to any of the following:</p> <ul style="list-style-type: none"> (a) manufacture: (b) fabrication: (c) testing: (d) quality control: (e) physical properties: (f) performance: (g) installation: (h) maintenance. 	building products in relation to any of the following:...”	
6	Clause 9 – Section 169 amended (Chief executive must monitor correct and emerging trends in building design, etc, and must report annually to Minister)	There is an error in the section title: ‘correct’ should read ‘current’.	
7	<p>Clause 13 - New sections 272HA to 272HC and cross-headings inserted</p> <p>After section 272H, insert:</p> <p><i>Recognition of building products or building methods certified under overseas product certification scheme</i></p> <p>272HA Recognition of building products or building methods certified under overseas product certification scheme</p>	We recommend an interpretation for the term product certification scheme be provided.	This recommendation is also mentioned in item 2 above.

	<p>(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.</p>		
8	<p>Clause 13 – New sections 272HA to 272HC and cross-headings inserted</p> <p>After section 272H, insert:</p> <p>...</p> <p><i>Recognition of standards issued by overseas standards organisations, and standards certification schemes</i></p> <p>272HB Recognition of overseas standards and domestic and international standards certification schemes</p> <p>(1) The Minister may, by notice, recognise, in whole or in part, any–</p> <p>(a) standards or groups of standards issued by an overseas standards organisation; or</p> <p>(b) standards certification schemes issued by a standards certification organisation that is based in New Zealand or overseas.</p> <p>(2) Subsection (1) applies only if the Minister is satisfied that the standards or groups of</p>	<p>We recommend the word ‘overseas’ is replaced with ‘accredited’:</p> <p>272HB Recognition of overseas [accredited] standards and domestic and international standards certification schemes</p> <p>(1) The Minister may, by notice, recognise, in whole or in part, any–</p> <p>(a) standards or groups of standards issued by an overseas [accredited] standards organisation; or</p> <p>(b) standards certification schemes issued by a standards certification organisation that is based in New Zealand or overseas.</p>	<p>This recommendation is also mentioned in item 3 above.</p>

	<p>standards, or standards certification schemes, meet the prescribed criteria.</p> <p>(3) The Minister may at any time, by notice, amend or revoke a notice of recognition made under subsection (1).</p>		
9	<p>Clause 13 – New sections 272HA to 272HC and cross-headings inserted</p> <p>After section 272H, insert:</p> <p>...</p> <p><i>Recognition of standards issued by overseas standards organisations, and standards certification schemes</i></p> <p>272HB Recognition of overseas standards and domestic and international standards certification schemes</p> <p>(1) The Minister may, by notice, recognise, in whole or in part, any–</p> <p>(a) standards or groups of standards issued by an overseas standards organisation; or</p> <p>(b) standards certification schemes issued by a standards certification organisation that is based in New Zealand or overseas.</p> <p>(2) Subsection (1) applies only if the Minister is satisfied that the standards or groups of</p>	<p>We note that the Minister is being given these responsibilities instead of the chief executive, and not afforded protection against civil proceedings, as provided to the chief executive under section 390.</p>	<p>This recommendation is also mentioned in item 4 above and relates to item 11 below.</p>

	<p>standards, or standards certification schemes, meet the prescribed criteria.</p> <p>(3) The Minister may at any time, by notice, amend or revoke a notice of recognition made under subsection (1).</p>		
10	<p>Clause 13 – New sections 272HA to 272HC and cross-headings inserted</p> <p>After section 272H, insert:</p> <p>...</p> <p><i>Recognition of standards issued by overseas standards organisations, and standards certification schemes</i></p> <p>272HB Recognition of overseas standards and domestic and international standards certification schemes</p> <p>(1) The Minister may, by notice, recognise, in whole or in part, any–</p> <p>(a) standards or groups of standards issued by an overseas standards organisation; or</p> <p>(b) standards certification schemes issued by a standards certification organisation that is based in New Zealand or overseas.</p> <p>(2) Subsection (1) applies only if the Minister is satisfied that the standards or groups of</p>	<p>We recommend adding public notification requirements to this section.</p>	<p>For example, new section 272HA includes:</p> <p>(5) A notice under subsection (1) is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).</p>

	standards, or standards certification schemes, meet the prescribed criteria. (3) The Minister may at any time, by notice, amend or revoke a notice of recognition made under subsection (1) .		
11	<p>Clause 16 - Section 402 amended (Regulations: general)</p> <p>(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:</p> <p>After section 402(1)(u), insert:</p> <p>(uaa)prescribing the criteria-</p> <p>(i) to be applied by the chief executive under section 272HA(2); or</p> <p>(ii) to be applied by the Minister under section 272HB(2):</p>	<p>We recommend a separation of power here, as it reads that the Minister can recommend regulations prescribing criteria for their own application.</p> <p>There are several reasons for recommending this power be separated:</p> <ul style="list-style-type: none"> - it would increase Parliamentary scrutiny; - it adds transparency; - it increases service to public good rather than political interest; - it can reduce complexities in secondary legislation and regulations. <p>It follows per BRANZ item 9 where we note that the Minister is being given these responsibilities under section 272HB(2), instead of the chief executive.</p> <p>The separation of power could be achieved by making this change:</p>	<p>This fusion of power has implications when reading Clause 15 Section 392 amended (Building consent authority not liable), where the new section is inserted:</p> <p>(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—</p> <p>(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</p> <p>(b) certified as meeting the standard referred to in paragraph (a) under a standards certification scheme that the Minister has recognised under section 272HB.</p>

		<p>After section 402(1)(u), insert:</p> <p>(uaa)prescribing the criteria-</p> <p>(i) to be applied by the chief executive under section 272HA(2); or</p> <p>(ii) to be applied by the Minister [chief executive] under section 272HB(2):</p>	
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SUMMARY OF SPECIFIC CLAUSE FEEDBACK:

BRANZ Item

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| 1 | We recommend clarifying and defining more clearly the terms standards certification organisation and standards certification scheme . |
| 2, 7 | We recommend providing an interpretation for the term product certification scheme . |
| 3, 8 | We recommend replacing ‘overseas’ with ‘accredited’ in the new sections 19(2)(c)(i) and 272HB(1)(a). |
| 4, 9 | We question why the Minister is given regulatory responsibilities instead of the chief executive. |
| 5 | We recommend changing the wording of new section 25B(2). |
| 6 | Correction of error. |
| 10 | We recommend adding public notification requirements to this section. |
| 11 | We recommend a separation of power in new section 402(1)(uaa)(ii). This recommendation cross-references items 4 and 9. |