

Proposals for CodeMark scheme rules

CONSULTATION DOCUMENT

Proposed rules for certifying building products and building methods





**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki – Lifting to make successful

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

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How to have your say

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on proposed rules for the CodeMark scheme for product certification by **5pm on 25 May 2022**.

Your submission may respond to any, or all of the proposed rules. Where possible, please include evidence to support your views – for example, references to independent research, facts and figures, or relevant examples.

- > You can provide your feedback by completing a survey online via www.mbie.govt.nz/have-your-say or
- > You can download a form at www.mbie.govt.nz/have-your-say and either:
 - email the completed form to building@mbie.govt.nz with the subject line '**CodeMark consultation 2022**', or
 - post it to:
CodeMark consultation 2022
Building System Performance
Building Resources and Markets
Ministry of Business, Innovation and Employment
PO Box 1473, Wellington 6140
New Zealand

If you have any questions about the submissions process please email us at building@mbie.govt.nz.

USE AND RELEASE OF INFORMATION

The information provided in submissions will contribute to MBIE's development of the CodeMark scheme rules. We may contact submitters directly if we require clarification of any matters in submissions.

Your submission will also become official information, which means it may be requested under the Official Information Act 1982 (OIA). The OIA specifies that information is to be made available upon request unless there are sufficient grounds for withholding it. If we receive a request, we cannot guarantee that feedback you provide us will not be made public. Any decision to withhold information requested under the OIA is reviewable by the Ombudsman.

Please set out clearly in the cover letter or email accompanying your submission if you have any objection to the release of any information in the submission and, in particular, which parts you consider should be withheld and reasons for withholding this information. MBIE will take such objections into account and consult with submitters when responding to requests under the OIA.

PRIVATE INFORMATION

The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of the CodeMark scheme rules. Please clearly indicate in the cover letter or email accompanying your submission if you do not wish your name or any other personal information to be included in any summary of submissions that MBIE may publish.

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INTERPRETATION

Accreditation body	Product certification accreditation body
Building Act	<i>Building Act 2004</i>
Building Code, Code	New Zealand Building Code, Schedule 1 to the Building Regulations 1992
Certificate holder	Proprietor of a building product or building method with a current product certificate
ISO/IEC 17065	AS/NZS ISO/IEC 17065: 2013 Conformity assessment – Requirements for bodies certifying products, processes and services
MBIE	Ministry of Business, Innovation & Employment
PCB	Product certification body
Product	May be used to refer to a building product and/or building method
Regulations	Building (Product Certification) Regulations 2008
Section	Section of the <i>Building Act 2004</i> unless otherwise specified

Seeking your feedback on proposals for scheme rules

We are seeking your feedback on CodeMark Scheme rules, which are made by MBIE’s chief executive under the *Building Act 2004* (the Building Act). This document provides some context for the proposed changes and suggested questions. A complete draft of the proposed CodeMark scheme rules is available at www.mbie.govt.nz/have-your-say.

CodeMark is a voluntary certification scheme, administered by MBIE, for certifying building products and building methods. A CodeMark product certificate demonstrates that the building product or building method it relates to complies with certain requirements of the Building Code.

The CodeMark scheme rules (the scheme rules) apply to the scheme parties, which are:

- › the product certification accreditation body (the accreditation body), an organisation appointed by MBIE to accredit product certification bodies to the CodeMark scheme
- › product certification bodies (also referred to as PCBs), which are the third party organisations that evaluate building products and building methods for certification, and then issue product certificates if they decide to certify, and
- › proprietors (manufacturers or suppliers) of building products or building methods that hold a current product certificate.

This consultation will be of interest to the scheme parties and also to:

- › building consent authorities, which must accept CodeMark certified products as Building Code compliant (when used in accordance with the conditions on the product certificate)
- › proprietors of building products or building methods interested in applying for CodeMark certification, and
- › other users including designers, builders and consumers.

KEY DATES

25 May 2022	Public consultation period closes
May-Aug 2022	Submissions considered, wording of CodeMark scheme rules finalised Familiarisation period for stakeholders
By 7 Sept 2022	Relevant legislative changes: <ul style="list-style-type: none"> › Building Act changes with respect to product certification come into force › Revised Building (Product Certification) Regulations also expected to come into force › CodeMark scheme rules are made
From date of commencement of Building Act changes	Accredited product certification bodies: <ul style="list-style-type: none"> › are considered registered product certification bodies for the next six months but must apply to MBIE for registration before the end of this period Current product certificates: <ul style="list-style-type: none"> › are considered registered product certificates › will be reviewed under the new scheme requirements whenever their next review occurs (ie no more than 12 months from the last review/when the product certificate was issued).

Context for change

The CodeMark scheme for certifying building methods and building products has been operating in Aotearoa New Zealand for over a decade, initially as a joint scheme with Australia (originally managed by the Department of Building and Housing, and the Australian Building Codes Board) and then as a separate scheme from 2016.

CodeMark operates under the legislative framework provided by the Building Act, Building (Product Certification) Regulations (the Regulations) and specific CodeMark scheme rules (refer to Figure 1). The scheme has previously operated under rules contained in the CodeMark Scheme Rules – Australia and New Zealand Version 2009.1, published 27 March 2009, and JAS-ANZ (Joint Accreditation System of Australia and New Zealand) Policy Number 01/10 Changes to the CodeMark Scheme Rules, published 15 January 2010.

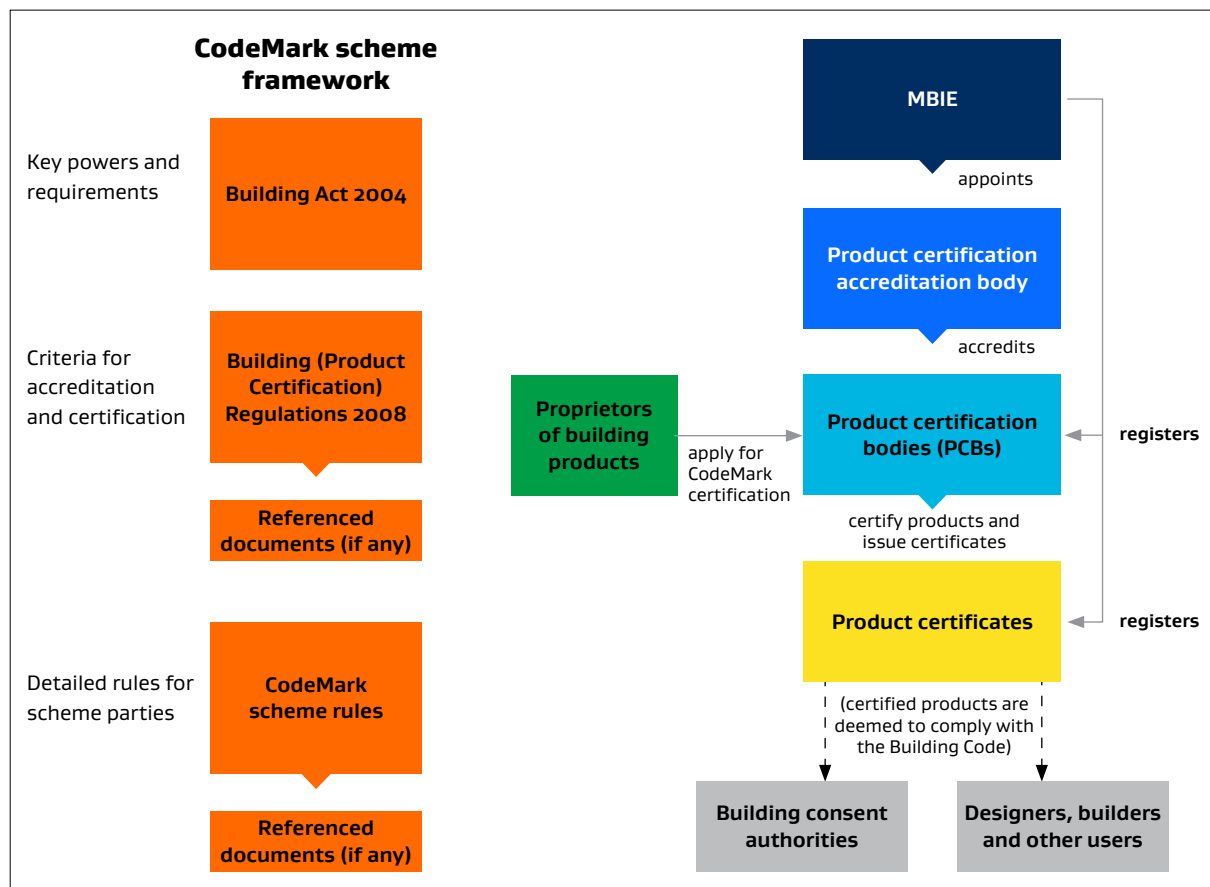



Figure 1: The system for managing product certification



An ongoing programme of building system legislative reform has introduced changes to the Building Act¹, most of which will come into force on or before 7 September 2022. Revised regulations are also expected to take effect on or before that date². The proposals for scheme rules, which are now secondary legislation made by MBIE's chief executive, are intended to align with these changes to the Building Act and the Regulations, and to support their implementation by providing much of the operational detail for the CodeMark scheme.

Other proposals for scheme rules are intended to increase confidence in the scheme and improve usability; make the rules clearer and more consistent; and include some new provisions based on sector feedback, changing practices, and MBIE's experience with how the scheme has operated to date. The proposals also draw on feedback from earlier consultation on proposed changes to the Regulations, recognising the close links between the two legislative instruments and their common stakeholders.

What the CodeMark scheme rules cover

Section 272E of the Building Act³ (refer to Annex A of this document) specifies the scheme parties; ie who the scheme rules apply to. As noted earlier, these are: the accreditation body, accredited PCBs, registered PCBs, and proprietors of any building product or building method that has a current product certificate (whether registered or not).

Section 272E also sets out what the scheme rules can cover, which includes rules about how the scheme parties are to perform their functions under the Building Act and rules about how building products and building methods are to be evaluated.

In addition, the scheme rules can also supplement regulations made under the Building Act section 402 (refer to Annex A) with respect to the accreditation body's accreditation of product certification bodies; the product certification bodies' certification of building products or building methods; and product certification bodies' annual reviews of product certificates.

As the scheme rules are only one part of the legislative framework for the CodeMark scheme, they should be read in conjunction with the Building Act and supporting regulations.

Other key documents for the operation of this scheme include the international standard AS/NZS ISO/IEC 17065:2013 (Conformity assessment – requirements for bodies certifying products, processes and services), which is included by reference in the proposed scheme rules. This standard is followed closely by the accreditation body and product certification bodies and includes structural, resource, process and management system requirements. Further documents supporting the CodeMark scheme's day-to-day operation include the accreditation body's accreditation manual and arrangements with product certification bodies, as well as the product certification bodies' own commercial arrangements with proprietors.

¹ Introduced via the *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021*.

² Public consultation on proposals for regulations was held in April 2021 (www.mbie.govt.nz/have-your-say/building-system-reform) and policy decisions were made by Cabinet in November 2021 (www.mbie.govt.nz/dmsdocument/18114-building-system-reform-regulations-policy-proposals-to-make-regulations-under-the-building-amendment-act-2021-proactiverelase-pdf).

³ As amended by the *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021*.

Discussion: the proposed CodeMark scheme rules

This part of the consultation discusses the draft of the proposed CodeMark scheme rules, which is available at www.mbie.govt.nz/have-your-say, in more detail.

Please note that any references to the 'previous scheme rules' or 'previous rules' are to The CodeMark Scheme Rules – Australia and New Zealand Version 2009.1, published 27 March 2009, and the Joint Accreditation System of Australia and New Zealand's (JAS-ANZ) Policy Number 01/10 Changes to the CodeMark Scheme Rules, published 15 January 2010.

INTRODUCTION

The introduction to the proposed scheme rules explains the legislative framework for the CodeMark scheme as well as who and what it applies to. We have also provided an informative Appendix (Appendix 1) to highlight relevant requirements in the Building Act and the Regulations.

PART 1: PRELIMINARY PROVISIONS

Note that in this draft for public consultation we have included the full wording of definitions from the Building Act and the Regulations (which are applicable to the scheme rules) in 1.2 Interpretation, as some of these definitions are new or have changed.

QUESTION

1. Do you have any comments on the definitions in this Part?

PART 2: ACCREDITATION BODY REQUIREMENTS

Rules for the accreditation body include some general requirements as well as a proposed rule with respect to surveillance audits of product certification bodies. This includes that the accreditation body must review any product certificate that the product certification body has become the responsible PCB for since the previous surveillance audit. The proposal is intended to address some stakeholder concerns that such changes may not be robustly considered by the new product certification body. Also see Part 3: Product certification body requirements, rule 3.4.2 (regarding a change of PCB) and rule 3.1.7 (recording of decisions).

QUESTIONS

2. Do you think the rule with respect to surveillance will provide appropriate oversight over any change in the product certification body responsible for a particular product certificate? If not, what changes do you suggest?
3. Do you have any other comments on the rules in this Part?

PART 3: PRODUCT CERTIFICATION BODY REQUIREMENTS

3.1 General requirements

Proposed rules for product certification bodies include some of the operational detail needed to support the Building Act and the Regulations. These are mostly based on the previous rules and regulations, with a few additional details such as proposed rule 3.1.7 with respect to record-keeping. There are also some minor additions in rule 3.1.1 relating to registration of product certification bodies (as the changes to the Building Act include new requirements for product certification bodies and product certificates to be registered by MBIE).

Technical competencies: rule 3.1.4 is a new proposal clarifying expectations for the CodeMark scheme, recognising that the competence of the product certification body's staff and contractors is a key factor in establishing whether a product certification body can successfully perform its functions, and that product evaluation is often a collaborative process. It replaces requirements in the previous rules to engage a person referred to as a 'UBC' (an Australian qualification without a local equivalent, although the previous rules include a brief outline of the skills and experience required for a 'UBC' operating in the Aotearoa New Zealand scheme). An independent review of the evaluation will still be required as specified in the relevant Standard, ISO/IEC 17065 (refer to the proposed scheme rules, Figure 2).

QUESTIONS

4. Are the specified technical competencies clear and workable? If not, what changes would you suggest?
5. Do you have any other comments on the rules in 3.1 General requirements?

3.2 Evaluation

These rules cover how product certification bodies evaluate building products and building methods, and then decide whether to certify them. There are some additions to the previous rules and some reorganisation, as noted below. Figure 2 in the proposed scheme rules summarises the process and also highlights applicable requirements in ISO/IEC 17065 for independent review.

Pre-evaluation and risk assessments

Regarding risk assessments, feedback from product certification bodies and other stakeholders was that risk assessments of the product provide a useful framework for determining its conformity assessment profile. However, the previous rules (including Tables 1 and 2 in Appendix A of the previous rules) have a number of limitations and inconsistencies.

Taking this into account, the proposed rules include definitions of likelihood as well as consequence to apply when determining the risk ratings, and separate risk assessments for manufacturing and installation to allow for a more nuanced and thorough conformity assessment profile.

A proposed rule near the end of this section requires the product certification body to inform the applicant (ie the proprietor of the building product or building method) of all Building Code clauses the product certification body considers applicable to the product's intended use/s, given there may be more than the applicant anticipated, and what might be involved in evaluating the product with respect to these Code clauses. This rule is intended to ensure the applicant is well informed early on, so they can decide whether they are happy to proceed or whether they want (if possible) to limit the scope of certification to make the project more manageable. There is also a new proposal for product certification bodies to get the applicant's agreement to this plan, estimated costs and timeframes before going ahead, to minimise any issues later on.

QUESTIONS:

6. Are the definitions of likelihood and consequence (in Table 1) appropriate for use in the risk assessment? If not, what changes would you suggest?
7. Are there any other factors you think we should add to Table 1 (Steps 2 and 6) or any you don't think should be there?
8. Do you consider the minimum frequency of audits and inspections provide an appropriate baseline for product certification bodies given that some discretion is allowed, and recognising that individual product certification body practice varies? If not, what changes would you suggest?

Preparing the evaluation plan

The required content of the product certification body's evaluation plan is similar to the previous rules. However, there is a new proposal relating to product certification bodies' evaluation of building products or building methods when there is no applicable national or international Standard, recognising that this is sometimes required.

The requirement in the previous rules for an independent review of the evaluation plan by a 'UBC' has been removed. This is not a requirement of ISO/IEC 17065, and preparing an appropriate evaluation plan is already likely to involve a range of expertise from product certification body staff and contractors.

QUESTION

9. Do you have any views on the proposal for developing an evaluation methodology (rule 3.2.8) or suggested changes to this wording?

Evaluating the building product or building method

These rules are also based on previous scheme rules, with proposed changes including:

- › a rule requiring the applicant's approval of any proposed changes to the evaluation plan
- › requirements for quality plans (also see related rules for certificate holders in Part 4), which include ensuring that the applicant has a product recall procedure. The rules here and in Part 4 are intended to provide relevant provisions whether or not the applicant or the manufacturer (if the applicant is not a manufacturer) has a management system accredited to ISO 9001:2015 (Quality management systems – requirements)
- › a rule for considering test reports – this was requested by some product certification bodies to set a baseline for these reports (also see Testing facilities below)
- › a rule for considering technical opinions – this was also requested by some product certification bodies as they receive a range of 'opinions' (eg accompanying test reports, or from specialists in a particular field) and wanted some parameters for considering these, and
- › clarification of how to verify corrective actions for a critical nonconformity.

Testing facilities

The proposed rules 3.2.15 to 3.2.17 provide for product certification bodies to accept test reports from facilities that are not accredited for that test in some circumstances. They aim to give assurance that product certification bodies are making robust decisions on whether to accept a particular test report and that these decisions can be audited, while allowing for situations where a test is not within scope of any testing facility's accreditation or there are other valid reasons for not using a particular facility.

A related proposal was included in the 2021 public consultation on the Regulations (available at www.mbie.govt.nz/have-your-say/building-system-reform) but has been amended to take account of some of the feedback received, and is now included in the scheme rules. In particular, several submitters on that proposal considered that there needed to be flexibility for product certification bodies given there may be valid reasons for not using an accredited facility (including that the product may be innovative), and that requirements should be principles based rather than prescriptive.

The provision in rule 3.2.16(b) for product certification bodies to consider whether requiring the use of an accredited testing facility would be 'unduly onerous due to cost' is only intended to cover rare situations. MBIE will illustrate the application of this provision further in guidance. An example of this could be if the product was manufactured in Aotearoa New Zealand and was not available closer to the accredited testing facility (which was on the other side of the world), the product was very large and therefore expensive to ship, and there was a reputable testing facility available locally that the product certification body could assess for competence.

Rule 3.2.16(c) is a transitional provision so existing certificate holders are not disadvantaged when the new CodeMark scheme rules are made. It means that any test report the product certification body accepted under the previous scheme rules with respect to a particular product may still be accepted with respect to that product under the new scheme rules. However, the same test report can't be used as evidence for other building products once the new scheme rules are made unless it meets the new requirements.

QUESTIONS

10. Do you think the proposed rules on accepting test reports provide a good baseline for product certification bodies? If not, what would you suggest?
11. Is the provision in rule 3.1.16(b) regarding costs being 'unduly onerous' appropriate? How else would you express this?
12. Are the proposed transitional provisions in rule 3.2.16(c) with respect to testing sufficiently clear and workable? If not, what else would you suggest?
13. Do you have any suggestions with respect to the rule for considering technical opinions?

Site audits and inspections

This section includes new proposals for:

- › **remote site audits**, ie audits carried without an auditor physically present. This type of audit has been carried out more frequently in recent years, especially during times of COVID-related travel restrictions. The proposed rule sets a baseline for conducting these audits and will be supported by guidance; eg safety measures to take while filming onsite and appropriate use of technology.
- › **demonstration of installations**, eg at the factory, rather than always requiring installation inspections to be at a construction site. This rule takes account of feedback that in some cases an installation inspection really only tests the skill of the particular builder onsite, and therefore may contribute very little to the evaluation of the product. Further, the previous scheme rules may unnecessarily disadvantage applicants who do not yet have their product in use in Aotearoa New Zealand but are waiting for CodeMark certification to do so. This feedback has to be balanced against the need to check the buildability of the product and that installation instructions are fit for purpose.

QUESTIONS

14. Is the rule relating to remote audits clear and workable? If not, what do you suggest?
15. Is the rule relating to installation demonstrations clear and workable? Do you have any suggested changes?

Evaluation report, review and certification decision

These rules cover the final steps before the product certification body decides whether to certify the product and are based on requirements in the previous scheme rules. Also refer to Figure 2 of the proposed scheme rules for relevant requirements in ISO/IEC 17065 concerning independent review.

QUESTION

16. Do you have any other comments on the rules in 3.2 Evaluation?

3.3 Product certificates and certificate numbers

The previous scheme rules required each product certificate to have a unique certificate number. Some product certification bodies add letters to this denoting their organisation, or other prefixes and suffixes.

The proposed addition to these rules specifies a standard format for the certificate number that won't alter if the certificate holder decides to move to another product certification body, potentially saving them the cost of altering product packaging and the like. Note that this proposal doesn't affect existing certificate numbers as it only applies when the product certification body issues a product certificate (when it certifies a new building product or building method).

Making the certificate number portable maintains traceability to the product certification body that issued the product certificate, while the 'responsible PCB' (the product certification body that issued, or last reviewed, the product certificate) can always be identified from MBIE's public register of product certificates (available at www.building.govt.nz/building-code-compliance/product-assurance-and-multiproof/codemark/product-certificate-register/).

Note that there are no rules about the content of product certificates, as certificate content is set in the Regulations.

QUESTIONS

17. Do you consider the rules for a standard format for certificate numbers are clear and workable? If not, what changes would you suggest?
18. Do you have any other comments on the rules in 3.3 Product certificates and certificate numbers?

3.4 Surveillance

Section 270 of the Building Act requires product certification bodies to review product certificates at least once a year to check that the certified product continues to comply with the certification criteria. What product certification bodies must take into account when carrying out these reviews will be covered in the Regulations.

The proposed rules provide some of the operational detail to support the Building Act and the Regulations, and are similar to existing requirements.

Section 270 of the Building Act also covers changes to the product certification body responsible for the certified product:

270 Annual review of product certificate

...

- (3) A registered PCB may review a product certificate for which it is not the responsible PCB at the request of the proprietor of the building product or building method to which it relates.

Rule 3.4.2 is intended to support the Regulations by making sure that if there is a change in product certification body any review of the product certificate is robust. Note that there are related requirements in rule 3.1.7 for product certification bodies to justify and record their decisions and the reasons for those decisions, and in Part 2, rule 2.2 for the accreditation body to consider any recent changes in the responsible PCB in its next surveillance audit.

This section also includes new proposals with respect to post-manufacture surveillance (as defined in Part 1, 1.2 Interpretation). There are requirements for this surveillance to be carried out in some circumstances; ie if directed to by MBIE or the accreditation body, or if the PCB receives a relevant complaint.

QUESTIONS

19. Do you consider the rules relating to changes in the product certification body are appropriate in view of the provisions in the Building Act? If not, do you have any suggested wording for this rule?
20. Do you consider the requirements for post-manufacture surveillance in certain circumstances are appropriate? If not, what do you suggest?

Surveillance reporting

The proposed rules clarify the reporting requirements for product certification bodies.

QUESTION

21. Do you have any other comments on the rules in 3.4 Surveillance?

3.5 Change in certificate holder

If a product certification body receives a request to transfer a product certificate from one certificate holder to another, the previous rules require this to be treated the same as a new application for certification. We have had feedback that this is too onerous, especially if all that's changing is the ownership of the intellectual property. The proposed rule aims to provide a more appropriate baseline.

QUESTION

22. Do you consider that the new rules provide a reasonable framework for assessing how changes in the certificate holder should be assessed by the product certification body? If not, do you have any other suggestions?

PART 4: CERTIFICATE HOLDER REQUIREMENTS

Proposed rules for certificate holders include ensuring that the certified product continues to be manufactured consistently with the quality plan and that every certified product has the CodeMark mark of conformity (a registered trade mark) on or attached to it. Other rules concern information that needs to be provided to the responsible PCB and what to do if the product certificate is suspended or revoked. These proposals draw on the Regulations and previous scheme rules.

One change is to set out what is required in the quality plan to make this clearer for certificate holders and product certification bodies. The proposed rules take account of the international Standard ISO/IEC 10005:2018 (Quality management – guidelines for quality plans), and also require the certificate holder to have a product recall procedure (which is already a requirement for the CodeMark Australia scheme). The rules here and in Part 3 for product certification bodies' evaluation of quality plans are intended to provide relevant provisions whether or not the applicant or the manufacturer (if these are distinct) has a management system accredited to ISO 9001:2015 (Quality management systems – requirements).

QUESTIONS

23. Do you agree with the proposed rules for quality plans? If not, what changes would you suggest?

24. Do you have any other comments on the rules in this Part?

SCHEDULE 1: USE OF THE MARK OF CONFORMITY

Schedule 1 sets out who can use the CodeMark mark of conformity, when this trade mark must and can be used, and the acceptable formats for its use. Requirements here are similar to the previous scheme rules.

QUESTION

25. Do you have any comments on Schedule 1?

APPENDIX 1: THE CODEMARK SCHEME FRAMEWORK

Appendix 1 is for information and guidance only. It highlights relevant legislative requirements for the CodeMark scheme.

QUESTION

26. Are there any other comments on the rules that you would like to add?

Annex A: The legislation

The following extracts are from the *Building Act 2004* as amended by the *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021* (these amendments will come into force on or before 7 September 2022).

272E Product certification scheme rules

- (1) The chief executive may make rules for the operation of the product certification scheme under this subpart.
- (2) The rules may (without limitation) include rules relating to 1 or more of the following:
 - a) how the scheme parties are to perform their functions under this Act:
 - b) how building products and building methods are to be evaluated:
 - c) the resolution of disputes between scheme parties:
 - d) procedural and administrative matters.
- (3) The rules may also supplement regulations made under section 402(1)(tb)(ii) or (u)(i) or (ii).
- (4) However, the chief executive must not make rules under subsection (3) unless satisfied that the rules—
 - a) set out matters of detail to elaborate on matters provided for in the regulations; or
 - b) set out procedures, methodologies, forms, or other matters of an administrative nature relating to matters provided for in the regulations; or
 - c) set out how requirements imposed by the regulations may or must be met; or
 - d) otherwise supplement matters of general principle set out in the regulations.
- (5) In this section, scheme party means any of the following:
 - a) the product certification accreditation body:
 - b) an accredited PCB:
 - c) a registered PCB:
 - d) the proprietor of a building product or building method that has a current product certificate (whether registered or not).
- (6) Rules made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

402 Regulations: general

- (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:
 - (tb) prescribing, in relation to product certification bodies, —
...
 - ii. for the purposes of section 263(1),—
 - (A) requirements for policies, procedures, and systems:
 - (B) other criteria and standards for accreditation:
 - (u) prescribing, in relation to product certification bodies, —
 - i. the criteria and standards for certification of a building product or building method for the purposes of section 269 (which must include, without limitation, criteria and standards about the effects on human health of the building product or building methods):
 - ii. in relation to reviews under section 270, matters that a registered PCB must take into account, and requirements that a registered PCB must comply with, in carrying out an audit:
- ...



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