



## COVERSHEET

<b>Minister</b>	Hon Chris Penk	<b>Portfolio</b>	Building and Construction
<b>Title of Cabinet paper</b>	<i>Building (Overseas Building Products, Standards, and Certification Schemes) Amendment Bill: Approval for Introduction</i>	<b>Date to be published</b>	14 October 2024

<b>List of documents that have been proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
August 2024	<i>Building (Overseas Building Products, Standards, and Certification Schemes) Amendment Bill: Approval for Introduction</i>	<i>Office of Minister for Building and Construction</i>
29 August 2024	<i>LEG-24-MIN-0172 Minute</i>	<i>Cabinet Office</i>

### **Information redacted**

**YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Information has been redacted on the following grounds:

- *Confidential advice to Government*

## In Confidence

Office of the Minister for Building and Construction

Cabinet Legislation Committee

## Building (Overseas Building Products, Standards, and Certification Schemes) Amendment Bill: Approval for Introduction

### Proposal

- 1 This paper seeks approval for the introduction of the Building (Overseas Building Products, Standards, and Certification Schemes) Amendment Bill (the Bill).

### Policy

- 2 The Bill gives effect to the Government's commitments for the building and construction portfolio to require building materials and product systems that meet international standards equivalent or better to that of New Zealand's to be approved here.
- 3 The introduction of the Bill will give effect to item five of the *Coalition Government's Q3 Action Plan for New Zealand 1 July – 30 September 2024*.
- 4 On 25 March 2024, Cabinet agreed to a package of changes to the Building Act 2004 (the Act) to remove regulatory barriers in the building consent system to the use of overseas products and to improve competition in the building products market (EXP-24-MIN-0008 and CAB-24-MIN-0101 refer). The package of changes:
  - 4.1 make it easier to use building products that meet overseas standards;
  - 4.2 streamline the citing of international standards; and
  - 4.3 mandate the acceptance of products certified overseas.
- 5 These changes will target each level of the building product assurance system (standards, certification schemes, and compliance pathways) and deliver the greatest benefit to improve competition and lower the cost of building.
- 6 The amendments will reduce barriers to high-quality building products being used to improve competition and reduce the price of building. Implementing these changes will address some of the recommendations of the Commerce Commission's market study into residential building supplies related to product compliance pathways, and impediments to product substitution and variations.

- 7  Confidential advice to Government

*Making it easier to use building products that meet overseas standards*

- 8 The Bill provides that the Minister for Building and Construction may recognise in whole, or in part any:
- 8.1 standards or groups of standards issued by an overseas standards organisation, or
  - 8.2 standards certification schemes issued by a standards certification organisation.
- 9 The Bill also includes a limited good faith liability protection for building consent authorities.
- 10 The Minister for Building and Construction may recognise the above schemes and standards only if the Minister for Building and Construction is satisfied they meet criteria to be set out in regulations.
- 11 This is intended to improve the confidence of designers, builders, and building consent authorities in building products that meet recognised standards from overseas standards organisations and are certified by standards certification schemes.

*Streamlining the citing of international standards*

- 12 The Bill introduces Building Product Specifications, a new instrument to streamline the citing of international standards that can be used with Acceptable Solutions (AS) and Verification Methods (VM) issued by the Ministry of Business, Innovation and Employment (MBIE) to comply with the Building Code. It is intended that Building Product Specifications will contain all the building product standards and specifications that are relevant to AS and VMs. Building consent authorities will not be liable for reliance in good faith on the Building Product Specifications.
- 13 This change will reduce the time and resources needed to incorporate standards that can be used with AS and VMs to comply with the Building Code. It is also intended to support building consenting processes and increased consumer choice for building products.

*Mandating acceptance of products certified overseas*

- 14 Currently, the Act enables the Chief Executive of MBIE to specify certifications of building products or building methods provided by persons outside New Zealand that are to be treated as product certifications in New Zealand (CodeMark). However, this power has never been used and cannot be used proactively. The current power cannot recognise groups of products. Building consent authorities are also not required to accept specified certifications as evidence of compliance with the Building Code.

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- 15 The Bill provides that the Chief Executive may, by notice, recognise one or more, or one or more groups of building products or building methods certified under an overseas product certification scheme. The Chief Executive may do so only if they are satisfied those products or methods meet criteria to be set out in regulations. I anticipate the regulations may include criteria such as the robustness of the schemes and similarity to the existing CodeMark certification scheme in New Zealand.
- 16 The Bill also provides that building consent authorities will not be liable for reliance in good faith on recognised certifications.
- 17 These changes will increase the range of products that can be used in New Zealand and streamline the building consenting processes for using these products in building designs.

*Decisions made during the drafting process*

- 18 On 25 March 2024, Cabinet also authorised me, as the Minister for Building and Construction, to make decisions and further clarify matters consistent with other proposals agreed by Cabinet on any issues which may arise during the drafting process (EXP-24-MIN-0008 and CAB-24-MIN-0101 refer). Consistent with this decision, I have decided that the following matters be included in the Bill, namely that:
- 18.1 a building consent authority may have regard to a notice issued by the Minister for Building and Construction that recognises standards issued by overseas standard organisations and standard certification schemes;
- 18.2 the Chief Executive of MBIE has a role to provide advice on, publish, and keep available the notices issued by the Minister for Building and Construction that recognise standards issued by overseas standards organisations and standard certification schemes. This supports the effective operation of the relevant provisions and enables MBIE to use building levy funds for this function;
- 18.3 processes for making amendments to AS and VMs that are necessary and appropriate to enable the Building Product Specifications have been included (meaning that sections 29, 30 and 409 of the Act do not apply);
- 18.4 the Building Product Specifications will be added to the matters that may be affected by current and emerging trends in the sector that MBIE must monitor and report on annually (section 169 of the Act). MBIE will be able to seek advice from the building advisory panel already established under section 171;
- 18.5 building product manufacturers importers, retailers and wholesalers will be added to the list of persons that MBIE may publish guidance for (section 175); and
- 18.6 good faith liability protections extended by this Bill are also extended to those who are employed or engaged by the Chief Executive to assist functions in relation to AS and VMs, Building Product Specifications and notices issued by the Minister for Building and Construction (section 390 of the Act).

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## Impact analysis

- 19 A regulatory impact statement (RIS) was previously considered by Cabinet at the time policy relating to the Bill was sought (CAB-24-MIN-0101 refers).
- 20 This RIS was completed, and the Regulatory Impact Analysis Review Panel at the Ministry of Business, Innovation and Employment (MBIE) reviewed the Regulatory Impact assessment *Mandating approval of overseas building products and associated supporting material*. The RIS was given a grade of Partially Meets due to the following:
- 20.1 The proposals have been informed by consultation by the Commerce Commission on the high-level competition issues, but in the time available MBIE has not been able to consult with sector participants on the specific proposed solutions.
- 20.2 The Panel considered the proposed Select Committee process will be critical to ensuring further public input into the proposals and mitigating risks and impacts.

## Compliance

- 21 The Bill complies with each of the following:
- 21.1 the principles of the Treaty of Waitangi;
- 21.2 advice from the Treaty Provisions Officials Group on any Treaty of Waitangi provisions;
- 21.3 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- 21.4 the disclosure statement requirements, a disclosure statement has been prepared and has been attached;
- 21.5 the principles and guidelines set out in the Privacy Act 2020;
- 21.6 relevant international standards and obligations;
- 21.7 the [Legislation Guidelines](#) (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

## Consultation

- 22 The following agencies were consulted on this paper and the draft Bill: The following agencies have been consulted on this paper: Parliamentary Counsel Office, Ministry for Regulation, Ministry of Foreign Affairs and Trade, Ministry for the Environment, Ministry of Housing and Urban Development, Department of Internal Affairs, Te Puni Kōkiri, the Treasury, Ministry of Transport, Ministry of Education, Ministry of Social Development, Department of Conservation, Department of the Prime Minister and Cabinet, Ministry for Primary Industries, Ministry for Culture and Heritage, Standards New Zealand, and the Office of the Privacy Commissioner.

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- 23 In addition to the above agencies, except for the Office of the Privacy Commissioner, Kainga Ora and the Commerce Commission were consulted on the policy proposals approved by Cabinet on 25 March (EXP-24-MIN-0008 and CAB-24-MIN-0101 refer).
- 24 World Trade Organisation (WTO) members were notified of the Cabinet policy decisions through the Technical Barriers to Trade mechanism. Comments on this notification closed on 7 August 2024.
- 25 ASTM International (a Standards Organisation) provided comment on the WTO notification from the United States of America. The comment expressed support for the proposals, highlighting the Building Product Specifications as enabling specifiers, builders and consumers to benefit from a variety of innovative building products. ASTM International noted their availability to answer any questions the Government of New Zealand may have of them.
- 26 Between May 31 and June 27, 2024, MBIE carried out targeted sector consultation on criteria for decision making and priorities for implementation of the Bill. This consultation included a webinar hosted by MBIE with 221 unique viewers. 196 submissions were received through this consultation.
- 27 Advice was also sought from the Legislation Design Advisory Committee during the drafting of the Bill.

### **Binding on the Crown**

- 28 This Bill amends the Building Act 2004. The Building Act 2004 is binding on the Crown (subject to the exceptions in that Act).

### **Creating new agencies or amending law relating to existing agencies**

- 29 The Bill does not create new agencies.

### **Allocation of decision-making powers**

- 30 The Bill does not involve the allocation of decision-making powers between the executive, the courts, or tribunals.

### **Associated regulations**

- 31 Regulations will be required to support the operation of the Bill. The Bill includes regulation making powers to prescribe decision making criteria for:
- 31.1 the Minister for Building and Construction to recognise standards issued by overseas standard organisations and standard certification schemes; and
  - 31.2 the Chief Executive of MBIE to recognise building products or building methods certified under an overseas product certification scheme.
- 32 The provisions in the Bill that relate to the regulations above will commence on a date set by Order in Council or two years after Royal Assent. I will seek approval of the

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commencement by Order in Council with the regulations prescribing decision making criteria.

- 33 I plan to seek policy approval on the associated regulations from Cabinet in the first half of 2025.

**Other instruments**

- 34 The Bill repeals and replaces an existing power of the Chief Executive of the Ministry of Business, Innovation and Employment (section 262), to provide recognition by notice, of one or more, or one or more groups of building products or building methods certified under an overseas product certification scheme. The notices will be secondary legislation and will be subject to the publication requirements in the Legislation Act 2019.

**Commencement of legislation**

- 35 The provisions of the Bill that relate to the regulations above (paragraph 31 refers) will come into force by Order in Council or two years after the date of Royal Assent. Other provisions of the Bill will commence the day after the date of Royal Assent.

**Parliamentary stages**

- 36 The Bill should be introduced in September 2024, and Confidential advice to Government
- 37 It is proposed that the Bill be referred to the Transport and Infrastructure Committee of Parliament.

**Proactive Release**


- 38 I propose to proactively release this Cabinet paper package and associated Cabinet minute within 30 business days.

**Recommendations**

I recommend that the Cabinet Legislation Committee:

- 1 Confidential advice to Government
- 2 Confidential advice to Government
- 3 **note** that the Building (Overseas Building Products, Standards, and Certification Schemes) Amendment Bill will remove regulatory barriers to the use and acceptance of overseas building products in New Zealand;

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- 4 **approve** the Building (Overseas Building Products, Standards, and Certification Schemes) Amendment Bill for introduction, subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 5 **agree** that the Bill be introduced on a date to be approved by the Leader of the House;
- 6 **agree** that the Government propose that the Bill be:
  - 6.1 referred to the Transport and Infrastructure Committee for consideration; and
  - 6.2  Confidential advice to Government

Authorised for lodgement

Hon Chris Penk

Minister for Building and Construction

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