



COVERSHEET

Minister	Hon Jenny Salesa	Portfolio	Building and Construction
Title of Cabinet paper	Building (Product Certification) Amendment Regulations 2019	Date to be published	28/10/2019

List of documents that have been proactively released

Date	Title	Author
10/9/2019	Building (Product Certification) Amendment Regulations 2019	Office of the Minister for Building and Construction
10/9/2019	LEG-19-MIN-0129	Cabinet Office
12/12/2018	Updating the regulations for the CodeMark product assurance scheme	Office of the Minister for Building and Construction
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Information redacted

NO (please select)

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Updating the regulations for the CodeMark product assurance scheme

Proposal

1. I seek Cabinet's agreement to update the *Building (Product Certification) Regulations 2008* (the Regulations) for the CodeMark building product certification scheme (CodeMark) based on the proposals in this paper

Executive Summary

2. CodeMark is a voluntary building product certification scheme established in 2008 that enables product owners to apply to have their building products assessed against New Zealand Building Code (the Building Code). Once a CodeMark product certificate is issued, a product is deemed to be compliant with the Building Code and can be used in building work.
3. This paper contains regulatory proposals to address the recommendations from the 2017 Deloitte review of CodeMark to improve the competency of Product Certification Bodies (PCB) and the quality of product certificates. I propose to update and clarify the Regulations to require that:
 - all product testing laboratories are independently certified, to ensure the product tests used for CodeMark meet a minimum standard;
 - every PCB has an International Organization for Standardization (ISO) certified quality management system in place, to ensure there is a minimum standard for all quality systems;
 - products are evaluated against all relevant Building Code clauses within *Code clause B2 Durability* and *Code clause F2 Safety of users*; and
 - product certificates include more information about a product, including its intended use and specifications, and additional information is carried over to a schedule on the certificate.
4. The Ministry of Business, Innovation and Employment (MBIE) sought feedback on the proposals from building and construction industry stakeholders, including CodeMark scheme participants, Building Consent Authorities (BCAs), and manufacturer and supplier representatives, along with other key building and construction sector stakeholders.
5. MBIE received 30 submissions in response. The proposals were all broadly supported by submitters. There was strong support for requiring independent certification of product testing labs and requiring products to be evaluated against relevant Building Code clauses. There was support for requiring PCBs to have ISO certified quality systems and concerns from some submitters

about the increased amount of information required on product certificates. I have made minor changes to the proposals to reflect stakeholder feedback.

6. I propose that MBIE share an exposure draft of the Regulation with stakeholders to seek their feedback and that MBIE review this Cabinet paper for proactive release.

Background to CodeMark

7. CodeMark is a voluntary building product certification scheme established in 2008. A product manufacturer or supplier can apply to have their product evaluated against the Building Code. If the product is evaluated to be compliant with the Building Code it can be issued with a CodeMark product certificate. Products with a CodeMark product certificate are deemed to comply with the Building Code and must be accepted by BCAs, if the product is specified for use in building work and is installed consistently with the information on the certificate.
8. MBIE is the owner of CodeMark. MBIE appoints a Product Certification Accreditation Body (PCAB) to undertake accreditation assessments and audits of PCBs against a set of standards and criteria set out in the Regulations.
9. Accredited PCBs carry out product evaluations and issue product certificates. The PCBs evaluate products against the standards and criteria, set out in the Regulations along with the requirements for the form and content of product certificates. There are currently seven PCBs operating under CodeMark New Zealand and 156 certificates¹.

Review of CodeMark

10. In 2016, MBIE engaged Deloitte to review and provide advice on potential improvements to CodeMark. The Deloitte review found that CodeMark has the potential to provide substantial benefits to the building industry but there are issues that prevent these benefits being fully realised. The issues and recommendations identified by Deloitte included MBIE's management and monitoring of the scheme, the competency of PCBs, the quality of certificates, and the PCBs by the PCAB.
11. The Deloitte review made a series of recommendations, which included:
 - addressing the lack of clarity around roles and responsibilities of the actors in the scheme;
 - addressing issues around the quality of CodeMark certificates;
 - building stakeholders' confidence in CodeMark, and

¹ As at 20 November 2018.

- improving the way the benefits of CodeMark were communicated and promoted.
12. I directed MBIE to undertake work to address the recommendations in March 2018. There are three parts to this work. This paper deals with regulatory proposals to improve product evaluation and product certificates to address the issues around quality of CodeMark certificates. At the same time, MBIE is also making operational improvements to CodeMark.
 13. MBIE is also developing options to clarify the purpose of the scheme and broaden the regulation making power. The broader regulation making powers will enable further improvements to the quality of CodeMark certificates and the competency of PCBs. I intend to bring those proposals to Cabinet in February 2019 as part of a package of proposed interventions for public consultation to the building products regulation and assurance systems.

Proposals to update the Regulations

14. The Act allows regulations to be made that set the criteria and standards for accrediting a PCB and the criteria and standards that must be applied when determining an application for a product certificate. The current regulations do not ensure that PCBs are conducting quality product evaluations and issuing robust product certificates. I seek your agreement to proposals to amend the Regulations and to issue drafting instructions to the Parliamentary Counsel Office (PCO). The proposal for updating and clarifying the Regulations are in relation to the:
 - standards and criteria for accreditation assessments and audits of PCBs;
 - standards and criteria against which products are evaluated; and
 - requirements for product certificates.
15. On 26 September 2018, I agreed to MBIE seeking feedback on the above proposals to update the Regulations. Given the technical and detailed nature of the proposed changes, MBIE sought feedback from building and construction sector stakeholders, including the PCAB, the PCBs, BCAs, the Building Industry Federation (representing manufacturers and suppliers), product certificate holders and those who participated in the Deloitte review. Feedback was received from 30 stakeholders and is summarised in Appendix B.
16. I also intend to provide stakeholders with access to an exposure draft of the Regulations to support them to prepare for the Regulations' implementation (when finalised) in May 2019. Specifically, the PCAB and PCBs, BCAs, the Building Industry Federation, certificate holders and a number of technical experts should have access to an exposure draft to help them prepare for implementing the changes. There may also be other stakeholders who request a copy of the draft and there is no reason that it should not be circulated given MBIE has already sought feedback on the proposals from a wide group of industry stakeholders.

Proposals for the standards and criteria for accreditation assessment and audits

Standards for PCB accreditation

17. The PCAB assesses PCBs against specified criteria and standards, set out in Regulations, to determine whether a PCB should be accredited for CodeMark. The standards and criteria include ISO standards that set out the systems and processes a PCB must demonstrate to be considered competent to evaluate products and issue product certificates. The conformity assessment standard referred to in the Regulations has been superseded. The updated ISO standard is *ISO/IEC 17065:2013 Conformity Assessment – Requirements for bodies certifying products processes and services* (ISO 17065 Conformity assessment) and the Regulations should be updated to refer to this standard.

Standards for product testing facilities

18. The Deloitte review recommended that the competency requirements for product evaluations should be specified with more detail. *ISO 17065 Conformity assessment* requires that any testing facility used by a PCB (including if the PCB conducts its own testing) must comply with the “applicable requirements” of *ISO 17025 General requirements for the competence of testing and calibration laboratories* (ISO 17025 Requirements for laboratories).
19. I propose that the Regulations make it clear that PCBs can only use testing laboratories and other facilities that are independently accredited against *ISO 17025 Requirements for laboratories*. A testing facility must include in their scope of accreditation the standards applicable for the products or systems they are testing, all test reports must come from accredited testing facilities and be issued under the testing facility’s accreditation.
20. This requirement will ensure that PCBs are only using testing facilities that are appropriately accredited for the tests the PCB is commissioning. Ensuring that the test reports used by PCBs to evaluate a product are robust and credible is intended to improve the quality of product certificates.
21. I propose that PCBs must comply with this new requirement within 24 months of the Regulation coming into effect. This should give adequate time for those testing facilities that comply with *ISO 17025 Requirements for laboratories* but are not accredited to gain accreditation or for PCBs to find alternative testing facilities.

Quality Management Systems

22. *ISO 17065 Conformity assessment* requires that PCBs must have a quality management system in place. The standard provides two options for meeting this requirement, a list of criteria that must be met or a quality management

system that is certified under *ISO 9001: 2015 Quality management systems – Requirements* (ISO 9001 Quality Systems).

23. I propose that all PCBs have an independently certified quality management system consistent with *ISO 9001 Quality systems* to set a minimum standard for all PCBs. This requirement will provide confidence to MBIE that PCBs have appropriate quality management systems in place to ensure they are carrying out robust product evaluations and issuing credible product certificates.
24. I propose that PCBs must be *ISO 9001 Quality Systems* certified within 12 months of the Regulations coming into effect.

Feedback from submitters

25. Submitters were generally in agreement that the information relied on by a PCB for its certification decision should be robust and credible. Those who supported the proposal saw value in having testing laboratories accredited. However, both those who supported and those that disagreed with the proposal were concerned that test reports from a number of jurisdictions and reputable testing agencies would be excluded from the CodeMark Scheme and that there could be higher costs for CodeMark certification.
26. Submitters were more evenly split on whether PCBs should be required to have their quality management system certified. The main concern from those who do not support the proposal was that compliance with *ISO 17065 Conformity assessment* should already ensure a PCB has adequate quality management system without the need for further accreditation.
27. I have not made any changes to the proposals based on the feedback from submitters. This proposal would have limited impact on most PCBs as there are only two PCBs (out of seven) that are not currently *ISO 9001 Quality Systems* certified. The two unaccredited PCBs should already have some form of quality management system in place so any impact on them will depend on any improvements they need to make to meet the ISO standard. The costs associated with gaining accreditation can be factored into the fees a PCB charges and are not considered to be significant.

Proposals for the standards and criteria against which products are evaluated

28. The current drafting of the Regulations does not specify any Building Code clauses that a product must comply with, beyond those sought by the applicant. There are relevant clauses in the Building Code that should be considered for all applications. Building Code *Clause B2 Durability* imposes requirements on the durability of building work. Therefore, I propose that *Clause B2 Durability* applies to all product evaluations.
29. Section 402(1)(u) requires that standards and criteria for evaluating a product must include an evaluation of a product's effect on human health. I propose that Building Code *Clause F2 Safety of users* be the appropriate standard for meeting the legislative requirement for an evaluation of a product's effect on

human health. Building Code *Clause F2 Safety of users* safeguards people from injury or illness. It covers hazards from construction, demolition, building materials, substances, processes, safety from falling, ensures visibility in escape routes and that buildings have warning systems and signs.

30. Under Regulation 11, an applicant for certification must provide a quality plan for the product that is being certified. The ISO standard that the quality plan must be consistent with has been superseded and needs updating. I propose that clause 11(2)(c) is updated to refer to *ISO 10005 2018 Quality Management – Guidelines for quality plans*.

Feedback from submitters

31. Submitters broadly supported these proposals. Submitters who supported this proposal noted that it would provide more clarity and reassurance to BCAs and consumers about CodeMark products. Submitters who did not support the proposal saw it as an unnecessary clarification or they had concerns around the wording that products comply with all clauses within *Code-clauses B2 Durability* and *F2 Safety of users*.
32. I have amended the original proposal based on feedback to make it clear that products need only comply with the relevant clauses within *Code-clauses B2 Durability* and *F2 Safety of users* and not all clauses.

Proposals for product certificates

33. Requiring robust information on product certificates is intended to ensure that certificates have the information product specifiers (such as architects and draughtspersons), product installers, and BCAs need to make informed decisions about how a product will perform. The additional information requirements should also help ensure that a product is installed consistently with the installation requirements and specifications and by appropriately qualified or skilled people, where this is required. If the specified information does not fit on a certificate, it must be included on a schedule to the certificate.
34. All of the additional information required for a product certificate should be held by the product manufacturer or supplier or should be generated by the PCB through the product evaluation process. The proposal should not impose significant additional compliance costs on certificate holders.
35. A summary of the proposed changes I propose to the information that must be provided on a certificate can be found in Appendix A. As a result of these changes, three clauses of Regulation 14 are no longer necessary and should be repealed.

Feedback from submitters

36. Stakeholders generally agreed with the proposal that certificates provide more detailed information and with the proposed requirements for further information and documentation in a schedule to a certificate. The main

concerns raised by submitters were about the level of detail that might be required on the certificates and the requirement to provide links to the tests and evaluations as these may contain proprietary information.

37. The proposal has been amended so that only a list of the tests and evaluations undertaken and a summary of the result must be included on the certificate rather than making the whole test or evaluation publicly available. This will provide those using a certificate with the information they need on the performance of the product without disclosing proprietary information. Other minor changes have also been made to the proposed requirements as a result of feedback from submitters to clarify the information required on the certificate and the schedule.

Consultation

38. MBIE sought feedback from 339 building and construction industry stakeholders. Stakeholders that MBIE consulted included the PCAB, PCBs, BCAs and manufacturer and supplier representatives, along with other key building and construction sector stakeholders. A summary of their feedback and MBIE's response is attached for your reference at Appendix B.

39. The Treasury, Ministry of Foreign Affairs and Trade, Department of Internal Affairs and the Department of Prime Minister and Cabinet were informed of this paper.

Financial Implications

40. There are no financial implications for government arising from the proposals.

Legislative Implications

41. If the proposals in this paper are agreed, they will result in PCO drafting updates to the Regulations and an exposure draft being consulted with key stakeholders. The Cabinet Legislation Committee will be asked to approve the final draft of the updated Regulations in early 2019.

Impact Analysis

42. The Regulatory Quality Team at The Treasury agrees that no formal regulatory Impact Statement is required in support of these proposals since the impacts are expected to be minor in practice.

Human Rights, Gender Implications and Disability Perspective

43. There are no human rights, gender or disability issues arising from the proposals.

Publicity

44. There is already some media interest in CodeMark. This has not resulted in significant public interest. Media interest will be managed by my office and by MBIE.

Recommendations

45. It is recommended that the Cabinet Economic Development Committee:
- 45.1. **Note** that the Ministry of Business, Innovation and Employment sought stakeholder feedback on proposals to amend the *Building (Product Certification) Regulations 2008* (the Regulations);
 - 45.2. **Note** that the stakeholder feedback was broadly supportive of the proposals;
 - 45.3. **Agree** to amend the Regulations to improve the quality of product evaluations by Product Certification Bodies and the information provided on CodeMark certificates by:

Standards and criteria for accreditation assessments and audits of PCBs

- 45.3.1. replacing the references to Guide 65 in the Regulations with the requirement that a Product Certification Body (PCB) must comply with all the requirements of *ISO/IEC 17065:2013 Conformity assessment – Requirements for bodies certifying products processes and services* (ISO 17065 Conformity assessment); and
- 45.3.2. creating an additional requirement so that, within 24 months of the Regulation coming into effect, all testing facilities used by PCBs are accredited against *ISO 17025 General requirements for the competence of testing and calibration laboratories* (ISO 17025 Requirements for laboratories); and
- 45.3.3. creating a requirement that testing facilities used by PCBs must have the standards applicable for the products or systems they are testing in their scope of accreditation; and
- 45.3.4. creating an additional requirement that all PCBs are accredited under *ISO 9001: 2015 Quality Management Systems – Requirements* (ISO 9001 Quality Systems), within 12 months of the regulation coming into effect; and

Standards and criteria against which products are evaluated

- 45.3.5. clarifying clause 10(a) of the Regulations to require that a product must comply with the New Zealand Building Code clauses relevant to the product's intended use; and
- 45.3.6. updating clause 11(2)(c) of the Regulations to refer to *ISO 10005: 2018 Quality management – Guidelines for quality plans*; and

Requirements for product certificates

45.3.7. amending clause 14 of the Regulations to require:

- 45.3.7.1. a simple, plain English description of the product and statement of the intended use(s) of the product; and
- 45.3.7.2. a list of the specific, relevant New Zealand Building Code clauses with which the product complies, which must include references to Code clauses *B2 Durability* and *F2 Safety of users*; and
- 45.3.7.3. the certificate holder's New Zealand trading name(s), address for service, and website, email and telephone number; and
- 45.3.7.4. the Product Certification Body's contact details; and
- 45.3.7.5. signatures of the Product Certification Body's authorised representative and the person or persons assigned by the Product Certification Body to make the certification decision; and
- 45.3.7.6. a list of compliance pathways the product is compliant with; any conditions or limitations for each individual performance requirement the product is compliant with; installation instructions, including any skills or qualifications needed to install the product, any health, safety and wellbeing declarations associated with installation, known situations in which the product should not be used, maintenance and use of the product; and the tests and evaluations, and any other documents that were used to prove compliance; and
- 45.3.7.7. adding a requirement that if any of the above information does not fit on the body of the certificate, further detail must continue in the schedule to the certificate;

45.4. **Agree** to repeal clauses 14(1)(e), 14(1)(g) and 14(1)(l) of the Regulations;

45.5. **Agree** to authorise the issuing of drafting instructions to the Parliamentary Counsel Office to give effect to the recommendations agreed to in this paper;

45.6. **Authorise** the Minister for Building and Construction to decide, if required, minor and technical matters that arise during the drafting process, consistent with the policy decisions in this paper;

45.7. **Note** that the Ministry of Business, Innovation and Employment will undertake targeted consultation on the draft of the updated Regulations;

45.8. **Agree** that the Ministry of Business, Innovation and Employment review this Cabinet paper using the principles in the Official Information Act

1982, the Privacy Act 1993 and the Protective Security Requirements and then proactively release it.

Authorised for lodgement

Hon Jenny Salesa

Minister for Building and Construction

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Appendix A: Proposed changes to product certificates

Current text	Proposed requirement
<p>Clause 14(1)(a): Each product certificate must contain or be accompanied by the following information and conditions: <i>(a) a description of the certified building method or product, including its trade name, catalogue number, model identification, and indication of the different brand names that may be used</i></p>	<p>1. A simple, plain English statement of the description of the product that includes:</p> <ul style="list-style-type: none"> • The name or names of the product in New Zealand (including the brand or brands used for marketing) • The product's catalogue or model identification number(s), or other unique identifiers that might be used by specifiers or suppliers to identify the product • for a physical product or material, the product's physical attributes including: <ul style="list-style-type: none"> ○ the materials the product is made of ○ the components that make up the product, for it to be the complete product as named ○ any acceptable variants in size and profiles of the product (consistent with the evaluation methodology and outcomes) • for a method, a detailed description of the method, including: <ul style="list-style-type: none"> ○ whether it covers building work ○ whether it requires the use of any specific or proprietary software, documents or templates, manuals, tools, products or materials ○ who must undertake the method and whether its application must be restricted to people with certain qualifications, skills, training or occupational licences ○ whether there are any variants or options available within the application of the method and the circumstances in which the variants can be used (for the method to remain Code compliant)
<p>Clause 14(1)(b): Each product certificate must contain or be accompanied by the following information and conditions: <i>(b) the purpose or use of the building method or product</i></p>	<p>2. A simple, plain English statement of the intended use(s) of the product as described in the product's manual and other instructional materials, clearly informing the user of the function or purpose of the product and the scope for which the use of the product is certified, including references to any applicable New Zealand Building Code clause and the relevant objective, functional or performance requirements.</p>

<p>Currently, there is no corresponding requirement</p>	<p>3. Add the following requirement: The scope for which the use of the product is certified, including references to any applicable New Zealand Building Code clause and the relevant objective, functional or performance requirements.</p>
<p>Clause 14(1)(c): Each product certificate must contain or be accompanied by the following information and conditions: <i>(c) a reference to the specific Building Code provisions to which the certification applies</i></p>	<p>4. A list of the specific, relevant New Zealand Building Code clauses with which the product complies which must include each individual Code clause including the objective(s), and functional and performance requirements. It must also include if necessary, detail on the product's specific contribution to compliance where used as part of a system and detail on any qualifications on the extent of compliance with those clauses (including where the product must be used as part of a system). References to the relevant New Zealand Building Code clauses with which the product complies must include references to <i>B2 Durability</i> and <i>F Safety of users</i></p>
<p>Clause 14(1)(d): Each product certificate must contain or be accompanied by the following information and conditions: <i>(d) the certificate holder's full contact details</i></p>	<p>5. The certificate holder's New Zealand:</p> <ul style="list-style-type: none"> • trading name(s) • address for service • website, email and phone number
<p>Clause 14(1)(e) Each product certificate must contain or be accompanied by the following information and conditions: <i>(e) the conditions, which must include the conditions relating to notification set out in regulation 15, and any limitations of certification</i></p>	<p>6. Repeal what is currently 14(1)(e) because if other changes are agreed, this clause will no longer be necessary</p>
<p>Clause 14(1)(f) and (g): Each product certificate must contain or be accompanied by the following information and conditions: <i>(f) specific references to the title and edition of any publication of documentation relevant to the building method or product:</i></p>	<p>7. Lists of each of the following:</p> <ul style="list-style-type: none"> • any Acceptable Solutions, Verification Methods, New Zealand standards or other compliance pathways referenced against each individual, performance requirement the product is compliant with, and their specific versions and date • any conditions or limitations of conformity for each individual performance requirement the product is compliant with, including:

<p><i>(g) a reference to the existence of any information that forms part of the certificate or the basis for certification</i></p>	<ul style="list-style-type: none"> ○ requirements for the product's use to be in accordance with the installation instructions and requirements against which the product was assessed, as listed in the schedule ○ requirements for people with the qualifications and skills described in the schedule to install the product or use the method ○ known or demonstrated situations where the product should not be used ● any health, safety and wellbeing declarations associated with installation, maintenance and use of the product, and their specific editions and dates necessary to ensure the objective, functional and performance requirements of Code clause F2 can be met ● the tests and evaluations, and any other documents that were used to prove compliance, along with their full and correct title, specific version and date, and the outcome of the test or evaluation, as relevant to the product's certification
<p>Clause 14(1)(j): Each product certificate must contain or be accompanied by the following information and conditions: <i>(j) the name of the product certification accreditation body and its symbol or mark</i></p>	<p>8. Repeal what is currently 14(1)(j) because if other changes are agreed, this clause will no longer be necessary</p>
<p>Currently, there is no corresponding requirement</p>	<p>9. Add the following requirements: The PCB's New Zealand:</p> <ul style="list-style-type: none"> ● trading name/s ● address for service ● website, email and phone number <p>A link to the publicly available information on the PCB's complaint process</p>
<p>Currently, there is no corresponding requirement</p>	<p>10. Add the following requirement: Signatures of the:</p> <ul style="list-style-type: none"> ● PCB's authorised representative ● The person or persons assigned by the PCB to make the certification decision in accordance with clause 7.6.2 of <i>ISO 17065 Conformity assessment</i> ● certificate holder's authorised representative
<p>Clause 14(1)(l):</p>	<p>11. Remove the disclaimer statement required by 14(1)(l) as it is not necessary and creates</p>

Each product certificate must contain or be accompanied by the following information and conditions:

(l) the following statement: *“This certificate is issued by an independent certification body accredited by the product certification accreditation body appointed by the Chief Executive of the Department of Building and Housing under the Building Act 2004. The Department of Building and Housing does not in any way warrant, guarantee, or represent that the building method or product the subject of this certificate conforms with the New Zealand Building Code, nor accept any liability arising out of the use of the building method or product. The Department of Building and Housing disclaims, to the extent permitted by law, all liability (including negligence) for claims of losses, expenses, damages, and costs arising as a result of the use of the building method(s) or product(s) referred to in this certificate.”*

some confusion about the standing of a CodeMark product certificate

Proposed requirements for the Schedule to a product certificate

Add the following:

If any of the above information does not fit on the body of the certificate in its entirety further detail must continue in the Schedule so that the Schedule includes:

A detailed:

- description of the intended use of the product
- description of the physical product including its component parts including any:
 - figures
 - illustrations
 - photos
- technical description of the product which clearly describes if the certificate applies to a:
 - specific product, or
 - suite of possible products, or
 - a system made up of multiple components

The full and complete titles of, and links to all available installation, maintenance and use manuals and materials, and their specific version and date

A list of the qualifications and skills needed to specify, install and use the product, if any

The full and complete titles and dates of, and links to, all training manuals and literature, and their specific version and date

A list of all the information, documents, evaluations and tests used to prove the product's New Zealand Building Code-conformance by each specific Code-clause, along with a simple, plain English statement of:

- what was proven
- who carried out any of the evaluations and tests used
- the dates of any evaluations and tests used and any resulting unique identifier numbers allocated

The evaluation methodology and process, including the rationale for choices made, and how the PCB worked with the certificate holder to (as applicable):

- limit the description of the product's intended use to make it easier to establish compliance
- carry out testing on the product to demonstrate compliance with all clauses against which the product has been certified as Code-compliant

Any other information considered relevant by the person or persons assigned by the PCB to make the certification decision in accordance with clause 7.6.2 of *ISO 17065 Conformity assessment* or other technical expert relied upon as part of the certification process

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