

## **Introduction**

NZCIC is making this submission on behalf of its members. We acknowledge that our members have a range of views on this issue and this is not a summary of our members' concerns and does not claim to be representative of them; however, this submission reflects the general tenor of the concerns raised by our members and, through them, the wider construction industry.

NZCIC supports the intent of the proposal and is eager to find appropriate solutions. We agree recognising further standards and certifications is a positive move for the industry, but navigating and resolving the complexities will dictate if this translates into more competition, greater efficiency, and lower prices.

The MBIE document states that overseas manufacturers and suppliers can face barriers to being able have their building products used in the Aotearoa/New Zealand market, as it can be time consuming and costly for designers, builders and owners to get approval from Building Consent Authorities to use overseas products. NZCIC agrees that this is an important issue and that both productivity and timeliness in the sector need to be improved; however, we are not persuaded that the proposal will achieve this.

The Commerce Commission identified that it is too slow and costly to get overseas building products accepted for general use, and that the building regulatory system needed to create clear compliance pathways for more key building supplies and make it easier for designers and market participants to use new or competing building supplies. NZCIC agrees with this, particularly the need for clear compliance pathways for more key building supplies; however, we consider the proposed compliance pathways are not clear and may not lead to improvements to supply chains or new building products.

The issues discussed here in the introduction are of a general nature and apply to some or all of the five questions in the proposal.

### ***Complexity***

The proposal oversimplifies a very complex issue and suggests that entire standards associations or certification schemes could be given blanket approval without considering the challenges of individual products in the New Zealand context; it is a case of putting the carte blanche before the horse.

### ***Quantum of products***

NZCIC challenges the statement that 'Aotearoa/New Zealand imports about 90 per cent of all building products (or components) sold in the country, which provides choice but also makes the sector vulnerable to price changes and supply chain disruption.' This seems at odds with the quantity of, say, timber, in a new house – one of the largest components of its construction and mostly locally sourced. If, however, this percentage is correct, then it would suggest that there are currently no barriers at all to using overseas building products – they

are flooding in! If we assume, that this percentage is an error, it reduces any confidence we might have in the rest of the proposal.

### ***Scale***

Not enough consideration has been given in the proposal to the volume of the products to be imported, the scale of the projects or the size of the business seeking to do this. The documentation appears to have been written to satisfy the high volume, large commercial market which leads to assumptions about the ability of larger businesses to manage and mitigate risk.

However, those involved in smaller, light commercial or residential projects, perhaps produced by a small design practice might not have the capacity to undertake appropriate due diligence and consequently, risk management – or even be aware that they should. Removing the liability from Building Consent Authorities will only exacerbate the exposure of smaller construction businesses and design practices, who might place greater reliance on the approval of a product, a standard, or a certification scheme that has been gazetted. If a standard or a certification scheme has been gazetted, will the government accept liability for the performance of a product that enters the country via this route?

In discussions about this proposal, MBIE has mentioned that liberating the process could lead to access to over 6000 plumbing products from Australia alone. This example has been cited as a great opportunity to provide more choice and competition, but it clearly demonstrates that a tighter regime is necessary to stop a tsunami of products that might not have had the testing and verification to ensure that they are fit for purpose and fit for New Zealand.

### ***Legal issues***

The proposal makes broad statements about legal issues and the need for specifiers, importers and installers to have appropriate warranties but it skirts the issue of how these might be enforced in other jurisdictions, exposing – particularly homeowners and smaller construction companies – to undue risk.

The intention to remove liability from Building Consenting Authorities does not eliminate it but simply offloads liability to others. Will it descend upon MBIE, who might have approved the relevant standard or certification scheme?

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

### ***NZCIC response:***

The MBIE document states:

- A. *The Government plans to amend the Building Act to enable the Minister for Building and Construction to **recognise groups of standards from overseas standards organisations and standards certification schemes**.*
- B. *This will provide guidance to designers, builders, building owners and building consent authorities about what standards from overseas standards organisations could be considered for a specification of building products that will comply with the Building Code.*
- C. *It will also remove the need for designers, builders, building owners and building consent authorities to verify the adequacy of a standard or the robustness of a standards certification scheme and allow them to rely on what has been certified.*
- D. *This will make it easier for any building product that has met an appropriate standard from a recognised jurisdiction to be specified in a building design.*
- E. *The Building Act is also being amended to provide **exemptions from liability** for Building Consent Authorities where they **typically must rely on information on equivalent standards and the performance of products**. This will provide support to Building Consent Authorities to make decisions around acceptance of new overseas building products.*
- F. *There will also be **criteria set in regulation**, to support Ministerial decision making. Recognition of overseas standards organisations and standard certification schemes will be done via Gazette notice issued by the Minister.*

If A above fails, then everything below it fails also. Should a future Minister for Building and Construction, advised by officials, recognise either a group of standards from an overseas standards organisation or a standards certification scheme that proves to be ill-advised, or deficient in performance or integrity, or sub-standard, or fall below a threshold acceptable in the New Zealand context, then:

- The guidance to designers, builders, building owners and building consent authorities could be faulty and unreliable
- The standards from overseas standards organisations could tacitly approve building products that will NOT comply with the Building Code.
- Designers, builders, building owners and building consent authorities (relieved of the need to verify the adequacy of a standard or the robustness of a standards certification scheme) could rely on what has been certified, when it would be foolhardy at least, and reckless at most, to do so.

- Any building product that has met an appropriate standard from such a jurisdiction could be specified in a building design which could prove to be disastrous.

Our point is that this entire process depends on the capability, accuracy, robustness and industry expertise of the officials advising the Minister. The proposal document fails to understand this need – or the risk of failure, should the need not be met. Nor does it specify how overseas standards, standards associations or certification schemes will be assessed and/or verified.

The MBIE proposal document refers, somewhat vaguely, and possibly cryptically to ‘criteria set in regulation, to support Ministerial decision making.’ The integrity of the proposed process depends entirely on these criteria, which must be defined and stipulated before any of the other steps are designed.

### ***Local Context***

Understanding the local context, climate and environment is of critical importance and its significance cannot be overlooked. It is important also to have a thorough understanding of the complexity of the requirements of the NZ Building Code. Attempting to establish ‘like for like’ across borders and oceans is futile. The Building Code and NZ Standards are designed for and appropriate for our unique context, climate and environment. We must exercise the utmost caution when considering standards and certifications created for conditions unlike ours.

### ***BPIR***

The Building Product Information Requirements (BPIR) system while well-intentioned would not be appropriate as a compliance pathway for suppliers. It certainly wouldn’t cope with the volume of new products needing verification and/or certification by MBIE should the Removing Barriers proposal be implemented as currently described. It would not capture the multitude of building products that are entering the country via online distributors such as Trade Me, Temu, and EBay selling building products that have no BPIR.

NZCIC has low confidence in BPIR. The construction industry would need assurance that any verification and/or certification processes developed by MBIE will be considerably more resilient and robust than BPIR.

## Streamlining the citing of international standards

### *NZCIC response:*

#### **The MBIE document states:**

*This new regulatory instrument is intended to reduce the burden for designers, product manufacturers and building consent authorities using products tested to standards from overseas. **If a product complies with the specification in its intended use, it must be accepted by Building Consent Authorities, as complying with the Building Code.***

*The processes for publishing the building product specification will be more streamlined than the current processes for publishing the acceptable solutions and verification methods that are published under the Building Act. This will help cut some of the internal MBIE red tape and **reduce the time require to recognise new building product standards or specifications** in the future.*

*Implementation will involve **moving product manufacturing and testing standards from the acceptable solutions and verification methods to the building product specification**. MBIE is also undertaking work to **identify suitable alternative product standards from overseas that provide an equivalent or better level of performance as those currently cited**. MBIE may also engage with external technical experts on selecting appropriate standards when there is a heightened risk to buildings due to a product failure or misuse.*

#### **New Regulatory Instrument**

This is particularly a concern with the proposal to develop a new regulatory instrument (the building product specification) to enable the approval of products tested to standards overseas. The building product specification will be ‘more streamlined than the current processes for publishing the acceptable solutions and verification methods that are published under the Building Act.’ Perhaps, rather than develop an entirely new regulatory instrument, it would be better to streamline the existing processes and comprehensively review the Building Code. If the Building Code is not performing as it should, a workaround will not improve it. The Building Code may be cumbersome – and it needn’t be – but its robustness and resilience are the last line of defence in a complex building system.

Acceptable Solutions currently reference appropriate overseas standards. Replacing these references with new references to the Building Product Specification adds another layer of bureaucracy and increases the possibility for mistakes to occur.

Disaggregating key functions – particularly those around compliance, certification, verification and integrity – to a different regulatory instrument weakens the system unnecessarily. Sometimes the nimble can be the enemy of the good.

### **Building Consent acceptance**

*If a product complies with the specification in its intended use, it must be accepted by Building Consent Authorities, as complying with the Building Code.*

This is a very high bar, placing extraordinary responsibility on those officials who approve the product – who must also be very specific about ‘its intended use’. A lack of specificity (or too much) could result in confusion about whether it is appropriate in a specific situation. A Building Consent Authority is likely to be unconcerned if a product complies because they will no longer have liability for it.

### **Reducing time**

*reduce the time require to recognise new building product standards or specifications*

There is no evidence that publishing a building product specification will reduce time; in fact, it may even increase it as it will need to be verified outside of the context of the Building Code and will require those verifying to seek or be provided with additional information.

### **Verification**

*moving product manufacturing and testing standards from the acceptable solutions and verification methods to the building product specification... and ...identifying suitable alternative product standards from overseas that provide an equivalent or better level of performance as those currently cited.*

This could cost considerably more than the current system due to the relative experience of those doing the verifying. Determining whether a standard provides ‘an equivalent or better level of performance as those currently cited’ is near impossible. Standards can be compared but verifying their ‘level of performance’ is vague and could require considerable testing in the New Zealand environment.

### **Building Systems**

Building products don’t exist on their own in a building; they are connected to other products often in complex building systems. Construction relies upon systems not products. Although instances exist where a standalone product may be able to be used, commonly a group of products are collectively tested against a range of standards and then must be used in that tested arrangement. A holistic view needs to be taken to enable a system to be used. As an example, an interior partition system may need to be tested for structural actions (permanent, imposed, wind, earthquake), fire performance, acoustic performance, impact resistance, and moisture resistance. To enable an overseas partition system to be used in New Zealand all these local standards under one or multiple standard organisations need to be recognized, comparable, and transferable. Disaggregating products to their singularities fail to understand how they will be used in concert with other materials. The nomenclature in the Building Code, of Acceptable Solutions, recognises that it is the total solution (including products, how they are detailed and their proposed use) that is approved as being acceptable; a Building Product Specification, by definition, is only interested in building products.



Similarly, some standards themselves are interconnected and act together, and would therefore be required to be viewed and considered together in the context of any approval or verification of foreign standards or certification schemes.

A focus on key systems that would most substantially increase competition or reduce cost may determine which standard organisations should be targeted for recognition. Often systems interact or exist on a substrate system. For example, an interior fire door system is applied into a fire rated interior partition system. Following on from this door hardware (handles, closers etc.) is then applied to the door. All these systems need to be tested with each other against various standards to determine compliance. The degree systems rely on or are relied upon by other systems needs to be a consideration in where the greatest benefits lie, and to avoid reached a dead end because an overseas door is not tested in a New Zealand partition or with a locally produced door handle.

### ***Technical support and advice***

There will be resistance if an overseas standard is considered less appropriate or rigorous than the standard that is currently being used in New Zealand. Detailed evidence will be required to demonstrate why overseas standards are appropriate and consequently why overseas systems should be specified. For systems from overseas there needs to be clarity on how support and technical advice is going to be provided. Often detailed communication and collaboration is required with suppliers and manufacturers through design and delivery. This will remain the case if the product comes from New Zealand or elsewhere. Likewise, there needs to be confidence that warranties will be maintained, that products will be available, and that manufacturers remain accountable. If this cannot be assured, then products cannot be specified. Mechanisms to enable this need to be considered and expressed. Consideration should be given to the training and familiarization that will be required across the industry. Those specifying products should be enabled to reasonably access and understand the standards, without cost or language being an undue barrier. There also needs to be a transitional period for knowledge growth to occur, risk exists in accelerating this process and not enabling the industry to adjust appropriately.

### ***Environment***

Distinction needs to be made between those products specified for the external envelope (where exposure to New Zealand's harsh environment and the need for weatherproofing are critical) and the internal context (where weatherproofing may not be an issue but humidity is). Similarly, products used as structural members (primary or secondary) need to meet significant local issues (high wind, UV exposure, seismic issues) that may not have been considered in the country of origin of the standard. For example, there could be risks associated with the importation of structural steel that does not comply with NZS3404, given the seismic environment in New Zealand.

### ***Evaluations***

The intention for overseas product standards to be evaluated prior to be added to the list of approved standards (and by inference, the need to evaluate individual products) will require evaluators to be adequately resourced and technically competent. Each revision of an overseas standard will require re-evaluation for our local context. Similarly, should we

upgrade a standard, a previously acceptable overseas standard may no longer comply. This could lead to complex and complicated resolution of future issues if a building consent was issued for a product that is no longer compliant.

## **Risk**

The intention that Building Consent Authorities would not be *'held liable for relying in good faith on claims made by suppliers, they will still need to be satisfied on reasonable grounds that the proposed work will comply with the Building Code'*, is meaningless if 'good faith' and reasonable grounds are not defined.

If Building Consent Authorities are to be indemnified, then where the responsibility and risk flows need to be explicitly explained. Building Consent Authorities play a critical role in assessing if drawings and specifications are aligned with the requirements of the Building Code, a modification to this could have wide implications across the industry. Currently Building Consent Authorities are inconsistent in the application of their roles and how they assess the appropriateness of Building Consent information. Consistency needs to be achieved across these Authorities to prevent greater product options resulting in greater inconsistency and longer, more expensive Building consent processes.

Given the complexity outlined above it is critical that a technical interest group is established and maintained to review the initial standards and certifications being considered, the systems, the impacts, the processes required, and any challenges that arise. Upcoming construction projects cannot be a test bed for the products that enter the market following the recognition of overseas standards. We have learnt through the leaky building crisis that rigor and review need to be at the core of our process. We should not compromise that and suffer the consequences in the long term.

Risk does not go away if it simply moves from one legislative document to another – or from local government to a central government department. Unlike Elvis, risk has not left the building.

### ***New Zealand's unique environment***

New Zealand has characteristics that need to be considered when looking at overseas standard organisations. Earthquake loads and UV strength being two examples, overseas standard organisations will need to have comparable base data and assumptions to enable the products that are tested against them to be suitable for our environment and conditions.

### ***Sustainability***

In addition to the environmental characteristics of New Zealand, the location and market size needs to be a consideration. Products designed, manufactured and managed in the United Kingdom will carry substantial costs to supply into the New Zealand market. Given our market size unless a reasonable market share can be achieved then supply may not be feasible. Products and systems will need to be able to demonstrate their sustainability and



their whole life carbon impact. This should be better than a New Zealand equivalent to be specified.

***Meet or exceed***

When evaluating overseas standards, it is important to ensure they meet or exceed New Zealand's requirements. They should be relevant to our specific conditions and regularly updated. The certification process must be thorough and unbiased, providing assurance that these products will perform as expected. Standards must offer the same safety and performance as New Zealand Standards without adding cost and complexity.

## **Mandating acceptance of products certified overseas**

### ***Certification***

Not all third-party product certifications schemes are equal. The existence of a system/standard/certification scheme does not make it automatically infallible because we think favourably of a jurisdiction similar to ours.

### ***Trade Issues***

Any blanket approval of overseas standards or certification schemes needs to be consistent with our WTO and existing free trade agreement obligations. Care will need to be taken to avoid unwarranted discrimination among our trading partners, or between New Zealand and foreign products, thereby creating new non-tariff barriers.