

Building (Overseas Building Products Standards and Certification Schemes) Amendment Bill

Submission of the New Zealand Law Society Te Kāhui
Ture o Aotearoa

13 November 2024

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Building (Overseas Building Products Standards and Certification Schemes) Amendment Bill (**Bill**).
- 1.2 The Bill proposes to amend the Building Act 2004 (**Act**) by implementing the recommendations made in the Commerce Commission’s final report of its residential building supplies market study, reported in 2022.¹ That market study recommended improving and clarifying compliance pathways as a means to bring in more (and new) key building products.
- 1.3 The Law Society acknowledges the importance of improving accessibility to new and improved building products and ensuring supply chain resiliency. The Bill provides high-level pathways for compliance but does not include detailed implementation requirements, and we recognise there is an intention to rely on regulations to enable flexibility and ensure the legislative regime remains fit for purpose. We consider this is generally an appropriate approach in a highly technical field characterised by frequent change.
- 1.4 This short submission recommends further consideration of legislative safeguards and addresses two minor drafting points. It has been prepared with assistance from the Law Society’s Commercial and Business Law Committee.²
- 1.5 The Law Society **does not** wish to be heard.

2 Chief Executive or Minister recognition

- 2.1 The Bill establishes new compliance pathways for building products entering the New Zealand market. However, it does not create any compliance obligations. It does this by allowing the Chief Executive (**CE**) or Minister to recognise one or more, or one or more groups of building products or methods certified under an overseas product certification scheme, if satisfied that those products or methods meet the criteria to be set out in regulations.³
- 2.2 During the assessment of the Regulatory Impact Statement (**RIS**), concern was raised that increasing flexibility would create a risk around product quality, with a potential outcome of building failure. Assessors noted that the analysis of this risk was inadequate.⁴ The RIS states that the consenting process and ‘a robust legal framework’ would adequately address this risk. We anticipate it is intended for the regulations issued pursuant to new section 402(1)(uaa) to provide this framework.
- 2.3 Given the current regime arose as a consequence of the leaky homes crisis in the late 1990s and early 2000s,⁵ we consider that further consideration should be given to including additional safeguarding criteria in proposed sections 272HA(2) and 272HB(2).

¹ Commerce Commission *Residential Building Supplies Market Study* (December 2022).

² More information on the Law Society’s Commercial and Business Law Committee can be found here: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/commercial-li/>

³ New section 272HA; explanatory note.

⁴ Regulatory Impact Statement, at para 62.

⁵ Beehive “Review reinforces Government action on weathertightness” (press release, 23 December 2009); Miriam Bell “Leaky homes 20 years on: could it happen again?” *Stuff* (online ed, New Zealand, 10 September 2022).

- 2.4 This could be achieved by legislating some required elements of the criteria for recognition by the CE or Minister. This could include:
- (a) Requiring product testing that reflects climates similar to or harsher/more variable than the New Zealand climate; and
 - (b) Requiring product testing of earthquake durability; or
 - (c) Otherwise specifying that the CE or Minister must be satisfied that there is sufficient evidence to demonstrate the product's suitability in the New Zealand environment.
- 2.5 This would ensure that products that meet standards that are otherwise similar to the New Zealand standard but are not tested in similar climates or for earthquake durability cannot be imported or used without such testing.
- 2.6 Alternatively, if the Select Committee is not of the view that such criteria should be specified in the primary legislation, the Ministry of Business, Innovation and Employment should be directed to include these criteria in the regulations, and to publicly consult on an exposure draft of the regulations.

3 Overseas standards organisation

- 3.1 Clause 4 states that an 'overseas standards organisation means an overseas organisation with functions similar to the standards organisation'. The Law Society suggests that the 'overseas standards organisation' definition should be redrafted to state that it has the same meaning as in section 4(1)(b) of the Standards and Accreditation Act 2015. This would avoid confusion and maintain the intended meaning.
- 3.2 Further, we suggest that guidance around the wording 'similar to' would be beneficial so that market participants can easily understand whether a particular product or method is likely to be recognised by the CE.

4 Standards

- 4.1 The Law Society suggests the insertion of a definition of 'standard' consistent with that provided in section 4(1) of the Standards and Accreditation Act 2015 to ensure conformity between statutes.



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