

# Regulatory Impact Statement: Product certification regulations

## Coversheet

Purpose of Document	
Decision sought:	<i>Analysis produced for the purpose of informing final Cabinet decisions for drafting of regulations and release of an exposure draft.</i>
Advising agencies:	<i>Ministry of Business, Innovation and Employment</i>
Proposing Ministers:	<i>Building and Construction</i>
Date finalised:	<i>20 October 2021</i>
Problem Definition	
<p>The Building Act 2004 was recently amended by the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021 to strengthen the product certification scheme and give stakeholders confidence that certified building products or building methods will perform as stated on their certificates. Regulations are needed to implement the improvements to the scheme made by the Act amendments.</p>	
Executive Summary	
<p><i>Background</i></p> <p>The product certification scheme under the Building Act 2004 (the Act), known as CodeMark, is a voluntary scheme that allows building products and methods to be certified. Building consent authorities must accept a product certificate as proof that the product or method complies with the Building Code (if the conditions on the certificate have been met).</p> <p>A review of the product certification scheme by Deloitte in 2017 noted a lack of clarity on the roles and responsibilities of the different actors in the scheme. Building consent authorities were found to have low confidence in the scheme.</p> <p>Deloitte also raised concerns about the following actors in the scheme:</p> <ul style="list-style-type: none"><li>• the competence and technical expertise of product certification bodies, which certify and audit building products or methods against the certification criteria</li><li>• the ability of the accreditation body, which assesses and audits product certification bodies against the accreditation criteria, and MBIE, which administers the scheme, to assess and monitor the competence of product certification bodies.</li></ul> <p>In September 2019, Cabinet agreed to a number of proposals intended to address these problems and enable MBIE to be an effective product certification scheme owner.</p>	

The Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021 (Amendment Act) implemented these changes to strengthen the product certification scheme. These changes included introducing a new registration requirement for product certification bodies and product certificates, enabling the chief executive of MBIE to make product certification scheme rules, and introducing new offences. This legislation was introduced on 8 May 2020 and received Royal assent on 7 June 2021.

The development of policy options has focused on aligning the product certification regulations with the new legislative framework introduced by the Amendment Act. Full implementation of the Amendment Act will require new regulations.

### *Options*

MBIE considered options against the following assessment criteria: Confidence, Certainty and Clarity, Cost effective, Proportionate, and Flexible.

Options were considered for the following categories of regulatory proposals:

- product certification body registration
- product certificate information
- product certification body accreditation
- product certificate reviews.

Some of the above categories contain several proposals; each with a preferred option. These preferred options are packaged as a series of interlinked proposals to show MBIE's preferred approach to strengthening the product certification regulations.

The preferred approach is compared to the status quo below:

### **Status quo: Retain existing regulations and do not implement the new registration functions.**

This option does not achieve the objectives of the reform programme to strengthen MBIE's oversight of the product certification scheme and to increase confidence in the quality of certificates issued under the scheme. This option would not increase confidence in the scheme or provide certainty and clarity to scheme parties. A new registration requirement would not be implemented and regulations would not be aligned with the amended legislative framework.

### **Preferred approach: New and amended product certification regulations.**

This approach strengthens the scheme and implements new requirements in the Amendment Act to its fullest extent. Proposed regulations are aligned with the new legislative framework and confidence in the product certification scheme is expected to increase.

### *Impacts*

The proposed regulations are intended to have the following benefits:

- current and future product certification bodies perform at a consistently high level and product certificates are consistently of a high quality
- MBIE has appropriate oversight of product certification bodies and certificates

- regulations are sufficiently flexible to provide for efficient or innovative approaches for product certification bodies and proprietors to meet their regulatory obligations
- regulations are fit for purpose within the new regulatory framework.

There are expected to be minor cost implications for the following groups:

- **Accreditation body:** minor compliance costs to align their business processes with the new requirements. These costs may be recovered.
- **Product certification bodies:** minor compliance costs to align their business processes with the new requirements. These costs may also be recovered.
- **Proprietors:** any cost increases for product certification bodies may be passed on to proprietors through higher certification and audit fees
- **MBIE:** additional costs related to the chief executive's new registration functions are intended to be recovered by fees.

The impacts of registration fees for product certification bodies and proprietors are set out in the accompanying Cost Recovery Impact Statement.

#### *Stakeholder feedback*

In April-June 2021, MBIE publicly consulted on proposed regulations for product certification that would be implemented under new regulation-making powers in the Amendment Act.

There was broad support for the proposed regulations. Submitters raised concerns about practical implementation and compliance issues with the proposed regulations. As a result of this feedback, elements of the proposals were revised to improve cost effectiveness, proportionality and flexibility.

### **Limitations and Constraints on Analysis**

In 2019, Cabinet agreed to amend the Building Act 2004 and regulations are required to implement the new product certification scheme provisions. Full implementation of the Amendment Act will require new regulations. The choices of which regulatory options are considered is constrained by limits on the regulation making powers to implement improvements of the product certification scheme.

### **Responsible Manager(s) (completed by relevant manager)**

*Amy Moorhead*

*Manager, Building Policy*

*Building System Performance*

*Ministry of Business, Innovation and Employment*

*20 October 2021*

**Quality Assurance (completed by QA panel)**

Reviewing Agency:	Ministry of Business, Innovation and Employment
Panel Assessment & Comment:	<i>MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.</i>

# Section 1: Diagnosing the policy problem

## Current situation

1. The Building Act 2004 (the Act), as amended by the Building (Building Product and Methods, Modular Components, and Other Matters) Amendment Act 2021 (the Amendment Act) provides for a product certification scheme.
2. The product certification scheme under the Act, known as CodeMark, is a voluntary scheme that allows building products and methods to be certified. Building consent authorities must accept a product certificate as proof that the product or method complies with the Building Code (if the conditions on the certificate have been met).
3. The Act and the Building (Product Certification) Regulations 2008 provide the legislative framework for the product certification scheme in New Zealand. This framework for product certification defines the roles and responsibilities for different parties.
4. Figure 1 below sets out the roles and responsibilities within the product certification scheme as amended by the Amendment Act.

**Figure 1: Roles and responsibilities within the product certification scheme**



5. The accreditation body is responsible for accrediting product certification bodies. Under the Act the accreditation body is appointed by the chief executive; or, if no one is appointed, the chief executive may carry out the functions of the accreditation body.
6. The current accreditation body, the Joint Accreditation System of Australia and New Zealand (JAS-ANZ), was appointed in 2008. JAS-ANZ was established by Treaty Agreement between Australia and New Zealand in 1991<sup>1</sup>. The Treaty Agreement provides for the principle that JAS-ANZ will be self-funding and not-for-profit.
7. Product certification bodies are responsible for certifying building products and methods and issuing product certificates. In order to ensure they are competent to perform this function, scheme certification bodies need to be both accredited (by an accreditation body) and registered (with MBIE).
8. Product certification bodies issue product certificates after assessing the performance of building products and methods against Building Code requirements, when used within a particular scope of certification.
9. The product certification scheme currently has four product certification bodies (Bureau Veritas, SAI Global, Global-Mark and BRANZ).
10. There are around 100 proprietors with certified products or methods, and 135 product certificates on the product certificate register.

<sup>1</sup> The 1991 Agreement was replaced by the 1998 Agreement, which is currently in force. The 1998 Agreement can be found here: <https://www.treaties.mfat.govt.nz/search/details/t/1319/>

## Recent regulatory history

11. In September 2019, Cabinet agreed to a number of proposals intended to enable MBIE to be an effective steward of the product certification scheme. These changes included introducing MBIE registration of product certification bodies and product certificates; enabling the chief executive of MBIE to make product certification scheme rules; and introducing new offences. MBIE consulted on these proposed changes in April-June 2019<sup>2</sup>.
12. The Amendment Act implemented these changes to strengthen the product certification scheme. This legislation was introduced on 8 May 2020 and received Royal assent on 7 June 2021.

## New regulatory framework

13. Regulations are needed to support and implement the Amendment Act. Specifically, this Regulatory Impact Statement considers proposed regulations for:
  - options to strengthen the existing product certification body accreditation requirements, including under the new regulation making powers introduced by the Amendment Act related to policies, procedures and systems that product certification bodies must have to be accredited
  - options to introduce new requirements for product certification bodies reviewing product certificates, using new regulation making powers introduced by the Amendment Act
  - options for introducing new requirements for product certification body registration, which was introduced by the Amendment Act
  - options to amend existing requirements for the content of product certificates, under the new legislative framework introduced by the Amendment Act which provides for regulations to set requirements for certificate information and MBIE's chief executive to approve the form of certificates.
14. In April-June 2021, MBIE publicly consulted on proposed regulations for product certification that would be implemented under new regulation-making powers in the Amendment Act.<sup>3</sup>

## Regulations

15. The existing regulations are the Building (Product Certification) Regulations 2008.
16. Regulation making powers in the Act include:
  - criteria for the accreditation and registration of product certification bodies, including requirements for policies, procedures and systems that product certification bodies must have in order to be accredited
  - criteria for the certification of building products or methods
  - fees for accreditation and registration

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<sup>2</sup> The Regulatory Impact Assessment for the 2019 consultation can be found here: <https://www.mbie.govt.nz/dmsdocument/7024-ris-building-law-reforms-phase-one-proactiverelease-pdf>

<sup>3</sup> The discussion document can be accessed at: <https://www.mbie.govt.nz/dmsdocument/14150-building-amendment-bill-proposals-for-regulations-discussion-document>

- the information that must go on certificates
- audit procedures product certification bodies must follow when reviewing a certificate.

17. The only new regulation making powers introduced by the Amendment Act relate to policies, procedures and systems for product certification bodies, audit procedures and registration.

### Scheme rules

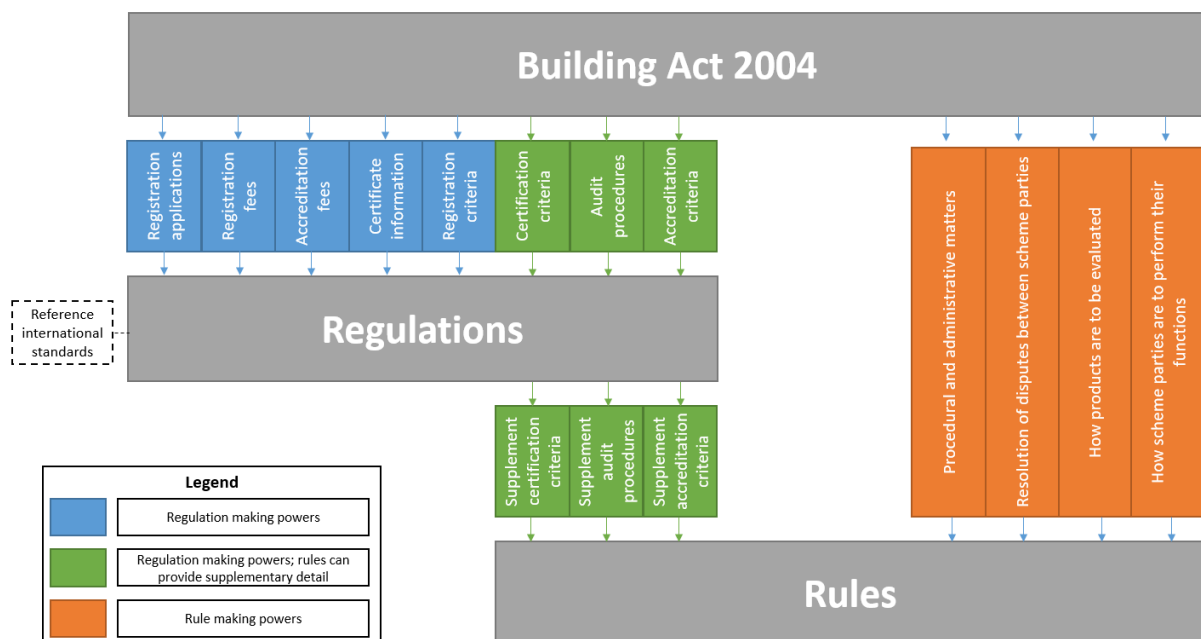
18. The Amendment Act also allows for scheme rules to be made relating to the following:

- how the scheme parties are to perform their functions under the Act
- how building products and building methods are to be evaluated
- the resolution of disputes between scheme parties
- procedural and administrative matters.

19. Separately, scheme rules may be developed to supplement the regulations as they relate to audit procedures and the criteria for the accreditation of product certification bodies and the certification of building products and methods.

20. The regulatory framework for the product certification scheme is summarised in Figure 2 below.

**Figure 2: Product certification regulatory framework**

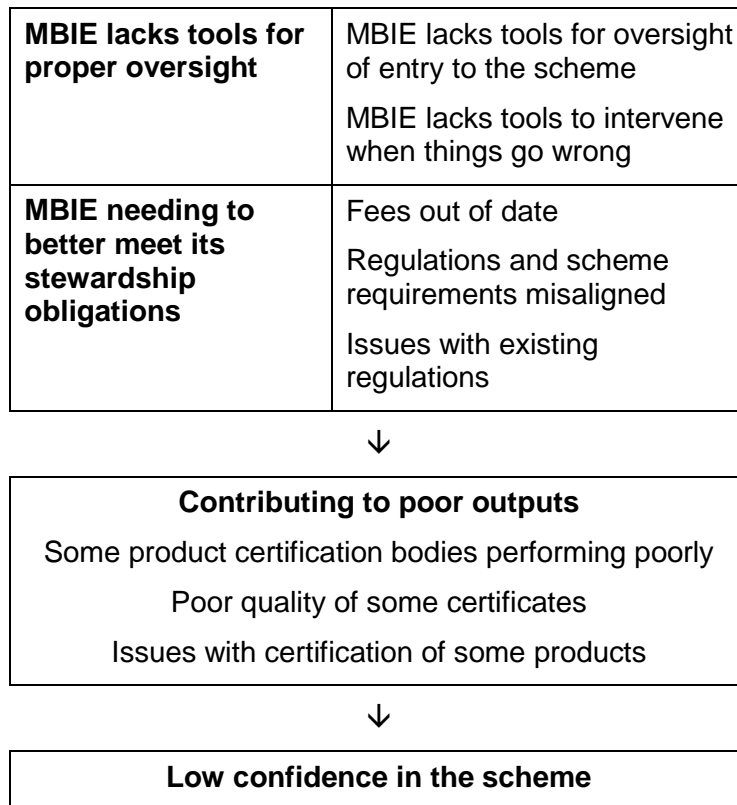


## Problem

**MBIE did not have the tools it needed to ensure the product certification scheme is fit for purpose prior to the passing of the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021**

21. The regulatory framework prior to the Amendment Act did not allow MBIE to give stakeholders the confidence they needed that certified building products or building methods will perform as stated on their certificates. Without regulations, the improvements to the scheme made by the Amendment Act cannot be implemented.
22. A review of the product certification scheme by Deloitte in 2017 raised concerns with the competence and technical expertise of product certification bodies and the ability of the accreditation body and MBIE to assess and monitor their competence. Deloitte also noted a lack of clarity on the roles and responsibilities of the different actors in the scheme. Building consent authorities were found to have low confidence in the scheme. While industry had concerns about the quality of the scheme, they still saw value in the scheme as a way to speed up consenting and open a pathway for innovative products.

**Figure 3: Product certification problem definition (prior to passing of Amendment Act)**



23. Since the scheme was reviewed in 2017, there have been a number of non-legislative improvements to the scheme. While a number of the poor outputs identified above have been addressed, amendments to the legislative framework will help future proof the scheme and provide assurance that future outputs meet consistent high standards.



## Objectives

24. New and amended product certification regulations aim to ensure the product certification scheme will result in buildings with certified building products and methods meeting Building Code performance requirements to the same level or higher than buildings that do not use certified products or methods.
25. This is because certified products and methods are deemed to comply with the Building Code if used in accordance with the certificate. Certified products and methods therefore are not assessed for Building Code compliance by building consent authorities through the traditional building consent process.
26. The legislative requirement for new and amended product certification regulations is consistent with the objectives of the product certification scheme as a whole, which are to provide a robust and easily-understood way to show a building product or method meets the requirements of the Building Code, especially for products that are innovative, new to the market or would have serious consequences if they failed.
27. Table 1 below outlines the objectives of new and amended product certification scheme regulations.

**Table 1: Objectives**

Objective	Created by
Support the use of innovative and new building products and methods	Improved trust and confidence in the product certification scheme and by strengthening MBIE's oversight of the scheme
Faster and more efficient consenting processes	Product certificates have consistent, full and accurate information that building consent authorities can rely on
Better informed decisions about use, installation and maintenance of building products and methods	Greater assurance about the accuracy and quality of product certificates
Easier compliance with an effective and efficient regulatory system	Act, regulations and rules align, with clear requirements for scheme parties

## Section 2: Deciding upon an option to address the policy problem

### Assessment criteria

28. MBIE has considered the assessment criteria in Table 2 below when developing proposals for regulations.

**Table 2: Assessment criteria for proposals for new and amended product certification regulations**

Criteria	Description of criteria	To achieve this, the regulations should ensure:
<b>Confidence</b>	System participants (including users, manufacturers and building consent authorities) should have confidence in the scheme, and in the designs, products and buildings that make use of them.	The scheme produces high quality certificates that can be relied on by building consent authorities. MBIE has appropriate oversight of the scheme by implementing new registration requirements for product certification bodies and for product certificates. Provide assurance that product certification bodies are being assessed against the right accreditation criteria and are carrying out appropriate audits of products.
<b>Certainty and Clarity</b>	The regulatory framework should have clear processes and responsibilities for scheme participants (including users, manufacturers and building consent authorities) and have reasonable compliance costs.	The Act and regulations are aligned. Scheme parties are clear on their responsibilities and the processes they must follow to participate in the scheme.
<b>Cost effective</b>	The benefits of the proposal outweigh the risks and costs.	Compliance costs do not create unnecessary barriers to participating in the scheme. Prescribed fees reflect no more than cost recovery. Fees will allow MBIE and the accreditation body to perform their roles effectively (a separate Cost Recovery Impact Statement refers).
<b>Proportionate</b>	The proposals are proportionate in the way they treat regulated parties.	The regulatory requirements are proportionate to the level of risk or harm and the burden of compliance is not unduly onerous.
<b>Flexible</b>	There is enough flexibility to allow regulated parties to adopt efficient or innovative approaches while also meeting their regulatory obligations.	The scheme's participants are provided with sufficient flexibility to investigate, develop, test and certify innovative products.

**Scope for considering options**

- 29. In 2019, Cabinet agreed to amend the Building Act 2004 and regulations are required to implement the new product certification scheme provisions. Full implementation of the Amendment Act will require new regulations to ensure the product certification scheme meets the objectives described in Table 1, above.
- 30. The choices of which regulatory options are considered is constrained by limits on the regulation making powers to implement improvements of the product certification scheme.
- 31. The development of policy options has therefore focused on aligning the product certification regulations with the new legislative framework introduced by the Amendment Act.

**Options considered**

- 32. A number of options were considered for each element of the product certification regulations. The assessment for each of these elements is summarised below.

**Product certification body registration**

- 33. New regulations are needed to implement MBIE’s registration function introduced by the Amendment Act. Options for regulations to implement registration of product certification bodies are assessed below. See proposals 1-2 in Annex 1 for detailed preferred proposals.

**Product certification body registration: fit and proper person test**

- 34. The Amendment Act provides for regulation making powers related to criteria a product certification body must meet before it is registered by MBIE’s chief executive.
- 35. MBIE considered introducing a fit and proper person test to ensure a product certification body is fit to be registered in the scheme. The fit and proper person test would assess an applicant’s history of civil proceedings and offences; professional and financial management history; compliance in similar schemes; conflicts of interest; and other relevant factors.

Option 1 – Status quo	Option 2 – Fit and proper person test for specific roles	Option 3 – Fit and proper person test for unspecified roles
No fit and proper person test introduced.	Introduce a fit and proper person test for product certification body registration that sets out specific roles that must be assessed (such as a chief executive).	Introduce a fit and proper person test for product certification body registration that requires the most relevant roles to be assessed – without specifying what these roles are.

- 36. The preferred option is **Option 3 – Fit and proper person test for unspecified roles**.
- 37. This option increases confidence in the scheme by providing criteria for MBIE’s chief executive to make decisions on registration of product certification bodies.
- 38. Option 3 is preferred over Option 2 because ensuring that only relevant roles are assessed provides flexibility for a range of corporate structures and is more cost

effective to implement. For example, Option 2 would have required the chief executive of a large multinational organisation to be assessed even when that role is not relevant for a small New Zealand scheme.

**Product certification body registration: notification requirements**

- 39. The Amendment Act provides for MBIE’s chief executive to assess applicant product certification bodies against registration criteria, and to suspend or revoke this registration if product certification bodies no longer comply with registration criteria or scheme rules.
- 40. To help ensure registration criteria continue to be met, MBIE considered introducing requirements for a product certification body to notify MBIE of any changes relevant to the registration criteria.

Option 1 – Status quo	Option 2 – Notification process as a registration criteria	Option 3 – Ongoing requirements in scheme rules
No notification requirements related to registration criteria.	Introduce a new requirement in regulations that a product certification body must have a process to notify MBIE of changes to key personnel or other circumstances that might impact their registration.	Do not introduce a new notification requirements in the regulations, but require in scheme rules that product certification bodies must notify MBIE of any changes that may impact their compliance with registration criteria.

- 41. The preferred option is **Option 3 – include ongoing notification requirements in scheme rules.**
- 42. This provides confidence in the scheme by ensuring MBIE is notified when relevant changes occur. MBIE considers this to be a more flexible and proportionate approach with no cost impacts.
- 43. Option 3 is preferred over Option 2 because it provides for a clear legislative hierarchy that sets ongoing requirements in the most appropriate legislative instrument (scheme rules). Option 3 is also more flexible as this requirement is operational in nature and may be adjusted if needed without amending regulations.

**Product certification body registration: application requirements**

- 44. A person must apply to be registered as a product certification body. Regulations may be made to specify the information that must go on an application for registration.
- 45. MBIE considered the best approach to ensure requirements for applications are clear.

Option 1 – Status quo	Option 2 – Introduce application requirements
No requirements for the information that must be in an application for registration as a product certification body.	Introduce requirements for information that must go on an application for product certification body registration.

- 46. The preferred option is **Option 2 – Introduce application requirements.**

47. This approach provides clear requirements to help MBIE administer the registration process effectively and efficiently. This option provides more certainty for product certification bodies and reduces the likelihood of MBIE requesting further information from an applicant during the application process.

**Product certificate information**

- 48. Existing regulations set requirements for what must go on a product certificate. The Amendment Act now provides for MBIE’s chief executive to determine whether a product certificate has the right information before registering a certificate. Amended regulations are needed to ensure the information requirements are fit for purpose.
- 49. Options for regulations to ensure product certificates have the right information are assessed below.
- 50. See proposal 3 in Annex 1 for further detail on the preferred approach.

**Product certificate information: simplified requirements**

51. Under the Amendment Act, product certificates must contain the prescribed information to be registered. The existing regulations set some requirements that are duplicated across different sections of the certificate or do not work well in practice. MBIE considered the best approach to make these requirements clearer.

Option 1 – Status quo	Option 2 – Remove requirements that are not fit for purpose
Retain existing requirements that would result in duplication across different sections of the certificate, or do not work well in practice.	Streamline the product certificate information requirements; remove regulatory duplication and requirements that do not work well in practice.

- 52. The preferred option is **Option 2 – Remove requirements that are not fit for purpose**.
- 53. This will simplify and streamline the current information requirements and make them clearer for product certification bodies and users of the certificate, such as building consent authorities. This approach will improve confidence in the scheme by improving consistency across certificates.

**Product certificate information: matters related to the form of the certificate**

- 54. Product certificates must contain sufficient information to make a decision on whether a certified product will contribute to a building that complies with the performance requirements of the Building Code. This information must be easily accessible.
- 55. Under the Amendment Act, regulations set information requirements for certificates, while MBIE’s chief executive approves the form of the certificate.
- 56. MBIE considered the best approach to ensuring that product certificates have the right information in the right place to help users of certificates make decisions.

Option 1 – Status quo	Option 2 – Move supporting information to the main body	Option 3 – Do not prescribe matters related to the form of the certificate
Retain existing regulations that set out what must be in the main body of the certificate or in the schedule to the certificate.	Ensure all information on the description, intended use and limitations of use of the product are in the main body of the certificate.	Remove existing regulation and remove references to the form of the certificate, which is now approved by the chief executive under the Amendment Act.

57. The preferred option is **Option 3 – Do not prescribe matters related to the form of the certificate**.
58. This approach provides a clearer legislative hierarchy that sets different requirements into the most appropriate legislative instrument. It is more flexible, as the form of the certificate can be quickly amended in response to operational experience and stakeholder feedback.
59. Option 2 was consulted on, and was intended to make sure that important information was not hidden in the schedule of a certificate. However, this option is not preferred because the requirements would be inflexible and would result in overly detailed certificates where important information could be overlooked by unnecessary technical detail. This may reduce clarity and confidence in the scheme by reducing the usability of certificates.

### Product certification body accreditation

60. Existing regulations set accreditation criteria that product certification bodies must meet before they are accredited. The Amendment Act provides for new, additional regulations to be made related to the policies, procedures and systems a product certification body must have at the time of accreditation. The Amendment Act also provides for scheme rules to set ongoing operational requirements for product certification bodies.
61. Amended regulations are needed to ensure the requirements related to product certification body accreditation are fit for purpose under the new legislative framework introduced by the Amendment Act. Options for regulations are assessed below.
62. See proposals 4-11 in Annex 1 for detailed preferred proposals.

#### Product certification body accreditation: conformity assessment, scope of accreditation, written records, and certifying products and methods

63. The existing regulations set out criteria for accreditation as a product certification body, which are assessed at the time a product certification body is first accredited. Several of these criteria set out requirements that a product certification body must continue to comply with on an ongoing basis.
64. The Amendment Act introduces a new regulation making power for policies, procedures and systems that a product certification body must have to be accredited. Additionally, MBIE's chief executive may make operational scheme rules.

65. Given this new legislative framework, MBIE considered the most appropriate way to require product certification bodies to comply with ongoing accreditation requirements related to conformity assessment, scope of accreditation, written records, and certifying products and methods.

Option 1 – Status quo	Option 2 – Introduce required policies
One-off accreditation criteria that are assessed at the time of accreditation, despite relating to ongoing requirements.	Require product certification bodies to have policies, procedures and systems in place at the time of accreditation, and set ongoing operational requirements in the scheme rules.

- 66. The preferred option is **Option 2 – Introduce required policies**.
- 67. This approach provides certainty and clarity to applicants for accreditation as a product certification body, because policies can be assessed at the point of entry to the scheme.
- 68. It is also more flexible because scheme rules can be more readily updated to reflect changes in operational requirements. MBIE does not consider there will be any impact on cost, proportionality or confidence compared to the status quo.
- 69. Option 1 is not preferred because the current criteria set ongoing requirements that can only be followed once an organisation is operating in the scheme, despite these criteria being assessed at the point of entry to the scheme. This option does not provide clear and certain regulatory requirements for scheme participants.

**Product certification body accreditation: staff and contractors, carrying out product evaluation and conducting risk assessments.**

- 70. Product certification bodies need competent staff and contractors to perform their functions. They must also carry out product evaluation and conduct risk assessments to ensure certified products and methods will comply with the Building Code.
- 71. The current regulations do not set requirements for these elements of a product certification body’s functions. MBIE considered the best approach to ensure that requirements related to these elements are clear and fit with the new legislative hierarchy introduced by the Amendment Act.

Option 1 – Status quo	Option 2 – Introduce required policies in regulations
No regulations for these elements of product certification bodies’ functions.	Require product certification bodies to have policies, procedures and systems in place at the time of accreditation and set ongoing operational requirements in the scheme rules.

- 72. The preferred option is **Option 2 – Introduce required policies in regulations**.
- 73. This will provide clear requirements which will contribute to improved confidence in product certification bodies. Setting the detail of these requirements through scheme rules is a flexible approach that can respond to emerging issues, and MBIE will work with product certification bodies to ensure any scheme rules are cost effective.
- 74. Option 1 would not improve confidence that product certification bodies are carrying out their functions effectively.

**Product certification body accreditation: test reports**

- 75. Proprietors provide test reports to the product certification body when applying for certification. These test reports must be appropriate if they are to contribute to the evidence that underpins a certification decision.
- 76. On 1 November 2022, a regulation is scheduled to come into force that would require product certification bodies to only accept test reports if they come from a laboratory accredited for that test. This regulation is restrictive and may lead to significant or onerous compliance costs.
- 77. MBIE considered the best approach to provide assurance that test reports are appropriate without imposing onerous compliance costs.

Option 1 – Status quo	Option 2 – Decision-making framework	Option 3 – Introduce required policies
Require product certification bodies to only accept test reports if they come from a laboratory accredited for that test.	Revoke existing regulation and introduce a framework for product certification bodies to make decisions on whether to accept a test report that does not come from a laboratory accredited for that test. The framework would only allow this if a test report from a laboratory accredited for that test if <u>not available</u> .	Revoke existing regulation and introduce a new regulation for product certification bodies to have policies in place related to accepting test reports. Ongoing requirements for accepting test reports would be set in scheme rules.

- 78. The preferred option is **Option 3 – Introduce the required policies for accepting product test reports in regulations**.
- 79. This option would remove onerous compliance costs and contribute to a clear regulatory hierarchy that fits with the changes under the Amendment Act. Setting ongoing requirements through scheme rules is a flexible approach that can be readily adapted to respond to emerging issues. As a separate programme of work, MBIE will work with product certification bodies to ensure any scheme rules are cost effective.
- 80. Option 2 is not preferred because it is not sufficiently flexible. There are a number of scenarios where it may be reasonable to accept a test report that does not come from a laboratory accredited for that test, and because Option 2 does not take into account these scenarios it is not proportionate or cost effective.

**Product certification body accreditation: quality management**

- 81. Appropriate quality management systems give confidence that a product certification body has robust processes to carry out its functions to a high standard.
- 82. The existing regulations require product certification bodies to be both:
  - accredited to an international standard which relates to conformity assessment, and contains quality management provisions, and
  - for some product certification bodies, certified to an international standard which relates specifically to quality management.



83. These requirements are complex and are not workable under the system of international standards. Organisations cannot be both accredited to standards and certified to standards. MBIE has considered the best approach to clarify requirements related to quality management.

Option 1 – Status quo	Option 2 – Remove certification requirement
Require some product certification bodies to be certified to an international standard related to quality management.	Remove the requirement for some product certification bodies to be certified to an international standard related to quality management. This option would rely on the quality management provisions in the international standard related to conformity assessment.

84. The preferred option is **Option 2 – Remove certification requirement**. This will improve the clarity of the legislative framework and confidence in the scheme by ensuring the regulations work in practice. This is a more proportionate approach because it does not require unnecessary certification.

### Product certificate reviews

85. The Amendment Act now provides for regulations to set out the matters a product certificate body must take into account when reviewing a certificate. New regulations are needed to ensure that certificate reviews are being carried out appropriately.
86. Options for regulations are assessed below. See proposal 12 in Annex 1 for further detail on the preferred approach.

#### Certificate reviews: matters a product certification body must take into account during an audit

87. After a product is certified, product certification bodies must review a certificate at least once every 12 months to ascertain whether the product continues to comply with certification criteria and there are grounds to suspend or revoke the certificate.
88. The Amendment Act provides for new regulation making powers to set out matters a product certification body must take into account during an audit. MBIE considered the best approach to provide assurance that audits are appropriate.

Option 1 – Status quo	Option 2 – Set frequencies for in-depth reviews	Option 3 – In-depth reviews only when triggered
No requirements in regulations relating to product certification bodies carrying out a review of a product certificate.	Set out the matters a product certification body must take into account when carrying out a review of a product certificate, and require an in-depth review at a set frequency.	Set out the matters a product certification body must take into account when carrying out a review of a product certificate, including matters that must be taken into account only when triggered by a relevant change.

89. The preferred option is **Option 3 – In-depth reviews only when triggered**.

90. This option is cost effective and proportionate, as it focuses audit effort where it is proportionate to the level of risk. It sets clear requirements that improve clarity and confidence in the scheme.
91. Option 2 also provides clear requirements, but is not cost effective or proportionate. It is not consistent with a risk-based framework for audits and would be likely to impose unnecessary costs by requiring an in-depth review even when nothing relevant has changed. Option 1 does not provide clear requirements for audits or appropriate confidence that audits are being carried out appropriately.

### **Overall assessment of preferred approach**

92. The preferred options above are packaged into a series of integrated and interlinked proposals that collectively comprise a preferred approach to introduce new and amended regulations to strengthen the product certification scheme.
93. In Table 3 below, this preferred approach is compared against the status quo and assessed against the assessment criteria.

**Table 3: Assessment of status quo and preferred approach against assessment criteria**

	<b>Status quo: Retain existing regulations and do not implement registration functions</b>	<b>Preferred approach: New and amended product certification regulations, with all preferred options</b>
<b>Confidence</b>	<p>0</p> <p>Does not implement registration of product certification bodies so MBIE’s oversight is not improved. No improvements to certificates for those who use certificates to make decisions. No assurance that certificates are being reviewed appropriately.</p>	<p>++</p> <p>Implements registration of product certification bodies, improves certificate information requirements and introduces requirements for certificate reviews. Improves MBIE’s oversight of the scheme and provides greater assurance that certificates are high quality and reviewed appropriately.</p>
<b>Certainty and Clarity</b>	<p>0</p> <p>Regulations do not align with amended Act. Some existing regulations are not clear, and it is not clear what must be taken into account when a certificate is reviewed.</p>	<p>++</p> <p>The amended Act and regulations align, which provides a clear and flexible legislative hierarchy for the scheme. It is clear what must go on a certificate, with the form of certificates approved by MBIE’s chief executive. Clear requirements for what policies, procedures and systems a product certification body must have to be accredited, and ongoing requirements are set by rules. A clear framework is provided for what may be taken into account when undertaking audits.</p>
<b>Cost effective</b>	<p>0</p> <p>Requirements for product certification bodies accepting test reports are expected to have onerous costs.</p>	<p>+</p> <p>More cost effective approach to test reports. Audit requirements are cost effective because the frequency of in depth audits will reflect the level of risk. Any cost impact from registration criteria is expected to be minor.</p>
<b>Proportionate</b>	<p>0</p> <p>Requirements for product certification bodies accepting test reports are not proportionate.</p>	<p>+</p> <p>Required policies related to test reports will not impose disproportionate regulatory burden. Audit effort is targeted at</p>

		changes that may affect the product's compliance with the certification criteria.
<b>Flexible</b>	0 Requirements related to test reports are inflexible, causing compliance challenges. Some ongoing operational requirements are set by regulations.	++ More flexibility is provided for product certification bodies related to ongoing operational requirements, including accepting test reports, by taking prescriptive requirements out of regulations.  Scheme requirements are more flexible through more appropriate use of scheme rules which may provide for operational details and administrative requirements that can be approved by MBIE's chief executive.
<b>Overall assessment</b>	0 Does not implement registration or align regulations with amended Act. Creates some compliance challenges and workability issues. Does not improve confidence in the scheme.	++ Implements registration and strengthens scheme in line with amended Act. Preferred approach is proportionate, cost effective and flexible. Improves confidence in the scheme and provides clarity and certainty to scheme participants.

<b>Key for qualitative judgements:</b>	
++	much better than doing nothing/status quo
+	better than doing nothing/status quo
0	about the same as doing nothing/status quo
-	worse than doing nothing/status quo
--	much worse than doing nothing/status quo

**Expected impact of the preferred packaged approach**

94. MBIE’s preferred approach for the package of proposals to strengthen the product certification scheme is informed by public feedback and has been designed with the input of key industry stakeholders.

**There will be some additional administrative costs although these are minor relative to the improvements in trust and confidence in the product certification scheme**

95. Table 4 below sets out the one off costs and the ongoing marginal costs and the benefits derived from the preferred packaged approach to enhance MBIE’s oversight of the product certification scheme and improve overall trust and confidence in the scheme. Table 4 also summarises the key impacts on scheme participants.

96. In summary, feedback from affected product certification bodies are that these costs are be minor, and will not lead to significant changes in their current business processes and procedures.

**Table 4: additional cost and benefits of the preferred packaged approach compared to taking no action**

Affected groups	Comment.	Impact.	Evidence Certainty
<b>Additional costs of the preferred approach compared to taking no action</b>			
Impact on product certification bodies and proprietors of MBIE’s new registration function for product certification bodies and product certificates)	Minor additional costs from registration fees (see associated Cost Recovery Impact Statement). Minor costs for product certification bodies to provide evidence of compliance with registration criteria and change business processes to reflect new product certificate requirements.	Maximum \$1,803.00 per product certification body registration \$180.30 per product certificate registration	<b>High.</b> Fees will be prescribed.
Impact on the accreditation body, product certification bodies and proprietors of other amendments	Potential for minor additional costs for product certification bodies to change business processes to comply with amended accreditation criteria and audit requirements.	<b>Low</b>	<b>Medium.</b> Reflects feedback from affected parties.

	Consultation indicates no significant costs on scheme parties.		
MBIE regulator costs	One off costs in setting up registration processes Ongoing costs in carrying out registration activities (cost recovered). Cost recovery fees will be reviewed within 3 years to assess cost assumptions.	<b>Low</b>	<b>Medium.</b> See associated Cost Recovery Impact Statement. Assume hours of effort have been correctly estimated based on prior experience.
<b>Total monetised costs</b>		Maximum \$1,803.00 per product certification body registration (maximum total of \$7,212.00 across four current product certification bodies) \$180.30 per product certificate registration (total of \$24,340.50 across 135 current product certificates)	
<b>Non-monetised costs</b>		<b>Low</b>	<b>Medium/High</b>
<b>Benefits of the preferred approach compared to taking no action</b>			
Accreditation body, product certification bodies and proprietors	Greater clarity for scheme parties' responsibilities. Fewer compliance costs and greater and flexibility related to laboratory requirements for product test reports.	<b>Medium</b>	<b>High.</b> Current regulations and rules do not align with the amended Act.
MBIE as the regulator	Improved oversight and fulfils stewardship role. Legislative framework aligns. Improved ability to intervene if things go wrong.	<b>Medium</b>	<b>High.</b> Implements registration to provide greater oversight.
Building consent authorities	Higher levels of confidence in certified products. Product certificates at a consistently high quality. More efficient consent processing.	<b>Medium</b>	<b>Medium.</b> Expected to lead to higher quality certificates and greater consistency across certification bodies.

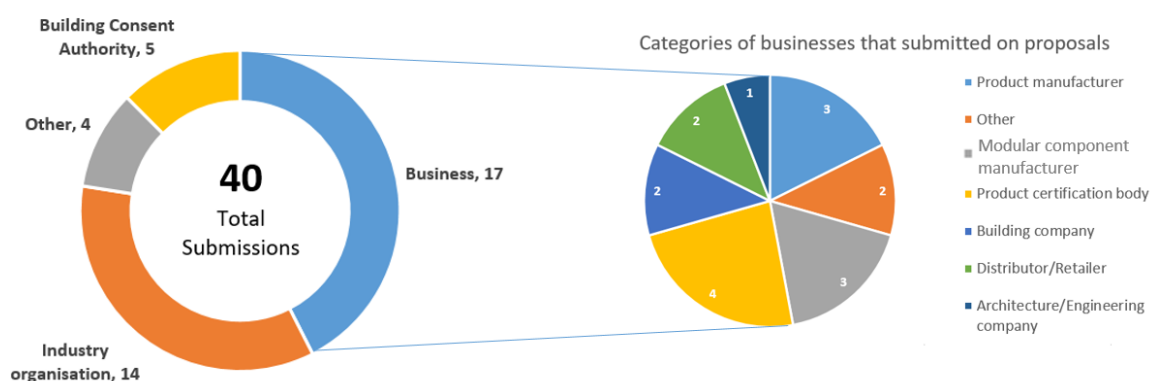
Consumers and users of the certified products	Higher levels of confidence in certified products. Fewer transfers of certificates (and associated time and cost of this) following product certification suspension or revocation.	<b>Medium</b>	<b>Medium.</b> Expected to lead to higher quality certificates and greater consistency of performance across certification bodies.
<b>Non-monetised benefits</b>		<b>Medium</b>	<b>Medium/High</b>

### Stakeholder feedback

97. In April-June 2021, MBIE publicly consulted on proposed regulations for product certification that would be implemented under new regulation-making powers in the Amendment Act.
98. MBIE met with a range of stakeholders, including the accreditation body and certification bodies, prior to releasing the discussion document to seek preliminary feedback and to help shape the proposals in the discussion document. MBIE also held targeted meetings with stakeholders during the consultation period.
99. MBIE received 40 submissions on the product certification proposals in the discussion document (57 submissions were received on the discussion document in total). These included submissions from the accreditation body, product certification bodies, certificate holders, practitioners in the building sector, local government and individual submitters.

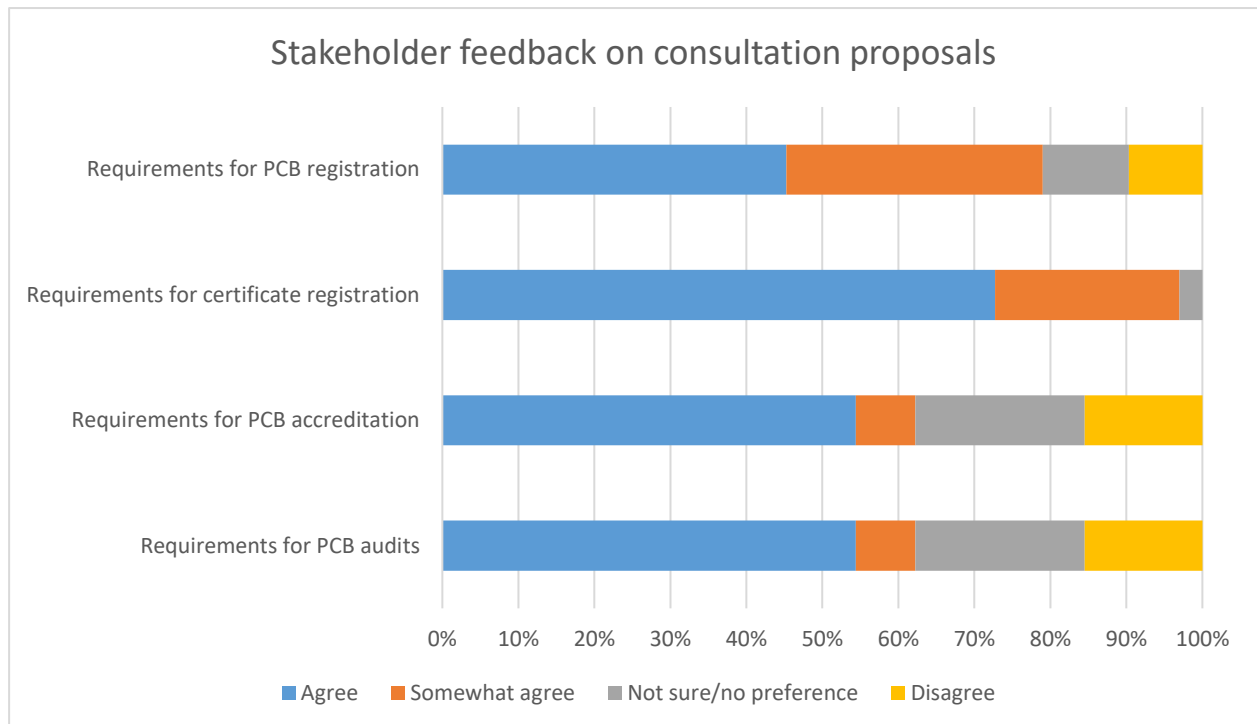
**Figure 4: Breakdown of submitters by category (number)**

Stakeholder groups that submitted on proposals



100. Figure 5 below sets out submitters' responses to questions in the four key themes consulted on for product certification proposals.

**Figure 5: Stakeholder feedback on consultation proposals**



**Implement new registration requirements for product certification bodies**

- 101. The majority of submitters agreed or somewhat agreed with the proposals for new registration requirements for product certification bodies.
- 102. Submitters mostly supported the fit and proper person test. Some submitters noted the fit and proper test needs to work for a wide range of product certification bodies’ corporate structures. The proposals have been modified to address this concern.
- 103. Submitters provided mixed views on the proposal to not introduce registration criteria related to product certification bodies having adequate means to cover civil liabilities. MBIE does not propose to modify the proposal as a result of this feedback.

**Implement new registration requirements for certificates**

- 104. There was broad support for the proposed registration requirements. Some submitters suggested additional requirements for certificates such as renewal dates, or were concerned about usability and disagreed with proposals to remove existing requirements.
- 105. MBIE proposes to remove all requirements relating to a certificate’s form from regulations, which responds to some stakeholder concerns about usability. MBIE does not support renewal dates as certificates must be accepted by a building consent authority at any time.

**Improve requirements for product certification body accreditation**

- 106. The majority of submissions agreed with the accreditation proposals.
- 107. Submitters provided mixed views on whether the proposals would create compliance issues, and some concerns were raised related to cost.



108. Some submitters agreed there needs to be flexibility for product certification bodies where a testing facility is not certified for the test, and that this should be principles-based. Three submitters suggested competent testing facilities should be accredited.
109. MBIE's revised proposal relating to testing facilities responds to feedback related to flexibility. MBIE does not support requiring accreditation for testing facilities as this creates compliance issues that do not support the scheme's objectives for new and innovative products.

#### **Strengthen requirements for product certification body audits and reviews of certificates**

110. Most submitters agreed in full or in part that the proposed requirements for product certification body audits and reviews of certificates looked reasonable. Submitters raised concerns about costs and whether the proposals were proportional to risks.
111. Submitters gave mixed feedback on the proposed frequency for in-depth reviews. Some submitters suggested three years was the right frequency and others suggested a risk-based framework with no set frequency for in-depth reviews.
112. MBIE's revised proposal to set out the matters that must be taken into account during an audit is intended to address concerns related to cost and risk. The revised proposal focuses on risk and reduces unnecessary costs that would arise from requiring in-depth reviews at set frequencies.

### **Section 3: Delivering the preferred approach**

#### **Implementation**

113. The proposed regulations will be drafted and given effect through an Order in Council.
114. Regulations for the product certification scheme are required to commence no later than 15 months from the date that the Amendment Act received Royal assent (7 June 2021).
115. A commencement date of Confidential advice to Government is being proposed for Cabinet's consideration to allow sufficient time for product certification scheme rules to be developed (as a separate programme of work).
116. MBIE will be developing detailed guidance to support the implementation of the Amendment Act and the regulations. This guidance will take into account the needs and information requirements of scheme participants including the accreditation body, product certification bodies and proprietors.
117. MBIE will oversee the effectiveness of the scheme's operation and will develop a compliance and enforcement strategy to support this.
118. MBIE has the power to intervene where elements of the scheme are not working as intended, for instance by suspending the registration of product certification bodies or product certificates. This is expected to be a last resort enforcement method for scheme non-compliance, and MBIE will continue to work with scheme parties in the first instance in most cases.

#### **Registration activities**

119. Under the Amendment Act product certification bodies are taken to be a registered product certification body on and after the commencement date. To remain registered, product certification bodies will need an application for registration to be granted within six months of the commencement date.

120. Current product certificates become registered product certificates on the commencement date.
121. It is expected that there will be four applications for product certification body registration within six months of the commencement date. While this is a manageable number for MBIE staff to assess, there is a risk that applications for registration are made all at once near the end of the six month period.
122. MBIE will engage with the current product certification bodies to mitigate these risks. Risks will be mitigated through the following:
  - product certification bodies will be encouraged to apply earlier than the end of the six month period.
  - MBIE will draw on recent experience assessing a fit and proper test in the building consent authority scheme to implement certification body registration effectively.
  - new internal workflow systems, drawing from experience with private building consent authority registration and MultiProof, to provide an efficient registration service.
  - guidance will be produced to support certification bodies and proprietors navigate the registration process.

#### **Accreditation and audit activities**

123. The enforcement of the accreditation and certification criteria and the audit requirements will continue to be the responsibility of the relevant scheme party (the accreditation body or the product certification body) in the first instance.

#### **Compliance and enforcement**

124. The scheme, as amended by the Amendment Act, contains a number of mechanisms to ensure that the accreditation body, certification bodies and proprietors comply with scheme requirements. Where these requirements are not met, these scheme parties could have their status revoked.
125. The Act requires the accreditation body (currently JAS-ANZ) to notify the chief executive in a number of situations and to comply with any requirements specified in the *Gazette*. The appointment of the accreditation body to be revoked at any time.
126. Product certification bodies are disciplinable entities under the Act, and may be investigated by MBIE's chief executive. Product certification bodies may have their accreditation or registration suspended or revoked for a number of reasons, including failing to comply with product certification scheme rules.
127. Proprietors must also comply with scheme rules, or their product certificates may be suspended or revoked.
128. The Building Amendment Act outlines a number of offences to prevent any person from:
  - performing the functions of a registered product certification body unless they are a registered product certification body. Fines of up to \$300,000 for individuals or \$1,500,000 for body corporates may be issued for any convicted offences.
  - representing themselves as a product certification body if that is not the case. Fines of up to \$50,000 for individuals or \$150,000 for body corporates may be issued for any convicted offences.

- representing something as having a product certificate if that is not the case. Fines of up to \$300,000 for individuals or \$1,500,000 for body corporates may be issued for any convicted offences.
129. MBIE will monitor the market for organisations that might be misrepresenting their products or status in relation to the scheme and take action as appropriate.

### **Monitoring, evaluation and review**

130. MBIE will continue to be responsible for monitoring the performance of the product certification scheme, including the new registration function. Ongoing feedback from the accreditation body and engagement with the product certification bodies will be key to this, along with regular reviews of MBIE's registration business processes and procedures to ensure that they are operating as effectively and efficiently as possible.
131. Product certification bodies and proprietors will be able to raise concerns with MBIE regarding registration processes and scheme requirements. Procedures related to complaints handling will be developed to assist with this.
132. MBIE will meet at least annually with accreditation body to discuss the product certification scheme.
133. A draft intervention logic model for the building system legislative reform programme was initially developed in 2019 (refer to Annex 2), and MBIE is currently in the process of reviewing this model. MBIE has committed to developing a monitoring and evaluation framework. While still in the scoping phase, this framework may be used to consider and incorporate the following indicators performance indicators:
- number of product certificates and product certificate bodies in the scheme
  - feedback from building consent authorities or other parties on the quality of certificates
  - complaints or other feedback received by MBIE regarding requirements of the scheme
  - non-conformances that are not appropriately dealt with through the scheme's standard processes.
134. The product certification scheme is expected to be reviewed every three years to ensure scheme requirements are fit for purpose.

# Annex 1 – Detailed proposals in the preferred approach

## Implement the new registration requirements for product certification bodies introduced by the Amendment Act, to improve confidence in the scheme

### **Proposal 1: prescribe a new fit and proper person test as a criteria for product certification body registration, to assess the history and non-technical suitability of product certification bodies and applicants**

1. The proposed test would assess the history and non-technical suitability of product certification bodies and applicants to the scheme. It would be based on the fit and proper test for building consent authority registration, and look at an applicant's history of civil proceedings and offences; professional and financial management history; compliance in similar schemes; conflicts of interest; and other relevant factors.
2. It is intended that the fit and proper test applies to the applicant body, and MBIE's chief executive would assess whether elements of the test are met by the product certification body's authorised representative and the person or persons directing or controlling its product certification functions.

### **Proposal 2: prescribe new requirements for information that must go on an application for product certification body registration, to help MBIE administer the registration process efficiently**

3. A product certification body must provide to MBIE the following information to demonstrate that the product certification body will meet the registration criteria:
  - details of the organisation, including name, address of principal place of business and contact details
  - details of person responsible for application, including name, title and contact details
  - evidence of accreditation by the product certification accreditation body
  - evidence sufficient to assess applicant against any prescribed criteria for registration.

## Improve the requirements for what must go on a product certificate, which will form the basis for registration of product certificates and improve confidence

### **Proposal 3: amend existing information requirements for product certificates, to improve workability**

4. MBIE proposes to remove the following information requirements for product certificates:
  - requirement for the certificate holder's New Zealand contact details to be included on the certificate

- requirement to include the certificate holder's signature on the certificate, so there is consistency in compliance across product certification bodies (which are responsible for each certificate)
  - duplication related to conditions and limitations in section 4 of Schedule 2, so all key information related to conditions and limitations are in the same place
  - duplication related to Building Code compliance in section 5 of Schedule 2, so all key information related to the basis for certification is in the same place.
5. Other proposed amendments to information requirements for certificates include:
- Amend section 7 of Schedule 2 (Health and safety information) so the 'performance' requirements of Building Code clauses F1 to F9 must be on the certificate, but not the 'objective and functional' requirements of these Building Code clauses. 'Objective and functional' requirements cannot be demonstrated for audit purposes, so should not be required on the certificate
  - Remove references to the form of the certificate, which is now approved by the chief executive under the Amendment Act.

### **Improve the workability of existing accreditation criteria to improve confidence and reflect the new legislative framework**

#### **Proposal 4: Require a product certification body to have policies to ensure it complies with any conformity assessment requirements in product certification scheme rules**

6. To be accredited, a product certification body must have policies, procedures and systems in place in relation to conformity assessment. These policies will ensure they comply with any applicable product certification scheme rules related to the competence, consistent operation and impartiality of product certification bodies.

#### **Proposal 5: Require a product certification body to have policies to ensure it carries out certification activities within the scope of its accreditation**

7. To be accredited, a product certification body must have policies, procedures and systems in relation to carrying out certification activities within the scope of its accreditation that comply with any applicable scheme rules. These policies will ensure that product certification bodies will only carry out certification activities for which they are competent.

#### **Proposal 6: Require a product certification body to have policies in place related to written records**

8. To be accredited, a product certification body must have policies, procedures and systems in relation to written records that comply with any applicable product certification scheme rules.
9. It is anticipated that scheme rules could include requirements for retaining written records for evaluations and decisions related to a product certification body's functions under the Building Act. These records would be sufficient to establish clearly that all requirements in the product certification scheme have been met.

**Proposal 7: Require a product certification body to have policies in place related to certifying each building product or building method**

10. To be accredited, a product certification body must have policies, procedures and systems in relation to certifying building products and building methods that are based on evidence established by testing the building product or building method, and assessing a proprietor's plan to maintain the quality of the building product or building method.
11. It is anticipated that scheme rules could include detailed operational requirements for product evaluation.

**Proposal 8: Require a product certification body to have policies in place to ensure it has sufficient and competent staff**

12. To be accredited, a product certification body must have policies, procedures and systems in place related to staff and contractors to ensure that they have the right people in the right roles and are undertaking the right work to perform their functions effectively and consistently.

**Proposal 9: Require a product certification body to have policies in place related to producing an evaluation plan and conducting a risk assessment**

13. To be accredited, a product certification body must have policies, procedures and systems in relation to producing an evaluation plan and conducting a risk assessment that comply with any applicable product certification scheme rules.
14. It is anticipated that scheme rules could include detailed operational requirements for what an evaluation plan would contain and what a risk assessment would look like.

**Proposal 10: Require a product certification body to have policies in place related to accepting test reports**

15. To be accredited, a product certification body must have policies, procedures and systems in relation to accepting test reports that comply with any applicable product certification scheme rules.
16. It is anticipated that the rules could provide for the following:
  - Product certification bodies would only accept test reports from testing facilities accredited for those tests – unless it is not reasonable to do so.
  - Product certification bodies would use a prescribed framework to decide whether it is reasonable to require that a test report comes from a laboratory accredited for that test, including matters such as lack of availability and level of risk.
  - If the product certification body assesses it is not reasonable, the product certification body could accept a test report from a laboratory that is not accredited for that test. The product certification body would assess this laboratory against the relevant requirements of *ISO/IEC 17025 – testing and calibration laboratories*, and confirm that the laboratory meets these requirements.

**Proposal 11: remove a current requirement for product certification bodies that are not accredited conformity assessment bodies to be accredited to *ISO/IEC 9001:2015 – Quality Management Systems – Requirements***

17. The existing regulation related to quality management systems would be revoked, and the scheme would rely on the quality management clauses in *ISO/IEC 17065 – Conformity assessment — Requirements for bodies certifying products, processes and services*.
18. ISO/IEC 17065 requires certification bodies to establish and maintain a management system that is in accordance with the requirements of ISO/IEC 9001, or addresses a range of activities that certification body must carry out. It does not require certification to ISO/IEC 9001.

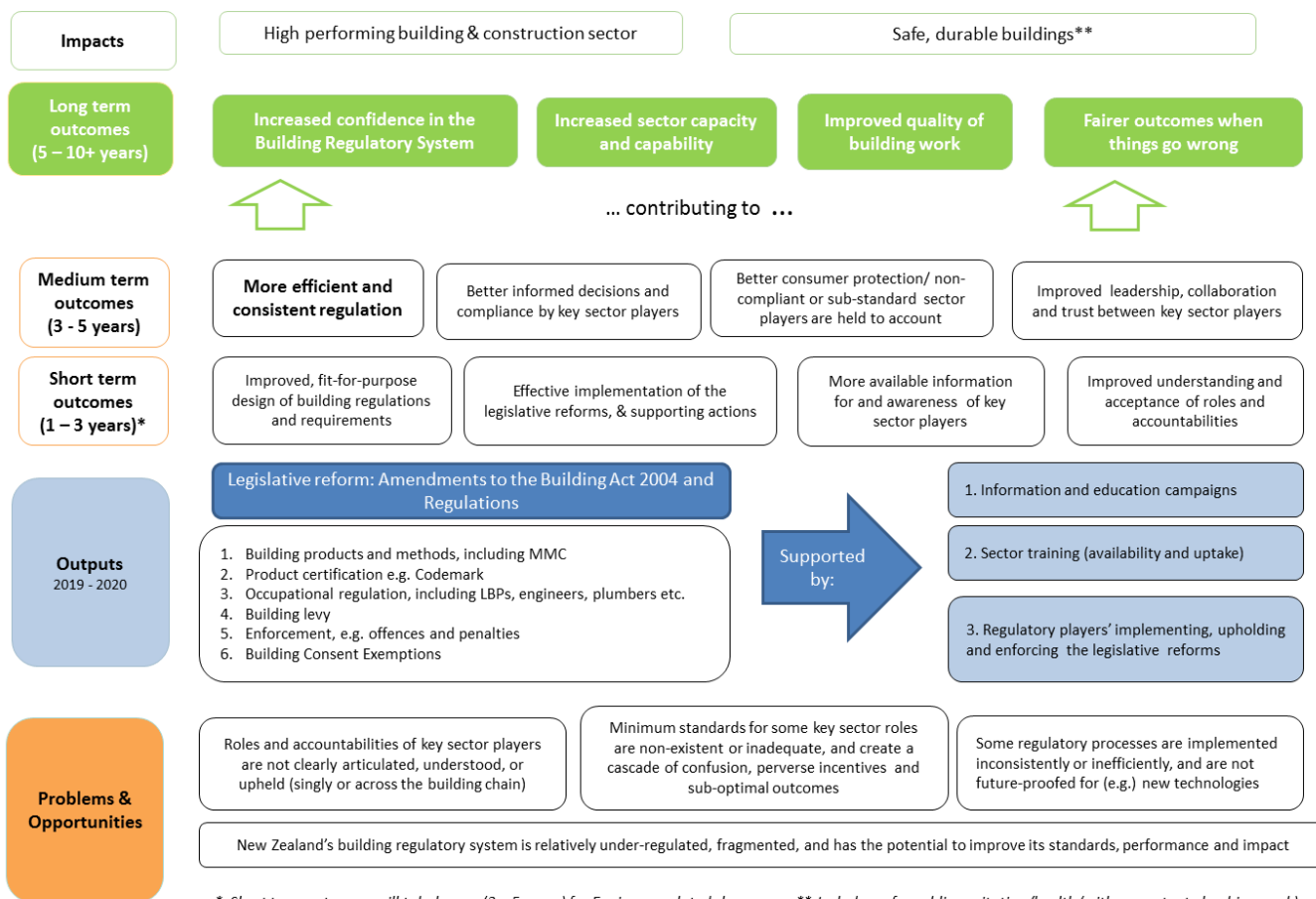
**Clarify requirements for a product certification body reviewing a certificate to improve confidence and reflect the new legislative framework**

**Proposal 12: Prescribe new audit procedures to set out the matters a product certification body must take into account when carrying out an audit.**

19. In carrying out an audit, the product certification body must take prescribed matters into account.
20. If, in the course of considering these matters, the product certification body becomes aware of a relevant change or information that may:
  - impact the product’s compliance with certification criteria or
  - trigger grounds to suspend or revoke the certificatethen it must also take into account further prescribed matters.

# Annex 2: Intervention logic

## DRAFT Logic Model for Legislative Reform Programme



\* Short term outcomes will take longer (3 – 5 years) for Engineers-related changes. \*\* Includes safer public sanitation/health (with competent plumbing work)