

Stage 2 Cost Recovery Impact Statement: Product certification scheme

Agency Disclosure Statement

This Cost Recovery Impact Statement has been prepared by the Ministry of Business, Innovation and Employment (MBIE). MBIE administers the Building Act 2004, which provides for regulations to be made to recover fees for specified activities under the product certification scheme, which is a voluntary scheme that allows building products and methods to be certified as complying with the Building Code.

The proposals in this Cost Recovery Impact Statement are part of a wider package of proposals to strengthen the product certification scheme by improving MBIE's oversight and ability to intervene when things go wrong. This package includes strengthening existing scheme requirements and introducing new registration requirements in the scheme.

This Cost Recovery Impact Statement proposes a cost recovery approach for new and updated costs associated with the accreditation, audit and registration of product certification bodies, and the registration of product certificates.

In considering cost recovery levels for the accreditation and audit of product certification bodies, MBIE is satisfied that the current accreditation body's significant experience in accrediting to the product certification scheme, and other similar schemes, provides reasonable insights to determine cost recovery and that over- or under-recovery of costs will be minimised. Further, the current accreditation body operates on a not-for-profit, cost recovery basis only.

If the accreditation body reviews its cost recovery levels in the future, this may trigger the need for further review of the prescribed fees for the accreditation and audit of product certification bodies.

The proposed fees for the registration of product certification bodies and product certificates were developed using the following assumptions:

- the estimated cost outputs for the proposed fit and proper person test for the registration of product certification bodies in the 2021 public discussion document are similar to the cost outputs for the fit and proper test for a private building consent authority
- the registration criteria and estimated cost outputs for the registration of product certification bodies and product certificates will be similar to what was consulted on in the 2021 public discussion document
- MBIE's experience reviewing the content of existing product certificates provides reasonable insights to determine the estimated cost outputs for performing the new registration function, so over- or under-recovery of costs will be minimised.

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13 October 2021

Executive summary

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 by accredited product certification bodies. These certifying bodies issue product certificates that building consent authorities must accept as proof that the product or method complies with the Building Code.

Figure 1: Roles and responsibilities within the product certification scheme



This Cost Recovery Impact Statement proposes a cost recovery approach for two types of fees under the Act:

- reviewed and updated fees for the accreditation and audit of product certification bodies. These updated fees reflect rising costs for the accreditation body which is a self-funded, not-for-profit organisation, established by a Treaty between Australia and New Zealand
- new fees for the registration of product certification bodies and product certificates. These new fees support recent amendments to the Act through the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021 to strengthen the product certification scheme.

Cabinet agreed to consult on fee proposals in April 2021 and a public discussion document was released for consultation from 28 April 2021 to 18 June 2021.

Submitters’ views were mixed on whether the proposed fees for the accreditation and audit of product certification bodies would create practical issues. While there was broad support for the fee levels, feedback received from the accreditation body suggests MBIE should make minor revisions to the proposed accreditation and audit fees to reflect actual cost recovery.

Submitters supported the proposed structure for the new fees for the registration of product certification bodies and product certificates, and there was broad support for fee levels.

The fee proposals have been assessed in line with Treasury and Office of the Auditor General guidelines, and against the following criteria: equity, certainty, effectiveness and administrative efficiency.

MBIE will monitor the number of applications for registration, the actual time taken, the cost outputs required to perform these services and the revenue collected from the proposed fees for registration, accreditation and audit fees to inform future reviews of the proposed fee levels.

MBIE recommends reviewing the proposed fees after no more than three years, in accordance with the Treasury’s guidelines on setting charges in the public sector.

Proposed adjusted fees for the accreditation and audit of product certification bodies

The accreditation and audit fees for the product certification scheme have not been updated since they were introduced in 2008. Cost recovery is essential for the accreditation body, which is self-funding and not-for-profit.

Following engagement with the current accreditation body (the Joint Accreditation System of Australia and New Zealand (JAS-ANZ)), the following fees to achieve cost recovery and enable the accreditation body to provide effective product certification accreditation services are proposed.

Fee for the accreditation of product certification bodies

The accreditation body may accredit a person as a product certification body if satisfied that they comply with prescribed accreditation criteria.

The following fees are proposed for product certification body accreditation. Increases to the existing fees are proposed because the existing fees have not been updated since 2008 and did not take into account overhead costs.

- Accreditation application fee: \$8,600 (exc GST), which for administrative simplicity this one-off fee now includes two days of application review comprising \$4,000 (exc GST). After accounting for the included two days of application review, this is an increase of 91 per cent.
- Accreditation application reviews: \$2,000 per day per assessor/ technical expert (exc GST). This is an increase of 66 per cent.

Fee for the audit of product certification bodies

The accreditation body must conduct audits on accredited product certification bodies.

The following fee is proposed for audits of product certification bodies:

- \$2,000 per day per assessor/ technical expert (exc GST). This is an increase of 66 per cent.

Proposed new fees for the registration of product certification bodies and product certificates

In response to a review of the product certification scheme in 2017, the Act was amended in 2021 to introduce new functions for the chief executive to register product certification bodies and product certificates. The purpose of these new registration functions is to improve the chief executive's oversight of the scheme.

Under the Act, fees may be prescribed to recover the costs of carrying out the chief executive's registration functions.

Fee for the registration of product certification bodies

Product certification bodies will have to apply for registration to participate in the scheme after the amendments to the Act take effect.

The following new fee is proposed for product certification body registration:

- an hourly charge of \$90.15 (exc GST) with a maximum fee level of twenty hours per application (maximum \$1,803.00 exc GST).

Fee for the registration for product certificates

The chief executive must also assess whether a product certificate contains the right information and is in the approved form before it can be used as part of the scheme.

The following new fee is proposed for product certificate registration:

- a fixed fee of two hours per certificate (\$180.30 exc GST).

Status quo

Background

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.

The product certification scheme under the Act, known as CodeMark, is a voluntary scheme that allows building products and methods to be certified as compliant with the Building Code. 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).

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.

Figure 2 below sets out the roles and responsibilities within the product certification scheme as amended by the Amendment Act.

Figure 2: Roles and responsibilities within the product certification scheme



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.

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 1991¹. The Treaty Agreement provides for the principle that JAS-ANZ will be self-funding and not for profit.

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,

¹ 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/>

scheme certification bodies need to be both accredited (by an accreditation body) and registered (with MBIE).

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.

The product certification scheme currently has four product certification bodies (Bureau Veritas, SAI Global, Global-Mark and BRANZ).

There are around 100 proprietors with certified products or methods, and 135 product certificates on the product certificate register.

The accreditation and audit of product certification bodies

The Act provides for regulated fees for the accreditation and audit of product certification bodies undertaken by the product certification accreditation body.

It is essential that product certification bodies are accredited against robust standards by a competent accreditation body, and audited regularly to ensure those standards are being maintained. These activities provide assurance that product certification bodies are carrying out their functions appropriately, and that the certificates issued by product certification bodies can be relied on by building consent authorities.

High performing product certification bodies and high quality certificates are intended to lead to greater consenting efficiency, particularly for new and innovative building products and methods.

Section 263 of the Act provides for fees to be prescribed to recover the costs of accrediting a product certification body. Section 262A of the Act provides for fees to be prescribed to recover the costs of carrying out an audit of an accredited product certification body.

Review of cost recovery charges

The current prescribed fees are in Regulation 9 and Schedule 2 of the Building (Product Certification) Regulations 2008. The fee levels were set in 2008 on a cost recovery basis and have not been updated since then.

MBIE’s review of these fees, and feedback from affected parties, has identified the current fee levels do not reflect the accreditation body’s (JAS-ANZ) current cost outputs and the business processes required to provide the accreditation and audit services.

Commercial information
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The registration of product certification bodies and product certificates

In December 2016, MBIE engaged Deloitte to undertake a review of the product certification scheme to ensure it was fit-for-purpose. The Deloitte review identified several issues, including low confidence in the scheme, concerns related to those assessing products for certification and issues related to the quality of product certificates.

In response to the Deloitte review, the Amendment Act strengthened the product certification scheme, including introducing a new registration function. These changes are intended to improve confidence in the scheme by improving the quality of certificates, contributing to more efficient consenting for building work that uses certified products.

The Amendment Act introduced registration functions for the chief executive to improve the chief executive's oversight of the scheme. Two new fees are required to recover the costs associated with the chief executive's registration functions.

First, the chief executive may, on application, register a person as a product certification body if satisfied that they are accredited and meet any prescribed criteria and standards for registration. The prescribed fee (if any) must be paid before registration can take place.

Second, the chief executive must register a product certificate if satisfied that the certificate is in the approved form and contains the prescribed information, and if the proprietor has paid the prescribed fee (if any).

Cost Recovery Principles and Objectives

Principles

The Office of the Auditor General's *Good practice guide: Charging fees for public sector goods and services* and the Treasury's *Guidelines for Setting Charges in the Public Sector* have been considered and the following principles identified in setting these fees.

- **Authority:** A public entity must have legal authority to charge a fee and must operate within the scope of the empowering provision.
- **Efficiency:** The user charge should be no higher than necessary to produce a good or service to the desired level of quality. The design of the charge should incentivise efficiency i.e. keeping costs down and the quality of the service high.
- **Accountability:** The user charge undergoes public consultation and can undergo scrutiny by the Regulation Review Committee.

Assessment criteria

The following assessment criteria have been applied in developing cost recovery proposals:

- **Equity (also described as fairness):** The user charge is being paid by the appropriate people. The beneficiary of the activity or service is paying for the relevant function to be carried out. Any cross-subsidy between different people, groups or other accreditation schemes (particularly between those with simple and complex applications) is minimised.
- **Certainty:** There is a reasonable level of certainty for the accreditation body, product certification bodies and proprietors on the level of cost incurred by the services that are being paid for. Any uncertainty to prospective applicants as to the likely total amount of the fees they will be required to pay is minimised so that informed business decisions can be made.
- **Effectiveness:** Fees are set at a level that fully recovers, but does not over-recover, the costs of carrying out functions. The accreditation body and chief executive are paid to a level that will allow them to provide high quality services that contribute to a robust

pathway for building products and methods to be certified as complying with the Building Code. This contributes to safe, durable and healthy housing for all New Zealanders.

- **Administrative efficiency:** Fees can be charged in an administratively efficient manner.

Rationale for cost recovery

Cost recovery for the accreditation and audit of product certification bodies

Under the product certification scheme, the accreditation body will assess applications for the accreditation of product certification bodies, and will audit certification bodies once they are accredited.

Parliament has decided that a fee may be prescribed for the accreditation and audit of product certification bodies by including a regulation making power in the Act. Under these circumstances, a fee must be prescribed in regulations if one is to be charged.

It is appropriate to regulate the cost recovery of the accreditation and audit of product certification bodies because either MBIE will perform these functions, or a third party accreditation body will perform the regulatory function on behalf of MBIE and will therefore have a monopoly role.

A fee is the most appropriate type of cost recovery for the accreditation and audit of product certification bodies because the applicant or certification body directly benefits from this service by being able to participate in the scheme, and others are excluded from the benefits of the accreditation and audit services. This makes accreditation and audit services predominately private goods that may be used to support ongoing business activities.

Rationale for reviewing existing fees for the accreditation and audit of product certification bodies

MBIE proposes to update the existing fees for the accreditation and audit of product certification bodies because:

- the existing fee schedule in the Building (Product Certification) Regulations 2008 has not been updated since 2008, and the current accreditation fee does not recover the costs of the business processes associated with accrediting a product certification body
- MBIE is aware of administrative inefficiencies related to the accreditation body using the existing fee schedule.

The current accreditation body is not-for-profit and self-funding. Adjusting the current regulated fees will better reflect the accreditation body's current business processes and costs.

Cost recovery options for the accreditation and audit of product certification bodies

The accreditation body (JAS-ANZ) has informed MBIE that the fee schedule in the 2008 regulations and the proposed fee schedule in the set out in the 2021 public discussion document are insufficient to recover its costs.

Following the release of the public discussion document, MBIE met with JAS-ANZ several times to understand its business processes and procedures and the cost outputs associated with accreditation and audit services.

Three options were considered for recovering the costs of the accreditation and audit of product certification bodies. The following table summarises the options considered.

- **Option 1: Retain the current fee schedule set in 2008 (the status quo)**
- **Option 2: Proposal in 2021 public discussion document**
- **Option 3: Revised fees proposal, incorporating stakeholder feedback** from the accreditation body (JAS-ANZ)

Table 1: Cost recovery options for accreditation and audit

	Option 1: retain the current fee schedule set in 2008 (the status quo) <i>(inc GST)</i>	Option 2: Proposal in 2021 public discussion document <i>(exc GST)</i>	Option 3: Revised proposal, incorporating stakeholder feedback <i>(exc GST)</i>
Accreditation application fee <i>(one off)</i>	\$2,706	Approx. \$8,586	\$8,600
Accreditation application reviews <i>(per assessor/ technical expert)</i>	\$169 per hour (or \$1,352 per day)	Approx. \$1,451 per day	\$2,000 per day
Audit <i>(per assessor/ technical expert)</i>	\$169 per hour (or \$1,352 per day)	Approx. \$1,878 per day	\$2,000 per day
Disbursements	Amount of reasonable expenses incurred	At actual and reasonable cost	At actual and reasonable cost

The three options are assessed against the assessment criteria in Table 2 below.

Table 2: Assessment of options against criteria

Key ✓✓ aligned with criteria ✓ somewhat aligned with criteria 0 neutral ✗ not very aligned with criteria ✗✗ not aligned with criteria	Option 1: Retain the current fee schedule set in 2008 (the status quo)	Option 2: Proposal in 2021 public discussion document	Option 3: Revised fees proposal, incorporating stakeholder feedback
Equity	✓✓ Direct fee to applicant	✓✓ Direct fee to applicant	✓✓ Direct fee to applicant
Certainty	✓ Daily and hourly rates are prescribed for different services. No maximum cap.	✓ Daily rates are prescribed, but are different for different services. No maximum cap.	✓ Same daily rates for accreditation services and audits are prescribed. No maximum cap.
Effectiveness	✗✗ Significant under-recovery of costs means accreditation body cannot perform its functions effectively	✗ Under-recovery of costs (does not take into account revenue from fees that cannot prescribed)	✓✓ Reflects cost recovery so accreditation body can perform its functions effectively
Administrative efficiency	✗ Different daily rates for different services. Different fees to other schemes to which the accreditation body accredits	✓ Same fees as other scheme accreditation body accredits to. Different daily rates for different services	✓ Same day rate for the accreditation body's product certification services. Different fees to other schemes the accreditation body accredits to
Overall assessment	0	✓	✓✓

The preferred option is **Option 3: Revised proposal**, because it reflects cost recovery and will allow the accreditation body to provide a viable and effective service, consistent with its accreditation and audit functions under the product certification scheme.

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Business processes and cost components for the accreditation and audit of product certification bodies

The following business processes and cost outputs have been factored into the proposed fees for accreditation and auditing:

- checking the accuracy of information in the application for accreditation
- reviewing the application
- reviewing the applicant's documented systems
- reviewing the applicant's evidence that it puts its systems into practice
- witness applicant carrying out its functions in accordance with its documented systems
- deciding on the application or requesting further information
- notifying the applicant of the decision
- issuing the accreditation deed.

For audits, business processes typically involve:

- preparation and planning for audits
- carrying out onsite assessment
- audit reporting
- follow up of any non-conformances.

Other cost outputs include:

- remuneration
- technical expert fee for service costs
- indirect costs.

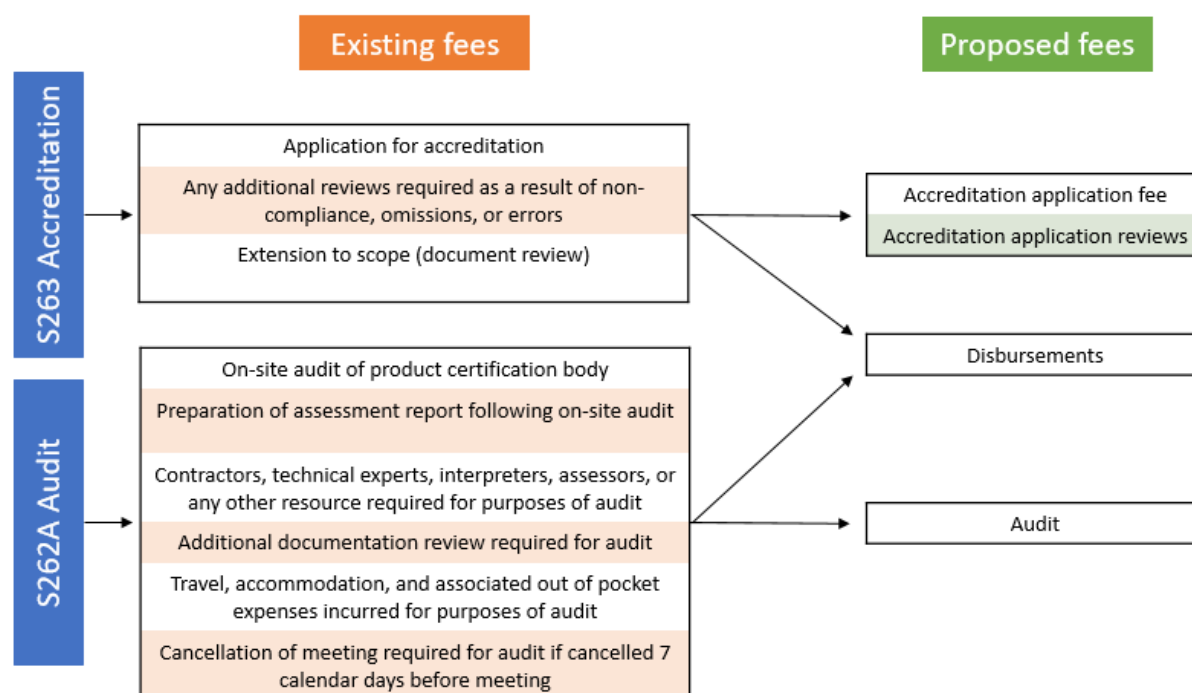
Proposed accreditation and audit fees

Under **Option 3: Revised fees proposal, incorporating stakeholder feedback** MBIE has proposed that the existing fee schedule for accreditation and audits is streamlined and simplified as follows:

- A one off fee to assess application for accreditation
- A day rate for additional accreditation assessments
- A day rate for audit services (at the same level as the accreditation day rate)
- Disbursements for accreditation and audit services at actual and reasonable cost.

Figure 3 shows how the proposed fee schedule has been simplified compared to the existing fees schedule.

Figure 3: Streamlined and simplified fee schedule for the accreditation and audit of product certification bodies



A summary of the proposed fee levels is set out in the following table. Components of the proposed fees are set out in more detail at Annex 1.

Table 3: Proposed fee levels for the accreditation and audit of product certification bodies

Fee	Level (exc GST)	Rationale
Accreditation application fee (one off)	\$8,600	Matches the current accreditation body's assessment of cost recovery Includes the usual time taken for system review (this is a baseline cost for accreditation and it is administratively simple to include it in the application fee) Recovers direct and indirect costs of accreditation body staff
Accreditation application reviews (day rate per assessor/ technical expert)	\$2,000	Matches the current accreditation body's assessment of cost recovery Single fixed day rate is administratively simple for accreditation body and certification bodies Takes into account the loss of revenue from omitting annual and certificate fees (usually charged by the accreditation body in other schemes) that cannot prescribed in regulations
Audit (day rate per assessor/ technical expert)	\$2,000	Recovers direct and indirect costs of accreditation body staff Intended to recover direct costs of external resources

Disbursements	At actual and reasonable cost	Standard cost recovery approach to disbursements
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Annex A sets out the components of the proposed fees for the accreditation and audit of product certification bodies.

Cost recovery for the registration of product certification bodies and product certificates

Consideration has been given to funding MBIE’s new registration services by general taxation or recovering the costs of these services through levies or fees. Cost recovery via fees is preferred.

Funding registration services through general taxation is inappropriate because the services are not predominately a public good (although there are elements of public benefit in a robust product certification scheme due to the positive impact on building outcomes).

The strengthened oversight of the scheme through MBIE’s registration of product certification bodies and product certificates has an element of club good and could therefore be funded by levy.

The most appropriate existing levy would be the building levy, which is paid by successful building consent applicants at the time a building consent is granted. Recovering the costs of MBIE’s registration services through the building levy may be considered, because:

- under section 53 of the Act, the building levy can be used to fund the chief executive’s functions under the Act. Under Section 11 of the Act the chief executive registers certification bodies and certificates
- the ‘club’ of levy payers (successful building consent applicants) would have limited benefit from MBIE’s oversight of the product certification scheme via its registration functions, through higher quality product certificates contributing to more efficient consenting.

However, MBIE has determined that there is a strong case for recovering the costs of the service from those who directly benefit from the registration of product certification bodies and from the registration of product certificates because registration is predominately a private good. The product certification body benefits from its registration because it is subsequently allowed to participate in the scheme, and the proprietor benefits from the registration of the certificate because it means the certificate can be used to demonstrate a product’s compliance with the Building Code.

Fees payable directly by the product certification body applicant and proprietor to recover the costs of MBIE’s registration services are therefore proposed. Setting fees for registration is also consistent with Treasury’s *Guidelines for Setting Charges in the Public Sector* because:

- there is the statutory authority to charge these fees (in sections 267A and 272A of the Act)
- registration is rivalrous and excludable (it applies only to the certification body to which the registration is granted, or to the certificate that is registered by the proprietor)

- the product certification body applicant or proprietor is the main beneficiary of registration as it allows them to gain business benefits from participating in the scheme.

Cost recovery options for the registration of product certification bodies

Four options were considered for recovering the costs of assessing applications for the registration of product certification bodies.

- Option 1 – No fee (the status quo)**
- Option 2 – Fixed fee**
- Option 3 – Fixed fee plus an hourly charge for complex applications**
- Option 4 – Hourly charge, capped at a maximum fee** (2021 public discussion document consultation proposal)

Table 4: Assessment of cost recovery options for registration of product certification bodies against criteria

Key ✓✓ aligned with criteria ✓ somewhat aligned with criteria 0 neutral × not very aligned with criteria ×× not aligned with criteria	Option 1: No fee (the status quo)	Option 2: Fixed fee	Option 3: Fixed fee plus an hourly charge for complex applications	Option 4: Hourly charge, capped at a maximum fee (2021 public discussion document consultation proposal)
Equity	×× Primary beneficiary of the activity does not pay for the activity.	✓ Direct fee to applicant. Some risk of cross subsidisation between certificates where over-recovery or under-recovery occurs	✓✓ Direct fee to applicant and reduces risk of cross-subsidisation between certificates	✓✓ Direct fee to applicant. Hourly rate reduces risk of over-recovering costs.
Certainty	✓✓ No fee provides high level of certainty to applicants.	✓✓ High level of certainty for applicants	✓ Uncapped fee provides low level of certainty and may risk creating a barrier for entering the scheme	✓✓ Capped charge provides a high level of certainty and is not likely to be a barrier for entry for prospective applicants.
Effectiveness	×× MBIE would not recover the costs of its registration	✓ For most applicants MBIE would recover the costs of its	✓✓ Ensures full cost recovery, including for complex	✓✓ MBIE would recover costs of its services for all expected

	services and may not be able to provide an effective service	services. For complex applications, this option may risk under-recovery.	applications, allowing MBIE to provide an effective service.	levels of complexity. Risk of under-recovery for only the most complex applications.
Administrative efficiency	✓✓ Simple to administer	✓✓ Simple to administer	✓ It is somewhat administratively efficient to charge this fee but does require MBIE to assign hours to the activity	✓ It is somewhat administratively efficient to charge this fee but does require MBIE to assign hours to the activity
Overall assessment	0	✓	✓	✓✓

Option 4: Hourly charge, capped at a maximum fee is the preferred option for MBIE’s product certification body registration services.

The maximum cap would provide certainty for applicants. The hourly rate reduces the risk of over-recovery. The maximum cap would be set at a level to provide for MBIE’s business processes such as assessing the fit and proper person test, which will be the main criteria for registration.

Option 2: Fixed fee would also meet the assessment criteria. However, the main benefit of a fixed fee compared to the preferred option is that a fixed fee is more administratively efficient. MBIE has applied a lower weighting to the administrative efficiency criteria because there are a very low number of applications expected.

Option 3: Fixed fee plus an hourly charge for complex applications would also meet the assessment criteria. However, MBIE has applied a higher weighting to the certainty criteria compared to the other criteria because product certification bodies will apply for registration on top of the time and costs associated with applying for and achieving accreditation.

Cost recovery options for the registration of product certificates

Four options were considered for recovering the costs of assessing product certificates for registration.

- **Option 1: No fee (the status quo)**
- **Option 2: Fixed fee** (2021 public discussion document consultation proposal)
- **Option 3: Fixed fee plus an hourly charge for complex applications**
- **Option 4: Hourly charge, capped at a maximum fee**

Table 5: Assessment of cost recovery options for registration of product certificates against criteria

Key ✓✓ aligned with criteria ✓ somewhat aligned with criteria 0 neutral * not very aligned with criteria ** not aligned with criteria	Option 1: No fee (the status quo)	Option 2: Fixed fee	Option 3: Fixed fee plus an hourly charge for complex applications	Option 4: Hourly charge, capped at a maximum fee (2021 public discussion document consultation proposal)
Equity	** Primary beneficiary of the activity does not pay for the activity.	✓ Direct fee to proprietor. Some risk of cross subsidisation between certificates	✓✓ Direct fee to proprietor and reduces risk of cross-subsidisation between applications	✓ Direct fee to proprietor. Hourly rate reduces risk of over-recovering costs.
Certainty	✓✓ No fee provides high level of certainty to applicants.	✓✓ High level of certainty for proprietors	✓ Uncapped fee provides low level of certainty and may risk creating a barrier for entering the scheme	✓✓ Capped charge provides a high level of certainty and is not likely to be a barrier for entry for prospective applicants.
Effectiveness	** MBIE would not recover the costs of its registration services and may not be able to provide an effective service	✓ For most certificates MBIE would recover the costs of its services. For complex applications, this option may risk under-recovery.	✓✓ Ensures full cost recovery, including for complex applications, allowing MBIE to provide an effective service.	✓ For most certificates MBIE would recover the costs of its services. For complex applications, this option may risk under-recovery.
Administrative efficiency	✓✓ Simple to administer	✓✓ High level of administrative efficiency for this low-value, high-volume fee	✓ It is somewhat administratively efficient to charge this fee but does require MBIE to assign hours to the activity	✓ It is somewhat administratively efficient to charge this fee but does require MBIE to assign hours to the activity
Overall assessment	0	✓✓	✓✓	✓

Option 2: Fixed fee (2021 public discussion document consultation proposal) is the preferred option for MBIE's product certificate registration services.

A single fee provides the most certainty for proprietors. It is simple for MBIE to administer and for proprietors to pay. While the costs of assessing the information on a certificate may vary based on whether there are requests for further information or amendments, MBIE has weighted administrative efficiency and certainty for proprietors higher than the other criteria. This is because:

- the high number of certificates (around 135) and low fee per certificate means that transaction costs should be kept to a minimum
- a high level of certainty is fairer on proprietors because the product certification body is responsible for issuing a correct product certificate, and therefore the proprietor should not be charged for any amendments required.

Business processes and cost components for the registration of product certification bodies and product certificates

In setting the proposed fees for the chief executive's registration activities, MBIE has identified the following business processes and outputs associated with the registration of product certification bodies and product certificates:

- receiving applications
- checking applications against registration criteria
- checking information on certificates
- updating registers

MBIE's cost outputs include the following direct and indirect costs:

- staff salaries
- professional services
- MBIE corporate overheads

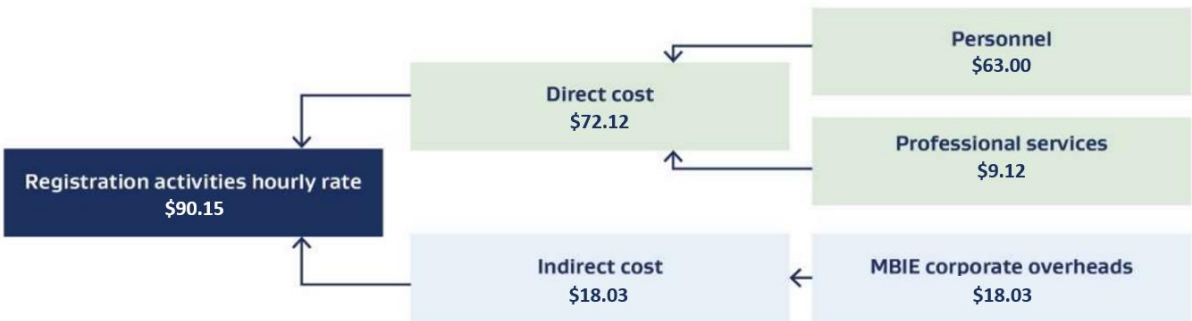
Direct costs include the following:

- Personnel costs include salary, superannuation and ACC levies. Average salary was calculated by taking the mean average of the following:
 - Adviser salary, based on the upper quartile of the annual salary range
 - Senior Adviser salary, based on the upper quartile of the annual salary range.
- Professional services costs include an estimate of training, legal, IT, supplies and travel for 1 Full Time Equivalent (FTE).

Indirect costs, such as MBIE corporate overheads, are estimated at a rate of 25 per cent direct costs.

Based on the above assumptions, MBIE has established an hourly rate for its registration activities in the product certification scheme of \$90.15. This rate and all fees calculated using this rate are GST exclusive (Figure 4 refers).

Figure 4: Allocating costs across registration activities (hourly rate)



Cost components of the proposed fee for the registration of product certification bodies

MBIE has used its experience in the administration of the product certification scheme and private building consent authority registration schemes as a basis for benchmarking and estimating the amount of time in hours required for MBIE to undertake registration activities.

The preferred option is an hourly charge, up to a maximum of 20 hours. At an hourly rate of \$90.15 the maximum fee would be \$1,803.00 (2021 public discussion document consultation proposal).

MBIE has assumed a 20 hour maximum cap would be appropriate. MBIE expects this will avoid under-recovery where multiple tests against registration criteria need to be carried out or requests for information are required. The estimated cost outputs of the activity are set out below.

Table 6 documents the expected costs of the business processes for product certification body registration.

Table 6: Estimated cost of business processes for the registration of a product certification body

Activity	Time (hours)	Cost
Receive application	0.1	\$9.02
Check accreditation status	0.5	\$45.08
Assess fit and proper test (including request for information if required)	1-18	\$90.15 – \$1,622.70
Quality check/ confirmation	1	\$90.15
Respond to applicant	0.2	\$18.03
Update register	0.2	\$18.03
Maximum product certification body registration (total)	20 hours	\$1,803.00

Cost components of the proposed fee for registration of product certificate

The chief executive of MBIE must register a product certificate if satisfied that it includes the prescribed information and the proprietor has paid the prescribed fee.

A fixed fee is proposed to be prescribed based on an estimated 2 hours work to register a product certificate. At an hourly rate of \$90.15, this would be \$180.30 per certificate (2021 public discussion document consultation proposal).

MBIE has estimated that two hours of effort is required to assess the information on a certificate based on MBIE's operational experience. The estimated cost drivers of the activity are set out below.

Table 7: Estimated cost of business processes for the registration of product certificates

Activity	Time (hours)	Cost
Receive certificate	0.1	\$9.02
Check certificate information	1	\$90.15
Request information or changes (if required)	0.3	\$27.05
Quality check/ confirmation	0.2	\$18.03
Respond to certification body and proprietor	0.2	\$18.03
Update register	0.2	\$18.03
Certificate registration (total)	2 hours	\$180.30

Impact analysis

A summary of the impact analysis for the introduction of fees is below. Further impact analysis for the product scheme can be found in the accompanying Regulatory Impact Statement.

The accreditation and audit of product certification bodies

The cost impacts for product certification bodies paying adjusted accreditation fees to the accreditation body are expected to be neutral or minor.

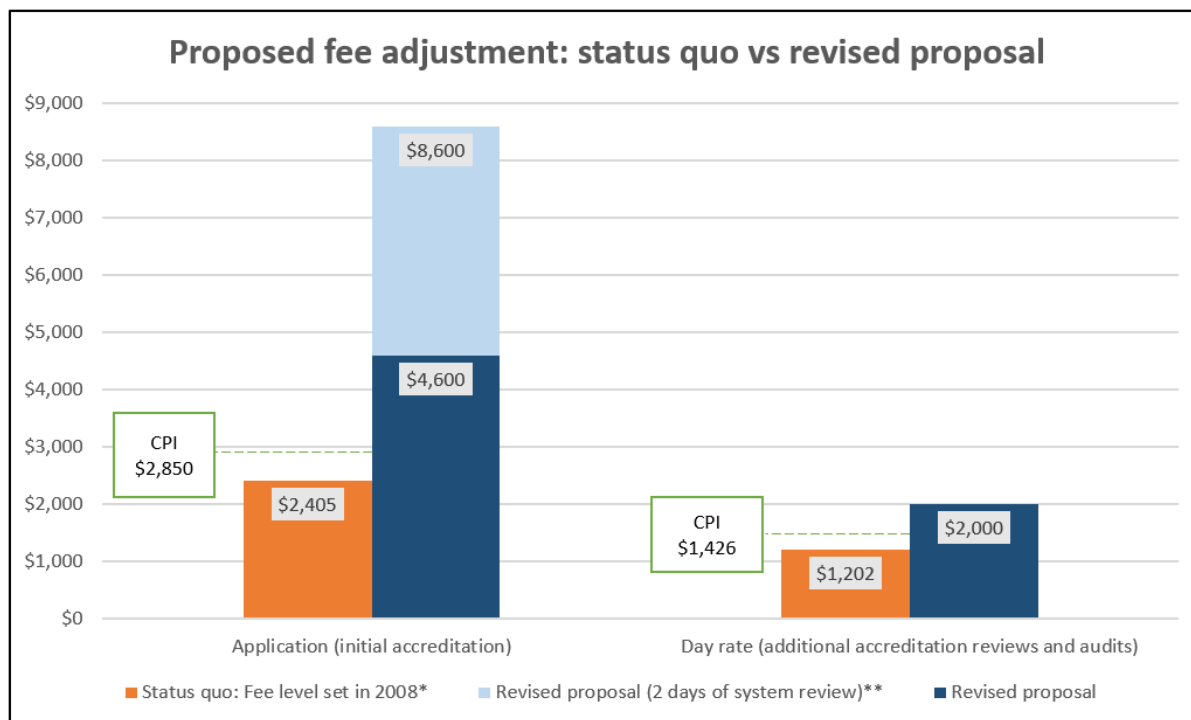
While the prescribed fees do represent a significant increase from their 2008 levels, the adjustment reflects the accreditation body's actual costs associated with undertaking its functions under the Act. Increases to the existing fees are proposed because the existing fees have not been updated since 2008 and did not take into account overhead costs.

Figure 5 below compares the revised proposal to the currently prescribed fees.

- The accreditation application fee is proposed to increase from \$2,405 (GST exclusive) to \$8,600 (GST exclusive). For administrative simplicity this one-off fee now includes two days of application review comprising \$4,000 (exc GST). After accounting for the included two days of application review, this is an increase of 91 per cent.

- The day rate is proposed to increase from \$1,202 (GST exclusive) to \$2,000 (GST exclusive) – an increase of 66 per cent.

Figure 5: Proposed fee adjustment: status quo vs revised proposal.



* Prescribed fees in 2008 were GST inclusive (at 12.5%). Fees have been converted to GST exclusive for comparison purposes. All other figures in this chart are GST exclusive.

** The proposed application fee has two days of system review included for administrative simplicity for the accreditation body and certification body. This was not included in the prescribed fee in 2008. The system review component of the proposed fee (\$4,000 exc GST) has been separated for comparison purposes.

The proposed fees for the accreditation and audit of product certification bodies are expected to allow the accreditation body to operate on a cost recovery basis and deliver its services effectively and efficiently in accordance with its requirements under the Act.

Stakeholder feedback suggested that there is unlikely to be any adverse effects on the demand for accreditation services. For a product certification body operating only in the product certification scheme, **Commercial information**

Product certification bodies have the option of passing on their costs to clients in the form of certification fees.

See Annex B for a summary of expected costs for a typical certification body accreditation and audit. This annex includes assumptions about what a typical accreditation and audit looks like in terms of time taken for each activity. This is estimated based on recent accreditations and audits carried out by the accreditation body.

These estimates are intended to give an idea of the expected revenue for the accreditation body, but will vary case by case. The day rates built into the fee schedule allow for cost recovery to occur for different cases.

The registration of product certification bodies and product certificates

The introduction of new registration fees is expected to have a nominal financial impact on product certification bodies and proprietors.

There are currently four product certification bodies who would pay the product certification body registration fee (maximum of \$1,803.00 per application). The total costs for this group based on the current number of product certification bodies would be a maximum of \$7,212.00 (exc GST). Historically, the scheme has not had more than seven product certification bodies at any one time.

There are around 100 proprietors in the current scheme and around 135 product certificates. A registration fee (proposed to be \$180.30) would be charged for each certificate. The total costs for this group based on the current number of product certificates would be \$24,340.50 (exc GST).

Consultation

MBIE published a public discussion document² on 28 April 2021 outlining a set of proposals for regulated fees to support and implement the strengthened product certification scheme under the Amendment Act.

MBIE met with a range of stakeholders prior to releasing the public discussion document to seek preliminary feedback and to help shape the proposals in the discussion document, including product certification bodies, the product certification accreditation body and building consent authorities.

To promote opportunities for feedback, more than 4,000 notifications regarding the consultation were sent to stakeholders who may have had an interest in the proposals. MBIE also held targeted meetings with stakeholders, including building consent authorities and Taituarā – Local Government Professionals Aotearoa (formerly SOLGM).

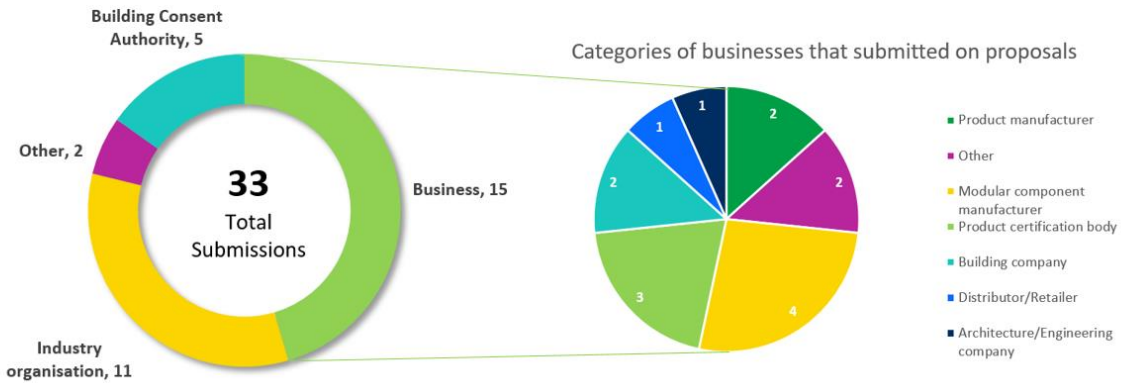
Feedback received

MBIE received 33 submissions on the fees proposals in the public discussion document. This number includes submissions received on proposed fees for both the product certification and modular component manufacture schemes.

² <https://www.mbie.govt.nz/dmsdocument/14150-building-amendment-bill-proposals-for-regulations-discussion-document>.

Figure 6: Breakdown of submitters by category (number)

Stakeholder groups that submitted on fee proposals



The accreditation and audit of product certification bodies

Submitters’ views were mixed on whether the proposed accreditation and audit fees would create practical issues. The product certification accreditation body, JAS-ANZ, noted the proposal does not reflect its costs associated with providing the accreditation services and ongoing auditing activities.

To inform final fee proposals for product certification body accreditation and audits, MBIE has engaged with JAS-ANZ to better understand the following:

- the business processes involved in undertaking these activities
- the cost outputs involved in undertaking these activities
- any other relevant direct and indirect costs such as consultancy fees, technical support and corporate costs
- understanding the extent of cross subsidisation with other schemes, if any.

A better understanding of these costs have been used to modify the proposed fees for accreditation and audit activities, as reflected in the preferred option **Option 3: Revised proposal as modified by stakeholder feedback**.

The registration of product certification bodies and product certificates

Submitters supported the proposed structure for registration fees, and there was broad support for registration fee levels.

Some submitters, including Dunedin City Council, raised concerns about cross subsidisation, including that a capped fee may lead to cross-subsidisation and there is a risk that the fixed fee for certificate registration may be raised across the board in response to one poor actor.

MBIE does not propose to modify the proposals for registration fees as a result of this feedback. There was broad agreement that these fees look reasonable, and concerns can be mitigated by regular reviews of the proposed fee schedule.

Conclusions and recommendations

The accreditation and audit of product certification bodies

For accreditation and audit activities, Option 3: Revised proposal is proposed. This proposal reflects stakeholder comments, in particular the accreditation body's assessment of cost recovery. It is a direct fee to applicants who benefit from the activity and allows the accreditation body to recover costs and perform its functions effectively, including for complex applications and audits.

To the extent possible this fee structure is the same as fees for other schemes JAS-ANZ administers, while working within the fee-making powers in the Act. This allows for a reasonable degree of administrative efficiency. The fixed day rate for accreditation and audit activities in the scheme contributes to the administrative efficiency of the proposal.

MBIE is confident in the accreditation body's assessment of cost recovery because:

- it is established by Treaty to be not-for-profit and self-funding
- the Treaty of establishment requires it to deliver audited consolidated financial statement for each financial year and the auditor's report on those financial statements. These financial statements are independently audited in accordance with Australian Auditing Standards
- it has significant experience accrediting to a number of schemes
- MBIE will be monitoring its performance under the Notice of Appointment as the product certification accreditation body.

The accreditation body conducts regular reviews of its cost structures. It would be appropriate to review the prescribed accreditation and audit fees every three years.

The registration of product certification bodies and product certificates

The following fees for registration activities are proposed;

- **Product certification body registration fee:** Hourly charge with maximum fee level of twenty hours per application (maximum \$1,803.00 exc GST)
- **Certificate registration fee:** fixed fee of two hours per certificate (\$180.30 exc GST).

For the purpose of this impact statement the hourly charge is \$90.15 (exc GST). This hourly rate has been adjusted from what was consulted on to account for a minor increase in cost inputs (salary) between financial year 2020/21 and 2021/22.

Product certification body registration

The product certification body registration fee is charged to the primary beneficiary of the activity and mitigates cross subsidy between simple and complex applications. The hourly charge aims to ensure MBIE can carry out its registration functions effectively, while the maximum fee level provides an element of certainty. While MBIE is confident in its assumption that 20 hours is the right maximum, based on experience in private building consent authority registration and feedback from the accreditation body (JAS-ANZ), the

maximum fee level is likely to need to be reviewed to ensure MBIE can provide an effective service within the maximum timeframe.

While this fee structure will create a minor administrative burden for MBIE to record hours spent on each application, low numbers of applicants are expected. MBIE is confident in this assumption as there have never been more than seven certification bodies at one time, and the strengthened scheme will ensure that only high performing certification bodies are part of the scheme.

Certificate registration

The certificate registration fixed fee is charged to the primary beneficiary of registration and provides certainty to proprietors. It is administratively efficient for the relatively higher volume of certificates that will be registered (compared to the number of certification bodies).

At the proposed fee level it is expected that MBIE will be able to recover its costs and provide an effective service, but this will need to be reviewed after registration is in place. There is some potential for complex applications to be cross-subsidised by simple applications. MBIE is confident that two hours is the correct level of effort for the fixed fee based on its experience reviewing the content of existing certificates in the scheme.

Implementation

The accreditation and audit of product certification bodies

The proposal is a rate adjustment for fees that are already being charged by the accreditation body. MBIE has worked with the accreditation body in developing the fee proposal. The accreditation body will implement the fee adjustment through their usual fee adjustment processes, including communication with current product certification bodies and future applicants.

MBIE will work with the appointed accreditation body to ensure the prescribed fees are clearly communicated, are workable and are complied with.

The registration of product certification bodies and product certificates

Under the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021, the commencement date of the regulations will be 15 months after Royal assent, or earlier by Order in Council. This means the product certification provisions of the Amendment Act must commence no later than 7 September 2022 although **Confidential advice to Government** for both regulations and scheme rules for the product certification scheme.

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

Current product certificates become registered product certificates on the commencement date.

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. MBIE will engage with the current product certification bodies to mitigate these risks. Risks will be mitigated through the following:

- MBIE will encourage product certification bodies to apply earlier than the end of the six month period.
- MBIE has recent experience in assessing for fitness and propriety related to private building consent authority registration and will draw on this experience to implement certification body registration effectively.
- MBIE will develop an internal workflow system, 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, including payment of fees.

MBIE's continued engagement with product certification bodies during the development of the Amendment Act and regulations has ensured product certification bodies will be aware of what is expected of them as part of registration.

MBIE also expects that some aspects of implementation will already be familiar to product certification bodies, such as the proposed fit and proper person requirement.

Monitoring and evaluation

MBIE will be monitoring the performance of the proposed cost recovery regime. The regime will be reviewed to ensure that it is operating efficiently and that under-recovery or over recovery is minimised. Ongoing feedback from the accreditation body 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. The processes for monitoring and evaluation are discussed in more detail, below.

The accreditation and audit of product certification bodies

MBIE has ongoing regulatory stewardship obligations and will work with the accreditation body to monitor the implementation of the proposed fees and the updated scheme requirements as a result of the building law reform programme. MBIE will work with the accreditation body to monitor the following with a view to achieving cost recovery for the accreditation body:

- the number of new applications
- the extent of audit activities carried out
- the time taken for accreditation and audit activities
- any feedback from certification bodies and proprietors.

Product certification bodies will be able to raise concerns with the accreditation body or MBIE regarding accreditation and audit fees. The accreditation body will have obligations to follow its Treaty of establishment, the notice of appointment as the accreditation body, and any

contracts it enters into with product certification bodies. MBIE administers the notice of appointment with the accreditation body and has stewardship over the regulations.

The registration of product certification bodies and product certificates

MBIE has ongoing regulatory stewardship obligations and will monitor the following to inform future reviews of the regulations to ensure cost recovery principles are being met:


- the number of applications for product certification body registration
- the number of certificate registrations
- the time taken to undertake registration activities – particularly testing the assumptions that 20 hours is an appropriate maximum for product certification body registration, and 2 hours is an appropriate fixed fee for certificate registration
- the revenue received from registration fees
- any feedback from product certification bodies and proprietors.

Product certification bodies and proprietors will be able to raise concerns with MBIE regarding registration fees. MBIE has stewardship over the regulations and carries out the registration function on behalf of the chief executive.

Review

MBIE plans to review the proposed fees after three years. This would be appropriate given the new registration function and the fact that the accreditation and audit fees have not previously been reviewed since they were introduced in 2008. This is an appropriate timeframe to undertake the monitoring described above and assess whether amendments to the fees are required.

Confidential information



Confidential information

