

Building Products Assurance Framework – Regulatory Options

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Contents

Abbreviations and acronyms	4
Executive Summary.....	5
Summary of Regulatory options	9
BPAF Element 5 – Rec 5A	9
BPAF Element 5 – Rec 5B	11
BPAF Element 3.....	12
BPAF Element 2, Recommendation 2A	12
Part A – Introduction	14
Scope of Project and Report	14
Cost benefit analysis	15
Research and analysis	17
Structure of Report	17
Part B – BPAF Element 5 – Audit and enforcement powers.....	18
BPAF Deliverable and Objective.....	18
BPAF Recommendation 5A – Strengthen enforcement	18
1. Potential Options for progressing BPAF Element 5	18
2. Research and analysis to support options.....	27
3. The CodeMark, WaterMark, Gas Product Certification Scheme and Electrical Equipment Safety System.....	30
4. Overseas jurisdictions	33
5. BPAF recommendation 5B - Data sharing methods and protocols between CABs and regulators.....	35
6. Research and analysis on information sharing.....	36
Part C – BPAF Element 3 and Recommendation 2A of Element 2 – Traceability, labelling and minimum information requirements	39
BPAF Deliverables and Objectives.....	39
BPAF Recommendations 2A, 3A and 3B.....	39
7. Understanding the issues.....	41
8. Potential Options for progressing BPAF Element 3 and recommendation 2A of Element 2 ..	42
9. Current approaches regarding traceability and labelling	45
10. Current approaches to minimum standardised building product information	46
11. Overseas jurisdictions	47
12. Key issues for consideration	48
Part D – Modular construction	52
Attachment A – Cost Benefit Analysis Report.....	56
Attachment B – ACCC statement	57



Attachment C – Consultations	60
Attachment D – Features of existing certification schemes (CodeMark, Electrical Equipment Safety System, Gas Product Certification Scheme, WaterMark).....	62
Attachment E – Comparison NSW and QLD building product compliance and safety laws	68
Attachment F – International jurisdictions	71
Attachment F1 – Example product information sheet (NZ)	96
Attachment F2 – Model declaration of performance (EU).....	101
Attachment G – Key background material	103
Attachment H – BPAF, Appendix D	104



Abbreviations and acronyms

The following abbreviations and acronyms are used in this report, as follows:

ABCB	Australian Building Codes Board
ACCC	Australian Consumer and Competition Commission
ACL	Australian Consumer Law
ACP	Aluminium Composite Panel
BCR	Building Confidence Report
BMM	Building Ministers Meeting
BPAF	Draft Building Product Assurance Framework, published in 2021
BRF	Building Regulators Forum
CAB	Conformity Assessment Body
EESS	Electrical Equipment Safety System
EoS	Evidence of Suitability requirements under the NCC
ERAC	Electrical Regulatory Authorities Council
FSANZ	Food Standards Australia and New Zealand
GPCS	Gas Product Certification Scheme
GTIN	Global Trade Item Number. A form of identification used for products, developed by GS1 – commonly in the form of a barcode or QR code.
GTRA	Gas Technical Regulators of Australia
JASANZ	Joint Accreditation System of Australia and New Zealand
NATA	National Association of Testing Authorities
NCC	National Construction Code, comprising of the Building Code of Australia (Volumes One and Two) and the Plumbing Code of Australia (Volume Three)
SCO	Standing Committee of Officials for the GPCS
SOG	Senior Officers Group



Executive Summary

This report was commissioned through the Australian Building Codes Board by Senior Policy Officers of the States and Territories (SOG), to identify and explore regulatory options to progress the Building Product Assurance Framework (BPAF).

The Building Product Assurance Framework was published by the ABCB in 2021 as part of its work to assist jurisdictions with the implementation of the Building Confidence Report. Ministers asked the SOG to give further consideration to the BPAF¹ and subsequently endorsed the required deliverable of the BPAF to be:

'A nationally consistent and coordinated system of building product assurance and regulation to ensure that building products are manufactured, supplied and utilised in compliance and conformance with laws, codes, standards to deliver trustworthy buildings.'

The aim of the BPAF is to improve building product compliance with the National Construction Code (NCC), which will reduce the risk associated with the use of inferior and sometimes dangerous products being used in the construction of buildings.

The regulatory options set out in this report have been developed following detailed research and analysis. That research included an examination of building product regulatory schemes existing or proposed by Australian governments (schemes for plumbing, gas and electrical products) and schemes operating in some overseas jurisdictions.

There Key reforms Governments could make

Bearing in mind the Ministers' mandate for a *'nationally consistent and coordinated system of building product assurance and regulation'* the regulatory options in this report encompass three 3 key areas of reform:

1. Establish mandatory and minimum labelling, traceability and information requirements for all building products. This can be done most efficiently and consistently by prioritising changes to the NCC's evidence of suitability provisions.
2. Establish a 'designated' products register which would require manufacturers and suppliers of products that relate to fire safety, structural steel and timber, glass and waterproofing to self-register each product on national, publicly available data base. The data base would be administered by the ABCB and would be self-funding through modest annual registration charge for each designated product.
3. Enhance the accountability of the product industry through expanding 'chain of responsibility' laws across Australia. These would be introduced as model or mirror laws based on the existing Qld and NSW schemes.

Each of the above reforms can be done in any order and independently of the other. Reforms 1 or 2 can be taken without the expansion of chain of responsibility laws across Australia. However, the most effective way to enhance building product regulation in Australia would be to make all three of the above reforms.

¹ BMM Communique November 2021



Labelling, traceability and minimum information

With regards to traceability, labelling and minimum information requirements, the benefits of mandating these requirements outweigh the likely costs significantly. This reform would improve the quality and accessibility of information about building products. This will enhance current regulatory schemes by assisting designers, certifiers and installers to more efficiently determine which products meet evidence of suitability requirements and are appropriate for use.

Mandating the use of global interoperable identifiers (ie barcodes or similar) has been found to have the potential for significant benefits. Standardised requirements could also readily enable information like carbon or other sustainability credentials to be included in the mandatory information for some or all products if governments chose to move in this direction (which is where the UK and EU are heading with their product regulations).

A Designated products register

A national register for designated building products is a substantial policy reform that would require collaboration by all Australian governments. However, the benefits are likely to be significant. Designated products proposed for inclusion include fire safety, structural steel and timber, glass and waterproofing products. A register would see the product industry funding administration, compliance and enforcement via a permanent revenue stream as a cost recovery model. A register would also support compliance in that the register could include labelling details together with a website where all mandatory minimum information requirements must be accessible. The register should be publicly available so it can be searched by designers, certifiers, builders and consumers to verify that a product is on the register and to source required information. It would also enable a person to match a registered product to a physical product with the consistent label markings. In this way a designated product register will enhance the effectiveness of existing building approvals processes.

Expanding the operation of chain of responsibility laws

The main benefit of chain of responsibility laws is that they place express and clear responsibility on suppliers and manufactures to supply safe and compliant products. In the absence of these laws, there is no clear accountability in the system directed at the product industry. Queensland introduced these laws in 2017 whilst NSW passed laws in December 2023 but they have not yet commenced. Expanding these laws across all of Australia will provide all governments with powers to take action directly against suppliers and manufactures when products are found to be misrepresented, unsafe or non-complaint.

Economic analysis of the options has been approached on a holistic basis asking what the impacts of having 'chain of responsibility laws' in all Australian jurisdictions would be, including comparing the four options proposed in this report for traceability and labelling requirements under any such laws.

Although there is much uncertainty around the costs and benefits of the identified options — largely due to a lack of reliable information — key findings of the CBA are as follows:

- Expanding building product 'chain of responsibility' laws beyond Queensland and NSW to the other jurisdictions appears to deliver significant net benefits with the net impact over 10 years being between \$1.2 billion and \$2.4 billion (depending on the labelling and traceability option chosen).
- It is also plausible that there could be significant net benefits from mandatory labelling on the product or packaging (depending on the nature of the product). The costs of the mandatory labelling requirements are estimated to be relatively modest, while labelling could potentially help to mitigate significant costs relating to product substitution.



- The benefit of mandating interoperable digital product identifiers (such as barcodes) are uncertain. However, it is likely that the benefits of more effective identification of product substitution and the potential for additional productivity gains would outweigh the associated costs.

There has also been analysis of the cost-effectiveness of establishing a product register for designated products. In general, there is a sound in-principle case to recover the cost of administration and compliance and enforcement activities from the products industry through a charge collected on the registration of a 'designated building product'.

Based on some high-level estimates, the CIE found that:

- User charges collected through a simple self-registration process is likely to be a more efficient funding mechanism than general taxation revenue (i.e. the efficiency gains from the avoided taxes are likely to outweigh the costs associated with developing and maintaining the register and the self-registration process).
- On the other hand, the costs associated with CAB assessments would outweigh the efficiency gains from avoided taxes. However, a registration process involving a CAB assessment could also deliver some additional benefits from improved compliance, which have not been considered.

Importantly, a well-designed cost recovery mechanism could ensure adequate funding, as there is a risk that the effectiveness of the options identified could be undermined by inadequate funding for compliance and enforcement activities.

Off-site construction

Our report also considers key regulatory issues and approaches to improving the regulation of off-site construction. We conclude that a foundational issue is to establish a suite of standards for how off site construction should be managed and assessed for compliance. The jurisdictions will then need to determine how the scope of their respective schemes will be adjusted to include the regulation of off-site construction. This makes up the fourth key reform proposed in this report.

Proposed landscape

Enhance current building approval processes by creating standardised requirements for labelling, traceability and product information and improving access to that information for designers, certified, installers and consumers



Reform 1 – Product labelling, traceability and information

Establish mandatory labelling, traceability and minimum information requirements for all building products through priority amendments to the NCC – ensuring the requirements apply consistently across Australia.



Reform 2 – National Designated Building Product Register

Establish a national designated building products register for products associated with high rates of defects and safety. The register would be administered by the ABCB and a cost recovery model would pay for administration, compliance and enforcement.



Reform 3 – Enhanced accountability for product suppliers

Complement the current building approval processes by expanding the operation of 'chain of responsibility laws' across Australia. This will bring greater accountability to the product industry through express obligations on them to supply compliant, safe products. The laws should be expanded to create harmonised regulation using model or mirror legislation based on the current Qld and NSW schemes.

The 3 key reforms set out above could be progressed either collectively or independently. Any one of them will bring economic benefit to industry and consumers. All three will result in a comprehensive suite of laws to ensure the use of compliant and safe building products and would conservatively result in a net positive impact of \$242.8 million per year.



Traceability, labelling and information

This should include mandating the use of global interoperable identifiers (eg barcodes or similar) which will mitigate against inappropriate substitution and enable productivity gains. The reforms could become a mechanism for encouraging or mandating transparency on sustainability credentials of products (as is occurring in the EU).



Designated products register determined to be cost-effective and consistent with best practice cost recovery principles

- Initially for fire safety products, structural steel, timber and glass, and waterproofing products (estimated to be 52K products)
- Industry funded through registration charges used for administration, audit and enforcement (estimated fee \$190/product)
- Complements & enhances mandatory traceability & labelling requirements & enforcement by jurisdictions
- Enables stakeholders to easily search for registered products & access links to mandatory information & labelling



Enhance regulation of off-site construction

1. Prioritise the development of a suite of standards that would apply to off-site construction which can apply across Australia through incorporation into the NCC;
2. Include in the mirror/model laws proposed under option 1 and 2 above, provisions to ensure state and territory schemes:
 - refer to and capture off site construction in their definitions of building work; and
 - provide for how these methods are to be assessed and certified offsite as well as during transportation and installation on site.



Summary of Regulatory options

BPAF Element 5 – Rec 5A

Enhancing enforcement – key elements of regulatory schemes – Options 1 and 2

In order to achieve harmonised and consistent building product safety laws, the jurisdictions could agree to develop model or mirror laws for all jurisdictions to enact. Alternatively, agreement on key features of elements of enhanced laws could be reached.

Harmonised regulatory schemes		Benefits	Challenges
Develop model or mirror legislation	Option 1	Consistency for stakeholders	Potential delays in reaching agreement. Qld and NSW already have laws which differ in some respects
Agree on key elements to be included	Option 2	Provides flexibility and autonomy to jurisdictions	Potential for inconsistency resulting in potential increased regulatory burden for stakeholders

Enhancing enforcement – Governance – Options 3, 5 and 5

The Ministers seek a nationally consistent and coordinated system of building product assurance and regulation. This will require either that each jurisdiction have in place harmonised building product specific laws or that existing consumer laws be used to regulate building products. **Part B** of this report sets out the research and analysis on this issue.

		National coordination				
		ACCC	Informal BRF/SOG ABCB webpage	ABCB amend IGA	New body IGA/ legal entity	Federal statutory body
Who is the regulator?	Building Regulators Each jurisdiction enacts BP specific laws	NA	Option 3A	Option 3B	Option 3C	Option 3D
	ACL or Building Regulators Each jurisdiction nominates which Regulator	NA	Option 4A	Option 4B	Option 4C	NA
	Australian Consumer Law Rely on existing ACL framework	Option 5	NA	NA	NA	NA



Funding model to support enforcement Options 4 and 5 – BPAF Element 5

The registration of suppliers of building products or individual products would provide a mechanism for regulators and supply chain participants to more readily identify when a product cannot be supplied or used and provide a clear process for excluding registered products where they are found to be non-compliant, non-conforming or unsafe.

Establishing a registration scheme would also provide a funding source to support proactive enforcement activities, such as testing products to ensure they meet evidence of suitability, product labelling and information requirements.

A national coordinating body would administer the register through a national, publicly accessible database.

The options below propose registration in relation to ‘designated products’ only. The product types suggested for costing analysis are chosen based on their association with high rates of defects and safety. They also include steel, timber, glass and waterproofing products which are already subject to voluntary industry initiated certification schemes. The inclusion of these products on a designated products register would be consistent with the objective of these schemes and is likely to face minimal resistance.

The economic analysis of this option considered the costs associated with a self-registration model and a CAB assessment model. A charge collected through a simple self-registration process is likely to be a more efficient funding mechanism than general taxation revenue (i.e. the efficiency gains from the avoided taxes are likely to outweigh the costs associated with developing and maintaining the register and the self-registration process). The cost of the CAB assessment model outweighs the efficiency gains from avoided taxes, however there are likely benefits of a CAB assessment model in that the credibility of information should be significantly improved and therefore improved compliance outcomes would be greater.

Further consideration of research and analysis to support options 4 and 5 is found in **Part B**.



	All building products ²	Designated products ³				
		Fire safety systems ⁴	Reinforcing and structural steel	Structural timber	Glass ⁵	Waterproofing membranes
Self-registration model	NA	Option 6A	Option 6B	Option 6C	Option 6D	Option 6E
CAB assessment model	NA	Option 7A	Option 7B	Option 7C	Option 7D	Option 7E

BPAF Element 5 – Rec 5B

Information sharing with CABs – Option 8

There is currently no express obligation on CABs to share information with building regulators within the CodeMark Scheme Rules. State and territory legislative information sharing provisions also do not appear to provide for information sharing agreements to be entered into with CABs. However, it is likely that investigative powers would allow building regulators to require CABs to provide information on notice.

Option 8

Enhance information sharing through

- amendments to scheme rules;
- establish information sharing powers agreement(s); and/or
- rely on investigative powers to require information from CABs to support enforcement activities

² Products that when used in building work may affect whether the building work complies with the NCC—excluding products regulated under EESS and GPCS.

³ Further analysis of products in scope would need to be undertaken by technical experts. This list is based on a review of how other legislative scheme have approached this issue. These scopes are for indicative cost benefit analysis only. Products captured would need to have a testing standard referenced in NCC. Could possibly mandate that ‘designated products’ have CodeMark assessments – noting EoS out of scope for this report therefore not subject to costing analysis in this project.

⁴ Active fire safety system equipment, fire doors, internal and external cladding products, passive fire protection products, fire sealants and stopping products, fire rated flooring products.

⁵ On the basis that these products go to key structural elements and have voluntary schemes in place already.



BPAF Element 3

Product Labelling and information requirements – Options 9 – 14

Labelling Options	Can be any product identifier	Must be interoperable digital identifier (e.g. GTIN)
Must have minimum information accessible via a website (address not required on product)	Option 9	Option 11
Must have website address on product or package	Option 10	Option 12
Labelling options achieved via		
Single standard applying to all products (unless they already have a specific standard for labelling)	Option 13	
Product specific labelling requirements introduced in all standards referenced in the NCC	Option 14	

There could be significant net benefits from mandatory labelling on the product or packaging (depending on the nature of the product). The costs of the mandatory labelling requirements are estimated to be relatively modest, while labelling could potentially help to avoid issues relating to product substitution.

The benefits for mandating interoperable digital product identifiers are uncertain. However, the CIE consider it likely that the benefits from more effective identification of product substitution and the potential for additional productivity gains would outweigh the associated costs.

BPAF Element 2, Recommendation 2A

Introduce minimum information requirements – Options 15 and 16

		Benefits	Challenges
The NCC	Option 15	National harmonisation through prescribing requirements in the NCC	Queensland and NSW would need to amend their legislation
In state and territory legislation	Option 16	Queensland and NSW already require similar information requirements to Attachment E	Possible that there will be inconsistency in requirements if jurisdictions are left to legislate minimum requirements



Conformity assessment for off-site/modular construction – Option 17

To enhance the regulation of off-site instruction:

- prioritise the development of a suite of standards that would apply to off-site construction which can apply across Australia through incorporation into the NCC;
- include in the mirror/model laws proposed under options 1 and 2 above, provisions to ensure state and territory schemes:
 - o refer to and capture off site construction in their definitions of building work; and
 - o provide for how these methods are to be assessed and certified off-site as well as during transportation and installation on site.



Part A – Introduction

Scope of Project and Report

The scope of this report was defined in the original request for tender⁶ and the approved implementation plan for the project.⁷

Whilst the project has been commissioned in order to progress the recommendations in the BPAF, not all elements of the BPAF are in scope for this project. Elements in scope are:

- Recommendation 2A in Element 2, in relation to minimum and standardised building product information;
- Element 3, in relation to the building product traceability and labelling requirements; and
- Element 5, in relation to the building product and enforcement powers and data sharing methods.

This report therefore does not cover BPAF:

- Element 1, EoS requirements in the NCC;
- Recommendation 2B of element 2, relating to the development of industry conformance schemes; or
- Element 4, surveillance, research and information sharing at a national level.

An objective of the project is to develop regulatory options for progressing the in scope BPAF elements. In order to inform regulatory options, research into various building regulatory system frameworks from Australia and overseas was undertaken. Drawing on this research and analysis, the report proposes regulatory options to enhance the regulation of building products by Australian governments. Table 1 summarises how issues in scope have been dealt with in this report.

⁶ CON006652 Issued by the Department of Industry, Science and Resources, ABCB in March 2023.

⁷ Final version dated 23 August 2023.



Table 1: Summary of issues in scope, relevant BPAF element and how issues have been dealt and options or suggested approaches included in this report

	BPAF element	Discussion in report	Options/approach – cost benefit analysis
Enhanced enforcement and compliance powers	5 – rec 5A	Part B – Analysis of Australian and international schemes including approaches to governance options Key features of building product specific regulatory frameworks based on best practice review.	2 harmonised laws options 3 Governance options 2 Options for registration of ‘designated products’ to fund and support enforcement with sub options for product types
Information sharing with CABs	5 – rec 5B	Part B – Existing provision and practice for information sharing with CodeMark CABs and mechanisms to improve	1 approach suggested to improve information sharing with CABs
Traceability and labelling	3	Part C – Analysis of approaches in Australian and international schemes	6 Options for labelling and traceability
Minimum Information Requirements	2 – rec 2A	Part C – Compare BPAF Attachment E with Queensland, NSW and other best practice approaches	2 options for mechanism to legislate
Modular construction	NA	Part D – Summary of emerging approaches, recent reports and issues	1 option to consider various models for national conformity assessment scheme

Cost benefit analysis

Economic impact analysis has been undertaken to assess the costs and benefits of introducing chain of responsibility laws across Australia. The CBA report is found at **Attachment A**.

Chapter 3 of the CBA Report sets out how the CBA has been approached. The CIE has analysed the costs and benefits associated with having chain of responsibility laws that contain the requirements presently set out in the Qld and NSW laws. In doing so they have had regard to the 4 options identified for product labelling and traceability (options 9-12). The CIE conclude that regardless of the labelling and traceability option, regulating building products using chain of responsibility laws has a significant net benefit to the public.



Table 5.1 from the CIE Report (p 44)

Labelling options	Option 9	Option 10	Option 11	Option 12
	Website address for product and any identifier on label	Website address on product and any identifier	Website address for product plus a barcode or similar	Website address on product plus a barcode or similar
	\$ million	\$ million	\$ million	\$ million
Benefits				
Avoided defect-related costs from improved product selection	747.4	747.4	747.4	747.4
Avoided defect-related costs from product substitution (product labelling)	0.0	692.9	0.0	692.9
Avoided defect-related costs from product substitution (interoperable digital identifier)	0.0	0.0	692.9	692.9
Building surveyor time savings	584.7	584.7	584.7	584.7
Total benefits	1 332.2	2 025.1	2 025.1	2 717.9
Costs				
Compliance and enforcement costs	54.7	54.7	54.7	54.7
Website costs	75.4	75.4	75.4	75.4
Product identifier costs	0.0	0.0	142.8	142.8
Labelling costs	0.0	16.3	0.0	16.3
Total costs	130.1	146.4	272.9	289.2
Net impact	1 202.12	1 878.6	1 752.2	2 428.8

The CBA has also considered the cost-effectiveness of collecting a registration charge to fund compliance and enforcement activity through the establishment of a product register for designated products (option 6 & 7). The CIE conclude a charge collected through a simple self-registration process is likely to be a more efficient funding mechanism than general taxation revenue (i.e. the efficiency gains from the avoided taxes are likely to outweigh the costs associated with developing and maintaining the register and the self-registration process).



Importantly, a well-designed cost recovery mechanism could ensure adequate funding, as there is a risk that the effectiveness of the options identified could be undermined by inadequate funding for compliance and enforcement activities.

The CIE's full report is found in **Attachment A**.

Research and analysis

To inform the development of the regulatory options 14 consultation meetings were conducted over 13.5 hours with a total 35 representatives from various bodies involved in building product compliance. To inform the CBA work, 19 consultation meetings were conducted with various stakeholder groups.

A list of consultation meetings is included at **Attachment C**.

We also conducted a survey of each state and territory's building regulator and the CABs for the CodeMark Certification Scheme about their experiences in sharing information. This resulted in requests to meet from one CAB and the South Australian government. The survey results are discussed in **Part B**.

We reviewed key background material listed in **Attachment G**. We reference various other materials we identified throughout the report.

Structure of Report

The **Executive Summary** is followed by a list of key reforms and a summary of options proposed for this report.

Part A of the report contains introductory information about the scope and approach to the report and set out key findings from the CIE's CBA Report (which is found at **Attachment A**).

Part B of the report considers BPAF Element 5, enhancing regulatory frameworks. The options relating to BPAF recommendation 5A are grouped into three areas, namely, key features of enhanced building product laws; governance models to ensure national coordination; and options for a registration scheme which would provide funding and support for enhanced enforcement. For BPAF recommendation 5B, we consider mechanisms for enactments of information sharing with CABs.

Part C of the report considers BPAF elements 3 and recommendation 2A of element 2 covering the issues of traceability, labelling and minimum information requirements. The options proposed go to whether a labelling standard should be generic or incorporated into referenced Australian standards. There are also options for mandating a product identifier and/or website address on all building products or their packaging.

Part D considers regulatory issues with regard to modular construction including the proposal for a conformity assessment scheme to support this rapidly growing sector.



Part B – BPAF Element 5 – Audit and enforcement powers

BPAF Deliverable and Objective

Deliverable: State and territory legislation applies to building product supply.

Objective: Extend regulatory compliance systems to building product supply, targeting information omissions, misrepresentation and fraud to strengthen enforcement and increase transparency through the entire building supply chain.

BPAF Recommendation 5A – Strengthen enforcement

Legislative requirements are introduced to strengthen *building product* audit and enforcement powers for all state and territory regulators, specifically powers to:

- pursue offenders across the entire building supply chain and not just those at the end (building practitioners);
- visit construction sites and suppliers of products to randomly sample *building products*;
- issue safety warning notices, injunctions, enforceable undertakings, recall or impose a mandatory safety standard;
- declare something a *non-conforming building product* where it is found not to be fit for the purpose that is claimed;
- take compliance action in cases where *building products* are supplied without the appropriate information or were not certified under the appropriate conformance pathway;
- issue penalties and fines and refer to criminal proceedings; and
- require mandatory reporting by all those in the building supply chain where they become aware that *non-conforming or non-complying building products* are being supplied or used.

1. Potential Options for progressing BPAF Element 5

There are three key areas which ought to be considered as part of strengthening building product regulations. These are:

1. Defining the key elements of state and territory based chain of responsibility laws that should be introduced by all jurisdictions;
2. Agreeing on the most appropriate governance model for national coordination of enhanced laws;
3. Establishing a funding and product surveillance model to support all jurisdictions in their enforcement and compliance efforts.



1.1 Enhancing enforcement – key elements of state and territory based chain of responsibility laws – Options 1 and 2

State and territory chain of responsibility laws should be harmonised as much as possible noting the BMM has endorsed a deliverable for ‘a nationally consistent and coordinated system for building product assurance and regulation’. Mirror or model legislation would be ideal. In the absence of mirror or model legislation the following key elements should be included in each state and territory’s building product regulation:

- consistent terminology and definitions;
- duties on supply chain participants with provision for defences where duties holders have acted reasonably;
 - to supply, sell, specify and install safe, compliant and conforming building products;
 - to not represent that a product is safe, compliant and confirming if it is not;
 - to notify the regulator where they have a reasonable belief that a building product is not safe, compliant or conforming;
- to ensure that minimum information requirements are met in relation to all building products (options for prescribed information and labelling requirements to be set out these laws or in the NCC); and
- responsible supply chain participants to include manufacturers, importers, retailers, specifiers (i.e. designers) and installers (including those who oversee or supervise installation);
- broad powers for enforcement including:
 - investigative powers including power to direct actions be taken to mitigate risk;
 - power to recall or ban the use or supply of products;
 - power to require those undertaking a voluntary recall to give notice and report;
 - power to issue product warning notices;
 - ability to accept undertakings;
 - ability to seek court orders for trading prohibition orders;
 - power to prosecute for offence with severe maximum penalties.

Note: Other elements may be required if options in this report are agreed, for example:

- to provide that building work includes off-site construction thereby adopting standards which should be included in the NCC (option 17); or
- appropriate reference to any agreed national coordination body (options 3-5) or;
- if a product register is to be established, the status of products in the register and possible any offences or necessary enforcement powers (options 6 and 7).

Cost benefit analysis is not necessary for these 2 options.



Table 2: Options for harmonised regulatory schemes

Harmonised regulatory schemes		Benefits	Challenges
Develop model or mirror legislation	Option 1	Consistency and minimal regulatory burden for stakeholders	Potential delays in reaching agreement and enacting laws
Agree on key elements to be included	Option 2	Provides flexibility and autonomy to jurisdictions	Potential for inconsistency resulting in potential confusion for stakeholders and increased regulatory burden

1.2 Enhancing enforcement – Governance models – Options 2-5

Element 5 of the BPAF, recommendation 2A calls for strengthening enforcement to regulate building products. Options are either:

- building product specific laws need to be enacted by each jurisdiction administered by building regulators, preferably with a commitment to harmonised terminology, definitions, duties, responsible supply chain participants and powers; or
- for jurisdictions to choose to rely on either ACL or building product specific laws regulated by building regulators but in either case, commit to enhanced national coordination; or
- Ministers could determine that the ACL scheme will be used to regulate building products by establishing specialised building product divisions in the ACCC and consumer regulators.

A common feature of the three overseas jurisdictions we researched is that they have multiple levels of government but their building product regulation is legislated at a national level (in the case of the UK and NZ) or by a centralised scheme adopted by member states (the EU).

Similarly in the case of Australia’s CodeMark, WaterMark, EESS and GPCS schemes, there is coordination of the scheme at the national level. Other examples of product regimes in Australia with a national coordinating body are food safety⁸, therapeutic goods⁹ and motor vehicle safety.¹⁰

In order to progress recommendation 5A of the BPAF, the ABCB and SOG should determine how an enhanced enforcement regime would be coordinated at a national level and a potential funding model for the scheme which relies on the building product industry.

With regards to national coordination, four options are proposed:

- If the ACL scheme is to be used, the ACCC would be the national body;

⁸ Food Standards Australia New Zealand (FSANZ) is a federal statutory body under the food safety scheme.

⁹ The Therapeutic Good Administration is a federal statutory body that approves and regulate medical and therapeutic products.

¹⁰ The National Transport Commission operates under an IGA.



- If building regulators are to be the administrator of building product specific laws, a national body could be:
 - an informal collaboration between the BRF and the SOG with the ABCB hosting a webpage reflecting existing informal arrangements;
 - amending the IGA for the ABCB to make it the national coordination body;
 - establishing a new body through an IGA or as a legal entity;
 - creating a federal statutory body, akin to FASANZ, the food safety standards coordination body.

With regard to establishing a new legal entity one scheme that has been discussed is the Australian Technical Evaluation Network (ATEN).¹¹ The ATEN is proposed to be an independent not-for-profit organisation which would provide technical appraisals for building construction products and develop testing standards and criteria.¹² The ATEN would be a new legal entity with members from selected construction industry experts and testing facilities. The scoping study for the ATEN says it could have a range of functions including establishing testing standards, product surveillance and administering a national database. It might also be a scheme that could establish conformity assessment for modular construction. Given conformity assessment and EoS is not within the scope of this project the ATEN is not specifically proposed as one of the options in this report. Should the SOG and ABCB wish to look at a broader range of issues in the future, the ATEN scheme may be worth further consideration.

In the short term, improvements and enhancements could also be made to the existing building product webpage about non-conforming building products, hosted by the ABCB.¹³ It does not appear to have been enhanced with the specific figures referenced in the BPAF,¹⁴ such as a reporting system and details of enforcement action that has been taken. The ABCB's webpage does include the ability to submit an enquiry or report a non-confirming building product to the relevant regulator. This could be improved to form part of a comprehensive reporting and communication system regarding non-conforming building products (as proposed in BPAF).

The above options are represented in a matrix below followed by a table considering the benefits and challenges for each option.

CBA has considered the costs and benefits of regulating building products based on the Qld and NSW chain of responsibility laws. The CIE concludes that the benefits of having building product regulation outweigh the costs. The benefits quantified were the costs of:

- avoiding defects a result of non-complying building products which were assessed on the following basis:
 - improved product selection because of better access to information about products;

¹¹ Swinburne University of Technology, Scoping Study for Australian Technical Evaluation Network, October 2019.

¹² The ATEN project was funded by Future Industries Fund, Sector Growth Program Stream 1 with co-funding from Swinburne University of Technology, Victorian Building Authority (VBA), Commonwealth Scientific and Industrial Research Organisation (CSIRO), Association of Consulting Structural Engineers Victoria (ACSEV), and National Association of Steel-framed Housing (NASH).

¹³ [https://www.abcb.gov.au/ncbp/suspect-non-conformance_\(accessed September 2023\)](https://www.abcb.gov.au/ncbp/suspect-non-conformance_(accessed September 2023)).

¹⁴ Page 22.



- reduced product substitution as a result of labelling on products (or packaging for some types of products that cannot have product labelling);
- reduced product substitution as a result of including interoperable digital identifiers.
- time cost savings for building surveyors (and others) in being able to access evidence of suitability information more readily.

The costs quantified were:

- compliance and enforcement costs to regulators;
- providing required product information on a website;
- costs of having an interoperable digital identifier;
- labelling costs;

The costs of having required information, including the possible costs of having products tested were not considered because this is already a requirement under the NCC, EoS provisions so proposed reforms would not increase these costs. However, the CIE has included sensitivity analysis on the cost of product testing.

The full CBA is found in **Attachment A**.

Table 3: BPAF Element 5 – Governance for enhance compliance and enforcement – Options 1-3 Matrix

		National coordination				
		ACCC	Informal BRF/SOG ABCB webpage	ABCB amend IGA	New body IGA/legal entity	Federal statutory body
Who is the regulator?	Building Regulators Each jurisdiction enacts BP specific laws	NA	Option 3A	Option 3B	Option 3C	Option 3D
	ACL or Building Regulators Each jurisdiction nominates which Regulator (emphasis on enhancing national coordination)	NA	Option 4A	Option 4B	Option 4C	NA
	Australian Consumer Law Rely on existing ACL framework	Option 5	NA	NA	NA	NA



Table 4: BPAF Element 5 Options Benefits and Challenges

Option	Benefits	Challenges
Which regulator?		
<p>Ministers could determine that the ACL scheme will be used to regulate building products by establishing specialised building product divisions in the ACCC and consumer regulators.</p>	<p>The laws and bodies are established and already understand product regulation and the powers used to regulate supply chains.</p>	<p>The ACCC strongly resists being a building product regulator. Some argue building products are not consumer goods, which may need legislative change to the ACL is required.</p> <p>The ACCC and consumer law regulators do not have building product technical expertise.</p> <p>Qld and NSW have already established specific laws for building product regulation via its building regulations.</p>
<p>Building product specific laws enacted by each jurisdiction administered by building regulators, preferably with a commitment to harmonised terminology, definitions, duties, responsible supply chain participants and powers.</p>	<p>Building regulators have some technical knowledge and capability that would be useful and understand building industry participants.</p>	<p>It may take many years for the processes required to enact new laws.</p> <p>Building Regulators do not have expertise in regulating supply chains and using powers like recalls, warnings and product bans.</p> <p>Building Regulators are already under resourced for the scope of regulation they have.</p>
<p>For jurisdictions to choose to rely on either ACL or building product specific laws regulated by building regulators but in either case, commit to enhanced national coordination.</p>	<p>Changes to laws may not be required, allowing action to be taken more quickly.</p>	<p>This lack of harmony could create confusion amongst consumers and industry as to who regulates.</p>



Option	Benefits	Challenges
National Bodies		
An informal collaboration between the BRF and the SOG with the ABCB hosting a webpage.	Is already in place and could be meeting regularly and focusing on building product issues relatively quickly.	May be a lack of engagement or resources given to undertake work. In the absence of an IGA there might be a lack of clarity around roles and functions making the group less effective
Amending the IGA for the ABCB to make it the national coordination body.	ABCB already established. Ministers could expand its role relatively quickly.	ABCB may have no capacity for further roles. May be considered that a bespoke building product coordinating body is required.
Establishing a new body through an IGA or NFP corporate entity.	A new bespoke body with a clear role and purpose might be more focused than the ABCB.	Time to develop an IGA, initial funding required to establish infrastructure. Potential duplication of administration already in place with ABCB.
Creating a federal statutory body, akin to FASANZ, the food safety standards coordination body.	If jurisdictions are going to enact new laws, a new federal body could be referenced in those laws (possibly the ABCB).	More complex and time consuming to establish. Current model of ABCB might be seen as just as effective without the cost and effort of a statutory body being established.



1.3 Enhancing enforcement- Funding models – Options 6 and 7

The registration of suppliers of building products or for products would provide a mechanism for regulators and supply chain participants to more readily identify when a product cannot be supplied or used and provide a clear process for excluding registered products where they are found to be non-compliant, non-conforming or unsafe.

Establishing a registration scheme would also provide a funding source to support proactive enforcement activities, such as testing products to ensure they meet evidence of suitability, product labelling and information requirements. By creating a funding model, smaller jurisdictions who may be otherwise reluctant or unable to fund building product regulation would be encouraged to participate in a nationally coordinated and consistent approach.

It would not be practicable to have supplier or product registration occur at a jurisdictional level. Therefore, the national coordinating body should administer the register through a national, publicly accessible database.

It would also not be practicable to require all building products to be registered, at least initially given the number of products in the market (which the CIE have estimated as 700,000). The options below propose registration in relation to 'designated products' only with the scope of products able to be expanded over time if warranted. The product types suggested for costing analysis are chosen based on their association with high rates of defects¹⁵ and safety. In relation to structural steel, structural timber and glass, these products are already subject to certified voluntary conformity assessment schemes. These types of products are also captured as higher risk products by European and UK regulatory systems (discussed further below). Through consultation the CIE has calculated there are approximately 90,000 products that come with in the definition of designated products, excluding the fire safety category.

With regard to water proofing membranes, in our consultation with South Australia, it was reported that the regulator sought to undertake check testing of five plastic waterproof membrane products for use under concrete slabs. The regulator found it a challenge to find a NATA accredited testing laboratory who could conduct the test and when it did it had to wait for that laboratory to undertake calibration testing of its equipment. Four of the five products tested were non-compliant. This suggests these products do not meet EoS requirements.

By requiring registration of these products, they can be more readily identified and scrutinised. If there are complaints and it is found products are not compliant, removal from the register would prevent their continued use nationally (or in relevant jurisdictions). Consumers and industry could also readily check the register to see whether products they are proposing to use are registered. The register could potentially also provide website links to minimum required information for the products which would also assist industry and stakeholders. In this way the national designated products register will support the existing 'gatekeeper' model for building regulation by making it easier for designers, certifiers and installers to identify which products are registered as can be used and by providing a link to a website where minimum information can be accessed. The register could also include details of the product label so that matching of products can occur on site. This may mitigate against inappropriate product substitution. Given the benefits a product register would bring to the current regulatory approvals processes across Australia, the national designated product registered could be introduced before or independent of the extension of chain of responsibility laws.

¹⁵ Several research reports have identified fire safety and water ingress and the most common form of defects.



The possible mechanisms for establishing and operating a product register would vary and will need detailed consideration. It could not be made mandatory without legislative change. A designated product register could be mandated through changes to the NCC's. For example, by providing in the NCC that for designated products, they must meet evidence of suitability requirements and also be included on the designated products register in order to be used. Jurisdictions could also choose to refer to the register in their schemes, in the same way that most of the schemes reference CodeMark. In terms of any enforcement powers that could be required to support a designated products register, these would probably need to be provided for at a state and territory level given the ABCB has no statutory basis. Other details about the administration of the register, including how funding from registration could be used by jurisdictions for compliance and enforcement could be set out in an intergovernmental agreement. This is the mechanism under which the EESS operates. Alternatively, model or mirror laws could be developed as part of the expansion of chain or responsibility or independent of that reform. These issues are related to the discussion above on the benefits of and options for a national coordinating body.

Product registration schemes are used in WaterMark and the EESS, although the funding models differ. Under EESS suppliers pay about \$224 per year to be registered. Products cost \$84 for 1 year, \$168 for 2 years and \$420 for 5 years. This low cost model is able to fund the scheme including ongoing proactive testing and surveillance. The Commonwealth Water Efficiency Labelling Scheme is also self-funded through product registration. These schemes provide for self-registration, in that the product supplier would register the product uploading required information which would be assumed to be correct. Through auditing of the register information could be reviewed and verified using a risk based approach or based on complaints.

An alternative model would be to require suppliers to have their product information independently assessed by a conformity assessment body prior to it being able to be put on the register. This would have the benefit of ensuring the EoS was credible and adequate. However, the costs to undertake this assessment for every product would be significantly more than if a self-registration model were used.

The 'self-registration' and 'CAB assessment model' have been proposed as options 6 and 7. The CIE undertook an assessment of the costs associated with each model. They concluded that a self-registration model was more cost effective than a CAB assessment model.

Based on some high-level assumptions, the CIE found that:

- A charge collected through a simple self-registration process is likely to be a more efficient funding mechanism than general taxation revenue (i.e. the efficiency gains from the avoided taxes are likely to outweigh the costs associated with developing and maintaining the register and the self-registration process).
- The alternative model of requiring suppliers to follow a conformity assessment process in relation to their information as a condition of registration was also considered (CAB assessment model). The costs associated with a CAB assessment model would outweigh the efficiency gains from avoided taxes. However, a registration process involving a CAB assessment model is likely to deliver some additional benefits through improved compliance.

Importantly, a well-designed cost recovery mechanism could ensure adequate funding, as there is a risk that the effectiveness of the options identified could be undermined by inadequate funding for compliance and enforcement activities.



Table 5: BPAF Element 5 – Funding to support enhanced compliance and enforcement – Options 4 and 5 Matrix

	All building products ¹⁶	Designated products ¹⁷				
		Fire safety systems ¹⁸	Steel	Timber	Glass ¹⁹ ;	Waterproofing membranes
Self-registration model	NA	Option 6A	Option 6B	Option 6C	Option 6D	Option 6E
CAB assessment model	NA	Option 7A	Option 7B	Option 7C	Option 7D	Option 7E

2. Research and analysis to support options

2.1 Existing audit and enforcement regimes in the States and Territories

Element 5 of the BPAF calls for state and territory governments to extend regulatory compliance systems to strengthen compliance and enforcement through the building product supply chain. The BPAF notes that manufacturers, suppliers and importers of building products largely sit outside the regulatory system. This is because with the exception of Queensland, there are no specific building product safety laws which prohibit the supply of non-compliant, non-conforming or unsafe building products.

Queensland’s chain of responsibility laws were introduced in 2017. In our consultation with the QBCC we heard that the scheme is effective. Regulatory powers (such as recalls) have not been used much as there are high levels of cooperation when compliance issues arise. An additional power the regulator would like is to compel suppliers to give details of where their products have been installed so that consumers can be contacted.

NSW passed the *Building Legislation Amendment Bill 2023* in December 2023.²⁰ The Bill amends the *Building Product Safety Act 2017* (NSW) to introduce chain of responsibility laws. The amendments

¹⁶ Products that when used in building work may affect whether the building work complies with the NCC—excluding products regulated under EESS, Gas Appliances.

¹⁷ Further analysis of products in scope would need to be undertaken by technical experts. This list is based on a review of how other legislative scheme have approached this issue. These scopes are for indicative cost benefit analysis only. Products captured would need to have a testing standard referenced in NCC. Could possibly mandate that ‘designated products’ have CodeMark assessments – noting EoS out of scope for this report therefore not subject to costing analysis in this project.

¹⁸ Active fire safety system equipment, fire doors, internal and external cladding products, passive fire protection products, fire sealants and stopping products, fire rated flooring products.

¹⁹ On the basis that these products go to key structural elements and have voluntary schemes in place already.

²⁰ The Bill was introduced into the NSW Parliament on 12 October 2023 and passed on 11 December 2023.



were developed having regard to the Queensland scheme²¹ although definitions and terminology vary slightly and the NSW scheme has a broader range of powers.

A comparison of key features of the Queensland and NSW schemes is found at **Attachment E**.

South Australia's *Planning Development and Infrastructure Act 2016* (PDI Act) provides that if any item or materials incorporated into any building does not comply with the Building Rules (which includes the NCC) and the failure to comply is attributable to the person who designed, manufactured, supplied or installed the item of materials, that person is guilty of an offence.²² We understand that provision was introduced after the collapse of a roof at the Riverside Gold Club in 2002. The collapse was attributed to a failure of the double girder timber truss installed during renovations in 1995. The PDI Act does not have recall or product warning powers, although we understand that where product safety issues arise, building officials work with officers from fair trading and consider the use of ACL powers.

For the remaining five jurisdictions there are no specific chain of responsibility laws. However, building regulatory schemes in all eight jurisdictions do have mechanisms to require building products to comply and confirm part of the building approvals process as follows:

- each jurisdiction adopts the NCC which requires EoS for all products and references standards some of which include with building product compliance matters;
- in some jurisdictions designers and engineers are expressly required to produce designs that comply with the NCC, which includes requiring them to specify compliant and conforming products for use;
- building approvals must not be issued unless the building surveyor is satisfied that proposed works will comply with the NCC which includes compliance with EoS and standards;
- there are offences where building works are not carried out in accordance with the NCC, placing an obligation on builders to ensure compliance with EoS and relevant standards. Although builders have successfully argued that where they have relied on advice from architects, engineers and building surveyors, they should be able to pass on liability when non-compliant products are installed by them.²³

The above mechanisms are important. They make designers, engineers and building surveyors 'gatekeepers' who should be ensuring products that are selected, approved and installed are compliant and conforming. However, we know that those gates have not worked effectively in the past. Thousands of class 2 – 9 buildings have been clad in non-compliant cladding products. We know that ACP products with a highly flammable 100% polyethylene core were used extensively on Type A buildings when those products did not have EoS supporting their use on such buildings. We also know that after the Lacrosse cladding fire, some fire rated products obtained CodeMark certificates but they were being installed contrary to the conditions on certificates. Some certificates were later withdrawn at the instigation of the scheme manager after investigation into the adequacy of the material relied on to produce the certificates.

Whilst there is ongoing regulatory action and civil litigation in relation to non-compliant combustible cladding, manufacturers and suppliers of the non-compliant products were unable to be regulated by

²¹ See page 3 of the Statement of Public Interest tabled with the Bill.

²² Section 216(3).

²³ See for example the Lacrosse decision – *Tanah Merah Vic Pty Ltd v Owners Corporation No 1 of PS613436T and Ors* [2021] VSCA 72.



governments because their laws did not apply to the supply chain. The cladding crisis has probably caused designers, surveyors and builders to be more vigilant about checking product information generally. However, a recent research project by Dr Nicole Johnston and Michael Teys into product selection and information transparency found that only a relatively small number of manufacturers involved in the study provided both in-depth technical information about their products and information in a manner that was easily accessible and readable.²⁴ Detail and clarity were lacking on most websites reviewed. This report confirms that the ‘gatekeepers’ will struggle to be able to discharge their obligations to ensure product compliance in the current environment where without supply chain laws, manufacturers and suppliers have limited accountability in the building regulatory system.

In the years following the Grenfell Tower fire, some jurisdictions banned or made restrictions on the use of combustible cladding products. They either used existing powers to do this or enacted new powers.²⁵ These regulatory responses were specific to cladding products.

Whilst Victoria’s building product powers are limited to cladding products, the Victorian Building Authority publicises that one of its six regulatory priorities is product safety, with its website listing the action it has taken in the area.²⁶ This shows that in the absence of chain of responsibility laws, jurisdictions are prioritising the regulation of building products through their ‘gatekeeper’ mechanisms but as noted above, the lack of regulatory accountability on manufacturers and suppliers undermines the system.

The ‘gatekeeper’ models would be enhanced if there were standardised mandatory requirements for labelling, traceability and minimum information requirements. By requiring manufacturers and suppliers to meet standardised requirements, the gatekeepers could more efficiently obtain and review information about products. Similarly, a national designated building products register would make it much simpler for the gatekeepers to look up designated products that can be used and to access the minimum information about products via links on the register.

2.2 Role of consumer regulators compared with building regulators

Note: The ACCC has reviewed this section of this draft report and provided a statement which is set out in Attachment B.

The BPAF states that building products have been considered as not covered by the general consumer or product safety provisions under the ACL on the basis that they may not be a consumer good. However, the ACL may apply where there is conduct that is misleading or deceptive or is likely to mislead or deceive.²⁷ Building products sold through retail outlets would also be consumer goods.

The ACCC is the Commonwealth statutory body responsible for enforcing the ACL. We consulted with representatives from the ACCC’s Consumer Product Safety Division. To the extent that building

²⁴ Dr. Nicole Johnston & Michael Teys, Investigating Building Product Selection and Information Transparency, 20 February 2023 – research supported by Alspec.

²⁵ Tasmania used an existing determination power under section 18 and 20 of its *Building Act 2016*; Victoria enacted a new power for the Minister to issue a declaration to ban high-risk cladding products in section 192B of the *Building Act 1993*. NSW enacted the *Building Product (Safety) Act 2017* which allowed it to issue a Building Product Use Ban. WA amended its *Building Regulations 2012* to establish new standards for the use of combustible materials. Queensland amended its Queensland Development Code. South Australia introduced enhanced disclosure requirements for metal panel linings (links accessed 13 October 2023).

²⁶ <https://www.vba.vic.gov.au/about/regulatory-approach/regulatory-priorities/regulatory-priority-products-safety> (accessed 27 September 2023).

²⁷ BPAF, page 27.



products would be covered by the ACL, the ACCC's position is that building products ought to be regulated solely by building regulators. It has consistently put forward this view²⁸ and holds the same view for other 'specialist' products such as food, therapeutic goods, automotive goods, electrical and gas products.

The ACCC says it ought not play a role in the regulation of specialist areas as it does not have the pre-market controls, the ability to licence or certify, specialist expertise, or relationships with stakeholders in the way that the industry specific regulators do. Further, the ACCC said that any attempt for it to play a role and co-regulate with the state and territory building regulators would likely lead to confusion, overlap and inconsistency, and raise expectations about what the ACCC can do. It would also require the ACCC to shift its resources away from its own identified and publicised priorities.

While the ACCC acknowledged consumers may look to the ACCC to regulate building products given for the most part, it is not provided for in the state and territory building regulation regimes, it confirmed it does not have the expertise or resources to do so.

In relation to the existing building product safety laws in Queensland and NSW, the ACCC advised that in practice, it has no working relationship with the QBCC or NSW Building Commission about building product supply issues.

The ACCC explained that it is currently working with electrical safety regulators around Australia to facilitate improved harmonisation and consistency across the country. There are also emerging issues relating to batteries which the electrical safety regulators are responsible for but the ACCC are assisting them with to ensure the safety risks are managed. The ACCC stressed that it does not intend to have a long term role in the area. It says it currently publishes recalls for gas and electrical products but it is envisaged this will stop so once the regulators have a coordinated central data collection and incident coordination function and can manage this themselves.

In terms of other specialist product regulation schemes, the ACCC referred to food safety and therapeutic goods. It noted that these schemes are standalone and the community and industry participants are very clear about who regulates these products. The ACCC says these models should be adopted for electrical, gas and building products. It was noted that there is no statutory body that would have a coordinating role at the Commonwealth level. The ACCC commented that effective coordination could occur between states and territories without the need for a federal statutory body, although it noted that for food and therapeutic goods, national statutory bodies do exist.

3. The CodeMark, WaterMark, Gas Product Certification Scheme and Electrical Equipment Safety System

3.1 Key features of the four schemes

Attachment E contains a comparison of key features of the above four schemes. In summary:

- All schemes are coordinated through a national body. WaterMark, CodeMark and the EESS are subject to an IGA. The GPCS's national body, GTRA, operates under terms of reference.

²⁸ For example, ACCC Submission to the Senate Economics Reference Committee Inquiry into non-conforming building products, 2015, available at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Non-conforming_products/Submissions (accessed October 2023).



- Each scheme regulates the conformity assessment process with all schemes, other than CodeMark having product types with different compliance requirements.
- Products subject to the WaterMark, EESS and GPCS schemes are categorised with higher risk products requiring third party certification. In our discussions with the administrators of all three schemes they reported that the scope and classification of products is generally well understood and they have efficient processes to adjust to accommodate emerging risks or remove products as appropriate.
- The EESS scheme is funded through supplier and product registration charge which covers administration and product surveillance. WaterMark is funded through fees on CABs and royalties for use of the mark of conformity.
- The WaterMark, EESS and GPCS all have mechanisms for the development of new standards for innovative products. For WaterMark those occur through a technical committee that does not include government representatives but is overseen by the ABCB as administrator. For the EESS and GPCS schemes, technical committees are comprised of representatives from their respective state and territory regulators.
- The ACCC has had an ongoing relationship with administrators of the EESS and GPSC to assist with product recalls and other product safety issues. As noted above, the ACCC has advised that over the longer term it would like to be less involved in specialist building related product safety regulation.
- Relevant standards for products under the WaterMark, EESS and GPCS schemes require product labelling and minimum information requirements to be held by certificate holders. Some of that information can also be accessed by central databases operated by scheme administrators.
- None of the schemes mandate the use of digitally interoperable markings (such as barcodes i.e. GTIN).

3.2 Current plans for reform or enhancement

The BPAF notes that a review of the CodeMark scheme is part of the ABCB's 2021-23 Forward Work program.²⁹ Hence element 1 of the BPAF is out of scope for this report.

The current version of WaterMark was established in 2016 with the scheme rules issued in 2017. The ABCB commencing a review of the scheme over this coming year.

The GPCS scheme was reformed in 2022, when the Rules were updated to reform marketing, operation and governance of CABs and introduce a high risk classification for certain gas product types and require further laboratory testing (because they are of a type for which surveillance auditing won't identify whether safety critical features are operating properly).

With regard to the EESS, we were told that in the next 6 – 12 months the database system is being rebuilt, to improve its functionality. This will enable practitioners and consumers to more easily check, including on their phones, if a supplier or product is registered. The EESS is also due for a review having been in operation for about 10 years. The IGA provides that the SCO is to commission a review of the operation of the IGA every fifth anniversary.

²⁹ The ABCB's 2023-24 Annual Business Plan also includes strengthening EoS requirements as a key priority.



3.3 Key issues or concerns

All three of the mandatory schemes reported that online sales are a challenge to regulate. ERAC are working on using artificial intelligence to detect non-compliant products being sold online. GTRA are engaging with large online retailers to seek their assistance.

WaterMark

The process for development of new standards is time consuming and costly for CABs and manufacturers that sponsor a new standard. This discourages the development of new standards and results in CABs being too willing to issue certificates based assessments which do not fully align with applicable standards. This is an area of complaint and frustration for the administrator which undermines the scheme.

The scheme only requires compliance at point of installation which has been a persistent complaint of industry who strongly advocate for the mandatory WaterMark certification scheme to apply at point of sale.

EESS

It has been challenging to get all jurisdictions signed up to the EESS. After more than 10 years, only four jurisdictions are participating in the scheme. During consultations we were told that other jurisdictions are taking steps to transition to the EESS and that aside from NSW, all jurisdictions accept EESS as a means of compliance (i.e. compliance with the EESS requirements is considered to meet the regulatory requirements of the jurisdiction). NT, SA and ACT appear to have no objections to the scheme but are yet to prioritise the legislative process required to join.

NSW operates its own system, although a 2023 review into the NSW legislation recommended that the NSW government give in principle support for joining the EESS subject to some specified issues being resolved. It was proposed that NSW engage in the upcoming review of the EESS and negotiate amendments to the scheme to ensure any move to national consistency does not compromise consumer safety in NSW.³⁰

The scope of products covered by the scheme is generally well defined, but an example of emerging risks are low voltage products that use lithium ion batteries and are not captured. This is an area where the SCO and ERAC are working with the ACCC who is encouraging them to regulate in this area.

Gas Product Certification Scheme

Although the scheme is reasonably harmonised across Australia, there are differences between jurisdictions in how it is administered including certification of installation for type B products. Some jurisdictions have privatised this role, others have not.

Regarding emerging issues, hydrogen and methane are areas where new standards are being developed and will be regulated within this scheme. They are also looking at new fuel cell technologies and the implications of policy decisions of some states to ban the use of gas in new homes.

CodeMark

In our consultation it was reported that certifications commonly contain limitations or conditions for use, but those limitations may not be well understood or applied. This results in the certified product being used in a way for which it is not certified and for which its suitability has not been assessed by any other method approved under the BCA.

³⁰ Recommendation 18, Statutory Review Gas and Electricity (Consumer Safety) Act 2017, NSW Department of Customer Service, March 2023.



There is also a risk certifiers or surveyors will accept a certificate that is out of date or which has been withdrawn. This has been mitigated by including historical certificates on the database but this only started happening recently.

The scheme is also reliant on CABs acting appropriately in the issue of certificates. In 2019, JASANZ suspended the accreditation of a CAB due to concerns about its processes and after a number of certificates of conformity issued by it for cladding products were withdrawn. In our discussion with one CAB, they also said some CABs have lower standards for what documentation they will rely on to issue a certificate and that the integrity of the scheme relies on effective regulation of CABs, which they suggest could be improved.

4. Overseas jurisdictions

4.1 Key features of schemes considered

Attachment F provides details on the NZ, UK and EU schemes. For the purposes of BPAF element 5, a summary of key points follows:

- In NZ, the Ministry of Business, Innovation and Employment's (MBIE) enforcement powers include issuing a notice to take corrective action, which requires a person to take actions to remedy non-compliance or ensure that non-compliance is not continued or repeated, and prosecute. Notably, persons in the chain of responsibility in NZ do not include designers. The legislation is aimed at NZ manufacturers and where products are imported, the importer.
- The new NZ building products scheme is directed at manufacturers, importers and retailers of products with obligations on designers, certifiers and installers found in their Building Act. It is notable that both the Qld and NSW schemes include that designers and installers as responsible persons in the supply chain. This is so despite the fact that in both schemes designers and installers are already required to ensure compliance with the NCC in their work. Designers and installers are required under the Qld and NSW schemes to pass on required information about products, whereas under the NZ scheme products must be labelled with a website address that provides a link to required information.
- In the UK, there are a broad range of powers including to issue a suspension notice, recall products, apply for an order for the forfeiture of products, and issue a prohibition notice, prohibiting the supply of products. There is also a power to compel the issue of a warning about construction products which have been supplied or are being supplied.
- In regard to the scope of products, the UK's Building Safety Act 2022 includes provision for Construction Products Regulations to be made (Schedule 11). Regulations can be made about a broad range of matters including to "prohibit the marketing or supply of construction products which are unsafe" and requirements about "safety-critical products". Notably, the UK has not included building product regulation in the role of its national building regulator. It has instead established the National Regulator for Construction Products which is in the Office of Product Safety Standards, within the Department For Levelling Up, Housing and Communities. This Department is separate to the UK's new national Building Safety Regulator which sits within the Health and Safety Executive, a statutory body responsible for work health and safety. Schedule 11 of the Building Safety Act 2022 also provides for regulations to give a broad range of powers to the National Regulator for Construction including search, seizure, warning, suspension and recall of products.



- In the EU the Commission can seek information from manufacturers and take action to prohibit or restrict products but this appears to be done by notifying relevant scheme member states who are expected to ‘put an end to compliance’. We take this to mean that each member state will use its own enforcement powers to act on non-compliant products.
- The recent Morrell report³¹ about the UK system for testing the safety of construction products and the use of data from the system found that the most obvious gap in the system is that only construction products for which there is a designated standard are covered by the regulation (said to be only one-third of all construction products) and many standards are outdated, inconsistent or non-existent. The report makes 20 recommendations for change, one of which is that further consideration be given to extending the requirement for declaration of performance to all construction products (acknowledging there would in turn need to be standards against which the products can be assessed). This was in the context of raising concerns about the proposal for all construction products to be brought into the scope of a “general safety requirement” in terms of the practicality, proportionality and effectiveness of introducing such a ‘catch-all’ that captures all products and extends a principle primarily designed for stand-alone consumer goods to construction products intended to function as a component or part of an assembly.³²

Other international papers on this are include the International Building Quality Centre’s Good Practice Regulator Framework for building product regulation.³³ It identifies 31 elements of a regulatory framework which include, as relevant to the scope of this report:

- National regulation is suggested where possible and for federated countries, national consistency and information sharing are important;
- The scheme should have regard to maintaining competition and a level playing field by requiring transparency and ensuring codes and standards do not specify proprietary products;
- The supply chain should be required to provide product technical statements containing minimum information with conformity assessment bodies having to approve the content of labelling and marketing materials put out by manufacturers and suppliers;
- Test results and historic records of certificates should be available on a publicly administered data base;
- Chain of responsibility laws should hold the supply chain participants accountable for the supply of safe, compliant products with product technical information including prohibitions on making misleading and deceptive claims about performance and compliance.
- Digital product identifiers should be required on products to enable traceability and owners should have access to product technical information for designated products in a digital form;
- Designers, approvers and installers should have responsibility to ensure products selected, approved and used are safe and compliant as part of the building approvals process. Those practitioners should have the necessary training and skills to understand and read test results,

³¹ Department for Levelling Up, Housing and Communities, review led by Paul Morrell OBE and Anneliese Day KC, Independent Review of the Construction Product Testing Regime, 20 April 2023.

³² Page 21.

³³ International Building Quality Centre, Building Products Performance Good Practice Regulatory Framework, February 2023 (accessed 18 October 2023)



conformity reports and conditions on the use of products. Manufacturers should proactively train and assist Installers to understand and use installation manuals;

- Regulators should be adequately resourced and equip with a broad range of enforcement powers to undertake effective compliance and enforcement, both proactive and reactive.

5. BPAF recommendation 5B - Data sharing methods and protocols between CABs and regulators

CABs and state and territory regulators are obligated to share information on the enforcement action taken with building practitioners and the public (e.g. when building products are identified as *non-conforming building products*, the issue of bans or recall orders or the withdrawal of conformance certificates).

They ensure that where a problem is confirmed with a particular *building product* the withdrawal of certificate, report or other form of evidence of suitability occurs quickly and is well communicated nationally.

This may require further supporting provisions to provide protection for the CAB and/or regulator from liability.

5.1 Potential Options for progressing BPAF Element 5 – rec 5B

There is currently no express obligation on CABs to share information with building regulators within the CodeMark scheme rules. State and territory information sharing provisions also do not appear to provide for information sharing agreements to be entered into with CABs. However, it is likely that investigative powers would allow building regulators to require CABs to provide information on notice.

A mechanism to regulate data sharing between regulators and CodeMark CABs is the CodeMark Scheme Rules. The Rules could be amended to set out circumstances in which information requested by specified government bodies (including building regulators) must be provided.

More broadly, most jurisdictions have information sharing provisions in state and territory building legislation. These could be amended to ensure they clearly reference CABs as a body with which information can be shared. However, this would then require an information sharing agreement to be in place. If all jurisdictions required information sharing agreements with all CABs this would be cumbersome. A preferred approach could be to provide for information sharing between jurisdictions and the ABCB through the IGA and reference access to information from CABs via scheme rules (which would require amendment). Alternatively, jurisdictions should consider using investigation powers to obtain information from CABs such as coercive powers and notices to produce.

It is not proposed that this option be subject to costing analysis.

Option 8

Enhance information sharing through

- amendments to scheme rules;
- establish information sharing powers agreement(s); and/or



- rely on investigative powers to require information from CABs to support enforcement activities.

6. Research and analysis on information sharing

6.1 Current information sharing between CodeMark CAB's and building regulators

The CodeMark Australia Scheme Rules do not refer to information sharing with regulators.

CABs must provide written advice and reports to the Scheme Administrator (JASANZ) about matters including the status of a Certificate of Conformity and its Scheme certification activity.³⁴

Certificates of Conformity are included on a register maintained by JASANZ, which includes certificates that have been expired or withdrawn.³⁵ This is a relatively recent improvement, as in the past there has been no repository or register of past certificates.

We have not conducted a detailed review of information sharing laws in each jurisdiction but those we did consider did not expressly refer to CodeMark CABs as a regulatory body with which building regulators could share information. Usually information sharing provisions provided for the creation of agreements with 'relevant agencies'. Therefore in order for states and territories to share information with CABs there would need to be the ability to create an agreement with a 'relevant agency'.³⁶

Another possible way regulators could obtain information from CAB would be using investigative powers, such as notices to produce. We have not reviewed each jurisdictions' powers to see whether they could be used.

To examine what occurs in practice we conducted a survey of building regulators and CABs. We received survey responses from six of the eight building regulators and three of the Codemark CABs.

The Building Regulators

Four of the six building regulators who responded, from ACT, SA, Vic and WA, said they have never engaged with a CodeMark Scheme CAB either directly or via JASANZ or the ABCB.

Consumer, Building and Occupational Services (Tas) reported one instance where it recently raised concerns with a CAB about the accuracy of the description of the product application on the product's certificate, noting when the CAB was challenged it eventually responded by changing the certificate.

The Victorian Building Authority reported it had not sought information from CodeMark CABs, it suggested "it may be beneficial to establish a more formalised communication channel between the VBA and certification bodies to ensure a streamlined approach to addressing and escalating any

³⁴ See Rule 31.

³⁵ CodeMark Register of Certificates of Conformity at <https://register.jasanz.org/codemark-register>.

³⁶ *Building Act 1993* (Vic) section 259A provides for information sharing agreements to be made with relevant agencies which include 'any other person or body that exercises functions in the public interest that involve protecting the interests of users of services of building practitioners, plumbers or architects.' The *Queensland Building and Construction Commission Act 1991* (Qld) makes provision for the QBCC to establish information sharing agreements with agencies of the Commonwealth that are prescribed, which is not likely to include CABs.



concerns regarding non-compliance, thereby ensuring the integrity and efficacy of the certification process.”

NSW Fair Trading (now NSW Building Commission) is the only regulator who reported making information requests to CABS, stating it requested compliance information to verify documents provided by a manufacturer/supplier as part of its investigations into whether building products comply with the BCA. Information requested may include:

1. A certificate or evidence of suitability.
2. Evidence about the suitability of a certificate to be used as a part of a construction certificate assessed under the BCA 2019/2022 or prior version and transitional arrangements.
3. To confirm whether certificates were issued prior to BCA amendments or later.
4. Confirmation of which performance requirements and associated Deemed to Satisfy provisions were relevant to a certificate.
5. Limitations or restrictions on a CodeMark certificate and a product’s intended use.

NSW Fair Trading (now NSW Building Commission) reported that it does not rely on a specific legislative provision or use a template to request such information. It says that it has contacted a CAB on one occasion in the last three months, to request documents referenced on a Certificate that were not provided or available via the CAB online search tool. In that case, despite multiple requests, the CAB did not release the requested documents on the basis that they were waiting on instructions from their legal representative and client (product manufacturer) to permit its release.

The CodeMark CABs

Global-Mark says it receives about two requests per year. It considers many of the requests come about following a complaint or query from a competitor or a client who may not understand the technical matters or application of the NCC. No specific template is used. It has received multiple questions on specific files from JASANZ, it has been subject to a forensic audit by the ABCB and the NSW Building Commissioner has also requested information.

Global-Mark reported that it provided the information requested unless it involved confidential information such as test reports, in which case it has offered JASANZ or the regulator to review the information on its website.

Intertek SAI Global reported that it has not been requested to provide information to a building regulator. Intertek SAI Global requested a meeting. At that meeting it raised concerns about consistency between CABs and how they interpret standards and assess products. It said minimum documents required to seek certification should be defined as some CABs seem willing to issue certificates based on very limited documentation. It also said that where a CodeMark certificate has been issued the client should not also have to show testing information to the supply chain as it leads to vexatious, time consuming complaints from competitors. Intertek SAI Global strongly support chain of responsibility laws and stronger oversight of CABs (which it says is not occurring). Where it provides information to JAZANZ or the ABCB, it would like to receive feedback to confirm it has not made any errors in its technical assessments.

BRANZ reported that it had not received any request from a state or territory building regulator to provide information.



6.2 Analysis of current laws and surveys – access to testing information

A key issue seems to be around the willingness of CABs to provide test reports and other data on request from anyone including building regulators. Intertek SAI Global reported that their clients consider one the main benefits of having a CodeMark certificate is that they do not have to release test information which they consider to be commercially sensitive. The CABs sign confidentiality agreements with clients and are therefore unwilling to release information when requested by anyone, including governments. This issue is borne about by the survey results.

In its response to the survey for this report, NSW Fair Trading (now NSW Building Commission) expressed a view that all evidence of suitability information used to indicate compliance with the NCC should be made publicly available to ensure that all building professionals, not just the building surveyor, can verify the compliance of the building product prior to its use. It said CABs should be discouraged from keeping product compliance information confidential.

The question of access to test reports is discussed further in **Part C** below in relation to publicly available minimum information requirements. There may be a basis to refrain from requiring test reports to be made publicly available, but there is arguably no justification for CABs not providing all material on which they relied to issue a certificate to building regulators for the purposes of compliance and enforcement activities.



Part C – BPAF Element 3 and Recommendation 2A of Element 2 – Traceability, labelling and minimum information requirements

BPAF Element 3 and recommendation 2A of BPAF element 2 are closely related and therefore considered together in this report.

BPAF Deliverables and Objectives

Deliverable Element 2: Regulation requires that manufacturers and suppliers of *building products* provide minimum and standardised *building product* information.

Deliverable Element 3: *Building product* traceability and labelling standards are set by government to provide the framework for nationally consistent *building product* traceability and identification.

Objective Element 2: To have clear, accurate, current and verified information available for all *building products* to inform their compliant selection and installation. Consistency and familiarity in the presentation of *building product* information facilitates efficient and reliable product selection.

Objective Element 3: *Building product* traceability and identification allows all participants across the building supply chain to efficiently share reliable and trusted information in a consistent way. It helps to address the lack of certainty that the *building products* specified and ordered are the ones that are delivered to site. It works through international standards to increase transparency as to the global knowledge on a product's performance. Up to date information can be accessed in the event of problems arising over the life of the building.

BPAF Recommendations 2A, 3A and 3B

Recommendation 2A – mandating minimum information obligations for manufacturers and suppliers

2A Legislative requirements mandate the provision of minimum information obligations for manufacturers and suppliers of *building products*. Specifically it would be required that *building products* are accompanied by information that is:

- drawn from the information requirements detailed at Attachment E and include:
 - identifying details;
 - suitability for a specific use and relevant limitations on its use;
 - access to evidence supporting claims; and
 - instructions as to appropriate design, installation and maintenance;
 - provided in an agreed form for consistency and transparency (align with the data templates recommended at 3A);



- detailed but concise and in plain English with the use of terminology abbreviations limited;
- detailed enough to establish conformance but not go so far as to compromise commercial-in-confidence requirements;
- all relevant information is clearly presented and is not misleading; and
- where provided for a system or building component, confirms the compliance and appropriate installation for a system as a whole, and not necessarily for each element that goes into the system/component.

Recommendation 3A – Traceability and identification framework

3A *Building product* traceability standards are developed to provide a traceability and identification framework to facilitate national construction industry-wide traceability, including:

- standards for setting globally unique product identification codes based on ISO/IEC accredited product identification standards (e.g. GTIN);
- data templates for the *building product* information to be accessible from the identification codes (drawn from the information requirements detailed in Attachment E and consistent with recommendation 2A);
- physical labelling or marking requirements (as per Proposed Action 3B); and
- data exchange protocols based on ISO/IEC accredited standards.

Recommendation 3B – Product labelling be included in all standards referenced in the NCC

3B Product labelling or marking requirements are included in all *building product* standards referenced in the NCC.

While the specific requirements will vary according to the nature of the product (its physical attributes and level of complexity and risk), all products should be required to have a permanent physical marking (or a form of indelible marking) that includes or provides access to the following information:

- product identification code;
- product name or trademark of the manufacturer;
- model number, name or designation;
- date of manufacture (month and year at a minimum);
- batch identifier or other traceability information; and
- detailed conformance information.



7. Understanding the issues

Before considering the topics of traceability, labelling and minimum information requirements, each term is defined below as informed by the research and analysis. The objective of considering these issues as part of a product assurance framework is also defined below.

7.1 Product Traceability

Product Traceability means the ability to track and trace a building product in the supply chain. This requires, as a minimum, a way to verify what a physical product is which is achieved by the product having identifying markings on it or on its packaging. Traceability methods have been in place for many decades. Markings identifying a product can be based on a manufacturer's own numbering system, an industry standard for a group of products, a country standard or international standards.

The reliability and efficiency to track and trace a product is improved by the use of markings on the product or its packaging which are machine readable. This enables transfer of data via digital means, for example using a barcode or GTIN. In the context of building products, traceability enables supply chains to track a product through the supply chain to the point of installation in a building. Digitally enabled traceability can also improve productivity, mitigate against unauthorised substitution and assist in compiling accurate records of products installed, for example in a building manual.

7.2 Product labelling

The means by which a product or its packaging is marked to identify what it is. Through those markings specified building product information held in another place might also be able to be accessed. For example by using a manufacturer's code to search a government database or by scanning a barcode to access information or links to information. The term labelling is broadly used to cover labels affixed to the product or its packaging, indelible marks, Radio Frequency Identification (RFID) chips, QR codes or barcodes which are known as GTINs. In the food and therapeutic goods sectors, labels are often required to contain detailed information about ingredients, warnings, measurements or websites that provide a link to other information.

7.3 Minimum Building Product information

Specified information that will, at a minimum, identify the product and its evidence of suitability. Specified information may also cover information such as its instruction manuals, maintenance information and any safety warnings. Often specified information may not be able to be produced on a label and may be required to be held by the manufacturer or supplier, accompanied with the product or accessible via a link to a website.

7.4 Providing for traceability, labelling and minimum information

With the above definitions in mind, the key issue is that although the NCC requires that all products used must be able to demonstrate EoS via one of six pathways which necessarily includes the provision of documented evidence, there is currently no minimum standard or mandatory requirement for Australian manufacturers or importers of overseas products to ensure:

1. All their products are clearly identifiable through physical markings on the product or its packaging;
2. Access to information about all products is readily able to be obtained via a public source; and
3. Information accessed includes prescribed details.



To address the above issues, the BPAF has called for mandatory minimum information requirements to be defined and legislated (recommendation 2A), the development of a traceability standard including for globally unique identifiers, physical labelling and data exchange protocols (recommendation 3A); and that building product labelling standards that set out the identification markings required and how they are to be affixed, be included in all relevant standards referenced in the NCC (recommendation 3B).

8. Potential Options for progressing BPAF Element 3 and recommendation 2A of Element 2

In our consultation with Standards Australia, they said that creating a general labelling or minimum information standards which could apply to all or most building products would be relatively straightforward provided that there was a clear policy position on what it should contain and which products it would apply to. They said that this issue had come up many times in the past but has never progressed because of the perceived cost to industry to mandate labelling.

Standards Australia's position seems contrary to the fact that under the EoS provisions in the NCC, compliance information must be able to be demonstrated for all building products which are required to comply with the NCC. Much of the minimum information proposed in recommendation 2A of Element 2 is the same as information building products should already have under the EoS. Establishing a standard would provide consistency in how products are physically identified, how that identifier is used to access required information and what the minimum requirements are for that information.

We also heard from our consultations with GS1 that any building products sold in retail or wholesale markets will already have a barcode. It therefore follows that mandating digitally enabled traceability using a GTIN is unlikely to be an additional cost for many manufacturers, importers and suppliers.

The most contentious issues in relation to labelling and minimum information seem to be:

- whether it is appropriate to mandate an internationally recognised machine readable code;
- the impact of requiring a physical label on the product or its packaging;
- mandating minimum information which includes things not currently required under EoS, for example a declaration from a manufacturer;
- mandating that minimum information be publicly accessible and in regard to this, whether test reports should be required to be publicly accessible.

These issues are discussed further below.

In terms of options for cost benefit analysis, labelling requirements the two variables proposed are:

- whether to require an identifier which is an internationally interoperable code which allows digital transfer of information or any form of product identifier; AND
- to require minimum information to be accessible on a website with the website address on the product or not.

The CIE has estimated that the costs of having a website with required information are \$75.4 million over a 10 year period based on net present value.

The costs of labelling products (or packaging if the product cannot be labelled) are estimated at \$16.3 million over a 10 year period based on net present value.



The above variables could be applied through:

- a generic standard applying to all products unless the product has a specific standard which already includes labelling requirements; or
- amending all referenced standards over time to include the agreed labelling requirements with variability based on product characteristics.

These options are set out in the tables below. Options 9-12 have been subject to CBA as part of the holistic assessment of the impacts of expanding chain of responsibility laws across Australia. The CIE concluded that:

- It is plausible that there could be significant net benefits from mandatory labelling on the product or packaging (depending on the nature of the product). The costs of the mandatory labelling requirements are estimated to be relatively modest, while labelling could potentially help to avoid issues relating to product substitution.
- The benefits for mandating interoperable digital product identifiers are uncertain. However, we consider it likely that the benefits from more effective identification of product substitution and the potential for additional productivity gains would outweigh the associated costs.

Governments could allow the product industry to choose their own identifiers but encourage the use of global digital identifiers by having a voluntary standard for the use of these identifiers. Alternatively, the government could mandate the use of global digital identifiers consistent with what is occurring in the EU and UK. It is estimated that about 1,300 building product suppliers already use GTIN technology on their products or packaging. The CIE has calculated that the cost to industry of using GTIN technology would be \$148.8 million over 10 years in net present value.

Table 4: Labelling options – Options 9 - 14

Labelling Options	Can be any product identifier	Must be global digital identifier (e.g. GTIN)
Must have minimum information accessible via a website (address not required on product)	Option 9	Option 11
Must have website address on product or package	Option 10	Option 12
Labelling options achieved via		
Single standard applying to all products (unless they already have a specific standard for labelling)	Option 13	
Product specific labelling requirements introduced in all standards referenced in the NCC (BPAF Rec 3B)	Option 14	

8.1 Minimum building product information

In terms of what the minimum information requirements must be, the list of proposed information in **Attachment C** of the BPAF is detailed and reasonable, having regard to the research we have



conducted. It is not proposed to have options for the types of information that should be required. However, there are two options for how to mandate the requirement for minimum information, namely in state and territory legislation (as has been done by Queensland and NSW) or via the NCC's EoS provisions.

These options are not proposed for cost benefit analysis.

Table 5: Minimum building product information - Options 15 and 16

		Benefits	Challenges
The NCC	Option 15	National harmonisation through prescribing requirements in the NCC	Queensland and NSW would need to amend their legislation
In state and territory legislation	Option 16	Queensland and NSW already require similar information requirements to Attachment E	Possible that there will be inconsistency in requirements if jurisdictions are left to legislate minimum requirements



9. Current approaches regarding traceability and labelling

The Queensland and NSW building product safety laws do not require identifiers on labelling or that any of the “required information” about building products that must accompany products be included on labels.

As part of governments’ responses to the cladding issues, the ACP labelling Technical Specification was developed. This has been mandated through its incorporation into the NCC.³⁷ The BPAF says this specification does not address traceability as it does not call for a globally unique product identifier. However, the physical marking of products does enable tracing, albeit less efficiently than digital tracing using globally unique product identifier such as GTIN.

The EESS and the GPCS provide for labelling and marks of conformity for products within their scheme, as do the schemes in the EU and UK. The requirements for markings on labels are specified in relevant standards and include the use of numbers and letters to identify model and serial numbers. Again, whilst labelling requirements under these schemes do not mandate the use of machine readable codes, they are widely used through market driven mechanisms, such as requirements imposed by the retail industry or because of the benefits of codes in efficient inventory management practices.

The NZ reforms require that the website address must be included on the product, on product packaging, where sold in a physical location on signs next to the product (e.g. for loose products) and where sold on the internet on that site or via a clear link to the site where it is located. This also only addresses traceability in a limited way, as although a product identifier for the building product must be included in the information disclosed about building products (accessible via the website), it need not be a digital or interoperable solution like a GTIN. The NZ reforms mandate the requirement for a website address on a label as a bare minimum but a GTIN or other interoperable label may also be on the label in addition to the website address.

In relation to the UK, the Morrell³⁸ report recommends a framework standard for traceability and labelling. The report refers to standardised product data templates; free to access software being developed under the LEXICON project and the inclusion of verifiable data passports, such as GTIN. It says the standard should deal with information requirements on labels or accessible via codes on labels with consideration for how labelling of different products should be mandated. These recommendations appear very similar to BPAF Element 3.

Whilst we have not conducted a detailed review of food safety and therapeutic goods labelling requirements, we note they are extensive and complex.

We have also been referred to the ACT’ egg labelling legislation as an example of relatively straightforward state based legislation requiring product labelling.³⁹ We note that like the ACP Labelling Technical Specification, the egg labelling laws in the ACT contain a very simple statement of what is required on a label demonstrating that establishing the content of minimum labelling requirements for building products should not be a difficult exercise.

³⁷ SA TS 5344:2019, Permanent labelling for Aluminium Composite Panel (ACP) products requires the name or trademark, model number name or designation, date of manufacture (month or year), batch identifier or other traceability information to be marked on each ACP sheet.

³⁸ Department for Levelling Up, Housing and Communities, review led by Paul Morrell OBE and Anneliese Day KC, Independent Review of the Construction Product Testing Regime, 20 April 2023.

³⁹ Eggs (Labelling and Sale) Act 2001 (ACT)



The National Building Products Coalition has recently released a draft implementation guide for the traceability and digitisation of building product information.⁴⁰ The guide is stated as being intended to be used by building product manufacturers, suppliers and building practitioners to implement digital traceability systems that provide unambiguous information regarding the identity, origin, transformation, location and attributes of building products. The guide discusses the benefits of digital traceability including transparency, certainty and efficiency. It also says that digital traceability can help manage risks associated with non-compliance, product recalls, product liability claims, consumer confidence and insurance costs. If governments did not want to mandate the use of global interoperable digital identifiers, this industry led initiative could form the basis of a voluntary scheme that governments could endorse to encourage the uptake of digital labelling. Alternatively, if interoperable identifiers were to be mandated, this guide could inform the development of a labelling standard which could be referenced in the NCC.

10. Current approaches to minimum standardised building product information

10.1 Relevant Australian laws

In Queensland “required information” must accompany building products. This includes:

- suitability for each intended use including any conditions or particular circumstances;
- instructions on how the product must be associated with a building;
- instructions on how it must be used; and
- any prescribed information (there is no information currently prescribed).

The NSW laws require building products to include “required information” about:

- the suitability of the product for the intended use;
- the circumstances or conditions when it may be used;
- instructions for ensuring its intended use it not a non-compliant use;
- information about the maintenance required to ensure the product performs correctly; and
- if the product consists of multiple elements, ensuring the above information is included as is applicable to the system or component as a whole.

Both the Queensland QBCC Act and NSW laws provide that required information must accompany the product, they do not otherwise specify how it is to be provided.

Building product information is also required by Australian Standards. As discussed above, the ACP labelling Technical Specification⁴¹ for the permanent labelling of ACP products requires the name or trademark, model number name or designation, date of manufacture (month or year), batch identifier or other traceability information to be marked on each ACP sheet.

Under the EESS, each category of in-scope equipment must have the regulatory compliance mark (RCM) and be marked with its brand or trade name and its model number. Equipment at level 2 (medium risk) and level 3 (high risk) must be registered in the national EESS Registration Database,

⁴⁰ The guide can be found at <https://industrycoalition.wixsite.com/building-products-co> (accessed 15 March 24).

⁴¹ SA TS 5344:2019, Permanent labelling for Aluminium Composite Panel (ACP) products.



which is a public searchable database that includes the name of the supplier, brand, model number and EESS certificate of conformity identifier. Level 1 (low risk) equipment may be voluntarily registered onto the database. Level 2 equipment requires the supplier to keep a compliance folder including evidence confirming that the equipment meets the relevant standard and Level 3 equipment requires a certificate of conformity, stating that the equipment complies with the relevant standard (with the certificate identifier recorded on the register).

In similar way to electrical products within the scope of the EESS, there is a public database for gas products within the GPCS, where the certificate number, date of certification, model of appliance, applicable Australian Standard and type of gas used are included for in scope gas products. Products must also be inscribed with a mark of conformity and compliance plate are required for specified types of appliances. The compliance plate includes product identifiers such as model numbers.

11. Overseas jurisdictions

11.1 New Zealand

New Zealand have recently introduced building product information requirements, which will come into force on 11 December 2023. For two classes of designed building products, the legislation requires “required building product information” to be provided.

For Class 1: Batch or mass produced products, this information includes but is not limited to, a product identifier for the building product (such as a GTIN), details of the manufacturer, a statement specifying the clauses of the building code that are relevant and (amongst other things) how the building product is expected to contribute to compliance with those clauses, any design requirements, any installation requirements and any maintenance requirements. Obligations relate to “responsible persons”, which cover importers, manufacturers, distributors and retailers.

The building product information must be published and maintained on an internet site, with the address of the site disclosed on the product, on the product packaging, where sold in a physical location on signs next to a product (e.g. for loose products), where sold on the internet on that site or via a clear link to the site where it is located. A link to the manufacturer’s homepage is said to be sufficient (rather than an individual website addresses for each product) and the addition of a QR code is optional.

The NZ MBIE’s guidance material requires consideration to be given to presenting the information in plain English or a format suitable for a wide variety of audiences, noting links to technical reports and other relevant documents can be included for those seeking more detailed or technical information.⁴²

See **Attachment F – International jurisdictions** and **Attachment F1 – Example product sheet (NZ)**, which is based on a template which is also available for use.

11.2 EU CE scheme

In the EU, a manufacturer’s “Declaration of Performance” must include information on the essential characteristics of a product, including but not limited to specified details of the product, details of the harmonised standard or European Technical Assessment that has been used for the assessment of

⁴² Building Product Information Requirements – Guide to complying with the Building (Building Product Information Requirements) Regulations 2022. Version 1, page 15. Available <https://www.building.govt.nz/building-code-compliance/product-assurance-and-certification-schemes/building-product-information-requirements/resources/#jumpto-guidance-document> (accessed October 2023).



each essential characteristic, the intended use of the product, the essential characteristics of the product and the performance of at least one of the essential characteristics of the construction product, relevant for the declared intended use or uses.

Declarations of Performance must be provided by paper or electronic means or be available on a website as per conditions of the European Commission.

In the EU there is a proposal to change the existing Construction Product Regulation (305/2011) in a range of different ways. A declaration of performance and compliance is proposed to be required which includes a revised range of details of the product, including sustainability information. There is provision for the establishment of a product database or system to be readily accessible to practitioners, regulators and the public and which can store required declarations, technical information and other instructions for use and safety about products. Products will bear a CE marking, product ID information and a permalink (a URL that is intended to remain unchanged for some time) to the database or system.

See **Attachment F – International jurisdictions** and **Attachment F2 – Model declaration of performance (EU)** from the European Construction Products Regulations 305/2011.

12. Key issues for consideration

12.1 Mandating the use of machine readable labels

A question for consideration is whether it is appropriate to mandate the use of interoperable digital labels, rather than leave their uptake and use to market mechanisms. In consultations we had with GS1 they referred to an Australian example of health legislation mandating the use of machine readable codes which are defined to mean an encoded GTIN allocated under GS1.⁴³ Under this standard the GTIN must be on the packaging of all prescribed medicines.

We were otherwise unable to find legislation mandating the use of GTIN codes on labelling but there are examples of non-legislative mandates being applied by large retailers or platforms such as Google, Amazon, supermarkets and many others.

GS1 is the largest supplier of GTINs but not the only one. Other examples are International Standard Book Numbers (ISBN) and European Article Number (EAN-13). GS1 is a global entity originally established by a network of retailers later expanding into healthcare, transport and logistics and other industrial sectors.

Governments are reluctant to mandate the use of specific technology solutions. However, there is an increasing push from governments to require digitally accessible information about products generally, in particular in relation to sustainability issues. In the EU, regulation will require Digital Product Passports for a wide range of physical goods, including construction products (which has been identified as one of a number of priority groups). This reform is one part of a broader framework to give effect to environmental policies.⁴⁴ A Digital Product Passport will provide information about a product's environmental sustainability and will be easily accessible by scanning a data carrier and will include information about a product's life cycle impacts and other sustainability matters. A Digital Product should also help regulators in their oversight and enforcement.

⁴³ Therapeutic Goods Order 91 – Standard for labels of prescription and related medicines made under section 10 of the *Therapeutic Goods Act 1989*.

⁴⁴ The [European Green Deal](#) involves a plan to, by 2030 reduce CO2 emissions by 55% compared to 1990 levels and by 2050 to make Europe the first climate neutral continent.



It might be arguable that any building product coming into Australia should be expected to have a global digital label on it to enable traceability and product identification by an independent means. It may be less arguable that it is reasonable to require all Australian manufactured building products to have a global digital label, particularly if they don't intend to export their product. However, given the mandatory use of barcodes in retail environments, and given the efficiencies of having a barcode for traceability, requiring Australian made building products to have a barcode would not appear to be onerous.

12.2 Labelling on packaging or products

Another area of concern will be the cost involved in having to physically label products or product packaging with specified markings if this is not already being done.

Physically labelling on products would probably need to be applied during the manufacturing process. If this is not occurring it may be expensive for manufacturers or importers to establish this process. However, many products already contain branding and markings for retail use or inventory management.

There will be some products that cannot be physically labelled, such as loose products like sand, paint, cement, screws or sealants. These would have to have labelling on packaging.

Some work would be required to determine whether to specify when packaging can be labelled and when physical labelling on the product is required. These sorts of details would form part of any specification or prescribed requirements. Ideally where a product can be labelled this should be preferred to labelling its packaging.

12.3 What should the minimum information consist of

The minimum information requirements proposed in Appendix D of the BPAF (reproduced in **Attachment H** of this report) reflects the types of information we found in our research of other schemes. In particular, the NSW laws and the NZ building information requirements are consistent with Proposed action 2A and BPAF Appendix D - and the Product Technical Statement template provided in the ABCB Handbook – Evidence of Suitability (which formed the basis of BPAF Appendix D).

Importantly, most of the information in BPAF Appendix D is also consistent with what would be required to be produced by manufacturers or suppliers to comply with EoS. However, BPAF Appendix D does call for a 'declaration of performance' from the manufacturer. The EU scheme also requires declarations of performance. These are not currently required under EoS, however, a manufacturer or supplier should be able to produce a declaration if they are meeting EoS.

12.4 Public accessibility to minimum information – including disclosure of test results

The Queensland and NSW chain of responsibility laws both require products to be 'accompanied' by minimum information. It may be practicable to have some information with the product itself but also desirable to be able to find information, including more detailed material such as testing details and manuals, on a website. The NZ approach is to require minimum information to be accessible on a website. Under proposed reforms to the CE scheme a URL (i.e. website address) will also be required.

Already discussed above in relation to information sharing between CABs and building regulators (see **5.2**), a key issue is whether disclosure of the test reports that support a building product's suitability for use ought to be mandated.



Reluctance to disclose test reports or assessments is said to be common on the basis that they are confidential and contain intellectual property or trade secrets. The argument is that if test reports are provided to building certifiers or surveyors, they could fall into the hands of competitors who will gain some competitive advantage, perhaps in manufacturing the same product more cheaply or querying the data to raise difficulties for the original manufacturer. Alternatively, some consider the only reasons manufacturers don't want to show test reports is because the claims being made are not supported by the testing that has been carried out.

The issue of access to test reports arose in the case of *Kingspan v Amalgamated Metal Industries Pty Ltd*.⁴⁵ Kingspan alleged misleading representations by Amalgamated Metal Industries. The case confirms that in legal proceedings, a person claiming misrepresentation will be entitled to access to test reports and other information on which a relevant CodeMark certificate was issued.⁴⁶

The IBQC's Building Products Performance Good Practice Regulatory Framework⁴⁷ provides that test results, certificates and historical records of products previously issued with certificates ought to be submitted and made publicly available on a database administered either by the jurisdiction's regulator or where established, an independent technical group. However, it also says that rights to keep commercial in confidence information confidential should be retained and that this may require disclosure to an independent assessor.⁴⁸

As noted above, in its response to the survey for this report, NSW Fair Trading expressed a view that all information used for evidence of suitability should be made publicly available. It said CABs should be discouraged from keeping product compliance information confidential.

Under the NZ reforms, test results are not required to be disclosed as part of building information requirements. However, in guidance material the MBIE says that manufacturers and importers are encouraged to provide this information, where possible. The scheme also provides that were a CodeMark certificate is issued, this will meet the minimum information requirements, meaning that the test reports and other material provided to obtain the certificate need not be disclosed.⁴⁹

In the UK, the 2023 Testing for a Safer Future Report recommends that manufacturers make available the full suite of documentation that supports the declaration of performance at least, if there is any justification for confidentiality, to the regulator.⁵⁰ The publication of test reports and classification and certification documents is also proposed in the Code for Construction Product Information developed by industry.⁵¹

⁴⁵ [2016] FCA 1490.

⁴⁶ Kingspan applied to the court for access to other test reports for a similar product referenced in the relevant CodeMark certificate but the court refused.

⁴⁷ Building Product Performance Part 2 – Good Practice Regulatory Framework, 9 March 2023 – available at <https://www.ibqc.org.au/publications/building-product-performance-part-2-good-practice-regulatory-framework/>.

⁴⁸ Element 17, page 12.

⁴⁹ Building Product Information Requirements – Guide to complying with the Building (Building Product Information Requirements) Regulations 2022, Version 1, page 16. Available with other resources at <https://www.building.govt.nz/building-code-compliance/product-assurance-and-certification-schemes/building-product-information-requirements/resources/#jumpto-guidance-document> (accessed September 2023).

⁵⁰ Department for Levelling Up, Housing & Communities, *Testing for a Safer Future: An Independent Review of the Construction Products*, April 2023, page 129.

⁵¹ As above, page 129 and section 33.



The above shows there are varying views by governments and stakeholders about whether test reports should be made available as part of minimum information requirements. A position will need to be taken on this when defining what is required as part of minimum information.



Part D – Modular construction

Whilst modular construction is not specifically referenced in the BPAF, we were asked to consider any regulatory mechanisms in the schemes we were reviewing as we undertook our research.

Building regulation frameworks in Australia do not specifically reference prefabricated and modular construction and yet this is a rapidly expanding area of construction. NSW has foreshadowed that it intends to regulate in this area. Under the proposed reforms, the construction of some prefabricated products will be captured within the definition of building work which means it will have to be performed by licensed builders and trades.

The NSW reforms will not apply to all prefabricated products. For example, prefabricated doors, windows and roof trusses will remain regulated under the ACL and *Building Product (Safety) Act 2017* (NSW) and genuinely moveable dwellings, such as caravans, will not be captured by these reforms. Instead, the intention is to confine the application of these new laws to larger products such as kitchen or bathroom pods and kit homes.

In addition to these products being required to be constructed by licensed persons, they will also be subject to a certification process and to meet prescribed standards for transport, storage and installation. Prefabricated products captured by the new laws that are constructed outside of NSW but supplied to NSW will have to comply with the new laws.

Whilst NSW is the only jurisdiction to publicise its intentions in this area, the SOG and ABCB should consider how a national approach to certification of modular construction can be established as part of a harmonised, coordinated approach to this growing area of construction.

Recent research and developments

The Regulatory Barriers Final Report reflects research and development work investigating regulatory barriers for off-site construction focussing on prefabricated and modular buildings.⁵²

The Report found that in most countries modular construction is largely regulated by the same frameworks and codes as convention construction. However, significant work has been carried out to improve the compliance and quality assurance of prefabricated and modular products and construction processes, including:

- Third-party certification of factories, products and processes;
- Manufacture/supplier declaration (self-certification) and quality control procedures;
- Development of standards and guidelines for prefabricated buildings;
- Product identification and traceability system; and
- Schemes to provide assurance to consumers and lenders.⁵³

For example:

⁵² Regulatory Barriers Associated with Prefabricated Modular Construction, Swinburne University of Technology, Final Report, October 2022. The project was commissioned by the Housing Industry Association (HIA) on behalf of the Advanced Manufacturing Growth Centre's Prefab Innovation Hub. Available at <https://hia.com.au/our-industry/prefab-and-modular-construction> (accessed October 2023).

⁵³ Regulatory Barriers Final Report, Page 7 Chapter 3.



- in the UK modular construction is, in general, regulated by the same codes as conventional construction. While there are some standards used for the design and construction of modular construction, it is reported that they tend to be out of date and limited; and
- in Canada the Canadian Standards Association have developed standards that provide requirements for manufactured homes, requirements relating to building installation and the procedure for certification of prefabricated buildings, modules and panels.

The Report makes a range of recommendations in relation to building and construction and chain of responsibility requirements, including that:

- Relevant terms and definitions be established for use in the NCC, standards and technical requirements (Recommendation 2);
- The ABCB establish a project to identify ways to provide prescriptive and performance requirements into the NCCC to support the use and approval of prefabrication and modular construction – such as a new section of the NCC for prefabrication and modular construction (Recommendation 3);
- Standards Australia develop a work program to review construction standards for their adequacy to address modular construction and develop a new suite for Australian Standards to provide industry with a set of DtS construction solutions (Recommendation 4);
- A manufacturer certification scheme be developed (Recommendation 6); and
- Supply chain roles and responsibilities to be made clear and implemented in practice (Recommendation 7).

The International Codes Council (ICC) is promoting that its suite of off-site construction standards can be adapted for use in Australia and NZ. These standards include ICC/MBI 1200-2021 for planning, design and fabrication, ICC/MBI 1205-2021 for inspection and regulatory compliance; and ICC/MBI Standard 1210 for componentisation and modularisation of elements of mechanical, electrical and plumbing (MEP) systems and the incorporation of MEP systems in componentised, panelised or modularised building elements.

These standards address the planning, designing, fabricating, transporting, assembly, approval and inspection of off-site constructed MEP elements within commercial and residential buildings throughout the life cycle of off-site construction projects from design and fabrication through approval and inspection. They have been used in the USA for decades.

New Zealand

New Zealand previously had a national multipurpose approval named Multiproof, to streamline the consent processes for standardised designs and enhance the compliance processes for prefabricated buildings with the NZ Building Code.

However New Zealand have recently created 'BuiltReady', a new voluntary certification scheme for modular component manufacturers. The scheme was introduced as part of the broader building



system reforms in 2021.⁵⁴ The Regulatory Barriers Final Report says that similar processes are adopted in countries which are leaders in modular construction, such as Japan, Sweden and Canada.⁵⁵

The BuiltReady scheme allows manufacturers to access a streamlined consenting pathway. The pathway allows manufacturers to provide certificates covering manufacture, or design and manufacture of modular components, which will be 'deemed to comply' with the New Zealand Building Code.

Accredited certification bodies and certified manufacturers will need to be registered by the MBIE. Registration of certified manufacturers includes a fit and proper person assessment, and an adequate means assessment to ensure it can cover any civil liabilities that may arise in relation to the design (if applicable) and manufacture of its modular components. Once registered, a certified manufacturer may issue a manufacturer's certificate for a component detailing its compliance with the Building Code.

In our consultation with the MBIE it reported that it is preparing to launch the scheme but expects to be open for applications soon. The MBIE noted that there has been considerable interest in the scheme from manufacturers.

The scheme is intended to streamline the consenting process and require less inspections. The MBIE explained that at present off-site construction may be required to have duplicate consents, one for the construction of the modular unit in the off-site facility and a second one when it is installed on site. With the new scheme, a certified and registered manufacturer who issues a certificate for a modular building component they have developed must be accepted by a building consent authority,⁵⁶ avoiding the need for an off-site consent.

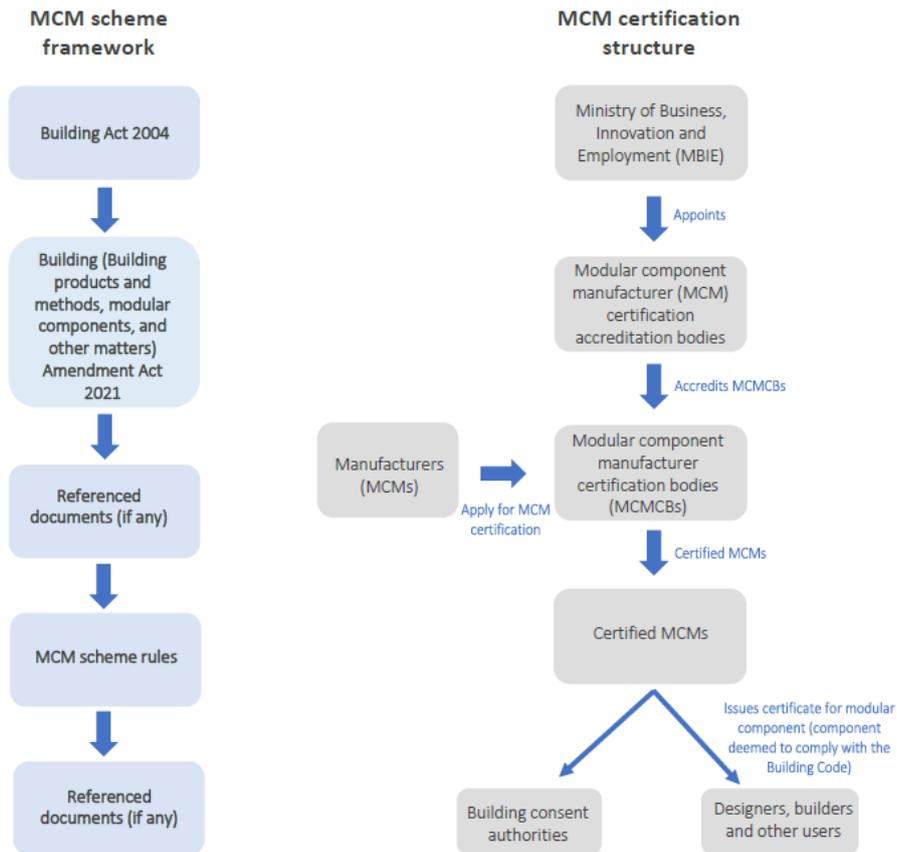
The new BuiltReady scheme is shown in the figure below.⁵⁷

⁵⁴ Via the *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021* (NZ).

⁵⁵ Regulatory Barriers Final Report, page 17.

⁵⁶ Provided it is designed and manufactured and used in accordance with the scope of the manufacturer's certification.

⁵⁷ Figure 9 from the Regulatory Barriers Final Report.



Proposed action for ABCB & SOG

It seems that recommendations from the Regulatory Barriers Final Report provide a useful roadmap for judications to follow. In particular the development of a suite of standards which can be incorporated into the NCC should be a priority. The ICC's suite of standards, already used in the USA, could be readily adaptable. This would allow the NCC to accommodate off-site methods of construction. It would then be for jurisdictions to amend their schemes to ensure they refer to and capture off site construction in their definitions of building work and to provide for how these methods are to be assessed and certified off-site as well as during transportation and installation on site. The mirror or model laws, proposed in options 1 and 2 could include provisions or criteria for off-site construction with a view to encouraging a harmonised regulator approach to the enhanced regulation of this rapidly emerging area of construction.



Attachment A – Cost Benefit Analysis Report

See separate document



17 July 2024

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Dear Ms Weir

Re: ACCC Statement on the regulation of building products

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to provide a statement for Weir Legal and Consulting's research project for the Australian Building Codes Board on the regulation of building products.

The ACCC supports work that helps ensure regulation is efficient and effective, including clarifying the roles and responsibilities of specialist regulators within Australia's product safety system. Reducing regulatory overlaps and duplication improves the efficient operation of the system and provides better outcomes for the Australian community.

The ACCC's role and responsibilities

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the *Competition and Consumer Act 2010* (CCA) which includes the Australian Consumer Law (ACL), and to regulate national infrastructure and undertake market studies.

The ACCC and the state and territory consumer protection agencies regulate the safety of general consumer products. Specific types of products such as chemicals, food, therapeutic goods, gas, and electrical products are regulated by specialist product safety regulators. This is because regulating specialist products requires a tailored approach, technical expertise, and close relationships with particular industries.

The ACL is economy-wide legislation that contains a limited suite of provisions for general product safety regulatory tools. The product safety provisions in the ACL do not contain sectoral-specific regulatory tools, such as those that are required for the effective and tailored regulation of specialist products, such as building products.

Using regulatory controls across multiple levels of government to regulate specific types of products is likely to lead to increased fragmentation of responsibilities and create inefficiencies, duplication, and regulatory gaps. Avoiding regulatory duplication also aligns with the Australian Government's [Statement of Expectations](#) for the ACCC.



Building products regulation and the ACL

The ACCC considers building products to be specialist products that are best regulated under appropriate specialised regulatory frameworks. This is consistent with previous ACCC [submissions](#) on building products regulation and is consistent with the approach to regulating other specific types of products such as those mentioned above.

Appropriate specialised regulatory frameworks for building products should include the specific and necessary controls and oversight to ensure the safety of products from manufacture to installation. This should cover the design of structures, the design and manufacture of products, controls on the qualifications of those completing built structures, and appropriate supervision of the building process and final assessment of the building itself. The specialised regulatory frameworks should also be equipped with a range of pre-market controls and specific powers including the ability to test, licence and certify. Having technical expertise in building products and relationships with industry are essential underpinnings for these frameworks.

The need for strong pre-installation controls is critical given the complexity of addressing safety issues after a building product is integrated into a built structure. Considering the challenges associated with remediation of non-conforming building products, appropriate specialised regulatory frameworks should prevent issues by design, rather than be reactive and reliant on post-market controls.

The scope and intent of the ACL's product safety provisions are designed to address the risk of serious injury and death from safety hazards in general consumer products. The ACL's primary regulatory powers for product safety are mandatory standards, compulsory product recalls and interim or permanent bans. The product safety provisions are heavily weighted toward post-market controls, limiting their application to specialist products which require a multi-faceted approach that places controls across the entire supply chain.

Whether or not a building product could also be considered a general consumer product under the ACL depends on a range of factors including the nature of the product, the way it is marketed, its intended or actual use, the availability to purchase, circumstances of supply and whether technical expertise is required to install it. In some circumstances limited types of building products could at law be covered by the ACL's product safety provisions, however this would need to be considered on a case-by-case basis. Separately, the broader consumer protection provisions under the ACL may apply where there is conduct that is misleading or deceptive or is likely to mislead or deceive.

Specialist product safety regimes

The effective and efficient operation of Australia's product safety system relies on regulators having clear responsibilities and appropriate powers for the types of products they regulate. Specialist product safety regulation is critical for protecting consumers from the safety risks associated with specific types of products, which are beyond the remit of the ACL. To the extent that specialist regulation is administered and enforced at the state and territory level, responsibilities should be clear, and powers should be harmonised and consistently applied.

On 5 October 2023 the ACCC released the [Lithium-ion batteries and consumer product safety report](#) which makes six recommendations to improve safety and raise consumer awareness. This included a recommendation for the state and territory governments to build a fit-for-purpose nationally consistent regulatory framework for electrical consumer products, supported by the Australian Government.



On 1 December 2023, Australian Treasurers at the Council on Federal Financial Relations agreed to review the national, state and territory electrical safety frameworks for household electrical consumer products. This [review](#) is being conducted by the National Electrical Safety Taskforce, a partnership between the Australian Government Department of Finance and the ACCC, and in consultation with states and territories.

There are other specialist product safety regimes which could be examined as possible models for reform for building products regulation. Food safety, therapeutic goods, and poisons are matured, harmonised regulatory regimes where the community and industry participants are clear about who regulates these specific types of products. While national statutory bodies exist within these regimes, it is not essential for enforcement or coordination to be led at the Commonwealth level.

The states and territories can effectively regulate specialist products provided nationally consistent laws are in place and robust coordination, communication and information sharing mechanisms are set up to manage multijurisdictional issues.

Critically, each specialist regulatory regime needs to be designed to meet the specific circumstances and market conditions of the products and industry it regulates, factoring in the costs and benefits. This approach aligns with the future direction of Australia's modern economy and ensures the long term sustainability of the broader product safety system.

Yours sincerely

Nicole Ross
Executive General Manager (a/g)
Consumer Product Safety Division



Attachment C – Consultations

Initial research phase

Gas Technical Regulators Committee (GTRC) & Energy Safe Victoria (ESV)	6 September 2023
Queensland Building Construction Commission (QBCC)	7 September 2023
Standards Australia	11 September 2023
Australian Building Codes Board (ABCB) – Codemark & Watermark Schemes	13 September 2023
Building and Construction Policy, Department of Customer Service – NSW Government	15 September 2023
Intertek SAI Global	15 September 2023
Australian Competition and Consumer Commission (ACCC)	19 September 2023
Energy Safe Victoria (ESV) and Electrical Safety Office (Qld) as members of Electrical Regulatory Authorities Council (ERAC) – Electrical Equipment Safety System (EESS)	20 September and 6 October 2023
Ministry of Business, Innovation and Employment – New Zealand Government	25 September 2023
GS1 Australia	6 and 12 October 2023
Department for Trade and Investment, Land and Built Environment Directorate – South Australian Government	9 October 2023
National Building Products Coalition	12 October 2023

Economic analysis phase

Stakeholder	Notes
Building Products Innovation Council (BPIC)	
Vinyl Council of Australia	
Engineered Wood Products Association of Australasia (EWPA)	
Australian Building Codes Board (ABCB)	for Codemark and Watermark
CSR Masonry and Brick	



Cement Concrete & Aggregates Australia	
Australian Institute of Building Surveyors	
Rockwell Group	for Insulation
Steel Reinforcement Institute of Australia (SRIA)	
Australian Glass and Window Association	for Glass and windows
National Timber and Hardware Association (NTHA)	for Timber products
Infrabuild	for GTIN, barcode
Level Crossing Removal Project	For data sharing initiatives
GS1	GTIN, barcode, Standards and digitization
National Association of Testing Authorities (NATA)	Standards and digitization in industry
Think Brick	for Brick, roof tiles, masonry/concrete
Electrical Equipment Safety Scheme (EESS) - Queensland	How the scheme works in Queensland
Ross Taylor and Associates	For Waterproofing
Queensland Building and Construction Commission (QBCC)	Regulator of chain of responsibility in Queensland



Attachment D – Features of existing certification schemes (CodeMark, Electrical Equipment Safety System, Gas Product Certification Scheme, WaterMark)

Scheme	Governing documents
CodeMark Certification Scheme	CodeMark Australia Scheme Rules Version 2016.2 - https://codemark.abcb.gov.au/resource/protocol/codemark-australia-scheme-rules ISO/IEC 17000:2004 – Conformity Assessment – Vocabulary and general principles ISO/IEC 17065:2012 – Conformity Assessment – Requirements for bodies certifying products, processes and services ISO 9001 – Quality Management Systems – Requirements ISO 10005:2005 – Quality Management systems
Electrical Equipment Safety System	ERAC <i>Electrical Equipment Safety System Equipment Safety Rules</i> AS 3000 <i>Australia/New Zealand Wiring Rules</i> AS 3820 <i>Essential safety requirements for electrical equipment</i> AS 4417.2 <i>Regulatory Compliance mark for electrical and electronic equipment, Part 2: Specific requirements for particular regulatory applications</i> https://www.saaapprovals.com.au/wp-content/uploads/4417.2-2020-DOA-18-12-21.pdf
Gas Product Certification Scheme	GTRA <i>Gas Equipment Certification Scheme Rules</i> Version 4.0 June 2022 (saved in file) GTRC National Certification Database - http://equipment.gtrc.gov.au/ ISO/IEC17065 for certification and inspection AS 3645 – ‘Essential requirements for gas equipment’ There are a large number of other Australia Standards referable to different types of gas equipment.
WaterMark Certification Scheme	National Construction Code, Volume 3, Plumbing Code of Australia: https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-three Watermark Certification Scheme Manual: https://watermark.abcb.gov.au/sites/default/files/resources/2022/Manual-for-WaterMark-certification-scheme.pdf Watermark Schedule of Products: https://watermark.abcb.gov.au/schedule-products-appliances

	Governance and administration	Scope of products	Regulated entities	Registration or approval requirements	Application to supply chain	Coordination across jurisdictions	Conformity assessment requirements	Information sharing requirements	Traceability and labelling requirements	Marks of conformity	Min standard product information	Mutual recognition of overseas conformity schemes
CodeMark	Scheme Owner is Commonwealth, acting on behalf of the States. ABCB appointed by to administer the Scheme but has engaged JASANZ to manage the scheme and be the accreditation body.	‘Product’ for the purpose of the Scheme, includes, but is not limited to, the components or systems to which the requirements of the BCA apply. 208 active certifications (as per JASANZ Register)	CABs - SAI Global - Bureau Veritas - BRANZ Limited - Global-Mark Pty. Ltd. - CMI Certification Pty. Ltd.	Accreditation - Requirements to meet for accreditation as CAB. Accreditation manual.	Certificate may be relied on as EoS Certificate Holder must ensure that a Certified Product is identified by applying the mark of conformity to the product or its packaging. The holder must also have and be able to	Via ABCB, as administrator and through EoS requirements in the NCC Each jurisdiction also references the CodeMark scheme in their legislation and says products with a certificate are taken to comply.	CAB must assess product against applicable provisions of BCA but applicant for a certificate can choose which performance requirements they seek certification for. CABs apply ISO/IEC 17065:2012, as well as the Rules	None. Certificates accessed on JASANZ website (a register) and owners of products. Rules refer to specified information to be provided to JASANZ re activity, annual	Rules governing the use of mark of conformity but no requirement to use the mark. JASANZ register of CodeMark certificates.	Approved user is entitled to use Mark of Conformity on certificates, packaging or labelling associated with the product, inspection reports, stationery, documents or advertising materials.	ABCB direction (2022) for CABs about info on certificates Includes - Certificate no. - Product name - Description of the product and its use - Applicable BCA edition and provisions	Operates separate from NZ. Products can be assessed against International standards provided they are referenced in the NCC.



	Governance and administration	Scope of products	Regulated entities	Registration or approval requirements	Application to supply chain	Coordination across jurisdictions	Conformity assessment requirements	Information sharing requirements	Traceability and labelling requirements	Marks of conformity	Min standard product information	Mutual recognition of overseas conformity schemes
	The ABCB has responsibility for CodeMark via an IGA				demonstrate effective control over the manufacture, testing, packaging, branding, delivery, installation and commissioning of a Certified Product.			report (rules 31 and 32).		Use of the Mark must comply with the rules for use of the mark, including not altering it or making statements regarding the certification that are too wide or misleading.	<ul style="list-style-type: none"> - Building classifications to which the certification applies - Limitations and conditions of use - Narrative description of the scope of approved use - Appendix containing product technical data - Appendix setting out evaluation statements issued for the product (actual evaluation need not be disclosed) *Note certificate must be reproduced in its entirety	
Electrical Equipment Safety System Since 2009	The Ministerial Oversight Committee (MOC) is the national policy and governance body for the EESS under an IGA and has oversight of the legislative framework, funding arrangements and all aspects of the EESS. Standing Committee of Officials (SCO) established by the MOC is a collaborative governance forum responsible for managing and coordinating the day	In-scope' defined to mean electrical equipment that is: <ul style="list-style-type: none"> - Rated at a voltage greater than 50 V AC RMS or 120V ripple-free DC; or - Rated at a voltage less than 1000V AC RMS or 1500V ripple-free DC; and - Is designed or marketed as suitable for household, personal or similar use (items purely for industrial or commercial use are not covered). 	Conformity certificates can be issued by regulators or by CABS. ERAC National Certification Database lists the following certifiers: <ul style="list-style-type: none"> - Australian Communications and Media Authority - Australian Gas Association - Australian Safety Approval - BSI Group - Certification Body Australia 	Registration of suppliers – to sell in scope equipment. Must be “responsible supplier” – Australian based manufacturer or importer of overseas equipment <ul style="list-style-type: none"> - Must comply with Rules, make declaration re equipment supplying, register all in scope requirement (Level 2 or 3), maintain evidence etc. 	Scheme applied to ‘supply’ of the product - Sellers of in scope equipment must be registered on the EESS Registration Database. They must declare that all equipment they are supplying meets relevant standards and is electrically safe. They also must register all in scope equipment that is level 2 or 3 intended to be sold in Australia and maintain documentary evidence that	SCO coordinates the EESS scheme under an IGA. ERAC also formed to coordinate activities of AS and NZ electrical regulators <ul style="list-style-type: none"> - Representatives from reg authorities from jurisdiction (NZ and Cth) - ERAC develops Equipment Safety Rules Note only 4 participating jurisdictions in EESS – all jurisdictions except NSW	Certification is assessed against the applicable standards for the electrical equipment. The standard for level 1 in scope equipment is the Australian Standard that applies to the equipment type (or international IEC standard if no Aus Standard), together with AS 3820. The standard for level 2 and 3 is the standard shown in AS 4417.2. Certificates of conformity can be	National database – information about responsible suppliers and products <ul style="list-style-type: none"> - Regulators can access - Consumers have limited access to check product certification - Responsible suppliers can access. 	Level 2 and 3 electrical equipment must be registered in EESS Registration Database. Registration of supplier and product provides for Level 2 and 3 equipment to be traced to supplier. Labelling requirements in AS 4417.2 that would apply to level 2 and 3 equipment including mark of conformity.	Single regulatory mark (unlike Gas marking). Regulatory compliance mark (RCM) is a trademark owned by the regulatory authorities and the Australian Communications Media Authority. The mark is to be applied to equipment itself, per AS 4417.1. AS 4417.1 and 4417.2 <i>Marking of electrical products to indicate compliance with regulations – General Rules for use of the mark</i> provides	Each category of in-scope equipment must have the regulatory compliance mark and be marked with its brand or trade name and its model number. Other requirements vary, depending on which risk level the equipment sits in. **See extract table summarising requirements for Levels 1, 2, 3	ERAC – Aus and NZ E.g. NZ law is recognised as a corresponding law in Victorian Act. International collaboration. SCO and ERAC are aware of international activities regarding electric equipment standards. Overseas manufactures can readily find information about how their products must be labelled to import into different countries. SCO and ERAC might amend or create standards



	Governance and administration	Scope of products	Regulated entities	Registration or approval requirements	Application to supply chain	Coordination across jurisdictions	Conformity assessment requirements	Information sharing requirements	Traceability and labelling requirements	Marks of conformity	Min standard product information	Mutual recognition of overseas conformity schemes
	<p>to day administration and operation of the EESS. SCO is comprised of officials from each of the four participating jurisdictions. Electrical Regulatory Authorities Council Secretariat and an ERAC Equipment working group.</p> <p>4 current participating jurisdictions are Qld, WA, Vic and Tas. Each jurisdiction has legislation administering the scheme. IGA involves all jurisdictions but SCO includes participants only.</p>	<p>Not all equipment that is in-scope requires a certificate of conformity. In-Scope electrical equipment is divided into 3 risk categories. Only Level 3, high risk equipment, is required to have a certificate of conformity. For Level 2 medium risk and Level 1 low risk, certification is optional. A list of level 3 and level 2 devices is set out in AS 4417.2</p>	<ul style="list-style-type: none"> - EESS Conformity Certification (CCS) - Queensland Government (ESO) - Energy Safe Victoria - Global Mark - NSW Fair Trading - Worksafe New Zealand - Office of the Technical Regulator - SAA Approvals - SAI Global - SGS Australia - Building Standards and Occupational Licensing - TUV Rheinland Australia - UL International NZ Ltd. 	<ul style="list-style-type: none"> - Annual registration. Registration of products by responsible supplier <p>In-scope electrical equipment cannot be sold unless it is electrically safe. This is implemented via legislation in each jurisdiction.</p> <p>Funding from registration collected by Qld as the secretariate of the SCO. Funds administration of SCO (inc register) and market surveillance. Participating judications can also be allocated funding for enforcement activities (e.g. check testing and audits of products)</p>	<p>demonstrates that the equipment is safe and meets standards. Equipment that is not in scope does not need to be on the database but it still must meet prescribed standards for that type of electrical equipment (see AS 4417). Responsible suppliers must make a declaration that all in-scope electrical equipment that they supply is electrically safe. They must also ensure that compliance records are available for inspection by regulators.</p>	<p>currently accept EESS as a means of compliance.</p>	<p>obtained for levels 1, 2 and 3 equipment.</p> <p>**See image at end of tables, Summary of requirements to sell in-scope electrical equipment in EESS participating jurisdictions</p>			<p>general requirements for the use of the RCM including location of the marking on the equipment.</p>		<p>based on international changes. Similarly, other schemes have adopted changes to standards based on work in Australia.</p>
<p>Gas Product Certification Scheme</p> <p>Since 1996</p>	<p>Compulsory Scheme – state and territory legislation prevents sale, installation etc. of gas appliances unless they are approved for use. Gas Technical Regulators of Australia (GTRA) is an association of each state and territory gov dep that is responsible for safe use of gas.</p>	<p>Gas equipment that:</p> <p>(a) Meets the requirements of AS 3645 or for which there are no product specific Australian Standards but where there are standards acceptable to Technical Regulators (i.e. state and</p>	<p>CABs:</p> <ul style="list-style-type: none"> - Australian Gas Association - SAI Global - IAPMO - Global Mark - BSI 	<p>Accreditation – CAB must maintain accreditation from JASANZ</p>	<p>Certificate holder is responsible for ensuring that the Gas Code Mark (GCM) is applied to the appliance data plate or as a separate marking on the appliance. The CABs certification label must be displayed adjacent to the GCM, along with the unique</p>	<p>Gas Technical Regulators of Australia</p>	<p>Minimum requirement, all gas equipment must be designed and constructed to conform to AS 3645. CABs are required to ensure that gas equipment meets standards applicable to that type of equipment – hierarchy in application of standards.</p>	<p>CABs each have their own rules for certification of products, which rules undertake to keep confidential information that is not in the public domain, save where required by law to divulge it. This means that, for example, test reports are not</p>	<p>Compliance label must be attached to the product that shows the mark of conformity, plus additional prescribed information including the certification number of the appliance and the type of gas to be used. Each of the CAB rules require that</p>	<p>Mark of Conformity on compliance label</p>	<p>Database contains list of all certified products, setting out:</p> <ul style="list-style-type: none"> - Certificate number - Date of certification - Model of appliance - Applicable Australian Standard - Type of gas used 	<p>Standards are consistent with international standards and scheme includes NZ</p>



	Governance and administration	Scope of products	Regulated entities	Registration or approval requirements	Application to supply chain	Coordination across jurisdictions	Conformity assessment requirements	Information sharing requirements	Traceability and labelling requirements	Marks of conformity	Min standard product information	Mutual recognition of overseas conformity schemes
	<p>GTRA administers scheme, has formulated the Gas Equipment Certification Scheme Rules. Operates under Terms of Reference. Scheme regulated via state/territory based legislation. Each Technical Regulator (i.e. the regulator in each state/territory) under the relevant legislation delegates to a CAB the responsibility to ensure compliance and gas safety when certifying gas equipment.</p> <p>JASANZ provides accreditation of CABs to ISO/IEC 17065.</p>	<p>territory regulators);</p> <p>(b) Does not require adjustment other than for commissioning or to take account of installation conditions;</p> <p>(c) Is a component of an appliance and which is made available as a spare part.</p>			<p>certification number where practicable.</p> <p>Each jurisdiction prohibits the sale, use or installation of products unless they have certification.</p>		<p>Rule requirements – product must be assessed by the CAB based on ISO/IEC 17067 Conformity Assessment – Includes technical specification and if required, test reports; description, documents necessary to understand product including operation; list of standards and solutions; test reports, manual for installation, commissioning, use and servicing. Certificate holders must declare</p> <ul style="list-style-type: none"> - Suitable systems are in place to ensure that the product manufactured conforms to the certified design; - The markings on the equipment are consistent with the certification - The equipment meets the requirements of the standards to which it has been certified; and - The equipment is safe. 	<p>required to be disclosed.</p>	<p>the certified entity ensures traceability of all certified products to the relevant batch inspection or test reports, including material and sub assemblies that may affect compliance of the product with respect to safety, local regulatory and certification Standard requirements, including on primary packaging.</p> <p>Product database operated by GTRC, certificate details and certification details .</p>			
WaterMark	<p>Scheme Owner is Commonwealth, acting on behalf of the States.</p>	<p>PCA requires certain plumbing products 0 Clause A5G4, EoS – e.g. products for use</p>	<p>CABs - ApprovalMark International Pty. Ltd.</p>	<p>Accreditation - JASANZ must accredit the CABs</p>	<p>Reliance as EoS</p>	<p>Via ABCB, as administrator</p>	<p>Certification procedure set out in section 8 of the Manual. It is based</p>	<p>Applicable specifications for product types must</p>	<p>Certified product must have WaterMark trademark applied</p>	<p>WaterMark trademark for certified products.</p>	<p>Product database contains, certificate number, model ID, model name, brand</p>	<p>No</p>



	Governance and administration	Scope of products	Regulated entities	Registration or approval requirements	Application to supply chain	Coordination across jurisdictions	Conformity assessment requirements	Information sharing requirements	Traceability and labelling requirements	Marks of conformity	Min standard product information	Mutual recognition of overseas conformity schemes
	<p>ABCB appointed by to administer the Scheme. JASANZ is accreditation body.</p> <p>ABCB has responsibility under an IGA</p>	<p>in contact with drinking water Watermark Schedule of Products, extensive, divided by category:</p> <p>WaterMark Schedule of Products</p> <p>Watermark Technical Advisory Committee (WMTAC) assesses product specifications for product categories to be included in WaterMark Product Database.</p> <p>New or innovative products – risk assessment protocol, review of assessment via WMTAC.</p> <p>If assessment finds products excluded from certification, database of excluded products is updated. Where assessment concludes product requires certification then a new product specification will need to be developed via WMTAC.</p>	<ul style="list-style-type: none"> - Certification Solutions International Pty. Ltd. - CMI Certification Pty. Ltd. - DNV Australia - Global Certification Pty. Ltd. - Global-Mark Pty. Ltd. - IAPMO Oceania Pty. Ltd. - ICC Oceania Pty. Ltd. - Intertek SAI Global Certification Services Pty Ltd. - Pro-Switch Pty. Ltd. - The Australian Gas Association 	<p>using IAF or ISO/IEC standards.</p>		<p>Watermark Technical Advisory Committee (WMTAC) provides technical advice to ABCB re the scheme.</p>	<p>on ISO/IEC 17067 – Conformity assessment – Fundamentals of product certification</p> <p>Products must be assessed by reference to the applicable specification through type testing; in approved lab etc.</p>	<p>be available for public inspection.</p> <p>Cth must publish the names of all CABs</p> <p>Each CAB must maintain a list of all current approved users and make that publicly available for inspection.</p> <p>Under the Approved Certifier agreement, a CAB must keep records, put certified products on the Watermark Product database and provide information to the scheme owner where required.</p> <p>The scheme owner may audit the CAB records once per year and the CAB must make all relevant information and personnel available for the audit.</p> <p>Under the approved user agreement the user must keep accurate records and documents to show it is complying with its obligations under the agreement and must grant the CAB or the scheme owner access to its premises and/or its documents and</p>	<p>Product database, certificate details and certification details .</p>		<p>name, whether it is Dts installation, the category, a description of the product and the scope of use.</p> <p>Link in certificate number provides certification details, including the certifier, specification, initial certification date, current certification date, current expiry date and the name of the licence holder.</p>	



	Governance and administration	Scope of products	Regulated entities	Registration or approval requirements	Application to supply chain	Coordination across jurisdictions	Conformity assessment requirements	Information sharing requirements	Traceability and labelling requirements	Marks of conformity	Min standard product information	Mutual recognition of overseas conformity schemes
								records to verify compliance.				

**Summary of requirements to sell in-scope electrical equipment in EESS participating jurisdictions

In-scope electrical equipment	Equipment registration in the EESS	Evidence of compliance with the relevant standard	Compliance Folder	Certificate of Suitability	Certificate of Conformity	Marked with the RCM
Level 1	Voluntary	Mandatory	Highly Recommended	Voluntary	N/A	Mandatory
Level 2	Mandatory	Mandatory	Mandatory	Voluntary	N/A	Mandatory
Level 3	Mandatory	Mandatory	Highly Recommended	N/A	Mandatory	Mandatory

From EESS website, <https://www.eess.gov.au/registration/registration-in-scope-electrical-equipment/>

Attachment E – Comparison NSW and QLD building product compliance and safety laws

	NSW	Qld
	<p><i>Building Products (Safety) Act 2017 (NSW) Provisions in the Act are not shaded.</i></p> <p><i>Building Legislation Amendment Bill 2023 – Schedule 2 Amendments relating to building product safety Provisions in the bill are shaded grey.</i></p>	<p><i>Queensland Building Construction and Commission Act 1991 (Qld)</i></p>
What products	<p>5-8 Key concepts</p> <p>Any product material or other thing that is or could be used in a building</p> <p>Used if incorporated or connect to or installed by building work</p> <p>Use includes misuse</p> <p>Building and Building work broadly defined but excludes:</p> <ul style="list-style-type: none"> - Upper layer of floor e.g. tiles - Lift, escalator, inclinor or garage door – raised or lowered - work done in by a person if person owns dwelling unless specialist work or work for which an owner-builder permit is require <p>Defined term ‘safety risk’ – has or will cause:</p> <p>Death or serious injury</p> <p>Damage to or defect in building resulting in, unable to inhabit or use as intended, destruction, threat of collapse</p>	<p>74AB</p> <p>A building product is any material or other thing associated with, or that could be associated with, a building.</p> <p>A building product is a non-conforming building product for an intended use if—</p> <p>(a) the association of the product with a building for the use—</p> <ul style="list-style-type: none"> (i) is not, or will not be, safe; or (ii) does not, or will not, comply with the relevant regulatory provisions; or <p>(b) the product does not perform, or is not capable of performing, for the use to the standard it is represented to perform by or for a person in the chain of responsibility for the product.</p>
	<p>7A – in BILL</p> <p>For this Act, a building product is a ‘non-conforming building product’ if—</p> <p>(a) the product does not comply with an applicable requirement of one or more of the following—</p> <p>(i) the National Construction Code, (ii) a relevant regulatory provision or an instrument made under a relevant regulatory provision</p> <p>or</p> <p>(b) a person in the chain of responsibility for the product makes an incorrect representation, whether intentionally or not, about one or more of the following—</p> <p>(i) a quality, feature or capability of the product, (ii) the performance of the product in relation to a particular standard, (iii) the product’s compliance with the National Construction Code or another legal requirement.</p> <p>(2) For this Act, an intended use of a building product in a building is a non-compliant use if— (a) the use does not comply with an applicable requirement of one or more of the following—</p> <p>(i) the National Construction Code, (ii) a relevant regulatory provision or an instrument made under a relevant regulatory provision, or</p> <p>(b) the use is otherwise unsuitable.</p> <p>(3) Subsections (1)(a) and (2)(a) do not apply if the building product is accredited in relation to the applicable requirement for the Environmental Planning and Assessment Act 1979, section 4.15(4) or 4.28(4).</p> <p>(4) For this Act, a non-compliance risk exists in relation to a building product if— (a) the product is or may be a non-conforming building product, or (b) an intended use of the product in a building is or may be a non-compliant use.</p>	
Who’s in the chain	<p>8B Persons in chain of responsibility</p> <ul style="list-style-type: none"> - Person who designs or deals with (manufacture, import or supply) the product; and knows or ought reasonably to know, that the product will, or is likely to be used in a building 	<p>74AE</p> <p>Chain of responsibility applies to building product designers, manufacturers, importers, suppliers and installers of a product who know, or are reasonably expected to know, that the building product will or is likely to be associated with a building.</p>



	NSW	Qld
	<ul style="list-style-type: none"> - A person who prepares a building design that incorporates or recommends the use of a product in the building (e.g. building designers, engineers, architects) - Person who uses the product in a building (installs or supervises the installation during construction) - Person specified in regulation (yet to be developed) 	
Duties	<p>8C Multiple and concurrent duties</p> <p>8D Standards for duties – as far as ‘reasonably practicable’ taking into account ‘risk management’ factors (defined)</p> <p>S8E Must ensure a ‘non-compliance risk’ does not exist in relation to the product (s7A exists if product is or may be a non-conforming product or intended use is or may be a non-compliant use)</p> <ul style="list-style-type: none"> - Penalty – corporation 1500 PU, otherwise 500 PU <p>8F Duty to provide required information – offence in 8G if fail to comply with duty or provides information when knows or ought to know the information is false or misleading (offence)</p> <ul style="list-style-type: none"> - Penalty – corporation 1500 PU, otherwise 500 PU <p>8H Duty to notify secretary of non-compliance or safety risk – within 7 days after become aware. Duty on ‘relevant person’ defined as person in chain of responsibility or person prescribed by regulation</p> <ul style="list-style-type: none"> - Penalty – corporation 500PU plus 200PU each day offence continues; otherwise 200 PU plus 100 PU each day offence continues <p>8I Duties on persons in chain of responsibility in relation to building product recall – including must comply with recall, must not supply or use product</p> <p>59 Liability of directors for ‘executive liability offences’ – fails to take ‘reasonable steps’</p>	<p>74AF Primary Duty</p> <p>Each person in the chain of responsibility for a building product must, so far as responsibly practicable, ensure that the product is not a non-conforming building product for an intended use.</p> <p>74AG Information Duty</p> <p>Duty to provide ‘required information’ to accompany a building product as it passes from them to the next person in the building product supply chain. Each person in the chain of responsibility also needs to conduct due diligence investigation on the ‘required information’ they receive to ensure that the QBCC Act is being complied with.</p> <p>Give means sell, supply or transfer to another person or facilitate the sale, supply or transfer</p> <p>Installer must give to owner (74AG(4))</p> <p>Designer must give information with their design (74AG(5))</p> <p>74AH Recall Duty</p> <p>Persons in the chain must comply with recall requirements</p> <p>Must not supply to install or specify a product that they know or ought to know is the subject of a recall</p> <p>74AI Duty on executive officers of company</p> <p>Duties apply to executive officers – they must exercise due diligence – defined term</p> <p>74AJ Offence to fail to comply with a duty</p> <p>Penalty for failing to comply with any of above duties – 1000PU</p> <p>74AK Duty about representations (offence)</p> <p>Where person in chain knows or ought to know association of product with a building for an intended use does not or will not comply, must not make representations that it will comply</p> <ul style="list-style-type: none"> - Penalty – 1000PU <p>74AL Duty to notify about non-conforming product</p> <p>Must notify QBCC within 2 days of becoming aware of a non-conforming product.</p> <ul style="list-style-type: none"> - Penalty – 50PU (offence 50 pu) <p>74AM Duty to notify about notifiable incident caused by a building product</p> <p>Must notify QBCC within 2 days of becoming aware</p> <ul style="list-style-type: none"> - Penalty – 50PU
Required information	<p>8F(7)(a)</p> <p>(i) the suitability of the product for the intended use, and</p> <p>(ii) if the product is suitable for the intended use only in particular circumstances or subject to particular conditions—the circumstances or conditions, and</p> <p>(iii) instructions for ensuring the intended use is not a non-compliant use, and</p>	<p>Required information – may be prescribed. Nothing prescribed</p> <p>required information, for a building product, means information about the product that—</p> <p>(a) for each intended use of the product, states or otherwise communicates the following—</p> <p>(i) the suitability of the product for the intended use and, if the product is suitable for the intended use only in particular circumstances or subject to particular conditions, the particular circumstances or conditions;</p> <p>(ii) instructions about how the product must be associated with a building to ensure it is not a non-conforming building product for the intended use;</p> <p>(iii) instructions about how the product must be used to ensure it is not a non-conforming building product for the intended use; and</p>



	NSW	Qld
	<p>(iv) information about the maintenance required to ensure the product performs or operates correctly in relation to the intended use, and</p> <p>(v) if the product is or includes a system or building component consisting of multiple elements—information mentioned in subparagraphs (i)–(iv) that is applicable to the system or component as a whole in relation to the intended use</p> <p>Regulation making power to prescribe additional information for this definition (Regulation yet to be published)</p>	<p>(b) complies with the requirements for the information, if any, prescribed by regulation for this definition.</p>
Enforcement powers	<p>9-14 Building product safety notices. 15H-15J requirement to provide information relating to notice (offence)</p> <p>15-Building Product Warning</p> <p>15B Building Product supply ban – prohibit supply</p> <p>15D Building Product use ban – prohibit use</p> <p>41C Power to apply for a trading prohibition – prevent person from carrying on a business of supplying products if engaged an unlawful conduct on more than one occasion</p>	<p>Division 5 - 74AZB Minister may issue warning statements</p> <p>74AL Commission may give written notice to person in chain of responsibility, direct to take stated action to remove or minimise stated risk</p> <p>74AN Commission may require remedial action – issue notice to person with duty</p> <p>74AO Commission may accept building product undertaking</p>
	<p>16 Power to issue an ‘affected building notice’ if a product the subject of a building product use or supply ban has been issued or a or recall has been used in a building</p> <p>19 May issue general warnings about classes of affected buildings</p> <p>20 Relevant enforcement authority can make a BP rectification order requiring an owner to eliminate or minimise safety risk proposed by use of a product subject to a BPUB; remediate and restore building *</p> <p>27 Secretary can accept undertakings.</p> <p>34 Secretary can</p> <ul style="list-style-type: none"> - investigate products - do product assessments (s38) <p>to see if a product is unsafe</p>	
Recall powers	<p>8L Voluntary recall conducted by a person in the chain of responsibility</p> <ul style="list-style-type: none"> - give notice with required information to Secretary within 2 days of the start of recall <p>8M Report on voluntary recall</p> <p>15F Building Product recall power, where satisfied on reasonable grounds that non-compliance risks exist in relation to a product or a safety risk exists in relation to an intended use of the product</p>	<p>Division 4 - 74AV Minister may issue recall orders</p>
	<p>TO BE REPLACED - Power to impose ‘building product use bans’ (BPUB) where a product is unsafe. Offence to contravene a BPUB</p> <p>AMENDED - Power to issue an ‘affected building notice’ if a product the subject of a BPUB has been used in a building. Instead, if building product supply ban or recall.</p>	

^Note –

- Penalty unit in Qld – currently \$154.80.
- Penalty unit in NSW – currently \$110



Attachment F – International jurisdictions

International jurisdictions – NZ, EU and UK

	Feature	Legislative reference	Notes
	New Zealand		
	<p>Building Act 2004 – as amended by the Building (Building Products and Methods, Modular Components and Other Matters) Amendment Act 2021</p> <p>Building (Building Product Information Requirements) Regulations 2022</p> <p>Building Product Information Requirements – Guide to complying with the Building (Building Product Information Requirements) Regulations 2022. Version 1. (referred to below as Guidance) Available with other resources at https://www.building.govt.nz/building-code-compliance/product-assurance-and-certification-schemes/building-product-information-requirements/resources/#jumpto-guidance-document (accessed October 2023).</p> <p>Ministry of Business, Innovation and Employment (MBIE) administers the legislative framework.</p>		
Building product information	Building (Building Product Information Requirements) Regulations 2022 designate building products for which building product information must be provided and establish the minimum requirements for that information.	Building product information requirements – Part 4B	<p>Made in June 2022</p> <p>Transition period – will apply 11 December 2023</p>
	Scope of building products covered	Building product information – Reg 4, 5 (class 1), 6 (class 2), 7 (exceptions)	<p>Building product information – information must be provided about “designated building products” manufactured or imported into New Zealand on or after 11 December 2023.</p> <p>Two classes of designated building products:</p> <ul style="list-style-type: none"> - Class 1: Batch or mass- produced products (e.g. cladding, roofing, internal lining etc – reg itself includes examples)



	Feature	Legislative reference	Notes
			<ul style="list-style-type: none"> - Class 2: Custom-made lines of products (e.g. external window joinery and doors) <p>Note categories of exceptions include – product for which a product certificate is registered under s272A of Act, product that is modular component manufactured by registered MCM, a product registered under the CodeMark scheme, a building product that is a gas or electrical appliance or a fitting.</p>
			<p>Definitions (from Guidance) -</p> <p>Class 1: Batch or mass-produced products</p> <p>Batch or mass-produced products that are typically available for retail or wholesale purchase. For example, cladding products, mechanical fixings, insulation products, internal lining, roofing products, structural wood-based products, structural steel and reinforcing products, sanitary plumbing and drainage products, including tapware (note: this is not an exhaustive list).</p> <p>Class 2: Custom-made lines of products</p> <p>Custom-made lines of products that are made to order to client specifications. For example, external window joinery and doors that have been customised to the specifications of individual clients (for example, specifications on dimensions and glass type).</p> <p>Broad scope of products, linked to building code.</p> <ul style="list-style-type: none"> - “Designed building products” – defined in reg 5 (class 1) and reg 6 (class 2). Exceptions in reg 7. - Building product has broad definition - s9A Building Act - Both regulations provide for link to building code: - “(d) when used in building work, may affect whether the building work complies with the building code” <p>Guidance about what products are in scope –</p>



	Feature	Legislative reference	Notes
			<ul style="list-style-type: none"> - wall paint, adhesives or sealants – not intended to meet a specific BC requirement and for cosmetic purposes only. - other examples referenced, picture hooks, cabinet handles <p>The consultation process resulted in a narrowing of this definition, following feedback from industry – it was previously “all building products”. See consultation paper https://www.mbie.govt.nz/have-your-say/building-system-reformems (page 21). This was also confirmed in the consultation with MBIE.</p>
	What information must be provided	<p>Reg 10 and 11, timing of information disclosure</p> <p>Reg 12, requirements as to method of disclosure of required building product information</p> <p>Reg 13, requirements for reviewing, updating and maintaining information</p> <p>Schedule 1 and 2, required information</p>	<p>“required building product information” – for class 1, as per Schedule 1; for class 2, as per Schedule 2 of the Regulations.</p> <p>See example product information sheet – attached. Based on template. Template and example available with other resources at https://www.building.govt.nz/building-code-compliance/product-assurance-and-certification-schemes/building-product-information-requirements/resources/#jumpto-guidance-document (accessed October 2023).</p> <p>No obligation to provide test results. Guidance – Proprietary Information – Manufacturers or importers of building products are not being asked to disclose proprietary information in relation to Schedule 1 and 2 of the regulations. Information only needs to state which standard(s) the product complies with. Practitioners may seek more information about a product to inform their decisions. “Manufacturers and importers are encouraged to provide this information, when possible, but they aren’t obliged to do so” (pg 16).</p>
Building product labelling	How the information must be disclosed	Reg 12, requirements as to method of disclosure of required building product information	<p>Building product information to be published and maintained on an internet site, with the address of the site disclosed on the product, the product packaging, where sold in a physical location signs next to a product (e.g. for loose products), where sold on the internet on that site or via a clear link to the site where it is located.</p> <p>Link to manufacturer’s homepage is sufficient (rather than individual website addresses for each product).</p> <p>Addition of QR code is optional.</p>



	Feature	Legislative reference	Notes
			(See Guidance, pg 18).
	Requirements for reviewing, updating and maintaining the information	Reg 13, requirements for reviewing, updating, and maintaining required building product information	Information must be kept up to date. Information must be maintained even where products are updated, superseded or taken off market. Previous versions / information must remain available – Guidance suggests archive for a period of least 10 years, timeframe aligns with implied statutory warranties (Guidance pg 20).
	Who has obligations	Reg 3	Importers, manufacturers, distributors, retailers Interpretation, reg 3 <i>responsible person</i> , in relation to a designated building product, means— <ul style="list-style-type: none"> (a) the person living, or incorporated, in New Zealand who is the manufacturer or importer of the building product; and (b) each of the persons living, or incorporated, in New Zealand who sell the building product by wholesale or retail, or otherwise distribute the building product No new responsibilities for building consent authorities or designers – already had obligations to ensure work complies with the Building Code.
Building product traceability			Building product information must be provided by the manufacturer to the supplier, and then in place for the product’s purchase. Information displayed on website.
Audit and enforcement powers	Powers given for audit, enforcement and compliance	ss362VB, 362VC offences – failure to comply with building product info requirements, false and misleading	MBIE may <ul style="list-style-type: none"> - Issue notice to take corrective action, which requires a person to take actions to remedy non-compliance or ensure that non-compliance is not continued or repeated - Prosecute



	Feature	Legislative reference	Notes
		<p>representations re building products</p> <p>s362VD defences – reasonable mistake, reasonable reliance on info provided by another person</p> <p>s362VE – may issue notice to take corrective action</p> <p>s362VF – offence to fail to comply with notice to take corrective action</p> <p>s207A – power to require information or documents – any person, where the chief executive reasonably believes it is necessary or desirable to obtain for taking enforcement action or exercising powers</p> <p>s207B – offence to fail to provide information or documents</p>	<ul style="list-style-type: none"> - Require information or documents by written notice <p>Note</p> <ul style="list-style-type: none"> - Power to issue infringement notices however does not apply to building product info offences. See s370 of Act, applies either to offences stated to be infringeable offences or declared under Regs. <p>Injunction power e continuing offences but not re relevant offences re BP info etc.</p>
Information sharing	Information sharing provisions	<p>s207A</p> <p>s207BA (including definitions of terms,</p>	<p>Chief executive [of MBIE] may require any person to provide information or document it considers necessary or desirable to obtain for the purpose of taking enforcement action (s11(m) or exercise powers under s26 (s207A).</p>



	Feature	Legislative reference	Notes
		regulatory body and relevant evidence) s272 Building Act 2004	Chief executive may provide relevant evidence to regulatory body if reasonably required in the exercise of the regulatory body's powers or performance of its functions (s207BA). Registered Product Certification Bodies must notify chief executive when issues, suspends, revokes etc product certificate (s272)
Other	BuiltReady – voluntary modular component manufacturer certification scheme	Subpart 7A – Responsibilities relating to modular component manufacturers Building Act; Building (Modular Component Manufacturer Scheme) Regulations 2022 and the BuiltReady scheme rules.	<ul style="list-style-type: none"> - Took effect September 2022. - Provides for certified and registered manufacturers to design and manufacture modular components that are deemed to comply with the Code – a modular component that has a certificate issued by a registered MCM must be accepted by building consent authority as meeting requires of the Code - Manufacturer can apply for certification to manufacture building component only, or design and manufacture component. Flexibility. - Act provides chief executive may appoint and register person as modular component manufacturer certification accreditation body (MCMCB); and registration of modular component manufacturer (MCM), who may issue certificate for modular components - Audits, surveillance
Other	Product certification – changes to CodeMark Scheme with Building Amendment Act 2021	Subpart 7 – Responsibilities relating to product certification	<p>Scheme includes –</p> <ul style="list-style-type: none"> - Appointment of product certification accreditation bodies - Conduct audits on accredited PCBs - May accredit person as PCB, suspend or revoke accreditation - Application for and issue of product certificates for building products or methods (s269) - Annual review of product certificates (s270) - Suspension of revocation of product certificate (s271)



	Feature	Legislative reference	Notes
			<ul style="list-style-type: none"> - Chief executive registration of product certificates (and suspension, revocation etc) <p>Product certification scheme rules (s272E)</p> <p>Changes to “strengthen oversight” of scheme. See MBIE website - https://www.building.govt.nz/getting-started/building-system-reforms/a-stronger-codemark/#jumpto-what-has-changed__003f</p>

	Feature	Legislative reference	Notes
	EU		
			<p>European Construction Products Regulations 305/2011 (CPR) of the European Parliament and of the Council of 9 March 2011</p> <p>Established harmonised conditions for the marketing of construction products and repealed Council Directive 89/106/EEC.</p> <p>Intended to simplify and clarify the existing framework for building products. Replaced the earlier Construction Products Directive (1989, 89/106/EEC), which was revised because it was not applied in a harmonised way throughout the EU (for example in some member states the CE marking was not compulsory).</p> <p>It became fully applicable from 1 July 2013.</p> <p>Note current proposal for change to Construction Product Regulation – see heading in table below.</p> <ul style="list-style-type: none"> - Large focus of the change is to meet environmental policy priorities. Also said to assist with the digital transition of the construction ecosystem, as part of the introduction of Digital Product Passports for products.⁵⁸ - On 30 March 2022, the European Commission adopted a Proposal for a Regulation of the European Parliament and of the Council – laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011 (adopted 30 March 2022). See https://ec.europa.eu/docsroom/documents/49315

⁵⁸ E.g. see Questions & Answers: Revision of the Construction Products Regulation. <https://ec.europa.eu/docsroom/documents/51034> (accessed October 2023).



	Feature	Legislative reference	Notes
	<ul style="list-style-type: none"> - The proposal has been considered by the Council of the European Union and discussed by the Working Party on Technical Harmonisation. A mandate for trilogue discussions (negotiations between the European Parliament, Council of the European Union and the European Commission regarding a proposed piece of legislation) was agreed on 30 June 2023.⁵⁹ <u>This document includes the proposed Regulation with proposed changes by the Council.</u> - We have not identified further progress through the European Parliament beyond that stage.⁶⁰ - Not yet made – the current proposal is that it shall come into effect from 24 months following its publication in the Official Journal of the European Union. <p>Digital Product Passports – see end of table</p>		
Building product information			
	Scope of building products covered	Article 2(1) “construction work” Article 2(3) “construction”	<p>“construction product” defined as “any product or kit which is produced and placed on the market for incorporation in a permanent manner in construction works or parts thereof and the performance of which has an effect on the performance of the construction works with respect to the basic requirements for construction works.”</p> <ul style="list-style-type: none"> - Suggests products that are important to the structure that has a bearing on aspects such as structural performance, fire, thermal, etc, that is fixed in such a way would change how the building performs - Key definitions of words and terms within definition included in the CPR. “Basic requirements for construction works” in Annex I – 7 basic requirements. - “When placed on the market” - Any supply of the (individual) construction product for the first time within the European Internal Market for distribution or use in the

⁵⁹ Mandate for discussions with the European Parliament, 23 June 2023 –at <https://data.consilium.europa.eu/doc/document/ST-10920-2023-INIT/en/pdf> (accessed October 2023). This includes proposed changes to the original Commission proposal for the new regulation.

⁶⁰ Briefing document, Revision of the Construction Products Regulation, 4 July 2023, European Parliament Public Register of Documents EPRS_BRI(2022)739243. See Revision of the Construction Products Regulation, European Parliament, https://www.europarl.europa.eu › etudes › BRIE_ (accessed October 2023).



	Feature	Legislative reference	Notes
			<p>course of a commercial activity, whether in return for payment or free of charge. (European Commission website, FAQs https://single-market-economy.ec.europa.eu/sectors/construction/construction-products-regulation-cpr/frequently-asked-questions_en)</p> <p>Regulation of compliance AND safety risk – Article 58. Complying products which nevertheless present a risk to health and safety</p> <ul style="list-style-type: none"> - [Where] ... finds that “although a construction product is in compliance with this Regulation, it presents a risk for the fulfilment of the basic requirements for construction works, to the health or safety of persons or to other aspects of public interest protection, it shall require the relevant economic operator to take all appropriate measures to ensure that the construction product concerned, when placed on the market, no longer presents that risk, to withdraw the construction product from the market or to recall it within a reasonable period, commensurate with the nature of the risk, which it may prescribe. <p>The economic operator shall ensure that any corrective action is taken in respect of all the construction products concerned which that economic operator has made available on the market throughout the Union.”</p> <p>“construction works” means buildings and civil engineering works</p> <p>Various other definitions – including “performance”, “level”, “class”</p>
Building product labelling	<p>What information must be provided</p> <p>How the information must be disclosed – CE mark and</p>	<p>Article 4 – Declaration of Performance</p> <p>Article 5 – Derogations from</p>	<p>For products for sale in the EU after 30 June 2013, the manufacturer has the obligation to issue a Declaration of Performance and affix a CE marking if:</p> <ul style="list-style-type: none"> - the product is covered by a harmonised European Standard and the coexistence period has ended; - OR - if a European Technical Assessment has been issued for the product.



	Feature	Legislative reference	Notes
	declaration of performance. and CE mark	<p>Declaration of Performance</p> <p>Article 6 – Content of Declaration of Performance (model in Annex III of the CPR)</p> <p>Article 7 – Supply of Declaration of Performance</p> <p>Article 8 – General principles and use of CE marking</p> <p>Article 9 – Rules and conditions for the affixing of CE marking</p>	<p>Declaration of Performance. Required to be made by manufacturer, provides information on the essential characteristics of a product, in accordance with the relevant harmonised technical specifications.</p> <ul style="list-style-type: none"> - Supplied by paper or electronic means (Article 7(1), paper if requested (Article 7(2)), or as derogation from 1 and 2, available on a website as per conditions of Commission (Article 7(3)). - Example declarations of performance – Bond-It company https://bond-it.co.uk/ce-marking-dop/ <p>CE marking. CE is an acronym for the French “Conformite Europeenne”.</p> <p>CE marking indicates that a product has been assessed by the manufacturer that the product meets statutory requirements in relation to safety, health and the environment. CE marking will not necessarily mean the product is appropriate for all uses, but that it is consistent with the Declaration of Performance from the manufacturer.</p> <p>If no Declaration of Performance, CE marking should not be affixed.</p> <p>Article 9(2) specifies what must be included – e.g. ref number of DoP etc.</p> <p>The CPR says in Article 8(2): “By affixing [...] the CE marking, manufacturers indicate that they take responsibility for the conformity of the construction product with the declared performance as well as the compliance with all applicable requirements laid down in this Regulation and in other relevant Union harmonisation legislation providing for its affixing.”</p>
		<p>Article 17 – Harmonised standards</p> <p>Article 26 – ETA</p>	<p>Harmonised standards – (harmonised European product standards – hENs) provide a technical basis to assess the performance of construction products. They enable manufacturers to draw up the Declaration of Performance as defined in the Construction Products Regulation, and affix the CE marking. https://single-market-economy.ec.europa.eu/sectors/construction/construction-products-regulation-cpr/harmonised-standards_en</p>



	Feature	Legislative reference	Notes
		Article 28 – Assessment and Verification of Constancy of Performance	<p>European technical assessment (ETA) – an alternative for construction products not covered by a harmonised standard – e.g. for innovative products. It is a document providing information on their performance assessment. The procedure is established in the construction products regulation and offers a way for manufacturers to draw up the declaration of performance and affix the CE marking. ETAs are issued by Technical Assessment Bodies (TABs) https://single-market-economy.ec.europa.eu/sectors/construction/construction-products-regulation-cpr/european-assessment-documents-and-european-technical-assessments_en</p> <p>Assessment and Verification of Constancy of Performance (AVCP) – a system defining how products are assessed and how the constancy of the assessment results is controlled. https://single-market-economy.ec.europa.eu/sectors/construction/construction-products-regulation-cpr/assessment-and-verification-constancy-performance_en</p> <p>Notified bodies – the only recognised third party carrying out the assessment of performance of construction products. Tasks include assessment of the performance of a construction product, certification of constancy of performance, factory production control certification. Notified bodies are designated by EU countries. https://single-market-economy.ec.europa.eu/sectors/construction/construction-products-regulation-cpr/notified-bodies_en</p>
	Requirements for reviewing, updating and maintaining the information		Manufacturer obligations include to keep the technical documentation and the declaration of performance for a period of 10 years after the construction product has been placed on the market (Article 11(2)).
	Who has obligations	<p>Article 11 – Obligations of manufacturers</p> <p>Article 13 – Obligations on importers</p>	<p>Manufacturers – obligation to draw up Declaration of Performance and affix CE marking.</p> <p>Includes (not exhaustive):</p> <ul style="list-style-type: none"> - By drawing up DoP, manufacturer assumes responsibility for conformity of product with such declared performance (Article 4(3)) - Must keep the technical documentation and the declaration of performance for a period of 10 years after the construction product has been placed on the market (Article 11(2)).



	Feature	Legislative reference	Notes
		<p>Article 14 – Obligations on distributors</p> <p>Article 15 – Cases in which obligations of manufacturers apply to importers and distributors</p>	<ul style="list-style-type: none"> - On product or packaging, type, batch, serial number; must have name, trademark and address (Article 11(4) and (5)) - Must also provide installation manual or installation instructions (Article 11(6)). To ensure the correct installation of the product, as Declaration of Performance relies on correct installation. - If concerned re non-compliance, take action to correct, withdraw or recall (Article 11(7)). <p>Importers – place on market only products that comply with CPR; package must include name, address.</p> <p>Distributors (retailers) – e.g. must ensure the product bears CE marking and is accompanied by Declaration of Performance, instructions and safety information.</p> <p>If retailers making products available on their own trade names then considered manufacturer, must draw up own DoP.</p>
Building product traceability	Identification details on packaging, declaration of performance		<p>Manufacturer obligations (see above) include obligations to include identification details – batch, serial number, name of manufacturer. Similar importer obligation.</p> <p>Also declaration of performance, will include ID details, details of manufacturer.</p>
Audit and enforcement powers	Powers given for audit, enforcement and compliance	<p>Chapter VIII, from article 56 – Market surveillance and safeguard procedures</p> <p>Article 58 – Complying construction products which nevertheless</p>	<p>Includes ability to take action to prohibit or restrict product on market, inform Commission and Member States.</p> <p>Formal non-compliance, Member State shall require economic operator to “put an end to non-compliance”</p> <p>Complying products which nevertheless present a risk to health and safety</p> <ul style="list-style-type: none"> - [Where] ... finds that “although a construction product is in compliance with this Regulation, it presents a risk for the fulfilment of the basic requirements for construction works, to the health or safety of persons or to other aspects of public



	Feature	Legislative reference	Notes
		<p>present a risk to health and safety</p> <p>Article 59 – Formal non-compliance</p>	<p>interest protection, it shall require the relevant economic operator to take all appropriate measures to ensure that the construction product concerned, when placed on the market, no longer presents that risk, to withdraw the construction product from the market or to recall it within a reasonable period, commensurate with the nature of the risk, which it may prescribe.</p> <ul style="list-style-type: none"> - The economic operator shall ensure that any corrective action is taken in respect of all the construction products concerned which that economic operator has made available on the market throughout the Union.”
Information sharing	Information sharing provisions		Manufacturers must respond to requests from authority, cooperate with (Article 11(8))
Proposed revision to the Construction Product Regulation			
		<p>*Under consideration – not yet in force.</p> <p>Considered proposed changes to original Commission proposal⁶¹</p>	<ul style="list-style-type: none"> - Establishes rules for placing or making available on the market construction products by establishing rules on how to express the performance of products, product requirements for products and obligations on economic operators dealing with construction products or their components (Article 1) - ‘construction product’ (Article 3 – definitions) <p>‘construction product’ means any formed or formless physical item, including its packaging and instructions for use, or a kit or assembly combining such items, that is placed on the market or produced for incorporation in a permanent manner in construction works or parts thereof within the Union, with the exception of items necessarily first integrated into an assembly, kit or another construction product prior to being incorporated in a permanent manner in construction works;</p>

⁶¹ As at July 2023 see <https://data.consilium.europa.eu/doc/document/ST-10920-2023-INIT/en/pdf>



	Feature	Legislative reference	Notes
			<ul style="list-style-type: none"> - 'economic operator' – manufacturer, authorised representative, importer, distributor and fulfilment service provider (Article 3 – definitions) - Declaration of performance and conformity (Article 11). Model of declaration in Annex II. <ul style="list-style-type: none"> ○ Includes product's environmental sustainability performance over life-cycle (specific requirements) - Rules and conditions for affixing CE marking (Article 17) <ul style="list-style-type: none"> ○ Affixed visibly, legibly and indelibly to product, where not possible/warranted on account of nature of product to label or packaging, or where also not possible to accompanying documents. ○ CE marking followed by: <ul style="list-style-type: none"> ▪ two last digits of year in which CE marking was first affixed (also provision for used products – last two digits of year product was deinstalled and then last two digits of year CE marking was affixed on the product) ▪ name and address of manufacturer (easy and unambiguous) (and any authorised representative) ▪ unique ID code of product-type ▪ reference code of declaration of performance and conformity ▪ ID number of notified body verifying product type and assessing factory production control if applicable ▪ Permalink [URL that is intended to remain unchanged for many years] to product registration in database or system (to be established – Article 78) ○ Can also have some of this information in permalink to declaration of performance and conformity - Unique identification code – manufacturer responsible for ensuring product bears manufacturer-specific unique identification code of the product type and where available, a batch and serial number. (On product, where not possible on account of nature of the product on packaging or label, or where not possible in a document accompanying the product).



	Feature	Legislative reference	Notes
			<ul style="list-style-type: none"> - Establishment of a complaint portal by the Commission and single liaison point of Member States for complaints or reports re possible non-compliances and requests (Articles 68, 69) - Establishment of an EU construction products database or system (Article 78). - Database or system would enable: <ul style="list-style-type: none"> o Economic operators to share or upload <ul style="list-style-type: none"> ▪ Declarations of performance and conformity ▪ General information, instructions for use and safety information ▪ Technical documentation (all as required by other requirements of the regulation) o Store and ensure the protection of data or documents o Make data or documents available to national authorities o Make data or documents publicly accessible “in a machine readable, structured, searchable and transferable format through an open interoperable data exchange network supported by a data dictionary o Provide possibility for economic operators to print or create permalinks to data or documents - Database or system to be compatible with digital product passport registry developed as per ESPR - People to have free access to database or system - Data or documents stored in the database or system for at least 25 years after been shared or uploaded - After the database or system has been operational for at least one year and has fulfilled its intended objective, the Commission to adopt an implementing act to provide for mandatory use of database or system by economic operators (as means of making available declaration of performance and conformity, general information, technical documents – Article 19(5)).



	Feature	Legislative reference	Notes
Digital product passport			
		Ecodesign for Sustainable Products Regulation (ESPR) published on 30 March 2022	<ul style="list-style-type: none"> - Ecodesign for Sustainable Products Regulation (ESPR) published on 30 March 2022 is the “cornerstone” of the EU’s approach to more environmentally sustainable and circular products. - It is part of a broader framework to give effect to environmental policies, the European Green Deal – which involves a plan to, by 2030 reduce CO2 emissions by 55% compared to 1990 levels and by 2050, to make Europe the first climate-neutral continent. - The ESPR will allow for setting a wide range of requirements about physical goods on the EU market (some exceptions – e.g. food). - A specific EU Battery Regulation has already been approved, in July 2023.⁶² - The construction and building industry has been identified as a prioritised industry for the changes (along with batteries and vehicles, electronics and ICT, textiles, furniture, plastics and chemicals).⁶³ - Requirements for products will relate to sustainability information (e.g. product durability, reusability, energy and resource efficiency, carbon and environmental footprints) and include a requirement for products to have a Digital Product Passport (DPP). - A DPP will: <ul style="list-style-type: none"> <i>“provide information about products’ environmental sustainability. This information will be easily accessible by scanning a data carrier and it will include attributes such as the durability and reparability, the recycled content or the availability of spare parts of a product. It should help consumers and businesses</i>

⁶² The Regulation starts to apply on 18 February 2024 with additional obligations and requirements introduced over time, including a battery passport obligation from 18 February 2027. Intertek summary of EU Battery Regulation, <https://www.intertek.com/blog/2023-08-17-battery-regulation/#:~:text=The%20regulation%20introduces%20requirements%20that,apply%20from%2018%20February%202027> (October 2023).

⁶³ EU Circular Economy Action Plan, adopted March 2020. See <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1583933814386&uri=COM:2020:98:FIN> (accessed October 2023).



	Feature	Legislative reference	Notes
			<p><i>make informed choices when purchasing products, facilitate repairs and recycling and improve transparency about products' life cycle impacts on the environment. The product passport should also help public authorities to better perform checks and controls.</i>⁶⁴</p> <ul style="list-style-type: none"> - The ESPR is based on and will ultimately replace the current Ecodesign Directive 2009/125/EC, which sets mandatory ecological requirements for energy using and energy related products.
	Specific requirements for DPPs		<ul style="list-style-type: none"> - Many aspects of the DPP framework are yet to be finalised. - It has been reported that the EC was seeking feedback from stakeholders on key areas that need to be standardised up to 26 September 2023, including the following areas: <ul style="list-style-type: none"> ○ Unique identifiers ○ Data carriers (QR code but several other means also possible) ○ Links between physical product and digital representation ○ Access rights management (public data vs. restricted data) ○ Interoperability (during life cycle, with other databases) ○ Data storage (including if it's stored by the companies or managed by the EU) and data persistence ○ Data authentication ○ Data security and privacy⁶⁵

⁶⁴ https://commission.europa.eu/energy-climate-change-environment/standards-tools-and-labels/products-labelling-rules-and-requirements/sustainable-products/ecodesign-sustainable-products-regulation_en (accessed October 2023).

⁶⁵ See <https://www.lexology.com/library/detail.aspx?g=2f1ac670-555a-464b-9e95-389d010f8783> (accessed October 2023).



	Feature	Legislative reference	Notes
			<p>In relation to data carriers, it is reported that guidelines will be established about data carriers and specify a list of preferred data carriers per product group (e.g. whether digital watermark on products, barcode etc).</p> <p><i>“5. Data carrier: The EC will set out general guidelines on data carriers and specify a list of preferred data carriers per product group. In the current proposal for the Battery Regulation, the EC favors QR codes, which could be an indication for other product groups. QR codes are relatively affordable, durable and already widely used. Generally, there are many potential data carriers: newer and more expensive (e.g., digital watermark, NFCiv, Bluetooth tags) and more established technologies (e.g., barcode, RFIDv). In product groups where barcodes are already widely used, they are likely the most affordable and easy to implement option. Moving forward, each product group-specific delegated act is expected to contain a list of acceptable data carriers which is subject to changes as newer data carrier technologies mature.”⁶⁶</i></p> <p>The framework does not detail DPP requirements for specific products at present.</p>
	Timing of DPPs		Final approval is reported as expected to be in 2024 and implementation for the first product groups in 2026/7. ⁶⁷

	Feature	Legislative reference	Notes
	United Kingdom		
	Construction Products (Amendment etc.)(EU Exit) Regulations 2019 and Construction Products (Amendment etc.)(EU Exit) Regulations 2020		

⁶⁶ See <https://www.wbcd.org/Pathways/Products-and-Materials/Resources/The-EU-Digital-Product-Passport>, article “The EU Digital Product Passport shapes the future of value chains: What it is and how to prepare”, World Business Council for Sustainable Development (accessed October 2023).

⁶⁷ As above.



	Feature	Legislative reference	Notes
	Made under the European Union (Withdrawal) Act 2018 The 2019 Regulations amend the EU law about the marking of construction products (Regulation (EU) No 305/2011 and the Construction Products Regulations 2013) by removing references to the EU so that they can operate in the United Kingdom. The 2020 Regulations update amendments in the 2019 regulations to broadly, restrict them to Great Britain only. In relation to Northern Ireland, it provides for an enforcement regime in relation to the EU Construction Products Regulation to replace the Construction Products Regulations 2013 (S.I. 2013/1387). These amendments allow the existing regime to continue largely unchanged once the implementation period has ended, and are necessary to implement the Ireland/Northern Ireland Protocol to the EU Withdrawal Agreement (see Explanatory Memorandum para 12.2 at https://www.legislation.gov.uk/ukdsi/2020/9780348213577/pdfs/ukdsiem_9780348213577_en.pdf) Building Safety Act 2022 – provision for Construction Products Regulations to be made.		
Building product regulator			Office of Product Safety and Standards (OPSS) – the National Regulator for Construction Products (NRCP). Follows recommendation made in the Independent Review of Building Regulations and Fire Safety led by Dame Judith Hackitt. See National regulation: construction products - GOV.UK (www.gov.uk) Note also Health and Safety Executive, Building Safety Regulator (regulates high-rise buildings) and New Homes Ombudsman created under the Building Safety Act 2022.
Building product labelling	How the information must be disclosed		Declaration of performance. If both CE and UKCA mark affixed to product, need declarations of performance that meet both regimes' requirements.
			CE mark replaced with UKCA mark. For the UK market of Northern Ireland (NI) the equivalent is CE and UKNI.
			To affix UKCA marking, must comply with requirements under CPR 2011 as retained in UK law. Rules re affixing broadly equivalent to CE marking but conformity assessment to be undertaken by UK approved body. The UK mark should be followed by:



	Feature	Legislative reference	Notes
			<ul style="list-style-type: none"> - the two last digits of the year in which it was first affixed - the name and the registered address of the manufacturer, or the identifying mark allowing identification of the name and address of the manufacturer - the unique identification code of the product-type - the reference number of the declaration of performance - the level or class of the performance declared - the reference to the harmonised technical specification applied - the identification number of the approved body, if applicable, and the intended use as laid down in the harmonised technical specification applied.
			<p>Until 30 June 2025, in GB both the UK marking and the CE marking will be recognised. Manufacturers will either need to:</p> <ul style="list-style-type: none"> - affix the UK marking using a UK approved body, or - affix the CE marking with UK(NI) indication using a UK approved body, or - affix the CE marking using an EU recognised notified body. <p>Where no third party assessment required (system 4 under AVCP), manufacturer can choose whether to affix UK marking or until 30 June 2024, CE marking provided that underlying requirements are met.</p> <p>*Diagram – accepted markings for the GB market (from Construction Products Regulation in Great Britain - GOV.UK (www.gov.uk) (accessed October 2023)) -</p>



	Feature	Legislative reference	Notes												
			<p>Accepted markings for the GB market</p> <p>Your goods may require different markings for different markets. The table below illustrates the accepted markings for the GB market.</p> <table border="1" data-bbox="1115 427 1872 523"> <thead> <tr> <th data-bbox="1115 427 1601 459">Type of good</th> <th data-bbox="1601 427 1872 523">Accepted marking or combination of markings*</th> </tr> </thead> <tbody> <tr> <td colspan="2" data-bbox="1115 544 1872 635">Supplying goods (which are not qualifying Northern Ireland goods) to the market in Great Britain</td> </tr> <tr> <td data-bbox="1115 660 1601 719">Construction product being supplied to the GB market until 30 June 2025</td> <td data-bbox="1601 660 1872 719">UKCA or CE or CE & UK(NI)</td> </tr> <tr> <td data-bbox="1115 746 1601 805">Construction product supplied to the GB market from 30 June 2025</td> <td data-bbox="1601 746 1872 805">UKCA</td> </tr> <tr> <td colspan="2" data-bbox="1115 831 1872 890">Supplying qualifying Northern Ireland goods to the market in Great Britain (unfettered access)</td> </tr> <tr> <td data-bbox="1115 916 1601 1038">Construction product which is a qualifying Northern Ireland good being supplied to the GB market under unfettered access provisions from 30 June 2025</td> <td data-bbox="1601 916 1872 1038">CE or CE & UK(NI)</td> </tr> </tbody> </table> <p>*You may use combinations of the product markings listed in each box and your goods may be acceptable with more than one marking. This is the UK's position and it will be for the EU to determine the arrangements that apply for supplying goods to the EU market.</p>	Type of good	Accepted marking or combination of markings*	Supplying goods (which are not qualifying Northern Ireland goods) to the market in Great Britain		Construction product being supplied to the GB market until 30 June 2025	UKCA or CE or CE & UK(NI)	Construction product supplied to the GB market from 30 June 2025	UKCA	Supplying qualifying Northern Ireland goods to the market in Great Britain (unfettered access)		Construction product which is a qualifying Northern Ireland good being supplied to the GB market under unfettered access provisions from 30 June 2025	CE or CE & UK(NI)
Type of good	Accepted marking or combination of markings*														
Supplying goods (which are not qualifying Northern Ireland goods) to the market in Great Britain															
Construction product being supplied to the GB market until 30 June 2025	UKCA or CE or CE & UK(NI)														
Construction product supplied to the GB market from 30 June 2025	UKCA														
Supplying qualifying Northern Ireland goods to the market in Great Britain (unfettered access)															
Construction product which is a qualifying Northern Ireland good being supplied to the GB market under unfettered access provisions from 30 June 2025	CE or CE & UK(NI)														



	Feature	Legislative reference	Notes
			<p>Former UK notified bodies operating under UK CPR regime – UK ‘approved bodies’, able to offer testing and certification. Listed on UKMCAB database</p> <p>UK Accreditation Service (UKAS) is UK’s national accreditation body for accrediting UK approved bodies</p>
			<p>Former UK based technical assessment bodies are ‘UK technical assessment bodies’, able to carry out technical assessment of products for the UK market. May then be affixed with the UK marking.</p> <p>Listed on the UKMCAB database.</p>
			<p>All existing harmonised European standards became UK ‘designated standards’ – i.e. harmonised European standards and UK designated standards currently identical.</p>
Audit and enforcement powers	Powers given for audit, enforcement and compliance	2020 Regulations	<p>Power to enforce EU Construction Products Regulation provided for in the Construction Products Regulations 2013.</p> <p>See https://www.gov.uk/guidance/eu-construction-products-regulation-and-ce-marking-including-uk-product-contact-point-for-construction-products#enforcement</p> <p>Enforced by Trading Standards in England (and Wales and Scotland) and by district councils in Northern Ireland. 2020 Regulations provide an enforcement regime for Northern Ireland that is instead based on EU Construction Products Regulation. With the 2020 Regulations the previous enforcement regime was largely unchanged, however they ensured the Ireland/Northern Ireland Protocol is implemented. As per - Construction Products (Amendment etc.) (EU Exit) Regulations 2020 - House of Lords Library (parliament.uk). See EU and the UK ratified the Ireland/Northern Ireland Protocol – January 2020</p> <p>Powers –</p> <ul style="list-style-type: none"> - Prosecute. Various offences re breaches of the 2011 Regulations – e.g. supplying product that does not have declaration of performance and CE marking.



	Feature	Legislative reference	Notes
			<p>Penalties include fines, imprisonment for up to 3 months (e.g. reg 4). Offences apply to suppliers, manufacturers, importers, distributors.</p> <ul style="list-style-type: none"> - Issue suspension notice. Enforcement authority. May prohibit person from supplying products up to 6 months without authority’s consent, recall products, keep authority informed of whereabouts of products concerned (reg 7). Offence to contravene suspension notice. - Apply for order for forfeiture of products (reg 8, 9). Application to court, can be part of prosecution proceedings. - Prohibition notice. Issued by Secretary of State, prohibits from supply of specified construction products, may include recall of products. Available where reasonable grounds for suspecting offences under regs 4, 5 – not all offences, re supply etc without declaration and CE marking not offences re duty to provide information etc (reg 11). Offence to contravene prohibition notice. - Notice to warn. Issued by Secretary of State, require person to publish in a form and manner as specified, warning about construction products which they have supplied or supply, where reasonable grounds to suspect offence under regs 4, 5 (as above re prohibition notices, not all offences) (reg 12). Offence to contravene notice to warn. - Power to obtain information. Secretary of State, to decide whether to issue, vary or revoke prohibition notice or notice to warn. Notice to provide information, produce records (reg 13). Offence to fail to comply with notice. - Powers of search, seizure etc (reg 16). Investigative power. <p>Other provisions that support enforcement – e.g. procedure re seized items, offence to obstruct authorised officer etc.</p>
Information sharing	Information sharing provisions	Appointment of UK Conformity Assessment Bodies:	<p>Requirements for CABs certifying for the FB and NI market from 1 January 2023. Some provisions re providing information.</p> <p>Guidelines on the designation of UK Notified Bodies</p>



	Feature	Legislative reference	Notes
		<p>Guidance (January 2021)</p>	<p>“4.2 A Notified Body will be required to maintain an up to date record of any certification which it has issued, and to whom it has been issued. The records will need to be made available on request to the Secretary of State or such other person as may be authorised by the Secretary of State.</p> <p>4.3 An appointed CAB will be required to inform the Secretary of State and UKAS immediately of any changes within itself which, in any way, affect its ability to carry out the duties within the authorised scope to the declared procedures. This includes any change in its status, ownership, location, key personnel, technical competence, facilities etc.”</p> <p>“3.11 An applicant will need to have fully documented agreements with its subcontractors. Applicants will need to maintain a Register of all sub-contractors which may be used by the applicant. The Management System will either contain the Register or will state where the Register is to be found. The agreements and the Register will need to be available for scrutiny at any reasonable time on request by the Secretary of State or such other person as may be appointed on behalf of the Secretary of State for that purpose.”</p> <p>Note reg 22 Construction Products Regulations 2013, restrictions on the disclosure of information.</p>
<p>Proposed new Construction Products Regulations</p>		<p>Building Safety Act 2022, Schedule 11 – provides for Regulations to be made relating to the marketing and supply of construction products, called “construction products regulations”</p> <p>Indicative draft Construction Products Regulations 2021</p>	<ul style="list-style-type: none"> - Provide for standards of product performance and other requirements – provide for setting up regime to replace existing EU based regime. - Provide for further laws to be made re marking and supply of construction products, including to “prohibit the marketing or supply of construction products which are unsafe”, requirements for products for which there are designated standards or technical assessments including re declarations of performance, the marking or packaging of products and the provisions of information about risks to persons to whom products are supplied. - Provisions re “general requirements” and “safety-critical products” (to be listed) which is to include products which, if they fail would risk causing death or serious injury to any person. Requirements include manufacturers will be required to complete declaration of performance for all safety critical products to be placed on the market, put in place factory production controls and follow the specified



	Feature	Legislative reference	Notes
			<p>system of assessment of verification of constancy of performance (AVCP) to ensure that the claimed performance is consistency met – i.e. products regulated as per products under existing framework.</p> <ul style="list-style-type: none"> - Explanatory notes – power re safety critical products to remove the gap in the regulation of products if they’re not covered by EU harmonised standard or regulated as a consumer product. - Provides for regulations to include powers for National Regulator for Construction: <ul style="list-style-type: none"> - carry out, or secure the carrying out of, market surveillance and test purchases; - enter, inspect and search premises and seize and retain products or evidence of non-compliance with construction product requirements; - require the retention and provision of information; - by notice require a person to warn others of the risks attaching to a product; - require the marking of a product in respect of the risks attaching to it; - suspend for a specified period or prohibit the marketing or supply of a product (or suspend or prohibit the marketing and supply of the product without the consent of a specified person); - require the withdrawal of a product from the market; - require the recall of a product from persons to whom it has been supplied; - require a person to do or cease to do anything so as to end non-compliance or suspected non-compliance with construction product requirements. <p>Note other matters not as directly related to product safety – control regime for higher-risk buildings, new gateways, ‘golden thread’ regulation (managing building information and data throughout the entire lifecycle of a building).</p>



Attachment F1 – Example product information sheet (NZ)

Class 1 Building Product Information Sheet

About this form

This template has been developed to help manufacturers and importers into Aotearoa New Zealand provide the information required by the **Building (Building Product Information Requirements) Regulations 2022**.

How to use

- > Download and save this form in your computer.
- > Fill out the form with the relevant information about your product.
- > You may use this filled out form and publish it on your product web page.

Types of building products

There are two classes of designated building products with different information requirements for each. The below summarises the information that must be provided for each class of product and when the information must be made available.

Class 1: Batch or mass-produced products

Batch or mass-produced products that are typically available for retail or wholesale purchase. For example, cladding products, mechanical fixings, insulation products, internal lining, roofing products, structural wood-based products, structural steel and reinforcing products, sanitary plumbing, and drainage products, including tapware (note: this is not an exhaustive list).

Class 2: Custom-made lines of products

Custom-made lines of products that are made to order to client specifications. For example, external window joinery and doors that have been customised to the specifications of individual clients (for example, specifications on dimensions and glass type).

MBIE provides resources to support manufacturers, importers, wholesalers, distributors, and retailers to understand what their obligations are, and how to meet them.

For more information, visit [Building product information requirements | Building Performance](#)

Background

The Building Amendment Act 2021 introduced new minimum information requirements for building products to support better informed decision-making by building consent authorities, building owners, builders, and designers. The new regulations designate several building products for which building product information must be provided and establish the minimum requirements for that information.

The new regulations will ensure better and more consistent information is available for these products, helping inform building consent authority decisions on building consent applications. This should result in fewer requests for information, and therefore faster processing times. In addition, the requirements will ensure people, including homeowners, are given the information they need to make good decisions about products, and use and maintain them as intended.

Please note that The Ministry of Business, Innovation and Employment (MBIE) is not responsible for the input details provided in the template.

BRM 0502 00/23



Class 1

Building Product Information Sheet

Product name (Include the brand name):

Sun Cloud Ceiling Blanket

Product description and its intended use (measurements, materials, usage):

Sun Cloud Ceiling Blanket is an insulation product manufactured using recycled wool and polyester fibre that are thermally bonded. It provides thermal insulation in the ceilings of residential buildings. It is suitable for laying between and/or over the bottom chords of roof trusses, or over ceiling joists.

Key technical specifications:

- Thickness: 190 mm
- Density: 2.9 kg/m²
- Product R-value: 3.6 for a single layer
- Length: 7 m per roll
- Width: 1200 mm

Product identifier (if applicable):

Sun Cloud R3.6 Wool/Polyester Ceiling Blanket

(This could be a Global Trade Item Number (GTIN) or quick response code (QR code), or any other distinguishable part/model number or identifier.)

Place of manufacture: Aotearoa New Zealand Overseas

Legal and trading name of the manufacturer(s):

Sun Cloud Insulation Limited

Address for service:

STREET NAME 39C Crescent Street SUBURB Derrimut VIC

CITY, COUNTRY Australia POSTCODE 3026

Website: www.suncloudinsulation.com.au

Email address: admin@suncloudinsulation.com.au

Phone no. (if applicable):

NZBN (if applicable): N/A



Legal and trading name of the importer (if applicable):

AB Building Insulation Imports Limited trading as Insulimports

Address for service:

STREET NAME 20 Cherry Street SUBURB Kaiwharawhara

CITY, COUNTRY Wellington POSTCODE

Website: www.insulimports.co.nz

Email address: info@insulimports.co.nz

Phone no. (if applicable):

NZBN (if applicable): 060708

Relevant Building Code clauses:

- B2 Durability: Performance clauses B2.3.1(a) (ii) and (iii) and B2.3.2
- E3 Internal Moisture: Performance clause E3.3.1
- F2 Hazardous Building Materials: Performance clause F2.3.1
- H1 Energy Efficiency: Performance clauses H1.3.1(a) and H1.3.2E

Statement on how the building product is expected to contribute to compliance:

- B2.3.1(a) (ii) and (iii) and B2.3.2: Sun Cloud ceiling blanket has a durability of at least 50 years where the insulation is not crushed or exposed to moisture affecting its thermal performance. Refer to the design and installation requirements for further information.
- E3.3.1, H1.3.1(a), and H1.3.2E: Sun Cloud ceiling blanket has a product R-value of 3.6 determined in accordance with AS/NZS 4859.1: 2018. Refer to the test report provided by Lexis testing laboratory available online at: suncloudinsulation.co.nz/testreports.
- F2.3.1: Sun Cloud ceiling blanket is safe when handled. There are no requirements for this product in order to comply with Acceptable Solution F2/AS1, First Edition Amendment 3, 2017.

- options for compliance set out in section 19 of the Act (regulations, acceptable solution, verification method)
- standard or technical document that describes the performance of the building product or the relevant specifications to which the building product was manufactured
- physical properties of the building product
- how the building product is intended to be used.



Limitations on the use of the building product:

- Installation of Sun Cloud ceiling blanket shall be carried out only after the building is weathertight. Sun Cloud ceiling blanket must remain dry while in-service and should not be used where there is a risk of moisture entry or condensation occurring.
- Sun Cloud ceiling blanket cannot be used close to flues or heat-generating fixed equipment that is not intended to be abutted or covered by insulation products. Check the instructions of suppliers of any downlights, flue systems, and other heat-generating equipment within the ceiling space before installation of Sun Cloud ceiling blanket. With reference to NZS 4246: 2016.
- Sun Cloud has not been assessed for use in locations where a Fire Resistance Rating (FRR) is required. Sun Cloud has not been assessed for use in locations where STC or ICC sound rating is required.

Design requirements that would support the appropriate use of the building product:

- Sun Cloud insulation blanket is intended for use in situations where a continuous insulation blanket can be fitted between or over structural members and other components within an enclosed roof space.
- Two layers of Sun Cloud ceiling blanket can be used to provide a higher level of thermal insulation to a ceiling (eg, one layer laid between truss bottom chords and a second layer laid over in the perpendicular direction).
- Clearance requirements for heating appliances and downlights must be met with reference to the manufacturer's installation instructions and NZS 4246: 2016.

Installation requirements (also provide link to the product installation guide):

- Refer to the Sun Cloud ceiling blanket installation instructions available from suncloudinsulation.co.nz/installation.
- NZS 4246: 2016 provides further information on installation of insulation products. Sun Cloud Insulation must be released from the packaging and allowed to re-loft prior to installation. The time to loft will depend upon the length of time the product has been packaged and stored. Install when 190mm loft is reached.
- Ensure that Sun Cloud ceiling blanket is not exposed to moisture during installation.
- When installed between members such as the bottom chords of trusses, the blanket width must be trimmed to 5 mm greater than the width of the available space.
- End joins between sections of Sun Cloud ceiling blanket, and side joins to adjacent sections should be fit by assembling sections together without gaps.
- Ensure Sun Cloud ceiling blanket is installed before the expiry of its shelf life printed on the packaging. The product is sensitive to the length of time it is stored under compression packaging. Prolonged compression could reduce the thermal performance of the product if it does not recover its nominal thickness.
- Follow the instructions of suppliers of downlight, flue systems and other equipment that may generate heat. Ensure any required clearances between the Sun Cloud ceiling blanket and any downlights, flues and heat-generating equipment are achieved.



Maintenance requirements (also provide link to the product maintenance guide):

- To avoid compression that could lead to loss of thickness, reduced thermal performance, and damage to the insulation, ensure that objects have not been placed on the Sun Cloud ceiling blanket.
- If the Sun Cloud ceiling blanket has become damp during service, it must be removed and replaced to avoid any reduction in its thermal performance.
- If Sun Cloud ceiling blanket becomes wet, this can result in moisture being transferred to and held against adjacent building materials. The ongoing presence of moisture can result in mould growth, which can affect health, damage the Sun Cloud ceiling blanket, and damage adjacent building materials.

Is the building product/building product line subject to warning or ban under section 26 of the Building Act 2004?:

Yes No

If yes, description of the warning or ban under section 26:

N/A

Version:

Date:



Attachment F2 – Model declaration of performance (EU)

ANNEX III
DECLARATION OF PERFORMANCE

No.

1. Unique identification code of the product-type:
2. Type, batch or serial number or any other element allowing identification of the construction product as required pursuant to Article 11(4):
.....
3. Intended use or uses of the construction product, in accordance with the applicable harmonised technical specification, as foreseen by the manufacturer:
.....
.....
4. Name, registered trade name or registered trade mark and contact address of the manufacturer as required pursuant to Article 11(5):
.....
.....
5. Where applicable, name and contact address of the authorised representative whose mandate covers the tasks specified in Article 12(2):
.....
.....
6. System or systems of assessment and verification of constancy of performance of the construction product as set out in Annex V:
.....
.....
7. In case of the declaration of performance concerning a construction product covered by a harmonised standard:
.....
(name and identification number of the notified body, if relevant)
performed under system
(description of the third party tasks as set out in Annex V)
and issued
(certificate of constancy of performance, certificate of conformity of the factory production control, test/calculation reports – as relevant)
8. In case of the declaration of performance concerning a construction product for which a European Technical Assessment has been issued:
.....
(name and identification number of the Technical Assessment Body, if relevant)
issued
(reference number of the European Technical Assessment)



on the basis of
 (reference number of the European Assessment Document)

performed under system
 (description of the third party tasks as set out in Annex V)

and issued
 (certificate of constancy of performance, certificate of conformity of the factory production control, test/calculation reports – as relevant)

9. Declared performance

Notes to the table.

1. Column 1 shall contain the list of essential characteristics as determined in the harmonised technical specifications for the intended use or uses indicated in point 3 above.
2. For each essential characteristic listed in column 1 and in compliance with the requirements of Article 6, column 2 shall contain the declared performance, expressed by level or class, or in a description, related to the corresponding essential characteristics. The letters 'NPD' (No Performance Determined) shall be indicated where no performance is declared.
3. For each essential characteristic listed in column 1, column 3 shall contain:
 - (a) dated reference of the corresponding harmonised standard and, where relevant, the reference number of the Specific or Appropriate Technical Documentation used;
 - or
 - (b) dated reference of the corresponding European Assessment Document where available and reference number of the European Technical Assessment used.

Essential characteristics (see Note 1)	Performance (see Note 2)	Harmonised technical specification (see Note 3)

Where pursuant to Article 37 or 38 the Specific Technical Documentation has been used, the requirements with which the product complies:

.....

10. The performance of the product identified in points 1 and 2 is in conformity with the declared performance in point 9.

This declaration of performance is issued under the sole responsibility of the manufacturer identified in point 4. Signed for and on behalf of the manufacturer by:

.....
 (name and function)

.....
 (place and date of issue)

.....
 (signature)



Attachment G – Key background material

Australian Procurement and Construction Council, Procurement of Construction Products, Guide to achieving compliance, 2nd Ed, December 2015

Peter Shergold and Bronwyn Weir, Building Confidence Report, April 2018

NSW Government on behalf of the Senior Officers Group, A Guide to Australian Building Product Conformity, April 2018

Australian Senate Economics References Committee, Non-conforming building products: the need for a coherent and robust regulatory regime, December 2018

ABCB, Handbook – Evidence of Suitability

Swinburne University of Technology, Scoping Study for Australian Technical Evaluation Network (ATEN), October 2019

ABCB, Draft National Building Product Assurance Framework – A response to the Building Confidence Report, 2021

International Building Quality Centre, Building Products Performance Part 1 – Discussion Paper, March 2022

Building 4.0 CRC, #2: Automated tracking of construction and materials for improved supply chain logistics and provenance – Scoping Study, Final Report, 15 April 2022

Swinburne University of Technology, Regulatory Barriers Associated with Prefabricated Modular Construction, Final Report, October 2022

International Building Quality Centre, Building Products Performance Good Practice Regulatory Framework, February 2023

Dr. Nicole Johnston & Michael Teys, Investigating Building Product Selection and Information Transparency, 20 February 2023 – research supported by Alspec

Department for Levelling Up, Housing & Communities, Testing for a Safer Future: An Independent Review of the Construction Products, April 2023

Department for Levelling Up, Housing and Communities, review led by Paul Morrell OBE and Anneliese Day KC, Independent Review of the Construction Product Testing Regime, 20 April 2023

United Nations Economic Commission for Europe (UNECE), White Paper, Digital Product Conformity Certificate Exchange, August 2023



Attachment H – BPAF, Appendix D

Building product safety

Appendix D – Information Requirements

The following has been derived from the Product Technical Statement template provided in the ABCB [Handbook - Evidence of suitability](#).

- a. **Identifying details:** description of the *building product* (e.g. the unique identifying number, manufacturer, supplier, name/brand and model/variant number).
- b. **Declaration of performance:** a clear statement of how the *building product* is intended to perform (e.g. NCC Performance Requirement, in whole or in part, it satisfies or referenced standard).
- c. **Basis of the declaration:** basis on which the declaration is made (e.g. test results summary, quality assurance measures etc.) including the core assumptions and the extent to which other documents are relied upon (e.g. standards, *specification*, software or other publications or documents). The NCC Deemed-to-Satisfy, evidence of suitability pathway or Verification Method followed where applicable.
- d. **Description of application:** a statement of the application and/or intended use of the *building product*.
- e. **Limitations:** relevant limitations and conditions of use insofar as they relate to the specified performance, including ways it could be misused and any relevant NCC Performance Requirements or referenced standard it does not satisfy.
- f. **Instructions:** for the handling, storage, installation, occupancy and maintenance to ensure product conformance and safe use with other *building products* likely to be nominated and over the life of the building.
- g. **Warranty:** details of any warranty or guarantee provided for the *building product*.
- h. **Contact and version details:** including details covering the currency, expiry, version and contacts details for advice and support.