

Response ID ANON-95HQ-W3BZ-D

Submitted to Proposed risk-based Building Product Registration Scheme
Submitted on 2024-10-03 10:26:20

General information

1 Important: Please ensure that you have read and understood the below statements before proceeding

2 By making a submission to this consultation you agree to the collection of the information you provide in your submission; and the use and disclosure of the information you provide in your submission as outlined above.

Publish response

3 What is your name?

Name:
Rodger Hills

4 What is your email address?

Email:
eo@bpic.asn.au

5 If completing on behalf an organisation, what is the name of your organisation?

Organisation:
Building Products Industry Council (BPIC)

6 What sector do you represent?

Building, Manufacturing

If other, please specify:

Survey questions

7 What is the level of your support for the proposed Scheme?

Low

8 What other options or changes do you propose on the intent of the Scheme and why?

Provide answer below:

BPIC ISSUE 1 – EARLY AND GUARANTEED COMMITMENT BY THE BMM AND EACH JURISDICTION

BPIC is concerned that the proposed Scheme is heavily reliant on its adoption by each Jurisdiction and believes that simply calling it up via the Governing Requirements (Part A) of the NCC is insufficient to guarantee, a) enforcement of its correct use by designers, specifiers, builders and building surveyors in each Jurisdiction, or b) that any investment by industry in preparation for the scheme possibly going 'live' in NCC 2028 will be justified.

For a), the Discussion Paper makes no mention of how the Scheme will ensure it is going to be widely used by all building industry professionals especially in the case of 'designated' products that will be deemed to have a higher risk of use than those that are not designated. In fact, the Paper almost takes a "build-it-and-they-will-come" attitude to the adoption of any product register by building practitioners and the general public.

For b), the Scheme will rely on manufacturers and suppliers making a considerable investment in the digitising of their existing conformity data so it can be used by, and across, electronic platforms. This will be a significant impost over and above any Scheme registration/participation costs, or further testing and conformity costs. Digitising conformity data is a difficult and slow exercise exacerbated by a limited number of specialist service providers able to do this work in Australia. BPIC also believes that the cost of "mandatory labeling and traceability for all building products" is significantly underestimated, as is the time it will take to achieve this, along with the lack of any Australian Standard (other than SA TS 5344:2019 Permanent labelling for Aluminium Composite (ACP) products) instructing industry how to go about it in a harmonised, effective and low-cost manner. Therefore an early guaranteed commitment by the BMM and each Jurisdiction will be a prerequisite to enabling manufacturers and suppliers having their data ready for any Scheme 'go-live' date.

Further to the considerations of a) and b) above, the building products sector has been negatively impacted by numerous, recent instances of Jurisdictions delaying NCC measures, varying them to suit perceived 'local' differences in the market, or back flipping on them altogether. BPIC would need to see an early and guaranteed commitment by the BMM and each Jurisdiction (possibly via the IGA) to the harmonised and practical roll-out of such a Scheme before it could offer its full support.

BPIC ISSUE 2 – THE SCHEME SHOULD FACILITATE ACCESS TO, AND NOT TAKE CONTROL OF, OR FUNNEL, PRODUCT ASSURANCE INFORMATION

While BPIC supports ready and free access to product conformance information that is accurate, complete, verifiable, audited and available at the point of decision making, the extent to which the proposed Scheme will deliver on that objective can only be determined in further details which are not yet available. Further, the Scheme as proposed, is not establishing 'risk-based product conformance'. Australia already has an extensive product conformance infrastructure. So the intent of the Scheme should be to facilitate access to, and not take control of, or funnel, accurate, complete and verifiable product

assurance information at the point of decision making, while addressing any gaps and shortcomings in the product conformance infrastructure.

BPIC ISSUE 3 – ON WHAT BASIS ARE THE RISKS RELATED TO THE USE OF A PRODUCT TO BE DETERMINED?

BPIC supports a risk-based approach to demonstrating NCC conformance since this is one of the recommendations of the National Building Product Assurance Framework. But while the Discussion Paper talks about designated products categories being determined by the Board in consultation with Jurisdictions through a combined assessment of building products for structural integrity, safety and risk of defects, it is unclear precisely how they will determine this, and who will absorb the liability for any risk. Will the determination of risk be decided a product-by-product basis? Will there simply be a blanket risk judgement applied to say, all fire-related products? Who will be the arbiter of decisions where a manufacturer disputes that their products fall into a particular risk category, or that the risk category justifies the level of testing needed for their product? If a product is registered and audited by the Scheme, does the ABCB Board bear liability if the product subsequently fails?

BPIC ISSUE 4 – THE DISCUSSION PAPER SIGNIFICANTLY UNDERESTIMATES THE NUMBER OF SKUS IN THE INDUSTRY BY AT LEAST AN ORDER OF MAGNITUDE

The cost-benefit analysis by CIE that underpins the proposal of the Scheme is based on an assumption of just 700,032 SKUs in the Australian building market, which is a gross under-estimation, especially in sectors like glass and glazing, steel, timber and so forth where the permutations of a particular product (height, width, thickness, colour, material, surface finish, etc) can run into the thousands or hundreds of thousands. Furthermore, it is unclear from the Discussion Paper what the definition of a "building product" is. Is it the steel, the steel wall components (studs, nogginns and top and bottom plates and shear bracing), the individual wall frame, all the wall frames in a house, or all of these?

BPIC ISSUE 5 – THE SCHEME WILL NOT PREVENT THE USE OF NON-CONFORMING PRODUCTS

BPIC is concerned that the Scheme, regardless of how well it might be designed or administered will have no impact on the significant volume of building products being imported into the country by builders, developer and owners then sent directly to sites and incorporated into the building structure before anyone can check or verify them. Whilst the Discussion Paper talks about mandatory product labelling and traceability as being a key part of the Scheme, it is unclear how this is going to pick up directly-imported products before they are incorporated into a building, or how certifiers and regulators are going to be able ascertain the bona fides of a product once it becomes part of the building structure.

BPIC ISSUE 5 – THE SCHEME WILL NOT PREVENT THE USE OF NON-COMPLIANT PRODUCTS

BPIC is concerned that the Scheme, regardless of how well it might be designed or administered will have little impact on the inappropriate specification and use of conforming products. Although part of the Scheme design is to reference product installation details and list a small number (e.g. 3-5) of examples of common compliance issues, there is no indication that Jurisdictions are going to ensure that building practitioners are going to take this into account.

BPIC ISSUE 6 – THE INTEROPERABILITY OF THE SCHEME WITH OTHER SCHEMES IS POTENTIALLY PROBLEMATIC

The Discussion Paper talks about the Scheme being interoperable with other schemes, national and international initiatives, where appropriate (noting cost considerations), to avoid becoming an isolated or a stranded asset, and BPIC supports this. However, there is no indication of how this would be achieved either from a practical, commercial or legal perspective. Many complex data integration projects like the proposed Scheme have been undertaken by federal and state jurisdictions over the years and the track record of these efforts are highly questionable. Many have experienced significant technology issues and barriers, some have failed to adequately compensate the external holders of data (in this case it would be industry organisations that own AS/NZS ISO/IEC 17065 compliant product certification schemes), others have failed to adequately resolve the legal ownership of shared data, and the often complex contractual arrangements needed to allow the free flow of information from one source to another.

BPIC ISSUE 7 – THE SCHEME MANAGER COULD REQUIRE CONFORMITY REQUIREMENTS THAT ARE ADDITIONAL TO THOSE THAT ALREADY EXIST FOR A PRODUCT

BPIC is opposed to any measure by the ABCB or other Jurisdictions to double-up on, or insist on extra conformity requirements to those that manufacturers are required to demonstrate through NCC EoS provisions or as part of an industry product conformity scheme accredited to AS/NZS ISO/IEC 17065. This would include having to do further testing or conformity demonstration simply because the Product Registration Scheme Management (or individual Jurisdiction) asks for it, or to fulfill some arbitrary scheme reporting requirement.

9 Do you agree with all of the principles for the intent of the Scheme?

No

What other options or changes do you propose for the intent of the Scheme and why?:

BPIC supports the principle of improving product conformance and the ability to verify performance against NCC requirements. But questions whether the principle to establishing a 'risk-based product conformance Scheme for all building products' is accurate or necessary. Australia already has a conformance infrastructure for establishing building product conformance. However Jurisdictions have consistently failed to enforce it, and based on current indications, will continue to fail to enforce it. As a result, BPIC has no confidence the Scheme (which will simply list/codify the existing conformance data required by Australia's conformance infrastructure) will be enforced to any greater degree than what is currently occurring. Furthermore the listing of products as 'designated' will not prevent regulatory disasters like Infinity Cables or the current WA leaking pipes crisis. BPIC is concerned that the listing of a designated product on a register will encourage a "rubber stamp" mentality amongst building practitioners who, due to time and resource pressures, accept that the presence of a product on the register automatically qualifies it for a particular use/purpose, without delving into the specific usage and limitations data related to that product. We are especially concerned that the Scheme will cause certifiers to reduce their oversight under the misguided belief that it's been looked at already.

10 Do you agree with the minimum information principle for better building information?

Yes

What other options or changes do you propose to the minimum information and why? :

Yes

BPIC supports the requirement of minimum and standardised product conformity, as well as product traceability information. These are two of the recommendations of the National Building Product Assurance Framework and key enablers of Chain of Responsibility regulatory compliance. BPIC is an active member of an industry coalition (National Building Products Coalition) that has been working to advance the implementation of the National Building Product Assurance Framework by producing two pieces of work – NCC Proposal for Change - Evidence of Suitability and an industry

guide for the Digitalisation and Traceability of Building Product Information. BPIC supports building on this work and providing similar wording as the Data Template provided in the Traceability Guide.

Minimum information requirements also sit within chain of responsibility legislation in Queensland and soon-to-be introduced legislation in New South Wales. Therefore BPIC supports the better implementation and enforcement of these existing requirements.

BPIC seeks clarity on what is meant by "All known compliance issues, regardless of number should be specific as part of the minimum information." We also need to understand how this is to be reconciled with the requirement to include "a small number of examples of common compliance issues". Is it intended to provide a link to a complaints process?

BPIC is also clear on the supporting evidence to be provided. What is "lodged, granted and non-granted approval details and use information"?

11 Should full test results be accessible?

No

If no, why?:

The NCC Proposal for Change - Evidence of Suitability submitted to the ABCB by the National Building Products Coalition addressed this issue by requiring that conformity evidence must include copies of original certificates, reports or documents, sufficient to demonstrate that the material, product, plumbing product, form of construction or design is fit for its intended purpose to achieve the relevant requirements of the NCC. The word "sufficient" was proposed in order to protect the intellectual property related to the unique aspects of individual products and reduce the vast amount of extraneous test data that is often requested by building surveyors which has no bearing on whether a product is fit for purpose to achieve the relevant requirements of the NCC, or not.

12 Do you agree with all the principles for a risk-based approach to demonstrating NCC conformance?

No

What other options or changes do you propose to a risk-based approach to demonstrating NCC compliance and why? :

BPIC supports conformance against all parts of the NCC. However, the Scheme as proposed has no integrated link to the evidence against which products are to be assessed. Also, there is an inference that 'designated' products can always rely on testing alone, which undermines the principle of a risk-based approach and how such products can demonstrate conformance through performance where no test standards exist. The evidence of suitability provisions in the NCC provide the basis against which the verification and attestation of conformity with requirements of the NCC are provided. Further, the National Building Products Coalition's NCC Proposal for Change - Evidence of Suitability provisions (submitted in August 2024) would support the Scheme proposal in providing a standardised and trustworthy methodology for product conformity information having regard to global supply changes, digital commerce and product innovation.

BPIC believes that any proposed Scheme should be called into being via the Governing Requirements (Part A) of the NCC under the Evidence of Suitability (EoS) provisions. This is the most logical location for any register of 'designated' products, including the reference to the criteria and methods of assessment. Further, these EoS provisions are the appropriate location for the approach outlined in the Regulatory Options paper for off-site construction, rather than regulating through a products register. However, as noted previously, this creates a conundrum for industry since a great deal of resource and financial investment will need to be outlaid by industry prior to the Scheme ever being called up in the NCC.

13 Do you view modern methods of construction and complex offsite/modular products as being designated products?

No

Why/why not?:

Modern methods of construction encompass a broad and evolving range of construction products, methodologies and processes. Where this includes building products and systems that would meet the criteria for 'designation' they should be included. Different processes and rules for modern methods of construction are not appropriate or necessary.

14 Would you prefer:

A medium assessment standard accompanied by a 'preferred' status at building certification stage

Why/Why not?:

BPIC believes respondents to this survey/consultation should not be required to make an either/or choice of options that in its opinion, are not entirely appropriate. Both options listed are too simplistic to cover the extensive range and types of products that might become "designated." BPIC is also of the opinion that while an ABCB panel might determine which products are designated or which purposes might lead to designation, those decisions should be based on sufficient evidence via the correct EoS compliance pathway to determine their appropriate use in buildings. Furthermore, the use of those products in a building should be at the discretion of the building practitioner, with the building surveyor/certifier retaining ultimate responsibility for whether the product is conforming and compliant or not. The building surveyor/certifier must always be able to exercise discretion to determine that the testing information is, or is not, sufficient for a specific use. At the same time there must be appropriate mechanisms in place to minimise or eliminate the occurrence of building surveyors/certifiers requesting additional testing and compliance data (to that required by the Scheme) from manufacturers, simply because they are being overly conservative, or in order to transfer certification risk from themselves to the manufacturer.

15 Would you prefer:

A robust, and potentially more expensive, evidentiary stage at registration, followed by less frequent and lower cost audits

Why/Why not?:

BPIC believes respondents to this survey/consultation should not be required to make an either/or choice of options that in its opinion, are not entirely appropriate. Both options listed assume that building product owners will shoulder ALL the costs associated with being on the register, irrespective of whether the costs are loaded at the front (during registration) or spread out over time (ongoing audits). This sidesteps the issue that the Scheme should not be entirely funded by either registration or ongoing audit fees. In this regard BPIC is opposed to industry paying full "cost recovery" and would expect an equitable arrangement where regular investments by government would ensure the ongoing maintenance and administration of a product register, especially when many manufactures may have hundreds or thousands of products, or the Scheme rules invoke permutations of a particular product that might number in the hundreds or thousands. Increased compliance costs will ultimately be passed on to the end consumer, putting further pressure on housing affordability and the economic viability of many residential developments.

16 Do you agree with all the principles for transparency and information sharing?

Yes

What other options or changes do you propose to transparency and information sharing and why? :

BPIC agrees with the requirement for standardised information to be provided and readily available, however it is unclear how the requirement for parties to verify that building products have been delivered to site, imported or installed as specified would operate or be enforced, or why this needs to be mandated. Will this apply to all building products or designated? How will a Scheme have any hope of enforcing this?

Labelling of product packaging is significantly more achievable than labelling of individual building products, and should be a recognised alternative.

While this is not perfect in terms of traceability, it can be a reasonable compromise for products that are difficult to physically label (e.g. bulk insulation, concrete, etc).

Product traceability should be advanced by government leadership and advice and not through mandates. Any building products registration scheme will rely on manufacturers and suppliers investing considerable amounts of time and money to digitise their existing conformity data so it can be used by and across electronic platforms. This will be an impost over and above any "scheme registration/participation costs".

BPIC also wishes to highlight the robustness of the Australian building product industry, and refute the perception coming from Section 4.4.1 of the Discussion Paper is "that most building products are imported."

17 Do you agree with all the principles for scheme operation and sustainability?

No

What options or changes do you propose for scheme operation and sustainability and why?:

BPIC stresses the importance of it being a national system supported by all the jurisdictions. Underpinning a national system is the assumption that all jurisdictions will, a) give effect to it through appropriate legislation or regulation, and b) that they will provide the necessary resources to enforce its use during project planning, design, procurement, construction and use, and c) they will provide equitable funding to ensure the Scheme costs are not completely borne by industry. However, recent and historical experience has shown that jurisdictions are often either reluctant, or in some cases unable, to vary their legislation to enact nationally consistent regulatory changes. As a result, industry lacks confidence that this proposal will come to fruition, and if it does, that it will do so in a nationally consistent manner.

With respect to auditing and compliance BPIC believes that further consideration needs to be given to how, incomplete or inaccurate building product information on the register, could be a matter for referral to the jurisdictions for compliance action. Which state or territory would have carriage for compliance to the national register?

Finally, product marks must include a means of verifying the accuracy of the registration. The UNECE White Paper on Digital Product Conformity Certificate Exchange is resource that should be used for this.

18 Any other comments?

Provide answer below:

It is not clear how the Scheme will treat building systems, as opposed to individual products. A single fire-rated plasterboard product, for example, can be used in hundreds of different system combinations with different FRL performance outcomes. Will every system need to be on the register, will every component (stud frame, screw fastener, wall insulation) of every system need to be on the register?