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Mr Gary Rake
Chief Executive Officer
Australian Building Codes Board
10 Binara Street
Canberra ACT 2601

3 October 2024

By Email: gary.rake@abcb.gov.au

Dear Gary,

Re: Submission on the Principles and scope of a Building Product Registration Scheme

Master Builders Australia (Master Builders) welcomes the opportunity to make a submission to Australian Building Codes Board (ABCB) *Principles and scope of a Building Product Registration Scheme* discussion paper (the discussion paper).

Master Builders is the nation's peak building and construction industry association which was federated in 1890. Master Builders' members are the Master Builder state and territory associations. Master Builders is the only industry association that represents all three sectors: residential, commercial and civil construction.

Master Builders members represent over 32,000 businesses, including the top 100 construction companies.

A building product registration scheme has the potential to improve safety, quality, and transparency within the building and construction industry, beginning to address the risks associated with non-conforming and non-compliant materials. However, it must be carefully designed to balance these benefits with the potential increase in costs, regulatory burden, and trade considerations. It must, in the first instance, be targeted at high-risk products or materials with a history of non-compliance.

Master Builders supports the introduction of a building product registration mechanism. Such a mechanism is an important opportunity for the building and construction industry because builders bear a huge risk in the current environment when determining which materials to use. Australia imports a significant proportion of its building materials, including timber from New Zealand and Canada, steel from China and Japan, tiles and flooring from Italy and Spain and plumbing and electrical products from China.

This increasing reliance on international manufacturers and providers means Australian builders do not always have adequate oversight of the quality of the products they use. They rely on manufacturers and sellers to vouch for their quality, conformance, suitability and traceability.

But if they choose wrong, the builder wears the risk.

Multiple issues then arise, including but not limited to:

- Safety risks such as potential structural failures, fire hazards and health hazards.



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- Legal risks such as the violation of the National Construction Code (NCC) and building regulations.
- Financial risks such as repair and replacement costs, which builders usually have to bear, or insurance related costs, which can lead to business insolvency.
- Warranty issues, including where non-conforming products void warranties by and to builders.
- Reputational damage, leading to a loss of future business opportunities, or even insolvency.

In an industry made up overwhelmingly of small businesses – 98 per cent of building and construction businesses are small in size – this ever-growing risk is problematic.

For this reason, Master Builders is overwhelmingly supportive of the creation of a building products register where it requires manufacturers to ensure designated products are held to a high standard and where the evidence of their claims accompanies the products. Such a mechanism gives comfort to the building and construction industry and will ideally remove or reduce the significant risk for builders when it comes to the longevity and safety of designated products.

That said, the proposal in the discussion paper unfortunately does not imply a scheme that will be fit for purpose or achieve meaningful change in this space.

The discussion paper itself is somewhat confusing and the methodologies proposed are difficult to reconcile. Master Builders notes the caveat in the footer of the discussion paper that assumptions and propositions about how a scheme will work are presented to assist in the provision of feedback and while this intention is appreciated, it has had the opposite effect. The assumptions and propositions have created confusion and lead Master Builders to hold concerns about the practical implementation of a scheme like the one proposed.

Master Builders is an active member of the National Building Products Coalition (NBPC) that has been working to advance the implementation of the National Building Products Assurance Framework (the Framework). The NBPC made a submission – to which Master Builders is a signatory – to the discussion paper highlighting the opportunities in the Framework to support better building product information. The NBPC has produced two pieces of work that support this goal and the goals of the proposed building products register – a Proposal for Change for Evidence of Suitability and an industry guide for the Digitalisation and Traceability of Building Product Information.

In its submission, the NBPC notes some concerns about the discussion paper and the scheme it proposes. Master Builders holds those same concerns, including but not limited to the fact that the discussion paper is vague about the evidence against which designated products are proposed to be assessed and there is no integration in the proposal with the NCC's evidence of suitability provisions.



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The discussion paper is also silent on how the proposed scheme will work within the existing infrastructure in the product conformance space. For example, where the NCC specifies a conformance path, meeting the requirements is relatively straightforward. It is when there is no identified pathway that the challenge lies. This is important but unaddressed in the discussion paper.

Furthermore, the proposal does not provide adequate detail on compliance and enforcement. More information needs to be given on processes, roles and responsibilities that will come into play in the event that conformance is found to be insufficient, as well as the chain of responsibility legislation, the ability to impose penalties and the role of accrediting bodies. Of particular importance to Master Builders is whether the information provided in the register can be relied upon to reduce risk or provide indemnity.

Please be assured that Master Builders is supportive in principle of the development of a building products register – improved product information is something for which the organisation has lobbied for many years. There are components of the discussion paper that would be valuable elements in a building product register scheme, such as the principle of transparency through public standardised product traceability with minimum required information and the principles of 'data integrity', interoperability and global connectivity.

However, from what is being proposed in the discussion paper it is still unclear how it will have a meaningful impact. This is disappointing because a building products register is absolutely needed in the building and construction industry, but the detail must be right for it to be practical, appropriate and properly implemented.

For completeness, attached is an appendix that directly answers the questions in the discussion paper. This has also been provided by way of the Consultation Hub.

Master Builders would welcome the opportunity to work with the ABCB in getting this important design and development phase right. If there is any further information we can provide, or if you would like us to convene a working group of experts in this space, we are more than willing to do so. We also stand ready to continue to offer our support through the NBPC.

Kind regards,

Alex Waldren
National Director, Industry Policy
Master Builders Australia



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APPENDIX

Consolidated questions

1. What is the level of your support for the proposed Scheme?

Master Builders supports ready access to product conformance information that is accurate, complete and available at the point of decision making. To be effective, a register needs to provide trustworthy and verifiable information that is appropriate to how products move through the supply chain and the needs of the numerous actors who use it.

This requires a holistic understanding of how the building control framework within which building products are specified, approved, procured and installed, operates.

The extent to which the proposed Scheme will deliver on that objective can only be determined in the detail which is not yet available.

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

The stated intent of the Scheme is to 'establish a risk-based product conformance Scheme for all building products'. The model, as presented in the proposal, does not represent the components of a 'Scheme' as defined in ISO/IEC 17000:2020. The description of it as a 'Scheme', in its current form, sits apart from internationally recognised frameworks for accredited product conformity schemes and therefore runs the risk of not meeting its objective.

To be recognised as a 'Scheme' the proposal must understand and work within the Australian product conformance infrastructure, a summary of which has been provided in the [National Building Product Assurance Framework](#). The intent of any 'scheme' must be to work within this infrastructure to facilitate access to accurate, complete and verifiable product assurance information at the point of decision making, and work to address any gaps and shortcomings in the product conformance infrastructure.

The intent of the proposal to establish a national register of products should be extended to include related information on its compliant use. For the building and construction industry a product register is only valuable when it includes accurate, reliable and complete information as to the compliant use of the building product.

The role of jurisdictions in assessing compliance occurs largely at the point of construction (with a limited exception in the case of the Queensland and NSW chain of responsibility legislation. For there to be confidence in the information provided in a product register, assessing compliance of the information provided in the register must be a first order priority for the ABCB and not a 'supplementary assessment'. The use of building products in building work will then continue to be assessed for compliance with the National Construction Code (NCC) under jurisdiction legislation.

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



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Master Builders supports the principle of improving product conformance and the ability to verify performance against NCC requirements.

Master Builders supports the principle of transparency through public standardised product traceability with minimum required information.

Master Builders also supports the principles of 'data integrity', interoperability and global connectivity.

The Scheme must be financially sustainable and cost recovery is one mechanism to achieve this.

With respect to compliance, a 'supplementary assessment' is insufficient. A comprehensive audit and remediation process is essential to ensuring the validity and accuracy of the building product information provided in the register. As is enforcement where suppliers of products which are required to provide information fail to do so.

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

See answer to question 2.

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

Master Builders supports the requirement of minimum information as one of the recommendations in the [National Building Product Assurance Framework](#).

Master Builders has been an active member of an industry coalition, the National Building Products Coalition (NBPC) that has been working to advance the implementation of the Framework. The NBPC has produced two pieces of work that support this goal – [Proposal for Change for Evidence of Suitability](#) and an industry guide for the [Digitalisation and Traceability of Building Product Information](#).

Master Builders 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. Master Builders supports the better implementation and enforcement of these existing requirements.

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

This is an issue that was considered at length both in the [National Building Products Assurance Framework](#) and subsequently by the NBPC.

Master Builders suggests that the registration scheme build on this work and provide similar wording to the Data Template provided in the industry guide prepared by the NBPC – [Traceability and Digitalisation of Building Product Information](#).

Master Builders would appreciate clarity on what is meant by *"all known compliance issues, regardless of number should be specific as part of the minimum information."*



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Master Builders would also like to understand how this 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?

Master Builders is not clear on the supporting evidence to be provided. What is “lodged, granted and non-granted approval details and use information”? More information on this intention would be appreciated.

7. Should full test results be accessible and if not, why?

The information needs to be detailed enough to determine conformance for a specific use. Full test results are often not required but where the building surveyor (certifier) determines that they are necessary they should be made available.

The [Proposal for Change for 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 achieve the relevant requirements of the NCC, or not.

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

There needs to be conformance against *all* relevant parts of the NCC.

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.

The National Building Product Coalition’s [Proposal for Change](#) to the Evidence of Suitability provisions support the proposal in providing a standardised and trustworthy methodology for demonstrating NCC conformance.

9. What other options or changes do you propose to a risk-based approach to demonstrating NCC conformance and why?

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. This will establish the an integrated link in the proposal to the evidence against which products are to be assessed which is currently not addressed.

The proposed approach for ‘designated products’ seems to require a ‘judgement call’ about the products that are in the higher information need category, with no clear means of determining where that line should be drawn, by whom, or how. It is very likely that the designation process would not capture relevant products that are intended to perform critical



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functions. This will result in a haphazard approach to what is adequately documented and what is not, thereby impacting the standard of confidence that can be derived from the proposal.

An alternative approach is a 'designated purpose' which can more easily be described (structural support, fire safety etc) so anyone proposing to provide a product that is intended to be used for a 'designated purpose' would have to meet elevated evidence criteria. Product manufacturers would understand that if they want their products to be used in critical situations, they will need to provide appropriate evidence for this duty. For example, a screw manufacturer can choose to provide additional evidence so their products can be used in critical situations (e.g., fixing a fire door frame to a fire wall), or if they intend to supply product in non-critical situations, such as fixing furniture together.

The definition of a 'designated purpose' would also be far simpler with significantly greater levels of transparency and logic to make compliance easier to understand.

10. Do you view modern methods of construction and complex offsite/modular products as being designated products and if so why/why not'?

Modern methods of construction encompasses 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. As with all building products, products that could be viewed as 'modern methods of construction' need to be able to demonstrate conformance under the NCC evidence of suitability provisions. Different processes and rules for modern methods of construction are not appropriate or necessary.

11. Would you prefer:

- a) a stringent test for registration (e.g. lab tests) accompanied with mandatory acceptance at building certification stage, or**
- b) a medium assessment standard accompanied by a 'preferred' status at building certification stage,**
- c) and why?**

All building products must be accompanied by sufficient evidence to determine their appropriate use in buildings. The level and nature of testing (evidence) is dependent on the type of product and the appropriate NCC evidence of suitability pathway necessary to determine is appropriate use in buildings. Where this requires 'stringent tests' they must always be undertaken before their specification and use in buildings.

Mandatory acceptance must be dependent not only on the existence of test information but whether it is sufficient and appropriate to the specific use of the building product. The building surveyor/certifier must always retain discretion to determine whether the testing information is sufficient for a specific use.

12. Would you prefer:



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- a) a robust, and potentially more expensive, evidentiary stage at registration, followed by
- b) less frequent and lower cost audits, or
- c) a lower cost registration, followed by a more robust, and a potentially more costly, cost recovered audit program (meaning the cost of the audit is paid for by the product sponsor),
- d) and why?

Where a product and its related information is going to be listed on a government register, industry must have complete confidence in the accuracy of that information.

The issue of liability and risk has not been addressed in the discussion paper. If a building practitioner were to rely on the information in the register, would they be indemnified against future liability?

It is also noted that unless the administration of a products register is adequately resourced, a product register as a compliance tool can lead to barriers to use of compliant products, including delays in being listed on register, delays in removal of non-compliant products from a register, costs of multiple registrations and slow adoption of new technologies.

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

Master Builders agrees with the requirement for standardised information to be provided and readily available across all building products.

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

Product traceability should be advanced by government leadership and advice and not through mandates.

A building products registration scheme will no doubt require manufacturers and suppliers to invest 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" and must be considered.

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

Master Builders stresses the importance of the scheme 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) provide necessary resources to enforce its use during project planning, design, procurement, construction and use.



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However, experience has shown that jurisdictions are often either reluctant, or in some cases unable, to vary their legislation to enact nationally consistent regulatory changes. Industry reiterates how important it is that this is a national system supported by jurisdictions. If this is not the case, it will not work.

With regard to auditing and compliance, further consideration needs to be given to how absent, incomplete or inaccurate building products on the register could be a matter for referral to the jurisdictions for compliance action. The question must be asked: which state or territory would have carriage for compliance to the national register?

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 here.

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

There must be a transparent process for determining 'designated products' that is reviewed to an agreed timeline. Any decision must be informed by experts with detailed technical knowledge of construction and the NCC. The ABCB and the jurisdictions making the decision should be informed by a technical advisory group.

17. Any other comments

Master Builders is of the view that the [National Building Products Assurance Framework](#), which speaks to the building control framework, is an essential resource to the development of the proposal.