



COVERSHEET

Minister	Hon Jenny Salesa	Portfolio	Minister of Building and Construction
Title of Cabinet paper	Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill: Approval for Introduction	Date to be published	12 June 2020

List of documents that have been proactively released

Date	Title	Author
17 March 2020	Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill: Approval for Introduction	Office of the Minister of Building and Construction
17 March 2020	LEG-20-MIN-0040	Cabinet Office

Information redacted

NO

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[In Confidence]

Office of the Minister for Building and Construction

Chair, Cabinet Legislation Committee

Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill: Approval for Introduction

Proposal

1. This paper seeks approval to introduce the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill (the Bill). The Bill contributes to a programme of reforms to the building regulatory system that will lift the efficiency and quality of building work and provide fairer outcomes if things go wrong. Specifically, the proposals within the Bill will:
 - 1.1. strengthen the regulation of building products and building methods;
 - 1.2. introduce a specialist framework for modern methods of construction (MMC). Note that the Bill refers to Modular Component Manufacturers (MCM), not MMC as a scheme;
 - 1.3. strengthen the existing product certification scheme (CodeMark); and
 - 1.4. expand the purpose of the building levy to support the sector; amend the maximum penalties for existing offences; and change public notification requirements.

Policy

2. The building sector plays a key role in the delivery of the government's housing and urban development priorities to improve housing supply, affordability and quality. The sector is under significant pressure to deliver safe, durable and affordable houses, buildings and other infrastructure, and meet the growing pipeline of construction projects.
3. On 30 September 2019, Cabinet agreed to amend the Building Act 2004 (the Act) to implement the first phase of the building system legislative reform programme [CAB-19-MIN-0507 and CAB-19-MIN-0508 refers].
4. Through the Bill, the following will be achieved for the sector and New Zealanders:
 - 4.1. The building reforms make it cheaper and faster to use different building methods such as offsite construction, and supports designers and builders to choose the right products and install them in the way intended, which may speed up consenting.

- 4.2. A new manufacturer certification and registration scheme will provide faster, more consistent building consent approaches for manufacturers that are able to meet quality and performance standards and have a demonstrated ability to produce buildings and components that comply with the building code. Building Consent Authority (BCA) involvement will focus on work not covered by the certification scheme, such as foundations and site works, potentially decreasing by half the number of building inspections required.
- 4.3. The existing product certification scheme (CodeMark) will be strengthened by empowering MBIE to administer the registers of product certification bodies and product certificates.
- 4.4. New offences will be created to support the effective operation of the manufacturer certification scheme, with higher maximum penalties, new enforcement powers and a longer period for regulators to bring a prosecution that will allow more time for BCAs to investigate a potential offence against the Act.
- 4.5. A widening of the scope of the building levy will allow MBIE to invest in a high performing building system through a whole-of-system approach to regulation.
- 4.6. A change to allow public notifications to be carried out online only rather than published in daily newspapers will show the industry is moving with the times, recognising the public's changing preferences in relation to how they access information.
5. Overall, trust and consumer confidence in the regulatory system and building sector is expected to improve, there will be better opportunities to meet demand and support economies of scale and the risk to New Zealand's reputation from product and building defects will diminish over time.
6. This Bill forms part of a wider work programme of reform. The government and industry are using a range of regulatory and non-regulatory levers to address identified problems. This Bill addresses problems resulting from legislative settings, where non-legislative options would not be effective. For example, only a change to current legislative settings can create a deemed to comply pathway for offsite construction undertaken by certified manufacturers.
7. Further reforms will strengthen the occupational regulation of licensed building practitioners; engineers; and plumbers, gasfitters and drainlayers. I intend to seek Cabinet decisions on these reforms later this year. Cabinet agreed to progress the reforms through two separate bills in order to achieve results in a timely manner.

Further policy decisions

8. Cabinet authorised me to make decisions on issues arising during the drafting process [CAB-19-MIN-0508 refers]. Pursuant to that, I have approved five further policy decisions required to give effect to the intent of Cabinet in the drafting of the Bill:

Policy decision	Rationale
That the penalty level for failing to provide requested information to support a decision to issue a product warning or ban be set at a lower maximum of \$20,000 for an individual and \$60,000 for other persons.	This better reflects the possible harm to the integrity of the regulatory system, the fairness of the fine and consistency with similar offences in other regulatory regimes.
Reduce the statutory timeframe for processing building consents for buildings comprising 100% MMC components from 20 to 10 working days, with a regulation making power to vary the consenting timeframe for buildings with some MMC components in the future, if required.	This change reflects the lower administrative effort in consenting these buildings, and incentivises 100% MMC builds. The regulation-making power will allow MBIE to see how pilot projects are using the MMC process and assess whether further efficiency gains from the consenting timeframe would be appropriate.
Include the ability for MBIE's chief executive to make operational rules for the MMC scheme.	This mirrors the Cabinet approved ability to make rules for the product certification scheme, and is required to establish complementary regimes.
Extend the ability for the chief executive of MBIE to share with other regulatory bodies information and documents <i>obtained in the course of an investigation</i> , to include the sharing of information <i>obtained while undertaking enforcement activities</i> .	The policy rationale of the maintenance of public safety approved by Cabinet for sharing information and documents for the purpose of investigating building products and methods should also be applied in relation to information obtained in enforcement.
Enable the chief executive of MBIE to enter premises and inspect building products, materials or MMC components, or the manufacturing of these, to determine whether enforcement action needs to be taken, or for the purpose of taking enforcement action, as authorised under the Building Act.	Cabinet has approved this power for enforcement of MMC provisions. Extending this beyond MMC enforcement is required for consistency with similar offences and to establish complementary MMC and product certification schemes.

Building products and methods

9. The Bill provides for more active regulation of building products and building methods under the Act. Quality building products are central to safe and durable buildings. Good product information, clear responsibilities, and stronger investigative and enforcement powers for MBIE to take corrective action are needed to support the building and construction sector to make good decisions about the use of building products.
10. The amendments provide a clear definition of 'building product' and 'building method'. These definitions will be relied on to prescribe building product information requirements and clarify the responsibilities of manufacturers, suppliers and builders in respect of those products and methods.
11. The Bill introduces the power to make regulations that will prescribe minimum information requirements that must be provided about building products and the manner and form in which the information must be provided. The Bill also introduces new offences and penalties for breaching these requirements.
12. These changes will ensure that those who manufacture, supply or use building products:

- have access to information to support good decisions about the specification, use, installation, inspection and maintenance of building products; and
 - can be held accountable for any breaches of their responsibilities in relation to building products and methods and their use.
13. Consistent information will also make it easier for people to compare and choose building products.
14. A key mechanism for regulating building products and methods are warnings and bans. Currently, the Act does not provide the chief executive of MBIE with sufficient powers to require the information or documents necessary to determine whether to issue a warning or a ban of a building product or building method. The Bill addresses this gap, by ensuring that the chief executive can require information to be provided when necessary for the purpose of determining whether to issue a warning or ban. This information may also be shared with other regulatory agencies when appropriate to ensure public safety.
15. The type of information that the chief executive could require includes:
- any test data for the product;
 - information on where the product has been supplied;
 - any concerns raised previously regarding the product; and
 - records of product failures or any records kept regarding the product including manufacturer audits or internal documents for quality assurance.

Manufacturer certification scheme for modern methods of construction (MMC)

16. Using new and innovative building products and building methods can lift productivity and reduce building costs and time. People need to have confidence and certainty that new products and methods will comply with the building code. However, a lack of clarity and confidence is creating barriers to the uptake of MMC such as prefabrication and offsite manufacturing.
17. This Bill provides the enabling framework for a manufacturer certification scheme for MMC. This scheme is intended to support increased use of offsite construction and enhance the productivity and efficiency of the building system by streamlining the consenting pathway for buildings manufactured offsite.
18. The Bill provides for the establishment of a voluntary certification scheme, based on a conformity model approach, which enables registered MMC manufacturers to be certified to produce modular building components within a defined scope of practice. These components will be deemed to comply with the building code.
19. Depending on how they meet specified eligibility criteria, a manufacturer may be certified to:
- 19.1. **manufacture only** modular building components to a building code compliant design (using designs that could be approved through MultiProof or by a BCA through a standard building consent application); or

- 19.2. **design and manufacture** modular building components to a building code compliant design that they have developed themselves, or that has been approved by either MultiProof or a BCA, as above.
20. The MMC scheme integrates a new deemed to comply pathway for modular components into the existing consenting system. When processing a building consent application for a building using modular components, a BCA will check the design for the whole building and proposed site works, but will not look at certified modular components beyond how they will interact with other elements (such as site work, foundations, connections to services, etc). Once building work has begun, BCAs will only need to inspect non-modular component elements for compliance with the building consent.
21. Certified manufacturers, registered by MBIE and compliant with the requirements of that registration, will be liable for the performance of their own modular components, and BCA liability will be limited to the aspects of a building that they are required to inspect. BCAs would issue a single code compliance certificate that covers all aspects of the building, with any modular components being deemed to comply with the building code.
22. The Bill specifies robust checks and balances (manufacturer and certification body eligibility criteria, audit, and suspension of registration and certification, and the setting of scheme rules by MBIE that must be complied with to provide assurance to homeowners, building users and BCAs. The legislation also includes new offences and penalties to help ensure compliance.
23. The changes proposed in the Bill will enable faster consenting for offsite manufacturing work done by certified manufacturers, saving consumers time and money. The clarification of roles and responsibilities for MMC will also ensure people take appropriate responsibility for their work. The manufacturer certification scheme will allow New Zealand to realise the full potential of MMC and support the government's wider goal of improving housing supply, sustainability and affordability.

Product certification scheme (CodeMark)

24. The existing product certification scheme (CodeMark) is designed to provide assurance that products comply with the building code. However, there is currently a lack of confidence in the scheme. To address these concerns the existing product certification scheme is to be strengthened and brought into line with recommended best practice by enabling MBIE to administer the registers of product certification bodies and product certificates.
25. Specifically, this Bill will make the following changes to the product certification scheme:
- There will be new registration requirements for Product Certification Bodies (PCBs) to ensure the quality of the product certification scheme. MBIE will be given the power to initiate investigations into PCBs and suspend or revoke registrations where appropriate. A PCB could be an existing industry body that also has other functions.

- Product certificates will not be registered if they do not meet the product certificate registration criteria. Product certificates may also be investigated, and may be suspended or revoked if they no longer meet the product certificate registration criteria. This will allow MBIE to take active steps to manage poor-performing PCBs and improve the quality and consistency of product evaluations and certificates.
 - MBIE will also now have the power to make rules for the product certification scheme which will provide clarity to PCBs and certificate holders, ensure consistency, and align with regulatory best practice.
 - Any person found to be misrepresenting themselves as a PCB, falsely issuing a certificate, or claiming a product has been evaluated and certified, will have committed an offence and will be subject to penalties.
26. These changes to the Act will build confidence so people know that they are using code-compliant products in a way that will result in safe and durable building work, and ensure faster consenting processes for certified products, saving consumers time and money.

Building levy

27. The building levy is the levy payable by an applicant for a building consent under section 53 of the Act. The levy is collected by BCAs and paid to MBIE's chief executive so that it may be used "for, or in connection with, the performance of the chief executive's functions under the Act..."
28. Section 11 of the Act provides a detailed list of the role of the chief executive and describes a number of the chief executive's functions under the Act. However, the list is not exhaustive and the use of the levy is confined to the performance of functions under the Act. This has meant that initiatives undertaken in accordance with the chief executive's functions under other legislation that relate to the building sector have not been able to be funded or fully funded from the building levy, even though these initiatives are likely to confer broad benefits to all building levy payers.
29. Cabinet has agreed that the building levy should be able to fund a broader range of functions and activities relating to the building and construction sector beyond those which might be carried out under the Act [CAB-19-MIN-0508 refers]. These broader functions and activities would include actions that relate to the monitoring, overseeing or improving the performance of the building sector or any part of the building sector, or regulatory systems under other relevant acts that relate to the building sector. For example, occupational regulation of the building sector.
30. These functions must also benefit levy payers or manage risks to levy payers, and must be functions that central government would reasonably be expected to perform, and not be currently funded by any other agency or party.
31. In developing this proposal, I have been mindful of the general principles and laws regarding the collection and spending of levy funds.
32. The Legislation Design and Advisory Committee (LDAC) has provided extensive feedback to my officials on this change. I am satisfied that the proposed wording on

extending the application of building levy revenue does not create any new functions, powers or obligations for the chief executive.

33. This change will allow MBIE to invest in a high performing building system through a whole-of-system approach to regulation.

Offences and penalties, and public notification

34. It is important that everyone comply with the obligations placed on building professionals, tradespeople and other people under the Act. New offences have been created to support compliance with product information requirements, MMC and product certification.
35. However, the intent is that while manufacturers overseas might be at fault for a failure with a building product or method, only New Zealand suppliers/importers would be legally liable for the offences and penalties in the Act. For manufacturers, the remedies when they have failed or acted inappropriately will be to suspend or revoke their accreditation/registration and remove them from the relevant scheme.
36. Additionally, many of the current maximum financial penalties set out in the Act have not been adjusted since its enactment. This means that the deterrence value of the penalties has eroded overtime. To improve this compliance and deter poor or illegal behaviour, the Bill amends the maximum penalties upon conviction to a level that better reflects the seriousness of the offence.
37. Regulators have reported that the current six month timeframe to investigate a potential offence is too short given the complexity of investigating a potential offence against the Act and the number of people involved. This hinders their ability to undertake a thorough investigation and is out of line with other legislation. Therefore, this Bill extends the timeframe to investigate potential offences to allow more time to be dedicated to researching potential breaches, gathering evidence and potentially allowing for multiple enforcement avenues to be pursued that encourage greater compliance. The new timeframe is 12 months.
38. This Bill also removes the requirement to publish in newspapers various matters that relate to the exercise of certain powers by the chief executive of MBIE or the Building Practitioners Board, to respond to changes in technology and better reflect how the public accesses information.

Impact analysis

39. A Regulatory Impact Statement (RIS) was prepared by MBIE in accordance with the necessary requirements and was submitted at the time that Cabinet approved the policies relating to the legislative reform programme [CAB-19-MIN-0507 and CAB-19-MIN-0508 refers]. MBIE's review panel considers the analysis meets the quality assurance criteria.
40. The RIS has been published on MBIE's website.

Compliance

41. The Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill complies with:
 - 41.1. the principles of the Treaty of Waitangi;
 - 41.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. The Ministry of Justice are currently undertaking a vet to determine compliance with the New Zealand Bill of Rights Act 1990, and MBIE will continue to work with the Ministry of Justice and PCO to ensure the introduction version of the Bill is consistent with the New Zealand Bill of Rights Act 1990.
 - 41.3. the disclosure statement requirements, as covered in the attached Departmental Disclosure Statement;
 - 41.4. the principles and guidelines set out in the Privacy Act 1993;
 - 41.5. relevant international standards and obligations; and
 - 41.6. the [Legislation Guidelines](#) (2018 edition).
42. In regards to the relevant international obligations and standards, the World Trade Organisation (WTO) Agreement to Technical Barriers to Trade (TBT Agreement), to which New Zealand is a party, requires that where possible technical regulations and conformity assessment procedures affecting trade should be based on international standards and guidelines. Processes for checking conformance should also be internationally recognised to avoid unnecessary trade barriers for goods coming from overseas and harmonise rules. The Bill has been drafted to ensure compliance with WTO TBT obligations.
43. Consultation with the Ministry of Foreign Affairs and Trade (MFAT) confirms that the proposed product information requirements in the Bill will need to be notified under the TBT Agreement, both at the time of the introduction of the Bill and when the subsequent proposed regulations are consulted on.
44. WTO members are required to notify other WTO members of proposed measures that may have a significant effect on other members' trade and that are not based on relevant international standards. This gives other members the opportunity to comment on the proposal before the regulation is finalised.
45. MBIE's International Trade team are working with MFAT to provide advice and assistance for this process. As the Bill develops, it will continue to be checked for consistency with WTO TBT obligations.

Consultation

46. Comprehensive consultation has taken place across the sector, beginning with the Building System Legislative Reform discussion paper released for public consultation in April 2019. When public consultation on the proposed reforms closed on 16 June 2019, MBIE had received 470 submissions. 215 of those submissions came from

organisations and 255 from individuals. The majority of submissions came from councils, BCAs, engineers, builders, and consumers. MBIE used the submissions to inform its advice to the government on the proposed reforms.

47. Further consultation with BCAs and other key stakeholders has also been undertaken, particularly in regard to the MMC scheme. MBIE has explored the MMC scheme at a high level with industry body PrefabNZ and a small number of major offsite manufacturers it nominated (Lockwood, Spanbild, NZ Tiny Homes). They are largely supportive of the policy intent for this scheme and anticipate that it will reduce the time and investment currently required for them to build relationships with any new BCAs.
48. MBIE has also consulted with the industry body Joint Accreditation System of Australia and New Zealand (JAS ANZ) and the PCBs involved with CodeMark over the last 12 months, and will continue to work closely with JAS ANZ as the Bill develops to test the proposals and ensure they will work in practice.
49. MBIE released a version of the Bill for discussion with JAS ANZ, Local Government New Zealand and Kāinga Ora at the same time as Ministerial and Departmental consultation on the Bill and this paper.
50. An inter-agency group of government and/or public bodies has regularly met to consider the work programme and Bill. The following government departments have also been consulted on the Bill and this paper, and their feedback has been incorporated:
 - the Treasury
 - Departments of the Prime Minister and Cabinet, Internal Affairs and Corrections
 - the Ministries of Housing and Urban Development, Justice, Foreign Affairs and Trade, Health and Education
 - the Ministry for the Environment
 - Te Puni Kōkiri.
51. MFAT has highlighted the need for notification of both the Bill and the subsequent regulations to the international community to ensure compliance with international trade obligations. MBIE will continue to work with MFAT to complete the notification process.
52. Local Government New Zealand and the following crown entities have also been consulted on the Bill and this paper, and their feedback has been incorporated:
 - Kāinga Ora – Homes and Communities
 - the Reserve Bank of New Zealand
 - the Commerce Commission
 - WorkSafe NZ
 - the Office of the Ombudsman
 - the Environmental Protection Agency.

53. The Office of the Privacy Commissioner has been consulted..
54. Discussions have been held with the Legislation Design and Advisory Committee on the policy proposals and the drafting of the Bill. Concerns raised by them have been addressed.
55. I have consulted with my Ministerial and caucus colleagues.

Binding on the Crown

56. The Bill will bind the Crown.
57. The Bill does not create new agencies or amend law relating to existing agencies.

Allocation of decision making powers

58. The Bill provides the Chief Executive of MBIE with new powers to take disciplinary action, suspend or revoke the registration of certification bodies, product certificates, and certified manufacturers under the MMC and product certification schemes. These decisions are appealable to the district court. The chief executive of MBIE may also issue a notice to take corrective action where a person is failing to comply with building product information requirements prescribed in regulations.

Associated regulations

59. Regulations will be required to support the implementation of the Bill. They will prescribe information requirements for building products, the requirements for a manufacturer certification scheme for modern methods of construction, the requirements to strengthen the existing a product certification scheme, offences and penalties, and public notification.
60. The Bill provides for the making of regulations and scheme rules to support the implementation of the primary legislation. The Building Act currently allows for the creation of regulations and rules, the Bill expands this to include the product information, product certification and MMC provisions. Cabinet has agreed that the regulation making powers within the Act be used to support the implementation of MMC, for example, through the setting of fees or establishing a process for registration.
61. The Regulations are being developed concurrently with the development and drafting of this Bill.
62. Policy recommendations for associated regulations will be provided to me for in principle approval in July 2020.

Other instruments

63. The Bill includes new empowering provisions for the making of rules by the Chief Executive of MBIE that will be legislative but not disallowable instruments.

Definition of Minister/department

64. The Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

Commencement of legislation

65. The Bill provides for some amendments to come into force the day after Royal Assent. These are the new notification requirements, the levy change and updates to existing penalties. The remaining provisions in the Bill will come into force either on a date(s) set by Order in Council; or, if not brought in earlier, twelve months after the date of Royal assent.

Parliamentary stages

66. This Bill has a category two priority on the 2020 Legislation Programme (to be passed in 2020).
67. I propose that it be introduced in early April 2020 and referred to the Environment Select Committee for consideration.
68. Note that I will be seeking a three month select committee process, in order to have the Bill passed by August 2020. There is an associated risk that the public or sector bodies will consider this time period insufficient. I am confident that the extensive consultation done across the sector during the policy development and drafting stages of this Bill has provided sufficient opportunities for the policy proposals and Bill to be tested and crafted with input from the sector.

Proactive Release

69. The Minister for Building and Construction will proactively release this Cabinet paper and the associated minute to the public within 30 days of Cabinet's agreement, or the introduction of the Bill (whichever is earliest). The other Cabinet papers relating to this Bill have already been publicly released on MBIE's website.

Recommendations

The Minister for Building and Construction recommends that the Committee:

1. **note** that the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill holds a category two priority on the 2020 Legislation Programme (to be passed in 2020);
2. **note** that this Bill contributes to a programme of reforms to the building regulatory system that will lift the efficiency and quality of building work and provide fairer outcomes if things go wrong. The Bill will:
 - 2.1. strengthen the regulation of building products and building methods;
 - 2.2. introduce a specialist framework for modern methods of construction; and
 - 2.3. strengthen the existing product certification scheme (CodeMark).

3. **note** that Cabinet authorised the Minister for Building and Construction to approve changes consistent with the policy intent [CAB-19-MIN-0508 refers], and I have approved five drafting decisions to address practical issues highlighted during drafting:
 - 3.1. that the penalty level for failing to provide requested information to support a decision to issue a product warning or ban be set at a maximum of \$20,000 for an individual and \$60,000 for other persons;
 - 3.2. a reduction in the statutory timeframe for a BCA processing a building consent application for a whole building comprising 100% MMC components from 20 to 10 working days, with a regulation making power to vary the consenting timeframe for buildings with some MMC components in the future, if required;
 - 3.3. including the ability for MBIE's chief executive to make operational rules for the MMC scheme;
 - 3.4. extending the ability for the Chief Executive of MBIE to share with other regulatory bodies information and documents obtained in the course of an investigation, to include the sharing of information obtained while undertaking enforcement activities; and
 - 3.5. enabling the Chief Executive of MBIE to enter premises and inspect the manufacturing of building products, materials or MMC components to determine whether enforcement action needs to be taken, or for the purpose of taking enforcement action, as authorised under the Building Act.
4. **agree** that the Bill be introduced in April 2020;
5. **note** that I will be seeking a three month select committee process, in order to have the Bill passed by early August 2020;
6. **note** that in addition to the select committee process, the extensive consultation done across the sector during the policy development and drafting stages of this Bill has provided sufficient opportunities for the policy proposals and Bill to be tested and crafted with input from the sector;
7. **note** that regulations and rules will be required to support the implementation of the Bill, and that policy decisions for associated regulations will be provided to me for 'in principal' approval in July 2020.
8. **agree** that the Government propose that the Bill be:
 - 8.1. referred to the Environment Select Committee for consideration;
 - 8.2. enacted in August 2020;
9. **agree** to allow PCO to continue to make minor and technical editorial changes to the Bill prior to Introduction, and those required to ensure consistency with the rights and

freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Authorised for lodgement

Hon Jenny Salesa
Minister for Building and Construction

PROACTIVELY RELEASED