



## COVERSHEET

|                               |   |                             |                           |
|-------------------------------|---|-----------------------------|---------------------------|
| <b>Minister</b>               | Hon Poto Williams   | <b>Portfolio</b>            | Building and Construction |
| <b>Title of Cabinet paper</b> | Building Amendment Bill proposals for regulations: Release of Discussion Document | <b>Date to be published</b> | 10 June 2021              |

### List of documents that have been proactively released

| <b>Date</b>   | <b>Title</b>   | <b>Author</b>                                       |
|---------------|--|---|
| 14 April 2021 | <i>Building Amendment Bill proposals for regulations: Release of Discussion Document</i> | Office of the Minister of Building and Construction |
| 14 April 2021 | Cabinet minute: DEV-21-MIN-0072  | Cabinet Office                                      |

### Information redacted

**YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld to maintain legal professional privilege and the constitutional convention protecting the confidentiality of advice tendered by Ministers and officials.

The appendix *Building System Reform: Proposals for regulations for Building Product Information Requirements; Modular Component Manufacturers; and Product Certification Discussion Document* has not been included as it has already been published on MBIE's website.

## In Confidence

Office of the Minister for Building and Construction

Cabinet Economic Development Committee

## Building Amendment Bill proposals for regulations: Release of Discussion Document

### Proposal

- 1 This paper seeks agreement to release the discussion document, *Building System Reform: Proposals for regulations for Building Product Information Requirements; Modular Component Manufacturers; and Product Certification*, for public consultation. The discussion document covers proposals for regulations to implement new building product information requirements, a modular component manufacturer scheme and strengthening the current product certification scheme.
- 2 The regulations will be made under the Building Act 2004 (the Act) to support the implementation of aspects of the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill (the Bill). The making of the proposed regulations therefore depends on the successful passage of the Bill through Parliament.

### Executive Summary

- 3 The Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill (the Bill) is Phase One of the Building System Legislative Reform Programme. The reforms being progressed will lift the efficiency and quality of building work and provide fairer outcomes if things go wrong.
- 4 The Bill is currently before the House, and is awaiting the Committee of the whole House stage.
- 5 Regulations are required to implement changes proposed in the Bill relating to building product information requirements, the modular component manufacturer scheme and product certification.
- 6 Proposals for regulations have been developed alongside the Bill and in consultation with key stakeholders. Key stakeholders have indicated broad support for the proposals, but robust engagement is expected as the consultation progresses.
- 7 I seek agreement to release a discussion document outlining proposals for regulations on or about 30 April 2021. The public consultation will take place over six weeks.
- 8 The discussion document is technical, however it also includes an executive summary of key proposals intended for a general audience.

9 I intend to seek Cabinet agreement to the final policy proposals in

Confidential advice to  
Government

## Background

- 10 The proposals in this paper are being progressed as part of the Building System Legislative Reform Programme (the Reform Programme), which is a series of reforms to building laws to lift the efficiency and quality of building work, and provide fairer outcomes if things go wrong.
- 11 The reforms are progressing in three phases:
- 11.1 Phase Two will progress reforms to occupational regulation of engineers and practitioners in the building and construction sector, so that people can have more confidence in these professions and their work; and
  - 11.2 Phase Three will investigate options to address the lack of a building warranty insurance market and risk allocation in the building and construction sector.
- 12 The proposals in this paper are part of Phase One of the Reform Programme, which focuses on building products, building methods and putting in place systems and processes to speed up consenting for new and innovative ways of building. The key current deliverable in Phase One is the Bill, which is currently before the House and which proposes:
- 12.1 a minimum set of information on building products to support better informed decision-making by building consent authorities, builders, building owners, designers and architects;
  - 12.2 a new modular component manufacturer certification scheme to enable faster, more consistent building consent approaches;
  - 12.3 a strengthened product certification scheme (known as CodeMark) to improve confidence that new and innovative building products and methods will comply with the Building Code and will be accepted by building consent authorities;
  - 12.4 new offences and higher maximum penalties to promote compliance, and a longer period to file a charge to make it easier for people to be held to account when they do not follow the rules;
  - 12.5 amending the scope of what the building levy is collected and used for to allow the Ministry of Business, Innovation and Employment (MBIE) to monitor, oversee and improve the performance of the building system in line with current chief executive functions; and
  - 12.6 a change to allow public notifications to be carried out online rather than published in daily newspapers, to show the industry is moving with the times, recognising the public's changing preferences in relation to how they access information.

- 13 The Bill was referred to the Environment Committee in May 2020, and was reported back to the House on 2 March 2021. It is currently awaiting Committee of the whole House stage.
- 14 Collectively, these changes are expected to improve trust and confidence in the regulatory system and building sector, with greater opportunity for economies of scale and a reduced risk to New Zealand's reputation from product and building defects.
- 15 Alongside this paper, I am also asking the Committee to approve the release of another public discussion document on issues with the licensed building practitioners scheme established by Part 4 of the Act. This work is part of Phase Two of the Reform Programme.

### **Regulations are required to implement key reforms in the Bill**

- 16 The Act authorises the creation of regulations to (among other things) prescribe procedures for regulating and controlling the construction, maintenance, and demolition of buildings; and prescribe the form or content of applications, or any other documentation or information required under the Act.
- 17 New or amended regulations will be required to support key reforms in the Bill relating to building product information requirements, the modular component manufacturing scheme and product certification.
- 18 The proposals for regulations have been developed alongside the Bill and in consultation with key sector stakeholders<sup>1</sup>. Now that the Bill has been reported back to the House, work on the supporting regulations can be accelerated. The first step is to undertake public consultation on proposals for regulations.
- 19 The following assessment criteria has been applied in developing proposals for regulations:
  - 19.1 Confidence: system participants (including users, manufacturers and building consent authorities) should have confidence in the schemes, and in the designs, products and buildings that make use of them.
  - 19.2 Certainty and clarity: the regulatory framework should have clear processes and responsibilities for scheme participants (including users, manufacturers and building consent authorities) and have reasonable compliance costs.
  - 19.3 Cost effective: the benefits of the proposals outweigh the risks and costs.
  - 19.4 Proportionate: the proposals are proportionate in the way they treat regulated parties.

---

<sup>1</sup> Stakeholders engaged with included building consent authorities, the Joint Accreditation System of Australia and New Zealand (JAS-ANZ), product certification bodies, some modular component manufacturers, PrefabNZ, GS1 and the Insurance Council of New Zealand.

- 19.5 Flexible: there is enough flexibility to allow regulated parties to adopt efficient or innovative approaches while also meeting their regulatory obligations.
- 20 Stakeholders who have been part of informal consultation to date have shown broad support for the proposals for regulation, and their feedback so far has helped to refine the proposals in the draft discussion document attached. Although feedback has been generally positive to date, robust engagement is expected as consultation progresses.
- 21 The proposals for regulations outlined in the attached draft discussion documents are summarised as follows.

*Minimum requirements for information on building products*

- 22 Poor building product information can lead to delays in consenting, increased costs and poor building outcomes if the products that are chosen are not fit for purpose.
- 23 The introduction of minimum building product information requirements will ensure there is a minimum level of product information available for every building product.
- 24 This information will be used by designers, engineers, tradespeople, building consent authorities and consumers, and will provide confidence that the products used are fit for purpose and contribute to ensuring safe and durable buildings.
- 25 Better information on building products will support better and more informed decision-making, helping designers and builders to choose the right products and install them in the way intended, and support faster consenting.
- 26 Recent media coverage has also highlighted the need for building owners, homeowners and consumers to have confidence that the building products they use are safe and fit for purpose. For instance, concerns have been raised about taps leaching lead into sanitary water.
- 27 The Bill introduces regulation-making powers that will be used to prescribe the information requirements for building products. The Bill also introduces offences, penalties and investigation powers that support these requirements.
- 28 The proposals regarding building product information requirements have been split into three areas.
- 29 First, the discussion document proposes regulations to prescribe **who** must disclose the information to whom, and how it must be verified. This includes:
- 29.1 Manufacturers and importers will be responsible for providing information about the building products they manufacture or import and may be held accountable if they are found to have made false, misleading or unsubstantiated claims about their products.

- 29.2 Distributors and retailers of building products will only be responsible for checking that those products have the information required and for ensuring that the information is made available to those that they distribute or sell the product to prior to sale.
- 30 Second, the discussion document proposes regulations to prescribe **what** information must be disclosed in relation to a building product. This includes:
- 30.1 Categories of information that are required to be provided, such as:
- a description of the product;
  - details of the manufacturer/supplier, including contact details;
  - performance, scope and limitations of use;
  - design and installation requirements;
  - maintenance requirements;
  - declaration if a product is subject to a warning or ban; and
  - information on the warranty of the product.
- 30.2 A requirement that product information reference all relevant Building Code clauses for a product's scope and limitations of use, and illustrate how the product meets Building Code clauses.
- 31 Third, the discussion document proposes regulations to prescribe **how** the information must be disclosed, how it must be stored and to what data standards.
- 32 Cabinet previously agreed to progress options that did not include a government-owned product database due to complexity and cost and because there are already existing databases in the market. The new information requirements is expected to increase demand for the use of these databases [CAB-190 MIN-0508 refers].
- 33 The discussion document also proposes an 18-month transition period for the building product information regulations to provide the sector with sufficient time to make the changes required to their systems and processes.
- 34 This information is vital to building consent applications. The present limitations on, and inconsistency regarding basic information requirements, is a common reason for building consent authorities' requests for further information. This can lead to delays in consenting and costs to both building consent authorities and builders.
- 35 The Ministry of Education proposed to add a new requirement that embodied carbon in products and other risk factors be included in the proposed building product information requirements. At this stage, the focus is on the provision

of basic minimum information requirements for all building products to ensure they are fit for purpose and contribute to safe and durable buildings.

- 36 Depending on future policy decisions, additional information requirements related to climate emissions can be included at a later stage as part of work under the Building for Climate Change work programme.

*Creation of modular component manufacturer certification scheme*

- 37 Current building consent processes are best suited to traditional construction methods. For components manufactured off-site, this can present barriers and delays for more innovative ways of off-site manufacturing.
- 38 The modular component manufacturer scheme is a new voluntary certification scheme for modular component manufacturers that is being established to support the increased use of manufacturing approaches in the building sector. These approaches can lift productivity, reduce building costs and time, and contribute to better environmental outcomes through a reduction in waste and transportation.
- 39 The scheme will enable modular component manufacturers that meet certain criteria and standards 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, meaning building consent authorities will not need to inspect the building work covered by the scheme.
- 40 This new pathway will provide more efficient and consistent building consent approaches for manufacturers, while providing confidence to building owners and councils that building work under the scheme complies with the Building Code.
- 41 This is a new scheme that will support growth in the use of manufacturing approaches in the building sector and enable faster, more consistent building consenting approaches for buildings that use offsite manufactured modular building components.
- 42 The scheme will also support the Government's programme to increase the supply of affordable housing, by lowering costs related to building new homes.
- 43 The pipeline of work that will be created through the Housing Acceleration Fund, will also contribute to providing the construction sector with certainty to plan and invest in the people and technology needed to lift productivity and ultimately deliver more affordable houses. This will also support the Construction Sector Accord Transformation Plan.
- 44 The Bill introduces regulation-making powers that will be used to provide details of the voluntary modular component manufacturer certification scheme.
- 45 The proposals are necessarily detailed because it involves creating a new scheme, rather than amending an existing scheme or regulatory framework.

- 46 The proposals regarding the modular component manufacturer scheme have been split into five areas:
- 46.1 Prescribing the kinds of building products that are 'modular components' to clarify what kinds of manufacturers and building products are eligible for the scheme.
  - 46.2 The accreditation and registration criteria for modular component manufacturer certification bodies, including factors such as assessment and inspection processes, audit capability and staffing.
  - 46.3 The certification and registration requirements for modular component manufacturers, including factors such as quality management processes, manufacturing processes, staffing and adequate means.
  - 46.4 The information requirements for modular component manufacturer certificates.
  - 46.5 Audit processes, including audit frequency and types of audits which can take place.
- 47 In addition, the discussion document also proposes fees to recover the costs of MBIE's registration functions, and accreditation and audit fees that would be payable by the certification bodies to an accreditation body for accreditation assessments and accreditation audits.
- 48 Collectively, these proposals seek to ensure the scheme is robust, protects consumers and maintains the confidence of scheme participants, scheme users, building consent authorities and the wider building sector.

*Strengthening the product certification scheme (CodeMark)*

- 49 The proposed changes to product certification scheme seek to provide MBIE with better oversight of the scheme, improve confidence in the scheme for building consent authorities, and improve confidence in the products and methods that are certified under the scheme.
- 50 The Bill introduces a registration requirement for product certification bodies and product certificates. MBIE will also have power to audit product certification bodies and suspend or revoke the registration of product certification bodies where appropriate.
- 51 A suite of regulations is proposed to implement product certification amendments in the Bill and to improve some of scheme's current regulations.
- 52 The proposals regarding the product certification scheme have been split into four areas:
- 52.1 New registration requirements for product certification bodies, such as a fit and proper person test to assess the history and non-technical suitability of product certification bodies and applicants to the scheme.



- 52.2 New registration requirements for product certificates.
- 52.3 New and amended requirements for product certification body accreditation, such as:
- a requirement for product certification bodies to have measures in place to ensure they have appropriate staff and contractors; and
  - a requirement for product certification bodies to only accept test reports from competent laboratories.
- 52.4 Strengthened existing requirements for the audit of product certification bodies, and the review of certificates, including what audits must occur and what factors should be taken into account to determine audit methodology.

### Proposal for public consultation

- 53 I seek agreement to undertake public consultation on the proposed regulations. Consultation will be through the attached discussion document, *Building System Reform: Proposals for regulations for Building Product Information Requirements; Modular Component Manufacturers; and Product Certification*, which sets out the proposals for regulations.
- 54 I intend to release the discussion document on or about 28 April 2021, for a consultation period of six weeks.
- 55 I also seek authorisation to approve the final release date of the discussion document, and to make minor and technical changes to the discussion document and any supporting documents before they are released.
- 56 Consultation will be aimed at building product manufacturers, importers and suppliers; modular component manufacturers; building consent authorities; certification and accreditation bodies; and builders, engineers and architects. I also expect that building owners, homeowners and building product users will have an interest in my proposals.
- 57 Following consultation, MBIE will analyse the submissions and make appropriate changes to the proposals. I intend to seek Cabinet agreement to the final policy proposals in Confidential advice to Government.

### Financial Implications

- 58 There are no financial implications from the proposal to consult.

### Impact Analysis

#### Regulatory Impact Statement

- 59 MBIE's Regulatory Impact Assessment Review Panel has reviewed and confirmed that a Regulatory Impact Statement (RIS) and Cost Recovery

Impact Statement are not required at this stage. The discussion document is likely to lead to effective consultation and support the delivery of a quality Regulatory Impact Analysis.

- 60 The outcomes of the consultation will inform the development of a RIS that will be presented to Cabinet alongside the final proposed regulations in

Confidential advice to Government

### Departmental Consultation

- 61 MBIE consulted with the following government agencies on the draft Cabinet paper and the draft discussion document: Department of the Prime Minister and Cabinet; the Treasury; Ministry of Justice; Ministry of Housing and Urban Development; Ministry for the Environment; Ministry of Foreign Affairs and Trade; Ministry of Education; Ministry of Health; Te Puni Kōkiri; Department of Internal Affairs; Department of Corrections; Commerce Commission; Ministry for Pacific Peoples, Office for Seniors, Office for Disability Issues; WorkSafe New Zealand and Kāinga Ora – Homes and Communities.

### *World Trade Organisation Technical Barriers to Trade Agreement*

- 62 World Trade Organisation (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.

63

Legal professional privilege

64

Legal professional privilege

- 65 This process gives other WTO members the opportunity to comment on the proposal before regulations are finalised. MBIE will continue to check for consistency with TBT Agreement obligations. MBIE's Trade and International team is working with MFAT to provide advice and assistance for this process.

### Climate Implications of Policy Assessment

- 66 The Climate Implications of Policy Assessment (CIPA) team at the Ministry for the Environment has advised that the CIPA requirements do not apply to this proposal as the threshold for significance is not met. The CIPA team will continue to work with MBIE to assess the emissions impacts of policy proposals as they are further developed, and as appropriate.

### Legislative Implications

- 67 There are no immediate legislative implications from the proposal to consult on the discussion document. Following consultation, regulations will be required to implement the proposals for implementing the changes proposed in the Bill.
- 68 I will report back to Cabinet seeking policy decisions following consultation on the discussion document and finalisation of the proposed regulations.

### Human Rights, Gender Implications and Disability Perspective

- 69 The proposals in this paper have no implications under the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993. There are no gender or disability implications arising from this paper.

### Population Implications

- 70 These proposals in this discussion document are broadly focussed on improving the operation and performance of the building and construction sector; they are not directed at any one specific population group.

### Communications

- 71 A media statement will be issued accompanying the release of the discussion document. The discussion document and summary documents will be made publicly available on MBIE's website.

### Proactive Release

- 72 I propose to release this Cabinet paper and associated Cabinet Minute in full. The Cabinet paper and Minute will be published along with the discussion document on MBIE's website.

### Recommendations

The Minister for Building and Construction recommends that the Committee:

- 1 **note** that there are systemic problems limiting the efficiency and quality of building work and preventing fair outcomes when things go wrong;
- 2 **note** the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill (the Bill) proposes changes to:
  - 2.1 enable the creation of a new voluntary certification scheme for modular component manufacturers;
  - 2.2 introduce information requirements for building products; and
  - 2.3 strengthen the product certification (CodeMark) scheme;
- 3 **note** that regulations are required to implement reforms proposed in the Bill;

IN CONFIDENCE

- 4 **agree** to the release of the attached discussion document, *Building System Reform: Proposed regulations for Building Product Information Requirements; Modular Component Manufacturers; and Product Certification*, for public consultation;
- 5 **authorise** the Minister for Building and Construction to make minor amendments and refinements to the discussion document and supporting documents before they are released;
- 6 **note** that the Minister for Building and Construction also intends to notify parties to the World Trade Organisation Technical Barriers to Trade Agreement of the proposed regulations;
- 7 **note** that the Minister for Building and Construction will report back to Cabinet in Confidential advice to Government on the outcome of the consultation, and seek agreement to final policy proposals for building system regulations proposed under the Bill.

Authorised for lodgement

Hon Poto Williams

Minister for Building and Construction

**Appendix**

Appendix 1: *Building System Reform: Proposals for regulations for Building Product Information Requirements; Modular Component Manufacturers; and Product Certification* Discussion Document