



COVERSHEET

Minister	Hon Poto Williams	Portfolio	Building and Construction
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List of documents that have been proactively released		
Date	Title	Author
27 October 2021	<i>Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021: Proposed Building System Reform Regulations</i>	Office of the Minister of Building and Construction
27 October 2021	Cabinet minute: DEV-21-MIN-0212	Cabinet Office
12 October 2021	Regulatory Impact Statement: Building Product Information Requirements	Office of the Minister of Building and Construction
13 October 2021	Stage 2 Cost Recovery Impact Statement: Modular Component Manufacturer scheme	Office of the Minister of Building and Construction
13 October 2021	Stage 2 Cost Recovery Impact Statement: Product certification scheme	Office of the Minister of Building and Construction
20 October 2021	Regulatory Impact Statement: Modular component manufacturer scheme regulations	Office of the Minister of Building and Construction
20 October 2021	Regulatory Impact Statement: Product certification regulations	Office of the Minister of Building and Construction

Information redacted

YES

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Some information has been withheld to protect the confidentiality of advice tendered by Ministers and officials, and to protect confidential information.

In Confidence

Office of the Minister for Building and Construction

Cabinet Economic Development Committee

Building System Reform Regulations: Policy proposals to make regulations under the *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021*

Proposal

- 1 This paper seeks agreement to policy proposals for regulations to:
 - 1.1 implement new mandatory building product information requirements
 - 1.2 implement a new voluntary modular component manufacturer scheme
 - 1.3 make new or amended regulations that will strengthen the product certification scheme (CodeMark)

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

Executive Summary

- 2 The Building Amendment Act received Royal assent on 7 June 2021, and is a key part of 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.
- 3 Regulations are required to support and implement changes in the Building Amendment Act relating to new mandatory building product information requirements, a new voluntary modular component manufacturer scheme and a strengthened product certification scheme.
- 4 Cabinet agreed to the release of a public discussion document on proposed building system reform regulations in April 2021 [DEV-21-MIN-0072 refers]. The consultation period ended on 18 June 2021 with 57 submissions received.
- 5 Stakeholders were largely supportive of the proposals made in the public discussion document. However, they raised a number of specific concerns and made suggestions to ensure regulations are workable. The policy proposals have been reviewed, and in some instances revised, in response to stakeholder feedback.
- 6 My policy proposals for regulations fall into four main areas. These are outlined in Table 1 below.

Table 1: Overview of proposals for regulations, by category

Category of regulations	Purpose of regulations	Overview of proposals for regulations
<p>Building product information requirements</p> <p><i>Paragraphs 17-55</i></p> <p><i>Annex 1</i></p> <p><i>See attached Regulatory Impact Statement</i></p>	<p>To provide the detail of the mandatory information requirements for building products that contribute to Building Code compliance, to support better decision-making.</p>	<p>The proposals outline:</p> <ul style="list-style-type: none"> • what information must be disclosed in relation to a building product • who is responsible for disclosing the information, and to whom • how and when information must be disclosed, verified, stored; and to what information management standards • an 18 month transition period.
<p>Modular component manufacturer scheme</p> <p><i>Paragraphs 56-100</i></p> <p><i>Annex 2</i></p> <p><i>See attached Regulatory Impact Statement</i></p>	<p>To provide the detail for the voluntary modular component manufacturer scheme, to ensure the quality of participants and modular components and provide consumer protection.</p>	<p>The proposals prescribe:</p> <ul style="list-style-type: none"> • the kinds of building products that are ‘modular components’ • criteria for the accreditation and registration of modular component manufacturer certification bodies, and the certification and registration of modular component manufacturers • audit processes for the accreditation body and certification bodies • requirements for modular component manufacturers’ certificates.
<p>Product certification scheme</p> <p><i>Paragraphs 101-142</i></p> <p><i>Annex 3</i></p> <p><i>See attached Regulatory Impact Statement</i></p>	<p>To strengthen the requirements for the product certification scheme (CodeMark), to improve oversight and confidence in the scheme.</p>	<p>The proposals outline:</p> <ul style="list-style-type: none"> • criteria for the accreditation and registration of product certification bodies, and the certification of building products and methods • audit processes for product certification bodies auditing a certified building product or method • registration requirements for certificates.
<p>Regulated fees</p> <p><i>Paragraphs 143-160</i></p> <p><i>Annex 4</i></p> <p><i>See attached Cost Recovery Impact Statements</i></p>	<p>To enable the recovery of administrative costs related to the modular component manufacturer and product certification schemes.</p>	<p>The proposals prescribe fees related to:</p> <ul style="list-style-type: none"> • the registration, accreditation and auditing of certification bodies under the modular component manufacturer and product certification schemes • the registration of modular component manufacturers and product certificates.

- 7 Cost benefit analyses of the proposed regulations for the building product information requirements and modular component manufacturer scheme show net benefits for both sets of proposals.
- 8 Subject to Cabinet policy decisions, I intend to consult with key stakeholders on an exposure draft of the regulations in early 2022 for up to three weeks. Following the outcome of this process, I expect final regulations to support and implement the changes in the Building Amendment Act will be made by the end of Confidential advice to Government

Background

- 9 The proposals in this paper are part of Phase One of the Building System Legislative 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.
- 10 The key deliverable in Phase One is the Building Amendment Act which, amongst other changes, provides for:
 - 10.1 a mandatory minimum set of information for building products to support better-informed decision-making by building consent authorities, builders, building owners, designers and architects
 - 10.2 a new voluntary modular component manufacturer scheme to enable faster, more consistent building consent approaches
 - 10.3 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.
- 11 New or amended regulations are required to support these key changes.

Policy proposals for regulations to implement the Building Amendment Act

- 12 Cabinet agreed to the release of a public discussion document on proposed building system reform regulations in April 2021 [DEV-21-MIN-0072 refers]. The consultation period ended on 18 June 2021 with 57 submissions received.
- 13 Overall, stakeholders were largely supportive of the proposals made in the public discussion document. However, they raised a number of specific concerns, including the application of the building product information requirements to custom-made products and the inclusion of open frames and trusses in the definition of 'modular component'.
- 14 The policy proposals have been reviewed, and in some instances revised, in response to stakeholder feedback.
- 15 I seek Cabinet's agreement to policy proposals in Annexes 1 to 4, which respond to the submissions received.

- 16 The detailed regulatory proposals for each area are outlined in Annexes 1 to 4 of this Cabinet paper. A broad overview of the proposals for each area follows.

Building product information requirements

- 17 Currently, sufficient information is not provided for all building products to provide clarity and certainty about what the product is intended to be used for, how it should be used and any limitations on its use. Where this information is provided, it is not always clearly linked to relevant Building Code performance requirements.
- 18 The Building Amendment Act provides regulation-making powers in the following areas:
- what information must be disclosed in relation to a building product
 - who is responsible for disclosing the information, and to whom
 - how and when information must be disclosed, verified, stored, and to what information management standards.
- 19 Regulations may prescribe different requirements for particular building products or classes of building products. Regulations may also prescribe different requirements for different manufacturers, suppliers, or other persons, or classes of such persons.¹
- 20 I propose a number of regulations be made to address these issues. These regulations are intended to better support those who choose and use building products for building work to enable them to carry out their role effectively and to ensure their building work complies with the Building Code. The proposals for regulations also aim to support more efficient building consenting by building consent authorities.

Final proposals for regulations for the building product information requirements

- 21 Following consideration of submissions and further analysis, I propose a mandatory package of basic building product information requirements. The proposals include:
- 21.1 supply chain responsibilities to meet information requirements, which identify who is responsible for preparing and providing the required information
 - 21.2 the content of information to be provided for building products, which establishes a set of required minimum information
 - 21.3 supply chain data and information standards, which identifies how the information must be made available online

¹ Building Amendment Act, s84.

- 21.4 a transition period of 18 months, to enable industry to prepare for the new requirements.
- 22 The information requirements will apply to building products that form part of the determination as to whether building work is Building Code compliant.
- 23 The package incorporates feedback from the manufacturers of made-to-order products who were concerned about a lack of flexibility in the proposed information requirements. It also proposes modified requirements for gas and electrical products that are already regulated under the *Gas Act 1992* or the *Electricity Act 1992*.

Supply chain responsibilities to meet information requirements

- 24 I propose the following building product information requirement responsibilities for manufacturers and importers, and distributors and retailers:
- 24.1 New Zealand-based suppliers responsible for the manufacture or import of a building product must collate, produce and disclose the required product information in accordance with the information requirements.
- 24.2 New Zealand-based suppliers responsible for the distribution and/or retail only of a building product must ensure that those products meet information requirements and that the information is available to all those they distribute or sell the product to before it is sold.
- 25 This approach reflects that manufacturers and importers are best-placed to produce the required information, while distributors and suppliers will have responsibility for ensuring the information is included with every relevant product they supply. Feedback during consultation was largely supportive of this approach.
- 26 Further detail on supply chain responsibilities to meet information requirements is included in Annex 1 (Proposal 1).

Content of information to be provided for building products

- 27 The Building Amendment Act defines a building product as anything that could be used as a component of a building and sets out several considerations for determining whether a product could be expected to be used as a component of a building.²

² These considerations include the purposes for which the product is ordinarily used and the purposes for which the manufacturer or supplier intends it to be used; Building Amendment Act, s7.

- 28 I propose that building product information be required for building products that form part of the decision as to whether building work will be Building Code compliant. This means the proposed regulations would apply to building products such as those that would be specified in a building consent application and checked by building consent authorities.
- 29 The information requirements will not apply to products that do not form part of the decision as to whether building work will be Building Code compliant, such as hobby-related products (e.g. craft glue), amenity-related products (e.g. carpets, curtains and curtain rails), or 'do it yourself' products (e.g. cupboard handles and picture hooks). This clarification is important, as many submitters commented that the information requirements should only apply to products that are critical to building performance.
- 30 I also propose to introduce a proportionate, tiered approach where the information requirements would vary according to the following classes of building product:
- 30.1 Class 1: batch- or mass-produced products that are typically available for retail or wholesale purchase, such as fixings, nail plates, structural timber, roofing, flashings and cladding.
 - 30.2 Class 2: custom-made lines of products, such as external windows and doors, that are made to order to client specifications and vary in dimensions to meet design, installation and/or location requirements (e.g. to accommodate wind or climate zone requirements).
 - 30.3 Class 3: gas and electrical products regulated under the *Gas Act* and *Electricity Act* and associated regulations, such as water heaters and products required to be registered on the Gas Appliance Supplier Declaration database.
- 31 I propose the information required will include:
- 31.1 a description of the building product (such as what the product is called and used for, and the manufacturer if made overseas) and a product identifier (for example, a Global Trade Item Number, if available)
 - 31.2 the details of the manufacturer or importer, including contact details and a New Zealand Business Number where applicable
 - 31.3 the expected Building Code performance of a building product or its contribution to Building Code requirements within its intended scope of use, along with any limitations on its use (including demonstrating this through appropriate means)
 - 31.4 any design and installation requirements
 - 31.5 any maintenance requirements of a building product

I N C O N F I D E N C E

- 31.6 either a statement confirming the product is not subject to a warning or ban under the *Building Act 2004*, or a description of any warning or ban that has been made in relation to the product.
- 32 Products in Class 1 will be required to provide all of the above information at the point of sale by a distributor or retailer. Products in Classes 2 and 3 will have somewhat varied requirements as described below.
- 33 The information required for custom-made building products under Class 2 will be similar to that for Class 1 products. The key differences will be that:
- 33.1 the requirements will apply at a higher level, i.e. in relation to a base unit, product line or suite of products available for order, not an individual unit that is produced
- 33.2 the requirements will be met earlier in the process, e.g. if a product is available to order, relevant building product information should be available prior to ordering by potential customers so they know they are ordering the right product.
- 34 This class recognises that the responsibility for determining any additional specifications required to achieve Building Code compliance for any individual unit (such as the use of safety glass or window stays) will rest with the designer/builder.
- 35 The Class 2 requirements respond to concerns raised by the window and glass industry, in particular, about the feasibility of providing tailored information for each and every custom-made product. These products are fabricated to order and each order is typically unique to each building due to site and plan variations, which can change the Building Code requirements. Further, many of the design and specification decisions are made in advance of ordering and fabrication of the product.
- 36 Class 3 incorporates gas and electrical products that have Building Code performance requirements. The building product information requirements would only apply to those aspects of information not already covered by information disclosure requirements under the *Gas Act* or *Electricity Act* and associated regulations.
- 37 The information requirements for Class 3 products would only include:
- 37.1 a description of the product (including a product identifier)
- 37.2 details of the manufacturer or importer, including a New Zealand Business Number where applicable
- 37.3 information in relation to Building Code performance (not already covered by information disclosure requirements under the *Gas Act* or *Electricity Act* and associated regulations)
- 37.4 any warnings or bans in place for the product.

- 38 Class 3 has been developed in response to concerns that the proposed building product regulations may duplicate regulations under the *Gas Act* and *Electricity Act* for gas and electrical products. It recognises that, under these regimes, gas and electrical appliances already provide a range of information (e.g. safety and installation information) that is substantially similar to the requirements proposed for building products. As with Class 1, information required for Class 3 products must be provided at the point of sale by a distributor or retailer.
- 39 Finally, I propose that building product information requirements will not be prescribed for:
- 39.1 frames and trusses that are manufactured offsite in accordance with an acceptable solution or verification method³ under the Building Code
 - 39.2 products that have a current CodeMark product certificate
 - 39.3 modular components by manufacturers certified and registered under the modular component manufacturer scheme.
- 40 This is because appropriate levels of product assurance are provided either by the acceptable solution or verification method, or the relevant certification scheme. Frames and trusses are also easily inspected by building consent authorities once assembled onsite, which occurs as part of the consenting and compliance process.
- 41 Further detail on the mandatory minimum set of information to be provided with building products is included in Annex 1 (Proposals 2-6).

Supply chain data and information standards

- 42 I propose that the required information on building products must be:
- 42.1 available prior to sale of the product (or prior to ordering in the case of Class 2 products)
 - 42.2 kept up to date with the latest version of the product, with earlier versions of the information also maintained online
 - 42.3 made freely available online
 - 42.4 easily identifiable in relation to a particular product.
- 43 These requirements reflect stakeholder feedback, including that it would be beneficial for information relating to previous versions of a product to remain online for as long as the product could reasonably be expected to be in use and that the information should be made freely available online.
- 44 The discussion document proposed requiring information to be provided in a structured data format. Potential issues with this proposal were raised during

³ Acceptable solutions and verification methods are produced by MBIE and, if followed, must be accepted by a building consent authority as evidence of compliance with the Building Code.

consultation, including the time demand on manufacturers, the role that product sellers on websites such as Trade Me would play, and whether it was appropriate to attempt to regulate the collection and storage of digital product data.

- 45 There are benefits in pursuing a structured data format for some product information, as it could support digital initiatives to improve productivity within the sector. However, pursuing this proposal is not critical to achieving the primary objective of the proposed regulations, which is supporting those who choose and use building products to ensure they will meeting building performance requirements.
- 46 I consider that this matter is instead best owned and progressed through industry-related initiatives. The proposed information requirements will still go some to way to supporting such initiatives, as they introduce a minimum set of information to be included with products, which distributors and retailers can expand on, in conjunction with suppliers and manufacturers, to achieve other purposes.
- 47 The discussion document also proposed that each product be required to have a unique product identifier. Submitters were again concerned about the cost and some submitters noted that it could be confused with other product or model numbers.
- 48 I consider that the policy intent of ensuring that building products can be linked to their information online can be achieved by requiring manufacturers to clearly link their product with its online information. This means that it will be at manufacturers' discretion how this is achieved, and could include the use of a Global Trade Item Number, if available, a QR code, or a model or part number.
- 49 Further detail on supply chain data and information standards is included in Annex 1 (Proposals 7 and 8).

Transition period

- 50 I propose to proceed with the 18 month transition period proposed in the discussion document to allow industry time to adjust to the new building product information requirements. The information requirements will apply to new stock supplied for sale from the date the regulations come into effect.
- 51 Stock that is already 'on the shelf', i.e. ready for sale or in trade at the date that the regulations commence, would not be required to comply with the new requirements.
- 52 Most submitters agreed with this proposal, stating that many suppliers would be meeting or almost meeting the new information requirements already.
- 53 Some disagreed with the proposed timeframe, stating that it was not long enough due to the scale of work required to prepare the product information. Only one stakeholder suggested a shorter transition period.

- 54 On balance, I am satisfied that 18 months is a reasonable timeframe to comply with the new information requirements.
- 55 Further detail on the transition period for building product information requirements regulations is included in Annex 1 (Proposal 9).

Modular component manufacturer scheme

- 56 The modular component manufacturer scheme in the Building Amendment Act addresses regulatory barriers to more efficient and consistent building consent approaches for modular component manufacturers that are able to meet quality assurance and performance standards. The proposals for regulations define what a modular component is and set out the quality and capability requirements for scheme participants.
- 57 The Building Amendment Act provides regulation-making powers in the following areas:
- prescribing the kinds of building products that are ‘modular components’
 - accreditation and registration criteria for modular component manufacturer certification bodies
 - certification and registration criteria for modular component manufacturers
 - audit processes and fees
 - requirements for modular component manufacturers’ certificates.
- 58 The Building Amendment Act also provides for the chief executive of MBIE to make modular component manufacturer scheme rules, which may set out detailed operational requirements. Modular component manufacturer certification bodies and modular component manufacturers must follow these scheme rules to remain in the scheme.
- 59 The following proposals for regulations reflect this new legislative framework and aim to set out a clear hierarchy between regulations and scheme rules.
- 60 It is anticipated that the chief executive of MBIE will make scheme rules following a separate consultation process. Modular component manufacturer scheme rules are secondary legislation and would be subject to scrutiny by the Regulation Review Committee.

Final proposals for regulations for the modular component manufacturer scheme

- 61 Following consideration of the submissions on MBIE’s public discussion document and further analysis, I propose a package of detailed regulations to help implement the modular component manufacturer scheme.
- 62 I note that the majority of submitters were supportive of the certification and registration requirements for modular component manufacturer certification

bodies and modular component manufacturers, citing the importance of having robust systems and processes in place to instil confidence in the scheme.

Prescribing the kinds of components that are 'modular components'

- 63 I propose to prescribe the kinds of building products that would be 'modular components' in a way that includes:
- 63.1 elements of a building, such as open frames and trusses, enclosed panels or units, and volumetric structures
 - 63.2 whole buildings.⁴
- 64 I propose that a modular component does not include non-structural building products or systems, such as bathroom vanities or air conditioning systems.
- 65 I also propose that modular components are products that are constructed or manufactured off the site on which they are to be installed, although some onsite assembly or installation may be required, such as the connections between different components.
- 66 Further detail on the kinds of components that will be modular components in the scheme can be found in Annex 2 (Proposal 1).
- 67 I note that some submitters were concerned about including open frames and trusses within these regulations and suggested they be removed from the scheme.
- 68 I want the scheme to be flexible enough to provide for a range of different manufacturers, and I do not want to inadvertently exclude manufacturers who may wish to participate in the scheme in the future.
- 69 I am satisfied that the voluntary nature of the scheme will allow manufacturers to make their own business decisions to either take advantage of the scheme or to continue using the existing consent process if this works best for them.

Modular component manufacturer certification body accreditation and registration

- 70 The Building Amendment Act requires that modular component manufacturer certification bodies be accredited by MBIE or an independent third party. The standards and systems of these certification bodies will be critical for promoting and maintaining the credibility and effectiveness of the modular component manufacturer scheme.

⁴ Modular components may include within the component, for example, plumbing or electrical wiring.

- 71 To be accredited, I propose that a modular component manufacturer certification body must have policies, procedures and systems in place to:
- 71.1 oversee, assess and inspect modular component manufacturers to determine if they meet the criteria for certification⁵
 - 71.2 undertake risk assessments and audits of certified manufacturers
 - 71.3 ensure appropriate staff perform the certification body's functions.
- 72 I also propose that a modular component manufacturer certification body must have policies, procedures and systems in relation to written records (which can be electronic) that comply with any applicable modular component manufacturer scheme rules. It is anticipated that scheme rules could include requirements for retaining written records for decisions, staffing, supply chains, products and other issues relevant to ensuring the certification body continues to meet the accreditation criteria.
- 73 I propose that modular component manufacturer certification bodies must also have suitable complaints handling policies, procedures and systems to ensure any potential complaints or disputes are handled in an appropriate manner, and where possible, avoid costly and time-consuming legal intervention.
- 74 Further detail on the proposals for the accreditation of modular component manufacturer certification bodies can be found in Annex 2 (Proposals 2-6).
- 75 Under the Building Amendment Act, certification bodies also need to be registered with MBIE before they can act as a modular component manufacturer certification body.
- 76 In order to be registered to operate under the scheme, I propose that the modular component manufacturer certification body must satisfy a prescribed fit and proper person test.
- 77 The proposed fit and proper person test will assess the modular component manufacturer certification body's history and non-technical suitability, and consider matters such as the applicant's history of civil proceedings, convictions, compliance with similar schemes, professional and financial history, and any conflicts of interest.
- 78 Modifications have been made to the fit and proper person test from the proposal that was consulted on to ensure that the test targets the appropriate people.
- 79 Further detail on the proposals for the registration of modular component manufacturer certification bodies can be found in Annex 2 (Proposal 7).

⁵ In practice this could be evidenced by the modular component manufacturer certification body being accredited to or compliant with ISO17065 Conformity assessment – requirements for bodies certifying products, processes and services or other relevant standards. However, I do not propose to prescribe specific international standards to allow enough flexibility for certification bodies to adopt more innovative approach or build on existing systems and processes.

- 80 I consider that the following two proposals considered during public consultation would be better placed in rules that will be developed by the chief executive of MBIE:
- 80.1 require modular component manufacturer certification bodies to have a process in place to notify the accreditation body of circumstances that might affect the certification body's accreditation
 - 80.2 require modular component manufacturer certification bodies to have a process in place to notify MBIE of circumstances that might affect the certification body's registration.

Modular component manufacturer certification and registration

- 81 To ensure the quality of modular component manufacturers, I propose that to be certified, a manufacturer must have the following:
- 81.1 a quality plan and a quality management system to demonstrate its ability to consistently manufacture components that will meet customer requirements and regulatory obligations⁶
 - 81.2 manufacturing and design processes and systems appropriate to the scope of certification it is seeking
 - 81.3 policies, procedures and systems in place that ensure that they have appropriately competent staff in the right roles and undertaking the right work to perform its functions effectively and consistently.
- 82 I also propose that to be certified, a manufacturer must have:
- 82.1 policies, procedures and systems in relation to written records (which can be electronic) that comply with any applicable modular component manufacturer scheme rules. It is anticipated that scheme rules could include requirements for retaining written records for decisions, staffing, supply chains, products and other issues relevant to ensuring the manufacturer continues to meet the certification criteria.
 - 82.2 suitable complaints handling policies, procedures and systems to ensure any potential complaints or disputes are handled in an appropriate manner, and where possible, avoid legal intervention.
- 83 Further detail on the proposals for the certification of manufacturers can be found in Annex 2 (Proposals 8-13).
- 84 In order to be registered to operate under the scheme, I propose that a manufacturer must satisfy an adequate means test.
- 85 The adequate means test will ascertain if a modular component manufacturer

⁶ In practice, this may be evidenced by the manufacturer being accredited to or compliant with ISO9001: 2015 Quality management systems. However, I do not propose to prescribe specific international standards to allow enough flexibility for manufacturers to adopt more innovative approach or build on existing systems and processes.

has sufficient means to cover any civil liabilities they may incur through their activities in the scheme. This will help ensure there are sufficient protections for consumers if something goes wrong, given that building consent authorities have a much more limited role under the scheme.

- 86 The proposed test would consider matters such as organisational structure, exposure to risk, risk identification and management, transferred risks, retained risks, financial structure and any pending legal proceedings.
- 87 I also propose that to be registered, a manufacturer must satisfy a fit and proper person test. Modifications have been made to the fit and proper person test that was consulted on to ensure that the test is targeted to the appropriate people.
- 88 Further detail on the registration requirements for modular component manufacturers can be found in Annex 2 (Proposals 14 and 15).
- 89 I consider that the following two proposals considered during public consultation would be better placed in rules that will be developed by the chief executive of MBIE:
- 89.1 require modular component manufacturers to have a process in place to notify the certification body of circumstances that might affect the manufacturer's certification
- 89.2 require modular component manufacturers to have a process in place to notify MBIE of changes to key personal or other circumstances that might impact its registration.

Audits within the modular component manufacturer scheme

- 90 Audits are a key safeguard within the modular component manufacturer scheme, and legislated audit requirements are set out in the Building Amendment Act.
- 91 Audits of modular component manufacturer certification bodies and modular component manufacturers must take place at least once every 12 months, consistent with the requirements in the Building Amendment Act.
- 92 I have considered whether audits need to be required by regulations more frequently in certain circumstances. I am satisfied that the provisions of the Building Amendment Act and proposals for scheme rules sufficiently address risk and I am not proposing regulations for more frequent audits at this time.
- 93 I propose the following matters must be taken into account by the modular component manufacturer accreditation body and modular component manufacturer certification bodies in carrying out an audit (Annex 2; Proposal 16):
- 93.1 the outcome of any risk assessments undertaken by the accreditation body or the certification body

- 93.2 previous performance by the certification body or the manufacturer in the scheme and compliance within similar schemes
 - 93.3 complaints or feedback received by the accreditation body or the certification body.
- 94 The following audit proposals were considered during public consultation. However, I consider that these proposals would be better placed in rules that will be developed by the chief executive of MBIE:
- 94.1 require the appointed accreditation body and modular component manufacturer certification bodies to issue an audit report to the audited party and to MBIE in a timely manner
 - 94.2 require modular component manufacturer certification bodies and modular component manufacturers to make any changes required by an audit report within three months of receipt
 - 94.3 require the accreditation body and modular component manufacturer certification bodies to issue audit certificates to the audited party in a timely manner once an audit has been passed and any required changes have been made.

Modular component manufacturer certificates

- 95 Under the Building Amendment Act, modular component manufacturers issue certificates for the components they have manufactured under the scheme's requirements to support an application for a building consent or code compliance certificate. The purpose of these certificates is to ensure that consumers are adequately protected and that scheme participants, such as building consent authorities and the general public, can have confidence in the scheme.
- 96 I propose that regulations are made to prescribe the information requirements for manufacturers' certificates issued at both the building consent application stage and code compliance certificate application stage. Different requirements will be prescribed for manufacturers certified to manufacture modular components only, and manufacturers certified to manufacture and design modular components.
- 97 Under my proposals, the certificates issued at both building consent application stage and code compliance certificate application stage will include a statement around the manufacture, storage, transportation and installation of the modular component. This recognises that certified and registered modular component manufacturers are best placed to control and limit risk from the transportation, storage and assembly of modular components.
- 98 Further detail on the content of the manufacturers' certificates can be found in Annex 2 (Proposals 17-20).

Consequential amendments to building regulations

- 99 Consequential amendments to the *Building (Residential Consumer Rights and Remedies) Regulations 2014* will be required to align the regulations with the new modular component manufacturer scheme. These regulations include a disclosure statement, checklist and implied terms that will require updating.
- 100 Consequential amendments to the *Building (Forms) Regulations 2004* will also be required, to update multiple forms in section 5 to include modular component manufacturer certificates as an attachment, where applicable.

Product certification

- 101 The product certification scheme, known as CodeMark, is an existing voluntary scheme that allows building products and methods to be certified by product certification bodies. When a certified product or method is used as part of building work, a building consent authority must accept that it is compliant with the Building Code.
- 102 The Building Amendment Act strengthened the scheme by improving MBIE's oversight and ability to intervene when things go wrong. The following proposals amend the existing *Building (Product Certification) Regulations 2008* and introduce additional requirements to implement the Building Amendment Act.
- 103 The Building Amendment Act provides regulation-making powers in the following areas:
- 103.1 criteria for the accreditation and registration of product certification bodies, including requirements for policies, procedures and systems that product certification bodies must have in order to be accredited
 - 103.2 criteria for the certification of building products and methods
 - 103.3 audit procedures for product certification bodies auditing a certified building product or method
 - 103.4 registration requirements for certificates.
- 104 The Building Amendment Act also provides for the chief executive of MBIE to make product certification scheme rules, which may set out detailed operational requirements. Product certification bodies and proprietors of certified products must follow these scheme rules to remain in the scheme.
- 105 The following proposals for regulations reflect this new legislative framework and aim to set out a clear hierarchy between regulations and scheme rules.
- 106 It is anticipated that the chief executive of MBIE will make scheme rules following a separate consultation process. Product certification scheme rules are secondary legislation and would be subject to scrutiny by the Regulation Review Committee.

Final proposals for regulations for the product certification scheme

- 107 Following consideration of submissions on MBIE's public discussion document and further analysis, I propose a package of new or amended regulations that will increase confidence in the quality of product certificates issued by product certification bodies, provide more flexibility for the testing of innovative products and enhance MBIE's oversight of scheme participants via a new registration function.
- 108 I note that the majority of submitters were supportive of the proposed changes to the *Building (Product Certification) Regulations 2008*.

Product certification body accreditation and procedures and systems

- 109 Product certification bodies must be accredited to participate in the scheme.
- 110 I propose that product certification bodies be required to have appropriate policies to ensure they:
- 110.1 comply with general conformity assessment requirements set out in scheme rules. It is anticipated that under new scheme rules, a product certification body could be required to comply with the relevant requirements of applicable international standards related to conformity assessment
 - 110.2 only carry out certification activities that are within the scope of their accreditation. It is anticipated that scheme rules could set out operational requirements for establishing a product certification body's scope of accreditation
 - 110.3 have the right people in the right roles to perform their functions effectively and consistently. These policies would address matters such as the competency and training of staff and contractors.
 - 110.4 retain written records (which can be electronic). The purpose of this requirement is to ensure that a product certification body's key activities (such as evaluations undertaken for each certificate) are recorded and can be audited by the accreditation body.
 - 110.5 evaluate each product based on evidence established by testing the product and assessing a proprietor's plan for ensuring the quality of the building product
 - 110.6 produce appropriate evaluation plans and conduct appropriate risk assessments when evaluating building products. It is anticipated scheme rules could set out detailed operational requirements for product evaluation.
- 111 The above proposals related to conformity assessment, scope of accreditation, written records and evaluating products are not policy changes, but are amendments to existing accreditation criteria that reflect the new legislative framework provided for by the Building Amendment Act.

- 112 Because these proposals relate to ongoing requirements for product certification bodies after they are accredited, it is appropriate to require policies to be in place at the time of accreditation, and for detailed operational requirements to be set out in scheme rules.
- 113 I also propose to address a workability issue by removing the requirement that is currently provided for in regulation 7A of the *Building (Product Certification) Regulations*, which relates to a product certification body's quality management systems.
- 114 Revoking this regulation would address concerns raised by the current accreditation body and product certification bodies that, under the international standards system, organisations cannot be accredited certification bodies and also be certified to other standards.
- 115 These proposals received broad support from stakeholders during consultation.
- 116 I also propose to set a requirement for product certification bodies to have policies to ensure they only accept test reports from competent laboratories. It is anticipated that under new scheme rules, a product certification body would use a prescribed framework to determine whether it is reasonable to require that a test report comes from a laboratory accredited for that test. If it is unreasonable, it is anticipated that a product certification body would assess the laboratory against international standards.
- 117 Test reports are used to demonstrate a product's compliance with certification criteria, and this approach will be beneficial for new or innovative products, where suitable laboratory testing facilities may be difficult to find.
- 118 This is a modified proposal that responds to stakeholder feedback on the discussion document. The discussion document focused only on allowing flexibility where a laboratory accredited for a certain test was not available. The modified proposal takes into account a number of different scenarios where finding a laboratory accredited for that test would not be reasonable.
- 119 This proposal will replace the requirements related to test reports in the Building (Product Certification) Amendment Regulations 2019, which are due to commence on 1 November 2022. The requirements in the 2019 Amendment Regulations are not sufficiently flexible and may impose significant regulatory impacts.
- 120 Proposals for new and amended requirements for product certification body accreditation are set out in detail in Annex 3 (Proposals 1-8).

Product certification body audits and product certificate reviews

- 121 Under the Building Amendment Act, product certification bodies must audit a certified product or method at least annually to ascertain whether it continues to meet certification criteria.

- 122 I propose to set out in regulations the matters that a product certification body must take into account when conducting an audit, including a provision for in-depth reviews only when triggered by a relevant change, such as a change in the product's manufacturing process. These matters are set out in detail in Annex 3 (Proposal 9).
- 123 This is a modified proposal to address concerns raised by stakeholders about costs and approaches to risk management. The discussion document proposed a requirement that product certification bodies must conduct an in-depth product certificate review every three years in addition to the annual routine review. Stakeholders were concerned that this was not a cost effective approach, and would not be proportionate to risk. Other aspects of the proposal received broad support from stakeholders.

Registration of product certification bodies by MBIE

- 124 In addition to being accredited by an accreditation body, product certification bodies must also be registered by MBIE before they can participate in the scheme.
- 125 I propose to set out in regulations the following registration requirements for product certification bodies:
- 125.1 a new fit and proper person test
 - 125.2 new requirements for information that must be included in an application for registration.
- 126 The proposed fit and proper person test would require the chief executive of MBIE to consider matters including, amongst other things, the applicant's history of civil proceedings, convictions, compliance with similar schemes and financial management when assessing whether the applicant body is fit and proper.
- 127 I consider that a draft proposal considered during public consultation that would require product certification bodies to have a process in place to notify MBIE of circumstances that might affect the product certification body's registration would be better placed in rules that will be developed by the chief executive of MBIE.
- 128 These proposals received broad support during consultation. One minor modification from what was consulted on relates to a discussion document proposal to specify the roles within a product certification body that MBIE must assess during the fit and proper person test. Some submitters noted that this approach was not appropriate for some product certification bodies' corporate structures.
- 129 I therefore propose that the fit and proper person test not set out specific roles that must be assessed. This better targets administrative effort to assess the most relevant members of a product certification body's staff.

- 130 The proposed registration requirements for product certification bodies are set out in detail in Annex 3 (Proposals 10 and 11).

Registration of product certificates by MBIE

- 131 Product certificates are issued by a product certification body to provide evidence that a product or method complies with the Building Code. Under the Building Amendment Act, product certificates must be registered by MBIE before they can be used as part of a building consent application.
- 132 Regulations are needed to enable the chief executive of MBIE to assess the content of certificates against appropriate requirements before they can be registered.
- 133 I propose to amend the existing requirements for the content of product certificates to improve their usability for aiding decisions on a product's compliance with the Building Code.
- 134 Under the Building Amendment Act, matters related to the form of the certificate are to be approved by the chief executive and are not appropriate for regulations. To reflect the Building Amendment Act, and in response to stakeholders' concerns about the usability of certificates, I am proposing to remove all requirements relating to a certificate's form from the current product certification regulations. Instead, these matters will be approved by the chief executive of MBIE, consistent with the Building Amendment Act.
- 135 Other proposed amendments include removing from the current regulations:
- 135.1 the requirement for the certificate holder's signature to be on the certificate
 - 135.2 the requirement that the address and contact details for a certificate holder on a certificate must be in New Zealand
 - 135.3 existing references to a product meeting the 'objective and functional' requirements of the Building Code, because a product certification body can only assess and audit a product against the 'performance' requirements of the Building Code
 - 135.4 duplication in different areas of the certificate.
- 136 This proposal to simplify the content of product certificates addresses submitters' concerns that the proposals in MBIE's discussion paper would result in a certificate that would be too detailed for aiding decisions on the product's compliance with the Building Code.
- 137 The proposed requirements for the content of product certificates are set out in detail in Annex 3 (Proposals 12 and 13).

Certification of building products and methods

- 138 Under the Building Amendment Act, regulations may set out criteria that a product must meet before it is certified. Additionally, the product certification scheme rules, which are made by the chief executive of MBIE, set out requirements that a certificate holder must follow after their product is certified.
- 139 I propose to remove requirements in the *Building (Product Certification) Regulations* that relate to certificate holders notifying product certification bodies and providing public disclosure statements. I also propose to remove requirements related to including the mark of conformity on certified products.
- 140 Because these requirements relate to actions a certificate holder must take under the scheme after their building product or method is certified, it is more appropriate for these requirements to be in product certification scheme rules, rather than in the regulations.
- 141 I therefore propose that these requirements be removed from the current regulations and moved into new product certification scheme rules.
- 142 The proposal to amend existing requirements for the certification of products and methods is set out in more detail in Annex 3 (Proposal 14).

Regulated fees for the modular component manufacturer and product certification schemes

- 143 The Building Amendment Act provides for regulations to be made to prescribe fees related to:
- 143.1 the accreditation and auditing of certification bodies under the new modular component manufacturer scheme and product certification scheme
 - 143.2 the registration of certification bodies, modular component manufacturers and product certificates.
- 144 Cost Recovery Impact Statements for the proposed fees are attached.

Final proposals for regulations for regulated fees for the modular component manufacturer and product certification schemes

Fees for the accreditation and audit of modular component manufacturer certification bodies

- 145 The appointed third-party accreditation body or, if no one is appointed, the chief executive of MBIE, will assess applications for accreditation and carry out audits of modular component manufacturer certification bodies. I propose the following fees to recover the costs of these activities:

- 145.1 accreditation of a modular component manufacturer certification body: \$8,600 (GST exclusive) as an application fee, and \$2,000 (GST exclusive) per day per assessor or technical expert for additional accreditation application reviews
- 145.2 audit of a modular component manufacturer certification body: \$2,000 (GST exclusive) per day per assessor or technical expert.
- 146 These proposals have been modified from what was consulted on. The discussion document proposed a different fee structure including an hourly charge with a maximum daily cap for accreditation and audit activities, and an administrative overhead fee based on the time since the last accreditation or audit for that certification body.
- 147 While the fee structure in the discussion document received broad support, some submitters disagreed and commented that fees should be set by the accreditation body based upon their knowledge of the scheme and the required audits.
- 148 The current accreditation body for product certification suggested that these fees should align with the fees model under the product certification scheme because the business processes and procedures under both schemes are similar.
- 149 In light of stakeholder feedback, I therefore propose to amend the proposals for cost recovery so that the fees structure under the new modular component manufacturer scheme and the product certification scheme are the same.
- 150 Detailed proposals for fees for the accreditation and audit of modular component manufacturer certification bodies are set out in Annex 4 (Proposals 1 and 2).

Registration fees for modular component manufacturer scheme

- 151 I propose the following fees to recover the costs of MBIE's chief executive assessing applications for registration:
- 151.1 prescribe an hourly fee capped at 20 hours for assessing a registration application from an accredited modular component manufacturer certification body
- 151.2 prescribe an hourly fee capped at 65 hours for assessing a registration application from a certified modular component manufacturer.
- 152 These fees received broad support during consultation and the majority of submitters did not think that the registration fees would create significant barriers to participation in the scheme.
- 153 Detailed proposals for registration fees for the modular component manufacturer scheme are set out in in Annex 4 (Proposals 3 and 4).

Fees for the accreditation and audit of product certification bodies

- 154 Under the Building Amendment Act, fees may be prescribed related to the accreditation and audit of product certification bodies. These fees are already prescribed in the *Building (Product Certification) Regulations 2008*, and have not been updated since 2008.
- 155 I propose to adjust the existing fees to provide for the recovery of administrative costs associated with the accreditation and audit of product certification bodies as follows:
- 155.1 the accreditation of a product certification body: \$8,600 (GST exclusive) as an application fee, and \$2,000 (GST exclusive) per day per assessor or technical expert for additional accreditation application reviews
- 155.2 the audit of a product certification body: \$2,000 (GST exclusive) per day per assessor or technical expert.
- 156 These proposals have been modified from what was consulted on to reflect feedback from the current accreditation body on the business processes and cost outputs associated with undertaking these functions.
- 157 Detailed proposals for fees for the accreditation and audit of product certification bodies are set out in Annex 4 (Proposals 5 and 6).

Fees for the registration of product certification bodies and product certificates

- 158 I propose prescribing new fees to recover the costs of MBIE's chief executive assessing:
- 158.1 an application for registration as a product certification body at an hourly rate, capped at 20 hours maximum
- 158.2 whether product certificates have the prescribed information and are in the form approved by the chief executive of MBIE, at a flat fee set at two hours of effort.
- 159 The proposed registration fees for the product certification scheme received broad support from stakeholders.
- 160 Detailed proposals for fees for the registration of product certification bodies and product certificates are set out in Annex 4 (Proposals 7 and 8).

The impact of the proposals for regulations

- 161 Cost benefit analyses of the proposed regulations for the building product information requirements and modular component manufacturer scheme show strong net economic benefits for the proposed modular component manufacturer scheme regulations and net economic benefits from requiring basic information on building products.

- 162 The expected overall impact of the new and amended regulations for product certification are increased confidence by building consent authorities and product users in the quality of CodeMark certificates issued by product certification bodies, greater flexibility for scheme participants as to how some products are tested, and strengthened scheme oversight by MBIE.

Next steps

- 163 I propose to release an exposure draft of regulations to targeted stakeholders in early 2022.
- 164 Following consideration of stakeholder feedback, I expect that a Cabinet paper on final regulations will be considered by the Cabinet Legislation Committee by the end of Confidential advice to Government
- 165 The Building Amendment Act provides for the chief executive of MBIE to make rules for the operation of the modular component manufacturer scheme and the product certification scheme. These rules may provide for operational matters such as how scheme parties perform their functions, and other matters such as dispute resolution and administrative matters. Rules may also be used to supplement regulations for the schemes.
- 166 Detailed scheme rules are being developed for the both schemes. I expect that these rules will be approved by the chief executive of MBIE and will be ready to support the proposed regulations when they commence.
- 167 The Building Amendment Act also provides for the chief executive of MBIE to appoint a person as the modular component manufacturer certification accreditation body. My officials are currently exploring options for the appointment of a body for the accreditation of certification bodies under the new scheme.
- 168 To support the implementation of the new modular component manufacturer scheme, I expect that MBIE will be making decisions on the appointment process in Confidential advice to Government
- 169 My officials will be monitoring and evaluating the schemes' effectiveness before I consider making further changes to scheme settings.

Financial Implications

- 170 I expect there will be nominal administrative costs for MBIE associated with setting up new business processes and procedures for the new modular component manufacturer scheme and for MBIE's new product certification registration function. These costs will be absorbed by MBIE's baseline.
- 171 The proposed fees for MBIE's registration functions under the modular component manufacturer scheme and the product certification scheme are based on Treasury cost recovery guidelines and are expected to recover all ongoing administrative costs associated with the two schemes.

172 There will be no impact on the Crown’s operating balance (Table 2 refers).

Table 2: Vote Building and Construction

	\$m – increase/(decrease)				
	2021/22	2022/23	2023/24	2024/25	2025/26 and outyears
Vote Building and Construction Minister for Building and Construction					
Operating Balance and Net Core Crown Debt Impact	-	-	-	-	-
No Impact	0.000	0.036	0.011	0.009	0.009
Total	0.000	0.036	0.011	0.009	0.009

Legislative Implications

- 173 Regulations are needed to implement these proposals.
- 174 It is intended that the regulations for the modular component manufacturer scheme and product certification scheme will commence earlier than originally expected and therefore a commencement order will be required to bring into force the relevant empowering provisions in the Building Amendment Act.
- 175 Regulations will be made under the *Building Act* using regulation-making powers introduced or amended by the Building Amendment Act.
- 176 I propose that regulations for modular component manufacturing and for product certification commence three months after they are made.
- 177 I propose an 18 month transitional period as part of the building product information requirements regulations after they are made in order to provide industry with sufficient time to make the necessary changes to their systems and processes to comply with the new requirements.

Impact Analysis

Regulatory Impact Statement

- 178 A Regulatory Impact Statement is attached for each of the three key areas of proposed regulations: building product information requirements, modular component manufacturer scheme and product certification scheme.
- 179 MBIE’s Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statements prepared by MBIE for the building product information

requirements, modular component manufacturer scheme, and product certification scheme. The Panel considers that the information and analysis summarised in the Impact Statements meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

180 There are also two Cost Recovery Impact Statements attached for the proposals for regulations for fees for the modular component manufacturer scheme and product certification scheme.

181 MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Cost Recovery Impact Statements prepared by MBIE. The Panel considers that the information and analysis summarised in the Cost Recovery Impact Statements meet the criteria necessary for Ministers to make informed decisions on the fee proposals in this paper.

Climate Implications of Policy Assessment

182 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

183 The proposed regulations are broadly focussed on improving the operation and performance of the building and construction sector via new minimum product information requirements, a new modular component manufacturer scheme and a strengthened product certification scheme; they are not directed at any one specific population group.

Human Rights

184 This paper has no implications under the *New Zealand Bill of Rights Act 1990* or the *Human Rights Act 1993*.

Departmental consultation

185 The following agencies were consulted on this paper: Ministry of Justice, Ministry of Housing and Urban Development, Department of Internal Affairs, Ministry for the Environment, Ministry of Foreign Affairs and Trade, Ministry of Health, Treasury, Ministry of Education, Department of Corrections, Te Puni Kōkiri, Ministry for Pacific Peoples, Kāinga Ora, Ministry of Social Development, Office for Disability Issues, Office for Seniors, WorkSafe New Zealand, and the Department of the Prime Minister and Cabinet.

World Trade Organisation consultation

186 New Zealand notified World Trade Organisation members of the proposals for regulations, in line with its obligations under the Technical Barriers to Trade Agreement. This gave other members the opportunity to comment on the proposal before the regulations are finalised.

187 New Zealand did not receive any submissions or feedback from members on the proposals.

Communications

188 I propose to issue a press release following Cabinet's decisions.

Proactive Release

189 I propose to proactively release this Cabinet paper package and associated Cabinet minute within 30 business days. The Cabinet paper, associated impact statements and minute will be published on MBIE's website and any redactions will be based on *Official Information Act 1982* principles.

190 I also propose to proactively release a summary of the submissions received on the public discussion document.

Recommendations

The Minister for Building and Construction recommends that the Committee:

- 1 **note** that in April 2021, Cabinet agreed to the release of a public discussion document on proposals for regulations to give effect to the *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021* [DEV-21-MIN-0128 refers];
- 2 **note** that the *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021* introduces new mandatory building product information requirements, a new voluntary modular component manufacturer scheme and a strengthened product certification scheme;
- 3 **note** that feedback received during public consultation was generally supportive of the proposed regulatory framework, and although a number of specific concerns were raised, these have been addressed in the current proposals;
- 4 **note** that a summary of submissions received on the public discussion document will be proactively released;

Building product information requirements

- 5 **note** that the Minister for Building and Construction proposes regulations to prescribe the detail of the minimum mandatory information requirements for building products that contribute to Building Code compliance to support better decision-making;
- 6 **agree** to the regulatory proposals for building product information requirements specified in Annex 1;
- 7 **agree** to an 18 month transitional period for the building product information requirements from the date the regulations are made to provide sufficient time for manufacturers, importers, distributors and retailers to adjust their systems and processes to comply with the new information requirements;

Modular component manufacturer scheme

- 8 **note** that the Minister for Building and Construction proposes regulations to provide the detail to the voluntary modular component manufacturer scheme to ensure quality and consumer protection;
- 9 **agree** to the regulatory proposals for modular component manufacturer scheme specified in Annex 2;
- 10 **agree** that the regulations for the modular component manufacturer scheme commence three months after the regulations are made;

IN CONFIDENCE

- 11 **note** that consequential amendments are needed to the *Building (Residential Consumer Rights and Remedies) Regulations 2014* and *Building (Forms) Regulations 2004* to align those regulations with the new modular component manufacturer scheme;
- 12 **agree** to consequential amendments to the *Building (Residential Consumer Rights and Remedies) Regulations 2014* and *Building (Forms) Regulations 2004* to align those regulations with the new modular component manufacturer scheme;

Product certification

- 13 **note** that the Minister for Building and Construction proposes regulations to strengthen the requirements for the product certification scheme to improve oversight and confidence;
- 14 **agree** to the regulatory proposals for product certification scheme specified in Annex 3;
- 15 **agree** that the regulations for product certification commence three months after the regulations are made;

Regulated fees for Product Certification and Modular Component Manufacturer Scheme

- 16 **agree** to the regulatory proposals for regulated fees for the modular component manufacturer and product certification schemes specified in Annex 4;
- 17 **agree** to increase spending to provide for costs associated with the policy decisions in recommendation 16 above, with the following impacts on the operating balance and net core Crown debt:

	\$m – increase/(decrease)				
Vote Building and Construction Minister for Building and Construction	2021/22	2022/23	2023/24	2024/25	2025/26 and outyears
Operating Balance and Net Core Crown Debt Impact	-	-	-	-	-
No Impact	0.000	0.036	0.011	0.009	0.009
Total	0.000	0.036	0.011	0.009	0.009

- 18 **approve** the following changes to appropriation to give effect to the policy decision in recommendation 16 above, with no impact on the operating balance and/or net core Crown debt:

	\$m – increase/(decrease)				
	2021/22	2022/23	2023/24	2024/25	2025/26 and outyears
Vote Building and Construction Minister for Building and Construction					
Multi-Category Expenses and Capital Expenditure: Building Policy, Regulation and Advice MCA	-	-	-	-	-
Departmental Output Expenses: Building Regulation and Control <i>(funded by revenue other)</i>	0.000	0.036	0.011	0.009	0.009
Total	0.000	0.036	0.011	0.009	0.009

- 19 **agree** that the proposed changes to appropriations for 2021/22 above be included in the 2021/22 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;

Next steps

- 20 **note** that the *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021* received Royal assent on 7 June 2021;
- 21 **note** that it is intended that the regulations for the modular component manufacturer scheme and product certification scheme will commence earlier than expected;
- 22 **note** that a commencement order will be required to bring into force the empowering provisions in the *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021* on the building product information requirements, modular component manufacturer scheme and product certification scheme;

- 23 **agree** that the relevant empowering provisions of the *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021* that did not commence on the day after Royal assent will commence at the same time as the modular component manufacturer scheme and product certification scheme regulations;
- 24 **note** that the Ministry of Business, Innovation and Employment will make detailed scheme rules under the *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021* to support the regulations for the modular component manufacturer and product certification schemes, and these will be made to align with the commencement of the regulations;
- 25 **note** that the Ministry of Business, Innovation and Employment is exploring options for the appointment an accreditation body for the new modular component manufacturer scheme and that decisions on this will be made in
Confidential advice to Government
- 26 **authorise** the Minister for Building and Construction to issue drafting instructions to the Parliamentary Counsel Office to give effect to the policy proposals in this paper;
- 27 **authorise** the Minister for Building and Construction to make decisions consistent with the proposals in these recommendations on any issues which arise during the drafting process, including minor, technical and timing changes as required;
- 28 **note** that the Minister for Building and Construction intends to issue a press release announcing decisions;
- 29 **note** that the Minister for Building and Construction intends to consult key stakeholders on an exposure draft on the regulations in early 2022 for up to three weeks;
- 30 **authorise** the Minister for Building and Construction to release an exposure draft on the regulations to key stakeholders;
- 31 **note** that the Minister for Building and Construction plans to report back to the Cabinet Legislation Committee on final regulations following feedback on the exposure draft by the end of
Confidential advice to Government

32 **note** that this paper and the associated impact statements and Cabinet minute will be released under the Government's proactive release policy.

Authorised for lodgement

Hon Poto Williams

Minister for Building and Construction

Annex 1: Recommended proposals for regulations on mandatory building product information requirements

I propose that Cabinet agree to the proposals for regulations to implement the building product information requirements detailed below.

Table 1: Policy proposals for regulations on mandatory building product information requirements

<p>Proposal 1: Establish supply chain responsibilities Establish responsibilities on manufacturers and importers and distributors and retailers as follows:</p> <ul style="list-style-type: none"> • New Zealand-based suppliers responsible for the manufacture or import of a building product must collate, produce and disclose the required product information specified in Proposal 2 below. • New Zealand-based suppliers responsible for the distribution and/or retail only of a building product must ensure that those products meet information requirements and that the information is available to all those they distribute or sell the product to before it is sold.
<p>Proposal 2: Require that a minimum set of information be provided with building products Require a minimum set of information to be provided for building products that form part of the determination as to whether building work is Building Code compliant, for example, building products that would be specified in a building consent application and checked by building consent authorities.</p>
<p>Proposal 3: Exclude some building products from the information requirements The following products will not have any product information requirements:</p> <ul style="list-style-type: none"> • Frames and trusses that are manufactured offsite in accordance with an acceptable solution or verification method under the Building Code. • Products that have a current CodeMark product certificate. • Modular components by manufacturers certified and registered under the modular component manufacturer scheme.
<p>Proposal 4: Establish three classes of building products Establish a proportionate, tiered approach where the information requirements would vary according to the type of building product:</p> <ul style="list-style-type: none"> • Class 1: batch or mass produced products that are typically available for retail or wholesale purchase, such as fixings, nail plates, structural timber, roofing, flashings and cladding. • Class 2: custom-made lines of products, such as external windows and doors, that are made to order to client specifications and vary in dimensions or to meet design, installation and/or location requirements (e.g. to accommodate wind or climate zone requirements). • Class 3: gas and electrical products regulated under the <i>Gas Act 1992</i> and <i>Electricity Act 1992</i> and associated regulations, such as water heaters and products required to be registered on the Gas Appliance Supplier Declaration

database.

Proposal 5: Specify the information that must be provided with building products

For Class 1 and Class 2 building products, require that the minimum information provided will include:

- a description of the building product (such as what the product is called and used for, and the manufacturer if made overseas) and a product identifier (for example, a Global Trade Item Number, if available)
- the details of the manufacturer or importer, including contact details and a New Zealand Business Number where applicable
- the expected Building Code performance of a building product within its intended scope of use, along with any limitations on its use (including demonstrating this through appropriate means)
- any design and installation requirements
- any maintenance requirements of a building product
- either a statement confirming the product is not subject to a current warning or ban under the Building Act 2004, or a description of any warning or ban that has been made in relation to the product.

For Class 3 building products, require that the minimum information provided will only include:

- a description of the product (including unique product identifier)
- details of the manufacturer or importer, including a New Zealand Business Number where applicable
- the expected Building Code performance of the building product within the scope and limitations of use (where that information is not already covered by information disclosure requirements under the *Gas Act* or *Electricity Act* and associated regulations)
- a statement as to whether the product is subject to a warning or ban under the *Building Act*.

Proposal 6: Require claims about Building Code compliance to be demonstrated

Require all claims about Building Code compliance to illustrate how this is achieved by making reference to:

- compliance pathways listed in section 19 of the *Building Act*, or
- any other international standards or technical drawing that details the standard to which a product was manufactured, or
- the physical properties of the product, or how the product is expected to be used.

Proposal 7: Specify when the required building product information must be provided

For Class 1 and Class 3 building products, require that the minimum building product information must be provided when the product is offered for sale by a distributor or retailer.

For Class 2 building products, require that the minimum building product information must be:

- made available prior to ordering so that potential consumers know they are ordering the right product; and
- in relation to a product line or suite of similar products rather than an individual product unit.

Proposal 8: Specify how the required building product information must be provided

Require that:

- all information required to be disclosed about building products be made freely available online
- the building product be clearly linked with its corresponding online information (for example, by assigning a unique product identifier or model/part number to the product)
- the information about the building product be kept up to date with the latest version of a product
- the information remains available online for earlier versions of products.

Proposal 9: Provide a transition period

Provide that the building product information requirements regulations will commence 18 months after they are made.

Annex 2: Recommended proposals for regulations on modular component manufacturer scheme

I propose that Cabinet agree to the proposals for regulations to implement the modular component manufacturer scheme detailed below.

Table 2: Policy proposals for regulations on the modular component manufacturer scheme

<p>Proposal 1: Prescribe the kinds of building products that are ‘modular components’</p> <p>‘Modular components’ includes products that:</p> <ul style="list-style-type: none"> • include elements of a building such as open frames and trusses, enclosed panels or units, and volumetric structures; and whole buildings. These may also include within the component, for example, plumbing or electrical wiring; • do not include non-structural building products or systems such as bathroom vanities, storage systems, or heating, ventilation and air conditioning systems; and • are constructed or manufactured off the site on which they are to be installed, though some onsite assembly or installation may be required.
<p><i>Modular component manufacturer certification body accreditation and registration</i></p>
<p>Proposal 2: Require that modular component manufacturer certification bodies have the policies, procedures and systems and detailed understanding needed to carry out their functions, to be accredited</p> <p>To be accredited, a modular component manufacturer certification body must have policies, procedures and systems in place to oversee, assess and inspect modular component manufacturers to determine whether they meet the standards and criteria required for accreditation.</p> <p>For this requirement to be met, a modular component manufacturer certification body must have the following in place:</p> <ul style="list-style-type: none"> • Policies, procedures and systems to show that they can undertake the modular component manufacturer certification body function within the modular component manufacturer scheme. • Policies, procedures and systems to show that they can conduct the certification body role at a geographical distance to cope with situations where they or the modular component manufacturers for which they are responsible may be based in a different region or offshore. <p>The modular component manufacturer certification body will also be required to provide evidence that it has a robust and detailed understanding of the New Zealand Building Code, <i>Building Act 2004</i> and any other relevant legislation, regulations and other relevant settings in New Zealand’s building system to determine its ability to undertake the modular component manufacturer certification body function.</p>
<p>Proposal 3: Require that modular component manufacturer certification bodies have a process for undertaking risk assessments and audits, to be accredited</p> <p>To be accredited, a modular component manufacturer certification body must have policies, procedures and systems in place that sets out their process for undertaking</p>

risk assessments and audits of certified and registered modular component manufacturers for which they are responsible.

Proposal 4: Require a modular component manufacturer certification body to have policies in place to ensure sufficient and competent staff, to be accredited

To be accredited, a modular component manufacturer certification body must have policies, procedures and systems in place to ensure that they have the right people in the right roles and are undertaking the right work to perform their functions effectively and consistently.

Proposal 5: Require that a modular component manufacturer certification body have policies in place related to written records, to be accredited

To be accredited, a modular component manufacturer certification body must have policies, procedures and systems in relation to written records (which can be electronic) that comply with any applicable modular component manufacturer scheme rules.

It is anticipated that scheme rules could include requirements for retaining written records for decisions, staffing, supply chains, products and other issues relevant to ensuring the certification body continues to meet the accreditation criteria.

Proposal 6: Require that a modular component manufacturer certification body have suitable complaints handling processes, to be accredited

To be accredited, a modular component manufacturer certification body must have suitable complaints handling policies, procedures and systems in place for receiving and managing complaints.

Proposal 7: Require that a modular component manufacturer certification body satisfy a fit and proper person test, to be registered

To be registered, a modular component manufacturer certification body must satisfy a prescribed fit and proper person test. The fit and proper test will assess the history and non-technical suitability of the applicant body, its authorised representatives and each person responsible for directing or controlling the applicant body's modular component manufacturer certification body functions.

The fit and proper person test would take into account relevant matters including history of convictions, compliance in similar schemes, and conflicts of interest.

The fit and proper persons test complements the accreditation assessments, which assess an accredited certification body's technical suitability.

Modular component manufacturer certification and registration

Proposal 8: Require that modular component manufacturers have a quality plan and quality management system, to be certified

To be certified, modular component manufacturers must have a quality plan and quality management system in place in order to demonstrate their ability to consistently manufacture modular components and services that meet customer and regulatory requirements.

Proposal 9: Require that modular component manufacturers have appropriate manufacturing processes and systems, to be certified

To be certified, a modular component manufacturer must have manufacturing processes and systems appropriate to the scope of certification it is seeking. This would also include having established robust defect detection systems and having strong supply chain management for building products and materials, and could take into account the kinds of manufacturing machinery used.

Proposal 10: Require that modular component manufacturers have appropriate design processes and systems, to be certified

To be certified to 'design and manufacture', a modular component manufacturer must have design processes and systems appropriate to the scope of certification it is seeking and demonstrate the ability to design modular components to a Building Code compliant standard.

Proposal 11: Require a modular component manufacturer to have policies in place to ensure it has sufficient and competent staff, to be certified

To be certified, modular component manufacturers must have policies, procedures and systems in place that ensure that they have the appropriately competent staff in the right roles and undertaking the right work to perform its functions effectively and consistently.

Proposal 12: Require that modular component manufacturers have policies in place related to written records, to be certified

To be certified, modular component manufacturers must have policies, procedures and systems in relation to written records (which can be electronic) that comply with any modular component manufacturer scheme rules.

It is anticipated that scheme rules could include requirements for retaining written records for decisions, staffing, supply chains, products and other issues relevant to ensuring the manufacturer continues to meet the certification criteria.

Proposal 13: Require that modular component manufacturers have a suitable complaints handling process, to be certified

To be certified, modular component manufacturers must have suitable complaints handling policies, procedures and systems for receiving and managing complaints.

Proposal 14: Require that modular component manufacturers satisfy an adequate means test, to be registered

To be registered, a modular component manufacturer must have sufficient means to cover any civil liabilities they may incur in relation to its manufacturer and design (if applicable) of modular components in the scheme.

This test would take into account the following factors:

- Organisational structure
- Exposure to risk (types of modular components being designed and/or manufactured)
- Risk identification and management (likely liabilities, amount and duration of each liability, and organisational risk management framework)
- Transferred risks (e.g. through contracts, insurance, bonds, etc., with no building warranty product covering a 10 year limitation period being required)
- Retained risks (what they are and how managed)
- Financial status (accounts for the last 2-3 years plus 2-3 year projections)
- Any legal proceedings currently in train.

Proposal 15: Require that modular component manufacturers satisfy a fit and proper person test, to be registered

To be registered, a modular component manufacturer must satisfy a prescribed fit and proper person test. The fit and proper test will assess the history and non-technical suitability of the applicant body, its authorised representatives and each person responsible for directing or controlling the applicant body's modular component manufacturer functions.

The fit and proper person test would take into account relevant matters including history of convictions, compliance in similar schemes, and conflicts of interest.

The fit and proper persons test complements the certification assessments, which assess the modular component manufacturers' technical suitability.

Audits within the modular component manufacturer certification scheme

Proposal 16: Prescribe matters that must be taken into account when conducting audits within the scheme

Require the following matters to be taken into account by the modular component manufacturer accreditation body and modular component manufacturer certification bodies in carrying out an audit:

- the outcome of any risk assessments undertaken by the accreditation body or the certification body
- previous performance by the certification body or the manufacturer in the scheme and compliance within similar schemes
- complaints or feedback received by the accreditation body or the certification body.

Information requirements for modular component manufacturer's certificates

Proposal 17: Prescribe information to be included on a manufacturer's certificate at building consent application stage (manufacture only)

Modular component manufacturers that are certified to 'manufacture' modular components and are registered within the modular component manufacturer scheme may issue a certificate at the building consent application stage that covers the following information:

- **Modular component manufacturer details**, including legal name, trading name and New Zealand Business Number (if applicable), address for service in New Zealand, contact details, internet site and internet link to information about the MCM's complaints process.
- **Modular component manufacturer certification and registration details**, including certificate numbers, issue dates, scope of certification, statement about audits that have taken place, disclaimer that MCM takes responsibility for the modular component for which this certificate has been issued.
- **Responsible modular component manufacturer certification body details**, including legal name, trading name and New Zealand Business Number where applicable, address for service in New Zealand, contact details, internet site and internet link to information about the MCM certification body's complaints process.
- **Modular component manufacturing specifications**, which set out information about the manufacturing processes to be used for the modular component.
- **Manufacture statement** that the modular component(s) will be manufactured, stored, transported to site and installed according to the consented design, and will comply with details of the manufacturer's certificate.

Proposal 18: Prescribe information to be included on a manufacturer's certificate at building consent application stage (design and manufacture)

Modular component manufacturers that are certified to 'design and manufacture'

modular components and are registered within the modular component manufacturer scheme may issue a certificate at the building consent application stage that covers the following information:

- **Modular component manufacturer details**, including legal name, trading name and New Zealand Business Number (if applicable), address for service in New Zealand, contact details, internet site and internet link to information about the MCM's complaints process.
- **Modular component manufacturer certification and registration details**, including certificate numbers, issue dates, scope of certification, statement about audits that have taken place, and disclaimer that the MCM takes responsibility for the modular component for which this certificate has been issued.
- **Responsible modular component manufacturer certification body details**, including legal name, trading name and New Zealand Business Number (where applicable), address for service in New Zealand, contact details, internet site and internet link to information about the MCM certification body's complaints process.
- **Modular component manufacturing specifications**, which set out information about the manufacturing processes to be used for the modular component.
- **Modular component design specifications**, including a statement regarding the specific modular component's design, compliance with relevant Building Code performance requirements and any testing it has undergone/will undergo, limitations on its use, and an internet link to further information and design details that cannot be included on certificate.
- **Manufacture statement** that the modular component(s) will be manufactured, stored, **transported** to site and installed according to the specified design, and will comply with details of the manufacturer's certificate.

Proposal 19: Prescribe information to be included on a manufacturer's certificate at code compliance certificate application stage (manufacture only)

Modular component manufacturers that are certified to 'manufacture' modular components and are registered within the modular component manufacturer scheme may issue a certificate at the code compliance certificate application stage that covers the following information:

- **Modular component manufacturer details**, including legal name, trading name and New Zealand Business Number (if applicable), address for service in New Zealand, contact details, internet site and internet link to information about the MCM's complaints process.
- **Modular component manufacturer certification and registration details**, including certificate numbers, issue dates, scope of certification, statement about audits that have taken place, and disclaimer that the modular component manufacturer takes responsibility for the modular component for which this certificate has been issued.

- **Responsible modular component manufacturer certification body details**, including legal name, trading name and New Zealand Business Number (where applicable), address for service in New Zealand, contact details, internet site and internet link to information about the MCM certification body's complaints process.
- **Manufacture statement**, which confirms that the modular component(s) that have been manufactured, stored, transported to site and installed according to the consented design, comply with details of the manufacturer's certificate that was issued at building consent application stage.

Proposal 20: Prescribe information to be included on a manufacturer's certificate at code compliance certificate application stage (design and manufacture)

Modular component manufacturers that are certified to 'design and manufacture' modular components and are registered within the modular component manufacturer scheme may issue a certificate at the code compliance certificate application stage that covers the following information:

- **Modular component manufacturer details**, including legal name, trading name and New Zealand Business Number (where applicable), address for service in New Zealand, contact details, internet site and internet link to information about the MCM's complaints process.
- **Modular component manufacturer certification and registration details**, including certificate numbers, issue dates, scope of certification, statement about audits that have taken place, and disclaimer that the MCM takes responsibility for the modular component for which this certificate has been issued.
- **Responsible modular component manufacturer certification body details**, including legal name, trading name and New Zealand Business Number (where applicable), address for service in New Zealand, contact details, internet site and internet link to information about the MCM certification body's complaints process.
- **Design and manufacture statement**, which confirms that modular component(s) that have been designed, manufactured, stored, transported to site and installed correctly and comply with details of the manufacturer's certificate that was issued at building consent application stage.

Any variations from the design provided at building consent stage should also be outlined.

Annex 3: Recommended proposals for regulations on product certification scheme

I propose that Cabinet agree to the proposals for regulations to implement changes to the product certification scheme detailed below.

Table 3: Policy proposals for regulations on the product certification scheme

<i>Add or amend requirements for product certification body accreditation</i>
<p>Proposal 1: Require a product certification body to have policies to ensure it complies with any conformity assessment requirements in product certification scheme rules, to be accredited</p> <p>To be accredited, a product certification body must have policies, procedures and systems in place in relation to conformity assessment. These policies will ensure they comply with any applicable product certification scheme rules related to the competence, consistent operation and impartiality of product certification bodies.</p>
<p>Proposal 2: Require a product certification body to have policies to ensure it carries out certification activities within the scope of its accreditation</p> <p>To be accredited, a product certification body must have policies, procedures and systems in relation to carrying out certification activities within the scope of its accreditation that comply with any applicable scheme rules. These policies will ensure that product certification bodies will only carry out certification activities for which they are competent.</p>
<p>Proposal 3: Require a product certification body to have policies in place to ensure it has sufficient and competent staff, to be accredited</p> <p>To be accredited, a product certification body must have policies, procedures and systems in place related to staff and contractors to ensure that they have the right people in the right roles and are undertaking the right work to perform their functions effectively and consistently.</p>
<p>Proposal 4: Require a product certification body to have policies in place related to written records, to be accredited</p> <p>To be accredited, a product certification body must have policies, procedures and systems in relation to written records (which can be electronic) that comply with any applicable product certification scheme rules.</p> <p>It is anticipated that scheme rules could include requirements for retaining written records for evaluations and decisions related to a product certification body's functions under the Building Act. These records would be sufficient to establish clearly that all requirements in the product certification scheme have been met.</p>
<p>Proposal 5: Require a product certification body to have policies in place related to certifying each building product or building method, to be accredited</p> <p>To be accredited, a product certification body must have policies, procedures and systems in relation to certifying building products and building methods that are based on evidence established by testing the building product or building method, and assessing a proprietor's plan to maintain the quality of the building product or building method.</p> <p>It is anticipated that scheme rules could include detailed operational requirements for product evaluation.</p>

Proposal 6: Require a product certification body to have policies in place related to producing an evaluation plan and conducting a risk assessment, to be accredited

To be accredited, a product certification body must have policies, procedures and systems in relation to producing an evaluation plan and conducting a risk assessment that comply with any applicable product certification scheme rules.

It is anticipated that scheme rules could include detailed operational requirements for what an evaluation plan would contain and what a risk assessment would look like.

Proposal 7: Remove a current requirement for product certification bodies that are not accredited conformity assessment bodies to be accredited to ISO9001:2015

Remove the current requirement for all product certification bodies that are not accredited conformity assessment bodies to be accredited to ISO9001:2015 (Quality management systems – Requirements).

Proposal 8: Require a product certification body to have policies in place related to accepting test reports, to be accredited

To be accredited, a product certification body must have policies, procedures and systems in relation to accepting test reports that comply with any applicable product certification scheme rules.

It is anticipated that the rules could provide for the following:

- Product certification bodies would only accept test reports from testing facilities accredited for those tests – unless it is not reasonable to do so.
- Product certification bodies would use a prescribed framework to decide whether it is reasonable to require that a test report comes from a laboratory accredited for that test, including matters such as lack of availability and level of risk.
- If the product certification body assesses it is not reasonable, the product certification body could accept a test report from a laboratory that is not accredited for that test. The product certification body would assess this laboratory against the relevant requirements of *ISO 17025 – testing and calibration laboratories*, and confirm that the laboratory meets these requirements.

As a consequence of this proposal, the requirements related to test reports in the Building (Product Certification) Amendment Regulations 2019, which are due to commence on 1 November 2022, **would** be removed. The requirements in the 2019 Amendment Regulations are not sufficiently flexible and may impose significant regulatory impacts.

Strengthen requirements for product certification body audits and reviews of certificates

Proposal 9: Prescribe new matters that a product certification body must take into account when conducting an audit

Prescribe new matters that a product certification body must take into account when conducting an audit of a certified product or method, including, among other things, any changes to the product or method, complaints received and any reason to update information relied upon during certification.

Matters will also be prescribed that must be taken into account if, during the course of an audit or otherwise, the product certification body becomes aware of a relevant change or information that may impact the product's compliance with certification criteria or trigger grounds to suspend or revoke the certificate. These matters include, among other things, any reason to review the product's evaluation plan, or update the

risk assessment carried out for that product.

Implement registration requirements for product certification bodies

Proposal 10: Require a product certification body to satisfy a fit and proper person test, to be registered

To be registered, a product certification body must satisfy a prescribed fit and proper person test. The fit and proper person test will assess the history and non-technical suitability of the applicant body, its authorised representative and each person responsible for directing or controlling the applicant body's product certification functions.

The fit and proper test would take into account relevant matters including history of convictions, compliance in similar schemes, and conflicts of interest.

The fit and proper persons test complements the accreditation process, which assesses a product certification body's technical suitability.

Proposal 11: Require an application for registration of a product certification body to contain sufficient information for decision-making

An application for registration of a product certification body must contain sufficient information for the chief executive to make a decision on registration, including applicant details, evidence of accreditation and any information required to assess against prescribed registration criteria.

Implement registration requirements for certificates

Proposal 12: Prescribe registration requirements for product certificates

The content of a product certificate must meet the following requirements for the certificate to be registered.

The information in each product certificate must be written in plain English, and contain an appropriate level of detail for users of the certificate (such as building consent authorities and designers) to make a decision on how the product would perform in the intended use. The information must be consistent with other information provided by the manufacturer.

Proposal 13: Amend existing requirements for the content of product certificates

Make the following amendments to the existing requirements in the *Building Product (Product Certification) Regulations 2008* for the content of the product certificate to improve workability and reflect the Building Amendment Act:

- Add requirements to have a certificate number, and a version number and date of last revision if any.
- Remove references to body and schedule of certificate.
- Remove references to key information and supporting information.
- Remove references to headings, section numbers, and ordering, and any requirements that are duplicative in the existing regulations.
- Remove requirement that the proprietor's address for service, email address and phone number on the certificate must be in New Zealand.
- Remove reference to objective and functional requirements of the Building Code.

- Remove requirement for the signature of the certificate holder's authorised representative.

Amend existing requirements for the certification of products and methods

Proposal 14: Remove specified requirements in the Building (Product Certification) Regulations 2008

Remove the current requirements in the *Building (Product Certification) Regulations 2008*:

- to mark each certified product with a mark of conformity
- for the certificate holder to notify the product certification body of relevant changes or any reason to suspect that the certified product or method does not comply with the building code
- for the certificate holder to disclose noncompliance with the Building Code to the product certification body and the chief executive.

Under the Building Amendment Act these matters are more appropriate for product certification scheme rules.

Annex 4: Recommended proposals for regulations on regulated fees for the modular component manufacturer scheme and product certification scheme

I propose that Cabinet agree to the proposals for regulations to put in place scheme fees detailed below.

Table 4: Policy proposals for regulations on regulated fees for the modular component manufacturer scheme and product certification scheme

<p><i>Prescribe accreditation and audit fees for modular component manufacturer certification scheme</i></p>
<p>Proposal 1: Prescribe a fee for the accreditation of a modular component manufacturer certification body The proposed fee for the accreditation of a modular component manufacturer certification body is \$8,600 (GST exclusive) as an application fee, and \$2,000 (GST exclusive) per day per assessor or technical expert for additional accreditation application reviews.</p> <p>Disbursements incurred as part of accreditation activities would be at actual and reasonable cost.</p>
<p>Proposal 2: Prescribe a fee for the audit of a modular component manufacturer certification body The proposed fee for the audit of a modular component manufacturer certification body is \$2,000 (GST exclusive) per day per assessor or technical expert.</p> <p>Disbursements incurred as part of audit activities would be at actual and reasonable cost.</p>
<p><i>Prescribe registration fees for modular component manufacturer certification scheme</i></p>
<p>Proposal 3: Prescribe a fee to accompany an application for registration as a modular component manufacturer certification body The proposed fee to accompany an application for registration as a modular component manufacturer certification body is an hourly rate, up to a maximum of 20 hours. At the proposed hourly rate of \$90.15 (GST exclusive), this is a maximum of \$1,803.00 (GST exclusive).</p>
<p>Proposal 4: Prescribe a fee to accompany an application for registration as a modular component manufacturer The proposed fee to accompany an application for registration as a modular component manufacturer is an hourly rate, up to a maximum of 65 hours. At the proposed hourly rate of \$90.15 (GST exclusive), this is a maximum of \$5,859.75 (GST exclusive).</p>
<p><i>Prescribe accreditation and audit fees for product certification scheme</i></p>
<p>Proposal 5: Adjust existing fee for the accreditation of a product certification body The proposed fee for the accreditation of a product certification body is \$8,600 (GST exclusive) as an application fee, and \$2,000 (GST exclusive) per day per assessor or technical expert for additional accreditation application reviews.</p> <p>Disbursements incurred as part of accreditation activities would be at actual and reasonable cost.</p>

Proposal 6: Adjust existing fee for the audit of a product certification body

The proposed fee for the audit of a product certification body is \$2,000 (GST exclusive) per day per assessor or technical expert.

Disbursements incurred as part of audit activities would be at actual and reasonable cost.

Prescribe registration fees for product certification scheme

Proposal 7: Prescribe a fee to accompany an application for registration as a product certification body

The proposed fee to accompany an application for registration as a product certification body is an hourly rate, up to a maximum of 20 hours. At the proposed hourly rate of \$90.15 (GST exclusive), this is a maximum of \$1,803.00 (GST exclusive).

Proposal 8: Prescribe a fee for the registration of a product certificate

The proposed fee for the registration of a product certificate is a set fee at two hours of effort per certificate. At the proposed hourly rate of \$90.15 (GST exclusive), this is a fee of \$180.30 (GST exclusive).

Regulatory Impact Statement: Building Product Information Requirements

Coversheet

Purpose of Document	
Decision sought:	<p>Policy approval to pursue regulations under the <i>Building Act 2004</i> to implement building product information requirements.</p> <p>This will give effect to amendments made by the <i>Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021</i>.</p>
Advising agencies:	Ministry for Business, Innovation and Employment
Proposing Ministers:	Minister for Building and Construction
Date finalised:	12 October 2021
Problem Definition	
<p>Building owners, homeowners and consumers want to have confidence that the building products they use, and buildings they live in, are safe and fit for purpose.</p> <p>A lack of consistent and readily available building product information, including how products contribute to New Zealand Building Code (Building Code) compliance, can lead to poor product selection, or incorrect installation, use or maintenance, which can increase the risk of building or product failure. These issues increase the cost of building through consenting delays and rework in order to achieve Building Code compliance.</p> <p>To help address these issues, the <i>Building Act 2004</i> (Building Act) was recently amended by the <i>Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021</i> (Building Amendment Act) to introduce regulation-making powers to require information for building products.</p> <p>Regulations are needed to implement the new building products information requirements, which will address the problems identified above.</p>	
Executive Summary	
<p>Preferred option</p> <p>This regulatory impact statement identifies the preferred option for building product information requirements as being to introduce regulations that:</p> <ul style="list-style-type: none">• Set out responsibilities on suppliers for the manufacture or import of a building product and the distribution and/or retail only of a building product• Establish a proportionate, tiered approach to mandatory minimum building product information requirements under three different classes of products	

- Require claims about whether a building product meets or contributes to all relevant Building Code clauses for the stated scope and limitations of use
- Require all claims about Building Code compliance to illustrate how this is achieved
- Require that all information requirements be met prior to supply of the product, and that information is kept up to date with the latest version of a product
- Require all information required to be disclosed about building products to be made freely available online, and ensure that the product is clearly linked with its corresponding online information
- Provide an 18 month transition period after building product information regulations are made before they come into force.

Introduction to current building reforms

The Government's Building System Legislative Reform Programme (the reform programme), which commenced in 2019, aims to achieve three linked, mutually reinforcing outcomes:

- a high performing building sector that builds it right the first time
- construction of safe and durable buildings using quality products and methods
- an efficient regulatory system that people have confidence in.

In September 2019, Cabinet agreed to a number of proposals intended to improve building product information as part of the first phase of the reform programme. The Building Act was recently amended to provide for these changes.

Regulation-making powers for building product information

As well as providing for a new voluntary modular component manufacturer scheme and a strengthened product certification scheme (CodeMark), the Building Amendment Act introduced regulation-making powers for building product information requirements.

The Building Amendment Act also introduced new powers for the regulator (Ministry of Business, Innovation and Employment (MBIE)) to undertake investigations. Previously, MBIE relied on the goodwill of businesses to provide any information requested. Under new legislative powers, MBIE can require information or documents in relation to enforcement action or the exercising of the chief executive's powers (section 207A of the Building Act). This change is vital to ensure the effectiveness of any building product information requirement regulations that are made.

The responsibility of builders¹ was also clarified, with amendments to state that builders are responsible for ensuring all building products and building methods used in building work are used in a manner that complies with the Building Code, and any building consent and associated plans and specifications (sections 14E(2) and 14E(2A) of the Building Act).

¹ A builder is defined as any person who carries out building work, and can include carpenters, plumbers, and other tradespersons.

In order to give full effect to these legislative changes and achieve the intended benefits, MBIE proposes that regulations are made to establish minimum building product information requirements². The regulations will set out **who** must disclose the information to whom, **what** information must be disclosed in relation to a building product and how it must be verified, and **how** the information must be disclosed. A transition period to enable the sector to implement the requirements is also proposed.

This Regulatory Impact Statement (RIS) provides two options for the regulations, which are analysed alongside the status quo.

Why better building product information is needed

Poor building product information can lead to delays in consenting, increased costs, and poor building outcomes if the products chosen are not fit for purpose. The introduction of building product information requirements will ensure there is a minimum level of product information available for building products that contribute to building performance.

This information will be used by designers, engineers, tradespeople, building consent authorities (BCAs) and consumers, and will provide confidence that the products used are fit for purpose and contribute to ensuring safe and durable buildings. The information is also vital to building consent applications. A lack of sufficient detail about a product's expected performance is a common reason for BCAs to request further information. This can lead to delays in consenting and costs to BCAs, builders and building owners.

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 tapware leaching lead into sanitary water.³

Better information on building products will help designers and builders to choose the right products and install them in the way intended. This will, in turn, reduce the risk of product-related building defects or rework requirements throughout the building process. The requirements will also support more efficient consenting by reducing the number of requests for further information BCAs need to make.

When combined with other recent legislative changes, the new requirements for a minimum level of building product information will:

- clarify the roles and responsibilities for the supply and use of building products and methods
- make it easier to hold people to account for false or misleading representations in relation to building products
- help provide greater confidence to participants in the building system about the performance and any limitations in the scope of use of building products
- make it easier to identify any warnings or bans in relation to building products.

² MBIE is separately proposing regulations for both the modular component manufacturer certification scheme and CodeMark, which are covered by separate Regulatory Impact Statements.

³ <https://www.stuff.co.nz/business/125723837/master-plumbers-concerned-about-lead-remnants-in-taps>

Stakeholder consultation

From April to June 2021, MBIE conducted public consultation on the proposals for building product information regulations. There was broad support for the regulatory proposals, though stakeholders identified a number of opportunities to refine the detail of the regulations.

Key among these is clarifying the scope of products captured by the information requirements and the level of information required for certain products. Specifically, many stakeholders considered that the information requirements should:

- only capture information that is critical to building performance i.e. information that specifically relates to performance requirements in the Building Code
- be scalable for different classes of building products, such as custom-made building products, for example, window units or frames and trusses.

Options

Three options are considered to address the problems identified above.

- *Option One* – Do not make regulations (maintain the status quo).
- *Option Two* – Make regulations for building product information requirements, which would require a minimum set of information common to all building products to be made available by manufacturers, importers, distributors and retailers (MBIE public discussion document⁴ proposals). This information would include how the building product is expected to contribute to compliance with the Building Code.
- *Option Three (preferred)* – Similar to *Option Two*, this option would make regulations for building product information requirements, however, some amendments in relation to the kinds of products captured by the information requirements and the format of information provided have been made in response to stakeholder feedback.

Benefits and costs

Benefits will accrue primarily to building product users – designers, builders and consumers – as well as BCAs, which use the information to inform building consents. These benefits include:

- avoided delays during the consent application process, for example, where an application is rejected or further information requested due to insufficient information about building products listed on the application
- avoided delays from failed inspections, such as where a BCA is not satisfied the correct product has been installed or considers that it has been incorrectly installed
- avoided additional inspection fees, where re-inspections are required to confirm identified issues have been corrected
- avoided cost of rework, such as where a non-conforming product is used, or where a product has not been properly installed or adequately maintained

⁴ <https://www.mbie.govt.nz/have-your-say/building-system-reform/>

- avoided search time for designers, engineers and builders, as the information they need about building product performance is more readily available.

There will also be wider long-term benefits once the full package of building legislative reform is implemented. These include increased confidence in building products and the building sector, as less rework and fewer building defects signals better quality, safer and more durable buildings.

The proposed regulations will primarily impact suppliers in terms of costs. Manufacturers and importers will be required to prepare the required information and include it with their products, as well as make it available online. Distributors and retailers will be required to ensure the information is included with each product they supply (but will not be required to verify the information provided). There will also be some compliance and enforcement costs for MBIE, as the regulator.

To support this analysis, MBIE procured a comprehensive cost benefit analysis that shows the benefits are likely to outweigh the costs of the regulations. A benefit-to-cost ratio (BCR) of greater than 1:1 but less than 2:1 is expected.

Implementation

MBIE has developed an implementation plan that will support, inform and educate the industry on the new building product information requirements, and ensure the sector is ready when the regulations come into force. Stakeholder engagement has been key throughout the development of these proposals. This will continue to be an important factor in ensuring that the new requirements are implemented as effectively and efficiently as possible.

In terms of compliance and enforcement, MBIE, as the regulator for the building system, will shift its operational duties from a focus on promoting product assurance (noting that demonstrating product compliance with the Building Code is currently voluntary) to enforcing the building product information requirements. Having good quality information will also address some key gaps in the current regulatory system, and improve MBIE's ability to investigate specific building products both in relation to adherence to the new building product information requirements and where false or misleading representations on products may have been made.

Limitations and Constraints on Analysis

The scope of the options analysed is limited by the regulation-making powers in the Building Amendment Act. Those powers enable regulations to specify: what information must be disclosed in relation to the building product; who must disclose the information and to whom; and when the information must be disclosed. This means that some suggestions received by stakeholders during consultation, such as compulsory third-party testing, verification or certification of products are beyond the scope of what can be considered under the Act's new regulation-making powers. Other suggestions may be considered as part of MBIE's other building system functions, such as updating the Building Code.

The constraints on this analysis are limited by two factors:

- There is a lack of detailed information or data on the number of requests for information BCAs make about building products during the consenting process. As such, the cost benefit analysis includes some assumptions on the frequency and nature of requests for further information.
- The number of building products on the market can only be estimated. The cost benefit analysis for *Option Two* used an upper estimate of 600,000 building products, however, recent stakeholder engagement and further research suggest lower estimates may be more likely. Sensitivity analysis on the benefit to cost ratio has been undertaken to recalculate the ratio to reflect 300,000 and 100,000 products on the market. Under these scenarios, the BCR increases from 1.11 for 600,000 products to 1.6 for 100,000 products.

Responsible Manager(s) (completed by relevant manager)

Amy Moorhead

Manager Building Policy

Building System Performance

Ministry of Business, Innovation and Employment

12 October 2021

Quality Assurance (completed by QA panel)

Reviewing Agency:	MBIE Regulatory Impact Analysis Review Panel
Panel Assessment & Comment:	MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the Impact Summary meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Current situation

1. The building sector is vital to New Zealand's economic success and the wellbeing of New Zealanders. It employs 10 per cent of the national workforce (278,300 people)⁵, and contributed 6.3 per cent of gross domestic product (\$15.8 billion) in the year ending March 2021.⁶
2. The sector faces a number of challenges, including low productivity, inefficient practices and processes, skill and labour shortages, business vulnerability and poor health and safety.
3. A range of initiatives is underway to lift the efficiency and quality of building in New Zealand. As part of the reform programme, problems identified in relation to building products include that:
 - product information often lacks clear detail on the product's performance
 - the roles and responsibilities for building products and methods are not clear
 - manufacturers and suppliers have disincentives to provide product information
 - MBIE has to rely on voluntary cooperation when it investigates building products and methods.
4. This particular initiative aims to address the problem of key information gaps about how building products are expected to perform in relation to the performance requirements of the Building Code.
5. The Building Code is an integral component of New Zealand's building regulatory framework, which is provided by the *Building Act 2004*.⁷

Recent regulatory history

6. In September 2019, Cabinet agreed to a number of proposals intended to improve building product information as part of the first phase of the reform programme. MBIE consulted on these proposed changes from April to June 2019.⁸
7. The Building Amendment Act, which was passed into law on 7 June 2021, introduced new regulation-making powers for building product information, including:

⁵ <https://www.mbie.govt.nz/dmsdocument/13358-construction-factsheet-january-2021>

⁶ <https://www.stats.govt.nz/information-releases/gross-domestic-product-march-2021-quarter>

⁷ <https://www.building.govt.nz/building-code-compliance/how-the-building-code-works/nz-regulatory-framework/>

⁸ The Regulatory Impact Statement for the 2019 consultation is available online: <https://www.mbie.govt.nz/dmsdocument/7024-ris-building-law-reforms-phase-one-proactiverelease-pdf>

- what information must be disclosed in relation to a building product
 - who is responsible for disclosing the information, to whom, and when
 - how and when information must be disclosed, verified, stored, and to what information management standards.
8. Regulations made under these provisions may:
- prescribe requirements for a particular building product or a class or classes of building products
 - prescribe different requirements for different building products or classes of building products
 - prescribe different requirements for different manufacturers, suppliers, or other persons, or classes of such persons
 - otherwise make different provision for different cases on any differential basis.
9. Regulations are now needed to support and implement the initial set of minimum building product information requirements.

Building products and the need for information

10. MBIE has identified four key levers in the building regulatory system – people, products, processes and performance. Building products are central to the safety and durability of buildings, and should therefore be reliable, durable and fit for purpose.
11. The Building Amendment Act defines a building product as anything that could be used as a component of a building and sets out several considerations for determining whether a product could be expected to be used as a component of a building.⁹
12. Building products come in many shapes and sizes.
- *Simple through to complex* – products can range from a nail to a prefabricated panel made up of multiple components. Modular component manufacturers can produce products that range from factory-made bathroom pods to complete houses produced by 3D concrete printers.
 - *Single or multiple uses* – a product’s use determines how it contributes to the overall performance of a building. Identifying and specifying the right product – and using it correctly – requires technical knowledge of the building product and New Zealand’s Building Code.
 - *Different sources* – products can be made in New Zealand or imported by wholesalers, retailers or building owners.

⁹ This section of the Building Amendment Act also enables declarations to be made via Order in Council that a particular product is or is not a building product. However, these powers are not proposed to be utilised as part of the proposals considered in this RIS. These regulation-making provisions were included to ensure the definitions capture new and emerging technologies and can be adjusted to reflect the complexity of the range of products and methods and any changes over time.

13. One often cited estimate is that there are around 600,000 building products on the market. This estimate was used as the basis for the cost benefit analysis for *Option Two* (proposals for regulations that were consulted on). However, recent stakeholder engagement and further analysis suggest lower estimates, for example:
 - Carters estimated that the requirements could apply to around 100,000 building products.
 - The GS1 National Product Catalogue has 82,000 DIY and building products.¹⁰
 - PlaceMakers (which uses the GS1 catalogue) carries over 74,000 product lines.
 - Bunnings carries 45,000, with a further 20,000 available for special order.
14. Some product lines will be duplicates between these stores, and many will not be building products, for example, housewares, cleaning supplies, outdoor equipment and so on.
15. Sensitivity analysis has been undertaken to assess the impact on the BCR for *Option Two* if the number of building products is 100,000 or 300,000 (refer to Annex 1).
16. As building products are critical to building performance, there should be sufficient information about them to inform product selection, consenting, installation and maintenance. Under consumer protection and commercial law, building products must be fit for purpose. However, there are no currently mandatory requirements for manufacturers to provide building product information under either the *Fair Trading Act 1986* (Fair Trading Act) or the Building Act.
17. While building product manufacturers are not required to make any claims about the expected performance of their products in relation to the Building Code, if they elect to do so, then they must be able to prove those claims under the Fair Trading Act.
18. Many manufacturers do provide information about their building products, and some even have them certified under CodeMark.¹¹ However, the information provided is not always consistent or sufficiently detailed to inform sound decision-making.
19. This is contributing to inefficiencies in the building sector and the building regulatory system. MBIE has identified this as a key regulatory gap.

Users of building product information

20. The primary users of building product information are designers, builders, building owners, and BCAs.
 - **Designers'** plans and specifications must be sufficient to result in building work that complies with the Building Code. Accordingly, designers must also

¹⁰ Dodwell, D., Page, I. & Curtis, M (2017). *Electronic traceability of New Zealand construction products: Feasibility and opportunities*. BRANZ Study Report SR365. Judgeford, New Zealand: BRANZ Ltd.

¹¹ CodeMark is a voluntary product certification scheme that shows how a building product meets the requirements of the New Zealand Building Code. Products are assessed by accredited product certification bodies and issued with a product certificate. The product certificate details similar information to that being proposed in the building product information regulations, with the certification process providing an additional level of product assurance for product users and BCAs.

ensure that the products and methods they specify will comply with the Building Code.

- **Builders** are responsible for making sure their work complies with the Building Code, the building consent and the related plans and specifications. This includes making sure that all the products they use comply with the Building Code.
 - **Building owners** are responsible for obtaining the necessary consents for the building work. Permission must also be obtained from the relevant BCA if they want to replace a building product in the signed-off consent with a different product (product substitution). Building owners are responsible for maintaining their buildings – some products may have specific maintenance requirements.
21. BCAs rely on product information to understand how specific products will affect the performance of the building when assessing the plans against Building Code requirements. When BCAs don't have the information they need to assess a building consent application, they will generally issue a request for further information. This can slow the consent down until the required information is provided, which may take several weeks in some cases.

Status quo

22. From April to June 2021, MBIE publicly consulted on a proposed set of minimum building product information requirements to be implemented under new regulation-making powers in the Building Amendment Act.¹²
23. These regulations will give effect to the parts of the Building Amendment Act that relate to building product information. The proposed regulations also form a key part of the broader reform programme, which aims to increase consumer confidence in the building system and make it safer and more predictable to build.
24. Without action to address the lack of consistency in available building product information, the problems identified above will continue to exist and the broader benefits of the reform programme may not be fully realised.

What is the policy problem or opportunity?

The quality of building product information is variable

25. Information about building products is important to inform decision-making when designing buildings (i.e. ensuring products being used are fit for purpose), ensure products are installed and maintained correctly, and support the assessment of consent applications.
26. Currently, not all products are provided with sufficient information to provide clarity and certainty about what the product is intended to be used for, how it should be used and any limitations on its use. Where this information is provided, it is not always clearly linked to relevant Building Code clauses.

¹² The discussion document can be accessed at: <https://www.mbie.govt.nz/dmsdocument/14150-building-amendment-bill-proposals-for-regulations-discussion-document>

27. Where information is insufficient or incomplete, sector participants may use judgement, familiarity or brand awareness to exercise discretion over whether a product is suitable.
28. Current building regulation settings in New Zealand do not regulate what building products can be produced or imported into New Zealand. Instead building products are regulated at the point of inclusion in a building consent application. At this point in the build process, the designer is responsible for submitting a building consent application that would result in a code compliant build.
29. The design and specifications of building products affects their anticipated performance, and therefore must be taken into account when designers and builders develop building plans and select the products needed to undertake the build.
30. Plans and specifications are assessed by BCAs to ensure the proposed building work will comply with the Building Code. When the BCA is satisfied, it will issue a building consent for the work to proceed. If a building is built to the consented plans and receives a code compliance certificate, it confirms the requirements of the Building Code have been met. Throughout this process, both the building plans and the specific products used to construct the building are assessed for compliance with relevant performance requirements in the Building Code.
31. The lack of consistent, comprehensive building product information about all products is leading to a number of problems, which are outlined below.

Product information often lacks clear detail on performance and other important details

32. New Zealand needs buildings that are safe and durable. Buildings must comply with the Building Code, and high quality product information is key. Designers and builders rely on good product information when making design and installation decisions. BCAs rely on product information to understand how it will affect the performance of the building when assessing it against Building Code requirements.
33. Currently, information on building products is inconsistent and often lacks technical detail needed to assess the expected performance of the building product. Liability for claims made about product performance discourages product suppliers from making such claims about their products.
34. Building product information also often lacks the detail that designers and builders need when specifying and using products. Stakeholders have told MBIE that product information is often marketing material that doesn't include information on code compliance and installation or maintenance requirements.
35. Because this information is necessary to support the appropriate use of building products, poor information can lead to situations where building products are not appropriate for their intended use or will not perform as needed.

Poor quality product information slows down the consent process

36. The consent process can be slowed down when BCAs don't have the information they need to assess a building consent application. Requests for additional information lead to delays in the consent being issued while the information is sought and submitted by the applicant and assessed by the BCA.

37. BCAs have advised that the use of imported building products has increased the frequency of these delays because manufacturers supply product technical statements and testing information as a way to justify compliance with the Building Code, but testing often can't be verified.

Manufacturers and suppliers have disincentives to provide product information

38. The Fair Trading Act and the Building Act make a manufacturer or supplier liable for the accuracy of any information that is provided about a product. However, there is presently no requirement to provide relevant information, so some suppliers simply elect not to do so.

Regulations are needed to implement recent amendments to the Building Act, improve building product information and support a more efficient building sector

39. There is an opportunity to improve the efficiency of designing, consenting and building processes by addressing common causes of defects and delays. The regulations will implement recent amendments to the Building Act and support the aims of the wider reform programme.
40. Better information on building products can support more informed decision-making, help designers and builders to choose the right products and install them in the way intended, and support faster consenting.
41. This will produce better outcomes for building owners and increase the broader community confidence in the building sector.

What objectives are sought in relation to the policy problem?

42. In order to address these problems, MBIE has identified the following objectives:
- Designers, builders and product manufacturers understand their roles and responsibilities, and are able to be held accountable for the building products they manufacture, select or use.
 - Trusted, quality information about building products is available.
 - Designers and builders choose products that meet the requirements of the Building Code.
 - Products are installed correctly to reduce the risk of defects in building work.
 - BCAs have the information they need to efficiently consent and inspect.
43. Any building product information requirements also need to be flexible enough to support innovation that increases productivity and ensure that buildings are safe and durable.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

44. MBIE has considered the assessment criteria in Table 1 below when developing proposals for regulations.

Table 1: Assessment criteria for proposals for building product information requirements

Criteria	Description of criteria	To achieve this, the regulations should ensure that:
Confidence	System participants (including product users, manufacturers and BCAs) have confidence in building products and how they will perform once installed.	Sufficient information is available for all building products that contribute to the Building Code’s performance-based objectives. Product information meets the needs of all key users, including designers, builders, building owners and BCAs.
Certainty and clarity	The regulatory framework has clear processes and responsibilities for suppliers (including manufacturers, importers, distributors and retailers) and have reasonable compliance costs.	The building product information requirements and who is responsible for meeting regulatory obligations are clearly stated. The regulations also ensure this information is freely available and accessible.
Cost effective	The benefits of the proposal outweigh the risks and costs.	The benefits to building product users outweigh the costs to suppliers (noting these costs may be passed on to consumers, at least in part), and costs do not deter suppliers from manufacturing or importing products for the New Zealand market.
Proportionate	The proposals are proportionate in the way they treat regulated parties.	Robust building product information is available to assist building product users to comply with the Building Code and help ensure new buildings are safe and durable without placing overly onerous requirements on suppliers.
Flexible	There is enough flexibility to allow regulated parties to provide building product information in a way that works for their operation.	The information requirements are scalable according to classes of products, so that the relevant information is provided for building products in a way that minimises costs for individual businesses, and requirements for how the information must be provided are flexible for suppliers so long as consistent information is available to user.

What is the scope for identifying options?

45. The Building Amendment Act introduced regulation-making powers to establish mandatory building product information requirements. Specifically, Section 84 provides that regulations can be made under section 402 of the Building Act to prescribe information requirements for a building product that specify:
- what information must be disclosed, who must disclose the information and to whom, and when the information must be disclosed
 - the information to be disclosed, which may include information about: the building product; manufacturer, supplier or other person connected with the supply of the product; the installation, use, maintenance, or disposal of the building product; and any warnings, bans, or other restrictions in force in relation to the building product

- the form and manner in which information must be disclosed; how information must be obtained or verified before it is disclosed; requirements for reviewing and updating information; requirements for retaining copies of, or keeping records about, information; any other requirements that are necessary or desirable to administer and enforce compliance with the information requirements.
46. Regulations made under this section of the Building Amendment Act may:
- prescribe requirements for a particular building product or a class or classes of building products
 - prescribe different requirements for different building products or classes of building products
 - prescribe different requirements for different manufacturers, suppliers, or other persons, or classes of such persons
 - otherwise make different provision for different cases on any differential basis.
47. Any other options or initiatives outside of the scope of these regulation-making powers cannot be considered. For example, mandatory certification of building products was considered prior to the introduction of the Building Amendment Act into Parliament, but this option was not progressed. The combination of new building product information requirements and offences under the Building Amendment Act will ensure that product suppliers will make claims about the performance of their building products and that they are accountable for the accuracy of those claims.
48. In the case of tapware, for example, this would mean making claims about adherence to the relevant standards for sanitary plumbing products, which manufacturers would have to be able to prove if asked by MBIE. The changes in the Building Amendment Act are therefore expected to achieve a similar outcome to mandatory certification, without the costs and other impacts of a mandatory certification scheme.
49. It should also be noted that this regulatory proposal is just one initiative in a much broader programme to bring about building sector reform.

What options are being considered?

50. Three options are considered below:
- **Option One (status quo)** – do not make regulations, and the benefits sought by including regulatory powers in the Building Amendment Act are not realised.
 - **Option Two** – a set of regulations for minimum information requirements on building products is made in line with those proposed in the MBIE public discussion document. Under this option, a basic minimum set of information would be required to be provided with all building products that have Building Code compliance requirements. Manufacturers and importers would be required to make claims about whether their building products meets or contributes to all relevant Building Code clauses for the stated scope and limitations of use, and illustrate how this is achieved. This option also proposes a series of supply chain data and information standard requirements to be met in making the information available to product users online,

including that the information must be available in a structured data format and each product must have a unique identifiable code.

- **Option Three (preferred)** – a set of regulations for minimum information requirements on building products is made that are modified from *Option Two* based on consultation feedback and further exploration of the issues and potential solutions. Under this option, differing information requirements would be prescribed for three classes of products. Manufacturers and importers would still be required to make claims about whether their building products meets or contributes to all relevant Building Code clauses for the stated scope and limitations of use, and illustrate how this is achieved. However, different classes of products will ensure that meeting these requirements is not overly onerous for certain types of manufacturers, while still ensuring the intent of the regulations is achieved. Product information must be freely and readily available online, but a unique identifiable code and structure data format will not be mandatory.

Option One – No regulation are made (status quo)

51. This option is equivalent to the status quo as discussed in Section 1. That is, no regulations are made to support the intent of the changes made by the Building Amendment Act.
52. Under the status quo, the quality of building product information will remain variable, though some of the intended benefits of the Building Amendment Act in relation to products will occur without regulations, for example:
 - Section 10 clarifies builders' responsibilities in relation to building products.
 - Section 55 introduces the power for the chief executive of MBIE to require any person to provide any information or document required to support investigations, for example, in relation to a potential product warning or ban.
 - A number of penalties have been revised up to better deter substandard work or poor behaviour, particularly for larger organisations.
53. However, manufacturers and suppliers will still not have any legally enforceable responsibilities in building law. There is currently no requirement to provide relevant and sufficient information in relation the intended use, and scope and limitations of such products, though any information provided must be accurate (as per the Fair Trading Act). As a result, some suppliers simply avoid providing information.
54. Designers and builders have a responsibility to assess and select the right products to achieve compliance with the Building Code, however, do not always have adequate information to make informed decisions. A number of participants rely on BCAs to undertake quality assurance at the consenting and inspection stages. Gaps in responsibilities can make it difficult to hold people accountable.

Outcomes of Option One

55. With the Building Amendment Act provisions described above, MBIE will be better placed to pursue investigations into building products. However, if the new regulation-making powers are not also used, low incentives on suppliers to meet demand for consistent, accurate information about building products will remain. There will continue to be inefficiencies and delays as building consent applications are placed

on hold until the information needed to process them is sourced. Delays in consenting have been estimated to cost close to \$1,600 a week.¹³

56. The sector will continue to face potential costs and delays due to failed inspections and rework, and additional inspection costs to ensure the appropriate remediation has taken place. Other problems may not be identified until after completion, representing a cost impact to the builder to rectify the issue and a time and inconvenience cost to consumers. BRANZ surveys consistently report a large majority of new homeowners having to get tradespeople to come back to fix defects after they have moved in¹⁴.
57. There is an expectation that regulations will be made 15 months after the passage of the Building Amendment Act (i.e. by 7 September 2022). It is also important that all aspects of the programme are pursued to maximise the sector wide benefits, such as increased confidence in the sector.

Option Two – Introduce a set of regulations for minimum building product information requirements in line with those proposed in the MBIE public discussion document

58. *Option Two* encompasses the proposals presented in MBIE’s public discussion document, which was released for public consultation from April until June 2021. It has also been tested with a comprehensive cost benefit analysis.
59. It includes a series of proposed regulations to be made under the Building Act, which are outlined in Table 2 below. These requirements would apply to any building products that could reasonably be expected to contribute to Building Code compliance, for example, products that would be specified in a building consent application and checked by BCAs. They will not apply to, for example, handles on cupboards, carpets or other such components that are not critical to building performance in any reasonably expected application.

Table 2: Option Two regulatory proposals

Category	Proposals for regulations	How the proposals meet the objectives for scheme regulations
Supply chain responsibilities to meet building product information requirements	Set out responsibilities on suppliers for the manufacture or import of a building product and the distribution and/or retail only of a building product, namely that: <ul style="list-style-type: none"> • New Zealand based suppliers responsible for the manufacture or import of a building product must collate, produce and disclose the required product information in accordance with the information requirements. • New Zealand based suppliers responsible for the distribution and/or retail only of a building product must ensure that those products meet information requirements and that the information is available to all those they distribute or sell the product to before it is sold. 	This will ensure that there are clear roles and responsibilities for those that manufacture and supply building products into the New Zealand market. Each participant in the supply chain will have a role that ensures the correct information is being supplied with each building product.

¹³ Sapere. (2021). *Cost benefit analyses of proposed building system regulations*.

¹⁴ For example, the 2018 survey reports that 80 per cent of respondents called back their builder to fix defects. Brunsdon, N and Lockyer, O. (2019) *New Home Owners’ Satisfaction Survey 2018*. BRANZ Study Report SR421.

Content of information to be provided about building products	Require a minimum set of information to be provided for relevant building products.	This will ensure consistent information is available for all relevant building products to better inform potential consumers ahead of their product choices.
	Require claims about whether a building product meets or contributes to all relevant Building Code clauses for the stated scope and limitations of use.	This will ensure trusted, quality information about building products is available, which will assist designers and builders to choose products that meet a building's performance requirements, and that BCAs have the information they need to efficiently consent and inspect new buildings.
	Require all claims about Building Code compliance to illustrate how this is achieved by making reference to: <ul style="list-style-type: none"> • compliance pathways listed in section 19 of the Building Act • any other international standards or technical drawing that details the standard to which a product was manufactured • the physical properties of the product, or how the product is expected to be used. 	This will ensure trusted, quality information about building products is available, which will assist designers and builders to choose products that meet a building's performance requirements, and that BCAs have the information they need to efficiently consent and inspect new buildings.
Supply chain data and information standards	Require that all information requirements be met prior to supply of the product, and that information is kept up to date with the latest version of a product.	This will ensure the most up to date information about building products is available, further ensuring that information is trusted, quality information.
	Require information to be stored in a structured data format that is accessible across the supply chain and by MBIE.	This will ensure up to date information about building products is available to a range of users, including those who wish to incorporate the information into design/engineering software or to undertake research into building products. This would also support MBIE's regulatory role by making information available in a way that can be more easily analysed.
	Require all information required to be disclosed about building products to be made available online.	This will ensure information is readily available to those who need it, and will further support the quality of information as manufacturers and importers can make detailed information such as design drawings or installation schematics available online.
	Require all building products to have a unique identifiable code that links it to the information provided online.	This will ensure information is readily available to those who need it, as it will be easily identifiable online.
Transition period	Provide an 18 month transition period after building product information regulations are made before they come into force.	This will ensure manufacturers and importers have time to develop the required information for current products or products in development. Additional testing may be required and manufacturers require a lead in time to update packaging or information to be included with products. It will also ensure distributors and retailers will have time to establish systems to check the information is included with each product it supplies.

60. Only a basic set of information common to relevant building products is proposed as a starting point to ensure all product information provided meets the same minimum level. *Option Two* proposes that the set of information to be required for building products is:
- a description of the building product (such as what the product is called and used for, and the manufacturer if made overseas) and a product identifier (for example, a Global Trade Item Number, if available)
 - the details of the manufacturer or importer, including a New Zealand Business Number or Global Location Number where applicable
 - the expected Building Code performance of a building product or its contribution to Building Code requirements within its intended scope of use, along with any limitations on its use (including demonstrating this through appropriate means)
 - any design and installation requirements
 - any maintenance requirements of a building product
 - any warranty or guarantee provided for the building product
 - either a statement confirming the product is not subject to a warning or ban under the Building Act, or a description of any warning or ban that has been made in relation to the product.
61. Under this option, there would be no product information requirements on the following:
- products certified by CodeMark
 - modular components manufactured under the modular component manufacturing scheme.
62. This is because appropriate levels of product assurance is provided either by the product certification scheme or the modular component manufacturing scheme.
63. More detailed information about *Option Two*, including detailed analysis on the benefits of the proposals, is available in Annex 2.

Benefits and Costs of Option Two

64. The primary beneficiaries of the proposals will be designers, builders, consumers and BCAs. These benefits are largely in the form of avoided delays, as well as avoided rework and inspection costs. There will also be savings to designers, builders and BCAs in the form of avoided search time. These benefits have been estimated to be \$177.5 million (NPV¹⁵) over 11 years.¹⁶
65. The majority of costs will be incurred by suppliers (manufacturers, importers, distributors and retailers), with a smaller cost to MBIE as the regulator (for implementation, guidance, monitoring and enforcement). These costs have been

¹⁵ Net present value.

¹⁶ Sapere. (2021). *Cost benefit analyses of proposed building system regulations*.

estimated at \$159.7 million (NPV) over 11 years.¹⁷ It is likely that these costs, at least in part, will be passed on to consumers through higher prices.

66. Annex 1 provides further detail on the cost benefit analysis for *Option Two*.

Risks associated with Option Two

67. MBIE has identified two key risks associated with *Option Two*:

- A potential risk raised during consultation is that some suppliers may elect to withdraw from the market, rather than comply with the regulations. However, feedback from the sector also shows that many manufacturers already have the required information and may already comply with requirements, or need only minor amendments to ensure the information is provided in the appropriate format.
- As with any regulation, there is a risk that some costs may be passed on to product users, particularly for products where little information is currently provided, as the implementation costs will be higher. However, the cost benefit analysis shows that the cost of regulation per product is relatively low, and the benefits, such as faster consenting, fewer inspection failures and fewer defects to rectify in future will be broadly shared by a range of participants in the sector.

68. The cost benefit analysis also shows that benefits associated with the new information requirements outweigh the costs and the risks. Further, there was broad support for the regulations overall. Major retailers have advised MBIE that they support the regulations and are already planning to implement them, though also noted that sufficient transition time will be essential to support successful implementation.

69. Stakeholder feedback also indicated that more consistent product information may make it easier for new and innovative products to compete with established products, as it will be easier to compare products.

Option Three – Introduce a modified set of regulations for minimum information requirements on building products, based on stakeholder feedback (preferred)

70. *Option Three* is a modified version of *Option Two*. It includes a series of proposed regulations to be made under the Building Act, which are outlined in Table 3 below.

71. These modifications incorporate stakeholder feedback and further policy development since the release of MBIE's public discussion document.

¹⁷ Ibid.

Table 3: Option Three regulatory proposals

Category	Proposal
Supply chain responsibilities to meet building product information requirements	Set out responsibilities on suppliers for the manufacture or import of a building product and the distribution and/or retail only of a building product (no change).
Content of information to be provided about building products	<p>Establish a proportionate, tiered approach to mandatory minimum building product information requirements under different classes:</p> <ul style="list-style-type: none"> • Batch- or mass-produced building products that contribute to Building Code compliance (Class 1). • Custom-made building products that contribute to Building Code compliance, and that are made-to-order, non-repeatable products with specifications or performance requirements that are tailored to each order (Class 2). • Gas and electrical products regulated under the <i>Electricity Act 1992</i> or <i>Gas Act 1992</i> and any associated regulations (Class 3). <p>Under this option, there would also be no product information requirements for frames and trusses that are manufactured off site in accordance with an acceptable solution or verification method under the Building Code.</p> <p>Like <i>Option Two</i>, there would be no product information requirements on the following:</p> <ul style="list-style-type: none"> • products certified by CodeMark • modular components manufactured under the modular component manufacturing scheme.¹⁸ <p>Require claims about whether a building product meets or contributes to all relevant Building Code clauses for the stated scope and limitations of use (no change).</p> <p>Require all claims about Building Code compliance to illustrate how this is achieved by making reference to:</p> <ul style="list-style-type: none"> • compliance pathways listed in section 19 of the Building Act • any other international standards or technical drawing that details the standard to which a product was manufactured • the physical properties of the product, or how the product is expected to be used (no change).
Supply chain data and information standards	<p>Require that all information requirements be met prior to supply of the product, and that information is kept up to date with the latest version of a product (no change).</p> <p>Require all information required to be disclosed about building products to be made freely available online, and ensure that the product is clearly linked with its corresponding online information (amended).</p>
Transition period	Provide an 18 month transition period after building product information regulations are made before they come into force (no change).

¹⁸ This is because appropriate levels of product assurance is provided either by the product certification scheme or the modular component manufacturing scheme.

72. The key difference between *Options Two* and *Three* is the introduction of a proportionate, tiered approach where the minimum information requirements would vary between different classes of products: batch or mass produced products, custom-made building products, and products with some similar regulatory requirements under other legislation.
73. Some stakeholders advised that *Option Two* would be unduly onerous for custom-made products, and that providing all of the information proposed for each unit produced would add little value, as the performance specifications to achieve Building Code compliance are determined prior to ordering. For gas and electrical products, stakeholder engagement suggested that much of the information proposed is already required under the Electricity or Gas Acts.
74. Under *Option Three*, the proposals that product information is provided in a structured data format and that each product must have a unique identifiable code have been removed. Stakeholder feedback was mixed on these proposals, though a number of submissions highlighted concerns about the cost and ability of manufacturers to do this. Other feedback included that the purpose or benefits of these proposals were unclear or didn't seem to benefit key users of the information.
75. There are no changes proposed to the supply chain responsibilities or transition period. Changes proposed to be incorporated into *Option Three* with regard to the different classes of building products and digital requirements are discussed further below.

Content of information to be provided about building products

Warranty or guarantee information

76. Only information generic to all building products is proposed as a starting point to ensure all product information provided is meeting the same minimum level.
77. Some stakeholders noted that explicit warranties or guarantees are not required for all products as a matter of law. Where warranties or guarantees are provided, they represent a contract between the warrantor/guarantor and the purchaser or end user. Including such information in the regulations could be confusing as it may:
- not be clear who the contracting parties are, particularly where an importer is preparing the information for a product with a warranty provided by an overseas manufacturer
 - be confused with the durability requirements of the Building Code; further, where a warranty or guarantee is explicitly provided but is for a shorter period than would be reasonably expected for the life of a product, then consumer law provides for remedies even if the warranty or guarantee has "expired".
78. The proposed requirement to include information about warranties or guarantees is therefore removed under *Option Three*.

Introducing different classes of products

79. *Option Three* proposes to introduce a proportionate, tiered approach where the information requirements would vary according to which class each building product belongs to:

- Class 1: batch- or mass-produced products that are typically available for retail or wholesale purchase, such as fixings, nail plates, structural timber, roofing, flashings and cladding.
 - Class 2: custom-made lines of products, such as external windows and doors, that are made to order to client specifications and vary in dimensions or to meet design, installation and/or location requirements (e.g. to accommodate wind or climate zone requirements).
 - Class 3: gas and electrical products regulated under the Electricity and Gas Acts and associated regulations, such as water heaters and products required to be registered on the Gas Appliance Supplier Declaration database.
80. As with *Option Two*, products with a current CodeMark product certificate and modular components manufactured by a certified modular component manufacturer will not have to provide building product information.
81. *Option Three* will also not require building product information for frames and trusses where they are produced in accordance with acceptable solutions and verification methods under the Building Code.
82. Introducing a more targeted and tiered approach to the building product information requirements, alongside the proposal to omit frames and trusses from the proposed information requirements, will ensure the level of regulation on building product manufacturers is proportionate. That is, the amended requirements will not impose information requirements on classes of building products where it is not feasible or practicable to do so.

Class 1: Batch or mass produced products

83. For Class 1 products, the standard set of information required will be as proposed in *Option Two*, except for warranty or guarantee information. Class 1 products will also include products that may be made to order, but where the product design and specifications are pre-determined and the product is not customisable (such as products made by smaller suppliers or with low sales volumes).

Class 2: Custom-made products

84. For Class 2 products, the standard set of information required will be the same as for Class 1 products, but will apply to lines of products (for example, a suite of window products), rather than the individual units that are custom-made to order. The information prepared for such product lines will need to be made available prior to units being available to order.
85. Class 2 has been developed in response to stakeholder feedback. Stakeholders in the window and glass industry, in particular, were concerned the requirements would be overly onerous for the kinds of products they make, as each unit ordered and fabricated may be required to have a unique set of information prepared for it.
86. Further, the manufacturer or fabricator usually doesn't control the design specifications. These are determined by builders, designers or building owners, who must order units with the right specifications and install them in the right way to achieve Building Code compliance. Providing the information with a unit that has already been ordered or fabricated would also mean the information is not made available in a timely manner. It may assist with installation and maintenance requirements, but not performance specifications to inform product selection.

87. There are other examples of such products that MBIE has identified, such as pre-cast concrete panels. Annex 3 provides further information about how such products are designed and fabricated.
88. Product information requirements for Class 2 products also reflect that a base level of information can be provided for custom-made products, while acknowledging that additional performance specifications are usually required to be made at the individual unit level to achieve Building Code compliance (for example, safety glass or window stays).
89. This will ensure that designers, builders and consumers have access to information to inform their decisions about which base product line to select, while enabling manufacturers to provide clear advice about the scope and limitations of use of their products, for example, advising that additional specifications may be required to achieve the required level of building performance.

Class 3: Certain gas and electrical products

90. Electrical and gas products that have building code performance requirements and that are also regulated under the Electricity Act, Gas Act and associated regulations would only have to provide any information that is not already disclosed under these existing legislative frameworks (for example, gas appliance supplier declaration requirements under the Gas (Safety and Measurement) Regulations 2010).
91. Under these regimes, gas and electrical appliances provide a range of information (e.g. safety and installation information) that is substantially similar to the requirements proposed for building products. Information requirements under the proposed regulations will therefore be limited to a description of the product (including a product identifier), information in relation to Building Code performance (not already covered by information disclosure requirements under the Gas Act or Electricity Act and associated regulations), and any warnings or bans in place for the product.
92. Only requiring information that is not already provided for such products will ensure that the proposed building product regulations do not substantially duplicate existing legislation or create gaps between the current disclosure requirements and proposed regulations. The requirements are only expected to a small subset of the products regulated under the Electricity and Gas Acts and associated regulations, as many such products do not have building code implications (e.g. gas barbecues and portable electrical appliances).

No information requirements for frames and trusses

93. Under this option, there would be no information requirements for frames and trusses that are manufactured in accordance with an acceptable solution or verification method under the Building Code (e.g. *NZS3604 Timber-framed buildings*).
94. Frame and truss stakeholders raised similar concerns to external windows and door manufacturers, namely that each set of frames and trusses fabricated may be required to have a unique set of information prepared. This would be overly onerous for fabricators and the information would not be timely for designers and builders.
95. Further, fabricators have little control over the building code compliance of a particular building, as the designer or builder determines the requirements for frames and trusses and orders them to be fabricated in line with those requirements. Annex 3 provides further information on the design and ordering process.

96. In contrast with external windows and doors, which have product lines or suites and a number of customisations that can be made to meet either Building Code requirements or consumer preferences, frames and trusses are more simple products. They are less complex, relatively simple to make and have little variability in the way they are fabricated. That is, there are very few specifications to choose from. They are also easy to inspect once installed, which BCAs do prior to roofing and cladding being applied, and there are no maintenance requirements.
97. Following further investigation and discussions with key stakeholders, MBIE has determined that there would be no additional benefit in applying building product information requirements to the offsite fabrication of frames and trusses. This is because the current processes, such as the way frames are engineered and inspection requirements, alongside the requirements of relevant standards that guide production and installation, provide sufficient product assurance.

Digital requirements for information about building products

98. While there was clear support for making the building product information available prior to supply, ensuring it is kept up to date, and is available online, there was less stakeholder support for providing information in a structured data format and with a unique product identifier.
99. Concerns included the cost impact and that if the product identifier was required to be marked on the product, this could impact aesthetics for the home owner. Some stakeholders also felt there was no clear benefit from these proposals, or that the benefit would not be to the sector itself, but to MBIE or other third party stakeholders. Others considered it would only be useful in conjunction with a central product register or database.
100. One BCA was concerned that if a building consent applicant referred to structured data on a manufacturer's website, rather than including the information with the application, it could actually increase the processing time.

Structured data format and unique product identifier

101. This option was initially proposed to due inconsistency in digital product data creating duplication of effort across the supply chain to access, input and process information. After considering feedback and further analysis, MBIE has concluded that introducing structured data and unique product identifiers would likely have little additional benefit without the introduction of a central product register, which is not being pursued at this time.
102. Digital product data¹⁹ and electronic traceability²⁰ can have information accessibility benefits. However, further work would be required to determine what a structured data format would look like and there are risks in attempting to prescribe this in regulation.

¹⁹ <https://www.branz.co.nz/pubs/research-reports/er56/>

²⁰ <https://www.branz.co.nz/pubs/research-reports/sr365/>

103. Such initiatives do not require regulations to be pursued, and are best owned and progressed through voluntary, industry-led initiatives, with MBIE support as appropriate.
104. It is therefore proposed instead that the regulations will require information about building products to be available prior to sale of the product, kept up to date with the latest version of the product, and made freely available online, and that the correct online information can be easily sourced in relation to a particular product.
105. This approach will ensure that the policy intent of ensuring that building products can be linked to their information online is achieved without mandating that each product must have a unique identifiable code. It will instead be at manufacturers' discretion how this is achieved, though this could include the use of a Global Trade Item Number (GTIN), a QR code, or a distinguishable model/part number.

Impact on costs and benefits of these changes

106. MBIE expects the benefits of *Option Three* to be similar to *Option Two*. This is because the information required to support the intent of the proposed regulations will be available to those who most need it at the appropriate point in the product selection and installation process, as well as the compliance process.
107. There may be slightly longer search times for designers, builders and BCA officers by not requiring information to be in a structured data format or have a unique product identifier. The overall benefits of avoided search time were calculated as being \$62.5 million (NPV) over 11 years. MBIE does not anticipate a significant loss of this benefit.
108. There will be a reduction in costs under *Option Three*, as some of the implementation costs associated with the digital information proposals will be avoided, alongside an overall reduction in administrative burden compared to *Option Two*.
109. The cost benefit analysis for *Option Two* identified the costs of putting the data into the prescribed format and procuring and maintaining a unique identifier as being \$28.5 million (NPV) over 11 years. Not having these requirements represents an implementation cost saving, though some businesses may still elect to use a GTIN or similar to meet the requirements.
110. Further, as noted in relation to the costs of *Option Two*, smaller businesses are likely to face a disproportionate cost impact. Flexibility in how suppliers can meet requirements to make information publicly accessible will mitigate costs on smaller enterprises, allowing them to find ways to meet requirements in a way that will fit their business model.

Stakeholder feedback

111. From April to June 2021, MBIE undertook consultation on a public discussion document. This has been supplemented with ongoing direct engagement with key stakeholders, in particular, the Window and Glass Association of New Zealand and Frame and Truss Manufacturers Association, both of which had significant concerns about the feasibility and potential impact of *Option Two* on their industries. This ongoing consultation has been key to informing the development of *Option Three*.
112. Fifty-seven submissions were received, the majority of which supported the proposed building product information requirements in full or part. Submitters included:

- 18 industry organisations
 - six product manufacturers and three distributors
 - four building companies and two architecture/engineering companies
 - five building consent authorities.
113. The balance of submissions were from a range of businesses and individuals in the building and construction sector (noting that some submissions were only relevant to separate proposals being made in relation to modular component manufacturing and product certification, or CodeMark).

Supply chain responsibilities to meet building product information requirements

114. Feedback from consultation on this proposal was largely in agreement with the proposed responsibilities on suppliers. A number of manufacturers that submitted noted that the proposal broadly aligned with the information they were already supplying with their products, and therefore didn't anticipate issues with meeting the requirements.²¹
115. However, several submissions noted that achieving compliance with the Building Code is a shared responsibility, and that manufacturers may not have line of sight of all the applications of their product. There is an obligation on others, such as designers, builders and BCAs, to also ensure the correct products are selected and installed in buildings. This will be clarified in the requirements and in guidance once the regulations are made.
116. Another key area of feedback was that the proposed building product information requirements should apply only to products that are critical to building performance, i.e. those that support compliance with the Building Code. This was the intention and both Options Two and Three now clarify this.
117. Other concerns included that the information may change after it is checked by suppliers and without them becoming aware, and that there is a lack of clarity on who is liable for incorrect or incomplete information when non-compliance of a product is identified. Section 84 of the Building Amendment Act will insert defence provisions into the Building Act for failing to comply with the requirements, such as if the failure was due to reasonable reliance on information supplied to the defendant by another person.

Information required to be included with products

118. Feedback on the proposed information requirements was broadly supportive. Suggested amendments included the exclusion of warranties, and inclusion of operational and embodied carbon, waste/recycling, emissions and other environmental impact information. Work is underway via the Building for Climate Change programme, which will explore building regulations in relation to climate change and may lead to amended building product information requirements in due course.

²¹ This is recognised in the cost benefit analysis for the proposed regulations, which estimated that 64.4 per cent of manufacturers and importers already have the information required.

119. Of the small number that disagreed with the requirements, feedback was most commonly that the information requirements would not be feasible for custom-made products. This feedback has been addressed by *Option Three*.
120. A number of submitters called for third party certification of products, third party verification of testing results and/or MBIE playing a role in terms of routinely auditing product information and testing products to confirm the information associated with them is correct. Compulsory third party certification is outside of the scope of the regulations and not provided for in the Building Act. Voluntary product certification is currently available through CodeMark.
121. Third party verification of testing results is also not considered necessary. In order to make claims about building product performance, manufacturers will most often refer to relevant New Zealand, Australian or international standards, which typically reference appropriate and robust testing mechanisms in order to ensure the standard is being met.
122. Through new powers of investigation, MBIE will be able to request documentation, including testing results, to ensure products are adhering to the building product information requirements. If MBIE is not satisfied with the methods used to verify expected Building Code performance, then it may pursue its own testing as part of an investigation into a particular product, though this is rarely necessary.

Digital requirements for information about building products

123. The proposals to produce the information prior to supply and to have the information available online were the most widely supported out of all nine proposals. In addition, a number of submissions noted the need to keep information up to date, and to maintain information about older products.
124. However, with regard to the proposed structured data format requirement, some stakeholders felt it was unclear what problem the proposal is trying to solve, or that the benefits expected to flow to the building industry, as opposed to the central regulator, were not clear.
125. A substantial number of submitters called for a single national product register, most likely to be operated by MBIE, so that building product information could be found in a single place online and some duplication of effort could be avoided. Conversely, some submitters did not support such a register, noting the potential cost implications, particularly if the cost was passed on to the sector.
126. The Government has already decided not to pursue a national product register at this stage so it is out of scope of the regulations. The potential benefits from a register are highly dependent on the information being up-to-date and accurate. Given the number of building products in the market, the costs of administering and maintaining the register are likely to be prohibitive.
127. A number of product databases for building products already exist in New Zealand, and are an option for manufacturers or importers who do not wish to establish or maintain a suitable web presence.

Transition period

128. Feedback received through the consultation period was somewhat supportive of an 18 month timeframe for implementation, though nine out of 57 submitters did not support this proposal. Alternatives were proposed range from two years up to five years.
129. Some submitters considered that smaller suppliers may need more time to comply, or that there should be discretion in the use of enforcement initially, such as providing opportunities to address identified issues and ensuring MBIE is available to provide advice about how to achieve compliance. MBIE's Product Assurance Compliance Strategy will guide compliance and enforcement. One of the three pillars of this strategy is education. (Refer to Section 3 for further detail.)
130. While the regulations should take effect as soon as practicable, it is clear from stakeholder feedback (both through the consultation process and conversations between MBIE and key stakeholders) that the timeframe cannot be shortened. For example, one stakeholder has commented that the new information requirements could compound the current supply chain disruptions due to Covid-19.
131. On balance, MBIE considers that 18 months is a reasonable timeframe to allow industry to adjust to the new information requirements.

How do the options compare to the status quo?

Refer to key over the page	Option One – Status Quo	Option Two – Package of building product regulations in MBIE discussion document	Option Three – Amended package of building product regulations to incorporate stakeholder feedback
Confidence	0 Building sector confidence remains static, or potentially declines as further building product defects are identified	++ Building sector confidence increases due to a clear government mandate for minimum building product information	++ Building sector confidence increases due to a clear government mandate for minimum building product information
Certainty and clarity	0 Requirements for suppliers do not change and no compliance costs incurred, but building product users will not have the information they need to adequately inform decisions	++ Building product users have greater confidence in the products they are using	++ Building product users have greater confidence in the products they are using
Cost effective	0 Given the BCR of Options Two and Three is greater than 1, this is not a cost effective option	0/+ While the benefits will be similar to <i>Option Three</i> , the costs to suppliers of custom-made products may be much greater than assumed in the cost benefit analysis	+ With a modest BCR, net benefits that can be quantified are not substantial, though show there is merit in pursuing the regulations to ensure better building product information is available to the building sector and consumers
Proportionate	0	0/+ The costs to suppliers of custom-made products would be disproportionate to other suppliers, without a commensurate increase in benefits	++ <i>Option Three</i> will achieve similar benefits to <i>Option Two</i> , while ensuring costs to suppliers of different classes of products are proportionate
Flexible	0	+ Suppliers have flexibility in the methods they use to demonstrate expected Building Code performance, and can specify any limitations	++ Suppliers have flexibility in the methods they use to demonstrate expected Building Code performance, and can specify any limitations, as well as how they make the information available online Suppliers of custom-made products can meet the requirements in way that is better suited to their business model
Overall assessment	0	+	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

- 132. *Option Three* is recommended as the best option to address the problems identified in Section 1. It will achieve similar outcomes and is likely deliver a somewhat higher net benefit than *Option Two*.
- 133. This assessment is primarily based on the potential significant cost impacts of requiring custom-made products to have building product information in line with the proposals in *Option Two*.
- 134. *Option Two* would also be more costly for suppliers across the board due to the requirements for structured data and a unique product identifier.
- 135. The benefits of either *Option Two* or *Option Three* are very similar, and both are much greater than *Option One*.

Key:

++	much better than the status quo
+	better than the status quo
0	about the same as the status quo
-	worse than the status quo
--	much worse than the status quo

What are the marginal costs and benefits of Option Three?

Affected groups (identify)	Comment <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Building product manufacturers and suppliers	Manufacturers and suppliers will face the majority of overall costs. In particular, while many manufacturers and suppliers already provide the required information, there will be an upfront cost for those who do not to produce the required product information for existing products and publish it online. Ongoing costs will include maintaining that information and developing information for new products.	\$80.8 million (npv) over 11 years Note: Cost benefit analysis showed costs of \$109.3 million for <i>Option Two</i> , which included \$28.5 million for putting the data into the prescribed format and procuring a unique product identifier, which will not be required under <i>Option Three</i> ²²	Medium/High – MBIE has under taken a cost benefit analysis to assess the costs and benefits of the proposed regulations, though this included costs associated with proposals that are not being pursued under <i>Option Three</i> .
Building product distributors and retailers	Distributors and retailers may face a small initial cost to establish systems to check product information, with the majority of their costs being ongoing compliance costs once the regulations are in force and product checking commences.	\$39.0 million (npv) over 11 years	High – MBIE has under taken a cost benefit analysis to assess the costs and benefits of the proposed regulations
Building sector regulator (MBIE)	MBIE will face a small implementation cost to develop guidance and undertake communications to ensure the sector is aware of the new requirements. Monitoring and enforcement costs on an ongoing basis will be more substantial.	\$11.5 million (npv) over 11 years	High – MBIE has under taken a cost benefit analysis to assess the costs and benefits of the proposed regulations
Total monetised costs	MBIE has undertaken a cost benefit analysis to inform monetised costs.	\$131.2 million (npv) over 11 years	High – MBIE has under taken a cost benefit analysis to assess the costs and benefits of the proposed regulations
Non-monetised costs	No substantial non-monetised costs have been identified.	Low	High – No qualitative costs were identified in the cost benefit analysis

²² These costs have been removed here to give better indication of the potential costs of *Option Three*. MBIE considers there may be some additional costs for businesses to put the information online, particularly where they don't currently have an online presence, but expects these costs to be low.

Additional benefits of the preferred option compared to taking no action			
Building consumers	Building consumers will experience ongoing benefits through avoiding the costs associated with additional inspection fees, avoided rework, and avoided building delays (caused by consent, inspection and rework issues), along with increased confidence in building work. These costs include re-inspection fees and other costs associated with delays while consumers wait for building completion.	<p>\$177.5 million (npv) over 11 years</p> <p>Note: this figure assumes no loss of benefit as a result of not requiring structured data and a unique product identifier²³</p>	<p>Medium-high – MBIE has under taken a cost benefit analysis to assess the costs and benefits of the proposed regulations, though this included benefits associated with proposals that are not being pursued under <i>Option Three</i>.</p>
Builders	The benefits to builders are avoided delays from inspections or consenting applications, which can impact builders land holding costs, interest payments on loans and profits because delays or rework may mean that they build less.		
Architects, builders, engineers and BCAs	The benefits to those researching and choosing building products, as well as consenting their use, is avoided search time due to the online availability of consistent building product information, in particular, how the building product is expected to perform in relation to the Building Code.		
Broader community	The benefits will be increased confidence in the construction sector because less rework is undertaken, signalling better quality and more durable buildings.	<p>Medium</p> <p>This benefit is also reliant on the impact of other elements of the building sector reforms currently underway</p>	<p>Medium – this is a qualitative benefit that was not able to be assessed as part of the BCR</p>
Total monetised benefits	MBIE has undertaken a cost benefit analysis to inform monetised costs.	\$177.5 million (npv) over 11 years	High – MBIE has under taken a cost benefit analysis to assess the costs and benefits of the proposed regulations
Non-monetised benefits	As noted above, the primary non-monetised benefit will be increased community confidence in the construction sector.	Medium	Medium

²³ While there may be a slight reduction in search time benefits from removing the structured data requirements, MBIE expects that this benefit loss will be small.

Section 3: Delivering an option

How will the new arrangements be implemented?

136. As the new requirements will be mandatory for building products captured by the regulations, implementation will be critical for ensuring compliance and that the benefits will be achieved.
137. Implementation will have two key aspects:
 - Ensuring the sector understands and is ready to implement the information requirements when the regulations come into force, which will primarily be through education activities.
 - Preparations within MBIE, as the regulator, to ensure it is ready to commence its monitoring, compliance and enforcement role.
138. With the proposed transition period, there is significant lead time to plan for and commence implementation. The planned activities are discussed briefly below, noting that these may be adapted or amended as necessary due to any change in timeframes or the emergence of additional needs highlighted by the sector.

Implementation plan

139. MBIE has developed an implementation plan, which has the following objectives:
 - Support, inform and educate the industry of the change through an information and education campaign to ensure external audiences are aware of the changes and their new obligations. This would include guidance materials and resources, plus activity to communicate/ promote resources across the sector.
 - Engage with internal and external stakeholders so they are aware of the change, and are supported throughout the implementation phase.
 - Ensure the sector is ready for the change once the regulations come into force
140. The kinds of activities that will be pursued to achieve these objectives include:
 - Development of a compliance function and strategy, business processes and procedures for compliance and complaints.
 - Communication, information and education tasks – including the development of education and other information to educate stakeholders and ensure that behavioural change is influenced and sector participants are complying.
 - Identify MBIE's role in industry-led initiatives to pursue digital transformation to improve productivity, for example, through common information systems or product databases.
141. The plan identifies a number of phases, including estimated timeframes, as well as the resources required to adequately support implementation. It is also supported by other internal activities within MBIE, such as an information and education plan.
142. The implementation project team will continue to regularly engage with key stakeholders within the building sector. This engagement will help the project team to design and develop the necessary business processes and requirements, as well as inform guidance and education requirements.

Compliance and enforcement

143. With the new powers to require information and documentation, and the offences and penalties associated with the information requirements, MBIE's operational duties will shift from a focus on promoting product assurance, as demonstrating product compliance with the Building Code is currently voluntary, to enforcing the building product information requirements.
144. Failure to comply with the building product information requirements can lead to a fine of up to \$10,000 for an individual and \$30,000 for a body corporate. Making false or misleading representations in relation to building products can lead to fines of up to \$200,000 for an individual and \$600,000 for a body corporate.
145. MBIE's existing Product Assurance Compliance Strategy will be used as a basis for compliance and enforcement of the new building product information requirements. Previous experience in running investigations into building products will also be valuable in implementing the regulations.
146. The current Strategy has three pillars:
 - *Engagement* – maintaining a stakeholder register, engaging with key stakeholders on a regular basis (e.g. BRANZ) and attending conferences and industry events.
 - *Education* – providing accessible, timely information via the Building Performance website, providing in-depth guidance and information, and responding to queries through a products inbox and the Building CodeHub.
 - *Enablement* – providing opportunities for regulated parties to be exposed to industry best practice and regulatory requirements, and linking regulated parties with appropriate industry advisors.
147. Enforcement has not historically formed part of the Strategy. The Building System Assurance team has already commenced revisions to incorporate the recent legislative changes and develop an approach for enforcing the regulations once they are made. Further revision and refinement is likely between now and the end of the transition period for the new regulations, as this is approximately two years away.
148. The proposed regulations address some key gaps in the regulatory system that will further supporting the Building System Assurance function, including:
 - having good quality information, which is becoming increasingly crucial in making decisions about unfamiliar products, especially as the range and complexity of building products and methods available continues to increase
 - improving the timeliness and quality of regulatory decision-making
 - providing stronger measures to respond to non-compliance, with specific offences associated with the new building product information requirements, as well as the ability for the regulator to require information or documents.
149. There are potential overlaps with the enforcement responsibilities for MBIE and the Commerce Commission. MBIE will work with the Commerce Commission to identify how these enforcement responsibilities should be split and develop a memorandum of understanding between the two organisations.

BCAs as co-regulators

150. BCAs are co-regulators in the building system. The roles, responsibilities and functions of BCAs would not be directly changed by the proposed changes. However, some of the changes (such as requiring information about building products) are expected to affect how BCAs make decisions about building consents and their enforcement functions.
151. Overall, this is expected to produce benefits for BCAs, including reducing the number of requests for information they need to make when assessing consent applications, which will enable them to approve consents in a more timely way and free up resources to better meet the growing demand for consents.

How will the new arrangements be monitored, evaluated, and reviewed?

152. The implementation plan discussed in the previous section includes the development of a post implementation review assessment to evaluate the policy and changes and implementation activity.
153. An intervention logic model for the building system legislative reform programme was developed in 2019 (refer to Annex 4), and MBIE is currently in the process of reviewing this model. An evaluation framework is being developed, taking into consideration the following factors for the effectiveness of the building product information requirements:
 - desktop review or sampling of building product information available online against the regulatory requirements
 - feedback from BCAs or other parties
 - complaints or other feedback received by MBIE regarding building product information
 - non-conformance identified through MBIE's compliance and enforcement activities.

Annex 1: Costs benefit analysis (Option Two)

MBIE procured a comprehensive and cost benefit analysis to support this RIS. Over an 11-year period, the benefit-to-cost (BCR) ratio was calculated to be positive, at 1.11.

Benefits of the proposals

The main beneficiaries of the proposed regulations are builders, designers, engineers, BCAs, and consumers, as well as the broader community. The benefits of the proposed regulations are outlined in Table 4 below.

Table 4: Quantitative and qualitative benefits of Option Two

Benefit	Description
Avoided additional inspection fees	BCAs undertake building inspections throughout the building process to ensure that the construction is occurring in accordance with the consented plans and specifications. An inspection may fail due to an incorrect product being used or a product being installed incorrectly. Re-inspection after the issue has been addressed is required, which incurs an additional cost.
Avoided delays from failed inspections	Should an inspection fail, there is often a delay in the building process while the issue is addressed and re-inspected. In some cases, other work may continue and the building process may not be substantially delayed, however, in others, the overall build time could be extended by several weeks. This may have a cost impact on the builder, as they cannot build as many houses, and the owner, for example, additional rent payments while they wait for occupation.
Avoided delays from consenting applications	If there is insufficient information about building products with a consent application, BCAs may reject the application or request more information, both of which delay the process to achieve consent and commence building.
Avoided rework costs from the use of non-conforming products	Non-conforming building products are sometimes used because of a lack of information about when they should be used and how they contribute to Building Code compliance. Better information will ensure that products are fit for purpose, and used, installed and maintained correctly, which will reduce rework costs.
Avoided search time for users of building products	Ensuring consistent information is available online for all building products, including the use of a unique identifier to ensure the correct product information is being viewed, will save time for designers, builders, engineers, BCA officers and other users of building products.
Increased confidence in the construction sector (qualitative benefits)	<p>Improved stewardship will lead to an improved regulatory operating environment for regulated parties. This will, in turn, increase consumer confidence that the government is appropriately regulating the building industry and making it safer and more predictable to build. Designers and builders will have increased confidence in specifying and using a product.</p> <p>Less rework signals better quality and more durable buildings, which will support increased confidence in the construction sector. There will also be fewer accidents and injuries from product failures. Such benefits are difficult to quantify, and will also be attributable to the broader building sector reforms underway.</p>

Cost impact of proposals

The cost impact of the regulations almost entirely falls on suppliers (manufacturer, importers, distributors and retailers). These costs include:

- producing the required information
- ensuring the information is provided with products and online
- putting data into the prescribed format
- procuring and maintaining a unique product identifier.

In addition, MBIE will incur implementation, guidance, monitoring and enforcement costs.

Summary of costs and benefits

Table 5 below shows the quantitative costs and benefits of the proposals under *Option Two*.

Table 5: Quantitative costs and benefits of Option Two

	NPV (\$million)
Costs	
Manufacturers & importers	
One-off compliance costs	\$24.8
Ongoing compliance costs	\$56.0
Putting data into prescribed format	\$23.2
Unique identifier	\$5.3
Distributors and retailers	
Ongoing compliance costs	\$39.0
MBIE	
Implementation & guidance costs	\$0.4
Monitoring & enforcement	\$11.1
Total costs	\$159.7
Benefits	
Avoided delays from failed inspections	\$46.6
Avoided delays from consenting applications	\$15.1
Avoided additional inspection fees	\$1.9
Avoided rework from NCP	\$51.4
Avoided search time	\$62.5
Total benefits	\$177.5
NPV	\$17.8²⁴
BCR	1.11

²⁴ The net present value is determined by discounting cash flows at Treasury's recommended discount rate for regulatory proposals, which was five per cent per annum at the time of writing.

Benefit-to-cost ratio

While the overall BCR of 1.11 is not strong, the cost benefit analysis also considered a number of different scenarios (sensitivity analysis) and their impact on the BCR. This found that the BCR would increase if, for example:

- compliance costs were lower (0.3 per cent rather than 0.4 per cent of building product sector turnover), then the BCR would be 1.22
- more people used the information (32,000 engineers as opposed to 19,952²⁵), then the BCR would be 1.20
- 70 per cent of failed inspections due to building product typology were avoided, then the BCR would be 1.44.

Conversely, sensitivity analysis showed that if:

- retailers spend 30 minutes per day checking labels, rather than 20 minutes, the BCR would be 0.99
- only 30 per cent of failed inspections due to building product typology were avoided, then the BCR would be 0.90.

Sensitivity testing was also undertaken on the BCR to factor in a lower number of products (refer to discussion in Section 1). If there are 300,000 products, and 8,800 manufacturers (instead of 1,000), then the BCR would be 1.3. If there are 100,000 products and 8,000 manufacturers, then the BCR would be 1.6.

MBIE considers that the BCR will, in fact, exceed 1.11, and could be as high as 1.6. Further, the BCR only captures quantifiable costs and benefits; qualitative benefits are expected to include increased confidence in the construction sector because less rework is undertaken, signalling better quality and more durable buildings.

²⁵ There are variable data sources on the number of engineers in New Zealand, the BCR was reassessed using different source for this sensitivity analysis.

Annex 2: Detailed description of proposals for building product information requirements as set out in MBIE's public discussion document (Option Two)

The following provides a detailed description and analysis of the proposals contained in MBIE's public discussion document²⁶ (*Option Two*) under each of the four categories of proposals.

Supply chain responsibilities to meet building product information requirements

Option Two proposes to set out in regulations the roles and responsibilities of those who manufacture and/or import building products and those who distribute and/or retail building products, including that:

- New Zealand based suppliers responsible for the manufacture or import of a building product must collate, produce and disclose the required product information in accordance with the information requirements.
- New Zealand based suppliers responsible for the distribution and/or retail only of a building product must ensure that those products meet information requirements and that the information is available to all those they distribute or sell the product to before it is sold.

Setting specific requirements across the supply chain relating to producing and evidencing claims is intended to provide clarity about the role manufacturers, importers, distributors and retailers play. This will also enable people to be held to account for the building products they supply and their use.

Many product manufacturers and suppliers already provide information beyond the proposed minimum standards. There is no intention to encourage these groups to reduce the level of information they supply. Rather, it aims to create a level playing field where all manufacturers and suppliers provide a consistent minimum level of product information. It will also give other parties in the system – designers, builders, BCAs – the information they need to carry out their responsibilities.

The cost impacts of *Option Two* will primarily affect manufacturers/importers and distributors/retailers due to the responsibilities they will each have in relation to the information requirements of building products. The estimated cost impact across the sector is detailed in Annex 1.

Experience in the European market indicates that requirements such as these will disproportionately affect small and medium enterprises. The impact on smaller manufacturers will likely be greater due to economies of scale and because some may not currently have basic technology capabilities, which will be necessary to comply with the proposals to have the information available online and in a structured data format.

There will also be some minor cost impacts to MBIE, as the regulatory body that will be monitoring and enforcing the regulations (refer to Annex 4).

²⁶ <https://www.mbie.govt.nz/have-your-say/building-system-reform/>

Content of information to be provided about building products

Only information generic to all building products is proposed as a starting point to ensure all product information provided is meeting the same minimum level. *Option Two* proposes that the minimum set of information to be required in relation to building products is:

- a description of the building product
- the details of the manufacturer or importer including a New Zealand Business Number or Global Location Number where applicable
- the expected Building Code performance of a building product within the scope and limitations of use
- any design and installation requirements
- any maintenance requirements of a building product
- any warranty or guarantee provided for the building product
- a statement as to whether a product is subject to a warning or ban under the Building Act.

The requirements to make statements about scope, limitations, and maintenance and installation requirements are principle based, which ensures flexibility in the requirements to reflect the complexity of products. For instance, simple products such as nails and treated wood would require only a simple set of information and the evidence needed to be able to substantiate claims would be relatively straightforward. For more complex products, such as window units or bathroom pods, information required would be more complex, covering the many aspects of the product's features. This would inherently require a higher level of evidence to be able to substantiate claims made about the product's use.

These requirements are similar to those recommended for inclusion in Product Technical Statements, which are voluntary statements introduced around 10 years ago. Some large, and primarily domestic, manufacturers use these, often in conjunction with a third-party product catalogue service. These provide a subscription style service where, for a fee, manufacturers can develop and upload product technical statements on a third party website so they are available in a central location, alongside many other products, for designers and building practitioners to access.

Building Code performance

Option Two proposes that each product identifies the Building Code clauses it complies with, or contributes to compliance with (where a number of products work in conjunction with each other to achieve compliance).

The Building Code sets out performance clauses in relation to general provisions, stability, protection from fire, access, moisture, safety of users, services and facilities and energy efficiency. All building work in New Zealand must comply with the Building Code, even if it doesn't require a building consent. This ensures buildings are safe, healthy and durable for everyone who uses them.

MBIE considers that building product suppliers should be required to specify the Building Code clauses that their product relates to. This means that the supplier must consider the nature of their product, the scope and limitations they have set for it, and the role it plays in the overall building when deciding what Building Code clauses to reference.

It is important to note that a building product cannot, in isolation, achieve Building Code compliance, as compliance is based on a number of different products coming together to create a building. Suppliers also cannot be expected to anticipate every single use of their products and, despite the additional information proposed to be included with products, some consumers may ultimately elect to use the product in an unorthodox manner.

However, additional information about expected Building Code performance will provide guidance and identify parameters on the use of a product, helping to ensure more appropriate products are selected and used within their intended scope and limitations, and in conjunction with other appropriate products to achieve overall Building Code compliance.

Manufacturers are generally well placed to do this, given they are responsible for the design and manufacture of products, and must be able to substantiate any claims they make about a product's performance. The key change will be that manufacturers will be required to make claims about performance and substantiate those claims. Currently, they may stay silent on performance and are therefore not required to provide evidence about the suitability of their product for various applications.

Many suppliers already include such information with their products, and the main change will be to ensure that they provide the information in a way that meets the requirements. This may lead to a small cost for compiling and accessing the information from existing records and providing it in accordance with regulations. For smaller suppliers, there will likely be a higher cost barrier to set up systems and cover initial costs of developing systems and processes to meet information requirements.

Importers do not necessarily do the kind of testing required to substantiate claims about Building Code compliance, but they do regularly retrieve this information from overseas manufacturers to fulfil current obligations. Importers may need to undertake greater due diligence to ensure that they have the product information they need and can be confident that the product will perform as the manufacturer claims. They may, for some products, need to seek additional appraisals or third party testing to assure the quality and performance of products, if this has not already been done to the standard set by information requirements.

Evidence to illustrate claims about Building Code performance

Option Two proposes that claims about Building Code are substantiated by making reference to compliance pathways listed in section 19 of the Building Act or other relevant international standards or technical drawings that details the physical properties of the product or how the product is expected to be used.

The Building Act provides a number of pathways to compliance, which include acceptable solutions and verification methods. These most often refer to New Zealand or Australian Standards, but may also refer to other New Zealand and international publications, including international standards. Where a product meets a relevant standard or adheres to the requirements specified in other publications, it is likely to meet the requirements of a section 19 compliance pathway and thus meet the performance requirements of the Building Code that the standard or publication covers.

Where there is not a relevant acceptable solution or verification method, then the product would be required to provide other evidence of its suitability for a particular building, in the context of Building Code performance requirements.

Different products can illustrate their expected performance or physical properties in other ways. For instance, a cladding system for the external walls of a high rise building may have technical drawings with structural, fire and weather tightness ratings. It is expected that the product would have been tested in accordance with its installation instructions within its scope and limitations of use.

For many products, producer statements signed off by a certified practitioner, third party testing or appraisals of testing completed overseas to comparable standards would be appropriate. In practice, this means that the evidence being used to substantiate claims

needs to be sufficient enough to also satisfy investigations about a building product under existing settings.

Benefits of the information requirements for building products

The overarching aim of the proposed information requirements is to ensure building products are fit for their intended purpose. Designers, builders and homeowners should have access to the information they need to ensure that products are selected and used correctly, so that their building work is compliant with the Building Code.

The proposed changes are expected to reduce inefficiencies in the design process because more information will be available to designers. Designers would have easier access to product information, including any product limitations, they need when designing buildings. This would enable informed decisions on what products to use and how to use them with other products.

The new building product information requirements are also expected to bridge the gap between manufacturer and installer by including clear information about the scope and limitation of use, design and installation requirements, and any maintenance requirements. Having this information consistently provided with building products should prompt installers to seek and review this information at the point of installation. The proposed changes are therefore expected to reduce building inspection failures or instances where remediation of work is required.

Information about product maintenance would help building owners to maintain their buildings. They would also have greater confidence that those involved in building work have made good decisions about the products used.

Retailers would also be able to make informed choices about the products they decide to stock, and will have greater assurance that the products they sell will be fit for purpose, as they know manufacturers and importers can be held to account for providing false or misleading information, or making unsubstantiated representations. Access to information will also support them to provide advice to customers on product choice, and installation and maintenance requirements.

While manufacturers and importers will bear the majority of the costs of implementing the information requirements, they will also benefit from a reduced risk to their reputation from product failure.

Finally, implementing the building product information requirements would support MBIE's role as the building sector regulator, as it would have better access to the information it needs to make decisions on the performance of a building product. Offences and penalties under the Building Amendment Act mean manufacturers and importers can be held to account for inaccurate or unsubstantiated information where they have not adhered to the regulations and supplied a building product that is not fit for its described purpose or will not perform as intended.

Supply chain data and information standards

Option Two proposes a number of ways that data should be stored and made accessible, with the intention of ensuring that information is freely available and readily accessible across the supply chain and to all building product users.

MBIE would also benefit from greater visibility of the number and type of products available. There are gaps in available information about the quantity of products sold, and where they are currently stored or have been included in building work. This impacts the ability to track building products for monitoring and enforcement, as well as to inform new policy decisions.

It is sensible to specify that the information requirements for building products are met prior to supply, as the information should inform the selection of the product. In the digital age, it also makes sense to specify that this information be made available online.

Designers, builders and consumers alike are more and more frequently researching products online before purchasing, and want to compare information and specifications about products from the office or home, rather than spend time going from one retail or wholesale outlet to another. It also means the information can be compared side-by-side, rather than relying on recall from a visit to view a product in person.

The amount of information that can be included with a product or its packaging may be limited by factors such as the size of the product relative to the information (i.e. in the case of a small product/package that has many pages of specifications, and possibly installation and maintenance requirements), or by its format (such a large technical drawings).

Option Two therefore also proposes to require all building products to have a unique identifiable code that links it to the information provided online, and to require information to be stored in a structured data format that is accessible across the supply chain and by MBIE. This means that large documents, technical information or technical drawings could be solely provided online, rather than being required to be physically included with the product, provided they are readily available and easily identifiable.

These requirements are intended to make building products easier to track, and help the building and construction sector realise productivity gains, enable modern technology solutions (including building information modelling and digital consenting)²⁷, and enable more reliable information for making regulatory decisions in future.

Benefits of supply chain data and information standards

The key immediate and direct benefits of requiring a unique product number would be that the online product information is readily matched to the product (provided the number is clearly marked on the product or any packaging).

Available analysis suggests that gains in productivity would also be available through reduced effort to produce, share and use product information when standardised information and a common information structure is implemented.

The information could also be used to inform research or be used by other parties looking for machine readable information to input into design or engineering software.

²⁷ <https://www.branz.co.nz/pubs/research-reports/er56/>

The use of unique product numbers, such as the Global Trade Item Number, also has the potential to open up electronic traceability systems and other systems that could improve productivity. For example, BRANZ has identified that a traceability system could reduce defects and rework caused by poor product substitution, and find installed products in the event that a defect is identified after the build is complete²⁸.

Achieving such benefits would require significant industry buy in (for example, additional requirements would include marking products with a barcode or similar), investment in other technology (scanners, app development and so on), as well as a single national catalogue or database. It would also likely require suppliers to provide information additional to the minimum regulatory requirements proposed in this RIS.

Transition period

An 18 month transitional period is proposed in order to provide the sector with sufficient time to make the changes required to their systems and processes. This means businesses will have up to 18 months to begin complying with the regulations after they are made, noting that much of the sector has been aware of these forthcoming requirements since as early as 2019.

Anecdotal feedback from some major suppliers is that they are already preparing for the regulations, though they require certainty about what the regulations will require in order to fully commence the implementation phase.

Delaying the commencement would delay the benefits of having consistent information provided with all building products. The building sector is currently facing a broad set of challenges, many of which will take some time to address. In particular, demand for building consents has been rising steadily since 2011.²⁹ Initiatives to streamline the consenting process and prevent delays due to information requests, rework and re-inspection will speed up both consenting and build times, so it is important they are pursued as soon as practicable.

²⁸ <https://www.branz.co.nz/pubs/research-reports/sr365/>

²⁹ <https://www.stats.govt.nz/information-releases/building-consents-issued-june-2021>

Annex 3: Custom-made products case studies

This section outlines the ordering and production processes for two key custom-made products that are common to the vast majority of buildings: external windows and doors, and frames and trusses.

External windows and doors

Figure 1 outlines the process for fabricating external windows and doors. Similar processes may be followed for other products that are custom-made, such as pre-cast concrete panels or other unique, site-specific building features.

Figure 1: External window and door ordering and fabrication process

Builders and designers will use information from window system manufacturers to determine which broad suite of window/door options it will order from. These suites of window are tested to an appropriate standard (usually NZS 4211). Manufacturers of window systems will licence fabricators to make these windows. The builder or designer will provide one or more fabricators with the plans and individual window/door unit requirements to get a quote and choose a fabricator.

Each window or door unit is unique to each building due to site specific characteristics and plan variations, which can change the requirements of the Building Code that must be met (e.g. in relation to wind or climate zone) or may relate to consumer preferences (such as colour or lock choice). Many of the design and specification decisions to meet the performance requirements of the Building Code are made in advance of consent, ordering and fabrication of the product.

While window fabricators are familiar with reading plans and understanding Building Code requirements and may offer advice to customers through the quoting process, they are ultimately not responsible for ensuring the window meets the Code's requirements. Fabricators will make what is ordered by the designer or builder, who have the responsibility for ensuring that the specification they make will meet or exceed the Building Code requirements.

Changes to the base specifications established by manufacturers of window systems can be made by the fabricator to ensure Building Code compliance (e.g. safety glass, the use of opening restrictors for windows above a certain height, ensuring the glass is appropriate for the site's wind zone), however, changes made should not detract from the specifications needed to ensure each window unit continues to comply with the relevant standard its product suite has been tested to.

Nearly all external windows and doors in New Zealand are custom-made. They are not available as an "off the shelf" products (with some exceptions, such as skylight windows), which is due to both the variability in Building Code requirements depending on the site and customer preferences.

Window fabricators that MBIE engaged with during the policy development process advised that New Zealand consumers have a very strong preference for unique house and window designs. For this reason, there is also a very limited second-hand market for such products, as units used in one house will typically not be suitable for another, both due to the variable dimensions used, and that Building Code requirements can be different for different sites.

Frames and trusses

Frames and trusses can be built onsite by a licensed building practitioner, however, more often than not builders or designers will order these to be fabricated offsite. Fabricators will use designs or plans to make components to the required specifications and deliver them to be assembled onsite by the builder.

Typically, the selection of fabricator will be based on price, any existing relationship and/or availability. There are no product lines or options that builders, designers or customers can choose from. Occasionally consumers may express a preference for a particular type of wood (e.g. Douglas fir over radiata pine), though there are very few structural timber options available overall. Some sites will require the use of galvanised steel components to prevent corrosion. However, on the whole, there is little variability in the components used, and the proposed building product information requirements will apply to these components, which will help inform their correct application and use.

Timber frames and trusses manufactured offsite will generally adhere to *NZS 3604 Timber-framed buildings*, as this is accepted as being compliant with the Building Code. A very limited number of inputs are used, and the construction of components is relatively uncomplicated.

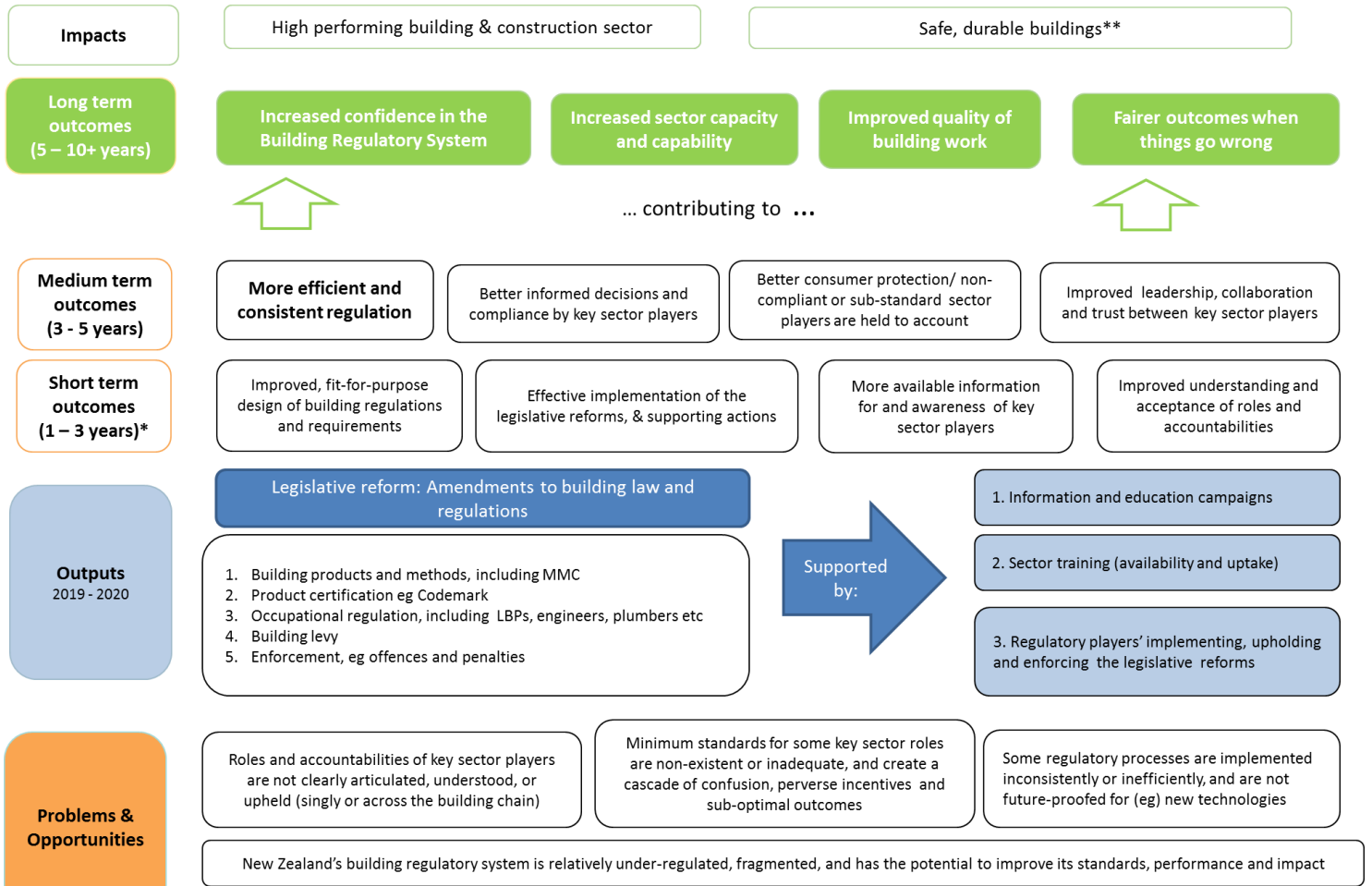
NZS 3604 sets out a range of requirements in order for frames and trusses to meet the standard, including information requirements in the form of producer and design statements. The plans will be specified by the designer or builder, and Mitek and Pryda (the only two providers of engineering systems for timber frames and trusses) provide engineering support. Fabricators have little control over the building code compliance of a particular building.

These structures are easily inspected by BCAs as part of the inspection process during building (i.e. prior to the roofing and cladding being applied) and any defects must be fixed before the building can continue.

There are effectively no maintenance requirements, as frames and trusses are both internally and externally covered, though if a home owner became aware of any potential issues, these would naturally require investigation. Because of the lack of ability to maintain or periodically inspect frames and trusses once the building is complete, the Building Code (objective B2) requires that frames and trusses are durable for a period of 50 years.

Annex 4: Intervention logic

DRAFT Logic Model for Legislative Reform Programme



* Short term outcomes will take longer (3 – 5 years) for Engineers-related changes. ** Includes safer public sanitation/health (with competent plumbing work)

Regulatory Impact Statement: Modular component manufacturer scheme regulations

Coversheet

Purpose of Document	
Decision sought:	<i>Analysis produced for the purpose of informing Cabinet decisions for new regulations to implement the modular component manufacturer certification scheme, introduced by the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021.</i>
Advising agencies:	<i>Ministry of Business, Innovation and Employment</i>
Proposing Ministers:	<i>Minister for Building and Construction</i>
Date finalised:	<i>20/10/2021</i>
Problem Definition	
<p>The <i>Building Act 2004</i> was recently amended by the <i>Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021</i> (Building Amendment Act) to provide more efficient and consistent building consent approaches for manufacturers of modular components that meet prescribed quality assurance criteria. Regulations are needed to implement the new voluntary scheme introduced by the Building Amendment Act.</p>	
Executive Summary	
<h3>Background</h3> <p>In September 2019, Cabinet agreed to a number of proposals intended to improve the building consent process for manufacturers of modular building components. These changes included introducing a certification and registration scheme for modular component manufacturers. The Building Act 2004 was recently amended by the Building (<i>Building Products and Methods, Modular Components, and Other Matters</i>) Amendment Act 2021 (Building Amendment Act) to provide for this new scheme.</p> <p>The new voluntary modular component manufacturer scheme enabled under the Building Amendment Act provides more efficient and consistent building consent approaches for modular component manufacturers (ranging from individual components to whole buildings) where they are able to meet the prescribed quality assurance and performance measures.</p>	

Participating modular component manufacturers may be certified and registered to:

- manufacture modular building components to a Building Code compliant design that has been approved by a building consent authority through either a standard building consent application or a current MultiProof (refer to **Annex One** for a comparison of the key schemes within the Building Act); or
- design and manufacture modular building components to a Building Code compliant design that they have developed themselves (or a design that has been approved by either a standard building consent application or MultiProof).

Regulations are needed to implement the new voluntary scheme introduced by the Building Amendment Act. This Regulatory Impact Statement considers the scope of these regulations. The preferred option (Option Three) may be viewed as a package of connected and interlinked regulations that need to be considered together to provide for an effective, and voluntary, modular component manufacturer certification scheme.

Options

MBIE considered three options for scheme regulations against the following assessment criteria: confidence, certainty and clarity, cost effective, proportionate, and flexible.

Option One – Regulatory framework for the modular component manufacturer scheme, with no regulations (status quo)

- This option is not preferred as the modular component manufacturer scheme would not be implemented and the existing issues such as building consent authorities have difficulty assuring themselves of build quality and code compliance would continue.

Option Two – Regulatory framework for the modular component manufacturer scheme, with all elements for regulations that were consulted on during public consultation

- This option is not preferred as it includes a proposal that was identified during stakeholder engagement as not being the most effective way to achieve the objectives and criteria of a successful modular component manufacturer scheme.

Option Three – Regulatory framework for the modular component manufacturer scheme, with revised elements for regulations based on stakeholder feedback received during public consultation

- This is the preferred option as it includes elements that were originally consulted on and were deemed fit for purpose, and makes an amendment to the proposals for regulations that were consulted on and discussed in Option 2.

The results of the cost benefit analysis show that there are material benefits to make regulations to implement the scheme. There was a strong benefit cost ratio ranging from 4.54 to 8.50 based on three scenarios that were modelled¹.

Modular component manufacturers are expected to incur a large portion of the costs to participate in the scheme (ongoing compliance costs being the highest cost). This is because the benefits of participating in the scheme will be realised by those businesses

¹ The cost benefit analysis is based on the proposals for regulations considered under Option Two, but is also reflective of Option Three as the changes are minor.

who choose to participate in the scheme. That is, certified and registered manufacturers who see business benefits from participating in the scheme.

Stakeholder feedback:

In April-June 2021, the Ministry of Business, Innovation and Employment (MBIE) conducted public consultation on the proposals for regulations for the modular component manufacturer scheme. Stakeholders were largely supportive of the proposals for regulations that were consulted on:

- Prescribing the kinds of 'modular components' will provide manufacturers with clarity around what kinds of building products can be manufactured within the scope of the scheme.
- Robust systems and processes are necessary to instil confidence in the scheme.
- Audit requirements are standard practice and would provide certification bodies and manufacturers with certainty regarding the auditing process.
- Most manufacturers are currently responsible for the end to end process from manufacture to installation.

Limitations and Constraints on Analysis

Scope of proposals for regulations

The scope of the proposals for regulations are provided through the regulation-making powers set out in section 402 of the Building Act, modified by the Building Amendment Act.

These powers enable a package of regulations to be made in the following areas so that the modular component manufacturer scheme may be implemented:

- prescribing the kinds of building products that are 'modular components'
- accreditation and registration criteria for modular component manufacturer certification bodies
- certification and registration criteria for modular component manufacturers
- audit processes and fees
- requirement for modular component manufacturer's certificates.

The proposals for regulations for the scheme fees are covered separately in the associated Stage 2 Cost Recovery Impact Statement.

These regulations will be supported by scheme rules, operational guidance and information that will be developed in parallel with the regulations. Separate work programmes are under way to address these matters.

Assumptions

The modular component manufacturer market is diverse and emerging, ranging from manufacturers that produce individual modular components to those who produce whole buildings. MBIE recognises that manufacturers have a variety of different business

models, production methods and approaches to manufacturing modular building components.

The wide range of manufacturers in New Zealand and offshore makes it difficult and complex to make accurate estimates of likely scheme uptake and to design settings that will function equally well for all potential participants. Stakeholder engagements conducted by Sapere as part of work commissioned by MBIE to inform the cost benefit analysis has been used to help ensure assumptions are as informed as possible. A conservative approach has also been taken in assessing the benefits and uptake of the scheme to reflect this.

Responsible Manager(s) (completed by relevant manager)

*Amy Moorhead
Manager, Building Policy
Building System Performance
Ministry of Business, Innovation and Employment
20 October 2021*

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Business, Innovation and Employment
Panel Assessment & Comment:	MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Current situation

1. A new voluntary modular component manufacturer scheme (MCM scheme) has recently been introduced to the *Building Act 2004* by the *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021* (Building Amendment Act).
2. The MCM scheme is intended to provide more efficient and consistent building consent approaches for modular component manufacturers (ranging from individual modular components to whole buildings) that are able to meet quality assurance and performance standards. These manufacturers will also have a demonstrated ability to produce modular components that comply with the Building Code.
3. The MCM scheme is voluntary, meaning manufacturers that do not wish to use it will still be able to use existing building consent approaches for their modular components.
4. Modular components are building products that are manufactured offsite and transported to site for installation, and can range from part of a building up to a whole building.
5. If manufacturers meet the certification and registration criteria (to be set in regulations), they may be certified to:
 - manufacture modular building components to a Building Code compliant design that has been approved by a building consent authority, through either a standard building consent application or a current MultiProof (refer to **Annex One** for a comparison of the key schemes within the Building Act); or
 - design and manufacture modular building components to a Building Code compliant design that they have developed themselves (or a design that has been approved by either a standard building consent application or MultiProof).
6. Under the amendments to the Building Act, building consent authorities will only inspect work that is not completed by the certified and registered manufacturer, such as foundations and site work. The MCM scheme transfers compliance responsibilities and liability from the building consent authority to certified and registered manufacturers in order to support more efficient consenting for modular approaches; meet demand for building and housing; and support manufacturers to grow, diversify and deliver economies of scale within the sector. The timeframe for processing building consents involving modular components that are whole buildings is reduced from 20 working days to 10 working days.
7. The legislative framework for the modular component manufacturer scheme defines the roles and responsibilities for different parties as shown by the following figure:

Figure 1: Roles and responsibilities of different parties under the MCM scheme



- 8. Under the amendments to the Building Act, an accreditation body may be appointed by the Ministry for Business, Innovation and Employment (MBIE). Certification bodies must be both accredited by the accreditation body and registered with MBIE before they can perform functions under the MCM scheme. Similarly, manufacturers must be certified by an accredited certification body and registered with MBIE before they can perform functions under the modular component manufacturer scheme.
- 9. This legislative framework clarifies responsibility and potential liability in the event of a building or modular component defect and ensures that consumers and building consent authorities can have confidence in the MCM scheme. An adequate means requirement for certified and registered manufacturers will be a key part of building consumer confidence in the scheme.

Recent regulatory history

- 10. In September 2019, Cabinet agreed to a number of proposals intended to improve the building consent process for manufacturers of modular building components. These changes included introducing a certification and registration scheme for modular component manufacturers. MBIE consulted on these proposed changes in April-June 2019².
- 11. The Building Amendment Act implemented these changes. This legislation was introduced on 8 May 2020 and received Royal assent on 7 June 2021.
- 12. Regulations are needed to support and implement the Building Amendment Act. This Regulatory Impact Statement considers the scope of these regulations.
- 13. In April-June 2021, MBIE publicly consulted on proposed regulations for the scheme that would be implemented under new regulation-making powers in the Building Amendment Act³.

New regulatory framework

Regulations

- 14. Regulation making powers in the Building Amendment Act include:

² The Regulatory Impact Assessment for the 2019 consultation can be found here: <https://www.mbie.govt.nz/dmsdocument/7024-ris-building-law-reforms-phase-one-proactiverelease-pdf>

³ The discussion document can be accessed at: <https://www.mbie.govt.nz/dmsdocument/14150-building-amendment-bill-proposals-for-regulations-discussion-document>

- prescribing the kinds of building products that are ‘modular components’
- accreditation and registration criteria for modular component manufacturer certification bodies
- certification and registration criteria for modular component manufacturers
- audit processes and fees
- requirements for modular component manufacturer’s certificates.

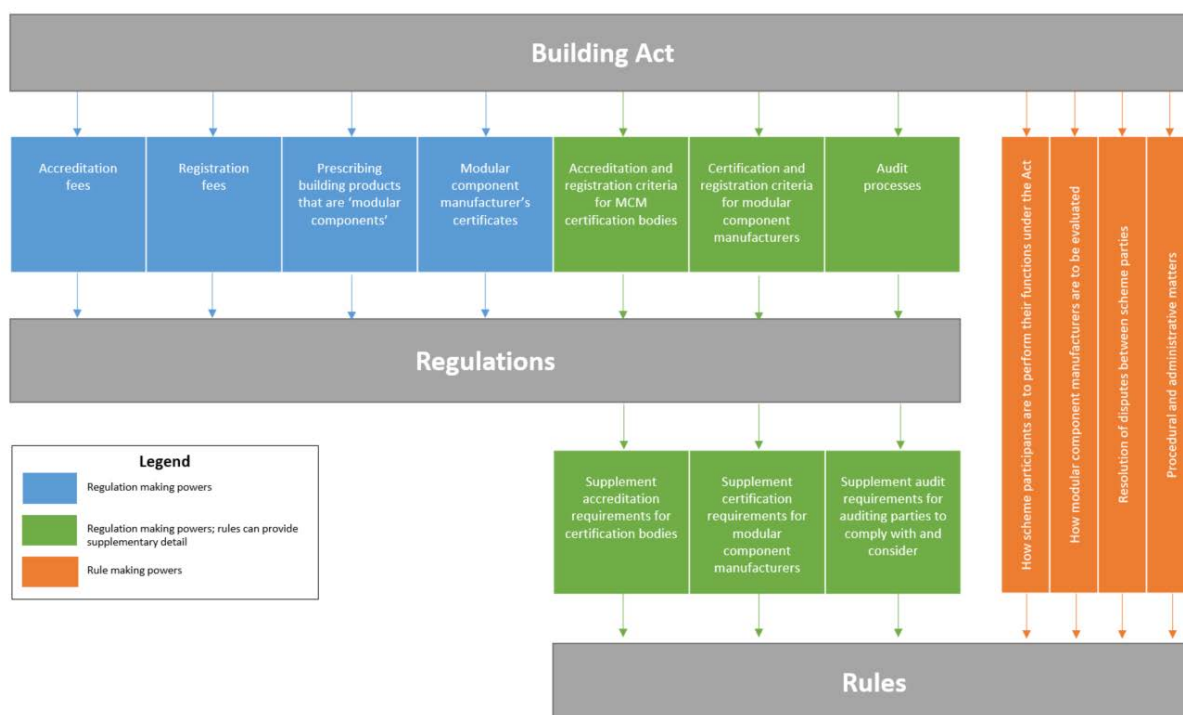
Scheme rules

- Following passage of the Building Amendment Act, the Building Act allows for scheme rules to be made relating to the following:
 - how the scheme parties are to perform their functions under the Act
 - how modular component manufacturers are to be evaluated
 - the resolution of disputes between scheme parties
 - procedural and administrative matters.
- Scheme rules may also supplement regulations related to audit procedures and criteria for accreditation of scheme certification bodies and certification of modular component manufacturers.
- A separate programme of work is underway to consider and consult on scheme rules.

Regulatory framework

- The regulatory framework for the scheme is summarised in Figure 2 below.

Figure 2: Modular component manufacturer scheme regulatory framework



What is the policy problem or opportunity?

Prior to the passing of the Building Amendment Act, offsite manufacturing approaches were not well supported by building consent processes

19. Evidence from New Zealand and overseas indicates that offsite manufacturing approaches for whole buildings and components can lift building sector productivity, reduce building costs and time, and contribute to better environmental outcomes through a reduction in waste and transportation.
20. However, the uptake of offsite manufacturing approaches in New Zealand is low. BRANZ estimates that 10% of non-residential buildings and 35% of new housing in New Zealand utilise offsite manufacture, compared to 80% in some parts of Europe, where many countries have industry-led certification schemes⁴. Though some kinds of offsite manufacturing are widely accepted in New Zealand, e.g. pre-nailed frames and trusses, more complex kinds of offsite manufacturing like pods and whole buildings remain rare.
21. Modular components and modular component manufacturers must comply with a range of overarching laws including the Act (which outlines the building consent process) and the New Zealand Building Code (which ensures buildings meet a minimum standard and are safe, healthy and durable for everyone who may use them).
22. MBIE is steward of the building regulatory system and administers the Building Act. Building Consent Authorities assess and issue building consents, inspect building work and issue Code Compliance Certificates once building work is complete.
23. Under the Building Act, a building consent is generally required before carrying out building work (unless work is exempt or there is an emergency). The manufacture and installation of modular components is building work, therefore, offsite manufacturers are required to go through the existing building consent process.
24. While this process works for traditional onsite construction, it does not provide an efficient pathway for offsite manufactured modular components or adequately respond to the potential risks within offsite manufacturing⁵. This in turn creates barriers to the uptake of manufacturing approaches in the building sector. These issues are discussed in more detail in the Regulatory Impact Statement for the Building Amendment Act.⁶

What objectives are sought in relation to the policy problem?

25. The objectives are to implement the scheme in a way that strikes a balance between:

⁴https://d39d3mj7qio96p.cloudfront.net/media/documents/ER45_Compliance_and_assurance_for_manufactured_buildings.pdf

⁵ Building consent authorities have difficulty assuring themselves of build quality and code compliance where traditional inspection practices can't be used. This is the case with many buildings and components manufactured by modular component manufacturers. This is because the manufacture of these components can occur from some distance where the component will ultimately be installed, or when the manufacturer's products arrive at a building site already enclosed, limiting the effectiveness of visual inspections.

⁶ <https://www.mbie.govt.nz/dmsdocument/7024-ris-building-law-reforms-phase-one-proactiverelease-pdf>

- building and maintaining confidence in the MCM scheme and the certified and registered manufacturers undertaking work within it; and
- providing an appropriately accessible and flexible pathway for offsite manufacturers of different kinds to become certified.

26. The proposed regulations are intended to align with other regulatory regimes in the Building Act, including CodeMark, MultiProof and the building consent authority accreditation scheme. The proposed regulations also integrate with the Building Act's regulatory framework for building consents and code compliance certificates.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

27. For consistency, the same criteria has been considered across all three regulatory proposal areas enabled under the Building Amendment Act (building product information requirements, modular component manufacturer certification scheme and product certification scheme). The criteria for assessing options is outlined below in Table 1.
28. Note there are trade-offs between these criteria. For instance, a system that provides a high level of certainty to scheme parties is likely to have a lower level of flexibility. For this reason, the assessment of options aims to strike a balance between these criteria. The trade-offs between these criteria are discussed in the next section (what options are being considered) and the stakeholder feedback section.

Table 1: Criteria for assessing options

A scheme that promotes...	... means the regulations will	To achieve this, the regulations will seek to:
Confidence	Provide system participants' (including users, manufacturers and building consent authorities) with confidence in the proposed settings for the modular component manufacturer scheme.	Align with regulatory frameworks for consumer protections in the Building Act Provide accessible pathways for complaints and dispute resolution.
Certainty and Clarity	Provide clear and transparent processes and responsibilities that enable scheme participants (including users, manufacturers and building consent authorities) to understand what is required of them; Provide reasonable compliance costs; and,	Provide clarity on the roles and responsibilities of different scheme parties, including the accreditation body, certification bodies, and manufacturers. Provide clarity on the standards that prospective parties must meet, and continue to meet, to participate in the scheme.

	Where practical, provide consistency with existing building system regulatory regimes.	
Cost effective	Be feasible to implement, and where practicable consistent with existing building system regulatory regimes.	Align with existing Building Act and insurance requirements.
Proportionate	Be proportionate in the way they treat regulated parties, and put in place compliance costs that are proportionate to risk	Appropriately balance the risks of modular component failure – particularly the risks to people – against compliance costs to scheme participants.
Flexibility	Provide sufficient flexibility to allow regulated parties to participate in the scheme and adopt efficient or innovative approaches, while continuing to meet their regulatory obligations.	Set a high-level framework for accreditation, certification and registration requirements that enables parties to tailor or interpret them in a way that is relevant to their business.

What scope will options be considered within?

29. The scope of proposals for regulations are provided through the regulation-making powers set out in section 402 of the *Building Act 2004*, as modified by the Building Amendment Act.
30. These powers enable a package of regulations to be made in the following areas:
 - prescribing the kinds of building products that are ‘modular components’
 - accreditation and registration criteria for modular component manufacturer certification bodies
 - certification and registration criteria for modular component manufacturers
 - audit processes and fees
 - requirements for modular component manufacturer’s certificates.
31. For the modular component manufacturer scheme in the Building Amendment Act to meet all the objectives outlined in paragraphs 25 and 26, regulations are needed across all five categories of regulation making powers listed above. Within some of these categories of regulations, sets of interlinked proposals are needed to meet the scheme’s objectives (e.g. accreditation and registration requirements both need to be specified and both need to work together).

The proposals for regulations across all five regulation making powers should be considered as an integrated package that needs to work together in order to realise the objectives of the MCM scheme.

What options are being considered?

32. The three options considered for MCM scheme regulations are listed below:
 - **Option One** – Regulatory framework for the modular component manufacturer certification scheme, with no regulations (status quo)
 - **Option Two** – Regulatory framework for the modular component manufacturer certification scheme, with all elements for regulations that were consulted on during public consultation
 - **Option Three** – Regulatory framework for the modular component manufacturer certification scheme, with revised elements for regulations based on stakeholder feedback received during public consultation (**preferred option**).
33. These options are outlined below and compared in Table 2 (pages 14 to 20).

Option One – Regulatory framework for the modular component manufacturer scheme, with no regulations or rules (status quo)

34. This option is equivalent to the status quo discussed in Section 1 – Diagnosing the problem and is, therefore, not preferred.
35. Without regulations, the MCM scheme set out in the Building Amendment Act would not be implemented and the policy intent of the changes to the Building Act would not be achieved.
36. Under this option, manufacturers will have to continue using the existing building consent process and deal with the issues identified in Section 1:
 - building consent authorities will continue to deal with the difficulty of assuring themselves that offsite manufactured modular components are Building Code compliant
 - offsite manufacturers continue to encounter inconsistent approaches from building consent authorities when making an application for building consent.
37. If the status quo remains, manufacturers may seek to prioritise developing ad-hoc or inconsistent working relationships with building consent authorities in order to minimise the extent of barriers that exists. In such cases, building consent authorities who have confidence in manufacturers' quality assurance processes are able to process consent applications relatively quickly and are willing to use online documentation/photos in lieu of physical inspections. However, this is not a cost effective option as manufacturers noted that it often requires 1 to 2 years of intensive engagement, facilitating factory visits (including overseas) and building prototype modular components for building consent authorities to inspect. The inconsistent or irregular treatment of manufacturers may also be perpetuated.
38. There is a significant level of support from stakeholders for the establishment of the clear and certain MCM scheme in the Building Amendment Act. This includes offsite manufacturers, building consent authorities, accreditation and certification bodies and construction businesses.

39. Of those who submitted on the proposals for regulations, only one stakeholder did not support the creation of a specific framework for modular component manufacturers. The rationale being that existing certification schemes such as the Product Certification Scheme (CodeMark) is already well suited to cover modular component manufacturers.
40. Although CodeMark is available to offsite modular component manufacturers, it does not adequately meet the objectives of the modular component manufacturer certification scheme because this scheme targets individual products rather than the manufacturer. The CodeMark also does not address the challenges currently experienced by modular component manufacturers as outlined in Section 1.

Option Two – Regulatory framework for the modular component manufacturer scheme, with all elements for regulations that were consulted on during public consultation

41. This option incorporates all the proposals for regulations set out in **Annex Two**, which were also outlined in a public discussion document for stakeholder consultation. Stakeholder perspectives and support for the proposals for regulations are outlined in the next section (Stakeholder feedback).
42. This option is not preferred as the fit and proper person test, as outlined in the discussion document, was identified during stakeholder engagement as not being the most effective way to achieve the objectives and criteria of a successful MCM scheme. This is because it did not take into account the range of potential corporate structures for the MCM scheme certification bodies and manufacturers.
43. Further analysis also showed that the proposed audit settings could be refined to clarify the auditing requirements while still ensuring the scheme is robust. This issue is discussed further in Option 3 below.

Option Three – Regulatory framework for the modular component manufacturer scheme, with revised elements based on stakeholder feedback

44. This is the preferred option as it includes elements that were originally consulted on and deemed to be fit for purpose, and makes an amendment to the proposals for regulations that were consulted on and discussed in Option 2.
45. The following changes have been made to the fit and proper person test based on stakeholder engagements:
 - Clarifying that the fit and proper person test applies to the applicant body, and the chief executive would assess whether elements of the test are met by the modular component manufacturer certification bodies' and manufacturers' authorised representatives and anyone directing or controlling the certification bodies and manufacturers functions.
46. The audit proposals consulted on have been amended following further analysis and to ensure audit settings are clear. The proposals for regulations no longer require auditing bodies to use a prescribed process to determine audit frequency. Audits of modular component manufacturer certification bodies and modular component manufacturers

must take place at least once every 12 months, consistent with the requirements in the Building Amendment Act.

47. MBIE considered whether audits need to be required more frequently by regulations in certain circumstances. We are satisfied that the provisions of the Building Amendment Act and separate proposals for scheme rules will be sufficient to provide certainty of the auditing requirements.
48. The proposals have also been amended to set out a clear hierarchy between regulations and scheme rules, which may set out detailed operational requirements.
49. In addition to the discussion on the proposals for regulations outlined in Option 2 above, Option 3 also ensures that the regulatory settings to participate in the MCM scheme are similar, as far as possible, to the CodeMark scheme. This will provide a more cost effective option as the regulatory settings will allow enough flexibility for CodeMark scheme participants to add on to existing systems and processes if they decide to participate in the MCM scheme.
50. Stakeholders that submitted on the MCM scheme proposals for regulations were largely supportive of the registration criteria for certification bodies and manufacturers. However, stakeholders that submitted on the CodeMark proposals for regulations commented that the proposed scope of the fit and proper person test does not take into account the range of potential corporate structures for product certification bodies. This option provides a further level of clarity and confidence to the MCM scheme as roles and responsibilities are clearly defined.

Table 2: Comparison of options across scope of proposals for regulations

Scope	Status quo (Option 1)	Proposals for regulations, with all elements consulted on in discussion document (Option 2)	Proposals for regulations, with revised elements based on feedback (Option 3)
<p>Prescribing the kinds of building products that are ‘modular components’</p>	<p>Do not prescribe the kinds of products that are ‘modular components’.</p> <p><u>Assessment of proposal against criteria</u></p> <p>This would lead to a lack of clarity and certainty around the scope of building products that can be manufactured under the MCM scheme.</p>	<p>Prescribe ‘modular components’ as building products that meet the following criteria:</p> <ul style="list-style-type: none"> • includes elements of the building, such as open frames and trusses, enclosed panels or units, volumetric structures, and whole buildings and may include services such as plumbing or electrical wiring • excludes non-structural building products or systems such as bathroom vanities, storage systems, or heating, ventilation and air conditioning systems • must be constructed or manufactured off the site on which they are to be installed, though some onsite assembly or installation may be required. <p><u>Assessment of proposals against criteria</u></p> <p>Prescribing the kinds of building products that would be ‘modular components’ will provide manufacturers with clarity and certainty around the scope of building products that can be manufactured under the MCM scheme. This will also contribute to gaining consumers’ trust and confidence in the MCM scheme.</p> <p>The proposed description is broad enough to incorporate a wide range of manufacturers and business models, which will help to future-proof the scheme to accommodate technological development and innovation.</p>	<p><u>Changes from Option 2 and assessment of proposals against criteria (where applicable)</u></p> <p>Option 3 has no changes from Option 2.</p> <p><u>Variations of Option 3</u></p> <p>A variant of this option could exclude frames and trusses, however this is not proposed because it would reduce the flexibility of the scheme and preclude frame and truss manufacturers from participating in the scheme in future.</p>
<p>Accreditation and registration criteria for modular</p>	<p>Do not prescribe any accreditation and registration criteria for modular component</p>	<p><u>Accreditation proposals</u></p> <p>To be accredited, a certification body must have:</p> <ul style="list-style-type: none"> • policies, procedures and systems in place to oversee, assess and inspect modular component manufacturers to determine if they meet 	<p><u>Changes from Option 2 and assessment of proposals against criteria (where applicable)</u></p> <p>Option 3 makes amendments to the fit and proper person test that is proposed to apply to certification bodies. The test will only apply to the</p>

Scope	Status quo (Option 1)	Proposals for regulations, with all elements consulted on in discussion document (Option 2)	Proposals for regulations, with revised elements based on feedback (Option 3)
<p>component manufacturer certification bodies</p>	<p>manufacturer certification bodies.</p> <p><u>Assessment of proposal against criteria</u></p> <p>This would mean that certification bodies would not be able to operate and the benefits of the scheme would not be realised. Offsite manufacturers would continue to face additional barriers when applying for building consents.</p>	<p>criteria required for certification</p> <ul style="list-style-type: none"> • policies, procedures and systems in place to undertake risk assessments and audits of certified manufacturers • policies, procedures and systems in place that ensure appropriate staff perform its functions • a system to retain records in relation to their decisions, and the policies, procedures and systems required by regulations • a process to notify the modular component manufacturer accreditation body of changes to key personnel or other circumstances that might impact its accreditation • suitable complaints handling policies, procedures and systems. <p><u>Registration proposals</u></p> <p>To be registered, a certification body must:</p> <ul style="list-style-type: none"> • satisfy a prescribed fit and proper person test • provide evidence that it has a process to notify MBIE of changes to key personnel or other circumstances that might impact its registration. <p><u>Assessment of package of proposals against criteria</u></p> <p>This package of interlinked proposals aimed to strike a balance between robustness and flexibility, while also providing clarity and certainty for certification bodies. The proposed criteria also aimed to provide consumers with confidence that those who certify and audit manufacturers in the MCM scheme have been approved by appropriately skilled bodies.</p> <p>This is evidenced through the requirement for certification bodies to have a robust and detailed understanding of the Building Code and relevant legislation, regulations and other relevant settings in the New Zealand</p>	<p>relevant roles within an organisation. This provides greater flexibility for a range of corporate structures and is more cost effective to implement.</p> <p>The proposal for a certification body to notify MBIE of changes that might impact its registration has been moved to scheme rules to be set by MBIE rather than being set by regulations. This will improve the flexibility of the scheme and better reflects the split between regulations and scheme rules under the Building Amendment Act in relation to ongoing operational requirements.</p> <p><u>Variations of Option 3</u></p> <p>A variant of this option could prescribe ISO 17065:2012 <i>Conformity assessment – requirements for bodies certifying products, processes and services</i> or other relevant standards as a requirement for accreditation but this is not proposed in order to allow flexibility for different approaches to meeting the requirements.</p>

Scope	Status quo (Option 1)	Proposals for regulations, with all elements consulted on in discussion document (Option 2)	Proposals for regulations, with revised elements based on feedback (Option 3)
		<p>building system; to have procedures and systems in place to undertake risk assessments and audits of certified and registered manufacturers, retain records and handle complaints, and ensure staff are competent; and to satisfy a fit and proper person test and notify MBIE of key changes.</p> <p>While the Building Amendment Act also enables adequate means requirements to be prescribed for MCM certification bodies' registration, an adequate means test is not proposed at this time. This is because the package of proposals above are expected to meet the scheme objectives.</p>	
<p>Certification and registration criteria for modular component manufacturers</p>	<p>Do not prescribe any certification and registration criteria for modular component manufacturers.</p> <p><u>Assessment of proposal against criteria</u></p> <p>This would mean that manufacturers would not be able to operate and the benefits of the scheme would not be realised. Offsite manufacturers would continue to face additional barriers when</p>	<p><u>Certification proposals</u></p> <p>To be certified, a modular component manufacturer must:</p> <ul style="list-style-type: none"> • have a quality plan and quality management system • provide evidence that it has manufacturing processes and systems appropriate to the scope of certification they are seeking • provide evidence that it has design processes and systems appropriate to the scope of certification it is seeking in order to be certified to 'design and manufacture' • have policies, procedures and systems in place that ensure appropriate staff perform its functions • have a system to retain records in relation to its decisions, and policies, procedures and systems required by regulations • have a process to notify the responsible modular component manufacturer certification body of changes to key personnel and other circumstances that might impact its certification • have suitable complaints handling policies, procedures and systems. 	<p><u>Changes from Option 2 and assessment of proposals against criteria (where applicable)</u></p> <p>Option 3 makes amendments to the fit and proper person test that is proposed to apply to manufacturers. The test will only apply to the relevant roles within an organisation. This provides greater flexibility for a range of corporate structures and is more cost effective to implement.</p> <p>The proposal for a manufacturer to notify MBIE of changes that might impact its registration has been moved to scheme rules to be set by MBIE rather than being set by regulations. This will improve the flexibility of the scheme and better reflects the split between regulations and scheme rules under the Building Amendment Act in relation to ongoing operational requirements.</p>

Scope	Status quo (Option 1)	Proposals for regulations, with all elements consulted on in discussion document (Option 2)	Proposals for regulations, with revised elements based on feedback (Option 3)
	<p>applying for building consents.</p>	<p><u>Registration proposals</u></p> <p>To be registered, a certified modular component manufacturer must:</p> <ul style="list-style-type: none"> • satisfy a prescribed test to indicate it has adequate means to cover any civil liabilities that may arise in relation to their manufacture and design (if applicable) of modular components • satisfy a prescribed fit and proper person test • provide evidence that it has a process to notify MBIE of changes to key personnel or other circumstances that might impact its registration. <p><u>Assessment of package of proposals against criteria</u></p> <p>This package of interlinked proposals for certification and registration criteria aims to ensure the manufacturers that participate in the MCM scheme meet appropriate standards and can carry out their functions within the scheme. The adequate means test will also provide MBIE with sufficient information to assess whether a modular component manufacturer may have adequate means to cover consumer protection in the case of an act or omission by the manufacturer. The proposed regulations are important as the MCM scheme will reduce building consent authorities' oversight.</p> <p>The proposals aim to strike the right balance between increasing the efficiency of consenting timeframes by transferring compliance responsibilities from building consent authorities to the manufacturers, and instilling confidence in the MCM scheme.</p>	<p><u>Variations of Option 3</u></p> <p>A variant of this option could prescribe ISO 9001:2015 <i>Quality management systems</i> or other relevant standards as a requirement for certification but this is not proposed in order to allow flexibility for different approaches to meeting the requirements.</p>
<p>Audit processes</p>	<p>Do not prescribe audit processes.</p> <p>Audits of modular component</p>	<p>The modular component manufacturer accreditation body must use a prescribed process to decide appropriate audit procedures and audit frequency to apply to modular component certification bodies.</p>	<p><u>Changes from Option 2 and assessment of proposals against criteria (where applicable)</u></p> <p>Option 3 makes amendments following further analysis and to ensure audit settings are clear</p>

Scope	Status quo (Option 1)	Proposals for regulations, with all elements consulted on in discussion document (Option 2)	Proposals for regulations, with revised elements based on feedback (Option 3)
	<p>manufacturer certification bodies and modular component manufacturers must take place at least once every 12 months, consistent with the requirements in the Building Amendment Act.</p> <p><u>Assessment of proposal against criteria</u></p> <p>Not prescribing audit processes would reduce certainty and clarity as to what matters auditing bodies must take into account when carrying out an audit.</p>	<p>A modular component manufacturer certification body must use a prescribed process to decide appropriate audit procedures and determine the audit frequency for the modular component manufacturers for which it is responsible.</p> <p>Following the completion of an audit, the modular component manufacturer accreditation body and modular component manufacturer certification bodies must issue an audit report to the audited party and to MBIE in a timely manner.</p> <p>Modular component manufacturer certification bodies and modular component manufacturers must make any changes required by an audit report within three months of receiving that audit report.</p> <p>When a modular component manufacturer certification body or modular component manufacturer passes an audit and has made all changes required by the audit report, the modular component manufacturer accreditation body and modular component manufacturer certification bodies must issue an audit certificate to the audited party in a timely manner.</p> <p><u>Assessment of proposals against criteria</u></p> <p>Audits are a key safeguard within the MCM scheme and will assure scheme users that accredited or certified modular component manufacturer certification bodies and manufacturers continue to meet relevant criteria and standards. The proposals aimed to provide confidence while being cost effective and proportionate.</p> <p>Clear audit setting will also help to ensure audits are beneficial to all parties and contributes to the robustness of MCM scheme participants.</p>	<p>and robust.</p> <p>The proposals for regulations under Option 3 no longer require auditing bodies to use a prescribed process to determine audit frequency. Audits of modular component manufacturer certification bodies and modular component manufacturers must take place at least once every 12 months, consistent with the Building Amendment Act. This change will improve clarity and certainty for scheme participants regarding when audits must be undertaken compared to Option 2.</p> <p>The audit proposal now prescribes matters that must be taken into account by the modular component manufacturer accreditation body and modular component manufacturer certification bodies in carrying out an audit. This change will improve clarity and certainty for scheme participants regarding what matters auditing bodies must take into account when carrying out an audit.</p> <p>The proposals for regulations for issuing audit reports, requiring audits to be acted on, and audit certificates to be issued have been moved to scheme rules to be set by MBIE rather than being set by regulations. This will improve the flexibility of the scheme and better reflects the split</p>

Scope	Status quo (Option 1)	Proposals for regulations, with all elements consulted on in discussion document (Option 2)	Proposals for regulations, with revised elements based on feedback (Option 3)
			<p>between regulations and scheme rules under the Building Amendment Act in relation to ongoing operational requirements.</p> <p><u>Variations of Option 3</u></p> <p>A variant on this proposal could require audits to be carried out more frequently by regulations in certain circumstances, but MBIE is satisfied that the provisions of the Building Amendment Act and proposals for scheme rules sufficiently address risk at this time.</p>
<p>Requirement for modular component manufacturer's certificates</p>	<p>Do not prescribe requirements for manufacturer's certificates.</p> <p><u>Assessment of proposal against criteria</u></p> <p>This would mean that the roles and responsibilities of scheme participants would not be clearly defined, which would create risk to consumers if things go wrong and</p>	<p>Prescribe requirements for modular component manufacturer's certificates issued at building consent application stage by registered modular component manufacturers that are certified to:</p> <ul style="list-style-type: none"> • 'manufacture' modular components • 'design and manufacture' modular components. <p>Prescribe requirements for modular component manufacturer's certificates issued at code compliance certificate application stage by registered modular component manufacturers that are certified to:</p> <ul style="list-style-type: none"> • 'manufacture' modular components (Proposal 28) • 'design and manufacture' modular components (Proposal 29). <p><u>Assessment of proposals against criteria</u></p> <p>The proposed requirements for modular component manufacturer certificates (Proposal 25 – 28 outlined in Annex Two) clarifies responsibility between manufacturers and building consent authorities, and between the</p>	<p><u>Changes from Option 2 and assessment of proposals against criteria (where applicable)</u></p> <p>Option 3 has no changes from Option 2.</p>

Scope	Status quo (Option 1)	Proposals for regulations, with all elements consulted on in discussion document (Option 2)	Proposals for regulations, with revised elements based on feedback (Option 3)
	reduce confidence in the scheme.	<p>manufacturer and other sub-trades that may be working on a site. Clearly defining the roles and responsibilities of scheme participants will minimise the risk to consumers if things go wrong.</p> <p>The information requirements will also support certified and registered manufacturers to gain the confidence of building consent authorities by supporting them to understand and plan for what parts of the building they may need to inspect and which they do not as it is covered by the scheme.</p>	

51. The table on the following page provides an overview of the high-level packages of options assessed against the criteria.

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – All elements consulted on	Option Three – Revised elements based on stakeholder feedback
Confidence	0 The modular component manufacturer scheme is not implemented.	+	++
		Scheme accreditation, certification and registration requirements (including the requirement for suitable complaints handling policies and procedures) <i>mostly</i> provides scheme participants and users with confidence in the scheme.	Scheme accreditation, certification and registration requirements (including the requirement for suitable complaints handling policies and procedures) provides scheme participants and users with confidence in the scheme.
Certainty and Clarity	0 Existing uncertainty in how the building consent process works for offsite manufactured modular components remains.	+	++
		Roles and responsibilities of all scheme participants defined. Standards and criteria that scheme participants are required to meet are specified.	Roles and responsibilities of all scheme participants more clearly defined. Standards and criteria that scheme participants are required to meet are more clearly defined.
Cost effective	0 Requires extensive time and resource commitment from offsite manufacturers to build relationship and trust with building consent authorities.	++	++
		The certification and registration requirements for streamline the building consent process for offsite manufacturers. The cost benefit analysis also confirms that the benefits of participating in the scheme far outweigh the costs.	The certification and registration requirements for streamline the building consent process for offsite manufacturers. The cost benefit analysis also confirms that the benefits of participating in the scheme far outweigh the costs.
Proportionate	0 Offsite manufacturers continue to face additional barriers when applying for building consent.	++	++
		The compliance costs for scheme participants are proportionate to the risks associated with their respective roles and responsibilities.	The compliance costs for scheme participants are proportionate to the risks associated with their respective roles and responsibilities.

Flexible	0 Offsite manufacturers continue to experience additional barriers to co	++ Certification and registration requirements provide sufficient flexibility to allow certification bodies and manufacturers to participate in the scheme and adopt efficient and innovative approaches, while continuing to meet their regulatory obligations.	++ Certification and registration requirements provide sufficient flexibility to allow certification bodies and manufacturers to participate in the scheme and adopt efficient and innovative approaches, while continuing to meet their regulatory obligations.
Overall assessment	0	+	++

Key

++	Much better than the status quo
+	Better than the status quo
0	About the same as the status quo
-	Worse than the status quo
--	Much worse than the status quo

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

52. MBIE's preferred approach is Option 3 – the regulatory framework for the modular component manufacturer scheme, with revised elements based on both stakeholder feedback received during public consultation and further analysis.
53. Option 3 includes the benefits of Option 2, whilst providing further confidence and clarity in the MCM scheme by ensuring the roles and responsibilities are clearly defined and distributed. This option will also ensure the MCM scheme is consistent, as far as possible, with CodeMark.

What are the marginal costs and benefits of the option?

54. MBIE procured the services of Sapere to conduct a cost benefit analysis on the proposals for regulations for the modular component manufacturer scheme that were consulted on. This analysis is based on the proposals outlined in Option 2. The cost benefit analysis is also reflective of Option 3 (the preferred option) as the differences between Option 2 and 3 are minor.
55. Sapere modelled three marginal scenarios for the modular component manufacturer certification scheme compared to the status quo:
 - **Scenario 1:** limited uptake of the scheme and volumes (based on manufacturers that indicated that they would participate in the scheme in its first year). This scenario assumes one modular component manufacturer certification body and four modular component manufacturers certified for design and manufacture.
 - **Scenario 2:** credible expansion of the scheme, with annual growth that displaces traditional construction methods. This scenario assumes one modular component manufacturer certification body initially, increasing by one with every fifth modular component manufacturer. Assumes four modular component manufacturers initially, and one additional modular component manufacturer each year.
 - **Scenario 3:** similar to Scenario 2 but including an additional benefit where by suppliers are producing at sufficient scale that enabled them to produce cheaper modular components.
56. Table 3 below reflects the impact of scenario 1 as outlined above. **Annex Three** provides a further breakdown of the costs and benefits for all three scenarios, compared to the status quo (not implementing the scheme).

Table 3: Additional costs and benefits of preferred option versus status quo

Affected groups	Comment <i>Nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	Impact <i>\$m present value for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to the status quo			
Regulated group: Accreditation Body	One-off compliance costs and ongoing operating costs	\$0.56m	High
Regulated group: Certification Bodies	One-off compliance costs, ongoing compliance costs and auditing costs	\$0.53m	High
Regulated group: Modular Component Manufacturers	One-off compliance costs, ongoing compliance costs and auditing costs	\$3.63m	Medium
Regulators: MBIE	Implementation costs and ongoing system monitoring and enforcement costs	\$1.1m	High
Consumers	Manufacturers may pass on the one-off set up costs and ongoing compliance costs to consumers	Low	Med - Uncertain whether manufacturers will pass costs on to consumers and how significant this will be
Total monetised costs		\$5.82m	
Non-monetised costs		Low	
Additional benefits of the preferred option compared to the status quo			
Regulated groups: Modular Component Manufacturers	Reduced time spent on consenting administration, avoided delays from processing consent applications and avoided consent and inspection fees	\$26.44m	High
Consumers	Construction savings being passed down to consumer having access to more affordable building methods	High	Low - Uncertain whether cost savings for manufacturers will be passed on to consumers
Total monetised benefits		\$26.44m	High
Non-monetised benefits		<i>High</i>	<i>High</i>

Cost benefit analysis findings

57. The results of the cost benefit analysis show that there are material benefits under each of the three scenarios considered. There was a strong benefit cost ratio for all three scenarios ranging from 4.54 for scenario 1 to 8.50 for scenario 3.
58. Certified and registered manufacturers will take on the majority of costs associated with participating in the scheme (63 percent of the total costs under scenario 1), with the largest individual cost being the ongoing compliance costs that manufacturers will face in participating in the scheme (\$2.86m under scenario 1). However, this is complemented with the benefits of the scheme predominantly being realised by manufacturers (all the benefits identified under scenario 1 will be realised by participating manufacturers).

Figure 3: Distribution of costs - Scenario 1

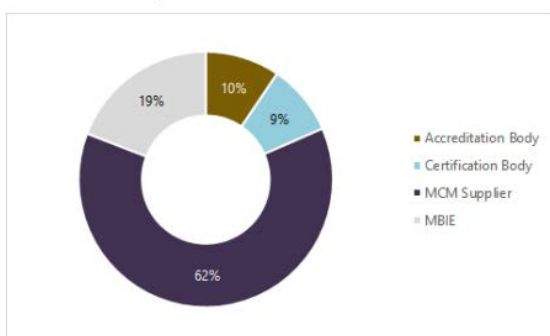
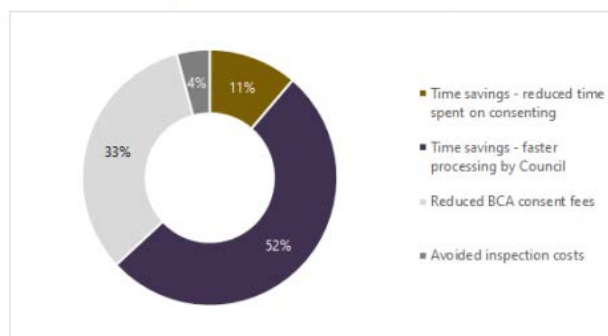


Figure 4: Distribution of benefits - Scenario 1



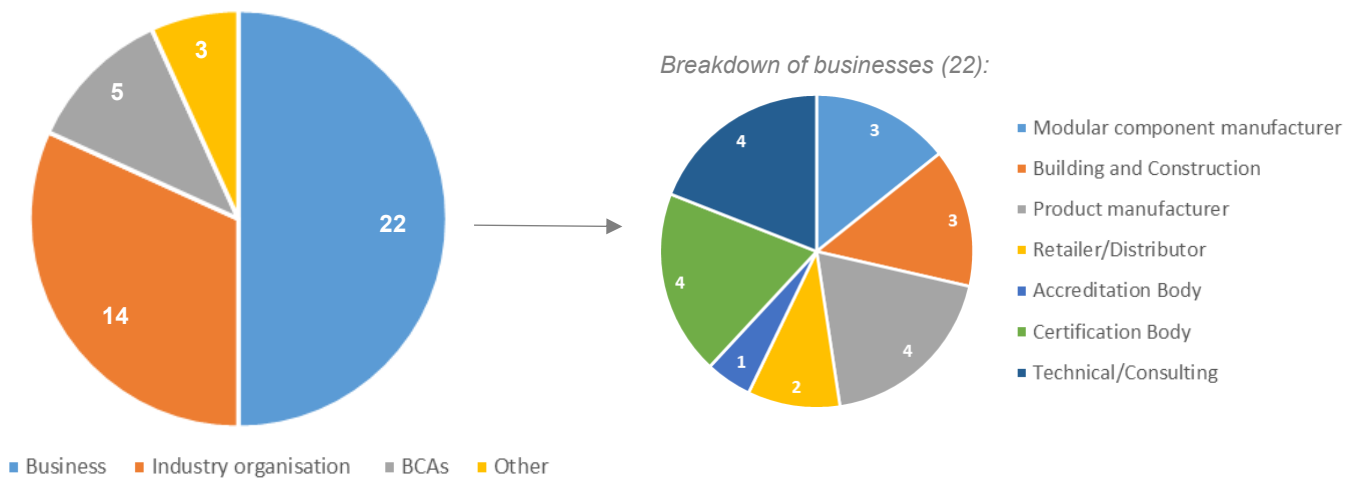
Environment benefits

59. In addition to the benefits outlined in the table above, Sapere calculated that Scenario 2 and 3 would generate environmental benefits by producing less construction waste. Both scenarios would reduce CO2 emissions by 849 tCO2e over the 10 year period (approximately equivalent to the annual emissions of 450 cars). Other additional benefits from scenario 2, with new growth includes:
- Faster build time (cash flow and financing benefits) – offsite manufacturing is recognised as being a faster means of constructing new buildings.
 - Reduced serious harm (incidents in the workplace) – offsite manufacturing is recognised as providing a more controlled building environment
 - Reduced wastage of materials – offsite manufacturing is recognised as generating considerably less wastage of building products.
60. Although the benefits of participating in the scheme are clear, a failure rate of just 1 percent of modular components consented under the modular component manufacturer scheme (if requiring a full rebuild) would reduce the benefit cost ratio in all three scenarios to 1 or below. This emphasises the importance of ensuring there are adequate quality assurance measures and regular risk based audits to reduce the risk of component defects and to instil trust and confidence in offsite manufacturing.

Stakeholder feedback

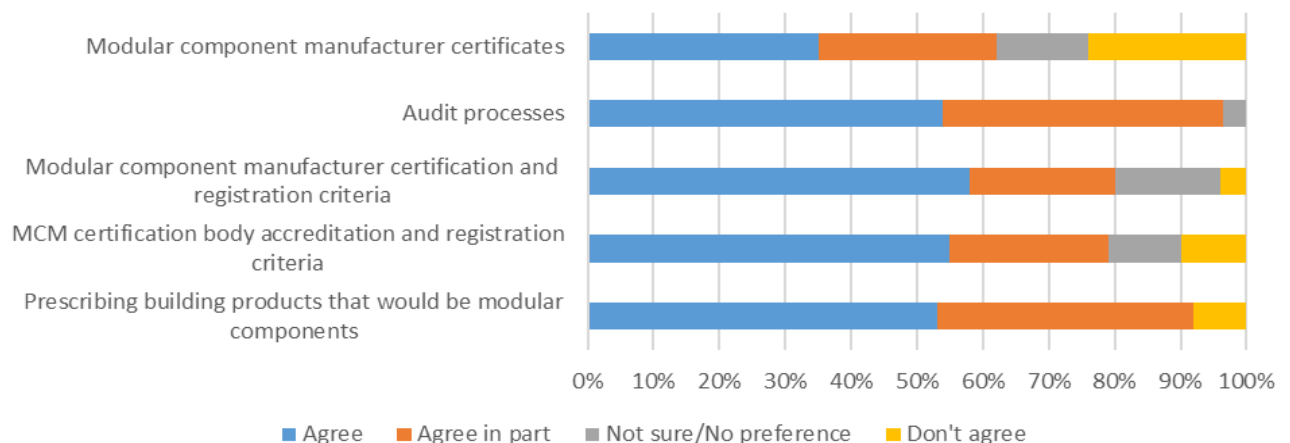
61. In April-June 2021, MBIE publicly consulted on proposals for regulations for the MCM scheme that would be implemented under the new regulation-making powers in the Building Amendment Act (**Annex Two**).
62. MBIE received 57 submissions in total. Forty-four submissions commented on the MCM scheme proposals for regulations in the discussion document. Stakeholders ranged from an accreditation body and certification bodies, a range of offsite manufacturers, building consent authorities and industry membership bodies.

Figure 5: Breakdown of submitters by category (number)



63. Stakeholders were largely supportive of the proposals for regulations (as highlighted below in Figure 6).

Figure 6: Stakeholder support for the MCM scheme proposals for regulations



Prescribing the kinds of building products that are 'modular components'

64. The majority of stakeholders are supportive of this proposal as it will bring consistency and certainty as to the scope of the proposed scheme.
65. The main concern raised by stakeholders was the inclusion of open frames and trusses in the scope of 'modular components'. These industry stakeholders were concerned

that the inclusion of open frames and trusses would create unintended consequences for the industry by creating additional compliance costs if consumers begin demanding certification. Stakeholders considered that the traditional consenting process already works successfully for open frame and truss organisations, and the challenges identified in the problem definition are not reflective of these manufacturers' experiences.

66. MBIE considered the proposal to remove open frames and trusses from the kinds of building products that would be 'modular components'. However, MBIE has prioritised the need to ensure enough flexibility to future-proof the potential scope of the scheme so that it doesn't inadvertently preclude manufacturers that may wish to participate in the MCM scheme in the future. The potential impact on open frame and truss manufacturers will be minimised through the implementation of the scheme to ensure its aim of the scheme is clear.

Accreditation and registration criteria for modular component manufacturer certification bodies

67. The majority of stakeholders that submitted on the proposed regulatory settings to be an accredited and registered certification body agreed that the proposals would provide confidence in the certification bodies that would be accredited and registered to participate in the MCM scheme. Stakeholders that supported the proposals cited the importance of having robust and fit for purpose quality assurance systems in order to give confidence that the scheme is robust, protects consumers and maintains the trust of scheme participants, users and the general public.
68. Stakeholders also proposed that the relevant international standards be prescribed in regulations (ISO17065) to ensure certification bodies' quality management meets international best practice and New Zealanders are appropriately protected. MBIE considered this proposal and concluded that the proposals that were consulted on struck the right balance between industry best practice compliance with international standards and providing enough flexibility to allow certification bodies to participate in the scheme.

Certification and registration criteria for modular component manufacturers

69. Most stakeholders that submitted were supportive of these proposals. Stakeholders agreed that the proposed regulatory settings will provide confidence in manufacturers that will be certified and registered to manufacture modular components with the MCM scheme. Similar to the accreditation requirements for certification bodies, stakeholders also proposed that the relevant international standards be prescribed in regulations (ISO9001). However, as noted above, MBIE decided not to prescribe specific standards to ensure the regulatory settings strike a balance between building confidence in certified and registered manufacturers and providing enough flexibility to allow certification bodies to participate in the scheme.
70. The majority of stakeholders that submitted on the proposals, including JAS-ANZ, Prefab NZ and all the building consent authorities generally agreed that the proposed regulatory settings will provide for adequate consumer protection.

Audit processes

71. There was strong support from submitters for the proposed regulatory settings for audits. The majority agreed that the proposed settings were standard practice and would provide manufacturers and certification bodies with certainty regarding the auditing process.
72. A number of submitters on the audit processes highlighted the importance of enabling enough flexibility within the prescribed timeframes to reflect the urgency of issues that are highlighted. The legislative settings provides scope for certificates to be automatically suspended or revoked if scheme parties no longer meet the criteria or fail to comply with the MCM scheme rules.

Requirement for modular component manufacturer's certificates

73. Stakeholders were largely supportive of the proposals for regulations that were consulted on, noting support for keeping responsibility in one place where it is best managed. However, some stakeholders thought it was unfair to expect manufacturers to be responsible for the transportation, storage and assembly of modular components if they do not have control over the process. These stakeholders proposed that the responsibility for transportation, storage and assembly be determined based on the manufacturer's contract of service.
74. In considering this proposed amendment to responsibility, MBIE concluded that ensuring there are no gaps in responsibility is a priority, in order to ensure consumers are adequately protected and scheme participants, users and the general public have confidence in the MCM scheme. Further, MBIE understands that most manufacturers would prefer to oversee the full continuum of activities from manufacturing through to transportation to the site to avoid the risk of damage or component deterioration.
75. The distribution of responsibility among scheme participants will be monitored and may be reviewed in the future if business models begin to change.

Section 3: Delivering an option

How will the new arrangements be implemented?

76. Regulations for the MCM scheme are intended to commence no later than 15 months from the date that the Building Amendment Act received Royal assent (June 2021). A commencement date of three months after the regulations are made is being proposed for Cabinet's consideration to allow sufficient preparation time for the MCM scheme to be set up and to allow sufficient time for the development of scheme rules.
77. MBIE intends to seek Cabinet decisions on the MCM scheme policy proposals in October 2021, with the intention of drafting the regulations to begin in November 2021.
78. There will be a separate programme of work for the following activities to support the implementation of the MCM scheme:
 - develop scheme rules as defined under section 272Z of the Building Amendment Act

- set up and appoint the scheme accreditation body
 - create and deliver customer facing information and education and guidance material
 - develop a communications plan to facilitate awareness of the scheme
 - set up MBIE's registration function.
79. MBIE is currently in the final stages of appointing the scheme accreditation body as work is already underway to develop the scheme rules. The registration of scheme participants is an internal function that MBIE will set up based on previous experience.
80. MBIE has also set up a technical working group made up of manufacturers of different scales and types to provide input into the development and implementation of the modular component manufacturer scheme. The technical working group is meeting quarterly, or more frequently where necessary, and will feed into the development of the scheme rules, identify any potential implementation issues to be addressed, and provide input into the type of information and education materials needed to support the successful implementation of the scheme. The first meeting of the group was on 13 August 2021. Four subsequent meetings will be scheduled for November 2021, February, April and June 2022.
81. The proposed regulations will be communicated through public communications (e.g. ministerial press release) and targeted communications to the industry and stakeholders.

Modular component manufacturer scheme rules

82. Scheme rules will provide certainty to scheme participants about their roles and responsibilities (as outlined in the Building Amendment Act and the proposed regulations), the operating process, evaluation criteria and any other matters to ensure consistency and align with regulatory best practice.
83. The rules will be developed by MBIE with input from the appointed accreditation body and the technical working group. There will be an opportunity to stakeholder input into the development of these rules.

Appointing the modular component manufacturer scheme accreditation body

84. The role of the appointed accreditation body will have a significant impact on the implementation of the modular component manufacturer scheme. In the first instance, MBIE will work closely with the appointed accreditation body to set up the accreditation function and the appointed body will feed into the development of the scheme rules.
85. MBIE has assumed that the organisation that has expressed interest in being appointed the modular component manufacturer accreditation body will be appointed. If a third party accreditation body is not appointed, MBIE will carry out the functions of the accreditation body.

Customer facing information and education material

86. Creating guidance material and information and education resources to support the implementation of the scheme will ensure scheme participants are clear on their roles

and responsibilities. The development of guidance materials will also support modular component manufacturers to meet the certification and registration criteria

87. The technical working group will feed into identifying the types of guidance and educational resources that will be required to support uptake from modular component manufacturers. Given the level of flexibility provided through the proposed regulations, providing scheme participants with guidance on their roles and responsibilities and the certification and registration criteria will support uptake of the scheme.
88. Forms to meet the scheme's requirements will be created or updated and made available online.

Compliance and enforcement

89. The structure of the modular component manufacturer scheme introduces a number of mechanisms to ensure that modular component manufacturers and certification bodies comply with the requirements of the scheme, which have been outlined elsewhere in this document. Where these requirements are not met, modular component manufacturers or certification bodies could have their status suspended or revoked.
90. The accreditation body that will oversee the certification bodies will be appointed by the chief executive and monitored by MBIE. The Building Amendment Act requires the accreditation body to notify the chief executive in a range of situations, and enables the appointment of the accreditation body to be revoked at any time.
91. The Building Amendment Act outlines a number of offences to prevent any person from representing themselves as the accreditation body, a certification body, or a certified or registered modular component manufacturer. Fines of up to \$50,000 for individuals or \$150,000 for body corporates may be issued for any convicted offences.
92. It is also an offence to misrepresent a modular component as being manufactured by a register modular component manufacturer, with fines of up to \$300,000 for individuals and \$1.5 million for body corporates. MBIE will monitor the modular component market for products or manufacturers that may be misrepresenting their products or status in relation to the scheme and take action as appropriate.

How will the new arrangements be monitored, evaluated, and reviewed?

93. MBIE will be responsible for monitoring the performance of the modular component manufacturer scheme. To support this, MBIE will develop a reporting and monitoring framework for post-implementation assessment. Complaints handling policies, procedures and systems will also provide all scheme participants, users and the general public with a feedback loop should any issues or concerns arise through the modular component manufacturer scheme.
94. A draft intervention logic model for the building system legislative reform programme was initially developed in 2019 (refer to **Annex Four**), and MBIE is currently in the process of reviewing this model. It is expected that an evaluation framework will be developed, taking into consideration the following factors for the effectiveness of the modular component manufacturer scheme requirements:

- number of modular component manufacturer certification bodies and manufacturers participating in the scheme
- number of working days for a consent to be processed and observed reductions in the duplication of process
- cost savings for manufacturers (consenting and inspection fees)
- number of modular components manufactured
- frequency and significance of complaints made against scheme participants.

Annex One: Comparing key schemes under the Building Act 2004

CodeMark

- Voluntary scheme that **certifies that a building product or method** complies with the Building Code
- **Targets a particular product** as opposed to the manufacturer of a product.

MCM Scheme

Voluntary scheme that **certifies manufacturers** that meet specific certification and registration criteria to:

- **Manufacture** modular components to a Building Code compliant design (through MultiProof or approved by a building consent authority), or
- **Design and manufacture** modular components to a Building Code compliant design that they have developed themselves

Targets the manufacturer (within their scope of certification) not the product itself

Reduces consenting process to **10 days** for whole buildings.

MultiProof

- Voluntary scheme that **establishes that a design** complies with the Building Code
- Designs need to be for a **whole building and repeated** at least 10 times in a two year period
- MultiProof can **complement the MCM scheme** for manufacturers that are certified to 'manufacture only'.

Annex Two: Description of suite of proposals for regulations for the scheme in MBIE's public discussion document (Option Two)

Prescribing the types of building products that would be 'modular components'

1. MBIE proposed to prescribe the kind of building product that is a 'modular component' in a way that incorporates the following:

- includes elements of the building such as open frames and trusses, enclosed panels or units, volumetric structures, and whole buildings, and may include services such as plumbing, or electrical wiring
- does not include non-structural building products or systems such as bathroom vanities, storage systems, or heating, ventilation and air conditioning systems
- must be constructed or manufactured off the site on which they are to be installed, though some onsite assembly or installation may be required.

Accreditation and registration criteria for modular component manufacturer certification bodies

2. Policies, procedures and systems in place to oversee, assess and inspect MCM's to determine if they meet the criteria required for certification

To be accredited, certification bodies will be required to:

- have the processes and ability to undertake the certification body function within the MCM scheme. This would include evidencing a robust and detailed understanding of the Building Code and relevant legislation, regulations and other relevant settings in the New Zealand building system.
- show how they can conduct the MCM certification body role at geographic distance to cope with situations where they or the MCMs for which they are responsible may be based offshore.

This could be evidenced by the MCM scheme certification body being accredited to or compliant with ISO17065:2012 Conformity assessment – requirements for bodies certifying products, processes and services or other relevant standards.

3. Policies, procedures and systems in place to undertake risk assessments and audits of certified manufacturers

To be accredited, certification bodies will be required to have processes and procedures to undertake audits appropriately and robustly, helping to ensure that certified modular component manufacturers continue to meet certification criteria.

4. Policies, procedures and systems in place to ensure appropriate staff perform its functions

To be accredited, certification bodies will be required to provide evidence that they have the right people in the right places and are undertaking the right work to perform their functions effectively and consistently. This could involve showing evidence that:

- the certification body has sufficient employees and contractors to perform its functions
- employees are appropriately trained and compliant with relevant occupational regulation frameworks
- work is allocated to employees or contractors who are competent to do the work

- the competence of employees and contractors to perform the work that is allocated to them is established.

5. System to retain records in relation to decisions, and policies, procedures and systems required by regulations

To be accredited, certification bodies will be required to operate an information management system that can create, maintain and archive robust records for a variety of issues, including decisions, staffing, supply chains, products, and so on.

This would likely be a digitally-accessible database, though MBIE does not propose that a specific method or system be used. Records could be maintained in an easily-accessible format for seven years and in an archived format for a longer period of time. The records would be a key focus of audits that take place following accreditation.

6. Process to notify the MCM accreditation body of changes to key personnel or other circumstances that might impact the accreditation

To be accredited, certification bodies will be required to keep the MCM accreditation body informed of changes to their staffing, processes and systems. This could help inform whether the MCM accreditation body may wish to undertake an out-of-cycle audit to ensure the MCM certification body continues to meet accreditation requirements following any such changes.

7. Suitable complaints handling policies, procedures and systems

To be accredited, certification bodies will be required to have suitable complaints handling policies, procedures and systems. This would help to ensure complaints, disputes and potentially adverse events are handled in an appropriate manner and where possible reach practical resolutions without needing costly and time-consuming legal intervention. Note that this would not limit consumers or MCMs from contacting MBIE, as the MCM scheme's steward to resolve complaints or using the legal system.

8. Satisfy a prescribed fit and proper person test

To be registered, scheme certification bodies will be required to satisfy a prescribed fit and proper person test. The proposed test would assess the history and non-technical suitability of MCM certification bodies and applicants to the scheme, which would complement accreditation assessments which assess an MCM certification body's technical suitability. The proposed test would require the following to be taken into account to establish the sustainability of certification bodies, and their directors for the MCM scheme:

- civil proceedings history
- offences/convictions history
- history in similar schemes
- professional history
- financial management history
- conflict of interest
- other relevant factors.

9. Process to notify MBIE of changes to key personnel or other circumstances that might impact its registration

To be registered, certification bodies will be required to keep MBIE informed of changes its status, processes and systems. This could help inform whether MBIE may wish to undertake an out-of-cycle audit to ensure the MCM certification body continues to meet registration requirements following the change.

Certification and registration criteria for modular component manufacturers

10. Quality plan and quality management system

To be certified, manufacturers will be required to demonstrate the ability to consistently provide modular components and services that meet customer and regulatory requirements. This may be evidenced by the manufacturer by being accredited to or compliant with ISO9001: 2015 Quality management systems.

11. Provide evidence that it has manufacturing processes and systems appropriate to the scope of certification it is seeking

To be certified, manufacturers will need to demonstrate the ability to consistently manufacture modular components to a Building Code compliant standard. This would include having established robust defect detection systems and having strong supply chain management for building products and materials, and could take into account the kinds of manufacturing machinery used.

The scope of certification a manufacturer is seeking would drive an MCM certification body's judgement of what an appropriate manufacturing processes and systems might be. For instance, if a manufacturer only wishes to be certified to manufacture frames and trusses, it would not be assessed for its processes to produce whole buildings. This proposal would require manufacturers to evidence and demonstrate a robust understanding of and ability to manufacture to the Building Code and relevant legislation, regulations and other relevant settings in the New Zealand building system.

12. In order to be certified to 'design and manufacture', a modular component manufacturer must provide evidence that it has design processes and systems appropriate to the scope of certification it is seeking

MBIE proposed that manufacturers be required to evidence and demonstrate the ability to design modular components to a Building Code compliant standard. This would include having established quality assurance or peer review mechanisms and processes for designs that they produce. It would also take into account the design or modelling programmes and systems used. This proposal would require manufacturers to evidence and demonstrate a robust understanding of and ability to design to the Building Code and relevant legislation, regulations and other relevant settings in the New Zealand building system.

13. In order to be certified, a modular component manufacturer must have policies, procedures and systems in place that ensure appropriate staff perform its functions

MBIE proposed that manufacturers would provide evidence that they have the right people, in the right places and undertaking the right work to perform their functions effectively and consistently. This could involve showing evidence that:

- the manufacturer has sufficient employees and contractors to perform its functions

- employees are appropriately trained and compliant with relevant occupational regulation frameworks
- work is being allocated to employees or contractors who are competent to do the work
- the competence of employees and contractors to perform the work that is allocated to them has been established.

14. Modular component manufacturer must have a system to retain records in relation to its decisions, and policies, procedures and systems required by regulations

To be certified, manufacturers will be required to have systems for creating, maintaining and archiving robust records of a variety of issues, including decisions, staffing, supply chains, products, and so on. This would likely be in a digitally-accessible database, though MBIE does not propose a specific approach or system is proposed. Records could be maintained in an easily-accessible format for seven years and in an archived format for a longer period of time. The records must be sufficient to establish clearly that all relevant regulatory requirements have been met, and would be a key focus of audits that take place following certification.

15. Modular component manufacturer must have a process to notify the responsible modular component manufacturer certification body of changes to key personnel and other circumstances that might impact its certification

To be certified, manufacturers will be required to keep their MCM scheme certification body informed of changes to the staffing, processes and systems. This could help inform whether the MCM certification body may wish to undertake an out-of-cycle audit to ensure the MCM continues to meet certification requirements following the change.

16. Modular component manufacturer must have suitable complaints handling policies, procedures and systems

To be certified, manufacturers will be required to have suitable systems for ensuring that complaints, disputes and potentially adverse events are handled in an appropriate manner and, where possible, reach practical resolutions without needing costly and time-consuming legal intervention. Note that this would not limit consumers from contacting MBIE, as the MCM scheme's steward, to resolve complaints or using the legal system to address contractual disputes.

17. A certified modular component manufacturer must satisfy a prescribed test to indicate it has adequate means to cover any civil liabilities that may arise in relation to its manufacture and design (if applicable) of modular components

To be registered, a certified manufacturer will be required to meet a prescribed test to ascertain if they have sufficient means to cover any civil liabilities they may incur through their activities in the scheme. This test would take into account the following factors:

- organisational structure
- exposure to risk (types of modular components being designed and/or manufactured)
- risk identification and management (likely liabilities, amount and duration of each liability, and organisational risk management framework)

- transferred risks (e.g. through contracts, insurance, bonds, etc., with no building warranty product covering a 10 year limitation period being required)
- retained risks (what they are and how managed)
- financial status (accounts for the last 2-3 years plus 2-3 year projections)
- any legal proceedings currently in train.

The proposed test is largely based on the adequate means test applied as part of private building consent authority registration. This would be a non-technical assessment that complements certification assessments, which assess an MCM's technical suitability to quality assure, manufacture and in some cases design modular components.

18. A certified modular component manufacturer must satisfy a prescribed fit and proper person test

To be registered, a certified manufacturer will be required to satisfy a fit and proper person test that would assess the history and non-technical suitability of the manufacturer and applicants to the scheme, complementing certification assessments that assess an MCM's technical suitability. The proposed test would require the following to be taken into account:

- civil proceedings history
- offences/convictions history
- history in similar schemes
- professional history
- financial management history
- conflict of interest
- other relevant factors.

The proposed test is largely based on the fit and proper person test applied as part of private building consent authority registration. A similar test is proposed within this paper for the registration of MCM certification bodies and PCBs.

19. A certified modular component manufacturer must evidence it has a process to notify MBIE of changes to key personnel or other circumstances that might impact its registration

To be registered, certified manufacturers will be required to keep MBIE informed of changes to their status, processes and systems. This could help inform whether MBIE may wish to undertake an out-of-cycle audit to ensure the MCM continues to meet registration requirements following the change.

Audit Processes

20. The modular component manufacturer accreditation body must use a prescribed process to decide appropriate audit procedures and audit frequency to apply to modular component manufacturer certification bodies

To enable the appointed accreditation body to tailor the kinds of audit procedures they use and the frequency at which it uses them for different MCM certification bodies. It is proposed that in considering audit procedures and frequency to use for any individual MCM certification body, the MCM accreditation body must consider:

- the outcome of any risk assessment of the MCM certification body
- the MCM certification body's previous performance in the scheme
- any complaints or other feedback about the MCM certification body
- the MCM certification body's history of compliance with relevant requirements in the Building Act, the proposed regulations and any scheme rules made under section 272ZG of the Bill
- any other factors the MCM accreditation body considers relevant.

Audits may take place at intervals determined by the MCM accreditation body, but must be at least once every 12 months. It is expected that new MCM certification bodies will be audited more frequently and progressively less often as they build a history of successful audits. Audit procedures may include, but would not be limited to paper-based documentation audits, scheduled onsite audits, full accreditation reassessment, and unannounced spot check audits. Different audit procedures serve different purposes and could give the MCM accreditation body a suite of tools to confirm MCM certification bodies' ongoing compliance with accreditation criteria.

21. A modular component manufacturer certification body must use a prescribed process to decide appropriate audit procedures and determine the audit frequency that would apply for the modular component manufacturer for which it is responsible

MBIE proposed to enable MCM scheme certification bodies to tailor the kinds of audit procedures they use and the frequency at which they use them to different MCMs. In considering audit procedures and frequency, the MCM certification body must consider:

- the outcome of any risk assessment of the MCM
- the MCM's previous performance in the MCM scheme
- the receipt of complaints or other feedback about the MCM
- the MCM's history of compliance with relevant requirements in the Building Act, the proposed regulations, and any scheme rules made under section 272ZG
- any other factors the MCM certification body considers relevant. Audits may take place at intervals determined by the MCM certification body, but must occur at least once every 12 months.

It is expected that new modular component manufacturers will be audited more frequently and progressively less often as they build a history of successful audits. Audit procedures may include but would not be limited to paper-based documentation audits, scheduled onsite audits, full accreditation reassessment and unannounced spot check audits. Different audit procedures serve different purposes and could give the MCM certification bodies a suite of tools to confirm compliance with the scheme. MBIE expects that the scheduling and processes for audits will be agreed between MCM certification bodies and MCMs as part of their contractual service agreement. This is also where fees would be agreed.

22. Following the completion of an audit, the modular component manufacturer accreditation body and certification bodies must issue an audit report to the audited party and to MBIE in a timely manner

MBIE proposed to require a record of an audit's finding to be provided to both the audited party and MBIE following the audit. This would include any recommendations or changes that the audited party may need to make before it passes the audit and receive an audit certificate. The audit report would need to be provided efficiently following the audit so it does not unnecessarily delay the audited party's activities. Further detail about audit reports, including specific information to be included in them, maybe prescribed through scheme rules.

23. Modular component manufacturers and certification bodies must make any changes required by an audit report within three months of receiving that audit report

MBIE proposed to provide MCM scheme certification bodies and MCMs with a three month timeframe in which to make changes outlined in an audit report that are required for them to meet relevant accreditation or certification criteria. If three months pass without the audited party making the required changes, its accreditation or certification could be suspended or revoked by the auditing party. Note that if an MCM accreditation body or certification body identifies a significant non-conformance during an audit, it can suspend the audited party or request MBIE urgently suspend their registration until it is rectified.

24. When a modular component manufacturer or certification body passes an audit and has made all changes required by the audit report, the modular component manufacturer certification and accreditation body must issue an audit certificate to the audited party in a timely manner

MBIE proposed to require the appointed accreditation body and MCM scheme certification bodies to issue a formal audit certificate to the audited party that confirms the audit has had a successful outcome. The proposal includes requiring the certificate to be provided efficiently following the audit so it does not unnecessarily delay the audited party's activities.

Modular Component Manufacturer Certificates

25. Prescribe requirements for certificates to be issued at building consent application stage by registered modular component manufacturers that are certified to 'manufacture' modular components

MBIE proposed that the following information be included in manufacturer's certificates issued at the building consent application stage by registered MCMs that are certified to manufacture modular components:

- **MCM details**, including legal name, trading name and New Zealand Business Number where applicable, address for service in New Zealand, contact details, internet site and internet link to information about the MCM's complaints process.
- **Responsible MCM certification body details**, including legal name, trading name and New Zealand Business Number where applicable, address for service in New

Zealand, contact details, internet site and internet link to information about the MCM certification body's complaints process.

- **MCM certification details**, including certificate number, issue date, scope of certification, statement about audits that have taken place, disclaimer that MCM takes responsibility for the modular component for which this certificate has been issued.
- **Modular component manufacturing specifications**, which set out information about the manufacturing processes to be used for the modular component.

26. Prescribe requirements for certificates to be issued at building consent application stage by registered modular component manufacturers that are certified to 'design and manufacture' modular components

MBIE proposed that the following information be included in manufacturer's certificates issued at the building consent application stage by registered MCMs that are certified to 'design and manufacture' modular components:

- **MCM details**, including legal name, trading name and New Zealand Business Number (where applicable), address for service in New Zealand, contact details, internet site and internet link to information about the MCM's complaints process.
- **Responsible MCM certification body details**, including legal name, trading name and New Zealand Business Number (where applicable), address for service in New Zealand, contact details, internet site and internet link to information about the MCM certification body's complaints process.
- **MCM certification details**, including certificate number, issue date, scope of certification, statement about audits that have taken place, and disclaimer that the MCM takes responsibility for the modular component for which this certificate has been issued.
- **Modular component manufacturing specifications**, which set out information about the manufacturing processes to be used for the modular component.
- **Modular component design specifications**, including a statement regarding the specific modular component's design, compliance with relevant Building Code performance requirements and any testing it has undergone/will undergo, limitations on its use, and an internet link to further information and design details that cannot be included on certificate.

27. Prescribe requirements for certificates to be issued at code compliance certificate application stage by registered modular component manufacturers that are certified to 'manufacture' modular components

MBIE proposed the following information be included within manufacturer's certificates issued at code compliance certificate application stage by registered MCMs that are certified to manufacture modular components:

- **MCM details**, including legal name, trading name and New Zealand Business Number (where applicable), address for service in New Zealand, contact details, internet site and internet link to information about the MCM's complaints process.
- **Responsible MCM certification body details**, including legal name, trading name and New Zealand Business Number (where applicable), address for service in New

Zealand, contact details, internet site and internet link to information about the MCM certification body's complaints process.

- **MCM certification details**, including certificate number, issue date, scope of certification, statement about audits that have taken place, and disclaimer that the MCM takes responsibility for the modular component for which this certificate has been issued.
- **Manufacture statement**, which confirms that the modular component(s) that have been manufactured, stored, transported to site and installed according to the consented design, comply with details of the manufacturer's certificate that was issued at building consent application stage.

This proposal will make certified and registered manufacturers responsible for the transportation, storage and assembly of modular components that they manufacture within the scheme. Certified and registered manufacturers are considered best able to control and limit risk from these factors, so it is appropriate for MCMs to take responsibility for them

28. Prescribe requirements for certificates to be issued at code compliance certificate application stage by registered modular component manufacturers that are certified to 'design and manufacture' modular components

MBIE proposed that the following information, be included in manufacturer's certificates issued at the code compliance certificate application stage by registered MCMs that are certified to 'design and manufacture' modular components:

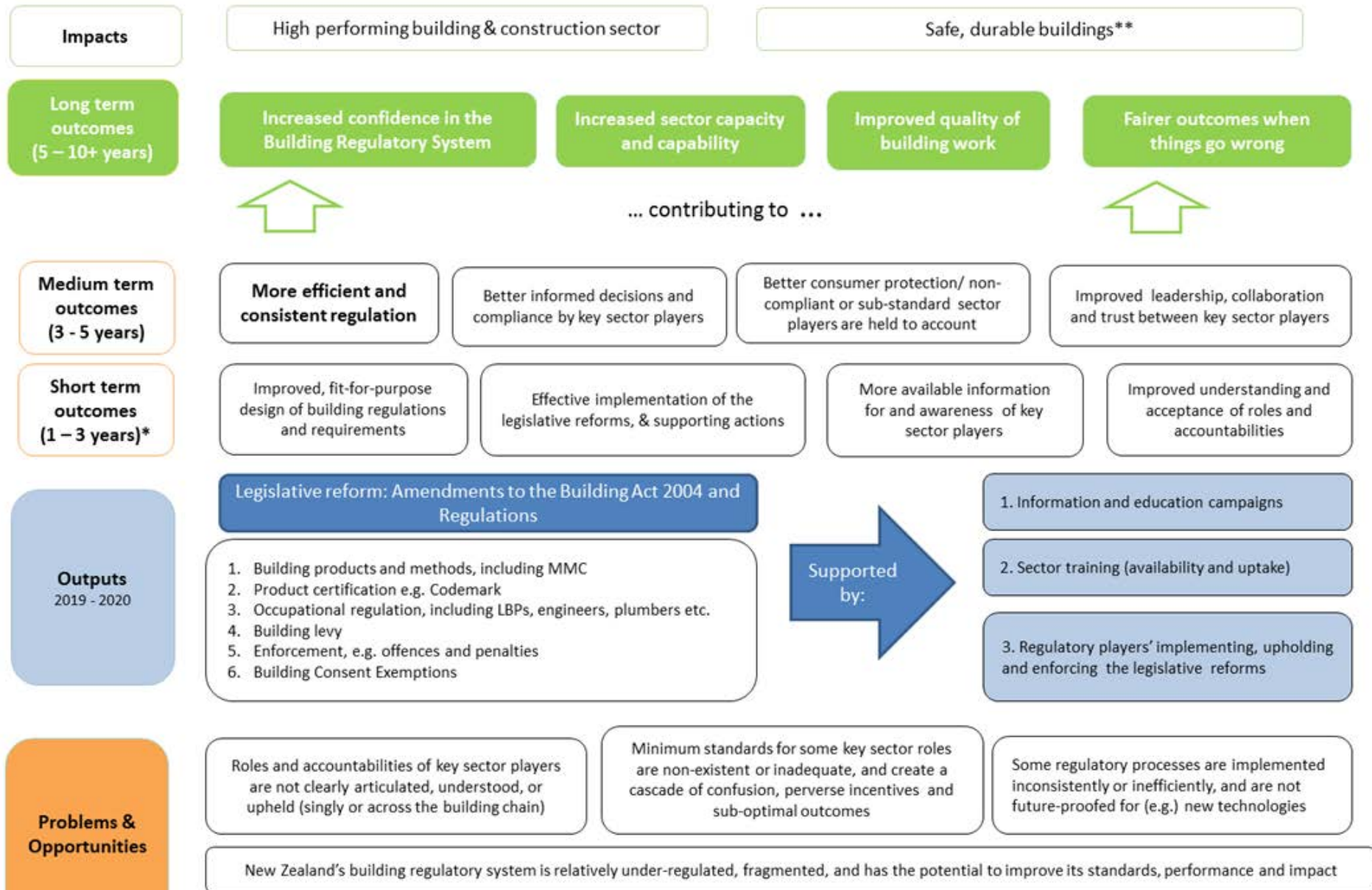
- **MCM details**, including legal name, trading name and New Zealand Business Number (where applicable), address for service in New Zealand, contact details, internet site and internet link to information about the MCM's complaints process.
- **Responsible MCM certification body details**, including legal name, trading name and New Zealand Business Number (where applicable), address for service in New Zealand, contact details, internet site and internet link to information about the MCM certification body's complaints process.
- **MCM certification details**, including certificate number, issue date, scope of certification, statement about audits that have taken place, and disclaimer that the MCM takes responsibility for the modular component for which this certificate has been issued.
- **Design and manufacture statement**, which confirms that modular component(s) that have been designed, manufactured, stored, transported to site and installed correctly and comply with details of the manufacturer's certificate that was issued at building consent application stage.

Any variations from the design provided at building consent stage should also be outlined. Note that this will make certified and registered manufacturers responsible for the transportation, storage and assembly of modular components that they manufacture within the scheme. Certified and registered manufacturers are considered best able to control and limit risk from these factors regarding modular components, so it is appropriate for MCMs to take responsibility for them.

Annex Three: CBA results in net present value (\$million) over 10-year period

NPV (\$million)	Scenario 1	Scenario 2	Scenario 3
Costs			
Accreditation Body			
One-off compliance costs	\$0.10	\$0.10	\$0.10
Ongoing operating costs	\$0.46	\$0.46	\$0.46
Certification Bodies			
One-off compliance costs	\$0.07	\$0.18	\$0.18
Ongoing compliance costs	\$0.40	\$0.91	\$0.91
Cost of being audited	\$0.06	\$0.14	\$0.14
MCM Suppliers			
One-off compliance costs	\$0.39	\$0.67	\$0.67
Ongoing compliance costs	\$2.86	\$5.37	\$5.37
Cost of being audited	\$0.38	\$0.78	\$0.78
MBIE			
Implementation costs	\$0.10	\$0.10	\$0.10
Monitoring & enforcement	\$1.00	\$1.00	\$1.00
Total costs	\$5.82	\$9.71	\$9.71
Benefits			
Reduced time spent on consenting administration	\$2.98	\$5.81	\$5.81
Avoided delays from consent processing	\$13.71	\$23.85	\$23.85
Avoided consent fees	\$8.65	\$15.05	\$15.05
Avoided inspection fees	\$1.10	\$2.63	\$2.63
Faster build time – cashflow and financing benefits (new growth only)	-	\$8.21	\$8.21
Reduced serious harm incidents in the workplace (new growth only)	-	\$0.16	\$0.16
Construction savings (new growth only)	-	-	\$26.78
Total benefits	\$26.44	\$55.71	\$82.49
NPV	\$20.62	\$46.01	\$72.78
BCR	4.54	5.74	8.50

Annex Four: Intervention logic for the Building System Legislative Reform Programme



Stage 2 Cost Recovery Impact Statement: Modular Component Manufacturer scheme

Agency Disclosure Statement

This Cost Recovery Impact Statement has been prepared by the Ministry of Business, Innovation and Employment (MBIE). MBIE administers the *Building Act 2004*, which provides for regulations to be made to recover fees for the specified activities under the modular component manufacturer scheme.

These are new functions introduced by the *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021*, which introduced a legislative framework for a voluntary modular component manufacturer scheme.

This Cost Recovery Impact Statement proposes a cost recovery approach for the costs associated with the accreditation and audit of scheme certification bodies and the registration of scheme certification bodies and modular component manufacturers under the modular component manufacturer scheme.

MBIE has assumed that the Joint Accreditation System of Australia and New Zealand (JAS-ANZ) will be appointed the modular component manufacturer accreditation body. JAS-ANZ is currently the product certification accreditation body under the product certification (CodeMark) scheme and has expressed interest (following a formal Expressions of Interest process) in being appointed as the modular component manufacturer accreditation body. If JAS-ANZ is not appointed, MBIE will carry out the functions of the accreditation body.

In considering cost recovery levels for the accreditation and audit of scheme certification bodies, MBIE is satisfied that JAS-ANZ's significant experience in accrediting to the product certification scheme, and other similar schemes, provides reasonable insights to determine cost recovery and that over- or under-recovery of costs will be minimised. Further, the JAS-ANZ operates on a not-for-profit, cost recovery basis only.

If the accreditation body reviews its cost recovery levels in the future, this may trigger a review of the prescribed fees for the accreditation and audit of scheme certification bodies.

The proposed fees for the registration of scheme certification bodies and modular component manufacturers were developed using the following assumptions:

- the estimated cost outputs for the proposed fit and proper person test in the 2021 public discussion document are similar to the cost outputs for the fit and proper test for a private building consent authority
- the registration criteria and estimated cost outputs for the registration of scheme certification bodies and modular component manufacturers will be similar to what was consulted on in the 2021 public discussion document.

Amy Moorhead, Manager Building Policy, Ministry of Business, Innovation and Employment

13 October 2021

Executive summary

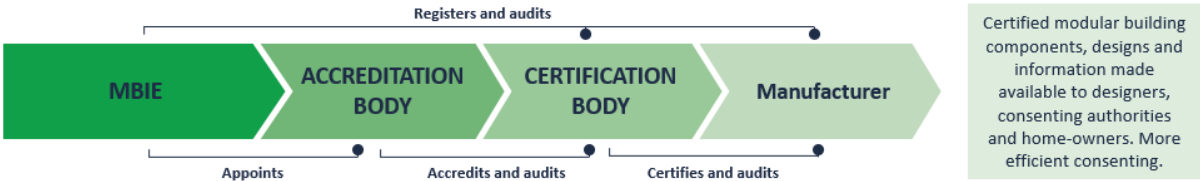
The *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021* (the Building Amendment Act) recently introduced a legislative framework for a voluntary modular component manufacturer scheme.

This is a voluntary scheme that allows modular component manufacturers to be certified and registered to produce modular components that are deemed to comply with the Building Code. This means that building consent authorities will only inspect work that is not completed by the manufacturer, such as foundations and site work, provided the manufacturer has acted within the scope of their certification.

The scheme has been established to support the increased use of offsite manufacturing approaches in the building sector. These manufacturing approaches can lift productivity, reduce building costs and time and contribute to better environmental outcomes through a reduction in waste.

Scheme certification bodies will be responsible for certifying manufacturers. To ensure they are competent to perform this function, scheme certification bodies need to be both accredited (by an accreditation body) and registered (with MBIE).

Figure 1: Roles and responsibilities within the modular component manufacturer certification scheme



This Cost Recovery Impact Statement proposes a cost recovery approach for two types of fees introduced by recent amendments to the Act to support its implementation:

- new accreditation and audit fees to support cost recovery for the accreditation body’s functions
- new registration fees to support cost recovery for the chief executive of MBIE’s registration functions

Cabinet agreed to consult on fee proposals in April 2021 and a public discussion document was released for consultation from 28 April 2021 to 18 June 2021:

- Some submitters disagreed with the proposed fees structure for accreditation and audits, commenting that fees should be set by the accreditation body based upon its knowledge of the scheme and the required audits.
- Submitters supported the proposed structure for registration fees, and there was broad support for registration fee levels.

The fee proposals have been assessed in line with Treasury and Office of the Auditor General guidelines, and against the following criteria: equity, certainty, effectiveness and administrative efficiency.

MBIE will monitor the number of applications for registration, the actual time taken, the cost outputs required to perform these services and the revenue collected from registration and accreditation fees to inform future reviews of the proposed fee levels.

MBIE recommends reviewing the proposed fees after no more than three years, in accordance with the Treasury's guidelines on setting charges in the public sector.

Proposed new fees for the accreditation and audit of scheme certification bodies

Fee for the accreditation of scheme certification bodies

The accreditation body may accredit a person as a scheme certification body if satisfied that they comply with prescribed accreditation criteria.

The following fees are proposed for scheme certification body accreditation:

- Accreditation application fee: \$8,600 (exc GST); and
- Accreditation application reviews: \$2,000 per day per assessor/ technical expert (exc GST).

Fee for the audit of scheme certification bodies

The accreditation body must conduct audits on scheme certification bodies.

The following fee is proposed for audits of scheme certification bodies:

- \$2,000 per day per assessor/ technical expert (exc GST).

Proposed new fees for the registration of scheme certification bodies and modular component manufacturers

Modular component manufacturers and scheme certification bodies will need to apply for registration to participate in the scheme. The chief executive of MBIE must decide whether to register these scheme parties.

Under the Building Act, fees may be prescribed to recover the costs of carrying out the chief executive's registration function.

The following new fees for registration are proposed;

- Scheme certification body registration fee: Hourly charge of \$90.15 (exc GST) with a maximum fee level of twenty hours per application (maximum \$1,803.00 exc GST)
- Modular component manufacturer registration fee: Hourly charge of \$90.15 (exc GST) with a maximum fee level of 65 hours per application (maximum \$5,859.75 exc GST).

Status quo

The *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021* (the Building Amendment Act), received Royal assent on 7 June 2021. The Building Amendment Act introduced a legislative framework for a voluntary modular component manufacturer scheme.

The scheme was introduced to enable 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 modular components that comply with the New Zealand Building Code (Building Code).

Building consent authorities must accept a manufacturer's certificate as evidence that the modular component complies with the Building Code when used in accordance with the certificate. Building consent authorities will only inspect work that is not completed by the certified manufacturer, such as foundations and site work.

The Building Amendment Act sets out the legislative framework for the scheme and defines the roles and responsibilities for different parties:

Figure 2: Roles and responsibilities within the modular component manufacturer certification scheme



The Building Amendment Act provides that the accreditation body is appointed by the chief executive of MBIE; or, if no one is appointed, the chief executive may carry out the functions of the accreditation body.

Certification bodies must be both accredited by the accreditation body and registered with MBIE before they can perform functions under the scheme.

Similarly, manufacturers must be certified by a certification body and registered with MBIE before they can perform functions under the scheme.

This legislative framework clarifies responsibility and potential liability in the event of a building or modular component defect and ensures that consumers and building consent authorities can have confidence in the scheme.

The accreditation and audit of scheme certification bodies

It is essential that the scheme certification bodies, who certify the manufacturers, are accredited against robust standards by a competent accreditation body and audited regularly to ensure those standards are being maintained. This will give assurance that scheme certification bodies are carrying out their functions appropriately, and the certified manufacturers can be relied upon to produce modular components that comply with the Building Code.

High performing scheme certification bodies, and the subsequent high quality of modular components produced by certified manufacturers, are intended to lead to greater consenting efficiency where these modular components are used.

New fees are needed to recover the costs of the accreditation body's functions:

- section 272J of the Building Amendment Act provides for fees to be prescribed to recover the costs of accreditation
- section 272K of the Building Amendment Act provides for fees to be prescribed to recover the costs of carrying out an audit of a certification body.

The registration of scheme certification bodies and modular component manufacturers

Under the scheme, the chief executive of MBIE carries out registration functions for:

- **scheme certification bodies:** the chief executive of MBIE may, on application, register a person as a scheme certification body if satisfied that they are an accredited scheme certification body and meet any prescribed criteria and standards for registration
- **modular component manufacturers:** the chief executive of MBIE may, on application, register a person as a modular component manufacturer if satisfied that they are a certified modular component manufacturer and meet any prescribed criteria and standards for registration.

These registration functions are intended to ensure scheme users, such as building consent authorities and consumers, can have confidence in modular component manufacturers and those certifying them. Registration provides MBIE an appropriate level of oversight as owner of the scheme and gives MBIE the tools to intervene if necessary.

Two new fees are needed to recover the costs of these registration functions:

- section 272N of the Building Amendment Act provides for fees to be prescribed for the registration of scheme certification bodies
- section 272K provides for fees to be prescribed to for the registration of modular component manufacturers.

Cost Recovery Principles and Objectives

Principles

The Office of the Auditor General's *Good practice guide: Charging fees for public sector goods and services* and the Treasury's *Guidelines for Setting Charges in the Public Sector* have been considered and the following principles identified in setting these fees.

- **Authority:** A public entity must have legal authority to charge a fee and must operate within the scope of the empowering provision.
- **Efficiency:** The user charge should be no higher than necessary to produce a good or service to the desired level of quality. The design of the charge should incentivise efficiency i.e. keeping costs down and the quality of the service high.

- **Accountability:** The user charge undergoes public consultation and can undergo scrutiny by the Regulations Review Committee.

Assessment criteria

The following assessment criteria have been applied in developing cost recovery proposals:

- **Equity (also described as fairness):** The user charge is being paid by the appropriate people. The beneficiary of the activity or service is paying for the relevant function to be carried out. Any cross-subsidy between different groups (particularly between those with simple and complex applications) is minimised.
- **Certainty:** There is a reasonable level of certainty for the accreditation body, scheme certification bodies and modular component manufacturers on the level of cost incurred by the services that are being paid for. Any uncertainty to prospective applicants as to the likely total amount of the fees they will be required to pay is minimised so that informed business decisions can be made.
- **Effectiveness:** Fees are set at a level that fully recovers, but does not over-recover, the costs of carrying out functions. The accreditation body and chief executive are paid to a level that will allow them to provide high quality services that contribute to a robust pathway for modular components produced by certified manufacturers to be deemed to comply with the Building Code. This contributes to safe, durable and healthy housing for all New Zealanders.
- **Administrative efficiency:** Fees can be charged in an administratively efficient manner.

Rationale for cost recovery

The accreditation and audit of scheme certification bodies

Parliament has decided that a fee may be prescribed for the accreditation and audit of scheme certification bodies by including a regulation making power in the Act. Under these circumstances, a fee must be prescribed in regulations if one is to be charged.

It is appropriate to regulate the cost recovery of these services because either MBIE will perform these functions, or a third party accreditation body will perform the regulatory function on behalf of MBIE and that body will therefore have a monopoly role.

A fee is the most appropriate type of cost recovery for the accreditation and audit of scheme certification bodies because the applicant or certification body directly benefits from this service by being able to participate in the scheme, and others are excluded from the benefits of the accreditation and audit services. This makes the accreditation and audit of scheme certification bodies predominately private goods that may be used to support ongoing business activities.

Cost recovery options for the accreditation and audit of scheme certification bodies

At the time of the release of the public discussion document, there was uncertainty whether MBIE would perform the accreditation functions for the scheme, or if a third party would be appointed as the accreditation body.

Following release of the public discussion document, MBIE has made internal decisions to pursue third party accreditation, including carrying out an Expressions of Interest process for organisations interested in performing this role. An organisation expressed interest.

This organisation is the currently appointed product certification accreditation body (the Joint Accreditation System of Australia and New Zealand (JAS-ANZ)) for the product certification scheme. The proposed cost recovery approach for the modular component manufacturer scheme is therefore consistent with the cost recovery approach proposed for the product certification scheme.

Following release of the public discussion document, MBIE met with JAS-ANZ several times to understand its business processes and procedures and the cost outputs associated with accreditation and audit services. Because JAS-ANZ is established by Treaty to operate on a not-for-profit basis, it only seeks to recover its costs in order to deliver an effective service. JAS-ANZ submitted that the modular component manufacturer fees will need to match the product certification fees to achieve cost recovery.

While a decision has not been finalised on whether the accreditation function will be carried out by MBIE or a third party, at the time of writing this Impact Statement MBIE intends to proceed on the basis that accreditation services will be carried out by a not-for-profit third party.

The following table summarises the options considered. A status quo option (no fees) is not considered an effective option because without prescribed fees, the accreditation body could not recover the costs of its accreditation and audit services for the scheme. This is not viable as the accreditation body is a not-for-profit entity and entirely self-funding. Any under- or over-recovery of costs would have flow on effects to the accreditation body's other fees and could lead to cross-subsidisation between schemes.

- **Option 1: Fees proposal in the 2021 public discussion document.** This option reflected some uncertainty on whether accreditation functions would be carried out by MBIE or a third party. This option therefore proposed prescribing fees for certification body accreditation and audits using the same methodology and level as those used in the Building Consent Authority accreditation scheme.
- **Option 2: Revised fees proposal.** This option was developed following an Expressions of Interest process to identify an accreditation body. This option reflects feedback from the organisation that expressed an interest in seeking appointment as the accreditation body (JAS-ANZ). This option proposes prescribing fees for certification body accreditation and audits using the same methodology and level as the updated fees for the product certification scheme.

Table 1 compares the two options. MBIE does not expect one option to necessarily impose higher overall costs than the other for scheme certification bodies. This is because:

- Each option includes day rates, so the total cost of accreditation and audit activities will vary depending on the time taken to carry out these activities
- While Option 2 includes a one-off application fee, it is expected that this will result in fewer additional days of application reviews being charged.
- While overhead costs are treated differently under each option, the objective for both structures is cost recovery.

Table 1: comparison of options for cost recovery for the accreditation and audit of scheme certification bodies

	Option 1: Fees proposal in 2021 public discussion document <i>(exc GST)</i>	Option 2: Revised fees proposal <i>(exc GST)</i>
Accreditation and Audit	<p>Staff member accreditation and audit services Capped at \$1,720 per day per staff member</p> <p>Technical expert accreditation and audit services Capped at \$1,248 per day per technical expert</p>	<p>Accreditation application fee \$8,600 <i>(one off)</i></p> <p>Accreditation application reviews \$2,000 per day <i>(per assessor/ technical expert)</i></p> <p>Audit \$2,000 per day <i>(per assessor/ technical expert)</i></p>
Disbursements	Actual and reasonable costs	Actual and reasonable costs
Administrative overhead	\$106 per month since last accreditation assessment or audit	N/A <i>(these overheads are included in the Accreditation and Audit fees above)</i>

The two options are assessed against the assessment criteria in Table 2 below.

Table 2: Assessment of options against criteria

	Option 1: Fees proposal in 2021 public discussion document	Option 2: Revised fees proposal
Equity	✓✓ Direct fee to applicant	✓✓ Direct fee to applicant
Certainty	✓ Set daily rates for staff and technical experts. No maximum cap.	✓ Same daily rates for accreditation and audits are prescribed. No maximum cap.
Effectiveness	✘✘ Under-recovery of costs means the accreditation body cannot perform its functions effectively	✓✓ Reflects cost recovery so the accreditation body can perform its functions effectively
Administrative efficiency	✘✘ Different fee structure and daily rates to other schemes to which the potential accreditation body accredits	✓ Consistent fee structure and levels aligned with similar business processes and procedures under the product certification scheme.
Overall assessment	✘	✓

Key

✓✓	Aligned with criteria
✓	Somewhat aligned with criteria
✘	Not very aligned with criteria
✘✘	Not aligned with criteria

The preferred option is **Option 2: Revised fees proposal**, because it reflects no more than cost recovery and will allow the accreditation body to provide a viable and effective service, consistent with its accreditation and audit functions under the modular component manufacturer scheme.

Having the same fee structure and levels as the product certification scheme, and a single day rate for assessors and technical experts, is also administratively simple for the accreditation body and scheme certification bodies. Because these fees are limited by the empowering provisions in the Act, and therefore may have a different structure to the fees charged by the accreditation body for other schemes, it is important to improve their administrative efficiency where practical.

Business processes and cost components for the accreditation and audit of scheme certification bodies

The following business processes and cost outputs have been factored into the proposed fees for the accreditation of modular component manufacturer certification bodies and for the auditing of modular component manufacturer certification bodies.

For accreditation, the business processes typically involve:

- checking the accuracy of information in the application for accreditation
- reviewing the application
- reviewing the applicant's documented systems
- reviewing the applicant's evidence that it puts its systems into practice
- witness applicant carrying out its functions in accordance with its documented systems
- deciding on the application or requesting further information
- notifying the applicant of the decision
- issuing the accreditation deed.

For audits, the business processes typically involve:

- preparation and planning for audits
- carrying out onsite assessment
- audit reporting
- follow up of any non-conformances.

Other cost outputs include:

- remuneration
- technical expert fee for service costs
- indirect costs.

Under **Option 2: Revised fees proposal**, MBIE has proposed that the following fees are introduced for the accreditation and audit of scheme certification bodies:

- A one off fee to assess application for accreditation
- A day rate for additional accreditation assessments
- A day rate for audit services (at the same level as the accreditation day rate)
- Disbursements for accreditation and audit services at actual and reasonable cost.

A summary of the proposed fee levels is set out in the following table. Components of the proposed fees are set out in more detail at Annex 1.

Table 3: Rationale for the proposed fee levels for the accreditation and audit of scheme certification bodies

Fee	Level (exc GST)	Rationale
Accreditation application fee (one off)	\$8,600	Reflects feedback from the organisation that expressed interest in seeking appointment as the accreditation body Includes the usual time taken for system review (this is a baseline cost for accreditation and it is administratively simple to include it in the application fee) Expected to recover direct and indirect costs of accreditation body staff
Accreditation application reviews (day rate per assessor/ technical expert)	\$2,000	Reflects feedback from the organisation that expressed interest in seeking appointment as the accreditation body Single fixed day rate is administratively simple for accreditation body and certification bodies Expected to recover direct and indirect costs of accreditation body staff
Audit (day rate per assessor/ technical expert)	\$2,000	Intended to recover direct costs of external resources
Disbursements	At actual and reasonable cost	Standard cost recovery approach to disbursements

The registration of scheme certification bodies and modular component manufacturers

Consideration has been given to funding MBIE's new registration services by general taxation or recovering the costs of these services through levies or fees. Cost recovery via fees is preferred.

Funding registration services through general taxation is inappropriate because the services are not predominately a public good (although there are elements of public benefit in a robust modular component manufacturer scheme due to the positive impact on broader building outcomes).

MBIE's oversight of the scheme through the registration of scheme certification bodies and modular component manufacturers has an element of a 'club good'. It could therefore be funded by levy.

The most appropriate existing levy would be the building levy, which is paid by successful building consent applicants at the time a building consent is granted. Recovering the costs of MBIE's registration services through the building levy may be considered, because:

- under section 53 of the Act, the building levy can be used to fund the chief executive's functions under the Act. Under Section 11 of the Act the chief executive registers modular component manufacturers and modular component manufacturer certification bodies
- the 'club' of levy payers (successful building consent applicants) would have limited benefit from MBIE's oversight of the scheme via its registration functions, through greater

assurance that modular components produced by certified manufactures are high quality, contributing to more efficient consenting.

However, MBIE has determined that there is a strong case for recovering the costs of the service from those who directly benefit from the registration of scheme certification bodies and modular component manufacturers because registration is predominately a private good. Applicants benefit from registration because they are subsequently allowed to participate in the scheme.

Fees payable directly by the scheme certification body and modular component manufacturer to recover the costs of MBIE's registration services are therefore proposed. Setting fees for registration is also consistent with Treasury's *Guidelines for Setting Charges in the Public Sector* because:

- there is the statutory authority to charge these fees (in sections 272N and 272Y of the Building Amendment Act)
- registration is rivalrous and excludable (it applies only to the scheme certification body or modular component manufacturer to which it is granted)
- the certification body or manufacturer is the main beneficiary of registration as it allows them to gain business benefits from participating in the scheme.

Cost recovery options for the registration of scheme certification bodies and modular component manufacturers

Four options were considered for recovering the costs of assessing applications for the registration of scheme certification bodies and modular component manufacturers (see Table 4 below):

- **Option 1: No fee (the status quo)**
- **Option 2: Fixed fee**
- **Option 3: Fixed fee plus an hourly charge for complex applications**
- **Option 4: Hourly charge, capped at a maximum fee** (2021 discussion document proposal)

Option 4: Hourly charge, capped at a maximum fee is the preferred option for the registration of scheme certification bodies and modular component manufacturers.

The maximum cap would provide certainty for applicants. The hourly rate reduces the risk of over-recovery. The maximum cap would be set at a level to provide for MBIE's business processes such as assessing the fit and proper person test, which will be the main criteria for registration.

Option 2: Fixed fee would also meet the assessment criteria. However, the main benefit of a fixed fee compared to the preferred option is that a fixed fee is more administratively efficient. MBIE has applied a lower weighting to the administrative efficiency criteria because there are a very low number of applications expected.

Option 3: Fixed fee plus an hourly charge for complex applications would also meet the assessment criteria. However, MBIE has applied a higher weighting to the certainty criteria compared to the other criteria because scheme certification bodies will apply for registration on top of the time and costs associated with applying for and achieving accreditation, and

modular component manufacturers will apply for registration on after applying for and achieving certification.

Table 4: Assessment of options against criteria

	Option 1: No fee (the status quo)	Option 2: Fixed fee	Option 3: Fixed fee plus an hourly charge for complex applications	Option 4: Hourly charge, capped at a maximum fee (2021 public discussion document consultation proposal)
Equity	✖✖ Primary beneficiary of the activity does not pay for the activity.	✓ Direct fee to applicant. Some risk of cross subsidisation between applicants where over-recovery or under-recovery occurs	✓✓ Direct fee to applicant and reduces risk of cross-subsidisation between applicants	✓✓ Direct fee to applicant. Hourly rate reduces risk of over-recovering costs
Certainty	✓✓ No fee provides high level of certainty to applicants.	✓✓ High level of certainty for applicants	✓ Uncapped fee provides low level of certainty and may risk creating a barrier for entering the scheme	✓✓ Capped charge provides a high level of certainty and is not likely to be a barrier for entry for prospective applicants
Effectiveness	✖✖ MBIE would not recover the costs of its registration activities and may not be able to provide an effective service	✓ For most applicants MBIE would recover the costs of its services. For complex applications, this option may risk under-recovery.	✓✓ Ensures full cost recovery, including for complex applications, allowing MBIE to provide an effective service.	✓✓ MBIE would recover costs of its services for all expected levels of complexity. Risk of under-recovery for only the most complex applications
Administrative efficiency	✓✓ Simple to administer	✓✓ Simple to administer	✓ It is somewhat administratively efficient to charge this fee but does require MBIE to assign hours to the activity	✓ It is somewhat administratively efficient to charge this fee but does require MBIE to assign hours to the activity
Overall Assessment	0	✓	✓	✓✓

Key

✓✓	Aligned with criteria
✓	Somewhat aligned with criteria
0	Neutral
✗	Not very aligned with criteria
✗✗	Not aligned with criteria

Business processes and cost components for the registration of scheme certification bodies and modular component manufacturers

In setting the proposed fees for the chief executive's registration activities, MBIE has identified the following business processes and outputs associated with the registration of scheme certification bodies and modular component manufacturers:

- receiving applications
- checking applications against registration criteria
- updating registers

MBIE's cost outputs include the following direct and indirect costs:

- staff salaries
- professional services
- MBIE corporate overheads

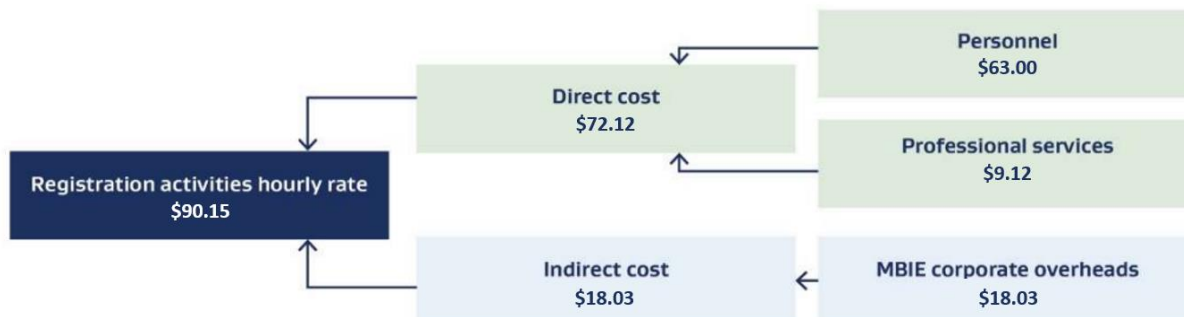
Direct costs include the following:

- Personnel costs include salary, superannuation and ACC levies. Average salary was calculated by taking the mean average of the following:
 - Adviser salary, based on the upper quartile of the annual salary range
 - Senior Adviser salary, based on the upper quartile of the annual salary range.
- Professional services costs include an estimate of training, legal, IT, supplies and travel for 1 Full Time Equivalent (FTE).

Indirect costs, such as MBIE corporate overheads, are estimated at a rate of 25 per cent direct costs.

Based on the above assumptions, MBIE has established an hourly rate for its registration services in the modular component manufacturer scheme of \$90.15. This rate and all fees calculated using this rate are GST exclusive (Figure 3 refers).

Figure 3: Allocating costs across the registration of scheme certification bodies and modular component manufacturers (hourly rate)



Cost components of the proposed fee for the registration of scheme certification bodies

MBIE has used its experience in the administration of the private building consent authority registration schemes as a basis for benchmarking and estimating the amount of time in hours required for MBIE to undertake registration services.

The preferred option is an hourly charge, up to a maximum of 20 hours. At an hourly rate of \$90.15 the maximum fee would be \$1,803.00 exc GST.

MBIE has assumed a 20 hour maximum cap would be appropriate. This is expected to avoid under-recovery where multiple tests against registration criteria need to be carried out or requests for information are required. The estimated cost drivers of the activity are set out below.

Table 5 documents the expected costs of the business processes for the registration of scheme certification bodies.

Table 5: Estimated cost of business processes for the registration of a modular component manufacturer certification body

Activity	Time (hours)	Cost
Receive application	0.1	\$9.02
Check accreditation status	0.5	\$45.08
Assess fit and proper test (including request for information if required)	1-18	\$90.15 – \$1,622.70
Quality check/ confirmation	1	\$90.15
Respond to applicant	0.2	\$18.03
Update register	0.2	\$18.03
Maximum fee for certification body registration (total)	20 hours	\$1,803.00

Cost components of the proposed fee for the registration of certified modular component manufacturers

An hourly charge is proposed to be prescribed, up to a maximum of 65 hours. At an hourly rate of \$90.15 the maximum fee would be \$5,859.75 exc GST.

MBIE has assumed a 65 hour maximum cap would be appropriate. This is expected to avoid under-recovery where multiple tests against registration criteria need to be carried out or requests for information are required. The estimated cost drivers of the activity are set out in the following table.

Table 6: Estimated cost of business processes for the registration of a certified modular component manufacturer

Activity	Time (hours)	Cost
Receive application	0.1	\$9.02
Check certification status	0.7	\$63.11
Assess fit and proper test (including request for information if required)	1-18	\$90.15 – \$1,622.70
Assess adequate means	10-40	\$901.50 – \$3,606.00
Quality check/ confirmation	1	\$90.15
Create report and respond to applicant	5	\$450.75
Update register	0.2	\$18.03
Maximum fee for certified manufacturer registration (total) exc GST	65 hours	\$5,859.75

Impact analysis

MBIE procured the services of Sapere to conduct a cost benefit analysis¹ on the proposals for regulations for the modular component manufacturer certification scheme that were consulted on. While the cost recovery proposals have been revised following consultation, the costs and benefits are also reflective of the preferred options in this cost recovery impact statement. A conservative estimate of total accreditation cost was included in the cost benefit analysis.

The changes to the proposals consulted on in the discussion document in this Cost Recovery Impact Statement are not expected to affect the allocation of costs and benefits in the cost benefit analysis.

¹ *Cost benefit analyses of proposed building system regulations*, Sapere, 9 August 2021

The cost benefit analysis modelled the following estimated volumes of scheme uptake for modular component manufacturer certification bodies and for modular component manufacturers.

Table 7: Estimated volumes of scheme uptake

Key input category	Assumption
Number of scheme certification bodies	Starts at 1, increases by 1 when 5 new manufacturers join scheme
Number of certified manufacturers at outset (starters)	3
Number of certified manufacturers joining each additional year (joiners)	1

The cost benefit analysis of the proposals for regulations considered three scenarios based on varying uptake of the modular component manufacturer scheme. The results of the cost benefit analysis show a strong benefit cost ratio for all three scenarios ranging from 4.54 for a limited uptake scenario to 8.50 for a scenario with a credible expansion of the scheme and a sufficient scale of production to lead to cost savings for modular components.

Certified and registered manufacturers bear the majority of cost, with the largest individual cost being the ongoing compliance costs that manufacturers will face in participating in the scheme. However, the benefits of the modular components scheme are largely realised by manufacturers.

A summary of the impact analysis specific to fee proposals is discussed below. Further impact analysis for the modular component manufacture scheme can be found in the accompanying Regulatory Impact Statement.

The accreditation and audit of scheme certification bodies

The financial impacts on scheme certification bodies are not expected to be significant or to create a barrier to entry to the scheme. Certification bodies will make their own commercial decisions on whether to participate in the scheme, and it is expected that costs will be passed on to certified manufacturers.

Based on experience in the product certification scheme, it is likely that most or all of the scheme certification bodies will be large organisations that certify to a number of different schemes in different jurisdictions.

The registration of scheme certification bodies and modular component manufacturers

The introduction of registration fees is expected to have a nominal financial impact for scheme certification bodies and modular component manufacturers.

These fees are not expected to be a barrier to entry to the scheme. Modular component manufacturers will make their own business decisions on whether to participate in the

scheme. Based on the fees consulted on and stakeholder feedback the preliminary indications are manufacturers will choose to become registered because they see longer term business benefits from being certified and registered.

Consultation

MBIE published a public discussion document² on 28 April 2021 outlining a set of proposals for regulated fees to support and implement the modular component manufacturing scheme under the Building Amendment Act.

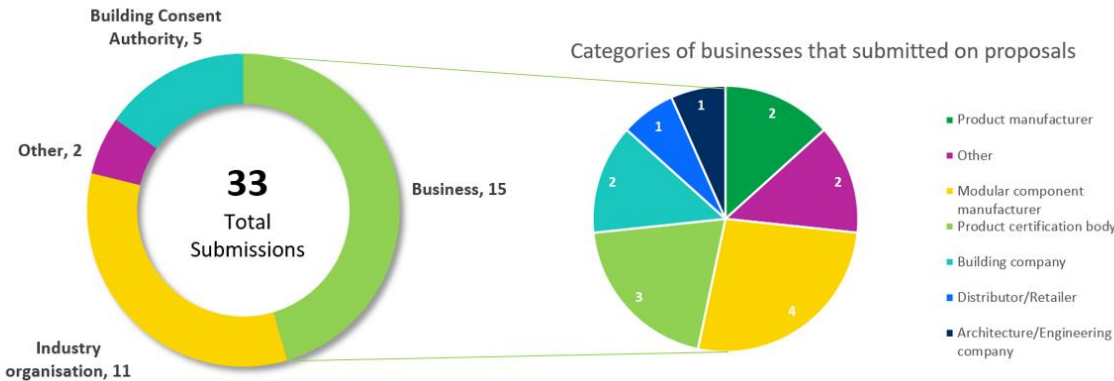
MBIE met with a range of stakeholders prior to releasing the public discussion document to seek preliminary feedback and to help shape the proposals in the discussion document, including PrefabNZ (now called 'OffsiteNZ'), the product certification bodies, the product certification accreditation body (JAS-ANZ) and building consent authorities.

To promote opportunities for feedback, more than 4,000 notifications regarding the consultation were sent to stakeholders who may have had an interest in the proposals. MBIE also held targeted meetings with stakeholders, including building consent authorities and Taituarā – Local Government Professionals Aotearoa (formerly SOLGM).

Stakeholder feedback

MBIE received 33 submissions on the fees proposals in the public discussion document. This number includes submissions received on proposed fees for both the product certification and modular component manufacture schemes.

Figure 4: Stakeholder groups that submitted on fee proposals



The accreditation and audit of scheme certification bodies

The majority of submitters agreed or somewhat agreed with the proposed fee structure for accreditation and audits

Some submitters disagreed with the proposed fees structure for accreditation and audits, and commented that fees should be set by the accreditation body based upon their knowledge of

² <https://www.mbie.govt.nz/dmsdocument/14150-building-amendment-bill-proposals-for-regulations-discussion-document>.

the scheme and the required audits. The product certification accreditation body, JAS-ANZ, suggested that fees should match what is proposed for the product certification scheme.

To inform final fee proposals for modular component manufacturer accreditation and audits, MBIE has engaged with JAS-ANZ to better understand the following:

- the expected business processes involved in undertaking these activities
- the expected cost outputs involved in undertaking these activities
- any other relevant direct and indirect costs such as consultancy fees, technical support and corporate costs
- understanding the extent of potential cross subsidisation with other schemes, if any.

A better understanding of these costs have been used to modify the proposed fees for accreditation and audit activities, as reflected in the preferred option **Option 2: Revised proposal**.

The registration of scheme certification bodies and modular component manufacturers

Submitters supported the proposed structure for registration fees, and there was broad support for registration fee levels. Most submitters did not think the registration fees would create significant barriers to participation as they are fairly low. Alternative fee structures suggested by submitters included uncapped fees, to avoid cross-subsidisation, or adopting a pro-rata cost structure.

MBIE does not propose to modify the proposals for registration fees as a result of this feedback. There was broad agreement that these fees look reasonable, and concerns can be mitigated by regular reviews of the proposed fee schedule.

Conclusions and recommendations

The accreditation and audit of scheme certification bodies

For accreditation and audit activities, **Option 2: Revised fees proposal** is proposed. This proposal reflects feedback from the organisation that expressed interest in seeking appointment as the accreditation body (JAS-ANZ), following its assessment of cost recovery. It is a direct fee to applicants who benefit from the services provided and it will allow a third party accreditation body to recover costs and perform its functions effectively, including for complex accreditation applications and audits.

The proposed fee structure is the same as is proposed for the product certification scheme. This allows for a reasonable degree of administrative efficiency. The fixed day rate for the accreditation and audit of scheme certification bodies in the scheme contributes to the administrative efficiency of the proposal.

MBIE is confident in the accreditation body's assessment of cost recovery because:

- it is established by Treaty to be not for profit and self-funding
- the Treaty of establishment requires it to deliver audited consolidated financial statement for each financial year and the auditor's report on those financial statements. These financial statements are independently audited in accordance with Australian Auditing Standards

- it has significant experience accrediting to a number of schemes
- MBIE will be monitoring its performance under the Notice of Appointment as the modular component manufacturer accreditation body.

The accreditation body conducts regular reviews of its cost structures. It would be appropriate to review the prescribed accreditation and audit fees every three years.

The registration of scheme certification bodies and modular component manufacturers

The following fees for registration activities are proposed:

- **Scheme certification body registration fee:** Hourly charge with maximum fee level of twenty hours per application (maximum \$1,803.00 exc GST)
- **Modular component manufacturer registration fee:** Hourly charge with maximum fee level of 65 hours per application (maximum \$5,859.75 exc GST)

For the purpose of this impact statement the hourly charge has been assumed at \$90.15 (exc GST), which reflects what was consulted on. Final recommendations to Cabinet may increase to take into account the rising costs of inputs (salary) in the next financial year.

The preferred registration fees are charged to the primary beneficiary of the activity and this approach mitigates any risk of cross subsidisation between simple and complex applications. The hourly charge aims to ensure MBIE can carry out its registration functions effectively, while the maximum fee level provides an element of certainty.

The proposed maximum fee levels may be reviewed after the scheme commences to ensure MBIE can provide an effective service within the maximum timeframe.

Implementation plan

The accreditation and audit of scheme certification bodies

MBIE will work with the appointed accreditation body to ensure the prescribed fees are clearly communicated, are workable and are complied with.

The registration of scheme certification bodies and modular component manufacturers

Under the Building Amendment Act, scheme certification bodies apply for registration after they are accredited. Similarly, manufacturers apply for registration following certification. Expected timeframes for the receipt of registration applications therefore depend on:

- the appointment of the scheme accreditation body, or MBIE being set up to carry out this function if no accreditation body is appointed
- the accreditation of at least one scheme certification body, after which the first registration application will be made
- the certification of at least one modular component manufacturer, after which the first manufacturer registration will be made.

Guidance will be produced to support scheme certification bodies and modular component manufacturers navigate the registration process, including payment of fees.

MBIE also expects that some aspects of implementation will already be familiar to applicants, such as the proposed fit and proper person requirement.

MBIE has recent experience in assessing for fitness and propriety and adequate means related to private building consent authority registration and will draw on this experience to implement registration in the modular component manufacturer scheme.

MBIE will develop an internal workflow system, drawing from experience with private building consent authority registration and MultiProof, to provide an efficient registration service.

Monitoring and evaluation

The accreditation and audit of scheme certification bodies

MBIE has ongoing regulatory stewardship obligations and will work with any appointed accreditation body to monitor the implementation of the proposed fees. MBIE will work with the accreditation body to monitor the following with a view to achieving no more than cost recovery for the accreditation's body's functions under the scheme:

- the number of new applications
- the extent of audit activities carried out
- the time taken for accreditation and audit activities
- any feedback from certification bodies and modular component manufacturers.

Scheme certification bodies will be able to raise concerns with the accreditation body or MBIE regarding accreditation and audit fees and a complaints handling procedure will be established to provide for this. If JAS-ANZ is appointed as the accreditation body, it will have obligations to follow its Treaty of establishment, the notice of appointment as the accreditation body, and any contracts it enters into with certification bodies. MBIE administers the notice of appointment with the accreditation body and has stewardship over the regulations.

The registration of scheme certification bodies and modular component manufacturers

MBIE has ongoing regulatory stewardship obligations and will monitor the following to inform future reviews of the regulations to ensure cost recovery principles are being met:


- the number of applications for certification body and modular component manufacturer registration
- the time taken to undertake registration activities – particularly testing the assumptions that 20 hours is an appropriate maximum for certification body registration, and 65 hours is an appropriate maximum for modular component manufacturer registration
- the revenue received from registration fees
- any feedback from certification bodies and modular component manufacturers.

Certification bodies and modular component manufacturers will be able to raise concerns with MBIE regarding registration fees. MBIE will set up a complaints handling procedure to provide for this. MBIE has stewardship over the regulations and carries out the registration function on behalf of the chief executive.

Review

MBIE plans to review the proposed fees after three years. This would be appropriate given the new registration function and the fact that the accreditation and audit fees are being newly introduced. This is an appropriate timeframe to undertake the monitoring described above and assess whether amendments to the fees are required.

Confidential information



Stage 2 Cost Recovery Impact Statement: Product certification scheme

Agency Disclosure Statement

This Cost Recovery Impact Statement has been prepared by the Ministry of Business, Innovation and Employment (MBIE). MBIE administers the Building Act 2004, which provides for regulations to be made to recover fees for specified activities under the product certification scheme, which is a voluntary scheme that allows building products and methods to be certified as complying with the Building Code.

The proposals in this Cost Recovery Impact Statement are part of a wider package of proposals to strengthen the product certification scheme by improving MBIE's oversight and ability to intervene when things go wrong. This package includes strengthening existing scheme requirements and introducing new registration requirements in the scheme.

This Cost Recovery Impact Statement proposes a cost recovery approach for new and updated costs associated with the accreditation, audit and registration of product certification bodies, and the registration of product certificates.

In considering cost recovery levels for the accreditation and audit of product certification bodies, MBIE is satisfied that the current accreditation body's significant experience in accrediting to the product certification scheme, and other similar schemes, provides reasonable insights to determine cost recovery and that over- or under-recovery of costs will be minimised. Further, the current accreditation body operates on a not-for-profit, cost recovery basis only.

If the accreditation body reviews its cost recovery levels in the future, this may trigger the need for further review of the prescribed fees for the accreditation and audit of product certification bodies.

The proposed fees for the registration of product certification bodies and product certificates were developed using the following assumptions:

- the estimated cost outputs for the proposed fit and proper person test for the registration of product certification bodies in the 2021 public discussion document are similar to the cost outputs for the fit and proper test for a private building consent authority
- the registration criteria and estimated cost outputs for the registration of product certification bodies and product certificates will be similar to what was consulted on in the 2021 public discussion document
- MBIE's experience reviewing the content of existing product certificates provides reasonable insights to determine the estimated cost outputs for performing the new registration function, so over- or under-recovery of costs will be minimised.

Amy Moorhead, Manager Building Policy, Ministry of Business, Innovation and Employment

13 October 2021

Executive summary

The product certification scheme under the Building Act 2004 (the Act), known as CodeMark, is a voluntary scheme that allows building products and methods to be certified by accredited product certification bodies. These certifying bodies issue product certificates that building consent authorities must accept as proof that the product or method complies with the Building Code.

Figure 1: Roles and responsibilities within the product certification scheme



This Cost Recovery Impact Statement proposes a cost recovery approach for two types of fees under the Act:

- reviewed and updated fees for the accreditation and audit of product certification bodies. These updated fees reflect rising costs for the accreditation body which is a self-funded, not-for-profit organisation, established by a Treaty between Australia and New Zealand
- new fees for the registration of product certification bodies and product certificates. These new fees support recent amendments to the Act through the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021 to strengthen the product certification scheme.

Cabinet agreed to consult on fee proposals in April 2021 and a public discussion document was released for consultation from 28 April 2021 to 18 June 2021.

Submitters' views were mixed on whether the proposed fees for the accreditation and audit of product certification bodies would create practical issues. While there was broad support for the fee levels, feedback received from the accreditation body suggests MBIE should make minor revisions to the proposed accreditation and audit fees to reflect actual cost recovery.

Submitters supported the proposed structure for the new fees for the registration of product certification bodies and product certificates, and there was broad support for fee levels.

The fee proposals have been assessed in line with Treasury and Office of the Auditor General guidelines, and against the following criteria: equity, certainty, effectiveness and administrative efficiency.

MBIE will monitor the number of applications for registration, the actual time taken, the cost outputs required to perform these services and the revenue collected from the proposed fees for registration, accreditation and audit fees to inform future reviews of the proposed fee levels.

MBIE recommends reviewing the proposed fees after no more than three years, in accordance with the Treasury's guidelines on setting charges in the public sector.

Proposed adjusted fees for the accreditation and audit of product certification bodies

The accreditation and audit fees for the product certification scheme have not been updated since they were introduced in 2008. Cost recovery is essential for the accreditation body, which is self-funding and not-for-profit.

Following engagement with the current accreditation body (the Joint Accreditation System of Australia and New Zealand (JAS-ANZ)), the following fees to achieve cost recovery and enable the accreditation body to provide effective product certification accreditation services are proposed.

Fee for the accreditation of product certification bodies

The accreditation body may accredit a person as a product certification body if satisfied that they comply with prescribed accreditation criteria.

The following fees are proposed for product certification body accreditation. Increases to the existing fees are proposed because the existing fees have not been updated since 2008 and did not take into account overhead costs.

- Accreditation application fee: \$8,600 (exc GST), which for administrative simplicity this one-off fee now includes two days of application review comprising \$4,000 (exc GST). After accounting for the included two days of application review, this is an increase of 91 per cent.
- Accreditation application reviews: \$2,000 per day per assessor/ technical expert (exc GST). This is an increase of 66 per cent.

Fee for the audit of product certification bodies

The accreditation body must conduct audits on accredited product certification bodies.

The following fee is proposed for audits of product certification bodies:

- \$2,000 per day per assessor/ technical expert (exc GST). This is an increase of 66 per cent.

Proposed new fees for the registration of product certification bodies and product certificates

In response to a review of the product certification scheme in 2017, the Act was amended in 2021 to introduce new functions for the chief executive to register product certification bodies and product certificates. The purpose of these new registration functions is to improve the chief executive's oversight of the scheme.

Under the Act, fees may be prescribed to recover the costs of carrying out the chief executive's registration functions.

Fee for the registration of product certification bodies

Product certification bodies will have to apply for registration to participate in the scheme after the amendments to the Act take effect.

The following new fee is proposed for product certification body registration:

- an hourly charge of \$90.15 (exc GST) with a maximum fee level of twenty hours per application (maximum \$1,803.00 exc GST).

Fee for the registration for product certificates

The chief executive must also assess whether a product certificate contains the right information and is in the approved form before it can be used as part of the scheme.

The following new fee is proposed for product certificate registration:

- a fixed fee of two hours per certificate (\$180.30 exc GST).

Status quo

Background

The Building Act 2004 (the Act), as amended by the Building (Building Product and Methods, Modular Components, and Other Matters) Amendment Act 2021 (the Amendment Act) provides for a product certification scheme.

The product certification scheme under the Act, known as CodeMark, is a voluntary scheme that allows building products and methods to be certified as compliant with the Building Code. Building consent authorities must accept a product certificate as proof that the product or method complies with the Building Code (if the conditions on the certificate have been met).

The Act and the Building (Product Certification) Regulations 2008 provide the legislative framework for the product certification scheme in New Zealand. This framework for product certification defines the roles and responsibilities for different parties.

Figure 2 below sets out the roles and responsibilities within the product certification scheme as amended by the Amendment Act.

Figure 2: Roles and responsibilities within the product certification scheme



The accreditation body is responsible for accrediting product certification bodies. Under the Act the accreditation body is appointed by the chief executive; or, if no one is appointed, the chief executive may carry out the functions of the accreditation body.

The current accreditation body, the Joint Accreditation System of Australia and New Zealand (JAS-ANZ), was appointed in 2008. JAS-ANZ was established by Treaty Agreement between Australia and New Zealand in 1991¹. The Treaty Agreement provides for the principle that JAS-ANZ will be self-funding and not for profit.

Product certification bodies are responsible for certifying building products and methods and issuing product certificates. In order to ensure they are competent to perform this function,

¹ The 1991 Agreement was replaced by the 1998 Agreement, which is currently in force. The 1998 Agreement can be found here: <https://www.treaties.mfat.govt.nz/search/details/t/1319/>

scheme certification bodies need to be both accredited (by an accreditation body) and registered (with MBIE).

Product certification bodies issue product certificates after assessing the performance of building products and methods against Building Code requirements, when used within a particular scope of certification.

The product certification scheme currently has four product certification bodies (Bureau Veritas, SAI Global, Global-Mark and BRANZ).

There are around 100 proprietors with certified products or methods, and 135 product certificates on the product certificate register.

The accreditation and audit of product certification bodies

The Act provides for regulated fees for the accreditation and audit of product certification bodies undertaken by the product certification accreditation body.

It is essential that product certification bodies are accredited against robust standards by a competent accreditation body, and audited regularly to ensure those standards are being maintained. These activities provide assurance that product certification bodies are carrying out their functions appropriately, and that the certificates issued by product certification bodies can be relied on by building consent authorities.

High performing product certification bodies and high quality certificates are intended to lead to greater consenting efficiency, particularly for new and innovative building products and methods.

Section 263 of the Act provides for fees to be prescribed to recover the costs of accrediting a product certification body. Section 262A of the Act provides for fees to be prescribed to recover the costs of carrying out an audit of an accredited product certification body.

Review of cost recovery charges

The current prescribed fees are in Regulation 9 and Schedule 2 of the Building (Product Certification) Regulations 2008. The fee levels were set in 2008 on a cost recovery basis and have not been updated since then.

MBIE’s review of these fees, and feedback from affected parties, has identified the current fee levels do not reflect the accreditation body’s (JAS-ANZ) current cost outputs and the business processes required to provide the accreditation and audit services.

Commercial information
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The registration of product certification bodies and product certificates

In December 2016, MBIE engaged Deloitte to undertake a review of the product certification scheme to ensure it was fit-for-purpose. The Deloitte review identified several issues, including low confidence in the scheme, concerns related to those assessing products for certification and issues related to the quality of product certificates.

In response to the Deloitte review, the Amendment Act strengthened the product certification scheme, including introducing a new registration function. These changes are intended to improve confidence in the scheme by improving the quality of certificates, contributing to more efficient consenting for building work that uses certified products.

The Amendment Act introduced registration functions for the chief executive to improve the chief executive's oversight of the scheme. Two new fees are required to recover the costs associated with the chief executive's registration functions.

First, the chief executive may, on application, register a person as a product certification body if satisfied that they are accredited and meet any prescribed criteria and standards for registration. The prescribed fee (if any) must be paid before registration can take place.

Second, the chief executive must register a product certificate if satisfied that the certificate is in the approved form and contains the prescribed information, and if the proprietor has paid the prescribed fee (if any).

Cost Recovery Principles and Objectives

Principles

The Office of the Auditor General's *Good practice guide: Charging fees for public sector goods and services* and the Treasury's *Guidelines for Setting Charges in the Public Sector* have been considered and the following principles identified in setting these fees.

- **Authority:** A public entity must have legal authority to charge a fee and must operate within the scope of the empowering provision.
- **Efficiency:** The user charge should be no higher than necessary to produce a good or service to the desired level of quality. The design of the charge should incentivise efficiency i.e. keeping costs down and the quality of the service high.
- **Accountability:** The user charge undergoes public consultation and can undergo scrutiny by the Regulation Review Committee.

Assessment criteria

The following assessment criteria have been applied in developing cost recovery proposals:

- **Equity (also described as fairness):** The user charge is being paid by the appropriate people. The beneficiary of the activity or service is paying for the relevant function to be carried out. Any cross-subsidy between different people, groups or other accreditation schemes (particularly between those with simple and complex applications) is minimised.
- **Certainty:** There is a reasonable level of certainty for the accreditation body, product certification bodies and proprietors on the level of cost incurred by the services that are being paid for. Any uncertainty to prospective applicants as to the likely total amount of the fees they will be required to pay is minimised so that informed business decisions can be made.
- **Effectiveness:** Fees are set at a level that fully recovers, but does not over-recover, the costs of carrying out functions. The accreditation body and chief executive are paid to a level that will allow them to provide high quality services that contribute to a robust

pathway for building products and methods to be certified as complying with the Building Code. This contributes to safe, durable and healthy housing for all New Zealanders.

- **Administrative efficiency:** Fees can be charged in an administratively efficient manner.

Rationale for cost recovery

Cost recovery for the accreditation and audit of product certification bodies

Under the product certification scheme, the accreditation body will assess applications for the accreditation of product certification bodies, and will audit certification bodies once they are accredited.

Parliament has decided that a fee may be prescribed for the accreditation and audit of product certification bodies by including a regulation making power in the Act. Under these circumstances, a fee must be prescribed in regulations if one is to be charged.

It is appropriate to regulate the cost recovery of the accreditation and audit of product certification bodies because either MBIE will perform these functions, or a third party accreditation body will perform the regulatory function on behalf of MBIE and will therefore have a monopoly role.

A fee is the most appropriate type of cost recovery for the accreditation and audit of product certification bodies because the applicant or certification body directly benefits from this service by being able to participate in the scheme, and others are excluded from the benefits of the accreditation and audit services. This makes accreditation and audit services predominately private goods that may be used to support ongoing business activities.

Rationale for reviewing existing fees for the accreditation and audit of product certification bodies

MBIE proposes to update the existing fees for the accreditation and audit of product certification bodies because:

- the existing fee schedule in the Building (Product Certification) Regulations 2008 has not been updated since 2008, and the current accreditation fee does not recover the costs of the business processes associated with accrediting a product certification body
- MBIE is aware of administrative inefficiencies related to the accreditation body using the existing fee schedule.

The current accreditation body is not-for-profit and self-funding. Adjusting the current regulated fees will better reflect the accreditation body's current business processes and costs.

Cost recovery options for the accreditation and audit of product certification bodies

The accreditation body (JAS-ANZ) has informed MBIE that the fee schedule in the 2008 regulations and the proposed fee schedule in the set out in the 2021 public discussion document are insufficient to recover its costs.

Following the release of the public discussion document, MBIE met with JAS-ANZ several times to understand its business processes and procedures and the cost outputs associated with accreditation and audit services.

Three options were considered for recovering the costs of the accreditation and audit of product certification bodies. The following table summarises the options considered.

- **Option 1: Retain the current fee schedule set in 2008 (the status quo)**
- **Option 2: Proposal in 2021 public discussion document**
- **Option 3: Revised fees proposal, incorporating stakeholder feedback** from the accreditation body (JAS-ANZ)

Table 1: Cost recovery options for accreditation and audit

	Option 1: retain the current fee schedule set in 2008 (the status quo) <i>(inc GST)</i>	Option 2: Proposal in 2021 public discussion document <i>(exc GST)</i>	Option 3: Revised proposal, incorporating stakeholder feedback <i>(exc GST)</i>
Accreditation application fee <i>(one off)</i>	\$2,706	Approx. \$8,586	\$8,600
Accreditation application reviews <i>(per assessor/ technical expert)</i>	\$169 per hour (or \$1,352 per day)	Approx. \$1,451 per day	\$2,000 per day
Audit <i>(per assessor/ technical expert)</i>	\$169 per hour (or \$1,352 per day)	Approx. \$1,878 per day	\$2,000 per day
Disbursements	Amount of reasonable expenses incurred	At actual and reasonable cost	At actual and reasonable cost

The three options are assessed against the assessment criteria in Table 2 below.

Table 2: Assessment of options against criteria

Key ✓✓ aligned with criteria ✓ somewhat aligned with criteria 0 neutral × not very aligned with criteria ×× not aligned with criteria	Option 1: Retain the current fee schedule set in 2008 (the status quo)	Option 2: Proposal in 2021 public discussion document	Option 3: Revised fees proposal, incorporating stakeholder feedback
Equity	✓✓ Direct fee to applicant	✓✓ Direct fee to applicant	✓✓ Direct fee to applicant
Certainty	✓ Daily and hourly rates are prescribed for different services. No maximum cap.	✓ Daily rates are prescribed, but are different for different services. No maximum cap.	✓ Same daily rates for accreditation services and audits are prescribed. No maximum cap.
Effectiveness	×× Significant under-recovery of costs means accreditation body cannot perform its functions effectively	× Under-recovery of costs (does not take into account revenue from fees that cannot prescribed)	✓✓ Reflects cost recovery so accreditation body can perform its functions effectively
Administrative efficiency	× Different daily rates for different services. Different fees to other schemes to which the accreditation body accredits	✓ Same fees as other scheme accreditation body accredits to. Different daily rates for different services	✓ Same day rate for the accreditation body's product certification services. Different fees to other schemes the accreditation body accredits to
Overall assessment	0	✓	✓✓

The preferred option is **Option 3: Revised proposal**, because it reflects cost recovery and will allow the accreditation body to provide a viable and effective service, consistent with its accreditation and audit functions under the product certification scheme.

Commercial information



Business processes and cost components for the accreditation and audit of product certification bodies

The following business processes and cost outputs have been factored into the proposed fees for accreditation and auditing:

- checking the accuracy of information in the application for accreditation
- reviewing the application
- reviewing the applicant's documented systems
- reviewing the applicant's evidence that it puts its systems into practice
- witness applicant carrying out its functions in accordance with its documented systems
- deciding on the application or requesting further information
- notifying the applicant of the decision
- issuing the accreditation deed.

For audits, business processes typically involve:

- preparation and planning for audits
- carrying out onsite assessment
- audit reporting
- follow up of any non-conformances.

Other cost outputs include:

- remuneration
- technical expert fee for service costs
- indirect costs.

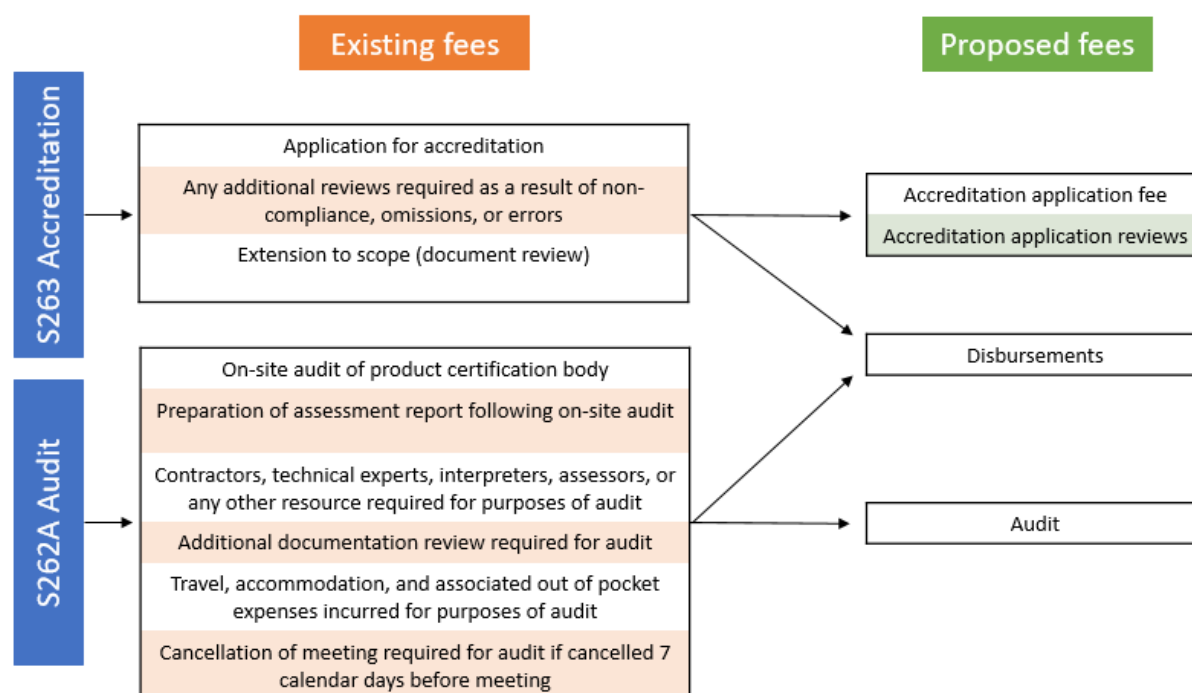
Proposed accreditation and audit fees

Under **Option 3: Revised fees proposal, incorporating stakeholder feedback** MBIE has proposed that the existing fee schedule for accreditation and audits is streamlined and simplified as follows:

- A one off fee to assess application for accreditation
- A day rate for additional accreditation assessments
- A day rate for audit services (at the same level as the accreditation day rate)
- Disbursements for accreditation and audit services at actual and reasonable cost.

Figure 3 shows how the proposed fee schedule has been simplified compared to the existing fees schedule.

Figure 3: Streamlined and simplified fee schedule for the accreditation and audit of product certification bodies



A summary of the proposed fee levels is set out in the following table. Components of the proposed fees are set out in more detail at Annex 1.

Table 3: Proposed fee levels for the accreditation and audit of product certification bodies

Fee	Level (exc GST)	Rationale
Accreditation application fee (one off)	\$8,600	Matches the current accreditation body's assessment of cost recovery Includes the usual time taken for system review (this is a baseline cost for accreditation and it is administratively simple to include it in the application fee) Recovers direct and indirect costs of accreditation body staff
Accreditation application reviews (day rate per assessor/ technical expert)	\$2,000	Matches the current accreditation body's assessment of cost recovery Single fixed day rate is administratively simple for accreditation body and certification bodies Takes into account the loss of revenue from omitting annual and certificate fees (usually charged by the accreditation body in other schemes) that cannot prescribed in regulations
Audit (day rate per assessor/ technical expert)	\$2,000	Recovers direct and indirect costs of accreditation body staff Intended to recover direct costs of external resources

Disbursements	At actual and reasonable cost	Standard cost recovery approach to disbursements
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Annex A sets out the components of the proposed fees for the accreditation and audit of product certification bodies.

Cost recovery for the registration of product certification bodies and product certificates

Consideration has been given to funding MBIE’s new registration services by general taxation or recovering the costs of these services through levies or fees. Cost recovery via fees is preferred.

Funding registration services through general taxation is inappropriate because the services are not predominately a public good (although there are elements of public benefit in a robust product certification scheme due to the positive impact on building outcomes).

The strengthened oversight of the scheme through MBIE’s registration of product certification bodies and product certificates has an element of club good and could therefore be funded by levy.

The most appropriate existing levy would be the building levy, which is paid by successful building consent applicants at the time a building consent is granted. Recovering the costs of MBIE’s registration services through the building levy may be considered, because:

- under section 53 of the Act, the building levy can be used to fund the chief executive’s functions under the Act. Under Section 11 of the Act the chief executive registers certification bodies and certificates
- the ‘club’ of levy payers (successful building consent applicants) would have limited benefit from MBIE’s oversight of the product certification scheme via its registration functions, through higher quality product certificates contributing to more efficient consenting.

However, MBIE has determined that there is a strong case for recovering the costs of the service from those who directly benefit from the registration of product certification bodies and from the registration of product certificates because registration is predominately a private good. The product certification body benefits from its registration because it is subsequently allowed to participate in the scheme, and the proprietor benefits from the registration of the certificate because it means the certificate can be used to demonstrate a product’s compliance with the Building Code.

Fees payable directly by the product certification body applicant and proprietor to recover the costs of MBIE’s registration services are therefore proposed. Setting fees for registration is also consistent with Treasury’s *Guidelines for Setting Charges in the Public Sector* because:

- there is the statutory authority to charge these fees (in sections 267A and 272A of the Act)
- registration is rivalrous and excludable (it applies only to the certification body to which the registration is granted, or to the certificate that is registered by the proprietor)

- the product certification body applicant or proprietor is the main beneficiary of registration as it allows them to gain business benefits from participating in the scheme.

Cost recovery options for the registration of product certification bodies

Four options were considered for recovering the costs of assessing applications for the registration of product certification bodies.

- Option 1 – No fee (the status quo)**
- Option 2 – Fixed fee**
- Option 3 – Fixed fee plus an hourly charge for complex applications**
- Option 4 – Hourly charge, capped at a maximum fee** (2021 public discussion document consultation proposal)

Table 4: Assessment of cost recovery options for registration of product certification bodies against criteria

Key ✓✓ aligned with criteria ✓ somewhat aligned with criteria 0 neutral × not very aligned with criteria ×× not aligned with criteria	Option 1: No fee (the status quo)	Option 2: Fixed fee	Option 3: Fixed fee plus an hourly charge for complex applications	Option 4: Hourly charge, capped at a maximum fee (2021 public discussion document consultation proposal)
Equity	×× Primary beneficiary of the activity does not pay for the activity.	✓ Direct fee to applicant. Some risk of cross subsidisation between certificates where over-recovery or under-recovery occurs	✓✓ Direct fee to applicant and reduces risk of cross-subsidisation between certificates	✓✓ Direct fee to applicant. Hourly rate reduces risk of over-recovering costs.
Certainty	✓✓ No fee provides high level of certainty to applicants.	✓✓ High level of certainty for applicants	✓ Uncapped fee provides low level of certainty and may risk creating a barrier for entering the scheme	✓✓ Capped charge provides a high level of certainty and is not likely to be a barrier for entry for prospective applicants.
Effectiveness	×× MBIE would not recover the costs of its registration	✓ For most applicants MBIE would recover the costs of its	✓✓ Ensures full cost recovery, including for complex	✓✓ MBIE would recover costs of its services for all expected

	services and may not be able to provide an effective service	services. For complex applications, this option may risk under-recovery.	applications, allowing MBIE to provide an effective service.	levels of complexity. Risk of under-recovery for only the most complex applications.
Administrative efficiency	✓✓ Simple to administer	✓✓ Simple to administer	✓ It is somewhat administratively efficient to charge this fee but does require MBIE to assign hours to the activity	✓ It is somewhat administratively efficient to charge this fee but does require MBIE to assign hours to the activity
Overall assessment	0	✓	✓	✓✓

Option 4: Hourly charge, capped at a maximum fee is the preferred option for MBIE’s product certification body registration services.

The maximum cap would provide certainty for applicants. The hourly rate reduces the risk of over-recovery. The maximum cap would be set at a level to provide for MBIE’s business processes such as assessing the fit and proper person test, which will be the main criteria for registration.

Option 2: Fixed fee would also meet the assessment criteria. However, the main benefit of a fixed fee compared to the preferred option is that a fixed fee is more administratively efficient. MBIE has applied a lower weighting to the administrative efficiency criteria because there are a very low number of applications expected.

Option 3: Fixed fee plus an hourly charge for complex applications would also meet the assessment criteria. However, MBIE has applied a higher weighting to the certainty criteria compared to the other criteria because product certification bodies will apply for registration on top of the time and costs associated with applying for and achieving accreditation.

Cost recovery options for the registration of product certificates

Four options were considered for recovering the costs of assessing product certificates for registration.

- **Option 1: No fee (the status quo)**
- **Option 2: Fixed fee** (2021 public discussion document consultation proposal)
- **Option 3: Fixed fee plus an hourly charge for complex applications**
- **Option 4: Hourly charge, capped at a maximum fee**

Table 5: Assessment of cost recovery options for registration of product certificates against criteria

Key ✓✓ aligned with criteria ✓ somewhat aligned with criteria 0 neutral * not very aligned with criteria ** not aligned with criteria	Option 1: No fee (the status quo)	Option 2: Fixed fee	Option 3: Fixed fee plus an hourly charge for complex applications	Option 4: Hourly charge, capped at a maximum fee (2021 public discussion document consultation proposal)
Equity	** Primary beneficiary of the activity does not pay for the activity.	✓ Direct fee to proprietor. Some risk of cross subsidisation between certificates	✓✓ Direct fee to proprietor and reduces risk of cross-subsidisation between applications	✓ Direct fee to proprietor. Hourly rate reduces risk of over-recovering costs.
Certainty	✓✓ No fee provides high level of certainty to applicants.	✓✓ High level of certainty for proprietors	✓ Uncapped fee provides low level of certainty and may risk creating a barrier for entering the scheme	✓✓ Capped charge provides a high level of certainty and is not likely to be a barrier for entry for prospective applicants.
Effectiveness	** MBIE would not recover the costs of its registration services and may not be able to provide an effective service	✓ For most certificates MBIE would recover the costs of its services. For complex applications, this option may risk under-recovery.	✓✓ Ensures full cost recovery, including for complex applications, allowing MBIE to provide an effective service.	✓ For most certificates MBIE would recover the costs of its services. For complex applications, this option may risk under-recovery.
Administrative efficiency	✓✓ Simple to administer	✓✓ High level of administrative efficiency for this low-value, high-volume fee	✓ It is somewhat administratively efficient to charge this fee but does require MBIE to assign hours to the activity	✓ It is somewhat administratively efficient to charge this fee but does require MBIE to assign hours to the activity
Overall assessment	0	✓✓	✓✓	✓

Option 2: Fixed fee (2021 public discussion document consultation proposal) is the preferred option for MBIE's product certificate registration services.

A single fee provides the most certainty for proprietors. It is simple for MBIE to administer and for proprietors to pay. While the costs of assessing the information on a certificate may vary based on whether there are requests for further information or amendments, MBIE has weighted administrative efficiency and certainty for proprietors higher than the other criteria. This is because:

- the high number of certificates (around 135) and low fee per certificate means that transaction costs should be kept to a minimum
- a high level of certainty is fairer on proprietors because the product certification body is responsible for issuing a correct product certificate, and therefore the proprietor should not be charged for any amendments required.

Business processes and cost components for the registration of product certification bodies and product certificates

In setting the proposed fees for the chief executive's registration activities, MBIE has identified the following business processes and outputs associated with the registration of product certification bodies and product certificates:

- receiving applications
- checking applications against registration criteria
- checking information on certificates
- updating registers

MBIE's cost outputs include the following direct and indirect costs:

- staff salaries
- professional services
- MBIE corporate overheads

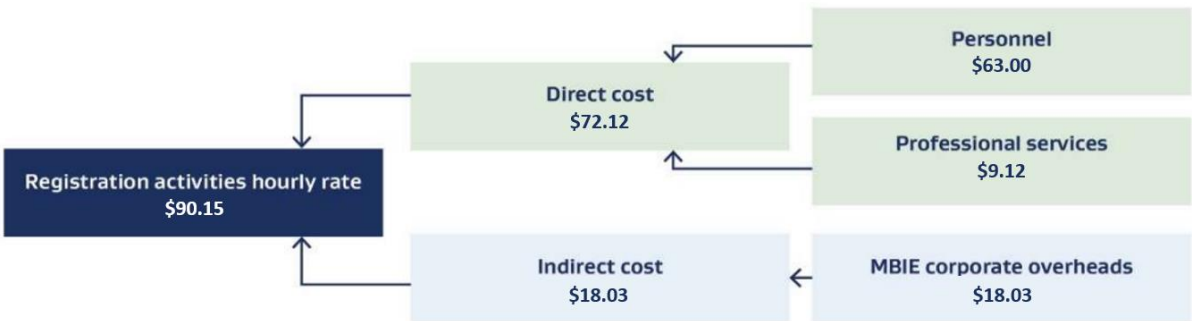
Direct costs include the following:

- Personnel costs include salary, superannuation and ACC levies. Average salary was calculated by taking the mean average of the following:
 - Adviser salary, based on the upper quartile of the annual salary range
 - Senior Adviser salary, based on the upper quartile of the annual salary range.
- Professional services costs include an estimate of training, legal, IT, supplies and travel for 1 Full Time Equivalent (FTE).

Indirect costs, such as MBIE corporate overheads, are estimated at a rate of 25 per cent direct costs.

Based on the above assumptions, MBIE has established an hourly rate for its registration activities in the product certification scheme of \$90.15. This rate and all fees calculated using this rate are GST exclusive (Figure 4 refers).

Figure 4: Allocating costs across registration activities (hourly rate)



Cost components of the proposed fee for the registration of product certification bodies

MBIE has used its experience in the administration of the product certification scheme and private building consent authority registration schemes as a basis for benchmarking and estimating the amount of time in hours required for MBIE to undertake registration activities.

The preferred option is an hourly charge, up to a maximum of 20 hours. At an hourly rate of \$90.15 the maximum fee would be \$1,803.00 (2021 public discussion document consultation proposal).

MBIE has assumed a 20 hour maximum cap would be appropriate. MBIE expects this will avoid under-recovery where multiple tests against registration criteria need to be carried out or requests for information are required. The estimated cost outputs of the activity are set out below.

Table 6 documents the expected costs of the business processes for product certification body registration.

Table 6: Estimated cost of business processes for the registration of a product certification body

Activity	Time (hours)	Cost
Receive application	0.1	\$9.02
Check accreditation status	0.5	\$45.08
Assess fit and proper test (including request for information if required)	1-18	\$90.15 – \$1,622.70
Quality check/ confirmation	1	\$90.15
Respond to applicant	0.2	\$18.03
Update register	0.2	\$18.03
Maximum product certification body registration (total)	20 hours	\$1,803.00

Cost components of the proposed fee for registration of product certificate

The chief executive of MBIE must register a product certificate if satisfied that it includes the prescribed information and the proprietor has paid the prescribed fee.

A fixed fee is proposed to be prescribed based on an estimated 2 hours work to register a product certificate. At an hourly rate of \$90.15, this would be \$180.30 per certificate (2021 public discussion document consultation proposal).

MBIE has estimated that two hours of effort is required to assess the information on a certificate based on MBIE's operational experience. The estimated cost drivers of the activity are set out below.

Table 7: Estimated cost of business processes for the registration of product certificates

Activity	Time (hours)	Cost
Receive certificate	0.1	\$9.02
Check certificate information	1	\$90.15
Request information or changes (if required)	0.3	\$27.05
Quality check/ confirmation	0.2	\$18.03
Respond to certification body and proprietor	0.2	\$18.03
Update register	0.2	\$18.03
Certificate registration (total)	2 hours	\$180.30

Impact analysis

A summary of the impact analysis for the introduction of fees is below. Further impact analysis for the product scheme can be found in the accompanying Regulatory Impact Statement.

The accreditation and audit of product certification bodies

The cost impacts for product certification bodies paying adjusted accreditation fees to the accreditation body are expected to be neutral or minor.

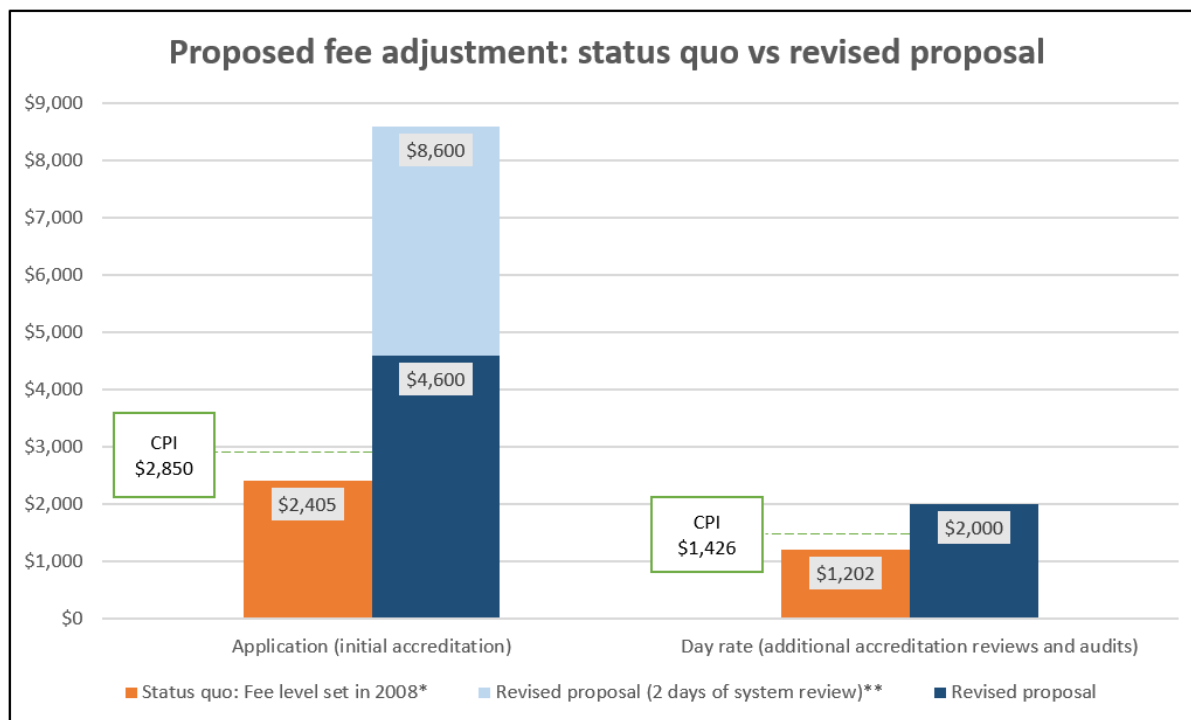
While the prescribed fees do represent a significant increase from their 2008 levels, the adjustment reflects the accreditation body's actual costs associated with undertaking its functions under the Act. Increases to the existing fees are proposed because the existing fees have not been updated since 2008 and did not take into account overhead costs.

Figure 5 below compares the revised proposal to the currently prescribed fees.

- The accreditation application fee is proposed to increase from \$2,405 (GST exclusive) to \$8,600 (GST exclusive). For administrative simplicity this one-off fee now includes two days of application review comprising \$4,000 (exc GST). After accounting for the included two days of application review, this is an increase of 91 per cent.

- The day rate is proposed to increase from \$1,202 (GST exclusive) to \$2,000 (GST exclusive) – an increase of 66 per cent.

Figure 5: Proposed fee adjustment: status quo vs revised proposal.



* Prescribed fees in 2008 were GST inclusive (at 12.5%). Fees have been converted to GST exclusive for comparison purposes. All other figures in this chart are GST exclusive.

** The proposed application fee has two days of system review included for administrative simplicity for the accreditation body and certification body. This was not included in the prescribed fee in 2008. The system review component of the proposed fee (\$4,000 exc GST) has been separated for comparison purposes.

The proposed fees for the accreditation and audit of product certification bodies are expected to allow the accreditation body to operate on a cost recovery basis and deliver its services effectively and efficiently in accordance with its requirements under the Act.

Stakeholder feedback suggested that there is unlikely to be any adverse effects on the demand for accreditation services. For a product certification body operating only in the product certification scheme, **Commercial information**

Product certification bodies have the option of passing on their costs to clients in the form of certification fees.

See Annex B for a summary of expected costs for a typical certification body accreditation and audit. This annex includes assumptions about what a typical accreditation and audit looks like in terms of time taken for each activity. This is estimated based on recent accreditations and audits carried out by the accreditation body.

These estimates are intended to give an idea of the expected revenue for the accreditation body, but will vary case by case. The day rates built into the fee schedule allow for cost recovery to occur for different cases.

The registration of product certification bodies and product certificates

The introduction of new registration fees is expected to have a nominal financial impact on product certification bodies and proprietors.

There are currently four product certification bodies who would pay the product certification body registration fee (maximum of \$1,803.00 per application). The total costs for this group based on the current number of product certification bodies would be a maximum of \$7,212.00 (exc GST). Historically, the scheme has not had more than seven product certification bodies at any one time.

There are around 100 proprietors in the current scheme and around 135 product certificates. A registration fee (proposed to be \$180.30) would be charged for each certificate. The total costs for this group based on the current number of product certificates would be \$24,340.50 (exc GST).

Consultation

MBIE published a public discussion document² on 28 April 2021 outlining a set of proposals for regulated fees to support and implement the strengthened product certification scheme under the Amendment Act.

MBIE met with a range of stakeholders prior to releasing the public discussion document to seek preliminary feedback and to help shape the proposals in the discussion document, including product certification bodies, the product certification accreditation body and building consent authorities.

To promote opportunities for feedback, more than 4,000 notifications regarding the consultation were sent to stakeholders who may have had an interest in the proposals. MBIE also held targeted meetings with stakeholders, including building consent authorities and Taituarā – Local Government Professionals Aotearoa (formerly SOLGM).

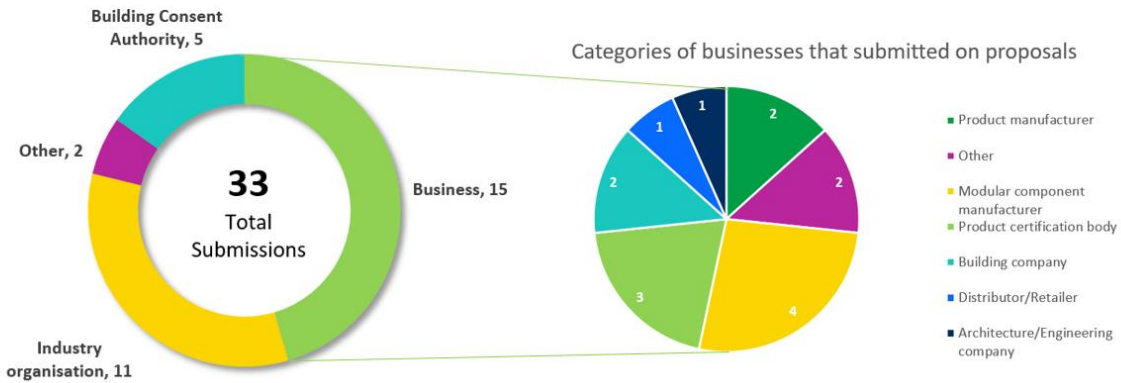
Feedback received

MBIE received 33 submissions on the fees proposals in the public discussion document. This number includes submissions received on proposed fees for both the product certification and modular component manufacture schemes.

² <https://www.mbie.govt.nz/dmsdocument/14150-building-amendment-bill-proposals-for-regulations-discussion-document>.

Figure 6: Breakdown of submitters by category (number)

Stakeholder groups that submitted on fee proposals



The accreditation and audit of product certification bodies

Submitters’ views were mixed on whether the proposed accreditation and audit fees would create practical issues. The product certification accreditation body, JAS-ANZ, noted the proposal does not reflect its costs associated with providing the accreditation services and ongoing auditing activities.

To inform final fee proposals for product certification body accreditation and audits, MBIE has engaged with JAS-ANZ to better understand the following:

- the business processes involved in undertaking these activities
- the cost outputs involved in undertaking these activities
- any other relevant direct and indirect costs such as consultancy fees, technical support and corporate costs
- understanding the extent of cross subsidisation with other schemes, if any.

A better understanding of these costs have been used to modify the proposed fees for accreditation and audit activities, as reflected in the preferred option **Option 3: Revised proposal as modified by stakeholder feedback**.

The registration of product certification bodies and product certificates

Submitters supported the proposed structure for registration fees, and there was broad support for registration fee levels.

Some submitters, including Dunedin City Council, raised concerns about cross subsidisation, including that a capped fee may lead to cross-subsidisation and there is a risk that the fixed fee for certificate registration may be raised across the board in response to one poor actor.

MBIE does not propose to modify the proposals for registration fees as a result of this feedback. There was broad agreement that these fees look reasonable, and concerns can be mitigated by regular reviews of the proposed fee schedule.

Conclusions and recommendations

The accreditation and audit of product certification bodies

For accreditation and audit activities, Option 3: Revised proposal is proposed. This proposal reflects stakeholder comments, in particular the accreditation body's assessment of cost recovery. It is a direct fee to applicants who benefit from the activity and allows the accreditation body to recover costs and perform its functions effectively, including for complex applications and audits.

To the extent possible this fee structure is the same as fees for other schemes JAS-ANZ administers, while working within the fee-making powers in the Act. This allows for a reasonable degree of administrative efficiency. The fixed day rate for accreditation and audit activities in the scheme contributes to the administrative efficiency of the proposal.

MBIE is confident in the accreditation body's assessment of cost recovery because:

- it is established by Treaty to be not-for-profit and self-funding
- the Treaty of establishment requires it to deliver audited consolidated financial statement for each financial year and the auditor's report on those financial statements. These financial statements are independently audited in accordance with Australian Auditing Standards
- it has significant experience accrediting to a number of schemes
- MBIE will be monitoring its performance under the Notice of Appointment as the product certification accreditation body.

The accreditation body conducts regular reviews of its cost structures. It would be appropriate to review the prescribed accreditation and audit fees every three years.

The registration of product certification bodies and product certificates

The following fees for registration activities are proposed;

- **Product certification body registration fee:** Hourly charge with maximum fee level of twenty hours per application (maximum \$1,803.00 exc GST)
- **Certificate registration fee:** fixed fee of two hours per certificate (\$180.30 exc GST).

For the purpose of this impact statement the hourly charge is \$90.15 (exc GST). This hourly rate has been adjusted from what was consulted on to account for a minor increase in cost inputs (salary) between financial year 2020/21 and 2021/22.

Product certification body registration

The product certification body registration fee is charged to the primary beneficiary of the activity and mitigates cross subsidy between simple and complex applications. The hourly charge aims to ensure MBIE can carry out its registration functions effectively, while the maximum fee level provides an element of certainty. While MBIE is confident in its assumption that 20 hours is the right maximum, based on experience in private building consent authority registration and feedback from the accreditation body (JAS-ANZ), the

maximum fee level is likely to need to be reviewed to ensure MBIE can provide an effective service within the maximum timeframe.

While this fee structure will create a minor administrative burden for MBIE to record hours spent on each application, low numbers of applicants are expected. MBIE is confident in this assumption as there have never been more than seven certification bodies at one time, and the strengthened scheme will ensure that only high performing certification bodies are part of the scheme.

Certificate registration

The certificate registration fixed fee is charged to the primary beneficiary of registration and provides certainty to proprietors. It is administratively efficient for the relatively higher volume of certificates that will be registered (compared to the number of certification bodies).

At the proposed fee level it is expected that MBIE will be able to recover its costs and provide an effective service, but this will need to be reviewed after registration is in place. There is some potential for complex applications to be cross-subsidised by simple applications. MBIE is confident that two hours is the correct level of effort for the fixed fee based on its experience reviewing the content of existing certificates in the scheme.

Implementation

The accreditation and audit of product certification bodies

The proposal is a rate adjustment for fees that are already being charged by the accreditation body. MBIE has worked with the accreditation body in developing the fee proposal. The accreditation body will implement the fee adjustment through their usual fee adjustment processes, including communication with current product certification bodies and future applicants.

MBIE will work with the appointed accreditation body to ensure the prescribed fees are clearly communicated, are workable and are complied with.

The registration of product certification bodies and product certificates

Under the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021, the commencement date of the regulations will be 15 months after Royal assent, or earlier by Order in Council. This means the product certification provisions of the Amendment Act must commence no later than 7 September 2022 although **Confidential advice to Government** for both regulations and scheme rules for the product certification scheme.

Under the Amendment Act product certification bodies are taken to be a registered product certification body on and after the commencement date of the proposed regulations. To remain registered, product certification bodies will need an application for registration to be granted within six months of the commencement date.

Current product certificates become registered product certificates on the commencement date.

It is expected that there will be four applications for product certification body registration within six months of the commencement date. While this is a manageable number for MBIE staff to assess, there is a risk that applications for registration are made all at once near the end of the six month period. MBIE will engage with the current product certification bodies to mitigate these risks. Risks will be mitigated through the following:

- MBIE will encourage product certification bodies to apply earlier than the end of the six month period.
- MBIE has recent experience in assessing for fitness and propriety related to private building consent authority registration and will draw on this experience to implement certification body registration effectively.
- MBIE will develop an internal workflow system, drawing from experience with private building consent authority registration and MultiProof, to provide an efficient registration service.
- Guidance will be produced to support certification bodies and proprietors navigate the registration process, including payment of fees.

MBIE's continued engagement with product certification bodies during the development of the Amendment Act and regulations has ensured product certification bodies will be aware of what is expected of them as part of registration.

MBIE also expects that some aspects of implementation will already be familiar to product certification bodies, such as the proposed fit and proper person requirement.

Monitoring and evaluation

MBIE will be monitoring the performance of the proposed cost recovery regime. The regime will be reviewed to ensure that it is operating efficiently and that under-recovery or over recovery is minimised. Ongoing feedback from the accreditation body will be key to this, along with regular reviews of MBIE's registration business processes and procedures to ensure that they are operating as effectively and efficiently as possible. The processes for monitoring and evaluation are discussed in more detail, below.

The accreditation and audit of product certification bodies

MBIE has ongoing regulatory stewardship obligations and will work with the accreditation body to monitor the implementation of the proposed fees and the updated scheme requirements as a result of the building law reform programme. MBIE will work with the accreditation body to monitor the following with a view to achieving cost recovery for the accreditation body:

- the number of new applications
- the extent of audit activities carried out
- the time taken for accreditation and audit activities
- any feedback from certification bodies and proprietors.

Product certification bodies will be able to raise concerns with the accreditation body or MBIE regarding accreditation and audit fees. The accreditation body will have obligations to follow its Treaty of establishment, the notice of appointment as the accreditation body, and any

contracts it enters into with product certification bodies. MBIE administers the notice of appointment with the accreditation body and has stewardship over the regulations.

The registration of product certification bodies and product certificates

MBIE has ongoing regulatory stewardship obligations and will monitor the following to inform future reviews of the regulations to ensure cost recovery principles are being met:


- the number of applications for product certification body registration
- the number of certificate registrations
- the time taken to undertake registration activities – particularly testing the assumptions that 20 hours is an appropriate maximum for product certification body registration, and 2 hours is an appropriate fixed fee for certificate registration
- the revenue received from registration fees
- any feedback from product certification bodies and proprietors.

Product certification bodies and proprietors will be able to raise concerns with MBIE regarding registration fees. MBIE has stewardship over the regulations and carries out the registration function on behalf of the chief executive.


Review

MBIE plans to review the proposed fees after three years. This would be appropriate given the new registration function and the fact that the accreditation and audit fees have not previously been reviewed since they were introduced in 2008. This is an appropriate timeframe to undertake the monitoring described above and assess whether amendments to the fees are required.

Confidential information



Confidential information



Regulatory Impact Statement: Product certification regulations

Coversheet

Purpose of Document	
Decision sought:	<i>Analysis produced for the purpose of informing final Cabinet decisions for drafting of regulations and release of an exposure draft.</i>
Advising agencies:	<i>Ministry of Business, Innovation and Employment</i>
Proposing Ministers:	<i>Building and Construction</i>
Date finalised:	<i>20 October 2021</i>
Problem Definition	
<p>The Building Act 2004 was recently amended by the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021 to strengthen the product certification scheme and give stakeholders confidence that certified building products or building methods will perform as stated on their certificates. Regulations are needed to implement the improvements to the scheme made by the Act amendments.</p>	
Executive Summary	
<p><i>Background</i></p> <p>The product certification scheme under the Building Act 2004 (the Act), known as CodeMark, is a voluntary scheme that allows building products and methods to be certified. Building consent authorities must accept a product certificate as proof that the product or method complies with the Building Code (if the conditions on the certificate have been met).</p> <p>A review of the product certification scheme by Deloitte in 2017 noted a lack of clarity on the roles and responsibilities of the different actors in the scheme. Building consent authorities were found to have low confidence in the scheme.</p> <p>Deloitte also raised concerns about the following actors in the scheme:</p> <ul style="list-style-type: none">• the competence and technical expertise of product certification bodies, which certify and audit building products or methods against the certification criteria• the ability of the accreditation body, which assesses and audits product certification bodies against the accreditation criteria, and MBIE, which administers the scheme, to assess and monitor the competence of product certification bodies. <p>In September 2019, Cabinet agreed to a number of proposals intended to address these problems and enable MBIE to be an effective product certification scheme owner.</p>	

The Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021 (Amendment Act) implemented these changes to strengthen the product certification scheme. These changes included introducing a new registration requirement for product certification bodies and product certificates, enabling the chief executive of MBIE to make product certification scheme rules, and introducing new offences. This legislation was introduced on 8 May 2020 and received Royal assent on 7 June 2021.

The development of policy options has focused on aligning the product certification regulations with the new legislative framework introduced by the Amendment Act. Full implementation of the Amendment Act will require new regulations.

Options

MBIE considered options against the following assessment criteria: Confidence, Certainty and Clarity, Cost effective, Proportionate, and Flexible.

Options were considered for the following categories of regulatory proposals:

- product certification body registration
- product certificate information
- product certification body accreditation
- product certificate reviews.

Some of the above categories contain several proposals; each with a preferred option. These preferred options are packaged as a series of interlinked proposals to show MBIE's preferred approach to strengthening the product certification regulations.

The preferred approach is compared to the status quo below:

Status quo: Retain existing regulations and do not implement the new registration functions.

This option does not achieve the objectives of the reform programme to strengthen MBIE's oversight of the product certification scheme and to increase confidence in the quality of certificates issued under the scheme. This option would not increase confidence in the scheme or provide certainty and clarity to scheme parties. A new registration requirement would not be implemented and regulations would not be aligned with the amended legislative framework.

Preferred approach: New and amended product certification regulations.

This approach strengthens the scheme and implements new requirements in the Amendment Act to its fullest extent. Proposed regulations are aligned with the new legislative framework and confidence in the product certification scheme is expected to increase.

Impacts

The proposed regulations are intended to have the following benefits:

- current and future product certification bodies perform at a consistently high level and product certificates are consistently of a high quality
- MBIE has appropriate oversight of product certification bodies and certificates

- regulations are sufficiently flexible to provide for efficient or innovative approaches for product certification bodies and proprietors to meet their regulatory obligations
- regulations are fit for purpose within the new regulatory framework.

There are expected to be minor cost implications for the following groups:

- **Accreditation body:** minor compliance costs to align their business processes with the new requirements. These costs may be recovered.
- **Product certification bodies:** minor compliance costs to align their business processes with the new requirements. These costs may also be recovered.
- **Proprietors:** any cost increases for product certification bodies may be passed on to proprietors through higher certification and audit fees
- **MBIE:** additional costs related to the chief executive's new registration functions are intended to be recovered by fees.

The impacts of registration fees for product certification bodies and proprietors are set out in the accompanying Cost Recovery Impact Statement.

Stakeholder feedback

In April-June 2021, MBIE publicly consulted on proposed regulations for product certification that would be implemented under new regulation-making powers in the Amendment Act.

There was broad support for the proposed regulations. Submitters raised concerns about practical implementation and compliance issues with the proposed regulations. As a result of this feedback, elements of the proposals were revised to improve cost effectiveness, proportionality and flexibility.

Limitations and Constraints on Analysis

In 2019, Cabinet agreed to amend the Building Act 2004 and regulations are required to implement the new product certification scheme provisions. Full implementation of the Amendment Act will require new regulations. The choices of which regulatory options are considered is constrained by limits on the regulation making powers to implement improvements of the product certification scheme.

Responsible Manager(s) (completed by relevant manager)

Amy Moorhead

Manager, Building Policy

Building System Performance

Ministry of Business, Innovation and Employment

20 October 2021

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Business, Innovation and Employment
Panel Assessment & Comment:	<i>MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.</i>

Section 1: Diagnosing the policy problem

Current situation

1. The Building Act 2004 (the Act), as amended by the Building (Building Product and Methods, Modular Components, and Other Matters) Amendment Act 2021 (the Amendment Act) provides for a product certification scheme.
2. The product certification scheme under the Act, known as CodeMark, is a voluntary scheme that allows building products and methods to be certified. Building consent authorities must accept a product certificate as proof that the product or method complies with the Building Code (if the conditions on the certificate have been met).
3. The Act and the Building (Product Certification) Regulations 2008 provide the legislative framework for the product certification scheme in New Zealand. This framework for product certification defines the roles and responsibilities for different parties.
4. Figure 1 below sets out the roles and responsibilities within the product certification scheme as amended by the Amendment Act.

Figure 1: Roles and responsibilities within the product certification scheme



5. The accreditation body is responsible for accrediting product certification bodies. Under the Act the accreditation body is appointed by the chief executive; or, if no one is appointed, the chief executive may carry out the functions of the accreditation body.
6. The current accreditation body, the Joint Accreditation System of Australia and New Zealand (JAS-ANZ), was appointed in 2008. JAS-ANZ was established by Treaty Agreement between Australia and New Zealand in 1991¹. The Treaty Agreement provides for the principle that JAS-ANZ will be self-funding and not-for-profit.
7. Product certification bodies are responsible for certifying building products and methods and issuing product certificates. In order to ensure they are competent to perform this function, scheme certification bodies need to be both accredited (by an accreditation body) and registered (with MBIE).
8. Product certification bodies issue product certificates after assessing the performance of building products and methods against Building Code requirements, when used within a particular scope of certification.
9. The product certification scheme currently has four product certification bodies (Bureau Veritas, SAI Global, Global-Mark and BRANZ).
10. There are around 100 proprietors with certified products or methods, and 135 product certificates on the product certificate register.

¹ The 1991 Agreement was replaced by the 1998 Agreement, which is currently in force. The 1998 Agreement can be found here: <https://www.treaties.mfat.govt.nz/search/details/t/1319/>

Recent regulatory history

11. In September 2019, Cabinet agreed to a number of proposals intended to enable MBIE to be an effective steward of the product certification scheme. These changes included introducing MBIE registration of product certification bodies and product certificates; enabling the chief executive of MBIE to make product certification scheme rules; and introducing new offences. MBIE consulted on these proposed changes in April-June 2019².
12. The Amendment Act implemented these changes to strengthen the product certification scheme. This legislation was introduced on 8 May 2020 and received Royal assent on 7 June 2021.

New regulatory framework

13. Regulations are needed to support and implement the Amendment Act. Specifically, this Regulatory Impact Statement considers proposed regulations for:
 - options to strengthen the existing product certification body accreditation requirements, including under the new regulation making powers introduced by the Amendment Act related to policies, procedures and systems that product certification bodies must have to be accredited
 - options to introduce new requirements for product certification bodies reviewing product certificates, using new regulation making powers introduced by the Amendment Act
 - options for introducing new requirements for product certification body registration, which was introduced by the Amendment Act
 - options to amend existing requirements for the content of product certificates, under the new legislative framework introduced by the Amendment Act which provides for regulations to set requirements for certificate information and MBIE's chief executive to approve the form of certificates.
14. In April-June 2021, MBIE publicly consulted on proposed regulations for product certification that would be implemented under new regulation-making powers in the Amendment Act.³

Regulations

15. The existing regulations are the Building (Product Certification) Regulations 2008.
16. Regulation making powers in the Act include:
 - criteria for the accreditation and registration of product certification bodies, including requirements for policies, procedures and systems that product certification bodies must have in order to be accredited
 - criteria for the certification of building products or methods
 - fees for accreditation and registration

² The Regulatory Impact Assessment for the 2019 consultation can be found here: <https://www.mbie.govt.nz/dmsdocument/7024-ris-building-law-reforms-phase-one-proactiverelease-pdf>

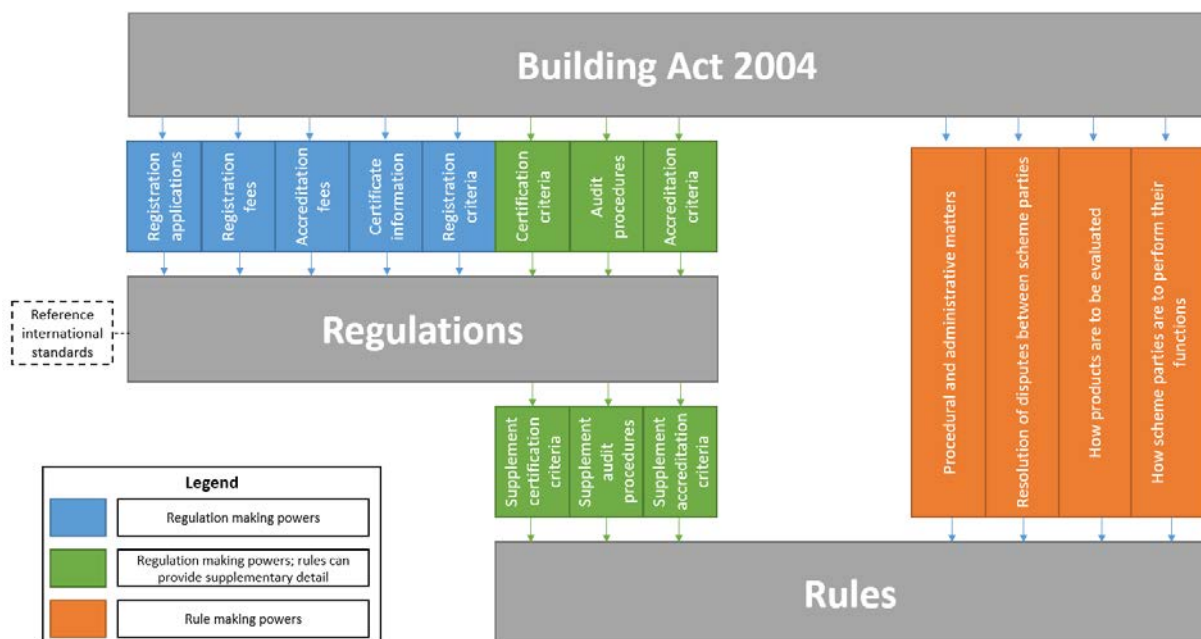
³ The discussion document can be accessed at: <https://www.mbie.govt.nz/dmsdocument/14150-building-amendment-bill-proposals-for-regulations-discussion-document>

- the information that must go on certificates
 - audit procedures product certification bodies must follow when reviewing a certificate.
17. The only new regulation making powers introduced by the Amendment Act relate to policies, procedures and systems for product certification bodies, audit procedures and registration.

Scheme rules

18. The Amendment Act also allows for scheme rules to be made relating to the following:
- how the scheme parties are to perform their functions under the Act
 - how building products and building methods are to be evaluated
 - the resolution of disputes between scheme parties
 - procedural and administrative matters.
19. Separately, scheme rules may be developed to supplement the regulations as they relate to audit procedures and the criteria for the accreditation of product certification bodies and the certification of building products and methods.
20. The regulatory framework for the product certification scheme is summarised in Figure 2 below.

Figure 2: Product certification regulatory framework

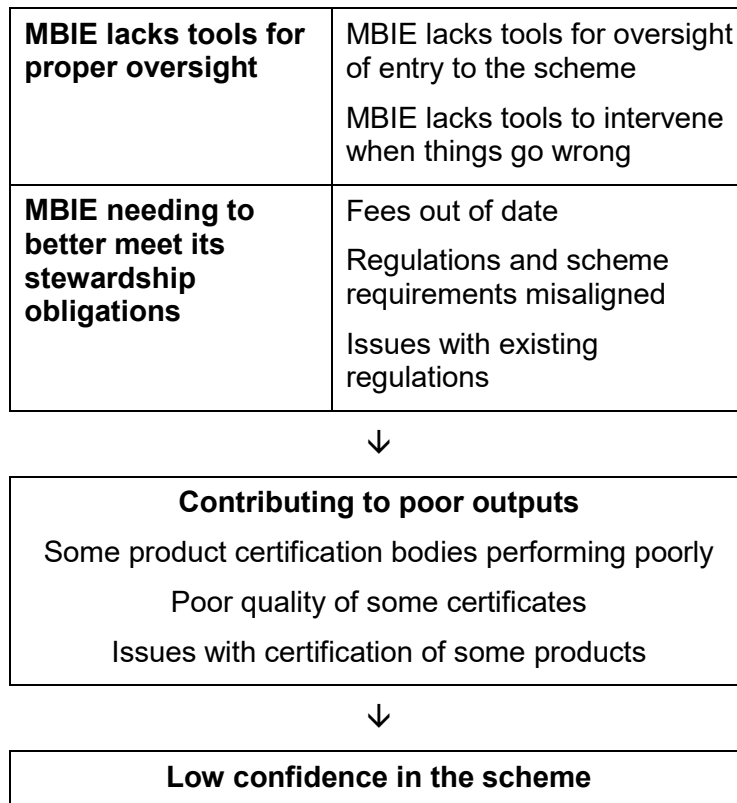


Problem

MBIE did not have the tools it needed to ensure the product certification scheme is fit for purpose prior to the passing of the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021

21. The regulatory framework prior to the Amendment Act did not allow MBIE to give stakeholders the confidence they needed that certified building products or building methods will perform as stated on their certificates. Without regulations, the improvements to the scheme made by the Amendment Act cannot be implemented.
22. A review of the product certification scheme by Deloitte in 2017 raised concerns with the competence and technical expertise of product certification bodies and the ability of the accreditation body and MBIE to assess and monitor their competence. Deloitte also noted a lack of clarity on the roles and responsibilities of the different actors in the scheme. Building consent authorities were found to have low confidence in the scheme. While industry had concerns about the quality of the scheme, they still saw value in the scheme as a way to speed up consenting and open a pathway for innovative products.

Figure 3: Product certification problem definition (prior to passing of Amendment Act)



23. Since the scheme was reviewed in 2017, there have been a number of non-legislative improvements to the scheme. While a number of the poor outputs identified above have been addressed, amendments to the legislative framework will help future proof the scheme and provide assurance that future outputs meet consistent high standards.

Objectives

24. New and amended product certification regulations aim to ensure the product certification scheme will result in buildings with certified building products and methods meeting Building Code performance requirements to the same level or higher than buildings that do not use certified products or methods.
25. This is because certified products and methods are deemed to comply with the Building Code if used in accordance with the certificate. Certified products and methods therefore are not assessed for Building Code compliance by building consent authorities through the traditional building consent process.
26. The legislative requirement for new and amended product certification regulations is consistent with the objectives of the product certification scheme as a whole, which are to provide a robust and easily-understood way to show a building product or method meets the requirements of the Building Code, especially for products that are innovative, new to the market or would have serious consequences if they failed.
27. Table 1 below outlines the objectives of new and amended product certification scheme regulations.

Table 1: Objectives

Objective	Created by
Support the use of innovative and new building products and methods	Improved trust and confidence in the product certification scheme and by strengthening MBIE's oversight of the scheme
Faster and more efficient consenting processes	Product certificates have consistent, full and accurate information that building consent authorities can rely on
Better informed decisions about use, installation and maintenance of building products and methods	Greater assurance about the accuracy and quality of product certificates
Easier compliance with an effective and efficient regulatory system	Act, regulations and rules align, with clear requirements for scheme parties

Section 2: Deciding upon an option to address the policy problem

Assessment criteria

28. MBIE has considered the assessment criteria in Table 2 below when developing proposals for regulations.

Table 2: Assessment criteria for proposals for new and amended product certification regulations

Criteria	Description of criteria	To achieve this, the regulations should ensure:
Confidence	System participants (including users, manufacturers and building consent authorities) should have confidence in the scheme, and in the designs, products and buildings that make use of them.	The scheme produces high quality certificates that can be relied on by building consent authorities. MBIE has appropriate oversight of the scheme by implementing new registration requirements for product certification bodies and for product certificates. Provide assurance that product certification bodies are being assessed against the right accreditation criteria and are carrying out appropriate audits of products.
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.	The Act and regulations are aligned. Scheme parties are clear on their responsibilities and the processes they must follow to participate in the scheme.
Cost effective	The benefits of the proposal outweigh the risks and costs.	Compliance costs do not create unnecessary barriers to participating in the scheme. Prescribed fees reflect no more than cost recovery. Fees will allow MBIE and the accreditation body to perform their roles effectively (a separate Cost Recovery Impact Statement refers).
Proportionate	The proposals are proportionate in the way they treat regulated parties.	The regulatory requirements are proportionate to the level of risk or harm and the burden of compliance is not unduly onerous.
Flexible	There is enough flexibility to allow regulated parties to adopt efficient or innovative approaches while also meeting their regulatory obligations.	The scheme's participants are provided with sufficient flexibility to investigate, develop, test and certify innovative products.

Scope for considering options

- 29. In 2019, Cabinet agreed to amend the Building Act 2004 and regulations are required to implement the new product certification scheme provisions. Full implementation of the Amendment Act will require new regulations to ensure the product certification scheme meets the objectives described in Table 1, above.
- 30. The choices of which regulatory options are considered is constrained by limits on the regulation making powers to implement improvements of the product certification scheme.
- 31. The development of policy options has therefore focused on aligning the product certification regulations with the new legislative framework introduced by the Amendment Act.

Options considered

- 32. A number of options were considered for each element of the product certification regulations. The assessment for each of these elements is summarised below.

Product certification body registration

- 33. New regulations are needed to implement MBIE’s registration function introduced by the Amendment Act. Options for regulations to implement registration of product certification bodies are assessed below. See proposals 1-2 in Annex 1 for detailed preferred proposals.

Product certification body registration: fit and proper person test

- 34. The Amendment Act provides for regulation making powers related to criteria a product certification body must meet before it is registered by MBIE’s chief executive.
- 35. MBIE considered introducing a fit and proper person test to ensure a product certification body is fit to be registered in the scheme. The fit and proper person test would assess an applicant’s history of civil proceedings and offences; professional and financial management history; compliance in similar schemes; conflicts of interest; and other relevant factors.

Option 1 – Status quo	Option 2 – Fit and proper person test for specific roles	Option 3 – Fit and proper person test for unspecified roles
No fit and proper person test introduced.	Introduce a fit and proper person test for product certification body registration that sets out specific roles that must be assessed (such as a chief executive).	Introduce a fit and proper person test for product certification body registration that requires the most relevant roles to be assessed – without specifying what these roles are.

- 36. The preferred option is **Option 3 – Fit and proper person test for unspecified roles**.
- 37. This option increases confidence in the scheme by providing criteria for MBIE’s chief executive to make decisions on registration of product certification bodies.
- 38. Option 3 is preferred over Option 2 because ensuring that only relevant roles are assessed provides flexibility for a range of corporate structures and is more cost

effective to implement. For example, Option 2 would have required the chief executive of a large multinational organisation to be assessed even when that role is not relevant for a small New Zealand scheme.

Product certification body registration: notification requirements

- 39. The Amendment Act provides for MBIE’s chief executive to assess applicant product certification bodies against registration criteria, and to suspend or revoke this registration if product certification bodies no longer comply with registration criteria or scheme rules.
- 40. To help ensure registration criteria continue to be met, MBIE considered introducing requirements for a product certification body to notify MBIE of any changes relevant to the registration criteria.

Option 1 – Status quo	Option 2 – Notification process as a registration criteria	Option 3 – Ongoing requirements in scheme rules
No notification requirements related to registration criteria.	Introduce a new requirement in regulations that a product certification body must have a process to notify MBIE of changes to key personnel or other circumstances that might impact their registration.	Do not introduce a new notification requirements in the regulations, but require in scheme rules that product certification bodies must notify MBIE of any changes that may impact their compliance with registration criteria.

- 41. The preferred option is **Option 3 – include ongoing notification requirements in scheme rules.**
- 42. This provides confidence in the scheme by ensuring MBIE is notified when relevant changes occur. MBIE considers this to be a more flexible and proportionate approach with no cost impacts.
- 43. Option 3 is preferred over Option 2 because it provides for a clear legislative hierarchy that sets ongoing requirements in the most appropriate legislative instrument (scheme rules). Option 3 is also more flexible as this requirement is operational in nature and may be adjusted if needed without amending regulations.

Product certification body registration: application requirements

- 44. A person must apply to be registered as a product certification body. Regulations may be made to specify the information that must go on an application for registration.
- 45. MBIE considered the best approach to ensure requirements for applications are clear.

Option 1 – Status quo	Option 2 – Introduce application requirements
No requirements for the information that must be in an application for registration as a product certification body.	Introduce requirements for information that must go on an application for product certification body registration.

- 46. The preferred option is **Option 2 – Introduce application requirements.**

47. This approach provides clear requirements to help MBIE administer the registration process effectively and efficiently. This option provides more certainty for product certification bodies and reduces the likelihood of MBIE requesting further information from an applicant during the application process.

Product certificate information

48. Existing regulations set requirements for what must go on a product certificate. The Amendment Act now provides for MBIE’s chief executive to determine whether a product certificate has the right information before registering a certificate. Amended regulations are needed to ensure the information requirements are fit for purpose.
49. Options for regulations to ensure product certificates have the right information are assessed below.
50. See proposal 3 in Annex 1 for further detail on the preferred approach.

Product certificate information: simplified requirements

51. Under the Amendment Act, product certificates must contain the prescribed information to be registered. The existing regulations set some requirements that are duplicated across different sections of the certificate or do not work well in practice. MBIE considered the best approach to make these requirements clearer.

Option 1 – Status quo	Option 2 – Remove requirements that are not fit for purpose
Retain existing requirements that would result in duplication across different sections of the certificate, or do not work well in practice.	Streamline the product certificate information requirements; remove regulatory duplication and requirements that do not work well in practice.

52. The preferred option is **Option 2 – Remove requirements that are not fit for purpose**.
53. This will simplify and streamline the current information requirements and make them clearer for product certification bodies and users of the certificate, such as building consent authorities. This approach will improve confidence in the scheme by improving consistency across certificates.

Product certificate information: matters related to the form of the certificate

54. Product certificates must contain sufficient information to make a decision on whether a certified product will contribute to a building that complies with the performance requirements of the Building Code. This information must be easily accessible.
55. Under the Amendment Act, regulations set information requirements for certificates, while MBIE’s chief executive approves the form of the certificate.
56. MBIE considered the best approach to ensuring that product certificates have the right information in the right place to help users of certificates make decisions.

Option 1 – Status quo	Option 2 – Move supporting information to the main body	Option 3 – Do not prescribe matters related to the form of the certificate
Retain existing regulations that set out what must be in the main body of the certificate or in the schedule to the certificate.	Ensure all information on the description, intended use and limitations of use of the product are in the main body of the certificate.	Remove existing regulation and remove references to the form of the certificate, which is now approved by the chief executive under the Amendment Act.

57. The preferred option is **Option 3 – Do not prescribe matters related to the form of the certificate**.
58. This approach provides a clearer legislative hierarchy that sets different requirements into the most appropriate legislative instrument. It is more flexible, as the form of the certificate can be quickly amended in response to operational experience and stakeholder feedback.
59. Option 2 was consulted on, and was intended to make sure that important information was not hidden in the schedule of a certificate. However, this option is not preferred because the requirements would be inflexible and would result in overly detailed certificates where important information could be overlooked by unnecessary technical detail. This may reduce clarity and confidence in the scheme by reducing the usability of certificates.

Product certification body accreditation

60. Existing regulations set accreditation criteria that product certification bodies must meet before they are accredited. The Amendment Act provides for new, additional regulations to be made related to the policies, procedures and systems a product certification body must have at the time of accreditation. The Amendment Act also provides for scheme rules to set ongoing operational requirements for product certification bodies.
61. Amended regulations are needed to ensure the requirements related to product certification body accreditation are fit for purpose under the new legislative framework introduced by the Amendment Act. Options for regulations are assessed below.
62. See proposals 4-11 in Annex 1 for detailed preferred proposals.

Product certification body accreditation: conformity assessment, scope of accreditation, written records, and certifying products and methods

63. The existing regulations set out criteria for accreditation as a product certification body, which are assessed at the time a product certification body is first accredited. Several of these criteria set out requirements that a product certification body must continue to comply with on an ongoing basis.
64. The Amendment Act introduces a new regulation making power for policies, procedures and systems that a product certification body must have to be accredited. Additionally, MBIE's chief executive may make operational scheme rules.

65. Given this new legislative framework, MBIE considered the most appropriate way to require product certification bodies to comply with ongoing accreditation requirements related to conformity assessment, scope of accreditation, written records, and certifying products and methods.

Option 1 – Status quo	Option 2 – Introduce required policies
One-off accreditation criteria that are assessed at the time of accreditation, despite relating to ongoing requirements.	Require product certification bodies to have policies, procedures and systems in place at the time of accreditation, and set ongoing operational requirements in the scheme rules.

- 66. The preferred option is **Option 2 – Introduce required policies**.
- 67. This approach provides certainty and clarity to applicants for accreditation as a product certification body, because policies can be assessed at the point of entry to the scheme.
- 68. It is also more flexible because scheme rules can be more readily updated to reflect changes in operational requirements. MBIE does not consider there will be any impact on cost, proportionality or confidence compared to the status quo.
- 69. Option 1 is not preferred because the current criteria set ongoing requirements that can only be followed once an organisation is operating in the scheme, despite these criteria being assessed at the point of entry to the scheme. This option does not provide clear and certain regulatory requirements for scheme participants.

Product certification body accreditation: staff and contractors, carrying out product evaluation and conducting risk assessments.

- 70. Product certification bodies need competent staff and contractors to perform their functions. They must also carry out product evaluation and conduct risk assessments to ensure certified products and methods will comply with the Building Code.
- 71. The current regulations do not set requirements for these elements of a product certification body’s functions. MBIE considered the best approach to ensure that requirements related to these elements are clear and fit with the new legislative hierarchy introduced by the Amendment Act.

Option 1 – Status quo	Option 2 – Introduce required policies in regulations
No regulations for these elements of product certification bodies’ functions.	Require product certification bodies to have policies, procedures and systems in place at the time of accreditation and set ongoing operational requirements in the scheme rules.

- 72. The preferred option is **Option 2 – Introduce required policies in regulations**.
- 73. This will provide clear requirements which will contribute to improved confidence in product certification bodies. Setting the detail of these requirements through scheme rules is a flexible approach that can respond to emerging issues, and MBIE will work with product certification bodies to ensure any scheme rules are cost effective.
- 74. Option 1 would not improve confidence that product certification bodies are carrying out their functions effectively.

Product certification body accreditation: test reports

- 75. Proprietors provide test reports to the product certification body when applying for certification. These test reports must be appropriate if they are to contribute to the evidence that underpins a certification decision.
- 76. On 1 November 2022, a regulation is scheduled to come into force that would require product certification bodies to only accept test reports if they come from a laboratory accredited for that test. This regulation is restrictive and may lead to significant or onerous compliance costs.
- 77. MBIE considered the best approach to provide assurance that test reports are appropriate without imposing onerous compliance costs.

Option 1 – Status quo	Option 2 – Decision-making framework	Option 3 – Introduce required policies
Require product certification bodies to only accept test reports if they come from a laboratory accredited for that test.	Revoke existing regulation and introduce a framework for product certification bodies to make decisions on whether to accept a test report that does not come from a laboratory accredited for that test. The framework would only allow this if a test report from a laboratory accredited for that test if <u>not available</u> .	Revoke existing regulation and introduce a new regulation for product certification bodies to have policies in place related to accepting test reports. Ongoing requirements for accepting test reports would be set in scheme rules.

- 78. The preferred option is **Option 3 – Introduce the required policies for accepting product test reports in regulations**.
- 79. This option would remove onerous compliance costs and contribute to a clear regulatory hierarchy that fits with the changes under the Amendment Act. Setting ongoing requirements through scheme rules is a flexible approach that can be readily adapted to respond to emerging issues. As a separate programme of work, MBIE will work with product certification bodies to ensure any scheme rules are cost effective.
- 80. Option 2 is not preferred because it is not sufficiently flexible. There are a number of scenarios where it may be reasonable to accept a test report that does not come from a laboratory accredited for that test, and because Option 2 does not take into account these scenarios it is not proportionate or cost effective.

Product certification body accreditation: quality management

- 81. Appropriate quality management systems give confidence that a product certification body has robust processes to carry out its functions to a high standard.
- 82. The existing regulations require product certification bodies to be both:
 - accredited to an international standard which relates to conformity assessment, and contains quality management provisions, and
 - for some product certification bodies, certified to an international standard which relates specifically to quality management.

83. These requirements are complex and are not workable under the system of international standards. Organisations cannot be both accredited to standards and certified to standards. MBIE has considered the best approach to clarify requirements related to quality management.

Option 1 – Status quo	Option 2 – Remove certification requirement
Require some product certification bodies to be certified to an international standard related to quality management.	Remove the requirement for some product certification bodies to be certified to an international standard related to quality management. This option would rely on the quality management provisions in the international standard related to conformity assessment.

84. The preferred option is **Option 2 – Remove certification requirement**. This will improve the clarity of the legislative framework and confidence in the scheme by ensuring the regulations work in practice. This is a more proportionate approach because it does not require unnecessary certification.

Product certificate reviews

- 85. The Amendment Act now provides for regulations to set out the matters a product certificate body must take into account when reviewing a certificate. New regulations are needed to ensure that certificate reviews are being carried out appropriately.
- 86. Options for regulations are assessed below. See proposal 12 in Annex 1 for further detail on the preferred approach.

Certificate reviews: matters a product certification body must take into account during an audit

- 87. After a product is certified, product certification bodies must review a certificate at least once every 12 months to ascertain whether the product continues to comply with certification criteria and there are grounds to suspend or revoke the certificate.
- 88. The Amendment Act provides for new regulation making powers to set out matters a product certification body must take into account during an audit. MBIE considered the best approach to provide assurance that audits are appropriate.

Option 1 – Status quo	Option 2 – Set frequencies for in-depth reviews	Option 3 – In-depth reviews only when triggered
No requirements in regulations relating to product certification bodies carrying out a review of a product certificate.	Set out the matters a product certification body must take into account when carrying out a review of a product certificate, and require an in-depth review at a set frequency.	Set out the matters a product certification body must take into account when carrying out a review of a product certificate, including matters that must be taken into account only when triggered by a relevant change.

89. The preferred option is **Option 3 – In-depth reviews only when triggered**.

90. This option is cost effective and proportionate, as it focuses audit effort where it is proportionate to the level of risk. It sets clear requirements that improve clarity and confidence in the scheme.
91. Option 2 also provides clear requirements, but is not cost effective or proportionate. It is not consistent with a risk-based framework for audits and would be likely to impose unnecessary costs by requiring an in-depth review even when nothing relevant has changed. Option 1 does not provide clear requirements for audits or appropriate confidence that audits are being carried out appropriately.

Overall assessment of preferred approach

92. The preferred options above are packaged into a series of integrated and interlinked proposals that collectively comprise a preferred approach to introduce new and amended regulations to strengthen the product certification scheme.
93. In Table 3 below, this preferred approach is compared against the status quo and assessed against the assessment criteria.

Table 3: Assessment of status quo and preferred approach against assessment criteria

	Status quo: Retain existing regulations and do not implement registration functions	Preferred approach: New and amended product certification regulations, with all preferred options
Confidence	<p>0</p> <p>Does not implement registration of product certification bodies so MBIE’s oversight is not improved. No improvements to certificates for those who use certificates to make decisions. No assurance that certificates are being reviewed appropriately.</p>	<p>++</p> <p>Implements registration of product certification bodies, improves certificate information requirements and introduces requirements for certificate reviews. Improves MBIE’s oversight of the scheme and provides greater assurance that certificates are high quality and reviewed appropriately.</p>
Certainty and Clarity	<p>0</p> <p>Regulations do not align with amended Act. Some existing regulations are not clear, and it is not clear what must be taken into account when a certificate is reviewed.</p>	<p>++</p> <p>The amended Act and regulations align, which provides a clear and flexible legislative hierarchy for the scheme. It is clear what must go on a certificate, with the form of certificates approved by MBIE’s chief executive. Clear requirements for what policies, procedures and systems a product certification body must have to be accredited, and ongoing requirements are set by rules. A clear framework is provided for what may be taken into account when undertaking audits.</p>
Cost effective	<p>0</p> <p>Requirements for product certification bodies accepting test reports are expected to have onerous costs.</p>	<p>+</p> <p>More cost effective approach to test reports. Audit requirements are cost effective because the frequency of in depth audits will reflect the level of risk. Any cost impact from registration criteria is expected to be minor.</p>
Proportionate	<p>0</p> <p>Requirements for product certification bodies accepting test reports are not proportionate.</p>	<p>+</p> <p>Required policies related to test reports will not impose disproportionate regulatory burden. Audit effort is targeted at</p>

		changes that may affect the product's compliance with the certification criteria.
Flexible	0 Requirements related to test reports are inflexible, causing compliance challenges. Some ongoing operational requirements are set by regulations.	++ More flexibility is provided for product certification bodies related to ongoing operational requirements, including accepting test reports, by taking prescriptive requirements out of regulations. Scheme requirements are more flexible through more appropriate use of scheme rules which may provide for operational details and administrative requirements that can be approved by MBIE's chief executive.
Overall assessment	0 Does not implement registration or align regulations with amended Act. Creates some compliance challenges and workability issues. Does not improve confidence in the scheme.	++ Implements registration and strengthens scheme in line with amended Act. Preferred approach is proportionate, cost effective and flexible. Improves confidence in the scheme and provides clarity and certainty to scheme participants.

Key for qualitative judgements:

- ++ much better than doing nothing/status quo
- + better than doing nothing/status quo
- 0 about the same as doing nothing/status quo
- worse than doing nothing/status quo
- much worse than doing nothing/status quo

Expected impact of the preferred packaged approach

94. MBIE’s preferred approach for the package of proposals to strengthen the product certification scheme is informed by public feedback and has been designed with the input of key industry stakeholders.

There will be some additional administrative costs although these are minor relative to the improvements in trust and confidence in the product certification scheme

95. Table 4 below sets out the one off costs and the ongoing marginal costs and the benefits derived from the preferred packaged approach to enhance MBIE’s oversight of the product certification scheme and improve overall trust and confidence in the scheme. Table 4 also summarises the key impacts on scheme participants.

96. In summary, feedback from affected product certification bodies are that these costs are be minor, and will not lead to significant changes in their current business processes and procedures.

Table 4: additional cost and benefits of the preferred packaged approach compared to taking no action

Affected groups	Comment.	Impact.	Evidence Certainty
Additional costs of the preferred approach compared to taking no action			
Impact on product certification bodies and proprietors of MBIE’s new registration function for product certification bodies and product certificates)	Minor additional costs from registration fees (see associated Cost Recovery Impact Statement). Minor costs for product certification bodies to provide evidence of compliance with registration criteria and change business processes to reflect new product certificate requirements.	Maximum \$1,803.00 per product certification body registration \$180.30 per product certificate registration	High. Fees will be prescribed.
Impact on the accreditation body, product certification bodies and proprietors of other amendments	Potential for minor additional costs for product certification bodies to change business processes to comply with amended accreditation criteria and audit requirements.	Low	Medium. Reflects feedback from affected parties.

	Consultation indicates no significant costs on scheme parties.		
MBIE regulator costs	One off costs in setting up registration processes Ongoing costs in carrying out registration activities (cost recovered). Cost recovery fees will be reviewed within 3 years to assess cost assumptions.	Low	Medium. See associated Cost Recovery Impact Statement. Assume hours of effort have been correctly estimated based on prior experience.
Total monetised costs		Maximum \$1,803.00 per product certification body registration (maximum total of \$7,212.00 across four current product certification bodies) \$180.30 per product certificate registration (total of \$24,340.50 across 135 current product certificates)	
Non-monetised costs		Low	Medium/High
Benefits of the preferred approach compared to taking no action			
Accreditation body, product certification bodies and proprietors	Greater clarity for scheme parties' responsibilities. Fewer compliance costs and greater and flexibility related to laboratory requirements for product test reports.	Medium	High. Current regulations and rules do not align with the amended Act.
MBIE as the regulator	Improved oversight and fulfils stewardship role. Legislative framework aligns. Improved ability to intervene if things go wrong.	Medium	High. Implements registration to provide greater oversight.
Building consent authorities	Higher levels of confidence in certified products. Product certificates at a consistently high quality. More efficient consent processing.	Medium	Medium. Expected to lead to higher quality certificates and greater consistency across certification bodies.

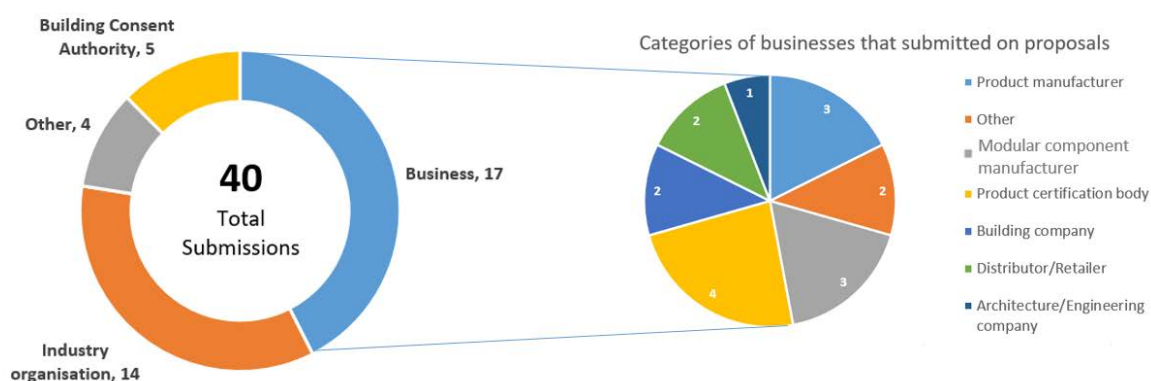
Consumers and users of the certified products	Higher levels of confidence in certified products. Fewer transfers of certificates (and associated time and cost of this) following product certification suspension or revocation.	Medium	Medium. Expected to lead to higher quality certificates and greater consistency of performance across certification bodies.
Non-monetised benefits		Medium	Medium/High

Stakeholder feedback

97. In April-June 2021, MBIE publicly consulted on proposed regulations for product certification that would be implemented under new regulation-making powers in the Amendment Act.
98. MBIE met with a range of stakeholders, including the accreditation body and certification bodies, prior to releasing the discussion document to seek preliminary feedback and to help shape the proposals in the discussion document. MBIE also held targeted meetings with stakeholders during the consultation period.
99. MBIE received 40 submissions on the product certification proposals in the discussion document (57 submissions were received on the discussion document in total). These included submissions from the accreditation body, product certification bodies, certificate holders, practitioners in the building sector, local government and individual submitters.

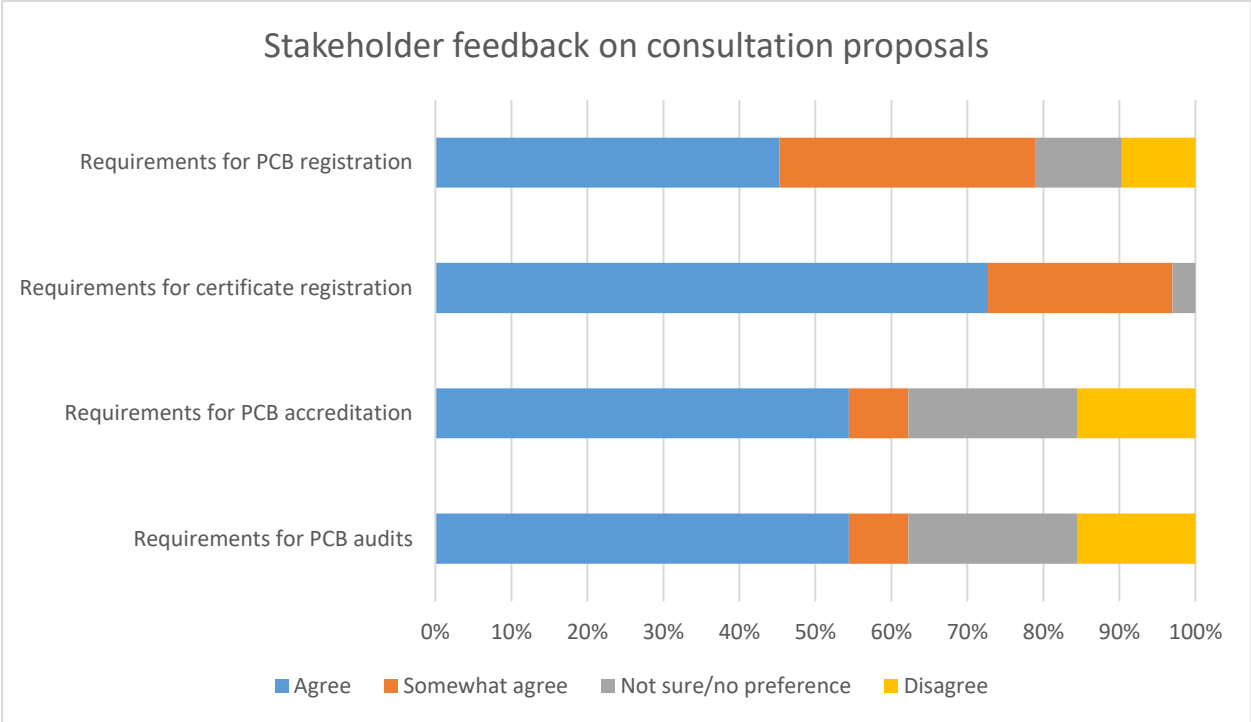
Figure 4: Breakdown of submitters by category (number)

Stakeholder groups that submitted on proposals



100. Figure 5 below sets out submitters' responses to questions in the four key themes consulted on for product certification proposals.

Figure 5: Stakeholder feedback on consultation proposals



Implement new registration requirements for product certification bodies

- 101. The majority of submitters agreed or somewhat agreed with the proposals for new registration requirements for product certification bodies.
- 102. Submitters mostly supported the fit and proper person test. Some submitters noted the fit and proper test needs to work for a wide range of product certification bodies’ corporate structures. The proposals have been modified to address this concern.
- 103. Submitters provided mixed views on the proposal to not introduce registration criteria related to product certification bodies having adequate means to cover civil liabilities. MBIE does not propose to modify the proposal as a result of this feedback.

Implement new registration requirements for certificates

- 104. There was broad support for the proposed registration requirements. Some submitters suggested additional requirements for certificates such as renewal dates, or were concerned about usability and disagreed with proposals to remove existing requirements.
- 105. MBIE proposes to remove all requirements relating to a certificate’s form from regulations, which responds to some stakeholder concerns about usability. MBIE does not support renewal dates as certificates must be accepted by a building consent authority at any time.

Improve requirements for product certification body accreditation

- 106. The majority of submissions agreed with the accreditation proposals.
- 107. Submitters provided mixed views on whether the proposals would create compliance issues, and some concerns were raised related to cost.

108. Some submitters agreed there needs to be flexibility for product certification bodies where a testing facility is not certified for the test, and that this should be principles-based. Three submitters suggested competent testing facilities should be accredited.
109. MBIE's revised proposal relating to testing facilities responds to feedback related to flexibility. MBIE does not support requiring accreditation for testing facilities as this creates compliance issues that do not support the scheme's objectives for new and innovative products.

Strengthen requirements for product certification body audits and reviews of certificates

110. Most submitters agreed in full or in part that the proposed requirements for product certification body audits and reviews of certificates looked reasonable. Submitters raised concerns about costs and whether the proposals were proportional to risks.
111. Submitters gave mixed feedback on the proposed frequency for in-depth reviews. Some submitters suggested three years was the right frequency and others suggested a risk-based framework with no set frequency for in-depth reviews.
112. MBIE's revised proposal to set out the matters that must be taken into account during an audit is intended to address concerns related to cost and risk. The revised proposal focuses on risk and reduces unnecessary costs that would arise from requiring in-depth reviews at set frequencies.

Section 3: Delivering the preferred approach

Implementation

113. The proposed regulations will be drafted and given effect through an Order in Council.
114. Regulations for the product certification scheme are required to commence no later than 15 months from the date that the Amendment Act received Royal assent (7 June 2021).
115. A commencement date of Confidential advice to Government is being proposed for Cabinet's consideration to allow sufficient time for product certification scheme rules to be developed (as a separate programme of work).
116. MBIE will be developing detailed guidance to support the implementation of the Amendment Act and the regulations. This guidance will take into account the needs and information requirements of scheme participants including the accreditation body, product certification bodies and proprietors.
117. MBIE will oversee the effectiveness of the scheme's operation and will develop a compliance and enforcement strategy to support this.
118. MBIE has the power to intervene where elements of the scheme are not working as intended, for instance by suspending the registration of product certification bodies or product certificates. This is expected to be a last resort enforcement method for scheme non-compliance, and MBIE will continue to work with scheme parties in the first instance in most cases.

Registration activities

119. Under the Amendment Act product certification bodies are taken to be a registered product certification body on and after the commencement date. To remain registered, product certification bodies will need an application for registration to be granted within six months of the commencement date.

120. Current product certificates become registered product certificates on the commencement date.
121. It is expected that there will be four applications for product certification body registration within six months of the commencement date. While this is a manageable number for MBIE staff to assess, there is a risk that applications for registration are made all at once near the end of the six month period.
122. MBIE will engage with the current product certification bodies to mitigate these risks. Risks will be mitigated through the following:
 - product certification bodies will be encouraged to apply earlier than the end of the six month period.
 - MBIE will draw on recent experience assessing a fit and proper test in the building consent authority scheme to implement certification body registration effectively.
 - new internal workflow systems, drawing from experience with private building consent authority registration and MultiProof, to provide an efficient registration service.
 - guidance will be produced to support certification bodies and proprietors navigate the registration process.

Accreditation and audit activities

123. The enforcement of the accreditation and certification criteria and the audit requirements will continue to be the responsibility of the relevant scheme party (the accreditation body or the product certification body) in the first instance.

Compliance and enforcement

124. The scheme, as amended by the Amendment Act, contains a number of mechanisms to ensure that the accreditation body, certification bodies and proprietors comply with scheme requirements. Where these requirements are not met, these scheme parties could have their status revoked.
125. The Act requires the accreditation body (currently JAS-ANZ) to notify the chief executive in a number of situations and to comply with any requirements specified in the *Gazette*. The appointment of the accreditation body to be revoked at any time.
126. Product certification bodies are disciplinable entities under the Act, and may be investigated by MBIE's chief executive. Product certification bodies may have their accreditation or registration suspended or revoked for a number of reasons, including failing to comply with product certification scheme rules.
127. Proprietors must also comply with scheme rules, or their product certificates may be suspended or revoked.
128. The Building Amendment Act outlines a number of offences to prevent any person from:
 - performing the functions of a registered product certification body unless they are a registered product certification body. Fines of up to \$300,000 for individuals or \$1,500,000 for body corporates may be issued for any convicted offences.
 - representing themselves as a product certification body if that is not the case. Fines of up to \$50,000 for individuals or \$150,000 for body corporates may be issued for any convicted offences.

- representing something as having a product certificate if that is not the case. Fines of up to \$300,000 for individuals or \$1,500,000 for body corporates may be issued for any convicted offences.
129. MBIE will monitor the market for organisations that might be misrepresenting their products or status in relation to the scheme and take action as appropriate.

Monitoring, evaluation and review

130. MBIE will continue to be responsible for monitoring the performance of the product certification scheme, including the new registration function. Ongoing feedback from the accreditation body and engagement with the product certification bodies will be key to this, along with regular reviews of MBIE's registration business processes and procedures to ensure that they are operating as effectively and efficiently as possible.
131. Product certification bodies and proprietors will be able to raise concerns with MBIE regarding registration processes and scheme requirements. Procedures related to complaints handling will be developed to assist with this.
132. MBIE will meet at least annually with accreditation body to discuss the product certification scheme.
133. A draft intervention logic model for the building system legislative reform programme was initially developed in 2019 (refer to Annex 2), and MBIE is currently in the process of reviewing this model. MBIE has committed to developing a monitoring and evaluation framework. While still in the scoping phase, this framework may be used to consider and incorporate the following indicators performance indicators:
- number of product certificates and product certificate bodies in the scheme
 - feedback from building consent authorities or other parties on the quality of certificates
 - complaints or other feedback received by MBIE regarding requirements of the scheme
 - non-conformances that are not appropriately dealt with through the scheme's standard processes.
134. The product certification scheme is expected to be reviewed every three years to ensure scheme requirements are fit for purpose.

Annex 1 – Detailed proposals in the preferred approach

Implement the new registration requirements for product certification bodies introduced by the Amendment Act, to improve confidence in the scheme

Proposal 1: prescribe a new fit and proper person test as a criteria for product certification body registration, to assess the history and non-technical suitability of product certification bodies and applicants

1. The proposed test would assess the history and non-technical suitability of product certification bodies and applicants to the scheme. It would be based on the fit and proper test for building consent authority registration, and look at an applicant's history of civil proceedings and offences; professional and financial management history; compliance in similar schemes; conflicts of interest; and other relevant factors.
2. It is intended that the fit and proper test applies to the applicant body, and MBIE's chief executive would assess whether elements of the test are met by the product certification body's authorised representative and the person or persons directing or controlling its product certification functions.

Proposal 2: prescribe new requirements for information that must go on an application for product certification body registration, to help MBIE administer the registration process efficiently

3. A product certification body must provide to MBIE the following information to demonstrate that the product certification body will meet the registration criteria:
 - details of the organisation, including name, address of principal place of business and contact details
 - details of person responsible for application, including name, title and contact details
 - evidence of accreditation by the product certification accreditation body
 - evidence sufficient to assess applicant against any prescribed criteria for registration.

Improve the requirements for what must go on a product certificate, which will form the basis for registration of product certificates and improve confidence

Proposal 3: amend existing information requirements for product certificates, to improve workability

4. MBIE proposes to remove the following information requirements for product certificates:
 - requirement for the certificate holder's New Zealand contact details to be included on the certificate

- requirement to include the certificate holder’s signature on the certificate, so there is consistency in compliance across product certification bodies (which are responsible for each certificate)
 - duplication related to conditions and limitations in section 4 of Schedule 2, so all key information related to conditions and limitations are in the same place
 - duplication related to Building Code compliance in section 5 of Schedule 2, so all key information related to the basis for certification is in the same place.
5. Other proposed amendments to information requirements for certificates include:
- Amend section 7 of Schedule 2 (Health and safety information) so the ‘performance’ requirements of Building Code clauses F1 to F9 must be on the certificate, but not the ‘objective and functional’ requirements of these Building Code clauses. ‘Objective and functional’ requirements cannot be demonstrated for audit purposes, so should not be required on the certificate
 - Remove references to the form of the certificate, which is now approved by the chief executive under the Amendment Act.

Improve the workability of existing accreditation criteria to improve confidence and reflect the new legislative framework

Proposal 4: Require a product certification body to have policies to ensure it complies with any conformity assessment requirements in product certification scheme rules

6. To be accredited, a product certification body must have policies, procedures and systems in place in relation to conformity assessment. These policies will ensure they comply with any applicable product certification scheme rules related to the competence, consistent operation and impartiality of product certification bodies.

Proposal 5: Require a product certification body to have policies to ensure it carries out certification activities within the scope of its accreditation

7. To be accredited, a product certification body must have policies, procedures and systems in relation to carrying out certification activities within the scope of its accreditation that comply with any applicable scheme rules. These policies will ensure that product certification bodies will only carry out certification activities for which they are competent.

Proposal 6: Require a product certification body to have policies in place related to written records

8. To be accredited, a product certification body must have policies, procedures and systems in relation to written records that comply with any applicable product certification scheme rules.
9. It is anticipated that scheme rules could include requirements for retaining written records for evaluations and decisions related to a product certification body’s functions under the Building Act. These records would be sufficient to establish clearly that all requirements in the product certification scheme have been met.

Proposal 7: Require a product certification body to have policies in place related to certifying each building product or building method

10. To be accredited, a product certification body must have policies, procedures and systems in relation to certifying building products and building methods that are based on evidence established by testing the building product or building method, and assessing a proprietor's plan to maintain the quality of the building product or building method.
11. It is anticipated that scheme rules could include detailed operational requirements for product evaluation.

Proposal 8: Require a product certification body to have policies in place to ensure it has sufficient and competent staff

12. To be accredited, a product certification body must have policies, procedures and systems in place related to staff and contractors to ensure that they have the right people in the right roles and are undertaking the right work to perform their functions effectively and consistently.

Proposal 9: Require a product certification body to be have policies in place related to producing an evaluation plan and conducting a risk assessment

13. To be accredited, a product certification body must have policies, procedures and systems in relation to producing an evaluation plan and conducting a risk assessment that comply with any applicable product certification scheme rules.
14. It is anticipated that scheme rules could include detailed operational requirements for what an evaluation plan would contain and what a risk assessment would look like.

Proposal 10: Require a product certification body to have policies in place related to accepting test reports

15. To be accredited, a product certification body must have policies, procedures and systems in relation to accepting test reports that comply with any applicable product certification scheme rules.
16. It is anticipated that the rules could provide for the following:
 - Product certification bodies would only accept test reports from testing facilities accredited for those tests – unless it is not reasonable to do so.
 - Product certification bodies would use a prescribed framework to decide whether it is reasonable to require that a test report comes from a laboratory accredited for that test, including matters such as lack of availability and level of risk.
 - If the product certification body assesses it is not reasonable, the product certification body could accept a test report from a laboratory that is not accredited for that test. The product certification body would assess this laboratory against the relevant requirements of *ISO/IEC 17025 – testing and calibration laboratories*, and confirm that the laboratory meets these requirements.

Proposal 11: remove a current requirement for product certification bodies that are not accredited conformity assessment bodies to be accredited to *ISO/IEC 9001:2015 – Quality Management Systems – Requirements*

17. The existing regulation related to quality management systems would be revoked, and the scheme would rely on the quality management clauses in *ISO/IEC 17065 – Conformity assessment — Requirements for bodies certifying products, processes and services*.
18. ISO/IEC 17065 requires certification bodies to establish and maintain a management system that is in accordance with the requirements of ISO/IEC 9001, or addresses a range of activities that certification body must carry out. It does not require certification to ISO/IEC 9001.

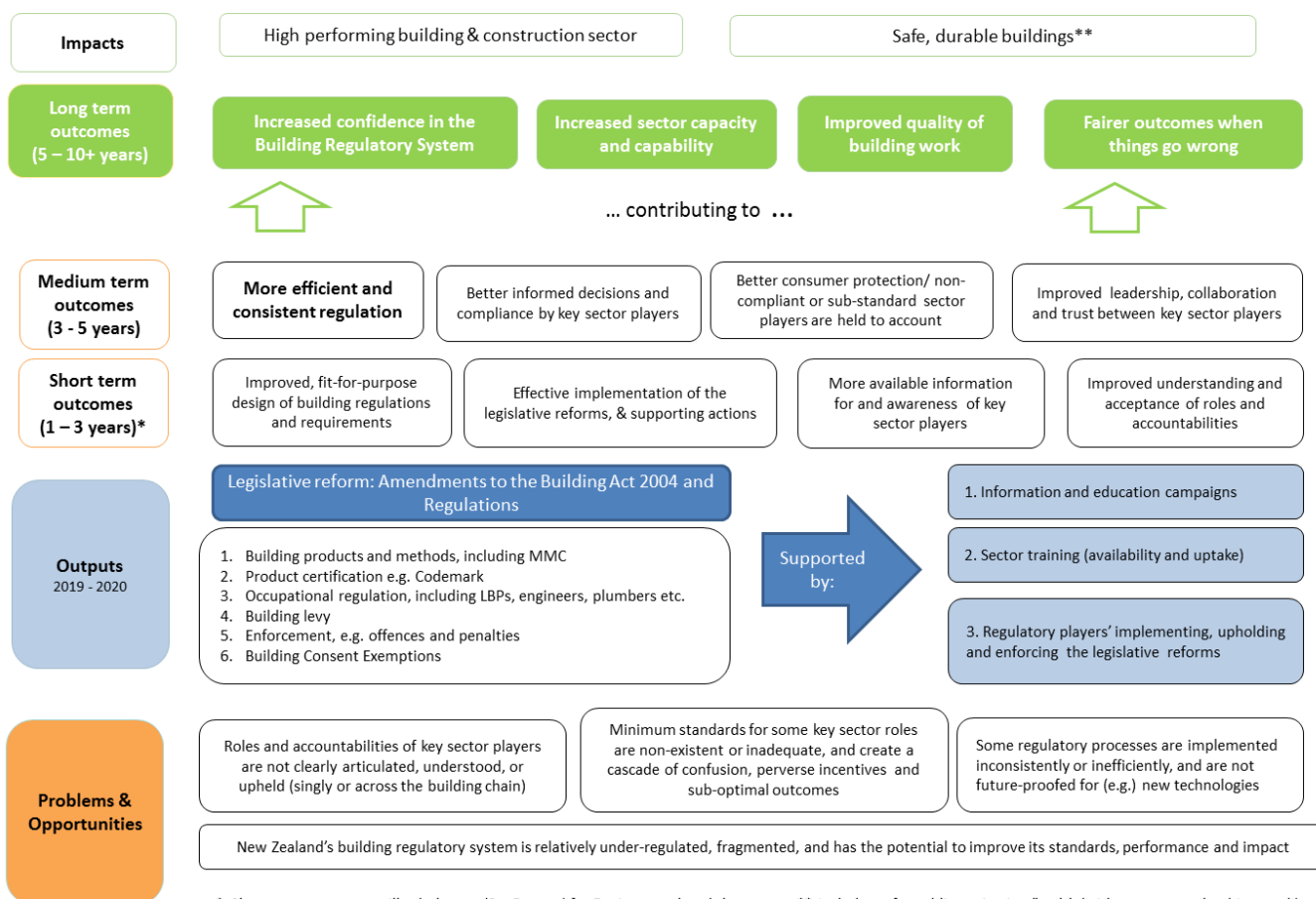
Clarify requirements for a product certification body reviewing a certificate to improve confidence and reflect the new legislative framework

Proposal 12: Prescribe new audit procedures to set out the matters a product certification body must take into account when carrying out an audit.

19. In carrying out an audit, the product certification body must take prescribed matters into account.
20. If, in the course of considering these matters, the product certification body becomes aware of a relevant change or information that may:
 - impact the product's compliance with certification criteria or
 - trigger grounds to suspend or revoke the certificatethen it must also take into account further prescribed matters.

Annex 2: Intervention logic

DRAFT Logic Model for Legislative Reform Programme



* Short term outcomes will take longer (3 – 5 years) for Engineers-related changes. ** Includes safer public sanitation/health (with competent plumbing work)