



COVERSHEET

Minister	Hon Jenny Salesa	Portfolio	Building and Construction
	Lifting the Efficiency and quality of the building system: Overview		11 October 2019

List of documents that have been proactively released			
Date	Title	Author	
25 September 2019	Lifting the Efficiency and quality of the building system: Overview	Office of Hon Jenny Salesa	
25 September 2019	Lifting the Efficiency and quality of the building system: Proposals for Bill One	Office of Hon Jenny Salesa	
30 September 2019	CAB-19-MIN-0507	Cabinet Office	
30 September 2019	CAB-19-MIN-0508	Cabinet Office	
25 September	Regulatory Impact Statement: Building System Legislative Reform Programme (Phase 1)	Ministry of Business, Innovation and Employment	

Information redacted

YES

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

Reasons for withholding information:

• Confidential advice to Government

© Crown Copyright, Creative Commons Attribution 4.0 International (CC BY 4.0)

In Confidence

Office of the Minister for Building and Construction

Chair, Cabinet Economic Development Committee

LIFTING THE EFFICIENCY AND QUALITY OF THE BUILDING SYSTEM: OVERVIEW

Proposal

- 1. I am seeking agreement to a programme of reforms to the building regulatory system that will lift the efficiency and quality of building work and provide fairer outcomes if things go wrong.
- 2. To enable reform of the building regulatory system in a timely manner, I am seeking agreement for a phased approach:
 - 2.1. The proposals for Bill One, which accompany this paper, propose changes to the regulation of building methods and products, the introduction of a specialist framework for modern methods of construction, strengthening the existing product certification scheme (CodeMark), and changes to the building levy, offences and penalties, and public notification requirements.
 - 2.2. Bill Two will propose changes to the occupational regulation of licensed building practitioners; engineers; and plumbers, gasfitters and drainlayers.
 - 2.3. A separate work stream will explore alternative options, including non-regulatory approaches, to address issues with risk, insurance and liability in the building system.

Executive Summary

- 3. Building defects and rework waste millions of dollars every year. Systemic building system failures, like the leaky homes crisis, waste billions of dollars.
- 4. The regulatory system must provide the right incentives to get it right the first time and protect consumers. The legislative reform programme will provide these incentives while lifting the efficiency and quality of building work and providing fairer outcomes if things go wrong.
- 5. The legislative reforms will give greater confidence to homeowners that the people building and renovating their homes know what they are doing and are making well-informed decisions about their work. At the same time, the reforms will allow building professionals and tradespeople to be held accountable if they do not meet the standards set for them.
- 6. Building consenting will be more efficient and it will be easier and faster to use new and innovative building methods and products, such as prefabrication and off-site

manufacturing. This will support the government's priorities to deliver more affordable houses and an economy that grows and works for all New Zealanders.

- 7. In order to achieve all of these aims in a timely manner, I am proposing to split the legislative reform programme into three parts. The accompanying paper, *Lifting the Efficiency and Quality of the Building System: Proposals for Bill One,* seeks agreement on the policy decisions that will be given effect through the proposed Bill One, including:
 - 7.1. legislative changes that will strengthen the regulation of building products and building methods to improve decision-making and accountability;
 - 7.2. the introduction of a specialist framework for modern methods of construction, and strengthening the framework for product certification (CodeMark), which will create efficiencies in the building consent process and support the use of new and innovative products;
 - 7.3. changes to the building levy, offences and penalties, and public notification requirements to improve the efficiency and effectiveness of the building regulatory system.
- 8. I am also seeking your agreement to amend regulations to lower the rate of the building levy and clarify the threshold at which it applies.
- 9. Annex 1 provides a brief overview of the current state of the building system and what the future state will be as a result of the successful implementation of my proposals for Bill One.
- 10. Confidential advice to Lintend to seek agreement on the policy decisions for the occupational regulation regimes. These changes will make up Bill Two.
- 11. Public consultation on possible changes to the risk, insurance and liability settings confirmed that the current building insurance market will not be able to meet a large increase in demand. Therefore, I intend to establish another work stream to address the issues of risk, insurance and liability in the building system with a focus on exploring non-regulatory solutions. I will report back in 2020 on the alternative options developed.
- 12. In undertaking this work, I have been mindful to ensure any cost added through regulation is reasonably offset by efficiencies gained across the building system. MBIE estimates that the cost of the average house build in Auckland would increase by \$200 as a result of the ongoing compliance from the changes proposed in Bill One. As the proposals reflect the improvement in whole-of-life building performance and quality, and building and consenting efficiencies, I consider this minor increase worthwhile.

Background

13. A vibrant, high-performing building sector is vital to providing safe and durable buildings where New Zealanders work, live and play. The sector plays a key role in delivering this government's housing and urban development priorities to improve housing supply, affordability and quality.

- 14. The primary legislation governing the building sector is the *Building Act 2004*. This legislation aims to improve control of, and encourage better, practices in building design and construction to provide greater assurance to building owners and users.
- 15. All building work must comply with the New Zealand Building Code (the Building Code). The Building Code sets out the rules for the construction, alteration, demolition and maintenance of new and existing buildings. The Building Code sets minimum standards for how a building must perform for particular parameters, such as moisture, fire safety, access and stability.
- 16. Building consent authorities¹ check whether proposed building work will comply with the Building Code and issue building consents allowing building work to start. They also check that the building work complies with the relevant building consent.
- 17. Like many of its overseas counterparts, systemic problems are holding the building sector back. Low productivity, inefficient practices and processes, skills and labour shortages, financial vulnerability, and poor health and safety practices are some of the key challenges facing the building sector².
- 18. Both a government and industry response is required to support sustained and transformative change for the sector. My key portfolio priorities are summarised below:
 - 18.1. The **Construction Sector Accord** establishes the government and industry's commitment to work in partnership. It sets out a shared vision and outcomes for the sector, and outlines strategic goals and priority work areas to transform the sector.
 - 18.2. The **Skills Action Plan** will ensure the New Zealand construction workforce has the people and skills needed to deliver the growing pipeline of construction projects.
 - **18.3.** The **Building Code Delivery Framework** strengthens MBIE's management of the Building Code, and includes a twice yearly update of the Building Code.
 - 18.4. The **Building System Strategy** will describe the desired future state of the system, set a clear direction of travel, and set realistic and measurable goals.
 - 18.5. The **Legislative Reform Programme** will improve the building regulatory system. It will fulfil a key government commitment in the Construction Sector Accord to provide a regulatory system that encourages innovation while ensuring buildings are safe, healthy and durable.
 - 18.6. Confidential advice to Government

¹ Building consent authorities are usually local and district councils, however, they can also be regional councils (eg for dams) and private organisations.

² These are key themes in publications by the United Kingdom and Australian governments, World Economic Forum, and McKinsey and Company.

- 18.7. The **Climate Change Programme** is preparing advice for me on actions the building regulatory system could take to support the government's climate change objectives.
- 19. On 15 April 2019, Cabinet agreed to release a discussion paper on proposed reforms to the building regulatory system. I was invited to report back in September 2019 on the outcome of the consultation, on whether the changes needed to be phased in, and to seek agreement to policy decisions [DEV-19-MIN-0166].
- 20. On 31 July 2019, I updated you on the outcome of the consultation. I was pleased with the sector's engagement and the amount of support for the proposed reforms. In response to submissions, I have decided to progress the legislative changes in two phases [DEV-19-MIN-0198].

The legislative reform programme is focused on lifting efficiency and quality, and providing fairer outcomes

- 21. The legislative reform programme will lift the efficiency and quality of building work and provide fairer outcomes if things go wrong.
- 22. I have heard from stakeholders that the regulatory environment has created a mind-set that is focused on meeting the 'minimum quality' needed to comply with the standards set out in the Building Code.
- 23. The most recent survey of new homeowners found that 80 per cent had to get tradespeople back to fix defects after they had moved in, and almost half were not surprised by the level of defects that occurred. There has been a slow decline in new homeowners' overall satisfaction levels since 2016³.
- 24. Building defects and rework represent productivity losses. They waste time, they waste materials and they waste money. Overseas estimates of the cost of rework vary widely from three to 23 per cent of the value of the contract⁴. In the year to June 2019, building consents were approved for \$7.4 billion worth of non-residential buildings in New Zealand. Applying the lowest estimate of three per cent translates to waste of \$220 million a year due to rework⁵.
- 25. We need to focus on driving quality, and getting it right the first time. The proposed reforms will give homeowners peace of mind, save them time and money, and make it easier to build their new home or fix up their existing one.
- 26. Homeowners will have greater confidence that the people involved in building their home will be able to make good decisions about how they are designed and built, and which products to use. They will also have assurance that building professionals and tradespeople have a better understanding of their roles and responsibilities, and that it will be harder to shift their responsibilities on to others.

³ Brunsdon, N and O Lockyer (2019) *New House Owners' Satisfaction Survey 2018.* BRANZ Study Report SR421.

⁴ Love, P.E.D, Z Irani and D.J. Edwards (2004) *A Rework Reduction Model for Construction Projects*. IEEE Transactions on Engineering Management, Vol. 51, No. 4.

⁵ BRANZ is currently undertaking research to estimate the costs of building rework in New Zealand.

- 27. It will be easier for homeowners to choose new and innovative building methods and products. They will have more efficient and reliable access to more productive and affordable building alternatives like prefabricated houses and other modern methods of construction.
- 28. Homeowners will find that the building consent process will be quicker and encounter fewer delays. It is estimated that delays in the consenting process cost around \$1,000 for each week of delays.
- 29. Annex 2 provides scenarios that illustrate how the building process will be different for homeowners after the reforms have been implemented.
- 30. For the government, the proposed changes will support the delivery of our housing and urban development priorities. The proposal to create a specialist framework for the certification of modern methods of construction will support the government to make more use of prefabrication to increase the supply of affordable houses. Greater consenting efficiency also supports other government goals a productive, sustainable and inclusive economy that is growing and working for all of us.
- 31. MBIE has engaged with representatives from Housing New Zealand Corporation, the Ministry of Housing and Urban Development, and the KiwiBuild programme about ways to support more efficient consenting, while ensuring safe and durable construction. Feedback from these agencies indicated broad support for a manufacturer certification scheme. This proposal is seen as an effective way to help accelerate large scale housing developments.

The accompanying paper seeks decisions for Bill One of the legislative reform programme

32. As discussed on 31 July 2019 [DEV-19-MIN-0198], I have decided to split the legislative changes for the reform programme into two phases. The first phase (Bill One) will cover building products and methods, building levy, offences and penalties, and public notification. The second phase (Bill Two) will cover three of the occupational regulation regimes. A separate work stream will cover the risk, insurance and liability settings.

Confidential advice to Government

- 33. Phasing the reforms means that work on Bill One can be accelerated. These proposals had stronger support from industry and the public, and require amendments to just one piece of legislation (the *Building Act*). Taking a phased approach to Bill Two will allow more time to work with industry to develop the occupational regulation proposals, which will likely involve amendments to multiple pieces of legislation (an omnibus bill).
- 34. As outlined in the accompanying paper, Bill One provides the foundations for a more efficient and effective regulatory system. It includes:
 - 34.1. introducing minimum requirements for information about building products to support better and more efficient decision-making, and clarifying responsibilities so that suppliers, designers and builders can be held accountable for any breaches of their responsibilities in relation to building products and methods and their use;
 - 34.2. introducing a specialist framework to streamline the consenting processes for modern methods of construction such as off-site manufacturing and prefabricated houses;
 - 34.3. strengthening the product certification framework 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;
 - 34.4. allowing MBIE to invest in a high performing building regulatory system and lowering some of the costs of consenting (by around \$80 for the average new build in Auckland) through changes to the building levy;
 - 34.5. providing stronger incentives to comply with the obligations placed on building professionals, tradespeople and other people under the *Building Act*.
- 35. Bill Two will build on these initial reforms by strengthening occupational regulation to ensure building professionals and tradespeople have the right level of competence and skills, and can be held to account for substandard work or poor conduct. Restrictions on who can carry out building and engineering work will be proportionate to the risks to public safety. I intend to seek Cabinet agreement on the policy decisions for Bill Two
- 36. As discussed on 31 July 2019, officials will continue to develop alternative approaches for the risk, insurance and liability settings. This includes a workstream looking at non-regulatory options for how to support growth in the insurance market.

Cost implications for the building sector

37. MBIE has undertaken a cost-benefit analysis for the package of changes in the first phase of reforms. The main cost increase will be the one-off and ongoing compliance costs for those suppliers who need to make changes in order to meet the new product information requirements. Offsetting these costs will be the longer term benefits once all the reforms are fully implemented – better quality building products

and building work, less rework, more efficient consenting and, ultimately, safer and more durable buildings that are less prone to systemic failure.

- 38. MBIE estimates that if all the one-off compliance costs (eg the cost of adjusting systems and practices to become compliant) are passed onto consumers and spread over a three-year period, the cost of the average consent value would increase by \$100 during that period only. However, some suppliers may choose to absorb some or all of these compliance costs.
- 39. The ongoing compliance costs (eg the cost of ensuring continued compliance such as making sure information is up-to-date and available) are more likely to be passed on to consumers. MBIE estimates that the cost of an average house build in Auckland would increase by \$200 as a result.
- 40. Considering the average cost of building work for a three bedroom house in Auckland is about \$310,000⁶, the potential increase of around \$200 would be negligible compared to the benefits of improved whole-of-life performance.
- 41. Further, as outlined in the accompanying paper, I am proposing to decrease the building levy, which would see a cost reduction of \$80 for the average new build.
- 42. More details on the expected costs and benefits are included in the regulatory impact assessment.

Timeframes for implementation

- 43. The changes proposed to the rate and threshold of the building levy are not dependent on legislation and can be brought into effect earlier by regulations.
- 44. The planned commencement date for Bill One is the date on which Royal Assent is given. The proposed new penalties for offences against the *Building Act* would come into force at that time.
- 45. Proposals to require the provision of product information, the new framework for modern methods of construction and the changes to the existing product certification scheme (CodeMark) represent significant shifts for the sector and will also require regulations to come into force. Accordingly, appropriate time needs to be allowed to ensure that affected people and businesses understand and successfully implement the changes to business operations. Confidential advice to Government

⁶ The average cost of building work for a 150m², three or four bedroom, one or two bathroom, private build in Auckland as at June 2018 (excluding the cost of land).

Consultation

Public consultation

- 46. During 2018, MBIE met with nearly 50 organisations that represent stakeholders in the building sector to understand the problems facing the building sector. MBIE then developed a proposed package of reforms based on this engagement. Since then, MBIE has continued to meet with industry representatives, occupational regulation bodies, building consent authorities and the Building Advisory Panel⁷ to test and refine the proposed changes.
- 47. MBIE released a discussion document on the proposed package of reforms for public consultation in April 2019, and a total of 470 submissions were received. Overall, submitters agreed that system-wide reform is needed and supported the proposals at a high-level. Some submitters raised concerns about the ability of the sector to respond to a large number of changes being made all at one time.
- 48. Most submitters supported the proposals that will apply to all building products and methods. The proposals would support good-decision making and clarify roles and responsibilities in relation to building products and methods. The majority supported MBIE having greater powers to investigate building products and methods. Monitoring and enforcement were seen as key to the proposals being successful.
- 49. There was broad support for the proposals to support modern methods of construction. Most submitters also considered the changes to the product certification scheme would increase their confidence that these products would perform as intended. Some were concerned about the potential costs.
- 50. There were a limited number of submissions from manufacturers, suppliers and product certification bodies. However, there will be further industry engagement on the regulations for modern methods of construction, the product certification scheme and product information requirements, so these groups will have more opportunities to have their say on the design and implementation of the proposals.
- 51. Most submitters supported allowing MBIE to spend the building levy on building sector stewardship. Most submitters did not support lowering the rate for the building levy, but few of these submitters were levy payers.
- 52. Most submitters supported increasing the maximum financial penalties for breaches of the *Building Act*, and supported having different penalty levels for individuals and organisations, as the existing penalties were considered an insufficient deterrence. Some were concerned there could be a serious negative impact on small businesses if they could not afford the higher penalties. This is mitigated to some extent as the courts take this into account when determining what penalty to impose.
- 53. The majority of submitters supported extending the timeframe to lay a charge under the *Building Act* so enforcement agencies had sufficient time to investigate potential offences. There was also strong support to amend the requirements for public

⁷ A statutory body of building experts and sector representatives that provides MBIE with independent strategic advice on issues facing the building sector.

notification, with the internet and *New Zealand Gazette* being seen as sufficient avenues.

- 54. An in-depth summary of the submissions has been published on MBIE's website.
- 55. Further consultation will be undertaken on the regulations needed to support the legislative changes.

Government agencies

56. MBIE consulted with the following government agencies on the draft Cabinet papers: Department of the Prime Minister and Cabinet; Treasury; Ministry of Justice; Ministry of Housing and Urban Development; Ministry for the Environment, Ministry of Foreign Affairs and Trade; Ministry of Education; Ministry of Health, Te Puni Kōkiri; Department of Internal Affairs; Department of Corrections; Office of the Privacy Commissioner; Reserve Bank of New Zealand; New Zealand Customs Service; Commerce Commission; WorkSafe New Zealand; Housing New Zealand Corporation; Office of the Ombudsman; and the Environmental Protection Agency. Local Government New Zealand and the Building Advisory Group were also consulted.

Financial Implications

Specialist framework: modern methods of construction

- 57. The fees for manufacturers, who wish to participate in the manufacturer certification scheme, are expected to be at a level that is lower than the direct benefits they will enjoy from reducing the duplication of effort in the consenting process. This has proven to be the case in overseas models. Other benefits such as economies of scale and productivity gains can also be expected, and there is potential for a reduction in environmental waste.
- 58. There will be a one-off set up cost for MBIE to establish and implement the manufacturer certification scheme, which current estimates suggest is \$1.3 million. MBIE will be developing a cost recovery model for accreditation and certification; once the scheme is established, it is anticipated that MBIE, Accreditation Bodies and Certification Bodies will be able to recover ongoing costs through fees for the services they provide.
- 59. The full financial implications of the proposal will be assessed once the details of the scheme have been developed in consultation with key stakeholders and industry representatives.

Specialist framework: strengthen product certification (CodeMark)

60. A minor operational cost of \$58,000 is estimated for MBIE to perform annual registration and annual audits in the two transition years following the changes taking effect. Ongoing costs are estimated at approximately \$14,000 per year thereafter. MBIE will develop a cost recovery model for registration, but is confident that costs will be minimal.

61. There will also be minor operational costs to MBIE for investigations and enforcement under the powers being given to MBIE's chief executive to administer the product certification scheme. Costs for investigations and enforcement will be shared across the legislative reform programme as a whole.

Building levy

- 62. The current rate of the building levy (which is used to fund the core regulatory functions of the chief executive of MBIE under the *Building Act*) has generated a surplus of \$55.4 million as at the end of June 2019.
- 63. It is estimated that the proposed reduction in the building levy will reduce the surplus to within the Treasury's guidelines by 2023/24.
- 64. Additional resource will be required to support the implementation of the reforms, including carrying out the monitoring and enforcement of the new regulatory requirements. Costs will be met within existing baselines and the building levy.
- 65. My proposals will reduce the cost to building levy payers by \$0.26 per \$1,000 of the estimated value of that portion of the building work over the levy threshold. This is likely to be a relatively small reduction in the amount payable for all but the largest commercial building projects. For a \$310,000 private house development (the current average cost of a new build in Auckland), the levy would fall from \$623 to \$543 (a reduction of \$81). For a \$20 million commercial build, the levy bill would fall from \$40,200 to \$35,000 (a reduction of \$5,200).
- 66. A reduction in the amount of the levy collected will not affect the service level provided to levy payers by MBIE, as the levy has been over-recovered for some years. In addition, by expanding the definition of stewardship and use of the levy, MBIE will increase the level of its expenditure and corresponding services.

Offences and penalties

67. Increased penalties should lead to fewer investigations in the medium to long term by deterring individuals and organisations from committing offences. In the short term, the cost of investigating and prosecuting should be off-set through the increased penalties regime and the distinction between an individual and an organisation.

Legislative Implications

68. Legislation is required to implement the proposals in this paper. Confidential advice to Government

Impact Analysis

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

70. The Treasury Regulatory Quality Team considers that the decisions sought in these papers on the building levy rate and threshold are exempt from the regulatory impact analysis requirements on the basis of no or only minor impacts on businesses, individuals or not-for-profit entities.

Human Rights

71. See the accompanying paper, Lifting the Efficiency and Quality of the Building System: Proposals for Bill One.

Gender and Disability Implications

72. See the accompanying paper, *Lifting the Efficiency and Quality of the Building System: Proposals for Bill One.*

Publicity and Proactive Release

73. I intend to issue a press release announcing the main decisions made by Cabinet. Both papers will be proactively released, with any appropriate redactions, on MBIE's website.

Recommendations

The Minister for Building and Construction recommends that the Committee:

- 1. **note** that on 15 April 2019, Cabinet agreed to the release of a discussion paper on proposed changes to the building regulatory system [DEV-19-MIN-0166];
- 2. **note** that on 31 July 2019, the Cabinet Economic Development Committee noted that the Minister for Building and Construction proposes to split the legislative reform programme into two phases and that further work will be undertaken on the risk, insurance and liability settings [DEV-19-MIN-0198];
- 3. **agree** that the legislative reform programme is split into two phases and that further work will be undertaken on the risk, insurance and lability settings;
- 4. **note** that the overall objective of the legislative reform programme is to lift the efficiency and quality of building work and provide fairer outcomes if things do go wrong;
- 5. **note** there was broad support through the public consultation for most of the proposals and submitters favoured a logical and sequential change process;
- 6. **note** that the accompanying Cabinet paper seeks policy decisions for Bill One, which will include amendments relating to building products and methods, product certification, the building levy, offences and penalties, and public notification, and will introduce a specialist framework for modern methods of construction;

- 7. **note** that <u>Confidential advice to</u> the Minister for Building and Construction intends to seek Cabinet agreement to policy decisions for Bill Two of the legislative reform programme, which will focus on amendments relating to the occupational regulation regimes;
- 8. **note** that the Minister for Building and Construction intends to issue a press release announcing the main decisions on the first phase of the legislative reform programme.

Authorised for lodgement

Hon Jenny Salesa

Minister for Building and Construction

JIA (

Annex 1: A3 Lifting the Efficiency and Quality of the Building System Overview

OBACTIVIELS BELLEASE

Annex 2: Scenarios

Oles

The following scenarios set out how the building process will be different for homeowners after the reforms in Bill One have been implemented.

FRASE

CHARLES WELLEMANNE

Scenario 1: Samantha's journey through a traditional on-site build



z96jefgse 2019-09-30 10:47:58

Scenario 1: Samantha's journey through a traditional on-site build



MODERN METHODS OF CONSTRUCTION – MANUFACTUER CERTIFICATION

Key Parties Involved

Current State

The scenario is one representation of how the compliance process is applied to offsite building. Depending on the BCA(s), the type of project etc. the process and the assurance required by the BCA(s) will change

