



## COVERSHEET

<b>Minister</b>	Hon Jenny Salesa	<b>Portfolio</b>	Building and Construction
<b>Title of Cabinet paper</b>	<b>Lifting the Efficiency and quality of the building system: Overview</b>	<b>Date to be published</b>	11 October 2019

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

### **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

In Confidence

Office of the Minister for Building and Construction  
Chair, Cabinet Economic Development Committee

## **LIFTING THE EFFICIENCY AND QUALITY OF THE BUILDING SYSTEM: PROPOSALS FOR BILL ONE**

### **Proposal**

1. This paper seeks agreement to policy proposals for the first of two bills that will improve the efficiency and effectiveness of the building regulatory system by amending the *Building Act 2004*. The proposals within the first bill will:
  - 1.1. strengthen the regulation of building products and building methods (section 1);
  - 1.2. introduce a specialist framework for modern methods of construction and strengthen the existing product certification scheme, CodeMark (section 2);
  - 1.3. reduce the building levy and expand its purpose to support the sector, update offences and penalties, and change public notification requirements (section 3).

### **Executive Summary**

#### ***Building products and building methods***

2. Quality building products are central to safe and durable buildings. Good product information, clear responsibilities, and stronger investigative powers for the central regulator are needed to support the building and construction sector to make good decisions about the use of building products.
3. Public consultation resulted in broad support for proposals to increase the quality of building work and reduce the risks of product-related defects by strengthening the regulation of building products and methods.
4. I seek agreement to the proposals to:
  - 4.1. require suppliers to provide consistent and quality information about their building products;
  - 4.2. allow building product suppliers, designers, and builders to be held accountable for building products and building methods and their use.
5. There will be compliance costs for suppliers of building products, which may be passed on to consumers. MBIE estimates that the cost of the average house build

would increase by \$200 as a result of the ongoing compliance from the proposed changes.

6. Offsetting these costs will be the long-term benefits once the full package of building legislative reform is implemented. These include increased confidence in building products, better quality building products and building work, fewer occasions where rework will be required to fix defects, improved consenting efficiency and, ultimately, safer and more durable buildings. Consenting delays have been estimated to cost a building owner around \$1,000 for each week of delays.

### ***Specialist frameworks for modern methods of construction and product certification***

7. Using new and innovative building products and building methods can lift productivity and reduce building costs and time. People need to have confidence and certainty that new products and methods will comply with the New Zealand Building Code (the Building Code).
8. However, a lack of clarity and confidence is creating barriers to the uptake of modern methods of construction (MMC) such as prefabrication and off-site manufacturing, and the existing product certification scheme (CodeMark), which is designed to provide assurance that products comply with the Building Code.
9. I propose to enable a manufacturer certification scheme for MMC that will allow New Zealand to realise the full potential of MMC and support the government's wider goal of improving housing supply and affordability.
10. I propose to bring the CodeMark scheme into line with recommended best practice by enabling MBIE to administer the registers of product certification bodies and product certificates.
11. These proposals will:
  - 11.1. build confidence so people know that they are using code-compliant products in a way that will result in safe and durable building work;
  - 11.2. ensure faster consenting for certified products and for work done by certified manufacturers, saving consumers time and money.
12. There was broad support from the building sector for these proposals. There will be further public consultation to ensure the detailed design of the regulatory framework for MMC will work for the sector.

### ***Building levy, offences and penalties, and public notification***

13. I propose some further amendments that will contribute to the efficiency and effectiveness of the building regulatory system by:
  - 13.1. reducing the cost of building consents that are subject to the building levy;
  - 13.2. enabling the building levy to be used by the chief executive of MBIE to fulfil its regulatory stewardship obligations for the benefit of levy payers;

- 13.3. increasing the maximum financial penalties in the *Building Act* and increasing the time for enforcement agencies to lay charges; and
- 13.4. updating the public notification requirements under the *Building Act* to reflect changes in the way people access important information.
14. MBIE has accrued a surplus of \$55.4 million in the building levy memorandum account due to sustained construction activity over the last few years. Lowering the levy rate from \$2.01 to \$1.75 (including GST) will reduce the upfront costs to successful building consent applicants.
15. Reducing the levy provides a partial offset to compliance costs associated with the rest of the legislative reform package. A levy reduction will also mean that MBIE can manage the surplus downwards over time to a level consistent with the Treasury's best practice guidelines.
16. The building levy cannot presently be used to fund MBIE's wider building sector stewardship activities, such as improving the performance of the building sector as a whole, driving the transformation of the sector and increasing collaboration. Broadening the purposes for which the levy may be used will support MBIE's role as the steward and regulator of the building sector. There was strong support for this proposal from most submitters, including territorial authorities and the construction sector.
17. Many of the offences and penalties set out in the *Building Act* have not been reviewed since 2004. As a result, they are now inconsistent with other similar regulatory regimes and insufficient to deter substandard work or poor behaviour, particularly for larger organisations.
18. I propose to increase penalties and distinguish between individuals and organisations, to better protect the public and maintain trust and confidence in the building system.
19. The *Building Act* currently allows for six months to lay a charge. This is not an adequate timeframe for complex investigations. Extending the timeframe to 12 months will give enforcement agencies sufficient time to conduct thorough investigations and aligns with similar provisions in other legislation.
20. Public notices allow the public to know about recent decisions or actions taken under the *Building Act*. I propose to remove the requirement for publishing in newspapers in the five main centres to reflect the declining reach of these types of notices.

## SECTION 1: BUILDING PRODUCTS AND BUILDING METHODS

### *There are gaps in the regulation of building products and building methods*

21. Building products are the materials used in building work. Building methods are the ways the products are used in building work.
22. Building products and building methods are changing in ways that nobody expected when the *Building Act* came into effect in 2004. There are now a variety of sophisticated and modern methods of construction – such as prefabrication and off-site manufacture – and more imported building products available.

*An estimated 600,000 building products are available in New Zealand.*

### *There is limited direct regulation of building products under the Building Act*

23. The quality of building work depends on the quality of the products used. In general, building products are only implicitly regulated through the consenting process and the way they are specified and used in building work. Stakeholders have told me this creates uncertainty about who is responsible for products used in building work, and makes it more difficult to hold people to account for product-related building defects.

### *Product information often lacks clear detail on performance*

24. People need reliable information so they can make good decisions when designing buildings, choosing and installing products, and assessing consent applications.
25. Stakeholders have said that product information is often marketing material that does not include the information designers and builders need to choose the right product, and make sure it is correctly installed and maintained. Potential liability for claims made about products discourages suppliers from providing information about how a product will perform once installed. This lack of quality information can slow down the consenting process.

*Requests for information about building products put consents on hold for an average of 21 working days. Delays in consenting have been estimated to cost a building owner around \$1,000 for each week of delays.*

*Based on MBIE data from seven building consent authorities*

### *Roles and responsibilities for building products and building methods are not clear*

26. The *Building Act* sets out the responsibilities for key parties in the building process in terms of 'building work'. Responsibilities are not explicit in relation to the products used in building work. This creates confusion and allows some parties to avoid their responsibilities or seek to shift blame.

### *MBIE does not have sufficient investigative powers to perform its functions*

27. The *Building Act* provides the chief executive of MBIE with the power to warn against or ban the use of a building product or method if the chief executive considers on

reasonable grounds that the use of the product or method has resulted, or is likely to result, in buildings or building work failing to comply with the Building Code. To date, MBIE has issued a warning about loop bars in April 2018 and a ban on foil insulation in July 2016. Both decisions were based on findings of independent investigations into other safety issues.

28. The power to issue warnings or bans is a key mechanism for preventing the use of building products or building methods that will result in non-compliant building work. However, MBIE has to rely on voluntary cooperation with requests for information when investigating concerns about building products. Investigations have been delayed or put on hold because a manufacturer or supplier refused to cooperate.

### ***Objectives of the proposals for building products and building methods***

29. The changes I propose will address gaps and weak incentives in the regulation of building products and building methods, lift the quality of building work, and provide fairer outcomes if things go wrong by:
  - 29.1. increasing the quality of information available about building products;
  - 29.2. allowing suppliers, building professionals and tradespeople to be held accountable for building products and building methods and their use;
  - 29.3. reducing the risk of product-related building defects.

### ***There was broad support for the proposals from public consultation***

30. The majority of submitters supported the proposals for building products and methods. Submitters thought the proposals would help all parties better understand their roles and would support good decision-making. Monitoring and enforcement were seen as critical for the success of the reforms.

### **Strengthening the regulation of building products and building methods**

#### ***Proposal 1: Widen the purpose of the Building Act and have separate definitions for building products and building methods***

31. I propose to amend the *Building Act* to:
  - 31.1. widen the purpose of the *Building Act* to explicitly include the regulation of building products and building methods;
  - 31.2. include separate definitions for 'building product' and 'building method' that are clear and can be distinguished from each other;
  - 31.3. enable the inclusion and exclusion of items in the definitions of 'building product' and 'building method' by regulation.
32. The definitions proposed in the discussion paper have been revised to remove ambiguity identified by some stakeholders. The proposed definitions are:

- 32.1. **building product:** any component or combination of at least two components supplied and intended to be used together that could reasonably be expected to be incorporated into building work
- 32.2. **building method:** a specific way of using a product in building work.

### *Rationale*

- 33. Including the regulation of building products and building methods in the purpose of the *Building Act* will reflect their importance in the overall quality of building work. It will also reinforce the shift in focus this package of proposals represents – from regulating building work, to regulating both building work and the products and methods used in that work. Clear definitions are needed to support new obligations set out in the other proposals.
- 34. Enabling items to be included or excluded by regulation will 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. I do not expect to include or exclude items by regulation when the legislation initially comes into effect.

### ***Proposal 2: Require suppliers of building products to comply with building product information requirements***

- 35. I propose to amend the *Building Act* to require suppliers of building products to comply with information requirements for the products they supply. These requirements broadly align with provisions for Consumer Information Standards under the *Fair Trading Act 1986*.
- 36. Obligations would apply to any person that supplies a building product to the New Zealand market, such as local manufacturers, importers, distributors and retailers of building products, including online retailers. This includes any person importing a product on behalf of another person (such as a developer or builder importing a product on behalf of the building owner), but not those importing building products for their own use or selling products that had been previously installed in their own home (for example, selling pre-used products after a renovation).
- 37. Local manufacturing and importing suppliers of building products would have an additional obligation to ensure product information is not false or misleading, and must not make unsubstantiated representations.
- 38. I propose to enable the following matters to be prescribed by regulations:
  - 38.1. the minimum prescribed information that must be provided about building products [an indicative list is provided in Annex 1]. Additional requirements could be added by regulation later, such as information on the energy embodied in the product, thermal performance, or instructions on how to recycle or dispose of the product;
  - 38.2. the manner and form in which the information must be provided (for example, on a freely accessible website, in hard copy with the product, or by providing a link or other means by which the information may be easily accessed);

- 38.3. conditions or additional requirements on the supply of the information, such as a requirement to provide information in hard copy if requested or the placement of information on a website, the length of time that information must be accessible, and/or requirements for updating and maintaining information;
- 38.4. minimum information requirements for different classes or types of product;
- 38.5. information requirements for different classes or types of supplier;
- 38.6. exemptions for certain suppliers, products, or classes or types of suppliers and products from the obligations to comply with product information requirements.

### Enforcement

- 39. I propose to provide MBIE with a power to issue a notice to a supplier to take corrective action, if satisfied on reasonable grounds that the supplier is not complying with their obligations. The notice must be in writing, state the action required (for example, to comply with the obligations or remedy a defect in the information) and specify a reasonable timeframe within which to comply.
- 40. Proposed offences and fines are set out in the table below. The proposed offences and fines are based on existing offences under the *Fair Trading Act*.

Offence	Type of offence	To apply to	Maximum fine
<b>Failure to comply with the building product information requirements under the <i>Building Act</i> or regulations</b>	Infringement offence	Any supplier of building products ( <i>for one-off or lower level offending</i> )	Infringement fee to be set by regulation at \$1,000.
<b>Failure to comply with the building product information requirements under the <i>Building Act</i> or regulations</b>	Strict liability offence Defences to prosecution similar to those in section 44 of the <i>Fair Trading Act</i> .	Any supplier of building products ( <i>for repeat or large-scale non-compliance</i> )	\$10,000 for individuals and \$30,000 for any other person
<b>Failure to comply with a notice to take corrective action</b>	Strict liability offence	Any supplier of building products	\$10,000 for individuals and \$30,000 for any other person
<b>False or misleading statement, or unsubstantiated representation about a building product</b>	Strict liability offence Defences to prosecution similar to those in section 44 of the <i>Fair Trading Act</i> .	Manufacturing and importing suppliers of building products	\$200,000 for individuals and \$600,000 for any other person

## *Rationale*

41. This proposal will ensure that those who use building products have access to information to support good decisions about the specification, use, installation, inspection and maintenance of building products, and can be held to account for their decisions. Consistent information will make it easier for people to compare and choose new and innovative products.
42. The proposal creates a level playing field for all suppliers, and addresses perverse incentives that discourage suppliers from making claims about product performance.
43. Prescribing building product information requirements in regulations allows flexibility to amend requirements in response to the needs of the users of building products, and as technology and the complexity of products available changes.
44. Enabling regulations to set different requirements for different classes or types of products or suppliers ensures requirements can be set that appropriately accommodate the wide range of products and suppliers.
45. The obligations for different classes or types of suppliers recognise the different roles in the system. Those higher in the supply chain have access to the evidence to provide and substantiate information, but any person who supplies a building product is still required to carry out due diligence to confirm that the minimum product information requirements have been met. Prescribed defences to prosecution reflect these different roles, and allow people to rely on credible information provided by others in the supply chain.
46. Enabling exemptions from requirements is necessary to ensure new requirements do not duplicate other regulatory requirements or where compliance is not practical. For example, dealers of recycled building products may be exempt if the original information about the product either does not exist or is no longer relevant, and they would otherwise have to individually test each product.

## *Impact*

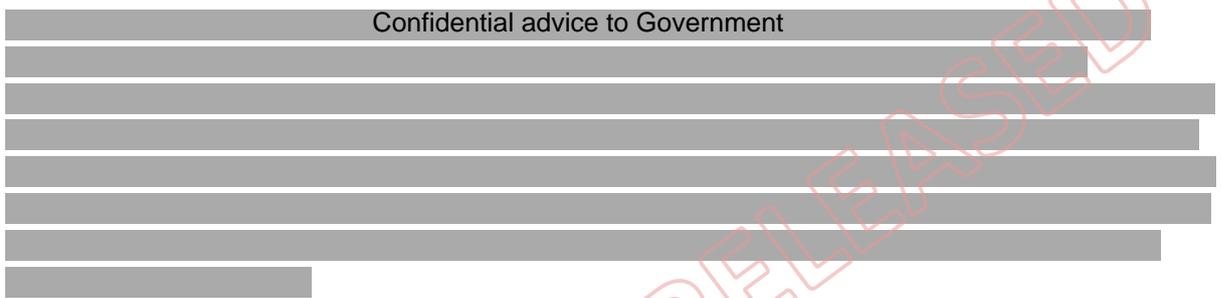
47. There will be one-off and ongoing compliance costs for those suppliers who need to make changes in order to comply with the proposed building product information requirements. If these costs are passed onto consumers, MBIE estimates that the cost of the average house build would increase by \$200<sup>1</sup>.
48. Although the information requirements may create a barrier for new products to enter the market, it will make it easier for new and innovative products to compete with established products, by allowing easier comparisons.
49. Some suppliers may choose not to supply the New Zealand market rather than comply. However, consultation found that some suppliers already provide similar or

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<sup>1</sup> Based on estimates provided by suppliers that submitted on the reforms, Statistics New Zealand data on the value of consents, and estimates by the Australian Building Codes Board and Deloitte on the cost of building products as a percentage of the total build cost of a new home.

more information than the proposed minimum requirement<sup>2</sup>. It is intended that this will include only information that a supplier would be reasonably be expected to hold, and will align with requirements in other jurisdictions where possible.

50. Offsetting these costs will be the longer term benefits once all the reforms are fully implemented. These benefits include increased confidence in building products, better quality building products and building work, fewer occasions where rework will be required to fix defects, more efficient consenting and, ultimately, safer and more durable buildings.

51.  Confidential advice to Government

52. A summary of the expected impacts is provided in the table below:

Party	Impacts
<b>Manufacturers and importers</b>	<ul style="list-style-type: none"> <li>• Level playing field for those who already provide information and for suppliers of new and innovative products.</li> <li>• Obligation to ensure information is accurate and products are fit for purpose, as they can be held to account if the products do not match the claims made in the information provided.</li> <li>• Additional costs to collate and provide information for those who do not do so already.</li> </ul>
<b>Retailers</b>	<ul style="list-style-type: none"> <li>• Able to make informed choices about the products they decide to stock.</li> <li>• 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.</li> <li>• Access to information to provide advice to customers on product choice, and installation and maintenance requirements.</li> <li>• Potential compliance cost to confirm that product information has been provided for the products they stock.</li> </ul>
<b>Designers</b>	<ul style="list-style-type: none"> <li>• Easy access to information about all building products to help them specify the right products for the job, or identify an appropriate substitute product.</li> <li>• Fewer requests for information from BCAs and consenting delays.</li> </ul>

<sup>2</sup> The consultation document asked manufacturers and suppliers to indicate how closely the proposed minimum building product information requirements reflect what they already provide. Of the 45 online responses to this question, 29 (64 per cent) indicated that the information they currently provide is similar to or more than the proposed minimum requirements.

Party	Impacts
	<ul style="list-style-type: none"> <li>• Able to be held to account for specifying products that will result in building work not complying with the Building Code.</li> <li>• Greater confidence to specify new or innovative products as they will have the information to determine if the use of those products will comply with the Building Code and greater certainty that the specification of these products will be accepted by BCAs.</li> </ul>
<b>Builders</b>	<ul style="list-style-type: none"> <li>• Better quality building work, more satisfied homeowners, and fewer inspection failures or need to fix product-related defects as they: <ul style="list-style-type: none"> <li>○ understand their responsibilities for the use of building products and know they will be held to account for poor choice of product or poor installation of a product</li> <li>○ have easy access to information to choose the right products, install them correctly, and advise the homeowner of any maintenance requirements.</li> </ul> </li> <li>• May see a small increase in the cost of building products, passed on from manufacturers and importers. These costs are likely to be passed on to the homeowner.</li> </ul>
<b>BCAs</b>	<ul style="list-style-type: none"> <li>• Consenting will be more efficient as BCAs will: <ul style="list-style-type: none"> <li>○ have more confidence in the quality of the design and building work, as they know that manufacturers and importers can be held to account for the quality of building products and building product information, and builders can be held to account for not following plans or suppliers' installation instructions</li> <li>○ have easy access to information about products they are not familiar with to determine code-compliance</li> <li>○ have less need to issue requests for information, inspection failures or notices to fix.</li> </ul> </li> </ul>
<b>Homeowners and the wider public</b>	<ul style="list-style-type: none"> <li>• Greater confidence in the quality of building work, and reduced risk of product-related building defects and consenting delays.</li> <li>• Confidence that suppliers, designers and builders can be held to account for product-related building defects.</li> <li>• Greater choice of products, including confidence to use new or innovative products.</li> <li>• Access to the information they need to ensure products are correctly maintained to ensure durability.</li> <li>• Potential increase in the cost of building products, passed on from manufacturers and importers. MBIE estimates this could add \$0.30 to a price of a product that currently sells for \$100.</li> </ul>

*I do not propose to establish a building products register at this time*

53. A number of key stakeholders, including the Confidential advice to Government  
[REDACTED]  
[REDACTED] made submissions in support of a register of building products. While a national register could make it easier to find information about

building products, it would need to be up-to-date to deliver real benefits. Given the number of building products available (estimated to be over 600,000) it would be very costly to ensure that the register is regularly updated.

54. There are already a number of privately-provided building product databases in New Zealand, including EBOSS, GS1 New Zealand, miproducts, Masterspec and Productspec. I have asked officials to monitor how the market responds to the reform programme and advise me if any further intervention is necessary.

**Proposal 3: Clarify the existing responsibilities for manufacturers, suppliers and builders**

55. I propose to amend the outline of responsibilities under the *Building Act* to clarify the responsibilities of manufacturers, suppliers and builders<sup>3</sup> in relation to building products, as shown in the table below. Clear responsibilities will ensure all parties know what is expected of them and others, and can be held to account where appropriate.

Party	Current responsibility	Proposed amendment	Rationale
<b>Product manufacturers or suppliers</b>	<ul style="list-style-type: none"> <li>Must ensure the product complies with any claims made by the manufacturer or supplier about how the product will comply with relevant provisions of the Building Code.</li> </ul>	<ul style="list-style-type: none"> <li>Outline the proposed new obligation to comply with minimum building product information requirements.</li> </ul>	<ul style="list-style-type: none"> <li>Consequential amendment to reflect new requirements (refer Proposal 2 for rationale).</li> </ul>
<b>Builders<sup>5</sup></b>	<ul style="list-style-type: none"> <li>Must ensure that building work complies with the building consent and the Building Code.</li> </ul>	<ul style="list-style-type: none"> <li>Clearly outline their responsibility to ensure products used in building work comply with the relevant building consent and the Building Code, as appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>Lift quality of building work and reduce risk of inspection failures or need for rework, by ensuring builders understand their responsibilities include the decisions they make about building products and how they are installed.</li> </ul>

**Proposal 4: Enable the chief executive of MBIE to require information to be provided in order to determine whether to issue a warning or ban a building product or method**

56. I propose to amend the *Building Act* to enable the chief executive of MBIE to issue a notice requiring any person to provide information or documents of any kind that the chief executive considers necessary for the purpose of determining whether to issue

<sup>3</sup> The *Building Act* defines a builder as anyone who carries out building work, whether in trade or not. It includes carpenters, plumbers and other tradespeople.

a warning or ban of a building product or method. The notice would need to be in writing, state the information or documents that must be provided and how, and set a reasonable deadline for providing the information.

57. Failure to provide information or documents by the date specified in the notice would be an offence subject to a maximum fine on conviction of \$50,000 for individuals and \$150,000 for other persons (such as body corporates).
58. I propose to enable the chief executive of MBIE to share information or documents received using this new power with BCAs, territorial authorities, the Commerce Commission, Trading Standards (MBIE), WorkSafe, the Environmental Protection Authority, the Ministry of Health, the New Zealand Customs Service, and any other regulatory bodies with functions relating to the safety of buildings or products, hazardous materials, drinking water and sanitation, fair trading and the regulation of occupational groups in the building and construction sector.
59. Information or documents would be shared, on a case-by-case basis, if there is evidence indicating:
  - 59.1. a building product itself might be unsafe or pose a hazard (to people or the environment), or where its use in building work may present risks to the health and safety of building occupants;
  - 59.2. a person made false, misleading or unsubstantiated claims about a building product;
  - 59.3. non-compliance by a regulated building professional with minimum standards for registration or licensing.
60. Examples of the type of information that might be shared are provided in Annex 2.

#### *Rationale*

61. The power to warn against or ban the use of a building product is a critical tool to prevent the use of building products or methods that will likely result in non-compliant building work.
62. The power to require information will bring MBIE's investigation powers into line with those of other bodies responsible for health and safety, and consumer protection, and ensure MBIE can access the evidence it needs to confidently issue warnings or bans when required.
63. The power to share information and documents ensures the appropriate regulatory body can take action to prevent, mitigate or rectify the use of unsafe building products, and hold product suppliers and regulated professionals to account.

#### *Impact*

64. The power to require a person to provide information or documents of any kind potentially limits the right to be secure against unreasonable search and seizure under section 21 of the *Bill of Rights Act 1990*.

- 65. The threshold for use of the power – that it is necessary to determine whether to issue a warning or ban – provides a safeguard on the exercise of the power.
- 66. MBIE expects compliance costs will be minimal as the person subject to the notice should already hold the information. It is not intended that MBIE would use this power to require a person to create completely new information, such as further testing data.
- 67. Overall, the proposal provides the sector with confidence that non-compliant building products and building methods can be identified and addressed.

**SECTION 2: SPECIALIST FRAMEWORKS FOR BUILDING PRODUCTS AND BUILDING METHODS**

**Modern methods of construction**

*There are opportunities for the construction sector*

Use of prefabrication in New Zealand is low, at 10% of building components for non-residential and 35% for new housing.

This compares to 80% in some parts of Europe, where many countries have industry-led certification schemes.

BRANZ estimates

- 68. The building and construction sector is making use of manufacturing technology and processes to increase its productivity. Modern methods of construction include prefabrication such as off-site construction of pods or whole buildings. It tends to use processes that are precise, repeatable and consistent. The use of modern construction methods has the potential to transform New Zealand’s building system to operate more efficiently and better meet housing needs.
- 69. The proposals below prioritise supporting a scaling-up of the use of off-site construction. They will also future-proof the regulatory environment to remove barriers to the use of emerging construction technologies, such as automated onsite building innovations like brick-laying robots or 3D concrete printers.

Area	Potential benefits
<b>Safer working conditions</b>	<ul style="list-style-type: none"> <li>• Prefabricated buildings require less machinery, tools or equipment to install.</li> <li>• Tradespeople have increased safety when working at height.</li> <li>• Production lines used in off-site construction can reduce or eliminate overlap amongst trades.</li> </ul>
<b>Production efficiency</b>	<ul style="list-style-type: none"> <li>• A single production site can manufacture consistent quality in volumes that traditional on-site building cannot.</li> <li>• Automated technologies can also deliver benefits of greater precision on site.</li> <li>• Off-site construction can occur in parallel with on-site preparation, which provides time savings and reduces weather delays.</li> </ul>

	<ul style="list-style-type: none"> <li>• There is a shorter period of construction on site, reducing the impact on residents in surrounding properties.</li> </ul>
<b>Environmental benefits</b>	<ul style="list-style-type: none"> <li>• Off-site construction can reduce material waste by using production software to accurately calculate resource requirements.</li> <li>• Running multiple construction projects at the same time in one location reduces the impact of workforce travel.</li> </ul>

**A European environmental evaluation found the benefits of prefabricated systems included:**

- **30% to 60% reduction of time spent on site through a more efficient coordination of the different construction packages**
- **50% reduction in the quantity of water used in comparison to a traditional construction**
- **50% reduction of the quantity of material utilised and produced by excavations**
- **up to 80% reduction of waste materials generated during on site works**

<b>Increased workforce opportunities</b>	<ul style="list-style-type: none"> <li>• Off-site construction can offer employment opportunities to a more diverse range of workers, because factories and automated processes can provide increased oversight of lower skilled workers.</li> </ul>
<b>Affordability</b>	<ul style="list-style-type: none"> <li>• Off-site construction can assist with affordability for those entering the housing market. Coordinated procurement and production can result in cost savings estimated to remove between \$20,000-\$40,000 for a standard house build.</li> </ul>

*Consenting for off-site construction can be inconsistent and inefficient*

70. The provisions in the *Building Act* reflect traditional roles and processes, and are not clear about how non-traditional building methods should be treated. This leads to:

70.1. **Inconsistency:** different BCAs employ different processes for consenting off-site construction, and require different documents and inspections. While some BCAs are willing to rely on information from a manufacturer not located in their territory about how their product is produced and quality is assured, other BCAs perform in-person factory inspections. This inconsistency leads to uncertainty for the sector about the consenting process that will be followed and how long it will take. Anecdotally, this uncertainty makes it less appealing to enter the New Zealand market.

70.2. **Duplication of effort:** manufacturers typically perform quality assurance and quality control tasks throughout their production. Many BCAs then duplicate these checks, rather than relying on evidence from the manufacturer that these processes are in place. A manufacturer producing buildings for different regions may have many different BCAs performing the same checks on their production facilities, because each BCA requires in-person inspections of the building work. This duplication of effort can lead to time delays and extra costs for developers and consumers.

71. Existing settings that enable faster consenting for products that have third party assurance and for repeatable designs (CodeMark and MultiProof) are not enough to effectively support the scaling up of off-site manufacturing. They do not cover the end-to-end manufacturing process or provide assurance that the building work occurring in a manufacturing setting meets expected standards.

*A manufacturer certification scheme is required to support the scaling up of off-site construction*

72. Introducing a new certification scheme to provide an alternative end-to-end pathway for manufacturers could remove unnecessary duplication and delays from the consenting process. A number of overseas markets, with more established off-site construction supply chains, have similar certification schemes in place, including:
- 72.1. Canada: certification scheme for modular and off-site manufacture;
- 72.2. Singapore: Prefabricated Prefinished Volumetric Construction certification.
73. The scope and approach of the schemes vary from country to country, but common elements can be adapted to create a scheme appropriate for New Zealand's context. Common features of these schemes include checks to ensure the manufacturer has appropriate quality management systems, plant and design capabilities, human resource requirements, and quality control processes in place.
74. These overseas schemes are designed to streamline consenting and provide clarity to industry, while ensuring safe, durable construction. Adoption of a similar scheme would assist New Zealand to better utilise off-site construction to meet current housing demand and support the government's wider goals of improving housing supply and affordability.

***Objectives of the proposals to better enable the use of modern methods construction***

75. Introduction of a new certification scheme aims to promote a more efficient regulatory system and a high performing building sector by providing a regulatory process that people in the industry can have confidence in.

***There is broad support for proposed changes to enable innovative and new ways of building***

76. The majority of submitters supported the proposal. Only a small number of submissions on this proposal came from manufacturers or suppliers. However, a key sector body, PrefabNZ, viewed the proposals positively.

***Proposal 5: Establish a new manufacturer certification scheme targeted at better enabling the use of modern methods of construction under the Building Act***

77. I propose that a manufacturer certification scheme be established under the *Building Act* to provide an alternative consenting pathway for modern methods of construction. The proposed scheme would be voluntary; manufacturers can decide whether to participate in the scheme or use the traditional consenting pathway.
78. The main features of the proposed scheme are:

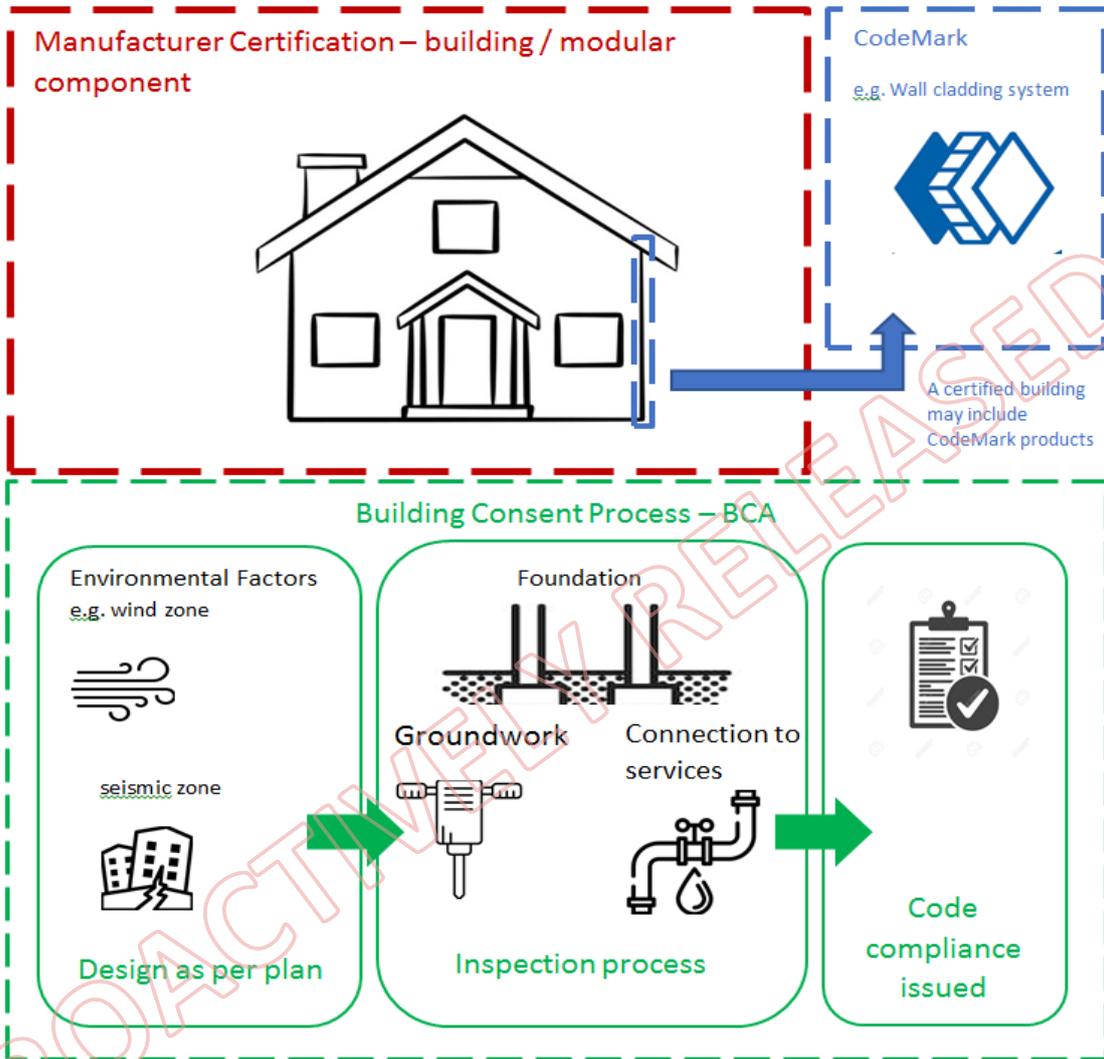
- 78.1. **Certification of manufacturers** – the scheme would certify manufacturers, rather than individual products, based on their manufacturing, quality assurance and transport processes, and the competence of their staff.
- 78.2. **‘Deemed-to-comply’ pathway** – the scheme would provide a ‘deemed-to-comply’ pathway for off-site construction undertaken by certified manufacturers. BCAs must accept off-site construction produced by a certified manufacturer as complying with the Building Code, in line with their approved scope of certification. This means a BCA’s role would be limited to onsite checks of ground works and installation.
- 78.3. **Clearly defined scope of certification** – certification would occur for a defined scope of practice, setting the boundaries within which manufacturers in the scheme would operate. Likely scopes of practice are: design and manufacture, manufacture, or design only. The scope of practice would dictate the requirements a manufacturer would need to demonstrate to achieve and maintain a certification.
79. The proposed scheme is based on widely accepted construction conformance approaches. Conformance is the process of determining whether a particular product, system or service meets a standard or complies with a regulation. Conformity assessments are undertaken by technical experts, inspection bodies and certification bodies, who refer to standards when testing, inspecting safety equipment, calibrating measurements, or auditing quality systems. Conformity assessment bodies issue reports and certificates of compliance.
80. The conformity approach will also enable overseas suppliers to produce homes for the New Zealand market, using audit and inspection processes to ensure that their designs and building work meet our standards and comply with the New Zealand Building Code.
81. Further stakeholder engagement and sector consultation will be undertaken to confirm the details of the scheme. It is likely that the proposed scheme will mirror the approach taken for the current product certifications scheme and would have similar roles and responsibilities set out in legislation:

<b>Roles</b>	<b>Responsibilities/Powers</b>
<b>Certification body</b>	<ul style="list-style-type: none"> <li>• Certifies manufacturer</li> <li>• Audits manufacturer</li> <li>• Suspends or revokes certification of manufacturer</li> <li>• Charge fees for their services</li> </ul>
<b>Accreditation body</b>	<ul style="list-style-type: none"> <li>• Accredits certification body</li> <li>• Audits certification body</li> <li>• Suspends or revokes accreditation of certification body</li> <li>• Charge fees for their services</li> </ul>
<b>MBIE</b>	<ul style="list-style-type: none"> <li>• Appoints accreditation body, or performs the role of the accreditation</li> </ul>

	<p>body</p> <ul style="list-style-type: none"> <li>• Investigates <ul style="list-style-type: none"> <li>○ Certification body</li> <li>○ Manufacturers</li> </ul> </li> <li>• Registers <ul style="list-style-type: none"> <li>○ Accredited certification body</li> <li>○ Certified manufacturers</li> </ul> </li> <li>• Suspends or revokes <ul style="list-style-type: none"> <li>○ certification of manufacturer</li> <li>○ accreditation of certification body</li> </ul> </li> <li>• Charge fees for their services</li> <li>• Prescribe fees that the accreditation body can charge</li> </ul>
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82. A manufacturer who chooses to be certified under the scheme would apply to a certification body to be assessed. The certification body would assess the manufacturer's processes, including its quality assurance processes, based on prescribed criteria and standards to ensure the manufacturer has the capability, experience and robust processes to produce code compliant products off-site. The certification body must also audit certified manufacturers regularly.
83. Certification audits are typically conducted every one to three years, with the rate determined by the perceived risk level. More frequent audits may occur when a manufacturer is first certified, if concerns have been raised about the manufacturer, if an audit is failed, or when other risk factors are present and the regulator wants to ensure these are appropriately monitored and managed.
84. A building consent would still be required from the BCA responsible for the area where the building, or parts of the building (such as a bathroom pod), would be installed. The BCA would have oversight of any site-specific work (eg foundations and connection to services) and installation. BCAs would also have oversight of any parts of the build that are not covered by the manufacturer certification scheme, such as if a building only had a kitchen pod constructed off-site by a certified manufacturer while the rest of the house was built on site.
85. Figure 1 below shows how the proposed manufacturer certification scheme would interact with the consenting process and the existing product certification scheme (CodeMark).

Figure 1: how the manufacturer certification scheme would interact with existing processes



86. I propose to create three new offences and penalties to support the effective operation of the manufacturer certification scheme and help hold certified manufacturers, accreditation bodies and certification bodies to account. The proposed offences and penalties are set out in the table below:

Offence	Type of offence	To apply to	Maximum fine
<b>False or misleading statement about being an accreditation body or a certification body</b>	Strict liability offence Defences to prosecution aligned to section 388 of the <i>Building Act</i> .	Certification and accreditation of manufacturers of modular components.	\$50,000 for individuals and \$150,000 for any other person
<b>Performing the functions of an accreditation body or a certification body without authorisation</b>	Strict liability offence Defences to prosecution aligned to section 388 of the <i>Building Act</i> .	Certification and accreditation of manufacturers of modular components.	\$300,000 for individuals and \$1,500,000 for any other person

<b>Failure to comply with the duties of a certified manufacturer</b>	Strict liability offence  Defences to prosecution aligned to section 388 of the <i>Building Act</i> .	Certification and accreditation of manufacturers of modular components.	\$50,000 for individuals and \$150,000 for any other person
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87. This will help ensure that each party fulfils their roles and responsibilities with the required level of competence, and will create a deterrent for misinformation that could undermine confidence in the building market.
88. The proposed penalties have been aligned with similar offences and penalties within the *Building Act* and are comparable to the offences for performing the duties of a BCA without authorisation. The penalties have been assigned based on the possible consequences of these behaviours, in line with the broader work on offences and penalties discussed in Section 3.

*Rationale*

89. Safe, healthy homes play a crucial role in the wellbeing of New Zealanders. The houses we build must be durable and suitable for the New Zealand environment, to protect the people who will live in them and the associated financial investment. Introduction of a third-party certification scheme for modern methods of construction will help ensure buildings produced comply with the Building Code.
90. A manufacturer certification scheme would assist New Zealand to better use off-site construction to meet current housing demand. Prefabrication and production line approaches can help use limited resources more efficiently, supporting the industry to meet demand within existing constraints.
91. As new building technologies and processes emerge, the scheme could be adapted to enable appropriate certification of these innovative approaches, thus future proofing New Zealand’s building system.

*Impact*

92. There will be compliance costs for those manufacturers who choose to seek and maintain certification. Offsetting these costs will be the longer term benefits once all the reforms are fully implemented. These benefits include increased confidence in off-site construction, a faster and more efficient consenting process, decreased construction costs, and reductions in construction defect rates and the associated remediation costs. A summary of the expected impacts is in the table below:

Party	Impacts
<b>Manufacturers and importers</b>	Manufacturers will have clarity about the required standards, and requirements of certification. Manufacturers who already have established systems in place to ensure quality construction will be able to have third-party certification.  Additional costs to collate and provide information for those who do not already do so are offset by the advantages of a faster and more certain consenting process.

<b>BCAs</b>	Consenting will be more efficient as BCAs will: <ul style="list-style-type: none"> <li>• have a reduced role in consenting off-site building work when it is covered by certification</li> <li>• focus on inspection of on-site work, and traditional building work.</li> </ul>
<b>Homeowners and the wider public</b>	Greater confidence in the quality of off-site construction and reduced uncertainty about consenting delays.

## Product certification

*A lack of confidence about certification of building products is preventing efficiency gains for new building products*

93. Product certification plays a valuable role in the building regulatory system by providing assurance that a product complies with the Building Code. It supports better decision-making to ensure building work is safe and durable and helps to build confidence in construction quality. Product certification is suitable for any building product, but is particularly beneficial to manufacturers and suppliers of products and methods that are new to the market or that would have serious consequences if they failed.
94. The existing product certification scheme under the *Building Act* is CodeMark. Cabinet has recently approved changes to regulations to strengthen the performance of CodeMark within the existing settings in the *Building Act* [LEG-19-MIN-0129 refers]. I signalled at that time that there were further changes needed to the legislative settings to ensure CodeMark is robust and credible.

*More effective product certification will help increase stakeholder confidence*

95. Currently, the *Building Act* does not give MBIE the tools needed to ensure that product certification is fit for purpose. The scheme relies on certificates issued by a product certification body (PCB) that has been accredited by a product certification accreditation body (PCAB). The PCAB and the chief executive of MBIE can suspend or revoke a PCB or certificate for prescribed reasons under the *Building Act* but this can only occur after the PCB or certificate is first registered.
96. In practice, a suspension is usually followed by a revocation. The PCB and certificate holder must be provided with a reasonable opportunity to rectify the matters that led to the suspension. There is no prescribed process or timeframe for meeting this requirement. This can result in delays during which poor certificates and PCBs remain active, leading to less confidence in product certificates generally, and potentially lower quality building work because of the assumed compliance.

## **Objectives of the proposals to strengthen the framework for product certification**

97. The section below outlines proposals to strengthen the framework for product certification. Proposals are intended to:
- 97.1. prevent the registration of unsuitable PCBs and product certificates;
  - 97.2. ensure PCBs have adequate policies, procedures and systems in place;
  - 97.3. give MBIE the tools it needs to be an effective scheme owner;
  - 97.4. align with regulatory best practice.

### ***Proposal 6: Give MBIE the power to effectively administer the registers of product certification bodies (PCBs) and product certificates***

#### *Product Certification Bodies*

98. The accreditation and registration processes for product certification schemes do not align with other accreditation and registration processes in the *Building Act*. I propose to set the following registration requirements for PCBs:
- 98.1. meeting the prescribed standards, criteria, policies, procedures and systems for registration;
  - 98.2. holding a current accreditation from a PCAB;
  - 98.3. providing the prescribed application information.
99. A PCB will need to be entered onto the register before it can issue product certificates.
100. Currently PCBs and certificates are subject to regular audits. Registration would remain continuous as long as PCBs and certificates continue to demonstrate that they meet the registration requirements.

#### *Product Certificates*

101. I propose to set the following registration requirements that product certificates must meet after they are issued by a PCB and before they are registered by MBIE's chief executive:
- 101.1. the certificate meets the prescribed criteria and standards for certification;
  - 101.2. the certificate meets the prescribed content for product certificates;
  - 101.3. the certificate is on the prescribed form (if any).
102. BCAs would not be required to accept that a product certificate demonstrates compliance with the Building Code until the product certificate is placed on the register.

### *Other proposed new powers*

103. I propose to give MBIE's chief executive the power to actively manage the registers, including enabling the chief executive to audit PCBs, carry out investigations into complaints against PCBs and product certificates, and suspend or revoke the registration of PCBs and product certificates where they no longer meet the registration requirements.

### *Rationale*

104. It is best practice for the regulator of a conformity assessment scheme like CodeMark to control the scheme's registers, particularly as there is a statutory obligation imposed on other parties to accept the contents of the register. Given the risk posed by using a product that does not comply with the Building Code, a broader range of factors should be considered as part of the registration process for PCBs and product certificates than simply whether the PCB meets the prescribed criteria and standards for accreditation. Specific registration requirements are needed to ensure the quality of product certificates when they are issued by PCBs.
105. With these changes, MBIE will be better able to take active steps to deal with poor performing PCBs and improve the quality and consistency of product evaluation and certificates.

### *Impact*

106. These changes will contribute to the overall goal of increasing confidence in product certification, supporting efficient consenting, and safe and durable building work by:
  - 106.1. improving the technical competency and consistency of product evaluation and certificates;
  - 106.2. preventing the registration of unsuitable PCBs and product certificates, ensuring only those with adequate performance and who meet specific requirements are able to operate in this scheme and make decisions on code compliance;
  - 106.3. allowing for speedier resolution of concerns impacting the credibility of the scheme;
  - 106.4. aligning the scheme with regulatory best practice.
107. These changes may exclude some potential PCBs from entry into the scheme, potentially limiting the pool of PCBs. However, due to the risk posed by poor product certification, my view is that any party excluded from the scheme on these grounds should not have been part of the scheme.
108. There will be a minimal operational cost for MBIE in the transition years (estimated at \$58,000) and ongoing costs of approximately \$14,000 thereafter for annual registration and annual audits. MBIE will develop a cost recovery model for registration, but is confident that costs will be minor and proportionate to the benefits to public safety. The costs to PCBs to ensure they have the correct processes and systems should be minimal because good PCBs would already have these in place.

**Proposal 7: Enable MBIE to make rules for product certification schemes**

109. The *Building Act* does not provide a mechanism for MBIE's chief executive to make rules for product certification schemes<sup>4</sup>. I propose to enable MBIE's chief executive to make rules for product certification schemes that would:
- 109.1. govern interactions between parties (PCAB, PCBs, certificate holders, and MBIE);
  - 109.2. prescribe the systems, policies, and procedures for parties to follow, including for managing complaints.
110. Rules would be made by notice after consultation with affected parties.

*Rationale*

111. The rules would prescribe the processes parties must follow in carrying out their activities to ensure procedural consistency across the scheme and would be backed by an obligation in the *Building Act* to comply with rules. Failure to comply with the rules would be grounds to suspend or revoke registration (for both PCBs and certificates).

**Proposal 8: Create offences and penalties to protect the scheme from misrepresentation**

112. I propose to create new offences and penalties as follows:
- 112.1. An offence for an unregistered person to hold themselves out as a registered PCB. The proposed maximum fine liable upon conviction would be \$50,000 for an individual and \$150,000 for other persons.
  - 112.2. An offence for an unregistered PCB to issue a certificate or to make a claim that implies that a product has been evaluated or certified under the scheme. The proposed maximum fine liable upon conviction would be \$300,000 for an individual and \$1,500,000 for other persons.

*Rationale*

113. The first offence above creates a deterrent for misinformation that could be detrimental to confidence in the CodeMark product certification scheme. The second offence creates a deterrent for fraudulent behaviour that could result in serious risk to health and safety that is comparable to someone performing the functions of a BCA without appropriate assessment. The penalties have been assigned based on the possible consequences of these behaviours, in line with the broader work on offences and penalties discussed in Section 3.

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<sup>4</sup> There are CodeMark Scheme Rules that were developed by the Australian Building Codes Board, in consultation with the Department of Building and Housing, in 2009 for the CodeMark Product Certification Scheme. These rules are out of date and cannot be updated to reflect the way CodeMark operates in New Zealand.

## *Impact*

114. Introducing these offences is intended to act as a deterrent, protecting the reputation of the scheme and protecting the public from harm that could be caused by fraudulent certificates.

## **SECTION 3: THE BUILDING LEVY, OFFENCES AND PENALTIES, AND PUBLIC NOTIFICATION**

### ***Opportunities to improve the efficiency and effectiveness of the regulatory system***

115. This section sets out further proposals to improve the efficiency and effectiveness of the building regulatory system.

### ***Objectives of the proposals for the building levy, offences and penalties, and public notification***

116. My objectives are to improve the efficiency and effectiveness of the building and construction regulatory system by:
- 116.1. supporting a high-performing building sector and quality building work through MBIE's stewardship responsibilities;
  - 116.2. reducing the over-collection of the building levy and providing clarity on the threshold for when it applies;
  - 116.3. providing greater incentives to comply with the *Building Act* and produce quality building work;
  - 116.4. recognising more fit-for-purpose methods for ensuring the public are informed about the exercise of powers under the *Building Act*.

### **Amendments to the building levy**

*The building levy is used to fund the functions of MBIE's chief executive*

117. The building levy is paid by applicants who are granted a building consent for building work with an estimated value above the specified threshold of \$20,000 (including GST). The threshold does not reflect the 2010 increase in GST from 12.5 per cent to 15 per cent. The current levy rate is set at \$2.01 (including GST) for every \$1,000 of consented building work. Both the levy rate and levy threshold are set in regulations.
118. Since the levy was last reviewed, activity in the building sector has significantly increased, generating a surplus of \$55 million in the building levy memorandum account as at the end of 2018/19. Based on current settings, this surplus is projected to rise further. A surplus means that this money is not being used for more productive purposes, which is inefficient and out of line with the Treasury's best practice guidance that memorandum account balances should trend towards zero.

119. Some BCAs are using different thresholds for the building levy. When the rate for GST was increased in 2010, most BCAs interpreted the threshold as having increased to \$20,444. Some BCAs still use the old threshold of \$20,000, as set in the *Building Levy Order 2005*. The use of different threshold amounts creates confusion and disparities between regions.
120. The building levy is used to fund the costs associated with MBIE's chief executive fulfilling their functions under the *Building Act*. These functions include operational policy advice and service design, service delivery, information and education, compliance and enforcement, and monitoring. Building levy payers benefit from these functions through MBIE's ability to regulate the industry in designing and building safe and durable buildings.
121. Since the *Building Act* was written, the government's expectations for stewardship have increased. However, the building levy cannot specifically be used to fund MBIE's wider building sector stewardship activities, which include actively planning for, and managing, the building sector's medium to long term interests, such as the Construction Sector Accord. It involves adopting a whole-of-system, lifecycle view of regulation and taking a proactive, collaborative approach to the monitoring and oversight of the building sector as a whole.

***Proposal 9: Reduce the rate of the building levy***

122. I propose to reduce the rate of the levy to \$1.75 (including GST) per \$1,000 spent above the minimum estimated value of building work. This will directly benefit levy payers, who will pay less per building consent.

*Rationale*

123. My proposal reflects the best practice guidelines published by the Treasury within Circular 2011/10: Guidance for the Operations of Departmental Memorandum Accounts. It also reflects the consultation feedback I received where some concerns were raised with the initial proposal to reduce the levy to \$1.50.
124. A reduced levy rate of \$1.75 will still contribute to a reduction in the memorandum account surplus by 2023/24, which is one year longer than the timeframe forecast for a reduction of the levy to \$1.50. While a smaller reduction in the levy now will mean more time before the memorandum account surplus is eroded, it is also likely to result in a smaller increase being required in the future to maintain the memorandum account at an appropriate balance.
125. This reduction will result in a modest decrease in costs for building consent applicants. For a \$310,000 private house development (the current average cost of building work for a new 3 bedroom home in Auckland), the levy would fall from \$623 to \$543 (a reduction of \$81). For a \$20 million commercial build, the levy would fall from \$40,200 to \$35,000 (a reduction of \$5,200).
126. BCAs retain a small amount of levy for administrative purposes and have indicated there would be minimal impact to their operating costs. I am satisfied that the

proposed reduction strikes the right balance and takes into account consultation feedback.

**Proposal 10: Clarify the levy threshold**

127. I propose amending the *Building Levy Order 2005* to provide that the correct levy threshold is \$20,444 including GST. The levy threshold must be updated to take account of the change in the rate of GST from 12.5 per cent to 15 per cent in 2010. MBIE intends to discuss with the Parliamentary Counsel Office whether there is a way to clarify that the figure in the Building Levy Order is GST inclusive, to avoid confusion in future.

*Rationale*

128. This change will ensure there is a consistent approach to the levy threshold across all BCAs. Consultation feedback supported standardising the threshold at \$20,444 with many BCAs indicating that they already set the threshold at the proposed amount and that this change would have no impact.

**Proposal 11: Provide a clear authority to spend the levy on stewardship**

129. I propose to amend the *Building Act* to allow MBIE to spend the building levy for purposes relating to stewardship of the building regulatory system. Stewardship of the building system would involve funding and performing functions that the chief executive would be reasonably expected to perform and are not currently funded by another agency.

130. I propose that the wording below setting out the policy intent of stewardship is used to inform the drafting or amendment of provisions in the *Building Act* needed to enable the levy to be used to fund stewardship activities:

130.1. **Building sector stewardship** means performing and funding functions that are intended to:

- adopt a whole-of-system, lifecycle or system-based view of regulation; or
- improve the performance of the building sector; or
- support the building sector to meet future conditions; or
- improve connectivity and collaboration amongst parties; or
- monitor and oversee the regulatory system;

and

- benefit levy payers or manage risks to levy payers;

and

- the central government would reasonably be expected to perform (rather than local government or the public, for example);

and

- are not currently funded by any other agency or party.

### *Rationale*

131. MBIE must be able to use the levy more broadly to meet its stewardship obligations and support the building sector, improve connectivity and collaboration, and support building sector transformation. This would enable the levy to be spent on implementing initiatives such as the Construction Sector Accord. This proposal was strongly supported by submitters who responded to the consultation.
132. Decisions on levy expenditure for stewardship activities will continue to be guided by Treasury and Office of the Auditor General guidelines for setting levies that require a link between levy payers and the activity being funded. For example, levy spending will need to continue to be for a particular purpose that benefits the group that contributed to the levy. If a clear levy payer link cannot be made to the initiative and to roles described in the *Building Act*, then other sources of funding, such as a new budget bid, may need to be considered.

### **Offences and penalties**

*The offences and penalties regime allows MBIE to regulate the building industry and hold people to account*

133. The *Building Act* specifies a range of offences and penalties that are intended to deter non-compliance and hold people to account for substandard work or poor conduct. This is achieved through ensuring penalties are proportionate to the offence committed.
134. Many of the maximum financial penalties for offences against the *Building Act* have not been reviewed since 2004. The real value of the penalties has eroded overtime meaning they do not have the same deterrence effect they once did. The maximum penalty amounts are also out of step with penalty regimes that also protect lives and people's wellbeing such as the *Health and Safety at Work Act 2015*, the *Food Act 2014* and the *Fair Trading Act*.
135. The current maximum penalties apply to both individuals and other persons, such as body corporates and companies. Best practice penalty regimes apply different penalty levels to individuals and other persons in recognition of the greater resources usually available to body corporates. The status quo means that the potential repercussions for some body corporates may be an insufficient deterrent to poor behaviour compared to the financial consequences on an individual.
136. Enforcement agencies (MBIE, territorial authorities, regional authorities and other authorised people) currently have six months to file a charging document for an offence against the *Building Act* from the date that an offence becomes known, or from when the agency could not justify having missed an offence.
137. Enforcement agencies have told me that this does not allow sufficient time to gather information and undertake an investigation due to the complex nature of these types

of investigations. Some enforcement agencies have indicated that the short timeframe is a disincentive to taking a prosecution.

**Proposal 12: Increase the maximum financial penalties**

138. I propose to amend the current maximum penalties on conviction within the *Building Act* to the appropriate level that reflects the seriousness of the offence committed and incentivises compliance. The majority of submitters agreed with this proposal and felt that the current maximum penalty amounts were not sufficient to deter poor behaviour and that higher penalties should be introduced. Offences with a continuing provision element or offences relating to the *Building Amendment Act 2019* will not be increased.
139. I propose to amend the current maximum penalties on conviction within the *Building Act* based on the factors set out below in paragraph 142.

*Rationale*

140. MBIE must be able to regulate the building system so that people can use buildings in a safe and sustainable way. Buildings are more likely to be safe and built right the first time if people are provided with the right incentives to comply with their obligations.

**Proposal 13: Set different maximum penalty levels for individuals and organisations**

141. Alongside increasing the maximum penalties set out in the *Building Act*, I propose setting maximum penalties differently for individuals than for other persons.
142. By setting higher maximum amounts for offences for organisations, penalties will become fair and proportionate as organisations generally have greater resources available to them compared with individuals. This also reflects best practice.
143. To implement Proposals 12 and 13, I propose to apply the same increase rate to all offences which currently have the same maximum penalty on conviction (eg all offences with a \$20,000 maximum fine would become \$50,000) apart from those detailed in paragraph 144. The rate of the increase and the corresponding increases for other persons has been set out, taking into account the following factors:
- 143.1. the harm these offences may do to an individual or the wider public;
  - 143.2. the possible harm to the integrity of the building regulatory system;
  - 143.3. the fairness of the fine and its appropriateness in creating compliance;
  - 143.4. how other penalty regimes responded to similar offences.

*Additional criteria for offences that currently have a maximum financial penalty of \$5,000*

144. Applying the same rate increase to all offences that currently have a maximum penalty of \$5,000 has highlighted that these offences capture behaviours which can cause different levels of harm. For example, a person failing to provide administrative information to MBIE's chief executive (section 207B of the *Building Act*) and a dam

owner who knowingly displays a false dam compliance certificate (section 150(4)(b) of the *Building Act*) are both penalised at \$5,000, while the latter offence can lead to higher levels of harm.

145. In order to reflect the seriousness of these behaviours and potential harm with the right penalty level, I propose to increase offences with a current maximum penalty of \$5,000 by three different rates, determined by taking into consideration the following additional criteria:

145.1. offences related to administrative obligations, where the potential harm to the public and the building regulatory system is considered low or minor, will remain at the same current level of \$5,000 for an individual and \$25,000 for other persons;

145.2. offences where the offender has stricter defined responsibilities under the *Building Act*, where lives could be put at risk or the potential harm to the regulatory system is considered high, will be increased to \$20,000 for an individual and \$60,000 for other persons;

145.3. offences that require the prosecution to prove the wilful intention of the offender to commit the offence, carry greater risk to lives, or where there is impersonation of authority figures, will be increased to \$50,000 for an individual and \$150,000 for other persons.

146. The proposed rates are shown in the table below and the actual increase for each individual offence is set out in Annex 3.

<b>Current maximum fine liable upon conviction</b>	<b>Proposed new maximum fine liable upon conviction for an individual</b>	<b>Proposed new maximum penalty liable upon conviction for other persons</b>
\$2,000	\$5,000	\$25,000
\$5,000	\$5,000	\$25,000
	\$20,000	\$60,000
	\$50,000	\$150,000
\$10,000	\$50,000	\$150,000
\$20,000	\$50,000	\$150,000
\$200,000	\$300,000	\$1,500,000

**Proposal 14: Extend the timeframe to file a charging document under the Building Act**

147. I propose to increase the timeframe for relevant enforcement agencies to investigate and to file a charging document from six months to 12 months.

*Rationale*

148. A 12-month timeframe strikes a balance between sufficient time to investigate a charge and timely prosecution. It also aligns with other Acts, such as the *Electricity Act 1992*, or the *Health and Safety at Work Act*. This change has been supported through the feedback received on consultation, and in particular it was noted that it

will allow for greater time to work with individuals under investigation and help them achieve compliance.

## **Public Notification Requirements**

*Notification requirements allow the public to know about recent decisions or actions taken*

149. The *Building Act* provides for public notification requirements that are used by MBIE's chief executive or the Building Practitioners Board (BPB) to notify the public of certain actions taken by or on behalf of the chief executive or the BPB. Some examples of public notification include issuing a warning about or banning a building product or building method, or when changes are made to the Building Code.
150. Presently, where the *Building Act* requires a notice to be publicly notified it must be published in the *New Zealand Gazette*, on the internet, and in one or more daily newspapers in Auckland, Hamilton, Wellington, Christchurch and Dunedin. Declining readership of newspapers means that newspaper notices have more limited reach compared to other notification methods.

### ***Proposal 15: Remove the requirement to publicly notify in newspapers***

151. I propose that where the *Building Act* requires a notice to be publicly notified, the requirement for the notice to be published in newspapers of the five main centres of New Zealand is removed.

#### *Rationale*

152. Removing the requirement for publishing in newspapers will result in fewer costs incurred for MBIE and support more effective and relevant forms of communication. MBIE will still be able to publish in newspapers depending on the specific audience or preferred consultation requirements. Publication will still be required in the *New Zealand Gazette* and in an electronic form that is publicly accessible at all reasonable times.

## **Consultation**

153. See the accompanying paper, *Lifting the Efficiency and Quality of the Building System: Overview*.

## **Financial Implications**

154. See the accompanying paper, *Lifting the Efficiency and Quality of the Building System: Overview* for the cross-programme financial implications.

## **Legislative Implications**

155. See the accompanying paper, *Lifting the Efficiency and Quality of the Building System: Overview*.

## Impact Analysis

156. See the accompanying paper, *Lifting the Efficiency and Quality of the Building System: Overview*.

## Human Rights

157. A key outcome of the legislative reforms is safe and durable buildings, including houses, which contributes to the right to adequate housing, and safe and healthy working conditions as recognised under the International Covenant on Economic, Social and Cultural Rights.

### *Building products and building methods*

158. This paper proposes a number of strict liability offences that may limit section 25(c) of the *Bill of Rights Act*, which affirms the right to be presumed innocent until proved guilty.
159. I consider this limitation is justified under section 5 of the *Bill of Rights Act* because it serves a significant objective by ensuring that those who have obligations take the necessary steps to comply. Proposed maximum fines are designed to reflect the risk of harm if the obligations are not complied with. They are consistent with the proposed increases to similar offences in the *Building Act* and fines for similar offences in the *Fair Trading Act*.
160. Defences to prosecution for failing to comply with the minimum building product information requirements will be created to align with those that apply to prosecution of similar offences in relation to Consumer Information Standards under the *Fair Trading Act*. Existing defences for strict liability offences in the *Building Act* will apply for the other offences proposed in this paper.
161. The power to require a person to provide information or documents of any kind potentially limits section 21 of the *Bill of Rights Act*, which affirms the right to unreasonable search and seizure.
162. To address this, the proposed power includes a condition that the powers can be exercised only when the chief executive of MBIE considers it necessary for the purposes of making a decision on whether to issue a warning or ban of a building product or method. I consider the limitation justified under section 5 of the *Bill of Rights Act* as the power is needed to ensure the chief executive can fulfil their functions under the *Building Act* and make decisions on whether to issue a warning or ban of a building product or method.

### *Specialist frameworks for building products and building methods*

163. The proposals in this section include of strict liability offences that may limit section 25(c) of the New Zealand Bill of Rights Act 1990 (NZBORA), which affirms the right to be presumed innocent until proved guilty.
164. I consider that the limitation is justified as the proposed offences are designed to incentivise those operating in the building system to take the necessary steps to comply with their obligations, and therefore ensure that the building system provides

safe and durable buildings for all New Zealanders. Proposed maximum fines are designed to reflect the risk of harm if the obligations are not complied with. They are consistent with the proposed increases to similar offences in the Building Act.

### *Offences and penalties*

165. The proposal to increase the current maximum penalties for the strict liability offences in the *Building Act* may limit section 25(c) of the *Bill of Rights Act*, which affirms the right to be presumed innocent until proved guilty.
166. I consider this limitation is justified because it serves a significant objective by strengthening the enforcement of the building regulatory system to ensure that buildings are safe and the public are protected from harm. Proposed maximum penalties are designed to reflect the risk to public and personal health if the building regulations are not complied with. They are consistent with penalties in similar regulatory regimes and are rationally linked and proportionate to the objective.

### **Gender and Disability Implications**

167. There are no gender or disability implications arising from these proposals.

### **Publicity and Proactive Release**

168. 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:

#### *Recommendations relating to widening the purpose of the Building Act*

1. **note** that gaps and weak incentives in the regulation of building products and building methods are contributing to delays in the consenting process and making it challenging to hold people to account for product-related defects in building work;
2. **agree** to amend the purpose of the *Building Act 2004* to include the regulation of building products and building methods;

#### *Recommendations relating to the definitions of building products and building methods*

3. **agree** to amend the *Building Act* to include separate definitions for 'building product' and 'building method' that are clear and can be distinguished from each other;
4. **agree** to amend the *Building Act* to enable the inclusion and exclusion of items in the definitions of 'building product' and 'building method' by regulation;

#### *Recommendations relating to building product information*

5. **note** that building product information often lacks the detail that designers and builders need to make good decisions;

6. **agree** that suppliers of building products will be required to comply with requirements for building product information;
7. **agree** that a supplier for the purposes of this obligation will include manufacturers, importers, distributors and retailers;
8. **agree** that the information requirements may be prescribed by regulation (including the minimum prescribed information that must be provided, the manner and form in which the information must be provided, conditions or additional requirements on the supply of information, and requirements for different classes or types of products or different classes or types of supplier);
9. **agree** that regulations may exempt certain suppliers, building products, classes or types of suppliers or building products, from the obligation to comply with building product information requirements;
10. **agree** that MBIE may issue a notice to a supplier to take corrective action if satisfied on reasonable grounds that the supplier is failing to comply with building product information requirements;
11. **agree** that failure to comply with the building product information requirements will be an infringement offence (infringement fee to be set by regulation at \$1,000);
12. **agree** that failure to comply with the building product information requirements will also be a strict liability offence (maximum fine of \$10,000 for an individual or \$30,000 for other persons);
13. **agree** that failure to comply with a notice to take corrective action will be a strict liability offence (maximum fine of \$10,000 for an individual or \$30,000 for other persons);
14. **agree** that a false or misleading statement, or unsubstantiated representation, made by a manufacturing or importing supplier will be a strict liability offence (maximum fine of \$200,000 for an individual or \$600,000 for other persons);
15. **agree** that there will be defences to prosecution similar to those in section 44 of the *Fair Trading Act* for an offence against suppliers' obligations to comply with minimum building product information requirements, and to not make false, misleading or unsubstantiated representations;

*Recommendations relating to roles and responsibilities for building products and building methods*

16. **note** that unclear roles and responsibilities in relation to building products allow some parties to avoid their responsibilities or shift blame if things go wrong;
17. **agree** to amend the existing responsibilities for product manufacturers and suppliers in the *Building Act* to include the responsibility to comply with the building product information requirements;
18. **agree** to amend the existing responsibilities for builders to include ensuring that the building products used in building work will comply with the relevant consent and the

Building Code (where a specific product is either not specified or the building work is not covered by a consent);

*Recommendations relating to information to support decisions to issue a product warning or ban*

19. **note** the chief executive of MBIE currently does not have sufficient powers to require information or documents necessary to determine whether to issue a warning or ban of a building product or building method;
20. **agree** to amend the *Building Act* to enable the chief executive of MBIE to require any person to provide information or documents of any kind that the chief executive considers necessary for the purposes of determining whether to issue a warning or ban of a building product or building method;
21. **agree** the chief executive of MBIE must give written notice to the person (referred to in recommendation 20 above) specifying the information or documents that must be provided, how it must be provided and a reasonable deadline for providing that information;
22. **agree** that failure to provide the information required by the deadline specified in a notice will be a strict liability offence (maximum fine of \$50,000 for an individual and \$150,000 for other persons);
23. **agree** that the chief executive of MBIE may share information or documents acquired for the purpose of investigating building products with regulatory agencies or other regulatory bodies if the chief executive reasonably considers that the information may assist the regulatory agency or body in the performance or exercise of their functions, powers or duties under any enactment for the safety of buildings or products, hazardous materials, potable water, sanitation, fair trading, or the regulation of occupational groups in the building and construction sector;

*Recommendations relating to introducing a manufacturer certification scheme*

24. **agree** that the *Building Act* be amended to include a manufacturer certification scheme for modern methods of construction (MMC);
25. **agree** that MMC includes the off-site manufacture of 'modular components' in New Zealand or overseas which are to be installed on land in New Zealand as a building or part of a building;
26. **agree** that regulations may define 'modular components';
27. **agree** that the definition of 'restricted building work' contained in the *Building (Definition of Restricted Building Work) Order 2011* be amended to exclude work undertaken by a registered certified manufacturer;
28. **agree** that the *Building Act* be amended to provide that under the manufacturer certification the design and manufacture of modular components will be deemed to comply with the Building Code if they are designed or manufactured by a registered certified manufacturer;

29. **agree** that the regulations may prescribe the details of the application process for approval of the design plans and specifications of a modular component (including the form and manner of the application, any required information, details of the required plans and specifications);
30. **agree** that regulations may prescribe the application fee for approval of the design plans and specifications;
31. **agree** that the installation of a modular component on the land, or in the building on the land, will require building consent in the installation territory;
32. **agree** that the manufacturer certification scheme will be voluntary for manufacturers;
33. **agree** that manufacturers must be registered by the chief executive of MBIE in order to design and manufacture modular components under the scheme;
34. **agree** that the chief executive of MBIE will have the role and function of registering certified manufacturers;
35. **agree** that the *Building Act* will set out the criteria for registration of a manufacturer, which will include:
- 35.1. having current certification from a certification body;
  - 35.2. meeting prescribed criteria and standards for registration; and
  - 35.3. meeting obligations in relation to having adequate means to cover any civil liabilities;
36. **agree** that regulations may prescribe the following in relation to an application for registration of MMC certification:
- 36.1. any criteria and standards that the applicant must meet; and
  - 36.2. details of any minimum requirements in relation to adequate liability cover;
37. **agree** that regulations may prescribe an application fee for registration;
38. **agree** that the *Building Act* will set out the process for MMC registration (including criteria for registration, the application process, processes for suspension and revocation of registration);
39. **agree** that the chief executive of MBIE may appoint an MMC accreditation body (which may be MBIE);
40. **agree** that the MMC accreditation body will have the role and function of:
- 40.1. accrediting the certification bodies (and suspending and revoking accreditation); and
  - 40.2. auditing certification bodies;

41. **agree** that the *Building Act* will set out the process for MMC accreditation (including criteria for accreditation, the application process, processes for suspension and revocation of accreditation);
42. **agree** that regulations may prescribe the following in relation to an application for accreditation as an MMC certification body:
- 42.1. the criteria and standards for accreditation;
  - 42.2. the manner and form in which the application is to be given; and
  - 42.3. any information to be included in the application;
43. **agree** that the *Building Act* will set out audit requirements for the auditing of MMC certification bodies (including minimum frequency);
44. **agree** that regulations may prescribe the requirements in relation to MMC audits (including the frequency and the issuing of audit reports and compliance certificates);
45. **agree** that regulations may prescribe the fees the MMC accreditation body may charge for:
- 45.1. accreditation of certification bodies; and
  - 45.2. carrying out audits of certification bodies;
46. **agree** that the *Building Act* will set out the criteria for registration of an MMC certification body, which will include:
- 46.1. having current accreditation from the accreditation body;
  - 46.2. meeting the fit and proper person test (as assessed against certain criteria);
  - 46.3. meeting prescribed criteria and standards for registration; and
  - 46.4. meeting obligations in relation to having adequate means to cover any civil liabilities;
47. **agree** that regulations may prescribe the following in relation to an application for registration as an MMC certification body:
- 47.1. any criteria and standards that the applicant must meet; and
  - 47.2. details of any minimum requirements in relation to adequate liability cover;
48. **agree** that regulations may prescribe the fee for application for registration by a certification body
49. **agree** that the *Building Act* will set out the process for registration of an MMC certification body (including criteria for registration, the application process, processes for suspension and revocation of registration);
50. **agree** that the MMC certification bodies will have the role and function of:

- 50.1. certifying manufacturers (and suspending and revoking certification); and
- 50.2. auditing certified manufacturers;
51. **agree** that the *Building Act* will set out the criteria for manufacturer certification (including having appropriate systems and processes);
52. **agree** that the *Building Act* will set out the application process for manufacturer certification (and the processes for suspension and revocation of certification);
53. **agree** that regulations may prescribe the detail of the criteria and standards for manufacturer certification;
54. **agree** that regulations may prescribe the manner and form of the application and any information to be included in an application for manufacturer certification;
55. **agree** that the *Building Act* will set out audit requirements for the auditing of certified manufacturers (including minimum frequency);
56. **agree** that regulations may prescribe the requirements in relation to audits (including the frequency and the issuing of audit reports and compliance certificates);
57. **agree** that regulations may prescribe the fees the MMC certification body may charge for:
- 57.1. certifying manufacturers; and
- 57.2. carrying out audits of certified manufacturers;
58. **agree** that the chief executive of MBIE will have the role of investigating the performance of the MMC accreditation body and the MMC certification bodies;
59. **agree** that the chief executive of MBIE will have disciplinary powers similar to those in section 203 of the *Building Act*;
60. **agree** that it will be an offence for a person to hold themselves out to be an MMC accreditation body or an MMC certification body and that the maximum penalty for an individual will be \$50,000, and \$150,000 for any other person;
61. **agree** that it will be an offence for a person to perform any of the functions of an MMC accreditation body or an MMC certification body without being accredited or registered (whichever is relevant) and that the maximum penalty for an individual will be \$300,000, and \$1,500,000 for any other person;
62. **agree** that a manufacturer who manufactures 'modular components' under the manufacturer certification scheme will be under a duty to:
- 62.1. only manufacture the modular component under the scheme if they have current registration as a manufacturer; and

- 62.2. only design (if applicable) and manufacture in accordance with the criteria (including processes and systems) to which they received certification and registration;
63. **agree** that it will be an offence for a manufacturer to breach or fail to comply with a manufacturer duty with a maximum penalty of \$50,000 for an individual and \$150,000 for any other person
64. **agree** that a person who imports a 'modular component' under the manufacturer certification scheme will be under a duty to only represent their modular components as having been produced by a registered manufacturer unless they have been;
65. **agree** to enable the chief executive of MBIE to share information or documents acquired for the purpose of determining whether the manufacturer is complying with its duties with the Commerce Commission and the Ministry of Housing and Urban Development where the information or document is relevant to the regulatory responsibilities of that body;
66. **agree** that the chief executive of MBIE will have the power to require any person to provide information or documents of any kind that the chief executive considers necessary for the purposes of determining whether the manufacturer is complying with their duties;
67. **agree** that the chief executive of MBIE will have the power to, at all times during normal working hours or while manufacturing is being carried out, to inspect:
- 67.1. any premises on which manufacturing under the scheme is or is proposed to be carried out; and
- 67.2. any modular component that has been manufactured or is being manufactured;
68. **agree** that the chief executive of MBIE will have the power to enter premises for the purpose of carrying out an inspection referred to in recommendation 67 above;

*Recommendations relating to strengthening the framework for product certification*

69. **note** that these proposals are intended to enable MBIE to be an effective product certification scheme owner;
70. **agree** to amend the *Building Act* to enable MBIE's chief executive to decide whether to enter an accredited product certification body's (PCB) name onto the register of PCBs;
71. **agree** that in order to gain registration a PCB must:
- 71.1. meet any prescribed standards, criteria, policies, procedures and systems as specified by regulation; and
- 71.2. hold a current accreditation from a product certification accreditation body;

72. **agree** to amend the *Building Act* to require that an application for registration as a PCB must be:
- 72.1. made in writing;
  - 72.2. given in the prescribed manner;
  - 72.3. contain the prescribed information; and
  - 72.4. be accompanied by the prescribed fee;
73. **agree** to amend the *Building Act* to specify MBIE's chief executive must decide an application for registration as a PCB;
74. **agree** to amend the *Building Act* so that MBIE's chief executive may suspend or revoke the registration of a PCB if it no longer meets the criteria for registration;
75. **agree** to amend the *Building Act* to enable MBIE's chief executive to audit PCBs to ensure they are complying with their registration requirements;
76. **agree** to amend the *Building Act* to set criteria for registration of a product certificate once the chief executive is notified by a PCB that a product certificate has been issued;
77. **agree** to amend the *Building Act* to enable regulations to prescribe the form of a product certificate;
78. **agree** to amend the *Building Act* to include the following criteria for registering a product certificate:
- 78.1. the certificate contains the prescribed information; and
  - 78.2. the certificate is on the prescribed form (if any);
79. **agree** to amend the *Building Act* to enable MBIE's chief executive to make rules for product certification schemes;
80. **agree** to amend the *Building Act* to make failure to comply with the rules grounds for suspending or revoking a PCB's or product certificate's registration;
81. **agree** to amend the *Building Act* to enable MBIE's chief executive to investigate complaints against a PCB or the holder of a product certificate;
82. **agree** to amend the *Building Act* to enable MBIE's chief executive to request information from a PCB or holder of a product certificate necessary to the investigation of a complaint;
83. **agree** to amend the *Building Act* to make it an offence for an unregistered person to hold themselves out as a registered PCB (maximum fine of \$50,000 for an individual and \$150,000 for other persons);

84. **agree** to amend the *Building Act* to make it an offence for an unregistered person to issue a certificate, or to make a claim that implies a product has been evaluated or certified under these schemes (maximum fine of \$300,000 for an individual and \$1,500,000 for other persons);

*Recommendations relating to the building levy*

85. **agree** to amend the *Building Levy Order 2005* to reduce the rate of the building levy from \$2.01 to \$1.75 including GST, per \$1,000;
86. **agree** to amend the current building levy threshold from \$20,000 to \$20,444 including GST;
87. **agree** to amend the *Building Act* to provide authority for the chief executive of MBIE to spend the building levy for purposes relating to stewardship of the building regulatory system;

*Recommendations relating to offences and penalties*

88. **agree** to set separate maximum financial penalties in the *Building Act* on conviction for individuals and other persons;
89. **note** that the proposed increases are based on the criteria set out in paragraph 142;
90. **note** that offences with a current maximum penalty of \$5,000 will be assessed by the additional criteria set out in paragraph 143;
91. **agree** that the maximum financial penalties on conviction for individuals for the offences listed in Annex 3 will be increased to the levels set out in the Annex 3;

*Recommendation relating to extending the timeframe to file a charging document*

92. **agree** to extend the time for relevant enforcement agencies to file a charging document for an offence against the *Building Act* from six months to 12 months;

*Recommendation relating to public notification*

93. **agree** to remove from the *Building Act* the requirement for public notices to be published in daily newspapers;

*Recommendations relating to drafting instructions*

94. **invite** the Minister for Building and Construction to issue drafting instructions to the Parliamentary Counsel Office to give effect to the recommendations in this Cabinet paper;
95. **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;

96. **authorise** the Minister for Building and Construction to approve and release an exposure draft of the Building System Legislative Reform Bill One for targeted consultation;
97. **note** that Confidential advice to Government the Minister for Building and Construction intends to seek Cabinet agreement to introduce the Building System Legislative Reform Bill One.

Authorised for lodgement

Hon Jenny Salesa

Minister for Building and Construction

PROACTIVELY RELEASED

**Annex 1: Proposed initial minimum information requirements to be prescribed in regulations**

Information	Rationale
Product description	Description of the product must be sufficient to uniquely identify the product in plain English.
Details of the supplier	Details of the supplier must include a New Zealand physical address and phone number.
Scope and limitations of use	The supplier providing this information must be able to substantiate claims made about scope, limitations and maintenance requirements.
Design and installation requirements	Required to ensure that designers and BCAs can make informed considerations for the use of building products.
Maintenance requirements	Required to ensure that designers and owners can make informed considerations for the maintenance of buildings.
Declaration if a product is subject to a warning or ban	All product users should be made aware if a product is subject to a warning or ban.

PROACTIVELY RELEASED

## Annex 2: Examples of the type of information MBIE might share with other regulatory bodies

Regulator	Relevant functions	Scenario	Action regulator might take
WorkSafe	Enforces compliance with the <i>Energy (Safety) Regulations 2010</i> and the <i>Gas (Safety and Measurement) Regulations 2010</i>	An independent report of a fire-rated downlight (to determine its compliance with the 'protection from fire' provisions of the Building Code) indicates the downlight may also be electrically unsafe.	MBIE refers report to WorkSafe. WorkSafe assess the information and product to determine whether it is in fact unsafe or non-compliant. If found to be unsafe then WorkSafe could issue a prohibition or urgent instructions.
Trading Standards (MBIE)	Administers the product safety elements of the <i>Consumer Guarantees Act</i> and the <i>Fair Trading Act</i>	Documents provided by the importer of components for a smoke alarm found to be defective in some circumstances shows the components have never been tested as a combined unit.	MBIE refers original complaint and documents provided by the importer to Trading Standards. Trading Standards works with the importer to issue a voluntary recall of the product.
Environmental Protection Authority	Enforces compliance with the Hazardous Substances and New Organisms Act 1996	Information supplied by the manufacturer about the waterproofing coating for external cladding shows the coating contains a hazardous chemical not on the approved hazardous substances list.	MBIE refers the information to the EPA, which assesses if it needs to investigate, undertake compliance or enforcement action, or advice the responsible regulator.
Customs	Enforces prohibitions or restrictions on imports, including hazardous substances and goods declared to be unsafe	Information supplied by the manufacturer about the waterproofing coating for external cladding shows the coating contains a hazardous chemical not on the approved hazardous substances list. The waterproof coating is manufactured in New Zealand using imported materials.	MBIE refers the information to Customs, which may include this information in their risk assessment process, may put in place target alerts to stop future importations of likely similar consignments, and may also undertake importer outreach, reminding them of their HSNO obligations in respect of imports.
Ministry of Health	Monitors procedures for achieving safe drinking-water supplies and effective sanitation in New Zealand	Test reports of taps sold for use in kitchens or bathrooms showed a higher than acceptable level of lead-leaching for a potable water supply.	MBIE refers the information to the Ministry of Health, which assesses the case against statutory requirements. If serious enough the Ministry can undertake enhanced surveillance. The Ministry could also provide public health advice.
BCAs and territorial authorities	Performs functions under the <i>Building Act</i> relating to dangerous, earthquake-prone or insanitary buildings	MBIE issues a warning against the use of a wall system following an investigation. During the investigation, MBIE received information that only 15 systems had been sold in total, all to individuals in the Hamilton area.	MBIE refers the information to Hamilton City Council to determine if any of the buildings that had the wall system installed present a risk to the safety of building occupants.
Commerce Commission	Enforces compliance with the <i>Fair Trading Act</i>	Third-party test data provided by the manufacturer indicates a claim about the product (not related to the performance requirements of the Building Code) cannot be substantiated by the data.	MBIE refers data to the Commerce Commission. Commerce Commission may investigate and take enforcement action under the <i>Fair Trading Act</i> .
Occupational body	Enforces compliances with standards for registration or licensing	Independent test report of cladding alleged to be 'leaking' shows the cladding meets Building Code requirements for moisture control if installed as per the manufacturers' instructions.	MBIE refers original complaint and report to the Building Practitioners Board. Builders Practitioners Board investigates and determines if the builder was negligent when they installed the cladding.

### Annex 3: Table of proposed maximum penalty values

Current maximum fine liable upon conviction	Proposed new maximum fine liable upon conviction for an individual	Proposed new maximum penalty liable upon conviction for other persons	Offences proposals apply to
\$2,000	\$5,000	\$25,000	<u>s326(1)</u> - Failing to comply with summons by the Board without sufficient cause.
\$5,000	Offences related to administrative obligations where the potential harm to the public and the building regulatory system is considered low or minor.		
	\$5,000	\$25,000	<u>s42(2)</u> – Failing to apply for a certificate of acceptance for urgent work as soon as reasonably practicable after completion of building work. <u>s58(3)</u> - Building Consent Authority (BCA) failing to pay building levy to the Territorial Authority (TA). <u>s63(4)</u> – Applicant for a building consent, a BCA or TA failing to provide information to the Chief Executive (CE) in order to assess amount of building levy payable based on estimated value of building work. <u>s114(3)</u> – Owner failing to give written notice to the territorial authority of proposed changes to use, extend life or subdivision of buildings. <u>s206(3)(a)</u> - Failing to comply with supply of warrant to enter land or building on behalf of chief executive. <u>s270(4)</u> – Failing to provide any information on matter that the product certification body requires relating to the annual review of a product certificate.
		N/A	<u>s314(3)(a)(b)</u> – Failing to produce evidence of being licensed as required by section 289; or to give written notice of a change in circumstances in accordance with section 302.
	Offences where the offender has stricter defined responsibilities under the Act, where lives could be put at risk, or the potential harm to the regulatory system is considered high.		
	\$20,000	\$60,000	<u>s138(4)</u> - Dam owner failing to comply with a direction from a regional authority to have a dam classification audited by a recognised engineer. <u>s150(4)(a)</u> - Dam owner knowingly failing to display a dam compliance certificate required to be displayed. <u>s150(4)(c)</u> - Dam owner knowingly displaying a dam compliance certificate other than in accordance with section 150. <u>s168(1AA)</u> – Failing to comply with a notice to fix a means of restricting access to a residential pool. <u>s207B</u> - Failing to comply with CE notice for provision of information. <u>s365(1)</u> – Intentionally failing to comply with direction of authorised person. <u>s369(1)(a)(b)</u> - Knowingly making false or misleading statement or knowingly making a material omission in any communication, application or document that is required to be made or given under the Act.
Offences that require prosecution to prove the wilful intention of the offender to commit the offence, carry a greater risk to lives or where there is impersonation of authority figures.			

	\$50,000	\$150,000	<p><u>s150(4)(b)</u> - Dam owner knowingly displaying a false or misleading dam compliance certificate.</p> <p><u>s206(3)(b)</u> – Impersonating or falsely pretending to be a person named in a warrant supplied by the chief executive to enter land or buildings.</p> <p><u>s225(1)</u> - Impersonating or falsely pretending to be an authorised officer.</p> <p><u>s368(1) (a) (b)</u> - Wilfully removing or defacing a notice published under the Act or inciting another person to do so.</p> <p><u>s366 (1)(a)(b)</u> - Impersonating a building consent authority or regional authority, or an officer or employee of a building consent authority or regional authority.</p> <p><u>s367(1)</u> - Wilfully obstructing, hindering, or resisting a person executing powers conferred to that person under the Act or its regulations.</p> <p><u>s371D(1)</u> - Impersonating or falsely pretending to be an enforcement officer named in a warrant issued under section 371B(3).</p>
\$10,000	\$50,000	\$150,000	<p><u>s145(4)</u> - Dam owner failing to comply with a direction from a regional authority to have a dam safety assurance programme audited by a recognised engineer.</p>
\$20,000	\$50,000	N/A	<p><u>s85(1)</u> - Person who is not Licensed building Practitioner (LBP) carrying out restricted building work without supervision of LBP who is licensed to carry out that work.</p> <p><u>s85 (2)</u> A LBP carrying out restricted work or supervising restricted work that he/she is not licensed to carry out or supervise.</p> <p><u>s87A (5)</u> – Owner-builder failing to provide prescribed notice to building consent authority when owner-builder carries out restricted building work.</p>
		\$150,000	<p><u>s86(1)(1A)</u> - Engaging another person to carry out or supervise restricted building work if that person knows that the person is not a licensed building practitioner licensed to carry out or supervise the work.</p> <p><u>s108(5) (aa)(a)(b)(c)</u> - Failing to supply to the territorial authority the prescribed building warrant of fitness, failing to display a building warrant of fitness that is required to be displayed under this section; or displaying a false or misleading building warrant of fitness; or displaying a building warrant of fitness otherwise than in accordance with this section.</p> <p><u>s133AU(2)(3)(4)</u> – Failing to comply with Earthquake Prone Buildings(EPB) notices and EPB exemption notices.</p> <p><u>s134(C)</u> - Dam owner failing to classify dam according to the potential impact of a failure of the dam on persons, property and the environment.</p> <p><u>s140(3)</u> - Dam owner failing to prepare, or arrange the preparation of, a dam safety assurance programme and submit it for audit.</p> <p><u>s150(4)(b)</u> - Dam owner knowingly displaying a false or misleading dam compliance certificate.</p> <p><u>s314(1)</u> - Person holding himself or herself out as being licensed to do or supervise building work or building inspection work while not being so licensed.</p> <p><u>s362D(5)</u> - Knowingly making a statement that is false or misleading in a material particular or knowingly making a material omission in any communication or document required to be made or given relating to entering a residential building contract.</p>
\$200,000	\$300,000	\$1,500,000	<p><u>s27(2)</u> - Using a building method or product in breach of ban under section 26.</p> <p><u>s128(A)(1)</u> - Failing to comply with a notice issued under section 124(2)(c), within the time stated in the notice, requiring work to be carried out on a dangerous, earthquake-prone, or insanitary building.</p> <p><u>s133AU(1)</u> - Owner of a building or a part of a building that is subject to an EPB notice failing to complete seismic work on the building or part by the deadline that applies under section 133AM.</p>

			<p><u>s154(3)</u> - Dam owner failing to comply with a notice, within the time stated in the notice, requiring work to be carried out on a dangerous dam to remove or reduce the danger.</p> <p><u>s199(1)(2)</u> - Performing functions of building consent authority or regional authority if person not registered, etc.</p> <p><u>s362V(1)</u> - Offence for commercial on-seller to transfer household unit without code compliance certificate.</p>
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PROACTIVELY RELEASED