

Departmental Disclosure Statement

Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

12 March 2020

Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information	8
Part Three: Testing of Legislative Content.....	10
Part Four: Significant Legislative Features	14

Part One: General Policy Statement

What the Bill seeks to achieve and why

By amending the Building Act 2004, this Bill contributes to a programme of reforms to the building regulatory system that will lift the efficiency and quality of building work and provide fairer outcomes if things go wrong.

The current legislative framework is not delivering the efficiency and quality required in the building sector

A high-performing building sector is vital to providing safe and durable buildings where New Zealanders work, live, and play. However, systemic problems are holding the building sector back. Low productivity, inefficient practices and processes, skills and labour shortages, financial vulnerability, and poor health and safety practices are some of the key challenges facing the building sector.

The building sector plays a key role in the delivery of the government's housing and urban development priorities to improve housing supply, affordability, and quality. The sector is under significant pressure to deliver safe, durable, and affordable houses, buildings, and other infrastructure, and to meet the growing pipeline of construction projects.

This Bill forms part of a wider work programme of reform. The government and industry are using a range of regulatory and non-regulatory levers to address identified problems. This Bill addresses problems resulting from legislative settings, where non-legislative options would not be effective.

A coordinated government and industry response is required to support sustained and transformative change for the sector and to support a high performing building sector that produces efficient and high quality building outcomes. In order to achieve this, in January 2020, government and industry leaders launched the Construction Sector Transformation Plan containing 22 programmes within 6 workstreams to be implemented over 3 years.

The objective of the Bill is to support transformative change for the building sector

This Bill provides for necessary legislative reform to support these changes, and to deliver the following outcomes:

- better information on products to support better and more informed decisionmaking, helping designers and builders to choose the right products and install them in the way intended and support faster consenting;
- a new manufacturer certification and registration scheme will provide faster, more consistent building consent approaches for manufacturers that are able to meet quality and performance standards and have a demonstrated ability to produce buildings and components that comply with the New Zealand Building Code. Building Consent Authority (BCA) involvement will focus on work not covered by the certification scheme, such as foundations and site works, potentially decreasing by half the number of building inspections required:

- a strengthened product certification scheme will improve confidence that new and innovative building products and methods will comply with the building code and will be accepted by BCAs:
- higher maximum penalties and a longer period to file a charge will provide greater protection for building users:
- widening the scope of the building levy to allow the Ministry of Business, Innovation, and Employment (**MBIE**) to monitor, oversee, and improve the performance of the building sector and relevant systems operating under building sector legislation:
- a change to allow public notifications to be carried out online rather than published in daily newspapers will show the industry is moving with the times, recognising the public's changing preferences in relation to how they access information.

Collectively, these changes are expected to improve trust and confidence in the regulatory system and building sector, with greater opportunity for economies of scale and a reduced risk to New Zealand's reputation from product and building defects.

Specific features of the Bill

Minimum requirements for information on building products

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.

Currently the Building Act 2004 does not provide clear definitions on what a "building product" or "building method" is and what role they play in building work. This Bill defines these terms separately and expands the purpose of the Building Act 2004 to support an efficient regulatory system and a high-performing building sector. Subsequently, these terms have been updated throughout the Building Act 2004 to ensure consistency – this is not indicative of a change in policy intent.

The Bill also introduces minimum requirements for information about building products to support better and more efficient decision-making, and clarify responsibilities so that importers, manufacturers, suppliers, designers, and builders can be held accountable for any breaches of their responsibilities in relation to building products and methods and their use.

Creation of specialist frameworks for Modern Methods of Construction

Using new manufacturing approaches and methodology can lift productivity and reduce building costs and delays. However, there are difficulties gaining building consents for modern methods of construction such as prefabrication and off-site manufacturing. MMC processes use automation, technology, and assembly-line methodology to efficiently produce building products.

Under the current scheme, BCAs can have difficulty assuring themselves of build quality and code compliance when traditional inspection practices are difficult, as is the case with many buildings and components manufactured using MMC. Manufacture of these components can occur some distance (either off-site or off-shore) from where the component will ultimately be installed, or when manufactured products arrive at a building site already enclosed, limiting the effectiveness of visual inspections.

This Bill addresses these issues by providing for the establishment of a voluntary certification scheme, based on a conformity model, which enables registered modular component manufacturers (**MCMs**) to be certified to produce modular building components within a defined scope of practice. These components will be deemed to comply with the Building Code.

Depending on how they meet specified eligibility criteria, an MCM may be certified to:

- manufacture modular building components to a NZ Building Code compliant design (using designs that could be approved through MultiProof or by a BCA through the traditional building consent application process); or
- design and manufacture modular building components to a NZ Building Code compliant design that they have developed themselves, or that has been approved by either of the consent pathways above.

A certified manufacturer will also need to be registered by MBIE and comply with the requirements of that registration.

When reviewing a building consent application that includes modular components from a certified and registered MCM, a BCA will check the design for the whole building and proposed site works, but will not review modular component(s) beyond how they will interact with the design's other elements (site work, foundations, connections to services, etc.). Once building work has begun, BCAs will only need to inspect the building work not covered by the certification scheme.

Certified and registered MCMs will be liable for the performance of the modular components they produce. Third party certification bodies will audit and monitor the manufacturers. BCA liability will be limited to the aspects of a building that they are required to inspect. The relevant BCA in the location where the component has been installed will issue a single Code Compliance Certificate for the building, relying on a certificate from the certified and registered MCM as evidence that their modular component complies with the code.

These changes will help ensure faster consenting for work done using components manufactured by registered MCMs, saving consumers time and money. The clarification of roles and responsibilities for the MCM scheme will help to more appropriately apportion liability, so that costs associated with remediation of building defects sits with the producer or those trusted to monitor the manufacturer's operations, rather than the council or ratepayers.

MBIE will also have power to make rules for the MCM scheme, which will provide clarity to manufacturers and certification bodies, ensure consistency, and align with regulatory best practice.

The MCM scheme will allow New Zealand to realise the full potential of modular components and support the government's wider goal of improving housing supply and affordability and providing safe, healthy, durable buildings for New Zealanders.

Strengthening the product certification scheme (CodeMark).

The existing product certification scheme (known by the brand name CodeMark) is designed to provide assurance that products comply with the Building Code. However there is currently a lack of confidence in the scheme. To address these concerns the existing product certification scheme will be strengthened and brought into line with recommended best practice by enabling MBIE to administer the registers of product certification bodies (**PCBs**) and product certificates.

This Bill will create new registration requirements for PCBs to ensure the quality of the product certification scheme. MBIE will have power to audit PCBs and suspend or revoke registrations where appropriate.

Product certificates will not be registered unless they meet the product certificate registration criteria. Product certificates will be reviewed annually and may be suspended or revoked if they no longer meet the product certification criteria.

MBIE will also have power to investigate complaints against a PCB and to take disciplinary action, including suspending product certificates issued by the PCB, where appropriate. This will allow MBIE to take active steps to manage poor-performing PCBs and improve the quality and consistency of product evaluations and certificates.

MBIE will also have power to make rules for the product certification scheme, which will provide clarity to PCBs and certificate holders, ensure consistency, and align with regulatory best practice. Additionally, any person found to be misrepresenting themselves as a PCB, falsely issuing a certificate, or falsely claiming a product has been evaluated and certified, will commit an offence and be subject to a penalty.

These changes to the Building Act 2004 will build confidence so people know that they are using code-compliant products in a way that will result in safe and durable building work; and ensure faster consenting processes for certified products, saving consumers time and money.

Use of the building levy

The building levy provides funding for the performance by MBIE's chief executive of functions under the Act.

The scope of the levy is being amended so that the chief executive can use it for wider purposes. The Bill provides that the chief executive may use building levy revenue for a wider purpose within the building sector, provided it is for the exercise of a function by the chief executive under this Act or another Act that relates to the building sector. This will enable MBIE to fund the exercise of functions and activities that relate to the monitoring, overseeing, or improving the performance of the building sector or any part of the building sector, or regulatory systems under other relevant Acts that relate to the building sector. For example: occupational regulation of the building sector.

This amendment will not give the chief executive new functions, powers, or obligations that they do not already have under any enactment or by virtue of their role as a chief executive of a government department.

Regulations

MBIE has a number of regulatory tools in its role as a regulator. A key mechanism for regulating building products and methods are warnings and bans in relation to building product or building method. Currently, the Building Act 2004 does not confer sufficient powers to require the production of information or documents necessary to determine whether to issue a warning or a ban. The Bill addresses this gap by ensuring the chief executive can require information to be provided when necessary for the purpose of determining whether to issue a warning or ban.

The Building Act 2004 authorises the creation of regulations to (among other things) prescribe procedures for regulating and controlling the construction, maintenance, and demolition of buildings, and prescribe the form or content of applications, or any other documentation or

information required under the Act. Cabinet has agreed that the regulation making powers within the Building Act 2004 be used to support the implementation of the MCM scheme, for example, through the setting of fees or establishing a process for registration.

Offences and Penalties

It is important that product manufacturers, building professionals, tradespeople, and other people comply with the obligations placed on them under the Building Act. New offences have been created to support compliance with the MCM and product certification schemes.

Additionally, many of the current maximum fines set out in the Building Act 2004 have not been adjusted since its enactment. This means that the deterrent value of the penalties has eroded over time. To improve compliance and deter poor or illegal behaviour, the Bill amends the maximum penalties on conviction to a level that reflects the seriousness of the offences.

The current 6 month timeframe to investigate a potential offence against the Building Act 2004 is too short given the complexity of investigating potential offences and the number of people involved. Therefore, this Bill extends that timeframe to 12 months allow more time to be properly investigate potential breaches, gather evidence, and where appropriate allow for multiple enforcement avenues to be pursued to encourage greater compliance before prosecuting.

Public notification requirements

This Bill also removes the requirement to publish in newspapers various matters that relate to the exercise of certain powers by the MBIE's chief executive or the Building Practitioners Board, to respond to changes in technology and better reflect how the public accesses information.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
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Regulatory impact statement: Building System Legislative Reform Programme (Phase 1), Ministry of Business, Innovation and Employment, 25 September 2019, <https://www.mbie.govt.nz/dmsdocument/7024-ris-building-law-reforms-phase-one-proactiverelease-pdf>

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
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The RIS was not reviewed by the RIA Team in the Treasury as it did not meet the threshold for their assessment. MBIE's internal review panel considers the analysis meets the quality assurance criteria.

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>MBIE undertook a cost-benefit analysis for the package of changes for phase one of the reforms. The main cost increase will be the one-off and ongoing compliance costs for those suppliers who need to make changes in order to meet the new product information requirements. Offsetting these costs will be the longer term benefits once all the reforms are fully implemented – better quality building products and building work, less rework, more efficient consenting and, ultimately, safer and more durable buildings that are less prone to systemic failure.</p> <p>MBIE estimates that if all the one-off compliance costs (eg the cost of adjusting systems and practices to become compliant) are passed on to consumers and spread over a three-year period, the cost of the average consent value would increase by \$100 during that period only. However, some suppliers <u>may</u> choose to absorb some or all of these compliance costs.</p> <p>The ongoing compliance costs (eg the cost of making sure information is up-to-date and available, or fees for regular audits under the MMC scheme) are more likely to be passed on to consumers. MBIE estimates that the cost of an average house build in Auckland would increase by \$200 as a result.</p> <p>Considering the average cost of building work for a three bedroom house in Auckland is about \$310,000, the potential increase of around \$200 would be negligible compared to the benefits of improved whole-of-life performance.</p> <p>Increased compliance costs will be offset by a reduction of the building levy rate. From 1 July 2020, the levy rate will reduce to \$1.75 including GST for any building work that is over the \$20,444 threshold (including GST). MBIE estimates that the cost for consenting will be reduced by about \$80 (based on the average new build in Auckland).</p> <p>More details on the expected costs and benefits are included in the RIS.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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New Zealand as a member of the World Trade Organisation (WTO) has agreed to make international trade more efficient. The WTO Agreement to Technical Barriers to Trade (TBT Agreement) requires that, where possible, technical regulations and conformity assessment procedures affecting trade should be based on international standards and guidelines. Processes for checking conformance should also be internationally recognised to avoid unnecessary trade barriers for goods coming from overseas and harmonise rules.

The Ministry of Foreign Affairs and Trade has confirmed the proposed product information requirements in the Bill will need to be notified under the TBT Agreement. WTO members are required to notify other WTO members of proposed measures that may have a significant effect on other members' trade and that are not based on relevant international standards. This gives other members the opportunity to comment on the proposal before the regulation is finalised. MBIE's International Trade team are working with MFAT to provide advice and assistance for this process. As the Bill develops it will continue to be checked for consistency with WTO TBT obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Bill has been reviewed for consistency with the principles of the Treaty of Waitangi, and is confirmed to be consistent.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	No
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The Ministry of Justice are currently undertaking a vet to determine compliance with the New Zealand Bill of Rights Act 1990, and MBIE will continue to work with the Ministry of Justice and PCO to ensure the introduction version of the Bill is consistent with the New Zealand Bill of Rights Act 1990.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
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<p><u>Increase to maximum penalties for existing offences</u></p> <p>Many of the maximum financial penalties for existing offences in the Act have not been reviewed since 2004. The real value of the penalties has eroded over time meaning they do not have the same deterrence effect they once did.</p> <p>The objective of the changes is to strengthen the enforcement of the building regulatory system to ensure that buildings are safe and the public are protected from harm.</p> <p>The 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. The actual rate of each increase was applied taking into account the following factors:</p> <ul style="list-style-type: none"> • the harm these offences may do to an individual or the wider public • the possible harm to the integrity of the building regulatory system • the fairness of the fine and its appropriateness in creating compliance • how other penalty regimes responded to similar offences. <p><u>New offences created</u></p> <p>The Bill specifies that the following actions will be an offence:</p> <ul style="list-style-type: none"> • to fail to provide the information required by the deadline specified in a notice issued under section 207 • for an unregistered person to perform the functions of a registered PCB • for a person to misrepresent themselves as being an accredited PCB, a registered PCB, or as authorised to issue product certificates. • for a person to misrepresent a building product or building method as having a current product certificate, a registered product certificate, or that the product has been evaluated and certified under the product certification scheme in the Act • for a person to misrepresent themselves as being an MCM accreditation body, authorised to accredit MCM certification body, an accredited MCM certification body, a registered MCM certification body, authorised to certify modular component manufacturers, a certified MCM, or a registered MCM • 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) • for a person to misrepresent a modular component as being manufactured by a registered MCM or as a modular component to which section 19(1)(da) or (db) of the Act applies • for a manufacturer to breach or fail to comply with a manufacturer duty under MMC • to fail to comply with the building product information requirements • to fail to comply with a notice to take corrective action • to make a false or misleading statement, or unsubstantiated representation, as a manufacturing or importing supplier. <p>In creating the new offences, considering whether they should be strict liability or not, and in determining the appropriate penalty, 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 increasing the maximum penalties discussed above.</p>	
<p>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</p>	<p>YES</p>
<p>Clause 56 of the Bill updates and expands section 208 of the Act - the ability to appeal to the District Court against certain decisions of the chief executive – to cover the broader range of powers vested in the chief executive as a result of the amendments and new provisions for entry and inspections.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
MBIE consulted the Ministry of Justice on these provisions, particularly regarding the proposed offences and the level of the penalties. Advice from the Ministry of Justice was incorporated into the development of the Bill.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>The Bill creates new powers for the chief executive of MBIE to require information to be provided in order to determine whether to issue a warning or ban for a building product or method under s207A of the Act. The information required is unlikely to contain personal information, but may do so for instances of investigating whether a person has made false claims about a product.</p> <p>The Bill will then enable the chief executive of MBIE to share information or documents received using that power, or received during enforcement activities, with a regulatory body if the chief executive reasonably considers that the evidence is reasonably required by the regulatory body in the exercise of its powers or performance of its functions. For this purpose, a regulatory body is defined as:</p> <ul style="list-style-type: none"> • the chief executive or Ministry exercising powers or performing functions under another Act; • another person or body exercising powers or performing functions under this Act; or • any other person or body established by or under an enactment exercising powers or performing functions in relation to building products, building methods, building designs, or building work. <p>Information or documents would be shared on a case-by-case basis.</p> <p>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.</p> <p>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.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Office of the Privacy Commissioner was consulted on the policy proposals, the Bill and the LEG paper. Feedback from the Office of the Privacy Commissioner on the sharing of information with regulation bodies informed the development of the Bill.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Comprehensive consultation has taken place across the sector, beginning with the Building System Legislative Reform discussion paper released for public consultation in April 2019. When public consultation on the proposed reforms closed on 16 June 2019, MBIE had received 470 submissions. 215 of those submissions came from organisations and 255 from individuals. The majority of submissions came from engineers, builders, and consumers. MBIE used the submissions to inform its advice to the government on the proposed reforms.</p> <p>Further consultation with BCAs and other key stakeholders has also been undertaken, particularly in regard to the MMC scheme. MBIE has explored the MMC scheme at a high level with PrefabNZ and a small number of major offsite manufacturers it nominated (Lockwood, Spanbild, NZ Tiny Homes). They are largely supportive of the policy intent for this scheme and anticipate that it will reduce the time and investment currently required for them to build relationships with any new BCAs.</p> <p>MBIE has also consulted with the industry body Joint Accreditation System of Australia and New Zealand (JAS ANZ) and the product certification bodies (PCBs) involved with CodeMark over the last 12 months, in order to test the proposals and ensure they will work in practice.</p> <p>MBIE released a version of the Bill for discussion with JAS ANZ (JAS ANZ received a redacted version with only the relevant clauses included), Local Government New Zealand and Kāinga Ora at the same time as Ministerial and Departmental consultation on the Bill and the LEG paper.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>Further consultation with BCAs and other key stakeholders has also been undertaken, particularly in regard to the MMC scheme. MBIE has explored the MMC scheme at a high level with PrefabNZ and a small number of major offsite manufacturers it nominated (Lockwood, Spanbild, NZ Tiny Homes).</p> <p>MBIE has also consulted with the industry body Joint Accreditation System of Australia and New Zealand (JAS ANZ) and the product certification bodies (PCBs) involved with CodeMark over the last 12 months, in order to test the proposals and ensure they will work in practice.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>Clause 24 amends section 53 of the Act so as to widen the purposes for which the building levy may be used. In particular, by allowing the revenue from the levy to be used in connection with the chief executive's functions under Acts other than the Building Act 2004 and as the chief executive of a department, provided that those functions relate to—</p> <ul style="list-style-type: none">• the building sector or any part of the building sector; and• monitoring, overseeing, or improving the performance of the building sector (or any part of the sector), or regulatory systems under the other Act. <p>The Bill allows for a fee to be charged for the processing of certification/registration, but this will only extend to administrative cost recovery.</p> <p>Additionally, the Bill creates new powers to prescribe fees relating product certification and the MMC scheme. These rely on the existing fee regulation making power in section 402(1)(v) and (w), but they are “new” fees and charges under the Bill. These are:</p> <ul style="list-style-type: none">• registration under (section 267A)• applications to lift PCB registration suspension (section 267D(3))• the power to charge fees for annual reviews of product certificates (section 270(6))• lifting suspension of product certificate registration (section 272C(3))• new fees for the MMC scheme:<ul style="list-style-type: none">○ section 272(2)○ section 272A(1)○ section 272C(3)○ section 272J(2)○ section 272K(4)○ section 272N(2)○ section 272Q(3)○ section 272U(3)○ section 272V(4)○ section 272Y(3)○ section 272ZB(3).	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
<p>The new offences proposed by the Bill, discussed in section 3.4, are all proposed to be strict liability offences, although defences are provided for the offence of failing to comply with building product information requirements, and general defences under the Building Act remain available (section 388).</p> <p>The creation of strict liability offences is justified as they serve a significant objective by ensuring that those who have obligations take the necessary steps to comply with them, and therefore ensure that the building system provides safe and durable buildings for all of New Zealand.</p> <p>Defences to prosecution for failing to comply with the minimum building product information requirements are based on 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 proposed offences (see section 388 of the Act).</p> <p>MBIE consulted the Ministry of Justice on these provisions. Advice from the Ministry of Justice was incorporated into the development of the Bill.</p>	
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
Section 392(1)(c) of the Act is amended to include reliance on a current MCM certificate.	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>The Bill creates or amends numerous decision-making powers to make a determination about a person's commercial interests. For example, see the creation of decision-making powers to:</p> <ul style="list-style-type: none"> register (section 267A), and suspend (section 267C) or revoke (section 267E) the registration of a product certification body; or accredit (section 272J) and register (section 272N) a modular component manufacturer certification body, and suspend or revoke that accreditation (sections 272L, 272P and 272R). 	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
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New sections 9A and 9B (see clause 7) introduce new, separate definitions of the terms 'building product' and 'building method'. A building product is a product that could reasonably be expected to be used as a component of a building. A building method is a method for using one or more products or things as part of building work.

A product or method can also be declared to be a building product or a building method by Order in Council. Equally, a product or method that would otherwise come within the definitions referred to above can be declared by Order in Council to not be a building product or building method.

Additionally, the Bill introduces a power to prescribe in regulations what building products are modular components for the purposes of MMC (see new section 402, inserted by clause 94).

4.8. Does this Bill create or amend any other powers to make delegated legislation?

YES

The Bill provides for the making of regulations and scheme rules to support the implementation of the primary legislation. The Building Act currently allows for the creation of regulations and rules, the Bill expands this to include the product information, and MMC provisions.

New regulation and rule making powers (in addition to those discussed above) are provided as follows:

- For registration of PCBs or MCM Certification Bodies (MCMCB):
 - prescribe requirements for registration as a PCB or MCMCB that include the ability to prescribe requirements requiring the applicant to have adequate means to cover any civil liabilities arising from the performance of their functions under the Act (sections 267A and 272N).

- For MMC:
 - prescribe the criteria and standards that an applicant must comply with to be able to be certified as MMC manufacturer by a MCC certification body (section 272U)
 - prescribe the requirements for audits of MMC certification bodies and for MMC manufacturers (section 272V)
 - prescribe the form, content and other requirements for certificates for modular components, and the circumstances which those certificates are not required (section 272ZF)
 - enable the chief executive to make rules for product certification and MMC schemes (section 272ZG).

- For product information:
 - prescribe the information disclosure requirements for building products and specify who must comply with those requirements (section 402(1)(xg)).

A number of new substantive provisions that provide for matters to be prescribed. These are matters relevant to the applications (form, manner, information that must be in applications), the form of certificates and fees. These matters do not require new regulation-making powers to be introduced as there are already regulation-making powers for these matters. These existing regulation-making powers are:

- section 402(1)(k): which provides for prescribing the form or content of applications, or any other documentation or information required under the Act
- section 402(1)(m): which provides for regulations to be made prescribing time limits for the purpose of the Act
- section 401(1)(v): which provides for determining or fixing scales of charges or other criteria for the purpose of fixing charges by the chief executive under Part 3
- section 402(1)(w): which provides for prescribing the matters in respect of which fees are payable under the Act and the amount of those fees or the rate at which, or method by which, fees are to be calculated for the purposes of the Act.

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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