

Departmental Disclosure Statement

Building (Earthquake-prone Building Deadlines and Other Matters) Amendment Bill

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 (MBIE).

MBIE certifies that, to the best its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

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Contents

Contents.....2

Part One: General Policy Statement.....3

Part Two: Background Material and Policy Information5

Part Three: Testing of Legislative Content.....7

Part Four: Significant Legislative Features 10

Part One: General Policy Statement

Purpose of Bill

Earthquake-prone building remediation deadlines

The key purpose of the Bill is to extend remediation timeframes for earthquake-prone buildings by four years, with a limited power to extend deadlines by a further period of up to two years by Order in Council. Buildings with deadlines that have not expired as at 2 April 2024 will be eligible for the initial four-year extension, with the extension applying retrospectively from 2 April 2024. If an Order in Council is issued, buildings with deadlines that have not expired as at the date of the Order in Council (including those identified between commencement of the amendment Act and the date of the Order in the Council) will be eligible for the further extension of up to two years.

The extension will provide clarity and certainty as to the statutory obligations of building owners and territorial authorities while a review of the management of seismic risk in existing buildings and any subsequent legislative amendments take place. It will also prevent large clusters of deadlines from expiring during that time, which will avoid a potentially substantial enforcement burden on territorial authorities during the period of the review.

Territorial authorities must automatically reissue earthquake-prone building notices for all eligible buildings following the passage of the Bill, and again if an Order in Council is issued as enabled by this Bill. Territorial authorities must also update the online Register of earthquake-prone buildings in line with the reissued earthquake-prone building notices.

Independently qualified persons and Building Warrant of Fitness scheme

In addition to extending eligible earthquake-prone building remediation deadlines, the Bill will close a regulatory gap by clarifying that independently qualified persons must only issue a certificate for a specified system if the inspection, maintenance, and reporting procedures stated in the compliance schedule have been fully complied with during the previous 12 months. The Bill will also make it an offence to issue a certificate when a specified system has not met these requirements.

A building warrant of fitness supplied to the territorial authority annually must include such a certificate.

These amendments will address concerns around instances where an independently qualified person has issued a certificate for specified systems that have not met the requirements of the compliance schedule. This will help to ensure that independently qualified persons are fulfilling their obligations under the building warrant of fitness scheme and help to protect the health and safety of building occupants.

Miscellaneous matters

The Bill also includes minor and technical changes to the Building Act 2004 to improve its workability. The most significant of these changes clarify the law relating to the collection of building levies by standalone building consent authorities that are not territorial authorities, and sets out the respective responsibilities of territorial authorities and standalone building consent authorities in this matter.

The Bill also makes changes covering the following topics:

- dam safety penalties and obligations;
- provisions relating to pools;
- provisions relating to certificates of acceptance for building work; and
- increasing infringement fees for infringement offences relating to the building warrant of fitness scheme.

These amendments will primarily address inconsistencies and improve efficiency for regulated parties and ensure that the building regulatory system accords with best regulatory practice.

There will also be consequential and other related amendments, including to:

- prevent territorial authorities from imposing a fee for issuing an earthquake-prone building notice due to changes to deadlines for completing seismic work made by the amendment Act;
- ensure transitional provisions for earthquake-prone building notices issued prior to 1 July 2017 continue to apply;
- provide immunity from an offence for failure to comply with a remediation deadline that expires between 2 April 2024 and commencement, as the extension will apply retrospectively to these deadlines;
- provide for the continuation of proceedings, and ability to charge and complete proceedings, for a failure to complete seismic work on or before 1 April 2024;
- clarify that the provisions apply only to new levies imposed on or after commencement.

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?	YES
Early insights – Initial Evaluation of the Earthquake-prone Building System, Ministry of Business, Innovation and Employment, March 2021. https://www.mbie.govt.nz/assets/early-insights-initial-evaluation-of-the-earthquake-prone-building-system-report.pdf	

Relevant international treaties

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

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Regulatory Impact Statement: Extension of remediation deadlines for earthquake-prone buildings, Ministry of Business, Innovation and Employment, 25 March 2024. https://www.mbie.govt.nz/dmsdocument/28327-regulatory-impact-statement-extension-of-remediation-deadlines-for-earthquake-prone-buildings-proactiverelease-pdf.</p> <p>Impact Summary: Regulatory Framework for Dam Safety, Ministry of Business, Innovation and Employment, 14 July 2020. https://www.mbie.govt.nz/dmsdocument/13916-impact-summary-regulatory-framework-for-dam-safety-proactiverelease-pdf (refer to Annex One).</p> <p>Both RISs are also accessible at: http://www.treasury.govt.nz/publications/informationreleases/ris.</p> <p>Other proposals exempt</p> <p>The Treasury's Regulatory Impact Analysis team determined that the independently qualified persons proposals were exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.</p> <p>The Treasury's Regulatory Impact Analysis team determined that the technical changes to building levy payments and building consent information provisions proposals were exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.</p> <p>Due to the minor and technical nature of the other proposed changes originally intended for inclusion in the Regulatory Systems Amendment Bill (No 3), Regulatory Impact Analysis requirements did not apply to those proposals at that time.</p>	

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

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

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

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?	NO
<p>The marginal costs and benefits of the proposal to extend non-lapsed earthquake-prone building remediation deadlines are set out in a table on pages 27-28 of the Regulatory Impact Statement: Extension of remediation deadlines for earthquake-prone buildings, Ministry of Business, Innovation and Employment, 25 March 2024.</p> <p>https://www.mbie.govt.nz/dmsdocument/28327-regulatory-impact-statement-extension-of-remediation-deadlines-for-earthquake-prone-buildings-proactiverelase-pdf</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

Earthquake-prone building deadlines

Changes to levels of compliance with existing obligations and the nature and level of regulator effort put into securing compliance are likely to affect the potential costs and benefits of extending non-lapsed earthquake-prone building remediation deadlines. Please refer to the table on pages 27-28 of the Regulatory Impact Statement: Extension of remediation deadlines for earthquake-prone buildings, Ministry of Business, Innovation and Employment, 25 March 2024. <https://www.mbie.govt.nz/dmsdocument/28327-regulatory-impact-statement-extension-of-remediation-deadlines-for-earthquake-prone-buildings-proactiverelase-pdf>.

Independently Qualified Persons

The level of effective compliance with the clarified obligations for independently qualified persons in new section 108A, and the nature and level of regulator effort put into encouraging or securing compliance (such as through audits), are likely to affect the benefits of the policy.

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?

Officials determined that there are no international obligations relevant to the Bill.

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?

Officials determined that the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi.

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?

YES

Advice was provided that considered any New Zealand Bill of Rights inconsistencies in relation to the proposed extension to earthquake-prone building deadlines.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>Independently Qualified Persons</p> <p>Clause 12 of the Bill inserts new section 108A into the Building Act 2004. Section 108A(2) creates an offence for breach of the duty in section 108A(1) i.e. where an independently qualified person states that the inspection, maintenance, or reporting procedures in a compliance schedule relating to a specified system have been complied with during the previous 12 months but those inspection, maintenance or reporting procedures for that system have not been fully complied with during that period.</p> <p>Liability to pay levy: stand-alone building consent authority</p> <p>Clause 5 replaces section 58 and includes an offence provision in subsection (4) for persons who fail to comply with the new section 58(2) that requires a stand-alone building consent authority to pay the levy to the chief executive by the 20th day of the month following the month in which the relevant building consent was granted.</p> <p>Dam compliance</p> <p>Clause 22 amends section 150 of the principal Act by removing the requirement for dam owners to display a dam compliance certificate prominently on a dam, replacing it with requirements for the certificate to be forwarded to the relevant regional authority. In turn, the offences in section 150 are amended to reflect this new requirement by making it an offence if the person fails to supply to the regional authority a dam compliance certificate in the required form and manner, or supplies such a certificate knowing that it is false or misleading.</p> <p>Building Warrant of Fitness infringement offences</p> <p>Clause 32 of the Bill amends Schedule 1 of the Building (Infringement Offences, Fees, and Forms) Regulations 2007 by increasing from \$250 to \$1,000 the infringement fees for failing to supply a territorial authority with a building warrant of fitness and failing to display a building warrant of fitness required to be displayed.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted about the offences and penalties aspects of the following parts of the bill, both previously (when Cabinet agreement was sought) and again during departmental consultation on the draft Cabinet paper <i>Earthquake-prone building system – Proposed review, extension of remediation deadlines and other matters</i> and associated Regulatory Impact Statement, and most recently during departmental consultation on the draft Cabinet Legislation Committee paper for the Bill:</p> <ul style="list-style-type: none"> • closing a regulatory gap in relation to the regulation of independently qualified persons (new section 108A); and • a change to the way the levy is collected from non-territorial building consent authorities (new section 58). 	

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?	NO

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO

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>The proposed extension of non-lapsed earthquake-prone building deadlines was consulted with external parties including:</p> <ul style="list-style-type: none"> • A small group of territorial authorities. • The Joint Committee for Seismic Assessment and Retrofit. • Crown entities: WorkSafe, Fire and Emergency New Zealand, EQC Toka Tū Ake (now Natural Hazards Commission Toka Tū Ake), Te Whatu Ora Health New Zealand. • Property Council New Zealand. <p>The policy proposals for independently qualified persons were consulted with:</p> <ul style="list-style-type: none"> • Building Networks • Association of Building Compliance • Waikato Building Consent Group • Southern Building Controls Group • Accident Compensation Corporation • Infrastructure Commission • Kāinga Ora • WorkSafe New Zealand • New Zealand Police. <p>The policy proposals originally included in the Regulatory Systems Bill (No. 3) (i.e. amendments relating to the building levy, certificates of acceptance, pool fences and dam certificates) were individually tested through departmental consultation before they went to Cabinet, as well as with key stakeholders most affected by the amendments (for example, building consent authorities and Consentium for the levy changes).</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?	NO

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

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>The Bill makes minor amendments to the way the building levy is handled by stand-alone building consent authorities.</p> <p>Clauses 5 to 9 replace or amend sections 58 to 64. Clause 5 replaces section 58 with new section 58 that requires stand-alone building consent authorities to pay the levy directly to MBIE, rather than to the relevant territorial authorities.</p> <p>Clause 7 replaces sections 60 to 62 with new sections 60 to 62:</p> <ul style="list-style-type: none">• New section 60 enables a stand-alone building consent authority to retain three per cent of the levy in the same way that a building consent authority that is a territorial or regional authority can.• New section 61 confirms that the chief executive of MBIE may recover unpaid levies from a stand-alone building consent authority.• New section 62 clarifies the power of territorial authorities to recover unpaid levies from an applicant for a building consent – including where the application was made to a stand-alone building consent authority.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

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
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<p>Stand-alone building consent authorities</p> <p>Clause 5 of the Bill creates an offence for failing to comply with new section 58(2) that requires a stand-alone building consent authority to pay the levy to the chief executive by the 20th day of the month following the month in which the relevant building consent was granted. This replaces the current strict liability offence in section 58 of the principal Act which applies to building consent authorities, as opposed to just stand-alone building consent authorities.</p> <p>Clause 26 of the Bill replaces section 238 of the Act with new sections 238 and 238A. New section 238 creates an offence for failure by a stand-alone building consent authority to comply with section 238(1). The current section 238(4) contains a strict liability offence for failure by a building consent authority to comply with subsection (3).</p> <p>Independently qualified persons</p> <p>Clause 12 of the Bill inserts section 108A into the Building Act 2004. Section 108A(2) creates a strict liability offence for incorrectly stating in a document that a specified system has met all of the inspection, maintenance, and reporting requirements in compliance schedule in the previous 12 months – in breach of the duty in section 108A(1). New section 108A(3) provides that it is a defence if the defendant proves:</p> <ul style="list-style-type: none"> • the failure to comply was due to either a reasonable mistake or reasonable reliance on information supplied to the defendant by another person; or • the defendant took reasonable precautions and exercised due diligence to avoid the failure. <p>Independently qualified persons are best placed to show what information they used and relied on or what due diligence they undertook when certifying that a specified system had met all the inspections, maintenance and reporting requirements in the previous 12 months. Territorial authorities who regulate independently qualified persons may not have access to all of this information to be able to prove that a person had knowingly or negligently certified a system when they should not have.</p> <p>Providing these defences also make it clearer what behaviour is acceptable ie independently qualified persons can rely on information provided to them if it was reasonable to do so. This is important as the Building Act 2004 does not clarify the expected behaviours of independently qualified persons, so providing any clarity on what behaviour is acceptable is useful.</p> <p>Dam compliance certificates</p> <p>Clause 22 of the Bill creates a strict liability offence under new section 150(3) for failing to supply to the regional authority a dam compliance certificate in accordance with subsection (2). This is because the requirement for a dam owner to display the compliance certificate in a prominent place is being repealed due to difficulties in doing so, and the fact that many affected dams are on private land. This strict liability offence ensures that dam owners continue to ensure their dams are compliant, even though they are no longer responsible for displaying the certificate – but instead are required to supply it.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>Schedule New Part 5 inserted into Schedule 1AA, 17(3) of the Bill provides that an owner who fails to comply with a deadline that expires on or after 2 April 2024 but before the commencement date of the Amendment Act is deemed not to have committed an offence under the Building Act 2004.</p> <p>This is consistent with the retrospective application of the extension to remediation deadlines expiring on or after 2 April 2024 under Clause 17, new section 133AMA.</p>	

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?	NO

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
<p>Clause 17 of the Bill inserts new section 133AMC that creates a power to make delegated legislation by providing that the Governor-General may, by Order in Council made under section 402 on the recommendation of the Minister, extend all of the unexpired deadlines under section 133AMA or section 133AMB or both, before the commencement of the Order in Council by a period not exceeding two years.</p> <p>This section is repealed on 2 April 2028.</p> <p>This clause is necessary to ensure that there is sufficient time for the review of seismic risk management in existing buildings, and any subsequent legislative changes, to be carried out before deadlines start lapsing and owners become liable to prosecution for not carrying out seismic work by their deadlines.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

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?	YES
<p>Clause 17 inserts new section 133AMA, which involves retrospective application of a four-year extension to earthquake-prone building remediation deadlines from 2 April 2024 to notices issued before commencement of the section. The date of 2 April 2024 is the date of Cabinet decisions on the policy proposals and provides certainty as to stakeholders' compliance and enforcement obligations from that date (and subsequent public knowledge of the extension). Retrospective application will prevent a further up-to 19 EPB notices from expiring prior to commencement of the Bill (if it is passed by the end of 2024).</p>	