BUILDING PERFORMANCE

Discussion document

Building System Reform

Building Amendment Bill

Proposals for regulations for:

- Building Product Information Requirements
- Modular Component Manufacturer Certification Scheme
- Product Certification Scheme

APRIL 2021

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

New Zealand Government

Permission to reproduce

Important notice

The opinions contained in this document are those of the Ministry of Business, Innovation and Employment and do not reflect official Government policy. Readers are advised to seek specific legal advice from a qualified professional person before undertaking any action in reliance on the contents of this publication. The contents of this discussion document must not be construed as legal advice. The Ministry does not accept any responsibility or liability whatsoever whether in contract, tort, equity or otherwise for any action taken as a result of reading, or reliance placed on the Ministry because of having read, any part, or all, of the information in this discussion document or for any error, inadequacy, deficiency, flaw in or omission from the discussion document.

ISBN 978-1-99-100812-1 (online)

How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on proposals for regulations for Building Product Information Requirements, the modular component manufacturer certification scheme, and the product certification scheme (CodeMark) by **5pm, on 11 June 2021**.

Your submission may respond to any or all of the proposals for regulations. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please use the submission template provided at: **www.mbie.govt.nz/building-system-reform**. This will help us to collate submissions and ensure that your views are fully considered. Please also include your name and (if applicable) the name of your organisation in your submission.

Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission through the following methods:

- Filling out the feedback template attached and sending your submission to the email or mailing details below
- By sending your submission as a Microsoft Word document to **building@mbie.govt.nz**
- By mailing your submission to:

  Consultation: Building Amendment Bill proposals for regulation
  Building System Performance
  Building, Resources and Markets
  Ministry of Business, Innovation and Employment
  PO Box 1473

  Wellington 6140
  New Zealand

Please direct any questions that you have in relation to the submissions process to **building@mbie.govt.nz**.

Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on regulations for Building Product Information Requirements, the Modular Component Manufacturer Certification Scheme, and the Product Certification Scheme (CodeMark). We may contact submitters directly if we require clarification of any matters in submissions.

Release of information

MBIE intends to upload PDF copies of submissions received to MBIE's website at ***www.mbie.govt.nz***. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to requests under the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish

Contents

How to have your say 3
List of acronyms 6
Figures 7
Tables 7
Minister's Foreword 8
Executive Summary 8
PART ONE OF FIVE: Background and context 11
PART TWO OF FIVE: Building Product Information Requirements 17
Proposals at a glance 18
Supply chain responsibilities to meet Building Product Information Requirements 23
Content of information to be provided about building products 28
Supply chain data and information standards 37
Transition period 41
PART THREE OF FIVE: Modular component manufacturer certification scheme 42
Proposals at a glance 43
Prescribing the kinds of building products that would be 'modular components' and proposing scopes of certification 51
Modular component manufacturer certification body accreditation and registration 58
Modular component manufacturer certification and registration 65
Audits within the modular component manufacturer certification scheme 73
Modular component manufacturer's certificates 79
PART FOUR OF FIVE: Product certification scheme 86
Proposals at a glance 87
Implement new registration requirements for product certification bodies 91
Implement new registration requirements for certificates 95
Improve requirements for product certification body accreditation 98
Strengthen requirements for product certification body audits and reviews of certtificates .. 103
PART FIVE OF FIVE: Regulated fees for the modular component manufacturer certification scheme and the product certification scheme 106
Proposals at a glance 107
Registration and audit fees for the modular component manufacturer certification scheme 113
Accreditation and audit fees for the modular component manufacturer certification scheme 115
Registration fees for product certification 118
Accreditation and audit fees for product certification 120
Annex One: Summary of questions 124

List of acronyms

BPIR	Building Product Information Requirements
Building Code	New Zealand Building Code
GLN	Global Location Number
MBIE	Ministry of Business, Innovation and Employment
MCM	Modular component manufacturer
MCM accreditation body	Modular component manufacturer accreditation body
MCM certification body	Modular component manufacturer certification body
MCM scheme	Modular component manufacturer certification scheme
MultiProof	National multiple-use approval
NZBN	New Zealand Business Number
PCB	Product Certification Body
QMS	Quality Management System
RFI	Request for Further Information

Figures

Figure 1	Key timeframes for legislation and regulations to come into force	15
Figure 2	Impact of Building Product Information Requirements regulatory proposals across the supply chain	27
Figure 3	Roles and responsibilities within the modular component manufacturer certification scheme	48
Figure 4	Responsibilities within building consent and code compliance process for modular component manufacturers certified to 'manufacture only'	49
Figure 5	Responsibilities within building consent and code compliance process for modular component manufacturers certified to 'design and manufacture'	50
Figure 6	Potential modular component categories	55
Figure 7	Potential modular component typologies	56
Figure 8	Potential categories and building usage complexities	57
Figure 9	Roles and responsibilities within the product certification scheme	91
Figure 10	Allocating costs across registration activities (hourly rate)	113

Tables

Table 1	Estimated cost drivers for assessing a registration application from an accredited MCM certification body	114
Table 2	Estimated cost drivers for assessing a registration application from a certified MCM	115
Table 3	Estimated cost drivers for accreditation fees	116
Table 4	Estimated cost drivers for audit fees	118
Table 5	Estimated cost drivers of registration of PCB	119
Table 6	Estimated cost drivers for registration of certificate	120
Table 7	Options for adjusting the existing accreditation fee	121
Table 8	Comparison of the existing audit fee in regulations and the current accreditation body's day rate	123

Minister's Foreword

Minister for Building and Construction, Poto Williams

The building and construction sector is New Zealand's fourth-largest employer, accounting for 10 per cent of New Zealand's workforce, and our fourth-largest industry by GDP.

The Government has a key role in promoting and enabling the supply of buildings and housing which are the places where New Zealanders live, work, and play. We therefore need a building system that inspires trust and confidence, lifts build quality, promotes productivity, and supports innovation. We all know that the building sector is currently under significant pressure to deliver safe, durable and affordable buildings and to meet the growing pipeline of construction projects.

My Building System Legislation Reform Programme proposes significant changes to New Zealand's building laws to address identified issues that have been holding back the building industry.

The reforms will see a more efficient building system, a lift in the quality of building work, and fairer outcomes when things go wrong. I also expect these reforms will support the government's broader housing priorities to speed up the supply of housing and create an economy that grows and works for all New Zealanders.

The first of these changes, the Building (Building Products and Methods, Modular Components and Other Matters) Amendment Bill is currently going through its remaining stages in Parliament.

New and amended regulations will be needed to support the implementation of this Bill once it has passed the remaining stages.

This discussion document has been developed to gain feedback on the detail of proposals in three key areas:

- a minimum set of information on building products to support better informed decision-making by building consent authorities, builders, building owners, designers and architects;
- a new modular component manufacturer certification scheme to enable faster, more consistent building consent approaches;
- a strengthened product certification scheme (known as CodeMark) to improve confidence that new and innovative building products and methods will comply with the building code and will be accepted by building consent authorities.

To achieve our goals and to make the implementation of new regulations as effective we as possible, we need your input and feedback. I encourage you to participate in this consultation process to ensure we get this right.

Executive Summary

Background and context (Part One)

The Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill (the Bill) introduces regulation-making powers that will be used to prescribe information requirements for building products, implement the modular component manufacturer certification scheme and to strengthen the existing product certification scheme.

The Bill is the first phase of the Building System Legislative Reform Programme, which aims to lift the efficiency and quality of building work and provide fairer outcomes if things go wrong.

MBIE has developed proposals for regulations intended to: build the confidence of modular component manufacturer and product certification scheme participants; create certainty and regulatory clarity; ensure cost-effectiveness; and allow flexibility for scheme participants to adopt efficient and innovative approaches while still meeting their regulatory obligations.

These proposals have been informed by industry feedback, operational experience, and international comparisons. They are intended to be a starting point for discussions about the regulations that are required to support and implement the Bill.

The regulations for modular component manufacturing and for product certification will commence as soon as they are made (or no later than 15 months from the date of Royal Assent). An 18 month transitional period is proposed as part of the Building Product Information Requirements regulations after they are made in order to provide the sector with sufficient time to make the changes required to their systems and processes.

This discussion document seeks views on proposals for regulations that are needed to support and implement the Bill. These proposals are outlined below.

Setting minimum building product information requirements (Part Two)

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

The proposals in this section are grouped into four areas:

- supply chain responsibilities to meet Building Product Information Requirements
- content of information to be provided about building products
- supply chain data and information standards
- transition period.

Better information on building products will support better and more informed decision-making, help designers and builders to choose the right products and install them in the way intended and support faster consenting.

Creation of the modular component manufacturer certification scheme (Part Three)

Current building consenting processes are best suited to traditional construction methods. For components manufactured off-site, this can present barriers and delays for more innovative ways of off-site manufacturing. The modular component manufacturer certification scheme is a new voluntary scheme that is being established to support the increased use of manufacturing approaches in the building sector.

The proposals in this section are grouped into five areas:

- prescribing the kinds of building products that would be 'modular components' and proposing scopes of certification
- modular component manufacturer certification body accreditation and registration
- modular component manufacturer certification and registration
- audits within the modular component manufacturer certification scheme
- modular component manufacturer's certificates.

These proposals seek to ensure the scheme is robust; protects consumers; and maintains the confidence of scheme participants, scheme users, building consent authorities and the wider building sector.

Strengthening the product certification scheme (Part Four)

The product certification scheme is a voluntary scheme that allows building products and methods to be certified. However, there is currently a lack of confidence in the scheme.

The proposals in this section are grouped into four areas:

- implementing registration requirements for product certification bodies
- implementing registration requirements for certificates
- improving scheme requirements for product certification body accreditation
- strengthening requirements for product certification body audits and reviews of certificates.

These proposed changes seek to provide MBIE with better oversight of the scheme, improve confidence in the scheme for building consent authorities, and improve confidence in the products and methods that are certified under the scheme.

Regulated Fees (Part Five)

Proposals for regulated fees in relation to the modular component manufacturer certification scheme and product certification scheme are also made. The proposals for regulations in this section outline fees to recover the costs associated with registration, accreditation and audits.

PART ONE OF FIVE:
Background and context

1. Background and context

This discussion document seeks feedback on regulations that are needed to support and implement the Bill

The Bill introduces regulation-making powers that will be used to prescribe information requirements for building products, implement the modular component manufacturer certification scheme and strengthen the existing product certification scheme.

This discussion document seeks views on proposals for regulations that are needed to support and implement the Bill. These proposals cover regulations for building product information requirements, the modular component manufacturer certification scheme, and the product certification scheme. The proposed regulations will also specify the fees associated with some of the proposals in this document.

These proposals are discussed in four parts:

- **Building Product Information Requirements (Part Two)**

  The minimum information requirements that suppliers of building products must comply with and the form and manner in which information must be provided.

- **Modular Component Manufacturer Certification Scheme (Part Three)**

  Processes and requirements to implement the manufacturer certification scheme, including a definition of 'modular component'; accreditation, assessment, certification and registration requirements; manufacturer scopes of practice and certificates; and monitoring and auditing requirements.

- **Product Certification Scheme (Part Four)**

  Requirements for accreditation, certification and registration to strengthen the current product certification scheme (CodeMark).

- **Regulated fees for the modular component manufacturer certification scheme and the product certification scheme (Part Five)**

  A range of fees may be prescribed to implement the modular component manufacturer certification scheme and product certification schemes. Prescribed fees relate to registration, accreditation and audits for these two schemes.

Your submission may respond to any or all of the proposals for regulations. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

The Bill is phase one of the Government's reform of the building system to improve outcomes in the sector

The Bill is the first phase of the Building System Legislative Reform Programme, that aims to lift the efficiency and quality of building work and provide fairer outcomes if things go wrong.

The Bill sets out to address the following issues:

- Currently, the Building Act doesn't require basic information to be provided with building products. Poor information can lead to delays in consenting, increased costs and poor building outcomes if products are chosen that are not fit for purpose.
- Current building consenting processes are best suited to traditional construction methods. For components manufactured off-site, this can present barriers and delays for more innovative ways of off-site manufacturing.
- Concerns about the level of confidence in the current product certification scheme and provide greater assurance that certified product comply with the New Zealand Building Code and will result in safe and durable building work.

By amending the *Building Act 2004* (Building Act), the Bill intends to deliver the following outcomes:

- **Better information on building products** to support better and more informed decision-making, to help designers and builders to choose the right products and install them in the way intended, address information gaps and support faster consenting.
- **A new modular component manufacturer certification scheme** to enable faster, more consistent building consent approaches for manufacturers that are able to meet quality and performance standards and have a demonstrated ability to produce buildings and modular components that comply with the New Zealand Building Code (Building Code).
- **A strengthened product certification scheme** (CodeMark) to improve confidence that new and innovative building products and methods will comply with the Building Code and will be accepted by building consent authorities.

The Bill also introduces the following:

- **Higher maximum penalties** and a longer period to file a charge to make it easier for people to be held to account when they do not follow the rules.
- **Extended timeframes** for the chief executive of MBIE, a territorial authority or a regional authority to investigate potential offences and lay a charge.
- **Widening the scope of what the building levy is collected and used for** to allow 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 to show that the industry is moving with the times, recognising the public's changing preferences in relation to how they access information.

Collectively, these changes will support the Government's broader housing supply and affordability goals, improve trust and confidence in the regulatory system and building sector, promote greater opportunity for innovation and economies of scale and reduce the risk to New Zealand's reputation from product and building defects.

Proposals for regulations are based on MBIE analysis and draw on sector feedback

MBIE developed initial proposals for regulations by drawing on industry feedback, operational experience, international comparisons from the building sector and other sectors and internal workshops. MBIE then tested these initial proposals with a small groups of stakeholders to understand whether they were workable and if they addressed issues or gaps in the right way.

These stakeholders include GS1, EBOSS, Standards New Zealand, building consent authorities, JAS-ANZ, BRANZ, GlobalMark, Bureau Veritas, SAI Global, Insurance Council of New Zealand and Prefab New Zealand.

The proposals in this document take into account these initial conversations. They are intended as a starting point for discussion, and to help you provide in-depth feedback to help shape the final regulations.

MBIE has applied the following assessment criteria to develop these proposals

MBIE has considered the following assessment criteria in developing proposals for regulations:

- **Confidence**: system participants (including users, manufacturers and building consent authorities) should have confidence in the schemes, and in the designs, products and buildings that make use of them.
- **Certainty and Clarity**: the regulatory framework should have clear processes and responsibilities for scheme participants (including users, manufacturers and building consent authorities) and have reasonable compliance costs.
- **Cost effective**: the benefits of the proposal outweigh the risks and costs.
- **Proportionate:** the proposals are proportionate in the way they treat regulated parties.
- **Flexible:** there is enough flexibility to allow regulated parties to adopt efficient or innovative approaches while also meeting their regulatory obligations.

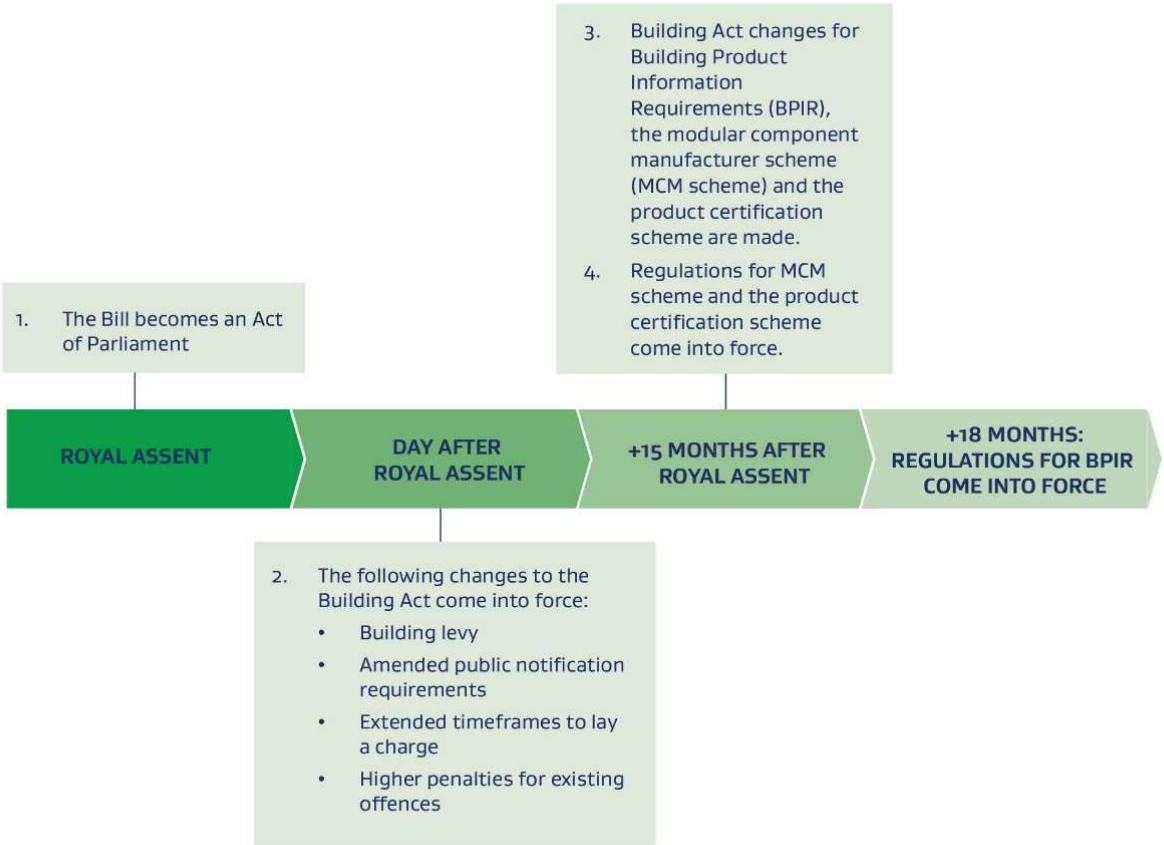
When will the legislation and regulations come into force?

The legislative changes to the building levy, amended public notification requirements, extended timeframes to lay a charge and higher penalties for existing offences will come into effect the day after the Bill receives Royal assent. The other legislative changes in the Bill will come into effect on a date(s) set by Order in Council that is no later than 15 months from the date of Royal assent.

Regulations for the modular component manufacturer certification scheme and the product certification scheme will commence as soon as the regulations are made (no later than 15 months from the date of Royal Assent).

Regulations for Building Product Information Requirements will also be made no later 15 months from the date of Royal assent. However, an 18 month transitional period is proposed as part of the Building Product Information Requirements in order to provide the sector with sufficient time to make the changes required to their systems and processes. MBIE welcomes feedback on this proposal.

Figure 1: Timeframes for legistation and regulations to come into force



How will the legislation and regulations be enforced?

As per Cabinet's Expectations for Good Regulatory Practice, all regulators are required to provide accessible, timely information and support to help regulated parties understand and meet their regulatory obligations.

MBIE is developing a Compliance Framework that sets out its approach for enabling and supporting building consent authorities and territorial authorities to exercise their enforcement functions under the Building Act.

Under this framework, MBIE has identified three key compliance objectives and a suite of activities that aim to efficiently meet the following compliance objectives:

- **Promote compliance:** MBIE will provide accessible, timely information and support to help regulated parties understand and meet their obligations under the proposals for regulations
- **Develop a picture of risk using monitoring and analysis:** MBIE will continually monitor domestic and international trends and engage closely with stakeholders to understand the current environment and proactively identify systemic risks
- **Identify and respond to non-compliance:** where non-compliance is identified, all parties will move quickly to address any issues, taking into account the potential for harm. MBIE has a number of statutory and non-statutory mechanisms to incentivise good behaviour.

Where non-compliance is identified, MBIE and councils will move quickly to address any issues, taking into account the potential for harm. To ensure compliance occurs, MBIE has a number of statutory and non-statutory mechanisms that can be used to provide an incentive for good behaviour or a disincentive for bad behaviour.

How will the legislation and regulations be monitored and evaluated?

MBIE is developing a monitoring and evaluation framework to support the building system reform programme. This will include considering key evaluation questions and key performance indicators to measure outcomes.

PART TWO OF FIVE:

Building Product Information Requirements

Proposals at a glance: Building Product Information Requirements

What and why

MBIE proposes a suite of regulations to introduce requirements for a basic set of information for all building products.

Specific requirements are proposed for information related to Building Code compliance to ensure that information provided supports building product users to carry out their role.

MBIE expects that these requirements will ensure a consistent set of information across the building product supply chain.

Proposals

Supply chain responsibilities to meet Building Product Information Requirements

Proposal 1: Set out responsibilities on suppliers for the manufacture or import of a building product and the distribution and/or retail only of a building product.

Content of information to be provided about building products

Proposal 2: Require a minimum set of information to be provided for all building products, including:

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

Proposal 3: Require claims about whether a building product meets or contributes to all relevant Building Code clauses for the stated scope and limitations of use.

Proposal 4: Require all claims about Building Code compliance to illustrate how this is achieved by making reference to:

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

Supply chain data and information standards
Proposal 5: Require that all information requirements be met prior to supply of the product, and that information is kept up to date with the latest version of a product.
Proposal 6: Require information to be stored in a structured data format that is accessible across the supply chain and by MBIE.
Proposal 7: Require all information required to be disclosed about building products to be made available online.
Proposal 8: Require all building products to have a unique identifiable code that links it to the information provided online.
Transition period
Proposal 9: Provide an 18 month transition period after building product information regulations are made before they come into force.

2. Building Product Information Requirements

Introduction

Why are regulations on Building Product Information Requirements being proposed?

MBIE is consulting on the detail of a new regulatory framework for Building Product Information Requirements (information requirements) established in the Bill.

Currently, there are no mandatory requirements to provide information about a building product being sold.

Under the *Fair Trading Act 1986* (Fair Trading Act) and the *Consumer Guarantees Act 1993* (Consumers Guarantees Act), a supplier is liable for any claims they make about their products. However, there are no requirements for suppliers to make claims about their products in the first instance, particularly in relation to compliance with the Building Code.

A lack of clarity around who is responsible for products used in building work also makes it difficult to hold people to account for product-related building defects. This contributes to a large degree of variation and inconsistency in the type, quality and credibility of information available about different building products.

Building consent authorities confirmed that this is one of the main reasons for requests for further information (RFIs) on building consent applications with information submitted often not relevant to, or compliant with, Building Code requirements. This significantly slows down consenting decisions and contributes to overall inefficiencies in the building consent process.

There are also substantial data gaps on building products in New Zealand and inconsistency in what information is provided. This leads to inefficiencies and reduced productivity from design and consenting, through to completion of building work. The lack of information on a product's performance can also result in products that are not fit for purpose being used or products being used incorrectly, resulting in building defects and damage.

In addition, there is an increasing range and complexity of building products and methods available, with consumers more readily able to access them from outside traditional channels. This drives the use of cheaper alternatives and heightens the risk of using building products and methods that do not comply with Building Code, leading to potential building defects.

The legislative framework in the Bill provides regulation-making powers in the following areas:

- what information must be disclosed in relation to a building product
- who is responsible for disclosing the information, to whom, and when
- how and when information must be disclosed, verified, stored, and to what information management standards.

The legislative framework also sets out a general obligation for suppliers to ensure that the products they supply meet information requirements, in addition to offences, penalties and investigation powers to enforce these provisions. However, the information requirements need to be set in regulations in order for the offences to apply. The proposals set out in this section will specify the details of the information requirements.

At this stage, MBIE is not proposing to exclude any building products from information requirements or set higher requirements for some building products. However, the option to set higher or lower requirements for specific products, or groups of products, is available in future if necessary.

The Bill defines a building product as anything that could be reasonably expected to be used as a component of a building, or is declared by the Governor General by Order in Council to be a building product. The Bill also sets out the following considerations for determining whether a product could reasonably be expected to be used as a component of a building:

- the purposes for which it is ordinarily used
- the purposes for which the manufacturer or supplier intends the thing to be used
- the purposes for which the thing is represented as being used for
- the purposes for which the thing is likely to be used (because of the way in which it is presented or for any other reason).

MBIE considers, that as part of these considerations, a product, for which the scope and limitations includes restricted building work in relation to the product or building work that would require a building consent in relation to the product would be a building product. Products for which the scope and limitations does not include any restricted building work in relation to the product or any building consent in relation to the product would not be considered a building product.

MBIE will provide clear guidance to support the industry to meet information requirements. MBIE is also developing an enforcement strategy focused on engaging, educating and enabling compliance in the first instance.

What is MBIE trying to achieve?

The proposed information requirements are intended to better support those who choose and use building products for building work to enable them to carry out their role effectively and to ensure their building work complies with the Building Code.

It also seeks to address concerns about building products by ensuring there is a clear and consistent minimum level of information available for all building products.

This approach will 'fill in' information gaps across the sector to:

- inform better decisions about product use
- improve productivity across the supply chain
- provide visibility to regulatory bodies over sector trends
- ensure greater accountability for the quality, use and installation of building products.

What are the expected impacts?

Collectively, MBIE expects the regulatory proposals will contribute to:

- better informed decision making about the use of building products
- ease of identification, verification and use of building products
- reduced remediation costs due to incorrect use or installation of building products
- greater accountability for the code compliance of building products
- more efficient building consent processes
- greater confidence in new products allowing for innovation
- designers, engineers, building consent officers, tradespeople and owners having relevant information to make decisions about purchase, use, maintenance and responsibilities related to products.

MBIE anticipates that there will be some compliance costs for manufacturers and importers in order to meet the proposed information requirements. However, MBIE expects that manufacturers and importers will already have access to the information required prior to selling products in New Zealand.

MBIE welcomes feedback on this assessment. A detailed cost benefit analysis will also be undertaken before final proposals are made.

Proposal areas

The proposals regarding building products information requirements are grouped into four areas:

- supply chain responsibilities to meet Building Product Information Requirements
- content of information to be provided about building products
- supply chain data and information standards
- transition period.

2.1. Supply chain responsibilities to meet Building Product Information Requirements

Why are regulations for supply chain responsibilities to meet Building Product Information Requirements being proposed?

The Bill sets out a general obligation for all suppliers to ensure the products they supply meet minimum information requirements. However, regulations are needed to set specific requirements across the supply chain to differentiate between the responsibilities of New Zealand based manufacturers, importers, distributors and retailers to ensure that building products comply with information requirements.

What is MBIE trying to achieve?

The general obligation on suppliers outlined in the Bill will give consumers confidence that any product they purchase complies with information requirements. Setting specific requirements across the supply chain relating to producing and evidencing claims is intended to provide clarity about the role manufacturers, importers, distributors and retailers play. This will also enable people to be held to account for the building products they supply and their use.

These proposals are also intended to strike a balance between ensuring suppliers are not selling products that could lead to non-compliant work, and not placing undue burden on suppliers that may not be well placed to know the accuracy of technical detail.

PROPOSAL 1: Set out responsibilities on suppliers for the manufacture or import of a building product and the distribution and/or retail only of a building product

Description of proposal

MBIE proposes to set out in regulations the roles and responsibilities of those who manufacture and/or import a building product and those who distribute and/or retail a building product.

These responsibilities are outlined below:

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

Manufacturers and importers would be required to create building product information that complies with the new information requirements. Offences for making false, misleading or unsubstantiated claims under the Building Act will place responsibility onto the manufacturer and importer to ensure information is accurate.

Distributors and retailers will not be required to produce the required product information. Instead, their role will be to ensure that the products they supply meet information requirements. Distributors and retailers will also be responsible for ensuring that the product information is available to those that they supply to before they on sell products. Where a supplier carries out a combination of these roles, their responsibilities will depend on the role they play in relation to the product in question.

Tradespeople can also act as product suppliers when they source and use products that end up in building work for consumers. For this reason, they will be captured by the requirement to ensure that the products they select and use meet the prescribed information requirements. In practice, this means they must check that the correct information has been provided for a product when they purchase it for inclusion in building work. Tradespeople should already be doing this when checking a product's information to ensure it is fit for purpose.

Rationale

Due to the complexity of building product supply chains (for example, overlapping and varying roles in relation to the manufacture, importation and distribution of products), the responsibilities of a supplier have been linked to their role in regards to the product in question.

While there will be differing responsibilities across the supply chain, the proposals are based on the expectation that all suppliers across the building system (manufacturers, importers, distributers and retailers) will take responsibility for ensuring the products they sell meet information requirements. This will ensure that if an importer or manufacturer doesn't comply with the information requirements, this won't impact the wider supply chain – where a product is distributed across the country and incorporated in building work before a problem is picked up.

While all suppliers will be responsible for ensuring products they sell meet information requirements, only importers and manufacturers of a product are well placed to produce and evidence information. MBIE considers that distributors and retailers have a role to play in ensuring that the product they on sell complies, but this should be limited to checking information has been provided rather than for the accuracy of that information.

This is because it is manufacturers and importers who have best access to critical technical and testing data to be able to substantiate technical claims relevant to ensuring compliant building work. It would create unnecessary duplication of effort to have distributors and retailers carry responsibility for the accuracy of claims, and may inadvertently require them to carry out third party testing to verify claims.

Many products in New Zealand originate from overseas. However, when placing information requirements on suppliers, it would not be possible to enforce any requirements that applied to overseas manufacturers and suppliers as they are outside of New Zealand's jurisdiction. Therefore, these requirements will apply only to those that reside or operate in New Zealand. Importers do not necessarily do the kind of testing required to substantiate claims about Building Code compliance, but they do regularly retrieve this information from overseas manufacturers to fulfil current obligations.

Expected impacts of proposals for regulations for supply chain responsibilities to meet Building Product Information Requirements

It is expected that these proposals would impact differently on parties depending on their role within the supply chain, their business size and how much of the required information they already provide. Figure 2 below provides an example of the impact these proposals could have across the supply chain.

Product users and consumers: A clear expectation that all building products have consistent information provided will give product users and consumers' confidence in the products they are choosing. Where a building product is not complying with information requirements (such as not having information available online), it will be a clear indication that the product may also not comply with other requirements. Consumers and product users will be able to raise any concerns with MBIE who can then investigate and take enforcement action where necessary.

Suppliers: A large number of manufacturers and importers already have the information required, but likely in a different form. Therefore, there may be a small cost for compiling and accessing the information from existing records and providing it in accordance with regulations. For smaller suppliers there will likely be a higher cost barrier to set up systems and cover initial costs of developing systems and processes to meet information requirements. These would not be on-going costs.

Importers will have an obligation to check the credibility of the information supplied by an overseas supplier. In some instances they may need to seek additional appraisals or third party testing to assure the quality and performance of products if this has not already been done to the standard set by information requirements.

Industry parties: Successful industry co-operation to embed standardised approaches to producing digital product data would reduce the cost of compliance and create productivity efficiencies across the supply chain by minimising duplication of effort and time taken to input, share and access information about building products. MBIE intends to work with the industry to achieve this outcome, as possible productivity gains across the supply chain would likely offset any potential costs and create a net reduction in the cost of building products.

Building consent authorities: Improved efficiencies from better quality and more consistent product information will support more efficient building consent processes as building consent authorities would need to make fewer information requests. There will also be fewer occasions where rework will be required to fix defects and increased confidence in building products.

MBIE: Addressing significant data gaps on building products will also assist MBIE in its regulatory function in monitoring and enforcement activities and in making future policy decisions.

Questions about supply chain responsibilities to meet Building Product Information Requirements	
1.	Do you think the split of responsibilities across the supply chain for information requirements is clear? Please explain your views.
2.	Do you agree with the proposal that manufacturers and importers should be responsible for producing information for the building products they supply in order to comply with information requirements? Please explain your views.
3.	Do you agree with the proposal that distributors and retailers should be responsible for ensuring building products they supply comply with information requirements? Please explain your views.
4.	Do you agree with MBIE's assessment of the likely impacts of the proposed information requirements on (1) manufacturers and importers, and (2) distributors and retailers? If not, what impacts do you think the proposals will have on these two groups?

Figure 2: Impact of Building Product Information Requirements regulatory proposals across the supply chain

JOURNEY MAP Building Product Information Requirements

BUILDING PERFORMANCE

Introducing building product information requirements (BPIR) will ensure there is a minimum and consistent level of product information available for every building product to support designers, building consent authorities, tradespeople and consumers to make better choices about building products used in their building work.

THE MANUFACTURER

1 Win-Frame Ltd is a NZ-based manufacturer of window frames made from aluminium sourced from overseas. To be sold in New Zealand they must provide certain product information about the window frames. They collate information from the aluminium manufacturer, internal quality control testing and the results of external testing.

2 Win-Frame Ltd are uncertain of some of the claims from the overseas manufacturer so they check what testing was done, by who and to what international standard. They can also undertake 3rd party testing to be sure of the physical properties before including those claims in the product information.

THE GENERAL MANAGER (GM)

3 The GM of a large building product retailer, is preparing their staff for the requirement for all products in stock to meet the minimum information requirements. There are already a number of other regulatory requirements that the retailer must comply with such as hazardous materials labelling for which they have dedicated staff.

4 The GM works with those staff members to expand their role to track that building products they are selling comply with BPIRs. The GM needs to ensure the information is easily accessible for customers and that in-store signage to educate customers is available.

THE DESIGNER

5 The designer thinks frames from Win-Frame Ltd would work well in their design but hasn't used them before and needs to check how the frames secure to the building structure. The designer is able to look up the technical drawings for installation within the product information and adjust the frame design to ensure it meets these installation requirements.

6 The designer is also able to see how this product works with the wider building system to meet Building Code performance requirements by reading through the building product information. It is clear from the building product information that there are no bans on the product.

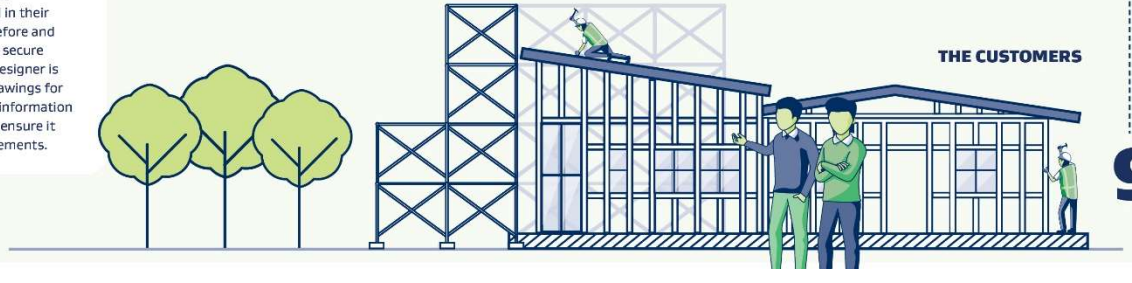
THE CONSENTING AGENT

7 The consenting agent is reviewing the Building Consent application for the customer's new home. They haven't come across Win-Frame Ltd's window frames before. Previously the agent would have had to seek further information from the architect to understand the frames scope and limitations. Now they are able to look up the product information on the manufacturer's website.

8 The builder who is working on the customer's house has not installed Win-Frame Ltd's frames before but, as building products now must include installation information, they are able to install the window frames correctly first time. This saves them from having redo them later because they weren't installed properly.

THE BUILDER

THE CUSTOMERS



9 The Customers are happy with how their new house is progressing. They find another window frame they think will look better in the living room. After checking the product information and discussing the relevant differences and similarities to the window frames being used in the rest of the house, they are confident the new window frame will also be fit for purpose. With the builder's help, they complete a variation to the building consent.

2.2. Content of information to be provided about building products

Why are regulations on the content of information to be provided about building products being proposed?

The proposals for regulations in this section aim to ensure that there is a consistent minimum set of information requirements for any building product regardless of risk profile or complexity.

A minimum set of information is a first, confident step towards improving the quality of information across the building sector. Although many suppliers will likely already provide this information, there are products within the building and construction sector that do not already meet these requirements. These regulations will trigger manufacturers and importers to bring their product information up to the standards of their competitors and take a more active responsibility for product quality and the accuracy of the claims made about these products.

Introducing a minimum set of information will also enable consumers and other parties to rely on the information provided to make decisions. This is important because decision-makers and users of building products need confidence that they are using the correct product, in the correct way and in the correct context in order to meet Building Code requirements.

This will increase consenting efficiency as building consent authorities will have better access to the information necessary to understand if a building product specified in a design is fit for purpose.

Having access to information that is essential to a range of roles across the building and construction sector will ensure that all participants take responsibility for ensuring building work is compliant with the Building Code.

What is MBIE trying to achieve?

These proposals are intended to strike a balance between creating extra work for the supply chain, and ensuring that practitioners and consumers have the information necessary to make informed decisions in carrying out their role.

The intention of the minimum set of information is to support the following:

- identifying and verifying products and their related information
- transparency of origin and contact points
- clarity about a products use in building work, code compliance and maintenance
- accountability for claims about a building product's performance.

To ensure information is relevant to practitioners carrying out their role, the minimum set of information has been modelled off the existing guidance on Product Technical Statements which are standard across much of the industry.

PROPOSAL 2: Require a minimum set of information to be provided for all building products

Description of proposal

The minimum set of information to be provided includes:

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

Information about the scope and limitations of use, performance, design considerations, installation and maintenance requirements will vary greatly depending upon the complexity of a building product. Specialised building products such as cladding systems would likely include technical drawings and user manuals to illustrate how and where they are intended to be used. In contrast, multipurpose products, such as concrete, may simply state the physical attributes of the product, how it must be stored and prepared before use and that it can only be used for building designs where concrete of that grade is required.

Recognising the judgement that manufacturers and importers would need to exercise in determining how much information to provide, MBIE intends to provide guidance to support manufacturers and importers to meet their obligations in relation to this requirement.

Rationale

Only information generic to all building products is proposed as a starting point to ensure all product information provided is meeting the same minimum level. This will help to ensure that products are fit for their intended purpose, and that designers, builders and homeowners have access to the information they need to ensure that products are specified and used in such a way that will result in building work that is compliant with the Building Code.

The regulations will set one core information requirement which identifies all building products as needing to meet the minimum information requirements. The proposed information requirements strike a balance between the level of information suppliers will be required to provide, the range and complexity of products and the level of information already being provided by some product suppliers.

The proposed list of information ensures that anyone viewing a product and its information can be sure of its identity, where it has come from, what its properties are and how it should be used and maintained.

Description of a product

A description of a product, including what category or classification a product is in, will ensure information is easily sorted and searched by consumers, artificial intelligence across supply chains and by MBIE when analysing information.

The details of a manufacturer and supplier

Being able to make contact with local product suppliers is important for a range of product users when they need to make enquiries about a building product. Building consent authorities, designers, tradespeople and consumers may have questions about a building product that is not provided in the required information. In these cases it is important that suppliers are contactable. It is also important that MBIE is able to make contact with suppliers for enforcement purposes.

Including the details of a supplier as a requirement in the regulations, along with a New Zealand Business Number or Global Location Number where applicable, will ensure that this information is consistently available. The use of an NZBN or GLN leverages off existing systems for capturing key business information including contact details.

Technical information about a product

Setting the requirement to provide any technical information that may exist prompts manufacturers and importers to include relevant information, and means that where information for these products does exist but is intentionally omitted, manufacturers and importers can be held liable.

Warranty information

While consumers are covered by the general guarantees under the Consumer Guarantees Act, some manufacturers and importers provide specific guarantees or warranties for building products. This requirement will ensure that any relevant warranty information for a product is available to those making decisions about the product's purchase and use.

Requiring any information about product warranties to be included will ensure that consumers can make informed decisions and understand their cover in relation to the products they choose.

Warnings or Bans under the Building Act

A Warning or Ban under the Building Act makes it clear to the industry where a product should not be included in building work. However, it does not legally stop a supplier from selling that product generally. Clearly identifying where a product has a Warning or Ban will ensure that it does not inadvertently get incorporated into building work.

PROPOSAL 3: Require claims about whether a building product meets or contributes to all relevant Building Code clauses for the stated scope and limitations of use

Description of proposal

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

To support a principled approach to setting requirements for referencing Building Code clauses, suppliers will require clarity as to which Building Code clauses might be considered relevant for different kinds of products.

The guiding principle is to consider any Building Code clauses that the product meets or contributes to as part of its stated scope and limitations and any relevant evidence developed to ensure the product performs as expected.

Rationale

Identifying which Building Code clauses are relevant to a particular building product can be complex, as it depends not just on the product, but where and how it is used.

Linking required claims to the scope and limitations of a product helps to:

- focus supplier claims to those that decision-makers will need to carry out their role
- give flexibility to suppliers to only reference Building Code clauses that relate to the scope and limitations they anticipate for their product
- eliminate the need for a large, complex and high maintenance list of all building products on the market and their relevant Building Code clauses.

MBIE considers that setting a principled, rather than prescribed, approach allows product suppliers to exercise discretion over which Building Code clauses are relevant.

MBIE considered creating a prescriptive list of products and relevant Building Code clauses as an alternative option. However, MBIE concluded that there were significant barriers in trying to create an exhaustive list (for example, the growing complexity of products and the multitude of ways they can be used). This option would also create too high a risk of some products or Building Code clauses being missed. Consequently, this could create legal loopholes for manufacturers or importers to avoid their responsibilities.

A principled approach reflects that manufacturers and importers are best placed to understand the Building Code implications of their product.

PROPOSAL 4: Require all claims about Building Code compliance to illustrate how this is achieved

Description of proposal

MBIE proposes that suppliers should be required to make claims about the performance of their building products. This can be achieved by making reference to compliance pathways listed in section 19 of the Building Act and any other international standards or technical drawing that details the physical properties of the product or how the product is expected to be used.

To support all suppliers to understand what best practice looks like, MBIE intends to provide guidance on how to illustrate compliance without restricting suppliers to one approach.

It is expected that all claims made about a building product's performance will be held to account in the same way that claims are currently held to account under the Fair Trading Act. Claims about Building Code compliance will need to provide evidence in the same way they currently are in order to satisfy the building consent process.

Under existing settings, to make a claim about how a product meets or contributes to Building Code compliance (for example, that a tap used for sanitary plumbing meets standards for acceptable levels of lead leaching) the product would have to have been tested in accordance with all associated requirements set out in that Building Code standard. However, different products illustrate their expected performance or physical properties in other ways. For instance, a cladding system for the external walls of a high rise building may have technical drawings with structural, fire and weather tightness ratings. It is expected that the product would have been tested in accordance with its installation instructions within its scope and limitations of use.

For many products, producer statements signed off by a certified practitioner, third party testing or appraisals of testing completed overseas to comparable standards would be appropriate. In practice, this means that the evidence being used to substantiate claims needs to be sufficient enough to also satisfy investigations about a building product under existing settings.

Rationale

Information on performance and the scope and limitations of a product needs to be clear as to how it relates to the Building Code. MBIE recognises that different building products use different kinds of methods to illustrate how they form part of a system that complies with the Building Code. Current proposals are intended to allow flexibility in how claims about Building Code compliance can be evidenced while giving confidence that claims are reliable and inform good decision making.

The Building Act already sets out a range of compliance pathways with the Building Code. Referencing existing compliance pathways is already common practice for many suppliers. This supports considerations about Building Code compliance while also providing technical evidence for claims about performance of a product.

Because there are a range of other international standards and ways that suppliers can show the physical and technical properties of a product, MBIE proposes to allow these compliance pathways as long as the information is sufficient to evidence claims about the Building Code.

This flexible approach allows New Zealand to leverage off multiple jurisdictions and access the best products around the world. Where products have specific requirements under the Building Act, this approach will still require statements about how they meet those requirements. For instance, suppliers of tapware intended for use in sanitary plumbing will need to refer to standards related to lead leaching and will need to have tested to those standards in order to substantiate those claims.

MBIE considered mandatory certification for some products based on risk profile or other metric, but does not consider this appropriate at this time. The purpose of product certification is to provide certainty over the Building Code compliance of a building product and accuracy of any claims made. However, mandating such an approach can be unnecessarily restrictive on a market without delivering further certainty than can be achieved by other means. In future, there may be a case for setting specific requirements about how evidence is established for some products. If this is the case, regulation making powers under the Bill allow for further and specific requirements for some categories of products to be set by regulations as needed.

Case Study – how might the requirement for all claims about Building Code compliance work in practice?

General use products: nails, concrete and wood etc.

Reference to Building Code clauses could link back to Australian/New Zealand or international product standards that give confidence of the grade of the product and how it was produced. This will provide the designer, engineer, building consent official or tradesperson with confidence that products will meet Building Code requirements where it is used in a design that specifies that grade of product.

Complex products: cladding system

The specified scope and limitations and installation requirements would indicate the relevant Building Code clauses. Reference to relevant testing standards gives assurance that the product will perform as expected when used in the way it has been designed and tested to.

Products with specific requirements: taps for sanitary plumbing

Unless specifically excluded by the scope and limitations of use, a tap will need to illustrate compliance to relevant Australian/New Zealand or international standards related to sanitary plumbing. These can make reference to the specific testing that has been done to relevant standards to give assurance that the product is fit for purpose.

Products for specialised uses

For some products there are few requirements for general use, but specialised uses have specific Building Code clauses that are relevant. In these cases, the scope and limitations of products are critical in determining relevant Building Code clauses.

For instance, if a door isn't intended for use as a fire escape door, then it would be reasonable to omit references to relevant Building Code clauses about fire, but it would be necessary to explicitly include use as part of a fire escape as a limitation of the building product. However, if the scope and limitations of the building product is intended to include use as a fire escape door, the supplier would need to reference relevant fire rating/testing in relation to the Building Code.

Supporting claims about Building Code compliance

Information provided about a building product will need to be supported by relevant data and evidence. This will form a key part of any enforcement processes undertaken by MBIE to hold suppliers to account for the accuracy of the information they provide.

Most compliance pathways explicitly require particular testing such as standards. Where products use alternative solutions or have been tested or certified overseas, the importing or manufacturing supplier will need to be able to illustrate and provide evidence of how these products comply with the Building Code. Data and evidence from overseas would be an acceptable means to substantiate claims as long as it is clear how it applies to the Building Code and that the data and evidence is verifiable and from a credible source.

Expected impacts of proposals for regulations for content of information to be provided about building products

Overall, better quality information on a product's performance, scope and limitations will offset any cost increase. The information requirements for performance, scope and limitations will create consistency in reference of, and evidence for, compliance with Building Code clauses.

Product users and consumers: More consistent and comparable information on building products will give consumers and users confidence in the quality and suitability of building products for their intended use. Where consumers are choosing products directly such as tapware for their bathroom, they can have confidence that the product meets relevant mandatory standards or performance requirements. In the case of tapware, this would include standards for use in sanitary plumbing related to leaching of lead. Where suppliers have increased compliance costs, these costs may be passed on to consumers but will likely be outweighed by increased efficiencies across the supply chain and reduced need for remedial work due to use of substandard building products, creating a net reduction in cost to consumers as changes bed in.

Building consent authorities: The information requirements will increase efficiency in consenting and ensure suppliers are liable for the performance of their products, increasing consistency of product quality across the industry. It will also more clearly differentiate between high and low quality products that may appear similar before looking at technical details. This information will support designers, building consent authorities, tradespeople and consumers to make better choices about building products included in building work.

Clear, relevant and standardised information on what relevant and credible information looks like will support better quality building product information to be provided and will support better building consent applications, enabling the use of new and innovative products.

Suppliers: Providing guidance material, rather than prescribing everything through regulations, will also help to minimise any potential costs by creating flexibility for suppliers to illustrate compliance with the Building Code with the compliance pathways they already use for their products. For most suppliers, the information being asked for isn't different to what is already provided. The main change for these suppliers will simply be in how they provide that information to ensure it is meeting the requirements common to all building products under new regulation.

For suppliers that are importing products, clearer guidance on how international testing applies in a New Zealand context may reduce compliance costs if they no longer need to undertake the significant cost to retest products in New Zealand that already meet international standards.

MBIE: As part of MBIE's new investigation powers, MBIE would be able to request information to understand whether these claims have been substantiated and take enforcement action where non-compliance with information requirements or the Building Code generally is found. This differs greatly from the current state, where manufacturers and importers do not have to make explicit claims about their products' Building Code compliance and where MBIE is restricted in investigating claims of non-compliance due to gaps in investigation powers.

Questions about content of information to be provided about building products	
5.	Does the minimum set of information required for all building products look reasonable? If not, what information requirements should be added or removed?
6.	Do you agree with the proposal that manufacturers and importers must make claims about how their building product meets relevant Building Code clauses?
7.	What challenges would manufacturers and importers face in making claims about how their building products meet relevant Building Code clauses?
8.	Do you agree with the proposal for manufacturers and importers to use the compliance pathways listed in section 19 of the Building Act 2004 to illustrate compliance with the Building Code? Please explain your views.
9.	What other requirements or guidance would you recommend to ensure information provided is relevant and accurate?

2.3. Supply chain data and information standards

Why are regulations for supply chain data and information standards being proposed?

Product users and decision-makers across the building system need access to information in a range of circumstances. Decision-makers need to have confidence that the information is accurate and credible in order to have confidence in the decisions they make in purchasing or working with a building product.

Currently, there are substantial data gaps on building product information in New Zealand. Information is provided in different forms and places, and data is not consistently stored in a way that is easily accessible by the rest of the supply chain, the public, or regulatory bodies.

Inconsistency in digital product data creates duplication of effort across the supply chain to access, input and process information, increasing the cost of products and contributing to the high cost of construction in New Zealand.

Data gaps makes it difficult for MBIE as the regulator to have visibility over all the different building products available across the building sector in New Zealand, the quantity of building products and where they are currently stored or have been included in building work. This in turn limits MBIE's ability to track building products for monitoring and enforcement purposes and inform new policy decisions in future.

What is MBIE trying to achieve?

The intention is to ensure that information is accessible across the supply chain and to all building product users, and that building products can be readily identified and matched with their relevant information online. Structured data should also be accessible across the supply chain to achieve productivity gains for the sector, and to inform investigations and regulatory decisions by the central regulator.

MBIE proposes that information about building products be:

- disclosed prior to supply and kept up to date with the latest version of a building product
- stored in a structured data format that is accessible across the supply chain and by MBIE
- made available online
- accessible via a unique identifiable code that links the product to the information provided online.

PROPOSAL 5: Require that all information requirements are met prior to supply of the product, and that information is kept up to date with the latest version of a product

Description of proposal

MBIE proposes that information must be available prior to sale of the product to ensure that it is available as soon as the product is on the market. As products are updated and new versions made available, the associated information must be updated where applicable. For distributors or retailers, when purchasing a new version of a product (for instance a 2020 model of a product that supersedes a 2019 model), the expectation would be that the distributor or retailer checks that the latest information is provided with the product.

Rationale

All product information should be available as soon as a product has entered the market. As new models of the same product come out, any changes to the product's information need to be made available in case there are implications for the performance of the product. So long as a product remains unchanged it is safe to expect that the product's relevant attributes remain the same.

PROPOSAL 6: Require information to be stored in a structured data format that is accessible across the supply chain and by MBIE

Description of proposal

Structured data is a way of storing information by placing information into data fields in a digital system. That information is then viewable as part of a spreadsheet, and can be input into a typical web browser page or other computer system. This allows content to be stored in a standardised way that is then easily shared across the supply chain for multiple uses without the need to manually enter data. It also allows for more efficient searching of information across a database and enables analysis of product trends and auditing.

MBIE proposes that structured data be accessible across the supply chain and by MBIE for these purposes.

Rationale

Structured data provides the foundation for digital transformation across the construction sector. It is necessary for realising productivity gains, enabling modern technology solutions including building information modelling and digital consenting), and enabling more reliable information for making regulatory decisions in future.

Requiring information to be provided in a structured data format will improve the quality and availability of important data for the entire construction sector. Ensuring that information is provided in a consistent format through structured data across the supply chain will provide two clear benefits: reducing effort across the entire supply chain to collate and input information in their own systems, and enabling easy collection and analysis of bulk information.

Presently, there can be enormous duplication of effort across supply chains to produce, copy, upload or input basic information about products into dedicated data bases, advertise online and input into retailer databases. Where information is provided in a structured data format, this effort is minimised, enabling efficiencies across the supply chain in the sharing and managing of basic and critical information.

More effective and accurate sharing of information across the supply chain allows for data collection on building products for MBIE's monitoring and enforcement functions. It will contribute to developing rich product data by enabling information to be collected and analysed on a larger scale. This will increase visibility over what, how much, where and what kind of building products exist across the New Zealand building sector, enabling better informed regulatory interventions and future responses to live events regarding product failures.

PROPOSAL 7: Require all information required to be disclosed about building products to be made available online

Description of proposal

MBIE proposes that the required information is made available online to enable universal access.

Rationale

Basic information about building products needs to be used by a wide range of groups including building consent authorities, designers, engineers, tradespeople and consumers. It therefore makes sense to ensure that this information is universally accessible in a modern context. By ensuring information is available online, questions about building products can be answered whether one is shopping in a store, considering designs in an office or checking products on site before installation. If the information is also required to be provided through structured data, the additional burden to then make this information available online will be minimal.

PROPOSAL 8: Require all building products to have a unique identifiable code that links it to the information provided online

Description of proposal

MBIE proposes to require a unique identifiable code such as the Global Trade Identification Number to link a product to its relevant product information. This is a unique number given to any product across any supply chain in the world, which eliminates the risk that it is misidentified as another product.

Rationale

Unique identifiable codes ensure that it is immediately clear what information corresponds with which products and makes it significantly harder for counterfeit products to enter the market. It links a product and its packaging to information whether it is with the product or online. Being able to track building products by unique identifiable codes would give confidence in products and support investigations into building product failures. Many suppliers will already provide this but including this requirement in regulations will ensure that all building products are identifiable in a consistent way.

Expected impacts of proposals for regulations about supply chain data and information standards

Suppliers: Costs to comply with new information requirements will likely include accessing the information from existing records and compiling it into a structured data system and making it available online in accordance with regulations. Suppliers may need to make their own site to host this information but would be able to save costs by listing it on a third party site. For the most part, these systems are largely pre-existing and are used across international supply chains already.

MBIE expects that co-operation across the industry to adopt shared information storage, access and data standards to meet information requirements would reduce the costs of compliance and realise many of the benefits of structured digital product data. This cooperation could include support from MBIE as the central regulator and from industry leaders to develop common approaches to achieving compliance.

Major retailers: There will be a small impact for major building product retailers as they will likely need to increase tracking and checking of products and maintain their own internal systems as part of the compliance approach, but generally all major retailers have appropriate systems in place to ensure compliance with other regulatory requirements for other products. Large retailers, for instance, generally use some form of structured data to manage product catalogues for retail and inventory purposes.

Small manufacturers: The impact on smaller manufacturers will likely be greater due to economies of scale and because some may not have basic technology capabilities, which will be necessary to comply. Getting up to speed with technology, including having basic product labelling in the form of a unique identifiable code and access to and inputting into a structured data online system, will be required for this group if they don't already have these systems in place.

Benefits: The benefits of the regulations are expected to outweigh any potential costs (both monetary and non-monetary) imposed as a result. These benefits include:

- productivity gains across the supply chain
- greater code compliance of building products
- increased efficiency in the consenting system
- increased accountability for building products
- improved data for monitoring and enforcement activities
- improved data for tracking industry trends and evidencing the case for regulatory interventions
- lower risk of financial losses from product failure
- increased confidence for designers, builders and other tradespeople in specifying and using products.

Questions on supply chain data and information standards proposals
10. Do you agree with MBIE's assessment of the likely impacts on manufacturers and importers of the requirement to make evidenced claims about the Building Code compliance of their products? If not, what impacts do you think the proposals will have on manufacturers and importers?
11. Do you agree that all information requirements should be met prior to supply of a building product and that information be kept up to date with the latest version of that product? If not, what other requirements do you think would be reasonable?
12. Do you agree that all information should be provided in structured data and accessible across the supply chain and by MBIE? Please explain your views.
13. Do you think it is reasonable to require all information to be disclosed about building products to be made available online?
14. Do you agree with the proposal for all building products to have a unique identifiable code that links it to the information provided online?

2.4. Transition period

PROPOSAL 9: Provide an 18 month transition period after building product information regulations are made before they come into force

Description of proposal

MBIE proposes that the regulations provide for an 18 month transition period after they are made before they come into force.

Rationale

An 18 month transitional period is proposed as part of the Building Product Information Requirements regulations in order to provide the sector with sufficient time to make the changes required to their systems and processes.

Question on the proposed transition period
15. Do you agree with proposal for an 18 month transition period after building product information requirement regulations are made before they come into force? If not, what would be a reasonable timeframe?

PART THREE OF FIVE:

Modular component manufacturer certification scheme

Proposals at a glance: Modular component manufacturer certification scheme

What and why

MBIE proposes a suite of regulations to implement the modular component manufacturer certification scheme.

Specific requirements are proposed in a range of areas, including to prescribe:

- the kinds of building products that would be 'modular components',
- standards and criteria for modular component manufacturer certification body accreditation and registration
- standards and criteria for modular component manufacturer certification and registration
- how and when audits within the modular component manufacturer certification scheme take place
- requirements for modular component manufacturer's certificates.

MBIE intends these proposals to implement the modular component manufacturer certification scheme in a way that addresses system barriers to offsite manufacturing, while also establishing and maintaining consumers' trust and confidence in the scheme.

Proposals

Prescribing the kinds of building products that would be 'modular components' and scopes of certification

Proposal 1: Prescribe in regulations offsite manufactured building elements such as open frames and trusses, enclosed panels/units, volumetric structures, and whole buildings as the kinds of building products that are 'modular components'.

Proposal 2: Establish a non-regulatory system to guide modular component manufacturer certification bodies in certifying modular component manufacturers to certain scopes of practice.

- **Option 1:** Base the proposed scope of the certification system on modular component categories *(preferred option)*.
- **Option 2:** Base the proposed scope of the certification system on modular component typologies.
- **Option 3:** Base the proposed scope of the certification system on modular component, building use and material complexity.

Modular component manufacturer certification body accreditation and registration

To be **accredited**, a certification body must have:

- policies, procedures and systems in place to oversee, assess and inspect modular component manufacturers to determine if they meet criteria required for certification **(Proposal 3)**

- policies, procedures and systems in place to undertake risk assessments and audits of certified manufacturers **(Proposal 4)**
- policies, procedures and systems in place that ensure appropriate staff perform its functions **(Proposal 5)**
- a system to retain records in relation to their decisions, and the policies, procedures and systems required by regulations **(Proposal 6)**
- a process to notify the modular component manufacturer accreditation body of changes to key personnel or other circumstances that might impact its accreditation **(Proposal 7)**
- suitable complaints handling policies, procedures and systems **(Proposal 8)**.

To be **registered**, a certification body must:

- satisfy a prescribed fit and proper person test **(Proposal 9)**
- provide evidence that it has a process to notify MBIE of changes to key personnel or other circumstances that night impact its registration **(Proposal 10).**

Modular component manufacturer certification and registration

To be **certified**, a modular component manufacturer must:

- have a quality plan and quality management system **(Proposal 11)**
- provide evidence that it has manufacturing processes and systems appropriate to the scope of certification they are seeking **(Proposal 12)**
- provide evidence that it has design processes and systems appropriate to the scope of certification it is seeking in order to be certified to 'design and manufacture' **(Proposal 13)**
- have policies, procedures and systems in place that ensure appropriate staff perform its functions **(Proposal 14)**
- have a system to retain records in relation to its decisions, and policies, procedures and systems required by regulations **(Proposal 15)**
- have a process to notify the responsible modular component manufacturer certification body of changes to key personnel and other circumstances that might impact its certification **(Proposal 16)**
- have suitable complaints handling policies, procedures and systems **(Proposal 17).**

To be **registered**, a certified modular component manufacturer must:

- satisfy a prescribed test to indicate it has adequate means to cover any civil liabilities that may arise in relation to their manufacture and design (if applicable) of modular components **(Proposal 18)**
- satisfy a prescribed fit and proper person test **(Proposal 19)**
- provide evidence that it has a process to notify MBIE of changes to key personnel or other circumstances that might impact its registration **(Proposal 20).**

Audits within the modular component manufacturer certification scheme
Proposal 21: The modular component manufacturer accreditation body must use a prescribed process to decide appropriate audit procedures and audit frequency to apply to modular component certification bodies. **Proposal 22:** A modular component manufacturer certification body must use a prescribed process to decide appropriate audit procedures and determine the audit frequency for the modular component manufacturers for which it is responsible.
Proposal 23: Following the completion of an audit, the modular component manufacturer accreditation body and modular component manufacturer certification bodies must issue an audit report to the audited party and to MBIE in a timely manner.
Proposal 24: Modular component manufacturer certification bodies and modular component manufacturers must make any changes required by an audit report within three months of receiving that audit report.
Proposal 25: When a modular component manufacturer certification body or modular component manufacturer passes an audit and has made all changes required by the audit report, the modular component manufacturer accreditation body and modular component manufacturer certification bodies must issue an audit certificate to the audited party in a timely manner.
Modular component manufacturer's certificates
Prescribe requirements for modular component manufacturer's certificates issued at **building consent application stage** by registered modular component manufacturers that are certified to: • 'manufacture' modular components **(Proposal 26)** • 'design and manufacture' modular components **(Proposal 27)**.
Prescribe requirements for modular component manufacturer's certificates issued at **code compliance certificate application stage** by registered modular component manufacturers that are certified to: • 'manufacture' modular components **(Proposal 28)** • 'design and manufacture' modular components **(Proposal 29)**.

3. Modular component manufacturer certification scheme

Introduction

Why are regulations for a modular component manufacturer certification scheme being proposed?

MBIE is consulting on a regulatory framework to operationalise the modular component manufacturer certification scheme (MCM scheme) that has been established through the Bill.

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

A lack of clarity and confidence in how existing regulatory settings apply to offsite manufactured modular components has created barriers to the uptake of manufacturing approaches in the building sector.

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

The Bill sets the high-level legislative framework for the MCM scheme. Regulations are required to establish the detail of this legislative framework.

The Bill provides regulation-making powers in the following areas:

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

These regulations will be supported by scheme rules, operational guidance and information that will be developed.

What is MBIE trying to achieve?

The MCM scheme is intended to address the barriers outlined above by providing more efficient and consistent building consent approaches for manufacturers that are able to meet quality assurance and performance standards. These manufacturers will also have a demonstrated ability to produce modular components that comply with the Building Code.

Depending on how manufacturers meet specified certification and registration criteria, they may be certified to:

- **manufacture** modular building components to a Building Code compliant design that must be approved by a building consent authority through either a standard building consent application or a current national multiple-use approval (MultiProof), or
- **design and manufacture** modular building components to a Building Code compliant design that they have developed themselves, or that has been approved by either a standard building consent application or MultiProof.

Building consent authorities will only inspect work that is not completed by the certified manufacturer, such as foundations and site work. This scheme transfers compliance responsibilities from a building consent authority to certified manufacturers in order to support more efficient consenting for modular approaches, meet demand for building and housing, and support manufacturers to grow, diversify and deliver economies of scale within the sector.

The legislative framework for the MCM scheme defines the roles and responsibilities for different parties:

Figure 3: Roles and responsibilities within the modular component manufacturer certification scheme

An accreditation body may be appointed by MBIE. Certification bodies must be both accredited by the accreditation body and registered with MBIE before they can perform functions under the MCM scheme. Similarly, manufacturers must be certified by a certification body and registered with MBIE before they can perform functions under the MCM scheme.

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

Further detail on how the modular component manufacturer scheme integrates with the consenting process is provided in Figures 4 and 5 below.

Figure 4: Responsibilities within building consent and code compliance process for modular component manufacturers certified to 'manufacture only'

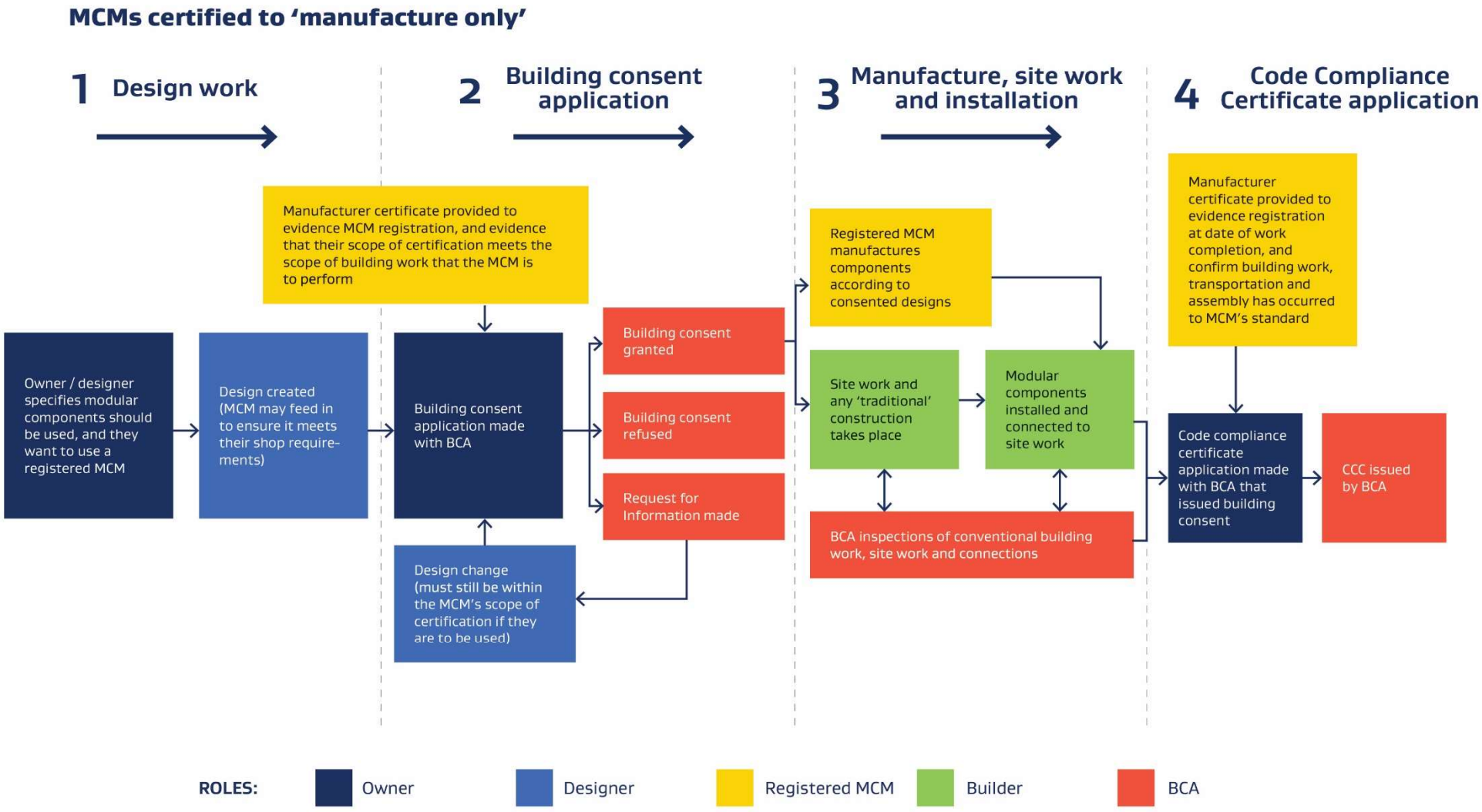
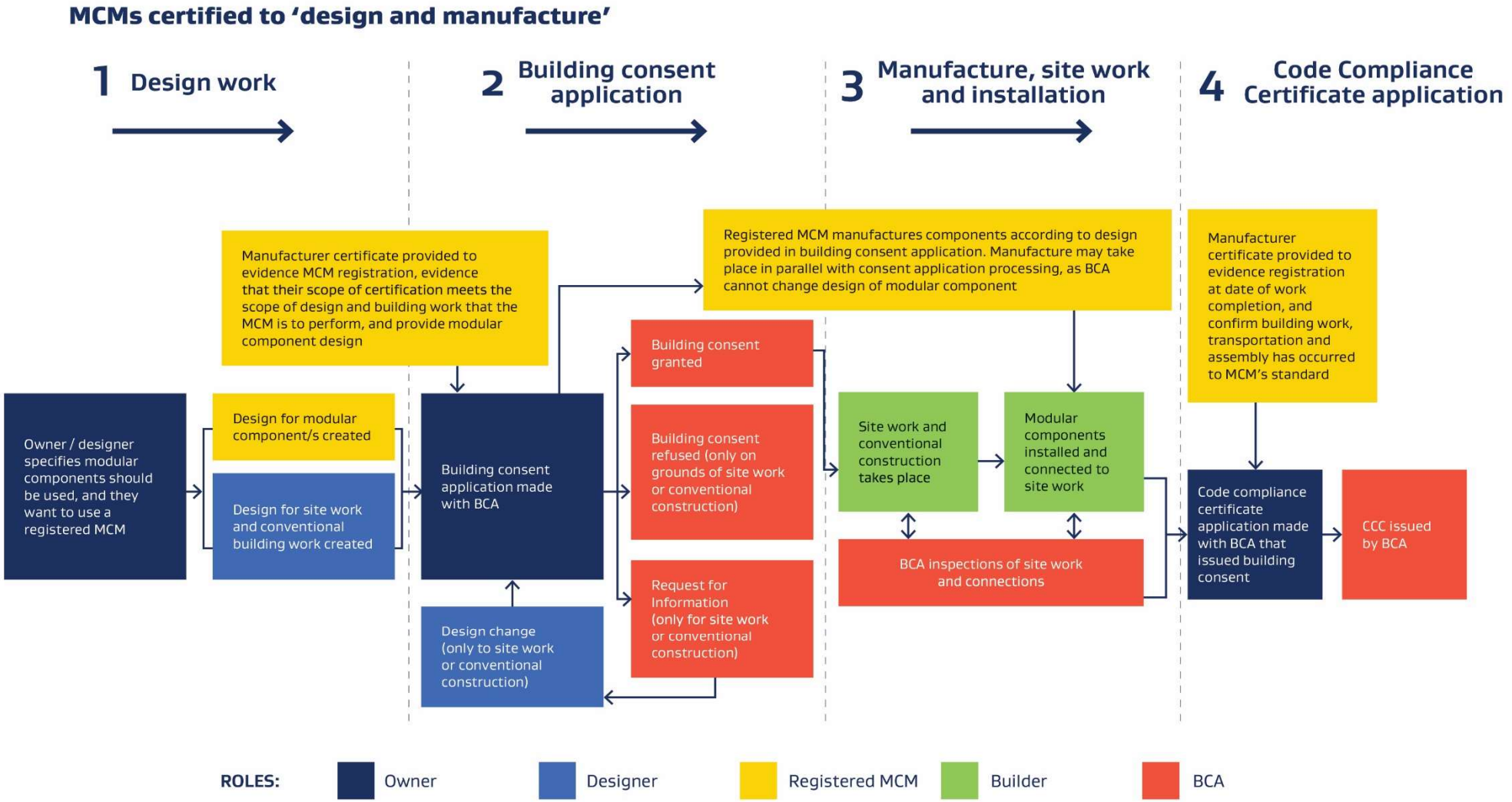


Figure 5: Responsibilities within building consent and code compliance process for modular component manufacturers certified to 'design and manufacture'



What are the expected impacts?

Collectively, MBIE expects the regulatory proposals in this section will contribute to:

- establishing and maintaining consumers' trust and confidence in the scheme
- more efficient consenting and code compliance assessment for buildings using modular components
- growing the use, availability and diversity of modular components and manufacturing approaches available in New Zealand's building market
- more affordable buildings and a more productive building industry that has a reduced environmental impact through the increased use of modular manufacturing approaches.

Proposal areas

The proposals regarding modular components are grouped into five areas:

- prescribing the kinds of building products that would be 'modular components' and proposing scopes of certification
- modular component manufacturer certification body accreditation and registration
- modular component manufacturer certification and registration
- audits within the modular component manufacturer certification scheme
- modular component manufacturer's certificates.

There are also further proposals regarding the MCM scheme within the 'regulated fees' section of this paper (Part Five: Regulated Fees).

3.1. Prescribing the kinds of building products that would be 'modular components' and proposing scopes of certification

Why are regulations being proposed to identify the kinds of building products that would be 'modular components'?

This section proposes regulations to specify and clarify the kinds of building products to which the scheme relates. As terminology around modular components is complex and constantly evolving, regulations will ensure that scheme participants and users are using consistent approaches.

Section 402(1)(ua) of the Bill provides for regulations to prescribe the kinds of building products that are 'modular components' for the purpose of the scheme. This is required to ensure clarity for scheme participants and users and focus the scope of the scheme in the kinds of building products that will achieve the scheme's intended outcomes.

Why are options being proposed regarding scopes of certification?

This section also proposes options for a non-regulatory system to support MCM certification bodies to specify the kinds of modular components that manufacturers may be certified to manufacture and in some cases design, which must be done as part of MCM certification under section 272U(2). This system is intended to provide a consistent approach for MCM certification bodies to use when describing kinds of modular components that are within a MCM's scope of certification.

What is MBIE trying to achieve?

These proposals are intended to ensure that manufacturers within the scheme are only certified to manufacture or design the specific kinds of modular components that have been assessed as being within their level of competency. This recognises that not all manufacturers have the processes and systems in place to produce all kinds of modular components, and it would be onerous to expect this of them. This is intended to control risk within the scheme and ensure that consumers are protected from MCMs operating outside of their competency without the safeguards of building consent authority inspection.

The proposals are also intended to ensure this scheme aligns with others in the building system (such as product certification and MultiProof) and to help manufacturers identify which scheme is the best fit for their business. The proposals are also intended to provide a level of flexibility that enables manufacturers to develop and use new technologies and manufacturing approaches within their certification.

PROPOSAL 1: Prescribe in regulations offsite manufactured building elements such as open frames and trusses, enclosed panels/units, volumetric structures and, whole buildings as the kinds of building products that are prescribed as 'modular components'

Description of proposal

The Bill defines 'modular component' as a building product of a prescribed kind. MBIE proposes to prescribe the kind of building product that is a 'modular component' in a way that incorporates the following:

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

This would mean that modular components could be manufactured using traditional construction and methods, automated machinery or other approaches.

Rationale

The intent is to provide a clear scope on what kinds of building products can be manufactured by MCMs through the scheme. The proposed definition is intended to be broad enough to incorporate a wide range of manufacturers and business models, as this will help to future-proof the scheme to accommodate technological development and innovation that may take place in future.

The proposed considerations are also intended to provide clear limitations on what is not a modular component, and therefore not eligible to be manufactured within the MCM scheme. This will reduce the risk of unforeseen consequences and ensure that the manufacturers are only manufacturing building products that contribute to the intended outcomes of the scheme.

PROPOSAL 2: Establish a non-regulatory system to guide modular component manufacturer certification bodies in certifying modular component manufacturers to certain scopes of practice

Description of proposal

Under the Bill, MCM certification bodies can certify a manufacturer to produce certain kinds of modular components within their broad 'manufacture' or 'design and manufacture' certification. Several approaches were considered to support MCM certification bodies to fulfil this obligation.

MBIE proposes a flexible system of certification based on high-level modular component groupings. MBIE has identified three flexible options with different levels of detail that would enable MCM certification bodies to certify MCMs to produce different kinds of modular components within a broad grouping.

This would enable common approaches, language and terminology in MCMs' certification, while seeking to strike a balance between risk management and enabling innovation. MBIE welcomes feedback on the three options discussed below.

Rationale

MBIE does not intend to restrict the MCM scheme to any one 'kind' of MCM. Different kinds of manufacturers with different business models, production methodologies and approaches to producing different kinds of modular components may seek to participate in the scheme. Each of these variables produces different levels of risk and complexity that need to be understood and managed by MCM certification bodies and MCMs as part of certification. This will ensure consumers are protected, particularly where an MCM is using a new or novel approach or system. A flexible system that applies shared approaches and terminologies would help to ensure consistency across the scheme.

MBIE also seeks to make use of MCM certification bodies' professional judgement and expertise. A high-level system will enable them to develop tailored, fit-for-purpose methodologies for assessment and review of manufacturers, appropriate to the kinds of modular components that manufacturer is to be certified to produce.

MBIE recognises that a more prescriptive system would potentially become out of date as technology and manufacturing approaches progress. A high-level system is more flexible and could enable new scopes of certification to be added in future, keeping up with technological development.

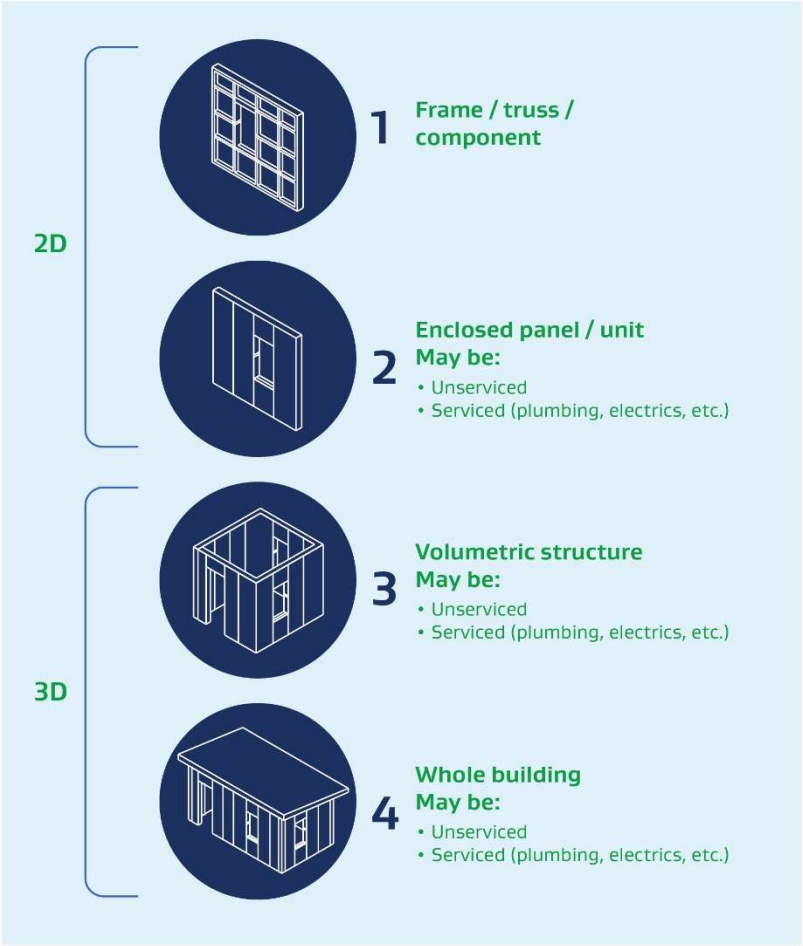
Option 1: Base the proposed scope of the certification system on modular component categories (preferred option)

Under this option, the kinds of modular components a MCM is certified to manufacture or design and manufacture would be determined using different categories.

When an MCM is undergoing certification assessments and audits, the responsible MCM certification body would assess which categories within which the MCM is to be certified to produce modular components. MCMs could be certified to produce modular components within multiple categories.

The below diagram outlines four potential categories in which MCMs could be certified to produce modular components:

Figure 6: Potential modular component categories



Images from PrefabNZ Material Matrix: https://www.prefabnz.com/Downloads/Assets/12341/1/180302%20The%20Material%20Matrix%20March2018%204.pdf

This option would provide a high level of flexibility for manufacturers to innovate within these categories. It is also relatively easy for scheme parties to understand. However, this approach provides little specificity to the MCM's scope of certification, which may risk an MCM producing something that is outside of its competency. This approach also does not incorporate the complexity of the building a modular component is to be used within or the materials it is to be made from, both of which can add greater risk of something going wrong.

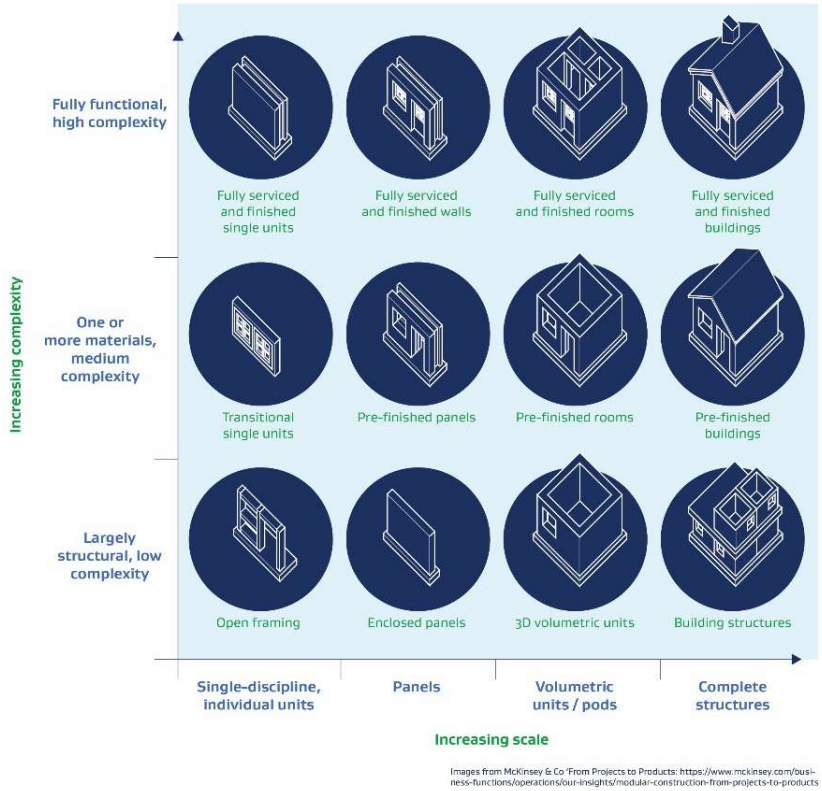
Option 2: Base the proposed scope of the certification system on modular component typologies

Under this option, the kinds of modular components a MCM is certified to manufacture or design and manufacture would be determined through a set of endorsements for modular component types.

When an MCM is undergoing certification assessments and audits, the responsible MCM certification body would assess which component type or types a manufacturer is to be certified to produce. MCMs could be certified to produce modular components of multiple types, and could produce variations of modular components within those types.

The below diagram shows a potential framework of modular component types:

Figure 7: Potential modular component typologies



This option would provide greater specificity to the MCM's scope of certification, limiting the risk of them producing a modular component outside their competency, while retaining some flexibility to innovate within each of these types. Modular component types could be added as new technology and manufacturing processes develop within the industry. This approach could also distinguish between serviced (containing plumbing, wiring, etc.) and unserviced modular components, which have different levels of complexity.

However, administering and maintaining a long list of modular component types may become unmanageable. Newly-developed modular components may also create gaps if they sit 'between' types. This approach also does not consider any information about the buildings in which modular components may be used, which may add a level of risk and complexity.

Option 3: Base the proposed scope of the certification system on modular component, building usage and material complexity

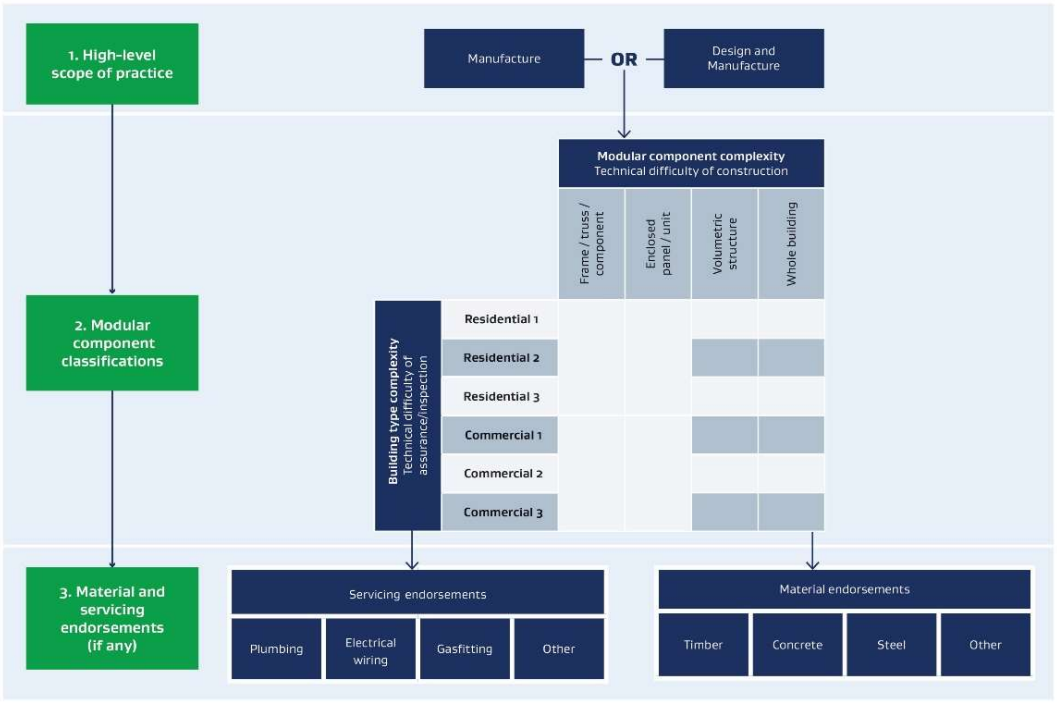
Under this option, the kinds of modular components a MCM is certified to manufacture or design and manufacture would be articulated as a set of endorsements for the:

- high-level modular component categories in which it is certified to 'manufacture' or 'design and manufacture' modular components
- kinds of buildings it is certified to use those modular components
- kinds of services it is certified to install in their modular components
- kinds of materials from which it is certified to manufacture modular components.

When an MCM is undergoing certification assessments and audits, the responsible MCM certification body would assess a range of factors regarding the modular components it can produce and the types of buildings in which they can be used.

The below diagram outlines the different categories and building usage complexities to which MCMs could be certified:

Figure 8: Potential categories and building usage complexities



The diagram proposes building usage complexities based off the levels of the national building consent authority competency assessment system. This system outlines the different skills and knowledge required to competently assess the compliance of different complexities of residential and commercial buildings. Given that MCMs with a 'design and manufacture' scope of certification would be conducting their own compliance assessments of modular components they produce, this proposal uses the building consent authority competency assessment system as a proxy for the skills and competencies those MCMs require.

This option would provide significant assurance that MCMs are designing, manufacturing and using modular components within their competency, and as part of buildings for which they understand compliance pathways. This option also enables endorsements for construction materials to be considered, which introduces a further control for elements that could bring additional complexity.

However, this option could be complex and onerous for MCM certification bodies to administer and for MCMs and scheme users to understand. It may not be proportionate to the risk within the scheme, as the broader certification, registration and auditing process is established to ensure MCMs are working within their areas of competency.

Expected impacts of proposals for 'modular component' definition regulations and scopes of certification system

The proposals and options in this section are expected to contribute to scheme participants understanding the scope of the scheme and the kinds of building products to which it applies.

There may be some cost implications for MCM certification bodies if a more detailed option is used for the proposed system on which to base scopes of certification, as more in-depth work may be required to understand its requirements and assess MCMs. However, establishing a shared system and vocabulary for certification is expected to benefit MCM certification bodies as they will have clarity on potential certification outcomes so can process applications and assessments more efficiently.

Questions on prescribing the kinds of building products that would be 'modular components' and scopes of certification
1. Do you agree with the proposed approach to prescribe offsite manufactured building elements such as open frames and trusses, enclosed panels/units, volumetric structures, and whole buildings as 'modular components'? Please explain your views.
2. To what extent do you think there is benefit in developing a system to guide how modular component manufacturer certification bodies describe the scope of a modular component manufacturer's certification?
3. Which, if any, of the proposed options on which to base the proposed scope of certification system do you prefer? Please explain your views.

3.2. Modular component manufacturer certification body accreditation and registration

Why are regulations for modular component manufacturer certification bodies' accreditation and registration being proposed?

The proposals in this section aim to ensure that accredited and registered MCM certification bodies meet appropriate standards and can carry out their functions within the scheme. This is important because when they are accredited and registered, they will be able to certify manufacturers, and in some cases, design modular components with a reduced level of building consent authority oversight.

What is MBIE trying to achieve?

These proposals are intended to strike a balance between robustness and flexibility, while also providing transparency for certification bodies.

By setting robust standards for MCM certification bodies, MBIE intends to provide consumers with confidence that those who certify and audit manufacturers in the scheme have been approved by appropriately skilled bodies. This will in turn build confidence in the manufacturers and in their processes and products.

By enabling the standards to be flexible and principles-based, MBIE intends to enable different kinds of certification bodies to participate in the scheme. This approach would also enable the MCM accreditation body to tailor assessment and auditing processes as appropriate for each MCM certification body it reviews.

It is intended that the proposals are broadly consistent with those of other schemes in the building sector where certification bodies already operate (primarily the product certification scheme). This would enable certification bodies that are considering entering the scheme to conduct a self-assessment and understand whether or not it is likely they can be accredited. This could enable certification bodies to participate in the scheme without having to fundamentally reorganise their policies, procedures and systems.

While the Bill enables adequate means requirements to be prescribed for MCM certification bodies' registration, at this stage, MBIE are not proposing to prescribe an adequate means test for this. A standalone adequate means test would be onerous for MCM certification body applicants to undertake, would be complex for MBIE to administer and would not provide additional consumer protection in the event of a modular component failure. This could be reviewed as the scheme progresses.

PROPOSAL 3: In order to be accredited, a certification body must have policies, procedures and systems in place to oversee, assess and inspect modular component manufacturers to determine if they meet criteria required for certification

Description of proposal

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

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

Rationale

Robust certification assessment processes will help MCM certification bodies ensure that that certified MCMs for which they are responsible consistently meet certification criteria. This requirement would ensure that those who are undertaking certification assessments of MCMs can do so in an appropriately robust manner, and contribute to scheme participants and users having confidence in the scheme.

PROPOSAL 4: In order to be accredited, a certification body must have policies, procedures and systems in place to undertake risk assessments and audits of certified manufacturers

Description of proposal

This proposal would require MCM certification bodies to have the processes and procedures to undertake audits appropriately and robustly, helping to ensure that certified MCMs continue to meet certification criteria.

Proposal 22 of this part of the discussion document proposes that MCM certification bodies undertake audits based on a range of factors, including risk assessments for each MCM for which they are responsible. Implementing that proposal would require MCM certification bodies to have processes and procedures to robustly and transparently undertake risk assessments and audits to an appropriate standard.

Rationale

This requirement would ensure that those who are undertaking audits of MCMs can do so in an appropriately robust manner. Robust audits are required of MCMs to ensure they continue to meet certification criteria, and that scheme participants and users can continue to have confidence in the scheme. As MCM certification bodies would have flexibility to decide appropriate audit types and frequency, this proposal would ensure that audits are not overly onerous, unnecessary, or insufficient.

PROPOSAL 5: In order to be accredited a certification body must have policies, procedures and systems in place that ensure appropriate staff perform its functions

Description of proposal

This would require certification bodies to evidence they have the right people in the right places and are undertaking the right work to perform their functions effectively and consistently. This could involve showing evidence that:

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

Rationale

Establishing the competence of an MCM certification body's staff and how they are assigned work will indicate the extent to which the MCM certification body will be able to fulfil its functions and promote confidence in the scheme. This proposal is consistent with requirements under the building consent authority accreditation scheme.

PROPOSAL 6: In order to be accredited a certification body must have a system to retain records in relation to their decisions, and the policies, procedures and systems required by regulations

Description of proposal

This would require MCM certification bodies to operate an information management system that can create, maintain and archive robust records for a variety of issues, including decisions, staffing, supply chains, products, and so on. This would likely be a digitally-accessible database, though MBIE does not propose that a specific method or system be used. Records could be maintained in an easily-accessible format for seven years and in an archived format for a longer period of time.

The records would be a key focus of audits that take place following accreditation.

Rationale

This proposal could ensure decisions and processes can be effectively audited and, if needed, reviewed in the event of an adverse event requiring investigation. This proposal would also help limit the impact of key person risk by ensuring that procedures and systems are recorded and accessible, and not kept only 'in the heads' of a small number of expert staff.

The length of time for which records are proposed to be kept is based on good information-management practices and record-keeping requirements of other regulatory regimes including the *Tax Administration Act 1994*.

PROPOSAL 7: In order to be accredited a certification body must have a process to notify the modular component manufacturer accreditation body of changes to key personnel or other circumstances that might impact their accreditation

Description of proposal

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

Rationale

The MCM accreditation body needs to have sufficient and up-to-date information to ensure MCM certification bodies continue to meet accreditation criteria on an ongoing basis, not just at the point in time of audits and assessments. Personnel or other changes may affect this. For instance, if a new audit lead is recruited or appointed by an MCM certification body, there may be a variety of impacts across the business potentially affecting accreditation that the MCM accreditation body may wish to assess through audit.

This proposal would help to ensure MCM certification bodies proactively provide information about their activities to the MCM accreditation body, contributing to the ongoing robustness of the scheme.

PROPOSAL 8: In order to be accredited a certification body must have suitable complaints handling policies, procedures and systems

Description of proposal

This would help to ensure complaints, disputes and potentially adverse events are handled in an appropriate manner and where possible reach practical resolutions without needing costly and time-consuming legal intervention.

Note that this would not limit consumers or MCMs from contacting MBIE, as the MCM scheme's steward to resolve complaints or using the legal system.

Rationale

As in any scheme, complaints or potentially adverse outcomes between MCM certification bodies, MCMs and scheme users may occur. This requirement would help to ensure that all MCM certification bodies within the scheme have systems in place to, where possible, resolve these events quickly, effectively and without legal recourse. This will support consumer protection.

PROPOSAL 9: In order to be registered, an accredited certification body must satisfy a prescribed fit and proper person test

Description of proposal

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

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

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

Rationale

MBIE requires sufficient information to assess whether a registered MCM certification body or applicant for MCM certification body registration is suitable for the scheme.

There is benefit in being broadly consistent across fit and proper person requirements for different schemes under the Building Act. Because the fit and proper person test for MCM certification bodies would be similar for private building consent authorities and what is proposed in this paper for MCMs and PCBs, MBIE will build expertise in this area.

The proposed test includes looking at an applicant's history of financial management, which is not included in existing building system fit and proper person tests. Assessing financial history, such as bankruptcy or whether they have ever been placed into receivership, is a common part of other fit and proper tests in New Zealand and may help to establish financial stability. This could reduce the risks that consumers will be left out of pocket in the event of adverse events in which the MCM certification body is implicated.

PROPOSAL 10: In order to be registered, an accredited certification body must evidence it has a process to notify MBIE of changes to key personnel or other circumstances that might impact its registration

Description of proposal

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

Rationale

MBIE need to have sufficient and up-to-date information to ensure MCM certification bodies continue to meet registration criteria on an ongoing basis, not just at the point in time of audits and assessments. For instance, if legal action has been taken against the MCM certification body that may impact their ability to meet the proposed fit and proper person test, MBIE may wish to conduct an out-of-cycle audit.

This requirement is particularly important for registration, as the legislation requires MBIE to conduct at minimum three-yearly audits for registration (as opposed to the at-minimum annual audits for certification).

Expected impacts of modular component manufacturer certification bodies accreditation and registration proposals

It is expected that these regulatory settings will impact differently on different parties.

MCM certification bodies: Certification bodies have clarity about what requirements they need to meet to be accredited and registered within the scheme. Only those that meet clear standards are accredited and registered.

There may be some cost implications for MCM certification bodies to create and maintain policies, procedures and systems in order to meet accreditation and registration requirements. MBIE expects these would be offset by the commercial benefits of participating in the MCM scheme (i.e. being able to charge fees to MCMs for their services).

MCMs: Manufacturers in the scheme are assessed and certified by sufficiently robust certification bodies, and are aware of valid avenues for dispute and complaint resolution.

MCM accreditation body: The accreditation body has clarity about the requirements against which it must assess and audit certification bodies, helping it to plan assessments and audits. The MCM accreditation body understands that it will be required to use its own expertise to interpret how different MCM certification bodies may meet these requirements.

Building consent authorities: building consent authorities are confident that MCM certification bodies, which certify manufacturers in the scheme, meet robust standards and can conduct their roles effectively. This would contribute to them having confidence in the manufacturers who participate in the scheme.

Questions on modular component manufacturer certification body accreditation and registration
4. Do you think the proposed regulatory settings provide confidence in the certification bodies that would be accredited and registered within the scheme? Please explain your views.
5. How do you think the proposed regulatory settings for certification bodies might affect their uptake of the scheme?

3.3. Modular component manufacturer certification and registration

Why are regulations for modular component manufacturer certification and registration being proposed?

The regulations proposed in this section aim to ensure that certified and registered manufacturers meet appropriate standards and can carry out their functions within the scheme. This is important because when they are certified and registered, MCMs will be able to manufacture, and in some cases design, modular building components with a reduced level of building consent authority oversight. This will increase efficiency of consenting timeframes by transferring compliance responsibilities from building consent authorities to the manufacturer.

To ensure customers have confidence in the scheme, MBIE proposes to place robust certification requirements on manufacturers. This includes requirements around quality management and assurance systems, defect detection processes, staffing, and other requirements that can provide confidence that the manufacturer is robust.

This section also proposes regulations regarding the registration of certified manufacturers with MBIE. These proposals largely focus on measures of manufacturers' financial and risk management. These proposals seek to provide consumers with confidence that if something does go wrong a manufacturer will have the processes and financial stability to address the issue.

Regulatory proposals in this section could be supported by more technical requirements in scheme rules, and through guidance and information.

What is MBIE trying to achieve?

These proposals are intended to strike a balance between robustness and flexibility, while providing transparency for manufacturers and increasing the efficiency of consenting for modular components.

MBIE expects that the proposals will contribute to building consent authorities, consumers and other parties having confidence in certified manufacturers. MBIE intends to ensure scheme users do not have any reduced consumer protections when using the scheme compared to if they used traditional building processes.

MBIE also intends to enable multiple different kinds of MCMs, with different manufacturing processes and working to different scales and volumes, to participate in the scheme. This will require certification and registration settings to be performance- or principles-based rather than prescriptive, and is intended to enable the scheme contribute to growing a robust MCM market and lifting consumer choice.

It is intended that manufacturers considering entering the scheme can use these proposals to conduct a self-assessment and understand whether or not it is likely they can be certified within the scheme. Given that manufacturers are likely to need to invest in policies, procedures and systems to enable them to be certified, MBIE considers they should be able to understand from the outset what may be required of them and whether this investment might be right for them.

PROPOSAL 11: In order to be certified a modular component manufacturer must have a quality plan and quality management system

Description of proposal

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

Rationale

Quality management systems will provide evidence that manufacturers can produce modular components consistently and to a high standard. This will limit the risk of defects from modular components.

MBIE proposes not to prescribe any particular way of meeting this requirement in order to enable manufacturers to build on existing systems that they may have invested in and tailored to their requirements.

PROPOSAL 12: In order to be certified a modular component manufacturer must provide evidence that it has manufacturing processes and systems appropriate to the scope of certification it is seeking

Description of proposal

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

The scope of certification a manufacturer is seeking would drive an MCM certification body's judgement of what an appropriate manufacturing processes and systems might be. For instance, if a manufacturer only wishes to be certified to manufacture frames and trusses, it would not be assessed for its processes to produce whole buildings.

This proposal would require manufacturers to evidence and demonstrate a robust understanding of and ability to manufacture to the Building Code and relevant legislation, regulations and other relevant settings in the New Zealand building system.

Rationale

MCMs could potentially produce a large volume of modular components at speed that could be used in many buildings in the New Zealand market. The impact of a manufacturing defect that goes undetected for some time could therefore be very significant. Requirements around stringent manufacturing processes are intended to mitigate this risk.

Tailoring requirements to the scope of certification will contribute to an efficient system whereby manufacturers only need to show their ability to manufacture the kinds of modular components they are seeking to be certified to manufacture.

PROPOSAL 13: In order to be certified to 'design and manufacture', a modular component manufacturer must provide evidence that it has design processes and systems appropriate to the scope of certification it is seeking

Description of proposal

MBIE proposes that manufacturers be required to evidence and demonstrate the ability to design modular components to a Building Code compliant standard. This would include having established quality assurance or peer review mechanisms and processes for designs that they produce. It could also take into account the design or modelling programmes and systems used.

This proposal would require manufacturers to evidence and demonstrate a robust understanding of and ability to design to the Building Code and relevant legislation, regulations and other relevant settings in the New Zealand building system.

Rationale

MCMs with a design and manufacture scope of certification will be able to design and manufacture modular components that could be used in many buildings in the New Zealand market with no building consent authority oversight of that process. This is a significant difference from the existing building system and means that the impact of a design or manufacturing defect that goes undetected for some time could be very high, with significant financial and reputational impacts on the building system. Requirements around stringent design processes are intended to mitigate this risk.

PROPOSAL 14: In order to be certified, a modular component manufacturer must have policies, procedures and systems in place that ensure appropriate staff perform its functions

Description of proposal

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

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

Rationale

Establishing the competence of an MCM's staff will provide important information and safeguards about the extent to which the MCM will be able to fulfil the scope of certification for which it has applied. It will also promote confidence in the scheme. This proposal is consistent with requirements under the building consent authority accreditation scheme.

PROPOSAL 15: In order to be certified a modular component manufacturer must have a system to retain records in relation to it decisions, and policies, procedures and systems required by regulations

Description of proposal

MBIE proposes that manufacturers would have systems for creating, maintaining and archiving robust records of a variety of issues, including decisions, staffing, supply chains, products, and so on. This would likely in a digitally-accessible database, though MBIE does not propose a specific approach or system is proposed. Records could be maintained in an easily-accessible format for seven years and in an archived format for a longer period of time.

The records must be sufficient to establish clearly that all relevant regulatory requirements have been met, and would be a key focus of audits that take place following certification.

Rationale

This proposal could ensure decisions and processes can be effectively audited and, if needed, reviewed in the event of an adverse event requiring investigation. This proposal would also help limit the impact of key person risk by ensuring that procedures and systems are recorded and accessible, and not kept only 'in the heads' of a small number of expert staff.

The length of time for which records are proposed to be kept is based on good information-management practices and record-keeping requirements of other regulatory regimes, including the *Tax Administration Act 1994*.

PROPOSAL 16: In order to be certified a modular component manufacturer must have a process to notify the responsible modular component manufacturer certification body of changes to key personnel and other circumstances that might impact its certification

Description of proposal

MBIE proposes to require MCMs to keep their MCM certification body informed of changes to the staffing, processes and systems. This could help inform whether the MCM certification body may wish to undertake an out-of-cycle audit to ensure the MCM continues to meet certification requirements following the change.

Rationale

MCM certification bodies need to have sufficient and up-to-date information to ensure MCMs continue to meet certification criteria on an ongoing basis, not just at the point in time of audits and assessments. For instance, if a new quality management lead is recruited by an MCM, there may be a variety of impacts across the business potentially affecting certification, so the MCM certification body may wish to perform an audit.

This proposal would help to ensure MCMs proactively provide information about their activities to MCM certification bodies, contributing to the ongoing robustness of the scheme.

PROPOSAL 17: In order to be certified a modular component manufacturer must have suitable complaints handling policies, procedures and systems

Description of proposal

MBIE proposes that certified manufacturers would have suitable systems for ensuring that complaints, disputes and potentially adverse events are handled in an appropriate manner and, where possible, reach practical resolutions without needing costly and time-consuming legal intervention.

Note that this would not limit consumers from contacting MBIE, as the MCM scheme's steward, to resolve complaints or using the legal system to address contractual disputes.

Rationale

As in any scheme, complaints or potentially adverse outcomes between MCMs and scheme users may occur. This requirement would help to ensure that all MCMs within the scheme have systems in place to, where possible, resolve these events quickly, effectively and without legal recourse. This will support consumer protection.

PROPOSAL 18: In order to be registered, a certified modular component manufacturer must satisfy a prescribed test to indicate it has adequate means to cover any civil liabilities that may arise in relation to its manufacture and design (if applicable) of modular components

Description of proposal

MBIE proposes that MCMs would need to meet a prescribed test to ascertain if they have sufficient means to cover any civil liabilities they may incur through their activities in the scheme. This test would take into account the following factors:

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

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

Rationale

MBIE needs to have sufficient information to assess whether a registered MCM or applicant for MCM registration may have adequate means to contribute to consumer protection in the case of an act of omission by the MCM. This is important because building consent authorities cannot be held liable for decisions they make in good faith regarding modular components manufactured by certified and registered MCMs. MCMs therefore carry risk and the potential to incur significant civil liabilities if something goes wrong with one of their modular components. The proposed adequate means test would provide an indicator of the extent to which consumer protection may be in place.

The proposed test incorporates a broad variety of factors because MCMs will be manufacturing and, in some cases, designing different kinds of modular component to different scales and volumes. Therefore the adequate means for one manufacturer is unlikely to be the same as the adequate means for another.

The proposed test does not prescribe a specific period for which insurance requirements must cover, unlike private building consent authorities, which must demonstrate adequate means that cover a ten year period. A ten year requirement is considered to be disproportionate to the activities of MCMs and would overly restrict entry to the scheme, given that New Zealand's building insurance market does not currently offer products covering a ten year time span. MBIE considers that taking a variety of factors into account as part of an adequate means test would give MCMs a more flexible route to evidence how they have put in place measures to protect consumers.

PROPOSAL 19: In order to be registered a certified modular component manufacturer must satisfy a prescribed fit and proper person test

Description of proposal

MBIE proposes a fit and proper person test that would assess the history and non-technical suitability of MCMs and applicants to the scheme, complementing certification assessments that assess an MCM's technical suitability. The proposed test would require the following to be taken into account:

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

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

Rationale

MBIE requires sufficient information to assess whether a registered MCM or applicant for registration is suitable for the scheme.

There is benefit in being broadly consistent across fit and proper person requirements for different schemes under the Building Act. Because the fit and proper person test for MCMs would be similar for private building consent authorities and what is proposed in this paper for MCM certification bodies and PCBs, MBIE will build expertise in this area.

The proposed test includes looking at an applicant's history of financial management, which is not included in existing building system fit and proper person tests. Assessing financial history, such as bankruptcy or whether they have ever been placed into receivership, is a common part of other fit and proper tests in New Zealand and with the proposed adequate means test may help to establish financial stability. This could reduce the risks that consumers will be left out of pocket in the event of adverse events in which the MCM is implicated.

PROPOSAL 20: In order to be registered, a certified modular component manufacturer must evidence it has a process to notify MBIE of changes to key personnel or other circumstances that might impact its registration

Description of proposal

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

Rationale

MBIE need to have sufficient and up-to-date information to ensure MCMs continue to meet registration criteria on an ongoing basis, not just at the point in time of audits and assessments. For instance, if the terms or coverage of a MCM's insurance are changed in a way that may impact their ability to meet the proposed adequate means test, MBIE may wish to conduct an out-of-cycle audit.

This requirement is particularly important for registration, as the Bill requires MBIE to conduct at minimum three-yearly audits for registration (as opposed to the at-minimum annual audits for certification). This proposal would help to ensure MCMs proactively provide information about their activities to MBIE, contributing to the ongoing robustness of the scheme.

Expected impacts of proposals for regulations for modular component manufacturer certification and registration

It is expected that these regulatory proposals would impact differently on different parties.

MCMs: Only manufacturers of sufficiently robust standing will be able to be certified and registered in the scheme. The regulations will assist those considering entering the MCM scheme to understand what certification and registration requirements they may need to meet and can make business plans in order to do so.

There will be cost implications for manufacturers to create and maintain policies, procedures and systems in order to meet the proposed certification and registration requirements. It is expected these costs would be offset by the commercial benefits the scheme would have for these manufacturers, such as more efficient consenting for their modular components.

MCM certification bodies: Certification bodies have clarity about the certification requirements against which they must assess and audit manufacturers and can plan and budget assessments and audits. Certification bodies understand they will be required to use their own expertise to interpret how different manufacturers may meet these requirements.

Building consent authorities: Building consent authorities are confident that certified and registered manufacturers meet robust standards and can conduct their roles effectively, in particular where building consent authorities and manufacturers' responsibilities are in close alignment, for instance regarding to consenting and code compliance certificate applications.

MCM scheme users: MCM scheme users are confident that certified and registered manufacturers meet robust standards, can conduct their roles effectively and have consumer protections in place. They also are aware of valid avenues for dispute resolution and liability management in the event something goes wrong, and understand that they are not exposed to any additional risk using this scheme.

Questions on modular component manufacturer certification and registration
6. Do you think the proposed regulatory settings provide confidence in the modular component manufacturers that would be certified and registered within the scheme? Please explain your views.
7. Do you think the proposed regulatory settings for modular component manufacturers provide for adequate consumer protection? Please explain your views
8. How might the proposed regulatory settings for modular component manufacturers have different impacts for different kinds of manufacturers that may wish to participate in the scheme?
9. To what extent do you think modular component manufacturers will benefit from the proposed regulatory settings, and what costs do you think they might face when trying to meet the proposed settings?

3.4. Audits within the modular component manufacturer certification scheme

Why are regulations for audits within the modular component manufacturer certification scheme being proposed?

Audits are a key safeguard within the MCM scheme and will assure scheme users that accredited or certified MCM certification bodies and MCMs continue to meet relevant criteria and standards. It is also possible that audits could become overly onerous and disruptive of the processes and business of the party being audited. Regulations will help ensure a more an appropriate and more consistent audit standard is applied across the scheme.

Legislated audit requirements within the MCM scheme are set out in section 272K of the Bill, which outlines requirements for audits of MCM certification bodies, and section 272V, which outlines requirements for audits of certified MCMs. The Bill also provides two sets of regulation-making powers regarding audits:

- Under section 402(1)(ub)(ii), regulations can be made to prescribe the frequency of audits, the matters that the MCM accreditation body must take into account when carrying out audits of MCM certification bodies.
- Under section 402(1)(uc)(ii), regulations can be made to prescribe the frequency of audits, the matters that MCM certification bodies must take into account when carrying out audits of MCMs and other requirements for MCM certification bodies in undertaking audits.

Note that proposals regarding audit fees payable to the MCM accreditation body by MCM certification bodies are discussed within the regulated fees section of this discussion document (Part Five: Regulated Fees).

What is MBIE trying to achieve?

MBIE is seeking to ensure that audits are robust, consistent and maintain the quality of the participants in the scheme. This will contribute to the quality of the modular components produced through the scheme and maintain confidence in the scheme itself. The proposed audit settings are not intended to be overly onerous. Clear audit settings will help to ensure audits are beneficial for all parties and contribute to the robustness of MCM scheme participants.

PROPOSAL 21: The modular component manufacturer accreditation body must use a prescribed process to decide appropriate audit procedures and audit frequency to apply to modular component manufacturer certification bodies

Description of proposal

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

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

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

Rationale

This approach relies on the MCM accreditation body to utilise its own expertise in auditing, rather than seeking to specifically prescribe what it is expected to do and how to do it. Enabling the MCM accreditation body to use a variety of audit methods, including unannounced spot checks, reflects that the impact of something going wrong within the scheme could potentially be significant and widespread. The MCM accreditation body should not be hampered in its ability to decide the most appropriate procedures for different purposes.

The Bill provides a clear legislated requirement for the frequency of audits – at minimum, once per 12 months. Therefore, this approach is intended to provide flexibility within this constraint to ensure that audits are not unnecessarily onerous for the MCM accreditation body and MCM certification bodies, and contribute to building confidence in the scheme. This flexibility also gives the MCM accreditation body a variety of tools to resolve potential performance issues within the scheme without needing to suspend or revoke accreditation, which may have significant impacts on the MCMs for which a suspended MCM certification body is responsible.

This approach incorporates learnings from the experience of audits within the product certification and building consent authority accreditation scheme.

PROPOSAL 22: A modular component manufacturer certification body must use a prescribed process to decide appropriate audit procedures and determine the audit frequency that would apply for the modular component manufacturer for which it is responsible

Description of proposal

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

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

Audits may take place at intervals determined by the MCM certification body, but must occur at least once every 12 months. It is expected that new MCMs will be audited more frequently and progressively less often as they build a history of successful audits.

Audit procedures may include but would not be limited to paper-based documentation audits, scheduled onsite audits, full accreditation reassessment and unannounced spot check audits. Different audit procedures serve different purposes and could give the MCM certification bodies a suite of tools to confirm compliance with the scheme.

MBIE expects that the scheduling and processes for audits will be agreed between MCM certification bodies and MCMs as part of their contractual service agreement. This is also be where fees would be agreed.

Rationale

This proposal reflects that there is no one-size-fits-all solution for MCMs, given that different kinds of MCMs working to different scopes and producing different kinds of modular components are likely to be present in the scheme.

This approach relies on each MCM certification body utilising its own expertise in auditing, rather than seeking to prescribe what they should be expected to do and how. Enabling MCM certification bodies to use a variety of audit methods, including unannounced spot checks, reflects that the impact of something going wrong within the scheme could potentially be significant and widespread.

The Bill provides a clear legislated requirement for the frequency of audits – at minimum, once per 12 months. Therefore, this approach is intended to provide flexibility within this constraint to ensure that audits are not unnecessarily onerous for the MCM certification bodies and MCMs, while still contributing to building confidence in the scheme.

MCM accreditation body audits of MCM certification bodies would also ensure that MCM certification bodies' processes for deciding audit procedures and frequency are not overly onerous or costly for MCMs.

This flexibility also gives MCM certification bodies a variety of tools to resolve potential performance issues within the scheme without needing to suspend or revoke accreditation, which may have significant impacts on a suspended MCM and its client base.

This approach incorporates learnings from the experience of audits within the product certification and building consent authority accreditation scheme.

PROPOSAL 23: Following the completion of an audit, the modular component manufacturer accreditation body and certification bodies must issue an audit report to the audited party and to MBIE in a timely manner

Description of proposal

MBIE proposes to require a record of an audit's finding to be provided to both the audited party and MBIE following the audit. This would include any recommendations or changes that the audited party many need to make before it passes the audit and receive an audit certificate.

The audit report would need to be provided efficiently following the audit so it does not unnecessarily delay the audited party's activities.

Further detail about audit reports, including specific information to be included in them, maybe prescribed through scheme rules.

Rationale

This proposal contributes to the ongoing improvement of scheme participants, since following each audit they are provided a written record of where they must or could improve their practices to better meet accreditation or certification criteria. It also contributes to MBIE knowledge about when audits are being undertaken and their findings, supporting its stewardship of the scheme.

This enables auditing parties to correct issues identified in audit before intervention may be required through more onerous tools such as suspension or revocation of accreditation or certification. This will help to reduce bureaucracy and ensure the scheme is user-friendly. This, in turn, will build confidence and trust in the scheme.

This proposal also supports audited parties to understand on what grounds they are being audited. This could provide them with grounds to make a complaint to the MCM certification or accreditation body, or MBIE if they consider that they have been audited unfairly or on inappropriate grounds.

PROPOSAL 24: Modular component manufacturers and certification bodies must make any changes required by an audit report within three months of receiving that audit report

Description of proposal

MBIE proposes to provide MCM certification bodies and MCMs with a three month timeframe in which to make changes outlined in an audit report that are required for them to meet relevant accreditation or certification criteria. If three months pass without the audited party making the required changes, its accreditation or certification could be suspended or revoked by the auditing party.

Note that if an MCM accreditation body or certification body identifies a significant non-conformance during an audit, it can suspend the audited party or request MBIE urgently suspend their registration until it is rectified.

Rationale

This time limit gives MCM certification bodies and MCMs a reasonable amount of time to make changes to their policies, procedures and systems, but does not enable them to put off making changes for a long time. This is important as the MCM certification body or MCM would still be able to perform their functions in the scheme while they are making these changes. This is consistent with provisions in the Building Act, which applies a similar three-month window in the event that a MCM certification body or MCM no longer meets accreditation or certification criteria due to an amendment being made to those criteria.

PROPOSAL 25: When a modular component manufacturer or certification body passes an audit and has made all changes required by the audit report, the modular component manufacturer certification and accreditation body must issue an audit certificate to the audited party in a timely manner

Description of proposal

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

Rationale

This proposal is intended to support transparency and confidence. Audited parties are able to inform their clients when they were last successfully audited and, in the case of MCMs, provide this information on manufacturer's certificates.

Expected impacts of proposals for regulations for audits within the modular component manufacturers certification scheme

It is expected that these regulatory settings will impact differently on different parties. MBIE expects the overall impact will be that all scheme participants consistently meet accreditation or certification criteria, and that any issues are resolved quickly without suspension or revocation of accreditation or certification needing to take place. This, ultimately, will contribute to participants' and users' confidence in the MCM scheme.

MCMs: MCMs understand that they will be audited in a way that reflects their risk assessment, including the scope of their activities. They will have the information they need to improve their business and standing within the scheme. This will contribute to transparent and effective audits of these parties.

MCM certification bodies: MCM certification bodies understand that they will be audited in a way that reflects their risk assessment, including the scope of their activities. They will also understand the processes and procedures that they are able to use when planning and undertaking audits of the MCMs for which they are responsible. MCM certification bodies will have the information they need to improve their business and standing within the scheme. This will contribute to transparent and effective audits of these parties.

MCM accreditation body: The MCM accreditation body understands the processes and procedures that it is able to use when planning and undertaking audits of MCM certification bodies. This will contribute to transparent and effective audits of these parties.

Building consent authorities and scheme users: These parties have confidence that all scheme participants meet appropriate criteria and standards.

Questions on audits within the modular component manufacturer certification scheme
10. Do you agree with the proposal that auditing parties will use a prescribed risk assessment to decide the frequency and type of audits they will use for those being audited? Please explain your views.
11. What costs do you think the proposed audit requirements might have for modular component manufacturers, given that the fees for audits would be set through contract between the manufacturer and its modular component manufacturer certification body?
12. Do you agree with modular component manufacturer certification bodies and modular component manufacturers having three months to make changes outlined in an audit report following an audit? Please explain your views.

3.5. Modular component manufacturer's certificates

Why are regulations for modular component manufacturer's certificates being proposed?

The Bill provides regulation-making powers to prescribe requirements for manufacturer's certificates. Under the Bill, certified and registered MCMs are able to issue manufacturer's certificates for modular components that they have manufactured to support a building consent application or a code compliance certificate application.

The MCM scheme introduces new pathways in the existing consenting system. It is recognised that if done without adequate safeguards, there is potential to create gaps and confusion which potentially leads to greater risk, disruption and delay than the status quo. Manufacturer's certificate regulations provide an opportunity to clarify how modular components integrate into the consenting system, which will reduce this risk.

What is MBIE trying to achieve?

Regulatory proposals regarding manufacturer's certificates are intended to contribute to a range of outcomes:

Clear responsibility: Manufacturer's certificates are intended to outline responsibility between MCMs and building consent authorities, and between the MCM and other sub trades that may be working on a site. This will support clarity and swift resolution of liability in the event of an adverse outcome. Under the Bill, a building consent authority cannot be held liable for decisions it has made in good faith relying on information in a current manufacturer's certificate.

Clarity for building consent authorities: Manufacturer's certificates are primarily intended to be used by building consent authorities, which are responsible for processing all aspects of a building consent or code compliance certificate application outside of the parts covered by a manufacturer's certificate. The certificate could support building consent authorities to understand and plan for what parts of a building they may need to inspect and which they do not as they are covered by the scheme.

Consistency between manufacturers: Prescribing requirements for manufacturer's certificates through regulations, rather than enabling manufacturers to identify relevant requirements themselves, will help ensure that certificates are consistent, user-friendly and meet recognised standards. This will help to building consent authorities to easily understand and interpret the information provided in manufacturer's certificates.

Strong record-keeping: Manufacturer's certificates are intended to be stored with other consenting documentation in Council records. This would enable future building owners to know what building work has occurred and which modular components, produced by which manufacturers, have been used. This will align with proposed building product information requirements and ensure robust and consistent record-keeping, which will support the future alteration or sale of buildings using modular components to be undertaken smoothly.

To achieve these outcomes, it is proposed that different information is included in manufacturer's certificates that are to be issued at different parts of the building consent process, by manufacturers that have different scopes of certification. This is detailed in the sections below.

The flowcharts at Figures 4 and 5 also illustrate the way proposed manufacturer's certificates are expected to enable the MCM scheme to integrate into the consenting system.

PROPOSAL 26: Prescribe requirements for modular component manufacturer's certificates issued at building consent application stage by registered modular component manufacturers that are certified to 'manufacture' modular components

Description of proposal

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

- **MCM details**, including legal name, trading name and New Zealand Business Number where applicable, address for service in New Zealand, contact details, internet site and internet link to information about the MCM's complaints process.
- **Responsible MCM certification body details**, including legal name, trading name and New Zealand Business Number where applicable, address for service in New Zealand, contact details, internet site and internet link to information about the MCM certification body's complaints process.
- **MCM certification details,** including certificate number, issue date, scope of certification, statement about audits that have taken place, disclaimer that MCM takes responsibility for the modular component for which this certificate has been issued.
- **Modular component manufacturing specifications,** which set out information about the manufacturing processes to be used for the modular component.

Rationale

The provision of administrative information about the MCM, its responsible MCM certification body and its certification is intended to provide assurance that the manufacturer is certified and registered at the time at which the certificate is issued. Similar administrative requirements have been set for product certificates under the product certification scheme.

The inclusion of manufacturing specifications will enable the building consent authority to confirm that the design is within the scope of the manufacturer's certification.

PROPOSAL 27: Prescribe requirements for modular component manufacturer's certificates issued at building consent application stage by registered modular component manufacturers that are certified to 'design and manufacture' modular components

Description of proposal

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

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

Rationale

The provision of administrative information about the MCM, its responsible MCM certification body and its certification is intended to provide assurance that the manufacturer is certified and registered at the time at which the certificate is issued. Similar administrative requirements have been set for product certificates under the product certification scheme.

Requiring a statement regarding the modular component's compliance with Building Code performance requirements ensures clarity. This information would be additional to, and likely more detailed than, any Building Product Information Requirements that may be set through regulations under other proposals in this paper.

Requiring design specification details will enable the building consent authority to assess the compliance of aspects of the building design for which it has responsibility that may be impacted by the design of the modular component. These could include foundations, connections to services, or connections between modular components and any conventional onsite construction. Sufficient information would need to be provided ether on the certificate or through secure online communication to enable the building consent authority to assess the compliance of the parts of the building consent application that are within their areas of responsibility.

MBIE notes that in some instances it may be easier for a certificate to include internet or digital links for further information, e.g. designs and diagrams. This would be appropriate given the potential complexity of some modular components and designs.

PROPOSAL 28: Prescribe requirements for modular component manufacturer's certificates issued at code compliance certificate application stage by registered modular component manufacturers that are certified to 'manufacture' modular components

Description of proposal

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

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

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

Rationale

This proposed manufacturer's certificate confirms that the MCM has manufactured the modular component according to the consented designs. Were no certificate issued at this stage, there could be confusion as to whether the MCM has undertaken work previously approved at building consent stage. This manufacturer's certificate also confirms that the MCM's certification and registration has not lapsed since the building consent was issued.

This certificate also clarifies areas of building consent authority and MCM liability and responsibility, which will support consumer protection in the event of a building failure.

PROPOSAL 29: Prescribe requirements for modular component manufacturer's certificates issued at code compliance certificate application stage by registered modular component manufacturers that are certified to 'design and manufacture' modular components

Description of proposal

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

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

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

Rationale

This proposed manufacturer's certificate confirms that the MCM has manufactured the modular component according to the design that was provided at building consent stage, and details any variations from that design that were made as part of the manufacturing process. Were no certificate issued at this stage, there could be confusion as to whether the MCM has undertaken work previously approved at building consent stage. This manufacturer's certificate also confirms that the MCM's certification and registration has not lapsed since the building consent was issued. This certificate also clarifies areas of building consent authority and MCM liability and responsibility, which will support consumer protection in the event of a building failure.

Expected impacts of proposals for regulations for modular component manufacturer's certificates

Collectively, it is expected that these regulatory settings will impact differently on different parties.

MCMs: Manufacturers in the scheme understand the scope of their responsibility. They understand what information they need to provide in manufacturer's certificates at different times. They also understand the scope of their potential liability in the event of an adverse event or failure. There may be some cost implication for manufacturers to provide the information proposed to be contained within manufacturer's certificates, but this could be factored into the cost of manufacture and incorporated into the price of the component.

Building consent authorities: building consent authorities can access the information they need to understand the scope of their compliance activities. Consents and code compliance certificates can be issued efficiently. Building consent authorities may be required to create new operational processes to consider manufacturer's certificates that contain the proposed information as part of their building consent and code compliance certificate assessments. Guidance and information can be provided in future to support this.

MCM scheme users: scheme users are able to access the information required for building consents to be processed efficiently. They can be confident that the entire building they own meets Building Code performance requirements, regardless of whether an MCM or building consent authority has assessed the compliance of individual components.

Future owners of a building that was built using the scheme: Future owners can access records of what building work was performed as part of the scheme, in the event they want to undertake alterations or other work requiring a building consent in future.

Questions on modular component manufacturer's certificates
13. Do you support manufacturers being responsible for transportation, storage and assembly of modular components that they manufacture within the scheme? What impacts might this have on manufacturers?
14. To what extent do you think the information that is proposed to be required on manufacturer's certificates will provide clarity for different parties within the scheme?
15. What costs do you anticipate that providing the proposed information on manufacturer's certificates might have?

PART FOUR OF FIVE:

Product certification scheme

Proposals at a glance: Product certification scheme

What and why
A suite of regulations is proposed to implement product certification amendments in the Building Act and strengthen the requirements for the scheme, which will include new registration requirements for product certification bodies and product certificates. These will give MBIE better oversight by improving controls over entry to the scheme and its ability to intervene when things go wrong. Other regulation updates will improve workability of the scheme based on MBIE's experience and sector feedback. The regulations will be aligned with other scheme documents (such as updated scheme rules). The proposals for regulations will help improve consistency between scheme documents and clarify what is expected of scheme parties. Gaps and workability issues with the existing scheme will be addressed, leading to clearer requirements that support effective and consistent conformity assessment. The framework set by the Bill will be implemented efficiently and in line with cost recovery guidelines. These regulation changes – alongside amendments to the Building Act, scheme rules and operational processes – are intended to help improve confidence in the scheme and lift the quality of product certificates to support more efficient consenting.
Proposals
Implement registration requirements for product certification bodies
Proposal 1: Prescribe a new fit and proper person test as a criteria for product certification body registration, to assess the history and non-technical suitability of product certification bodies and applicants.
Proposal 2: Prescribe a new requirement that a product certification body must have a process to notify MBIE of changes to key personnel or other circumstances that might impact their registration.
Proposal 3: Prescribe new requirements for information that must go on an application for product certification body registration to help MBIE administer the process efficiently.
Implement registration requirements for certificates
Proposal 4: Amend existing information requirements for product certificates, to improve workability.
Improve requirements for product certification body accreditation
Proposal 5: Add a new requirement for product certification body to have in place policies, procedures and systems for ensuring they have appropriate staff and contractors.
Proposal 6: Add a new requirement for product certification bodies to record decisions, the reasons for decisions, and the outcomes of decisions.
Proposal 7: A regulation requiring product certification bodies to only accept test reports from competent laboratories to ensure the competence of labs while maintaining flexibility.
Proposal 8: Revoke existing regulation 7A regarding quality management systems (QMS) to improve workability.

Strengthen requirements for product certification body audits and reviews of certificates
Proposal 9: Prescribe new audit procedures to set requirements for: • what audits and reviews must occur, and • what factors a product certification body must take into account when determining audit methodology.

4. Product certification scheme

Introduction

Why are regulations for the product certification scheme being proposed?

The product certification scheme, known as CodeMark, is a voluntary scheme that allows building products and methods to be certified. Accredited product certification bodies are the only organisations that can evaluate and issue a product or method with a CodeMark certificate. Building consent authorities must rely on a CodeMark certificate as proof that the product or method complies with the Building Code (if the conditions on the certificate have been met).

The Building Act and the Building (Product Certification) Regulations 2008 provide the legislative framework for the product certification scheme in New Zealand.

The existing regulations prescribe the:

- criteria and standards for accreditation as a PCB, including the fees payable to the accreditation body
- criteria and standards for certification of products
- minimum content for product certificates.

A 2017 Deloitte review of the product certification scheme identified several issues, including low confidence in the scheme, concerns related to those assessing products for certification and issues related to the quality of CodeMark certificates.

In response to the Deloitte review, the Building Act was amended to introduce registration for PCBs and certificates. This provides the regulator with greater oversight and ability to intervene if things go wrong. New regulations are needed to implement these changes.

At the same time, MBIE has identified opportunities to strengthen other requirements for the product certification scheme to ensure the regulations achieve the intended outcomes.

In addition to the new and amended regulations proposed in this section, MBIE will also update the CodeMark scheme rules. It is intended that the updated regulations and scheme rules come into force at the same time. There will be a further submission period on the proposal to update the scheme rules at a later date.

What is MBIE trying to achieve?

MBIE aims to strengthen the product certification scheme to ensure scheme parties operate within a regulatory framework that has clear and consistent requirements. This is intended to improve confidence in the scheme by improving the quality of certificates, contributing to more efficient consenting for building work that uses certified products.

The regulatory framework for product certification defines the roles and responsibilities for different parties:

Figure 9: Roles and responsibilities within the product certification scheme

An accreditation body may be appointed by MBIE. Certification bodies must be both accredited by the accreditation body and registered with MBIE before they can perform functions under the product certification scheme. Once accredited and registered, a product certification body may issue product certificates following certification of a building product or building method.

What are the expected impacts?

Collectively, MBIE expects the regulatory proposals in this section will contribute to:

- improving confidence in the product certification scheme
- improving the alignment of the Building Act, product certification regulations and scheme rules
- clarifying requirements for scheme parties
- improving MBIE's oversight of PCBs and product certificates.

These impacts are expected to improve the usability of product certificates and lead to more efficient consenting where certified products and methods are used.

MBIE anticipates that there will be only minor compliance costs for scheme parties to comply with the requirements proposed in this section. MBIE welcomes feedback on this assessment.

There will be new costs for MBIE related to carrying out its registration functions. It is proposed that these costs are recovered by fees. The cost impact for fees related to registration is discussed in the next section on regulated fees.

Proposal areas

The proposals regarding the product certification scheme are grouped into four areas:

- implementing registration requirements for product certification bodies
- implementing registration requirements for certificates
- improving scheme requirements for product certification body accreditation
- strengthening requirements for product certification body audits and reviews of certificates.

There are also further proposals regarding the product certification scheme within the 'regulated fees' section of this discussion document (Part Five: Regulated Fees).

4.1. Implement new registration requirements for product certification bodies

Why are new regulations for registration requirements for product certification bodies being proposed?

PCB registration requirements are needed to allow the chief executive of MBIE to perform their registration functions. These proposals would introduce suitable criteria against which the chief executive would assess a PCB before making a decision on registration, and set requirements for applications so MBIE can effectively administer the process.

What is MBIE trying to achieve?

The proposals aim to set criteria to assess a PCB's non-technical suitability for the scheme. This would provide MBIE greater oversight without duplicating existing criteria for accreditation. MBIE considers at this stage that other relevant aspects of a PCB's suitability are technical in nature and should be assessed during the accreditation process.

MBIE would continue to evaluate the need for further registration criteria as the new legislative framework beds in.

PROPOSAL 1: Prescribe a new fit and proper person test as a criteria for product certification body registration

Description of proposal

The purpose of PCB registration is to provide MBIE greater oversight of the scheme. MBIE proposes a fit and proper test to meet this aim.

The proposed test would assess the history and non-technical suitability of PCBs and applicants to the scheme. It would be based on the fit and proper test for building consent authority registration, and look at an applicant's history of civil proceedings and offences; professional and financial management history; compliance in similar schemes; conflicts of interest; and other relevant factors.

It is intended that the fit and proper test applies to the applicant body, the person responsible for the application (the PCB's authorised representative) and management. Management, in relation to a PCB, means the chief executive officer and every manager or director who is responsible for directing or controlling the product certification functions of the entity in relation to CodeMark New Zealand.

Rationale

MBIE needs to have sufficient information to assess whether a PCB or applicant is suitable for the scheme. This would be a non-technical assessment, as a PCB's technical suitability to certify products or methods will be assessed during the accreditation process.

There is benefit in being broadly consistent across fit and proper person requirements for schemes under the Building Act. Because the fit and proper person test for PCBs would be similar for private building consent authorities and what is proposed for MCM manufacturers and certification bodies, MBIE will build expertise in this area that can be applied across schemes.

One proposed test which is not in the building consent authority registration fit and proper test is related to history of financial management. Assessing a PCB's financial history, such as bankruptcy or whether they have been placed into receivership, may help reduce the risks that consumers will be left out of pocket. This is a common part of other fit and proper tests in New Zealand, and would provide a level of oversight related to financial information.

MBIE considers at this stage that other relevant aspects of a PCB's suitability are technical in nature and should be assessed during the accreditation process.

MBIE would continue to evaluate the need for further registration criteria as the new legislative framework beds in.

PROPOSAL 2: Prescribe a requirement that a product certification body must have a process to notify MBIE of changes to key personnel or other circumstances that might impact its registration

Description of proposal

MBIE proposes that PCBs would be required to keep MBIE informed of changes that are relevant to registration criteria. This could help inform whether MBIE may wish to undertake a review or audit to ensure the PCB continues to meet registration requirements following the change.

Rationale

MBIE need to have sufficient and up-to-date information about PCBs to ensure those PCBs continue to meet registration criteria on an ongoing basis, not just at the point in time that registration is applied for or renewed. For instance, if legal action has been taken against the PCB that may impact their ability to meet the proposed fit and proper person test, MBIE may wish to conduct an audit against the registration criteria.

This proposal would help to ensure PCBs proactively provide information about their activities to MBIE, contributing to the ongoing robustness of the scheme and associated confidence in it.

PROPOSAL 3: Prescribe new requirements for information that must go on an application for product certification body registration

Description of proposal

Prescribed requirements for applications are needed to support PCBs to comply with the registration process.

MBIE proposes that a PCB must provide to MBIE the following information to demonstrate that the PCB will meet the registration criteria:

- details of the organisation, including name, address of principal place of business and contact details
- details of person responsible for application, including name, title and contact details
- evidence of accreditation by the product certification accreditation body
- evidence sufficient to assess applicant against any prescribed criteria for registration.

Rationale

MBIE requires this information to process an application for PCB registration. Clear requirements will lead to more efficient administration of the registration process because there is likely to be fewer requests for further information after an application is made.

Expected impacts of proposals to implement new registration requirements for product certification bodies

Building consent authorities and scheme users: Scheme users have confidence that certification bodies are suitable for the scheme, and MBIE is maintaining appropriate oversight of those issuing product certificates.

PCBs: Certification bodies have clarity about what requirements they need to meet to be registered within the scheme. Only those that meet clear standards are registered. There may be some cost implications for product certification bodies to comply with registration requirements (such as providing information related to the fit and proper person test). MBIE expects that these costs would not be significant. The cost impact for PCBs for fees related to registration is discussed in the regulated fees section of this discussion document (Part Five: Regulated Fees).

Proprietors: While MBIE does not expect any additional compliance costs for certification bodies to be significant, costs may be passed on to proprietors through certification fees.

MBIE: The proposals are expected to allow MBIE to carry out its registration function efficiently and effectively, providing MBIE with greater insights related to a PCB's non-technical suitability for the scheme. This will improve MBIE's oversight of the scheme, and is expected to lead to increased confidence in the scheme for users. There will be new costs for MBIE related to carrying out its registration functions. It is proposed that these costs are recovered by fees (see Part Five: Regulated Fees).

Questions on the new registration requirements for product certification bodies
1. Do you consider that the proposed fit and proper test and notification requirements would be effective criteria to establish if a product certification body should operate in the scheme? Please explain your views.
2. Do you agree with the proposal to not prescribe an adequate means test or other product certification body registration criteria at this stage? Please explain your views.
3. Do you consider MBIE has proposed the right requirements for what must go on an application for product certification body registration?

4.2. Implement new registration requirements for certificates

Why are new regulations for registration requirements for certificates being proposed?

Under the Bill, the chief executive of MBIE must register a product certificate if they are satisfied that it includes the prescribed information. Regulations are therefore needed to enable the chief executive to assess certificates against appropriate requirements before they are registered.

MBIE considers that the existing information requirements for certificates are broadly fit for purpose. Many of the anticipated quality and consistency improvements for certificates will come from improved guidance and greater enforcement of these requirements as a result of MBIE's registration role.

However, there are several operational issues that have been identified since these information requirements were introduced in the Building (Product Certification) Amendment Regulations 2019.

What is MBIE trying to achieve?

Addressing the issues that have been identified in the existing regulations is intended improve consistency across PCBs and improve certificate usability.

PROPOSAL 4: Amend existing information requirements for product certificates

Description of proposal

Information requirements for product certificates are intended to provide consistency and clarity across certificates, making them easier to use for building consent authorities. Consistent and clear certificates will improve confidence that they can be relied upon to demonstrate Building Code compliance.

These information requirements are currently set out in Regulation 14 and Schedule 2 of the existing regulations. Following the passage of the Bill, MBIE will check certificates against these information requirements before they can be registered.

MBIE proposes to remove the following information requirements for product certificates:

- requirement for the certificate holder's New Zealand contact details to be included on the certificate
- requirement to include the certificate holder's signature on the certificate, so there is consistency in compliance across PCBs (which are responsible for each certificate)
- duplication related to conditions and limitations in section 4 of Schedule 2, so all key information related to conditions and limitations are in the same place
- duplication related to Building Code compliance in section 5 of Schedule 2, so all key information related to the basis for certification is in the same place.

Other proposed amendments to information requirements for certificates include:

- Amend section 7 of Schedule 2 (Health and safety information) so the 'performance' requirements of Building Code clauses F1 to F9 must be on the certificate, but not the 'objective and functional' requirements of these Building Code clauses. 'Objective and functional' requirements cannot be demonstrated for audit purposes, so should not be required on the certificate.

- Move the supporting information in section 9, 10 and 11 of Schedule 2, to the key information section of the certificate. This would ensure all information related to the description, intended use, and limitations of use is in the main body of the certificate.

Rationale

Requiring a certificate holder to have New Zealand contact details can be difficult for offshore certificate holders, and does not improve the ability of the sector to contact the certificate holder if things go wrong.

It is inappropriate for the certificate holder to sign a certificate that has been issued by a third party, where that can be construed as indicating the certificate holder assessed or issued the certificate. A potential option is to require the certificate holder to sign an acknowledgement on the certificate that they will maintain their responsibilities. However, requiring the certificate holder's signature has led to inconsistencies across PCBs, given their varying privacy policies. MBIE considers that there are sufficient safeguards for a certificate holder to comply with their responsibilities, including contracts, and potential suspension of certificates or registration of certificates.

There is some duplication in the information requirements in different sections, leading to variations across certificates which may impact how user-friendly certificates are.

Addressing these issues is intended to improve consistency across PCBs and improve certificate usability.

Expected impacts of proposals to amend existing information requirements for product certificates

Building consent authorities and scheme users: Scheme users have confidence that product certificates have consistently high quality information across the scheme, and MBIE has appropriate oversight of the information on certificates. The proposal will allow MBIE to carry out its registration function effectively by updating the requirements against which MBIE will assess certificates before they are registered.

PCBs: MBIE expects only minor compliance costs for PCBs to align their processes to accommodate the proposed amendments to product certificate information requirements.

Proprietors: The cost impact for proprietors for fees related to registration is discussed in the regulated fees section of this discussion document (Part Five: Regulated Fees).

MBIE: The proposal will allow MBIE to carry out its registration function effectively by updating the requirements against which MBIE will assess certificates before they are registered.

There will be new costs for MBIE related to carrying out its registration functions. It is proposed that these costs are recovered by fees (see Part Five: Regulated Fees).

Questions on new registration requirements for certificates
4. Do you agree with MBIE's assessment that the proposals for certificate information will improve the usability of product certificates?
5. Are there any gaps or issues with current certificates that MBIE has missed that should be addressed by changes to Regulation 14 or Schedule 2?

4.3. Improve requirements for product certification body accreditation

Why are regulations for product certification body accreditation requirements being proposed?

Under the Bill, regulations may prescribe criteria for accreditation and requirements for policies, procedures and systems. To ensure the regulations align with the new legislative framework, there should be regulations for all key elements of the scheme – even where these elements are covered at a high level in the referenced international standards.

Some proposals relate to ensuring the right detail is in the scheme, including in scheme rules. The Bill introduces a power for the chief executive of MBIE to make scheme rules and sets out what these rules may contain. There must be a clear link between the content of the scheme rules and the Act's empowering provisions for those rules.

Other proposals are needed to strengthen scheme requirements and improve the workability of existing regulations.

What is MBIE trying to achieve?

The proposals are intended to ensure that the right requirements can be in the scheme, including detail in scheme rules where appropriate, in a way that is consistent with the new legislative framework and does not conflict with ISO/IEC 17065. MBIE is aiming to provide a clear link between the empowering provisions in the Building Act and any supplementary detail in the scheme rules for key aspects of accreditation.

MBIE is also aiming to have a workable, consistent set of requirements in the scheme for PCB accreditation criteria and requirements for policies, procedures and systems.

PROPOSAL 5: Prescribe a new requirement for product certification bodies to have in place policies, procedures and systems for ensuring they have appropriate staff and contractors

Description of proposal

The requirements would include systems for ensuring:

- the PCB has enough employees and contractors to perform its functions
- employees are appropriately trained
- work is allocated to employees or contractors who are competent to do the work
- the technical competence of employees and contractors to perform the work that is allocated to them is established.

Rationale

Staff and contractors are a key factor to establish whether a PCB can perform its functions

Current staffing and resource requirements for PCBs come from ISO/IEC 17065. This regulation proposal is intended to be consistent with ISO/IEC 17065, while enabling the scheme to clarify specific expectations for CodeMark New Zealand – including where supplementary detail will be provided in scheme rules. An example of supplementary detail that may be appropriate for scheme rules could be specific requirements for what are known as Unrestricted Building Certifiers (UBCs).

The proposal is intended to ensure that the right detail can be included in scheme rules from a legislative design perspective, without conflicting with ISO/IEC 17065. It would provide a clear link between the empowering provisions in the Building Act and any supplementary detail in the scheme rules for this key aspect of accreditation.

PROPOSAL 6: Prescribe a new requirement for product certification bodies to record its decisions, the reasons for the decisions and the outcomes of decisions

Description of proposal

A PCB would be required to record the:

- decisions it makes under the policies, procedures, and systems required by these regulations
- reasons for the decisions
- outcomes of the decisions.

Rationale

Records related to decisions are a key part of a PCB's role, and it is important for these decisions to be recorded for audit purposes. The legislative framework for the scheme must cover this requirement appropriately. The proposal is intended to be consistent with existing high level requirements in ISO/IEC 17065.

This proposal is intended to ensure that the right detail can be included in scheme rules from a legislative design perspective, without conflicting with ISO/IEC 17065. It would provide a clear link between the empowering provisions in the Building Act and any supplementary detail in the scheme rules for this key aspect of accreditation.

PROPOSAL 7: A regulation requiring product certification bodies to only accept test reports from competent testing facilities

Description of proposal

This proposal aims to ensure the competence of testing facilities while maintaining flexibility in the scheme.

Under the proposal, a PCB must only accept test reports from a testing facility that is accredited to ISO/IEC 17025 for that test – except where there is a lack of availability of accredited facilities for that test. In that case, the PCB:

- may accept test results from a testing facility that is competent in relation to the test, standard or product
- must record the decision to rely on a test that is not within the scope of accreditation of the laboratory that issued that report
- must record the method by which the PCB established that the testing facility was competent for that test.

A competent testing facility is one which meets Section 6 and 7 of ISO/IEC 17025 in relation to the test, standard or product, unless the test facility can demonstrate to the PCB that a certain element is not applicable for that specific test.

Tests referred to in this proposal would include only tests used as the basis for certification. It would not include 'batch' tests where batches of the product are tested on a routine basis.

Rationale

Establishing the validity of test reports is essential because these are relied upon to determine if a product or method should be certified, and therefore deemed to comply with the Building Code.

The proposal aims to give assurance that PCBs are making robust decisions on whether to accept a test report, and that these decisions can be audited. It aims to do so without overly restrictive requirements, on the basis that it is appropriate in a third party scheme to rely on:

- PCBs to assess whether a test report from a testing facility accredited to that test is required, or if an alternative form of establishing competence should be used, and
- the product certification accreditation body to ensure PCBs are carrying out this assessment appropriately.

The regulation needs to be flexible to reflect the nature of certified products in the scheme. It is appropriate to use on international standard as a basis for establishing competency while providing for situations where the test would not be in scope of any testing facility's accreditation to that standard.

It is likely that further clarification will be needed related to defining what 'lack of availability' means. This supplementary detail may be more appropriate for scheme rules.

PROPOSAL 8: Revoke existing regulation 7A regarding quality management systems (QMS) to improve workability

Description of proposal

Under this proposal, the existing regulation related to QMS would be revoked, and the scheme would rely on ISO/IEC 17065's quality management clauses.

Rationale

Amending the existing regulation (Regulation 7A) addresses a workability issue. Under the international framework, a PCB cannot both be certified to a standard, and certify to that standard. Because a PCB could be accredited under different schemes – not just CodeMark New Zealand – the existing Regulation 7A risks limiting participation by requiring that all PCBs that are not accredited conformity assessment bodies are certified to ISO/IEC 9001.

The proposal to revoke Regulation 7A aims to introduce some flexibility to the regulations to remove this issue, while ensuring that a PCB's quality management systems are fit for purpose.

ISO/IEC 17065 requires certification bodies to establish and maintain a management system that is in accordance with the requirements of ISO/IEC 9001, or addresses a range of activities that certification body must carry out. It does not require certification to ISO/IEC 9001.

MBIE considers that the ISO/IEC 17065 requirements are sufficient, and revoking this regulation would better align the regulation with international standards. This will clarify the requirements for PCBs while maintaining quality management outcomes.

Expected impacts of proposals to improve requirements for product certification body accreditation

Building consent authorities and scheme users: Scheme users have confidence that PCBs are being assessed against appropriate criteria and can perform their functions to a high standard. High performing PCBs produce high quality certificates that scheme users can be confident in.

PCBs: The key requirements for PCBs will be set in regulations, providing a clear link between the empowering provisions in the Building Act and the detail that is expected to be required in scheme rules.

There will be appropriate criteria for accreditation in the regulations. Applicants to the scheme will have clarity about what will be expected of them as scheme parties.

While there will be some compliance costs for PCBs to adjust to the new accreditation requirements, MBIE does not expect that the proposals would create significant additional costs for PCBs. Several of the proposals set scheme-specific requirements to align with the legislative design of the scheme, but are being carried out in some form by PCBs already.

Proprietors: Where there are increased costs for PCBs, these may be passed on to the proprietors through higher certification and audit fees. These costs are not expected to be significant. In relation to the proposal on testing laboratories, there may be additional costs for proprietors who are relying on test reports that do not comply with the new regulation. These costs are not expected to be unreasonable because the regulation is intended to be flexible enough to provide for alternatives where appropriate.

MBIE are not aware of any specific test reports currently that would not comply with the proposed regulation. However, if a test report is being relied upon that does not meet the proposal, MBIE considers that it would be reasonable to expect a proprietor to pay for an appropriate test, as this forms the basis of evidence of Building Code compliance.

Product certification accreditation body: The criteria against which the accreditation body assesses PCBs will be based on a clear, robust legislative framework. MBIE does not expect additional costs for the accreditation body from the accreditation proposals. MBIE welcomes feedback on this assessment.

Questions on improving scheme requirements for product certification body accreditation
6. Do you consider that the product certification body accreditation proposals will improve the alignment of scheme documents? Please explain your views.
7. Do you consider there will be any compliance issues with the product certification body accreditation proposals? If so, what are they?
8. What further clarification related to the proposal to require product certification bodies to only accept test reports from competent testing facilities may be required?
9. Do you agree with proposal 8 to revoke existing Regulation 7A? Please explain your views.

4.4. Strengthen requirements for product certification body audits and reviews of certificates

Why are regulations for product certification body audits and reviews of certificates being proposed?

Audit requirements for the product certification scheme should be set by regulation given the new regulation making power in the Bill. This approach will allow rules to supplement the regulations with additional detail where appropriate.

What is MBIE trying to achieve?

The proposal is intended to ensure PCBs fulfil their function to ascertain whether the product or method continues to meet the criteria for certification and if there are grounds to suspend or revoke the certificate.

The proposal aims to provide clear expectations for the types of audits PCBs carry out and at what frequency, while allowing for an appropriate level of judgement from the PCB. The clearer expectations address a current lack of clarity, and consistency between PCBs, related to certificate expiry and recertification every 3 years (as a result of differences between the New Zealand and Australian schemes).

PROPOSAL 9: Prescribe new requirements for what certificate reviews must occur and what factors product certification bodies must take into account when determining audit methodology

Description of proposal

The Building Act requires a minimum of one audit every 12 months, to ascertain whether the product or method continues to meet the criteria for certification, and if there are any grounds to suspend or revoke certification.

To achieve this purpose, the proposal would require PCBs to carry out a routine review at least once every 12 months that includes an audit of:

- the Quality Plan and the proprietor's implementation of the Quality Plan
- the content of the product certificate
- any relevant changes that have been made.

In addition to this routine review, every three years a PCB would be required to carry out a certification review, which would ensure that:

- all documentation used to support certification remains fit for purpose
- any relevant test reports are current
- the product evaluation plan is fit for purpose.

The methodology and frequency of the above reviews would be a matter for the PCB to determine. However when determining methodology and frequency of reviews, a PCB must take into account the outcome of any risk assessment, previous performance of the product or method, complaints or other feedback, the proprietor's history of compliance with the scheme, and any other factors the PCB considers relevant.

Rationale

The proposal is intended to ensure PCBs fulfil their function to ascertain whether the product or method continues to meet the criteria for certification and if there are grounds to suspend or revoke the certificate.

Prescribed audit requirements should not be too prescriptive given the variety of products and methods that could be certified, and it is appropriate in a third party scheme to provide for a PCB's judgement in this area.

This approach would give PCBs flexibility to decide what audit methodologies are most appropriate for each certificated product or method, recognising that there is no one-size-fits-all approach. It provides for PCBs to respond to any relevant changes by increasing or decreasing the frequency of audits, or adapting audit methodologies.

While allowing for an appropriate level of judgement from the PCB, the proposal aims to provide clear expectations for the types of audits PCBs carry out and at what frequency. This addresses a current lack of clarity and consistency between PCBs, related to certificate expiry and recertification every 3 years (as a result of differences between the New Zealand and Australian schemes).

Audit requirements for the scheme should be set by regulation, given the new regulation-making power in the Bill. This approach will allow rules to supplement the regulations with additional detail where appropriate.

Expected impacts of proposals to strengthen requirements for product certification body audits and reviews of certificates

Building consent authorities and scheme users: Scheme users have confidence that PCBs are consistently undertaking appropriate audits, leading to high quality certificates that are not based on out of date information or assessments.

PCBs: Alongside supplementary detail in scheme rules, it is expected that the proposal will clarify what is required to be reviewed and how frequently. PCBs will consistently carry out reviews of certificates that reflect risk assessment for each product or method.

There will be clarity over what is required at a minimum frequency, reducing the risk that documentation such as test reports have long periods of time between reviews. This is expected to provide greater confidence that the product or method continues to meet the criteria for certification over time.

While there will be some compliance costs for PCBs to adjust to the new audit requirements, MBIE does not expect that the proposal would create significant additional costs for PCBs. Because the proposal is fairly similar to the current requirements for certificate reviews set out in scheme rules, it is likely that the proposal is broadly consistent with current practice. MBIE welcomes feedback on this assessment.

Proprietors: There will be clear requirements related to what a PCB is expected to audit and review related to a proprietor's product or method.

Where there are increased costs for PCBs, these may be passed on to the proprietors through higher certification and audit fees. These costs are not expected to be significant.

Product certification accreditation body: The accreditation body will be required to ensure PCBs are complying with new requirements for auditing and reviewing a certificate. These requirements will be clearly set out in the regulations and rules.

MBIE does not expect additional costs for the accreditation body related to ensuring compliance with these requirements. MBIE welcomes feedback on this assessment.

Questions on strengthening requirements for product certification bodies audits and reviews of certificates
10. Does the proposal related to product certification body audits and reviews of certificates look reasonable? If not, what requirements should be amended, added or removed?
11. What cost impacts do you consider the product certification body audit proposals will have? Will costs change compared to the current requirements?
12. Is three years the correct minimum frequency for certification review? Please explain your views.

PART FIVE OF FIVE:

Regulated fees for the modular component manufacturer certification scheme and the product certification scheme

Proposals at a glance: Regulated fees for the modular component manufacturer certification scheme and the product certification scheme

What and why
A range of fees may be prescribed to implement the modular component manufacturer and product certification schemes. MBIE proposes to prescribe fees related to registration, accreditation and audits for these two schemes. For fees related to registration, the chief executive of MBIE will assess applications for registration of product certification bodies, modular component manufacturers and certification bodies. The chief executive will also assess product certificates against information requirements before the certificate is registered. These registration services are predominately private goods, where the applicant directly benefits from registration by being able to participate in the schemes. For fees related to accreditation and audits, the accreditation body will assess applications for accreditation and audit certification bodies once they are accredited. Because the applicant or certification body directly benefits from these services by being able to participate in the scheme, they are predominately private goods. It is appropriate to prescribe a fee as the accreditation body is performing a regulatory function on behalf of MBIE and has a monopoly role. MBIE does not propose to prescribe fees to assess an application to lift the suspension of registration of either a modular component manufacturer or certification body, or product certification body or product certificate at this time. MBIE proposes to re-evaluate the need for this type of fee if appropriate as the new legislative framework beds in.
Proposals
Registration fees for modular component manufacturer certification scheme
Proposal 1: Prescribe an hourly fee capped at 20 hours for assessing a registration application from an accredited Modular Component Manufacturer Certification Body.
Proposal 2: Prescribe an hourly fee capped at 65 hours for assessing a registration application from a certified Modular Component Manufacturer.
Accreditation and audit fees for modular component manufacturer certification scheme
Proposal 3: Prescribe the same fee structure for modular component manufacturer certification body accreditation as is currently in place for Building Consent Authority accreditation.
Proposal 4: Prescribe the same fees structure for modular component manufacturer certification body accreditation audits as is currently in place for building consent authority accreditation.
Registration fees for product certification scheme
Proposal 5: prescribe a new fee for assessing an application for registration as a product certification body at an hourly rate, capped at 20 hours maximum
Proposal 6: prescribe a new fee for assessing whether product certificates have the prescribed information at a flat fee set at 2 hours of effort

Accreditation and audit fees for product certification scheme
Proposal 7: Adjust existing accreditation fee to align with the current accreditation body's equivalent fee levels.
Proposal 8: Adjust existing audit fee schedule (accreditation body auditing product certification body) to align with the accreditation body's day rate for unscheduled surveillance.

5. Regulated fees for the modular component manufacturer certification scheme and the product certification scheme

Introduction

Why are regulations for regulated fees being proposed?

Registration activities

As part of the new registration functions for MCM and product certification, the chief executive of MBIE will assess applications for registration of PCBs, MCM certification bodies and MCMs. The chief executive will also assess product certificates against information requirements before the certificate is registered.

These registration services are predominately private goods, where the applicant directly benefits from registration by being able to participate in the schemes. MBIE is therefore proposing fees to recover the costs of MBIE's registration activities directly from the applicant.

Setting fees for registration is consistent with Treasury's Guidelines for Setting Charges in the Public Sector.[1]

MBIE does not propose to prescribe fees to assess an application to lift the suspension of registration of either an MCM certification body or MCM, or PCB or product certificate at this time. MBIE proposes to re-evaluate the need for this type of fee if appropriate as the new legislative framework is embedded.

Given the proposed safeguards in the product certification and MCM schemes, MBIE expects suspensions of registration will rarely occur. Where they do they do occur, this will be for reasons that MBIE cannot anticipate at the outset of the scheme (or otherwise MBIE would incorporate those reasons into certification or registration criteria). Therefore, suspensions of registration and any potential lifting of those suspensions is best dealt with on a case-by-case basis that will require close work between MBIE and the MCM certification body or MCM, or PCB or proprietor, in question. MBIE would bear the costs of lifting suspension of registration as part of being steward of the scheme.

[1] Treasury. (2017). *Guidelines for Setting Charges in the Public Sector.* Retrieved from: https://treasury.govt.nz/publications/guide/guidelines-setting-charges-public-sector-2017-html

Accreditation and audit

Under both the MCM and product certification schemes, the accreditation body will assess applications for accreditation, and audit certification bodies once they are accredited. It is appropriate to prescribe a fee for these activities because:

- either MBIE will perform these functions, or a third party accreditation body will perform the regulatory function on behalf of MBIE and have a monopoly role
- the applicant or certification body directly benefits from these services by being able to participate in the scheme, making them predominately private goods.

These fees will be new for the MCM scheme. However, for product certification, they are already prescribed under the existing Building (Product Certification) Regulations 2008. MBIE is proposing to update the product certification fees because:

- the fees have not been updated since 2008, and some form of inflation adjustment may be appropriate
- MBIE is aware of inefficiencies related to the accreditation body using the existing fee schedule in practice.

Where Parliament has decided a fee can be prescribed for an activity (by including a regulation making power in the Building Act), a fee must be prescribed if one is to be charged. For example, because the Building Act provides that an application for accreditation must be accompanied by the prescribed fee, if regulations did not prescribe a fee then the accreditation body could not charge for its assessment of the application.

What is MBIE trying to achieve?

The objectives for the proposals are that:

- fees do not act as a barrier to entry to scheme
- fees are set at a level that fully recovers, but does not over-recover, the costs of carrying out functions
- any cross-subsidy between different groups (particularly between those with simple and complex applications) is minimised
- uncertainty to prospective applicants as to the likely total amount of the fees they will be required to pay is minimised
- MBIE and accreditation bodies are incentivised to conduct certification in an efficient and effective manner
- fees can be charged in an administratively efficient manner.

MBIE is aiming to recover the costs of these activities for the two schemes in a fair and transparent manner. The proposed fees are set at a level that aims to avoid adding unreasonable costs to participants in the schemes. To this end, a maximum fee level has been proposed for MBIE's registration activities.

MBIE acknowledges that, for some options, there may be complex cases where MBIE's effort exceeds the amount of time accounted for by the prescribed fee. MBIE considers that, in these cases, using the building levy to cover spill over costs would be appropriate. This is because the 'club' of levy payers (building consent applicants) derive benefit from MBIE's oversight of the two schemes via its registration functions, through higher quality certificates contributing to more efficient consenting. The fee levels MBIE has proposed aim to reduce the likelihood of this occurring.

How has MBIE come up with these proposals?

Accreditation and audit fees

For proposals related to updating the product certification fees, MBIE based the proposals on the existing accreditation body's current accreditation manual, which contains a generic set of fees including day rates.

MBIE used the existing costs to carry out these activities in the building consent authority accreditation scheme as a proxy for estimating the accreditation and audit costs in the MCM scheme.

Unless otherwise indicated, accreditation and audit fees in this section are GST exclusive.

Estimates of time to carry out registration activities

MBIE has used experience in the product certification and private building consent authority registration schemes as a basis for estimating the amount of time in hours required for MBIE to undertake registration activities.

Hourly rate for registration activities

MBIE has assumed an hourly rate of $88.61. This is an illustrative rate only and may not reflect the final rate prescribed by regulations. This rate, including any fees calculated using this rate, is exclusive of GST.

The hourly rate was calculated by the following costs:

Direct costs: include personnel costs and professional services costs.

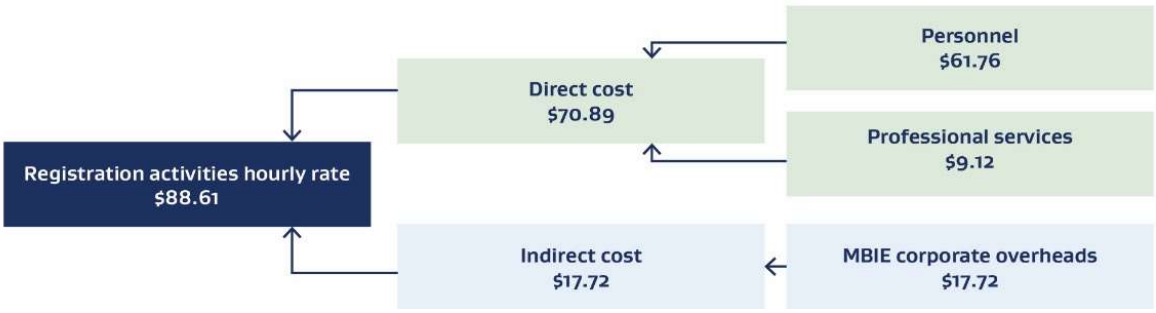
Personnel costs include salary, superannuation and ACC levies.

Professional services costs include an estimate of training, legal, IT, supplies and travel for 1 Full Time Equivalent (FTE).

Indirect costs: were estimated at a rate of 25% direct costs.

Hourly rate: the hourly rate was calculated by dividing the sum of direct and indirect costs by the annual number of hours worked (1540).

Figure 10: Allocating costs across registration activities (hourly rate)



Cost recovery options for assessing registration applications

Three options were considered for recovering the costs of assessing registration applications for MCMs, MCM certification bodies and PCBs:

- a fixed fee
- a fixed fee plus an hourly charge for complex applications
- an hourly charge, capped at a maximum fee.

Fixed fee

A single fee would provide the most certainty and administrative efficiency. However, it may result in cross-subsidisation between simple and complex applications, and there may be a gap between the cost of the activity and the recovery (i.e. there is a higher risk that the cost is either not fully recovered or over-recovered).

Fixed fee plus an hourly charge for complex applications

A fixed fee plus an hourly charge is the most effective option at reducing cross-subsidisation and ensuring costs are fully recovered. There is a chance that an uncapped fee may present a barrier to entering the scheme for applicants, who at the time of application have already gone through the accreditation process.

Hourly charge, capped at a maximum fee

For complex applications, this option may risk under-recovering costs. It is somewhat administratively efficient to charge this fee but does require MBIE to assign hours to the activity. The capped charge means it is not likely to be a barrier to entry for prospective applicants and provides a high level of certainty.

5.1. Registration and audit fees for the modular component manufacturer certification scheme

PROPOSAL 1: Prescribe an hourly fee capped at a maximum of 20 hours for assessing a registration application from an accredited modular component manufacturer certification body

Description of proposal

The chief executive of MBIE may, on application, register a person as a MCM certification body if satisfied that they are accredited and meet any prescribed criteria and standards for registration. The prescribed fee (if any) must be paid before registration can take place.

MBIE proposes that an hourly fee is prescribed, up to a maximum of 20 hours. At an hourly rate of $88.61 the maximum fee would be $1,772.20.

Rationale

The maximum fee would provide certainty for applicants while the hourly rate would avoid over-recovery when processing the application.

MBIE has estimated that assessing a fit and proper person test and confirming a MCM certification body has a process to notify MBIE of changes will take less than 20 hours, due to the relative simplicity of these criteria. MBIE has weighted the objectives of providing certainty, avoiding additional barriers to entry and ensuring registration is processed efficiently, as MCM certification bodies will apply for registration at the end of the accreditation process and will have already made a significant time and financial investment into the scheme.

MBIE has estimated that a 20 hour maximum cap would be appropriate based on the below cost drivers:

Table 1: Estimated cost drivers for assessing a registration application from an accredited MCM certification body

Activity	Time (hours)	Cost
Receive application	0.1	$8.86
Check accreditation status	0.2	$17.72
Assess fit and proper test (including request for information if required)	1-18	$88.61 – $1,594.98
Quality check/ confirmation	1	$88.61
Respond to applicant	0.5	$44.31
Update register	0.2	$17.72
Maximum MCM certification body registration	**20 hours**	**$1,772.20**

This proposed fee structure is consistent with the proposed fees for the registration of accredited PCBs for the product certification scheme, also contained within this paper.

PROPOSAL 2: Prescribe an hourly fee capped at a maximum of 65 hours for assessing a registration application from a certified modular component manufacturer.

Description of proposal

The chief executive of MBIE may, on application, register a person as an MCM if satisfied that they are certified and meet any prescribed criteria and standards for registration. The prescribed fee (if any) must be paid before registration can take place.

MBIE proposes that an hourly charge is prescribed, up to a maximum of 65 hours. At an hourly rate of $88.61 the maximum fee would be $5,759.65. MBIE expects that only the most complex MCM registrations would approach this maximum, with the actual registration fee for most MCMs being lower.

Rationale

The maximum fee would provide some certainty for applicants while the hourly rate would avoid over-recovery when processing very complex applications. The maximum, which is higher than the proposed maximum for MCM certification body or PCB registration, reflects the relative complexity of the scheme. The proposed maximum is significantly below the estimated and actual time required for MBIE to process applications for private building consent authority registration, which is more complex.

MBIE has estimated that assessing a fit and proper person test and confirming a MCM has a process to notify MBIE of changes will take less than 20 hours, due to the relative simplicity of these criteria. Experience from administering private building consent authority registration indicates that assessing an adequate means test is likely to be more complex and time-consuming, particularly in instances where an MCM may have a broad scope of certification or manufacture at a large scale or volume (therefore having the potential to incur significant civil liabilities). In some instances, specialist advice may need to be procured to support MBIE's assessment.

MBIE has estimated that a 65 hour maximum cap would be appropriate based on the below cost drivers:

Table 2: Estimated cost drivers for assessing a registration application from a certified modular component manufacturer

Activity	Time (hours)	Cost
Receive application	0.1	$8.86
Check certification status	0.7	$62.03
Assess fit and proper test (including request for information if required)	1-18	$88.61 – $1,594.98
Assess adequate means	10-40	$886.10 – $3,544.40
Quality check/ confirmation	1	$88.61
Create report and respond to applicant	5	$443.05
Update register	0.2	$177.22
Maximum MCM registration	**65 hours**	**$5,759.65**

Questions on registration and audit fees for modular component manufacturer certification scheme
1. Do you agree with MBIE's estimated cost drivers for modular component manufacturer certification body and modular component manufacturer registration? Please explain your views.
2. To what extent might the prescribed registration fees create a barrier to entry and ongoing participation in the scheme?

5.2. Accreditation and audit fees for the modular component manufacturer certification scheme

PROPOSAL 3: Prescribe fees for Modular Component Manufacturer Certification Body accreditation at the same structure and level as those used in Building Consent Authority accreditation.

Description of proposal

This proposal would set the framework for MCM certification body accreditation fees at the same structure and level as those used for building consent authority accreditation, outlined in Schedule 2 of the Building (Accreditation of Building Consent Authorities) Regulations 2006. This would mean that the fee payable by an MCM certification body to the MCM accreditation body for an accreditation assessment would take into account personnel costs, technical costs and disbursement costs. It would also set a daily cap on personnel and technical expert costs.

The estimated cost drivers for accreditation fees are outlined below:

Table 3: Estimated cost drivers for accreditation fees

Activity	Hourly cost	Daily cap
Personnel cost	$215/hr per accreditation body staff member undertaking accreditation assessment or audits	Capped at $1,720/day per accreditation body staff member
	$105/hr per accreditation body staff member travelling for the purpose of accreditation assessment or audits	
Technical expert cost	$156/hr per technical expert supporting accreditation body to undertake accreditation assessment or audits	Capped at $1,248/day per technical expert
	$105/hr per technical expert travelling for the purpose of supporting accreditation assessment or audits	
Disbursement cost	Actual and reasonable costs incurred by accreditation body staff members or technical experts in connection with performing their duties, including accommodation and travel	-

Rationale

The hourly rate would ensure the MCM accreditation body can conduct an appropriately in-depth assessment of the MCM certification body, while avoiding under-recovery of costs when processing very complex applications. It also enables the services of appropriate technical experts to be taken on board, if required.

The proposed hourly rates for accreditation staff and technical staff are higher than the proposed hourly rate proposed for registration because MBIE performs registration assessments, whereas a non-government organisation may undertake accreditation. MBIE may be able to supplement fees through the building levy if there is an under-recovery, but a non-government organisation would not be able to do so.

It is possible that due to these cost drivers, accreditation fees may become high for MCM certification bodies with complex systems or processes that take time for the MCM accreditation body to assess. MBIE considers this appropriate given that accredited and registered MCM certification bodies will be able to certify MCMs, which potentially carries risk for consumers. MBIE also notes that MCM certification bodies will be able to set their own fees for certification of MCMs and so will be able to identify how best to cost-recover accreditation fees they incur through that pathway. Audits would help to ensure that MCM certification bodies are not over-recovering costs.

More information on the actual total cost of an accreditation assessment for MCM certification bodies will be gained through engagement with potential MCM accreditation bodies and MCM certification bodies, taking place in parallel to consultation on this discussion document.

PROPOSAL 4: Prescribe fees for MCM certification body accreditation audits at the same structure and level as those used in Building Consent Authority accreditation.

Description of proposal

This proposal would set the framework for MCM certification body accreditation audit fees at the same structure and level as those used for building consent authority accreditation audit, within Schedule 2 of the Building (Accreditation of Building Consent Authorities) Regulations 2006. This would mean that the fee payable by an MCM certification body to the MCM accreditation body for an audit would take into account the same factors and cost drivers in the above proposal, with the addition of an administrative overhead cost. It would also set a daily cap on personnel and technical expert costs.

The estimated cost drivers for audit fees are outlined over the page.

Table 4: Estimated cost drivers for audit fees

Activity	Hourly cost	Daily cap
Personnel cost	$215/hr per accreditation body staff member undertaking accreditation assessment or audits	Capped at $1,720/day per accreditation body staff member
	$105/hr per accreditation body staff member travelling for the purpose of accreditation assessment or audits	
Technical expert cost	$156/hr per technical expert supporting accreditation body to undertake accreditation assessment or audits	Capped at $1,248/day per technical expert
	$105/hr per technical expert travelling for the purpose of supporting accreditation assessment or audits	
Disbursement cost	Actual and reasonable costs incurred by accreditation body staff members or technical experts in connection with performing their duties, including accommodation and travel	-
Administrative overhead cost	$106/month since last accreditation assessment or audit	-

Rationale

The hourly rate would ensure the MCM accreditation body can conduct an appropriately in-depth audit of the MCM certification body, while avoiding under-recovery of costs when processing very complex audits or over-recovery when processing 'light-touch' audits. It also enables the services of appropriate technical experts to be taken on board, if required. It reflects that if audits are undertaken more frequently than annually, as enabled by regulations proposed in this paper, the cost of administrative overheads will be lower.

The proposed hourly rates for accreditation staff and technical staff are higher than the proposed hourly rate proposed for registration because MBIE performs registration assessments, whereas a non-government organisation may undertake accreditation. MBIE is able to supplement fees through the building levy if there is an under-recovery, but a non-government organisation would not be able to do so.

The proposed structure provides flexibility to the MCM accreditation body when conducting audits, and also maintains consistency across different building system schemes.

Questions on accreditation and audit fees for the modular component manufacturer certification scheme
3. Do you agree with MBIE's assumption that the fee structure and level for assessing modular component manufacturer certification body accreditation is comparable to that for assessing building consent authority accreditation?
4. Do you agree with MBIE's proposed fee structure for modular component manufacturer certification body accreditation and audits?
5. To what extent might the prescribed audit fees create a barrier to entry and ongoing participation in the scheme?

5.3. Registration fees for product certification

PROPOSAL 5: Prescribe a new fee for assessing an application for registration as a product certification body

Description of proposal

The chief executive of MBIE may, on application, register a person as a PCB if satisfied that they are an accredited PCB and meet any prescribed criteria and standards for registration. The prescribed fee (if any) must be paid before registration can take place.

Under the proposals in this document, the chief executive of MBIE would need to assess a fit and proper person test for each applicant for registration, and check whether the applicant has a process in place to notify MBIE of changes.

It is assumed that the assessment activity can be carried out by existing MBIE staff. There are currently four PCBs who would pay this fee. Historically, the scheme has not had more than seven PCBs at any one time.

MBIE proposes that an hourly charge is prescribed, up to a maximum of 20 hours. At an hourly rate of $88.61 the maximum fee would be $1,772.19.

Rationale

The maximum would provide certainty for applicants, while the hourly rate would avoid over-recovery where processing the application and assessing a fit and proper person test takes less than 20 hours.

MBIE has weighted the objectives of providing certainty and avoiding barriers to entry higher, due to the timing of PCBs applying for registration at the end of the accreditation process which requires a time and cost investment.

MBIE has assumed a 20 hour maximum cap would be appropriate. MBIE expects this will avoid under-recovery where multiple fit and proper person tests need to be carried out or requests for information are required. The estimated cost drivers of the activity are set out below.

Table 5: Estimated cost drivers of registration of PCB

Activity	Time (hours)	Cost
Receive application	0.1	$8.86
Check accreditation status	0.5	$44.30
Assess fit and proper test (including request for information if required)	18 (max)	$1,594.97
Quality check/ confirmation	1	$88.61
Respond to applicant	0.2	$17.72
Update register	0.2	$17.72
Maximum PCB registration (total)	**20 hours**	**$1,772.19**

PROPOSAL 6: Prescribe a new fee for assessing whether product certificates have the prescribed information at a flat fee set at 2 hours of effort.

Description of proposal

The chief executive of MBIE must register a product certificate if satisfied that it includes the prescribed information and the proprietor has paid the prescribed fee.

MBIE proposes that a flat fee is prescribed based on an estimated 2 hours work to register a product certificate. At an hourly rate of $88.61, this would be $177.22 per certificate.

There are around 100 proprietors in the current scheme and around 150 product certificates.

Rationale

A single fee provides the most certainty for proprietors and is the simplest fee to administer. It gives the most flexibility for fee payments to fit within existing fee structures in the scheme. While the costs of assessing the information on a certificate may vary based on whether there are requests for further information or amendments, potentially leading to cross-subsidisation, MBIE has weighted administrative efficiency and certainty for proprietors higher.

Administrative simplicity is important because there are a reasonably high number of certificates (around 150) and the fee is expected to be low. This would also help future-proof the fee structure if the number of certificates grows.

MBIE considers that a high level of certainty is fairer on proprietors because the PCB is responsible for ensuring the certificates have the right information, and therefore the proprietor should not be charged for any amendments required.

MBIE also considered similar options to PCB registration, namely, to have a fixed fee with an hourly charge for complex cases, and an hourly charge capped at a maximum fee. However, MBIE discounted these two options for the reasons outlined above related to certainty and administrative efficiency.

MBIE has estimated that two hours of effort is required to assess the information on a certificate based on MBIE's operational experience. The estimated cost drivers of the activity are set out below.

Table 6: Estimated cost drivers for registration of certificate

Activity	Time (hours)	Cost
Receive certificate	0.1	$8.86
Check certificate information	1	$88.61
Request information or changes (if required)	0.3	$26.58
Quality check/ confirmation	0.2	$17.72
Respond to PCB and proprietor	0.2	$17.72
Update register	0.2	$17.72
Certificate registration (total)	**2 hours**	**$177.22**

Questions on registration fees for product certification
6. Do you agree with MBIE's assessment of the options for structuring registration fees for product certification bodies and certificates? Please explain your views.
7. Do you consider that the proposed fees for registration of product certification bodies and certificates are set at the right level? Please explain your views.

5.4. Accreditation and audit fees for product certification

PROPOSAL 7: Adjust existing accreditation fee to align with the current accreditation body's equivalent fee levels.

Description of proposal

The existing fee schedule in the Building (Product Certification) Regulations 2008 has not been updated since 2008. The current accreditation fee does not recover the costs of accrediting a PCB.

MBIE considered two options to adjust the existing accreditation fee:

- Inflation adjustment: perform a Consumer Price Index (CPI) adjustment on the existing application fee in regulations.
- Current accreditation body fees: adjust the existing accreditation fee in regulations to match the current accreditation body's fee for accreditation lodgement and day rate for additional reviews.

The two options are compared below.

Table 7: Options for adjusting the existing accreditation fee

Fee type	Fee level set in 2008 (GST inclusive)	Fee level in 2020 adjusted for CPI[2] (GST inclusive)	Current accreditation body accreditation lodgement fee and day rate[3] (GST exclusive)
Application for accreditation	$2,706	Approx. $3,277	Approx. $8,586
Any additional reviews required	$169 per hour (or $1,352 per day)	Approx. $205 per hour (or $1,640 per day)	Approx. $1,451 per day (per assessment team member)

MBIE's preferred option is to propose adjusting the existing application fee to match the current accreditation body's accreditation lodgement fee and day rate for additional reviews.

It is proposed that disbursements continue to be charged at actual and reasonable costs.

[2] Estimate using RBNZ inflation calculator 2008 Q4 to 2020 Q4.
[3] Estimate reached by converting AUD to NZD using Morningstar conversion rates on 3 March 2021.

Rationale

The current accreditation body is a not for profit entity established by treaty between the New Zealand and Australian governments, and operates at cost recovery. Its assessment of the costs of accreditation are likely to be more accurate than a simple CPI adjustment.

As a result of the prescribed fee schedule not being updated since 2008, the accreditation body is already charging the fees proposed in this document.

MBIE considers that the CPI adjustment would be less appropriate because it would under-recover the costs of accreditation.

The proposal is administratively simple for the accreditation body as it aligns each prescribed fee as much as possible with the accreditation body's equivalent fee level. However, fees prescribed by regulations are restricted by the empowering provisions in the Act, and there may be costs related to accreditation to the CodeMark scheme that are usually recovered from fees that cannot be prescribed. Any under- or over-recovery would have flow on effects to the accreditation body's other fees, given that the current accreditation body is not for profit and self-funding. MBIE welcomes feedback on whether the proposed fee levels are appropriate.

MBIE has received feedback that there is an argument for not prescribing fees charged by the accreditation body. The Building Act provides that an applicant for accreditation must pay the prescribed fee, and revisiting the policy settings behind this fee making power is out of scope for this regulatory work. In the absence of further analysis and decisions by Cabinet and Parliament related to the Building Act's treatment of accreditation body fees, MBIE considers it to be appropriate to prescribe a fee as the accreditation body is performing a regulatory function on behalf of MBIE and has a monopoly role.

PROPOSAL 8: Adjust existing audit fee schedule (accreditation body auditing product certification body) to align with the accreditation body's day rate for unscheduled surveillance.

Description of proposal

MBIE proposes to align the existing schedule for audit fees with the current day rate for unscheduled surveillance charged by the accreditation body. The current accreditation body charges a simplified fee for unscheduled surveillance, or where a PCB requires surveillance at a higher frequency (quarterly). The cost of this surveillance is $1,878 (GST exclusive) per day per assessment member.

The existing audit fees are set at $1,352 (GST inclusive) per day or part of day for:

- on-site audits
- preparation of assessment report following on-site audit
- contractors or any other resource required for audit.

Additional documentation reviews required for audit are prescribed at $169 per hour (GST inclusive).[4] The table below compares the existing audit fee in regulations with an inflation adjustment and the current accreditation body's day rate for unscheduled surveillance. MBIE proposes that disbursements continue to be charged at actual and reasonable costs.

Table 8: Comparison of the existing audit fee in regulations and the current accreditation body's day rate

Fee type	Fee level set in 2008 (GST inclusive)	Fee level in 2020 adjusted for CPI[5] (GST inclusive)	Current accreditation body day rate[6] (GST exclusive)
Audit	$1,352 per day	Approx. $1,637 per day	Approx. $1,878 per day

Rationale

The above rationale for Proposal 9 (accreditation fees) applies here, namely that MBIE is satisfied that, as a not for profit and fully self-funded entity, the current accreditation body operates at cost recovery. Fees based on its current fee structure are likely to be a more accurate assessment of the costs of carrying out audit activities compared to an inflation adjustment.

Questions on accreditation and audit fees for product certification
8. Would the proposed fees for product certification body accreditation and audits of product certification bodies create any practical issues? If so, what would the issues be?
9. Do you consider that the proposed fees for product certification body accreditation and audits of product certification bodies are set at the right level? Please explain your views.

Expected impacts of proposals for regulated fees

Benefits

The following benefits are expected from the proposals for regulated fees:

- enabling MBIE to recover the costs of its registration activities through fees is in line with Treasury's cost recovery guidance
- prescribed fees for registration will provide certainty to PCBs and proprietors
- adjusting levels to match their equivalent existing fees will better reflect the accreditation body's costs.

[4] This is the equivalent of $1,352 (GST inclusive) per 8 hour day.
[5] Estimate using RBNZ inflation calculator 2008 Q4 to 2020 Q4.
[6] Estimate reached by converting AUD to NZD using Morningstar conversion rates on 3 March 2021.

Costs

The following costs are expected from the proposals for regulated fees:

- New registration fees are expected to be introduced, which will have a minor additional cost impact on PCBs and proprietors.
- It is expected that PCBs will need to renew their registration at the end of each accreditation cycle (currently four years).
- It is expected that proprietors will need to renew their certificate registration every three years. This is in line with the proposal for PCBs to perform a certification review at least once every 3 years, and is intended to prevent any certificate information being out of date or incorrect after the initial registration.

The cost impacts for PCBs paying adjusted accreditation and audit fees to the accreditation body are expected to be neutral. While the prescribed fees are proposed to increase, this reflects the accreditation body's current charging levels.

Questions on expected impacts of regulated fees
10. Will the prescribed fees have a significant impact on the costs of participating in the schemes?
11. Do you have any other comments on the proposals?

Annex One: Summary of questions

PART TWO: Building Product Information Requirements
Supply chain responsibilities to meet Building Product Information Requirements
1. Do you think the split of responsibilities across the supply chain for information requirements is clear? Please explain your views.
2. Do you agree with the proposal that manufacturers and importers should be responsible for producing information for the building products they supply in order to comply with information requirements? Please explain your views.
3. Do you agree with the proposal that distributors and retailers should be responsible for ensuring building products they supply comply with information requirements? Please explain your views.
4. Do you agree with MBIE's assessment of the likely impacts of the proposed information requirements on (1) manufacturers and importers, and (2) distributors and retailers? If not, what impacts do you think the proposals will have on these two groups?
Content of information to be provided about building products
5. Does the minimum set of information required for all building products look reasonable? If not, what information requirements should be added or removed?
6. Do you agree with the proposal that manufacturers and importers must make claims about how their building product meets relevant Building Code clauses?
7. What challenges would manufacturers and importers face in making claims about how their building products meet relevant Building Code clauses?
8. Do you agree with the proposal to require manufacturers and importers to use the compliance pathways listed in section 19 of the Building Act 2004 to illustrate compliance with the Building Code? Please explain your views.
9. What other requirements or guidance would you recommend to ensure information provided is relevant and accurate?
Supply chain data and information standards
10. Do you agree with MBIE's assessment of the likely impacts on manufacturers and importers of the requirement to make evidenced claims about the Building Code compliance of their products? If not, what impacts do you think the proposals will have on manufacturers and importers?
11. Do you agree that all information requirements should be met prior to supply of a building product and that information be kept up to date with the latest version of that product? If not, what other requirements do you think would be reasonable?
12. Do you agree that all information should be provided in structured data and accessible across the supply chain and by MBIE? Please explain your views.
13. Do you think it is reasonable to require all information to be disclosed about building products to be made available online?
14. Do you agree with the proposal for all building products to have a unique identifiable code that links it to the information provided online?
Transition period
15. Do you agree with proposal for an 18 month transition period after building product information requirement regulations are made before they come into force? If not, what would be a reasonable timeframe?

PART THREE: Modular components manufacturer certification scheme
Prescribing the kinds of building products that would be 'modular components' and scopes of certification
1. Do you agree with the proposed approach to prescribe offsite manufactured building elements such as open frames and trusses, enclosed panels/units, volumetric structures, and whole buildings as 'modular components'? Please explain your views.
2. To what extent do you think there is benefit in developing a system to guide how modular component manufacturer certification bodies describe the scope of a modular component manufacturer's certification?
3. Which, if any, of the proposed options on which to base the proposed scope of certification system do you prefer? Please explain your views.
Modular component manufacturer certification body accreditation and registration
4. Do you think the proposed regulatory settings provide confidence in the certification bodies that would be accredited and registered within the scheme? Please explain your views.
5. How do you think the proposed regulatory settings for certification bodies might affect their uptake of the scheme?
Modular component manufacturer certification and registration
6. Do you think the proposed regulatory settings provide confidence in the modular component manufacturers that would be certified and registered within the scheme? Please explain your views.
7. Do you think the proposed regulatory settings for modular component manufacturers provide for adequate consumer protection? Please explain your views
8. How might the proposed regulatory settings for modular component manufacturers have different impacts for different kinds of manufacturers that may wish to participate in the scheme?
9. To what extent do you think modular component manufacturers will benefit from the proposed regulatory settings, and what costs do you think they might face when trying to meet the proposed settings?
Audits within the modular component manufacturer certification scheme
10. Do you agree with the proposal that auditing parties will use a prescribed risk assessment to decide the frequency and type of audits they will use for those being audited? Please explain your views.
11. What costs do you think the proposed audit requirements might have for modular component manufacturers, given that the fees for audits would be set through contract between the manufacturer and its certification body?
12. Do you agree with modular component manufacturer certification bodies and modular component manufacturers having three months to make changes outlined in an audit report following an audit? Please explain your views.
Modular component manufacturer's certificates
13. Do you support manufacturers being responsible for transportation, storage and assembly of modular components that they manufacture within the scheme? What impacts might this have on manufacturers?
14. To what extent do you think the information that is proposed to be required on manufacturer's certificates will provide clarity for different parties within the scheme?
15. What costs do you anticipate that providing the proposed information on manufacturer's certificates might have?

PART FOUR: Product certification scheme

Implement registration requirements for product certification bodies

1. Do you consider that the proposed fit and proper test and notification requirements would be effective criteria to establish if a product certification body should operate in the scheme? Please explain your views.

2. Do you agree with the proposal to not prescribe an adequate means test or other product certification body registration criteria at this stage? Please explain your views.

3. Do you consider that MBIE has proposed the right requirements for what must go on an application for product certification body registration?

Implement registration requirements for certificates

4. Do you agree with the MBIE's assessment that the proposals for certificate information will improve the usability of product certificates?

5. Are there any gaps or issues with current certificates that MBIE have missed that should be addressed by changes to Regulation 14 or Schedule 2?

Improve scheme requirements for product certification body accreditation

6. Do you consider that the product certification body accreditation proposals will improve the alignment of scheme documents? Please explain your views.

7. Do you consider there will be any compliance issues with the product certification body accreditation proposals? If so, what are they?

8. What further clarification related to the proposal to require product certification bodies to only accept test reports from competent testing facilities may be required?

9. Do you agree with proposal 8 to revoke existing Regulation 7A? Please explain your views.

Strengthen requirements for product certification body audits and reviews of certificates

10. Does the proposal related to product certification body audits and reviews of certificates look reasonable? If not, what requirements should be amended, added or removed?

11. What cost impacts do you consider the product certification body audit proposals will have? Will costs change compared to the current requirements?

12. Is three years the correct minimum frequency for certification review? Please explain your views.

PART FIVE: Regulated fees for the modular component manufacturer certification scheme and the product certification scheme

Registration and audit fees for modular component manufacturer certification scheme

1. Do you agree with MBIE's estimated cost drivers for modular component manufacturer certification body and modular component manufacturer registration? Please explain your views.

2. To what extent might the prescribed registration fees create a barrier to entry and ongoing participation in the scheme?

Accreditation and audit fees for modular component manufacturer certification scheme

3. Do you agree with MBIE's assumption that the fee structure and level for assessing modular component manufacturer certification body accreditation is comparable to that for assessing building consent authority accreditation?

4. Do you agree with MBIE's proposed fee structure for modular component manufacturer certification body accreditation and audits?

5. To what extent might the prescribed audit fees create a barrier to entry and ongoing participation in the scheme?

Registration fees for product certification scheme

6. Do you agree with MBIE's assessment of the options for structuring registration fees for product certification bodies and certificates? Please explain your views.

7. Do you consider that the proposed fees for registration of product certification bodies and certificates are set at the right level? Please explain your views.

Accreditation and audit fees for product certification scheme

8. Would the proposed fees for product certification body accreditation and audits of product certification bodies create any practical issues? If so, what would the issues be?

9. Do you consider that the proposed fees for product certification body accreditation and audits of product certification bodies are set at the right level? Please explain your views.

Expected impacts

10. Will the prescribed fees have a significant impact on the costs of participating in the schemes?

11. Do you have any other comments on the proposals?