



## COVERSHEET

<b>Minister</b>	Hon Poto Williams	<b>Portfolio</b>	Building and Construction
<b>Title of Cabinet paper</b>	<i>Two Building Act 2004 Regulations to Minimise Unnecessary Regulatory Impacts on the Building and Construction Sector</i>	<b>Date to be published</b>	30 November 2021

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
9 September 2021	<i>Two Building Act 2004 Regulations to Minimise Unnecessary Regulatory Impacts on the Building and Construction Sector</i>	Office of the Minister of Building and Construction
9 September 2021	Cabinet minute: LEG-21-MIN-0134	Cabinet Office

### Information redacted

**NO**

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

In Confidence

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

## **Two Building Act 2004 regulations to minimise unnecessary regulatory impacts on the building and construction sector**

### **Proposal**

- 1 This paper seeks authorisation for submission to the Executive Council of the:
  - 1.1 Building (Product Certification) Amendment Regulations 2021; and
  - 1.2 Building (Infringement Offences, Fees, and Forms) Amendment Regulations 2021.

### **Policy**

- 2 On 12 July 2021, Cabinet agreed to proposals to amend two Building Act 2004 regulations to [CAB-21-MIN-0267 refers]:
  - 2.1 amend the commencement date for a new general competency regulation in the Building (Product Certification) Amendment Regulations 2019 which requires that product certification bodies must only accept test reports used to evaluate building products from laboratories that are accredited for those tests; and
  - 2.2 remove prescriptive references to the method for payment of infringement fees to enforcement authorities in the Building (Infringement Offences, Fees, and Forms) Regulations 2007.
- 3 These changes are necessary in order to minimise unnecessary regulatory impacts on the building and construction sector.

### *Building (Product Certification) Amendment Regulations 2021*

- 4 The Building (Product Certification) Amendment Regulations 2021 amends the commencement date for a general competency regulation in the voluntary building product certification scheme (known as CodeMark) which restricts the types of tests a product certification body can accept.
- 5 The regulations extend the commencement date by 12 months from 1 November 2021 to 1 November 2022. This extension is necessary to support a transition to new building product certification regulations that are intended to be made by mid-2022.

- 6 CodeMark is often used for innovative building products where a manufacturer or supplier might find it difficult to show building consent authorities that their product complies with the Building Code.
- 7 The general competency regulation requires that product certification bodies may only accept test reports from laboratories that are accredited for those tests. The purpose of this requirement was to improve the quality of test reports that are used to evaluate innovative building products or methods. My officials have received feedback that the regulation is unduly onerous and may impose unnecessary regulatory impacts on current certificate holders and new product certification applicants.
- 8 As part of a review of the effectiveness of CodeMark, the Ministry of Business, Innovation and Employment (MBIE) has consulted on a proposal that is expected to provide the intended benefits of strengthening the requirements for test reports while also providing some flexibility and minimising unnecessary regulatory impacts on CodeMark certificate holders and product testing laboratories. Under recent amendments to the Building Act 2004, these new regulations must be made by 7 September 2022.
- 9 Extending the commencement date of the general competency regulation by a further 12 months effectively means the current regulatory settings will continue until new regulations are made that will strengthen CodeMark and improve MBIE's oversight of the scheme.
- 10 Sector feedback suggests that an extension to the commencement date is manageable as current settings are sufficient to provide assurance the test reports will remain credible until new and amended CodeMark regulations are made.

#### *Building (Infringement Offences, Fees, and Forms) Amendment Regulations 2021*

- 11 The Building (Infringement Offences, Fees, and Forms) Amendment Regulations 2021 removes prescriptive references to the method for payment of infringement fees to give enforcement authorities flexibility to set their own payment methods. Enforcement authorities include territorial authorities, regional authorities and MBIE. In practice, most infringements are issued by territorial authorities.
- 12 The Building (Infringement Offences, Fees, and Forms) Regulations 2007 currently requires enforcement authorities to accept payment by cheque or money order as payment for a building infringement fee. More flexibility is required for enforcement authorities to set their own terms for payment because by mid-2021, major banks will no longer accept cheques for deposit into bank accounts.
- 13 The removal of prescriptive references to methods for payment by cheque or money order reflects modern payment practices and other similar infringement notice requirements, and offers enforcement authorities the flexibility to set their own payment methods.

## **Timing and 28-day rule**

- 14 A waiver of the 28-day rule is not sought. The regulations will come into force on 14 October 2021, which is 28 days after which they will be notified in the *New Zealand Gazette*.

## **Compliance**

- 15 The regulations comply with:
- 15.1 the principles of the Treaty of Waitangi;
  - 15.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
  - 15.3 the principles and guidelines set out in the Privacy Act 2020;
  - 15.4 relevant international standards and obligations;
  - 15.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

## **Regulations Review Committee**

- 16 I do not consider there are any grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

## **Certification by Parliamentary Counsel**

- 17 The regulations were prepared and certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

## **Impact Analysis**

- 18 The Regulatory Strategy Team at the Treasury determined that the regulatory proposal to amend the commencement date of the general competency regulation is exempt from the requirement to provide a Regulatory Impact Statement on the basis that it has no or minor impacts on businesses, individuals or not-for-profit entities.
- 19 The Regulatory Impact Analysis Team at the Treasury also determined that the proposal relating to amending the Building (Infringement Offences, Fees, and Forms) Regulations 2007 to remove references to methods for payment of infringement fees is exempt from the requirement to provide a Regulatory Impact Statement on the ground that it removes redundant legislative provisions.

## **Publicity**

- 20 MBIE will contact affected stakeholders directly to notify them of the new regulations.

## Proactive release

- 21 I intend to release this paper proactively, subject to any redactions consistent with the Official Information Act 1982. MBIE will publish a copy of this paper on its website.

## Consultation

- 22 The Ministry of Housing and Urban Development, Kāinga Ora – Homes and Communities, the Treasury, and the Department of Internal Affairs have been consulted. The Parliamentary Counsel Office and the Department of the Prime Minister and Cabinet have been informed.

## Recommendations

The Minister for Building and Construction recommends that the Committee:

- 1 **note** that on 12 July 2021 Cabinet agreed to:
  - 1.1 amend the commencement date for a general competency regulation in the Building (Product Certification) Amendment Regulations 2019 requiring that test reports used to certify building products to must only come from laboratories accredited for those tests; and
  - 1.2 remove prescriptive references to the method for payment of infringement fees to enforcement authorities in the Building (Infringement Offences, Fees, and Forms) Regulations 2007.
- 2 **note** that the Building (Product Certification) Amendment Regulations 2021 and the Building (Infringement Offences, Fees, and Forms) Amendment Regulations 2021 will give effect to the decisions referred to in paragraph 1 above;
- 3 **authorise** the submission to the Executive Council of the:
  - 3.1 Building (Product Certification) Amendment Regulations 2021;
  - 3.2 Building (Infringement Offences, Fees, and Forms) Amendment Regulations 2021;
- 4 **note** that the regulations referred to in paragraph 3 will come into force on 14 October 2021.

Authorised for lodgement

Hon Poto Williams

Minister for Building and Construction