



COVERSHEET

Minister	Hon Chris Penk	Portfolio	Building and Construction
Title of Cabinet paper	Building (Earthquake-prone Building Deadlines and Other Matters) Amendment Bill: Approval for Introduction	Date to be published	16 September 2024

List of documents that have been proactively released		
Date	Title	Author
30 July 2024	Building (Earthquake-prone Building Deadlines and Other Matters) Amendment Bill: Approval for Introduction	Office of the Minister for Building and Construction
1 August 2024	Building (Earthquake-prone Building Deadlines and Other Matters) Amendment Bill: Approval for Introduction LEG-24-MIN-0151 Minute	Cabinet Office

Information redacted

YES / NO

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Some information has been withheld for the reason of Confidential advice to Government.

In Confidence

Office of the Minister for Building and Construction

Cabinet Legislation Committee

Building (Earthquake-prone Building Deadlines and Other Matters) Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval for introduction of the Building (Earthquake-prone Building Deadlines and Other Matters) Amendment Bill into the House.

Policy

- 2 The proposal supports the delivery of the building and construction work programme to create an efficient, competitive building regulatory system and reduce overall building costs. This includes setting the course for appropriate seismic risk management and aligns with Government priorities for the assessment and improvement of new and existing legislation and regulation.

Extension of earthquake-prone building remediation deadlines

- 3 On 2 April 2024, Cabinet agreed to amend the *Building Act 2004* (the Act) to extend remediation deadlines for buildings issued an earthquake-prone building notice under Section 133AL of the Act by four years. The extension excludes earthquake-prone building notices that lapse prior to 2 April 2024 [ECO-24-MIN-0043; CAB-24-MIN-0109].
- 4 The extension will provide clarity and certainty to building owners and territorial authorities as to their obligations during a review of seismic risk management in existing buildings (the Review). On 4 June 2024, Cabinet agreed to the terms of reference for the Review [ECO-24-MIN-0087; CAB-24-MIN-0195].
- 5 Cabinet also agreed that these amendments will allow for an additional extension of all earthquake-prone building remediation deadlines by up to two years. This further extension would be by Order in Council. It would include buildings identified as earthquake-prone buildings between 2 April 2024 and 2 April 2028, and exclude those that lapse prior to 2 April 2024.
- 6 The Bill places limitations on the use of this power. The power may be used only once, to extend deadlines for a period of time of up to two years, and will be repealed on 2 April 2028.
- 7 This regulation-making power would be made under section 402 of the Act. As such, in addition to the limitations in the Bill, the power would be subject to the usual

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safeguards for secondary legislation that apply under the *Legislation Act 2019*, namely:

- 7.1 Publication: The Parliamentary Counsel Office must publish it on the legislation website and notify it in the Gazette;
- 7.2 Presentation: the Minister must present it to the House of Representatives; and
- 7.3 Disallowance: it may be disallowed by the House of Representatives.

Independently qualified persons and building warrant of fitness scheme

- 8 Under section 108(3)(c) of the Act, a building warrant of fitness supplied to the territorial authority must include a Form 12A. The Form must be issued by an independently qualified person. It certifies that the inspection, maintenance and reporting procedures stated in the building's compliance schedule have been fully complied with during the previous 12 months.
- 9 Local government and building compliance industry stakeholders have raised concerns about instances where an independently qualified person has issued a Form 12A for specified systems that have not met the requirements of the compliance schedule.
- 10 On 7 August 2023, following the Loafers Lodge fire, Cabinet agreed to amend the Act to clarify the obligations of independently qualified persons in issuing a Form 12A and to introduce a new standard offence for independently qualified persons who negligently issue a Form 12A for a specified system where the inspection, maintenance and reporting procedures of the compliance schedule have not been fully complied within the last 12 months for that system [CAB-23-MIN-0350].
- 11 Cabinet agreed that the penalty for this offence be a fine not exceeding \$50,000 for an individual and \$150,000 for a body corporate.
- 12 Cabinet also agreed to amend the Building (Infringement Offences, Fees, and Forms) Regulations 2007 to increase the infringement fees for building owners who fail to supply the territorial authority with a building warrant of fitness, or to display a building warrant of fitness required to be displayed, from \$250 to \$1,000.
- 13 This Bill gives effect to these decisions by prohibiting an independently qualified person from stating that the inspection, maintenance and reporting procedures for specified systems have been complied with in the previous 12 months if those procedures have not been fully complied with. This Bill also introduces an offence for acting in breach of that requirement.
- 14 This offence is intended to target behaviour where an independently qualified person negligently issues the Form 12A with the penalty being a fine not exceeding \$50,000 for an individual and \$150,000 for a body corporate. The Bill also provides independently qualified persons with a defence where, for example, they took reasonable precautions and exercised due diligence when performing their duties.

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Other matters

- 15 The Bill will also make other minor and technical amendments in relation to:
- 15.1 dam safety penalties and obligations – to remove the obligation on a dam owner to display a copy of a dam compliance certificate in a prominent place on the dam, replacing it with requirements for the certificate to be forwarded to the relevant regional authority, and amending the associated offences;
 - 15.2 building levy payment requirements for building consent authorities –to require stand-alone building consent authorities to pay the building levy directly to MBIE and set out the respective responsibilities of territorial authorities and standalone building consent authorities;
 - 15.3 provisions relating to pools - to achieve the policy intent of the *Building (Pools) Amendment Act 2016* by exempting small heated pools with a safety cover that either complied with the building code when it was installed, or currently complies with the building code, from the requirement for periodic inspection; and
 - 15.4 provisions relating to certificates of acceptance for building work – to clarify that if a certificate of acceptance for any work is issued under section 96 of the principal Act, it is not necessary for any person to apply for a building consent in respect of that work.
- 16 The amendments to levies and other matters are uncontroversial and will make a significant improvement to the effectiveness and efficiency of the building regulatory system and ensure that it aligns with regulatory best practice. The amendments will achieve this by:
- 16.1 clarifying and updating the statutory provisions in the Act, to give effect to the purpose of the Act and its provisions;
 - 16.2 addressing regulatory duplication, gaps, errors and inconsistencies within the Act;
 - 16.3 keeping the regulatory system up-to-date and relevant; and
 - 16.4 removing unnecessary compliance costs.
- 17 In 2019, Cabinet agreed to the changes in relation to levies and other matters [CAB-19-MIN-0362] as part of MBIE’s Regulatory Systems Amendment Bill (No 3) package (RSB 3).
- 18 Due to interruptions caused by COVID-19 in 2020 and 2021, additional amendments were proposed for inclusion in RSB 3, and received Cabinet Economic Development Committee [DEV-21-MIN-0088] and Cabinet [CAB-21-MIN-0151] approval in May 2021. Changes to allow for a more efficient process for building consenting authorities that are not part of a territorial authority were approved on 18 May 2022 [DEV-22-MIN-0112].

- 19 Due to previous uncertainty about the timing of RSB 3, it was determined that these decisions would be progressed separately through either a standalone Building Act amendment bill, or as part of a suitable amendment bill on other matters.

Impact analysis

- 20 A regulatory impact statement for the extension of earthquake-prone building deadlines was prepared in accordance with the necessary requirements and was submitted at the time that Cabinet approval of the policy relating to the Bill was sought [[ECO-24-MIN-0043; CAB-24-MIN-0109]. MBIE's Regulatory Impact Assessment Review Panel considered that it partially met the quality assurance criteria on the basis that one option (Option C), which involved a possible extension of remediation deadlines for only a subset of buildings (such as heritage buildings only or excluding Importance Level 4 buildings or priority buildings), would have benefitted from the sub-options being assessed independently. The Panel also found that the application of some criteria could have been more consistent.
- 21 The Treasury's Regulatory Impact Analysis team determined that the independently qualified persons proposals were exempt from the requirement to provide a regulatory impact statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.
- 22 A regulatory impact statement for the broader dam safety proposals was prepared in accordance with the necessary requirements and was submitted at the time that Cabinet approval of the policy relating to the bill was sought [DEV-21-MIN-0008]. MBIE's Regulatory Impact Assessment Review Panel considered that it partially met the quality assurance criteria.
- 23 The Treasury's Regulatory Impact Analysis team has determined that the technical changes to building levy payments and building consent information provisions are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.
- 24 Due to the minor and technical nature of the other proposed changes originally intended for inclusion in the Regulatory Systems Amendment Bill (No 3), Regulatory Impact Analysis requirements did not apply to those proposals at that time.

Compliance

- 25 The Bill complies with each of the following:
- 25.1 the principles of the Treaty of Waitangi;
 - 25.2 advice from the Treaty Provisions Officials Group on any Treaty of Waitangi provisions (include a summary of any concerns raised);
 - 25.3 the rights and freedoms contained in the *New Zealand Bill of Rights Act 1990*¹ and the *Human Rights Act 1993* (no potential inconsistencies identified);

¹ A BORA vet is in progress by the Ministry of Justice.

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- 25.4 the disclosure statement requirements (a disclosure statement has been prepared and is attached to the paper);
 - 25.5 the principles and guidelines set out in the *Privacy Act 2020*;
 - 25.6 relevant international standards and obligations.
- 26 However, the Bill departs from the [Legislation Guidelines](#) (2021 edition) in the following two ways:
- 26.1 The extension of remediation deadlines for earthquake-prone buildings has retrospective effect as it applies to deadlines on or after 2 April 2024. This will effectively reverse the expiration of up to 19 further EPB notices between 2 April 2024 and commencement, which provides certainty as to stakeholders' compliance and enforcement obligations from the date of Cabinet decisions and subsequent public awareness of the extension and the Review.
 - 26.2 The Bill also empowers the making of secondary legislation that extends deadlines by up to two years. This secondary legislation will be made by Order in Council on the Minister's recommendation. This extra extension may only be used once for a single period not exceeding two years, and the power will be repealed on 2 April 2028.

Consultation

- 27 The following departments were consulted on this paper and the draft Bill: National Emergency Management Agency (NEMA); Ministry for the Environment; Ministry for Culture and Heritage; Ministry of Education; Ministry for Housing and Urban Development; The Treasury; Department of Prime Minister and Cabinet; Department of Internal Affairs; New Zealand Defence Force; Ministry of Justice; Ministry of Justice; WorkSafe New Zealand; Fire and Emergency New Zealand; Health New Zealand Te Whatu Ora; Natural Hazards Commission Toka Tū Ake.
- 28 The proposed extension of non-lapsed earthquake-prone building deadlines was previously consulted with parties, including:
- 28.1 Building officials from a small group of territorial authorities;
 - 28.2 The Joint Committee for Seismic Assessment and Retrofit;
 - 28.3 The Manatū Taonga Ministry for Culture and Heritage, the Ministry for the Environment Manatū Mō Te Taiao, the Department of Internal Affairs Te Tari Taiwhenua, the Treasury New Zealand, the Department of the Prime Minister and Cabinet, WorkSafe, Te Tūāpapa Kura Kāinga Ministry of Housing and Urban Development, Earthquake Commission Toka Tū Ake, the Parliamentary Council Office, WorkSafe, Te Whatu Ora Health New Zealand, Fire and Emergency New Zealand, EQC Toka Tū Ake (now Natural Hazards Commission Toka Tū Ake);
 - 28.4 Property Council New Zealand.
- 29 The policy proposals for independently qualified persons were consulted with:

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- 29.1 Accident Compensation Corporation; Department of Internal Affairs; Department of Prime Minister and Cabinet; Te Tūāpapa Kura Kāinga – the Ministry of Housing and Urban Development; Infrastructure Commission; Kāinga Ora; Ministry of Foreign Affairs and Trade; Ministry of Education; Ministry of Justice; Te Puni Kokori; WorkSafe New Zealand; The Treasury; Ministry of Health.
- 29.2 Building Networks; Association of Building Compliance; Waikato Building Consent Group; Southern Building Controls Group;
- 29.3 Accident Compensation Corporation; Infrastructure Commission; Kāinga Ora; WorkSafe New Zealand;
- 29.4 New Zealand Police.
- 30 The policy proposals originally included in the Regulatory Systems Bill (No. 3) (i.e. amendments relating to the building levy, certificates of acceptance, pool fences and dam certificates) were individually tested through departmental consultation before they went to Cabinet, as well as with key stakeholders most affected by the amendments (for example, building consent authorities and Consentium for the levy changes).

Binding on the Crown

- 31 This Bill amends the *Building Act 2004*. The *Building Act 2004* is binding on the Crown (subject to the exceptions in that Act). This is not proposed to change.

Creating new agencies or amending law relating to existing agencies

- 32 Not applicable. The Bill does not create a new agency or amend the existing coverage of the *Ombudsmen Act 1975*, the *Official Information Act 1982*, or the *Local Government Official Information and Meetings Act 1987*.

Allocation of decision making powers

- 33 Not applicable. The Bill does not involve the allocation of decision-making powers between the executive, the courts and tribunals.

Associated regulations

- 34 Not applicable. Regulations will not be needed to bring the Bill into operation.

Other instruments

- 35 Not applicable. The Bill does not include a provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

Definition of Minister/department

- 36 Not applicable. The Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

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Financial implications

- 37 The building levy proposals are not expected to have a material impact on levy revenue.
- 38 Compliance and enforcement will be managed within MBIE's existing baselines.

Commencement of legislation

- 39 The Bill will come into force on the day after Royal assent.

Parliamentary stages

- 40 The Bill should be introduced in August 2024 and passed by the end of 2024.
- 41 It is proposed that the Bill be referred to the Transport and Infrastructure Committee of Parliament.

Proactive Release

- 42 I intend to release this paper proactively, subject to appropriate redactions under the *Official Information Act 1982*. MBIE will publish a copy of this paper on its website.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that the Building (Earthquake-prone Building Deadlines and Other Matters) Amendment Bill holds a category Confidential advice to Government priority on the 2024 Legislation Programme;
- 2 **note** that the Bill will:
 - 2.1 extend earthquake-prone building remediation deadlines by four years and provide for an additional extension of earthquake-prone building remediation deadlines by up to two years by Order in Council;
 - 2.2 clarify the obligations of independently qualified persons, introduce an associated offence and increase infringement fees for building owners; and
 - 2.3 make other minor and technical amendments to the *Building Act 2004*;
- 3 **note** that the Bill sets limitations on the power to further extend deadlines by Order in Council: it may be used only once, to extend deadlines for a period of time of up to two years, and will be repealed on 2 April 2028;
- 4 **note** that, in addition to the limitations in the Bill, the power would be subject to the usual safeguards for secondary legislation that apply under the *Legislation Act 2019*, including that the Order in Council may be disallowed by the House of Representatives;
- 5 **approve** the Building (Earthquake-prone Building Deadlines and Other Matters) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;

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6 **agree** that the Bill be introduced on a date to be approved by the Leader of the House;

7 **agree** that the Government propose that the Bill be:

7.1 referred to the Transport and Infrastructure Committee for consideration;

7.2 enacted by Confidential advice to Government.

Authorised for lodgement

Hon Chris Penk

Minister for Building and Construction

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