



COVERSHEET

Minister	Hon Jenny Salesa	Portfolio	Building and Construction
Title of Cabinet paper	Lifting the Efficiency and quality of the building system: Overview	Date to be published	11 October 2019

List of documents that have been proactively released		
Date	Title	Author
25 September 2019	<i>Lifting the Efficiency and quality of the building system: Overview</i>	<i>Office of Hon Jenny Salesa</i>
25 September 2019	<i>Lifting the Efficiency and quality of the building system: Proposals for Bill One</i>	<i>Office of Hon Jenny Salesa</i>
30 September 2019	<i>CAB-19-MIN-0507</i>	<i>Cabinet Office</i>
30 September 2019	<i>CAB-19-MIN-0508</i>	<i>Cabinet Office</i>
25 September	<i>Regulatory Impact Statement: Building System Legislative Reform Programme (Phase 1)</i>	<i>Ministry of Business, Innovation and Employment</i>

Information redacted

YES

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Reasons for withholding information:

- Confidential advice to Government



Cabinet

Minute of Decision

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Lifting the Efficiency and Quality of the Building System: Proposals for Bill One (Paper B)

Portfolio Building and Construction

On 30 September 2019, following reference from the Cabinet Economic Development Committee, Cabinet:

Widening the purpose of the Building Act

- 1 **noted** that gaps and weak incentives in the regulation of building products and building methods are contributing to delays in the consenting process and making it challenging to hold people to account for product-related defects in building work;
- 2 **agreed** to amend the purpose of the Building Act 2004 to include the regulation of building products and building methods;

Definitions of building products and building methods

- 3 **agreed** to amend the Building Act to include separate definitions for 'building product' and 'building method' that are clear and can be distinguished from each other;
- 4 **agreed** to amend the Building Act to enable the inclusion and exclusion of items in the definitions of 'building product' and 'building method' by regulation;

Building product information

- 5 **noted** that building product information often lacks the detail that designers and builders need to make good decisions;
- 6 **agreed** that suppliers of building products be required to comply with requirements for building product information;
- 7 **agreed** that a supplier for the purposes of this obligation include manufacturers, importers, distributors and retailers;
- 8 **agreed** that the information requirements may be prescribed by regulation (including the minimum prescribed information that must be provided, the manner and form in which the information must be provided, conditions or additional requirements on the supply of information, and requirements for different classes or types of products or different classes or types of supplier);

- 9 **agreed** that regulations may exempt certain suppliers, building products, classes or types of suppliers or building products, from the obligation to comply with building product information requirements;
- 10 **agreed** that the Ministry of Business, Innovation and Employment may issue a notice to a supplier to take corrective action if satisfied on reasonable grounds that the supplier is failing to comply with building product information requirements;
- 11 **agreed** that failure to comply with the building product information requirements be an infringement offence (infringement fee to be set by regulation at \$1,000);
- 12 **agreed** that failure to comply with the building product information requirements also be a strict liability offence (maximum fine of \$10,000 for an individual or \$30,000 for other persons);
- 13 **agreed** that failure to comply with a notice to take corrective action be a strict liability offence (maximum fine of \$10,000 for an individual or \$30,000 for other persons);
- 14 **agreed** that a false or misleading statement, or unsubstantiated representation, made by a manufacturing or importing supplier be a strict liability offence (maximum fine of \$200,000 for an individual or \$600,000 for other persons);
- 15 **agreed** that there be defences to prosecution similar to those in section 44 of the Fair Trading Act 1986 for an offence against suppliers' obligations to comply with minimum building product information requirements, and to not make false, misleading or unsubstantiated representations;

Roles and responsibilities for building products and building methods

- 16 **noted** that unclear roles and responsibilities in relation to building products allow some parties to avoid their responsibilities or shift blame if things go wrong;
- 17 **agreed** to amend the existing responsibilities for product manufacturers and suppliers in the Building Act to include the responsibility to comply with the building product information requirements;
- 18 **agreed** to amend the existing responsibilities for builders to include ensuring that the building products used in building work will comply with the relevant consent and the Building Code (where a specific product is either not specified or the building work is not covered by a consent);

Information to support decisions to issue a product warning or ban

- 19 **noted** that the Chief Executive of the Ministry of Business, Innovation and Employment (the Chief Executive) currently does not have sufficient powers to require information or documents necessary to determine whether to issue a warning or ban of a building product or building method;
- 20 **agreed** to amend the Building Act to enable the Chief Executive to require any person to provide information or documents of any kind that the chief executive considers necessary for the purposes of determining whether to issue a warning or ban of a building product or building method;
- 21 **agreed** the Chief Executive must give written notice to the person (referred to in paragraph 20 above) specifying the information or documents that must be provided, how it must be provided, and a reasonable deadline for providing that information;

- 22 **agreed** that failure to provide the information required by the deadline specified in a notice be a strict liability offence (maximum fine of \$50,000 for an individual and \$150,000 for other persons);
- 23 **agreed** that the Chief Executive may share information or documents acquired for the purpose of investigating building products with regulatory agencies or other regulatory bodies if the Chief Executive reasonably considers that the information may assist the regulatory agency or body in the performance or exercise of their functions, powers or duties under any enactment for the safety of buildings or products, hazardous materials, potable water, sanitation, fair trading, or the regulation of occupational groups in the building and construction sector;

Introducing a manufacturer certification scheme

- 24 **agreed** that the Building Act be amended to include a manufacturer certification scheme for modern methods of construction (MMC);
- 25 **agreed** that MMC includes the off-site manufacture of ‘modular components’ in New Zealand or overseas which are to be installed on land in New Zealand as a building or part of a building;
- 26 **agreed** that regulations may define ‘modular components’;
- 27 **agreed** that the definition of ‘restricted building work’ contained in the Building (Definition of Restricted Building Work) Order 2011 be amended to exclude work undertaken by a registered certified manufacturer;
- 28 **agreed** that the Building Act be amended to provide that under the manufacturer certification the design and manufacture of modular components will be deemed to comply with the Building Code if they are designed or manufactured by a registered certified manufacturer;
- 29 **agreed** that the regulations may prescribe the details of the application process for approval of the design plans and specifications of a modular component (including the form and manner of the application, any required information, details of the required plans and specifications);
- 30 **agreed** that regulations may prescribe the application fee for approval of the design plans and specifications;
- 31 **agreed** that the installation of a modular component on the land, or in the building on the land, will require building consent in the installation territory;
- 32 **agreed** that the manufacturer certification scheme will be voluntary for manufacturers;
- 33 **agreed** that manufacturers must be registered by the Chief Executive in order to design and manufacture modular components under the scheme;
- 34 **agreed** that the Chief Executive have the role and function of registering certified manufacturers;
- 35 **agreed** that the Building Act will set out the criteria for registration of a manufacturer, which will include:
- 35.1 having current certification from a certification body;

- 35.2 meeting prescribed criteria and standards for registration; and
- 35.3 meeting obligations in relation to having adequate means to cover any civil liabilities;
- 36 **agreed** that regulations may prescribe the following in relation to an application for registration of MMC certification:
- 36.1 any criteria and standards that the applicant must meet; and
- 36.2 details of any minimum requirements in relation to adequate liability cover;
- 37 **agreed** that regulations may prescribe an application fee for registration;
- 38 **agreed** that the Building Act set out the process for MMC registration (including criteria for registration, the application process, processes for suspension and revocation of registration);
- 39 **agreed** that the Chief Executive may appoint an MMC accreditation body (which may be the Ministry of Business, Innovation and Employment);
- 40 **agreed** that the MMC accreditation body have the role and function of:
- 40.1 accrediting the certification bodies (and suspending and revoking accreditation); and
- 40.2 auditing certification bodies;
- 41 **agreed** that the Building Act set out the process for MMC accreditation (including criteria for accreditation, the application process, processes for suspension and revocation of accreditation);
- 42 **agreed** that regulations may prescribe the following in relation to an application for accreditation as an MMC certification body:
- 42.1 the criteria and standards for accreditation;
- 42.2 the manner and form in which the application is to be given; and
- 42.3 any information to be included in the application;
- 43 **agreed** that the Building Act set out audit requirements for the auditing of MMC certification bodies (including minimum frequency);
- 44 **agreed** that regulations may prescribe the requirements in relation to MMC audits (including the frequency and the issuing of audit reports and compliance certificates);
- 45 **agreed** that regulations may prescribe the fees the MMC accreditation body may charge for:
- 45.1 accreditation of certification bodies; and
- 45.2 carrying out audits of certification bodies;
- 46 **agreed** that the Building Act set out the criteria for registration of an MMC certification body, which will include:
- 46.1 having current accreditation from the accreditation body;

- 46.2 meeting the fit and proper person test (as assessed against certain criteria);
- 46.3 meeting prescribed criteria and standards for registration; and
- 46.4 meeting obligations in relation to having adequate means to cover any civil liabilities;
- 47 **agreed** that regulations may prescribe the following in relation to an application for registration as an MMC certification body:
- 47.1 any criteria and standards that the applicant must meet; and
- 47.2 details of any minimum requirements in relation to adequate liability cover;
- 48 **agreed** that regulations may prescribe the fee for application for registration by a certification body;
- 49 **agreed** that the Building Act set out the process for registration of an MMC certification body (including criteria for registration, the application process, processes for suspension and revocation of registration);
- 50 **agreed** that the MMC certification bodies have the role and function of:
- 50.1 certifying manufacturers (and suspending and revoking certification); and
- 50.2 auditing certified manufacturers;
- 51 **agreed** that the Building Act set out the criteria for manufacturer certification (including having appropriate systems and processes);
- 52 **agreed** that the Building Act will set out the application process for manufacturer certification (and the processes for suspension and revocation of certification);
- 53 **agreed** that regulations may prescribe the detail of the criteria and standards for manufacturer certification;
- 54 **agreed** that regulations may prescribe the manner and form of the application and any information to be included in an application for manufacturer certification;
- 55 **agreed** that the Building Act set out audit requirements for the auditing of certified manufacturers (including minimum frequency);
- 56 **agreed** that regulations may prescribe the requirements in relation to audits (including the frequency and the issuing of audit reports and compliance certificates);
- 57 **agreed** that regulations may prescribe the fees the MMC certification body may charge for:
- 57.1 certifying manufacturers; and
- 57.2 carrying out audits of certified manufacturers;
- 58 **agreed** that the Chief Executive have the role of investigating the performance of the MMC accreditation body and the MMC certification bodies;
- 59 **agreed** that the Chief Executive have disciplinary powers similar to those in section 203 of the Building Act;

- 60 **agreed** that it be an offence for a person to hold themselves out to be an MMC accreditation body or an MMC certification body, and that the maximum penalty for an individual be \$50,000, and \$150,000 for any other person;
- 61 **agreed** that it be an offence for a person to perform any of the functions of an MMC accreditation body or an MMC certification body without being accredited or registered (whichever is relevant), and that the maximum penalty for an individual be \$300,000, and \$1,500,000 for any other person;
- 62 **agreed** that a manufacturer who manufactures 'modular components' under the manufacturer certification scheme be under a duty to:
- 62.1 only manufacturer the modular component under the scheme if they have current registration as a manufacturer; and
 - 62.2 only design (if applicable) and manufacture in accordance with the criteria (including processes and systems) to which they received certification and registration;
- 63 **agreed** that it be an offence for a manufacturer to breach or fail to comply with a manufacturer duty with a maximum penalty of \$50,000 for an individual and \$150,000 for any other person;
- 64 **agreed** that a person who imports a 'modular component' under the manufacturer certification scheme be under a duty to only represent their modular components as having been produced by a registered manufacturer unless they have been;
- 65 **agreed** to enable the Chief Executive to share information or documents acquired for the purpose of determining whether the manufacturer is complying with its duties with the Commerce Commission and the Ministry of Housing and Urban Development where the information or document is relevant to the regulatory responsibilities of that body;
- 66 **agreed** that the Chief Executive have the power to require any person to provide information or documents of any kind that the Chief Executive considers necessary for the purposes of determining whether the manufacturer is complying with their duties;
- 67 **agreed** that the Chief Executive have the power to, at all times during normal working hours or while manufacturing is being carried out, to inspect:
- 67.1 any premises on which manufacturing under the scheme is or is proposed to be carried out; and
 - 67.2 any modular component that has been manufactured or is being manufactured;
- 68 **agreed** that the Chief Executive have the power to enter premises for the purpose of carrying out an inspection referred to in paragraph 67 above;

Strengthening the framework for product certification

- 69 **noted** that these proposals in the paper under CAB-19-SUB-0508 are intended to enable the Ministry of Business, Innovation and Employment to be an effective product certification scheme owner;
- 70 **agreed** to amend the Building Act to enable the Chief Executive to decide whether to enter an accredited product certification body's (PCB) name onto the register of PCBs;

- 71 **agreed** that in order to gain registration, a PCB must:
- 71.1 meet any prescribed standards, criteria, policies, procedures and systems as specified by regulation; and
 - 71.2 hold a current accreditation from a product certification accreditation body;
- 72 **agreed** to amend the Building Act to require that an application for registration as a PCB must be:
- 72.1 made in writing;
 - 72.2 given in the prescribed manner;
 - 72.3 contain the prescribed information; and
 - 72.4 be accompanied by the prescribed fee;
- 73 **agreed** to amend the Building Act to specify that the Chief Executive must decide an application for registration as a PCB;
- 74 **agreed** to amend the Building Act so that the Chief Executive may suspend or revoke the registration of a PCB if it no longer meets the criteria for registration;
- 75 **agreed** to amend the Building Act to enable the Chief Executive to audit PCBs to ensure they are complying with their registration requirements;
- 76 **agreed** to amend the Building Act to set criteria for registration of a product certificate once the Chief Executive is notified by a PCB that a product certificate has been issued;
- 77 **agreed** to amend the Building Act to enable regulations to prescribe the form of a product certificate;
- 78 **agreed** to amend the Building Act to include the following criteria for registering a product certificate:
- 78.1 the certificate contains the prescribed information; and
 - 78.2 the certificate is on the prescribed form (if any);
- 79 **agreed** to amend the Building Act to enable the Chief Executive to make rules for product certification schemes;
- 80 **agreed** to amend the Building Act to make failure to comply with the rules grounds for suspending or revoking a PCB's or product certificate's registration;
- 81 **agreed** to amend the Building Act to enable the Chief Executive to investigate complaints against a PCB or the holder of a product certificate;
- 82 **agreed** to amend the Building Act to enable the Chief Executive to request information from a PCB or holder of a product certificate necessary to the investigation of a complaint;
- 83 **agreed** to amend the Building Act to make it an offence for an unregistered person to hold themselves out as a registered PCB (maximum fine of \$50,000 for an individual and \$150,000 for other persons);

- 84 **agreed** to amend the Building Act to make it an offence for an unregistered person to issue a certificate, or to make a claim that implies a product has been evaluated or certified under these schemes (maximum fine of \$300,000 for an individual and \$1,500,000 for other persons);

Building levy

- 85 **agreed** to amend the Building Levy Order 2005 to reduce the rate of the building levy from \$2.01 to \$1.75 including GST, per \$1,000;
- 86 **agreed** to amend the current building levy threshold from \$20,000 to \$20,444 including GST;
- 87 **agreed** to amend the Building Act to provide authority for the Chief Executive to spend the building levy for purposes relating to stewardship of the building regulatory system;

Offences and penalties

- 88 **agreed** to set separate maximum financial penalties in the Building Act on conviction for individuals and other persons;
- 89 **noted** that the proposed increases are based on the criteria set out in paragraph 143 of the paper under CAB-19-SUB-0508;
- 90 **noted** that offences with a current maximum penalty of \$5,000 will be assessed by the additional criteria set out in paragraph 143 of the paper under CAB-19-SUB-0508;
- 91 **agreed** that the maximum financial penalties on conviction for individuals for the offences listed in Annex 3 to the paper under CAB-19-SUB-0508 be increased to the levels set out in the Annex 3;

Extending the timeframe to file a charging document

- 92 **agreed** to extend the time for relevant enforcement agencies to file a charging document for an offence against the Building Act from six months to 12 months;

Public notification

- 93 **agreed** to remove from the Building Act the requirement for public notices to be published in daily newspapers;

Legislative implications

- 94 **invited** the Minister for Building and Construction to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 95 **authorised** the Minister for Building and Construction to make decisions, consistent with the above paragraphs, on any issues which arise during the drafting process;
- 96 **authorised** the Minister for Building and Construction to approve and release an exposure draft of the Building System Legislative Reform Bill One for targeted consultation;

97 **noted** that Confidential advice to Government the Minister for Building and Construction intends to seek Cabinet agreement to introduce the Building System Legislative Reform Bill One.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
Deputy Prime Minister
Minister for Building and Construction

PROACTIVELY RELEASED