



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

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.

Reasons for withholding information:

- Confidential advice to Government

Coversheet: Building System Legislative Reform Programme (Phase 1)

Advising agencies	Ministry of Business, Innovation and Employment (MBIE)
Decision sought	Informing key policy decisions to be taken by Cabinet on the first phase of reforms to New Zealand’s building laws.
Proposing Ministers	Minister for Building and Construction

Summary: Problem and Proposed Approach

<p>Problem Definition</p> <p>What problem or opportunity does this proposal seek to address? Why is Government intervention required?</p>
<p>The legislative reform programme will address problems identified with the building regulatory system. The first phase of the reform programme is focused on addressing three underlying problems: 1. there are gaps in the regulatory system, 2. there are low incentives to get it right, and 3. there are inefficiencies where the regulatory system has been slow to respond to changing practices. The government has a role in ensuring that the regulatory system is fit for purpose and building owners and the public are protected from physical and financial harm due to building work being defective or dangerous.</p>

<p>Proposed Approach</p> <p>How will Government intervention work to bring about the desired change? How is this the best option?</p>
<p>Government intervention will work to provide the right incentives for people to undertake quality building work. The preferred package of proposals will provide clear roles and responsibilities, address information gaps and asymmetries and enable people to be held to account if something goes wrong. In some cases government intervention is necessary because the market has failed to respond without intervention. In other cases intervention is necessary because the problem lies with the existing legislative settings and non-regulatory interventions are insufficient to address the problem identified.</p>

Section B: Summary Impacts: Benefits and costs

<p>Who are the main expected beneficiaries and what is the nature of the expected benefit?</p>
<p>The main beneficiaries will be building owners who will benefit from higher quality building work, and time and cost savings from reduced rework to repair building defects. Building owners, designers, builders and Building Consent Authorities (BCAs) will benefit from increased information and confidence in building products and methods. They will be able to make better design and installation decisions which will contribute to efficiencies in building consenting. Suppliers (including manufacturers and importers) will benefit from a more even playing field and greater clarity about their role in the building process.</p>

Building owners will also benefit from increased use of new and innovative building products and methods, which should contribute to lower costs for construction. Manufacturers and suppliers that are using modern methods of construction (in particular, off-site construction) and BCAs will benefit from greater certainty, efficiencies in consenting and quality assurance processes from manufacturer certification. In turn, building owners and developers will benefit from long-term economies of scale and productivity gains generated.

The building sector will benefit from an improved regulatory operating environment. Regulators will benefit through improved mechanisms to undertake their roles which will, in turn, improve accountability and the incentives to get it right the first time.

Where do the costs fall?

The majority of costs will directly fall on suppliers of building products. These costs are likely to be passed on (in full or in part) to building owners. The ongoing compliance costs for the combined package of proposals are estimated to add less than 1 per cent (approximately \$200) to the total cost of the average value of a consent.

Manufacturers and suppliers who choose to use the product certification or manufacturing certification schemes will incur direct costs of being part of this scheme (eg. fees for accreditation, audits etc) as well as the indirect costs of participation (eg. providing documentation, preparing for site visits, ensuring follow quality assurance processes etc). These indirect costs are expected to be minimal and thought to be part of their existing quality assurance processes.

There may be increased costs for those people who do not comply with the *Building Act 2004*, due to higher financial penalties, but these costs can be avoided. Media companies will have lower revenue due to proposed changes to the public notification requirements, but this is estimated at only \$10,000 a year.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

The key risks and unintended impacts are:

- Negative impact on the supply of building professionals or tradespeople. This risk would be significant given there is already a skills shortage in the building sector, but there is a low likelihood that the preferred package of options will have direct impacts on supply. This risk will be mitigated through sufficient transition periods and education and awareness raising campaigns.
- Delays in getting building products to market due to a shortage of technical skills to carry out testing or certification. This risk would be significant as it would negatively impact on the successful implementation of three key proposals in this impact assessment (product information, product certification and manufacturing certification). This risk will be mitigated through close collaboration with industry, including the relevant accreditation bodies, on the detailed design of the proposals, and having sufficiently long transition periods.
- Lower industry buy-in to the reforms because they are seen as “not going far enough”. This risk would have a moderate impact. It will be mitigated through clear communications about the objectives and phasing of the reforms, and the other work also underway to support a high-performing building sector.

Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.

No significant incompatibilities have been identified.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty

How confident are you of the evidence base?

Overall, MBIE has a medium level of confidence in the evidence base. While much of the evidence is based on anecdotal reports, the widespread nature and consensus of views gives MBIE confidence that the problems have been correctly identified. In some cases anecdotal evidence is supported by administrative data or qualitative surveys.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

The Ministry of Business, Innovation and Employment

Quality Assurance Assessment:

MBIE's Regulatory Impact Analysis Review Panel has reviewed the Regulatory Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the Regulatory Impact Statement meets the Quality Assurance criteria

Reviewer Comments and Recommendations:

The Panel confirms that its feedback is reflected in the Regulatory Impact Statement

Impact Statement: Building System Legislative Reform Programme (Phase 1)

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PROACTIVELY RELEASED

Section 1: General information

1.1 Purpose

The Ministry of Business, Innovation and Employment (MBIE) is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by Cabinet.

1.2 Key limitations or constraints on analysis

Anecdotal evidence base

Much of the evidence of the problem is based on anecdotal feedback from stakeholders. However, the consistency of views provides confidence that the problem does exist and creates significant concerns throughout the industry. MBIE has tested the scope of the reform programme with the Building Advisory Panel¹, who advises that the reforms are focused on the right things.

It is difficult to quantify the size of the problem and therefore identify what is a proportionate response. Due to this, MBIE has favoured those options that require a lower degree of government intervention overall. This may mean that more interventionist approaches may be needed in the future if the preferred options turn out not to have the desired level of behaviour change.

Limited input from manufacturers and suppliers

There were a limited number of submissions from product manufacturers and suppliers on the proposals that directly affect them. The main industry bodies, Building Industry Federation and Prefab New Zealand, did make submissions. There was also limited input from product certification bodies on the proposed changes to the product certification scheme. MBIE will identify ways to increase participation on the consultation for the regulations.

Public consultation on the discarded options and the impacts

The public discussion paper asked for feedback on a package of preferred options. These preferred options were identified as part of engagement with key industry groups. The discussion paper included information on options that MBIE had considered but discarded. It is possible that stakeholders did not provide comments on the discarded (or other alternative) options or may have expressed support for the proposal when compared to status quo, rather than when compared with a wider range of options. As submitters did express support for some discarded options (such as a product register and proportionate liability), MBIE considers that this risk is low.

It has been decided not to progress all of the proposals in the discussion paper at the same time. When submitters commented on the potential impacts of the proposal, they may have taken into account the impacts from the entire package of proposals in the discussion paper. It is possible that some submitters' views on the potential impacts may change because of the different timeframes for implementation.

¹ The Building Advisory Panel is a statutory body of building experts and sector representatives who provides MBIE with independent strategic advice on issues facing the building sector.

Limited range of options

The range of options considered is limited for some topic areas. In some cases, there is a binary choice between status quo and the proposed option. In some cases, the problem is caused by the legislative settings, so non-regulatory options have not been considered.

Assumptions and constrains for the cost-benefit analysis

The cost-benefit analysis (CBA) uses a number of assumptions and has some data limitations. The estimated compliance costs for product suppliers to provide product information uses data provided by submitters. A wide range of estimates were provided from there being no additional cost (53% of submitters who provided specific cost information) to being tens of thousands of dollars (20%). As the detailed requirements on exactly what information will have to be provided will be set in regulations, it would have been difficult for some suppliers to accurately identify their compliance costs. Further CBA work will be undertaken as part of the development of the regulations.

Assumptions have been made about the potential uptake of a proposed manufacturer certification scheme, based on an initial working model involving MBIE, accreditation and certification bodies who would cost recover through fees imposed on manufacturers. A full business case will be undertaken, including further work on the potential costs and benefits, and uptake of the proposed scheme, as part of the development of the regulations.

Assumptions have been made about the extent changes to the maximum penalties will have on compliance and enforcement activity by territorial authorities (TAs) and building consent authorities (BCAs). At present, data provided to MBIE on the specific numbers of investigations undertaken by BCAs each year has been limited. MBIE has limited information on how BCAs and TAs deal with offences against the *Building Act* in their local areas.

Where New Zealand data is not available, data from other jurisdictions has been used. This assumes that there may be similar sized impacts in New Zealand as elsewhere, and does not take into account differences between the two countries in terms of the wider operating environment or people's responses to change.

Time constraints on analysis

The analysis has been prepared under significant time constraints. This has not allowed for engagement with stakeholders on the refinement of the proposals that were part of the public consultation. A few weeks were available between the close of submissions and the finalising of the regulatory assessment.

1.3 Responsible manager

Anna Butler

General Manager, Building System Performance

Ministry of Business, Innovation and Employment

September 2019

Section 2: Problem definition

2.1 What is the context within which action is proposed?

Safe and durable buildings are a major contributor to wellbeing. The building and construction sector builds and maintains the places New Zealanders work, live and play. The sector is New Zealand's fourth largest employer with nearly 10 per cent of the workforce. In the year ending March 2017, the sector contributed nearly \$15 billion to the economy. Over 31,000 new apartments and houses were consented in 2017, and the number of consents is expected to increase to 43,000 in 2023.

Within the sector, there are a large number of small firms or sole traders (particularly in residential building work) and a small number of large firms. The sector makes extensive use of contracting and subcontracting arrangements with long supply chains and many niche specialisations within professions. This has led to some fragmentation within the industry.

The building sector plays a key role in the delivery of the government's housing and urban development priorities to improve housing supply, affordability and quality. The sector is under huge pressure to deliver safe, durable and affordable houses, buildings and other infrastructure, and meet the growing pipeline of construction projects.

Quality building work is essential for ensuring New Zealand's buildings are safe and durable. It is important to focus on getting things right the first time. Rework leads to productivity losses and wastes time and materials. There are varying estimates of the costs of rework using overseas data ranging from 3 to 23 per cent of the contract value².

² Love, P.E.D, Z Irani and D.J. Edwards (2004) *A Rework Reduction Model for Construction Projects*. IEEE Transactions on Engineering Management, Vol. 51, No. 4. Data from Australia suggests the direct cost of rework accounts for 12.4% of the total contract value, and was estimated at about \$5.4 billion a year in 1996 (Mills, A, P Williams and D Yu (2010) *Benchmarking Construction Rework in Australian Housing* International Journal for Housing Science, vol 34, no3). Swedish research estimated that the costs of rework corresponded to 4.4% of the production cost and the time to correct them corresponded to 7% of the total working time (Josephson, P-E (1998) *Defects and Defect Costs in Construction – A study of seven building projects in Sweden*. Working Paper, Department of Management of Construction and Facilities, Chalmers University of Technology).

Similar to comparable jurisdictions, the building sector faces a number of systemic problems³, which can make it difficult to lift the efficiency and quality of building work. These problems are interconnected making it difficult to isolate causes and symptoms.



The government and industry are using a range of regulatory and non-regulatory levers to address the problems identified, including:

- The Construction Sector Accord establishes the government and industry commitment to work in partnership and sets out a shared vision and outcomes for the sector, and outlines strategic goals and priority work areas to transform the sector.
- The Skills Action Plan will ensure that the New Zealand construction workforce has the people and skills needed to deliver the growing pipeline of construction projects.
- The Building Code Delivery Framework strengthens MBIE's management of the building code, and includes a twice yearly update of the building code.
- The Building System Strategy will describe the desired future state of the system, set a clear direction of travel for the system and set realistic and measurable goals.

The building system legislative reform programme will improve the regulatory system through changes to four broad areas of building law:

- building products and methods
- occupational regulation of builders, engineers, plumbers, gasfitters and drainlayers
- building levy
- offences and penalties, and public notification.

The legislative reform programme is focused on the legislative changes needed to improve the regulatory system. The implementation of the changes will be supported by education, awareness raising and enforcement activities.

³ Includes publications by the United Kingdom and Australian governments, World Economic Forum, and McKinsey and Company.

The reforms are being progressed in two phases. This impact assessment covers the first phase. A separate impact assessment will be prepared for the second phase.

Confidential advice to Government

As part of the public consultation in April 2019, MBIE also sought feedback on the risk, insurance and liability settings. Further work will be undertaken on these settings, and the Minister for Building and Construction will report back to Cabinet on this work in 2020.

2.2 What regulatory system is already in place?

The building regulatory system provides for the regulation of buildings, building work⁴ and various occupational groups in the building industry, and the setting of building performance standards. The objectives of the regulatory system are:

- People who use buildings can do so safely.
- Buildings contribute appropriately to health, physical independence and wellbeing.
- Buildings comply with fire safety.
- Buildings are sustainably designed and constructed.
- The accountability of owners, designers, builders and BCAs is promoted.

The *Building Act* provides for:

- requirements relating to building work including building controls such as the building code⁵ which sets the minimum performance standards buildings must meet
- the functions of MBIE, TAs, BCAs and their accreditation
- licensing of building practitioners
- mandatory contracts and implied warranties for the benefit of consumers
- defined responsibilities for owners, designer, builders and manufacturers/suppliers, and
- guidance from the regulator.

Other relevant building and construction-related regulation includes the occupational regulation of plumbers, gasfitters and drainlayers and Chartered Professional Engineers.

The building regulatory system focuses on good building performance, so that everyone has access to safe, healthy, durable homes and buildings. Regulation is a key tool used to influence the performance of the building sector, because:

⁴ In the *Building Act*, building work is defined as work for, or in connection with, the construction, alteration, demolition or removal of a building; and on an allotment that is likely to affect the extent to which an existing building on that allotment complies with the building code and includes sitework and design work that is restricted building work.

⁵ All building work must comply with the building code. The building code sets out the rules for the construction, alteration, demolition and maintenance of new and existing buildings. It sets minimum standards for how a building must perform for particular parameters, eg moisture, fire, safety, stability, access, services and facilities, and energy efficiency.

- The building sector delivers public good benefits – poor performance in the sector has broad and significant negative impacts.
- There is information asymmetry – providers of services or products often have superior information to individual customers and regulation is used to protect consumers.
- The system needs to reflect societal expectations about health and safety and system-wide coordination – the overall integrity, soundness, and efficiency of the building sector calls for a role for government.

The agencies with a role in the regulatory system are:

MBIE	COUNCILS/BCAs	OCCUPATIONAL REGISTRATION BOARDS
<ul style="list-style-type: none"> • System leadership and oversight • Policy advice • Setting performance requirements in the building code • Producing guidance on ways to comply with the building code • Performance monitoring • Determinations • Training and education • Licensing of some professions 	<ul style="list-style-type: none"> • Determines whether building plans and building work comply with the building code • Performance monitoring • Advice and guidance on systems and processes • Record keeper • Provision of property information 	<ul style="list-style-type: none"> • Supervision of professionals • Investigate complaints against conduct • Hear appeals against licensing decisions • Approve rules

In recent years, work on the regulatory system has been focused on responding to natural disasters such as the Christchurch and Kaikōura earthquakes.

The fitness of the building regulatory system was assessed in late 2014. The system was found to have significant issues against the assessment criteria, including:

- MBIE not yet being the strong central regulator that was contemplated in the system design
- poor monitoring and information flows
- workforce capability issues
- incomplete incentives that potentially drive poor performance, and
- lack of clarity about elements of the system design, particularly the roles and responsibilities of system participants.

Changes have been made or are in progress to address the issues identified in the 2014 assessment, including a regulatory charter, monitoring and evaluating BCA accreditation, and the work identified in section 2.1. While there has not been a formal assessment of the system since 2014, the regulatory system governance group reviews the system’s performance each year and provides updates of its assessment on MBIE’s website.

The regulatory settings relevant to phase 1 of the reform programme

Building products and methods

Building products are the materials used in building work. Building methods are the ways the products are used in building work. There are an estimated 600,000 building products available in New Zealand. A product’s use determines how it contributes to the overall performance of a building. Identifying and specifying the right product – and using it correctly – requires technical

knowledge of the building product, the building code and the design of the building that the product is being incorporated into.

Building products, building methods and building work are changing in ways that nobody expected when the *Building Act* came into effect in 2004. Changes include the increased use of modern methods of construction and a significant increase in imported building products.

People's existing roles and responsibilities are set out in the *Building Act*. They are mostly expressed in terms of how building products and methods relate to building work. Some responsibilities for manufacturers and suppliers are set in consumer and commercial law:

- Manufacturers and suppliers⁶ are not obligated to provide information about their building products. If they do provide information, they must ensure it is accurate. Under consumer and commercial law, their goods must be fit for purpose.
- Designers⁷ plans and specifications must be sufficient to result in building work that complies with the building code. This includes specifying products and methods that will comply with the building code.
- Builders⁸ are responsible for making sure their work complies with the building code, the building consent and the related plans and specifications. This includes making sure they use the specified products and that the products they use will comply with the building code.
- Building owners are responsible for obtaining the necessary consents for the building work. Building owners are responsible for maintaining their buildings. Some products have specific maintenance requirements.
- BCAs are responsible for checking that an application for a building consent, including the combination of products used, will result in buildings that will comply with the building code. They are also responsible for checking that the building work that has been done complies with the building code.

The *Building Act* includes implied warranties for residential building work. These include a warranty that materials will be fit for purpose and new (unless stated otherwise). Building contractors are required to remedy defects for 10 years, including defective materials. If the defect cannot be remedied, builders can be required to compensate homeowners for any reduction in the value caused by the building work and pay damages. Builders must provide homeowners and the relevant TA with information on any warranties for the products used and any maintenance requirements.

MBIE is able to issue a warning or ban a building product or method if the chief executive considers on reasonable grounds that the use of a building product or method has resulted in, or is likely to result in, a building or building work failing to comply with the building code. To date, MBIE has issued one warning (for loop bars in April 2018) and one ban (for foil insulation in July 2016).

The *Building Act* provides for voluntary product certification schemes. There is currently one scheme in operation, CodeMark. Under CodeMark, a building product or method is evaluated to determine whether it complies with the building code. Products or methods with a CodeMark product certificate must be accepted by BCAs as being compliant with the building code if the product is specified for use in building work, and installed as set out in the information on the certificate.

⁶ 'Manufacturers and suppliers' are manufacturers, importers, distributors and retailers of products that can be used in building work.

⁷ A designer is someone who prepares plans and specifications for building work or who gives advice on the compliance of building work with the building code, including engineers and architects.

⁸ A builder is any person who carries out building work, whether in trade or not, including carpenters, plumbers and other tradespeople.

CodeMark was jointly established with Australia in 2008. It has operated separately in New Zealand since Australia established CodeMark Australia in 2016.

Under the product certification framework, MBIE appoints a product certification accreditation body (PCAB), currently JAS-ANZ, to undertake accreditation and audits of product certification bodies (PCBs) against the standards and criteria set out in the *Building (Product Certification) Regulations 2008* (the 2008 regulations). The PCB evaluates the product or method against the standards and criteria set out in the 2008 regulations. If a PCB believes a product or method meets these criteria, it can issue a CodeMark certificate for that product or method.

There are currently four active PCBs. One of these is based in New Zealand while the other three are international companies. After 11 years, this scheme has only a relatively small number of certificates registered. As at 1 August 2019, there were 174 active certificates and nine suspended certificates.

Building levy

The building levy is paid by applicants who are granted a building consent for work valued above the specific threshold. The levy funds the core regulatory functions of the chief executive of MBIE under the *Building Act*.

The chief executive is also responsible for stewardship of the building sector. Stewardship requires MBIE to analyse the building environment, understand where the future might take the sector and assess whether the building regulatory system is equipped to cope with the future. Stewardship means actively planning for and managing the medium to long-term development and improvement of the building regulatory system as a whole. Some of these regulatory stewardship functions are not specifically funded by the building levy.

Penalties and offences and public notification

People who do not comply with building law may face financial penalties. The goal of these penalties is to deter poor or illegal behaviour. The maximum financial penalties have not been reviewed since 2004. Currently, the highest maximum penalties are \$200,000 for an individual or an organisation (eg companies or other body corporates).

The chief executive of MBIE, TAs, regional authorities and other authorised people can file a charging document for an offence against the *Building Act*. They currently have six months to lay a charge from the date that an offence becomes known, or from when an enforcement agency could not justify having missed an offence.

A number of sections of the *Building Act* require public notification of various matters that relate to the exercise of certain powers by the chief executive of MBIE or the Building Practitioners Board (BPB). Public notification requires the publication of a notice in the *New Zealand Gazette*, on the internet and in one or more daily newspapers in Auckland, Hamilton, Wellington, Christchurch and Dunedin.

2.3 What is the policy problem or opportunity?

The building system legislative reform programme is one of multiple responses to address the broader problems facing the building sector. It is focused on fixing gaps identified in the regulatory system through engagement with industry representatives and in the regulatory system assessments.

Stakeholders have raised concerns about the quality of building products and the lack of information about them. There is concern about whether some people who work in the sector have the right

skills and competencies for the type of work they do. Consumers are at a disadvantage because they do not have technical expertise and often have limited experience of the building process. Information asymmetries mean it is hard to pinpoint who has contributed to a building defect, particularly where there are multiple causes. There were concerns that some people avoid responsibility – meaning the costs fall disproportionately on homeowners and BCAs. All of these issues create inefficiencies throughout the building process.

Phase 1 of the legislative reform programme is focused on addressing three underlying problems:

1. There are gaps in the regulatory system.
2. There are low incentives to get it right.
3. There are inefficiencies where the regulatory system has been slow to respond to changing practices.

Problem 1: There are gaps in the regulatory system

Regulatory failures can have devastating consequences, as was seen with the failure of the previous building regime which significantly contributed to the leaky homes crisis in the 1990s to early 2000s. Estimates of the costs to remediate these homes were up to \$11.3 billion (in 2009)⁹. This does not include the other impacts, such as on physical and mental health and legal costs. The regulatory system needs to be fit for purpose and incentivise good building performance to achieve safe, healthy and durable homes and buildings.

There is limited direct regulation of building products under the Building Act

There are four interconnected components of a well-functioning building regulatory system: people, products, performance and processes.

Currently, one of these components – products – is subject to only limited direct regulation¹⁰. While building products are central to safe and durable buildings, they are mostly only implicitly regulated through the consenting process and the way they are specified and used in building work.

Stakeholder engagement suggests that the status quo does not sufficiently ensure that all parties in the building process know what their responsibilities are. For example, the *Building Act* states that a builder is responsible for ensuring building work complies with the building code, the building consent and the plans and specifications. Stakeholders claim this creates uncertainty about who is responsible for product selection where specific products are not specified in the plans.

Manufacturers and suppliers in particular do not have any legally enforceable responsibilities in building law. Gaps in responsibilities can make it difficult to hold people accountable.

MBIE does not have the tools it needs to ensure the product certification scheme is fit for purpose

MBIE does not have the tools needed to ensure that the product certification scheme is fit for purpose. MBIE cannot give stakeholders confidence that certified building products or building methods will perform as stated on their certificates. The current powers and functions are too narrow and passive to improve the scheme, and do not enable MBIE to act in a way that is consistent with good regulatory practice.

⁹ Rehm, M, K Cheng, O Filippova and D Patel (2019) *Stigma, risk perception and the remediation of leaky homes in New Zealand* New Zealand Economic Papers

¹⁰ For example, manufacturers and retailers of pools must supply a notice setting out the responsibilities of pool owners and operators.

A review of the existing product certification scheme, CodeMark, by Deloitte in 2017 raised concerns with the competence and technical expertise of PCBs and the ability of the PCAB and MBIE to assess and monitor their competence. Deloitte also noted a lack of clarity on the roles and responsibilities of the different actors in the scheme. BCAs were found to have low confidence in CodeMark. While industry had concerns about the quality of CodeMark, they still saw value in the scheme as a way to speed up consenting and open a pathway for innovative products.

The Building Act does not specifically allow the building levy to be used to support MBIE's broader stewardship of the building sector

The *Building Act* describes the potential expenditure of the levy in a way that is narrower than the broader role MBIE plays as an effective regulator. The purposes for which the levy can be used do not explicitly include MBIE's broader stewardship of the building sector. The chief executive cannot generally spend levy funds in ways that might lift the full breadth of the building sector skills, streamline common processes or hold different types of regulated practitioners to account fairly and consistently, unless the expenditure is for or connected with the chief executive's functions under the *Building Act*.

Problem 2: There are low incentives to get it right

There is a view from across the sector, particularly from BCAs and industry itself, that the regulatory environment has created a negative 'minimum quality' mindset. BRANZ surveys consistently report a large majority of new homeowners having to get tradespeople to come back to fix defects after they have moved in¹¹. A number of participants rely on BCAs to undertake quality assurance at the consenting and inspection stages. This can lead to delays and rework.

There are disincentives on manufacturers and suppliers to provide product information voluntarily

Information about building products is important for good decision-making when designing buildings, installing products and assessing consent applications. Stakeholders have told us that building product information often lacks the detail that designers and builders need when specifying and using products. Often product information is marketing material that doesn't include information on performance, code compliance, installation or maintenance requirements. The market has failed to respond to the demand for accurate, consistent information about building products. There are disincentives to provide information about building products. There is no penalty for not providing any information, but there is a penalty if the information is inaccurate or misleading.

The lack of quality information can slow down the consenting process. Data from seven BCAs indicates that when requests for information were made about the products being specified, consents were placed on hold for an average of 21 working days until information was received. There can be multiple rounds of requests, responses and subsequent requests. Delays in consenting have been estimated to cost a building owner an extra \$1,000 to \$1,600 a week.

Investigations on whether to warn or ban a building product or method rely on cooperation

When MBIE investigates the performance of a building product or method, it relies on the voluntary cooperation of manufacturers and suppliers. MBIE has no powers to compel a person to provide information, such as the results of any testing that has been done on the product. Without this information, it can be impossible to decide whether to issue a warning or ban a building product. Lack of information has forced MBIE to delay investigations or put them on hold. In the past three years, three investigations into building products or methods have stalled due to a lack of

¹¹ For example, the 2018 survey reports that 80 per cent of respondents called back their builder to fix defects. Brunsdon, N and Lockyer, O. (2019) *New Home Owners' Satisfaction Survey 2018*. BRANZ Study Report SR421.

cooperation from persons holding relevant information and MBIE did not have sufficient information or evidence to warrant proceeding with the investigation.

The maximum financial penalties no longer provide sufficient deterrence

The current maximum financial penalties in the *Building Act* have not been adjusted since 2004. This means that many penalties may not be fit for purpose. They are also out of line with other legislation that affects the building sector and is aimed at protecting people's lives and wellbeing.

The maximum penalty amounts do not distinguish between an individual and an organisation. The financial consequences for some organisations may be an insufficient deterrent when compared to the effects on an individual. Other legislation has different maximum penalties for individuals and body corporates.

68% of submitters on this matter believed that the current financial penalties are not appropriate. They were seen as not providing sufficient deterrence or doing enough to promote quality performance or behaviour. Some BCAs reported that the low penalties acted as a disincentive on them taking a prosecution.

Some offences may not be prosecuted

Enforcement agencies currently have six months to lay a charge from the date that an offence becomes known, or from when the agency could not justify having missed an offence. Due to the possibly complex factors of an offence against the *Building Act* and the number of people involved, six months is not a sufficient period to gather information and progress an investigation. This means that some people may avoid being charged because there was insufficient time to undertake an investigation to gather the evidence necessary for a court trial.

Problem 3: There are inefficiencies where the regulatory system has been slow to respond to changing practices

There are barriers to Modern Methods of Construction fulfilling its potential for faster, more affordable building

The building industry is innovating by making use of manufacturing technology and processes to increase its productivity. This approach is referred to as modern methods of construction (MMC). MMC includes activities like offsite manufacturing of panels, pods or whole buildings. It can also include manufacturing processes that happen on a building site. Components and buildings produced using MMC can be seen as both building products and building work.

The current consenting system is not very clear about how to treat the things about MMC that are different from traditional building work, especially in relation to off-site construction. MMC tends to use processes that are precise, repeatable and consistent. Each product can reasonably be expected to be produced to the same quality as the previous product. However, manufacturers are still required to give BCAs assurance of the compliance of their work every time.

Because MMC can produce complex products, which fall under the definition of building work as well as that of building product, sometimes the roles and responsibilities are unclear.

Because the production of a full building is seen as building work under the *Building Act* even when it occurs in a factory environment, some manufacturers report that two building consents are being required for the same building – one in the region where the factory is and another where the building is going to be installed.

The treatment of MMC across BCAs varies significantly, making it difficult for manufacturers and people seeking to use MMC-produced components to get clarity about what they should do to demonstrate compliance, or certainty that their building work will be consented. This lack of clarity, consistency and certainty can limit the viability of MMC in New Zealand and add time and costs for building owners.

Public notification includes notices in newspapers despite falling circulation figures

The public notification requirement includes publishing notices in one or more daily newspapers in Auckland, Hamilton, Wellington, Christchurch and Dunedin. Changes in technology and how the public accesses information means that requiring public notification in daily newspapers may not be fit for purpose in the future.

2.4 What is the counterfactual?

Many of the problems identified are long-standing, which the market has not responded to on its own. There is little to suggest that the market is going to respond sufficiently without government intervention.

Information asymmetries will continue. Low incentives on suppliers to meet demand for consistent, accurate information about building products will remain irrespective of whether this is because there is limited competition in the market for building products, or because there is too much competition, creating an uneven playing field for those suppliers who do provide information. There will continue to be inefficiencies and delays as building consent applications are placed on hold until the information needed to process them is received.

The incentives to comply with the *Building Act* will continue to erode as the real value of financial penalties continues to decrease. An increasing number of people will see the cost of non-compliance as part of the cost of doing business. Regulators will be discouraged from taking enforcement action when weighing up the low probability of deterrence with the high costs of taking a prosecution.

MBIE will continue to find it hard to get the information it needs to decide whether a building product or method should be banned or a warning issued. This may mean that unsafe products are available to use or reduce confidence in the regulator. It will also be difficult for MBIE to ensure the product certification system is working effectively and to restore confidence in its use. Low confidence in the system will reduce the viable pathways available for building products and make it harder for new, innovative products to gain traction in the market.

There will continue to be inefficiencies in the consenting of some types of building work, particularly where enclosed structures are manufactured offsite. This will also limit the use of new technologies and reduce the ability of New Zealand to harness the potential productivity gains from MMC.

There will be limited positive impact on the costs of construction and affordable housing. It will be harder for the government to meet its objectives for housing and urban development.

On their own, the non-legislative initiatives will take a lot longer to drive the behavioural changes needed to lift the efficiency and quality of building work. There may be a loss of goodwill if the government is not seen to be playing its part in meeting its commitment under the Construction Sector Accord to improve the regulatory system. This could result in individual industry players leaving the Accord and pursuing fragmented, non-coordinated responses focused on the problems in their patch, rather than taking a systemic approach.

2.5 Are there any constraints on the scope for decision making?

Occupational regulation will be the focus of the second phase of the reform programme. Proposals that relate to designers' responsibilities for building products and methods will be undertaken as part of that work instead of phase 1. The occupational regulation regimes may impact on designers' responsibilities so delaying this work mitigates the risk that the responsibilities may need to be changed again.

Submissions from some key stakeholders recommended the government provide a central register of building products. The Minister for Building and Construction has decided not to undertake work on a product register at this time. The potential benefits from a register are highly dependent on the information being up-to-date and accurate. Given the number of building products available, the costs of administering and maintaining the register are likely to be prohibitive. A register would need to be funded from capital expenditure and there is no funding currently available.

Other options MBIE has considered but not progressed are:

- Requiring a minimum level of assurance for all products because it would be difficult and costly to implement. Different levels of assurance are needed depending on the complexity of the products, their use and how they fit within the design for the building. MBIE considers that the proposed requirement on suppliers to be able to substantiate claims made about their products would provide sufficient incentives for them to undertake the appropriate level of assurance for their product.
- Requiring people to pass on information about a building product because it would be unnecessary, and could be confusing and expensive to comply with. Queensland recently introduced a requirement to pass building product information down the building product supply chain. MBIE considers that this requirement would be unnecessary if the preferred option to require product information to be publicly accessible is put in place.
- Repealing, or repealing and replacing, the existing product certification scheme because of the value a statutory, 'deemed to comply', product certification scheme has for the New Zealand system. It is the only statutory, and therefore quality monitored, certification regime in New Zealand which, if utilised, stands to provide efficiencies in the consenting process by reallocating risk and providing greater information which in turn can improve building work. The problems identified with the product certification scheme can be addressed without repealing the existing scheme.

Regulating competition in the market for building products, or the price or quality of those products, is not in scope of the legislative reform programme. While the regulatory settings may impact on these factors, building law does not directly regulate competition, prices or the quality of products that enter New Zealand. It does set requirements on the performance of the products that are used in buildings through the building code. A building product banned under the *Building Act* because it does not comply with the building code can still be used for other purposes than building work. The Minister of Commerce and Consumer Affairs in certain circumstances may stop goods that are unsafe or do not meet specific product safety standards from being imported. Indirectly, the proposed changes may impact on competition by placing the same requirements on all manufacturers and suppliers to provide information about their products which should make it easier to make comparisons of different products.

2.6 What do stakeholders think?

During 2018, MBIE met with nearly 50 organisations that represent stakeholders in the building sector to better understand the problems facing the building sector. Over 2019, MBIE has continued

to meet with industry representatives, occupational registration bodies, BCAs and the Building Advisory Panel to test and refine the proposed legislative changes.

In April 2019, public submissions were sought on the proposed changes. Nearly 500 submissions were received from a range of people in the building sector, homeowners, insurers and developers. The majority of submitters agreed that system-wide reform is needed and supported the proposals at a high-level. Some submitters raised concerns about the ability of the sector to respond to a large number of changes being made at once. In response to concerns from submitters, the Minister for Building and Construction decided to progress the reforms in two phases.

The discussion paper set out MBIE's preferred package of proposals. It covered all five areas in the reform programme, not just the areas that make up this impact assessment. A summary of the submissions has been published on MBIE's website.

Submitters' views on building products and methods

The majority of submitters supported the proposals. Most believed that product information would support good decision-making by designers and BCAs. Monitoring and enforcement were seen as key to being successful. Submitters who did not support this proposal had two different perspectives – either they considered that the costs of providing information outweighed any benefits or the proposal did not go far enough. Councils and some key industry organisations considered the government should have a stronger role in verifying the information or provide a register of building products.

Submitters supported having clear roles and responsibilities. Comments indicate that people unintentionally or deliberately did not know what they were responsible for and would try to shift responsibility if something went wrong. The discussion paper was used as an opportunity to get feedback on the existing process for varying building consents. Submissions clearly indicate frustration with the existing process and threshold, but further work is needed to pinpoint the underlying causes. MBIE intends to undertake a detailed review of the provisions for varying building consents in a future work programme.

The majority of submitters supported MBIE having greater regulatory powers to require people to provide information to determine if a warning or ban is needed. Submitters supported the proposal because it is needed to check compliance, enabled MBIE to fulfil its role and would ensure a successful investigation. Several submitters considered the proposal would have wider impacts on building products by providing a more level playing field, lifting the quality of building products and improving confidence in the sector. Some noted it is only useful if it is seen as a deterrent, as MBIE has made limited use of its existing powers.

Most submitters saw the proposal to strengthen the product certification scheme as increasing their confidence that a product or method with a product certificate would perform as intended. Many submitters expressed concerns about potential cost increases. However, MBIE is confident that the cost impacts will be proportionate to the benefits to public safety.

Only a small number of submissions on MMC came from manufacturers or suppliers. The key stakeholder, PrefabNZ, viewed the proposals positively. Submitters were supportive of the proposals but raised questions about the design and implementation of the proposed framework. The Cabinet decisions sought at this time are for the enabling provisions for the MMC framework, which was supported by submitters. There will be further stakeholder engagement and public consultation on the detailed design of the framework, which will be set in regulations.

Submitters' views on building levy

The majority of submitters supported allowing MBIE to spend the building levy on building sector stewardship. Some suggestions for the building levy included activities the levy is already used for.

Submitters' views on offences and penalties, and public notification

The majority of submitters supported having different penalty levels for individuals and organisations and increasing the maximums for financial penalties. The existing penalties were seen as not having sufficient deterrence. Those opposed to the increase were concerned that there could be a serious, negative impact on small businesses, or considered that the increase would be unnecessary if there was better enforcement by BCAs and the courts. A majority of submitters supported extending the time to lay a charge to 12 months as an appropriate time period for enforcement agencies to undertake research and collect evidence.

There was also strong support to amend the definition of public notification so that newspaper advertisements would no longer be required. Publication on the internet and in the *Gazette* was seen as sufficient.

Further stakeholder consultation

Some of the preferred options require regulations to fully give them effect. Further stakeholder engagement and public consultation will be undertaken before seeking Cabinet policy decisions on the content of the regulations. This consultation is likely to take place in 2020.

Section 3: Options identification

3.1 Introduction

This impact assessment covers ten sets of options that make up the first phase of the legislative reform programme. The options cover:

- A. Regulating for building products and methods
- B. Information requirements for building products
- C. Responsibilities for building products and methods
- D. Investigations into building products and methods
- E. Regulatory framework for the product certification scheme
- F. Regulatory framework for modern methods of construction
- G. Using the building levy for stewardship purposes
- H. Financial penalties under the *Building Act*
- I. The timeframe to lay a charge for an offence against the *Building Act*
- J. The requirements for public notification.

Decisions on each of these areas can be taken separately. The ability of the changes to achieve the objectives is dependent on changes in all of these areas and the second phase of the legislative reforms.

3.2 Objectives and criteria

The objective of the legislative reform programme is to lift the efficiency and quality of building work and provide fairer outcomes if things do go wrong.

This objective encompasses the following outcomes:

- People understand their roles and responsibilities and are held accountable for meeting their obligations.
- People have the information they need to fulfil their roles and responsibilities.
- Consumers have assurance that building professionals and tradespeople have the skills and competencies they need to perform to a high standard.
- Buildings are safe for those using and constructing them.
- Building consenting is more efficient.
- All inputs into the construction process are considered, including how the design, choice of products and skilled labour will result in compliant work so buildings last their expected lifetime.
- Buildings are built right the first time without major defects or remediation.
- People have confidence in the building regulatory system.
- People control risks that are in line with and proportionate to their role.
- There is timely, cost-effective and proportionate problem resolution.

Four criteria were used to assess the options identified.

PROPORTIONATE	RESILIENT	CLEAR AND CONSISTENT	SUPPORTS GROWTH AND WELLBEING
Any additional compliance costs are balanced by benefits to public safety and increased productivity from decreased rework.	<p>The option can adapt to changing technologies, practices and demand.</p> <p>The option is supported by industry and regulators.</p>	<p>The option provides clear obligations on parties in the regulatory system.</p> <p>The option is consistent with the regulatory system.</p> <p>The option supports the government’s priorities.</p>	<p>The option contributes to the programme objective.</p> <p>The option supports the effectiveness and efficiency of the building sector.</p>

Each of the criteria have been given equal weighting in the impact assessment.

PROACTIVELY RELEASED

3.3 Options identification and assessment

A. Regulating for building products and methods

A.1 Background

Currently the *Building Act* does not provide clear definitions on what a ‘building product’ and ‘building method’ are and what role they play in building work. Defining these separately and expanding the purpose of the *Building Act* will support an efficient regulatory system and a high-performing building sector. It will clarify roles and responsibilities and support the implementation of the wider legislative reform programme.

A.2 What is the policy problem or opportunity?

The purpose of the *Building Act* doesn’t adequately recognise the impact building products and building methods have on the performance of buildings. Including the regulation of building products and building methods in the purpose of the *Building Act* is an opportunity to reflect the key role they play in building work. This regulation needs to be flexible enough to support innovations that increase productivity and ensure that buildings are safe and durable.

Currently, there are not separate legislative definitions for building products and building methods. Having separate definitions provides an opportunity to have different responsibilities and requirements for each. The definitions will enable the implementation of the other sets of options related to building products and methods. The definitions will help to provide clarity on what the new obligations are.

A.3 What options have been considered?

The discussion paper proposed to amend the purpose of the *Building Act* to include building products and methods, to recognise the role they play in building performance, and to include the following definitions:

- A **building product** is any component or system that could be reasonably expected to be incorporated into building work. A system is a set of at least two components supplied and intended to be used together to be incorporated into building work.
- A **building method** is a specific way of using a product or system in building work.

These definitions were based on definitions used in other jurisdictions. Stakeholder engagement and consultation feedback demonstrated broad support for the proposed definitions but identified confusion with the use of the word ‘system’ in the definitions. The impact assessment considers options to address the concerns raised by submitters.

Option A1. No change to the proposed definitions that were consulted on: Use the definitions for building product and building method in the discussion paper.

Option A2. Define ‘building system’: Have a separate definition for ‘building system’ that is not part of the definitions for building product and building method.

Option A3. Replace the use of ‘system’ with ‘kit’: Some other jurisdictions use the term ‘kit’ instead of ‘system’.

Option A4. Remove the use of ‘system’ from the proposed definitions: Reword the definitions to remove the use of ‘system’ and allow the definitions to be amended through regulations.

A.4 Impact analysis

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

		Options				
		Status quo	A1: Definition in discussion paper	A2: Define 'building system'	A3: Replace 'system' with 'kit'	A4: Remove 'system'
	Proportionate	0	+	+	+	+
	Resilient	0	+	+	+	++
	Clear and consistent	0	-	-	-	++
	Supports growth and wellbeing	0	++	++	++	++
	Overall assessment¹²	0	+++	+++	+++	+++++
			As the definition enables the implementation of the other proposals and supports better compliance, it is unlikely to create additional compliance costs.	As the definition enables the implementation of the other proposals and supports better compliance, it is unlikely to create additional compliance costs.	As the definition enables the implementation of the other proposals and supports better compliance, it is unlikely to create additional compliance costs.	As the definition enables the implementation of the other proposals and supports better compliance, it is unlikely to create additional compliance costs.
			Widely supported by industry, however further refinement was suggested.	Can adapt to changing technologies. Is responsive to the feedback in submissions.	Can adapt to changing technologies. Is responsive to the feedback in submissions.	Remains sufficiently broad to support emerging technologies and building methods. Is responsive to feedback in submissions.
			Carries risk that may be confusion from use of term 'system' leading to inefficiencies.	Would clarify what is meant by system, but likely to create ambiguity as there is an existing definition of 'specified system' in the <i>Building Act</i> .	In New Zealand context, 'kit' is not frequently used and may cause further confusion.	Would clarify exactly what is meant by building product and building method and is further supported by a legislative power to add and exclude specific things or classes of things.
			Flexible enough to support innovations that increase productivity including MMC.	Sector would have clarity on what are a building product, method and system.	Clearer definition should increase the quality of building work.	Clearer definition should increase the quality of building work.
			Improvement on status quo.	Improvement on status quo.	Improvement on status quo.	Significant improvement on status quo.

¹² MBIE has used 6 or more plus (minus) signs to determine if there is a significant improvement (decrease) on the status quo.

A.5 Which of these options is the preferred option?

The preferred option is option A4. The revised working definitions are:

- A **building product** is any component, or a combination of at least two components supplied and intended to be used together, that could be reasonably expected to be incorporated into building work.
- A **building method** is a specific way of using a product in building work.

The preferred option provides clarity on what is meant by building product and building method and best supports the objectives of the legislative reform programme to increase the quality of information provided on and clarify responsibilities for building products and methods. Option A4 is consistent with international definitions and can be future proofed by introducing the ability to include or exclude items in the definitions through regulations.

The final wording of the definitions is subject to drafting by the Parliamentary Counsel Office.

A.6 What other impacts is the preferred option likely to have?

Stakeholders considered that clearer definitions would lift the quality of building products available on the market by making it clear what a building product is and what information is required about it. It would also support consistency and clarity in design specification resulting in greater transparency as to why certain building products and building methods are used.

A.7 What do stakeholders think?

The majority of submitters supported both definitions in the discussion paper, with very strong support for the definition of 'building method' in particular. While submitters agreed with the concept or intent of the definition of 'building product', a small number of submitters had concerns with the use of the word 'system' or thought that 'building system' should be defined separately.

The majority of submitters also supported widening the purpose of the *Building Act* to include the regulation of building products, including the Building Industry Federation (a key stakeholder for building products) and BCAs.

B. Information requirements for building products

B.1 Background

Designers, builders, BCAs and other building product users rely on good information about building products to choose and use building products appropriately. Ensuring information about building products is accurate and useful will support buildings to be safe and durable.

B.2 What is the policy problem or opportunity?

Building regulation does not regulate what building products can be produced or imported into New Zealand. Instead building products are regulated from the point they are included in a building consent application¹³. At this point in the building process, a consent application must include design specifications and plans that would result in a building that complies with the building code ('code compliance'). The relevant BCA is responsible for checking the design and products used for code compliance.

The building sector in New Zealand operates with thin profit margins. This places pressure on designers and other participants in the building process to use the lowest cost building products available that will be accepted by BCAs as code compliant. Where information is not sufficient or incomplete, sector participants sometimes use judgement, familiarity or brand awareness to inform their decision about whether a product is suitable.

Industry representatives have told MBIE that information on building products is inconsistent and often lacks the technical detail needed to assess the use of the building product. This problem is partly caused by a lack of system incentives for suppliers to provide information on building products. Potential liability for claims made about product performance discourages product suppliers from making claims about their products.

Widespread anecdotal evidence and evidence of similar issues overseas suggests that there is a significant number of building products that have insufficient, inaccurate or misleading information provided. This information is necessary to support users to use building products appropriately. Low quality or inconsistent information could be leading to building products being used in ways that mean they do not perform as intended or are used in ways that were not intended.

B.3 What options have been considered?

Option B1. Risk-based mandatory assurance: would require different levels of assurance and information requirements for building products based on their risk level. For example, a high risk building product would be required to undergo a higher level of assurance and provide more detailed information about the product's potential use and limitations.

Option B2. Recognise overseas product assurance: would recognise the results of building products that have undergone independent testing or other types of assurance in other jurisdictions.

Option B3. Require a minimum set of product information for all products: would require suppliers (including manufacturers, importers, retailers and wholesalers) to comply with minimum building product information requirements. Suppliers would be required to ensure a minimum set of information is made available for the products they supply. Importers and local manufacturers would need to be able to substantiate any claims made about their product, and the information must be accurate.

¹³ Or incorporated into building work if a consent is not required. That is all building work, including the products used, must comply with the building code.

B.4 Impact analysis

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

		Options			
		Status quo	B1: Risk based mandatory assurance	B2: Overseas assurance	B3: Require minimum set of information
Criteria	Proportionate	0	-	0	+
	Resilient	0	--	0	+
	Clear and consistent	0	--	-	++
	Supports growth and wellbeing	0	0	0	++
	Overall assessment	0	-----	-	+++++

B.5 Which of these options is the preferred option?

Option B3, require a minimum set of product information for all building products, is the preferred option. It meets the objectives of the legislative reform programme while not placing overly onerous requirements on products where it may not be necessary. The approach taken ensures consistency, accountability and transparency about building products, provides a level playing field for manufacturers and suppliers, and promotes the use of good information about building products.

Available evidence suggests the proposal is needed to make it easier for building product users to carry out their roles and responsibilities to ensure building products are used appropriately. Stakeholder engagement has shown widespread support for the proposed change. The majority of those who raised concerns about the proposal supported more interventionist approaches.

B.6 What other impacts is the preferred option likely to have?

There may be increased demand for the services of technical experts and product testers, due to this proposal and the proposals for the product certification scheme and MMC. If testers are unable to meet this demand, there may be bottlenecks in testing and delays for new products coming onto the market.

B.7 What do stakeholders think?

Submitters were broadly supportive of the proposal to require suppliers to supply information about building products. Councils were unified in their support of the preferred option and many considered a national product library was needed. BCAs implied this proposal would reduce the effort required to assess the quality of building products. The Building Industry Federation expressed the need for adequate enforcement of any new regulations.

Submitters made a number of suggestions on how this option could be designed or implemented.

THEMES FROM SUBMITTERS	MBIE RESPONSE
Needing clarity on who would be captured by 'suppliers and manufacturers'	A clear definition of what is meant by the term 'supplier' will be set out in legislation.
Identified additional information that would be useful to require (eg code compliance, sustainability, verification, who can carry out work, associated risks)	Specific requirements will be set in regulations to allow flexibility to adjust in future. The content of the regulations will undergo further public consultation which will allow for further engagement on what the information requirements will be.
Concerns about requiring information that is commercially sensitive	MBIE will ensure commercial sensitivity is taken into account when working through regulations and guidance on information requirements.
Concerns about adequate monitoring and enforcement	A monitoring and enforcement plan will be developed as part of the design and implementation of MBIE's new powers and responsibilities.

C. Responsibilities for building products and methods

C.1 Background

Clear roles and responsibilities are important for ensuring all participants in the building regulatory system know what is expected of them and others, and to be able to hold people to account. Part 1, subpart 4 of the *Building Act* currently sets out the existing responsibilities that are found throughout the *Building Act*. They are expressed in terms of 'building work' (a core concept of the *Building Act*).

C.2 What is the policy problem or opportunity?

Industry representatives have told MBIE that the responsibilities for suppliers (including importers and local manufacturers), designers and builders for building products and methods are not clearly defined. This problem is partly caused by the current responsibilities being described in terms of 'building work'. The proposal to directly regulate building products and methods provides an opportunity to provide greater clarity about people's responsibilities for building products and methods.

Unclear responsibilities carry the risk of different views on what each participant is responsible for. There are anecdotal reports that this leads to participants believing that someone else is responsible for doing something, which may contribute to building defects.

C.3 What options have been considered?

Option C1. Design and implement education campaigns about roles and responsibilities: would target participants across the sector to raise awareness and create a common understanding of what the different responsibilities are in relation to building products and methods. It would raise awareness of the existing legislative obligations, and how they relate to products and methods.

Option C2. Clarify the existing responsibilities: would amend the responsibilities set out in part 1, subpart 4 of the *Building Act* to include the existing legal responsibilities for building products and methods.

Option C3. Create an obligation on suppliers to ensure building products are fit for their intended purpose: would create a new obligation under building law that a building product is fit for the use stated in the product information (see option B3). This would be in addition to obligations for a product to be fit for purpose under consumer and commercial law.

Option C4. Create explicit duties of care for building product and methods across the supply chain: would explicitly set out the duty of care each participant in the building system has for building products and building methods.

Option C1 could be undertaken with any of the other options.

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

C.4 Impact analysis

		Options				
		Status quo	C1: Education	C2: Clarify existing responsibilities	C3: Obligation to be fit for intended purpose	C4: Supply chain duty of care
Criteria	Proportionate	0	+	+	-	--
			Does not create new obligations on regulated parties. Costs of education should be offset by benefits from improved understanding and practices.	Does not create new obligations on regulated parties but makes them easier to understand. Will help contribute to more even playing field.	Additional costs from identifying what obligations are under different pieces of legislation. May create over-compliance.	Likely disruption and costs from implementation disproportionate to benefits (ie can achieve same benefits with less regulation).
	Resilient	0	+	+	-	-
			Resources can be targeted at identified areas of need. Needs to be well designed to ensure desired impact. This option was not publicly consulted on, but increased education was supported by BCAs and in submitter comments.	Implementable as reflects and clarifies existing obligations. Supported by stakeholders.	May discourage innovative uses of products if suppliers reluctant to give advice on alternative uses. Very difficult to enforce. Unnecessary to create additional obligation if have to substantiate product information. Mixed support from stakeholders.	May be difficult to enforce. This option was not publicly consulted on.
	Clear and consistent	0	+	++	-	+
			Would help improve understanding of existing obligations.	Clearer that existing obligations include building products and methods (not just building work).	May be confusion with existing obligations to be fit for purpose.	Each party's obligations would be clear.
	Supports growth and wellbeing	0	+	+	-	+
			Would help to support quality building work.	Clearer obligations should increase quality of building work as people do their job right. Easier to hold people to account. Should increase efficiency as clearer who is responsible for what.	May incentivise narrow 'intended use' statements which would limit the benefits of the requirement to provide product information.	Clearer obligations should increase quality of building work.
	Overall assessment	0	++++	++++	----	-
			Improvement on status quo.	Improvement on status quo.	Decrease on status quo.	Decrease on status quo.

C.5 Which of these options is the preferred option?

The preferred options are options C1 and C2. Stakeholder engagement and submissions indicate that many participants in the regulatory system are not aware of their existing responsibilities. An education campaign along with legislative clarity on the existing responsibilities would achieve the objective of ensuring people know their responsibilities without the risks associated with the alternative options. These preferred options are better aligned with good regulatory practice as they do not create unnecessary regulation.

The preferred options will not create any new legislative obligations. Rather the focus should be on raising awareness of the existing obligations and enforcement of them, thereby increasing compliance. MBIE has not identified any gaps in the existing legal obligations on builders in the *Building Act*. The gaps in the obligations on suppliers are being addressed through the options being considered under information requirements. This proposal (B3) now includes a requirement to be able to substantiate claims made about a product. MBIE considers that the effect of this proposal on suppliers' incentives would be the same as placing a requirement on a building product to be fit for its intended purpose.

Because changes to the occupational regulation regimes may impact on the responsibilities for designers, MBIE intends to review these responsibilities in phase 2.

C.6 What other impacts is the preferred option likely to have?

The preferred options will help to signal the importance of building products and methods in building work. As well as raising awareness of their own responsibilities, it may help to increase awareness about the responsibilities held by others in the building process. This may further increase efficiency. The preferred options should improve accountability.

C.7 What do stakeholders think?

Submitters supported clarifying people's roles and responsibilities because it would support builders, designers and others to use the right product for the right purpose, in the correct manner. Other submitters thought that mandating a minimum amount of information on products would assist in clarifying the current roles and responsibilities.

BCAs generally thought clarifying roles and responsibilities would support them to do their part of the building process well. The Building Industry Federation felt that importers' roles and responsibilities should also be clarified and noted there is potential for the supplier to take on a financial burden on behalf of the importer.

D. Investigations into building products and methods

D.1 Background

MBIE has a number of regulatory tools as part of its role as a regulator. A key mechanism for regulating building products and methods are warnings and bans. Section 26 of the *Building Act* gives the chief executive the power to issue warnings or bans for building methods or products if their use has resulted, or is likely to result, in a building or building work failing to comply with the building code. The purpose of warnings or bans is to address the risk of specification or use of products or methods that will likely result in build work that does not comply with the code. This generally applies mainly to building work prior to being consented. MBIE must publicly notify the warning or ban, and in the case of a ban, whether the ban applies to building work for which a building consent has been issued before the date on which the ban comes into force. To date, MBIE has issued one warning and one ban.

Warnings and bans complement other tools used to manage buildings or building work that do not comply with the building code. MBIE has powers to investigate building failures that did or could have caused serious injury or death, where the building failed in a way that showed the building code needs to be updated. These powers are more intrusive than the provisions proposed for investigations into warnings and bans, as they have a higher threshold that must be met in order to be used, and include the ability to enter a building and take evidence.

There are already powers in the building regulatory system to take action where the use of a product method is identified as resulting in noncompliance that poses a higher level of risk, with TAs, regional authorities and BCAs able to issue a notice to fix (eg. require remediation work so that the building work complies with the building consent). TAs also have powers to address dangerous or insanitary buildings including banning or restricting entry and requiring work to be done to the building to address the problem. Furthermore, under the Fair Trading Act there are powers to recall products that are unsafe.

D.2 What is the policy problem or opportunity?

There is an increasing range and complexity of building products and methods, with consumers more easily able to access them from outside traditional channels, and drivers for using cheaper alternatives. This heightens the risk that building products and methods that do not meet requirements under the building code will be used. Concerns have been emerging about building products, such as lead-leaching, the strength of structural steel, and cladding weather tightness, which would have significant consequences for consumers if not adequately addressed.

Investigations into building products and methods are heavily reliant on information about that product or method. MBIE is unable to use existing provisions to require information for the purposes of taking enforcement action (section 207A) because a warning or ban does not qualify as an enforcement action. Three years ago MBIE set up an email inbox to receive complaints about building product and method failure to get a sense of the scale of issues. In that time, three investigations undertaken by MBIE to determine if building products or methods warranted a warning or a ban have stalled due to the manufacturer or supplier refusing to cooperate with MBIE's requests for information and MBIE did not have sufficient information or evidence to warrant proceeding with the investigation.

Regulators in other jurisdictions, such as the Fair Trade regulatory body in New South Wales, have powers to compel information on building products, demand testing, and access sites to conduct investigations including taking samples. Other regulatory bodies in New Zealand, such as the

Commerce Commission, WorkSafe and the Financial Markets Authority, have comparable powers to compel persons to provide information or documents to inform regulatory action.

D.3 What options have been considered?

Option D1. The chief executive can require information or documents when necessary: would mean the chief executive will be provided with information held by a person that is necessary to make a decision about a warning or a ban.

Option D2. The chief executive can require information when necessary, including powers to enter sites and take samples: would give the chief executive the power to actively collect information to support their functions under section 26. This would be similar to powers used for investigating significant building failures, although only for the purpose of issuing a warning or a ban.

Option D3. The chief executive can require information when necessary, including the power to compel testing: would give the chief executive the additional power to require a building product or building method be tested, in order to help determine if a warning or ban is warranted. This is similar to the New South Wales Fair Trade regulator's power to demand testing for products which did, or could have, caused serious injury or death.

Option D4. The chief executive can issue warnings or bans which include powers of recall or remediation: would allow the chief executive to recall products that are subject to a warning or ban, or require remediation if the building products or methods used in a building are subsequently found not to be code compliant. This would give the chief executive the power to take action on building products or methods after they have been used in a building.

Under options D1-D3, the chief executive would be able to share any relevant information received with other regulators if it relates to potential non-compliance with legislation they enforce. This is similar to provisions governing information sharing by the Financial Markets Authority and the Fair Trade regulator in New South Wales.

D.4 Impact analysis

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

		Options				
		Status quo	D1: Require information	D2: Powers of entry and sample collection	D3: Require testing	D4: Recall or require remediation
Criteria	Proportionate	0	++ Would remove a limitation on the chief executive's ability to issue warnings or bans. The documents or information should already exist from due diligence to ensure building product or method meets the building code. Information or documents would only be compelled under these new powers when necessary to determine if a warning or a ban is warranted.	- While likely to impact small number of parties where public interest to undertake investigation, there could be significant costs to those parties, for example if sampling requires parts of buildings to be destroyed. Subverts privacy and property rights for little additional gain compared to other options. Duplicates existing powers for building failures that meet the threshold of being able to cause injury or death.	0 Would enable better investigation of products or methods to determine if a warning or a ban is warranted. Would raise compliance costs for those suppliers and manufacturers who haven't already undertaken the type of testing required.	- Would significantly raise costs of compliance, as would reduce flexibility for building owners to determine how they want to remediate.
	Resilient	0	+ Does not prescribe the information or documents required, providing flexibility as product information systems change over time. Well-supported by the industry and regulators.	0 Very thorough powers and would give MBIE a resilient tool to adapt to new technologies, practices and demand. Little appetite in the sector for powers that are this intrusive, meaning buy-in would be difficult to cultivate.	+ Gives MBIE flexibility to adapt to changes in technologies, practices and demand. Some stakeholders concerned about compliance costs so may not support.	0 Gives MBIE flexibility as it works on a case-by-case basis. However it would rely on precise and accurate definitions of the products or methods being recalled or remediated in order to ensure its impacts are correctly targeted.
	Clear and consistent	0	+ Establishes clear obligations for persons to provide information they hold on products or methods they bring to market. Consistent with other regulatory settings, and supports the government's priorities on improving building system compliance.	0 Does not clarify the role of suppliers or manufacturers, with MBIE taking on additional responsibilities in the process of investigating if warnings or bans are warranted.	- Would create uncertainties about who is responsible for testing given the sometimes complex supply chains involved.	- Creates confusion around roles and responsibilities of retailers versus suppliers versus manufacturers. Increasingly supply lines in New Zealand are international which complicates cost recovery.

	Options				
	Status quo	D1: Require information	D2: Powers of entry and sample collection	D3: Require testing	D4: Recall or require remediation
Supports growth and wellbeing	0	++ Supports objectives and clearer accountability. Supports wellbeing by ensuring the central building regulator is able to effectively investigate products or methods to determine if they warrant a warning or a ban to protect building owners and users.	0 Would give MBIE greater powers to intervene, but unnecessary given existing powers to deal with building failures.	+ Would give MBIE greater powers to intervene, and support effective outcomes.	- Does not directly address the identified problem. It would support wellbeing by making it harder for non-compliant products or methods to exist in the building system, but the proposal is disproportionate to the problem.
Overall assessment	0	+++++ Significant improvement on the status quo.	- Decrease on status quo.	+ Improvement on status quo.	--- Decrease on status quo.

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D.5 Which of these options is the preferred option?

The preferred option is option D1, require information to be provided when necessary for the purpose of determining whether to issue a warning or ban. This power balances the importance of being able to continue investigations against the intrusiveness and costs of the alternative options considered. This was the option in the discussion paper and the response was very supportive.

The use of different powers is determined by the seriousness of the events being investigated. MBIE's assessment is that some of the stronger powers considered (eg. option D2, power to enter and take evidence, and option D4 recall or require remediate) are likely to be only used in very serious circumstances, such as when a building collapsed. The existing powers for building failures and dangerous buildings could be used making the additional powers unnecessary.

MBIE considers that there is not sufficient evidence available to justify the power to require testing (option D3) at this time. The proposal to require suppliers to be able to substantiate claims about their products (option B3) should provide sufficient incentives for suppliers to undertake appropriate testing, meaning that MBIE would not need to require this testing to be done.

D.6 What other impacts is the preferred option likely to have?

The preferred option should increase confidence that the regulator is able to take appropriate action. Stakeholders identified potential benefits as identifying poor quality supply chains or revealing a lack of robust quality assurance process. The preferred option was seen as leading to a general increase in the quality of building products and methods. It would also help improve BCAs' decision making.

Submitters identified that there may be a risk that the information MBIE receives is not accurate. There is also a risk that the information requested does not exist. MBIE considers that this risk is partially mitigated by the requirement on suppliers' to ensure they can substantiate claims made about their building products. The evidence on which they base their claims is likely to be used to inform MBIE's decision on whether the product complies with the building code.

Some submitters were concerned that there was a risk that commercially sensitive information may become public if, under the *Official Information Act 1982* (OIA), it meets the public interest test to be released. There was also some concern that MBIE might misuse its powers. MBIE has existing policies around how to handle commercially sensitive information. MBIE will further mitigate these risks by using these powers in accordance with its published enforcement strategy on the use of these powers and only gathering the information necessary to make a decision. There is no intent to exempt information or to undermine any parts of the OIA.

D.7 What do stakeholders think?

The proposal was widely supported, with 88 per cent of submitters in favour ranging from homeowners, to Councils, to designers and builders. Support was on the basis of supporting good decision-making across the system, giving section 26 of the *Building Act* the settings it needed to be used effectively, and incentivising supply chains to source better quality products.

Primarily concerns were about how MBIE would handle commercially sensitive information and the compliance costs. As discussed in the previous section, concerns were raised that once MBIE held this information, it would become public information subject to the public interest test in the OIA.

E. Regulatory framework for the product certification scheme

E.1 Background

CodeMark is the existing product certification scheme. A product manufacturer or supplier can apply to have their product evaluated to demonstrate how its use may result in building work that complies with the building code. This certification is carried out by an accredited product certification body (PCB).

A product certification scheme is a 'deemed to comply' pathway. A BCA assessing a building consent application must accept a CodeMark product if that product is used as intended and as part of a compliant system. For this reason, certification needs to have the same rigour as the consenting process and deliver accurate and reliable outcomes.

MBIE is currently doing work to improve CodeMark within its existing legislative settings. This includes operational improvements as well as regulatory improvements to the accreditation and audit of PCBs, what information must be provided on a certificate, and the criteria and standard which a product must be evaluated against.

E.2 What is the policy problem or opportunity?

Under the current legislative settings, MBIE does not have the tools it needs to be an effective and proactive scheme owner. The current settings are not fit for purpose as MBIE is unable to set:

- the systems, policies, or procedures that a PCB must have to adequately and consistently evaluate products
- the competence requirements for individuals/companies certifying products, or
- make new rules that govern the scheme.

This is resulting in:

- inconsistent processes and evaluations of similar products resulting in inconsistent decisions across the scheme
- poor quality certificates on the register
- unclear roles and responsibilities in the scheme, and
- the legislative and regulatory framework not enabling the regulator to take timely action to address poor performance and poor quality certificates.

MBIE has limited powers to manage either the register of PCBs or the register of product certificates established under the *Building Act*. A PCB is automatically registered once it obtains accreditation from a Product Certification Accreditation Body (PCAB) and a product certificate is automatically registered once it is issued by a PCB.

The regulator cannot set registration requirements or establish a process for removing registration of poor certificates or PCBs. There have been recent examples of PCBs and/or certificates that have demonstrated behaviour or have errors that undermine the scheme. There is limited recourse when this happens as the only action currently available is to remove the accreditation of the PCB.

These factors have contributed to BCAs and sector participants having limited confidence in the competence of PCBs and the certificates they issue. Consequently, CodeMark has not realised the efficiencies that it should have provided to the consenting system.

The existing scheme rules are out of date and written in an Australian context. There is no legal mandate to change these rules.

CodeMark is unique to New Zealand. Other countries that have a statutory or government sponsored certification scheme tend to focus on specific solutions to specific problems, or are focused on providing information or quality assurance to customers. CodeMark has a unique purpose in that it is a 'deemed to comply' certification. The unique nature is due to code compliance and because it replicates part of the consent process. Australia has the same scheme and is having the same struggles. Their problems are heightened further by a federal system which means they do not have the levers New Zealand has to make the necessary changes.

Because this scheme is unique to a New Zealand context and specifically connected to code compliance, a New Zealand building regulator should control the quality, and therefore registration, of certificates. The scheme's certification and accreditation processes incorporate international standards and conformity assessment techniques, where appropriate.

E.3 What options have been considered?

Option E1. Strengthening the regulatory framework for product certification: would include:

- **Establishing registration requirements for PCBs:** It is good practice for the regulator, who is best placed to understand the context of regulation, to have the final say on who should be allowed to operate in the scheme. Registration would consider any accreditation that has occurred but also any other skill requirements and the ability to cover civil liabilities.
- **Establishing registration requirements for certificates:** Confidence is undermined when there are errors or mistakes on certificates. This is also true if a certificate has been issued without the correct processes or competence. The regulator should be able to stop or remove the registration of a certificate if it knows it to be incorrect.
- **Enabling a rule making power:** This addresses problems around unclear roles and responsibilities and can explain how parties should achieve their functions.
- **Broadening MBIE's powers:** There is currently a gap in what the regulator can specify as a requirement of accreditation. This broader power would allow MBIE to set out what systems, policies, and procedures are needed to achieve the high standards of product certification.

Option E2. Non-regulatory intervention: would include education and information. This would sit alongside MBIE's ongoing work with the PCAB to set clear expectations on all scheme participants. This would involve clear articulation of what expectations the regulator has on PCBs around what they should be doing when they evaluate and certify a product, what competence would be required for certain activities, what information should be articulated on a certificate, what liability cover a PCB should have, and more clearly articulating what role MBIE would have in the scheme and how it would use its existing *Building Act* powers.

E.4 Impact analysis

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

		Options		
		Status quo	E1: Strengthening the regulatory framework for product certification including	E2: Non-regulatory intervention
Criteria	Proportionate	0	+	+
	Resilient	0	+	-
	Clear and consistent	0	++	+
	Supports growth and wellbeing	0	+	-
	Overall assessment	0	+++++	0

E.5 Which of these options is the preferred option?

Strengthening the regulatory framework is the preferred option (option E1). This is because it responds to regulatory gaps identified in the current scheme that stops the regulator from being an effective scheme owner. Stakeholders supported this improvement.

This will be more effective than option E2 on its own because it is unlikely that, in a system with no enforcement powers, poor performers will choose to change behaviour when there is not a natural market incentive to do so. Option E2 does not allow MBIE to shape the scheme to meet the intent of the regulatory environment and protect people.

Recent history has demonstrated that there is low confidence in PCBs and the removal of PCBs for poor performance shows a more proactive regulator could assist with driving this confidence. (MBIE assumes that the low numbers of certificates across the 11 years CodeMark has been operating demonstrates a low level of confidence, rather than being due to other factors that may be barriers to uptake).

It is good practice for the regulator of a conformity assessment scheme to control the scheme's registers, particularly where there is a statutory obligation imposed on other parties to accept the contents of the register. These proposals would give MBIE the ability to set requirements for the registration of PCBs and product certificates and enforce those requirements. These changes allow MBIE to be able to take active steps to deal with poor performing PCBs and improve the quality of product certificates. This in turn should improve the low confidence which is underpinning the under performance of the scheme.

E.6 What other impacts is the preferred option likely to have?

There is a potential risk that PCBs that aren't currently carrying out best practice will not be able to meet the higher standards for product certification. While this is a risk, the priority of the regulator must be the safety and durability of buildings. For this reason it is crucial to ensure the technical credibility of the scheme. Because these certificates are 'deemed to comply', each certificate needs a robust and reliable process and, because of its interplay with consenting compliant building work, the standards required must be as high as in a traditional consenting process.

Certificates from disqualified PCBs must be audited within a year of their issue and need to be reissued by another PCB. If these requirements cause an exit of PCBs there may be a superficial influx of work for the remaining PCBs. This higher workload may mean that some manufacturers' certificates are de-registered if they are not audited within the required timeframe.

E.7 What do stakeholders think?

The majority of stakeholders supported the proposed changes to the product certification scheme.

BCAs indicated during the consultation that they supported MBIE taking a more hands on approach to the product certification scheme. They have little confidence in the scheme yet are forced to rely on it.

Designers have told MBIE the proposal won't change their behaviour and that it won't increase their use of CodeMark products. This is largely due to wider concerns about the building sector and the small role CodeMark is currently playing. Ongoing guidance and information to promote the scheme would hopefully increase uptake.

PCBs have not meaningfully engaged with the consultation.

F. Regulatory framework for modern methods of construction (MMC)

F.1 Background

The term 'modern methods of construction' (MMC) refers to the use of new manufacturing technology and processes to help increase productivity in the building industry. MMC includes activities such as offsite manufacturing of panels, pods or whole buildings. It can also include manufacturing processes that happen on a building site, like using a brick-laying robot or a concrete 3D printer. MMC tends to use processes that are precise, repeatable and consistent.

Offsite manufacture of buildings has been present in New Zealand for many years. Developments in technology have led to a growth in MMC. MMC is increasingly seen as an efficient way to provide housing at scale, and a way to increase sector productivity.

F.2 What is the policy problem or opportunity?

The current building consent processes are best suited to traditional construction methods. There is a lack of clarity on how MMC, in particular, off-site construction, should be treated.

There is inconsistency as different BCAs employ different processes for consenting and require different documents and inspections. This leads to uncertainty for the sector about how the consenting process will go and how long it will take. This may be deterring new businesses from entering the market.

There is duplication of effort where a BCA performs quality assurance and quality control tasks on factory premises. A manufacturer producing buildings for different regions may have multiple BCAs performing the same checks on the same processes at the same time, because each of the BCAs requires in-person inspections of the building work. This can lead to time delays and extra costs for developers and consumers.

The time and efficiency gains typically associated with MMC may not be being realised. For example, consenting requirements may prevent offsite manufacturing work and onsite construction work from happening at the same time.

F.3 What options have been considered?

Option F1. Enabling a manufacturer certification scheme: would enable the design and implementation of a voluntary manufacturer certification scheme for MMC. The scheme would provide a 'deemed-to-comply' pathway for MMC products, with clearly defined roles and responsibilities across the supply chain. Under the scheme, BCAs must accept all the work covered by the manufacturer's certification as compliant with the Building Code. The BCAs' oversight of the process would be limited to the parts of the consent application and the build not covered by the certification (eg. site-specific work like foundations and connection to services).

There are four main roles under the manufacturer certification scheme:

- Regulator: appoints the accreditation body, registers certification bodies and manufacturers
- Accreditation body: accredits and audits certification bodies
- Certification body: certifies and audits manufacturers
- Manufacturer: once certified, follows appropriate quality assurance processes and produces code compliant MMC products.

Scopes of practice would be established to set the boundaries within which certification bodies and manufacturers can operate. The scheme is likely to include the following scopes:

- Design and manufacture: this certification would enable a manufacturer to both design and build MMC products that are code compliant.
- Manufacture: this certification would enable a manufacturer to build MMC products that are deemed to be code compliant using an approved design.
- Design only: this certification would enable the design of MMC products for manufacture by another party.

Each scope of practice may have more than one level of certification that recognises the different complexities of MMC products.

Option F2. Strengthening the existing tools and processes available under the Building Act: would strengthen the existing tools and processes that are available under the *Building Act* to support the use of MMC. Three areas were identified.

1. Remove legislative barriers to increase the use of MultiProof for MMC: The *Building Act* has a national multi-use approval scheme (MultiProof) to provide certainty for those who want to use the same design multiple times. MultiProof covers the design, but not the construction of the building. It is a 'deemed-to-comply' pathway meaning approved designs must be accepted by all BCAs.

To make MultiProof work more effectively for MMC, amendments would be made to:

- allow for more variations to design which will provide more flexibility
- relax the requirement that a design must be intended for use at least 10 times in a two-year period to be eligible, and
- enable MBIE to set a viability period for designs that have MultiProof approval.

2. Clarify 'reasonable grounds' decision-making for MMC: To provide some clarity and certainty about the consenting process that involves MMC, regulations or a code of practice would be issued, setting out what evidence a BCA should or must accept as satisfying them on reasonable grounds when consenting MMC.

3. Provide an optional single consent pathway through the destination region BCA: enable an optional consenting pathway for MMC where only the BCA in the destination region is required to provide consent. Consent would still be required prior to beginning to manufacture. This could make the consenting process more efficient by having only one BCA involved.

F.4 Impact analysis

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

		Options		
		Status quo	F1: Enabling a manufacturer certification scheme	F2: Strengthening the existing tools and processes available under the Building Act
Criteria	Proportionate	0	++ There are compliance costs associated with the manufacturer certification scheme, and some manufacturers (eg. small manufacturers or those new to the market) may not feel the benefit of certification justifies the costs. However, for many manufacturers the benefits will outweigh the costs, as the consenting process would be more efficient and effective by removing duplication of effort and greater certainty to both manufacturers and BCAs. This in turn would help increase the uptake of MMC in New Zealand and help businesses in the MMC sector to thrive.	+ Allowing more flexibility in approved designs and relaxing the minimum use requirement should lower compliance costs for existing MultiProof users. A single consenting pathway and clarification of 'reasonable grounds' decision-making for MMC could also reduce compliance costs due to less BCA involvement. However, the overall benefit for MMC is unlikely to manifest unless manufacturers and BCAs utilise the proposals as a whole package.
	Resilient	0	+ Most submitters were supportive. A manufacturer certification scheme, in its initial stage, is likely to benefit larger firms who manufacture at scale. As new building technologies and processes emerge, the scheme could be adapted to enable appropriate certification of these innovative approaches, thus helping future proof New Zealand's building system.	0 This option provides some level of adaptability as the improvements to the existing tools and processes can better facilitate the use of MMC. However, the uptake of MultiProof is currently low and it is unclear whether these proposals as a package would be sufficiently supported and utilised by the industry (this option was not publicly consulted on).
	Clear and consistent	0	++ A manufacturer certification scheme would clarify roles and responsibilities for those participating in the scheme, including where the liability lies if things go wrong. The scheme also simplifies the consenting process for certified manufacturers, and provides increased clarity for the sector about what they need to do to comply, making the overall process clearer and more consistent.	+ Clarifying 'reasonable grounds' decision-making for MMC could promote consistency in the consenting process and provide assurance to BCAs and manufacturers of MMC that same standards are being applied across New Zealand. However, BCAs may still have some level of discretion around how they interpret clarification on 'reasonable grounds' which could result in some inconsistencies remaining in the consent process. It also does not clarify or re-apportion where the liability lies if things do go wrong, which a manufacturer certification scheme could.

	Options		
	Status quo	F1: Enabling a manufacturer certification scheme	F2: Strengthening the existing tools and processes available under the Building Act
Supports growth and wellbeing	0	<p style="text-align: center;">++</p> <p>This option is likely to make the consenting process involving MMC more efficient and effective, especially for large scale manufacturing. This in turn could help increase the uptake of MMC in New Zealand. This option supports the use of new technologies and processes in the building sector, while also clarifying roles and responsibilities to ensure there can be fairer outcomes if things go wrong. This option best supports the delivery of affordable housing and quality buildings that New Zealanders need.</p>	<p style="text-align: center;">+</p> <p>There should be some efficiency gains in the overall building system through improving existing tools and processes. However, it is unclear whether this could help increase the uptake of MMC and promote consistent approaches across New Zealand.</p>
Overall assessment	0	<p style="text-align: center;">+++++</p> <p>Significant improvement on status quo</p>	<p style="text-align: center;">+++</p> <p>Improvement on status quo</p>

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F.5 Which of these options is the preferred option?

Enabling a manufacturer certification scheme is the preferred option (option F1). This is because it provides an alternative bespoke process for MMC, rather than attempt to assess MMC within existing schemes and processes that do not recognise that MMC is different to traditional building methods (option F2). Option F1 focuses on a new scheme that would best facilitate off-site manufacturing at scale, and could be adapted in the future to allow better use of emerging technologies and thus future proof New Zealand's building system.

A manufacturer certification scheme would be focused on assuring the robust processes and quality assurance that the manufacturer uses for all of its products, rather than checking each build and product. It simplifies the consenting pathway for manufacturers as the certification could cover all aspects of the manufacturing process, from design to the final manufacture. It would make the consenting process more efficient and effective and provide greater certainty to both manufacturers and BCAs.

The preferred option also better clarifies the roles and responsibilities of those involved, and could correctly apportion risk across the MMC supply chain. This is likely to be welcomed by manufacturers, BCAs and consumers, and help make the overall consenting process run much smoother and consistently.

F.6 What other impacts is the preferred option likely to have?

The scheme would be a voluntary scheme, allowing smaller businesses and new entrants to choose whether to be certified or use existing processes. However, it is likely that businesses with the necessary capability and resources will reap the biggest benefit from the scheme, and would most benefit off-site manufacturing at scale rather than small scale, bespoke manufacturing.

It is also not clear at this stage whether the New Zealand building sector has the capability or capacity to provide organisations that can fulfil the proposed roles of the accreditation body or certification bodies. Ongoing work with the sector is crucial to identify and build the necessary capability.

F.7 What do stakeholders think?

Public consultation

Most submitters supported the proposed elements for a framework for MMC. PrefabNZ (a key stakeholder) and others raised questions and key points to consider in the detailed design and implementation of the framework.

The main feedback from submitters concerned risk and liability, and ensuring these were clearly and correctly apportioned under the framework. Several submitters also questioned how the framework would apply to MMC products from overseas. Several submitters expressed concerns about the ability of the manufacturer certification scheme to handle variations between builds and sites.

The low response volumes from manufacturers, suppliers and off-site manufacturers make it difficult to gauge the likely uptake of a manufacturer certification scheme, but the response from PrefabNZ was positive. Just over half of manufacturers and suppliers supported the proposals.

BCAs' comments were split between supportive feedback broadly stating they already had arrangements in place with other BCAs and negative feedback expressing concerns about the risk and liability they would face. This would come either from accepting others' decisions or by having their decisions accepted more broadly.

Further engagement with key stakeholders

Feedback from representatives from Housing New Zealand Corporation, the Ministry of Housing and Urban Development and the Kiwibuild programme indicated a preference for option F1, which could help accelerate large-scale housing developments.

Napier City Council also saw value in option F1 that will provide clarity on the quality and compliance requirements for building work occurring in a manufacturing setting.

A medium-scale manufacturer of panellised building products and kit sets indicated that the cost of gaining manufacturer certification might not be cost effective for them. They were supportive of a voluntary scheme, or one which required certification once a production threshold had been met.

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G. Using the building levy for stewardship purposes

G.1 Background

MBIE is the lead advisor on the building regulatory system. It is responsible for advice on a broad range of legislation and regulations, including, but not limited to, the *Building Act*.

Stewardship is a term that sums up the government's expectations that MBIE will actively plan for, and manage, the building sector's medium to long term interests. It involves adopting a whole-of-system, lifecycle view of regulation and taking a proactive, collaborative approach to the monitoring and oversight of the whole building system. Stewardship is critical to developing efficient, high-quality regulatory systems that support a high-performing building sector.

Since the *Building Act* was written, the government's expectations about the importance of stewardship have increased. At a practical level, key government departments are obligated to prepare regulatory stewardship strategies. They are expected to be:

- strategic about regulatory settings and spending
- practical about how stewardship obligations are fulfilled, and
- collaborative and focused on external stakeholder input in regulatory design.

G.2 What is the policy problem or opportunity?

Specific legislative settings in the *Building Act* limit what the building levy can be used for. Under section 53, the building levy must be used for, or in connection with, the performance of the chief executive's functions under the *Building Act*. Section 11 lists these functions. They include issuing acceptable solutions or verification methods, registering BCAs, making determinations and reviewing the *Building Act*.

The *Building Act* does not specifically allow the levy to be spent on MBIE's broader stewardship responsibilities. This includes taking an all-of-system view of the building system which spans multiple pieces of legislation. Because of this, establishing clear authority to use the levy for stewardship purposes is not straightforward. The complexity and administrative effort required to source funding potentially acts as an obstacle to undertaking some initiatives.

G.3 What options have been considered?

Option G1. Change the *Building Act* to reframe the purposes for which the levy may be used: would capture the sector stewardship role that is expected of key regulatory agencies and authorise the spending of the building levy for purposes related to stewardship of the building sector.

This change could be:

- expressed as a function of the chief executive
- introduced as an authority to spend, and
- provided for in the levy provisions.

G.4 Impact analysis

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

		Options	
		Status quo	G1: Reframe the purposes for which the levy can be used
Criteria	Proportionate	0	+
	Resilient	0	++
	Clear and consistent	0	++
	Supports growth and wellbeing	0	++
	Overall assessment	0	++++++

G.5 Which of these options is the preferred option?

The preferred option would provide MBIE's chief executive with the explicit authority to spend the building levy on stewardship responsibilities and help MBIE to:

- contribute to the government's wider building system reform objectives by broadening the purposes for which the building levy may be used
- be a more effective regulator by promoting a consistent all-of-system view of building sector regulation
- ensure that the building regulatory system is fit for purpose over the medium to long term
- promote sector productivity and foster collaboration among building sector participants, and
- meet its broader stewardship responsibilities as specified by the Treasury and Cabinet.

The following working definition of building sector stewardship is proposed:

Building sector stewardship means performing and funding functions that:

- *are intended to:*
 - *adopt a whole-of-system, lifecycle or system-based view of regulation; or*
 - *improve the performance of the building sector; or*
 - *support the building sector to transform in order to better meet future conditions; or*
 - *improve connectivity and collaboration amongst parties; or*
 - *monitor and oversee the regulatory system; and*
 - *benefit levy payers or manage risks to levy payers; and*
- *the central government would reasonably be expected to perform (rather than local government or the public, for example); and*
- *are not currently funded by any other agency or party.*

G.6 What other impacts is the preferred option likely to have?

Even if a new authority exists to use the building levy for stewardship, it may not always be the case that the building levy should be used. Other funding sources include appropriations (from general taxation) and fees.

Assumptions about the cost impact of stewardship will be included in modelling proposed adjustments to the building levy rate. However, additional levy expenditure on stewardship initiatives is unlikely to contribute significantly to the cost of work that MBIE already does as a regulatory steward. This work includes:

- setting strategic direction and programme design
- monitoring trends
- coordinating governance arrangements and cross-agency engagement, and
- leading or supporting programme implementation.

In all cases, spending decisions on stewardship will need to be checked for alignment with:

- *Public Finance Act* requirements
- best practice guidelines from Treasury and the Office of the Auditor General
- MBIE's Stewardship Strategy
- MBIE's Building System Regulatory Charter, and
- MBIE's building levy allocation framework.

Further work is required to review the building levy allocation framework once the definition of stewardship has been agreed. This review requires the development of clear prioritisation criteria to guide levy spending decisions on stewardship initiatives.

G.7 What do stakeholders think?

Submitters overwhelmingly agreed with this proposal. A few submitters suggested having a broader definition of stewardship. Many submitters suggested that the levy should be used for activities it already funds, including education, investigations and reviewing the building code. A few submitters believed the building levy should only be used where it directly benefits building owners.

Those opposed to expanding the scope of the levy doubted MBE's ability to use the funding appropriately. The checks and balances on levy spending are outlined in the previous section.

PROACTIVELY RELEASED

H. Financial penalties under the *Building Act*

H.1 Background

Offences and penalties in the *Building Act* are intended to achieve compliance with the legislation and deter individuals or groups from behaving poorly or illegally. If regulations are not followed, building failure can have serious consequences and possibly put people's lives at risk.

H.2 What is the policy problem or opportunity?

Many of the current maximum financial penalties set out in the *Building Act* have not been adjusted since 2004. This means that the deterrence value of the penalties has eroded overtime.

The maximum financial penalties are also inconsistent with various other modern legislation which aims to protect people's lives and wellbeing (such as the *Health and Safety at Work Act 2015*, *Fire Emergency New Zealand Act 2017* and the *Fair Trading Amendment Act 2013*).

The maximum penalty amounts in the *Building Act* also don't distinguish specific maximums between an individual and any other types of person (such as organisations or body corporates). This means individuals are effectively penalised more severely than others, such as companies who typically have greater capacity to absorb the fine. The financial consequences for some organisations may be an insufficient deterrent compared to the incentives on an individual.

The evidence supporting this is a comparative analysis of other legislation more recently introduced, and submissions received through the consultation process. The majority agreed that the current maximum penalties are too low to properly incentivise compliance.

H.3 What options have been considered?

Option H1. Increase the maximum penalties liable upon conviction: would increase the maximum levels so that they are more consistent with the penalty levels in other legislation with similar objectives.

Option H2. Separate maximum penalties for individuals and for other persons: would have different maximum penalties for individuals and for other persons (eg body corporates).

Option H3. Increase the maximum penalties and have separate maximums for individuals and for others: would combine options H1 and H2.

H.4 Impact analysis

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

		Options			
		Status quo	H1: Increase maximum penalties	H2: Separate maximum penalties for individuals and other persons	H3: Combine options H1 and H2
Criteria	Proportionate	0	0 Should result in greater deterrence and lead to behavioural change. Does not address disproportionate impacts for individuals and others and may increase these impacts.	0 Addresses disproportionate impacts for individuals and others. Does not address lower real value of penalties so may not have desired level of behavioural change.	++ Balances impact of higher penalty levels with capacity to absorb them.
	Resilient	0	+ Supported by both industry and regulatory bodies.	+ Supported by both industry and regulatory bodies.	++ Widespread support from both industry and regulatory bodies.
	Clear and consistent	0	+ In line with other legislative regimes that offer higher maximum penalties than the <i>Building Act</i> at present.	+ Creates clear consequences for both individuals and organisations.	++ Brings maximum penalties into line with more modern legislation while also creating clear consequences for individuals and organisations.
	Supports growth and wellbeing	0	+ Contributes to the objectives of the reform programme and supports the effectiveness and efficiency of the building sector. Public benefit from decreased rework and increased accountability.	+ Contributes to the objectives of the reform programme and supports the effectiveness and efficiency of the building sector. Public benefit from decreased rework and increased accountability.	+ Best contributes to the objectives and effectiveness.
	Overall assessment	0	+++ Improvement on the status quo.	+++ Improvement on the status quo.	+++++++ Significant improvement on the status quo.

H.5 Which of these options is the preferred option?

Option H3 is the preferred option. It best supports the legislative reform programme meeting its objective to lift the efficiency and quality of building work and ensure that people can be held to account if things go wrong. It provides better incentives to comply with legislative requirements and creates a consistent and modern penalty regime.

H.6 What other impacts is the preferred option likely to have?

A risk of the preferred option is that the actual or potential costs of non-compliance (ie. financial penalties) may be passed on to consumers from those in the industry attempting to mitigate their costs if an offence does occur. There is also a risk that the proposal is seen as heavy handed and leads to individuals leaving the industry.

H.7 What do stakeholders think?

A majority of respondents who submitted on this proposal (option H3) stated that at present, maximum penalties are not seen as sufficient deterrents or doing enough to promote proper performance and behaviour. The majority also believed that the proposal would provide wider benefits by signalling the serious response to non-compliance for both individuals and organisations and align it better with other, more modern legislation. This would provide for industry-wide consistency. Key stakeholders in support of the proposal include BCAs, homeowners, construction organisations, specific trade groups and the CTV Building Families Group.

The main concerns raised were that the proposals would increase the costs to consumers, and perceived heavy-handedness would lead to people retiring or moving away from the industry exacerbating the current skills shortage. These views were mainly shared by individuals, the Plumbers, Gasfitters and Drainlayers Board, and a few district councils.

Some submitters believed the underlying problem lay with BCAs and the courts not enforcing the current penalties. The preferred option is allowing for a wider band of penalties to be applied, that is in line with the severity of the offence. The courts will continue to determine the appropriate level of penalty to impose within this band based on the principles set out in the *Sentencing Act 2002*.

There was also concern that this proposal would unduly impact those who are unable to pay current penalties. This concern can be mitigated by the inclusion of penalties for other persons (such as organisations or body corporates) which will help create a fairer penalty regime under the *Building Act*. This can also be mitigated through greater awareness of people's roles and responsibilities so that they do not breach their obligations in the first place.

I. The timeframe to lay a charge for an offence against the *Building Act*

I.1 Background

Under section 378 of the *Building Act*, enforcement agencies (such as the chief executive of MBIE, TAs, regional authorities and other authorised people) can file a charging document for an offence against the *Building Act*, within 6 months of the date that an offence becomes known, or from when an agency could not justify having missed an offence.

I.2 What is the policy problem or opportunity?

TAs and BCAs have told MBIE that the six month timeframe to investigate a potential offence is too short given the complexity of investigating a potential offence against the *Building Act* and the number of people involved. This hinders their abilities to undertake a thorough investigation. Extending the timeframe would allow more time to be dedicated to researching potential breaches, gathering evidence and potentially allowing for multiple enforcement avenues to be pursued that encourage greater compliance.

The existing timeframe is out of line with other legislation (such as the *Electricity Act 1992*, the *Crown Minerals Act 1991* and the *Health and Safety at Work Act 2015*) which have longer periods for investigation.

The evidence of the problem is based on a workshop with BCAs in late May 2019 and submissions. While the evidence is largely anecdotal, the consistent view from BCAs was that six months limits their ability to decide when to investigate a potential offence, gather sufficient evidence and work with the people being investigated to achieve compliance voluntarily.

I.3 What options have been considered?

Option I1. Extend the timeframe to 12 months

Option I2. Extend the timeframe to 24 months

As this problem is caused by the current legislative settings, it requires an amendment to section 378. No non-regulatory options have been considered to address the lack of time available to undertake an investigation.

I.4 Impact analysis

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

		Options		
		Status quo	I1: Amend section 378 to 12 months	I2: Amend section 378 to 24 months
Criteria	Proportionate	0	<p style="text-align: center;">+</p> <p>May be additional costs to TAs/rate payers, however this is offset by the greater chance of a successful prosecution due to the increased time for investigations. May lead to better compliance longer term, saving future costs.</p>	<p style="text-align: center;">-</p> <p>Investigations would last too long and could be disproportionate cost for TAs.</p>
	Resilient	0	<p style="text-align: center;">++</p> <p>Wide support from the industry and regulators and consistent with other legislative investigative timeframes.</p>	<p style="text-align: center;">+</p> <p>Had some support from industry groups; however overall consensus was that was too long. Not consistent with other legislative investigative timeframes considered.</p>
	Clear and consistent	0	<p style="text-align: center;">+</p> <p>Does not change existing obligations or functions of regulators but allows for more time to carry out a specific existing function.</p>	<p style="text-align: center;">0</p> <p>As an amendment to current regulations, there are already clear obligations on the industry regulators. This option allows for more time to carry out a specific function. Longer timeframe would create greater uncertainty for parties being investigated.</p>
	Supports growth and wellbeing	0	<p style="text-align: center;">+</p> <p>Contribute to legislative reform programme by helping to ensure that potential offences have sufficient time to be thoroughly investigated and the outcomes of the investigation will lead to greater compliance with the <i>Building Act's</i> requirements.</p>	<p style="text-align: center;">+</p> <p>Contribute to legislative reform programme by helping to ensure that potential offences have sufficient time to be thoroughly investigated and the outcomes of the investigation will lead to greater compliance with the <i>Building Act's</i> requirements.</p>
	Overall assessment	0	<p style="text-align: center;">+++++</p> <p>Improvement on the status quo.</p>	<p style="text-align: center;">+</p> <p>Improvement on the status quo.</p>

1.5 Which of these options is the preferred option?

The preferred option is to amend the timeframe for laying a charge from six months to 12 months (option 11). This option would support the overall reform objectives by helping to ensure that potential offences under the *Building Act* have sufficient time to be thoroughly investigated and more successful outcomes from investigations (including using the most appropriate enforcement tool) would lead to greater compliance with the *Building Act's* requirements. This option has widespread support from key stakeholders, such as BCAs, TAs, sector organisations and public submitters. The consistent agreement around this issue from submitters provides confidence that there is a problem at present and the preferred option will address it.

1.6 What other impacts is the preferred option likely to have?

There is a potential uncertainty about how this proposal will impact the number of investigations undertaken each year by the relevant enforcement agencies. At present, due to the cost and complexity of undertaking an investigation, there is a disincentive for TAs and BCAs to take a prosecution. This proposal does not impact the external factors that drive a large part of this disincentive (the cost of a lawyer for example) so it may not lead to more investigations in total, but may enable BCAs and TAs to having more successful prosecutions leading to greater compliance in their areas.

1.7 What do stakeholders think?

There is widespread agreement for the preferred option including from industry organisations, BCAs, and construction companies. The majority of submitters agreed with the proposal to increase the time to lay a charge to 12 months and believe this is an appropriate time period for enforcement agencies. Submitters believe 12 months provides for a more adequate timeframe in which research can be done and evidence presented. It was acknowledged that building offences can often be complex and involve a variety of people, products, events and interpretations.

There were a small number of submitters who considered that the current timeframe for laying a charge was already long enough. These submitters were more likely to be individual submitters and builders, designers and engineers. They were concerned that extending the timeframe risked cases becoming long, drawn out affairs. These concerns are mitigated by the fact that investigations can be no longer than 12 months.

J. The requirements for public notification

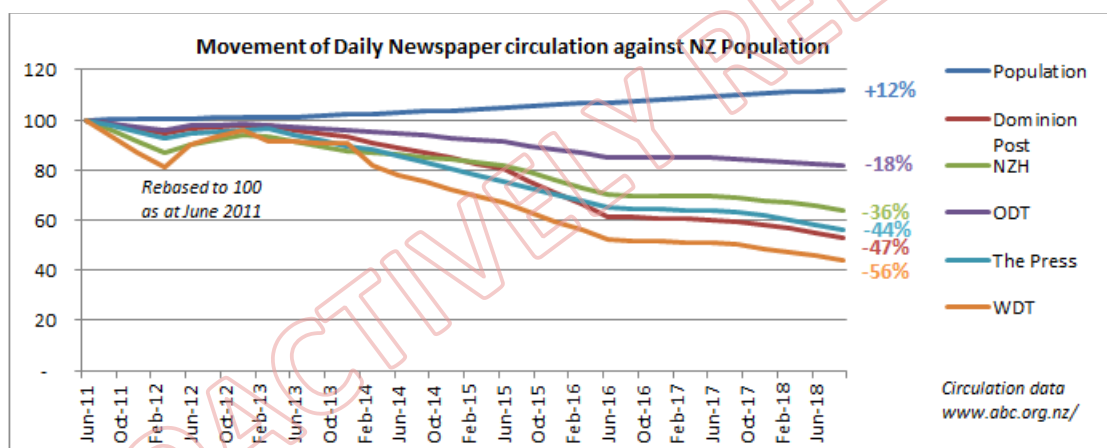
J.1 Background

A number of sections of the *Building Act* require public notification of various matters that relate to the exercise of certain powers by the chief executive of MBIE or the Building Practitioners Board (BPB). 'Publicly notify' is defined in section 7 of the *Building Act* and includes a requirement to publish a notice in one or more daily newspapers in Auckland, Hamilton, Wellington, Christchurch and Dunedin, in addition to publishing in the *New Zealand Gazette* and on the internet.

J.2 What is the policy problem or opportunity?

The opportunity for improvement is to create a fit for purpose *Building Act* that can respond to current and future trends in how the public prefers to access information.

At present, data (graph below) shows that there is a falling trend of newspaper circulation since 2011. This means that notices have a more limited reach than less costly alternatives to informing the public.



Public submissions also show there is broad agreement that publication in newspapers is no longer the most effective method of public notification.

J.3 What options have been considered?

Option J1. Remove the requirement to publicly notify in the newspapers of the five main centres

As this is an issue caused by a current legislative requirement and is a regulatory function, it is best addressed through legislative amendment.

J.4 Impact analysis

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

		Options	
		Status quo	J1: Remove requirement to publish in newspapers
Criteria	Proportionate	0	<p style="text-align: right;">+</p> <p>Costs to the public due to this amendment will be minimal. Would reduce costs of compliance for regulators, and continues to ensure the public has free access to notices.</p>
	Resilient	0	<p style="text-align: right;">+</p> <p>Allows the <i>Building Act</i> to better adapt to increased use of technology and reflects how the public prefers to consume information.</p>
	Clear and consistent	0	<p style="text-align: right;">+</p> <p>Provides a clear obligation to publish in at least two reasonably accessible locations: <i>New Zealand Gazette</i> and wider internet platforms.</p>
	Supports growth and wellbeing	0	<p style="text-align: right;">++</p> <p>Supports the reform objectives by contributing to an efficient regulatory system.</p>
	Overall assessment	0	<p style="text-align: right;">+++++</p> <p>Improvement on the status quo.</p>

J.5 Which of these options is the preferred option?

The preferred option is option J1, to remove the requirement to publish in newspapers, as it responds to changes in technology and reflects how the public accesses information, as corroborated by data showing a consistent decline year on year in newspaper circulation. This proposed change is also consistent with other public notification requirements in the *Building Act* to manage buildings following an emergency.

Retaining publication in the *New Zealand Gazette* and in an additional electronic form, would support overall system objectives by creating an efficient regulatory system to aid a high-performing building sector. Submissions received demonstrate that there is agreement with this proposal.

J.6 What other impacts is the preferred option likely to have?

There is a risk that a small minority of people rely on newspaper notices, for instance if they do not have reliable access to broadband in rural areas or if people cannot afford internet access. MBIE considers that this is a small risk and can be mitigated. MBIE uses other channels to raise awareness of changes under the *Building Act* and could still take out notices in newspapers when this would be merited.

J.7 What do stakeholders think?

The majority of submitters agree with the proposal to modify the definition of publicly notify. These submitters included Councils and industry organisations. The main rationale was that it shows the industry is moving with the times, newspapers are no longer the most reliable method of reaching a specific or targeted audience and reflect that the internet is the primary and most readily accessible source of information. A majority of submitters also agreed that publication online and in the *New Zealand Gazette* would be sufficient.

Those opposed to the proposal are concerned that there were many people who still relied on newspapers, particularly in rural areas where reliable, fast internet is not often available. Other concerns include the need for the public to be aware for enforcement to be effective, people may not be aware of the *Gazette* or read it. Submitters who were concerned included large construction companies, industry organisations and some district councils. Their concerns can be mitigated through using a wide array of channels, as well as publishing in print media when deemed effective to do so on a case-by-case basis.

Section 4: Conclusions

4.1 What option, or combination of options, is best likely to address the problem, meet the policy objectives and deliver the highest net benefits?

The preferred package of options is to:

- widen the purpose of the *Building Act* to include building products and methods and use the refined definition of building products and building methods, without the term 'system' (option A4)
- require suppliers to provide minimum information about their building products and for that information to be publicly accessible (option B3)
- undertake educational campaigns about people's existing roles and responsibilities (option C1)
- clarify the existing responsibilities set out in the *Building Act* to include the existing legal obligations for building products and methods (option C2)
- allow the chief executive to compel information when necessary to make a decision about issuing a warning or a ban on a building product or method (option D1)
- strengthen the regulatory framework for product certification (option E1)
- enable a manufacturer certification scheme for MMC (option F1)
- allow the building levy to be used to fund MBIE's sector stewardship role (option G1)
- increase the maximum financial penalties and have separate maximums for individuals and for others (option H3)
- extend the timeframe for laying a charge for an offence against the *Building Act* to 12 months (option I1), and
- remove the requirement for public notification to include notices in the newspapers in the five main centres (option J1).

The preferred package of options would achieve the legislative reform programme objective to lift the efficiency and quality of building work and provide fairer outcomes if things go wrong as set out below.

OBJECTIVE	IMPACT/BEHAVIOURAL CHANGE	CREATED BY
Lift the efficiency and quality of building work	<ul style="list-style-type: none"> Better informed decisions about building design and use of building products and methods 	<ul style="list-style-type: none"> Clear and consistent information is available about all building products Clarity about who is responsible for what in the building process Greater assurance about the accuracy of product certificates
	<ul style="list-style-type: none"> Support the use of innovative and new building products and methods Support the use of more productive, affordable building methods 	<ul style="list-style-type: none"> Improved confidence in the product certification scheme Manufacturer certification scheme
	<ul style="list-style-type: none"> More efficient consenting processes 	<ul style="list-style-type: none"> Information is publicly accessible for all building products Manufacturer certification scheme specifically designed to support MMC; deemed to comply pathway should make consenting for MMC quicker
	<ul style="list-style-type: none"> Greater incentives to comply with the <i>Building Act</i> 	<ul style="list-style-type: none"> Increasing the maximum financial penalties Recognising the different incentives for individuals and others through different maximums Supporting enforcement activities by extending the timeframe to lay a charge Supporting investigations into building products and methods
	<ul style="list-style-type: none"> Easier to comply with an effective and efficient regulatory system 	<ul style="list-style-type: none"> Building levy funding for stewardship purposes Fit for purpose public notification requirements Direct regulation of building products and methods in building law
Provide fairer outcomes if things go wrong	<ul style="list-style-type: none"> Increased accountability 	<ul style="list-style-type: none"> Clear responsibilities make it harder to shift responsibility

The preferred package of options would achieve the legislative reform programme objective to provide fairer outcomes if things go wrong by making it harder to try to shift responsibility through clarifying the responsibilities and accountabilities for building products and methods, product certification and manufacturer certification scheme.

MBIE considers that this package of options best addresses the problems identified in a way that is proportionate to the evidence base and is supported by stakeholders. While the refined options have not been widely tested with stakeholders, feedback on the public consultation has been used to inform these refinements.

Ultimately, the ability of the preferred package to achieve the programme objective is dependent on changes also being made to the occupational regulation regimes and effective education and enforcement.

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4.2 Summary table of costs and benefits of the preferred approach

The table below summarises the costs and benefits of the preferred package of options for phase 1 of the legislative reform programme. They combine the costs and benefits for all of the proposals. Annex 1 sets out the estimated costs and benefits over a 10 year period for two groups of proposals (eg. there is one table for all of the proposals related to building products and methods, and one table for the other changes). Annex 1 also summarises the data sources and assumptions used in the preparation of the cost-benefit analysis.

Additional costs of proposed approach, compared to taking no action

Affected parties <i>(identify)</i>	Comment <i>nature of cost or benefit (eg. ongoing, one-off), evidence and assumption (eg. compliance rates), risks</i>	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>	Evidence certainty <i>(High, medium or low)</i>
Regulated parties	Suppliers - cost of compliance to supply product information (based on estimates in submissions)	One-off \$24m Ongoing \$17m p.a.	Medium – Low
	MMC manufacturers - cost of participating in certification scheme	\$1.0m p.a.	Low
	Building professionals - increased penalties	\$4m p.a.	Low
Regulators	MBIE - enforcement and implementation for new obligations (including codemark)	\$1.5m p.a.	Moderate
	Certification bodies, accreditation bodies and MBIE - setup manufacturer certification scheme	One-off \$1.3m Then cost recovery	Low <i>(Pending business case)</i>
Other parties	Media companies - lower revenue	\$0.001m p.a.	Medium
Total Monetised Cost		One-off \$25.3m Ongoing \$23.5m p.a.	Medium - Low

Affected parties	Comment	Impact	Evidence certainty
Non-monetised costs	Increased expenditure on stewardship functions	Medium	Medium
	Potential for more investigations as time less of a constraint	Low	Low
	Possible bottleneck for testing building products or certifying manufacturers (leads to delays in bringing products to market, consent approvals)	Low	Medium
	Possible barrier to entry for new products (may lead to lower innovation)	Low	Medium
	Initial inefficiency from change while in-bedded (transition)	Low	Medium

Expected benefits of proposed approach, compared to taking no action

Affected parties <i>(identify)</i>	Comment <i>nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks</i>	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>	Evidence certainty <i>(High, medium or low)</i>
Regulated parties	Building professionals - decrease in frequency of consenting delays	\$9m p.a.	Medium
	Building professionals - decrease in inspection failure rate	\$3m p.a.	Medium
	MMC manufacturers – decrease in consenting duplication	\$1m p.a.	Low <i>(Pending business case)</i>
Regulators	Crown - increased revenue from penalties	\$4m p.a.	Medium
	MBIE - lower expenditure for media	\$0.001m p.a.	Medium
	BCA - decrease consenting duplication	\$1m p.a.	Low <i>(Pending business case)</i>
	Fewer investigations due to increased compliance	\$0.4m p.a.	Medium
Total Monetised Benefit		\$18.4m p.a.	Medium - Low

Affected parties	Comment	Impact	Evidence certainty
Non-monetised benefits	Benefits from improved stewardship – improved regulatory operating environment for regulated parties	Medium	Medium
	Potential for more successful convictions as time less of a constraint – improved compliance and more even playing field	Low	Low
	Fewer accidents and injuries from product failures	Low	Low
	Lower risk of financial losses from product failure	Medium	Low
	Designers and builders have increased confidence in specifying and using a product	Medium	Medium
	Further economies of scale and productivity gains from efficiencies in MMC certification and growth in offsite manufacturer	High	High
	Reduced risk to supplier’s reputation from product failure	Medium	Medium
	Reduced risk to New Zealand’s reputation from product and building defects	High	High
	Greater consumer confidence in the regulatory system and building sector	High	Medium
	Increased competition for products as easier to substitute – may lead to decrease in prices	High	Low
Potential environmental reduction of waste	<p>From:</p> <ul style="list-style-type: none"> • better design and planning of construction (less defect, rework) • improved on-site management of materials (MMC) • better training and education of builders and apprentices to encourage better waste management (MMC) • potential reduction in waste disposal fees from the above 	High	Medium

The initial monetarised costs (transition) are higher than the benefits; however, once embedded the monetarised and non-monetarised benefits should be higher than the costs, subject to system behaviours and change.

It is expected that most of the compliance costs for suppliers will be passed onto the end consumers.

- **One-off compliance costs:** if the 'one off' compliance costs took three years to transition, this would add approximately \$100 to the cost of the average building consent value, if all of the increased compliance costs are passed on.
- **Ongoing compliance costs:** *For building work:* The average cost of building work for a new (3 bedroom, 1 bathroom) house in Auckland is \$310,000. The 'ongoing' compliance costs are expected to add approximately \$200 to this cost or approximately 0.06% of total cost (ie. significantly less than 1%). Note the current rate of inflation (2%) would add \$6,200 a year to the average building consent value. *For individual building products:* A \$100 product may have an additional cost of 30 cents.

Offsetting these compliance costs, consumers will realise some direct benefits (both monetised and non-monetised), and will also experience indirect benefits such as a sounder and higher quality building system. The benefits to building professionals from fewer consenting failures and inspection failures may also be passed on to consumers.

4.3 Is the preferred option compatible with the government's 'Expectations for the design of regulatory systems'?

The preferred package of options is compatible with the expectations for the design of regulatory systems. There are clear objectives, clear obligations and flexibility and durability are supported through the design of the options (eg. use of regulations where appropriate). The proposals relating to product certification and MMC in particular will support predictable and consistent outcomes. The preferred package is also compatible with the government's expectations for regulatory stewardship.

Section 5: Implementation and operation

5.1 How will the new arrangements work in practice?

Changes to the *Building Act* will be required to implement the preferred options. Some requirements will be set in regulations to provide more detail on what regulated parties need to do. A separate impact assessment will be prepared for the regulations at the appropriate time.

The transitional timeframes are still under consideration. Public submissions have been sought on the appropriate timeframes for implementing most of the proposals. This feedback will be taken into consideration in determining the timeframes.

In order to be successful, the changes to the *Building Act* will need to be supported by:

- the effective use of enforcement mechanisms and processes to support compliance; stakeholder feedback noted that the measures proposed will strengthen the system only if sufficiently resourced to ensure adequate enforcement
- an information and education campaign to ensure that all parts of the building sector understand the changes, particularly with regards to their roles and responsibilities.

MBIE is the government department responsible for administering the *Building Act*. MBIE has experience in running investigations into building products, which will be applied to implementing the changes to the regulation of building products and methods. Further work will be carried out on the detailed processes needed to support the use of the proposed powers to ensure consistency and certainty. An enforcement strategy will be prepared and published, in line with good regulatory practice.

BCAs are co-regulators in the building system. The roles, responsibilities and functions of BCAs would not be directly changed by the proposed changes. However, some of the changes (such as requiring information about building products and strengthening the framework for MMC) are expected to affect how BCAs make decisions about building consents and their enforcement functions.

There are potential overlaps with the enforcement responsibilities for MBIE and the Commerce Commission. MBIE will work with the Commission to identify how these enforcement responsibilities should be split and enter into a memorandum of understanding with the Commission.

MBIE will develop educational materials and a targeted campaign to raise awareness and understanding of the changes. MBIE will identify the best mechanisms to reach different audiences (eg. building owners, building professionals and tradespeople, BCAs and other regulators) to increase understanding. We will continue to communicate the proposed changes to all affected parties during the Parliamentary and Select Committee processes. This will provide all industry stakeholders with sufficient time to adjust their operations as needed.

Building levy

Any new expenditure initiatives on stewardship will be controlled by a range of external and internal decision-making frameworks. Further work is required to review the building levy allocation framework once the authority to use the levy for stewardship purposes has been agreed. This review

requires the development of clear prioritisation criteria to guide levy spending decisions on stewardship initiatives.

The following tests will be included into a revised framework to guide future spending decisions:

- *Authority* – does MBIE have the enabling legislation/legal authority to spend the levy on this, under the definition of MBIE’s building sector stewardship function?
- *Cost recovery* – does spending the levy align with Treasury and Office of the Auditor General best practice guidance by providing or improving building related services to levy payers or manage the risks created by levy payers who construct, renovate or buy homes or commercial buildings?
- *Strategic Alignment* – does the spending align with MBIE’s regulatory stewardship strategy, including medium- to long-term goals for the building regulatory system and actions to move the sector as a whole towards those goals?
- *Appropriateness* – is the spending in accordance with the principles of responsible fiscal management under *Public Finance Act*?
- *Priority* – which activities provide the best use of levy revenues?

5.2 What are the implementation risks?

The success of these options is dependent on effective education and enforcement mechanisms and processes to support compliance. Implementation planning is underway to support the ability of sector participants to comply with the proposed policy changes.

Some submitters noted that meeting new requirements for product information would largely depend on the time taken for regulatory bodies to set clear requirements and the time needed for suppliers to compile existing information.

Some submitters expressed concern about the proposed transition period of six months for the roles and responsibilities for building products. As there are no changes proposed to the actual legal obligations, MBIE considers that any concern is unnecessary, as the changes would support compliance with existing obligations rather than create new ones.

During consultation, some stakeholders expressed caution about the complexity of the building system and fast evolving pace of the industry. They suggested that the legislative reform progress in a logical and sequential fashion with change being made to only one variable at a time so that the effect of any change can be properly assessed, before introducing further change. This feedback has informed the decision to introduce changes in phases, and will be factored into the implementation planning.

Section 6: Monitoring, evaluation and review

6.1 How will the impact of the new arrangements be monitored?

An evaluation framework has been prepared for both phases of the legislative reform programme. The evaluation framework presents a systems-level approach, rather than attempting to artificially separate and evaluate the interdependent interventions in the two phases. For example, it identifies common elements of desired improvement for both building products and occupational regulations alike, such as “more available information for and awareness of key sector players”, and “better informed decisions and compliance by key sector players”.

The evaluation framework is a living document that will be updated on an annual or as-needed basis. It sets out three overarching key evaluation questions (KEQs):

To what extent are the building system reforms –

KEQ1 ... working as intended, with regard to their design and implementation?

KEQ2 ... achieving the intended outcomes?

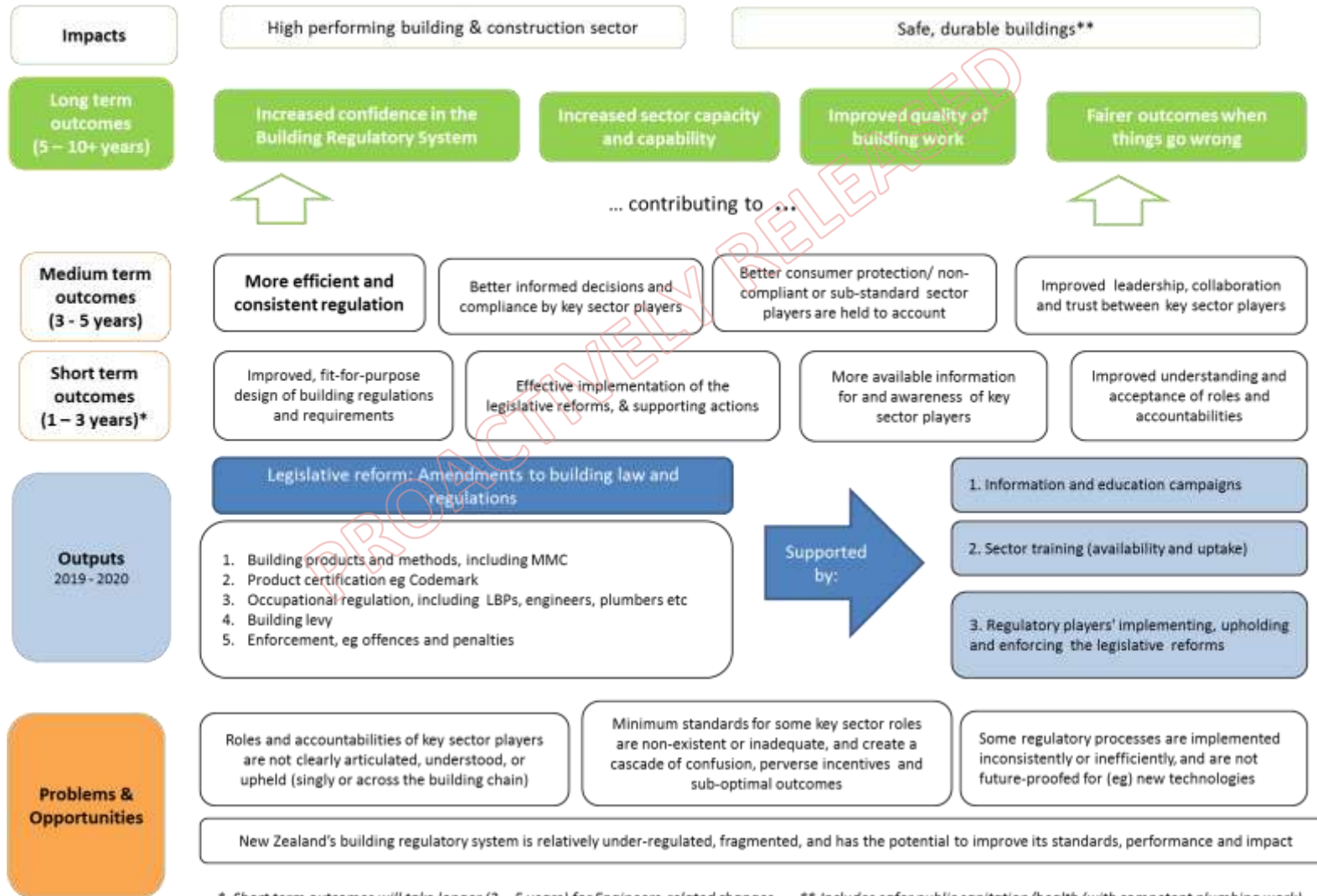
KEQ3 ... worth the investment, i.e. maximising the value of the desired outcomes proportionate to the costs and risks, and providing ongoing value-add?

An associated rubric sets out the evaluative criteria to answer the KEQs by aggregating and analysing an expected mix of qualitative and quantitative data across the topic areas of the building system reforms.

Specific evaluation activities will be confirmed following policy decisions, and will focus on tracking the short and medium-term outcomes (1 – 5+ years) that can be realistically attributed to the legislative reform programme.

These are set out in the middle two rows of the intervention logic model, which sets out in a diagram the steps of the intended changes, as an overall ‘map’ of what to monitor and evaluate. The logic model implicitly draws on conceptual models of behaviour change, demonstrating there is not a simple or fast ‘leap’ from implementing an intervention to the desired impacts (such as “*Safe, durable buildings*”); but rather an incremental approach from improved awareness and attitudes, to increased skills and confidence, to behaviour change and improved compliance.

DRAFT Logic Model for Legislative Reform Programme



* Short term outcomes will take longer (3 – 5 years) for Engineers-related changes. ** Includes safer public sanitation/health (with competent plumbing work)

The evaluation will initially prioritise key data collection activities in 2019/20 that capture relevant baseline/ pre-intervention data to inform the design and implementation, and provide a point of comparison in later monitoring and evaluation of progress, eg. current state attitudes and awareness around building products and methods (in particular), the building levy, and offences and penalties. In parallel, MBIE is developing a building system strategy and associated performance framework, which monitors system-level outcomes and impacts across the building regulatory system. This is consistent with MBIE's role of maintaining the *Building Regulatory System Charter*, ie. to “take all necessary steps to ensure implementation and administration of the Act and review Act as necessary”; and “monitor and report to the Minister on current and emerging trends...”¹⁴. The performance framework will enable monitoring of long-term system-level outcomes that legislative reform programme will contribute to (along with multiple other factors).

6.2 When and how will the new arrangements be reviewed?

The evaluation will involve regular rapid (3 – 6 monthly) feedback loops to inform the design and implementation, and some deeper ‘reviews’ of results at a more outcomes level (1 – 2 yearly). The evaluation framework is a living document that will be updated on an annual or as-needed basis. Detailed arrangements will be developed following confirmed policy decisions, based on key audience needs and expectations, budget and data availability.

¹⁴ Ministry of Business Innovation and Employment, *Regulatory Charter: Building regulatory system* (2017), Annex 1, page 14.

Annex 1: Detailed cost-benefit analysis

The cost-benefit analysis has been compiled using a number of estimates and assumptions. It represents the costs and benefits based on those estimates and assumptions. It only represents indicative findings.

Table 1: Building products

Building Products	\$ 000's										
<i>2019 values, unadjusted for inflation</i>	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30
<i>benefits = -ve costs = +ve</i>											
Costs	<i>transition TBD</i>										
Cost of Compliance (M&S)	17,000	16,447	16,084	16,554	16,318	16,694	16,683	16,585	17,000	17,000	
Cost of Compliance (Initial)	24,000	-	-	-	-	-	-	-	-	-	-
Products repository (removed)	-	-	-	-	-	-	-	-	-	-	-
Codemark	29	29	14	14	14	14	14	14	14	14	14
Investigative Powers & enforcement	1,750	1,750	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
<i>Verification, Accreditation, MBIE Setup*</i>		640	640								
<i>MMC Manufacturer (estimated fees)*</i>			941	964	988	1,011	1,035	1,058	1,082	1,105	
Total	42,779	18,865	19,178	19,032	18,820	19,219	19,231	19,157	19,596	19,619	
Benefits											
Inspection Failure	- 3,004	- 2,906	- 2,842	- 2,925	- 2,884	- 2,950	- 2,948	- 2,931	- 3,004	- 3,004	- 3,004
Cost of delay	- 8,925	- 8,635	- 8,444	- 8,691	- 8,567	- 8,764	- 8,758	- 8,707	- 8,925	- 8,925	- 8,925
Non-Conforming - rework	-	-	-	-	-	-	-	-	-	-	-
Consenting Duplication (BCA)*		-	- 1,184	- 1,252	- 1,267	- 1,330	- 1,363	- 1,388	- 1,458	- 1,492	
Consenting Duplication Manufacturer*		- 1,076	- 1,082	- 1,145	- 1,159	- 1,216	- 1,246	- 1,269	- 1,333	- 1,364	
Total	-11,929	-12,617	-13,552	-14,013	-13,876	-14,260	-14,316	-14,296	-14,719	-14,785	
Net Position	30,850	6,248	5,626	5,019	4,943	4,959	4,916	4,861	4,876	4,834	
<p><i>Due to one off compliance, costs are (significantly) greater than benefits in year 1. Then become minimal reducing overtime, as monetised benefits take effect.</i></p> <p><i>Non-monetised benefits (refer section 4.2) are expected to 'significantly' outweigh this compliance. (eg Housing affordability from MMC scale & NZ Inc brand)</i></p>											

Assumptions & sources*note - the transition plan is yet to be determined.**midpoints used in case of ranges*

Consents and value - Stats NZ, 2018 All Buildings

Intl Chamber of Commerce, counterfeit products 5-7%

ABCB & Deloitte - Cost of building products as a % of builds 16-40%

Branz CBA on Product Catalogue (*adjusted*) - *removed*

Number of manufacturers and suppliers (importers) 1000 - Branz

Inspections failure rates 33%, and building product cause 7.6% - 'Gogets' data set - MBIE

Cost of delay - Housing Accord Dec 2018 (\$1000 per week). Average 'products' delay 21 days.

Australian Building Codes Board estimate of cost of product testing \$30,000 AUD

EU Construction Products Directive ongoing cost of compliance - applicable to NZ market conditions

Initial cost of compliance (dataset - submission) - commercially sensitive

Indicative Scheme Admin Costs have been sourced from JAS-ANZ - commercially sensitive

Codemark MBIE of PCB / Certification registration Audit process. No of PCB 4, no of certificates 150.

*Business case pending - MMC Verification (VB) , Accreditation Bodies (AB) and MBIE will incur initial setup costs; thereafter - VB delivers services & fees, AB & MBIE cost recover through fees, MMC Manufacturer fee payer

Number new builds using OSM - 10 Branz, with a further 0.5% growth p.a.

Scale is unknown, we have assumed MMC Manufacturers Cert at 213 in yr1 then growing in line with OSM growth

Additional FTE for BSA team to support BSLRP implementation and other (12 FTE)

Benefit realisation (dataset - submission)

Optimism bias (Mott MacDonald) - WIP

Other *Economic impacts of the Construction Products Regulation - 2016*

Deloitte report on the cost of Building Materials - 2019

ABCB submission paper (Non-Conforming Building products) - 2015

The Impact of Regulation on housing affordability - RMBNZ

Productivity Commission Inquiry - 2006/07

Proposals for reform of the building safety regulatory system - England 2019

Table 2: Offences, penalties and public notification

Offences & Penalties	\$ 000's										
<i>2019 values, unadjusted for inflation</i>	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30
<i>benefits = -ve costs = +ve</i>											
Costs	<i>transition TBD</i>										
Loss of Revenue - Media		10	10	10	10	10	10	10	10	10	10
Additional fines for Professionals	4,000	3,870	3,784	3,895	3,840	3,928	3,925	3,902	4,000	4,000	
<i>Investigations (BCA's) - Potential for more investigations as time less of a constraint</i>											
Total	4,010	3,880	3,794	3,905	3,850	3,938	3,935	3,912	4,010	4,010	
Benefits											
Revenue / fines (BCA's, Prof'l Bodies, C	4,000	3,870	3,784	3,895	3,840	3,928	3,925	3,902	4,000	4,000	
Fewer Investigations (Prof'l Bodies)	- 400	- 387	- 378	- 390	- 384	- 393	- 393	- 390	- 400	- 400	
Lower media expenditure - mbie	- 10	- 10	- 10	- 10	- 10	- 10	- 10	- 10	- 10	- 10	
<i>Investigations (BCA's) - No direct benefit, Possible more convictions as time less of a constraint</i>											
Total	- 4,410	- 4,267	- 4,173	- 4,295	- 4,234	- 4,331	- 4,328	- 4,303	- 4,410	- 4,410	
Net Position	- 400	- 387	- 378	- 390	- 384	- 393	- 393	- 390	- 400	- 400	
Assumptions & sources	Revised maximum penalties v current calculations Current estimated frequency of fines, penalties ('some' data available publically eg LBP's) Summary investigation expenditure available by some professional bodies (extrapolated) Estimated media expenditure decline based on linear of historic - abc.org.nz/ Prosecutions / Investigations and Infringements - sample provided by BCA's Consents and value - Stats NZ										