

10 July 2020

New Zealand Construction Industry Council (NZCIC) Submission on the Building (Building Products and Methods, Modular Components and Other Matters) Amendment Bill

Introduction

The New Zealand Construction Industry Council (NZCIC) is a not-for-profit peak industry association representing around 35 member organisations involved in the delivery of our built environment — Members include designers and specifiers (architects, engineers etc.), contractors and suppliers (manufacturers, distributors, builders etc.) and a range of other building professionals (compliance, research, surveyors, developers etc.).

The NZCIC welcome the Government's commitment to building regulatory reform and acknowledges that such opportunities to shape and influence regulation do not come around very often. Therefore, the NZCIC and its members welcome the opportunity to provide feedback on the Building (Building Products and Methods, Modular Components and Other Matters) Amendment Bill (the Bill).

Several of the member associations of the NZCIC have also provided their own specific feedback on this Bill. This submission represents a general combined view of NZCIC members on key parts of the Bill. Some views expressed in this position statement may not align with the views of some NZCIC members.

Attached to this submission is the NZCIC January 2020 Position Statement on building regulatory reform that provides coverage on aspects contained in this Bill as well as other aspects of the building system.

General comments on the Bill

Product Information and Product Certification

The proposals to require the provision of minimum product information and the strengthening of the CodeMark scheme are welcomed by members of the NZCIC. The NZCIC however have concerns relating to the enforcement and monitoring of building products and the fact that product certification is still voluntary. This is particularly unacceptable for building products that are critical, where their failure could endanger building occupants and/or compromise building owners - building owners deserve greater assurance. Industry professionals should also be able to trust and rely upon the information provided on products, otherwise risk and responsibility continues to be transferred.



To enhance public trust and confidence in the building industry and protect the interests of those who own, work, live or conduct other activities in New Zealand buildings, a more robust, targeted framework to ensure building code compliance for building products, particularly those critical to the health and safety of building occupants is recommended.

This should involve:

- The introduction of a co-designed national registration framework for all building products and building methods (which should include as a minimum disclosing how the product or method meets the Building Code) and the establishment of an agency to undertake monitoring and enforcement.
- For critical building products (e.g. external cladding systems, fire safety systems) compliance with relevant Standards should be mandatory.
- Targeted critical building products need to be independently certified by appropriately accredited and routinely audited bodies before being able to be used in New Zealand building projects. The benefits of implementing this would realise increased confidence in building performance through a reduction in building product failure and ongoing costs to owners and occupiers.

It should also be noted that voluntary product certification is inconsistent with other key elements of the building regulatory system. For example, mandatory builder licensing is required for restricted building work and similarly, accreditation of Building Consent Authorities is required.

The NZCIC note the Bill unfortunately does not address building industry issues that result from product substitution during the delivery of building projects. Robust processes and requirements need to be developed for product substitution to ensure building code compliance and/or safety in design decisions are not compromised, including processes for decision making, competence requirements of decision makers and the resulting liability for any resulting non-compliance. The NZCIC would encourage timely consideration be given to address this gap and the potential significant risks from non-compliance in future building regulatory reforms.

Modern Methods of Construction (MMC)

The introduction under the Bill of a new voluntary manufacturer scheme for Modern Methods of Construction (MMC) is generally supported by the NZCIC.

The NZCIC appreciate the development of the framework for MMC but believe the framework can be simplified by removing some unnecessary layers of bureaucracy. The Bill indicates that a modular component manufacturer (MCM) needs to be registered with MBIE and certified with a modular component manufacturer certification body (MCMCB).

It is recommended that an MCM being certified by an MCMCB is sufficient to operate as an MCM.

The need for an MCMCB to register with MBIE and be accredited to an MCMC accreditation may also be considered a duplication of process and potentially introduce unnecessary cost and time delays.





Offences and Penalties

There is general endorsement for the proposals in this part of the Bill that ensure schemes under the Building Act are supported with fair and consistent offences and penalties.

Use of Building Levy

The NZCIC support widening the purposes for which the building levy may be used. Acknowledging the significant surplus that has accrued in the building levy account more proactive use on aspects that support the building system such as Standards maintenance and development, and working collaboratively with industry to target skills gaps, should be encouraged.

This investment of surplus building levy money could also extend to the establishment of the previously suggested National Registration Framework for Building Products.

A possible companion National Registration Framework for Building Practitioners could also be considered to address occupational regulation and refresh and extend the existing Licensed Building Practitioner Scheme.

This proactive spending can also support the Construction Sector Accord Transformation Plan workstreams.

Recommendations

The NZCIC recommend that the Select Committee alter or incorporate the following provisions in the Bill:

- Introduce a co-designed national registration framework for all building products and building methods (including minimum information requirements) with the establishment of a dedicated agency to undertake monitoring and enforcement
- Make mandatory compliance with relevant Standards for critical building products
- Require that targeted critical building products be independently certified by appropriately accredited and routinely audited bodies before being able to be used in New Zealand building projects.
- Simplify the Modern Methods of Construction framework by removing the need for registration of an MCM (and an MCMCB) with MBIE
- More proactive spending of the building levy surplus should be encouraged to support improvements of the building system

The NZCIC would also encourage the Government and the Building Regulator (MBIE) to prioritise a review of the risks and system requirements from product substitution, to ensure trust, confidence, appropriate risk allocations and accountability in the sector.



Thank you for the opportunity to provide feedback on this Bill. I will be happy to provide further clarification and detail and I otherwise look forward to presenting the NZCIC feedback to the Select Committee.

Yours faithfully,



Graham Burke
Chair of the New Zealand
Construction Industry Council

Encl. NZCIC January 2020 Position Statement on Building Reform



January 2020

New Zealand Construction Industry Council (NZCIC) Position Statement on Building Reform

Introduction/Background

1. The New Zealand Construction Industry Council (NZCIC) is a not-for-profit peak industry association representing around 30 member associations in the building and construction sector.
2. A number of the member associations of the NZCIC have provided their own specific feedback on the Building System Legislative Reform consultation conducted in 2019. Amongst the NZCIC membership there is general support to reform current building regulations.
3. The NZCIC have identified several strategic workstreams. Building regulatory reform is one of these. Other strategic workstreams include Vocational Education, Construction Sector Accord, Industry Attractiveness, Fair and Equitable Contracts and Sustainability.
4. The NZCIC and its members welcome the opportunity to be engaged in the co-design future building regulations. They represent the users of the building regulatory system and are here to help!!!
5. The NZCIC recognise that the Construction Sector Accord (CSA) Government-led priority work area to improve building regulatory systems and consenting processes will also intersect with proposals contained in this position statement.
6. This position statement represents a general combined view of NZCIC members on the key parts of the regulatory reform contained in the April 2019 MBIE discussion paper and the decisions the regulator and/or Minister has made subsequent to the consultation process. It is acknowledged that some views expressed in this position statement may not align with the views of some NZCIC members.

General NZCIC observations on Building Regulatory Reform

7. The NZCIC welcome the Government's commitment to regulatory reform and acknowledges that such opportunities to shape and influence regulation do not come around very often. The NZCIC members had high expectations when the reforms were announced in 2019 and are seeking to be engaged in the ongoing work MBIE needs to undertake to implement the reforms.
 8. The processes proposed to facilitate Modern Methods of Construction (MMC) are a significant improvement – the other reforms that have been agreed to proceed are
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considered by the NZCIC to make little substantive change to the way most building projects are delivered.

9. Whilst the proposed reforms did not cover the Building Code System the NZCIC strongly support work be undertaken to prioritise updating the Building Code System to ensure it is current and functional.
10. NZCIC supports the proposed changes to broaden the way the Building Levy may be allocated by the regulator; however, NZCIC are concerned that the decision to reduce the building levy rate may have unintended consequences. The costs to support industry betterment, such as implementing the work of the CSA, educating the building industry on future new regulations as well as the unknown costs that could result from broadening the scope of what the levy can be spent on could be compromised if the decision to reduce the building levy is applied.
11. The NZCIC believe building industry transformation will require a change in industry culture and behaviours. In response to an environment of risk and liability, relationships will be critical. The reforms proposed so far do not propose changes to the settings for risk and liability. Change and transformation, will need these settings to be reviewed as a matter of priority. In the interim, Government and industry behavioural change can provide a positive first step.

Comments on the specific parts of the building regulatory reform

Products

12. The proposals to require the provision of minimum product information are welcomed by members of the NZCIC. The NZCIC have concerns relating to enforcement of new regulations, product substitution and ensuring critical building products have systems in place to achieve building code compliance.
 13. No mechanism to monitor or enforce new building product regulations is proposed - is it otherwise left to market forces to self-regulate and use agencies such as the Commerce Commission to intervene when breaches are identified? To determine enforcement requirements the NZCIC would encourage a discussion with those that are likely to be involved in the enforcement, such as BCAs and supporting institutions, to assist with developing processes and understanding implications.
 14. Robust processes and requirements need to be developed for product substitution to ensure code compliance is not compromised, including processes for decision making, competence requirements of decision makers and liability for resulting non-compliance. The NZCIC would welcome the opportunity to co-design the processes and requirements.
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15. The strengthening of the CodeMark scheme to certify products meet the Building Code is welcomed – under the proposed reforms it is still a voluntary scheme so its ability to make significant changes to ensure (targeted) building products routinely comply is limited. Mandating that critical building products must demonstrate compliance with the building code/cited Standards is considered an essential underpinning requirement for building outcome improvements. The NZCIC would advocate regular third-party auditing of building products and systems approved in building regulatory schemes.

Occupational Regulation

16. It is understood that new proposals are being developed for this part of the reform programme. The NZCIC are eager to participate in developing the new proposals with the intent that occupational regulation schemes are strong and robust, so public trust and confidence is maintained.

Risk and Liability

17. The opportunity to achieve significant improvements in consenting processes and holistic treatment of risk and liability in the opinion of the NZCIC was a missed opportunity.
18. The NZCIC understand that the CSA has targeted building consenting as a key lever to improve the performance of the building sector and it is understood that there is support from their work to look at establishing a single national building consent authority (replacing the approximately current 70 BCAs). The NZCIC strongly support investigating the viability of establishing a more robust and streamlined consenting system and consider this reform has significant potential to transform the building sector by improving consenting consistency, quality and efficiency. The NZCIC are eager to contribute to this work.
19. This work could be further enhanced by implementing the regulations that support undertaking risk-based consenting so that a new consenting system can more logically allocate resources to target the projects where the consequences and risks are greatest. Work to establish if this is likely to be more efficient, and development of an implementation plan, needs to be undertaken. The NZCIC would encourage consultation with industry to determine if there is wider support to progress this.

Building Levy

20. The regulator has made the decision to broaden the way the building levy may be used and reduce the building levy rate. The majority of NZCIC submissions supported maintaining the building levy at its current rate and that the building regulator should look to invest the accumulated surplus generated by the building levy on aspects that support the building regulatory system such as standards development.
 21. Going forward the NZCIC would like to be involved in the process of deciding how building levy money is invested to ensure betterment and value for the industry is achieved.
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Offences, penalties and public notification

22. There is generally agreement with the proposals on this part of the regulator's reform programme. However, the potential to quickly change practitioner behaviour through an effective and enhanced infringement offences mechanism appears to be missed.

Conclusions / next steps

23. The NZCIC support the Government initiatives to undertake reform of the building sector and given our representation and interests NZCIC are seeking to collaborate and partner with the building regulator in its ongoing work to design new regulations.

24. The key matters that the NZCIC want to work with MBIE to improve the building regulatory system are:

- Ensure mechanisms are in place to enforce any new regulations for building products with a focus on checking that critical building products comply with the Building Code and cited Standards and developing robust processes for product substitution
 - Deciding how building levy money will be invested to ensure maximum value for industry, public outcomes and Government
 - Investigate the feasibility of establishing a more streamlined and efficient consenting system with the potential incorporation of regulations that support risk-based consenting
 - Develop strong and robust occupational regulation schemes
 - Updating the building code system to ensure it is current and functional
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