

Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill

Government Bill

As reported from the Environment Committee

Commentary

Recommendation

The Environment Committee has examined the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The bill forms part of wider reforms to the construction sector that seek to improve the efficiency and quality of building work, and ensure that any problems are resolved fairly.

The bill would mainly amend the Building Act 2004. Part 2 would make consequential changes to other legislation. The bill would:

- strengthen the existing product certification scheme (known as CodeMark) to ensure that products sold in New Zealand comply with the building code
- establish a new manufacturer certification scheme for non-traditional methods of construction, such as modular components and off-site manufacture
- strengthen the penalties for breaches of the requirements, and create new offences for noncompliance
- expand the use of the building levy to fund a broader range of functions and activities by the Ministry of Business, Innovation and Employment (MBIE)
- clarify the definitions of “building product” and “building method”, and introduce minimum requirements for information about products and methods, to support informed decision-making.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. Other than noting the following matter regarding definitions of terms, we have no issues regarding the legislation's design to bring to the attention of the House.

Definitions of “building product” and “building method”

Clause 7 would insert sections 9A and 9B in the Act to define the terms “building product” and “building method”. The bill would also allow specific products and methods to be declared by Order in Council to be (or not to be) building products and building methods.

The Regulations Review Committee noted that this type of Order in Council would be a “Henry VIII” power. It recommended that the bill be amended to either define the terms more directly, or to include more limits on how regulations might determine their meanings.

A number of submitters also commented on the definitions, and the provision for Orders in Council.

We have carefully considered the points raised, and on balance do not propose amending the definition provisions in the bill. This is because building products and building methods may evolve over time, and the regulation-making power would allow for this, without the need to return any legislation to Parliament. We note that any Orders in Council could only be made after appropriate consultation (clause 95), and would be subject to parliamentary scrutiny under the disallowance procedure.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss all minor or technical amendments. For example, we do not discuss the amendments made to support the Legislation Act 2019.

Our proposed changes are largely designed to improve the workability of the bill as introduced. In several instances, we propose equivalent changes in respect of both the product certification scheme and the proposed modular component manufacturer certification scheme.

Commencement date

Clause 2(2)(b) specifies that all sections of the bill not brought into force by clause 2(1) or clause 2(2)(a) would take effect 12 months after the date of Royal assent.

We are aware that a number of complex new regulations would be needed to implement some of the changes proposed by the bill. We wish to ensure that sufficient time is provided for the regulations to be developed, and appropriate consultation to occur. Accordingly, we recommend amending clause 2(2)(b) to extend the final commencement date to 15 months after the date of Royal assent.

Processing an application for building consent

Under section 48 of the Building Act, the standard time limit for decisions on building consent applications is 20 working days, but this is shortened to 10 working days in specified circumstances.

Clause 23(3) of the bill would insert new section 48(1A)(aa), specifying additional circumstances in which a building consent application would need to be processed in 10 working days. This is designed to speed up work on buildings consisting of a single modular component.

We consider the proposed section unclear. We recommend amending the proposed provision to make it clear that the 10 day time limit would apply when the building consisted entirely of a single modular component, and had been manufactured by a single certified manufacturer.

Issuing a code compliance certificate

Section 94 of the Act sets out the criteria that a building consent authority must consider when deciding to issue a code compliance certificate for building work. This is primarily to determine whether the building work complies with the building consent, and whether any of the building products or building methods used are subject to a current warning or ban.

We are concerned that the criteria for issuing a code compliance certificate do not allow for a manufacturer's certificate for a modular component to be considered or accepted as proof of compliance with the building consent.

We recommend amending clause 31 to insert section 94(2)(a) to allow this.

Audit of a registered product certification body

Clause 66, new section 267B(1), provides for the chief executive of MBIE to audit a registered product certification body (PCB). This would be to determine whether the PCB continued to meet the criteria for accreditation and registration, and whether there were grounds to suspend or revoke their accreditation or registration.

We note that the Act already provides for the accreditation of a PCB to be audited by a product certification accreditation body. It would duplicate this work to also require the chief executive to assess a PCB against the criteria for accreditation. We consider it more appropriate that an audit under new section 267B(1) should only assess a PCB against the criteria for registration.

We recommend amending clause 66, new section 267B(1), to this effect.

We recommend an equivalent amendment in clause 71, new section 272O, for audits of modular component manufacturer certification bodies.

Certification of building products and building methods

At present, product certificates can cover a combination of a building product and a building method. Clauses 68 and 69 of the bill as introduced would change this by

amending sections 268 and 269 of the Act. They would remove the ability for a product certificate to be issued for building work that uses a combination of building products and building methods.

We consider that the current flexibility should be retained. We recommend amending clause 70 to insert new section 269(2) to allow a product certificate to be issued for both a building product and a building method if they are intended to be used together.

Annual review of a product certificate

Clause 70, new section 270(6), would enable a PCB to charge a prescribed fee for auditing a product certificate.

The complexity of an audit would differ for each product certificate, as would the time and resources needed. We consider that the product certificate holder and the PCB would be better placed to determine the audit fee by contract, rather than prescribing it by legislation. We therefore recommend amending clause 70 to remove new section 270(6).

We recommend an equivalent amendment in clause 71, new section 272V, for audits conducted by a modular component manufacturer certification body.

Lifting the suspension of a registered product certificate

Clause 70, new section 272B(2)(a), would enable the chief executive of MBIE to suspend the registration of a product certificate if the responsible PCB had failed to comply with the product certification scheme rules. The product certificate holder could apply to the chief executive to lift the suspension under new section 272C(2)(a).

We consider that it would be unreasonable for the product certificate holder to pay a prescribed application fee if the registration was suspended due to the noncompliance of the PCB that issued it.

We recommend inserting new section 272C(3A) to remove the fee for a suspension under section 272B(2)(a).

We recommend an equivalent amendment to clause 71, new section 272ZB, to remove the fee for a suspension of a modular component manufacturer.

Product certification scheme rules

Clause 70, new section 272E(1), would allow the chief executive of MBIE to establish rules for the product certification scheme.

We recommend amending clause 70, new section 272E, to ensure that the rules set by the chief executive could supplement any regulations made under sections 402(1)(tb)(ii), 402(1)(u)(i), and 402(1)(u)(ii). This amendment would allow technical detail to be updated or changed frequently, and improve the workability of the scheme.

We recommend equivalent amendments to clause 71, new sections 272J and 272U, in respect of the rules for the modular component manufacturer scheme.

Certification of a modular component manufacturer

A member has concerns that a designer would not appear to have a role in certifying whether products manufactured in accordance with their design, do in fact comply with the design intent.

Limitation defences

Section 393 of the Building Act sets out the circumstances in which the 10 year time limit to file civil proceedings applies in relation to building work.

We recommend inserting clause 92A to amend section 393 to make it clear that the 10 year time limit for civil proceedings would include building work associated with the manufacture of a modular component.

Product certificates for building designs or building design methods

Clause 97(2) would allow for an existing product certificate to become registered as a certified building product or building method as if it had been certified under the new product certification scheme.

We are aware that some existing product certificates will have been issued for building work that would not fit either the new definition of building product or building method. In particular, this would be the case with product certificates issued for a building design or building design method.

We recommend amending clause 97(2) to insert clause 9A in Schedule 1AA so that any continued product certificate relating to a building design or a building design method is deemed a building method for the purpose of certification under the scheme.

Other amendments

We recommend amending several clauses of the bill to improve the workability of the proposed modular component manufacturer scheme, and to ensure that it interacts well with the existing building consent process. Our recommendations include amendments to:

- the definition of “building work” to exclude the design of a modular component (clause 4)
- the circumstances that would require a building consent authority to accept a product certificate as establishing compliance with the building code (clause 13(2))
- the circumstances that would require a current manufacturer’s certificate to be provided to a building consent authority (clauses 22 and 30)
- the circumstances that would not require building consent (clause 20).

Our recommendations would also affect clauses 71, 80, and 83. We also recommend consequential amendments to insert new clauses 78A, 79A, and 82A, to clarify how

the modular component manufacturer scheme would interact with consumer rights and remedies under the Act.

Appendix

Committee process

The Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill was referred to the Environment Committee of the 52nd Parliament on 27 May 2020.

The committee invited submissions on the bill with a closing date of 10 July 2020. It received and considered 93 submissions from interested groups and individuals. It heard oral evidence from 28 submitters.

The bill was reinstated with this committee in the 53rd Parliament on 26 November 2020.

Advice on the bill was provided by the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

The Regulations Review Committee reported on the powers contained in clause 7.

Committee membership

Hon Eugenie Sage (Chairperson)

Rachel Brooking

Tamati Coffey

Simon Court

Anahila Kanongata'a-Suisuiki

Debbie Ngarewa-Packer

Dr Deborah Russell

Hon Scott Simpson

Stuart Smith

Tangi Utikere

Angie Warren-Clark

**Building (Building Products and Methods, Modular
Components, and Other Matters) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Poto Williams

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act **2020**.

2 Commencement

5

(1) **Sections 6(7), 9, 16(3), 21, 23(1), 24 to 29, 33 to 45, 50, 54, 60, 75 to 79, 83, 85 to 91, and 94** come into force on the day after the date of Royal assent.

(2) The rest of this Act comes into force as follows:

- (a) on 1 or more dates set by Order in Council; or 10
- (b) to the extent not brought into force earlier, on the day that is ~~12~~ 15 months after the date of Royal assent.

(3) One or more orders may be made under **subsection (2)(a)** bringing different provisions into force on different dates.

(4) An Order in Council made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 15

Part 1

Amendments to Building Act 2004

3 Amendments to Building Act 2004

This Part amends the Building Act 2004. 20

4 Section 4 amended (Principles to be applied in performing functions or duties, or exercising powers, under this Act)

- (1) In section 4(2)(b), replace “building methods or products or of a particular building design” with “building products, building methods, or building designs”. 5
- (2) In section 4(2)(f), replace “building design and construction” with “building products, building methods, and building designs”.
- (3) In section 4(2)(g), replace “methods of building design and construction” with “building products, building methods, and building designs”.
- (4) In section 4(2)(n)(i), replace “materials (including materials” with “building products (including building products”. 10

5 Section 5 amended (Overview)

- (1) Replace section 5(2)(c)(v) and (vi) with:
 - (v) provides for—
 - (A) the appointment of a person as the product certification accreditation body; and 15
 - (B) the accreditation and registration of product certification bodies; and
 - (C) the certification of building products and building methods and the registration of those certificates: 20
 - (vi) provides for—
 - (A) the appointment of a person as the modular component manufacturer certification accreditation body; and
 - (B) the accreditation and registration of modular component manufacturer certification bodies; and 25
 - (C) the certification and registration of modular component manufacturers:
- (2) After section 5(2)(d), insert:
 - (da) Part 4A deals with consumer rights and remedies in relation to residential building work: 30
 - (db) **Part 4B** deals with building product information requirements and suppliers’ obligations in relation to information:
- (3) After section 5(2)(e), insert:
 - (f) Schedule 1AA deals with transitional, savings, and related matters.

6 Section 7 amended (Interpretation) 35

- (1) In section 7, repeal the definition of **building method or product**.
- (2) In section 7, insert in their appropriate alphabetical order:

accredited MCMCB means a person who has been accredited as a modular component manufacturer certification body under **section 272J** and whose accreditation is not suspended and has not been revoked

accredited PCB means a person who has been accredited as a product certification body under **section 263** and whose accreditation is not suspended and has not been revoked

building method has the meaning given to it by **section 9B**

building product has the meaning given to it by **section 9A**

certified MCM means a person who has been certified as a modular component manufacturer under **section 272U** and whose certification is not suspended and has not been revoked

manufacturer's certificate, in relation to a modular component, means a certificate issued by a registered MCM manufacturer for the modular component under **section 272ZF**

MCM scheme rules means the rules made under **section 272ZG**

MCMC accreditation body means—

- (a) the person appointed under **section 272I**; or
- (b) if no person is appointed, the chief executive

modular component means a building product of a prescribed kind

modular component design means the drawings, specifications, manufacturing processes, and other documents according to which a modular component is, or is to be, manufactured

product certificate means a certificate issued under **section 269** in relation to a building product or building method

product certification scheme rules means rules made under **section 272E**

registered MCM means a person who has been registered as a modular component manufacturer under **section 272Y** and whose registration is not suspended and has not been revoked

registered MCMCB means a person who has been registered as a modular component manufacturer certification body under **section 272N** and whose registration is not suspended and has not been revoked

registered PCB means a person who has been registered as a product certification body under **section 267A** and whose registration is not suspended and has not been revoked

registered product certificate means a product certificate that has been registered under **section 272A** and the registration for which is not suspended and has not been revoked

responsible MCMCB, in relation to a certified MCM, means—

- (a) the registered MCMCB that certified the person as a modular component manufacturer; or
- (b) if the certified MCM has been audited under **section 272V** by a different registered MCMCB, the registered MCMCB who conducted the most recent audit under that section

responsible PCB, in relation to a product certificate or the proprietor of the building product or building ~~material~~ method to which it relates, means—

- (a) the registered PCB that issued the certificate; or
- (b) if the certificate has been reviewed under **section 270** by a different registered PCB, the registered PCB who conducted the most recent review under that section

(3) In section 7, definition of **building work**,—

- (a) paragraph (a), replace “work—” with “work that is either of the following.”;
- (b) paragraph (a)(i), replace “building; and” with “building.”.

(4) In section 7, definition of **building work**, after the last paragraph ~~(d)~~, insert:

(ef) includes the ~~design and~~ manufacture of a modular component

(5) In section 7, definition of **falsework**, paragraph (a), replace “materials,” with “building products,”.

(6) In section 7, definition of **plans and specifications**, after paragraph (c), insert:

(d) in the case of a building that will include a modular component, also includes the modular component design of that component

(7) In section 7, definition of **publicly notify**, repeal paragraph (a).

(7A) In section 7, definition of **rules**, replace “means” with “, in Part 4, means”.

(8) In section 7, definition of **scaffolding used in the course of the construction process**, paragraph (a)(ii), after “materials”, insert “or building products”.

7 New sections 9A and 9B and cross-heading inserted

After section 9, insert:

Meanings of building product and building method

9A Meaning of building product

(1) In this Act, **building product** means a product that—

- (a) could reasonably be expected to be used as a component of a building; or
- (b) is declared by the Governor-General by Order in Council to be a building product.

- (2) However, a product that would otherwise be a building product under **subsection (1)(a)** is not a building product if it is declared by the Governor-General by Order in Council not to be a building product.
 - (3) In determining whether something could reasonably be expected to be used as a component of a building, the following are relevant considerations: 5
 - (a) the purposes for which the thing is ordinarily used:
 - (b) the purposes for which the manufacturer or supplier intends the thing to be used:
 - (c) the purposes for which the thing is represented as being used for:
 - (d) the purposes for which the thing is likely to be used (because of the way in which it is presented or for any other reason). 10
 - (4) The matters listed in **subsection (3)** are relevant, but not determinative, considerations and do not limit what may be considered.
 - (5) An Order in Council made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 15
- 9B Meaning of building method**
- (1) In this Act, **building method** means a method—
 - (a) for using 1 or more products or things as part of building work; or
 - (b) for carrying out building work that is declared by the Governor-General by Order in Council to be a building method. 20
 - (2) However, a method that would otherwise be a building method under **subsection (1)(a)** is not a building method if it is declared by the Governor-General by Order in Council not to be a building method.
 - (3) An Order in Council made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 25
- 8 Section 11 amended (Role of chief executive)**
- (1) In section 11(b), replace “building methods or products” with “building products or building methods”.
 - (2) After section 11(k), insert:
 - (ka) registers persons as product certification bodies under **section 267A** and registers product certificates under **section 272A**; and 30
 - (kb) makes product certification scheme rules under **section 272E**; and
 - (kc) appoints a person as the modular component manufacturer certification accreditation body under **section 272I**; and
 - (kd) registers persons as modular component manufacturer certification bodies under **section 272N** and modular component manufacturers under **section 272Y**; and 35
 - (ke) makes MCM scheme rules under **section 272ZG**; and

- (3) In section 11(m)(iii), replace “Part 4A” with “subparts 7 and **7A** of Part 3 and Parts 4A and **4B**”.

9 Section 14 amended (Roles of building consent authorities, territorial authorities, and regional authorities in relation to dams)

In section 14(4), replace “to 232, 276 to 281, 363A, and” with “to 228, 232, 276 to 281, 363A, 371A to 371C, and”.

10 Section 14E amended (Responsibilities of builder)

Replace section 14E(2) with:

- (2) A builder who carries out building work that is covered by a building consent is responsible for ensuring that— 10
- (a) the building work complies with the building consent and the plans and specifications to which the building consent relates; and
 - (b) all building products and building methods used in carrying out that building work are used in a manner that complies with the building consent and those plans and specifications. 15
- (2A) A builder who carries out building work that is not covered by a building consent is responsible for ensuring that—
- (a) the building work complies with the building code; and
 - (b) all building products and building methods used in carrying out that building work are used in a manner that complies with the building code. 20

11 Section 14G amended (Responsibilities of product manufacturer or supplier)

After section 14G(2), insert:

- (3) A person who supplies a building product is responsible for ensuring that the person complies with **Part 4B** (building product information requirements). 25

12 Section 15 amended (Outline of this Part)

- (1) After section 15(1)(b), insert:
- (baa) for warnings and bans to be issued in relation to building products or building methods:
- (2) After section 15(1)(o), insert: 30
- (p) for matters relating to residential pool safety.

13 Section 19 amended (How compliance with building code is established)

- (1) In section 19(1)(d), replace “product certificate issued under **section 269**” with “registered product certificate”. 35
- (2) After section 19(1)(d), insert:

- (da) in relation to the design and manufacture of a modular component that is designed and manufactured by a registered MCM, a current manufacturer's certificate issued by that registered MCM:
- (db) ~~in relation to the manufacture of a modular component that is designed by someone who is not a registered MCM but is manufactured by a registered MCM, a current manufacturer's certificate for the component issued by the registered MCM:~~ 5
- (3) In section 19(2)(a), replace “warning issued, and ban declared,” with “warning or ban in force”.
- 14 Section 20 amended (Regulations may specify that there is only 1 means of complying with building code)** 10
- Replace section 20(2)(c) with:
- (c) building products and building methods that have a current registered product certificate.
- 15 Section 26 amended (Chief executive may issue warning about, or ban use of, building methods or products)** 15
- (1) In the heading to section 26, replace “**building methods or products**” with “**building products or building methods**”.
- (2) In section 26(1), replace “building method or product” with “building product or building method”. 20
- (3) In section 26(2)(a) and (b), replace “building method or product” with “building product or building method”.
- 16 Section 27 amended (Offence to use building method or product in breach of ban under section 26)**
- (1) In the heading to section 27, replace “**building method or product**” with “**building product or building method**”. 25
- (2) In section 27(1), replace “building method or product” with “building product or building method”.
- (3) Replace section 27(2) and (3) with:
- (2) A person who fails to comply with subsection (1)— 30
- (a) commits an offence; and
- (b) is liable on conviction,—
- (i) in the case of an individual, to a fine not exceeding \$300,000:
- (ii) in the case of a body corporate, to a fine not exceeding \$1,500,000. 35

- 17 Section 30D amended (Chief executive must decide whether to accept, for processing, application for national multiple-use approval)**
Replace section 30D(3)(b) with:
(b) includes a building product or building method in relation to which a ban under section 26(2) is in force; or 5
- 18 Section 30F amended (Issue of national multiple-use approval)**
Replace section 30F(1)(d) with:
(d) the application does not involve the use of a building product or building method in relation to which a ban under section 26(2) is in force; and
- 19 Section 40 amended (Buildings not to be constructed, altered, demolished, or removed without consent)** 10
Replace the heading to section 40 with “**Building work not to be carried out without consent**”.
- 20 Section 41 amended (Building consent not required in certain cases)**
After section 41(1)(e), insert: 15
(f) the manufacture of a modular component that is ~~carried out~~ designed and manufactured—
(i) by a registered MCM who is certified to design and manufacture the component; and
(ii) with the intention that the component will be used in building work that is carried out somewhere else. 20
- 21 Section 42 amended (Owner must apply for certificate of acceptance if building work carried out urgently)**
Replace section 42(2) and (3) with:
(2) A person who fails to comply with subsection (1)— 25
(a) commits an offence; and
(b) is liable on conviction,—
(i) in the case of an individual, to a fine not exceeding \$5,000;
(ii) in the case of a body corporate, to a fine not exceeding \$25,000.
- 22 Section 45 amended (How to apply for building consent)** 30
After section 45(1)(ba), insert:
(bb) if the building work includes the use of a modular component and the applicant wishes to rely on **section 19(1)(da) or (db)**, be accompanied by a current manufacturer’s certificate for the component; and
(bc) if— 35

- (i) the building work is the manufacture of, or includes the use of, a modular component; and
- (ii) the component is to be manufactured by a registered MCM who is certified to manufacture it but was designed by someone else; and
- (iii) the applicant intends to rely on **section 94(2)(a)**,—
be accompanied by a current manufacturer’s certificate for the compo-
nent; and

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23 Section 48 amended (Processing application for building consent)

- (1) In section 48(1A), replace “limit is—” with “limit is,—”.
- (2) In section 48(1A)(a) and (b), delete “within”.
- (3) After section 48(1A)(a), insert:

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(aa) 10 working days after receipt by the building consent authority of the application if—

- (i) the building work is work for or in connection with the construction of a whole building; and
- (ii) ~~the primary structure of that building (excluding the site work, such as foundations and connections to services) will consist solely of a single modular component; and~~
- (iii) that modular component is designed and manufactured by a registered MCM who is certified to design and manufacture it; and
- (iv) ~~the manufacturer’s certificate for that modular component covers all of the building work relating to the primary structure for which the building consent is sought, other than on-site construction of foundations and connection of the primary structure to services; and~~
- (iv) the manufacturer’s certificate for that modular component covers all of the building work to which the application relates other than site work such as foundations and connections to services; and

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(ab) if the building work includes the use of 1 or more modular components but **paragraph (aa)** does not apply, 20 working days after receipt by the building consent authority of the application or any shorter period prescribed by the regulations; and

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- (4) In section 48(3)(b), replace “building method or product to which a current warning or ban under section 26(2) relates” with “building product or building method in relation to which a warning or ban under section 26(2) is in force”.

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24 Section 53 amended (Applicant for building consent liable to pay levy)

- (1) In section 53(1), delete “for, or in connection with, the performance of the chief executive’s functions under this Act”.

(2) After section 53(1), insert:

(1A) The chief executive may use the levy for, or in connection with, the performance of—

- (a) the chief executive's functions under this Act:
- (b) the chief executive's functions—
 - (i) under any other Act that relates to the building sector or any part of the sector; and
 - (ii) that relate to monitoring, overseeing, or improving—
 - (A) the performance of the building sector or any part of the sector; or
 - (B) regulatory systems under that other Act.

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(3) Repeal section 53(3).

(4) After section 53(4), insert:

(5) **Subsection (1A)(b)** does not confer on the chief executive—

- (a) any function that the chief executive does not already have; or
- (b) any obligation to use the levy for the purposes mentioned in **subsection (1A)(b)**.

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25 Section 58 amended (Liability to pay levy: building consent authority)

Replace section 58(3) and (4) with:

- (3) A person who fails to comply with subsection (2)—
 - (a) commits an offence; and
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$5,000;
 - (ii) in the case of a body corporate, to a fine not exceeding \$25,000.

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26 Section 63 amended (Chief executive may obtain information in order to assess amount of levy payable)

Replace section 63(4) and (5) with:

- (4) A person who fails to comply with a requirement to provide information under subsection (1)—
 - (a) commits an offence; and
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$5,000;
 - (ii) in the case of a body corporate, to a fine not exceeding \$25,000.

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Part 1 cl 27		Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill	
27	Section 85 amended (Offences relating to carrying out or supervising restricted building work)		
	In section 85(4), replace “\$20,000” with “\$50,000”.		
28	Section 86 amended (Offence to engage another person to carry out or supervise restricted building work if person is not licensed building practitioner)	5	
	Replace section 86(2) with:		
(2)	A person who commits an offence under this section is liable on conviction,—		
(a)	in the case of an individual, to a fine not exceeding \$50,000:		
(b)	in the case of a body corporate, to a fine not exceeding \$150,000.	10	
29	Section 87A amended (Notices to building consent authority when owner-builder carries out restricted building work)		
	In section 87A(5), replace “to a fine not exceeding \$20,000” with “on conviction to a fine not exceeding \$50,000”.		
30	Section 92 amended (Application for code compliance certificate)	15	
	After section 92(2A), insert:		
(3)	If—		
(a)	the building work included the use of a modular component; and		
(b)	in granting the building consent, the building consent authority relied on section 19(1)(da) or (db) ,—	20	
	the application under subsection (1) must be accompanied by a current manufacturer’s certificate for that component.		
(3A)	However, subsection (3) does not apply in the circumstances prescribed in the regulations.		
(3A)	If—	25	
(a)	<u>the building work was the manufacture of, or included the use of, a modular component; and</u>		
(b)	<u>the application for building consent included a manufacturer’s certificate under section 45(1)(bc),—</u>		
	<u>the application under subsection (1) must be accompanied by a current manufacturer’s certificate for that component.</u>	30	
31	Section 94 amended (Matters for consideration by building consent authority in deciding issue of code compliance certificate)		
	In section 94(2), replace “building method or product to which a current warning or ban under section 26(2) relates” with “building product or building method in relation to which a warning or ban under section 26(2) is in force”.	35	

Replace section 94(2) with:

- (2) In deciding whether to issue a code compliance certificate, a building consent authority—
- (a) must accept a current manufacturer’s certificate for a modular component accompanying the application under **section 92(3) or (3A)** as establishing that the building work to which the certificate applies complies with the building consent; and 5
 - (b) must have regard to whether a building product or building method in relation to which a warning or ban under section 26(2) is in force has, or may have, been used or applied in the building work to which the certificate would relate. 10

32 Section 103 amended (Content of compliance schedule)

Replace section 103(2)(b)(iii) with:

- (iii) a building product or building method.

33 Section 108 amended (Annual building warrant of fitness) 15

Replace section 108(6) with:

- (6) A person who commits an offence under this section is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$50,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$150,000.

34 Section 114 amended (Owner must give notice of change of use, extension of life, or subdivision of buildings) 20

Replace section 114(3) and (4) with:

- (3) A person who fails to comply with subsection (2)—
- (a) commits an offence; and
 - (b) is liable on conviction,— 25
 - (i) in the case of an individual, to a fine not exceeding \$5,000;
 - (ii) in the case of a body corporate, to a fine not exceeding \$25,000.

35 Section 115 amended (Code compliance requirements: change of use)

In section 115(b)(i)(B), replace “people” with “persons”.

36 Section 128A amended (Offences in relation to dangerous, affected, or insanitary buildings) 30

Replace section 128A(1)(b) with:

- (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$300,000;

- (ii) in the case of a body corporate, to a fine not exceeding \$1,500,000.

37 Section 133AU amended (Offences in relation to earthquake-prone buildings)

- (1) Replace section 133AU(1)(b) with: 5
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$300,000:
 - (ii) in the case of a body corporate, to a fine not exceeding \$1,500,000.
- (2) Replace section 133AU(4) with: 10
- (4) A person who commits an offence under subsection (2) or (3) is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$50,000:
 - (b) in the case of a body corporate, to a fine not exceeding \$150,000.

38 Section 133BE amended (Public notice of designation) 15
In section 133BE(2), replace “publicly notify” with “notify the public of”.

39 Section 134C replaced (Offence of failing to classify dam)

Replace section 134C with:

134C Offence of failing to classify dam

- A person to whom section 134 applies who fails to classify the dam in accordance with section 134B commits an offence and is liable on conviction,— 20
- (a) in the case of an individual, to a fine not exceeding \$50,000:
 - (b) in the case of a body corporate, to a fine not exceeding \$150,000.

40 Section 138 amended (Regional authority must require re-audit of dam classification that it refuses to approve) 25

Replace section 138(5) with:

- (5) A person who commits an offence under this section is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$20,000:
 - (b) in the case of a body corporate, to a fine not exceeding \$60,000.

41 Section 140 amended (Requirement for dam safety assurance programme) 30

Replace section 140(4) with:

- (4) A person who commits an offence under this section is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$50,000:
 - (b) in the case of a body corporate, to a fine not exceeding \$150,000.

42 Section 145 amended (Regional authority must require re-audit of dam safety assurance programme that it refuses to approve)

Replace section 145(5) with:

- | | | |
|-----|--|---|
| (5) | A person who commits an offence under this section is liable on conviction,— | 5 |
| (a) | in the case of an individual, to a fine not exceeding \$50,000: | |
| (b) | in the case of a body corporate, to a fine not exceeding \$150,000. | |

43 Section 150 amended (Owner of dam must supply annual dam compliance certificate)

Replace section 150(5) with:

- | | | |
|-----|--|----|
| (5) | A person who commits an offence under subsection (4)(a) or (c) is liable on conviction,— | 10 |
| (a) | in the case of an individual, to a fine not exceeding \$20,000: | |
| (b) | in the case of a body corporate, to a fine not exceeding \$60,000. | |
| (6) | A person who commits an offence under subsection (4)(b) is liable on conviction,— | 15 |
| (a) | in the case of an individual, to a fine not exceeding \$50,000: | |
| (b) | in the case of a body corporate, to a fine not exceeding \$150,000. | |

44 Section 154 amended (Powers of regional authorities in respect of dangerous dams)

Replace section 154(4) with:

- | | | |
|-----|--|----|
| (4) | A person who commits an offence under this section is liable on conviction,— | 20 |
| (a) | in the case of an individual, to a fine not exceeding \$300,000: | |
| (b) | in the case of a body corporate, to a fine not exceeding \$1,500,000. | |

45 Section 168 amended (Offence not to comply with notice to fix)

Replace section 168(1AB) with:

- | | | |
|-------|--|----|
| (1AB) | A person who commits an offence against subsection (1AA) is liable on conviction,— | 25 |
| (a) | in the case of an individual, to a fine not exceeding \$20,000: | |
| (b) | in the case of a body corporate, to a fine not exceeding \$60,000. | |

46 Section 169 amended (Chief executive must monitor current and emerging trends in building design, etc, and must report annually to Minister)

Replace section 169(1)(b) with:

- | | | |
|-----|---|----|
| (b) | any warnings or bans under section 26(2) in force in relation to a building product or building method: | 30 |
|-----|---|----|

Part 1 cl 47		Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill	
47	Section 171 amended (Chief executive may seek advice from building advisory panel)		
	Replace section 171(1)(a)(ii) with:		
	(ii) any warnings or bans under section 26(2) in force in relation to a building product or building method:		5
48	Section 175 amended (Chief executive may publish guidance information)		
	Replace section 175(1)(a)(ii) with:		
	(ii) disciplinable entities (as defined in section 200):		
49	Section 196 amended (Registration continuous so long as person meets criteria for registration)		10
	In section 196(2), replace “section 203” with “ section 203C ”.		
50	Section 199 replaced (Offence for person to perform functions of building consent authority or regional authority if person not registered, etc)		
	Replace section 199 with:		
199	Offence to perform functions of building consent authority if not authorised		15
(1)	A person who is not a building consent authority must not perform any of the functions of a building consent authority under this Act.		
(2)	A person who is a building consent authority but not a territorial authority or regional authority must not perform any of the functions of a building consent authority under this Act that are not within the person’s scope of accreditation.		20
(3)	A person who fails to comply with subsection (1) or (2) —		
(a)	commits an offence; and		
(b)	is liable on conviction,—		
(i)	in the case of an individual, to a fine not exceeding \$300,000:		25
(ii)	in the case of a body corporate, to a fine not exceeding \$1,500,000.		
51	Sections 200 to 203 replaced		
	Replace sections 200 to 203 with:		
	<i>Disciplinary powers in relation to complaints</i>		30
200	Interpretation		
(1)	In sections 200 to 203C ,—		
	complaint means a complaint made under section 202		
	complainant means the person who makes a complaint		

disciplinable entity means any of the following:	
(a)	a building consent authority:
(b)	a registered PCB:
(c)	a registered MCMCB
grounds for disciplinary action	has the meaning given in section 201
respondent	means,—
(a)	if a complaint is made under section 202 , the disciplinable entity who is the subject of the complaint; or
(b)	if an investigation is commenced under section 203A , the disciplinable entity that is the subject of the investigation.
(2)	In sections 200 to 203C , a reference to a registered PCB or registered MCMCB includes—
(a)	a person who has been registered as a product certification body or modular component manufacturer certification body but whose registration is suspended; and
(b)	a person who was, at the time of the conduct in question, a registered PCB or registered MCMCB.
201	Grounds for disciplinary action
There are grounds for disciplinary action against a disciplinable entity if—	
(a)	it has failed, or is failing, without good reason to properly perform its functions under this Act; or
(b)	it has been, or is, negligent in performing those functions; or
(c)	in the case of a registered PCB, it has failed to comply with any product certification scheme rules; or
(d)	in the case of a registered MCMCB, it has failed to comply with any MCM scheme rules.
202	Complaints may be made to chief executive
(1)	A person who believes that there are grounds for disciplinary action against a disciplinable entity may lodge a complaint with the chief executive.
(2)	A complaint must—
(a)	be made in writing; and
(b)	be made in the prescribed manner (if any); and
(c)	include the prescribed information (if any).
203	Acceptance of complaints
(1)	As soon as practicable after receiving a complaint, the chief executive must—
(a)	notify the respondent that the complaint has been made; and

- (b) decide whether to accept the complaint.
 - (2) The chief executive must accept the complaint if the chief executive has reason to believe that there may be grounds for disciplinary action against the respondent.
 - (3) The chief executive may decline to accept the complaint if the chief executive—
 - (a) is satisfied that it is vexatious or frivolous; or
 - (b) otherwise does not believe there may be grounds for disciplinary action.
 - (4) In considering whether to accept the complaint,—
 - (a) the chief executive may, but is not required to, seek information or hear from the respondent; and
 - (b) the respondent may provide information or submissions if requested by the chief executive.
 - (5) If the complaint is accepted, the chief executive must, as soon as practicable,—
 - (a) notify the complainant and respondent of that decision; and
 - (b) commence investigating the complaint.
 - (6) The notice must—
 - (a) state that the chief executive has reason to believe that there may be grounds for disciplinary action; and
 - (b) set out those grounds; and
 - (c) give the respondent a reasonable opportunity to make written submissions on the matter as part of the investigation.
 - (7) If the complaint is not accepted, the chief executive must immediately notify the complainant and respondent of that decision and the reasons for it.
- 203A Chief executive may initiate investigation**
- (1) If the chief executive believes on reasonable grounds that there may be grounds for disciplinary action against a disciplinable entity, the chief executive may decide to investigate the matter without a complaint being made.
 - (2) After deciding to investigate, the chief executive must, as soon as practicable,—
 - (a) notify the respondent of that decision; and
 - (b) commence investigating the matter.
 - (3) The notice must—
 - (a) state that the chief executive has reason to believe that there may be grounds for disciplinary action; and
 - (b) set out those grounds; and

- (c) give the respondent a reasonable opportunity to make written submissions on the matter.

203B Investigation

- (1) This section applies to an investigation commenced under **section 203(5)(b)** or **203A(2)(b)**. 5
- (2) In conducting the investigation the chief executive—
 - (a) must consider the submissions (if any) made by the respondent in accordance with the notice under **section 203(6)** or **203A(3)**; and
 - (b) may otherwise conduct the investigation as the chief executive considers appropriate. 10
- (3) After conducting the investigation, if the chief executive is satisfied that there are grounds for disciplinary action against the respondent, the chief executive may take action under **section 203C**.
- (4) The chief executive must notify the complainant (if any) and respondent of—
 - (a) the outcome of the investigation; and 15
 - (b) the disciplinary action (if any) being taken (if action is taken under **section 203C(1)(f)**, *see also* **section 272B(3)**).

203C Disciplinary powers of chief executive

- (1) If satisfied that there are grounds for disciplinary action, the chief executive may do 1 or more of the following: 20
 - (a) issue a warning to the respondent:
 - (b) require the respondent to take specified remedial action:
 - (c) impose limits on the functions that the respondent may perform under this Act:
 - (d) if the respondent is a building consent authority that is a territorial authority or regional authority, recommend to the Minister that the Minister appoint 1 or more persons to act in the place of the respondent in relation to any or all of its functions under this Act: 25
 - (e) if **paragraph (d)** does not apply, suspend or revoke the respondent's registration: 30
 - (f) if the ground for the disciplinary action is that set out in **section 201(c)**, either or both of the following:
 - (i) under **section 267C(2)(b)**, suspend the person's registration as a product certification body: 35
 - (ii) under **section 272B(2)(a)**, suspend the registration of any product certificate for which the person is the responsible PCB:
 - (g) if the ground for the disciplinary action is that set out in **section 201(d)**, either or both of the following:

- 52 Cross-heading above section 204 amended** 15

In the cross-heading above section 204, replace “*Further*” with “*Enforcement*”.

(1) Replace section 204(1)(a) to (ab) with:

(a) monitor the performance of functions under this Act by any of the following:

(i) a territorial authority;

(ii) a regional authority;

(iii) a disciplinable entity (as defined in **section 200**); and

(aa) exercise the chief executive's powers under **sections 200 to 203C** in relation to complaints and investigations; and

- (2) In section 204(2)(a)(i) and (2)(b), replace “any territorial authority, building consent authority, or regional authority” with “a territorial authority, regional authority, or disciplinable entity”.
- (3) Repeal section 204(2)(b)(iii).
- (4) Replace section 204(4) with:
 - (4) In this section, **relevant information** means any information (of any description and in any form) that relates to the performance of a function under this Act by a territorial authority, regional authority, or disciplinable entity.

- (1) In section 206(1)(c), replace “this section” with “section 204”.
- (2) Replace section 206(4) with:

- (4) ~~A person who commits an offence under subsection (3)(a) is liable on conviction,—~~
 (a) ~~in the case of an individual, to a fine not exceeding \$5,000;~~
 (b) ~~in the case of a body corporate, to a fine not exceeding \$25,000.~~
- (5) ~~A person who commits an offence under subsection (3)(b) is liable on conviction,—~~ 5
 (a) ~~in the case of an individual, to a fine not exceeding \$50,000;~~
 (b) ~~in the case of a body corporate, to a fine not exceeding \$150,000.~~
- (4) A person who commits an offence under subsection (3)(a) is liable on conviction to a fine not exceeding \$5,000. 10
 (5) A person who commits an offence under subsection (3)(b) is liable on conviction to a fine not exceeding \$50,000.

55 Sections 207A and 207B replaced

Replace sections 207A and 207B with:

- Power to require information and documents* 15
- 207A Power to require information or documents**
- (1) The chief executive may require any person to provide any information or document that the chief executive reasonably considers it is necessary or desirable to obtain for any of the following purposes: 20
 (a) taking enforcement action referred to in section 11(m);
 (b) exercising the chief executive's powers under section 26.
- (2) The chief executive must give written notice to the person that specifies—
 (a) the information or document that must be provided; and
 (b) how the information or document must be provided; and 25
 (c) a reasonable deadline by which the information or document must be provided.
- (3) The person must provide the information or document as required by the notice.
- (4) The chief executive may copy or retain any information or document provided.
- 207B Offence to fail to provide information or documents** 30
 A person who fails to provide any information or document as required by **section 207A**—
 (a) commits an offence; and
 (b) is liable on conviction,—
 (i) in the case of an individual, to a fine not exceeding \$20,000; or 35

- (ii) in the case of a body corporate, to a fine not exceeding \$60,000.

207BA Sharing of information

- (1) The chief executive may provide relevant evidence to a regulatory body if the chief executive reasonably considers that the evidence is reasonably required by the regulatory body in the exercise of its powers or performance of its functions. 5
- (2) As soon as practicable after doing so, the chief executive must give written notice to—
 - (a) any person to whom the evidence relates; and
 - (b) if it was obtained under **section 207A** from someone else, that other person. 10
- (3) The notice must—
 - (a) describe what has been provided; and
 - (b) specify which regulatory body it has been provided to; and
 - (c) explain why it has been provided. 15
- (4) However, the chief executive need not give a notice if the chief executive reasonably considers that it would prejudice the exercise or performance by the regulatory body of its powers or functions.
- (5) In this section,—

regulatory body means any of the following: 20

 - (a) the chief executive or Ministry exercising powers or performing functions under another Act:
 - (b) another person or body exercising powers or performing functions under this Act:
 - (c) any other person or body established by or under an enactment exercising powers or performing functions in relation to building products, building methods, building designs, or building work 25

relevant evidence means information or documents that are obtained under **section 207A** or that could have been obtained under that section but were in fact obtained by other means. 30

*Powers of entry and inspection for subparts 7 and **7A** of Part 3 and Parts 4A and **4B***

207BB Powers of entry and inspection

- (1) The chief executive may exercise a power under this section for 1 or more of the following purposes (**investigative purposes**): 35
 - (a) determining whether a relevant provision has been, or is being, complied with:

- (b) determining whether there are grounds for taking enforcement action to enforce a duty or an obligation under a relevant provision and deciding whether to do so.
 - (2) For investigative purposes, the chief executive may—
 - (a) inspect any of the following:
 - (i) a place at which building work is, or is proposed to be, carried out;
 - (ii) building work that has been, or is being, carried out;
 - (iii) any building or building product; and
 - (b) enter any premises for the purpose of carrying out an inspection under **paragraph (a)**.
 - (3) However, if the premises is a household unit or marae, *see* **section 207BC**.
 - (4) As soon as practicable after entering premises under this section, the chief executive must give written notice to the owners and occupiers of the premises of the exercise of that power.
 - (5) A person who enters premises under this section must, when first entering the premises and on request at any other time, show the following to any occupier of the premises:
 - (a) evidence of the person's identity;
 - (b) the chief executive's written authorisation to enter the site;
 - (c) if the premises is a household unit or marae, the warrant to enter the premises (if required).
 - (6) In this section, **relevant provision** means a provision of any of the following:
 - (a) subpart 7 of Part 3 (~~responsibilities of product certification bodies relating to product certification~~):
 - (b) **subpart 7A of Part 3** (responsibilities relating to modular component manufacturers);
 - (c) **Part 4B** (building product information requirements).
- 207BC Power to enter household unit or marae**
- (1) Despite **section 207BB(2)(b)**, the chief executive must not exercise the power of entry to enter a household unit that is being used as a household unit or marae except—
 - (a) with the consent of an occupier who is at least 14 years of age; or
 - (b) in accordance with a warrant issued under this section.

Entry with consent
 - (2) The chief executive must not enter with the occupier's consent unless the chief executive has—

- (a) told the occupier the reason for the proposed entry; and
- (b) told the occupier that they may consent, or refuse to consent, to the entry.
- (3) The chief executive may enter the household unit or marae, and exercise the other powers under **section 207BB**, only in accordance with the conditions of the occupier's consent (if any). 5
- Entry under warrant*
- (4) An issuing officer (as defined in section 3(1) of the Search and Surveillance Act 2012) may, on application, issue a warrant to enter a household unit or marae if the officer reasonably considers that entering the unit or marae is reasonably necessary for investigative purposes. 10
- (5) The chief executive must apply for the warrant in the manner provided in sub-part 3 of Part 4 of the Search and Surveillance Act 2012, which applies with any necessary modifications.
- (6) The warrant authorises the chief executive to enter the household unit or marae and exercise the other powers under **section 207BB**. 15

56 Section 208 replaced (Appeals to District Court)

Replace section 208 with:

208 Appeals to District Court

- (1) The following decisions of the chief executive are subject to appeal to the District Court: 20
 - (a) refusing to issue a national multiple-use approval (*see* section 30F):
 - (b) making a determination under section 188:
 - (c) giving a direction as to costs under section 190(2):
 - (d) taking disciplinary action under **section 203C**: 25
 - (e) refusing to register a person as any of the following, or suspending or refusing to lift the suspension of any such registration:
 - (i) a building consent authority (*see* sections 191 and 197):
 - (ii) a product certification body (*see* **sections 267A, 267C(2), and 267D(2)**): 30
 - (iii) a modular component manufacturer certification body (*see* **sections 272N, 272P(2), and 272Q(2)**):
 - (iv) a modular component manufacturer (*see* **sections 272Y, 272ZA(2), and 272ZB(2)**):
 - (f) refusing to register a product certificate or suspending, or refusing to lift the suspension of, the registration of a product certificate (*see* **section 272A, 272B(2), and 272C(2)**). 35
- (2) The following people may appeal against those decisions:

	(a) if subsection (1)(a) applies, the applicant for approval: (b) if subsection (1)(b) or (c) applies, the applicant for the determination or any other party (as defined in section 176): (c) if subsection (1)(d) applies, the respondent against whom the action is taken: (d) if subsection (1)(e) applies, the applicant for registration or person whose registration is suspended: (e) if subsection (1)(f) applies, the proprietor of the building product or building method to which the certificate relates.	5
57	Section 209 amended (Procedure for commencing appeal)	10
(1)	In section 209(1)(a)(i) and (2), replace “section 208(1)(a)” with “ section 208(1)(b) ”.	
(2)	Replace section 209(1)(a)(ia) and (ii) with:	
	(ii) in any other case, the date of the chief executive’s decision; and	
58	Section 210 amended (Steps after appeal is commenced)	15
	In section 210(1)(b), replace “section 208(1)(a) or (aa)” with “ section 208(1)(b) or (c) ”.	
59	Section 221 amended (Recovery of costs when territorial authority carries out work on default)	
	In section 221(2)(a) and (b), replace “materials” with “building products or other materials”.	20
60	Section 225 amended (Offence to impersonate authorised officer)	
	In section 225(2), replace “\$5,000” with “\$50,000”.	
61	Subpart 7 heading in Part 3 replaced	
	In Part 3, replace the subpart 7 heading with:	25
	Subpart 7—Responsibilities relating to product certification	
62	Section 262 amended (Requirements for product certification accreditation body)	
(1)	In section 262(2), replace “building methods or products” with “building products or building methods”.	30
(2)	In section 262(3), replace “building methods and products” with “building products or building methods”.	

63 Section 262A amended (Fees for audits)

In section 262A, replace “product certification body” with “PCB” in each place.

64 Sections 263 to 266 replaced

Replace sections 263 to 266 with:

5

263 Accreditation of product certification body

(1) The product certification accreditation body may, on application, and on payment of the prescribed fee (if any), accredit a person as a product certification body if satisfied that they—

(a) have the ability to perform the functions of a registered PCB competently, impartially, consistently, transparently, and accountably; and 10

(b) have policies, procedures, and systems in place that—

(i) will result in them performing their functions as required by **paragraph (a)**; and

(ii) comply with any prescribed requirements prescribed by regulations made under **section 402(1)(tb)(ii)(A)**; and 15

(c) comply with any other prescribed criteria and standards for accreditation; prescribed by regulations made under **section 402(1)(tb)(ii)(B)**; and

(d) comply with any product certification scheme rules made under **section 272E(2A)** that supplement the regulations referred to in **paragraphs (b)(ii) and (c).** 20

(2) The application must—

(a) be made in writing; and

(b) be made in the prescribed manner (if any); and 25

(c) include the prescribed information (if any); and,

(d) be accompanied by the prescribed fee (if any).

264 Suspension or revocation of accreditation

(1) The product certification accreditation body may suspend or revoke a person’s accreditation as a product certification body if satisfied that they— 30

(a) no longer meet the criteria for accreditation in **section 263**; or

(b) have failed to comply with any product certification scheme rules.

(2) However, if—

(a) regulations made for the purposes of **section 263(1)(b)(ii) or (c)** or product certification scheme rules that supplement those regulations are amended; and 35

- (b) a person ceases to meet the criteria in **section 263** solely as a result of those amendments,—
the product certification accreditation body cannot suspend their accreditation unless 3 months have elapsed since those amendments came into force.
- (3) The period of a suspension must allow the person a reasonable period to again meet the criteria in **section 263** or to rectify the failure. 5
- (4) The product certification accreditation body must lift the suspension of a person's accreditation if satisfied that they again meet those criteria or have rectified the failure.
- (5) If the suspension is not lifted before the end of the suspension period, the product certification accreditation body may revoke the accreditation. 10
- (6) Before suspending or revoking a person's accreditation under **subsection (1) or (5)**, the product certification accreditation body must—
- (a) notify the person in writing of the intention to do so and the reasons for it; and 15
- (b) give the person a reasonable opportunity to be heard.
- (7) If the product certification accreditation body suspends, lifts the suspension of, or revokes a person's accreditation, it must notify the person in writing of—
- (a) its decision and the reasons for it; and
- (b) the effect of **section 267C(1), 267D(1), or 267E(1)(a)** (as applicable). 20
- (8) If a person's accreditation is suspended or revoked, the product certification accreditation body must notify them in writing of the suspension or revocation and the reasons for it.
- (9) The chief executive may exercise the powers of the product certification accreditation body under this section (whether or not that body has exercised those powers in relation to the same person in the same period). 25

65 Section 267 amended (Product certification accreditation body must notify chief executive of grant, suspension, lifting of suspension, or revocation of accreditation) 30

In section 267(1) replace “an accreditation of” with “a person's accreditation as”.

66 New sections 267A to 267E and cross-heading inserted

After section 267, insert:

*Registration of product certification bodies***267A Registration of product certification body**

- (1) The chief executive may, on application, and on payment of the prescribed fee (if any), register a person as a product certification body if satisfied that they—
- (a) are an accredited PCB; and
 - (b) meet any prescribed requirements to have adequate means to cover any civil liabilities that may arise in the performance of their functions under this Act; and
 - (c) meet any other prescribed criteria and standards for registration.
- (2) The application must—
- (a) be made in writing; and
 - (b) be made in the prescribed manner (if any); and
 - (c) include the prescribed information (if any); ~~and,~~
 - (d) ~~be accompanied by the prescribed fee (if any).~~
- (3) As soon as practicable after receiving the application, the chief executive must—
- (a) decide whether to register the applicant; and
 - (b) notify the applicant in writing of the decision (including the reasons, if the application is declined).

267B Audit of registered PCB

- (1) The chief executive may audit a registered PCB to ascertain whether—
- (a) ~~they continue to meet the criteria for accreditation in **section 263**; and~~
 - (b) they continue to meet the criteria for registration in **section 267A**; and
 - (c) there are grounds to suspend or revoke their ~~accreditation or registration~~ under **section 264 or 267C**.
- (2) Any audit conducted under this section is in addition to audits required under section 262(1)(a).

267C Suspension of registration of PCB*Automatic suspension*

- (1) A person's registration as a product certification body is automatically suspended if their accreditation is suspended under **section 264**.

Suspension by chief executive

- (2) The chief executive may suspend a person's registration as a product certification body if satisfied that they—
- (a) no longer meet the criteria for registration in **section 267A**; or
 - (b) have failed to comply with any product certification scheme rules.

- (3) However, if—
- (a) regulations made for the purposes of **section 267A(1)(b) or (c)** are amended; and
 - (b) a person ceases to meet the criteria in **section 267A** solely as a result of those amendments,—
- the chief executive cannot suspend their registration under **subsection (2)(a)** unless 3 months have elapsed since those amendments came into force.
- (4) Before suspending a person's registration under **subsection (2)**, the chief executive must—
- (a) notify them in writing of the intention to do so and the reasons for it; and
 - (b) give them a reasonable opportunity to be heard.
- Notification*
- (5) If a person's registration is suspended under **subsection (1) or (2)**, the chief executive must—
- (a) notify them in writing of the suspension (including the reasons for it and the effect of **section 267E(1)(b)** (if applicable)); and
 - (b) update the register accordingly; and
 - (c) take all reasonable steps to notify the proprietors for whom the person is the responsible PCB.
- 267D Lifting of suspension of registration of PCB**
- Automatic suspension*
- (1) If a person's registration is suspended under **section 272C(1)**, that suspension is automatically lifted if the suspension of their accreditation is lifted.
- Suspension by chief executive*
- (2) If a person's registration is suspended under **section 267C(2)**, the chief executive may, on application, and on payment of the prescribed fee (if any), lift the suspension if satisfied that they—
- (a) again meet the criteria in **section 267A**; or
 - (b) have otherwise rectified the failure that led to the suspension.
- (3) The application must—
- (a) be made in writing; and
 - (b) be made in the prescribed manner (if any); and
 - (c) include the prescribed information (if any); ~~and~~
 - (d) ~~be accompanied by the prescribed fee (if any).~~
- (4) As soon as practicable after receiving the application, the chief executive must—
- (a) decide whether to lift the suspension; and

- (b) notify the applicant in writing of the decision (including the reasons, if the suspension is not lifted); and
- (c) if the suspension is lifted, update the register accordingly.

267E Revocation of registration of PCB

- (1) A person's registration as a product certification body is automatically revoked if— 5
 - (a) their accreditation is revoked under **section 264**; or
 - (b) their registration is suspended under **section 267C(2)** and the suspension is not lifted within 12 months after it was imposed.
- (2) However, if— 10
 - (a) a person's registration was suspended under **section 267C(2)**; and
 - (b) within 12 months of the suspension being imposed, the person applied under **section 267D(2)** for the suspension to be lifted; and
 - (c) at the end of those 12 months the application has not been decided,— 15

the 12-month period referred to in **subsection (1)(b)** is extended until the application is decided.
- (3) If a person's registration is revoked, the chief executive must— 20
 - (a) notify them in writing of the revocation (including the reasons for it); and
 - (b) remove their name from the register.

67 Cross-heading above section 268 replaced

Replace the cross-heading above section 268 with:

Certification of building products and building methods

68 Section 268 amended (Application for product certificate)

- (1) In section 268(1), replace “building method or product” with “building product or building method” in each place. 25
- (2) In section 268(1) and (2), replace “product certification body” with “registered PCB”.

69 Section 269 amended (Issue of product certificate)

- (1) In section 269(1), replace “product certification body” with “registered PCB”. 30
- (2) In section 269(1) and (2), replace “building method or product” with “building product or building method”.

70 Sections ~~270 to 272~~ 268 to 272 and cross-heading above section 268 replaced

Replace sections ~~270 to 272~~ 268 to 272 and the cross-heading above section 268 with:

Certification of building products and building methods

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269 Product certificates

(1) A registered PCB must, on application, issue a product certificate for a building product or building method if satisfied that it complies with—

(a) the criteria and standards for certification prescribed by regulations made under **section 402(1)(u)(i)**; and

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(b) any product certification scheme rules made under **section 272E(2A)** to supplement those regulations.

(2) If a building product and a building method are to be used together, a single product certificate may be issued in respect of both together.

(3) The product certificate must state whether there are any matters that should be taken into account in the use or application of the building product or building method and, if so, what those matters are.

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(4) The application must—

(a) be made by the proprietor of the building product or building method; and

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(b) include the information specified by the registered PCB (if any).

270 Annual review of product certificate

(1) A registered PCB must review each product certificate for which it is the responsible PCB at least once in every 12 months.

(2) However, **subsection (1)** does not apply in relation to a review required for a particular period if another registered PCB has reviewed the certificate in that period.

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(3) A registered PCB may review a product certificate for which it is not the responsible PCB at the request of the proprietor of the building product or building method to which it relates.

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(4) A PCB reviewing a certificate under **subsection (1) or (3)** must do so by conducting an audit of the building product or building method to which the certificate relates to ascertain whether—

(a) it continues to ~~meet~~ comply with the criteria for certification under **section 269**; and

35

(b) there are grounds to suspend or revoke the certificate under **section 271**.

(5) ~~An audit must be carried out in accordance with any prescribed procedures.~~

- (5) In carrying out an audit, a registered PCB must—
- (a) take into account any matters specified in regulations made under **section 402(1)(u)(ii)** and any product certification scheme rules that supplement those regulations; and
 - (b) comply with any other requirements prescribed by those regulations and scheme rules, including as to when the audit is conducted. 5
- (6) ~~The PCB may charge the person being audited the prescribed fee (if any) for conducting the audit.~~
- (7) The proprietor of the building product or building method being audited must provide the PCB with any information or matter that the PCB requires for the purposes of the audit. 10
- (8) A person who fails to comply with **subsection (7)**—
- (a) commits an offence; and
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$5,000; 15
 - (ii) in the case of a body corporate, to a fine not exceeding \$25,000.
- 271 Suspension or revocation of product certificate**
- (1) The responsible PCB for a product certificate may suspend or revoke the certificate if satisfied that—
- (a) the certificate was obtained by fraud, misrepresentation, or concealment of facts; or 20
 - (b) the building product or building method no longer meets the criteria for certification in **section 269**; or
 - (c) any certification or similar authorisation issued or granted in respect of the building product or building method has been suspended or revoked for any reason; or 25
 - (d) the building code no longer applies to the building product or building method because of an amendment to the code; or
 - (e) the proprietor of the building product or building method has failed to comply with any product certification scheme rules; or 30
 - (f) the certificate has not been reviewed under **section 270** within the previous 12 months.
- (2) However, if—
- (a) regulations made for the purposes of **section 269** or any product certification scheme rules that supplement those regulations are amended; and 35

- (b) a building product or building method ceases to meet the criteria in that section solely as a result of those amendments,—
the responsible PCB cannot suspend or revoke the certificate under **subsection (1)(b)** unless 3 months have elapsed since those amendments came into force. 5
- (3) **Subsection (1)(f)** does not apply if the certificate has been in force for less than 12 months.
- (4) The period of a suspension must allow the proprietor a reasonable period to ensure that the building product or building method again meets the criteria in **section 269** or to get a review undertaken. 10
- (5) The responsible PCB must lift the suspension of a certificate if satisfied that the building product or building method again meets those criteria or the certificate has been reviewed.
- (6) If the suspension is not lifted before the end of the suspension period, the responsible PCB may revoke the certificate. 15
- (7) Before suspending or revoking a certificate, the responsible PCB must—
(a) notify the proprietor in writing of the intention to do so and the reasons for it; and
(b) give them a reasonable opportunity to be heard.
- (8) If the responsible PCB suspends, lifts the suspension of, or revokes a product certificate, it must notify the proprietor in writing of— 20
(a) its decision and the reasons for it; and
(b) the effect of **section 272B(1), 272C(1), or 272D(1)(a)** (as applicable).
- (9) The chief executive may exercise the powers of a responsible PCB under this section (whether or not the responsible PCB has exercised those powers in relation to the same certificate in the same period). 25
- 272 Notification to chief executive by registered PCB**
- (1) A registered PCB must notify the chief executive when it does any of the following: 30
(a) issues a product certificate:
(b) suspends, or lifts the suspension of, a product certificate:
(c) revokes a product certificate:
(d) becomes the responsible PCB for a product certificate as a result of carrying out a review under **section 270(3)**. 35
- (2) The notification must be given—
(a) in the manner notified in writing by the chief executive to the registered PCB; and

- (b) within 7 days after the event occurs.

Registration of product certificates

272A Registration of product certificates

- (1) The chief executive must register a product certificate if satisfied that—
- (a) the certificate—
 - (i) ~~is in the prescribed form (if any); and~~
 - (i) is in the form (if any) approved by the chief executive; and
 - (ii) includes the prescribed information (if any); and
 - (b) the proprietor of the building product or building method to which the certificate relates has paid the prescribed fee (if any).
- (2) As soon as practicable after receiving notice under **section 272** of the issue of a product certificate, the chief executive must—
- (a) decide whether to register the certificate; and
 - (b) notify the issuing registered PCB and the proprietor of the decision (including the reasons, if the certificate is not registered).

272B Suspension of registration of product certificate

Automatic suspension

- (1) The registration of a product certificate is automatically suspended if the certificate is suspended under **section 271**.

Suspension by chief executive

- (2) The chief executive may suspend the registration of a product certificate for a specified period if satisfied that—
- (a) the responsible PCB has failed to comply with any product certification scheme rules; or
 - (b) the proprietor of the building product or building method has failed to comply with any product certification scheme rules.

Notification

- (3) If the registration of a product certificate is suspended under **subsection (1) or (2)**, the chief executive must—
- (a) notify each of the following in writing of the suspension (including the reasons for it and the effect of **section 272D(1)(b)** (if applicable)):
 - (i) the responsible PCB;
 - (ii) the proprietor of the building product or building method; and
 - (b) update the register accordingly.

272C Lifting of suspension of registration of product certificate

Automatic suspension

- (1) If the registration of a product certificate is suspended under **section 272B(1)**, that suspension is automatically lifted if the suspension of the certificate is lifted. 5

Suspension by chief executive

- (2) If the registration of a product certificate is suspended under **section 272B(2)**, the chief executive may, on application, and on payment of the prescribed fee (if any), lift the suspension if satisfied that—

- (a) in the case of a suspension under **section 272B(2)(a)**, the building product or building method meets the criteria for certification under **section 269**; or 10
- (b) in the case of a suspension under **section 272B(2)(b)**, that the proprietor has rectified the failure.

- (3) The application must— 15

- (a) be made in writing by the proprietor of the building product or building method; and
- (b) be made in the prescribed manner (if any); and
- (c) include the prescribed information (if any); ~~and~~
- (d) ~~be accompanied by the prescribed fee (if any).~~ 20

- (3A) However, the fee (if any) is not payable if the registration of the product certificate was suspended under **section 272B(2)(a)**.

- (4) As soon as practicable after receiving the application, the chief executive must—

- (a) decide whether to lift the suspension; and 25
- (b) notify the applicant in writing of the decision (including the reasons, if the suspension is not lifted); and
- (c) if the suspension is lifted, update the register accordingly.

272D Revocation of registration of product certificate

- (1) The registration of a product certificate is automatically revoked— 30

- (a) if the certificate is revoked under **section 271**; or
- (b) if the registration is suspended under **section 272B(2)** and the suspension is not lifted before the end of the suspension period.

- (2) However, if—

- (a) the registration of a product certificate was suspended under **section 272B(2)**; and 35

- (b) before the end of the suspension period, an application is made under **section 272C(2)** for the suspension to be lifted; and
 - (c) at the end of the suspension period the application has not been decided,—
- the period referred to in **subsection (1)(b)** is extended until the application is decided. 5
- (3) If the registration of a product certificate is revoked, the chief executive must—
- (a) notify the proprietor in writing of the revocation (including the reasons for it); and 10
 - (b) remove the certificate from the register.

Product certification scheme rules

272E Product certification scheme rules

- (1) The chief executive may, ~~by notice in the Gazette,~~ make rules for the operation of the product certification scheme under this subpart. 15
- (2) The rules may (without limitation) include rules relating to 1 or more of the following:
 - (a) how the scheme parties are to perform their functions under this Act:
 - (b) how building products and building methods are to be evaluated:
 - (c) the resolution of disputes between scheme parties: 20
 - (d) procedural and administrative matters.
- (2A) The rules may also supplement regulations made under **section 402(1)(tb)(ii) or (u)(i) or (ii).**
- (2B) However, the chief executive must not make rules under **subsection (2A)** unless satisfied that the rules— 25
 - (a) set out matters of detail to elaborate on matters provided for in the regulations; or
 - (b) set out procedures, methodologies, forms, or other matters of an administrative nature relating to matters provided for in the regulations; or
 - (c) set out how requirements imposed by the regulations may or must be met; or 30
 - (d) otherwise supplement matters of general principle set out in the regulations.
- (3) In this section, **scheme party** means any of the following:
 - (a) the product certification accreditation body: 35
 - (b) an accredited PCB:
 - (c) a registered PCB:

(d)	the proprietor of a building product or building method that has a current product certificate (whether registered or not).	
(4)	The rules are a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.	5
(4)	<u>Rules made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).</u>	
272F	Procedure for making product certification scheme rules	
(1)	Before making product certification scheme rules, the chief executive must—	
(a)	publicly notify the proposal to make the rules; and	10
(b)	give persons at least 20 working days to make submissions on the proposal; and	
(c)	consider those submissions.	
(2)	The notice must include the following:	
(a)	a detailed statement of the proposed rules, including any transitional arrangements (which may, but need not, include a copy of the proposed rules):	15
(b)	the reasons for making the rules:	
(c)	the date on which the rules will come into force:	
(d)	details of how, and by when, submissions may be made.	20
(3)	The chief executive need not comply with subsection (1) in relation to an amendment of the rules if satisfied that the amendment will not adversely affect the substantial interests of any person.	
(4)	The chief executive must ensure that the following are publicly available on the Ministry's Internet site:	25
(a)	all product certification scheme rules (including amendments) as they are made; and	
(b)	a consolidated version of the product certification scheme rules as in force from time to time.	
	<i>Offences relating to product registration scheme</i>	30
272G	Offence to misrepresent status as product certification body	
(1)	A person who is not a registered PCB must not perform any of the functions of a registered PCB.	
(2)	A person who fails to comply with subsection (1) —	
(a)	commits an offence; and	35
(b)	is liable on conviction,—	

	(i) in the case of an individual, to a fine not exceeding \$300,000:	
	(ii) in the case of a body corporate, to a fine not exceeding \$1,500,000.	
(3)	A person must not, in any other way, represent themselves as being any of the following if that is not the case:	5
	(a) an accredited PCB:	
	(b) a registered PCB:	
	(c) authorised to issue product certificates.	
(4)	A person who fails to comply with subsection (3) —	10
	(a) commits an offence; and	
	(b) is liable on conviction,—	
	(i) in the case of an individual, to a fine not exceeding \$50,000:	
	(ii) in the case of a body corporate, to a fine not exceeding \$150,000.	
272H Offence to misrepresent product certificate		
(1)	A person must not represent a building product or building method as being something as any of the following if that is not the case:	15
	(a) having a current product certificate:	
	(b) having a registered product certificate:	
	(c) having been evaluated and certified under the product certification scheme under this subpart.	20
(2)	A person who fails to comply with subsection (1) —	
	(a) commits an offence; and	
	(b) is liable on conviction,—	
	(i) in the case of an individual, to a fine not exceeding \$300,000:	
	(ii) in the case of a body corporate, to a fine not exceeding \$1,500,000.	25

71 New subpart 7A of Part 3 inserted

After **section 272H** (as inserted by **section 70**), insert:

Subpart 7A—Responsibilities relating to modular component
manufacturers

*Appointment of modular component manufacturer certification accreditation
body*

**272I Appointment of modular component manufacturer certification
accreditation body**

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The chief executive may—

- (a) appoint a person as the modular component manufacturer certification accreditation body; and
- (b) revoke the appointment at any time.

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Accreditation of modular component manufacturer certification bodies

272J Accreditation of modular component manufacturer certification body

- (1) The MCMC accreditation body may, on application, and on payment of the prescribed fee (if any), accredit a person as a modular component manufacturer certification body if satisfied that they—

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- (a) have the ability to perform the relevant functions competently, impartially, consistently, transparently, and accountably; and
- (b) have policies, procedures, and systems in place that—
 - (i) will result in them performing their functions as required by **paragraph (a)**; and
 - (ii) comply with any ~~prescribed~~ requirements prescribed by regulations made under **section 402(1)(ub)(i)(A)**; and
- (c) comply with any other ~~prescribed~~ criteria and standards for accreditation; prescribed by regulations made under **section 402(1)(ub)(i)(B)**; and
- (d) comply with any MCM scheme rules made under **section 272ZG(2A)** to supplement the regulations referred to in **paragraphs (b)(ii) and (c)**.

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- (2) The application must—

- (a) be made in writing; and
- (b) be made in the prescribed manner (if any); and
- (c) include the prescribed information (if any); ~~and~~
- (d) ~~be accompanied by the prescribed fee (if any).~~

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- (3) In this section, **relevant functions** means the functions of a modular component manufacturer certification body under this Act for which the person wishes to be accredited.

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272K Audit of accredited MCMCB

- (1) The MCMC accreditation body must audit each accredited MCMCB—
 - (a) at least once in every 12 months; and
 - (b) more frequently if required by the regulations.
- (2) The purpose of an audit is to ascertain whether— 5
 - (a) the person continues to meet the criteria for accreditation in **section 272J**; and
 - (b) there are grounds to suspend or revoke their accreditation under **section 272L**.
- ~~(3) An audit must be carried out in accordance with any prescribed procedures.~~ 10
- (3) In carrying out an audit, an MCMC accreditation body must—
 - (a) take into account any matters specified in regulations made under section 402(1)(ub)(ii)(B) and any MCM scheme rules that supplement those regulations; and
 - (b) comply with any other requirements prescribed by regulations made under **section 402(1)(ub)(ii)(BA)** and any MCM scheme rules that supplement those regulations. 15
- (4) The MCMC accreditation body may charge the person being audited the prescribed fee (if any) for conducting the audit.

272L Suspension or revocation of accreditation of MCMCB 20

- (1) The MCMC accreditation body may suspend or revoke a person's accreditation as a modular component manufacturer certification body if satisfied that they—
 - (a) no longer meet the criteria for accreditation in **section 272J**; or
 - (b) have failed to comply with any MCM scheme rules.
- (2) However, if— 25
 - (a) regulations made for the purposes of **section 272J(1)(b)(ii) or (c)** or any MCM scheme rules that supplement those regulations are amended; and
 - (b) a person ceases to meet the criteria in **section 272J** solely as a result of those amendments,— 30

the MCMC accreditation body cannot suspend or revoke their accreditation under **subsection (1)(a)** unless 3 months have elapsed since those amendments came into force.
- (3) The period of a suspension must allow the person a reasonable period to again meet the criteria in **section 272J** or to rectify the failure. 35
- (4) The MCMC accreditation body must lift the suspension of a person's accreditation if satisfied that they again meet those criteria or have rectified the failure.

- (5) If the suspension is not lifted before the end of the suspension period, the MCMC accreditation body may revoke the accreditation.
- (6) Before suspending or revoking a person's accreditation under **subsection (1) or (5)**, the MCMC accreditation body must—
 - (a) notify the person in writing of the intention to do so and the reasons for it; and 5
 - (b) give the person a reasonable opportunity to be heard.
- (7) If the MCMC accreditation body suspends, lifts the suspension of, or revokes a person's accreditation, it must notify the person in writing of—
 - (a) its decision and the reasons for it; and 10
 - (b) the effect of **section 272P(1), 272Q(1), or 272R(1)(a)** (as applicable).
- (8) The chief executive may exercise the powers of the MCMC accreditation body under this section (whether or not that body has exercised those powers in relation to the same person in the same period). 15

272M Notification to chief executive by MCMC accreditation body

- (1) The MCMC accreditation body must notify the chief executive when it does any of the following:
 - (a) accredits a person as a modular component manufacturer certification body: 20
 - (b) suspends, or lifts the suspension of, a person's accreditation:
 - (c) revokes a person's accreditation.
- (2) The notification must be given—
 - (a) in the manner notified in writing by the chief executive to the MCMC accreditation body; and 25
 - (b) within 7 days after the event occurs.

Registration of modular component manufacturer certification bodies

272N Registration of modular component manufacturer certification body

- (1) The chief executive may, on application, and on payment of the prescribed fee (if any), register a person as a modular component manufacturer certification body if satisfied that they—
 - (a) are an accredited MCMCB; and
 - (b) meet any prescribed requirements to have adequate means to cover any civil liabilities that may arise in the performance of their functions under this Act; and 35
 - (c) meet any other prescribed criteria and standards for registration.
- (2) The application must—

- (a) be made in writing; and
- (b) be made in the prescribed manner (if any); and
- (c) include the prescribed information (if any); ~~and~~
- (d) ~~be accompanied by the prescribed fee (if any).~~
- (3) As soon as practicable after receiving the application, the chief executive must— 5
- (a) decide whether to register the applicant; and
- (b) notify the applicant in writing of the decision (including the reasons, if the application is declined).
- 272O Audit of registered MCMCB** 10
- The chief executive must audit a registered MCMCB at least once in every 3 years to ascertain whether—
- (a) ~~they continue to meet the criteria for accreditation in **section 272J**; and~~
- (b) they continue to meet the criteria for registration in **section 272N**; and
- (c) there are grounds to suspend or revoke their ~~accreditation or registration~~ under **section 272L or 272P**. 15
- 272P Suspension of registration of MCMCB**
- Automatic suspension*
- (1) A person's registration as a modular component manufacturer certification body is automatically suspended if their accreditation is suspended under **section 272L**. 20
- Suspension by chief executive*
- (2) The chief executive may suspend a person's registration as a modular component manufacturer certification body if satisfied that they—
- (a) no longer meet the criteria for registration in **section 272N**; or 25
- (b) have failed to comply with any MCM scheme rules.
- (3) However, if—
- (a) regulations made for the purposes of **section 272N(1)(b) or (c)** are amended; and
- (b) a person ceases to meet the criteria in **section 272N** solely as a result of those amendments,— 30
- the chief executive cannot suspend their registration under **subsection (2)(a)** unless 3 months have elapsed since those amendments came into force.
- (4) Before suspending a person's registration under **subsection (2)**, the chief executive must— 35
- (a) notify them in writing of the intention to do so and the reasons for it; and

- (b) give them a reasonable opportunity to be heard.

Notification

- (5) If a person's registration is suspended under **subsection (1) or (2)**, the chief executive must—

- (a) notify them in writing of the suspension (including the reasons for it and the effect of **section 272R(1)(b)** (if applicable)); and 5
- (b) update the register accordingly; and
- (c) take all reasonable steps to notify certified MCMs for whom the person is the responsible MCMCB.

272Q Lifting of suspension of registration of MCMCB 10

Automatic suspension

- (1) If a person's registration is suspended under **section 272P(1)**, that suspension is automatically lifted if the suspension of their accreditation is lifted.

Suspension by chief executive

- (2) If a person's registration is suspended under **section 272P(2)**, the chief executive may, on application, and on payment of the prescribed fee (if any), lift the suspension if satisfied that they— 15

- (a) again meet the criteria for registration in **section 272N**; or
- (b) have otherwise rectified the failure that led to the suspension.

- (3) The application must— 20

- (a) be made in writing; and
- (b) be made in the prescribed manner (if any); and
- (c) include the prescribed information (if any); ~~and~~
- (d) ~~be accompanied by the prescribed fee (if any).~~

- (4) As soon as practicable after receiving the application, the chief executive must— 25

- (a) decide whether to lift the suspension; and
- (b) notify the applicant in writing of the decision (including the reasons, if the suspension is not lifted); and
- (c) if the suspension is lifted, update the register accordingly. 30

272R Revocation of registration of MCMCB

- (1) A person's registration as a modular component manufacturer certification body is automatically revoked if—

- (a) their accreditation is revoked under **section 272L**; or
- (b) their registration is suspended under **section 272P(2)** and the suspension is not lifted within 12 months after it was imposed. 35

- (2) However, if—
- (a) a person's registration was suspended under **section 272P(2)**; and
 - (b) within 12 months of the suspension being imposed the person applied under **section 272Q(2)** for the suspension to be lifted; and
 - (c) at the end of those 12 months the application has not been decided,— 5
the 12-month period referred to in **subsection (1)(b)** is extended until the application is decided.
- (3) If a person's registration is revoked, the chief executive must—
- (a) notify them in writing of the revocation (including the reasons for it); 10
and
 - (b) remove their name from the register.
- 272S Urgent suspension of registration of MCMCB**
- (1) The chief executive may suspend a person's registration as a modular component manufacturer certification body if the chief executive has reasonable grounds to suspect that— 15
- (a) they have—
 - (i) certified a manufacturer knowing that its modular components are likely to cause injury or death even if used in accordance with the manufacturer's instructions; or
 - (ii) certified as a modular component manufacturer a person who does 20
not meet the criteria for certification in **section 272U**; or
 - (iii) otherwise failed to properly exercise their powers or perform their functions; and
 - (b) that conduct creates a risk of injury or death to any person or a risk to public safety that is sufficient to justify the immediate suspension of the 25
person's registration.
- (2) The chief executive may suspend the person's registration without giving them prior notice.
- (3) If a person's registration is suspended under this section, the chief executive must— 30
- (a) notify them in writing of the suspension (including the reasons for it); and
 - (b) update the register accordingly; and
 - (c) take all reasonable steps to notify certified MCMs for whom the person is the responsible MCMCB; and 35
 - (d) conduct an investigation under **section 272T**.

272T Investigation following urgent suspension

- (1) After suspending a person's registration under **section 272S**, the chief executive must investigate whether—
 - (a) they have engaged in conduct referred to in **section 272S(1)(a)**; and
 - (b) there are grounds to suspend or revoke the person's accreditation or registration under **section 272L or 272P**. 5
- (2) The investigation may be conducted by the MCMC accreditation body on behalf of the chief executive.
- (3) After completing the investigation, the chief executive must do 1 of the following: 10
 - (a) lift the suspension;
 - (b) suspend or revoke the person's accreditation under **section 272L**;
 - (c) suspend the person's registration under **section 272P**.
- (4) If the chief executive has not done any of the things mentioned in **subsection (3)** before the expiry of 6 months from when the urgent suspension was imposed, that suspension is lifted on the expiry of those 6 months. 15
- (5) If the person's suspension is lifted under **subsection (3)(a) or (4)**, the chief executive must—
 - (a) notify them in writing of the lifting of the suspension; and
 - (b) update the register accordingly. 20
- (6) This section does not limit the chief executive in taking any other investigative or enforcement action under this Act the chief executive considers appropriate.

Certification of modular component manufacturers

272U Certification of modular component manufacturer

- (1) A registered MCMCB may, on application, and on payment of the prescribed fee (if any), certify a person as a modular component manufacturer if satisfied that they— 25
 - (a) ~~they~~ have the ability to competently and reliably—
 - (i) manufacture modular components of the kind the person is to be certified to manufacture to a standard that complies with the building code; and 30
 - (ii) design modular components of the kind (if any) the person is to be certified to design to a standard that complies with the building code; and
 - (b) ~~they~~ have policies, procedures, and systems that— 35
 - (i) will result in them performing their functions as required by **paragraph (a)**; and

- (ii) ~~comply with any prescribed requirements prescribed by regulations made under **section 402(1)(uc)(i)(A)**; and~~
 - (c) ~~they comply with any other prescribed criteria and standards for certification: prescribed by regulations made under **section 402(1)(uc)(i)(B)**; and~~ 5
 - (d) ~~comply with any MCM scheme rules made under **section 272ZG(2A)** to supplement the regulations referred to in **paragraphs (b)(ii) and (c)**.~~
 - (2) The certification must specify—
 - (a) the kinds of modular components the person is certified to manufacture; and 10
 - (b) the kinds of modular components (if any) the person is certified to design.
 - (3) The application must—
 - (a) be made in writing; and 15
 - (b) be made in the prescribed manner (if any); and
 - (c) set out—
 - (i) the kinds of modular components that the person seeks to be certified to manufacture; and
 - (ii) the kinds of modular components (if any) that the person seeks to be certified to design; and 20
 - (d) include the prescribed information (if any); ~~and~~
 - (e) ~~be accompanied by the prescribed fee (if any).~~
- 272V Audit of certified MCM**
- (1) A registered MCMCB must audit each certified MCM for whom it is the responsible MCMCB— 25
 - (a) at least once in every 12 months; and
 - (b) more frequently if required by the regulations.
 - (2) However, **subsection (1)** does not apply in relation to the audit required for a particular period if another registered MCMCB has audited the modular component manufacturer in that period. 30
 - (3) A registered MCMCB may audit a certified MCM for whom it is not the responsible MCMCB at the request of the certified MCM.
 - (4) The purpose of an audit is to ascertain whether—
 - (a) the modular component manufacturer continues to meet the criteria for certification in **section 272U**; or 35
 - (b) there are grounds to suspend or revoke the person's certification under **section 272W**.

- (5) ~~An audit must be carried out in accordance with any prescribed procedures.~~
- (5) In carrying out an audit, a registered MCMCB must—
- (a) take into account any matters specified in regulations made under **section 402(1)(uc)(ii)(B)** and any MCM scheme rules that supplement those regulations; and 5
 - (b) comply with any other requirements prescribed by regulations made under **section 402(1)(uc)(ii)(C)** and any MCM scheme rules that supplement those regulations.
- (6) ~~A registered MCMCB may charge the person being audited the prescribed fee (if any) for conducting the audit.~~ 10
- 272W Suspension or revocation of certification of MCM**
- (1) The responsible MCMCB for a certified MCM may suspend or revoke the person's certification if satisfied that they—
 - (a) no longer meet the criteria for certification in **section 272U**; or
 - (b) have failed to comply with any MCM scheme rules; or 15
 - (c) have not been audited within the previous 12 months (or any shorter period prescribed for the purposes of **section 272V(1)(b)**).
 - (2) **Subsection (1)(b)** does not apply if the person has been certified for less than 12 months (or the shorter prescribed period).
 - (3) However, if— 20
 - (a) regulations made for the purposes of **section 272U(1)(b)(ii) or (c)** or any MCM scheme rules that supplement those regulations are amended; and
 - (b) a person ceases to meet the criteria in **section 272U** solely as a result of those amendments,— 25

the responsible MCMCB cannot suspend or revoke their certification under **subsection (1)(a)** unless 3 months have elapsed since those amendments came into force.
 - (4) The period of a suspension must allow the person a reasonable period to again meet the criteria in **section 272U** or to get an audit undertaken. 30
 - (5) The responsible MCMCB must lift the suspension of a person's certification if satisfied that they again meet those criteria or have been audited.
 - (6) If the suspension is not lifted before the end of the suspension period, the responsible MCMCB may revoke the certification.
 - (7) Before suspending or revoking a person's certification, the responsible MCMCB must— 35
 - (a) notify them in writing of the intention to do so and the reasons for it; and
 - (b) give them a reasonable opportunity to be heard.

- (8) If the responsible MCMCB suspends, lifts the suspension of, or revokes a person's certification, it must notify the person in writing of—
- (a) its decision and the reasons for it; and
 - (b) the effect of **section 272ZA(1), 272ZB(1), or 272ZC(1)(a)** (as applicable). 5
- (9) If a person's certification is suspended or revoked, the responsible MCMCB must notify them in writing of the suspension or revocation and the reasons for it.
- (10) The chief executive may exercise the powers of a responsible MCMCB under this section (whether or not the responsible MCMCB has exercised those powers in relation to the same manufacturer in the same period). 10

272X Notification to chief executive by registered MCMCB

- (1) A registered MCMCB must notify the chief executive when it does any of the following:
- (a) certifies a person as a modular component manufacturer: 15
 - (b) suspends, or lifts the suspension of, a person's certification:
 - (c) revokes a person's certification:
 - (d) becomes the responsible MCMCB for a modular component manufacturer as a result of carrying out an audit under **section 272V(3)**.
- (2) The notification must be given— 20
- (a) in the manner notified in writing by the chief executive to the registered MCMCB; and
 - (b) within 7 days after the event occurs.

Registration of modular component manufacturers

272Y Registration of modular component manufacturer 25

- (1) The chief executive may, on application, and on payment of the prescribed fee (if any), register a person as a modular component manufacturer if satisfied that they—
- (a) are a certified MCM; and
 - (b) meet any prescribed requirements to have adequate means to cover any civil liabilities that may arise in relation to their manufacture and design (if applicable) of modular components; and 30
 - (c) comply with any other prescribed criteria and standards for registration.
- (2) A person who is registered under **subsection (1)** is a registered MCM only in respect of— 35
- (a) the manufacture of modular components of the kind they are certified to manufacture under **section 272U**; and

(b) the design of modular components of the kind (if any) they are certified to design under section 272U .	
(3) The application must—	
(a) be made in writing; and	
(b) be made in the prescribed manner (if any); and	5
(c) include the prescribed information (if any); and	
(d) be accompanied by the prescribed fee (if any).	
(4) As soon as practicable after receiving the application, the chief executive must—	
(a) decide whether to register the applicant; and	10
(b) notify the applicant in writing of the decision (including the reasons, if the application is declined).	
272Z Audit of registered MCM	
The chief executive must audit a registered MCM at least once in every 3 years to ascertain whether—	15
(a) they continue to meet the criteria for registration in section 272Y ; and	
(b) there are grounds to suspend the person's registration under section 272ZA .	
272ZA Suspension of registration of MCM	
<i>Automatic suspension</i>	20
(1) A person's registration as a modular component manufacturer is automatically suspended if their certification is suspended under section 272W .	
<i>Suspension by chief executive</i>	
(2) The chief executive may suspend a person's registration as a modular component manufacturer if satisfied that—	25
(a) the person no longer meets the criteria for registration in section 272Y ; or	
(b) the person has failed to comply with any MCM scheme rules; or	
(c) the responsible MCMCB for the person has failed to comply with any MCM scheme rules.	30
(3) However, if—	
(a) regulations made for the purposes of section 272Y(1)(b) or (c) are amended; and	
(b) a person ceases to meet the criteria in section 272Y solely as a result of those amendments,—	35
the chief executive cannot suspend their registration under subsection (2) unless 3 months have elapsed since those amendments came into force.	

- (4) Before suspending a person's registration under **subsection (2)**, the chief executive must—
- (a) notify them in writing of the intention to do so and the reasons for it; and
 - (b) give them a reasonable opportunity to be heard.

Notification

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- (5) If a person's registration is suspended under **subsection (1) or (2)**, the chief executive must—
- (a) notify them in writing of the suspension (including the reasons for it and the effect of **section 272ZC(1)(b)** (if applicable)); and
 - (b) update the register accordingly.

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272ZB Lifting of suspension of registration of MCM

Automatic suspension

- (1) If a person's registration is suspended under **section 272ZA(1)**, that suspension is automatically lifted if the suspension of their certification is lifted.

Suspension by chief executive

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- (2) If a person's registration is suspended under **section 272ZA(2)**, the chief executive may, on application, and on payment of the prescribed fee (if any), lift the suspension if satisfied that,—
- (a) in the case of a suspension under **section 272ZA(2)(a) or (c)**, the person meets the criteria for registration in **section 272Y**; or
 - (b) in the case of a suspension under **section 272ZA(2)(b)**, the person has rectified the failure.

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- (3) The application must—
- (a) be made in writing by the modular component manufacturer; and
 - (b) be made in the prescribed manner (if any); and
 - (c) include the prescribed information (if any); ~~and~~
 - (d) ~~be accompanied by the prescribed fee (if any).~~

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- (3A) However, the fee (if any) is not payable if the person's registration was suspended under **section 272ZA(2)(c)**.

- (4) As soon as practicable after receiving the application, the chief executive must—
- (a) decide whether to lift the suspension; and
 - (b) notify the applicant in writing of the decision (including the reasons, if the suspension is not lifted); and
 - (c) if the suspension is lifted, update the register accordingly.

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272ZC Revocation of registration of MCM

- (1) A person's registration as a modular component manufacturer is automatically revoked if—
 - (a) their certification is revoked under **section 272W**; or
 - (b) their registration is suspended under **section 272ZA(2)** and the suspension is not lifted within 12 months after it was imposed. 5
- (2) However, if—
 - (a) a person's registration was suspended under **section 272ZA(2)**; and
 - (b) within 12 months of the suspension being imposed the person applied under **section 272ZB(2)** for the suspension to be lifted; and 10
 - (c) at the end of those 12 months the application has not been decided,—the 12-month period referred to in **subsection (1)(b)** is extended until the application is decided.
- (3) If a person's registration is revoked, the chief executive must—
 - (a) notify them in writing of the revocation (including the reasons for it); and 15
 - (b) remove their name from the register.

272ZD Urgent suspension of registration of MCM

- (1) The chief executive may suspend a person's registration as a modular component manufacturer if the chief executive has reasonable grounds to suspect that— 20
 - (a) they have—
 - (i) manufactured modular components that are likely to cause injury or death even if used in accordance with the manufacturer's instructions; or 25
 - (ii) in connection with their modular components, failed to comply with this Act or any MCM scheme rules; and
 - (b) that conduct creates a risk of injury or death to any person or a risk to public safety that is sufficient to justify the immediate suspension of the person's registration. 30
- (2) The chief executive may suspend the person's registration without giving them prior notice.
- (3) If a person's registration is suspended under this section, the chief executive must—
 - (a) notify them in writing of the suspension (including the reasons for it); and 35
 - (b) update the register accordingly; and
 - (c) conduct an investigation under **section 272ZE**.

272ZE Investigation following urgent suspension

- (1) After suspending a person's registration under **section 272ZD**, the chief executive must investigate whether—
 - (a) they have engaged in conduct referred to in **section 272ZD**; and
 - (b) there are grounds to suspend or revoke the person's certification or registration under **section 272W or 272ZA**. 5
- (2) The investigation may be conducted by the MCMC accreditation body on behalf of the chief executive.
- (3) After completing the investigation, the chief executive must do 1 of the following: 10
 - (a) lift the suspension;
 - (b) suspend or revoke the person's certification under **section 272W**;
 - (c) suspend the person's registration under **section 272ZA(2)**.
- (4) If the chief executive has not done any of the things mentioned in **subsection (3)** before the expiry of 6 months from when the urgent suspension was imposed, that suspension is lifted on the expiry of those 6 months. 15
- (5) If the person's suspension is lifted under **subsection (3)(a) or (4)**, the chief executive must—
 - (a) notify them in writing of the lifting of the suspension; and
 - (b) update the register accordingly. 20
- (6) This section does not limit the chief executive in taking any other investigative or enforcement action under this Act the chief executive considers appropriate.

*Manufacturer's certificates for modular components***272ZF Registered MCM may issue certificate for modular components**

- (1) A registered MCM who is certified to manufacture a modular component may issue a certificate for that component relating to its compliance with the building code or relevant building consent for the purposes of 1 or more of **sections 19(1)(da), 45(1)(bb) or (bc), and 92(3) or (3A)**. 25
- (2) The certificate must—
 - (a) ~~be in the prescribed form; and~~ 30
 - (a) be in the form (if any) approved by the chief executive; and
 - (b) include the prescribed information; and
 - (c) be issued in accordance with any prescribed requirements.
- (3) The certificate—
 - (a) takes effect when it is issued by the manufacturer; and 35
 - (b) remains current until the first of the following occurs:

- (i) the manufacturer revokes the certificate:
- (ii) the manufacturer ceases to be a registered MCM.
- (4) Regulations prescribing requirements for **subsection (2)**—
 - (a) may prescribe requirements for all modular components or any class or classes of modular components: 5
 - (b) may prescribe different requirements for different modular components or classes of modular components:
 - (c) may prescribe different requirements for different manufacturers or classes of manufacturers:
 - (d) may prescribe different requirements depending on when the certificate is issued: 10
 - (e) may otherwise make different provision for different cases on any differential basis.

MCM scheme rules

- 272ZG MCM scheme rules** 15
- (1) The chief executive may, ~~by notice in the Gazette,~~ make rules for the operation of the modular component manufacturer certification scheme under this sub-part.
 - (2) The rules may (without limitation) include rules relating to 1 or more of the following: 20
 - (a) how the scheme parties are to perform their functions under this Act:
 - (b) how modular component manufacturers are to be evaluated:
 - (c) resolution of disputes between scheme parties:
 - (d) procedural and administrative matters.
 - (2A) The rules may also supplement regulations made under **section 402(1)(ub)(i), (ii)(B), or (ii)(BA), or (uc)(i), (ii)(B) or (ii)(C).** 25
 - (2B) However, the chief executive must not make rules under **subsection (2A)** unless satisfied that the rules—
 - (a) set out matters of detail to elaborate on matters provided for in the regulations; or 30
 - (b) set out procedures, methodologies, forms, or other matters of an administrative nature relating to matters provided for in the regulations; or
 - (c) set out how requirements imposed by the regulations may or must be met; or
 - (d) otherwise supplement matters of general principle set out in the regulations. 35
 - (3) In this section, **scheme party** means any of the following:

- (a) the MCMC accreditation body:
 - (b) an accredited MCMCB:
 - (c) a registered MCMCB:
 - (d) a certified MCM:
 - (e) a registered MCM. 5
- (4) ~~The rules are a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.~~
- (4) Rules made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 10
- 272ZH Procedure for making MCM scheme rules**
- (1) Before making MCM scheme rules, the chief executive must—
 - (a) publicly notify the proposal to make the rules; and
 - (b) give persons at least 20 working days to make submissions on the proposal; and 15
 - (c) consider those submissions.
 - (2) The notice must include the following:
 - (a) a detailed statement of the proposed rules, including any transitional arrangements (which may, but need not, include a copy of the proposed rules): 20
 - (b) the reasons for making the rules:
 - (c) the date on which the rules will come into force:
 - (d) details of how, and by when, submissions may be made.
 - (3) The chief executive need not comply with **subsection (1)** in relation to an amendment of the rules if satisfied that the amendment will not adversely affect the substantial interests of any person. 25
 - (4) ~~The chief executive must ensure that the following are publicly available on the Ministry's Internet site:~~
 - (a) ~~all MCM scheme rules (including amendments) as they are made; and~~
 - (b) ~~a consolidated version of the MCM scheme rules as in force from time to time.~~ 30

Offences relating to modular component manufacturer scheme

272ZI Offence to misrepresent status

- (1) A person who is not the MCMC accreditation body must not perform any of the functions of that body. 35

- (2) A person who is not a registered MCMCB must not perform any of the functions of a registered MCMCB.
 - (3) A person who fails to comply with **subsection (1) or (2)**—
 - (a) commits an offence; and
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$300,000;
 - (ii) in the case of a body corporate, to a fine not exceeding \$1,500,000.
 - (4) A person must not, in any other way, represent themselves as being any of the following if that is not the case:
 - (a) the MCMC accreditation body;
 - (b) authorised to accredit modular component manufacturer certification bodies;
 - (c) an accredited MCMCB;
 - (d) a registered MCMCB;
 - (e) authorised to certify modular component manufacturers;
 - (f) a certified MCM;
 - (g) a registered MCM.
 - (5) A person who fails to comply with **subsection (4)**—
 - (a) commits an offence; and
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$50,000;
 - (ii) in the case of a body corporate, to a fine not exceeding \$150,000.
- 272ZJ Offence to misrepresent modular component as manufactured by registered MCM**
- (1) A person must not misrepresent a modular component as being any of the following if that is not the case:
 - (a) manufactured by a registered MCM;
 - (b) a modular component to which **section 19(1)(da) or (db)** would apply.
 - (2) A person who fails to comply with **subsection (1)**—
 - (a) commits an offence; and
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$300,000;
 - (ii) in the case of a body corporate, to a fine not exceeding \$1,500,000.

72 Section 273 amended (Chief executive must keep registers)

Replace section 273(1)(d) and (e) with:

- (d) a register of product certification bodies for the purposes of **sections 267A to 267E**;
- (e) a register of product certificates for the purposes of **sections 272A to 272D**;
- (f) a register of modular component manufacturer certification bodies for the purposes of **sections 272N to 272T**;
- (g) a register of modular component manufacturers for the purposes of **sections 272Y to 272ZE**.

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73 Section 274 amended (Purpose of registers)

(1) Replace section 274(a)(iv) and (v) with:

- (iv) in the case of the register of product certification bodies, the names and contact details of registered PCBs and persons whose registration as a product certification body is suspended; and
- (v) in the case of the register of product certificates, which building products and building methods have registered product certificates; and
- (vi) in the case of the register of modular component manufacturer certification bodies, the names and contact details of registered MCMCBs and persons whose registration as a modular component manufacturer certification body is suspended; and
- (vii) in the case of the register of modular component manufacturers, the following details of registered MCMs and persons whose registration as a modular component manufacturer is suspended:
 - (A) their name and contact details; and
 - (B) the kind of modular components they are certified to manufacture; and
 - (C) the kind of modular components (if any) they are certified to design.

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(2) In section 274(b), after “chief executive”, insert “and other persons and bodies”.

74 Section 275 amended (Content of register of building consent authorities)

In section 275(a), replace “section 203(2)(c)” with “**section 203C**”.

75 Section 289 amended (Duty to produce evidence of being licensed)

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In section 289, insert as subsection (2):

- (2) A person who fails to comply with **subsection (1)**—

	(a) commits an offence; and	
	(b) is liable on conviction to a fine not exceeding \$5,000.	
76	Section 302 amended (Obligation to notify Registrar of change in circumstances)	
	After section 302(2), insert:	5
(3)	A person who fails to comply with subsection (1)—	
	(a) commits an offence; and	
	(b) is liable on conviction to a fine not exceeding \$5,000.	
77	Section 314 amended (Offences relating to licensing)	
(1)	In section 314(1), replace “commits an offence if the person holds himself or herself” with “must not hold themselves”.	10
(2)	Replace section 314(2) to (4) with:	
(2)	A person who fails to comply with subsection (1)—	
	(a) commits an offence; and	
	(b) is liable on conviction to a fine not exceeding \$50,000.	15
78	Section 326 amended (Failure to comply with summons)	
(1)	In section 326(1), replace “commits an offence if he or she, without sufficient cause,” with “must”.	
(2)	In section 326(1)(a), delete “fails to”.	
(3)	In section 326(1)(b) to (e), delete “does not”.	20
(4)	In section 326(1)(a), (b), (c) and (d), replace “; or” with “; and”.	
(5)	Replace section 326(2) with:	
(2)	A person who fails to comply with subsection (1) without sufficient cause—	
	(a) commits an offence; and	
	(b) is liable on conviction to a fine not exceeding \$5,000.	25
78A	Section 362B amended (Meaning of building work and residential building contract)	
	In section 362B(1), definition of residential building contract , replace paragraph (b) with:	
(b)	does not include a subcontracting agreement between a building contractor and a building subcontractor; and	30
(c)	does not include an agreement that relates to the purchase from a registered MCM of a modular component that is a household unit where the purchaser of the modular component intends to on-sell it.	

- 79 Section 362D amended (Building contractor must provide information before residential building contract entered into)**
- (1) In section 362D(5), replace “commits an offence who” with “must not”.
 - (2) In section 362D(5), replace “makes” with “make” in each place.
 - (3) Replace section 362D(6) with: 5
 - (6) A person who fails to comply with subsection (5)—
 - (a) commits an offence; and
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$50,000;
 - (ii) in the case of a body corporate, to a fine not exceeding \$150,000. 10
- 79A Section 362H amended (When provisions relating to implied warranties apply)**
- After section 362H(3), insert:
- (4) However, subsection (3)(a) does not apply to the manufacture of a household unit by a registered MCM who is certified to manufacture the household unit. 15
- 80 Section 362I amended (Implied warranties for building work in relation to household units)**
- (1) In section 362I(1)(a)(iii), after “consent”, insert “(if any)”.
 - (2) In section 362I(1)(b) and (f), replace “materials” with “building products”.
- 81 Section 362M amended (Remedies if breach of warranty can be remedied)** 20
- In section 362M(2), replace “materials” with “building products”.
- 82 Section 362Q amended (Building contractor or on-seller must remedy defect notified within 1 year of completion)**
- In section 362Q(3), replace “materials” with “building products”.
- 82A Section 362T amended (Building contractor must provide prescribed information and documentation on completion of residential building work)** 25
- In section 362T(2)(b), after “authority”, insert “(if any)”.
- 83 Section 362V amended (Offence for commercial on-seller to transfer household unit without code compliance certificate)** 30
- (1) In section 362V(1), replace “commits an offence if the commercial on-seller does either or both” with “must not do either”.
 - (2) In section 362V(1)(a), replace “completes” with “complete”.
 - (3) In section 362V(1)(b), replace “allows” with “allow”.
 - (4) Replace section 362V(3) with: 35

- (3) ~~A person who fails to comply with subsection (1)—~~
- ~~(a) commits an offence; and~~
 - ~~(b) is liable on conviction,—~~
 - ~~(i) in the case of an individual, to a fine not exceeding \$300,000;~~
 - ~~(ii) in the case of a body corporate, to a fine not exceeding \$1,500,000.~~
- (3) If a household unit is a modular component manufactured by a registered MCM who is certified to design and manufacture it, subsection (1) does not apply to the sale of the household unit by the manufacturer.
- (5) After section 362V(4), insert:
- (4A) A person who fails to comply with subsection (1)—
- (a) commits an offence; and
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$300,000;
 - (ii) in the case of a body corporate, to a fine not exceeding \$1,500,000.

84 New Part 4B inserted

After section ~~326V~~ 362V, insert:

- Part 4B**
- Building product information requirements**
- 362VA Building product information requirements may be prescribed**
- (1) Regulations may be made under **section 402(1)(xg)** prescribing information requirements for a building product.
- (2) The information requirements for a building product may specify—
- (a) what information must be disclosed in relation to the building product; and
 - (b) who must disclose the information and to whom; and
 - (c) when the information must be disclosed.
- (3) Without limiting **subsection (2)(a)**, the information to be disclosed may include information relating to—
- (a) the building product;
 - (b) the manufacturer, supplier, or other person connected with the supply of the building product;
 - (c) the installation, use, maintenance, or disposal of the building product:

- (d) any warnings, bans, or other restrictions in force in relation to the building product.
- (4) The information requirements for a building product may also specify any of the following:
- (a) the form and manner in which information must be disclosed: 5
 - (b) how information must be obtained or verified before it is disclosed:
 - (c) requirements for reviewing and updating information:
 - (d) requirements for retaining copies of, or keeping records about, information:
 - (e) any other requirements that are necessary or desirable to administer and enforce compliance with the information requirements. 10
- (5) Regulations prescribing information requirements for building products—
- (a) may prescribe requirements for a particular building product or a class or classes of building products:
 - (b) may prescribe different requirements for different building products or classes of building products: 15
 - (c) may prescribe different requirements for different manufacturers, suppliers, or other persons, or classes of such persons:
 - (d) may otherwise make different provision for different cases on any differential basis. 20
- 362VB Failure to comply with building product information requirements an offence**
- (1) This section applies in relation to a building product if information requirements are in force under **section 362VA** for that product.
- (2) A person must not, in trade, do any of the following with the building product unless the person complies with the information requirements: 25
- (a) supply the building product in New Zealand:
 - (b) offer to supply the building product in New Zealand:
 - (c) advertise the supply of the building product in New Zealand:
 - (d) import the product into New Zealand for the purpose of supply. 30
- (3) A person who fails to comply with **subsection (2)**—
- (a) commits an offence; and
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$10,000:
 - (ii) in the case of a body corporate, to a fine not exceeding \$30,000. 35

362VC False or misleading representations in relation to building products

- (1) A person must not, in trade, make a relevant representation about a building product that is—
 - (a) unsubstantiated; or
 - (b) false or misleading in a material particular or because of a material omission. 5
- (2) A **relevant representation** means a representation relating to a building product that is made in connection with—
 - (a) the supply, or possible supply, of the building product; or
 - (b) the promotion of the supply of the building product. 10
- (3) A representation is **unsubstantiated** if, when the representation is made, the person making it does not have reasonable grounds for the representation, irrespective of whether it is false or misleading.
- (4) However, **subsection (1)(a)** does not apply to a representation that a reasonable person would not expect to be substantiated. 15
- (5) A person who fails to comply with **subsection (1)**—
 - (a) commits an offence; and
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$200,000;
 - (ii) in the case of a body corporate, to a fine not exceeding \$600,000. 20

362VD Defences for offences against sections 362VB and 362VC

- (1) This section provides defences to a prosecution for an offence against **section 362VB(2) or 362VC(1)**.
- (2) It is a defence if the defendant proves that the failure to comply with **section 362VB(2) or 362VC(1)** was due to—
 - (a) a reasonable mistake; or
 - (b) reasonable reliance on information supplied to the defendant by another person. 25
- (3) It is a defence if the defendant proves that—
 - (a) the failure to comply with **section 362VB(2) or 362VC(1)** was due to—
 - (i) the act or omission of another person; or
 - (ii) an accident or to some other cause beyond the defendant's control; and
 - (b) the defendant took reasonable precautions and exercised due diligence to avoid the failure. 30 35

- (4) In relation to a failure to comply with **section 362VB(2)(c) or 362VC(1)**, it is a defence if the defendant proves that they—
- (a) are in the business of publishing, or arranging for the publication of, advertisements; and
 - (b) published, or arranged the publication of, the advertisement on behalf of another person in the ordinary course of that business; and
 - (c) did not know, and had no reason to suspect, that the publication of the advertisement would constitute an offence.
- (5) *See also* section 388 (strict liability and defences).

Notice to take corrective action

362VE Notice to take corrective action

- (1) The chief executive may give a notice to take corrective action to a person if satisfied that the person has failed to comply with a building product information requirement in force under **section 362VA**.
- (2) A **notice to take corrective action** is a notice requiring the person to whom it is given to take any steps specified in the notice to—
- (a) remedy the non-compliance; or
 - (b) ensure that the non-compliance is not continued or repeated.
- (3) The notice must—
- (a) be in writing; and
 - (b) specify a reasonable period within which the required steps must be taken.

362VF Compliance with notice to take corrective action

- (1) A person who has been given a notice to take corrective action by the chief executive must comply with it within the period specified in it.
- (2) A person who fails to comply with **subsection (1)**—
- (a) commits an offence; and
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$10,000;
 - (ii) in the case of a body corporate, to a fine not exceeding \$30,000.

85 Section 365 amended (Offence to fail to comply with direction of authorised person)

- (1) In section 365(1), replace “commits an offence if the person intentionally fails to” with “must”.
- (2) Replace section 365(2) with:
- (2) A person who intentionally fails to comply with subsection (1)—

	(a) commits an offence; and (b) is liable on conviction,— (i) in the case of an individual, to a fine not exceeding \$20,000; (ii) in the case of a body corporate, to a fine not exceeding \$60,000.	
86	Section 366 amended (Offence to impersonate building consent authority or regional authority, etc)	5
(1)	In section 366(1), replace “commits an offence if the person impersonates” with “must not impersonate”.	
(2)	Replace section 366(2) with:	
(2)	A person who fails to comply with subsection (1)— (a) commits an offence; and (b) is liable on conviction,— (i) in the case of an individual, to a fine not exceeding \$50,000; (ii) in the case of a body corporate, to a fine not exceeding \$150,000.	10
87	Section 367 amended (Offence to obstruct execution of powers under this Act)	15
(1)	In section 367(1), replace “commits an offence if the person wilfully obstructs, hinders, or resists” with “must not wilfully obstruct, hinder, or resist”.	
(2)	Replace section 367(2) with:	
(2)	A person who fails to comply with subsection (1)— (a) commits an offence; and (b) is liable on conviction,— (i) in the case of an individual, to a fine not exceeding \$50,000; (ii) in the case of a body corporate, to a fine not exceeding \$150,000.	20
88	Section 368 amended (Offence to remove or deface notices)	25
(1)	In section 368(1), replace “commits an offence if the person” with “must not”.	
(2)	In section 368(1)(a), replace “removes or defaces” with “remove or deface”.	
(3)	In section 368(1)(b), replace “incites” with “incite”.	
(4)	Replace section 368(2) with:	
(2)	A person who fails to comply with subsection (1)— (a) commits an offence; and (b) is liable on conviction,— (i) in the case of an individual, to a fine not exceeding \$50,000; (ii) in the case of a body corporate, to a fine not exceeding \$150,000.	30

Part 1 cl 89	Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill	
89 Section 369 amended (Offence to make false or misleading statement)		
(1) In section 369(1), replace “commits an offence if the person” with “must not”.		
(2) In section 369(1)(a) and(b), replace “makes” with “make”.		
(3) Replace section 369(2) with:		
(2) A person who fails to comply with subsection (1)— (a) commits an offence; and (b) is liable on conviction,— (i) in the case of an individual, to a fine not exceeding \$20,000: (ii) in the case of a body corporate, to a fine not exceeding \$60,000.		5
90 Section 371D amended (Offence to impersonate enforcement officer)		10
In section 371D(2), replace “\$5,000” with “\$50,000”.		
91 Section 378 amended (Time limit for filing charging document)		
In section 378, replace “6 months” with “12 months”.		
92 Section 392 amended (Building consent authority not liable)		
Replace section 392(1)(c) with:		15
(c) a current registered product certificate: (caa) a current manufacturer’s certificate for a modular component:		
92A Section 393 amended (Limitation defences)		
(1) <u>In section 393(1)(a), after “any building”, insert “or the manufacture of a modular component manufactured by a registered MCM who is certified to manufacture it”.</u>		20
(2) <u>In section 393(1)(b), after “building”, insert “or the modular component”.</u>		
93 Section 401 amended (Regulations: acceptable solutions, verifications, etc, that must be complied with in order to comply with building code)		
Replace section 401(1)(c) with:		25
(c) the circumstances in which building products or building methods that have a current registered product certificate must be used.		
94 Section 402 amended (Regulations: general)		
(1AAA) <u>In section 402(1)(i), after “which rules”, insert “made under section 353”.</u>		
(1) In section 402(1)(k), after “information”, insert “that is required to accompany applications or is otherwise”.		30
(2) Repeal section 402(1)(t)(iv).		
(3) In section 402(1)(ta), replace “, 257(a), or 262(1)(a),” with “or 257,”.		
(4) After section 402(1)(ta), insert:		

- (tb) prescribing, in relation to product certification bodies,—
 - (i) the fees payable under section 262A for an audit or the rate at which, or method by which, those fees are to be calculated:
 - (ii) for the purposes of **section 263(1)**,—
 - (A) requirements for policies, procedures, and systems: 5
 - (B) other criteria and standards for accreditation:
 - (iii) for the purposes of **section 267A**,—
 - (A) requirements to have adequate means to cover civil liabilities:
 - (B) other criteria and standards for registration: 10
- (5) Replace section 402(1)(u) with:
 - (u) prescribing, in relation to product certification bodies,—
 - (i) the criteria and standards for certification of a building product or building method for the purposes of **section 269** (which must include, without limitation, criteria and standards about the effects on human health of the building product or building methods): 15
 - (ii) ~~in relation to reviews under **section 270**,—~~
 - (A) ~~audit procedures (including the issuing of audit reports and certificates):~~
 - (B) ~~the fees payable for an audit or the rate at which, or method by which, those fees are to be calculated:~~ 20
 - (ii) in relation to reviews under **section 270**, matters that a registered PCB must take into account, and requirements that a registered PCB must comply with, in carrying out an audit: 25
 - (ua) prescribing the kinds of building products that are modular components for the purposes of the definition of modular component in section 7: 25
 - (ub) prescribing, in relation to modular component manufacturer certification bodies,—
 - (i) for the purposes of **section 272J(1)**,—
 - (A) requirements for policies, procedures, and systems: 30
 - (B) other criteria and standards for accreditation:
 - (ii) in relation to audits under **section 272K**,—
 - (A) the frequency with which audits must be conducted:
 - (B) ~~audit procedures (including the issuing of audit reports and certificates):~~ 35
 - (B) matters that an MCMC accreditation body must take into account in carrying out an audit:

- (BA) other requirements that an MCMC accreditation body must comply with in carrying out an audit:
- (C) the fees payable for an audit or the rate at which, or method by which, those fees are to be calculated:
- (iii) for the purposes of **section 272N**,— 5
- (A) requirements to have adequate means to cover civil liabilities:
- (B) other criteria and standards for registration:
- (uc) prescribing, in relation to modular component manufacturers,—
- (i) for the purposes of **section 272U(1)**,— 10
- (A) requirements for policies, procedures, and systems:
- (B) other criteria and standards for accreditation certification:
- (ii) in relation to audits under **section 272V**,—
- (A) the frequency with which audits must be conducted:
- (B) audit procedures (including the issuing of audit reports and certificates): 15
- (C) the fees payable for an audit or the rate at which, or method by which, those fees are to be calculated:
- (B) matters that a registered MCMCB must take into account in carrying out an audit: 20
- (C) other requirements that a registered MCMCB must comply with in carrying out an audit:
- (iii) for the purposes of **section 272Y**,—
- (A) requirements to have adequate means to cover civil liabilities: 25
- (B) other criteria and standards for registration:
- (ud) prescribing the form, content information to be included in, and other requirements for, manufacturer's certificates for modular components for the purposes of **section 272ZF**, and the circumstances in which those certificates are not required under **section 92(3A)**: 30
- (6) After section 402(1)(xf), insert:
- (xg) prescribing information requirements for building products for the purposes of **section 362VA**:
- 95 Section 403 amended (Consultation requirements for making regulations)**
- (1) In the heading to section 403, replace “**regulations**” with “**certain regulations and other Orders in Council**”. 35
- (2) In section 403(1)(a), replace “section 285” with “**section 9A, 9B**, or 285”.

- (3) In section 403(1)(b), replace “section 400 or section 401” with “section 400, 401, or **402(1)(xg)**”.

96 Section 405 amended (Incorporation of material by reference into certain instruments, solutions, and methods)

- (1) In section 405(4)(c), replace “section 41” with “**section 9A, 9B, 41,**”. 5
- (2) After section 405(4)(d), insert:
- (e) product certification scheme rules made under **section 272E**; and
 - (f) modular component manufacturer certification scheme rules made under **section 272ZG**.

97 Schedule 1AA amended

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- (1) In Schedule 1AA, clause 1, replace “schedule” with “Part”.
- (2) In Schedule 1AA, after clause 6, insert:

Part 2A
Provisions relating to Legislation Act 2019

6A Application of Part

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This Part applies until the main commencement date (as defined in clause 2 of Schedule 1 of the Legislation Act 2019).

6B Publication and status of product certification and MCM scheme rules

- (1) This clause applies to—
- (a) product certification scheme rules; and 20
 - (b) MCM scheme rules.
- (2) The rules must be—
- (a) made available on the Ministry’s Internet site (*see subclause (3)*); and
 - (b) notified in the *Gazette* together with a statement that the rules are available on the Ministry’s Internet site. 25
- (3) The chief executive must ensure that the following are publicly available on the Ministry’s Internet site:
- (a) all product certification scheme rules and MCM scheme rules (including amendments) as they are made; and
 - (b) a consolidated version of each of the product certification scheme rules and MCM scheme rules as in force from time to time. 30
- (4) The rules are a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Part 3

Provisions relating to Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2020

7 Meanings of building product and building method

- (1) An existing reference to a building method or product (as defined in section 20, as in force before the commencement date) is to be read as a reference to a building product (as defined in **section 9A**) or a building method (as defined in **section 9B**), as the case requires. 5
- (2) **Subclause (1)** applies unless the context otherwise requires.
- (3) In this clause,— 10
 - commencement date** means the date on which **section 7** of the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act **2020** comes into force
 - existing reference** means a reference in regulations or any document made under, or in connection with, this Act that was made before the commencement date. 15

8 Current PCBs have 6 months to become registered

- (1) On and after the commencement date, a current PCB is taken to be a registered PCB.
- (2) If, immediately before the commencement date, the current PCB's accreditation was suspended, their registration is taken to also be suspended (as if it had been suspended under **section 267C(2)** when the accreditation was suspended). 20
- (3) However, **subclause (1)** ceases to apply to a person on the earlier of the following: 25
 - (a) the person's registration under **section 267A**;
 - (b) the expiry of 6 months from the commencement date;
 - (c) the revocation of the registration under **section 267E**.
- (4) The chief executive must update the register kept under **section 273(1)(d)** to show the effect of this clause. 30
- (5) In this clause,—
 - commencement date** means the date on which **section 66** of the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act **2020** comes into force
 - current PCB** means a person who was an accredited product certification body immediately before the commencement date (even if the accreditation was suspended). 35

9	Current product certificates become registered	
(1)	On the commencement date, a current certificate becomes a registered product certificate as if it had been registered under section 272A .	
(2)	If, immediately before the commencement date, the current certificate was suspended, the registration is taken to also be suspended (as if it had been suspended under section 272B(2) when the certificate was suspended).	5
(3)	The chief executive must update the register kept under section 273(1)(e) to show the effect of this clause.	
(4)	In this clause,— commencement date means the date on which section 70 of the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2020 comes into force current certificate means a product certificate that was in force immediately before the commencement date (even if it was suspended).	10
9A	Product certificates for building designs or building design methods	15
(1)	<u>If a continued certificate relates to a building design, the certificate provisions apply as if the references in them to a building method included references to a building design.</u>	
(2)	<u>If a continued certificate relates to a building design method, the certificate provisions apply as if the references in them—</u>	20
(a)	<u>to a building method included references to a building design method; and</u>	
(b)	<u>to the building method complying with the criteria for certification under section 269(1) were references to plans and specifications prepared in accordance with the building design method complying with those criteria.</u>	25
(3)	In this clause,— certificate provisions means the provisions of this Act relating to product certificates, any regulations relating to product certificates, and any product certification scheme rules made under section 272E(2A) to supplement those regulations continued certificate means a current certificate that becomes a registered product certificate under clause 9 .	30
10	Time limit for filing charging document	
	Section 378, as in force before the commencement of section 91 of the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2020 , continues to apply in relation to offences committed before that commencement.	35

98 Schedule 1 amended

- (1) In Schedule 1, clause 1(1), replace “any component or” with “a building product or an”.
- (2) In Schedule 1, clause 1(1), replace “comparable materials are” with “a comparable building product or assembly is”.
- (3) In Schedule 1, clause 1(2), replace “any component or” with “a building product or an”.
- (3A) In Schedule 1, heading to clause 3A, replace “material” with “building products”.
- (3B) In Schedule 1, clause 3A(1)(c), replace “wall and roof materials” with “building products for the walls and roof”.
- (4) In Schedule 1, clause 1(2)(a), replace “component” with “building product”.
- (5) In Schedule 1, clause 1(3)(b), replace “any component or” with “a building product or an”.
- (6) In Schedule 1, clause 1(3)(c), replace “any component or assembly” with “a building product or an assembly incorporated in or associated with a building”.
- (7) In Schedule 1, clause 10(c)(ii), replace “material” with “a building product”.
- (8) In Schedule 1, clause 11(e), replace “material” with “a building product”.
- (9) In Schedule 1, clause 32(1), replace “materials” with “building products”.
- (10) In Schedule 1, clause 32(2)(a) and (3)(b), replace “component” with “building product”.
- (11) In Schedule 1, clause 36, replace “materials, comparable components, or a comparable assembly” with “building products or a comparable assembly”.

Part 2

Amendments to other enactments

Subpart 1—Search and Surveillance Act 2012

99 Amendment to Search and Surveillance Act 2012

This subpart amends the Search and Surveillance Act 2012.

100 Schedule amended

In the Schedule, item relating to the Building Act 2004, insert in its appropriate numerical order:

207BC	Chief executive may obtain and execute a warrant to enter a household unit or marae and exercise powers of inspection	Subpart 3
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Subpart 2—Building (Definition of Restricted Building Work) Order
2011

**101 Amendment to Building (Definition of Restricted Building Work) Order
2011**

This subpart amends the Building (Definition of Restricted Building Work) Order 2011. 5

**102 Clause 4 amended (Order does not apply to certain building work or
design work)**

In clause 4, insert as subclause (2):

- (2) This order does not apply to building work or design work carried out by a registered MCM in the course of designing or manufacturing a modular component. 10

Legislative history

8 May 2020
27 May 2020

Introduction (Bill 234–1)
First reading and referral to Environment Committee