

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

Government Bill

## **Explanatory note**

### **General policy statement**

By amending the Building Act 2004, this Bill contributes to a programme of reforms to the building regulatory system that will lift the efficiency and quality of building work and provide fairer outcomes if things go wrong.

### **Current legislative framework is not delivering efficiency and quality required in building sector**

A high-performing building sector is vital to providing safe and durable buildings where New Zealanders work, live, and play. However, systemic problems are holding the building sector back. Low productivity, inefficient practices and processes, skills and labour shortages, financial vulnerability, and poor health and safety practices are some of the key challenges facing the building sector.

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

This Bill forms part of a wider work programme of reform. The Government and industry are using a range of regulatory and non-regulatory levers to address identified problems. This Bill addresses problems resulting from legislative settings, where non-legislative options would not be effective.

A co-ordinated Government and industry response is required to support sustained and transformative change for the sector and to support a high-performing building sector that produces efficient and high-quality building outcomes. In order to achieve this, in January 2020 Government and industry leaders launched the Construction

Sector Transformation Plan containing 22 programmes within 6 workstreams to be implemented over 3 years.

### **Objective of Bill is to support transformative change for building sector**

This Bill provides for necessary legislative reform to support these changes, and to deliver the following outcomes:

- better information on products to support better and more informed decision making, helping designers and builders to choose the right products and install them in the way intended, and to support faster consenting:
- a new manufacturer certification and registration scheme will provide faster, more consistent building consent approaches for manufacturers that are able to meet quality and performance standards and have a demonstrated ability to produce buildings and components that comply with the New Zealand Building Code. Building consent authority (BCA) involvement will focus on work not covered by the certification scheme, such as foundations and site works, potentially decreasing by half the number of building inspections required:
- a strengthened product certification scheme will improve confidence that new and innovative building products and methods will comply with the building code and will be accepted by BCAs:
- higher maximum penalties and a longer period to file a charge will provide greater protection for building users:
- widening the scope of the building levy to allow the Ministry of Business, Innovation, and Employment (MBIE) to monitor, oversee, and improve the performance of the building sector and relevant systems operating under building sector legislation:
- a change to allow public notifications to be carried out online rather than published in daily newspapers will show the industry is moving with the times, recognising the public's changing preferences in relation to how they access information.

Collectively, these changes are expected to improve trust and confidence in the regulatory system and building sector, with greater opportunity for economies of scale and a reduced risk to New Zealand's reputation from product and building defects.

### **Specific features of Bill**

#### *Minimum requirements for information on building products*

Quality building products are central to safe and durable buildings. Good product information, clear responsibilities, and stronger investigative powers for the central regulator are needed to support the building and construction sector to make good decisions about the use of building products.

Currently, the Building Act 2004 does not provide a clear definition of what a building product or building method is and what role they play in building work. This Bill

defines those terms separately and expands the purpose of the Building Act 2004 to support an efficient regulatory system and a high-performing building sector. Consequently, those terms are updated throughout the Building Act 2004 to ensure consistency—this is not indicative of a change in policy intent.

The Bill also introduces minimum requirements for information about building products to support better and more efficient decision making, and clarify responsibilities so that importers, manufacturers, suppliers, designers, and builders can be held accountable for any breaches of their responsibilities in relation to building products and building methods and their use.

#### *Creation of specialist framework for modular components*

Using new manufacturing approaches and methodology can lift productivity and reduce building costs and delays. However, there are difficulties gaining building consents for modern methods of construction such as prefabrication and off-site manufacturing. Modern methods of construction (**MMC**) processes use automation, technology, and assembly-line methodology to efficiently produce building products.

Under the current scheme, BCAs can have difficulty assuring themselves of build quality and code compliance when traditional inspection practices are difficult, as is the case with many buildings and components manufactured using MMC. Manufacture of these components can occur some distance (either off-site or offshore) from where the component will ultimately be installed, or manufactured products may arrive at a building site already enclosed, limiting the effectiveness of visual inspections.

This Bill addresses those issues by providing for the establishment of a voluntary certification scheme, based on a conformity model, that enables registered modular component manufacturers (**MCMs**) to be certified to produce modular building components within a defined scope of practice. Those components will be deemed to comply with the building code.

Depending on how they meet specified eligibility criteria, an MCM may be certified to—

- manufacture modular building components to a building code compliant design (using designs that could be approved through MultiProof or by a BCA through the traditional building consent application process); or
- design and manufacture modular building components to a building code compliant design that they have developed themselves, or that has been approved by either of the consent pathways above.

A certified manufacturer will also need to be registered by MBIE and comply with the requirements of that registration.

When reviewing a building consent application that includes modular components from a certified and registered MCM, a BCA will check the design for the whole building and proposed site works, but will not review modular components beyond how they will interact with the design's other elements (site work, foundations, con-

nections to services, etc). Once building work has begun, BCAs will only need to inspect the building work not covered by the certification scheme.

Certified and registered MCMs will be liable for the performance of the modular components they produce. Third-party certification bodies will audit and monitor the manufacturers. BCA liability will be limited to the aspects of a building that they are required to inspect. The relevant BCA in the location where the component has been installed will issue a single code compliance certificate for the building, relying on a certificate from the certified and registered MCM as evidence that their modular component complies with the code.

These changes will help ensure faster consenting for work done using components manufactured by registered MCMs, saving consumers time and money. The clarification of roles and responsibilities for the MCM scheme will help to more appropriately apportion liability, so that costs associated with remediation of building defects sits with the producer or those trusted to monitor the manufacturer's operations, rather than the council or ratepayers.

MBIE will also have power to make rules for the MCM scheme, which will provide clarity to manufacturers and certification bodies, ensure consistency, and align with regulatory best practice.

The MCM scheme will allow New Zealand to realise the full potential of modular components and support the Government's wider goal of improving housing supply and affordability and providing safe, healthy, durable buildings for New Zealanders.

#### *Strengthening product certification scheme*

The existing product certification scheme (known by the brand name CodeMark) is designed to provide assurance that products comply with the building code. However, there is currently a lack of confidence in the scheme. To address these concerns, the existing product certification scheme will be strengthened and brought into line with recommended best practice by enabling MBIE to administer registers of product certification bodies (**PCBs**) and product certificates.

This Bill will create new registration requirements for PCBs to ensure the quality of the product certification scheme. MBIE will have power to audit PCBs and suspend or revoke registrations where appropriate.

Product certificates will not be registered unless they meet the product certificate registration criteria. Product certificates will be reviewed annually and may be suspended or revoked if they no longer meet the product certification criteria.

MBIE will also have power to investigate complaints against a PCB and to take disciplinary action, including suspending product certificates issued by the PCB, where appropriate. This will allow MBIE to take active steps to manage poor-performing PCBs and improve the quality and consistency of product evaluations and certificates.

MBIE will also have power to make rules for the product certification scheme, which will provide clarity to PCBs and certificate holders, ensure consistency, and align with regulatory best practice. Additionally, any person found to be misrepresenting

themselves as a PCB, falsely issuing a certificate, or falsely claiming a product has been evaluated and certified will commit an offence and be subject to a penalty.

These changes to the Building Act 2004 will build confidence so people know that they are using code-compliant products in a way that will result in safe and durable building work and ensure faster consenting processes for certified products, saving consumers time and money.

#### *Use of building levy*

The building levy provides funding for the performance by MBIE's chief executive of functions under the Act.

The scope of the levy is being amended so that the chief executive can use it for wider purposes. The Bill provides that the chief executive may use building levy revenue for a wider purpose within the building sector, provided it is for the exercise of a function by the chief executive under this Act or another Act that relates to the building sector. This will enable MBIE to fund the performance of functions and activities that relate to monitoring, overseeing, or improving the performance of the building sector or any part of the building sector, or regulatory systems under other relevant Acts that relate to the building sector, for example, occupational regulation of the building sector.

This amendment will not give the chief executive new functions, powers, or obligations that they do not already have under any enactment or by virtue of their role as a chief executive of a government department.

#### *Regulations*

MBIE has a number of regulatory tools in its role as a regulator. Key mechanisms for regulating building products and methods are warnings and bans in relation to building products or building methods. Currently, the Building Act 2004 does not confer sufficient powers to require the production of information or documents necessary to determine whether to issue a warning or a ban. The Bill addresses this gap by ensuring the chief executive can require information to be provided when necessary for the purpose of determining whether to issue a warning or ban.

The Building Act 2004 authorises the creation of regulations to (among other things) prescribe procedures for regulating and controlling the construction, maintenance, and demolition of buildings, and prescribe the form or content of applications or any other documentation or information required under the Act. Cabinet has agreed that the regulation-making powers within the Building Act 2004 will be used to support the implementation of the MCM scheme, for example, through setting fees or establishing a process for registration.

#### *Offences and penalties*

It is important that product manufacturers, building professionals, tradespeople, and other people comply with the obligations placed on them under the Building Act

2004. New offences have been created to support compliance with the MCM and product certification schemes.

Additionally, many of the current maximum fines set out in the Building Act 2004 have not been adjusted since its enactment. This means that the deterrent value of the penalties has eroded over time. To improve compliance and deter poor or illegal behaviour, the Bill amends the maximum penalties on conviction to a level that reflects the seriousness of the offences.

The current 6-month time frame to investigate a potential offence against the Building Act 2004 is too short given the complexity of investigating potential offences and the number of people involved. Therefore, this Bill extends that time frame to 12 months to allow more time to properly investigate potential breaches, gather evidence, and where appropriate allow for multiple enforcement avenues to be pursued to encourage greater compliance before prosecuting.

#### *Public notification requirements*

This Bill also removes the requirement to publish in newspapers various matters that relate to the exercise of certain powers by MBIE's chief executive or the Building Practitioners Board, to respond to changes in technology and better reflect how the public accesses information.

### **Departmental disclosure statement**

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2020&no=234>

### **Regulatory impact assessment**

The Ministry of Business, Innovation, and Employment produced a regulatory impact assessment on 25 September 2019 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of the regulatory impact assessment can be found at—

- <https://www.mbie.govt.nz/dmsdocument/7024-ris-building-law-reforms-phase-one-proactiverelease-pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

### **Clause by clause analysis**

*Part 1* of the Bill amends the Building Act 2004. *Part 2* makes consequential amendments to other legislation.

The effect of the amendments is summarised below on a subject matter basis.

The Bill provides for some amendments to come into force on the day after the Bill receives the Royal assent. A lead-in time is required for some amendments to allow necessary regulations to be made and administrative procedures to be put in place, and to give industry participants sufficient time to be able to comply. Those amendments will be brought into force on a date or dates to be set by Order in Council with a back-stop commencement date of 12 months after assent.

### Product certification scheme

The current product certification scheme is contained in the Building Act 2004 and also in the Building (Product Certification) Regulations 2008. Under the scheme, accredited product certification bodies (**PCBs**) issue product certificates in relation to certain building methods or products that meet specified criteria. If a product certificate has been issued in respect of a building method or product, a building consent authority (**BCA**) must accept the product certificate as establishing that the method or product complies with the building code.

Under the new provisions, a PCB must be registered before it may issue product certificates. The criteria for registration are that the body is an accredited PCB, that it meets any prescribed requirements relating to cover for civil liabilities that may arise in the performance of its functions, and that it meets any other prescribed criteria and standards. There is a process for audits of a registered PCB to be carried out by the chief executive, as well as provisions enabling the registration of a PCB to be suspended or revoked (similar to the existing process enabling the *accreditation* of a PCB to be suspended or revoked). (See *clauses 64 to 66: new sections 263 and 264*, the amendment to section 267, and *new sections 267A to 267E*.)

The new provisions will also require the product certificates themselves to be registered before they can be relied on by a BCA as establishing compliance with the building code. A registered PCB is required to notify the chief executive when it issues a product certificate, which triggers the requirement for the chief executive to decide whether to register the certificate (taking into account the specified criteria for doing so). Provisions are included that enable the registration of a product certificate to be suspended or revoked, and the existing requirement for a PCB to review a product certificate at least annually is continued in relation to registered PCBs. (See *clause 70: new sections 270 to 272D*.)

To transition to the new requirement for certificates to be registered, *new clause 9* of Schedule 1AA provides for all existing product certificates to be deemed to be registered. This will allow proprietors time to comply with the new registration requirements before the certificate has its next annual audit. *New clause 8* of Schedule 1AA also gives currently accredited PCBs 6 months to become registered. (See *clause 97*.)

The Bill introduces offences and penalties for a person misrepresenting themselves as a PCB in any way, or performing the functions of a registered PCB without being registered (see *clause 70: new section 272G*). Similarly, it will be an offence for a person to represent a product as having a product certificate (either registered or not) or

as having been evaluated and certified under the product certification scheme if that is not the case (*see clause 70: new section 272H*).

New powers are given to the chief executive to make operational rules for the product certification scheme (*see clause 70: new sections 272E and 272F*), including in relation to the following:

- how parties to the scheme are to perform their functions under the Act:
- how building methods and building products are to be evaluated:
- resolution of disputes:
- procedural and administrative matters.

Failure by a PCB to comply with the rules will be grounds for its accreditation to be suspended or revoked, its registration to be suspended, or disciplinary action to be taken against it (*see clauses 51, 64, and 66: new sections 201, 264, and 267C*). It may also be grounds for the suspension of the registration of any product certificates for which the PCB is responsible (*see clause 70: new section 272B*).

If the proprietor of a certified building method or building product fails to comply with the rules, it will be grounds for the suspension or revocation of the certificate or suspension of its registration. (*See clause 70: new sections 271, 272B, and 272D*.)

The Bill updates and expands the complaints process, which currently covers BCAs, and the related disciplinary powers of the chief executive to cover complaints and investigations regarding the parties involved in the product certification scheme (as well as the MCM scheme, *discussed below*). (*See clause 51: new sections 200 to 203C*.)

New powers of entry and inspection are also given to the chief executive to determine whether provisions relating to the product certification scheme have been complied with, and for enforcement purposes. These provisions also relate to the MCM scheme and the building product information requirements, *discussed below*. (*See clause 55: new sections 207BB and 207BC*.)

The Bill updates and expands the ability to appeal to the District Court against certain decisions of the chief executive to cover the broader range of powers vested in the chief executive as a result of the amendments and new provisions outlined above. (*See clause 56, which replaces section 208*.)

The Bill also makes a range of further amendments that relate to, or are consequential on, the changes outlined above.

### **Modular component manufacturer scheme**

*Clause 71* inserts *new subpart 7A* of Part 3. *New subpart 7A* introduces a new, voluntary certification scheme in relation to the use of modern construction methods. The new provisions create a framework for manufacturers to be certified to either design and manufacture, or manufacture only, particular kinds of modular components (*see clause 71: new section 272U*). A certified and registered modular component manufacturer will be able to issue a certificate for a modular component relating to its com-

pliance with the building code (*see clause 71: new section 272ZF*). A BCA must accept the certificate as establishing the component's compliance with the building code (*see clause 13*, which amends section 19).

In cases where a building consent application relates to a whole building, where the primary structure of the building will consist of a single modular component designed and manufactured within the scheme, the processing time in which the building consent authority must decide the application is shorter than usual, being 10 working days. (*See clause 23*, which amends section 48.)

The chief executive will have the ability to appoint a person as the modular component manufacturer certification accreditation body (the **MCMC accreditation body**). The role of the MCMC accreditation body will be, on application, to accredit any person meeting the relevant criteria to be a modular component manufacturer certification body (**MCMCB**). The role of an MCMCB will be to certify manufacturers as modular component manufacturers. There are provisions relating to the suspension and revocation of an MCMCB's accreditation, and a requirement for the MCMC accreditation body to audit each accredited MCMCB at least once every 12 months. (*See clause 71: new sections 272I to 272M.*)

An MCMCB, in addition to being accredited, must also be registered before they can certify a person as a modular component manufacturer (**MCM**). The relevant MCMCB must apply to the chief executive to be registered. The criteria for registration are that the person is an accredited MCMCB, that they meet any prescribed requirements relating to cover for civil liabilities that may arise in the performance of their functions, and that they meet any other prescribed criteria and standards. Similar to the accreditation process, there are provisions relating to the suspension and revocation of a person's registration as an MCMCB, as well as a requirement for the chief executive to audit a registered MCMCB at least once every 3 years. In serious cases, a person's registration as an MCMCB can be urgently suspended and an investigation carried out, for example, if the chief executive has reasonable grounds to suspect that the MCMCB concerned has certified a manufacturer knowing that the manufacturer's modular components are likely to cause injury or death. (*See clause 71: new sections 272N to 272T.*)

Once registered, an MCMCB can certify a person as an MCM. A manufacturer may apply for certification to manufacture only, or to design and manufacture, modular components. There are provisions relating to the suspension or revocation of a person's certification as an MCM, as well as a requirement for the relevant MCMCB to audit each certified MCM at least once every 12 months. (*See clause 71: new sections 272U to 272X.*)

Similar to the framework for an MCMCB, an MCM, in addition to being certified, must also be registered before they can issue certificates for modular components. The person must apply to the chief executive, who may register them if satisfied that the person is a certified MCM, that they meet any prescribed requirements relating to cover for civil liabilities that may arise in relation to their manufacture (and design, if

applicable) of modular components, and that they meet any other prescribed criteria and standards. (See clause 71: new section 272Y.)

Once again, there are provisions relating to the suspension and revocation of a person's registration as an MCM, and a requirement for the chief executive to audit a registered MCM at least once every 3 years. Corresponding provisions to those described above for an MCMCB are included in relation to the possibility for the urgent suspension of an MCM's registration, in cases where the MCM may have manufactured unsafe components. (See clause 71: new sections 272Z to 272ZE.)

The chief executive will also have the ability to make operational rules for the MCM certification scheme (see clause 71: new sections 272ZG and 272ZH), including in relation to the following:

- how parties to the scheme are to perform their functions under the Act:
- how MCMs are to be evaluated:
- resolution of disputes:
- procedural and administrative matters.

Failure by an MCMCB to comply with the rules will be grounds for its accreditation to be suspended or revoked, its registration to be suspended, or disciplinary action to be taken against it (see clauses 51 and 71: new sections 201, 272L and 272P). It may also be grounds for the suspension of the registration of any MCMs for which the MCMCB is responsible (see clause 71: new section 272ZA).

Failure by an MCM to comply with the rules will be grounds for its certification to be suspended or revoked or its registration to be suspended. (See clause 71: new sections 272W and 272ZA.)

It will be an offence for a person who is not the MCMC accreditation body to perform any of the functions of that body, and for a person who is not a registered MCMCB to perform any of the functions of an MCMCB. Similarly, it will be an offence for a person to misrepresent themselves as having any of the scheme qualifications of the various parties described above if that is not the case (see clause 71: new section 272ZI). It will also be an offence to misrepresent a modular component as having been manufactured or designed within the scheme if that is not the case (see clause 71: new section 272ZJ).

The Bill updates and expands the complaints process, which currently covers BCAs, and the related disciplinary powers of the chief executive to cover complaints and investigations regarding the parties involved in the MCM scheme (as well as the product certification scheme). (See clause 51: new sections 200 to 203C.)

New powers of entry and inspection are also given to the chief executive to determine whether provisions relating to the MCM scheme have been complied with, and for enforcement purposes. These provisions also relate to the product certification scheme and the building product information requirements (discussed below). (See clause 55: new sections 207BB and 207BC.)

New regulation-making powers are included allowing regulations to be made prescribing matters relating to the MCM scheme (*see clause 94*, which amends section 402). For example—

- the kinds of building products that are modular components for the purposes of the definition of modular component:
- in relation to MCMCBs and MCMs, the criteria and standards for accreditation and registration:
- the requirements for manufacturer’s certificates for modular components.

The Bill updates and expands the ability to appeal to the District Court against certain decisions of the chief executive to cover the broader range of powers vested in the chief executive as a result of the amendments and new provisions outlined above. (*See clause 56*, which replaces section 208.)

The Bill also makes a range of further amendments that relate to, or are consequential on, the changes outlined above.

### **Building product information requirements**

*Clause 84* inserts *new Part 4B*. The new Part introduces the ability for regulations to be made prescribing minimum information requirements for building products, including—

- what information must be disclosed:
- who must disclose the information and to whom:
- when the information must be disclosed.

If information requirements have been prescribed in relation to a building product, it will be an offence for a person to supply or offer to supply the building product in New Zealand, advertise to supply it in New Zealand, or import it into New Zealand for the purpose of supply, unless the person complies with the information requirements. (*See clause 84: new section 362VB.*)

It will also be an offence for a person, in trade, to make representations relating to the supply of a building product that are unsubstantiated, false, or misleading. (*See clause 84: new section 362VC.*)

Defences are provided for in relation to both of the above offences. For example, in relation to a failure to comply with any building product information requirements, it is a defence if the defendant proves that the failure was due to a reasonable mistake. A specific defence is also included for those who are in the business of publishing (or arranging for the publication of) advertisements on behalf of others, and who did not know (and had no reason to suspect) that the publication of the advertisement would constitute an offence. (*See clause 84: new section 362VD.*)

The chief executive will be able to give a notice to take corrective action to a person if the chief executive is satisfied that the person has failed to comply with a building product information requirement. It will be an offence for a person issued with such a

notice to fail to comply with it within the relevant period. (*See clause 84: new sections 362VE and 362VF.*)

New powers of entry and inspection are also given to the chief executive to determine whether provisions relating to the building product information requirements have been complied with, and for enforcement purposes. These provisions also relate to the product certification and MCM schemes. (*See clause 55: new sections 207BB and 207BC.*)

The Bill also makes a range of further amendments that relate to, or are consequential on, the changes outlined above.

### **Definitions of building products and methods**

The terms building product and building method are currently not separately defined in the Act. Section 20 includes a definition that refers to “building methods, methods of construction, building design, or building materials (**building methods or products**) that have a current product certificate issued under section 269”. This definition has caused confusion and uncertainty.

Accordingly, *new sections 9A and 9B (see clause 7)* introduce new, separate definitions of the terms building product and building method. A building product is a product that could reasonably be expected to be used as a component of a building. A building method is a method for using 1 or more products or things as part of building work.

A product or method can also be declared to be a building product or a building method by Order in Council. Equally, a product or method that would otherwise come within the definitions referred to above can be declared by Order in Council to *not* be a building product or building method.

Consequential changes updating the terms have been made throughout the Building Act 2004.

### **Penalties**

The maximum financial penalties for a range of offences throughout the Building Act 2004 have been updated and increased in order to maintain the offences as an effective deterrent from unlawful behaviour. The amendments also provide different penalty levels for individuals and body corporates. This is consistent with the penalties for offences inserted by other recent amendments (such as the Building Amendment Act 2019).

### **Use of levy**

An applicant for a building consent must pay a levy to the chief executive if the consent is granted. Currently, the levy funds the functions of the chief executive under the Building Act 2004.

*Clause 24* amends section 53 of the Act so as to widen the purposes for which the levy may be used. In particular, by allowing the revenue from the levy to be used in connection with the chief executive’s functions under Acts other than the Building

Act 2004 and as the chief executive of a department, provided that those functions relate to—

- the building sector or any part of the building sector; and
- monitoring, overseeing, or improving the performance of the building sector (or any part of the sector) or regulatory systems under the other Act.

The amendments will not give the chief executive any functions that the chief executive does not already have.

### **Power to require information and chief executive's enforcement powers**

The chief executive's powers to require information and documents are expanded to apply in relation to the exercise of the power to issue a warning or ban about a building method or product (as well as for taking enforcement action, as is the case currently). Information and documents obtained under the expanded powers will also be able to be provided as evidence to a regulatory body in certain circumstances. (*See clause 55: new sections 207A and 207BA.*)

New powers of entry and inspection are also given to the chief executive for investigative purposes in relation to the—

- product certification scheme;
- MCM scheme;
- building product information requirements.

Under the new powers, the chief executive has broad inspection powers for investigative purposes, including the ability to enter any premises for the purposes of carrying out such inspections (*see clause 55: new sections 207BB and 207BC*). There are additional process requirements, including the requirement for a warrant, if the relevant premises are a household unit or a marae, and a consequential amendment is made to the Search and Surveillance Act 2012 in relation to the ability to enter a household unit or marae (*see clauses 99 and 100*).

### **Clarification of obligations**

*Clause 10* amends section 14E so as to update and clarify the responsibilities of builders. In particular, the responsibilities of a builder in relation to building work that is covered by a building consent have been described separately from the responsibilities of a builder in relation to building work that is *not* covered by a building consent.

### **Time for prosecutions**

*Clause 91* amends section 378 so as to extend the limitation period in which to file a charging document for an offence against the Building Act 2004 from 6 months to 12 months.

The new transitional provision in *new clause 10* of Schedule 1AA (*see clause 97*) ensures that the current 6-month period continues to apply for offences committed before the commencement of the amendment to section 378.

**Public notice requirements**

The Building Act 2004 requires the chief executive to publicly notify various notices. This currently requires publication in the *Gazette* and on the Internet (ie, MBIE's Internet site) as well as publication in various newspapers. *Clause 6* amends the definition of publicly notify in section 7, so as to remove the requirement to publish notices relating to the exercise of certain powers by the chief executive in daily newspapers.

**Other amendments**

The Bill makes a range of minor clarifications and editorial fixes throughout the Act that have no significant legislative effect and are in the nature of grammatical and drafting corrections, or minor updates.

*Hon Jenny Salesa*

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| 31 | Section 94 amended (Matters for consideration by building consent authority in deciding issue of code compliance certificate)                            | 18 |
| 32 | Section 103 amended (Content of compliance schedule)   | 18 |
| 33 | Section 108 amended (Annual building warrant of fitness)   | 18 |
| 34 | Section 114 amended (Owner must give notice of change of use, extension of life, or subdivision of buildings)  | 18 |
| 35 | Section 115 amended (Code compliance requirements: change of use)  | 18 |
| 36 | Section 128A amended (Offences in relation to dangerous, affected, or insanitary buildings)  | 18 |
| 37 | Section 133AU amended (Offences in relation to earthquake-prone buildings)   | 18 |
| 38 | Section 133BE amended (Public notice of designation)   | 19 |
| 39 | Section 134C replaced (Offence of failing to classify dam)   | 19 |

**Building (Building Products and Methods, Modular  
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|    |      |  |    |
|----|------|--|----|
|    | 134C | Offence of failing to classify dam   | 19 |
| 40 |      | Section 138 amended (Regional authority must require re-audit of dam classification that it refuses to approve)                                  | 19 |
| 41 |      | Section 140 amended (Requirement for dam safety assurance programme)   | 19 |
| 42 |      | Section 145 amended (Regional authority must require re-audit of dam safety assurance programme that it refuses to approve)                      | 19 |
| 43 |      | Section 150 amended (Owner of dam must supply annual dam compliance certificate)   | 20 |
| 44 |      | Section 154 amended (Powers of regional authorities in respect of dangerous dams)  | 20 |
| 45 |      | Section 168 amended (Offence not to comply with notice to fix)   | 20 |
| 46 |      | Section 169 amended (Chief executive must monitor current and emerging trends in building design, etc, and must report annually to Minister)     | 20 |
| 47 |      | Section 171 amended (Chief executive may seek advice from building advisory panel)   | 20 |
| 48 |      | Section 175 amended (Chief executive may publish guidance information)   | 20 |
| 49 |      | Section 196 amended (Registration continuous so long as person meets criteria for registration)  | 21 |
| 50 |      | Section 199 replaced (Offence for person to perform functions of building consent authority or regional authority if person not registered, etc) | 21 |
|    | 199  | Offence to perform functions of building consent authority if not authorised   | 21 |
| 51 |      | Sections 200 to 203 replaced   | 21 |
|    |      | <i>Disciplinary powers in relation to complaints</i>   |    |
|    | 200  | Interpretation   | 21 |
|    | 201  | Grounds for disciplinary action  | 22 |
|    | 202  | Complaints may be made to chief executive  | 22 |
|    | 203  | Acceptance of complaints   | 22 |
|    | 203A | Chief executive may initiate investigation   | 23 |
|    | 203B | Investigation  | 23 |
|    | 203C | Disciplinary powers of chief executive   | 24 |
| 52 |      | Cross-heading above section 204 amended  | 25 |
| 53 |      | Section 204 amended (Special powers of chief executive for monitoring performance of functions under this Act)                                   | 25 |
| 54 |      | Section 206 amended (Chief executive must supply warrant)  | 25 |
| 55 |      | Sections 207A and 207B replaced  | 26 |
|    |      | <i>Power to require information and documents</i>  |    |
|    | 207A | Power to require information or documents  | 26 |
|    | 207B | Offence to fail to provide information or documents  | 26 |

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|    |       | <i>Powers of entry and inspection for subparts 7 and <b>7A</b> of<br/>Part 3 and Parts 4A and <b>4B</b></i>  |    |
|    | 207BB | Powers of entry and inspection   | 27 |
|    | 207BC | Power to enter household unit or marae   | 28 |
| 56 |       | Section 208 replaced (Appeals to District Court)   | 29 |
|    | 208   | Appeals to District Court  | 29 |
| 57 |       | Section 209 amended (Procedure for commencing appeal)  | 30 |
| 58 |       | Section 210 amended (Steps after appeal is commenced)  | 30 |
| 59 |       | Section 221 amended (Recovery of costs when territorial authority<br>carries out work on default)  | 30 |
| 60 |       | Section 225 amended (Offence to impersonate authorised officer)  | 30 |
| 61 |       | Subpart 7 heading in Part 3 replaced   | 30 |
|    |       | Subpart 7—Responsibilities relating to product<br>certification  |    |
| 62 |       | Section 262 amended (Requirements for product certification<br>accreditation body)   | 30 |
| 63 |       | Section 262A amended (Fees for audits)   | 30 |
| 64 |       | Sections 263 to 266 replaced   | 30 |
|    | 263   | Accreditation of product certification body  | 30 |
|    | 264   | Suspension or revocation of accreditation  | 31 |
| 65 |       | Section 267 amended (Product certification accreditation body<br>must notify chief executive of grant, suspension, lifting of<br>suspension, or revocation of accreditation) | 32 |
| 66 |       | New sections 267A to 267E and cross-heading inserted   | 32 |
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|    | 267D  | Lifting of suspension of registration of PCB   | 34 |
|    | 267E  | Revocation of registration of PCB  | 34 |
| 67 |       | Cross-heading above section 268 replaced   | 35 |
|    |       | <i>Certification of building products and building methods</i>   |    |
| 68 |       | Section 268 amended (Application for product certificate)  | 35 |
| 69 |       | Section 269 amended (Issue of product certificate)   | 35 |
| 70 |       | Sections 270 to 272 replaced   | 35 |
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| 71   | New subpart 7A of Part 3 inserted   | 41 |
|      | Subpart 7A—Responsibilities relating to modular<br>component manufacturers                |    |
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| 272I | Appointment of modular component manufacturer<br>certification accreditation body         | 42 |
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| 272N | Registration of modular component manufacturer<br>certification body                      | 44 |
| 272O | Audit of registered MCMCB   | 44 |
| 272P | Suspension of registration of MCMCB   | 45 |
| 272Q | Lifting of suspension of registration of MCMCB  | 45 |
| 272R | Revocation of registration of MCMCB   | 46 |
| 272S | Urgent suspension of registration of MCMCB  | 47 |
| 272T | Investigation following urgent suspension   | 47 |
|      | <i>Certification of modular component manufacturers</i>                                   |    |
| 272U | Certification of modular component manufacturer   | 48 |
| 272V | Audit of certified MCM  | 49 |
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| 272ZF | Registered MCM may issue certificate for modular components  | 55 |
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| 272ZG | MCM scheme rules   | 55 |
| 272ZH | Procedure for making MCM scheme rules  | 56 |
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| 72    | Section 273 amended (Chief executive must keep registers)  | 58 |
| 73    | Section 274 amended (Purpose of registers)   | 58 |
| 74    | Section 275 amended (Content of register of building consent authorities)  | 58 |
| 75    | Section 289 amended (Duty to produce evidence of being licensed)   | 58 |
| 76    | Section 302 amended (Obligation to notify Registrar of change in circumstances)  | 59 |
| 77    | Section 314 amended (Offences relating to licensing)   | 59 |
| 78    | Section 326 amended (Failure to comply with summons)   | 59 |
| 79    | Section 362D amended (Building contractor must provide information before residential building contract entered into)  | 59 |
| 80    | Section 362I amended (Implied warranties for building work in relation to household units)                             | 60 |
| 81    | Section 362M amended (Remedies if breach of warranty can be remedied)  | 60 |
| 82    | Section 362Q amended (Building contractor or on-seller must remedy defect notified within 1 year of completion)        | 60 |
| 83    | Section 362V amended (Offence for commercial on-seller to transfer household unit without code compliance certificate) | 60 |
| 84    | New Part 4B inserted   | 60 |

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| <b>Part 4B</b>                                   |   |    |
|--|---|----|
| <b>Building product information requirements</b> |   |    |
|  | 362VA Building product information requirements may be prescribed   | 60 |
|  | 362VB Failure to comply with building product information requirements an offence   | 61 |
|  | 362VC False or misleading representations in relation to building products  | 62 |
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| <i>Notice to take corrective action</i>          |   |    |
|  | 362VE Notice to take corrective action  | 63 |
|  | 362VF Compliance with notice to take corrective action  | 63 |
| 85   | Section 365 amended (Offence to fail to comply with direction of authorised person)   | 64 |
| 86   | Section 366 amended (Offence to impersonate building consent authority or regional authority, etc)  | 64 |
| 87   | Section 367 amended (Offence to obstruct execution of powers under this Act)  | 64 |
| 88   | Section 368 amended (Offence to remove or deface notices)   | 64 |
| 89   | Section 369 amended (Offence to make false or misleading statement)   | 65 |
| 90   | Section 371D amended (Offence to impersonate enforcement officer)   | 65 |
| 91   | Section 378 amended (Time limit for filing charging document)   | 65 |
| 92   | Section 392 amended (Building consent authority not liable)   | 65 |
| 93   | Section 401 amended (Regulations: acceptable solutions, verifications, etc, that must be complied with in order to comply with building code) | 65 |
| 94   | Section 402 amended (Regulations: general)  | 65 |
| 95   | Section 403 amended (Consultation requirements for making regulations)  | 67 |
| 96   | Section 405 amended (Incorporation of material by reference into certain instruments, solutions, and methods)                                 | 67 |
| 97   | Schedule 1AA amended  | 68 |
| 98   | Schedule 1 amended  | 69 |
| <b>Part 2</b>                                    |   |    |
| <b>Amendments to other enactments</b>            |   |    |
| Subpart 1—Search and Surveillance Act 2012       |   |    |
| 99   | Amendment to Search and Surveillance Act 2012   | 70 |
| 100  | Schedule amended  | 70 |

|   |  |    |
|---|--|----|
| Subpart 2—Building (Definition of Restricted Building Work)<br>Order 2011 |  |    |
| 101   | Amendment to Building (Definition of Restricted Building Work)<br>Order 2011       | 70 |
| 102   | Clause 4 amended (Order does not apply to certain building work<br>or design work) | 70 |

**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
  - (b) to the extent not brought into force earlier, on the day that is 12 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.

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**Part 1**

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**Amendments to Building Act 2004**

**3 Amendments to Building Act 2004**

This Part amends the Building Act 2004.

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

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- (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”.
- (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)”.

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**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 5
  - (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: 10
- (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
  - (C) the certification and registration of modular component manufacturers: 15

(2) After section 5(2)(d), insert:

- (da) Part 4A deals with consumer rights and remedies in relation to residential building work:
- (db) **Part 4B** deals with building product information requirements and suppliers' obligations in relation to information: 20

(3) After section 5(2)(e), insert:

- (f) Schedule 1AA deals with transitional, savings, and related matters.

**6 Section 7 amended (Interpretation)**

(1) In section 7, repeal the definition of **building method or product**. 25

(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 30
- 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 35

**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 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 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 <b>building work</b> , after paragraph (d), insert:  |    |
| (e)       | includes the design and manufacture of a modular component   | 5  |
| (5)       | In section 7, definition of <b>falsework</b> , paragraph (a), replace “materials,” with “building products,”.  |    |
| (6)       | In section 7, definition of <b>plans and specifications</b> , 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  | 10 |
| (7)       | In section 7, definition of <b>publicly notify</b> , repeal paragraph (a).   |    |
| (8)       | In section 7, definition of <b>scaffolding used in the course of the construction process</b> , paragraph (a)(ii), after “materials”, insert “or building products”.   |    |
| <b>7</b>  | <b>New sections 9A and 9B and cross-heading inserted</b>   |    |
|           | After section 9, insert:   | 15 |
|           | <i>Meanings of building product and building method</i>  |    |
| <b>9A</b> | <b>Meaning of building product</b>   |    |
| (1)       | In this Act, <b>building product</b> means a product that—   |    |
| (a)       | could reasonably be expected to be used as a component of a building;<br>or  | 20 |
| (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 <b>subsection (1)(a)</b> is not a building product if it is declared by the Governor-General by Order in Council not to be a building product. | 25 |
| (3)       | In determining whether something could reasonably be expected to be used as a component of a building, the following are relevant considerations:  |    |
| (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:  | 30 |
| (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).   |    |
| (4)       | The matters listed in <b>subsection (3)</b> are relevant, but not determinative, considerations and do not limit what may be considered.   | 35 |

**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.
- (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.

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**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
  - (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
  - (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**”.

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

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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—
- (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.

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- (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.

**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).

**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:

(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”.

- (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:

- (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)**

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)**
- (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”.
- (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**”.
- (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)—
- (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.
- 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
- 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)**
- 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:

- (f) the manufacture of a modular component that is carried out—
  - (i) by a registered MCM who is certified to manufacture the component; and
  - (ii) with the intention that the component will be used in building work that is carried out somewhere else.

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**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)—
  - (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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**22 Section 45 amended (How to apply for building consent)**

After section 45(1)(ba), insert:

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- (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

**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:
  - (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 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

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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
- (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”. 5
- 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”. 10
- (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— 15
- (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 20
- (B) regulatory systems under that other Act.
- (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 25
- (b) any obligation to use the levy for the purposes mentioned in **subsection (1A)(b)**.
- 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)— 30
- (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.

- 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)— 5
- (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.
- 27 Section 85 amended (Offences relating to carrying out or supervising restricted building work)** 10
- 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)** 15
- 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.
- 29 Section 87A amended (Notices to building consent authority when owner-builder carries out restricted building work)** 20
- 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)**
- After section 92(2A), insert: 25
- (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)**,—
- the application under subsection (1) must be accompanied by a current manufacturer’s certificate for that component. 30
- (3A) However, **subsection (3)** does not apply in the circumstances prescribed in the regulations.

- 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”. 5
- 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)**
- Replace section 108(6) with: 10
- (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)** 15
- 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,—
- (i) in the case of an individual, to a fine not exceeding \$5,000: 20
- (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)** 25
- 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. 30
- 37 Section 133AU amended (Offences in relation to earthquake-prone buildings)**
- (1) Replace section 133AU(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.
- (2) Replace section 133AU(4) with:
- (4) A person who commits an offence under subsection (2) or (3) 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.
- 38 Section 133BE amended (Public notice of designation)**  
In section 133BE(2), replace “publicly notify” with “notify the public of”. 10
- 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,— 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.
- 40 Section 138 amended (Regional authority must require re-audit of dam classification that it refuses to approve)**  
Replace section 138(5) with: 20
  - (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)**  
Replace section 140(4) with: 25
  - (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)** 30  
Replace section 145(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 \$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,— 5

(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,—

(a) in the case of an individual, to a fine not exceeding \$50,000: 10

(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,— 15

(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,— 20

(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)** 25

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:

**47 Section 171 amended (Chief executive may seek advice from building advisory panel)** 30

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:

**48 Section 175 amended (Chief executive may publish guidance information)**

Replace section 175(1)(a)(ii) with: 35

(ii) disciplinable entities (as defined in **section 200**):

- 49 Section 196 amended (Registration continuous so long as person meets criteria for registration)**  
 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)** 5  
 Replace section 199 with:
- 199 Offence to perform functions of building consent authority if not authorised**
- (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. 10
- (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.
- (3) A person who fails to comply with **subsection (1) or (2)**— 15
- (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. 20
- 51 Sections 200 to 203 replaced**  
 Replace sections 200 to 203 with:
- Disciplinary powers in relation to complaints*
- 200 Interpretation**
- (1) In **sections 200 to 203C**,— 25
- 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; 30
- (c) a registered MCMCB
- grounds for disciplinary action** has the meaning given in **section 201**

|            |  |    |
|------------|--|----|
|            | <b>respondent</b> means,—  |    |
|            | (a) if a complaint is made under <b>section 202</b> , the disciplinable entity who is the subject of the complaint; or   |    |
|            | (b) if an investigation is commenced under <b>section 203A</b> , the disciplinable entity that is the subject of the investigation.                                  | 5  |
| (2)        | In <b>sections 200 to 203C</b> , 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   | 10 |
|            | (b) a person who was, at the time of the conduct in question, a registered PCB or registered MCMCB.  |    |
| <b>201</b> | <b>Grounds for disciplinary action</b>   |    |
|            | There are <b>grounds for disciplinary action</b> against a disciplinable entity if—  |    |
|            | (a) it has failed, or is failing, without good reason to properly perform its functions under this Act; or   | 15 |
|            | (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.  | 20 |
| <b>202</b> | <b>Complaints may be made to chief executive</b>   |    |
| (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—  | 25 |
|            | (a) be made in writing; and  |    |
|            | (b) be made in the prescribed manner (if any); and   |    |
|            | (c) include the prescribed information (if any).   |    |
| <b>203</b> | <b>Acceptance of complaints</b>  |    |
| (1)        | As soon as practicable after receiving a complaint, the chief executive must—  | 30 |
|            | (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. | 35 |
| (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 5
    - (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. 10
  - (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. 15
  - (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. 20
  - (2) After deciding to investigate, the chief executive must, as soon as practicable,—
    - (a) notify the respondent of that decision; and 25
    - (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 30
    - (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)**. 35
  - (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.
- (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**. 5
- (4) The chief executive must notify the complainant (if any) and respondent of—
- (a) the outcome of the investigation; and
  - (b) the disciplinary action (if any) being taken (if action is taken under **section 203C(1)(f)**, *see also section 272B(3)*). 10

### 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:
- (a) issue a warning to the respondent: 15
  - (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: 20
  - (e) if **paragraph (d)** does not apply, suspend or revoke the respondent's registration:
  - (f) if the ground for the disciplinary action is that set out in **section 201(c)**, either or both of the following: 25
    - (i) under **section 267C(2)(b)**, suspend the person's registration as a product certification body:
    - (ii) under **section 272B(2)(a)**, suspend the registration of any product certificate for which the person is the responsible PCB: 30
  - (g) if the ground for the disciplinary action is that set out in **section 201(d)**, either or both of the following:
    - (i) under **section 272P(2)(b)**, suspend the person's registration as an MCMCB:
    - (ii) under **section 272ZA(2)(b)**, suspend the registration of any registered MCM for whom the person is the responsible MCMCB. 35
- (2) A requirement imposed under **subsection (1)(b)** may include any of the following:

- (a) time limits for the taking of the remedial action:
- (b) any conditions the chief executive thinks fit:
- (c) requirements for the respondent to report to the chief executive on the progress of the remedial action.
- (3) If the chief executive acts under **subsection (1)(d)**, sections 277 to 281 apply with all necessary modifications. 5
- (4) If the chief executive acts under **subsection (1)(e) or (f)**, the chief executive must update the relevant register kept under section 273 accordingly.

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

In the cross-heading above section 204, replace “*Further*” with “*Enforcement*”. 10

**53 Section 204 amended (Special powers of chief executive for monitoring performance of functions under this Act)**

- (1) Replace section 204(1)(a) to (ab) with:
  - (a) monitor the performance of functions under this Act by any of the following: 15
    - (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 20
- (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: 25
- (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.

**54 Section 206 amended (Chief executive must supply warrant)**

- (1) In section 206(1)(c), replace “this section” with “section 204”. 30
- (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. 35

- (5) A person who commits an offence under subsection (3)(b) 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.

**55 Sections 207A and 207B replaced** 5  
Replace sections 207A and 207B with:

*Power to require information and documents*

**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: 10
- (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— 15
- (a) the information or document that must be provided; and
  - (b) how the information or document must be provided; and
  - (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. 20
- (4) The chief executive may copy or retain any information or document provided.

**207B Offence to fail to provide information or documents**

A person who fails to provide any information or document as required by **section 207A**—

- (a) commits an offence; and 25
- (b) is liable on conviction,—
  - (i) in the case of an individual, to a fine not exceeding \$20,000; or
  - (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. 30
- (2) As soon as practicable after doing so, the chief executive must give written notice to— 35

- (a) any person to whom the evidence relates; and
  - (b) if it was obtained under **section 207A** from someone else, that other person.
- (3) The notice must—
- (a) describe what has been provided; and 5
  - (b) specify which regulatory body it has been provided to; and
  - (c) explain why it has been provided.
- (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. 10
- (5) In this section,—
- regulatory body** means any of the following:
- (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: 15
  - (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
- 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. 20
- Powers of entry and inspection for subparts 7 and 7A of Part 3 and Parts 4A and 4B*
- 207BB Powers of entry and inspection** 25
- (1) The chief executive may exercise a power under this section for 1 or more of the following purposes (**investigative purposes**):
- (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. 30
- (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: 35
    - (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 <b>paragraph (a)</b> .   |    |
| (3)          | However, if the premises is a household unit or marae, <i>see</i> <b>section 207BC</b> .  |    |
| (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  |
| (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:                              | 10 |
| (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, <b>relevant provision</b> means a provision of any of the following:   | 15 |
| (a)          | subpart 7 of Part 3 (responsibilities of product certification bodies):   |    |
| (b)          | <b>subpart 7A of Part 3</b> (responsibilities relating to modular component manufacturers):   |    |
| (c)          | <b>Part 4B</b> (building product information requirements).   |    |
| <b>207BC</b> | <b>Power to enter household unit or marae</b>   | 20 |
| (1)          | Despite <b>section 207BB(2)(b)</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.   | 25 |
|              | <i>Entry with consent</i>   |    |
| (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.  | 30 |
| (3)          | The chief executive may enter the household unit or marae, and exercise the other powers under <b>section 207BB</b> , only in accordance with the conditions of the occupier's consent (if any).          |    |
|              | <i>Entry under warrant</i>  | 35 |
| (4)          | An issuing officer may, on application, issue a warrant to enter a household unit or marae if the officer reasonably considers that entering the unit is reasonably necessary for investigative purposes. |    |

- (5) The chief executive must apply for the warrant in the manner provided in subpart 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**.

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**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:
- (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**:
- (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)**):
- (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)**).
- (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.

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- 57 Section 209 amended (Procedure for commencing appeal)**
- (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 5
- 58 Section 210 amended (Steps after appeal is commenced)**
- 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)** 10
- In section 221(2)(a) and (b), replace “materials” with “building products or other materials”.
- 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** 15
- In Part 3, replace the subpart 7 heading with:
- 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” 20
- (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. 25
- 64 Sections 263 to 266 replaced**
- Replace sections 263 to 266 with:
- 263 Accreditation of product certification body**
- (1) The product certification accreditation body may, on application, accredit a person as a product certification body if satisfied that they— 30
- (a) have the ability to perform the functions of a registered PCB 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; and
  - (c) comply with any other prescribed criteria and standards for accreditation. 5
- (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). 10
- 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—
  - (a) no longer meet the criteria for accreditation in **section 263**; or
  - (b) have failed to comply with any product certification scheme rules. 15
- (2) However, if—
  - (a) regulations made for the purposes of **section 263(1)(b)(ii) or (c)** are amended; and
  - (b) a person ceases to meet the criteria in **section 263** solely as a result of those amendments,— 20

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.
- (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. 25
- (5) If the suspension is not lifted before the end of the suspension period, the product certification accreditation body may revoke the accreditation.
- (6) Before suspending or revoking a person's accreditation under **subsection (1) or (5)**, the product certification accreditation body must— 30
  - (a) notify the person in writing of the intention to do so and the reasons for it; and
  - (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— 35
  - (a) its decision and the reasons for it; and

|             |   |    |
|-------------|---|----|
|             | (b) the effect of <b>section 267C(1), 267D(1), or 267E(1)(a)</b> (as applicable).   |    |
| (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.                                   | 5  |
| (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). |    |
| <b>65</b>   | <b>Section 267 amended (Product certification accreditation body must notify chief executive of grant, suspension, lifting of suspension, or revocation of accreditation)</b>   | 10 |
|             | In section 267(1) replace "an accreditation of" with "a person's accreditation as".   |    |
| <b>66</b>   | <b>New sections 267A to 267E and cross-heading inserted</b>   |    |
|             | After section 267, insert:  | 15 |
|             | <i>Registration of product certification bodies</i>   |    |
| <b>267A</b> | <b>Registration of product certification body</b>   |    |
| (1)         | The chief executive may, on application, register a person as a product certification body if satisfied that they—  |    |
|             | (a) are an accredited PCB; and  | 20 |
|             | (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—   | 25 |
|             | (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—   | 30 |
|             | (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).  |    |
| <b>267B</b> | <b>Audit of registered PCB</b>  | 35 |
| (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). 5
- 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**. 10
- 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. 15
- (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,— 20
- 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 25
- (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 30
- (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, 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—
- (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—
- (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,—
- 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

- (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) 5**

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

**69 Section 269 amended (Issue of product certificate) 10**

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

**70 Sections 270 to 272 replaced 15**  
Replace sections 270 to 272 with:

**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. 20
- (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.
- (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— 25
  - (a) it continues to meet the criteria for certification under section 269; and
  - (b) there are grounds to suspend or revoke the certificate under **section 271**. 30
- (5) An audit must be carried out in accordance with any prescribed procedures.
- (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. 35

- (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;
    - (ii) in the case of a body corporate, to a fine not exceeding \$25,000. 5
- 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 10
  - (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 15
  - (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
  - (f) the certificate has not been reviewed under **section 270** within the previous 12 months. 20
- (2) However, if—
- (a) regulations made for the purposes of section 269 are amended; and
  - (b) a building product or building method ceases to meet the criteria in that section solely as a result of those amendments,— 25
- the responsible PCB cannot suspend or revoke the certificate under **subsection (1)(b)** unless 3 months have elapsed since those amendments came into force.
- (3) **Subsection (1)(f)** does not apply if the certificate has been in force for less than 12 months. 30
- (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.
- (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. 35
- (6) If the suspension is not lifted before the end of the suspension period, the responsible PCB may revoke the certificate.

- (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— 5
- (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). 10
- 272 Notification to chief executive by registered PCB**
- (1) A registered PCB must notify the chief executive when it does any of the following: 15
- (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)**. 20
- (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* 25
- 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
    - (ii) includes the prescribed information (if any); and 30
  - (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 35

- (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**. 5

### *Suspension by chief executive*

- (2) The chief executive may suspend the registration of a product certificate for a specified period if satisfied that— 10
- (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— 15
- (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 20
- (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. 25

### *Suspension by chief executive*

- (2) If the registration of a product certificate is suspended under **section 272B(2)**, the chief executive may, on application, lift the suspension if satisfied that— 30
- (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
- (b) in the case of a suspension under **section 272B(2)(b)**, that the proprietor has rectified the failure. 35
- (3) The application must—

- (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). 5
- (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 10
  - (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—
- (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. 15
- (2) However, if—
- (a) the registration of a product certificate was suspended under **section 272B(2)**; and
  - (b) before the end of the suspension period, an application is made under **section 272C(2)** for the suspension to be lifted; and 20
  - (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. 25
- (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
  - (b) remove the certificate from the register. 30

*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.
- (2) The rules may (without limitation) include rules relating to 1 or more of the following: 35

|   |    |
|---|----|
| <ul style="list-style-type: none"> <li>(a) how the scheme parties are to perform their functions under this Act:</li> <li>(b) how building products and building methods are to be evaluated:</li> <li>(c) the resolution of disputes between scheme parties:</li> <li>(d) procedural and administrative matters.</li> </ul>  | 5  |
| <ul style="list-style-type: none"> <li>(3) In this section, <b>scheme party</b> means any of the following: <ul style="list-style-type: none"> <li>(a) the product certification accreditation body:</li> <li>(b) an accredited PCB:</li> <li>(c) a registered PCB:</li> <li>(d) the proprietor of a building product or building method that has a current product certificate (whether registered or not).</li> </ul> </li> </ul>   | 10 |
| <ul style="list-style-type: none"> <li>(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.</li> </ul>   | 10 |
| <b>272F Procedure for making product certification scheme rules</b>   |    |
| <ul style="list-style-type: none"> <li>(1) Before making product certification scheme rules, the chief executive must— <ul style="list-style-type: none"> <li>(a) publicly notify the proposal to make the rules; and</li> <li>(b) give persons at least 20 working days to make submissions on the proposal; and</li> <li>(c) consider those submissions.</li> </ul> </li> </ul>   | 15 |
| <ul style="list-style-type: none"> <li>(2) The notice must include the following: <ul style="list-style-type: none"> <li>(a) a detailed statement of the proposed rules, including any transitional arrangements (which may, but need not, include a copy of the proposed rules):</li> <li>(b) the reasons for making the rules:</li> <li>(c) the date on which the rules will come into force:</li> <li>(d) details of how, and by when, submissions may be made.</li> </ul> </li> </ul> | 20 |
| <ul style="list-style-type: none"> <li>(3) The chief executive need not comply with <b>subsection (1)</b> in relation to an amendment of the rules if satisfied that the amendment will not adversely affect the substantial interests of any person.</li> </ul>  | 25 |
| <ul style="list-style-type: none"> <li>(4) The chief executive must ensure that the following are publicly available on the Ministry's Internet site: <ul style="list-style-type: none"> <li>(a) all product certification scheme rules (including amendments) as they are made; and</li> <li>(b) a consolidated version of the product certification scheme rules as in force from time to time.</li> </ul> </li> </ul>  | 30 |
|   | 35 |

*Offences relating to product registration scheme*

**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)**— 5
- (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. 10
- (3) A person must not, in any other way, represent themselves as being any of the following if that is not the case:
- (a) an accredited PCB;
  - (b) a registered PCB;
  - (c) authorised to issue product certificates. 15
- (4) A person who fails to comply with **subsection (3)**—
- (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

**272H Offence to misrepresent product certificate**

- (1) A person must not represent a building product or building method as being any of the following if that is not the case:
- (a) having a current product certificate;
  - (b) having a registered product certificate: 25
  - (c) having been evaluated and certified under the product certification scheme under this subpart.
- (2) A person who fails to comply with **subsection (1)**—
- (a) commits an offence; and
  - (b) is liable on conviction,— 30
    - (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.

**71 New subpart 7A of Part 3 inserted**

- After **section 272H** (as inserted by **section 70**), insert: 35

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** 5

The chief executive may—

- (a) appoint a person as the modular component manufacturer certification accreditation body; and
- (b) revoke the appointment at any time. 10

*Accreditation of modular component manufacturer certification bodies*

**272J Accreditation of modular component manufacturer certification body**

- (1) The MCMC accreditation body may, on application, accredit a person as a modular component manufacturer certification body if satisfied that they—
  - (a) have the ability to perform the relevant functions competently, impartially, consistently, transparently, and accountably; and 15
  - (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; and 20
  - (c) comply with any other prescribed criteria and standards for accreditation.
- (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).
- (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. 30

**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— 35

- (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. 5
- (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**

- (1) The MCMC accreditation body may suspend or revoke a person’s accreditation as a modular component manufacturer certification body if satisfied that they— 10
- (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—
- (a) regulations made for the purposes of **section 272J(1)(b)(ii) or (c)** are amended; and 15
  - (b) a person ceases to meet the criteria in **section 272J** solely as a result of those amendments,—
- 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. 20
- (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.
- (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. 25
- (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 30
  - (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
  - (b) the effect of **section 272P(1), 272Q(1), or 272R(1)(a)** (as applicable). 35

- (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).

**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: 5
- (a) accredits a person as a modular component manufacturer certification body;
  - (b) suspends, or lifts the suspension of, a person's accreditation;
  - (c) revokes a person's accreditation. 10
- (2) The notification must be given—
- (a) in the manner notified in writing by the chief executive to the MCMC accreditation body; and
  - (b) within 7 days after the event occurs.

*Registration of modular component manufacturer certification bodies* 15

**272N Registration of modular component manufacturer certification body**

- (1) The chief executive may, on application, 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 20
  - (c) meet any other prescribed criteria and standards for registration.
- (2) The application must—
- (a) be made in writing; and 25
  - (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— 30
- (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**

The chief executive must audit a registered MCMCB at least once in every 3 35  
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**.

**272P Suspension of registration of MCMCB**

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*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**.

*Suspension by chief executive*

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- (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
  - (b) have failed to comply with any MCM scheme rules.

- (3) However, if—

15

- (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,—

the chief executive cannot suspend their registration under **subsection (2)(a)** unless 3 months have elapsed since those amendments came into force.

20

- (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.

25

*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
- (b) update the register accordingly; and
- (c) take all reasonable steps to notify certified MCMs for whom the person is the responsible MCMCB.

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**272Q Lifting of suspension of registration of MCMCB**

*Automatic suspension*

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- (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, lift the suspension if satisfied that they—
- (a) again meet the criteria for registration in **section 272N**; or
  - (b) have otherwise rectified the failure that led to the suspension. 5
- (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). 10
- (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 15
  - (c) if the suspension is lifted, update the register accordingly.

**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 20
  - (b) their registration is suspended under **section 272P(2)** and the suspension is not lifted within 12 months after it was imposed.
- (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 25
  - 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,—
- 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— 30
- (a) notify them in writing of the revocation (including the reasons for it); 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—
- (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 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 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—
- (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
  - (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**.
- (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:
- (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.
- (5) If the person's suspension is lifted under **subsection (3)(a) or (4)**, the chief executive must— 5
- (a) notify them in writing of the lifting of the suspension; and
  - (b) update the register accordingly.
- (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* 10

**272U Certification of modular component manufacturer**

- (1) A registered MCMCB may, on application, certify a person as a modular component manufacturer if satisfied that—
- (a) they have the ability to competently and reliably— 15
    - (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
    - (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 20
  - (b) they have policies, procedures, and systems that—
    - (i) will result in them performing their functions as required by **paragraph (a)**; and
    - (ii) comply with any prescribed requirements; and
  - (c) they comply with any other prescribed criteria and standards for certification. 25
- (2) The certification must specify—
- (a) the kinds of modular components the person is certified to manufacture; and
  - (b) the kinds of modular components (if any) the person is certified to design. 30
- (3) The application must—
- (a) be made in writing; and
  - (b) be made in the prescribed manner (if any); and
  - (c) set out— 35
    - (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
- (d) include the prescribed information (if any); and
- (e) be accompanied by the prescribed fee (if any).

**272V Audit of certified MCM**

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- (1) A registered MCMCB must audit each certified MCM for whom it is the responsible MCMCB—
  - (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. 10
- (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— 15
  - (a) the modular component manufacturer continues to meet the criteria for certification in **section 272U**; or
  - (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. 20
- (6) A registered MCMCB may charge the person being audited the prescribed fee (if any) for conducting the audit.

**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— 25
  - (a) no longer meet the criteria for certification in **section 272U**; or
  - (b) have failed to comply with any MCM scheme rules; or
  - (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). 30
- (3) However, if—
  - (a) regulations made for the purposes of **section 272U(1)(b)(ii) or (c)** are amended; and

- (b) a person ceases to meet the criteria in **section 272U** solely as a result of those amendments,—  
the responsible MCMCB cannot suspend or revoke their certification under **subsection (1)(a)** unless 3 months have elapsed since those amendments came into force. 5
- (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.
- (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. 10
- (7) Before suspending or revoking a person’s certification, the responsible MCMCB 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. 15
- (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). 20
- (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). 25
- 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: 30
- (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— 35
- (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**

- (1) The chief executive may, on application, register a person as a modular component manufacturer if satisfied that they—
- (a) are a certified MCM; and 5
  - (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
  - (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—
- (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**. 15
- (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). 20
- (4) 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). 25

**272Z Audit of registered MCM**

The chief executive must audit a registered MCM at least once in every 3 years to ascertain whether—

- (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**. 30

**272ZA Suspension of registration of MCM**

*Automatic suspension*

- (1) A person's registration as a modular component manufacturer is automatically suspended if their certification is suspended under **section 272W**. 35

*Suspension by chief executive*

- (2) The chief executive may suspend a person's registration as a modular component manufacturer if satisfied that—
- (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.
- (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,—
- 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*
- (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.

**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*

- (2) If a person's registration is suspended under **section 272ZA(2)**, the chief executive may, on application, 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.
- (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).
- (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.

**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.
- (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
  - (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
  - (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—
- (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
    - (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.
- (2) The chief executive may suspend the person's registration without giving them prior notice. 5
- (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
- (b) update the register accordingly; and 10
- (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 15
- (b) there are grounds to suspend or revoke the person's certification or registration under **section 272W or 272ZA**.
- (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: 20
- (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. 25
- (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 30
- (b) update the register accordingly.
- (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. 5
- (2) The certificate must—
  - (a) be in the prescribed form; and
  - (b) include the prescribed information; and
  - (c) be issued in accordance with any prescribed requirements.
- (3) The certificate— 10
  - (a) takes effect when it is issued by the manufacturer; and
  - (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)**— 15
  - (a) may prescribe requirements for all modular components or any class or classes of modular components:
  - (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: 20
  - (d) may prescribe different requirements depending on when the certificate is issued:
  - (e) may otherwise make different provision for different cases on any differential basis. 25

*MCM scheme rules*

**272ZG MCM scheme rules**

- (1) The chief executive may, by notice in the *Gazette*, make rules for the operation of the modular component manufacturer certification scheme under this subpart. 30
- (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 modular component manufacturers are to be evaluated:
  - (c) resolution of disputes between scheme parties: 35
  - (d) procedural and administrative matters.

- (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: 5
  - (e) a registered MCM.
- (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.
- 272ZH Procedure for making MCM scheme rules** 10
- (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
  - (c) consider those submissions. 15
- (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):
  - (b) the reasons for making the rules: 20
  - (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.
- (2) A person who is not a registered MCMCB must not perform any of the functions of a registered MCMCB. 35

- (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. 5
- (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: 10
  - (c) an accredited MCMCB:
  - (d) a registered MCMCB:
  - (e) authorised to certify modular component manufacturers:
  - (f) a certified MCM: 15
  - (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: 20
    - (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: 25
  - (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)**— 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.

**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**: 5
- (e) a register of product certificates for the purposes of **sections 272A to 272D**: 5
- (f) a register of modular component manufacturer certification bodies for the purposes of **sections 272N to 272T**: 10
- (g) a register of modular component manufacturers for the purposes of **sections 272Y to 272ZE**. 10

**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 15
- (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 20
- (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: 25
  - (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. 30

(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)** 35

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.   |    |
| <b>76</b> | <b>Section 302 amended (Obligation to notify Registrar of change in circumstances)</b>                                       |    |
|           | 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.   |    |
| <b>77</b> | <b>Section 314 amended (Offences relating to licensing)</b>  |    |
| (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 |
| <b>78</b> | <b>Section 326 amended (Failure to comply with summons)</b>  |    |
| (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 |
| <b>79</b> | <b>Section 362D amended (Building contractor must provide information before residential building contract entered into)</b> |    |
| (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:  | 30 |
| (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.   |    |
| <b>80</b> |      | <b>Section 362I amended (Implied warranties for building work in relation to household units)</b>                             |    |
|           |      | In section 362I(1)(b) and (f), replace “materials” with “building products”.  |    |
| <b>81</b> |      | <b>Section 362M amended (Remedies if breach of warranty can be remedied)</b>  | 5  |
|           |      | In section 362M(2), replace “materials” with “building products”.   |    |
| <b>82</b> |      | <b>Section 362Q amended (Building contractor or on-seller must remedy defect notified within 1 year of completion)</b>        |    |
|           |      | In section 362Q(3), replace “materials” with “building products”.   |    |
| <b>83</b> |      | <b>Section 362V amended (Offence for commercial on-seller to transfer household unit without code compliance certificate)</b> | 10 |
| (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”.   | 15 |
| (4)       |      | Replace section 362V(3) with:   |    |
| (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:  | 20 |
|           |      | (ii) in the case of a body corporate, to a fine not exceeding \$1,500,000.  |    |
| <b>84</b> |      | <b>New Part 4B inserted</b>   |    |
|           |      | After section 326V, insert:   |    |
|           |      | <b>Part 4B</b>  | 25 |
|           |      | <b>Building product information requirements</b>  |    |
|           |      | <b>362VA Building product information requirements may be prescribed</b>  |    |
| (1)       |      | Regulations may be made under <b>section 402(1)(xg)</b> prescribing information requirements for a building product.          |    |
| (2)       |      | The information requirements for a building product may specify—  | 30 |
|           | (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: 5
  - (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: 10
  - (a) the form and manner in which information must be disclosed:
  - (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: 15
  - (e) any other requirements that are necessary or desirable to administer and enforce compliance with the information requirements.
- (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: 20
  - (b) may prescribe different requirements for different building products or classes of building products:
  - (c) may prescribe different requirements for different manufacturers, suppliers, or other persons, or classes of such persons: 25
  - (d) may otherwise make different provision for different cases on any differential basis.

**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. 30
- (2) A person must not, in trade, do any of the following with the building product unless the person complies with the information requirements:
  - (a) supply the building product in New Zealand:
  - (b) offer to supply the building product in New Zealand: 35
  - (c) advertise the supply of the building product in New Zealand:
  - (d) import the product into New Zealand for the purpose of supply.

- (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. 5

### **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. 10
- (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. 15
- (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. 20
- (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. 25

### **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— 30
- (a) a reasonable mistake; or
  - (b) reasonable reliance on information supplied to the defendant by another person.
- (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— 35

- (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. 5
- (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 10
  - (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* 15

**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— 20
  - (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 25
  - (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. 30
- (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. 35

- 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: 5
- (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. 10
- 86 Section 366 amended (Offence to impersonate building consent authority or regional authority, etc)**
- (1) In section 366(1), replace “commits an offence if the person impersonates” with “must not impersonate”.
- (2) Replace section 366(2) with: 15
- (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
- 87 Section 367 amended (Offence to obstruct execution of powers under this Act)**
- (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: 25
- (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
- 88 Section 368 amended (Offence to remove or deface notices)**
- (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: 35

- (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. 5

**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)— 10
  - (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.

**90 Section 371D amended (Offence to impersonate enforcement officer) 15**

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: 20

- (c) a current registered product certificate:
- (caa) a current manufacturer’s certificate for a modular component:

**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)**

- (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 <b>section 263(1)</b> ,—  |    |
| (A)   | requirements for policies, procedures, and systems:   | 5  |
| (B)   | other criteria and standards for accreditation:   |    |
| (iii) | for the purposes of <b>section 267A</b> ,—  |    |
| (A)   | requirements to have adequate means to cover civil liabilities:   |    |
| (B)   | 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 <b>section 270</b> ,—  |    |
| (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 |
| (ua)  | prescribing the kinds of building products that are modular components for the purposes of the definition of modular component in section 7:  |    |
| (ub)  | prescribing, in relation to modular component manufacturer certification bodies,—   | 25 |
| (i)   | for the purposes of <b>section 272J(1)</b> ,—   |    |
| (A)   | requirements for policies, procedures, and systems:   |    |
| (B)   | other criteria and standards for accreditation:   |    |
| (ii)  | in relation to audits under <b>section 272K</b> ,—  |    |
| (A)   | the frequency with which audits must be conducted:  | 30 |
| (B)   | audit procedures (including the issuing of audit reports and certificates):   |    |
| (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 <b>section 272N</b> ,—  | 35 |
| (A)   | requirements to have adequate means to cover civil liabilities:   |    |

|           |  |    |
|-----------|--|----|
|           | (B) criteria and standards for registration:   |    |
| (uc)      | prescribing, in relation to modular component manufacturers,—  |    |
|           | (i) for the purposes of <b>section 272U(1)</b> ,—  |    |
|           | (A) requirements for policies, procedures, and systems:  |    |
|           | (B) other criteria and standards for accreditation:  | 5  |
|           | (ii) in relation to audits under <b>section 272V</b> ,—  |    |
|           | (A) the frequency with which audits must be conducted:   |    |
|           | (B) audit procedures (including the issuing of audit reports and certificates):  |    |
|           | (C) the fees payable for an audit or the rate at which, or method by which, those fees are to be calculated:   | 10 |
|           | (iii) for the purposes of <b>section 272Y</b> ,—   |    |
|           | (A) requirements to have adequate means to cover civil liabilities:  |    |
|           | (B) other criteria and standards for registration:   | 15 |
| (ud)      | prescribing the form, content, and other requirements for manufacturer’s certificates for modular components for the purposes of <b>section 272ZF</b> , and the circumstances in which those certificates are not required under <b>section 92(3A)</b> : |    |
| (6)       | After section 402(1)(xf), insert:  | 20 |
|           | (xg) prescribing information requirements for building products for the purposes of <b>section 362VA</b> :   |    |
| <b>95</b> | <b>Section 403 amended (Consultation requirements for making regulations)</b>  |    |
| (1)       | In the heading to section 403, replace “ <b>regulations</b> ” with “ <b>certain regulations and other Orders in Council</b> ”.   | 25 |
| (2)       | In section 403(1)(a), replace “section 285” with “ <b>section 9A, 9B</b> , or 285”.  |    |
| (3)       | In section 403(1)(b), replace “section 400 or section 401” with “section 400, 401, or <b>402(1)(xg)</b> ”.   |    |
| <b>96</b> | <b>Section 405 amended (Incorporation of material by reference into certain instruments, solutions, and methods)</b>   | 30 |
| (1)       | In section 405(4)(c), replace “section 41” with “ <b>section 9A, 9B</b> , 41,”.  |    |
| (2)       | After section 405(4)(d), insert:   |    |
|           | (e) product certification scheme rules made under <b>section 272E</b> ; and  |    |
|           | (f) modular component manufacturer certification scheme rules made under <b>section 272ZG</b> .  | 35 |

**97 Schedule 1AA amended**

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

|  |   |    |
|--|---|----|
| <b>Part 3</b>  |   |    |
| <b>Provisions relating to Building (Building Products and Methods,<br/>Modular Components, and Other Matters) Amendment Act 2020</b> |   | 5  |
| <b>7</b>   | <b>Meanings of building product and building method</b>   |    |
| (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 <b>section 9A</b> ) or a building method (as defined in <b>section 9B</b> ), as the case requires.   | 10 |
| (2)  | <b>Subclause (1)</b> applies unless the context otherwise requires.   |    |
| (3)  | In this clause,—<br><b>commencement date</b> means the date on which <b>section 7</b> of the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act <b>2020</b> comes into force<br><b>existing reference</b> means a reference in regulations or any document made under, or in connection with, this Act that was made before the commencement date. | 15 |
| <b>8</b>   | <b>Current PCBs have 6 months to become registered</b>  | 20 |
| (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 <b>section 267C(2)</b> when the accreditation was suspended).  | 25 |
| (3)  | However, <b>subclause (1)</b> ceases to apply to a person on the earlier of the following: <ol style="list-style-type: none"> <li>(a) the person’s registration under <b>section 267A</b>;</li> <li>(b) the expiry of 6 months from the commencement date;</li> <li>(c) the revocation of the registration under <b>section 267E</b>.</li> </ol>  | 30 |
| (4)  | The chief executive must update the register kept under <b>section 273(1)(d)</b> to show the effect of this clause.   |    |
| (5)  | In this clause,—<br><b>commencement date</b> means the date on which <b>section 66</b> of the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act <b>2020</b> comes into force  | 35 |

**current PCB** means a person who was an accredited product certification body immediately before the commencement date (even if the accreditation was suspended).

**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**. 5
- (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).
- (3) The chief executive must update the register kept under **section 273(1)(e)** to show the effect of this clause. 10
- (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 15

**current certificate** means a product certificate that was in force immediately before the commencement date (even if it was suspended).

**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. 20

**98 Schedule 1 amended**

- (1) In Schedule 1, clause 1(1), replace “any component or” with “a building product or an”. 25
- (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”.
- (4) In Schedule 1, clause 1(2)(a), replace “component” with “building product”. 30
- (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”. 35
- (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

5

### 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**

10

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

#### Subpart 2—Building (Definition of Restricted Building Work) Order 2011

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

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

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

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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.