

9 July 2019

Metals New Zealand

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

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1. Introduction

Metals New Zealand has prepared this submission having consulted with its member organisations (listed at the end of this submission), some of the member organisations are also making submissions on their own account.

Metals New Zealand submitted to the Building Legislative Reform process in June 2019. We were largely supportive of the proposed reforms but made the following comments re the MBIE process for sector consultation; role of building consent process; that the regulator currently struggles to be the enforcer; and the need for MBIE to take our people with them on the transformation process.

1.1. Review Process – lack of sector wide consultation.

In our June 2019 submission Metals New Zealand made the following comments

A robust, transparent and objective review process is critical for a successful outcome. Metals New Zealand, having consulted with other sector member organisations and the New Zealand Construction Industry Council members, is disappointed that the review process has not consulted widely with the sector in a robust, transparent and objective manner.

Metals New Zealand's only engagement with the process was a meeting we called in partnership with the Society for Materials New Zealand with MBIE on the subject of non-conforming products. This was our sole engagement with the reform process. Anecdotal feedback from other member organisations across the sector suggests their experience is no different.

Across the construction sector there is a wealth of practical experience of the issues, what works and what doesn't. Metals New Zealand is disappointed that review process appears to draw more from the perspective of policy writers in MBIE than practitioners across the sector.

We would ask that future consultation on the reform process be more widely based.

Regrettably, nothing has changed and there has been no broader sector engagement on the draft of the Bill. There is much that MBIE could learn from existing systems which deliver quality, certainty and performance in our building systems.

Heavy steel fabrication dominates commercial construction, is frequently prefabricated and often imported in prefabricated components. Steel Construction New Zealand has led the construction sector in instituting third party certified systems, (supported by the Heavy Engineering Research Association – HERA) which cover materials, welding and fabrication. Steel mills internationally use third party accredited systems like ACRS to certify product stewardship.

Significant construction delays have occurred on major hotel and apartment developments in Christchurch and Auckland where structures, devoid of certification, were imported.

Light steel frame is increasingly being used for prefabricated structures in residential construction and there is valuable learning to be had from the experiences with prefabricated structures designed for other jurisdictions that are being imported into New Zealand and failing to meet current New Zealand’s Building Code requirements with respect to seismic and bracing requirements.

1.2. The building consent process

In our 2019 submission Metals identified

that the Building Consent Process is central to achieving the three outcomes

- *Safe & durable buildings*
- *An efficient regulatory system that people have confidence in*
- *A high performing building sector that builds it right first time,*

and “a sustained transformation of the industry”. Surprisingly the building consent process is absent from the reform agenda.

For most parties engaged in the development, design and construction processes, it is the uncertainty created through current building consent processes and the resulting impact upon timelines and construction costs which is the major issue impeding current delivery of projects.

Metals New Zealand encourages the Minister to direct MBIE to include a review of the building consent process within the current reform process as the building consent process is central to the three outcomes government is seeking and without a reformed building consent process government will not achieve “a sustained transformation of the industry”.

1.3. Policy / regulator struggles already to be enforcer

Metals New Zealand strongly supports the intent of the Bill, which sets out to address systemic problems in the sector - p47 of the Impact Statement details government's expectations around stewardship -

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

However, Metals poses the question - can the developer of policy and the regulator be an effective, robust and transparent enforcer? Where are the success models across government, where the agency is an effective policy maker / regulator and an enforcer?

The low level of adoption and poor success of MBIE's own management of CODEMARK system¹ is testament to the need for independence and transparency of the enforcement system. Different technical skills and experience, not normally found in a regulator, are required to successfully deliver and enforce certification systems.

As part of the CODEMARK review Deloitte's raised concerns with the competence and technical expertise of the PCBs. With MBIE taking on the role of regulator, auditor and enforcer, they will also need staff with technical expertise to cover all these roles. Will MBIE find suitably qualified staff to conduct the audits, or will this function be contracted out? That being the case, would it not be appropriate to formalise the use of an appropriate third party auditor?

¹ Refer page 38 of Impact Statement: Building System Legislative Reform Programme

1.4. Taking our people with you is critical to achieving transformative change

The Bill, (and particularly with respect to MMC clauses) is silent on how we take our professions and trades along on the journey of transformative change, with the exception of course of the penalties and offences.

Recommendations.

MBIE to consult widely on a review of the Building Consent process in phase two of the Building System Legislative Reform process.

The Select Committee to direct MBIE to use third party audit system.

The Select Committee direct MBIE to consult more widely on the proposed Bill, particularly where the Bill refers to “prescribed information, if any”.

We would encourage MBIE to consider how “taking our people with you is critical to achieving transformative change” in future building regulatory reforms.

1. Product Information and Product Certification

Metals New Zealand supports the proposals to require the provision of minimum product information and the strengthening of the CODEMARK scheme.

Metals New Zealand does not support a voluntary system, it must be mandatory, or New Zealand will continue to suffer the cost of non-conforming products – estimated by BRANZ to cost New Zealand up to \$230 million per annum for residential and commercial construction, excluding costs associated with redesign, council fees and disruption to business ².

The Bill also fails to address to address the issues of product substitution. Robust processes and requirements need to be developed for product substitution to ensure building performance and code compliance is not compromised. This is particularly relevant when being applied to buildings using the MMC.

² Dowdell, D., Page, I. and Curtis, M. (2017). *Electronic traceability of New Zealand construction products: Feasibility and opportunities*. BRANZ Study Report SR365. Wellington: BRANZ Ltd.

In the Departmental Disclosure Statement - Section 2.5, MBIE Background Material and Policy Information, MBIE states -

MBIE undertook a cost-benefit analysis for the package of changes for phase one of the reforms. The main cost increase will be the one-off and ongoing compliance costs for those suppliers who need to make changes in order to meet the new product information requirements. Offsetting these costs will be the longer term benefits once all the reforms are fully implemented – better quality building products and building work, less rework, more efficient consenting and, ultimately, safer and more durable buildings that are less prone to systemic failure.

This suggests that by only meeting the new product information requirements, there will be long term benefits, *better quality building products and building work, less rework, more efficient consenting and, ultimately, safer and more durable buildings that are less prone to systemic failure.*

The reality is that improvements will come about only through industry education, training and upskilling. (refer 1.4 above)

2. Modern Methods of Construction (MMC)

Metals New Zealand is concerned that the proposed clauses in the Bill could inadvertently create a repeat of weathertightness failures.

One of the reasons for the poor uptake of MBIE's Multi Proof Consent is the high variability of challenging site and climatic conditions across New Zealand.

In the absence of robust sector consultation, existing risks have not been comprehensively identified.

Metals New Zealand is concerned that the Bill proposes significant systemic change to New Zealand's building regulatory framework. We recommend caution as significant changes in the past led to weather-tightness failures, which three decades on we still are addressing.

The Impact Statement lists likely risk and unintended impacts³. However missing from this list, is the greatest single risk – that the overseas manufacture of modular components fail, because either product incorporated in the modules are not certified by a PCB and/or that the modular components have not been designed to meet New Zealand seismic or climatic conditions.

New Zealand has experienced systemic failure of imported façade systems, which leak. Already we have kitset homes coming into New Zealand with similar building materials and systems to New Zealand, (e.g. like Australia), which fail to meet New Zealand's seismic design requirements. Are these not systemic risks which the Bill should ensure are not repeated in the future?

³ Refer page 38 of Impact Statement: Building System Legislative Reform Programme

Metals New Zealand suggests that the “*Creation of specialist frameworks for Modern Methods of Construction*” – as detailed in the Departmental Disclosure Statement – specific features of the Bill is optimistic at best –

- It is difficult to be confident in a “based on a conformity model”, particularly with the new systems and products. This issue underpinned the weathertight homes problem.
- The above is exacerbated when, as appears contemplated, the self-certified MCM is a foreign party. Indeed, the RIS did not recommend use of overseas assurance. See RIS at pages 26-28.
- It is difficult to see the distinctions between MCM, PCB, LBP and BCA fully working in practice. The issues will be at the margins, and different BCA’s will potentially interpret statements of compliance differently - perhaps due to site conditions, which differ markedly across NZ.
- The Bill will require MBIE to recruit a significant number of appropriately qualified staff to meet the Bill’s intentions.
- Finally - The Disclosure Statement states (p5)
The Bill addresses these issues by providing for the establishment of a voluntary certification scheme, based on a conformity model.

This statement is inconsistent with the Bill’s general policy statement of ***lifting efficiency and quality of building work and provide fairer outcomes if things go wrong.***

The Bill is silent on certification of products utilised in MMC.

Metals New Zealand suggests that the same criteria and standards (re product information and certification) should be mandatory for products utilised by modern component manufacturers. Obviously, this should apply to imported modular buildings requiring them to achieve the same standards as domestic suppliers. How foreign suppliers meet qualification requirements for certified Modular Component Manufacturers for modular buildings is not addressed.

Will imported Modular Buildings require a building consent issued prior to construction, as is proposed in the Bill, and would this apply for New Zealand based manufacturers?

Metals New Zealand notes that the Bill is silent on the following which surely impact upon the Bill:

- The Building (Product Certificate) Amendment Regulations 2019 which detail the criteria and standards for accreditation as a product certification body are not mentioned in the Bill. Some of the clauses came into effect in November 2019.

- The applicability of Restricted Building Work and the use of Licenced Building Practitioners for design and construction with the MCM.
- The function of the Building Practitioners Board with respect to the qualifications if any, of a Modular Component Manufacturer.

Recommendations – that the Select Committee ensure that, given the magnitude of the proposed changes, that

- The risk assessment to include the potential failure of products embodied in modular components.
- The proposed “*Creation of specialist frameworks for Modern Methods of Construction*” is too optimistic and needs further work to ensure that building quality is not compromised.
- Products embodied in all modular buildings, (manufactured in New Zealand or offshore), must comply with the same product information and certification requirements as for conventional residential construction in New Zealand.
- The Bill is consistent with Part 4 of the 2004 Act re regulation of Building Practitioners, which covers existing occupational registrations / licensing in New Zealand.
- The Bill is consistent with, and cites The Building (Product Certificate) Amendment Regulations 2019.

3. Offences and Penalties

Metals New Zealand supports government’s proposal to produce fairer outcomes when things go wrong and to bring about changes in participant behaviour.

Metals New Zealand supports the proposal to require guarantee and insurance products for residential new builds and significant alterations. We would encourage MBIE to look at successful models overseas, e.g. United Kingdom, where information re failures is collated and used to inform future building code review with respect to building methods and building product performance.

Will penalties still apply to individuals who are not licensed but undertaking restricted building work?

Metals New Zealand broadly agrees with the three proposed changes to offences and penalties in the Building Act, consistent with the penalties under the Health & Safety at Work Act 2015.

4. Use of Building Levy

Metals New Zealand did not support the reduction in Levy rate from \$2.01 to \$1.50. Savings to home purchaser would be minimal. A saving of \$158.10 on \$310,000 house is minimal.

Metals New Zealand advocated to broaden the use to which Levy funds could be allocated for MBIE to work more collaboratively with the sector – in particular, ongoing maintenance and development of Building Standards, and funding industry time / contribution on the Construction Sector Accord.

The Construction Sector Accord provides a systemic approach to addressing sector issues and realising opportunities and Levy funding should support sector contributions to the Accord work streams.

Metals New Zealand would like to present to the Select Committee hearing.

Please acknowledge receipt:

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Metals New Zealand member organisations



www.hera.org.nz

The New Zealand Heavy Engineering Research Association (HERA) was established in 1979 as a non-profit research organisation dedicated to serving the needs of the metals-based industries in New Zealand. Its membership consists of approximately 600 companies representing metals-based fabrication and manufacturing companies, the associated design and consulting industry, related education providers, and the supporting material supply and services industry. HERA is base funded through an industry generated R&D contribution in the form of a levy on heavy steel and welding consumables administered by the Heavy Engineering Research Levy (HERL) Act. HERA's current research is in the areas of steel construction, general heavy engineering industry development and welding fabrication innovation. HERA works with other research providers such as universities, independent research organisations and CRIs to deliver its programmes.



www.scnz.org

Steel Construction New Zealand Inc. (SCNZ) aims to advance the interests of New Zealand's diverse steel construction industry by promoting the benefits of steel solutions in building and infrastructure projects. Members include manufacturers of structural steel and steel products, distributors, fabricators, designers, detailers, galvanisers, and paint and building supply companies. SCNZ provides its members with technical advice on the latest in steel design trends and standards, networking opportunities, and a representative voice with key industry and Government decision-makers.



www.castingtechnologynz.org

Casting Technology New Zealand (CTNZ) aims to be a major contributor to the success and prosperity of the metal casting industry. The organisation is an advocate for maintaining high industry standards and encourages members to participate in quality training programmes. It provides a network for technical and business activities among its membership at national and international levels. At a Government level, CTNZ keeps abreast of legislation relevant to the metal casting industry and, importantly, represents the industry's position on issues affecting the sector.



www.metalroofing.org.nz

The New Zealand Metal Roofing Manufacturers Association Inc. (NZMRM) represents companies that roll-form steel and other metals for roofing and cladding purposes. Commonly known as 'Rollformers', NZMRM has 30 member companies. Members are involved in producing a wide range of profiled product, both painted and unpainted. The Association is active in the development and promotion of industry standards, and in conducting research that promotes the use of metal roofing and cladding.



www.nashnz.org.nz

Formed in New Zealand and Australia in 1982, the National Association of Steel-Framed Housing (NASH) is an advocate for all forms of low and medium rise steel-framed construction. NASH represents the interests of suppliers, practitioners and customers of steel-framing systems, and provides a representative voice for the sector at Government level.

The New Zealand Stainless Steel Development Association (NZSSDA) was formed in 1998 to promote and develop the stainless steel market in New Zealand. Its members include engineers, architects, fabricators, merchants and end-users with an interest in the supply or application of stainless steels. NZSSDA supports and



encourages technical excellence in the industry and provides specialised training courses on stainless steel for the New Zealand market.

www.nzssda.org.nz



New Zealand's major aluminium extrusion companies work collaboratively, (supported by Metals NZ), on areas of common interest which include fair and free trade, non-conforming products, government procurement and sustainability.



The Sustainable Steel Council (SSC) was reconstituted by Metals NZ, HERA, SCNZ, NZMRM, NZSSDA, NASH, New Zealand Steel, Fletcher Steel and Steel and Tube in 2018. Members of the Sustainable Steel Council are committed to a vision where steel is valued as a critical enabler in New Zealand's journey to a low emission economy. The vision is achieved by a financially sound industry taking leadership in delivering to the living standards framework, measured across human, social, natural and financial / infrastructure capitals.