

Building Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill contains some minor adjustments to improve the workability of the Building Act 2004 (the **Act**). The public policy objective is to amend the Act to improve the clarity and effectiveness of the regulatory framework. This will encourage an efficient and fair provision of building and local government services for New Zealanders. The Act's purpose is stated in section 3 of the Act. It introduced a range of measures to—

- strengthen the regulatory regime for building work;
- address the systemic issues that led to major building failure from the mid-1990s to 2001;
- significantly reduce the risks of building failure in the future.

The purpose of the Bill is to—

- alter the basis on which accreditation fees may be collected, so that the approval and appointment of a product certification accreditation body can proceed in 2007 as planned;
- clarify the approach to exemptions from building consent requirements (for example, reverting to the regime of the Building Act 1991 regarding culverts, small dams, and certain pylons, plumbing and drainage work), and in particular to require a building consent for weathertightness remediation work;
- adjust the future dam safety scheme to align it to a greater extent with international and New Zealand risk continuum

paradigms, for example, by adding new categories for earthquake-prone and flood-prone dams; and by adding an incentive for dam owners to become accredited (an exemption from annual compliance certificate requirements):

- clarify that small dams should be regulated by regional authorities as dams, not regulated by territorial authorities as buildings; and reintroduce the small dams exemption from building consent requirements (removing compliance costs for owners of small dams):
- fine-tune some elements of the scheme to license building practitioners, for example, set out the purpose of the scheme in a purpose clause; clarify that certification is an information provision requirement only (and therefore avoid the creation of any potential tort liability for licensed building practitioners); and introduce a new term, significant building project, to facilitate a whole-of-building concept as well as the element-based concept in the term restricted building work:
- require territorial authorities to include on project information memoranda (**PIMs**) for public use buildings a statement flagging that there are accessibility requirements in the Act and the building code, to assist in improving compliance with accessibility requirements at the building design stage:
- make a number of minor or technical amendments to the Building Act 2004 to correct errors, omissions, and inconsistencies.

Regulatory impact statements

Statement of nature and magnitude of problem and need for government action

The Act introduced a range of measures to—

- strengthen the regulatory regime for building work; and
- address the systemic issues that led to major building failure from the mid-1990s to 2001; and
- significantly reduce the risks of building failure in the future.

The Weathertight Homes Resolution Services Act of 2002 (repealed and succeeded by the Weathertight Homes Resolution Services Act 2006) was a related statute contributing to the same goals by addressing the leaky homes issue.

As the Department of Building and Housing (the **Department**) has progressed implementation of these Acts, a range of issues has

arisen regarding the practical application of the Acts' provisions. Matters relating to building consent exemptions (Schedule 1 of the Act) were not able to be fully considered in the review that led to the Building Act 2004, but have now been considered by the Department.

Building consent exemptions

Schedule 1 of the Act sets out the circumstances in which councils may exempt building work from needing a building consent. Its intent is to apply an appropriate balance between minimising compliance costs (by exempting low-risk and minor building work from the consent process) and requiring some consistent regulatory overview of building work that could involve risk to health and safety.

Schedule 1's list of exemptions for work that does not require a building consent (and thus is not subject to council inspections) lacks clarity and does not reflect the intention of the relevant principles and policy, partly because some items of the detailed list of exempt building work in the Building Act 1991 were omitted from the Act. The Department has identified the following problems with Schedule 1 of the Act:

- confusion and inconsistency in how 85 councils apply exemptions for building consents to comparable situations around New Zealand, creating—
 - delays and higher compliance costs, particularly for nation-wide building works such as the installation of power pylons, and road repairs involving culverts; and
 - a large volume of case-by-case examination and determination of how Schedule 1 should be interpreted; and
- health and safety risks by allowing, for minor building works, a wider scope of repairs or replacement of comparable materials than should be exempted, for example, recladding leaky homes without ensuring the underlying weathertightness problem has been addressed, or replacing domestic water heaters with replacements that could explode if not installed properly; and
- avoidance of liability for and council inspection of weather-tightness remediation repairs, weakening the Government's objective of fairly resolving leaky homes issues for current (and future) property owners.

The issue of problems with Schedule 1 of the Act is small in scope but significant in impact. It is estimated that the problems currently

affect less than 5% of the current 70 000 to 80 000 building consents issued annually; those figures do not include consents for building work valued at under \$5,000 that is subject to possible Schedule 1 exemptions for minor building work). For those cases where Schedule 1 problems arise, however, there could be hundreds of thousands of dollars of costs arising from an inadequate leaky home repair, or significant health costs to address injuries arising from building work needing particular standards and expertise.

Under the status quo the only action Government can take is to issue guidance material on the interpretation of the current wording of Schedule 1. That wording of Schedule 1 is silent on particular issues that need specific clarification, particularly around weathertightness repairs. Guidance material can only replicate this unsatisfactory situation, as it lacks legal authority to ensure compliance. Certainty can only be ensured through statutory text clarifying the scope of building consent exemptions. Accordingly the status quo does not meet the public policy objectives.

Statement of public policy objectives

The public policy objective is to amend the Act to—

- promote the health and safety of people regarding buildings, consistent with the Act's purposes set out in section 3 of the Act; and
- encourage greater confidence in the regulation of the building and construction industry through improved consistency and quality standards across service delivery; and
- improve the clarity and effectiveness of the regulatory framework to encourage an efficient and fair provision of building and local government services; and
- balance the needs of local government, property owners, building practitioners, and the public in a fair and effective regulatory framework.

The above public policy objectives relate to the Building Act and building issues in general, as well as to the resolution of the leaky homes problem in particular.

Statement of feasible options (regulatory, non-regulatory, or both) that may constitute viable means for achieving desired objective(s)

Status quo

The key features of the status quo are set out in the problem section above.

Amend the Building Act (preferred option)

The preferred option is to amend the Schedule 1 building consent exemptions to—

- clarify the status of some specific types of building work, the current status of which is uncertain; and
- confirm that, in particular, it is not appropriate to exempt durability matters such as weathertightness repairs from building consent requirements; and
- reflect more clearly the principles and policy intent behind the exemption of some building work, that is, minor and low-risk work, from building consent requirements; and
- ensure councils apply their discretionary powers to exempt work from a building consent in a manner consistent with the principles and policy intent behind Schedule 1.

Statement of net benefit of proposal, including total regulatory costs (administrative, compliance and economic costs) and benefits (including non-quantifiable benefits) of proposal, and other feasible options

Most of the proposed amendments to Schedule 1 relate to statutory provisions that were not carried over into the Act from the Building Act 1991. Between 1991 and 2005, these building consent exemptions were regulated as it is proposed they be regulated once more. The regulatory impact is therefore considered to be minimal, and a clarification of the long-standing and intended policy behind the provision for building consent exemptions in Schedule 1.

There is insufficient information to be able to quantify fully the extent of the costs and benefits arising from the proposed amendments, separate from the ongoing impact of the costs and benefits arising from the ongoing roll-out of the Act and the existing building consents process.

Overall, the proposed amendments will result in few net changes to the number of building consents currently issued across New

Zealand. There may be an increase in the number of leaky home repairs requiring building consent (a small percentage of the estimated 15 000 homes affected), offset somewhat by a small increase in some minor building work being exempt from needing a building consent under an amended Schedule 1. The cost of most building consent applications ranges from \$150 to \$1,500, depending on the size and complexity of the proposed building work and number of council inspections required.

The proposed amendments are consistent with—

- issues raised in the current Quality Regulation Review being overseen by the Ministry of Economic Development; and
- the Ministry of Commerce's analysis of the impact of costs to business of the Building Act 1991 (1999); and
- the aims of the Act's new accreditation scheme for councils as building consent authorities, which will raise quality and consistency standards for building consent processes.

Government

The proposed amendments will result in no new costs. Building consents are an existing process for the 85 territorial and regional authorities around New Zealand. The associated administration and inspection costs are passed on through building consent application fees.

The net increase in the number of building consents will be minimal, so there will be a negligible impact on the workload or net costs to local government; and the net increase should have little or no impact on premiums for liability insurance.

The benefits will include increased certainty and consistency across the regulatory framework, and fewer inquiries or complaints requiring the Department to address issues on a case-by-case basis, through call centre inquiries (nearly 100 inquiries, or about 10% of all Building Act inquiries, in 2005/06) or time-consuming reviews such as determinations.

In particular, all recladding work on leaky homes will be subject to a building consent, so full confidence will be restored in the building and housing sector. The effectiveness of the Government's \$30.5 million commitment to resolving weathertight homes issues and enhancing the effectiveness and efficiency of the Weathertight Homes Resolution Services will be maximised, not undermined.

One-off familiarisation costs for local government will be ameliorated by the Minister for Building Issues' announcement on 13 October 2006 of a \$3 million package to assist councils in improving standards for processing building consents, which include better and more consistent decision making around Schedule 1 exemptions.

Industry

The amendments will affect owners and operators proposing to do building work or repairs within the scope of Schedule 1, and the associated 28 000 building practitioners who carry out the work. There will be reduced compliance costs for network utility operators and others who work across council boundaries.

The proposed amendments will result in improved clarity, confidence, and shared expertise across councils, that is, a reduction in case-by-case justifications for decisions about building consent exemptions. This will improve customer relationships, and industry confidence in the sector.

Society

There will be reduced compliance costs for do-it-yourself property owners doing minor and low-risk building work that does not require a building consent. For owners of leaky homes, there will be the compliance cost of needing a building consent where previously one may not have been required or sought. Any costs for a building consent (most ranging between \$150 and \$1,500) will be more than offset by avoiding consequences such as having to re-clad an entire house because of ongoing leaks from an underlying design fault not identified through the building consent and inspection process.

Society will enjoy the net benefits of meeting the public policy objectives of safer, better quality homes and buildings, a better balance between risks and compliance costs for the regulation of building work, and greater confidence in the industry and local government through improved consistency and quality standards.

Statement of consultation undertaken

Stakeholders consulted

The proposed amendments were shared on a confidential basis with 12 local government bodies, 11 building designer or practitioner groups, and 9 accreditation bodies or other interested groups during

a targeted consultation in September and October 2006. The vast majority of submitted comments were supportive of or had no concerns about the proposed amendments. No submitters raised significant concerns.

Government departments/agencies consultation

The following departments have been consulted: Department of Prime Minister and Cabinet, Te Puni Kokiri, Ministries of Justice, Economic Development, Environment, Health, Agriculture and Forestry, and Consumer Affairs, Transit New Zealand, Department of Internal Affairs, Treasury, Office for Disability Issues, the Parliamentary Counsel Office, and the Energy Efficiency and Conservation Authority.

No significant issues were raised about the proposed amendments.

Business compliance cost statement

The main compliance cost will be one-off familiarisation with the proposed amendments. This will be minimal because the proposed amendment will revert to the situation that existed between 1991 and 2005 under the Building Act 1991. Most affected parties already know about this. Familiarisation will be offset by the Department's communications strategy to inform affected parties about changes to the Act. This will include information on the Department's website, and access to advice and information through the Department's free 0800 number and Contact Centre.

The paperwork around building consents will need to be completed by up to an estimated additional 5% of total building consents. This type of paperwork will be the same as that for current building consent applications because the existing building consent process will continue to apply to Schedule 1 building work.

There will be reduced compliance costs for network utility operators, roadworks managers, and other businesses who work across council boundaries because council decisions about consent will be more consistent.

Other regulatory impact issues

Another 2 regulatory impact statements were prepared in relation to this Bill that raise no business compliance costs and address the following topics:

- dam safety—impact for owners of dams that may become earthquake-prone or flood-prone who are required to carry out a review of their dam safety assurance programme:
- small dams—not requiring building consent:
- licensing levy—impact on timing of this payment (in advance rather than arrears) for licensed building practitioners:
- accessibility requirements on PIMs—administrative impact for local authorities to add a reminder on PIMs about accessibility.

All 3 regulatory impact statements are available from the Department's website at www.dbh.govt.nz.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 states that this Act amends the Building Act 2004.

Part 1 Amendments to principal Act

Clause 4 amends section 2(3) of the Act, which relates to the commencement of sections 45(1)(e), 45(2) to 45(4), and 84 to 89 of the Act. The effect of the amendment is that those provisions will come into force on 30 November 2010, rather than on 30 November 2009.

Clause 5 amends section 4 of the Act, relating to the principles to be applied in performing functions or duties, or exercising powers, under the Act. The amendment replaces a reference in section 4(2)(k) of the Act to people with disabilities with a reference to persons with disabilities, a defined term under the Act.

Clause 6 amends section 7 of the Act, the interpretation section, by—

- amending the definition of dam by removing from it a minimum depth and capacity restriction; and
- amending the definition of estimated value so that it refers to consideration rather than values (*see also* the new definition of consideration in this clause and the validation provision in *clause 92*); and

- amending the definition of owner so that it is clear that a person who has agreed in writing to take a lease of land is an owner for the purposes of section 32 (applying for PIMs), section 44 (when to apply for a building consent), section 92 (application for a code compliance certificate), and section 96 (issue of a certificate of acceptance in certain circumstances by a territorial authority), and section 97 (how to apply for a certificate of acceptance); and
- substituting a new definition of restricted building work; and
- inserting new definitions of consideration, large dam, prescribed fee, and significant building project.

Clause 7 amends section 9 of the Act, which states what is not included in the meaning of building for the purposes of the Act. The effect of the amendment is that building does not include a pylon, power pole, or telephone pole that is a system owned or controlled by a network utility operator (a **NUO** system), or part of a NUO system.

Clause 8 amends section 14 of the Act, which relates to the roles of building consent authorities, territorial authorities, and regional authorities in relation to dams. The amendments correspond to the intended division of the responsibilities for dams among those authorities.

Clause 9 amends section 25A of the Act, which relates to the availability of compliance documents on the Department of Building and Housing's website. The amendment, repealing section 25A(2) and (3), removes requirements for digital copies of compliance documents to show detailed information about changes to and revocations of those compliance documents.

Clause 10 amends section 35 of the Act, which relates to the content of PIMs. The amendment adds *new section 35(1)(i)*, requiring PIMs for some buildings to include a statement about the need for the building to comply with section 118 of the Act and certain provisions of the building code (that is, meeting requirements for persons with disabilities to have access to buildings and to facilities within buildings). The relevant buildings to which the new requirement applies are those that are intended to be used for a purpose specified in Schedule 2 of the Act, that is, buildings in respect of which requirements to provide access and facilities for persons with disabilities apply.

Clause 11 amends section 40 of the Act, which relates to building consent requirements for building work. The amendment substitutes *new section 40(1)*, and extends the offence set out in section 40 to engaging or permitting another person to carry out building work except in accordance with a building consent. This brings the offence into line with the former corresponding offence in the Building Act 1991.

Clause 12 amends section 45 of the Act, which relates to how to apply for a building consent. The amendment substitutes *new section 45(2)*, altering the building consent application requirements for the plans and specifications related to design work that is restricted building work. Those plans and specifications must be prepared by, or under the supervision of, licensed building practitioners, and a memorandum about the work must be provided.

Clause 13 amends section 69 of the Act, relating to the chief executive's grant of a waiver or modification of the building code in certain cases only. The amendment replaces a reference in section 69(1)(b) of the Act to people with disabilities with a reference to persons with disabilities, a defined term under the Act.

Clause 14 amends section 72 of the Act, which relates to a requirement for a building consent authority to grant a building consent in certain cases. The amendment limits the requirement to those building consent authorities that are territorial authorities.

Clause 15 amends section 73 of the Act, which relates to conditions on building consents granted under section 72 of the Act, so that, like the amended section 72, the kind of building consent authority to which the section refers is limited to those that are territorial authorities.

Clause 16 amends section 84 of the Act, which relates to the requirement that all restricted building work be carried out or supervised by appropriately licensed building practitioners. The amendment adjusts the statutory language in order to reflect that a licensed building practitioner is licensed to carry out or supervise certain types of work corresponding to a licensing class, or licensing classes, in which the licensed building practitioner is licensed, instead of the licensed building practitioner being authorised, by a licence issued to and held by the licensed building practitioner, to carry out or supervise that work.

Clause 17 amends section 85(1) of the Act, which sets out offences relating to carrying out or supervising restricted building work. The

amendments are an adjustment to the statutory language for the purpose set out in the explanation of the amendment made by *clause 16*.

Clause 18 amends section 86 of the Act, which sets out the offence of engaging another person to carry out or supervise restricted building work if that person is not a licensed building practitioner. The amendment is an adjustment to the statutory language for the purpose set out in the explanation of the amendment made by *clause 16*.

Clause 19 amends section 88 of the Act, which relates to the requirement for a licensed building practitioner who carries out or supervises restricted building work to certify the work. The amendments substitute a *new section 88(1)*, with the effect that a licensed building practitioner who carries out or supervises restricted building work under a building consent is required to provide a memorandum as to what restricted building work the licensed building practitioner carried out or supervised. Amendments to section 88(4) reflect the effect of *new section 88(1)*.

Clause 20 amends section 92 of the Act, which relates to applications for code compliance certificates. *New section 92(2A)* reflects the effect of *new section 88(1)*.

Clause 21 inserts a *new section 95A* into the Act. *New section 95A* creates a requirement for a building consent authority that refuses to grant an application for a code compliance certificate to give the applicant written notice of the refusal and the reasons for it.

Clause 22 inserts *new section 99A* into the Act. *New section 99A* creates a requirement for a territorial authority that refuses to grant an application for a certificate of acceptance to give the applicant written notice of the refusal and the reasons for it.

Clause 23 amends section 103 of the Act, which relates to the content of a compliance schedule. The amendment to section 103(1)(c), by including a reference to persons other than licensed building practitioners, indicates that the inspection, maintenance, and reporting procedures referred to in section 103(1)(c) may be the responsibility of persons other than licensed building practitioners.

Clause 24 inserts *new section 104A* into the Act. *New section 104A* creates a requirement for a territorial authority that receives a copy of a compliance schedule to provide the owner of the building for which the schedule was issued with a compliance schedule statement of the kind described in section 105(e) of the Act.

Clause 25 amends section 108 of the Act, which relates to the annual building warrant of fitness. The amendment inserts *new section 108(5)(aa)*, creating a new offence. The new offence relates to failure to supply the territorial authority with the building warrant of fitness, as required under section 108(1).

Clause 26 amends section 110 of the Act, which relates to a building owner's obligation to obtain reports on the building's compliance schedule. The amendment to *section 110(a)*, by including a reference to persons other than licensed building practitioners, reflects the amendment to section 103(1)(c) of the Act indicating that the inspection, maintenance, and reporting procedures referred to in section 103(1)(c) may be the responsibility of persons other than licensed building practitioners.

Clause 27 amends section 113 of the Act, which relates to buildings with specified intended lives. The amendment to section 113(1) changes the application of the section from buildings with an intended life of 50 years or less to buildings with an intended life of less than 50 years.

Clause 28 amends section 120 of the Act, which relates to the display of a symbol, visible externally to the building, to indicate the building's compliance with the access requirements of section 118 of the Act for persons with disabilities. The amendments to the heading to section 120 and to the section itself are in accordance with the existence of international symbols of access, for example, international symbols for ambulatory access and hearing access.

Clause 29 inserts a *new heading and new section 133A* into the Act. The *new heading* indicates the application of subpart 7 of Part 2 of the Act. *New section 133A* indicates which provisions of subpart 7 apply to all dams, and which apply only to large dams. (*See also* the definitions of dam and large dam in section 7 of the Act, as amended and inserted respectively by *clause 6* of this Bill).

Clause 30 amends section 146 of the Act, which relates to reviews of a dam safety assurance programme. The amendment substitutes *new section 146(2)*, the effect of which is to require a dam owner to review the dam safety assurance programme of an earthquake-prone dam or a flood-prone dam when requested to do so by the regional authority.

Clause 31 inserts *new section 150A* into the Act. *New section 150A* exempts accredited dam owners from the annual dam compliance certificate obligations set out in section 150 of the Act.

Clause 32 amends section 153 of the Act, which relates to the meaning of dangerous dam for the purposes of the Act. The effect of the amendments in *clause 32* is to remove leaky dams that are high potential impact dams or medium potential impact dams from classification as dangerous dams, unless they are likely to collapse in any of the circumstances set out in section 153(b).

Clause 33 inserts *new section 153A* into the Act. *New section 153A* sets out the meaning of earthquake-prone dam and flood-prone dam.

Clause 34 amends section 161 of the Act, which requires a regional authority to adopt a policy on dangerous dams. The amendments—

- require a regional authority to adopt a policy on earthquake-prone dams and flood-prone dams; and
- insert words into the heading to section 161 to indicate that new requirement; and
- change a reference to a regional authority's district to a reference to its region.

Clause 35 amends section 165 of the Act, which relates to the form and content of a notice to fix. The amendment substitutes *new section 165(1)(f)*, so that a notice to fix that requires building work to cease immediately may exempt from that requirement any work needed to make the site safe.

Clause 36 amends section 166 of the Act, which relates to special provisions for notices to fix from building consent authorities. The amendment to section 166(1) extends the provisions in that subsection to building consent authorities that are territorial authorities or regional authorities. The amendment to section 166(2) removes regional authorities from the requirements set out in that subsection.

Clause 37 amends section 177 of the Act, which relates to applications for determination. The amendment removes an incorrect cross-reference from section 177(f).

Clause 38 amends the heading above section 191 of the Act by removing the reference to regional authorities from it. The amendment is required because a chief executive has not had the power to register a person as a regional authority since 14 April 2005, as the result of amendments made by section 16 of the Building Amendment Act 2005.

Clause 39 amends section 198 of the Act, which relates to the effect of suspension under section 197 of the Act. The amendments clarify that the suspension is of a building consent authority, and that it is a

building consent authority, and not a person, that may be authorised under section 198(3) to perform limited functions.

Clause 40 amends section 208 of the Act, which relates to appeals to the District Court, by removing references to any decision, or right of appeal against such a decision, by the chief executive to decline to register a person as a regional authority. The amendment is required because a chief executive has not had the power to register a person as a regional authority since 14 April 2005, as the result of amendments made by section 16 of the Building Amendment Act 2005.

Clause 41 amends section 216 of the Act, which relates to a territorial authority's obligation to keep information about buildings. The amendment inserts *new section 216(2)(b)(iva)*, requiring the territorial authority to keep any memoranda provided by licensed building practitioners under section 45(2) or 88(1)(a) of the Act.

Clause 42 amends the heading to subpart 3 of Part 3 of the Act to exclude from the responsibilities listed in that subpart building consent authorities that are regional authorities.

Clause 43 inserts a *new heading and new section 249A* into the Act. The *new heading* indicates that *new section 249A* provides for audit fees. *New section 249A* gives explicit power to a building consent accreditation body to charge a building consent authority, on which it conducts an audit under section 249 of the Act, any prescribed audit fee.

Clause 44 amends section 250 of the Act, which relates to accreditation as a building consent authority. The amendment inserts into section 250 the requirement to pay any prescribed accreditation fee prior to accreditation by the building consent accreditation body. This amendment corresponds to the removal from section 253 of the Act of the requirement that this prescribed fee, if any, be paid at the time of the application for accreditation.

Clause 45 amends section 253 of the Act, which relates to an application for accreditation as a building consent authority. The amendment repeals section 253(d), removing the requirement that any prescribed fee for accreditation be paid at the time of the application. This amendment corresponds to the insertion into section 250 of the Act of the requirement to pay any prescribed accreditation fee prior to accreditation by the building consent accreditation body.

Clause 46 inserts a *new heading and new section 257A* into the Act. The *new heading* indicates that *new section 257A* provides for audit

fees. *New section 257A* gives explicit power to a dam owner accreditation body to charge an accredited dam owner, on which it conducts an audit under section 257 of the Act, any prescribed audit fee.

Clause 47 amends section 258 of the Act, which relates to accreditation as a dam owner. The amendment inserts into section 258(1) the requirement to pay any prescribed accreditation fee prior to accreditation by the dam owner accreditation body. This amendment corresponds to the removal from section 258(3) of the Act, by the repeal of section 258(3)(d), of the requirement that this fee be paid at the time of the application for accreditation.

Clause 48 inserts a *new heading and new section 262A* into the Act. The *new heading* indicates that *new section 262A* provides for audit fees. *New section 262A* gives explicit power to a product certification accreditation body to charge an accredited product certification body, on which it conducts an audit under section 262 of the Act, any prescribed audit fee.

Clause 49 amends section 263 of the Act, which relates to accreditation as a product certification body. The amendment inserts into section 263 the requirement to pay any prescribed accreditation fee prior to accreditation by the product certification accreditation body. This amendment corresponds to the removal from section 265 of the Act of the requirement that this prescribed fee, if any, be paid at the time of the application for accreditation.

Clause 50 amends section 265 of the Act, which relates to an application for accreditation as a product certification body. The amendment repeals section 265(d), removing the requirement that any prescribed fee for accreditation be paid at the time of the application. This amendment corresponds to the insertion into section 263 of the Act of the requirement to pay any prescribed accreditation fee prior to accreditation by the product certification accreditation body.

Clause 51 repeals section 266 of the Act, which relates to revocation of accreditation, and substitutes *new section 266* which relates to the suspension, lifting of suspension, or revocation of accreditation. *New section 266* sets out the process by which a product certification accreditation body or the chief executive may suspend, lift the suspension of the accreditation, or revoke the accreditation of a product certification body.

Clause 52 amends section 267 of the Act, which relates to notifying the chief executive of the granting or revocation of the accreditation

of a product certification body. The heading to the section and the section itself are amended to include references to the powers of suspension of accreditation and the lifting of that suspension set out in *new section 266*.

Clause 53 repeals section 271 of the Act, which relates to revocation of a product certificate, and substitutes *new section 271* relating to the suspension, lifting of suspension, or revocation of a product certificate. *New section 271* sets out the process by which a product certification body or the chief executive may suspend, lift the suspension of a product certificate, or revoke a product certificate.

Clause 54 amends section 272 of the Act, which relates to notifying the chief executive of the granting or revocation of a product certificate. The heading to the section and the section itself are amended to include references to the powers of suspension of the product certificate and the lifting of that suspension set out in *new section 271*.

Clause 55 amends section 282 of the Act, which relates to definitions for Part 4 of the Act, on the regulation of building practitioners. The amendments—

- in *clause 55(1)* change the reference to a class of licence in the definition of applicable minimum standards of licensing to a reference to a licensing class, an adjustment to the statutory language for the purpose set out in the explanation of the amendment made by *clause 16*; and
- in *clause 55(2)* correct an error in the expression in paragraph (e) of the definition of building inspection work.

Clause 56 inserts a *new heading and new section 282A* into the Act. The *new heading* indicates that *new section 282A* sets out the purposes of licensing. *New section 282A* sets out the purposes of the licensing of building practitioners under the Act.

Clause 57 repeals section 285 of the Act, which relates to the designation of classes of licences, and substitutes *new section 285* relating to the designation by Order in Council of licensing classes. This is—

- an adjustment to the statutory language for the purpose set out in the explanation of the amendment made by *clause 16*; and
- to insert a reference to licensing classes being in respect of the supervision, as well as the carrying out, of building work or building inspection work.

Clause 58 amends section 286 of the Act, which relates to entitlement to licences. The heading to section 286 is amended, as is

section 286(b). The amendments are adjustments to the statutory language for the purpose set out in the explanation of the amendment made by *clause 16*. *Clause 58* also amends section 286(d) by requiring the payment of the prescribed levy, in addition to the payment of the prescribed fee.

Clauses 59 to 70 amend sections 287 to 297, and the heading above section 294 of the Act relating to licences. The amendments are adjustments to the statutory language for the purpose set out in the explanation of the amendment made by *clause 16*.

Clause 71 amends section 298 of the Act, which relates to the register of licensed building practitioners, by changing an incorrect reference in section 298(1) to rules to a reference to regulations.

Clauses 72 to 79 amend sections 299, 301 to 303, 311, 313, 314, and 316 of the Act relating to licences. The amendments are adjustments to the statutory language for the purpose set out in the explanation of the amendment made by *clause 16*.

Clause 80 amends section 317 of the Act, which relates to grounds for discipline of licensed building practitioners, by making grounds for discipline in respect of—

- failure to provide memoranda as required by sections 45(2)(b) and 88(1) (*see new section 317(1)(da)*); and
- holding himself or herself out as being licensed to carry out or supervise building work or building inspection work of a type that, at that time, he or she was not licensed to carry out or supervise (*see new section 317(1)(db)*).

Clause 80 also amends section 317 by substituting a *new section 317(1)(c)* and amending section 317(1)(e) to adjust the statutory language for the purpose set out in the explanation of the amendment made by *clause 16*.

Clauses 81 and 82 amend sections 318 and 319 of the Act respectively. Those sections relate to disciplinary matters. The amendments are adjustments to the statutory language for the purpose set out in the explanation of the amendment made by *clause 16*.

Clause 83 amends section 330 of the Act, which relates to rights of appeal to the Board and to the District Court. The amendments—

- allow a new right of appeal to the District Court against a decision of the Board made on an appeal under section 330(1) (*see new section 330(2)(a)*); and

- adjust the statutory language for the purpose set out in the explanation of the amendment made by *clause 16* (see *clause 83(1)*).

Clause 84 amends section 348 of the Act, which relates to the form and content of the annual report. The amendment is an adjustment to the statutory language for the purpose set out in the explanation of the amendment made by *clause 16*.

Clause 85 amends section 353 of the Act, which relates to rules for licensed building practitioners. The amendments are adjustments to the statutory language for the purpose set out in the explanation of the amendment made by *clause 16*.

Clause 86 amends section 381 of the Act, which relates to the District Court granting injunctions for certain continuing breaches, by correcting an incorrect cross-reference in section 381(1)(a) to section 165 of the Act to a reference to section 168 of the Act.

Clause 87 amends section 402 of the Act, which relates to general regulations. The amendments to section 402(1)—

- adjust the language of paragraph (d) for the purpose set out in the explanation of the amendment made by *clause 16*; and
- include in paragraph (e) a reference to the levy payable under *new section 286(d)(i)*; and
- substitute *new paragraph (n)* to correspond to the provisions of *new section 285*; and
- insert *new paragraphs (qa) and (qb)* to correspond to the provisions of *new section 153A*; and
- insert *new paragraph (ta)* to correspond to the provisions of *new sections 249A, 257A, and 262A*; and
- substitute *new paragraph (w)* to provide for prescribed fees to be of set amounts, or for the rate or method of fee calculation to be prescribed.

Clause 88 amends section 405 of the Act, which relates to incorporation of material by reference into regulations and compliance documents. The amendments—

- insert a reference to certain Orders in Council into the heading to section 405; and
- provide a new definition of instrument for the purposes of sections 405 to 413 of the Act; and
- amend section 405(1) to make use of that new definition.

Clause 89 amends section 416 of the Act, which relates to the outline of the Act's transitional provisions. The amendment to

section 416(1)(g) substitutes a reference to 2009 with a reference to 2010, in accordance with the amendment to section 2(3) of the Act made by *clause 4*.

Clause 90 amends section 438 of the Act, which relates to transitional provisions for code compliance certificates. The amendment to section 438 substitutes a reference to 2009 with a reference to 2010, in accordance with the amendment to section 2(3) of the Act made by *clause 4*.

Clause 91 amends Schedule 1 of the Act, which relates to exempt building work, by—

- repealing paragraph (a) and substituting *new paragraphs (a) and (ab)*, relating to repair and maintenance work, and temporary access points in non-NUO drainage systems respectively; and
- substituting *new paragraph (b)* to extend the exemptions in that paragraph to water culverts that otherwise fit the current descriptors in that paragraph; and
- clarifying that the height restrictions for the exemptions in paragraph (d) apply to all the constructions mentioned in that paragraph; and
- inserting *new paragraph (da)* to exempt dam constructions of dams that are not large dams; and
- limiting the discretion of a territorial authority or regional authority to exempt building work from requiring a building consent by stipulating, in addition to the other matters that the authority must consider, that the building work be minor.

Part 2

Validation and transitional provisions

Clause 92 provides for the validation at all times of the current practice of calculating the relevant levy, as defined in *clause 92*, on building work as if the definition of estimated value were as amended by *clause 6*. The levy had previously been required to be calculated on the basis of an estimated aggregate of values, rather than (as is the current practice and as in the amended definition of estimated value set out in *clause 6*) the estimated aggregate of the consideration, where value was determined in accordance with section 10 of the Goods and Services Tax Act 1985. Consideration has the meaning given to that term in section 2(1) of that Act (*see the new definition of consideration inserted by clause 6(5) of this Bill*).

Clause 93 is a transitional provision for the content of some PIMs, so that the new requirements in section 35(1) of the Act need not be complied with unless 6 months have elapsed since the commencement of this Bill.

Clause 94 is a transitional provision for some refusals to issue code compliance certificates, so that the requirements in *new section 95A* of the Act need not be complied with unless 3 months have elapsed since the commencement of this Act.

Clause 95 is a transitional provision for some refusals to issue a certificate of acceptance, so that the new requirements in *new section 99A* of the Act need not be complied with unless 3 months have elapsed since the commencement of this Bill.

Hon Clayton Cosgrove

Building Amendment Bill

Government Bill

Contents

		Page
1	Title	4
2	Commencement	5
3	Principal Act amended	5

Part 1

Amendments to principal Act

4	Commencement	5
5	Principles to be applied in performing functions, duties, or exercising powers, under this Act	5
6	Interpretation	5
7	Building: what it does not include	6
8	Roles of building consent authorities, territorial authorities, and regional authorities in relation to dams	6
9	Compliance documents to be available on Ministry's website	7
10	Content of project information memorandum	7
11	Buildings not to be constructed, altered, demolished, or removed without consent	7
12	How to apply for building consent	7
13	Waiver or modification may only be granted by chief executive in certain cases	8
14	Building consent for building on land subject to natural hazards must be granted in certain cases	8
15	Conditions on building consents granted under section 72	8
16	Licensed building practitioner must carry out or supervise restricted building work	8
17	Offences relating to carrying out or supervising restricted building work	8
18	Offence to engage another person to carry out or supervise restricted building work if person is not licensed building practitioner	9

Building Amendment

19	Licensed building practitioner to certify restricted building work	9
20	Application for code compliance certificate	9
21	New section 95A inserted	10
	95A Refusal of application for code compliance certificate	10
22	New section 99A inserted	10
	99A Refusal of application for certificate of acceptance	10
23	Content of compliance schedule	10
24	New section 104A inserted	10
	104A Territorial authority must issue compliance schedule statement	10
25	Annual building warrant of fitness	10
26	Owner must obtain reports on compliance schedule	11
27	Buildings with specified intended lives	11
28	Access symbol must be displayed	11
29	New heading and section 133A inserted	11
	<i>Dams to which provisions of this subpart apply</i>	
	133A Dams to which subpart 7 provisions apply	11
30	Review of dam safety assurance programme	11
31	New section 150A inserted	12
	150A Annual dam compliance certificate requirements not to apply to accredited dam owner	12
32	Meaning of dangerous dam	12
33	New section 153A inserted	12
	153A Meaning of earthquake-prone dam and flood-prone dam	12
34	Regional authority must adopt policy on dangerous dams	12
35	Form and content of notice to fix	13
36	Special provisions for notices to fix from building consent authority	13
37	Application for determination	13
38	Heading above section 191 amended	13
39	Effect of suspension	13
40	Appeals to District Court	13
41	Territorial authority must keep information about buildings	14
42	Heading to subpart 3 of Part 3 amended	14
43	New heading and section 249A inserted	14
	<i>Audit fees</i>	
	249A Fees for audits	14

Building Amendment

44	Accreditation	14
45	Application for accreditation	14
46	New heading and section 257A inserted	14
	<i>Audit fees</i>	
	257A Fees for audits	14
47	Accreditation	15
48	New heading and section 262A inserted	15
	<i>Audit fees</i>	
	262A Fees for audits	15
49	Accreditation	15
50	Application for accreditation	15
51	New section 266 substituted	15
	266 Suspension or revocation of accreditation	15
52	Product certification accreditation body must notify chief executive of grant or revocation of accreditation	16
53	New section 271 substituted	17
	271 Suspension or revocation of product certificate	17
54	Product certification body must notify chief executive of issue and revocation of certificate	18
55	Definitions for this Part	18
56	New heading and section 282A inserted	18
	<i>Purposes of licensing</i>	
	282A Purposes of licensing building practitioners	18
57	New heading and section 285 substituted	19
	<i>Licensing classes</i>	
	285 Licensing classes may be designated by regulations	19
58	Entitlement to licence	19
59	Applications for licence	19
60	Registrar to license applicant or decline application	19
61	Duty to produce evidence of issue of licence	19
62	New section 290 substituted	20
	290 Term of being licensed	20
63	Automatic licensing of people registered under other enactments	20
64	Licensed building practitioner must meet applicable minimum standards for licensing to continue to be licensed	20
65	Consequences of failure to meet applicable minimum standards for licensing	20
66	New heading above section 294 substituted	21
67	Cancellation of licence	21

68	Mandatory suspension of licence	21
69	Voluntary suspension of licence	21
70	Effect of suspension of licence	21
71	Register of licensed building practitioners	21
72	Purpose of register	21
73	Matters to be contained in register	22
74	Obligation to notify Registrar of change in circumstances	22
75	Registrar must contact licensed building practitioners on annual basis	22
76	Functions of Registrar	22
77	Certificate of Registrar to be conclusive evidence	22
78	Offences relating to licensing	22
79	Board must investigate complaints	22
80	Grounds for discipline of licensed building practitioners	23
81	Disciplinary penalties	23
82	Non-payment of fines or costs	24
83	Right of appeal	24
84	Form and content of annual report	24
85	Rules relating to licensed building practitioners	24
86	District Court may grant injunctions for certain continuing breaches	24
87	Regulations: general	24
88	Incorporation of material by reference into regulations and compliance document	25
89	Outline of transitional provisions	26
90	Transitional provision for code compliance certificates and compliance schedules issued under former Act	26
91	Amendment to Schedule 1	26

Part 2

Validation and transitional provisions

92	Validation in respect of levies on estimated value of building work	27
93	Transitional provision for content of project information memorandum	27
94	Transitional provision for refusal of application for code compliance certificate	28
95	Transitional provision for refusal of application for certificate of acceptance	28

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Building Amendment Act **2007**.

- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act amended**
This Act amends the Building Act 2004. 5

Part 1 Amendments to principal Act

- 4 Commencement**
Section 2(3) is amended by omitting “2009” and substituting “2010”. 10
- 5 Principles to be applied in performing functions, duties, or exercising powers, under this Act**
Section 4(2)(k) is amended by omitting “people” and substituting “persons”.
- 6 Interpretation** 15
- (1) Paragraph (a) of the definition of **dam** in section 7 is amended by repealing subparagraph (iii).
- (2) The definition of **estimated value** in section 7 is amended by omitting “values” and substituting “consideration”.
- (3) Paragraph (b) of the definition of **owner** in section 7 is amended by repealing subparagraph (ii) and substituting the following subparagraph: 20
- “(ii) for the purposes of sections 32, 44, 92, 96, and 97, any person who has agreed in writing, whether conditionally or unconditionally, to purchase the land or any leasehold estate or interest in the land, or to take a lease of the land, and who is bound by the agreement because the agreement is still in force”. 25
- (4) Section 7 is amended by repealing the definition of **restricted building work** and substituting the following definition: 30
- “**restricted building work** means building work that—
- “(a) requires a building consent; and
- “(b) is part of a significant building project; and

- “(c) is of a kind declared by the Governor-General by Order in Council to be building work that must be carried out or supervised by a licensed building practitioner who is licensed to carry out or supervise that work”.
- (5) Section 7 is amended by inserting the following definitions in their appropriate alphabetical order: 5
- “**consideration**, in relation to estimated value, has the meaning given to it in section 2(1) of the Goods and Service Tax Act 1985
- “**large dam** means a dam that retains 3 or more metres depth, and holds 20 000 or more cubic metres volume, of water or other fluid 10
- “**prescribed fee** includes a fee calculated in accordance with a rate or method prescribed for this purpose in regulations made under this Act 15
- “**significant building project** means building work that—
- “(a) must be carried out or supervised by a licensed building practitioner who is licensed to carry out or supervise that work; and
- “(b) is of a kind declared by the Governor-General by Order in Council to be a significant building project”. 20
- 7 Building: what it does not include**
- Section 9 is amended by inserting the following paragraph after paragraph (a):
- “(ab) a pylon, power pole, or telephone pole that is a NUO system or part of a NUO system; or”. 25
- 8 Roles of building consent authorities, territorial authorities, and regional authorities in relation to dams**
- (1) Section 14(3)(b) is amended by omitting “sections 40 to 116, 220 to 232, and 276 to 281” and substituting “sections 40 to 116 (except section 114(2)(c)), 216 to 218, 220 to 232, 276 to 281, 363A, and 374”. 30
- (2) Section 14(4) is amended by omitting “sections 31 to 116, 220 to 232, and 276 to 281” and substituting “sections 31 to 116 (except section 114(2)(c)), 216 to 218, 220 to 232, 276 to 281, 363A, and 374”. 35

- 9 Compliance documents to be available on Ministry’s website**
 Section 25A is amended by repealing subsections (2) and (3).
- 10 Content of project information memorandum** 5
 Section 35(1) is amended by adding “; and” and also by adding the following paragraph:
- “(i) if the building is one that is intended to be used for, or associated with, 1 or more of the purposes specified in Schedule 2, a statement that the building must comply with— 10
- “(i) section 118 (relating to access and facilities for persons with disabilities to and within buildings); and
- “(ii) the provisions of the building code that relate to providing for persons with disabilities to have access to buildings and to facilities within buildings.” 15
- 11 Buildings not to be constructed, altered, demolished, or removed without consent**
 Section 40 is amended by repealing subsection (1) and substituting the following subsection: 20
- “(1) A person must not carry out building work, or engage or permit another person to carry out building work, except in accordance with a building consent.”
- 12 How to apply for building consent** 25
- (1) Section 45 is amended by repealing subsection (2) and substituting the following subsection:
- “(2) If an application for a building consent relates to design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act, any plans and specifications referred to in subsection (1) that accompany the application must— 30
- “(a) be prepared by, or under the supervision of, 1 or more licensed building practitioners; and 35
- “(b) be the subject of a memorandum—

- “(i) prepared by 1 or more licensed building practitioners who carried out or supervised the restricted building work; and
 “(ii) that identifies that work; and
 “(iii) that is provided with the plans and specifications.” 5
- (2) Section 45(3) is repealed.
- (3) Section 45(4) is amended by omitting “certification” and substituting “memorandum”.
- 13 Waiver or modification may only be granted by chief executive in certain cases** 10
 Section 69(1)(b) is amended by omitting “people” and substituting “persons”.
- 14 Building consent for building on land subject to natural hazards must be granted in certain cases** 15
 Section 72 is amended by inserting “that is a territorial authority” after “a building consent authority”.
- 15 Conditions on building consents granted under section 72**
 Section 73(1) is amended by inserting “that is a territorial authority” after “A building consent authority”. 20
- 16 Licensed building practitioner must carry out or supervise restricted building work**
 Section 84 is amended by omitting “whose licence authorises him or her” and substituting “who is licensed”. 25
- 17 Offences relating to carrying out or supervising restricted building work**
 (1) Section 85(1) is amended by omitting “whose licence authorises the practitioner” and substituting “who is licensed”. 30
 (2) Section 85(1A) is amended by omitting “his or her licence does not authorise him or her” wherever it appears and substituting in each case “he or she is not licensed”.

- 18 Offence to engage another person to carry out or supervise restricted building work if person is not licensed building practitioner**
 Section 86(1)(b)(ii) is amended by omitting “whose licence authorises him or her” and substituting “who is licensed”. 5
- 19 Licensed building practitioner to certify restricted building work**
- (1) The heading to section 88 is amended by inserting “**or provide memorandum about**” after “**certify**”.
- (2) Section 88 is amended by repealing subsection (1) and substituting the following subsection: 10
- “(1) Each licensed building practitioner who carries out or supervises restricted building work under a building consent must, on completion of the restricted building work,—
- “(a) provide the persons specified in subsection (2) with a memorandum, in the prescribed form, stating what restricted building work the licensed building practitioner carried out or supervised; and 15
- “(b) if applicable, give to the persons specified in subsection (2) a certificate, in the prescribed form, stating that any specified systems in the building to which the restricted building work relates are capable of performing to the performance standards set out in the compliance schedule attached to the building consent.” 20
- (3) Section 88(4) is amended by— 25
- (a) omitting “A certificate” and substituting “A memorandum provided or certificate”; and
- (b) omitting “the certificate” in each place where it appears and substituting in each case “the memorandum or certificate”. 30
- 20 Application for code compliance certificate**
 Section 92 is amended by inserting the following subsection after subsection (2):
- “(2A) If applicable, the owner must include with the application any memoranda provided by licensed building practitioners under section 88(1)(a).” 35

- 21 New section 95A inserted**
The following section is inserted after section 95:
- “95A Refusal of application for code compliance certificate**
If a building consent authority refuses to grant an application for a code compliance certificate, the building consent authority must give the applicant written notice of— 5
“(a) the refusal; and
“(b) the reasons for the refusal.”
- 22 New section 99A inserted**
The following section is inserted after section 99: 10
- “99A Refusal of application for certificate of acceptance**
If a territorial authority refuses to grant an application for a certificate of acceptance, the territorial authority must give the applicant written notice of—
“(a) the refusal; and 15
“(b) the reasons for the refusal.”
- 23 Content of compliance schedule**
Section 103(1)(c) is amended by inserting “or other persons” after “licensed building practitioners”.
- 24 New section 104A inserted** 20
The following section is inserted after section 104:
- “104A Territorial authority must issue compliance schedule statement**
A territorial authority that receives a copy under section 104 of a compliance schedule must, within 5 working days after receiving the compliance schedule, provide the owner of the building for which the compliance schedule was issued with the compliance schedule statement described in section 105(e).” 25
- 25 Annual building warrant of fitness** 30
Section 108(5) is amended by inserting the following paragraph before paragraph (a):
“(aa) fails to supply to the territorial authority the building warrant of fitness in accordance with subsection (1); or” 35

- 26 Owner must obtain reports on compliance schedule**
Section 110(a) is amended by inserting “or other person” after “licensed building practitioner”.
- 27 Buildings with specified intended lives**
Section 113(1) is amended by omitting “50 years or less” and substituting “less than 50 years”. 5
- 28 Access symbol must be displayed**
- (1) The heading to section 120 is amended by omitting “Access symbol” and substituting “Symbols of access”.
- (2) Section 120 is amended by omitting “access symbol” and substituting “symbols of access”. 10
- 29 New heading and section 133A inserted**
The following heading and section are inserted after the subpart 7 heading:
- “Dams to which provisions of this subpart apply 15
- “133A Dams to which subpart 7 provisions apply**
- “(1) Sections 157 to 159 apply to all dams.
- “(2) The other provisions in this subpart apply only to large dams.”
- 30 Review of dam safety assurance programme**
Section 146 is amended by repealing subsection (2) and substituting the following subsection: 20
- “(2) The owner must also review the dam safety assurance programme—
- “(a) if, at any time,—
- “(i) building work that requires a building consent is carried out on the dam; and 25
- “(ii) the building work results, or could result, in a change to the potential impact of the dam on persons, property, or the environment; or
- “(b) when requested by the regional authority to do so, if the dam is an earthquake-prone dam or a flood-prone dam.” 30

31 New section 150A inserted

The following section is inserted after section 150:

“150A Annual dam compliance certificate requirements not to apply to accredited dam owner

Section 150 does not apply to an accredited dam owner.”

5

32 Meaning of dangerous dam

- (1) Section 153(b) is amended by repealing subparagraph (iii) and substituting the following subparagraph:

“(iii) in a moderate flood (as defined in the regulations).”

10

- (2) Section 153(c) is repealed.

33 New section 153A inserted

The following section is inserted after section 153:

“153A Meaning of earthquake-prone dam and flood-prone dam

15

- “(1) A dam is an earthquake-prone dam for the purposes of this Act if the dam—

“(a) is a high potential impact dam or a medium potential impact dam; and

“(b) is likely to collapse in an earthquake threshold event (as defined in the regulations).”

20

- “(2) A dam is a flood-prone dam for the purposes of this Act if the dam—

“(a) is a high potential impact dam or a medium potential impact dam; and

“(b) is likely to collapse in a flood threshold event (as defined in the regulations).”

25

34 Regional authority must adopt policy on dangerous dams

- (1) The heading to section 161 is amended by adding “, **earthquake-prone dams, and flood-prone dams**”.

30

- (2) Section 161(1) is amended by omitting “within its district” and substituting “, earthquake-prone dams, and flood-prone dams within its region”.

- 35 Form and content of notice to fix**
 Section 165(1) is amended by repealing paragraph (f) and substituting the following paragraph:
 “(f) if it relates to building work, it may direct that the site be made safe immediately and that all or any building work cease immediately (except any building work necessary to make the site safe) until the responsible authority is satisfied that the person carrying out the work is able and willing to resume operations in compliance with this Act and the regulations.”
- 36 Special provisions for notices to fix from building consent authority**
 (1) Section 166(1) is amended by omitting “that is not a territorial authority or a regional authority”.
 (2) Section 166(2) is amended by inserting “or a regional authority” after “that is not a territorial authority”.
- 37 Application for determination**
 Section 177(f) is amended by omitting “under subpart 5 of Part 2”.
- 38 Heading above section 191 amended**
 The heading above section 191 is amended by omitting “*or regional authorities*”.
- 39 Effect of suspension**
 (1) Section 198(1) is amended by omitting “An authority” and substituting “A building consent authority”.
 (2) Section 198(3) is amended—
 (a) by omitting “an authority” and substituting “a building consent authority”; and
 (b) by omitting “the person” and substituting “the authority”.
- 40 Appeals to District Court**
 (1) Section 208(1)(b)(i) is amended by omitting “or, as the case may be, a regional authority”.
 (2) Section 208(2)(c) is amended by omitting “or, as the case may be, the regional authority”.

- 41 Territorial authority must keep information about buildings**
 Section 216(2)(b) is amended by inserting the following subparagraph after subparagraph (iv):
 “(iva) memoranda provided by licensed building practitioners under section 45(2) or 88(1)(a):” 5
- 42 Heading to subpart 3 of Part 3 amended**
 The heading to subpart 3 of Part 3 is amended by adding “or regional authority”.
- 43 New heading and section 249A inserted** 10
 The following heading and section are inserted after section 249:
“Audit fees
“249A Fees for audits
 A building consent accreditation body may charge an accredited building consent authority the prescribed fee (if any) for an audit conducted under section 249(a) by the building consent accreditation body on the building consent authority.” 15
- 44 Accreditation**
 Section 250 is amended by inserting “and on payment by the person of the prescribed fee (if any),” after “section 253,”. 20
- 45 Application for accreditation**
 (1) Section 253(c) is amended by omitting “(if any); and” and substituting “(if any).”
 (2) Section 253(d) is repealed. 25
- 46 New heading and section 257A inserted**
 The following heading and section are inserted after section 257:
“Audit fees
“257A Fees for audits 30
 A dam owner accreditation body may charge an accredited dam owner the prescribed fee (if any) for an audit conducted under section 257(a) by the dam owner accreditation body on the accredited dam owner.”

47 Accreditation

- (1) Section 258(1) is amended by inserting “and on payment by the person of the prescribed fee (if any),” after “subsection (3),”.
- (2) Section 258(3)(c) is amended by omitting “(if any); and” and substituting “(if any).” 5
- (3) Section 258(3)(d) is repealed.

48 New heading and section 262A inserted

The following heading and section are inserted after section 262: 10

“Audit fees

“262A Fees for audits

A product certification accreditation body may charge an accredited product certification body the prescribed fee (if any) for an audit conducted under section 262(1)(a) by the product certification accreditation body on the accredited product certification body.” 15

49 Accreditation

Section 263 is amended by inserting “and on payment by the person or body of the prescribed fee (if any),” after “section 265,”. 20

50 Application for accreditation

- (1) Section 265(c) is amended by omitting “(if any); and” and substituting “(if any).”
- (2) Section 265(d) is repealed. 25

51 New section 266 substituted

Section 266 is repealed and the following section substituted:

“266 Suspension or revocation of accreditation

- “(1) A product certification accreditation body or the chief executive may, at any time, suspend or revoke the accreditation under section 263 of a product certification body, if the product certification accreditation body or chief executive— 30
 - “(a) is satisfied that the product certification body no longer meets the prescribed criteria and standards for accreditation; and 35

- “(b) has first given the product certification body concerned a reasonable opportunity to be heard.
- “(2) A product certification accreditation body that, or chief executive who, suspends the accreditation of a product certification body must— 5
- “(a) give the product certification body a reasonable period to meet the criteria and standards prescribed for accreditation; and
- “(b) lift the suspension if it or he or she is satisfied that the product certification body meets those standards and criteria within that period. 10
- “(3) A product certification accreditation body or the chief executive may revoke the accreditation of a product certification body at the expiry of the period given in **subsection (2)**, if the product certification body has not met the criteria and standards prescribed for accreditation within that period. 15
- “(4) Despite **subsections (1) and (3)**, the product certification accreditation body or the chief executive must not suspend or revoke the accreditation of a product certification body if—
- “(a) the prescribed criteria and standards for accreditation are amended; and 20
- “(b) the product certification body no longer meets those criteria and standards solely as a result of the amendments.
- “(5) The limit in **subsection (4)** applies only during the period of 3 months after the date on which the amendments come into force.” 25
- 52 Product certification accreditation body must notify chief executive of grant or revocation of accreditation**
- (1) The heading to section 267 is amended by inserting “, **suspension, lifting of suspension,**” after “grant”. 30
- (2) Section 267(1) is amended by inserting “, suspends, lifts the suspension of,” after “grants”.
- (3) Section 267(2)(b) is amended by inserting “, suspension, lifting of suspension,” after “grant”. 35

53 New section 271 substituted

Section 271 is repealed and the following section substituted:

“271 Suspension or revocation of product certificate

- “(1) A product certification body that performed the certification of a building method or product, or the chief executive, may, at any time, suspend or revoke that product certificate if the product certification body or chief executive has first given the proprietor of the building method or product a reasonable opportunity to be heard, and the product certification body or chief executive is satisfied that—
- “(a) the certificate has been obtained by fraud, misrepresentation, or concealment of facts; or
 - “(b) the building method or product no longer meets the prescribed criteria and standards for certification (whether this becomes apparent as a result of an annual review of a product certificate under section 270 or otherwise); or
 - “(c) any certification, or similar authorisation issued or granted in respect of that building method or product, has been revoked or cancelled for any reason; or
 - “(d) the building code no longer applies to the building method or product because of an amendment to the code.
- “(2) A product certification body that, or chief executive who, suspends a product certificate must—
- “(a) give the proprietor of the building method or product a reasonable period to rectify the matter that led to the suspension of the product certificate; and
 - “(b) lift the suspension if it or he or she is satisfied that the product certification body has rectified the matter within that period.
- “(3) A product certification body or the chief executive may revoke the product certificate at the expiry of the period given in **subsection (2)** if, within that period, the proprietor of the building method or product has not rectified the matter that led to the suspension of the product certificate.
- “(4) Despite **subsections (1) and (3)**, the product certification body or the chief executive must not suspend or revoke a product certificate if—
- “(a) the prescribed criteria and standards for certification are amended; and

- “(b) the building method or product to which the certificate relates no longer meets those criteria and standards solely as a result of the amendments.
- “(5) The limit in **subsection (4)** applies only during the period of 3 months after the date on which the amendments come into force.” 5
- 54 Product certification body must notify chief executive of issue and revocation of certificate**
- (1) The heading to section 272 is amended by inserting “, **suspension, lifting of suspension,**” after “**issue**”. 10
- (2) Section 272(1) is amended by inserting “, suspends, lifts the suspension of,” after “issues”.
- (3) Section 272(2)(b) is amended by inserting “, suspension, lifting of suspension,” after “issue”.
- 55 Definitions for this Part** 15
- (1) Paragraph (a) of the definition of **applicable minimum standards for licensing** in section 282 is amended by omitting “class of licence” and substituting “licensing class”.
- (2) The definition of **building inspection work** in section 282 is amended by omitting paragraph (e) and substituting the following paragraph: 20
- “(e) inspection, maintenance, or reporting procedures stated in a compliance schedule”.
- 56 New heading and section 282A inserted**
- The following heading and section are inserted after section 282: 25
- “Purposes of licensing*
- “282A Purposes of licensing building practitioners**
- The purposes of licensing building practitioners under this Act are— 30
- “(a) to assess and record building practitioners as having certain skills and knowledge relevant to building work; and
- “(b) to license building practitioners so that, in regard to restricted building work, licensed building practitioners 35
can carry it out or supervise it.”

- 57 New heading and section 285 substituted**
 Section 285 and the heading above that section are repealed and the following heading and section substituted:
“Licensing classes
- “285 Licensing classes may be designated by regulations** 5
 The Governor-General may, by Order in Council made on the recommendation of the Minister, designate a licensing class or classes for carrying out or supervising particular types of—
 “(a) building work:
 “(b) building inspection work.” 10
- 58 Entitlement to licence**
- (1) The heading to section 286 is amended by omitting “**licence**” and substituting “**be licensed**”.
- (2) Section 286(b) is amended by omitting “holding a licence” and substituting “being licensed”. 15
- (3) Section 286 is amended by repealing paragraph (d) and substituting the following paragraph:
 “(d) that he or she has paid—
 “(i) the prescribed levy; and
 “(ii) the prescribed fee.” 20
- 59 Applications for licence**
- (1) The heading to section 287 is amended by omitting “**for licence**” and substituting “**to become licensed**”.
- (2) Section 287 is amended by omitting “for a licence” and substituting “to become licensed”. 25
- 60 Registrar to license applicant or decline application**
- (1) Section 288(1) is amended by repealing paragraph (a) and substituting the following paragraph:
 “(a) license the applicant; and”.
- (2) Section 288(1)(b) is amended by omitting “of the issue of that licence” and substituting “that he or she has been licensed”. 30
- 61 Duty to produce evidence of issue of licence**
- (1) The heading to section 289 is amended by omitting “**issue of licence**” and substituting “**being licensed**”.

- (2) Section 289(a) is amended by omitting “the issue of a licence sent to that person” and substituting “being licensed sent to the licensed building practitioner”.
- 62 New section 290 substituted**
 Section 290 is repealed and the following section substituted: 5
- “290 Term of being licensed**
 Licensing continues in force until it is cancelled or suspended under this subpart.”
- 63 Automatic licensing of people registered under other enactments** 10
- (1) Section 291(2) is amended by omitting “hold a licence of” and substituting “were licensed in”.
- (2) Sections 291(3) and (4) are repealed and the following subsections substituted:
- “(3) A person who is treated as being licensed in a particular class or classes under subsection (2) may not apply under this Act to be licensed in another class that is substantially equivalent to the class of licensing in which he or she is treated as being licensed. 15
- “(4) The licensing provisions of this subpart do not apply to a person who is treated under this section and the rules as if he or she were licensed (for example, he or she need not apply to become licensed or pay any fees under this subpart).” 20
- 64 Licensed building practitioner must meet applicable minimum standards for licensing to continue to be licensed** 25
- (1) The heading to section 292 is amended by omitting “to be licensed”.
- (2) Section 292(3) is amended by omitting “licence” and substituting “licensing”. 30
- 65 Consequences of failure to meet applicable minimum standards for licensing**
 Section 293 is amended by omitting “licence” in each place where it appears and substituting in each case “licensing”.

- 66 New heading above section 294 substituted**
The heading above section 294 is repealed and the following heading substituted: “*Licensing cancellation and suspension*”.
- 67 Cancellation of licence** 5
(1) The heading to section 294 is amended by omitting “**licence**” and substituting “**licensing**”.
(2) Section 294 is amended by omitting “licence” in each place where it appears and substituting in each case “licensing”.
- 68 Mandatory suspension of licence** 10
(1) Section 295 is amended by omitting the heading and substituting the following heading: “**Mandatory licensing suspension**”.
(2) Section 295 is amended by omitting “licence” in each place where it appears and substituting in each case “licensing”. 15
- 69 Voluntary suspension of licence**
(1) Section 296 is amended by omitting the heading and substituting the following heading: “**Voluntary licensing suspension**”.
(2) Section 296 is amended by omitting “licence” in each place where it appears and substituting in each case “licensing”. 20
- 70 Effect of suspension of licence**
(1) Section 297 is amended by omitting the heading and substituting the following heading: “**Effect of licensing suspension**”.
(2) Section 297 is amended by omitting “licence” in each place where it appears and substituting in each case “licensing”. 25
- 71 Register of licensed building practitioners**
Section 298(1) is amended by omitting “rules” and substituting “regulations”.
- 72 Purpose of register** 30
Section 299(a)(i) is amended by omitting “licence” and substituting “licensing”.

- 73 Matters to be contained in register**
- (1) Section 301(1)(l) is amended by omitting “licence” and substituting “licensing”.
- (2) Section 301(1)(l)(i) is amended by omitting “of licence held by the person” and substituting “in which the person is licensed”.
- (3) Section 301(2)(a) is amended by omitting “licence” and substituting “person’s licensing”.
- 74 Obligation to notify Registrar of change in circumstances**
- Section 302(1) is amended by omitting “applicant for a licence” and substituting “person applying to become licensed”.
- 75 Registrar must contact licensed building practitioners on annual basis**
- (1) Section 303(3) is amended by omitting “licence” and substituting “licensing”.
- (2) Section 303(4)(a) is amended by omitting “licence” and substituting “licensing”.
- (3) Section 303(5)(a) is amended by omitting “licence” and substituting “licensing”.
- 76 Functions of Registrar**
- Section 311(b) is amended by omitting “licences” and substituting “persons’ licensing”.
- 77 Certificate of Registrar to be conclusive evidence**
- Section 313(2)(c) is amended by omitting “authorised” and substituting “licensed”.
- 78 Offences relating to licensing**
- Section 314(3)(a) is amended by omitting “the issue of a licence” and substituting “being licensed”.
- 79 Board must investigate complaints**
- Section 316(2)(a) is amended by omitting “holds a licence” and substituting “is licensed”.

- 80 Grounds for discipline of licensed building practitioners**
- (1) Section 317(1) is amended by repealing paragraph (c) and substituting the following paragraph:
- “(c) a licensed building practitioner has carried out or supervised restricted building work or building inspection work of a type that he or she is not licensed to carry out or supervise; or” 5
- (2) Section 317(1) is amended by inserting the following paragraphs after paragraph (d):
- “(da) a licensed building practitioner has failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out or supervise, or has carried out or supervised, (as the case may be),— 10
- “(i) to provide a memorandum, in accordance with section 45(2)(b), about any plans and specifications required to accompany the building consent application; or 15
- “(ii) to provide the persons specified in section 88(2) with a memorandum, on completion of the restricted building work, in accordance with section 88(1); or 20
- “(db) a licensed building practitioner has held himself or herself out as being licensed to carry out or supervise building work or building inspection work of a type that, at that time, he or she was not licensed to carry out or supervise; or” 25
- (3) Section 317(1)(e) is amended by omitting “obtaining a licence (either for himself or herself or for any other person)” and substituting “becoming licensed himself or herself, or for the purpose of any other person becoming licensed”. 30
- 81 Disciplinary penalties**
- (1) Section 318(1)(a)(i) is amended by omitting “licence” and substituting “licensing”.
- (2) Section 318(1)(b) is amended by omitting “licence” in each place where it appears and substituting in each case “licensing”. 35

- (3) Section 318(1)(c) is amended by omitting “class of licence that he or she holds” and substituting “person’s licensing class or classes”.
- 82 Non-payment of fines or costs**
 Section 319 is amended by omitting “licence” in each place where it appears and substituting in each case “licensing”. 5
- 83 Right of appeal**
- (1) Section 330(1)(b) is amended by omitting “licence” and substituting “licensing”.
 (2) Section 330 is amended by repealing subsection (2) and substituting the following subsection: 10
 “(2) A person may appeal to a District Court against any decision of the Board—
 “(a) made by it on an appeal brought under subsection (1);
 or 15
 “(b) to take any action referred to in section 318.”
- 84 Form and content of annual report**
 Section 348(1)(b) is amended by omitting “class of licence” and substituting “licensing class”.
- 85 Rules relating to licensed building practitioners** 20
- (1) Section 353(1) is amended by omitting “class of licence” in each place where it appears and substituting in each case “licensing class”.
 (2) Section 353(2) is amended by omitting “a licence” in each place where it appears and substituting in each case “licensing”. 25
- 86 District Court may grant injunctions for certain continuing breaches**
 Section 381(1)(a) is amended by omitting “section 165” and substituting “section 168”. 30
- 87 Regulations: general**
- (1) Section 402(1)(d) is amended by omitting “licence” in each place where it appears and substituting in each case “evidence of being licensed”.

- (2) Section 402(1)(e) is amended by omitting “section 303” and substituting “sections **286(d)(i)** and 303”.
- (3) Section 402(1) is amended by repealing paragraph (n) and substituting the following paragraph:
“(n) designating a licensing class or classes for carrying out or supervising particular types of—
“(i) building work; or
“(ii) building inspection work:”.
- (4) Section 402(1) is amended by inserting the following paragraphs after paragraph (q):
“(qa) defining earthquake threshold event for the purposes of **section 153A**:
“(qb) defining flood threshold event for the purposes of **section 153A**:”.
- (5) Section 402(1) is amended by inserting the following paragraph after paragraph (t):
“(ta) prescribing the fees payable for an audit under section 249(a), 257(a), or 262(1)(a), or the rate at which, or method by which, those fees are to be calculated:”.
- (6) Section 402(1) is amended repealing paragraph (w) and substituting the following paragraph:
“(w) prescribing—
“(i) the matters in respect of which fees are payable under this Act, and the amount of those fees; or
“(ii) the rate at which, or method by which, fees are to be calculated for the purposes of this Act:”.

88 Incorporation of material by reference into regulations and compliance document

- (1) The heading to section 405 is amended by inserting “, **certain Orders in Council**,” after “**regulations**”.
- (2) Section 405(1) is amended by omitting “regulations or compliance document (**instruments**) made or issued under this Act” and substituting “instrument”.
- (3) Section 405 is amended by adding the following subsection:
“(4) In this section and in sections 406 to 413, **instrument** means—
“(a) any regulations; and
“(b) any compliance document; and

“(c) any Order in Council made under section 41 or 285.”

89 Outline of transitional provisions

Section 416(1)(g) is amended by omitting “2009” and substituting “2010”.

90 Transitional provision for code compliance certificates and compliance schedules issued under former Act

5

Section 438 is amended by omitting “2009” in each place where it appears and substituting in each case “2010”.

91 Amendment to Schedule 1

(1) Schedule 1 is amended by repealing paragraph (a) and substituting the following paragraphs: 10

“(a) any lawful repair and maintenance using comparable materials, or replacement with a comparable component or assembly in the same position, of any component or assembly incorporated or associated with a building, including all lawful repair and maintenance of that nature that is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 1976, except— 15

“(i) complete or substantial replacement of a specified system; or 20

“(ii) complete or substantial replacement of any component or assembly contributing to the building’s structural behaviour or fire-safety properties; or

“(iii) repair or replacement of any component or assembly that does not comply with the provisions of the building code as set out in clause B2 of Schedule 1 of the Building Regulations 1992 (relating to durability): 25

“(ab) the opening and reinstatement of any purpose-made access point within a drainage system that— 30

“(i) is not an NUO system or part of a NUO system; and

“(ii) is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 1976.”. 35

(2) Schedule 1 is amended by repealing paragraph (b) and substituting the following paragraph:

- “(b) the construction of any motorway sign, stopbank, culvert for carrying water under or in association with a road, or other similar structure that is a simple structure and is owned or controlled by a network utility operator or other similar organisation:” 5
- (3) Paragraph (d) of Schedule 1 is amended by inserting “, in each case” after “hoarding”.
- (4) Schedule 1 is amended by inserting the following paragraph after paragraph (d):
“(da) the construction of any dam that is not a large dam:” 10
- (5) Paragraph (k) of Schedule 1 is amended by inserting “is minor and” after “that building work”.

Part 2

Validation and transitional provisions

- 92 Validation in respect of levies on estimated value of building work** 15
- (1) For the purpose of determining the calculation of any relevant levy on building work, the principal Act must be read as if at all material times it contained the definition of **estimated value** in section 7 of the Act, as amended by **section 6** of this Act. 20
- (2) In this section, **relevant levy** means a levy—
- (a) imposed under section 53 of the principal Act; and
 - (b) calculated in accordance with section 53(2)(a) of the principal Act; and 25
 - (c) prescribed in the Building Levy Order 2005; and
 - (d) paid to the chief executive by the applicant for a building consent.
- 93 Transitional provision for content of project information memorandum** 30
- (1) This section applies to a project information memorandum if, before the commencement of this Act,—
- (a) an application for the project information memorandum—
 - (i) is made under section 31 or 32 of the principal Act; or 35
 - (ii) is treated, because of section 432 of the principal Act, as if it were an application under section 31 or 32 of the principal Act; and

- (b) the project information memorandum has not been issued.
- (2) A territorial authority that issues a project information memorandum to which this section applies need not comply with **section 35(1)(i)** of the principal Act in respect of that project information memorandum, as inserted by this Act, unless 6 months have elapsed since the commencement of this Act. 5
- 94 Transitional provision for refusal of application for code compliance certificate** 10
- (1) This section applies to a code compliance certificate application—
- (a) made under section 92 of the principal Act or to which section 436 of the principal Act applies; and
- (b) in respect of which a building consent authority has not made a decision under section 93 of the principal Act before the commencement of this Act. 15
- (2) A building consent authority that refuses to issue a code compliance certificate in respect of an application to which this section applies need not comply with **section 95A** of the principal Act, as inserted by this Act, in respect of that refusal unless 3 months have elapsed since the commencement of this Act. 20
- 95 Transitional provision for refusal of application for certificate of acceptance** 25
- (1) This section applies to an application for a certificate of acceptance—
- (a) made under section 97 of the principal Act or to which section 437 of the principal Act applies; and
- (b) in respect of which a territorial authority has not granted or refused a certificate of acceptance before the commencement of this Act. 30
- (2) A territorial authority that refuses to issue a certificate of acceptance in respect of an application to which this section applies need not comply with **section 99A** of the principal Act, as inserted by this Act, in respect of that refusal unless 3 months have elapsed since the commencement of this Act. 35

