

Environment Committee  
Parliament Buildings  
Wellington

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10 July 2020

**SUBMISSION ON BUILDING (BUILDING PRODUCTS AND METHODS,  
MODULAR COMPONENTS, AND OTHER MATTERS) AMENDMENT BILL**

**INTRODUCTION**

- 1.1 The NZIA, which has been in existence since 1905, is the professional body representing more than 90 per cent of New Zealand's registered Architects and a majority of recent graduates entering the profession; we have over 4,100 members. The NZIA is active not only in advocating in the interests of our members, but also in promoting practices and providing education and promoting industry wide co-operation that will improve the quality and sustainability of New Zealand's built environment.
- 1.2 The NZIA has, through its governance structure and membership, significant professional experience in the New Zealand construction industry. That experience includes a wide variety of projects across all construction types and scales. The NZIA also has more than a century of experience assisting our members and their clients with projects at all stages, from project establishment and concept design through to contract administration and site observation, depending on the scope of instructions from the client.
- 1.3 The objects for which NZIA is established include the promotion of excellence in architecture, improvement of the technical knowledge and professional development of persons engaged in the practice of architecture, and bringing to the attention of central and local authorities any matters affecting architecture or architects.
- 1.4 Accordingly, the NZIA supports Government initiatives to deliver a high-performing building sector, an efficient regulatory system and safe and durable buildings. We welcome the opportunity to comment on the Amendment Bill which seek to deliver these outcomes.

- 1.5 We do, however, wish to draw the Government's attention to a number of potential issues arising from the Bill and, where possible, we have suggested alternative solutions. We would welcome the opportunity to engage with officials and other industry professions on the issues raised in our submission. It will be important that this regulatory change is co-designed between industry and Government. This will ensure the expectations of the Bill are fit-for-purpose, pragmatic and deliver the intended benefits for the industry and Clients.

## **FOCUS AREAS FOR NZIA SUBMISSION**

### **2.1 Responsibilities of the builder**

The NZIA notes the changes made to Section 14E, regarding the responsibilities of the builder. These are significant responsibilities, particularly the need to ensure all building products and building methods comply with building consent plans and specifications.

- 2.2 A significant risk to architects, other designers and Clients is that substitutions and changes by builders are often made to specifications without review and/or approval of the designer. Whilst some changes may appear minor, design professionals (architects and engineers) take on considerable risk and liability for the decisions they make in regard to products, systems and safety in design decisions. Product substitutions introduce significant risk and this area needs to be prioritised in future building system regulatory reviews.

- 2.3 **RECOMMENDATION: The NZIA recommends that the supporting processes and associated liability for product substitution decisions needs be prioritised on the building system regulatory reform work programme.**

### **3.1 Minimum requirements for information**

The NZIA welcomes the introduction in the Bill of the power to prescribe minimum requirements for information about building products that are available to the New Zealand market. The inclusion of the new, Part 4B Building product information requirements is a positive step. Whilst the inclusions cover some important matters, the NZIA considers that the Bill list could be strengthened.

- 3.2 Noting that the building product information list is not exhaustive, the NZIA would however encourage the Select Committee to consider changes. These changes would be:
- a) Health and Safety in Design - There will be some overlap between the proposed building product information under the Building Act and the information requirements of PCBUs under the Health and Safety at Work Act 2015 (HSWA) in relation to structures at workplaces and 'designers' as upstream PCBUs and the associated duties associated with health and safety by design.

- b) A structure as defined under that Act includes components and parts of structures. From a design perspective, the building product information supplied by manufacturers and suppliers should enable designers to comply with the information requirements of the HSWA and the additional duties for designers as upstream PCBUs.
- c) Scope and limitations on use – there should be a minimum expectation of providing clear information and references to the relevant building code clauses and standards.
- d) Durability periods - The information should specify durability periods and be backed by a consistent guarantee or warranty with a clear claims process.

3.3 **RECOMMENDATION: The NZIA recommends that the Bill includes within Part 4B 362VA (3) references to, health and safety in design; relevant building code clauses and standards and durability periods aligned with building product guarantees and warranties.**

#### 4.1 **National Register or Database of building products**

The NZIA notes that MBIE considered but did not recommend a national register or database of building products in the Bill. The NZIA considers that for the regulatory proposals to work as proposed, there needs to be an immediate commitment and investment in an industry owned repository of information/library (with a “locked” archival capacity).

4.2 Product information needs to be current (a HSWA requirement) and there needs to be version control so that product information available at the date the design services were provided forms the base for accountabilities. Such a system could ultimately be integrated with online consenting, which would provide efficient lodgement, review and system assurances. Any system needs to be respected and developed by industry if it is to meet professional’s needs.

4.3 Construction Information Limited (CIL) is a product and specification system jointly owned by the NZIA and Registered Master Builders. Formed back in 1995, the Masterspec specification system is used by architects, engineers, designers, contractors, builders, utility companies, government organisations and tertiary institutions. With extensive industry knowledge, system development experience, the Bill’s features could be quickly implemented and adopted.

4.4 More than 1,400 New Zealand design practices using the CIL knowledge systems to specify an estimated \$9 billion worth of building work annually, this offers a pragmatic system for the Bill’s requirements.

4.5 **RECOMMENDATION: The NZIA recommends that the product information minimum requirements and technology solution be co-designed with industry. There are opportunities for Government to partner and leverage the knowledge and experience of Construction Information Limited and these should be investigated as an immediate priority ahead of any ‘bespoke’ system developments.**

## 5.1 Risk and Liability

The NZIA notes that the prior MBIE Discussion Paper indicated that the proposals and the Bill drafting are not intended to create any new liabilities or add to existing common law liabilities.

5.2 Unfortunately the Bill does not actively consider the issues of risk and liability, particularly for designers who are included under joint and severally liable claims. Prior to finalising the Bill the NZIA would encourage officials to liaise with 'designers' insurers (architects and engineers) to discuss the potential issues or unintended consequences from a designers reliance on the information provided by manufacturers or suppliers under the Bill. Architects and engineers offer co-operative insurance schemes under NZACS and CEAS respectively. We would be happy to organise introductions for officials.

5.3 The Bill recognises that manufacturers and suppliers should not be held responsible for a product if it fails solely because it was used in a way that is outside its intended use or installed incorrectly. The NZIA considers that it is important that a designer should not be held responsible for code non-compliance to the extent that the non-compliance is attributable to a reasonable reliance on what turns out to be incorrect or incomplete product information or certification (whether wilful or careless) provided by a product manufacturer or supplier.

5.4 **RECOMMENDATION: The NZIA recommends that officials discuss the Bill requirements, as drafted with the co-operative insurers of Registered Architects and Engineers (NZACS and CEAS) to identify the insurance, insurability and joint and several liability issues arising from the Bill and its drafting.**

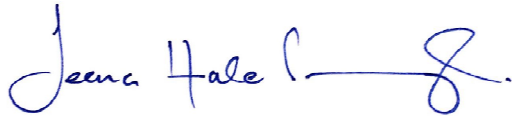
## 6.1 Building Levy

The NZIA supports the widening use of the building levy. Decisions for use of the funds need to be made in a timely manner to ensure the intended benefits are delivered. The NZIA would also encourage the Government to consider a collaborative industry/Government reference panel to support prioritisation and assessment of levy spending. Where possible and appropriate, levy funding investment should be evaluated for

6.2 **RECOMMENDATION: The NZIA recommends that a joint industry/Government reference panel be established to identify priorities for levy spending and to assess levy spending proposals. A key part of the Reference Panel should be to ensure there is an evaluation of the benefits of levy funded proposals.**

## CONCLUSION

- 7.1 Thank you for the opportunity to provide feedback on this Bill. I will be happy to provide further clarification and detail and I otherwise look forward to presenting the Te Kāhui Whaihanga New Zealand Institute of Architects feedback to the Select Committee.



**Teena Hale Pennington**  
Chief Executive