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New Changes for Suppliers of Building Products

By Andrew Skinner - 17 Jun 2021

On 3 June 2021 Parliament passed the Building (Building Products and Methods, Modular Components and Other Matters) Amendment Bill (**Bill**), which is the first phase of the wider building system legislative reform programme that aims to "lift the efficiency and quality of building work and provide fairer outcomes if things go wrong".

The Bill amends the Building Act 2004 and establishes a framework for important changes in three main areas:

- A new regime to ensure that a minimum set of information on building products is provided to support better informed decision-making by the building industry
- A new modular component manufacturer certification scheme to enable faster, more consistent building consent approaches
- A strengthened product certification scheme (known as CodeMark).

MBIE is currently in the process of developing the regulations that will provide the details for the above changes and has recently released a discussion document outlining various proposals for the changes.

Minimum Building Product Information Requirements

A building product supplier may be liable for any claims that they make about their products but until now there has been no obligation on a supplier to actually make any claims about building code performance. In MBIE's view, this gap in the law has contributed to a large degree of variation and inconsistency in the type, quality and credibility of information about different building products. To close this gap, the new legislative framework sets out a mandatory obligation on manufacturers and suppliers to ensure that the products they supply meet certain information requirements, together with a penalty regime to enforce those provisions.

What building products will this new regime apply to?

The definition of "building product" used in the Bill is very broad and refers to "any product that could be reasonably expected to be used as a component of a building". This definition may potentially apply

to thousands of products and building supplies merchants will be particularly interested in the scope of this regime.

MBIE's discussion document seeks feedback on the regime applying to those building products that:

- Contribute to "restricted building work"; or
- Would require a building consent in relation to the product being installed.

Products for which the scope and limitations do not include any restricted building work in relation to the product or any building consent in relation to the product would not be considered a building product.

What information needs to be supplied?

At this stage MBIE has advised that the information required will include:

- A description of the building product
- The details of the manufacturer or importer, including a New Zealand business number, or a global location number where applicable
- The expected building code performance of a building product within the scope and limitations of use
- Any design and installation requirements
- Any maintenance requirements of a building product
- Any warranty or guarantee provided for the building product
- A statement as to whether a product is subject to a warning or ban under the Building Act.

The critical new requirement above is the expected building code performance of a building product within the scope and limitations of use. Some manufacturers already make building code performance claims in their product technical statements, but this requirement will be new for others.

The difficulty in preparing this information will vary greatly depending upon the complexity of the building product. For some simpler products, it may be enough to simply state the attributes and standards relevant for the product. However, for more complex products (such as frames and trusses or roofing systems), further analysis will be needed, especially where those products rely on other third party products for performance. MBIE intends to provide guidance to support manufacturers and importers to meet their obligations in relation to this requirement.

Will the information requirements apply equally to manufacturers and retailers?

One of the immediate concerns when the Bill was introduced was that there appeared to be no recognition of the different responsibilities between a manufacturer of a building product and a merchant distributing building products. MBIE has recognised that manufacturers and suppliers have different responsibilities and that retailers cannot be expected to confirm the accuracy of the technical detail regarding a building product. On that basis the information responsibilities will be different for manufacturers and retailers:

- Suppliers responsible for the **manufacture or import** of a building product must collate, produce and disclose the required product information in accordance with the information requirements
- Suppliers responsible for the **distribution and/or retail only** of a building product must ensure that those products meet information requirements and that the information is available to all those they distribute or sell the product to before it is sold.

At first glance, distributors and retailers will be relieved that their responsibility is limited to checking the information is available. However, the potential scope of this checking exercise will be of concern especially given the wide range of building products covered. Merchants that stock a large range of products will need to develop processes and may need to employ further staff to check the information for each product is available before it is sold. It soon becomes obvious that there will be a significant duplication of effort amongst the merchants undertaking this task, which may add further costs into an already stretched building system. If manufacturers and importers are obliged to prepare and make the information available, it does seem somewhat unnecessary to then also require the merchants to further check that the information has been prepared.

When does the new regime come into effect?

The regulations for the information requirements are currently being prepared. It is then proposed that there will be an 18 month transitional period in order to provide the sector with sufficient time to make the changes required to their systems and processes.

There will be an opportunity for manufacturers and retailers to comment on the draft regulations in due course. It will be important for manufacturers and retailers to provide feedback on the regulations so that MBIE is fully aware of the potential impact of this new regime.

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