
Overview of changes to Building Act 2004 in relation to Modular Construction

By all measures, modular construction should be making waves in New Zealand.

It provides an opportunity to deliver mass housing at speed, minimise on-site waste, energy consumption and health and safety requirements, and optimise transportation of labour, equipment and materials. Yet instead of waves we are seeing ripples (and most of those are made by Kōinga Ora's building programme). [Amy Rutherford](#) and [Jordan Ropati](#) of Greenwood Roche Project Lawyers examine what's impeding progress.

One of the key issues is a building consents system which is not designed for modular construction. The government has sought to remedy this issue with changes to the Building Act 2004 which will, according to MBIE, "*enable faster consenting for innovative, efficient building methods, and increase the use of offsite and prefab manufacturing and products*".

This article provides an overview of legislative changes to the Building Act which will come into force on 7 September 2022 (the *Amendment Act*) and comments on whether these changes will make any meaningful impact on the uptake of modular construction in New Zealand.

The problem with the consents system

The Building Act was not designed to deal with the realities of modular construction.

By way of example, the current consenting process requires a separate consent for each module produced. If a module is produced in a different building consent authority (*BCA*) region to where it is delivered for assembly, then consent may be required from both councils. Not only does this result in duplication of processes, it creates the potential for inconsistent decisions between BCAs.

These issues, added to the typical speed at which building consents are being processed, can negate any of the programme benefits that comes with using this method of construction.

What is changing?

The Amendment Act seeks to address these issues by creating a separate scheme for Modular Component Manufacturers (*MCMs*), which will operate adjacent to the standard consent process.

Certification outside of BCA

The new consenting scheme creates a new accreditation body, new certification bodies and new certifications that can be applied for to produce modular components.

The accreditation body oversees the certification bodies to ensure uniform standards are rolled out. The certification bodies certify MCMs. MCMs are certified to produce a specific modular component or design and build modular components.

When considering a building consent with modular components, a BCA must accept a current manufacturer's certificate as evidence of compliance with the building code for that modular component. This is significant because it avoids the requirement for the BCA to undertake its own inspection (including, in respect of the off-site manufacture of the modular components).

New timeframes for building consent

Subject to the MCM and certification for the modular component complying with the requirements of the Amendment Act, the processing times for consent applications that relate to the installation of a single modular component will be reduced to 10 working days (down from 20 working days).

Risk shift

The Amendment Act shifts responsibility from BCA to the MCMs and certification bodies for providing the necessary checks and balances to ensure modular components comply with the building code. Contemplating the shift in responsibility, the Amendment Act requires both MCMs and certification bodies to procure 'adequate' cover from civil liability. It also allows MBIE to specify what suitable cover is.

Nationwide application

The scheme introduced by the Amendment Act operates nationwide which should help solve any cross-territory issues which occur under the old system.

Will it make a difference outside of the public sector?

While the Amendment Act comes into effect on 7 September 2022, there will not be an immediate impact as there are no accreditation or certification bodies in place. Applications for these will begin in September so it may be a while still until the impact of the changes can be properly assessed.

In addition, as the opt-in for accreditation and certification bodies is voluntary, the effectiveness of the Amendment Act will depend on uptake. Given that the compliance with requirements of the Amendment Act will involve cost and resource, we expect parties will only opt in to the scheme if there is a demand for the service which justifies the cost and resource.

On the issue of demand in the private sector, the major barriers remain. These include public perception of modular construction as low or cheap quality construction and also a lack of funding options. While improving the consenting laws is a step in the right direction for the uptake in modular construction, we expect the industry will need to address these wider issues before there is a major change in the uptake of modular construction in the private sector.

Published in August 2022 issue of Building Today magazine.
