

10th July 2020

Secretariat
Environment Committee
Select Committee Services
Parliament Buildings
WELLINGTON 6160

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

To the Environment Committee,

Please see the appended submission that the Frame & Truss Manufacturers Association of New Zealand (FTMA) wishes to provide to the Select Committee on the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill.

We also request the opportunity to speak to this submission.

The representative for the FTMA and contact person with respect to this submission is:

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This submission may be published in full.

Yours sincerely,



Ian McGregor

Member Services Executive



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

Submission by Frame & Truss Manufacturers' Association of New Zealand

10th July 2020



Frame & Truss Manufacturers' Association

The Frame & Truss Manufacturers' Association of New Zealand (FTMA) is a non-profit, self-regulating and independently audited industry association. Formed in 1998 by a group of pro-active frame and truss fabricators, the FTMA's main focus is to advocate on behalf of its members and to raise standards in the industry through maintaining a strong commitment to high quality timber framing production practices.

The FTMA represents approximately 70% of the timber frame and roof truss fabricators operating in New Zealand. Pre-fabricated building products have been provided to and relied upon by the New Zealand construction industry for many decades. Today, over 90% of residential buildings in New Zealand are built using pre-fabricated timber frames and roof trusses.

Overview

The FTMA generally supports the spirit of the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill (the Bill) which we understand is intended to broaden the scope of the Building Act to include building products and methods, however we have some concerns which are outlined in this submission.

Our view is that building products and methods should be regulated to ensure compliance with the NZ Building Code and that this should occur within a structure that places accountability on those who are primarily responsible for producing the building product or method.

We do not support a broader approach that might seek to encompass the entirety of the supply chain as there is significant risk that this will lead to cost increases and delays occurring in the consenting and construction processes without any resultant meaningful gains.

In commenting on these matters and providing our recommendations, we seek to ensure that there is more clarity in the wording of the Bill to alleviate some potential ambiguities that we believe may result from the current wording.

Concerns/Recommendations

Definition of “modular component”

Given the broad definition of “modular component” in the Bill it is unclear what the exact scope is. Without a more clearly defined scope there is risk of wide interpretation by modular component manufacturers, certification bodies or Building Consent Authorities which will lead to inconsistency and delay. Logically, the FTMA expects that modular components relate to building work carried out off-site that cannot be inspected by a building inspector after delivery and installation on site.

The FTMA is also concerned by the mixed concepts of “building work” and “building product” in the definition for modular components. The definition of modular component refers to a building product of a prescribed kind. However, the Bill amends the definition of building work to include the design and manufacture of a modular component. It would appear then that the design and manufacture of a modular component is building work but the finished output is a building product. This in turn means that:

- (a) The design and manufacture of the modular component is building work that must comply with the building code and the modular certificate; and
- (b) The final modular component is then a product that presumably will need to comply with the information requirements (unless the modular components are excluded by the Regulations).

To mix the concepts of building product and building work may confuse the regulation of modular components and may lead to some unintended consequences in terms of addressing liability. For example, will the longstop in section 393 of the Building Act apply to the manufacturer of these modular components?

Recommendation: That the definition be more clearly demarcated or determined by Order in Council.

Sections 9A & 9B

The differences between the current definitions of a building product and a building method give rise to concern when considering things that are commonly used in construction, commonly identified as being building products, but are made up of several components. Under the current wording of the Bill these things might now be considered a building method and we contend that this would be inappropriate. For example, a timber wall frame or roof truss is widely considered by the industry to be a building product, yet by definition in the Bill they might also be considered to be building methods as they are made up from a number of things that are themselves considered to be building products. The confusion seems to arise from the wording of Section 9B(1)(a) which references “products or things”, neither of which are defined.

Recommendation: Change 9B(1)(a) to read “for using building products as part of building work; or”

Some of this confusion may also be cleared up with knowledge of which items are likely to be declared a building product by Order in Council, however the manner in which this is to occur is unclear. Will the Order in Council seek to name and define every item that might be called a building product? How will the process be managed? Will it be completed and updated over set timeframes (e.g. quarterly or annually) or will it be a dynamic process requiring industry input?

Recommendation: Provide clarity around the management declaring building products by Order in Council and ensure that the industry is given reasonable time to provide feedback before the Order is finalised.

For the avoidance of doubt, the FTMA believes that timber wall frames and roof trusses as manufactured by its fabricator members are building products, not building methods in the context of the Bill.

The FTMA is also concerned about the use of the term “supplier” in Section 9A(3)(b). By using this term the clause incorrectly captures the entire supply chain which would include the likes of builders’ merchants, main contractors, subcontractors and many other parties who are simply providing the item in trade and have no bearing on determining the characteristics, performance or purpose of a particular building product. In fact it is the manufacturer or importer of an item who is identifying that item as being intended for use as a building product when they sell it. The FTMA further contends that any party that takes an item that was not originally intended to be a building product and repurposes it to become a building product should then be considered to have the same responsibilities as a manufacturer.

Recommendation: In Section 9A(3)(b) replace the word “supplier” with the word “importer”. Also, provide a new definition in Section 7 for “manufacturer” such that it includes not only those who manufacture but also those who seek to repurpose an item to become a building product.

Section 14G

For the same reasons set out above, the use of the term supplier or reference to supply anywhere in this Section incorrectly captures the entire supply chain. Accountability for the performance of a building product should be placed on those who are primarily responsible for producing or providing the building product. Additionally, imposing responsibilities on the supply chain for matters which they are not primarily responsible will increase the risk profile of trading entities which is highly likely to result in increased costs being passed along the supply chain, ultimately impacting on the building owner.

If a definition for a manufacturer is provided earlier in the Act, references to supply can be replaced by references to import and accountability will rest in the appropriate place.

However, this is not the only problem with Section 14G. The current wording of Section 14G(1) is such that if a manufacturer (or supplier) makes no statement about compliance, then they are no longer considered to be a manufacturer by definition. This Section has been ineffective since its incorporation into the Act and it will remain so unless the wording is changed.

Recommendation: Provide a new definition in Section 7 for “manufacturer” such that it includes not only those who manufacture but also those who seek to repurpose an item to become a building product. Replace the term “supplier” with “importer” in Section 14G and delete 14G(1). Revise Section 14G to read:

14G Responsibilities of product manufacturer or importer

- (1) A product manufacturer or importer is responsible for ensuring that the building product will, if installed in accordance with the technical data, plans, specifications, and advice prescribed by the manufacturer, comply with the relevant provisions of the building code.
- (2) A person who manufactures or imports a building product is responsible for ensuring that the person complies with **Part 4B** (building product information requirements).

Section 362VA

For the same reasons as set out above, the use of the term supplier or reference to supply in Section 362VA(3)(b) incorrectly captures the entire supply chain and will impose additional responsibilities on those who are not primarily responsible for the provision of building product information, leading to increased costs across the supply chain.

Recommendation: Change Section 362VA(3)(b) to read: “the manufacturer or importer of the building product:”

The reference to “disposal’ in Section 362VA(3)(c) may create an enforceable responsibility on a party to provide information on how the product is managed across the entirety of its life cycle. This may be an added but unintended consequence, however we wonder if the intention was to only to provide information on the disposal of building product waste. If that is the case we note that legislation and regulations already exist to cover waste management and hazardous substances e.g. Hazardous Substances and New Organisms Act.

Recommendation: Remove the reference to “disposal” in Section 362VA(3)(c).

For the timber wall frame and roof truss products our members fabricate, the position is unclear how the information requirements of Section 362VA will apply to these products. The information currently provided by timber wall frame and roof truss fabricators is well understood and accepted by Building Consent Authorities and builders. The format and content of currently provided information has also been supported through published guidance by the Regulator. It is not clear how the proposed new Regulations will apply to timber wall frame and roof truss products and the FTMA is concerned that the information requirements will introduce unnecessary uncertainty into this well performing part of the industry.

Recommendation: Classify timber wall frame and roof trusses as a separate class of products and recognise the information currently being provided when introducing new Regulations and ensure that the industry is given reasonable time to provide feedback before the requirements are finalised.

Section 393

The Courts have interpreted the long stop limitation in Section 393 of the Act as not applying to manufacturers or suppliers of building products. Now that the Bill extends the Act to apply to building products and building methods, the Act should also be amended so that building products and methods (and, by implication, those parties that manufacturer products and undertake building methods) get the benefit of the long stop limitation in section 393 of the Act as well. The purpose of the long stop is to give those involved in the industry certainty about the extent of their liability and to not have claims for latent defects years after the fact. If building products and building methods are to be regulated and included within the Act, then section 393 should be changed.

Recommendation: Provide an amendment to Section 393 in the Bill to expressly include building products and methods (and by implication manufacturers and suppliers).