



COVERSHEET

Minister	Hon Chris Penk	Portfolio	Building and Construction
Title of Cabinet paper	Building Fire Safety Work Programme: Update	Date to be published	18 June 2024

List of documents that have been proactively released

Date	Title	Author
May 2024	Building Fire Safety Work Programme: Update	Office of the Minister for Building and Construction
1 May 2024	Building Fire Safety Work Programme: Update ECO-24-Min-0066 Minute	Cabinet Office

Information redacted

YES / NO (please select)

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In Confidence

Office of the Minister for Building and Construction

Cabinet Economic Policy Committee

Update on the building fire safety work programme

Proposal

- 1 This paper provides an update on my building fire safety work programme, following the Loafers Lodge fire on 16 May 2023 and other emerging fire safety issues in buildings.

Background

- 2 On 16 May 2023, a fire broke out at Loafers Lodge in Newtown, Wellington resulting in the deaths of five people and injury to a further 20 people. Since that time, New Zealand Police have charged a man with arson and murder relating to the fire.
- 3 Fire and Emergency New Zealand is investigating the origin and cause of the fire and the performance of the building during the fire. This investigation will likely make recommendations about the building regulatory system, including the building code, the building warrant of fitness regime and, potentially, the building consent system including alterations and change of use.
- 4 Since the tragedy, there has been strong media interest in fire safety in buildings, including boarding houses similar to Loafers Lodge. There have been questions around perceived fire safety deficiencies in the building code, as Loafers Lodge was not protected with sprinklers and, if built today, would still not require sprinklers to comply.
- 5 My officials have also recently supported the Regulations Review Committee to consider a substantial complaint about the fire safety provisions in the building code. This complaint highlighted several areas of policy settings in the building code that may require further consideration.
- 6 Given stakeholder and media interest in fire safety, and with the one-year anniversary of the Loafers fire approaching, I consider it timely to provide Cabinet with an update on how I am responding to fire safety issues throughout the building and construction sector.

A fire safety work programme is underway

- 7 Since the Loafers Lodge fire on 16 May 2023, my officials have established a work programme to respond to fire safety issues in buildings. The programme includes:
 - 7.1 reviewing the fire safety requirements in the building code system;

- 7.2 introducing new offences and penalties for independently qualified persons;
- 7.3 increasing fines for building owners who fail to supply or display a building warrant of fitness;
- 7.4 supporting territorial authorities to improve the consistency of the regulation of independently qualified persons; and
- 7.5 developing guidance for territorial authorities, based on the findings from Operation Magazine.

Reviewing the fire safety requirements in the building code system

- 8 This is the first time that a full review of the fire safety provisions in the building code has been initiated in over a decade. The last substantive review of fire safety requirements in the building code concluded in 2012.
- 9 The previous review found that a lack of clarity in the building code was leading to disputes about the safety of fire designs and frequently causing delays in the consenting of buildings. In response, Cabinet agreed to policy proposals to amend the fire safety clauses to permit flexibility and innovation in design while also ensuring more consistent and predictable outcomes in decision-making. However, this review did not resolve all the issues. The provisions in the building code still leave room for interpretation and are causing delays in the consenting system.
- 10 My officials have advised me that the fire safety provisions have also not kept up with new and emerging fire safety issues in buildings. Changes in building uses, building materials, construction methods, and fire hazards have evolved rapidly since 2012. This review incorporates lessons learned from Loafers Lodge and other fire events in New Zealand and overseas, such as the 2017 Grenfell Tower fire in London in which 72 people lost their lives.
- 11 This review will also consider items raised in a recent complaint to the Regulations Review Committee. This complaint relates to specific technical details in the fire safety provisions in building code. While I do not agree with the substance of the complaint, it highlights specific issues in the building code that warrant a closer look and will inform this review.
- 12 My officials are currently forming a stakeholder group from across the building and construction sector, fire sector and property owner groups to discuss the issues with the fire safety provisions, including their impacts on consenting timeframes and the cost of construction. I expect to bring a draft issues discussion document on fire safety issues with the building code back to Cabinet for consideration in September 2024.

Independently qualified persons

Legislative changes to independently qualified persons

- 13 The Loafers Lodge fire highlighted concerns relating to some building owners' and independently qualified persons' lack of compliance with the building warrant of fitness regime.

- 14 The role of an independently qualified person is to assess whether a specified system in a building (such as a sprinkler system or fire alarm system) has met its requirements for inspections, testing, and maintenance listed in a compliance schedule during the previous 12 months. If it has, they then issue a form 12A to certify this. These forms must be attached to a building warrant of fitness when it is submitted annually to the territorial authority by a building owner or their agent (section 108(3)(c), the *Building Act 2004*). A building warrant of fitness requires a form 12A for all specified systems in order to be valid.
- 15 Section 369 of the *Building Act* provides that it is an offence to provide a false or misleading document. The *Building Act* therefore implies, but does not specify, that independently qualified persons should not issue a form 12A where a specified system has not met the requirements in the compliance schedule in the last 12 months. This obligation should be clarified in the Building Act.
- 16 Local government and building compliance industry stakeholders have raised concerns about instances where an independently qualified person has issued a form 12A for specified systems that have not met the requirements of the compliance schedule.
- 17 In 2023, Cabinet agreed to include changes to the Building Act to clarify this obligation and to introduce an offence and penalty for negligently issuing a form 12A in the next available legislative vehicle [CAB-23-MIN-0350 refers].
- 18 The penalty for this offence would be a maximum fine of \$50,000 for individuals and \$150,000 for body corporates.
- 19 Cabinet also agreed to increase the infringement offences for building owners who do not supply or display a building warrant of fitness from \$250 to \$1,000. These changes would be made alongside those described above.
- 20 I agree that the decisions made by Cabinet in 2023 to strengthen incentives for compliance with the current building warrant of fitness scheme are sensible and should continue to progress as proposed.
- 21 I sought approval from the Cabinet Legislation Committee to include these changes in the Building (Earthquake-prone building deadlines and other matters) Amendment Bill through the legislative bid process.

Officials are working with territorial authorities to improve the consistency of independently qualified person regulation

- 22 The Building Act provides that an independently qualified person is deemed as such by a territorial authority yet provides no further guidance as to who is qualified to hold such a title.
- 23 Currently the regulation of independently qualified persons is conducted by territorial authorities through seven territorial authority groups. This approach has led to inconsistencies in the regulation of independently qualified persons, such as the competencies required to attain registration.

- 24 My officials have been working with these territorial authority groups to find non-legislative solutions to identify and resolve inconsistencies in areas such as what competencies are required to be an independently qualified person.
- 25 Territorial authorities are already making improvements to consistency through voluntary amalgamation of territorial authority groups. Since September 2023 the number of groups has reduced from nine to seven.

Developing guidance based on the findings from Operation Magazine

- 26 Following the Loafers Lodge fire, a decision was made to inspect similar buildings throughout New Zealand in order to identify and address any immediate fire safety concerns (known as Operation Magazine).
- 27 The Ministry of Business, Innovation and Employment (MBIE) requested that councils provide information on the stock of boarding houses (or similar types of accommodation) in their area by 7 July 2023. Councils were asked to focus on boarding houses that were three or more storeys in height. An initial analysis of the data identified approximately 70 buildings that were similar in profile to Loafers Lodge. Following a more detailed review of the criteria, this was reduced down to 37 buildings across 9 council areas.
- 28 Operation Magazine commenced on Monday 28 August 2023 and ended on Friday 27 October 2023. MBIE worked alongside partner agencies Fire and Emergency New Zealand and local councils to carry out the visits to, and assessments of, the 37 buildings.
- 29 Operation Magazine focussed on compliance with the Residential Tenancies Act 1986 and the Building Act in relation to fire safety and landlord tenancy obligations. There were numerous instances of non-compliance with compliance schedule and building warrant of fitness requirements. In most cases, non-compliance with compliance schedule requirements occurred because there were specified systems¹ in the building that were not listed on the compliance schedule, as required. This makes it unlikely that these systems will be subject to essential inspection and maintenance procedures.
- 30 The most common breach of the building warrant of fitness requirements was where the owner or their agent had only complied with one month of inspection and maintenance requirements rather than the full 12 months required under the Building Act, which is an offence under that Act.
- 31 Nearly all buildings inspected had at least one general fire safety issue, but many had multiple issues, including:
- 31.1 Inadequate fire and smoke separations (including fire and smoke stop doors which was the most common issue found);
 - 31.2 Obstructed or inadequate escape route;

¹ Specified systems are systems or features that help a building to function fully. Some examples of specified systems include sprinklers, elevators, and fire alarm systems.

- 31.3 Missing, misleading or illegible signs to aid egress in the case of a fire (eg exit signs); and
- 31.4 Issues with fire alarm systems (eg smoke detectors were missing, provided inadequate coverage of the building, were unmonitored or compromised in some way).
- 32 Most compliance obligations discussed above are those of the building owner. However, local councils have an obligation to administer these provisions and take enforcement action against building owners who are not meeting their obligations.
- 33 MBIE is now working on guidance to territorial authorities on the findings from Operation Magazine, which will reinforce the importance of building warrant of fitness audits and the need to have up-to-date compliance schedules and support territorial authorities to enforce the fire safety related requirements in the Building Act.
- 34 Official reports on the Loafers Lodge fire from Fire and Emergency New Zealand and Police will provide additional perspectives of potential issues with the building code, including fire sprinklers or smoke detection systems, the building warrant of fitness scheme and the day-to-day management of fire safety systems in buildings.

Cost-of-living Implications

- 35 The work programme itself has no impacts to the cost of living. However, policy proposals that are developed through the work programme will be assessed for cost-of-living impacts.

Financial Implications

- 36 The work programme has no financial implications. However, policy proposals that are developed through the work programme will be assessed for financial implications.

Legislative Implications

- 37 The work programme has no legislative implications. However, policy proposals developed through the work programme will be assessed for legislative implications. Any proposals that request legislative change will seek Cabinet approval.

Impact Analysis

Regulatory Impact Statement

- 38 Policy proposals developed through the work programme will include a Regulatory Impact Statement, where applicable.

Climate Implications of Policy Assessment

- 39 The work programme does not have any climate implications, however proposals developed through the programme will be assessed for climate impacts.

Population Implications

- 40 The work programme does not have any population implications. However, policy proposals developed through the work programme will be assessed for population implications.

Human Rights

- 41 Proposals developed through the work programme will be assessed for any impacts to human rights.

Use of external Resources

- 42 No external resources were used in the development of these policy proposals.

Consultation

- 43 The following agencies were consulted on this paper on a 'for your information' basis: Accident Compensation Corporation; Department of Internal Affairs; Department of Prime Minister and Cabinet; Te Tūāpapa Kura Kāinga – the Ministry of Housing and Urban Development; Infrastructure Commission; Kāinga Ora; Ministry of Foreign Affairs and Trade; Ministry of Education; Ministry of Justice; Te Puni Kokori; WorkSafe New Zealand; The Treasury; Ministry of Health; Fire and Emergency New Zealand.

Communications

- 44 I do not intend to make any press releases following consideration of this paper.

Proactive Release

- 45 I intend to proactively release this paper as per Cabinet Circular [CO(18)4 refers]. However, some of the contents of this paper are part of an ongoing Police investigation and these parts will be withheld. If the paper were requested under the Official Information Act 1982, those parts would be withheld under section 6(c).

Recommendations

The Minister for Building and Construction recommends that the Committee:

- 1 **Note** that my officials have been supporting the Regulations Review Committee with a complaint relating to the fire safety provisions in the Building Code;
- 2 **Note** that the Minister for Building and Construction intends to return to Cabinet in September 2024 with a discussion document on the issues with the fire safety provisions in the building code;
- 3 **Note** that the Loafers Lodge fire raised concerns with independently qualified persons not complying with the building warrant of fitness regime;
- 4 **Note** that Cabinet agreed to amend the Building Act 2004 to clarify the obligations of independently qualified persons in issuing a form 12A;

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- 5 **Note** that Cabinet agreed to introduce a new standard offence for independently qualified persons who negligently issue a form 12A for a specified system where the inspection, maintenance, and reporting procedures of the compliance schedule for that system have not been fully complied with in the previous 12 months;
- 6 **Note** that Cabinet agreed that the penalty for this offence is a fine not exceeding \$50,000 for an individual and \$150,000 for a body corporate;
- 7 **Note** that Cabinet agreed to increase the fine for buildings owners for failing to supply territorial authority with a building warrant of fitness from \$250 to \$1,000;
- 8 **Note** that Cabinet agreed to increase the fine for building owners for failing to display a building warrant of fitness required to be displayed from \$250 to \$1,000;
- 9 **Note** that these amendments are to be included in the Building (Earthquake-prone Building Deadlines and Other Matters Bill), which was given a category 3 on the 2024 legislation programme;
- 10 **Note** that the Ministry of Business, Innovation and Employment is working with territorial authorities to find non-legislative ways to improve the consistency of the independently qualified persons regulatory system;
- 11 **Note** that Operation Magazine highlighted issues in the fire safety regulation settings;
- 12 **Note** that the Ministry of Business, Innovation and Employment is developing guidance for territorial authorities based on the findings from Operation Magazine.

Authorised for lodgement

Hon Chris Penk

Minister for Building and Construction