



COVERSHEET

Minister	Hon Jenny Salesa	Portfolio	Building and Construction
Title of Cabinet paper	Building System Legislative Reform Programme: Release of Discussion Paper	Date of release	17 May 2019

List of documents that have been proactively released

Date	Title	Author
3 April 2019	Building System Legislative Reform Programme: Release of Discussion Paper	Office of the Minister for Building and Construction
3 April 2019	DEV-19-MIN-0066	Secretary of Cabinet DEV Committee

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982.

In Confidence

Office of the Minister for Building and Construction
Chair, Cabinet Economic Development Committee

BUILDING SYSTEM LEGISLATIVE REFORM PROGRAMME: RELEASE OF DISCUSSION PAPER

Proposal

1. This paper seeks agreement to undertake public consultation on proposed changes to the building regulatory system aimed at lifting the quality of the building sector.

Executive Summary

2. The building sector is vital to New Zealand's economic success and the well-being of New Zealanders. I am seeking agreement to publicly consult on proposed changes to address gaps in the building regulatory system and align it with best regulatory practice.
3. I intend to consult on a package of legislative reforms to address long-standing problems that need fundamental reform. The reform package would create efficiencies in the building system through clear roles and responsibilities, giving people the information needed to do their job and holding them to account.
4. Public consultation will be used to test the proposed changes and identify refinements. Consultation will also be used to understand the costs and impacts of the proposals. It will run for eight weeks. Confidential advice to Government
5. Alongside major legislative reforms, I am considering some proposals that can be implemented in the shorter term. Reducing the building levy would lower the costs of applying for a building consent for housing and large commercial developments. Confidential advice to Government

Background

6. In December 2018, I presented an oral item on the building system legislative reform programme to the Cabinet Economic Development Committee [DEV-18-MIN-0283].
7. The legislative reform programme is part of a system-wide approach to address long-standing problems in the building sector. I am seeking agreement to publicly consult on proposed legislative changes.

8. The sector constructs and maintains the buildings where New Zealanders work and live. The sector is central to the delivery of major government programmes such as KiwiBuild, public housing and infrastructure initiatives.
9. There are a number of challenges facing the sector, including low productivity, inefficient practices and processes, skills and labour shortages, business vulnerability and poor health and safety. The Ministry of Business, Innovation and Employment's (MBIE) analysis suggests these challenges are systemic to the industry and are seen across a number of jurisdictions. Publications by the United Kingdom and Australian governments, World Economic Forum and Mckinsey and Company all point to common themes in the challenges faced by the sector. My portfolio priorities are focused on working with the building sector to meet these challenges as well as ensuring that the sector is resilient to respond to the future needs of New Zealand.
10. Both a government and an industry response is required to support sustained and transformative change for the sector. The Skills Action Plan launched late last year reflects the partnership approach both across government and with industry to ensure the sector has the people and skills it needs to meet current and future industry demand. I am also seeking Cabinet's approval for the Construction Sector Accord. The Accord will strengthen the partnership between government and industry to transform the construction sector for the benefit of all New Zealand. It will establish the government and industry commitment to working in partnership, set out a shared vision and outcomes for the construction sector, and outlines strategic goals and priority work areas to transform the sector. Subject to Cabinet's agreement, the Accord will be launched in mid-April.
11. The legislative reform programme will make changes to align the building regulatory system with best regulatory practice. The areas identified cover the building regulatory system as a whole, and the interdependencies within the system. Changes are needed to ensure that there are skilled and accountable people, fit for purpose products, good regulatory and commercial processes, and clear, reasonable and future-focused performance measures.

Outcomes of the Building System Legislative Reform Programme

12. The building system legislative reform programme has three linked, mutually reinforcing outcomes:
 - 12.1. **A high performing building sector** builds it right the first time. Efficient and effective processes and practices contribute to quality building work. The sector is highly productive. Skilled and competent people make informed decisions about building design and products.
 - 12.2. **Safe and durable buildings** are constructed using quality products and methods by a high performing building sector. The sector is supported by an efficient regulatory system that people trust.
 - 12.3. **An efficient regulatory system** that people have confidence in underpins the first two outcomes. The system encourages the behaviours that lead to a high

performing sector. Clear roles and responsibilities are set so people know what they are accountable for and what they must put right if things go wrong.

Proposed Changes to the Building Regulatory System

13. Over 2018, MBIE spoke to a wide range of sector stakeholders about the problems facing the building sector. The discussions were focused on the regulation of building products and occupations in the building sector, and how risk and liability fall on different parties in the system.
14. Underlying many of the concerns raised was the ability of people to avoid responsibility when something goes wrong. This could be because it is not clear what their role is or they don't have the information they need to do their job. There's a lack of incentives to do the right thing and, in some cases, disincentives to do so.
15. The legislative reform programme is focused on getting the basics right and aligning the regulatory system with best practice. I have focused on changes that will:
 - 15.1. create clear roles and responsibilities for all participants in the building system
 - 15.2. provide people with the information they need to perform their roles and responsibilities
 - 15.3. hold people accountable for performing their roles and responsibilities.
16. Some proposals are aimed at lifting quality in the sector to make sure things go right across the building process. These include:
 - 16.1. having clear roles and responsibilities for building products and methods, including requiring manufacturers and suppliers to provide information about building products
 - 16.2. amending the legislative settings for the product certification scheme to enable MBIE to be an effective scheme owner
 - 16.3. enabling a regulatory framework for modern methods of construction, including off-site manufacturing
 - 16.4. extending the definition of 'restricted building work' so that work on complex commercial buildings is undertaken by licensed building practitioners
 - 16.5. raising the competency standards for the licensed building practitioner scheme
 - 16.6. introducing a statutory licensing scheme for engineers that would capture all safety-critical, medium to high complexity engineering work in the building sector
 - 16.7. repealing some exemptions that allow restricted plumbing, gasfitting and drainlaying work to be carried out by someone without registration or licence.
17. Other proposals are aimed at fairer outcomes when things go wrong. These include:

- 17.1.** requiring builders to include a guarantee and insurance product in building contracts for residential new builds and significant alterations, while allowing homeowners to actively opt out of being covered
 - 17.2.** requiring information to be provided to MBIE to support an investigation into building products or methods
 - 17.3.** strengthening the occupational regimes and financial penalties so people are held accountable for how they do their job.
18. In addition, I am considering changes to the building levy which is used to fund the functions placed on MBIE under the *Building Act 2004*. The main changes that I propose to consult on are:
 - 18.1.** reducing the rate of the building levy (from \$2.01 to \$1.50 per \$1,000 of the value of the building work) – a reduction of around \$160 in consenting costs for a 150m² home in Auckland¹
 - 18.2.** standardising the levy threshold at \$20,444 to provide consistency for all BCAs
 - 18.3.** amending the purposes for which the levy can be used for to include MBIE's wider building sector stewardship responsibilities.
19. A summary of all the proposed legislative changes is included in annex 1. These proposed changes will be supported by appropriate information, education and enforcement activities.

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¹ Based on Quotable Value data that the average cost of building work for a new 150m², three bedroom, one bathroom house is \$310,000 as at June 2018. This value does not include the price of land.

Proposed Approach for Public Consultation

29. I am seeking your agreement to undertake public consultation on the proposed changes. Public consultation will be used to test these proposals and identify refinements. It will also be used to understand the costs and impacts of the proposals.
30. Consultation will be targeted at people who work in the building sector, manufacturers and suppliers of building products, industry organisations and consumers including homeowners and property developers.

31. The public consultation includes:
 - 31.1. summaries of the discussion paper, aimed at non-technical experts, that summarise the key changes (annex 2)
 - 31.2. a discussion paper that sets out the proposed changes more fully (annex 3).
32. MBIE will also undertake workshops with targeted stakeholders.

Next Steps

33. Public consultation on the proposed changes will be for eight weeks.
34. Following consultation, MBIE will analyse the submissions and refine the proposals.
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35. The legislative changes are expected to take three to five years to be fully implemented. This will allow people time to make changes to their systems and processes to meet their new obligations and allow sufficient time to transition to the new requirements under the occupational regulation regimes.

Previous Consultation with the Private Sector

36. MBIE met with about fifty organisations representing stakeholders from across the building system to understand the challenges facing the sector.
37. MBIE has undertaken targeted consultation with key stakeholders on the proposed changes that are most relevant to them.

Confidentiality

Departmental Consultation

42. The following agencies have been consulted on this paper and the draft discussion paper: Ministries of Justice, Housing and Urban Development, Foreign Affairs and Trade, Education, Health; Ministry for the Environment; Departments of Internal Affairs and Prime Minister and Cabinet (PAG); Treasury; Office of the Privacy Commissioner; Reserve Bank of New Zealand; Commerce Commission; Te Puni Kōiri; Housing New Zealand; and WorkSafe New Zealand.

Financial Implications

43. There are no financial implications from the proposal to consult. The discussion paper includes a proposal to reduce the building levy rate. Advice on the financial implications of any changes to the building levy rate will be provided when Cabinet policy decisions are sought.

Legislative Implications

44. There are no immediate legislative implications from the proposal to consult. Legislation will be required to implement Cabinet's policy decisions. There is a place for these amendments on the 2019 Legislative Programme, Confidential advice to Government

Impact Analysis

45. The Regulatory Quality Team at the Treasury has determined that the regulatory decisions sought in this paper are exempt from the requirement to provide an impact assessment as the relevant issues have been addressed in the discussion paper.
46. MBIE's Regulatory Impact Analysis Review Panel has determined that no separate regulatory impact assessment is required in support of the proposal to issue this discussion paper, since the analysis necessary at this stage is sufficiently covered in the discussion paper.

Human Rights, Gender Implications and Disability Perspective

47. This paper has no implications under the *New Zealand Bill of Rights Act 1990* or the *Human Rights Act 1993*. There are no gender or disability implications arising from this paper.

Publicity

48. I intend to issue a media statement accompanying the release of the discussion paper. The discussion paper and summary documents will be made publicly available on MBIE's website.

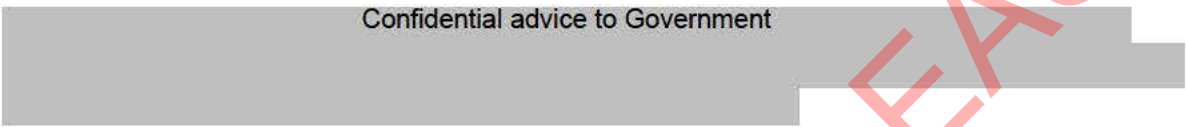
Proactive Release

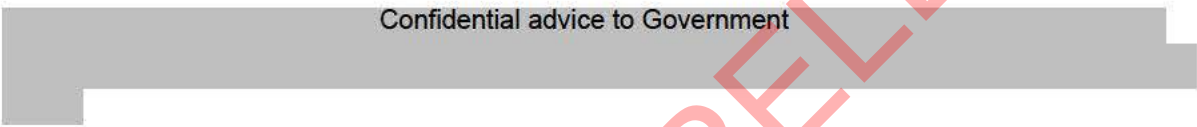
49. The Cabinet paper and associated minute will be published on MBIE's website, subject to any necessary redactions.

Recommendations

The Minister for Building and Construction recommends that the Committee:

1. note that significant legislative changes are proposed to address gaps in the building regulatory system and align it with best regulatory practice
2. agree to release the attached discussion paper and summary documents as a basis for public consultation on the proposed changes
3. agree that the Minister for Building and Construction can make minor amendments and refinements to the discussion paper and summary documents before they are released

4.  Confidential advice to Government

5.  Confidential advice to Government

Authorised for lodgement

Hon Jenny Salesa

Minister for Building and Construction

Annex 1: Summary of Proposed Legislative Changes for Public Consultation

	Current requirement	Proposal for consultation	Intent of proposal
1.	The current purpose of the <i>Building Act</i> does not fully recognise the impact of building products and methods on the performance of a building. Proposed changes #3-6 would increase the regulation of building products and methods.	- Widen the purpose of the <i>Building Act</i> to include the regulation of building products and methods.	Recognise the key role building products and methods play in building work and support the regulation of building products and methods.
2.	The current definitions of 'building product' and 'building method' are narrowly defined, and do not allow for interventions that differentiate between them.	- Expand the definition of 'building product' and 'building method'.	Support the broader regulation of building products and methods. Provide flexible definitions to allow for innovation.
3.	It is voluntary for manufacturers and suppliers to provide information about building products. Manufacturers and suppliers can be held to account if they provide false information. It is difficult to hold them to account if they provide no information.	- Require manufacturers and suppliers to provide information about building products. - Set minimum standards for the information provided. - Provide appropriate sanctions for manufacturers and suppliers who do not comply.	Increase information about building products so people can make informed decisions about which products to use and how. Create a level playing field for manufacturers and suppliers. Support more efficient consenting.
4.	Under consumer protection law, manufacturers and suppliers are responsible for ensuring goods are fit for purpose. The courts have suggested that, depending on the circumstances and nature of supply, building products might be covered by consumer law, but this needs to be determined on a case by case basis.	- Require manufacturers and suppliers to ensure that building products are fit for purpose.	Clarify that manufacturers and suppliers need to stand behind their products. Increase accountability for the performance of building products. Provide greater confidence in products.

	Current requirement	Proposal for consultation	Intent of proposal
5.	Some people are unclear about their roles and responsibilities for building products and methods.	<ul style="list-style-type: none"> - Clarify builders' responsibilities when using a different product or method to what is specified in a building consent. - Clarify builders' and designers' responsibilities for ensuring that the building products and methods used or specified will result in code compliant building work. 	Provide greater clarity of builders' and designers' responsibilities so they know what is expected of them. Allow for greater accountability.
6.	MBIE relies on manufacturers and suppliers voluntarily providing information when it is investigating building products and methods.	- Allow MBIE to require information to be provided to support an investigation into whether to place a ban or warning on a building product or method.	Support effective investigations into building products and methods. Increase confidence in building products and methods.

	Current requirement	Proposal for consultation	Intent of proposal
7.	CodeMark is a voluntary certification scheme for building products. The framework for product certification schemes under the <i>Building Act</i> is not adequate to allow MBIE, as the owner of the scheme, to take action against poor performing product certification bodies or poor quality CodeMark certificates.	<ul style="list-style-type: none"> - Establish a registration system for product certification bodies that is administered by MBIE. - Allow for regulations to set requirements on product certification bodies and for the accreditation and registration of product certification bodies. - Allow for regulations to set out the process and requirements for registering a product certificate. - Allow MBIE to set rules for the interactions between participants in the product certification scheme. - Provide MBIE with the powers needed to administer registers of product certification bodies and product certificates. 	Align the framework for product certification schemes with the principles of good regulatory stewardship. Increase the monitoring and oversight of the scheme. Provide clear roles and responsibilities and effective enforcement. Increase confidence in the certification scheme.
8.	Modern methods of construction, including off-site manufacturing, are emerging that do not fit into the traditional definition of building work, where work is done on a building site. The current consenting system is not clear about how it treats modern methods of construction.	<ul style="list-style-type: none"> - Enable a regulatory framework for modern methods of construction. The elements could include a factory certification scheme for repeatable manufacture processes; clarifying roles and responsibilities; minimising duplication of effort by not requiring two consents for the same building work. 	Enable the design of a regulatory scheme suited to modern methods of construction. Provide more clarity, certainty and consistency, and support more efficient consenting. Future-proof the building regulatory system.

	Current requirement	Proposal for consultation	Intent of proposal
9.	Only licensed building practitioners can undertake or supervise restricted building work. Restricted building work applies to residential buildings that are less than 10 metres high and do not include parts for mixed use (such as shops or offices).	<ul style="list-style-type: none"> - Extend the scope of 'restricted building work' to include high-rise apartments, mixed use residential/commercial buildings and a proportion of commercial buildings and communal buildings (eg schools, hospitals). - Raise the standard of competence for licensed building practitioners, introduce a supervision licence, and introduce behavioural standards for all licensees. 	<p>Ensure that the regulation of building work is more proportionate with the risks to public safety. Recognise that apartment owners are equally financially vulnerable to failure as house owners. Recognise the different levels of skills required and encourage uptake of the scheme. Increase confidence in the scheme.</p>
10.	There are few restrictions on who can carry out engineering work on buildings. The Chartered Professional Engineer credential is voluntary and does not provide adequate assurance of an engineer's competence to carry out very complex or specialised work.	<ul style="list-style-type: none"> - Establish a new licensing and certification regime for engineers, and restrict who can carry out or supervise structural, geotechnical and fire safety engineering work that is medium-to-high complexity and has implications for the life safety of building users. - The licensing and certification regime would be administered by an independent regulator. Engineering New Zealand staff would carry out some activities for or on behalf of the regulator. 	<p>Ensure that the regulation of engineering work is more proportionate to the risk to public safety, by requiring more complex, safety-critical work to be carried out by someone who has the necessary technical competence. Create stronger incentives for engineers to work within their competence and carry out work in a satisfactory way.</p>

	Current requirement	Proposal for consultation	Intent of proposal
11.	In some locations, there are no restrictions on who can carry out sanitary plumbing in homes. Also, there are no limits on tradespeople doing restricted plumbing, gasfitting or drainlaying provided they do this work under supervision.	- Repeal the exemptions for homeowners, people in rural areas and for plumbers, gasfitters and drainlayers working under supervision. Exemptions for trainees and other exemptions would remain.	Lift competency, improve accountability and ensure that suitably qualified people undertake work that poses a public health and safety risk and that the work meets the building code. Create a more level playing field for tradespeople.
12.	It is voluntary to take out a guarantee and insurance product to cover the risks to homeowners from residential building work. Without insurance cover, a homeowner needs to pursue legal action to seek compensation or remediation.	- Require builders to include a guarantee and insurance product in residential building contracts for new builds and significant alterations. Homeowners would be able to actively opt out of the guarantee and insurance product. - Provide appropriate sanctions for builders who do not comply.	Protect homeowners should things go wrong. Incentivise builders to do quality work.
13.	All parties who contributed to a defective building are jointly and severally liable for damages. BCAs' share of damages is disproportionate to their relatively passive role in the building process. However, any changes to the settings would shift this misalignment to others in the building sector creating significant risks for the building sector and increase the costs of building.	- Leave the liability settings for BCAs unchanged (preferred), or - Place a 20% cap on BCAs' liability.	Objectives of any change include: protect homeowners and rate payers from large financial losses; low cost, quick dispute resolution; more efficient consenting processes; and an efficient building sector that is willing to undertake risky or complex building work and supports the supply of affordable housing.

	Current requirement	Proposal for consultation	Intent of proposal
14.	<p>The building levy is used to undertake the regulatory functions of the chief executive of MBIE. It is paid on building consents for residential and commercial building work valued at over \$20,000 plus GST. The current rate for the levy (of \$2.01 per thousand dollars) has not been reviewed since 2009.</p> <p>Not all BCAs have adjusted the levy threshold to take into account the 2010 GST increase.</p> <p>The legislative settings do not allow the levy to be used in some key areas that are central to a high performing central regulator.</p>	<ul style="list-style-type: none"> - Reduce the building levy to \$1.50 per \$1,000. - Standardise the threshold for the building levy at \$20,444. - Clarify that the chief executive of MBIE may have regard to their building sector stewardship responsibilities when spending the levy. 	<p>Align levy revenue with the costs of the services to levy payers.</p> <p>Use the same levy threshold throughout New Zealand.</p> <p>Support more effective stewardship of the building regulatory system in line with MBIE's responsibilities under the <i>State Sector Act 1988</i>.</p>
15.	<p>The <i>Building Act</i> sets financial penalties (eg court fines and infringement notices) if someone commits an offence. The levels set for penalties have not been reviewed since 2004 and may not be aligned with similar offences in more modern legislation.</p> <p>The timeframe for laying charges does not always provide sufficient time to investigate complex cases.</p>	<ul style="list-style-type: none"> - Increase the maximum financial penalties in the <i>Building Act</i>, including different maximums for individuals and organisations. - Extend the time period for charges to be laid from 6 to 12 months. 	<p>Ensure there are sufficient incentives for individuals and organisations to comply with the <i>Building Act</i>.</p> <p>Better balance the time needed to enforce compliance with a timely prosecution and holding people accountable.</p>

	Current requirement	Proposal for consultation	Intent of proposal
16.	<p>Public notification is required for various matters in the <i>Building Act</i>.</p> <p>Currently, notice must be given in daily newspapers in the main centres, in the Gazette and on the internet.</p> <p>Due to changes in how people access information, publishing notifications in daily newspapers may not be fit for purpose in the future.</p>	<p>- Modify the definition of 'publicly notify' to remove the requirement to publish in daily newspapers in Auckland, Hamilton, Wellington, Christchurch and Dunedin.</p>	<p>Provide greater flexibility in public notifications and reflect modern methods of accessing information while ensuring the public are still informed about changes, decisions or actions taken under the <i>Building Act</i>.</p>