



MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

1

Discussion paper –
Building system legislative reform

Introduction

APRIL 2019





**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

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How to have your say

The Ministry of Business, Innovation and Employment (MBIE) invites feedback on proposals to reform the building regulatory system.

Feedback must be in the form of written submissions and you can comment on any of the proposals.

You must get your written submissions to us by **5.00pm on Sunday, 16 June 2019**.

How to deliver your feedback



Fill in the online survey at www.mbie.govt.nz/building-reform



Email your submission (Microsoft Word or searchable PDF) to building@mbie.govt.nz



Post your submission to:
Building Policy
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140

MBIE may publish your feedback unless you ask us not to

Be sure to include your contact details in a covering letter or email.

The Privacy Act 1993 will apply to all submissions. MBIE will publish a consultation report summarising the results of the consultation.

If you don't want your name or any personal information to be included in anything we publish, make this clear in the submission or in your covering letter or email.

Your feedback is subject to the Official Information Act

People will be able to get copies of your submission by making a request under the Official Information Act 1982. If you want us to keep some sections confidential, mark these sections clearly in the comment box for the relevant question and tell us why you'd like it withheld (ie commercial sensitivity, etc). MBIE will take your reasons into account and will consult with you when responding to requests under the Official Information Act.

Further information and updates

If you have any questions, or would like more information, please email building@mbie.govt.nz.

You can subscribe for updates at: www.mbie.govt.nz/building-reform

Minister's foreword



Building and Construction Minister, Jenny Salesa

The building sector is vitally important to New Zealand's social and economic success. A thriving, productive and sustainable building sector is a key priority for me as the Minister for Building and Construction.

The government is committed to working with the building sector to support the sustained transformation of the industry. The Skills Action Plan launched last year reflects our partnership approach across both government and industry to ensure the sector has the right people and skills it needs to meet industry demand.

Given the significance of the sector, my ministerial colleagues and I have worked closely with industry to define the government and industry accord that sets out the joint response to transform the industry.

To achieve its potential, the building sector needs an efficient building regulatory system that encourages innovation, while ensuring buildings are safe, healthy and durable.

Significant legislative change is required to achieve these goals. The proposed reforms will be the most far-reaching changes since the current *Building Act* was introduced in 2004. The reform package covers five key areas: building products and methods, occupational regulation, risk and liability, the building levy and penalties.

I expect these reforms to deliver:

- Safe and durable buildings
- A high performing building sector
- An efficient regulatory system.

These outcomes are linked and mutually reinforcing.

To achieve our goals, we need input and feedback from across the building and construction sector. I encourage you to participate in the consultation process and help us to get it right.

This discussion paper has been developed to gain feedback on a range of proposed changes to help address some of the long-standing problems that have prevented the sector from reaching its potential.

The responsibility for an efficient building regulatory system doesn't solely rest with the government. Everyone in the sector must work together to lift quality so things go right the first time, and, if they do go wrong, there are fairer outcomes. Please carefully consider the ideas put forward in this document, and give us your feedback.

New Zealand's building regulatory system should deliver safe and durable buildings

A vibrant sector that will build our future

The building sector is made up of:



The building sector builds and maintains the buildings where New Zealanders work and live. It is vital to the country's economic and social success.

The building sector is New Zealand's fourth largest employer, with nearly 10 per cent of the workforce. It contributed nearly \$15 billion to the economy in the year ending March 2017. Every \$1 invested in construction produces between \$2.51 and \$3.11 in economic activity.¹ The building sector helps deliver government programmes that include KiwiBuild, public housing and infrastructure. House building – just one part of the building sector picture – is growing to meet demand. Over 31,000 new apartments and houses got building consents in 2017. MBIE expects another 220,000 to get consents by 2023.²

New Zealand needs a building sector that builds safe and durable buildings that meet the nation's current and future needs.

¹ PWC. (2016). Valuing the role of construction in the New Zealand economy.

² MBIE. (2018). National construction pipeline report 2018.

Long-standing problems are holding the sector back

The building sector faces a number of long-standing problems. These problems range from low productivity and inefficient practices and processes, to skills and labour shortages, to poor health and safety.

During 2018, MBIE met with nearly 50 organisations that represent stakeholders in the building sector. We met many people who work hard to deliver the best possible results. These discussions helped us get a better understanding of the problems the sector is facing.

MBIE heard concerns about the quality of building products and the lack of information about them. We also heard concerns about whether some people who work in the building sector have the right skills and competencies for the type of work they do. There were concerns that some people avoid responsibility when something goes wrong – meaning the costs fall disproportionately on homeowners and building consent authorities (BCAs).

The concerns fall under three common themes:

- ⊗ Roles and responsibilities are not clear.
- ⊗ Information is not available when it is needed.
- ⊗ It is difficult to hold people accountable for the quality of their work.

This discussion paper sets out changes that aim to address those problems

We've listened to stakeholders and developed proposals for changes to five areas of the building regulatory system.

Building products and methods	Occupational regulation	Risk and liability	Building levy	Offences, penalties and public notification
See part 2	See part 3	See part 4	See part 5	See part 6

These five areas make up what we call the building system legislative reform programme.

Each part of the discussion paper outlines the problems in more detail. They then set out proposed changes that aim to address these problems.

The proposed changes won't address all of the problems we've heard about. They're focused on getting the basics right and filling gaps in the regulatory system. More changes may be needed in the future. MBIE will continue to work with the sector to implement any changes and identify future areas for reform.

MBIE wants your feedback on the building system legislative reform programme

We want feedback from stakeholders involved in every aspect of the building industry and every stage of the building process. You will find questions throughout the discussion paper. We welcome other relevant comments in addition to these questions.

You must get your written submissions to us by **5.00pm on Sunday, 16 June 2019.**

See page 04 of this document for more details on how to submit feedback.

The proposed changes aim to help the building sector deliver the best possible outcomes

People, products, processes and performance

The building regulatory system includes a broad range of participants, legislative tools and standards for regulating building work, buildings and industry occupational groups.

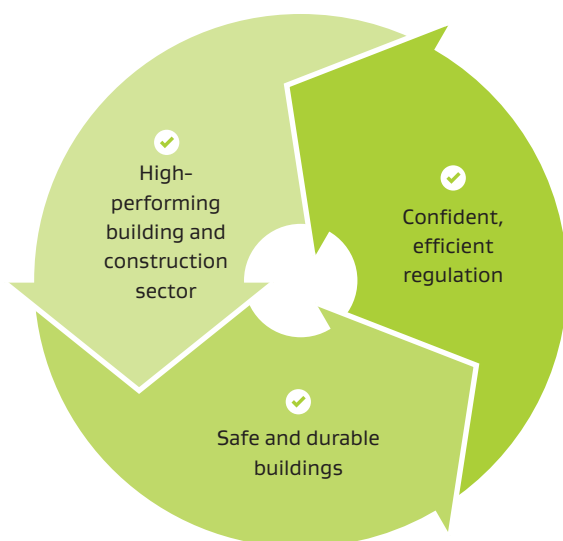
MBIE's framework for thinking about the system as a whole and its interdependencies is intended to ensure the building sector is supported by an effective regulatory system.

There are four key levers in the framework to influence how the building regulatory system operates:

- **People** – the building sector relies on a skilled and accountable workforce, capable building consent officers and informed consumers, including building owners and users.
- **Products** – building products are central to the safety and durability of buildings. Building products should be reliable, fit for purpose, and competitively priced.
- **Processes** – good regulatory and commercial processes are essential for a high-performing building sector. Processes include consenting processes, the accreditation of BCAs and consumer protection measures. Regulatory and commercial processes should be risk-based, appropriate and efficient.
- **Performance** – the building code sets out how a completed building and its parts must perform by setting minimum performance requirements for all new building work. Building performance requirements should be clear, reasonable and future-focused.

The proposals focus on three outcomes

The changes MBIE proposes to the building regulatory system focus on three mutually reinforcing outcomes:



- **Safe and durable buildings.** Buildings are constructed from quality products by a high-performing building sector. The sector is supported by an efficient regulatory system that people trust.
- **An efficient regulatory system that people have confidence in.** The building regulatory system underpins the first two outcomes. The system encourages the behaviours that lead to a high-performing sector. The system sets out clear roles and responsibilities so that people know what they're accountable for, and what they must put right if things go wrong.
- **A high-performing building sector that builds it right the first time.** Efficient and effective processes and practices contribute to quality building work. The sector has high productivity. Skilled and competent people make informed decisions about building design and building products.

<ul style="list-style-type: none"> ✓ Designers, builders and product manufacturers understand their roles and responsibilities. ✓ Trusted information about building products is available. ✓ Trusted information about builders' and designers' skills and competencies is available. 	<ul style="list-style-type: none"> ✓ Designers choose products that meet the building's performance requirements. ✓ Designers work within their competencies. ✓ Designs comply with the building code. 	<ul style="list-style-type: none"> ✓ Products are installed correctly. ✓ Builders work within their competencies. ✓ Building work complies with the building code. 	<ul style="list-style-type: none"> ✓ BCAs have the information they need to efficiently consent and inspect. ✓ BCAs are confident that buildings are safe and durable.
Right information	Good designs and specifications	Good building work	Effective checking

WHAT 'GOOD' LOOKS LIKE
Things go right the first time



WHAT 'GOOD' LOOKS LIKE
Fairer outcomes when things do go wrong

Right information	Effective risk management	Robust customer protection	Appropriate regulatory action
<ul style="list-style-type: none"> ✓ Building owners understand the risks of building and what they're responsible for. ✓ Trusted information about the track records of builders and designers is available. 	<ul style="list-style-type: none"> ✓ Building owners are able to take steps to protect themselves from risks. ✓ The liability and incentives of builders, designers, product manufacturers and BCAs are aligned with what they can control. 	<ul style="list-style-type: none"> ✓ Effective and efficient mechanisms are in place for fixing defects. ✓ Problems are solved quickly and cost effectively. 	<ul style="list-style-type: none"> ✓ Regulators have the right tools to enforce the law. ✓ Regulators take appropriate disciplinary action.

Note: By 'builders' we mean 'any person who carries out building work, whether in trade or not', as defined in the *Building Act*. This includes carpenters, plumbers and other tradespeople.

The changes are focused on three areas linked to people's roles

We want the changes to help people work to high standards, and encourage the behaviours that a high-performing sector needs.

The proposed changes are closely linked to people's roles, and focus on three areas:

1	2	3
Setting out clear roles and responsibilities for all participants in the building system.	Making sure that people in all roles have the information they need to work to high standards.	Holding people accountable to the responsibilities of their role.

Make sure things go right, and deliver fairer outcomes if things go wrong

The goal of the proposed changes is to lift quality throughout the building sector and:

- make sure things go right in the building process the first time
- deliver fairer outcomes when things do go wrong.

MBIE used five criteria to assess whether the proposed changes would lead to the desired outcomes

Each part of the building system legislative reform programme has its own topic-related objectives. These objectives are set out in the relevant part of the discussion paper. We have used the five criteria set out below to assess the proposed changes.



Does the proposal meet the specific objectives for this topic?



Would the proposal support the desired behavioural shifts in the building sector?



Would the benefits of the proposal outweigh the costs and risks?



Is the proposal consistent with other parts of the building regulatory system?



Is the proposal consistent with related government policy and regulations?

You will find our assessments in each section of the discussion paper.

Next steps: from feedback to implementation



Feedback must be in the form of written submissions and must get to us by 5.00pm on **Sunday, 16 June 2019**.

See page 04 of this document for more details on how to submit feedback.



MBIE will use the information in submissions to refine the proposals. The Minister for Building and Construction will then decide what changes to recommend to Cabinet.



Parts 2 to 6 of the discussion paper set out proposed changes that require changes to existing laws and regulations.

If the government decides to go ahead with the legislative changes, a Bill will be introduced to Parliament. The public will have a second opportunity to comment on the proposals when the Bill is considered by a Parliamentary select committee.

Any changes to existing laws would be supported by publicity, information and guidance, education and enforcement activities.



Part 5 of the discussion paper includes proposals to change the building levy rate. A change to the building levy rate would be done through a change to regulations. This change is intended to take place in the second half of 2020. A notice about any change to the building rate would be in the *New Zealand Gazette*.



In addition to the proposed changes in this discussion paper, MBIE identified other changes that don't need a change to existing law. These changes will be progressed through other work streams.

You can subscribe for updates at www.mbie.govt.nz/building-reform

List of acronyms

BCA	Building consent authority
BCO	Building consent officer
CPEC	Chartered Professional Engineers Council
CPEng	Chartered Professional Engineer
GIP	Guarantee and insurance product
GST	Goods and services tax
LBP	Licensed building practitioner
LIM	Land information memorandum
MBIE	Ministry of Business, Innovation and Employment
MMC	Modern methods of construction
PCAB	Product certification accreditation body
PCB	Product certification body
PCBU	Person Conducting a Business or Undertaking
PGD	Plumbers, gasfitters and drainlayers
PGD Act	<i>Plumbers, Gasfitters, and Drainlayers Act 2006</i>
QA	Quality assurance
RBW	Restricted building work
RFI	Request for information

