

SUBMISSION

BUILDING SYSTEM

LEGISLATIVE REFORM

DISCUSSION DOCUMENT

This submission addresses Part 2: Building products and methods; Part 3.1: Occupational regulation of the Licensed Building Practitioner (LBP) scheme; Part 4: Risk and liability; Part 5: Building Levy; and Part 6: Offences, penalties and public notification.

Engineering New Zealand is New Zealand's professional home for engineers. We are New Zealand's strongest and most influential voice on engineering issues. Our membership is growing, with more than 23,000 members who want to help shape the public policy agenda.

Engineering New Zealand plays a central role in the occupational regulation of engineers. We are making a separate comprehensive submission on Part 3.2 of the discussion document: occupational regulation of engineers.

Engineering New Zealand welcomes this comprehensive set of proposals and supports most of the changes. While these proposals alone are insufficient to make the building regulatory system work as well as it could, they have potential to make significant improvements. Other areas that need to be looked at include building consent processes, with a focus on efficiency and consistency.

PART 2: BUILDING PRODUCTS AND METHODS

Engineering New Zealand welcomes the proposed changes to broaden the purpose of the Building Act to include the regulation of building products and building methods.

In our view, designers should take responsibility for what they design, and manufacturers, suppliers, fabricators and installers should take responsibility for what they supply, construct and install. Owners, building consent authorities and designers all need to be able to rely on the information provided by, and quality assurance systems of, manufacturers, suppliers, fabricators and installers.

With this in mind, we agree that product manufacturers and suppliers (including importers) must provide publicly accessible, easily understandable and current information about building products. This information must be centrally managed so that it is easily available and freely accessible. This could be

supported by an online community database that shares knowledge, processes and pathways between professionals working in the industry, like the [Health Pathways](#) model in primary care in New Zealand.

We agree with the New Zealand Institute of Architects that this additional information should include health and safety in design, scope and limitations on use, testing and other evidence sources, installation and maintenance, durability periods and third-party approvals. We also see strong need for a system for flagging products that have been subject to warnings or alerts in other jurisdictions, especially Japan, Australia, the United States, the European Union or the United Kingdom.

Regulations must also address quality assurance issues, to verify the accuracy of the information provided. We need products or building methods that are:

- consistently assessed and certified by BRANZ or an MBIE-approved organisation;
- supported with traceable laboratory test data;
- backed by a guarantee or warranty consistent with building design life, with a clear claims process should product failure occur; and
- accompanied by guidance on installation and maintenance.

In developing this proposal, consideration also needs to be given as to how any reforms would impact or align with industry-based produce assurance schemes.

We also support stronger regulation for substitutions, but recommend further discussion with industry around specification and substitution responsibilities and what makes a substitution a minor or major variation. As noted in the New Zealand Institute of Architects' submission, a designer's obligation can only extend to using reasonable care and skill in the provision of services.

We also support MBIE having greater regulatory powers to require people to provide information and support its extension to include products and methods that fail to comply with the Building Code.

We strongly support enabling a regulatory framework for modern methods of construction; however, this will need to be flexible enough to take local factors into account, such as the differing water, ground, seismic and wind conditions that exist across New Zealand.

The proposals should support innovation and increase the efficiency of the consenting process. We agree that a transition period of at least two years is required to make these changes.

PART 3.1: OCCUPATIONAL REGULATION OF THE LICENSED BUILDING PRACTITIONER SCHEME

We support the proposed changes to the LBP scheme to broaden its scope and strengthen its requirements but consider that in addition to competency and supervision, the licensing tiers should also address levels of complexity and difficulty. Design complexity and importance level of a building under the Building Code are not equivalent.

It is unclear from the discussion document where designers and construction professionals who hold Chartered Professional Engineer status sit in relation to these changes.

We agree that the current sanitary plumbing exemptions for householders in specified areas, rural districts, and restricted sanitary plumbing, gasfitting and drainlaying work under supervision should be repealed.

We believe these proposals support the overall goal of raising the standards for all building work in New Zealand. Any additional short-term costs caused by changes to the scheme are likely to be outweighed by longer-term savings from improved build quality. We believe it is essential to take a longer-term view of the benefits.

PART 4: RISK AND LIABILITY

Engineering New Zealand supports changes that clarify risks and liability, although further details need to be developed, such as the capacity of the insurance industry to respond to the proposed changes.

We support the proposal to require guarantees and insurance products for homeowners and residential property developers but disagree with the opt-out clause. An opt-out option increases risk for successive owners and increases potential liabilities for third parties, including building consent authorities and engineers. Further consideration also needs to be given to where property developers who undertake mixed-use dwellings would fit under this proposal.

There is a level of ambiguity in the discussion document as to whether the liability of BCAs is proposed to be capped. We do not believe BCA liability can be capped without also capping liability for other key players in the building process. If BCA liability is capped, the liability of engineers and designers should also be capped in the interests of fairness and proportionality. Additionally, broader quality assurance mechanisms would need to be in place, including compulsory home-warranty insurance, strong regulation for all building practitioners and insurance products for all building practitioners. We also note there is some uncertainty as to the accountability and liability of project managers, who are often heavily involved in the decision-making process. We await more details on this aspect of the proposal.

PART 5: BUILDING LEVY

Our members have been concerned for some time that the Building Levy could be more effectively used to support improvements across the building regulatory system. We disagree that the levy should be reduced, as we consider that there are numerous opportunities for greater investment within the building system to support improved building performance. Rather than reduce the levy, we would support the criteria for its use being widened.

For example, the levy could be used to fund and update building-related standards and guidance. The current system of setting standards relies on volunteer effort, including by many engineers. Those volunteers (or their employers) cover their own costs. They are then expected to pay to use the standards. There is a strong case for free access to standards, particularly when they are directly or indirectly part of regulatory requirements.

The levy could also be used to help fund the certification of new building products and methods, research into building performance (including seismic performance) and the development of design codes.

PART 6: OFFENCES, PENALTIES AND PUBLIC NOTIFICATION

We support the proposed amendments and consider they are necessary to adjust for inflation since 2004, for consistency with other legislation, and for proportionality with the serious potential consequences of non-compliance.

Penalties need to be proportional, and set high enough that they act as an appropriate deterrent but not too high so as to have a negative impact on smaller operators. Higher penalties for organisations will

probably have the desired effect of improving organisational culture and internal quality-assurance processes, but need to be supported by robust processes that allow any deficiencies in practice to be identified and responded to.

We support extending the time limit for parties to lay a charge under the Building Act, from six months to 12 months, to allow sufficient time to gather information, particularly for complex and multi-party cases.

Public notification in a newspaper is no longer relevant nor meaningful where there are fewer local media outlets and when the internet is the primary and most readily accessible source of information.

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