



Building Policy
Ministry of Business, Innovation & Employment
Wellington
New Zealand

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SUBMISSION ON MBIE DISCUSSION PAPER - BUILDING SYSTEM LEGISLATIVE REFORM

Introduction

The NZIA, which has been in existence since 1905, is the professional body representing more than 90 per cent of New Zealand's registered Architects and a majority of recent graduates entering the profession; we have over 4,100 members. The NZIA is active not only in advocating in the interests of our members, but also in promoting practices and providing education and promoting industry wide co-operation that will improve the quality and sustainability of New Zealand's built environment.

The NZIA has, through its governance structure and membership, significant professional experience in the New Zealand construction industry. That experience includes a wide variety of projects across all construction types and scales. The NZIA also has more than a century of experience assisting our members and their clients with projects at all stages, from project establishment and concept design through to contract administration and site observation, depending on the scope of instructions from the client.

The objects for which NZIA is established include the promotion of excellence in architecture, improvement of the technical knowledge and professional development of persons engaged in the practice of architecture, and bringing to the attention of central and local authorities any matters affecting architecture or architects.

Accordingly, the NZIA supports Government initiatives to deliver a high-performing building sector, an efficient regulatory system and safe and durable buildings. We welcome the opportunity to comment on the proposed changes to help deliver these outcomes.

We do, however, wish to draw the Government's attention to a number of potential issues arising from the proposals and, where possible, we have suggested alternative solutions. We would welcome the opportunity to engage with officials and other industry professions (e.g. Engineering New Zealand, Registered Master Builders, Building Officials Institute) on the issues raised in our submission, particularly the development of alternative proposals and solutions.

This letter accompanies NZIA's separate comprehensive submission on Part 3.2 of the discussion document: *occupational regulation of engineers* and the Competed Submission Form in relation to the Discussion Paper. It expands upon the answers provided in the Submission Form in areas of most concern to NZIA.

The responses in the Submission Form cross-reference to the detail provided in this letter where relevant. In the interests of industry partnerships and collaboration, the NZIA's submission offers support for some specific views and positions of other professional bodies (these are noted in our submission), such as Engineering New Zealand and New Zealand Registered Architects Board (NZRAB).

Focus areas for NZIA Submission

1. PART 1 - OUTCOMES OF PROPOSED REFORMS

- 1.1 NZIA has considered the proposals in the Discussion Paper in the wider context of the guiding principles of the April 2019 Construction Sector Accord between government and industry.
- 1.2 Most relevantly, the shared goals noted in the Accord are consistent with what the reforms are trying to achieve. In particular:
 - ***Increase productivity*** – A productive, value-driven and efficient construction sector able to produce more for each dollar spent.
 - ***Raise capability*** – A skilled and capable workforce that meets New Zealand's growing housing and infrastructure needs.
 - ***Improve resilience*** – Strong, sustainable businesses with the capacity to innovate and adapt to change and disruption.
 - ***Restore confidence, pride and reputation*** – A high-performing, transparent and trusted sector we can all be proud of.
- 1.3 The shared commitments of government and industry include growing workforce capability and capacity; better risk management and fairer risk allocation; improved health and safety at work; more houses and better durability.
- 1.4 There is clearly an opportunity to lift industry performance, competence, capability and productivity through these reforms. However, greater ambition and options need to be identified in partnership with industry to do so.
- 1.5 NZIA believes that the Part 2 proposals around provision of building product information may result in designers specifying (and ultimately suppliers only providing) a limited range of "tried and true" products which may limit the use of innovative products.
- 1.6 Whilst the Discussion Paper Part 3 regulatory proposals may grow workforce capability, they may hinder capacity. There will need to be a real drive within the two year transition period to increase the number of LBPs to meet the demand created by the expanded definition of Restricted Building Work (RBW) and NZIA would welcome the opportunity to work with MBIE on how this might be achieved.
- 1.7 The proposal under Part 4 requiring builders to offer a guarantee and insurance product might assist homeowners to manage their risks; but the proposal relies on a very thin insurance provider market and does not alter the underlying joint and several liability position in terms of risk allocation.

- 1.8 Many of the proposals included in the Discussion Paper do not fully acknowledge the risks on all parties; or offer a range of options for consideration; or offer solutions for the system. In some instances, there is a potential disproportionate increase in risk and liability to some parties, including architects.
- 1.9 Despite these reservations which are expanded on below, in the specific submission on occupational regulation and in the Submission Form, NZIA remains supportive of the objectives and looks forward to assisting MBIE to achieve them.

2. PART 2 - BUILDING PRODUCTS

- 2.1 NZIA agrees with the proposal to widen the purpose of the Building Act to include the regulation of building products and methods. Architects preparing plans and specifications for building work, often find the level of product information made available by manufacturers and suppliers is inadequate to enable an informed decision as to code compliance, let alone any higher performance that might be desired. Technical information including important ‘health and safety in design’ information is often limited unavailable or hidden within product marketing.

Proposal 2 – Clearly define “building product” and “building method”

- 2.2 In relation to the definition of “building products” further consideration should be given to clarifying whether this includes computer software as per the Contract and Commercial Law Act, Part 3 and Consumer Guarantees Act definitions of “goods”. At present, computer software is used primarily in the design (e.g. fire design) and construction management phases of a project but in the future it may be used for the ongoing management of systems in the built environment.
- 2.3 NZIA also understands that under the proposed ‘modern methods of construction’ (MMC) certification scheme, the certified end product (e.g. bathroom pod) would be akin to a building product. The NZIA does however question the benefit of creating new terminology, MMC when international accepted practice would define these as ‘offsite building products or methods’. In the context of clarifying roles and responsibilities under Proposal 4 of Part 2, it should be made clear that in specifying the use of such a product, the designer of the building work takes no responsibility for the design and manufacture of that product and can rely on the certification as a defence to any claim in the event that the product subsequently fails.
- 2.4 In the context of clarifying roles and responsibilities for building products and building methods, we note that section 20 of the Building Act currently refers to both “building methods” and “methods of construction”. The distinction is not always immediately apparent and some further consideration may need to be given to the implications of defining “building methods” as “*a specific way of using a product or system in building work*” in the context of use of a method of construction such as MMC.

Proposal 3 – Set minimum standards for information about building products and require manufacturers and suppliers to supply that information

- 2.5 NZIA agrees that the proposed minimum information requirements for building products would benefit the wider industry value chain. Some of the direct benefits would be:

- (a) an improved quality and consistency of information available to industry (i.e. architects, building consent authorities);
- (b) supports and assists the preparation of quality documentation and specifications for projects;
- (c) a clearer accountability on suppliers and manufacturers for the technical claims, performance attributes and assurances offered;
- (d) an improved level of transparency of product information to the market (i.e. professionals, insurers and Clients);

2.6 However, the NZIA considers that there are some significant omissions from the proposed minimum requirements in Box 1 as outlined below:

- (a) **Health and Safety in Design** - There will be some overlap between the proposed building product information under the Building Act and the information requirements of PCBUs under the Health and Safety at Work Act 2015 (HSWA) in relation to structures at workplaces and ‘designers’ as upstream PCBUs and the associated duties associated with health and safety by design.

A structure as defined under that Act includes components and parts of structures. From a design perspective, the building product information supplied by manufacturers and suppliers should enable designers to comply with the information requirements of the HSWA and the additional duties for designers as upstream PCBUs. NZIA considers that it would be highly desirable to work with WorkSafe in further defining these health and safety in design information requirements.

- (b) **Scope and limitations on use** - the minimum standards should include information on the purpose and use of the product including limitations on use and performance. Detailed technical information needs to be provided, including clear references to the relevant building code clauses and standards.

- (c) **Testing and other evidence sources** - need to be provided to support product performance and technical parameters e.g. results of testing and source(s) of testing.

- (d) **Installation and maintenance** – requirements should be clearly outlined, including any exemptions/exclusions.

Detailed technical information needs to be provided around the product’s relationship with fixings and other systems (including any exclusions, geographic limits and/or system incompatibilities) and any bans or alerts issued, in New Zealand and/or overseas.

- (e) **Durability periods** - The information should specify durability periods and be backed by a consistent guarantee or warranty with a clear claims process.

- (f) **Third party approvals** - Information should be provided on third party approvals or certifications e.g. BRANZ or MBIE approved accreditation bodies.
- 2.7** NZIA notes that MBIE considered but did not recommend a national register or database of building products. NZIA considers that for the regulatory proposals to work as proposed, there needs to be an immediate commitment and investment in an industry owned repository of information/library (with a “locked” archival capacity). Product information needs to be current (a HSWA requirement) and there needs to be version control so that product information available at the date the design services were provided forms the base for accountabilities. Such a system could ultimately be integrated with online consenting, which would provide efficient lodgement, review and system assurances. Such a system needs to be respected and developed by industry if it is to meet professional’s needs.
- 2.8** There is also a need for a system for flagging products that have been subject to warnings or alerts in New Zealand and other countries.
- Proposal 4 – Clarify responsibilities for building products and building methods.**
- Variation to consent and substitution**
- 2.9** As a general observation, NZIA considers that the Discussion Paper does not demonstrate an appreciation of the practical relevance of the fact that an architect’s involvement in a project will be limited to the scope of services under its professional engagement agreement. Accordingly, the architect’s liability needs to be tied to that scope of services. For example, an architect’s engagement does not always extend to the construction phase of a project which is where product substitutions are commonly proposed and design changes occur. That is why “as built” plans often vary markedly from the detailed design and consented design.
- 2.10** In this context, although the Discussion Paper indicates that it is intended that builders would discuss any potential product or method substitution with the architect “where the designer is still contracted”, in practice, this may take place years after the architect’s brief ended. This may require the engagement of a different designer (with consequent delay to the process) and the reforms need to acknowledge and reflect this (see 2.12 below).
- 2.11** In relation to the threshold for minor vs major variations, it is important that consideration is given to the fact that the substitution may impact on wider systems and the building consent authority (BCA) and builder may not have the appropriate expertise to assess these issues.
- 2.12** Where an architect is not engaged in relation to a substitution, it should be made clear to all parties that the party(ies) who agrees/executes the product system or product substitution(s) are responsible for any adverse effects of that substitution and the ensuing liability. This aligns with the Industry Accord principle of a fairer risk allocation.

Potential impacts of changes on designers

- 2.13** NZIA notes that the Discussion Paper indicates that the proposals are not intended to create any new liabilities or add to existing common law liabilities.
- 2.14** However, NZIA believes that the inclusion of an additional designer responsibility at section 14D of the Building Act 2004 relating to the responsibilities of designers to “ensure that the building products and methods specified result in building work that complies with the code”, does have the potential to increase the risks to a designer in specifying a product that subsequently fails.
- 2.15** A designer’s obligation will usually only extend to using reasonable skill and care in the provision of services and professional indemnity arrangements are made on that basis. NZIA has a concern that the proposed change to s14D may open the door to a claim against an architect based on an implied fitness for purpose obligation. This could result in uninsurable losses and is likely to lead to designers being more risk adverse which would, in turn, limit innovation in the industry. For this reason, NZIA considers that s14D should not be expanded as proposed as this goes beyond “clarifying” responsibilities.
- 2.16** Just as the Discussion Paper recognises that manufacturers and suppliers should not be held responsible for a product if it fails solely because it was used in a way that is outside its intended use or installed incorrectly, NZIA considers that it is important that a designer should not be held responsible for code non-compliance to the extent that the non-compliance is attributable to reasonable reliance on what turns out to be incorrect or incomplete product information or certification (whether wilful or careless).

3. PART 3.1 – OCCUPATIONAL REGULATION OF THE LBP SCHEME

- 3.1** NZIA supports the proposal to broaden the definition of restricted building work (RBW) to include more complex non-residential work. NZIA also supports the proposal to provide for higher competence requirements for LBPs including tiered licensing and behavioural competence requirements.
- 3.2** This is consistent with the Construction Sector Accord goal of raising capability and restoring confidence in the building sector.
- 3.3** NZIA believes that it is imperative that there is a link between the complexity of the building work being undertaken and who is deemed competent to undertake that work. In this context we note that the design complexity and importance level of the building under the Building Code do not always amount to the same thing. A detailed submission on occupational regulation is provided in **Attachment A**.
- 3.4** It is also important that there is consistency of competency requirements for all LBPs practitioners undertaking design RBW including equivalent competency and ongoing education and regulation requirements.
- 3.5** The competency requirements must be appropriate to the level of RBW being undertaken.

The licensing prescribed standard of competence should be consistent with the standards set by the equivalent regulatory body; for example only registered architects engaged to supervision and peer review procedures undertaking commercial, high rise, complex buildings.

- 3.6** Given the complexity of the building types being considered for RBW, the NZIA believes that other professions in the building sector (e.g. project managers and building consent authorities) should also be appropriately licenced as occupations, including a regular re-licensing process. These roles have the capacity to influence project decisions on design, design coordination and overall building performance. Such an approach would offer an assurance on competence for the work to be undertaken, create a fairer allocation of risk and liability and contribute positively to client/public trust and confidence. The NZIA understands that the New Zealand Registered Architects Board (NZRAB) as regulator of ‘registered architects’ in their submission, further detail improvements to the occupational licensing of registered architects and LBP – Design.
- 3.7** NZIA members are required by its rules (Rule 5.3) to:
- have, maintain, and extend competence in areas of practice or claimed expertise
 - undertake CPD
 - accept peer review and guidance where appropriate.
- 3.8** Most NZIA members are registered architects or on a path to registration, and the NZIA disciplinary procedures overlap (appropriately) with the Registered Architects Act 2005, the Registered Architect Rules 2006, and the disciplinary processes there. Practising only within current competence is a requirement of Rule 58 of the Registered Architects Rules, and can also be a grounds for complaint under Rule 6.1(d) of the NZIA Rules.
- 3.9** There is one aspect of the NZIA Rules that deserves consideration, and that NZIA believes should be mandatory for all professional and trade organisations whose members publicise their membership as part of their brand. It is that the NZIA Rules are explicitly stated to be a contract between the members and the NZIA.
- 3.10** Resignation as a member requires Council approval, and does not relieve the member from any existing liability or excuse the member from disciplinary actions; Rule 5.8(b) - explicitly, Rule 6.7 provides that a member who has a complaint against them cannot resign until the complaint has been resolved.
- 3.11** NZIA believes this prevents a problem that has been faced by other professions in the industry, and significantly undermines public confidence if not comprehensively addressed.

4. PART 4 – RISK AND LIABILITY

Proposal 1 – require a guarantee and insurance product

- 4.1** NZIA supports the proposal in principle but is not sure that this is the best way to restore confidence in the sector or an appropriate solution to issues of industry quality, performance or education.

- 4.2** It offers an “ambulance at the bottom of the cliff” approach which will not restore homeowners’ confidence in the building sector. NZIA sees greater benefit and merit in an approach that focuses on ensuring the competency of builders.
- 4.3** Further NZIA expects that the available products will provide cover for the builder’s default in respect of defective workmanship but will exclude cover for designer default in relation to defective design. This will leave the designer’s liability position unchanged.
- 4.4** In terms of influencing how designers behave, NZIA does not see the availability of such an insurance product as changing the status quo in that architects as professionals already stand behind their work. Professional architectural advice and services is about developing good relationships with the client and creating trust and confidence in delivery of the commission. Architects acknowledge responsibility for their negligent actions, omissions or inadequate advice and they hold professional indemnity insurance to back this commitment. They do not rely on BCAs alone to identify errors in building work.
- 4.5** NZIA is not convinced that the requirement for builders to offer such insurance would incentivise builders to improve the quality of work.
- 4.6** The NZIA is concerned by the Discussion Paper and its ‘hope’ that a regulated minimum for builder insurance/guarantee is sustainable over the 10-15 year timeframe relevant to liability in the sector. The experience of registered architects is that their policies are continuously reviewed annually with new clauses, exemptions, exclusions, sub-limits or limitations introduced or increased annually. What will make the builder insurance or guarantees proposed in the Discussion Paper immune to such changes?
- 4.7** Salient but significant points in relation to an “insurance will fix it” approach include:
- The insurance market in New Zealand is very thin. With only 2 major insurance groups readily available to residential customers and their apparent reluctance to write new business even for completed homes in some areas there are genuine questions as to whether cover would be available. Even if it is was, it is an oligopoly or duopoly and the Government clearly, and rightly, is very wary of that in other areas such as supermarkets and fuel supply.
 - Compulsory (even if marketed as Client can voluntarily opt out) insurance may not only create wrong incentives for insureds, it can also create wrong incentives for insurers who can increase exceptions from cover and impose conditions on insureds, knowing that they will have little option other than to accept. It is relevant here that for major projects insurance policies can be very bespoke and impose conditions on the insured that the end client has no practical way to verify are being complied with; yet non-compliance may invalidate the policy.
 - Insurance is only as good as the insurer; and the CBL collapse in 2018 in this sector vividly illustrates this.

- Policies would need to be carefully analysed and their relationship with the myriad of parties in the sector made clear. If a client claimed against a BCA for poor inspection or certification leading to loss, would the BCA be able to claim directly against the LBP's insurer for a contribution; or only if the LBP was a party to the court action, mediation, or arbitration? Very possibly the LBP has disappeared, leaving only the insurer.
- This leads to the final point which is that if an insurer is notified of a claim, the insurer invariably has, and frequently exercises, the right to manage the claim. Entirely logically, insurers are motivated to resist claims wherever and by whatever means (think Christchurch earthquake claims) That is unlikely to be conducive to the aims of these reforms which include enhancing relationships and confidence in and between participants in the industry.

4.8 An option might be to require disclosure of insurance, or lack of it. There remains some risk because it is not usually practicable to disclose exceptions; but minimum standards might overcome that.

4.9 For example, the requirement on lawyers, found in the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care Rules 2008 is:

3.4 A lawyer other than a barrister sole must, in advance, provide in writing to a client information on the principal aspects of client service including the following:.....

(b) The professional indemnity arrangements of the lawyer's practice. This obligation is met if it is disclosed that the practice holds indemnity insurance that meets or exceeds any minimum standards from time to time specified by the Law Society. If a lawyer or a practice is not indemnified, this must be disclosed in writing to the client.

Proposal 2 – leave the liability settings for BCAs unchanged

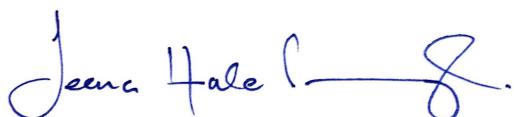
- 4.10** We agree with the Engineering New Zealand submission that there is a level of ambiguity as to whether the liability of BCAs is proposed to be capped. NZIA supports the position of leaving the liability of BCAs unchanged and does not support the approach of capping the liability of BCAs. Councils already rely on Memorandum – Certificate of (Design) Work by registered architects as part of a building consent application as a means of sharing liability for non-compliant building work. And, as with all players in the industry, if a BCA does its job to the required standard, it will not be liable in the first place.
- 4.11** NZIA has previously made submissions advocating for the concept of proportionate liability in relation to residential properties centred around a companion mandatory home-warranty scheme so that any uncollectable contribution from absent or insolvent concurrent wrongdoers was available to plaintiffs. NZIA continues to believe that this is a preferable approach.
- 4.12** NZIA considers that the Sapere report does not reflect the reality of professional negligence claims brought against architects which are settled out of court.

[The NZIA has sought comment from NZACS, New Zealand Architects' Co-operative Society. NZACS advise that claim notifications generally reflect genuine project-specific (rather than systemic) errors, failure to meet budgets, issues of copyright, inadequate attention to site constraints, communication breakdowns during the build process, and product and/or installation failures; and Client expectations. On larger projects, delivery of design documentation to meet the construction timelines has been an ongoing problem. These issues need to be understood by MBIE in designing proposals for change].

- 4.13** The NZIA is disappointed that the Discussion Paper makes no substantive proposal to change this area of the law particularly when the Construction Sector Accord has fairer risk allocation as a priority work area. It continues to be the position that professionals with the backing of professional indemnity insurance bear more than their fair share of the financial cost of claims because of joint and several liabilities.
- 4.14** Given the complexity of buildings, the necessary expertise to prepare designs and specifications and acknowledgment in the Discussion Paper that BCAs adopt inconsistent approach and contribute to delays, the NZIA favours an approach whereby the consenting process is carried out via centres of consenting excellence resourced by BCA staff with appropriate qualifications, expertise and training to make these decisions. This aligns expertise, knowledge and risk of projects and will/should improve the efficiencies of the consenting system and administration.
- 4.15** The recent decision by Housing New Zealand Corporation to undertake on a national consenting role (self-certification) could be interpreted as a direct response to the inefficiencies and inconsistencies of current BCA processes, systems, practices and administration of the Act, Code and relevant standards. Further consideration and assessment of this approach needs to be undertaken by MBIE.

5. PART 5 – BUILDING LEVY

- 5.1** NZIA does not believe that a reduction in the building levy is the best approach and is counter to the Construction Sector Accord of investing in the industry.
- 5.2** We consider that a better approach would be to spend, rather than save, the levy and use it to achieve the objectives of the proposed reforms by, for example, updating standards, investment in industry education, periodic and regular reviews of industry minimum standards. Given the Construction Sector Accord, values and priorities, the current and future balance of the levy should be available for such purposes.



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ATTACHMENT A

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16 June 2019

SUBMISSION ON MBIE DISCUSSION PAPER BUILDING SYSTEM LEGISLATIVE REFORM – OCCUPATIONAL REGULATION

This submission is made by the New Zealand Institute of Architects Incorporated (NZIA) and is limited to the issue of occupational regulation. It should be read in conjunction with the NZIA's overall submission to the MBIE reforms and the responses included on the MBIE feedback forms.

This further information on occupational regulation is structured as follows:

1. Introduction
2. Summary of submission
3. Role of architects in the building process
4. Responses to MBIE's proposals

1. Introduction

The NZIA's submission provides further comment on the occupational regulation reforms proposed by the Ministry of Business, Innovation & Employment (MBIE) discussion paper on building system legislative reform dated April 2019 (**Discussion Paper**).

Our members have been consulted on the MBIE proposed reforms and are concerned that the proposals do not consider the full range of professions involved in the building and construction industry. Many members believe that the proposals create unnecessary fragmentation in the regulation of occupations and also demonstrates a lack of understanding by MBIE of how professions must collaborate and coordinate their professional responsibilities on projects. For example, engineers and architects, as design professionals are involved in life safety critical work. This issue and the need for greater collaboration and information sharing between architects and structural engineers was identified in the Canterbury Earthquakes Royal Commission (recommendation 185).

In the NZIA's opinion, the 'selected' professions covered by the occupational regulation proposals is both inappropriate and will not achieve the reform objective being – "*that practitioners have the right skills and will act professionally, and those responsible for substandard work will be held to account when it occurs*".

Our consultation with members included:

- Branch sessions dedicated to the MBIE reforms and the topic of occupational regulation.
- Engagement at NZIA Board level and our medium/larger Practice Members on the MBIE reforms and proposals.
- Engagement with the New Zealand Registered Architects Board on the reforms and issues and implications for registered architects.
- Meetings in person or by teleconference with other key stakeholders, including the Structural Engineering Society New Zealand (SESOC), Engineering New Zealand, Association for Consulting and Engineering Professionals (ACENZ) and Construction Industry Council industry bodies.
- Engagement with members at an individual level through electronic newsletters, attendance at Branch meetings, and a call for feedback.

The profession recognises that there are areas of architecture where the risks are higher. It is critical that registered architects practising in those areas have demonstrated specific competence. Therefore, the proposals and thinking of MBIE should be widened beyond just engineers.

Whatever the legal framework, for it to have impact it needs to be underpinned by strong professional practice. The profession is passionate about quality assurance and upholding standards. With Government support, the profession can lead initiatives to strengthen professional behaviour and the quality of outputs across the building and construction sector, this includes peer review and audit. The NZIA understand that this position is also acknowledged and supported by the Engineering New Zealand submission.

The role that architects play in New Zealand's urban environment, communities and the building and construction industry underpins the NZIA's submission.

2. Summary of the NZIA's position

The Discussion Paper sets out that the reforms are intended to deliver the following:

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

The NZIA considers that the reforms proposed in the Discussion Paper go some way toward achieving the stated objectives in improving the building sector and it is pleased to see some of the proposed changes. However, there are compelling reasons why more change is necessary, and it must be identified and actioned sooner rather than later. The status quo is not a compelling proposition for the industry, Clients and the overall productivity and quality delivered.

At various points, the Discussion Paper refers to the organisations and individuals who design, build and maintain commercial and residential buildings – architects are an integral part of the design of commercial and residential buildings, yet they are not included in the reforms.

Also at the forefront of the NZIA's thinking is the Construction Sector Accord launched this year. Most relevantly, the shared goals noted in the Accord are consistent with what the reforms are trying to achieve. In particular:

- **Increase productivity** – A productive, value-driven and efficient construction sector able to produce more for each dollar spent.
- **Raise capability** – A skilled and capable workforce that meets New Zealand’s growing housing and infrastructure needs.
- **Improve resilience** – Strong, sustainable businesses with the capacity to innovate and adapt to change and disruption.
- **Restore confidence, pride and reputation** – A high-performing, transparent and trusted sector we can all be proud of.

To achieve the above goals under the Construction Sector Accord the NZIA would recommend the following:

- A. that Restricted Building Work (**RBW**) is extended to commercial projects to improve the expertise and competence of the building sector and in the interests of public safety.
- B. that the existing occupational licences are restructured to reflect higher levels of competency, either through creation of additional classes of licence or more rigorous thresholds and ongoing regulation of existing classes. The NZIA believes only registered architects and engineers have the requisite training and regulation to design complex residential and commercial buildings. Some examples to evidence this position includes:
 - a. *architectus, St Cuthbert's College Centennial Centre for Wellbeing*
 - b. *athfields, Massey University Te Ara Hihiko College of Creative Arts*
 - c. *Isthmus, Vinegar Lane, redevelopment*
 - d. *Jasmax, AUT Sir Paul Reeves*
 - e. *Novak & Middleton, Central Park Apartments*
 - f. *Opus Architecture, New Law Management Building Waikato University*
 - g. *Pattersons, Christchurch Botanic Gardens Visitor Centre*
 - h. *Warren and Mahoney & Well Connected Alliance, Waterview Connection*
- C. that additional occupational licences should be introduced for categories covering site administration and building control authority consenting and code compliance inspections. All participants in the construction sector should have mandatory ongoing training, ethical duties and regulation. These should be regulated by independent professional or government bodies, to ensure ongoing training, competencies, ethical obligations and disciplinary measures, as currently required for engineers and registered architects.
- D. the NZIA is open to the development of specialist licences for expertly trained professionals in the interests of public safety and trust and confidence, e.g. structural, fire safety or façade design.

3. Role of registered architects in the building sector

Registered architects have an important role in the building sector as highly trained and skilled creative professionals, with strong environmental and public good concerns, design abilities, technical knowledge and leadership. Registered Architects have a professional duty of care, and obligations requiring them to behave ethically, and continually maintaining and improving their knowledge, skills and practice.

Architects are trained to design and facilitate procurement of buildings through all stages of the development and construction process: project initiation and pre-design, concept design, preliminary and developed design stages, detailed design and documentation; procurement; administration and observation of the contract works.

Response to key areas affecting Registered Architects

A. *Restricted Building Work*

We address the issue of the definition of Restricted Building Work separately to issues arising in respect of occupational licence classes.

The NZIA agrees that the current definition of RBW is too narrow as it means commercial buildings, mixed-use buildings, educational and high-rise residential buildings are not regulated. RBW currently only applies to residential buildings (standalone and apartment buildings less than 10m in height). This is illogical given the scale and significance of commercial, multi-unit and high-rise, educational and mixed-use developments. As not included in RBW, commercial buildings are currently not subject to the LBP licencing regime. There is essentially no regulation of or requirement for competencies to design, construct, supervise or inspect commercial or complex buildings under the LBP scheme.

Only architects and engineers are captured by their own professional obligations and their statutory regulatory bodies, regardless of whether the buildings are residential or commercial.

Currently when a building consent application is lodged for RBW, the following must be provided:

- *Memorandum – Certificate of Design Work (CoW)* identifying how the primary structure, weathertightness elements and fire safety systems comply with the Building Code; and
- *Name, registration number and licensing class of the LBP* certifying the design. This must be an *individual*, not a company.

By signing the CoW, the LBP is legally declaring that the design complies with the Building Code and consequently that person becomes liable for any shortcomings in compliance with the Building Code relating to the design, and in particular, structure, weathertightness and fire safety.

MBIE intends to maintain the current system of *individual* licensing rather than licensing companies, so liability sits with the *individual* rather than the *company* that the client engaged to design the building. While a CoW may be appropriate for a stand-alone house or low height apartments, it is unreasonable for an *individual* designer to be held solely responsible for larger scale and/or more complex buildings where many professions and disciplines have been involved in the design process.

The RBW scheme ignores the contractual relationships between the parties involved in the construction process. In most cases the client will have engaged a design *company*, not an *individual*, to design the building. So, holding an *individual* accountable, rather than the design company, is inappropriate as it does not reflect how insurance and compensation would be applied in the event of a claim for losses/damages.

When RBW was first introduced in 2012, insurers excluded RBW from existing Professional Indemnity (PI) policies and instead, introduced a new personal insurance policy to cover RBW. That meant that designers carrying out RBW had to take out an additional (*individual*) insurance policy to cover themselves for RBW. The cost of additional *individual* insurance policies for large scale and/or complex buildings (in addition to the insurance policy that the client requires the *company* to have in place) would be significant and is likely to result in higher building design costs.

If RBW is to be extended to include larger, more complex buildings, the process of recording responsible people and holding them accountable needs to be different to the current simple system. It must adequately address the complexity of the building, the collective responsibility of the people involved in its creation and the contractual relationships between the parties. Effective face to face consultation with affected parties within the industry (consultants, insurers, licensing bodies and clients) is essential before implementing any changes to the existing RBW scheme. Consideration of company liability rather than individual liability must be recognised and taken into account. Individual liability under the RBW scheme will conflict with and multiply the liability the consultants already have under their contracts for services.

B. Licensed Building Practitioners – Licence classes / work categories

The NZIA advocates that registered architects should be involved in RBW for commercial buildings, mixed-use buildings, educational and multi storey and high-rise residential developments.

Regulation of Registered Architects:

The profession is regulated by the government under the Registered Architects Act 2005 through a statutory entity NZRAB. NZRAB is required to register, monitor and discipline architects, both to maintain the standard of the legally protected title “Registered Architect” or “architect” when providing building design services, and for public protection.

NZRAB:

- registers architects who have been assessed by their peers as competent to practice independently.
- maintains an online register, so the public can confirm that an architect is registered.
- reviews the competence of architects every five years.
- investigates complaints and, if need be, disciplines architects.

To maintain registration architects are required to comply with a code of ethics, and maintain the currency of their architectural knowledge and skills since the last assessment. The NZRAB is required by law to confirm every five years that all architects are still competent. This is done by a competence review.

Unlike engineers, registered architects do not specialise in separate disciplines but are required to offer services within their area of competence. They may specialise in particular building types or alliance with other firms with required expertise.

Commonly, to gain architect registration, candidates have a five-year architecture degree from an accredited institution and at least several years of supervised work experience, and pass a rigorous oral exam. There are other methods of gaining registration, but these still require candidates to meet the same minimum standards as those that take the most common path to registration. Architectural designers are not required to meet these standards.

Licensed Building Practitioner Design 3

The Discussion Paper identifies issues with the low competency standards for entry into the LBP scheme. At present there is differentiation between Registered Architects Act and Rules and Licensed Building Practitioners, Design, despite a current equivalency of the occupational licence. Registered architects are deemed to be the equivalent of an LBP Design 3. This creates unnecessary public confusion and lack of clarity within the sector which in turn impacts on trust and confidence in the profession.

The NZIA believes the current level entry to LBP Design 3 is too low, in terms of experience, training, competence, both technically and in design, and regulation. The current LBP Design 3 licence is not comparable to the level of expertise required of a registered architect, and does not equip the LBP Design 3 to procure complex or multi-storey buildings. Builders, architectural designers and technicians are not trained nor regulated on an ongoing basis as are registered architects.

Currently an LBP, Design 3 can design any category of building, but must only undertake the work they are competent to do, and recognise when other skills or supervision is required. LBP Design 3 currency has five competencies to reflect the skills and knowledge required by a competent person to be licensed in this class. Assessors are only required to look for broad evidence of competence, based of applicant submitted documents.

1. *Understand and apply knowledge of the regulatory environment of the building construction industry*
2. *Manage the building design process*
3. *Establish design briefs and scope of work and prepare the preliminary design*
4. *Develop, design and produce construction drawings and documentation*
5. *Manage construction phase design*

By comparison, registered architects, and engineers, are required to demonstrate a greater depth of experience, training, knowledge and expertise, including co-ordination competencies with other professionals on complex buildings, and are closely regulated on any ongoing basis in competency and ethical behaviour. The NZIA's position is that if LBP Design 3 are to be afforded the same opportunity for work of this nature then the requirements for initial and ongoing continuing professional development should be the same as those for registered architects or engineers, whether under NZRAB or another government regulatory body.

Given that the minimum professional standards for initial registration, ongoing registration and disciplinary action are significantly different as between registered architects and LBPs, the public has no clear expectation of the design profession. At present, LBP Design 3 can do the same RBW as registered architects but they have a lower standard of occupational licensing.

Given the complexity of buildings, material choices, site issues, the design skills required must be of the highest order. NZIA believes that the higher standard which is required of a registered architect should be required to do all restricted building work. This would create a common and clear understanding for the public and which would increase trust and confidence in the system and sector. This applies particularly in key areas requiring specialist design knowledge from engineers and registered architects e.g. façade design, structural integrity, accessibility, fire design (structure, materials and escape), and Safety in Design (**SID**) under the Health and Safety at Work Act 2015 (**HSWA**) (materials and structures).

C. Additional Licence Classes for Others in the Building Sector

The Discussion Paper also refers to changes to the licence classes to address supervision and site management issues.

The NZIA believes that all participants in the procurement of buildings should be subject to a regulatory and licensing regime designers, supervisors, administrators, contractors and consenting authorities, particularly where dealing with complex projects requiring expertise in determining compliance of design and construction.

The NZIA would recommend that those parties in the construction sector that are playing a major role in but are currently unregulated (occupational licensing), in either residential or commercial, should be brought within a rigorous occupational licensing scheme. The current proposed changes by MBIE do not fully address this concern.

On complex buildings, there should be high level competencies and skills by all parties involved in procurement, such as code compliance, design co-ordination, and construction expertise, including use of BIM. Where engineers and registered architects are not involved in site observation, contract administration, construction compliance can be jeopardized by site led variations involving e.g. substitutions of materials, changes to structural and mechanical layouts which impact fire, structural or weathertightness design integrity due to the lack of expertise of the contractor or site administrator. It is important there is additional regulation, expertise, and assurance of competencies in these areas:

Occupational Licenses for Site Supervision

MBIE proposes to change the license classes to either:

1. Carry out RBW; or
2. Carry out and supervise RBW

Supervision issues identified include: competence standards for entry to the LBP scheme are too low; LPB's are not adequately supervising unlicensed builders carrying out RBW; the LBP scheme does not have behavioural competence standards; an LBP can carry out supervision without any supervision experience or training and unlicensed builders are not being supervised adequately; inspection failure rates are higher than acceptable in both residential and commercial building.

While the NZIA agrees with this proposal, it is unlikely to improve behaviour relating to supervision if LBP technical competence is not increased or if a continuous site presence is not required (i.e. supervisors absent while work is carried out by unlicensed builders).

Design Licenses should not have a “supervision” component. Design LPBs, including registered architects, do not “supervise” construction, nor is this normally covered by PI insurance.

Design LPBs observe construction at intervals based on what has been agreed with the client. This is generally determined by what the client is prepared to pay and is usually based on site visits once a week or fortnight but can be more or less and even no site observation. There is currently no obligation on the client to ensure the building work is observed by the Design LBP even though there is an expectation by the BCA that this will be done. This can put the Design LBP in a difficult predicament, particularly when required to certify work or issue a Producer Statement as a condition of the Code Compliance Certificate when they haven't been engaged (or paid) to provide the level of service necessary to do this.

Building Consent Authority (BCA) Competency

The NZIA believes that it would also be beneficial to the procurement process if BCAs were also subject to a regulated occupational licensing scheme, to ensure competencies in reviewing consent applications and inspections for code compliance, and to reduce process risk to BCAs.

The Department of Building and Housing published a non-mandatory *National Building Consent Authority Competency Assessment System* in 2010¹, as guidance to help BCAs meet the Building (Accreditation of Building Consent Authorities) Regulations 2006, specifically regulations 9,10 and 11. This set down a national BCA competency assessment system as a benchmark for good industry practice by BCAs, with objectives including “encouraging national standardisation, facilitating the greater use of shared resources and expertise regionally and nationally; improving national consistency with a national basis for measuring competency of building officials; improving risk management of BCAs; improving alignment with other national programmes such as the Building Practitioner Scheme; improving the competency of building officials”.

There are six recommended competency levels recommended for building officials i.e. residential 1-3 and commercial 1-3., rather than the current three levels of the LBP scheme which may be relevant to any restructuring of the LBP licencing levels.

Project Management

Project Managers have a prominent role in managing projects, both in procuring design and administering construction sites. They are currently unregulated (no occupational licensing), have no professional body or code of ethics (specific to the building and construction industry), nor any required training or experience prerequisites, nor any disciplinary procedures. Some project managers may have registrations as registered architects, engineers or LBPs, so are otherwise regulated but this is not recognised or quantified specifically by any regulatory body.

The NZIA believe regulation (occupational licensing) of the project management profession would facilitate the goals of the Construction Sector Accord.

D. Specialist Licences

Engineers and Registered Architects

MBIE proposes to create a ‘certified engineer’ in respect of life safety critical work.

Like, Engineering New Zealand, the NZIA does not support the introduction of certification (a general quality mark) as it duplicates the occupational licensing requirements and adds additional complexity and cost into the system.

As earlier discussed, the collaboration and coordination between engineers and registered architects is integral to projects and as such, any changes to competence requirements and/or occupational licensing should address both professions.

Registered architects are involved in building projects where there are the same risks to public safety resulting from substandard design. As described above engineers and architects have SID responsibilities under the HSWA, whether in design or materials specified.

¹ *National Building Consent Authority Competency Assessment System*, Department of Building and Housing, June 2010

As professionals, architects are already legally subject to a higher duty of care than non-registered designers. They are regulated by their professional bodies outside any licensing scheme.

It is important that in complex projects which have implications for life safety that registered architects have the right skills, knowledge, competence and behaviour in order to undertake this type of work. If the reforms included a licencing requirement in relation to architects for life safety work then the current complaints and disciplinary process would still be fit for purpose as that would continue to be managed by NZRAB.

The NZIA would support the recognition of any specialist licences for registered architects and with government support, could facilitate professional development and training for any additional skills/competence.



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



Building system legislative reform

Submission form

A little bit about you

Your contact details

Name: *Teena Hale Pennington, Chief Executive*

Company: *New Zealand Institute of Architects Incorporated (NZIA)*

Email address: thalepennington@nzia.co.nz

- I would like to be anonymous in MBIE's published consultation results.

Yes No

- Are you representing others?

No, just my self
 Yes, I represent a company or an organisation

Company/Organisation title: *New Zealand Institute of Architects (NZIA)*

- The best way to describe your role is:

<input checked="" type="checkbox"/> Architect	<input type="checkbox"/> Builder	<input type="checkbox"/> Building Control Officer
<input type="checkbox"/> Building owner	<input type="checkbox"/> Designer	<input type="checkbox"/> Developer
<input type="checkbox"/> Electrician	<input type="checkbox"/> Engineer – Fire	<input type="checkbox"/> Engineer – Geotechnical
<input type="checkbox"/> Engineer – Structural	<input type="checkbox"/> Engineer – other	<input type="checkbox"/> Homeowner
<input type="checkbox"/> Manufacturer/supplier/off-site manufacturer		
<input type="checkbox"/> Plumber/gasfitter/drainlayer		
<input type="checkbox"/> Other (please specify) _____		

Part 2: Building products and methods

MBIE wants stakeholders' feedback on seven proposed changes:

1.	Widen the purpose of the Building Act to include the regulation of building products and methods.
2.	Provide clear definitions for 'building product' and 'building method'.
3.	Require product manufacturers and suppliers to supply information about their building products. Set minimum standards for that information. This would not apply to building methods.
4	Clarify responsibilities of manufacturers, suppliers, designers and builders for building products and building methods.
5.	Give MBIE the power to compel information to support an investigation into a building product or method.
6.	Strengthen the framework for product certification for building products and methods.
7.	Enable a regulatory framework for modern methods of construction, including off-site manufacture.

Proposal 1 -Widen the purpose of the Building Act to include the regulation of building products and building methods.

2.1	Do you agree with expanding the purpose of the Building Act to include the regulation of building products and methods and their use?
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Please tell us why or why not.	
NZIA agrees with the proposal to widen the purpose of the Building Act to include the regulation of building products and methods. Registered architects preparing plans and specifications for building work, often find the level of product information made available by manufacturers and suppliers is inadequate to enable an informed decision as to code compliance, let alone any higher performance that might be desired. Technical information including important 'health and safety in design' information is often limited unavailable or hidden within product marketing.	
Refer to NZIA Cover letter [2.1]	

Proposal 2 - Clearly define 'building product' and 'building method'.

Include the following definitions in the Building Act:

- A 'building product' is any component or system that could be reasonably expected to be incorporated into building work. A system is a set of at least two components supplied and intended to be used together to be incorporated into building work.
- A 'building method' is a specific way of using a product or system in building work.

2.2	<p>Do you agree with the proposed definition of ‘building product’?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Please tell us why or provide your suggested definition.</p> <p>NZIA understands that under the proposed ‘modern methods of construction’ (MMC) certification scheme, the certified end product (e.g. bathroom pod) would be akin to a building product. In the context of clarifying roles and responsibilities under Proposal 4 of Part 2, it should be made clear that in specifying the use of such a product, the designer of the building work takes no responsibility for the design and manufacture of that product and can rely on the certification as a defence to any claim in the event that the product subsequently fails.</p> <p>Refer to NZIA Cover letter [2.3]</p>
2.3	<p>Do you agree with the proposed definition of ‘building method’?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Please tell us why or provide your suggested definition.</p> <p>In the context of clarifying roles and responsibilities for building products and building methods, we note that section 20 of the Building Act currently refers to both “building methods” and “methods of construction”. The distinction is not always immediately apparent and some further consideration may need to be given to the implications of defining “building methods” as “a specific way of using a product or system in building work” in the context of use of a method of construction such as MMC.</p> <p>Refer to NZIA Cover letter [2.4]</p>
2.4	<p>Do these definitions provide sufficient scope to account for new and emerging technologies?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Please tell us why or what is not covered.</p> <p>In relation to the definition of “building products” further consideration should be given to clarifying whether this includes computer software as per the Contract and Commercial Law Act, Part 3 and Consumer Guarantees Act definitions of “goods”.</p> <p>Refer to NZIA Cover letter [2.2]</p>

Proposal 3 - Set minimum standards for information about building products and require manufacturers and suppliers to supply that information.

Product manufacturers and suppliers (including importers) would need to provide publicly accessible information about building products.

Set minimum information requirements for building products (through regulations).

2.5	<p>Do you support the proposal to require manufacturers and suppliers to supply information about building products?</p>
	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Please tell us why.</p>	
<p>NZIA agrees that the proposed minimum information requirements for building products would benefit the wider industry value chain. Some of the direct benefits would be:</p>	
<ul style="list-style-type: none"> (a) an improved quality and consistency of information available to industry (i.e. architects, building consent authorities); (b) supports and assists the preparation of quality documentation and specifications for projects; (c) a clearer accountability on suppliers and manufacturers for the technical claims, performance attributes and assurances offered; and (d) an improved level of transparency of product information to the market (i.e. professionals, insurers and Clients). 	
<p>Refer to NZIA Cover letter [2.5]</p>	
2.6	<p>(For designers, builders and building consent authorities) Would the proposed minimum information requirements for building products help you make good decisions about products?</p>
	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>Please tell us why or what's missing.</p>	
<p>While the proposed minimum information requirements are a good start, the following information should be included to help Registered Architects decide whether a building product will result in building work that complies with the building code.</p>	
<ul style="list-style-type: none"> (a) Health and Safety in Design - There will be some overlap between the proposed building product information under the Building Act and the information requirements of PCBUs under the Health and Safety at Work Act 2015 (HSWA) in relation to structures at workplaces and 'designers' as upstream PCBUs and the associated duties associated with health and safety by design. 	
<p>A structure as defined under that Act includes components and parts of structures. From a design perspective, the building product information supplied by manufacturers and suppliers should enable designers to comply with the information requirements of the HSWA and the additional duties for designers as upstream PCBUs. NZIA considers that it would be highly desirable to work with WorkSafe in further defining these health and safety in design information requirements.</p>	
<ul style="list-style-type: none"> (b) Scope and limitations on use - the minimum standards should include information on the purpose and use of the product including limitations on use and performance. Detailed technical information needs to be provided, including clear references to the relevant building code clauses and standards. 	

- (c) Testing and other evidence sources - need to be provided to support product performance and technical parameters e.g. results of testing and source(s) of testing.
- (d) Detailed technical information needs to be provided around the product's relationship with fixings and other systems (including any exclusions, geographic limits and/or system incompatibilities) and any bans or alerts issued, in New Zealand or overseas.
- (e) Installation and maintenance – requirements should be clearly outlined, including any exemptions/exclusions.
- (f) Durability periods - The information should specify durability periods and be backed by a consistent guarantee or warranty with a clear claims process.
- (g) Third party approvals - Information should be provided on third party approvals or certifications e.g. BRANZ or MBIE approved accreditation bodies.

Refer to NZIA Cover letter [2.6]

2.7 (For designers, builders and building consent authorities) Do you need any other information to help you decide whether a building product will result in building work that complies with the building code?

Yes No

Please tell us why or what other information can help you decide.

NZIA notes that MBIE considered but did not recommend a national register or database of building products. NZIA considers that for the regulatory proposals to work as proposed, there needs to be an immediate commitment and investment in an industry owned repository of information/library (with a “locked” archival capacity). Product information needs to be current (a HSWA requirement) and there needs to be version control so that product information available at the date the design services were provided forms the base for accountabilities. Such a system could ultimately be integrated with online consenting, which would provide efficient lodgement, review and system assurances.

Refer to NZIA Cover letter [2.7]

There is also a need for a system for flagging products that have been subject to warnings or alerts in other countries.

Refer to NZIA Cover letter [2.8]

2.8 (For manufacturers and suppliers) How closely do the proposed minimum information requirements reflect what you already provide?

Much less than what is already provided	Similar to what is already provided	Much more than what is already provided
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> I don't know		

2.9	<p>(For manufacturers and suppliers) Would there be a financial impact on your business to provide the proposed minimum product information for your products?</p> <p>Strong negative impact Negative impact No impact Positive impact Strong positive impact</p> <p><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p>				
2.10	<p>(For manufacturers and suppliers) Please tell us your estimated cost increase in NZD and include any relevant information on how it was calculated (eg the number of products you produce or supply).</p> <p><i>(please leave your comments here)</i></p>				

Proposal 4 - Clarify the responsibilities of manufacturers, suppliers, designers and builders for building products and building methods.

- Create an explicit responsibility on manufacturers and suppliers to ensure that a building product is fit for its intended purpose.
- Clarify that builders cannot use a different building product or building method to the product or method specified in the building consent without an appropriate variation to the consent.
- Clarify the responsibilities of builders and designers to ensure that the building products and methods specified or used will result in building work that complies with the code.

2.11	<p>Do you support the proposals to clarify roles and responsibilities for manufacturers, suppliers, designers and builders?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Please tell us why.</p> <p>Where a Registered architect is not engaged in relation to a substitution, it should be made clear to all parties that the party(ies) who agrees/executes the product system or product substitution(s) are responsible for any adverse effects of that substitution and the ensuing liability. This aligns with the Industry Accord principle of a fairer risk allocation.</p> <p>Refer to NZIA Cover letter [1.12]</p>				
2.12	<p>Is the current threshold and process for variations to consent appropriate for all circumstances?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Please tell us why.</p> <p>As a general observation, NZIA considers that the Discussion Paper does not demonstrate an appreciation of the fact that an architect's involvement in a project will be limited to the scope of services under its professional engagement agreement. Accordingly, the architect's liability needs to be tied to that scope of services. For example an architect's</p>				

engagement does not always extend to the construction phase of a project which is where product substitutions are commonly proposed and design changes occur. That is why “as built” plans often vary markedly from the detailed design and consented design.

In this context, the Discussion Paper indicates that it is intended that builders would discuss any potential product or method substitution with the registered architect. In practice, that will depend on whether the architect’ is still engaged at that stage of the project, (it may be years after the architect’s brief ended) and the reforms need to acknowledge and reflect this.

In relation to the threshold for minor vs major variations, it is important that consideration is given to the fact that the substitution may impact on wider systems and the building consent authority (BCA) and builder may not have the appropriate expertise or knowledge to assess these issues.

Where an architect is not engaged in relation to a substitution, it should be made clear to all parties that the party(ies) who agrees/executes the product system or product substitution(s) are responsible for any adverse effects of that substitution and the ensuing liability. This aligns with the Industry Accord principle of a fairer risk allocation.

Refer to NZIA Cover letter [2.9]-[2.12]

Proposal 5 - Give MBIE the power to compel information to support an investigation.

2.13 Do you support the proposal to give MBIE the power to compel information to support investigations?

Yes No

Please tell us why.

It is unclear how this MBIE power would impact on professional indemnity cover and potential claims. Would there be exemptions from liability if the MBIE information, meant a professional could not exercise reasonable, skill and care?

2.14 Would MBIE’s ability to compel information about building products or methods and share this with other regulators have unintended consequences? If so, what might these unintended consequences be?

Yes No

Please tell us why.

Potential impacts of the proposed changes

2.15 Do you think the impact of the proposed changes to the regulation of building products and building methods (proposals 1-5) would be positive or negative? What do you think the impact might be?

Strong negative impact Negative impact No impact Positive impact Strong positive impact

Please tell us what the impact might be.

NZIA notes that the Discussion Paper indicates that the proposals are not intended to create any new liabilities or add to existing common law liabilities.

Refer to NZIA Cover letter [2.13]

However, NZIA believes that the inclusion of an additional designer responsibility at section 14D of the Building Act 2004 relating to the responsibilities of designers to “ensure that the building products and methods specified result in building work that complies with the code”, does have the potential to increase the risks to a designer in specifying a product that subsequently fails.

Refer to NZIA Cover letter [2.14]

A designer’s obligation will usually only extend to using reasonable skill and care in the provision of services and professional indemnity arrangements are made on that basis. NZIA has a concern that the proposed change to s14D may open the door to a claim against an architect based on an implied fitness for purpose obligation. This could result in uninsurable losses and is likely to lead to designers being more risk adverse which would, in turn, limit innovation in the industry.

Refer to NZIA Cover letter [2.15]

Just as the Discussion Paper recognises that manufacturers and suppliers should not be held responsible for a product if it fails solely because it was used in a way that is outside its intended use or installed incorrectly, NZIA considers that it is important that a designer should not be held responsible for code non-compliance to the extent that the non-compliance is attributable to reliance on incorrect or incomplete product information or certification (whether wilful or careless).

Refer to NZIA Cover letter [2.16]

2.16 How do you think the proposed changes to the regulation of building products and building methods would change how you and your business/organisation operates?

Strong negative impact Negative impact No impact Positive impact Strong positive impact

Please tell us why.

As a general observation, NZIA considers that the Discussion Paper does not demonstrate an appreciation of the fact that an architect’s involvement in a project will be limited to the scope of services under its professional engagement agreement. Accordingly, the architect’s liability needs to be tied to that scope of services. For example an architect’s engagement does not always extend to the construction phase of a project which is where product substitutions are commonly proposed and design changes occur. That is why “as built” plans often vary markedly from the detailed design and consented design.

Refer to NZIA Cover letter [2.9]

Just as the Discussion Paper recognises that manufacturers and suppliers should not be held responsible for a product if it fails solely because it was used in a way that is outside its intended use or installed incorrectly, NZIA considers that it is important that a designer should not be held responsible for code non-compliance to the extent that the non-compliance is attributable to reliance on incorrect or incomplete product information or certification (whether wilful or careless).

Refer to NZIA Cover letter [2.16]

MBIE proposes a two-year transition period for product information, six months for other proposed changes (proposal 1, 2, 4 and 5).

2.17 How long do you think the transition period for product information needs to be to ensure manufacturers and suppliers are prepared for the changes?

Less than two years Two years More than two years

Please tell us why.

Much of information identified is fundamental to improving the decision making and quality across the industry. It should be available now but varies across manufacturers. A longer timeframe will continue the transfer of risk within the industry.

2.18 How long do you think the transition period for the changes to responsibilities needs to be so that people are prepared for the changes?

Six months More than six months

Please tell us why.

2.19 If the clarified roles and responsibilities came into force before the minimum requirements for product information, what would be the impact?

Proposal 6 - Strengthen MBIE's role as the product certification owner and regulator.

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 schemes.

Provide MBIE with the powers needed to administer the registers of product certification bodies and product certificates.

2.20

(For product manufacturers and suppliers) Would the changes proposed to the framework for product certification make product certification a more attractive compliance pathway for your products?

Yes

No

Please tell us why or what changes to product certification you think are necessary.

2.21

(For designers) How would the proposed settings to the framework for product certification impact your product specification in building designs?

No change

I'd specify fewer certified products

I'd specify more certified products

Please tell us why.

The information requirements will not significantly change the designers role, given the ongoing issues of risk and liability (joint and several liability).

2.22

(For building consent authorities) Would the changes to the product certification scheme's settings increase your confidence that a product or method with a product certificate will perform as intended?

Yes

No

Please tell us why.

Proposal 7 - Enable a regulatory framework for modern methods of construction (MMC), including off-site manufacture.

Amend the Building Act to enable a regulatory framework that would future-proof the building regulatory system for MMC. Features of this framework include:

- enabling a manufacturer certification scheme for repeatable manufacture processes used to produce building work
- clarifying what roles and responsibilities for MMC will be when the new framework is in place
- minimising duplication of effort by: not requiring two consents for the same building work, and considering whether to require BCAs to accept each other's consents and Code Compliance Certificates.

2.23

Are these the correct features for a future-proofed regulatory framework for MMC?

Yes

No

Please tell us why.

2.24 What would be the impact of such a regulatory framework for MMC?

Strong negative impact Negative impact No impact Positive impact Strong positive impact

Please tell us what the impact might be.

2.25 **(For manufacturers of MMC, including off-site manufacture)** How would the proposed framework impact your business?

Strong negative impact Negative impact No impact Positive impact Strong positive impact

Please tell us what the impact might be.

2.26 **(For manufacturers of MMC, including off-site manufacture)** Would you use the manufacturer certification scheme?

Yes No

How would it need to be designed to work for you?

2.27 **(For building consent authorities)** What would be the impact of a requirement for BCAs to accept one another's consents and code compliance certificates?

Strong negative impact Negative impact No impact Positive impact Strong positive impact

Please tell us what the impact might be.

Final thoughts

2.28 If you have any other comments on the proposals for building products and methods, please tell us.

The NZIA would encourage MBIE not to create new terminology – MMC. Offsite manufacturing as a term is understood by industry and internationally. We would encourage officials to engage with PrefabNZ on the issue of definitions and terminology.

Part 3.1: Occupational regulation of the Licensed Building Practitioner (LBP) scheme

MBIE wants stakeholders' feedback on two proposals:

1.	Broaden the definition of restricted building work (RBW) to include more complex non-residential building work.
2.	Raise the competence standard for LBPs to enter and remain in the LBP scheme. This includes proposals to: <ul style="list-style-type: none">• Introduce a tiered licensing system for LBPs to establish a progression pathway, including a specific licence for supervision.• Simplify the licence class categories.• Introduce behavioural competence requirements for LBPs.

Proposal 1 - Broaden the definition of restricted building work (RBW) to include more complex non-residential building work.

3.1.1	How effective do you think expanding the scope of RBW would be in managing risks to public safety in the building sector?		
	Not effective	Somewhat effective	Very effective
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.1.2	Do you agree with the proposed threshold for the definition of RBW?		
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
	Please tell us why.		
	Refer to NZIA Cover letter [Part 3.1-3.4] & Attachment A		
	NZIA supports the proposal to broaden the definition of restricted building work (RBW) to include more complex non-residential work. NZIA also supports the proposal to provide for higher competence requirements for LBPs including tiered licensing and behavioural competence requirements.		
	This is consistent with the Construction Sector Accord goal of raising capability and restoring confidence in the building sector.		
	NZIA believes that it is imperative that there is a link between the complexity of the building work being undertaken and who is deemed competent to undertake that work. In this context we note that the design complexity and importance level of the building under the Building Code do not always amount to the same thing.		
	It is also important that there is consistency of competency requirements for all LBPs practitioners undertaking design RBW including equivalent competency and ongoing education and regulation requirements.		
3.1.3	(For builders) What impacts do you think the proposals for RBW would have on you and your business (including type of work, recruitment, training and costs)?		

Strong negative impact Negative impact No impact Positive impact Strong positive impact

Please tell us what the impact might be.

3.1.4 What impacts do you think the proposals for RBW would have on homeowners, building owners and building occupants?

Strong negative impact Negative impact No impact Positive impact Strong positive impact

Please tell us what the impact might be.

The NZIA believes that this will be able to strength public confidence. Such an approach would offer an assurance on competence for the work to be undertaken, create a fairer allocation of risk and liability and contribute positively to Client/public trust and confidence.

The NZIA believes the proposed licensing does not go far enough. The licences should extend to all parties including project managers and BCAs. Further the NZIA see risks to the public if architects' registration and LBPs licences are not aligned as there will remain inconsistency and also confusion about the standards that the public can expect. Competencies widely differ despite architects and LBPs being entitled to carry out the same work. In addition, any additional compliance costs arising from the current proposed changes and the further proposals from NZIA are outweighed by the benefits to the public, professions and the sector as a whole.

Refer to NZIA Cover letter [3.6] & Attachment A

3.1.5 How do you think the proposed changes to the LBP scheme would affect the behaviour of LBPs?

The NZIA does not believe it is logical to expand the definition of RBW without addressing some of the issues arising in respect of design licensing, and additional categories of licences for other parties to procurement such as BCAs and project managers. There is a lack of consistency in required competences and regulation for LBPs. This needs to be addressed across the LBP licensing regime for improved performance of LBPs.

3.1.6 What impact do you think expanding the scope of RBW would have on the construction sector skill shortage

Strong negative impact Negative impact No impact Positive impact Strong positive impact

Please tell us what the impact might be.

Proposal 2 - Higher competence requirements to increase confidence in the LBP scheme.

3.1.7	How effective do you think raising the competence standards for the LBP scheme would be in increasing confidence in the LBP scheme?				
	Not effective	Somewhat effective	Very effective		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Please tell us why.				
	<p>Refer to NZIA Cover letter [3.5-3.11] & Attachment A</p> <p>The competency requirements must be appropriate to the level of RBW being undertaken. The licensing prescribed standard of competence should be consistent with the standards set by the equivalent regulatory body; for example only registered architects engaged to supervision and peer review procedures undertaking commercial, high rise, complex buildings.</p>				
	<p>Given the complexity of the building types being considered for RBW, the NZIA believes that other professions in the building sector (e.g. project managers and building consent authorities) should also be appropriately licenced as occupations, including a regular re-licensing/certification process. These roles have the capacity to influence project decisions on design, design coordination and overall building performance. Such an approach would offer an assurance on competence for the work to be undertaken, create a fairer allocation of risk and liability and contribute positively to Client/public trust and confidence. The NZIA understands that the New Zealand Registered Architects Board (NZRAB) as regulator of 'registered architects' in their submission, further detail improvements to the occupational licensing of registered architects and LBP – Design.</p>				
	<p>NZIA members are required by its rules (Rule 5.3) to:</p> <ul style="list-style-type: none"> • have, maintain, and extend competence in areas of practice or claimed expertise • undertake CPD • accept peer review and guidance where appropriate. 				
	<p>Most NZIA members are registered architects or on a path to registration, and the NZIA disciplinary procedures overlap (appropriately) with the Registered Architects Act 2005, the Registered Architect Rules 2006, and the disciplinary processes there. Practising only within current competence is a requirement of Rule 58 of the Registered Architects Rules, and can also be a grounds for complaint under Rule 6.1(d) of the NZIA Rules.</p>				
	<p>There is one aspect of the NZIA Rules that deserves consideration, and that NZIA believes should be mandatory for all professional and trade organisations whose members publicise their membership as part of their brand. It is that the NZIA Rules are explicitly stated to be a contract between the members and the NZIA.</p>				
	<p>Resignation as a member requires Council approval, and does not relieve the member from any existing liability or excuse the member from disciplinary actions; Rule 5.8(b) - explicitly, Rule 6.7 provides that a member who has a complaint against them cannot resign until the complaint has been resolved.</p>				

	NZIA believes this prevents a problem that has been faced by other professions in the industry, and significantly undermines public confidence if not comprehensively addressed.
3.1.8	What impact would changing the competence standards for the LBP scheme have on builders, building companies, building sector associations and training organisations?
3.1.9	<p>(For builders) Would introducing tiered licence classes make you more likely to apply to become an LBP?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Please tell us why.</p> <hr/>
3.1.10	<p>(For builders) If you're already an LBP, would you be likely to apply to become licensed under a new supervision licence class?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Please tell us why.</p> <hr/>
3.1.11	<p>(For builders) Do you still see potential value in having a site licence for residential and commercial building projects?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Please tell us why.</p> <hr/>
3.1.11a	How can a site license contribute to the coordination of building work?
3.1.12	(For builders) Who do you think should be responsible for coordinating building work on a site and what skills are required for this type of role?

3.1.13

Do you think that the introduction of a fit and proper person test and a code of ethics for LBPs would help to ensure that building professionals are held accountable and improve the public's confidence in the LBP scheme?

	Yes	No
Fit and proper person test	<input type="checkbox"/>	<input type="checkbox"/>
Code of the ethics for LBPs	<input type="checkbox"/>	<input type="checkbox"/>

Please tell us why.

In general the NZIA agrees with the fit and proper person test and code of ethics. The NZIA would expect this to align with the codes of ethics currently required by the engineer and architectural professional bodies. As for Engineering New Zealand and NZRAB, any code of ethics requires regulation and disciplinary procedures by the licensing authority.

MBIE proposes a transition period to implement the changes.

- reassess every existing LBP under the new competency standards after two years (November 2022); reassessment would be done when each licence comes up for renewal.
- assess new LBP applicants under the new competency standards; assessment would start in November 2022.

3.1.14

Do you agree the proposed timeframe for the changes to the LBP scheme is sufficient?

Yes

No, it's too long

No, it's too short

Please tell us why.

The time would be better spent by MBIE on improving occupational regulation across the entire industry, not just selected professions.

3.1.15

What should we consider in setting the transition timeframe?

Final thoughts

3.1.16

If you have any other comments on the proposals for LBPs, please tell us?

The Discussion Paper is disappointing in its assessment of the available options to improve system wide competence across the various professions involved in the

industry. The selective changes proposed will continue confusion for the consumer/Client and create unnecessary differences in occupational licensing.

Part 3.2 Occupational regulation of Engineers

MBIE wants stakeholders' feedback on the three proposals:

1	Establish a new voluntary certification scheme that provides assurance of an engineer's professionalism and general competency and phase out Chartered Professional Engineer (CPEng).
2	Restrict who can carry out or supervise safety-critical structural, geotechnical and fire-safety engineering work within the building sector. This would cover all medium to high complexity work and be triggered by factors such as building size, use and location.
3	Establish a new licensing scheme to regulate who can carry out or supervise engineering work that has been restricted.

Proposal 1 - Establish a new voluntary certification scheme that provides assurance of an engineer's professionalism and general competence and phase out CPEng.

3.2.1	Do you agree that there is a need for a statutory mark for engineers of professionalism and general competence to solve complex engineering problems?
	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Please tell us why.
<hr/>	
3.2.2	How well do you think CPEng currently provides this assurance? What do you think needs to change?
<hr/>	
3.2.3	Do you agree that a new title is needed for engineers that have been certified? If so, do you have a view on what that title should be?
	<input type="checkbox"/> Certified engineer <input type="checkbox"/> Chartered engineer <input type="checkbox"/> Other (leave your suggestion below)
	Please tell us what the title should be if you chose 'other'.
<hr/>	
3.2.4	For engineering work on buildings that does not require specialised skills, do you think certification would provide sufficient assurance of general competence and reduce the risks of substandard work?
	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Please tell us why.

Proposal 2 - Restrict who can carry out or supervise safety-critical structural, geotechnical and fire safety engineering work within the building sector. This would cover all medium-to-high complexity work and be triggered by factors such as building size, use and location.

3.2. 5	<p>Do you agree that life safety should be the priority focus determining what engineering work is restricted?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Please tell us why.</p> <p>The limitation of safety-critical work to engineering only is inconsistent with industry reality. The Canterbury Royal Commission acknowledged the importance of the collaboration and design coordination role between architects and engineers. Given the influence of ‘design’ on buildings, safety-critical work should be aligned to all design professionals, that is, registered architects and engineers. Refer to Attachment A for further information.</p>
3.2. 6	<p>What combination of the following factors should be used to determine what engineering work is restricted: building size, building use, ground conditions, other?</p> <p><input type="checkbox"/> Building size <input type="checkbox"/> Building use <input type="checkbox"/> Ground conditions <input type="checkbox"/> Other (please specify below)</p> <p>Please specify what might be included and why.</p> <p>As identified above the factors shouldn’t be limited to engineering only.</p>

Proposal 3 - Establish a new licensing scheme to regulate who can carry out or supervise engineering work that has been restricted.

3.2.7	<p>In your opinion, does geotechnical, structural and fire safety engineering work pose the greatest life safety risk in the building sector?</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">Yes</th> <th style="text-align: center;">No</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">Geotechnical work</td> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 5px;">Structural work</td> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 5px;">Fire safety engineering work</td> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> </tr> </tbody> </table>		Yes	No	Geotechnical work	<input type="checkbox"/>	<input type="checkbox"/>	Structural work	<input type="checkbox"/>	<input type="checkbox"/>	Fire safety engineering work	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No											
Geotechnical work	<input type="checkbox"/>	<input type="checkbox"/>											
Structural work	<input type="checkbox"/>	<input type="checkbox"/>											
Fire safety engineering work	<input type="checkbox"/>	<input type="checkbox"/>											
3.2.7a	<p>Do you think there are any other engineering specialities that pose greater life-safety risks in the building sector that are not included here?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>												

	Please tell us more.										
3.2.8	3.2.8 Do you agree that engineers should satisfy the requirements for certification before they could be assessed for licensing?										
	<input type="checkbox"/> Yes <input type="checkbox"/> No										
	Please tell us why.										
3.2.9	What impact do you think the restrictions and licensing would have on the number of engineers who can carry out or supervise engineering work on buildings that require technical competence in a specialised field?										
	<table style="width: 100%; text-align: center;"> <tr> <td>Strong negative impact</td> <td>Negative impact</td> <td>No impact</td> <td>Positive impact</td> <td>Strong positive impact</td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>	Strong negative impact	Negative impact	No impact	Positive impact	Strong positive impact	<input type="checkbox"/>				
Strong negative impact	Negative impact	No impact	Positive impact	Strong positive impact							
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>							
	Please tell us what the impact might be.										
3.2.9a	Do you feel that there are enough engineers with the necessary technical competence to meet any new demand?										
	<input type="checkbox"/> Yes <input type="checkbox"/> No										
	Please tell us why.										
3.2.10	3.2.10 What impact do you think the restrictions and licensing would have on the cost of engaging an engineer?										
	<table style="width: 100%; text-align: center;"> <tr> <td>Strong negative impact</td> <td>Negative impact</td> <td>No impact</td> <td>Positive impact</td> <td>Strong positive impact</td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>	Strong negative impact	Negative impact	No impact	Positive impact	Strong positive impact	<input type="checkbox"/>				
Strong negative impact	Negative impact	No impact	Positive impact	Strong positive impact							
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>							
	Please tell us what the impact might be.										
3.2.11	How effective do you think the proposed restrictions and licensing would be in reducing the risks to public safety from substandard engineering work?										
	<table style="width: 100%; text-align: center;"> <tr> <td>Not effective</td> <td>Somewhat effective</td> <td>Very effective</td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>	Not effective	Somewhat effective	Very effective	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
Not effective	Somewhat effective	Very effective									
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>									
	Please tell us why.										

3.2.12	If you engage a licensed engineer, would you feel confident that the engineer has the necessary technical competence to do the work?
	<input type="checkbox"/> Yes <input type="checkbox"/> No Please tell us why. <hr/>
3.2.13	Do you agree with the proposed grounds for discipline of licensed and certified engineers?
	<input type="checkbox"/> Yes <input type="checkbox"/> No Please tell us why. <hr/>
3.2.14	Is there anything else that you think should be grounds for discipline? Are there any proposed grounds for discipline that you think should be modified or removed?

It will take time to establish a new regime and transition to it.

3.2.15	What things should we consider when we develop transitional arrangements? What supports would you need to help you during this transition?
3.2.16	(For engineers who currently do not have CPEng or higher) Would you be likely to apply for a licence (fire safety, geotechnical, structural)?
	<input type="checkbox"/> Yes <input type="checkbox"/> No Please tell us why. <hr/>

Final thoughts

3.2.17	If you have any other comments on the proposals for engineers, please tell us.
	The occupational regulation changes should focus on the design professionals, registered architects and engineers.

Part 3.3 Occupational regulation of Plumbers, Gasfitters and Drainlayers

MBIE wants stakeholders' feedback on the three proposals:

1	Repeal specific sanitary plumbing exemptions for householders in specified areas and for rural districts.
2	Repeal exemptions for restricted sanitary plumbing, gasfitting and drainlaying work under supervision.

Proposal 1 - Repeal the current sanitary plumbing exemptions for householders in specified areas and for rural districts, including the current Gazette notices for districts made under the Plumbers, Gasfitters and Drainlayers Act 1976.

3.3.1	Have you encountered instances of hazards or health issues from sanitary plumbing work completed by unlicensed people?				
	<input type="checkbox"/> Yes		<input type="checkbox"/> No		
	Please tell us more or provide an example.				
3.3.2	How often do you find work undertaken under a householders or a rural areas exemption that does not comply with the requirements of relevant codes and standards?				
	Never	Occasionally	Regularly	Often	Always
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Please tell us why.				
3.3.3	Do you think that a person should be qualified to do sanitary plumbing work on your property?				
	<input type="checkbox"/> Yes		<input type="checkbox"/> No		
	Please tell us why.				

Proposal 2 - Repeal the exemptions for restricted sanitary plumbing, gasfitting and drainlaying work under supervision.

3.3.4	How often do you find substandard work carried out under a supervision exemption?
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	Never	Occasionally	Regularly	Often	Always
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Please tell us more.				
3.3.5	What benefits (if any) do you see from regulating people who are currently exempted if they work under supervision?				
3.3.6	What potential issues (if any) do you see from removing the exemptions for doing restricted work under supervision?				
3.3.7	What impacts (such as business impacts) would removing the supervision exemptions have on how your business is managed?				
3.3.8	Do you support allowing people currently working under supervision exemptions to continue working as a regulated person under a new registration and licence?				
	<input type="checkbox"/> Yes		<input type="checkbox"/> No		
	Please tell us why.				
3.3.9	Is anything else required to support the transition of exempted tradespeople to a new registration and licence?				
	<input type="checkbox"/> Yes		<input type="checkbox"/> No		
	Please tell us more.				

Final thoughts

- 3.3.10 If you have any other comments on the proposals for plumbers, drainlayers and gasfitters, please tell us.

Part 4 Risk and liability

MBIE wants stakeholders' feedback on the three proposals:

1	Require guarantee and insurance products for residential new builds and significant alterations, and allow homeowners to actively opt out.
2	Leave the liability settings for building consent authorities unchanged.

Proposal 1 - Require a guarantee and insurance product to be in place for all residential new builds and significant alterations. Homeowners would have the choice to actively opt out of having a guarantee and insurance product.

4.1	<p>Do you support the proposal to require guarantee and insurance products for residential new builds and significant alterations?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Please tell us why.</p> <p>NZIA supports the proposal in principle but is not sure that this is the best way to restore confidence in the sector or an appropriate solution to issues of industry quality, performance or education.</p> <p>Refer to NZIA Cover letter [4.1]</p> <p>It offers an “ambulance at the bottom of the cliff” approach which will not restore homeowners’ confidence in the building sector. [Refer to Construction Sector Accord – mopping up the problem.] NZIA sees greater benefit and merit in an approach that focuses on ensuring the competency of builders.</p> <p>Refer to NZIA Cover letter [4.2]</p>
4.2	<p>Do you think homeowners should be able to actively opt out of having a guarantee and insurance product?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Please tell us why.</p> <hr/>
4.3	<p>Should there be conditions on when homeowners are able to opt out? What should these conditions be?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Please tell us why and what the conditions should be.</p> <hr/>

4.4	<p>What types of buildings do you think should be required to have a guarantee and insurance product? (Please tick all that should apply.)</p> <p><input type="checkbox"/> Standalone residential dwellings</p> <p><input type="checkbox"/> Medium density housing (up to six storeys)</p> <p><input type="checkbox"/> High density housing (over six storeys)</p> <p><input type="checkbox"/> Mixed-used developments (i.e. where a part of the building is used as commercial premises, for example shops or offices.)</p> <p>Please tell us why.</p> <hr/>
4.5	<p>What threshold do you think the requirement for a guarantee and insurance product should be set at?</p> <p><input type="checkbox"/> Residential building work over \$30,000</p> <p><input type="checkbox"/> Residential building work over \$100,000</p> <p><input type="checkbox"/> Residential building work that would impact the structure or weathertightness of the building.</p> <p><input type="checkbox"/> Other (please tell us more in the comment box below)</p> <p>Please tell us why or any other comments.</p> <hr/>
4.6	<p>Do you have any views on the minimum standards that should be set for a guarantee and insurance product?</p> <p>For example: the type of product, the types of events that are covered, the minimum level of cover, the period of cover, the nature of redress, the maximum claim value, dispute resolution processes, the ability to transfer to new owners.</p> <hr/>
4.7	<p>What financial and prudential requirements do you think should be placed on providers, to ensure there is a continuing supply of guarantee and insurance products?</p> <p>For example: reinsurance or other insurance backing, solvency, auditing requirements, security and prudential requirements.</p> <hr/>
4.8	<p>If residential new builds and significant alterations are required to have a guarantee and insurance product, what do you think the impacts will be?</p> <hr/>

4.9	<p>(For builders) How difficult will it be for you to gain eligibility to offer a guarantee and insurance product?</p> <p>Impossible Very difficult Somewhat difficult Not very difficult I already offer one</p> <p><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p>Please tell us why.</p> <hr/>				
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MBIE proposes a two-year transition period.

4.10	<p>How long do you think the transition period for guarantee and insurance products needs to be to ensure providers, builders and BCAs are prepared for the changes?</p> <p><input type="checkbox"/> Less than two years <input type="checkbox"/> Two years <input type="checkbox"/> More than two years</p> <p>Please tell us why.</p> <hr/>		
4.11	<p>Is anything else needed to support the implementation of guarantee and insurance products?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Please tell us why.</p> <hr/>		

Proposal 2 – Leave the liability settings for BCAs unchanged.

4.12	<p>If the government decides to make all the other changes in this discussion paper, do you agree that that the liability settings for BCAs will not need to be changed?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Please tell us why.</p> <p>NZIA supports the proposal to leave the liability of BCAs unchanged and does not support the approach of capping the liability of BCAs. Councils already rely on Memorandum – Certificate of (Design) Work by registered architects as part of a building consent application as a means of sharing liability for non-compliant building work.</p> <p>Refer to NZIA Cover letter [4.10]</p>		
4.12a	<p>What area of work do you think will have the biggest impact on BCA consenting behaviour?</p>		

	<p><input type="checkbox"/> Products</p> <p><input type="checkbox"/> Occupational regulation</p> <p><input type="checkbox"/> Risk and liability</p> <p><input type="checkbox"/> Building levy</p> <p><input type="checkbox"/> Offences and penalties</p> <p>Please tell us why.</p> <hr/>
4.13	<p>If the government decides to limit BCA liability, do you support the proposal to place a cap on BCA liability?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Please tell us why.</p> <p>NZIA has previously made submissions advocating for the concept of proportionate liability in relation to residential properties centred around a companion mandatory home-warranty scheme so that any uncollectable contribution from absent or insolvent concurrent wrongdoers was available to plaintiffs. NZIA continues to believe that this is a preferable approach.</p> <p>Refer to NZIA Cover letter [4.11]</p>
4.14	<p>If there is a cap on BCA liability, do you agree that the cap should be set at 20 per cent?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Please tell us why.</p> <p>NZIA does not believe there should be a cap on the liability of the BCAs.</p> <p>Refer to NZIA Cover letter [4.10]</p>
4.15	<p>If there is a cap on BCA liability, do you think BCAs should have to pay more than 20 per cent if they have contributed to more than 20 per cent of the losses?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Please tell us why.</p> <hr/>
4.16	<p>What do you think would be the impacts of placing a cap on BCA liability?</p>

Final thoughts

4.17

If you have any other comments on the proposals for risk and liability, please tell us.

NZIA has previously made submissions advocating for the concept of proportionate liability in relation to residential properties centred around a companion mandatory home-warranty scheme so that any uncollectable contribution from absent or insolvent concurrent wrongdoers was available to plaintiffs. NZIA continues to believe that this is a preferable approach.

NZIA considers that the Sapere report does not reflect the reality of professional negligence claims brought against architects which are settled out of court.

The NZIA is disappointed that the Discussion Paper makes no substantive proposal to change this area of the law particularly when the Construction Sector Accord has fairer risk allocation as a priority work area. It continues to be the position that professionals with the backing of professional indemnity insurance bear more than their fair share of the financial cost of claims because of joint and several liabilities.

Given the complexity of buildings, the necessary expertise to prepare designs and specifications the NZIA favours an approach whereby the consenting process is carried out via centres of consenting excellence resourced by BCA staff with appropriate qualifications, expertise and training to make these decisions. This aligns expertise, knowledge and risk of projects and will/should improve the efficiencies of the consenting system and administration.

The recent decision by Housing New Zealand Corporation to undertake on a national consenting role (self-certification) could be interpreted as a direct response to the inefficiencies and inconsistencies of current BCA processes, systems, practices and administration of the Act, Code and relevant standards.

Refer to NZIA Cover letter [4.11-4.14]

Part 5 Building levy

MBIE wants stakeholders' feedback on the three proposals:

1	Reduce the rate of the levy from \$2.01 to \$1.50 including GST (per \$1,000).
2	Standardise the threshold at \$20,444 including GST.
3	Amend the Building Act to enable MBIE's chief executive to spend the levy for purposes related to broader stewardship responsibilities in the building sector.

Proposal 1 - Reduce the rate of the building levy from \$2.01 to \$1.50.

5.1	Do you agree that the levy rate should be reduced from \$2.01 to \$1.50?				
<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Please tell us why.</p> <p>NZIA does not believe that a reduction in the building levy is the best approach and is counter to the Construction Sector Accord of investing in the industry.</p> <p>Refer to NZIA Cover letter [5.1]</p>					
5.2	(For building consent authorities) What impact, if any, would a reduced levy rate have on building consent authorities?				
<p>Strong negative impact Negative impact No impact Positive impact Strong positive impact</p> <p><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p>Please tell us what the impact might be.</p> <hr/>					
5.3	Other than reduced building consent costs, what are the other impacts from reducing the current levy rate?				
5.4	(For building consent authorities) How long would you need to implement the proposed changes to the building levy rate and threshold?				
<p><input type="checkbox"/> 0-3 months <input type="checkbox"/> 3-6 months <input type="checkbox"/> 6-12 months <input type="checkbox"/> 12 months or longer <input type="checkbox"/> other (please tell us more)</p>					

Proposal 2 - Standardise the threshold for the building levy at \$20,444 including GST (per \$1,000).

5.5

Do you have any comments on standardising the threshold at \$20,444?

Proposal 3 - Amend the Building Act's provisions to enable the chief executive to spend the levy on activities related to stewardship responsibilities in the building sector.

5.6

Do you agree that the Building Act should be amended so MBIE's chief executive may spend the levy for purposes relating to building sector stewardship?

Yes

No

Please tell us why.

Refer to NZIA Cover letter [5.2]

We propose that the levy rate and threshold changes take effect on 1 July 2020.

5.7

Do you agree with the proposed start date of 1 July 2020 for the changes to the building levy rate and threshold?

Yes

No

Please tell us why.

Final thoughts

5.8

If you have any other comments on the proposals for building levy, please tell us.

We consider that a better approach would be to spend, rather than save, the levy and use it to achieve the objectives of the proposed reforms by, for example, updating standards, investment in industry education, periodic and regular reviews of industry minimum standards. Given the Construction Sector Accord, values and priorities, the current and future balance of the levy should be available for such purposes.

Refer to NZIA Cover letter [5.2]

Part 6 Offences, penalties and public notification

MBIE wants stakeholders' feedback on four proposals:

1	Increase the maximum financial penalties for all persons.
2	Set the maximum penalty levels differently for individuals and organisations.
3	Extend the time relevant enforcement agencies have to lay a charge under the Building Act, from six months to 12 months (section 378 of the Building Act).
4	Modify the definition of 'publicly notify' in section 7 of the Building Act.

Proposal 1 - Increase the maximum financial penalties.

6.1	Are the current maximum penalty amounts in the Building Act appropriate?
	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Please tell us why. _____
6.2	Do you agree with the proposed increases to maximum penalties?
	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Please tell us why and what they should be if you disagree. _____

Proposal 2 - Set the maximum penalties differently for individuals and organisations.

6.3	Do you agree with introducing higher penalties for organisations?
	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Please tell us why. _____
6.4	What impacts on the building industry could arise from this proposal if it is implemented?
	Strong negative impact Negative impact No impact Positive impact Strong positive impact
	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
	Please tell us what the impact might be.

Proposal 3 - Extend the time parties have to lay a charge under the Building Act, from six months to 12 months (section 378 of the Building Act).

6.5

Do you think 12 months is an appropriate time period for relevant enforcement agencies to lay a charge?

Yes

No

Please tell us why or what you think is an appropriate.

Proposal 4 - Modify the definition of ‘publicly notify’ in section 7 of the Building Act to remove the requirement to publish in daily newspapers circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin. Public notification will still be required in a more modern form that is future proofed and publicly accessible.

6.6

Do you agree that public notification under the Building Act should no longer be required in newspapers?

Yes

No

Please tell us why.

6.7

Do you agree that publication on the internet and in the New Zealand Gazette is sufficient?

Yes

No

Please tell us why.

Final thoughts

6.8

If you have any other comments on the proposals for offences, penalties and public notification, please tell us.

Overall feedback

Thinking about this consultation, do you have any comments or suggestions to help us improve future consultations?

1

What worked for you?

2

What would we do better?

3

Any other comments or final thoughts?