

Terms of Reference for the Building Regulatory System Review –Phase One

Purpose

1. The purpose of Phase One of the regulatory review of the building and construction sector (the Review) is to ensure that the building regulations are fit for purpose and investigate options to exempt additional low-risk building work from the need to obtain building consent, to make requirements easier and clearer for builders and homeowners.

Background

The building sector in New Zealand

2. The building sector is a major contributor to New Zealand's economy, accounting for around 6.3 per cent of GDP and ranking as the fifth-largest industry by economic output. It is also one of the country's largest employing sectors, the third-largest by employment, directly supporting more than 300,000 people, around 10 per cent of the total workforce, across approximately 80,000 businesses nationwide¹. The sector underpins activity across housing, infrastructure, and commercial development, with significant flow-on effects for regional economies and for the businesses, services, and workers that occupy and rely on the built environment, including retail, hospitality, education, healthcare, and community services.

A complex and multi-faceted regulatory system

3. The building regulatory system is inherently complex and multi-layered. While the Building Act 2004 and the Building Code form the core legislative framework, building activity intersects with a wide range of other regulatory regimes, institutions, and policy objectives.
4. These include, but are not limited to:
 - local government planning, consenting, inspection, and enforcement functions;
 - land use and environmental regulation, including interactions with the resource management and planning system;
 - housing quality and tenancy regulation, such as the Healthy Homes Standards;
 - workplace health and safety requirements;
 - fire safety and emergency management regimes; and

¹ Ministry of Business, Innovation and Employment - Building and Construction Sector Trends Annual Report 2023. <https://www.mbie.govt.nz/assets/building-and-construction-sector-trends-annual-report-2023.pdf>

- infrastructure, resilience, and climate-related policies.
5. Responsibilities within the system are distributed across central government agencies, territorial and regional authorities, building consent authorities, product manufacturers and suppliers, building owners, and occupants. As a result, the effectiveness of the system depends not only on individual regulatory instruments, but on how well these components operate together across the building lifecycle.

Emerging pressures

6. Over recent years, reviews, stakeholder feedback, and reform initiatives have highlighted ongoing challenges in the building system, including issues relating to regulatory complexity, duplication, inconsistency of interpretation and practice, compliance costs, and barriers to innovation.
7. At the same time, the sector is experiencing significant change. Advances in construction techniques, prefabrication, materials, digital design, and building services systems are altering how buildings are designed, built, and maintained. Expectations around building performance, including energy efficiency, resilience, and safety of specified systems continue to evolve.
8. These pressures underline the importance of periodically reassessing the overall coherence and fitness for purpose of the building regulatory framework, not only within individual components, but across the system as a whole.

Work currently underway

9. The Ministry of Business, Innovation, and Employment (MBIE) is progressing reforms that will align closely with, and inform, the Building Regulatory System Review.
10. They are advancing improvements to existing systems such as changes to liability settings, work to introduce self-certification pathways for qualified professionals, strengthening occupational regulation and practitioner performance, and initiatives to improve access to overseas building products. Minister Penk reported to Cabinet in October 2024 on the Fire Safety review following the Loafers Lodge fire, and MBIE will report back to the Minister for Building and Construction on any proposed Building Code regulatory changes in early 2027.
11. MBIE is also progressing reforms to improve the performance of the building consent system, including levy threshold changes to reduce consenting costs, efforts to support greater consolidation and consistency across Building Consent Authorities (BCA), and operational improvements to reduce inspection wait times. In addition, work is underway to streamline building research levy settings, expand building consent exemptions, and support faster uptake of sustainable building practices. The new Schedule 1A of the Building Act that relates to granny flats is also undergoing further change, and these changes will need time to be implemented and then reviewed. The Review will take account of these changes.
12. Collectively, these reforms from MBIE are expected to improve system efficiency, better align regulation with risk, and reduce unnecessary cost and delay. The Building Regulatory System Review will complement this programme of work.

Review procedure

Approach

13. For all proposed reviews, the approach is to identify:
- regulations that are justified;
 - regulations that are not justified but are being addressed by other government workstreams; and regulations that are not justified nor being addressed.
14. To address whether regulations are justified or not, a first principles framework is used. The main components of this framework include consideration of the following questions:
- What is the rationale for government intervention (i.e., what is the market failure)?
 - If there is a market failure, what is the proportionate response, including if it needs to come from government (e.g., co-regulation)?
 - What are the costs and benefits of regulation and the distribution of those across different parties?
 - How are the regulations working, including compared to equivalent regimes in other countries?

Review Sequencing

15. Phase One of this review will focus on targeted parts of the Building Act where there is evidence of unnecessary burden and scope for early improvement, such as building consent exemptions, including the interface between Schedule 1² and Schedule 1A³ for small standalone dwellings.
16. At the conclusion of Phase One the Ministry for Regulation will provide advice to the Minister for Regulation and the Minister for Building and Construction on the scope of future phases.

Reporting and oversight

17. The Review team will report to the Minister for Regulation. Additional oversight will be provided by a group of senior leaders from the Ministry for Regulation and MBIE. The Review will provide progress reporting and a final report to the Minister for Regulation and the Minister for Building and Construction, which will include the Review's findings and recommendations.

Engagement

18. The Review will seek to hear from a variety of different voices including the regulated parties in the building and construction sector, providers of the regulated services, consumers who use those services and other stakeholders who are impacted by the regulations. Insurance and lending companies may also be included to give a perspective on how any changes may affect risk assessments.

² Schedule 1 of the Building Act covers building work for which building consents are not required

³ Schedule 1A of the Building Act covers other building work for which building consent not required, specifically 'granny flats'.

19. The Review will use a variety of engagement methods including in-person and online meetings and inviting written feedback. Consideration will be given as to how we ensure that we consider as wide a range of views as possible.
20. Public consultation will also be undertaken before recommendations are made to Cabinet, although the exact form of this consultation will be tailored to meet the Review's timing and milestones.

In Scope

21. In scope of the Review is:
22. A review of building consent exemptions, including
 - Building consent exemptions (which are set out in Schedule 1 of the Building Act 2004), and the interface between Schedule 1 and Schedule 1A for small standalone dwellings;
 - Whether Schedule 1 can be expanded to exempt additional low risk building work;
 - Inconsistencies within the current exemption framework, including cases where relatively low-risk work requires consent while higher-risk work may be exempt; and
 - Opportunities to improve clarity and usability of the exemptions for homeowners, builders, and territorial authorities.

Roles

Cabinet

23. The Government's response to the Review's recommendations will be decided by Ministers or by Cabinet as appropriate.

Ministers

24. The Minister for Regulation, in consultation with the Minister for Building and Construction, will have oversight and decision-making for the recommendations of the Review. This Review does not affect the portfolio responsibilities or decision-making of the Minister for Building and Construction, and policy decisions on any regulatory changes remain with Cabinet.
25. Other relevant ministers will be informed and engaged as necessary. They may include the Minister of Local Government and The Minister for Housing. Portfolio ministers will be responsible for implementing recommendations from the Review.

Agencies

26. The Review will be led by the Ministry for Regulation within its central agency mandate to strengthen the regulatory management system and improve regulatory quality.
27. While the Review will be undertaken with cross-agency and stakeholder input, the Ministry for Regulation retains its independence and the ability to make comments and recommendations that may not be fully supported by other agencies or stakeholders. In saying this, the Ministry for Regulation recognises that change is more likely to succeed and be enduring where there is consensus between Ministers and between agencies.

28. MBIE will work closely with the Ministry for Regulation and provide information and advice on the regulatory system they play a role in and are responsible for.
29. Other agencies will be engaged with where appropriate.

Connections

With existing activities

30. The Review will complement and supplement existing work underway and seek to avoid duplication through communication and collaboration with MBIE.

With implementation activities

31. The Ministry for Regulation will consider implementation as part of the Review. Reviews are independent but findings and recommendations will be socialised with MBIE. Any recommendations identified through the Review will need to be agreed to by the Minister for Regulation in consultation with the Minister for Building and Construction, agency decision-makers or Cabinet and made with sufficient analysis of implications including costs and resourcing.
32. The Ministry for Regulation will work in collaboration with the relevant agencies to develop the Review's recommendations.
33. It is expected that Ministers responsible for the regulatory systems will oversee the implementation and prioritisation of any Cabinet decisions.
34. If legislative change is required, it is expected that those changes would be progressed within six months of Cabinet consideration of the recommendations. The responsible portfolio ministers and their agencies are expected to lead the Bill through the legislative process. The Ministry for Regulation may provide some limited support through this period.

Timing and milestones

35. Phase One is expected to commence in October 2026, with advice on options to be provided to joint Ministers by early 2027.

Regulatory systems relevant to the Review

Regulatory system	Building sector
Key Legislation	Building Act (2004), Building Code (and regulations made under these instruments)
Regulator	• MBIE • Territorial authorities (city and district councils)
Policy agency	MBIE

Responsible Minister(s)	Minister for Building and Construction
Other Ministers	• Minister of Housing • Minister of Local Government • Minister for Infrastructure • Minister for Emergency Management and Recovery
Purpose	To assess whether the current building consent exemptions remain appropriate, including if they can be expanded to exempt additional low-risk building work.
Regulated parties	• Builders / contractors • Designers (architects, engineers, building designers) • Building owners • Homeowners

Additional definitions

Regulatory systems are sets of formal and informal rules, norms and sanctions, given effect through the actions and practices of designated actors, that work together to shape people's behaviour or interactions in pursuit of a broad goal or outcome.

Regulated party / parties are a person or organisation that is subject to behavioural expectations, obligations, and/or sanctions within a regulatory system.

Phase One

