

# Offences, penalties and public notification

**One of the purposes of regulating the building sector is to ensure the construction of safe and durable buildings. Everyone in the building process has to comply with laws and regulations.**

Those who don't obey the law face penalties. The goal of these penalties is to deter poor or illegal behaviour. Enforcement agencies need enough time to investigate possible offences and public notifications need to be fit for future use.

## MBIE wants your feedback on four proposals

- 1** Increase maximum financial penalties for both individuals and organisations in proportion to the consequences of that offence.
- 2** Set higher maximum penalties for organisations than for individuals.
- 3** Extend the time for enforcement agencies to lay a charge under the *Building Act* from six months to 12 months (section 378 of the *Building Act 2004*).
- 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 the New Zealand Gazette and on the internet in a form that is publicly available and accessible at all times.





# 1. Increase maximum financial penalties for both individuals and organisations in proportion to the consequences of that offence

Penalties may not currently be fit for purpose or adequately deter poor or illegal behaviour. Increasing the maximum penalty amounts based on the seriousness of the offending will address the issue of adequacy.

Greater consequences for not complying with the *Building Act* will contribute to the reform programme's aims of improving compliance by practitioners and organisations and deterring them from illegal or unethical behaviour.

The maximum penalty amounts in the *Building Act* have not been reviewed or amended since 2004.

## Comparison of penalty maximums in current legislation and proposed penalty maximums

LEVEL OF SERIOUSNESS Very high		LEVEL OF SERIOUSNESS High	
Types of offences:		Types of offences:	
<ul style="list-style-type: none"> <li>Offences that cause serious risk/death to people</li> <li>Other offences that may have serious consequences.</li> </ul>		<ul style="list-style-type: none"> <li>Offences relating to dishonesty/fraud.</li> <li>Offences relating to risk/performance assessment and hazard identification.</li> <li>Offences relating to (failure to put in place) risk controls.</li> </ul>	
<i>Building Act 2004</i>		<i>Building Act 2004</i>	
<p><b>Example s128A:</b> Failure to comply with a notice when issued where a territorial authority is satisfied that a building is dangerous, affected or insanitary.</p>		<p><b>Example s116B(1)(b):</b> A person uses a building, or knowingly permits another person to use a building, that has inadequate means of escape from fire.</p>	
Current penalty \$200,000	Proposed individual penalty \$300,000	Current penalty \$100,000	Proposed individual penalty \$150,000
	Proposed organisational penalty \$1.5 million		Proposed organisational penalty \$500,000

LEVEL OF SERIOUSNESS Medium		LEVEL OF SERIOUSNESS Low	
Types of offences:		Types of offences:	
<ul style="list-style-type: none"> <li>Offences relating to administration and provision of information.</li> <li>Offences relating to notification.</li> </ul>		<ul style="list-style-type: none"> <li>Offences relating to record-keeping.</li> </ul>	
<b>Building Act 2004</b>		<b>Building Act 2004</b>	
<b>Example s108(5)(a):</b> A building owner fails to display a building warrant of fitness that is required to be displayed.		<b>Example s114(3):</b> A person fails to give written notice to the territorial authority that the owner proposes to change the use of a building.	
Current penalty \$20,000	Proposed individual penalty \$50,000	Current penalty \$5,000	Proposed individual penalty \$5,000
	Proposed organisational penalty \$150,000		Proposed organisational penalty \$25,000

### Tell us what you think



Are the current maximum penalty amounts in the *Building Act* appropriate?

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Do you agree with the proposed increases to maximum penalties?

## 2. Set higher maximum penalties for organisations than for individuals



Currently, penalties have uneven impacts on an individual versus an organisation. The proposal to set higher penalties for organisations aims to provide sufficient incentives for organisations to comply.

Maximum penalty amounts in the *Building Act* do not differentiate between individuals and organisations.

### Tell us what you think



Do you agree with introducing higher penalties for organisations?

What impacts on the building industry could arise from this proposal if it is implemented?

## 3. Extend the time for enforcement agencies to lay a charge under the *Building Act* from six months to 12 months (section 378 of the *Building Act 2004*).



Enforcement agencies have six months to lay a charge under the *Building Act*. This is not always a sufficient length of time to lay a charge due to the complexity of some cases and the number of people possibly involved. To address this, we propose to extend the time to lay a charge to 12 months by amending section 378 of the *Building Act* and replacing the stated time period from six months to 12.

This change will better balance the time needed to enforce compliance with ensuring timely prosecution and ensuring people in the building sector can be held accountable.

### Tell us what you think



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

#### 4. Modify the definition of 'publicly notify' in section 7 of the *Building Act*. Public notification will still be required in the New Zealand Gazette and on the internet in a form that is publicly available and accessible at all times.



Since 2004, when the Building Act came into effect, the public's increasing use of technology to access information has had dramatic impacts on the print newspaper industry. Newspapers are no longer the preferred way to get information. To adapt to this change, we propose to amend section 7 of the *Building Act* to remove the requirement for MBIE's chief executive or Building Practitioners Boards (BPB) to publish critical decisions in daily newspapers of the 'five main centres'. They would still be required to publish decisions/actions in the New Zealand Gazette and on the internet in a form that is publicly available and reasonably accessible at all times.

#### Tell us what you think



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

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



#### Have your say

Find out more about the building levy proposals and have your say at:

[www.MBIE.govt.nz/building-reform](http://www.MBIE.govt.nz/building-reform)



Submissions close  
on 16 June 2019