MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Chris Penk	**Portfolio**	Building and Construction
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List of documents that have been proactively released		
Date	**Title**	**Author**
August 2025	Changing Building and Construction Liability Settings and Reforming the Structure of Building Consent Authorities	Office of Hon Chris Penk, Minister for Building and Construction
13 August 2025	Changing Building and Construction Liability Settings and Reforming the Structure of Building Consent Authorities ECO-25-MIN-0121 Minute	Cabinet office
16 July 2025	Regulatory Impact Statement – Shift to Proportionate Liability for Building and Construction	MBIE
28 July 2025	Regulatory Impact Statement: Building Consent Authority – Barriers to Consolidation	MBIE

Information redacted **YES / NO** *(please select)*

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In confidence

Office of the Minister for Building and Construction

Cabinet Economic Policy Committee

Changing liability settings and enabling voluntary consolidation of Building Consent Authorities

Proposal

1 This paper seeks agreement to change liability settings for the building and construction sector from the current joint and several liability setting to proportionate liability, along with the development of market-based mechanisms to protect consumers.

2 This paper also proposes to enable council Building Consent Authorities (BCAs) to consolidate or transfer their building control responsibilities and notes the potential benefits of private BCAs and the broader use of Consentium.

Relation to government priorities

3 These proposals will help grow the economy and enable housing growth.

Executive Summary

4 Joint and several liability creates perverse incentives in the building system, resulting in unfair allocation of liabilities if things go wrong. Those with the inability to walk away, and with the deepest pockets, such as councils, can be liable for the full cost of a defect even when they are not responsible for it.

5 These settings have led to extremely risk-averse behaviour from BCAs when consenting and inspecting building work and are a fundamental reason for the delays and increased cost experienced by building professionals.

6 Moving to proportionate liability will address this underlying risk aversion and make building easier by ensuring participants are only responsible for their contribution to a defect.

7 Proportionate liability will also provide significant benefits for councils by reducing the likelihood of ratepayers underwriting losses and it will support greater uptake of private BCAs and self-certification by limiting liability.

8 I am proposing that Cabinet agree to change the liability rules, and direct officials to investigate options for supporting mechanisms like those seen in Australian States to mitigate any possible impacts for homeowners.

9 Alongside these changes, I am proposing to enable the 66 council BCAs to voluntarily consolidate or transfer their functions and services. This will improve consistency, and efficiency in the building consent system, particularly for builders working across different regional boundaries.

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10 Last year the Government consulted on three options to reform the structure of the building consent system which included voluntary consolidation, mandated regional groupings, and one central national BCA.

11 Voluntary consolidation offers an efficient and cost-effective way to deliver the Government's objectives while also delivering cost savings for local government and being broadly complementary to wider reforms.

12 There are several councils that have already been actively seeking to consolidate building control functions at a regional level. I expect these changes will see a reduction in the total number of BCAs while delivering more consistency and certainty for building professionals across current BCA / Council boundaries.

13 This paper also notes two key developments in the system that offer benefits to consumers;

13.1 Building Consent Approvals Ltd (BCAL) has been approved as the first private BCA under current legislation, and they focus on low-risk residential development across New Zealand. This means for the first time there will be competition for consenting services.

13.2 Confidential advice to Government

Background

14 In September 2024, Cabinet agreed [ECO-24-MIN-0192] for me to:

14.1 investigate options to reform the building consent system to drive consistency, certainty and efficiency in the building-regulatory system

14.2 commence targeted engagement on how to deliver consistency, certainty and efficiency in the building consenting system through structural reform

14.3 report back to Cabinet in early 2025 to seek agreement to consult on reform.

15 Cabinet also recognised that liability rules would be an area of possible reform and noted that consultation would include the role that insurance can play in the system. I now consider that liability reform is key to unlocking housing growth by injecting responsibility and confidence into the system.

16 Multiple players in the building and construction system (e.g. property developers, designers, engineers and BCAs, including building owners) are responsible for building work.

17 Joint and several liability sets out that individual parties in the system are individually and collectively responsible for defects in a building. However, if one party becomes unable to pay their share for reasons such as insolvency (genuine or claimed), the full liability is shared between remaining parties. This creates an 'empty chair' scenario, where other parties end up footing the bill, typically those with the deepest pockets.

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18 This is an unintended consequence and creates risk-averse behaviour from BCAs because they are seen as deep-pocket stakeholders who end up paying for liability when they are a remaining solvent party. These are the potential outcomes that lead to time delays and resultant extra costs for the building sector, as well as financial risk for ratepayers. I have also heard from the sector that claimants can see that councils have deep pockets and sometimes over-inflate claims.

19 Additionally, there is strong rationale for structural reform of the building consent system. With 68 BCAs interpreting a single national building code, there can be 68 different interpretations. This creates challenges for builders working across TA boundaries, as what is acceptable in one area may not be in another, undermining efficiency and consistency.

20 Through enabling BCA consolidation, the system will see more clarity, information-sharing and adoption of best practice through collaborative measures.

Changing liability settings

Shifting to a responsibility doctrine and moving liability to where it is most appropriate

21 I am proposing to rectify the structural unfairness of joint and several liability through a rule change to proportionate liability. This approach would mean that parties are financially accountable for their own contribution to defective building work, rather than relying on ratepayers to underwrite losses.

22 Shifting liability from joint and several to proportionate, delivers a responsibility-led structure that aligns with fairness and established legal principles.

Joint and several liability can produce unfair outcomes

23 An apartment complex in Queenstown demonstrates the impact of the empty chair problem. The Oaks Shores body corporate filed a $160m claim in 2015 against various parties due to weathertight defects. The developer, Wensley Developments Ltd, was not sued as it had been placed into voluntary liquidation. This left the council and the remaining parties exposed to the entire claim in the developer's absence. While ultimately the claim settled privately, there was speculation the claim could increase the rates bills for ratepayers by $300 a year for the next 30 years.

Proportionate liability would represent sensible and fair rules

24 Each party should be accountable for their own contribution to defective building work. In instances where a liable party is unable to be held accountable – the empty-chair problem – a gap in liability is created, but because stakeholders are not jointly liable, it remains unallocated. This is particularly pertinent for BCAs who are unable to use insolvency to avoid payment, and often have deep pockets, ultimately underwritten by the ratepayer.

25 Examples in Australia demonstrate the impact, and fairness, when proportionate liability is applied when a building fails. In 2014 a fire in the Melbourne high-rise apartment building, The Lacrosse, spread vertically up the side of the building. Investigation found that the external envelope of the building was clad in combustible material. Owners raised a claim made up of damages and compliance costs. The court

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issued a decision that held the fire engineer responsible for 39% of damages; the architect responsible for 25% of damages; the Building Surveyor responsible for 33% of damages; and the builder responsible for 3%. Ultimately of the damages, the builder paid $5.7 million and recouped 97% of that through its subcontractors.

Australian experiences validate sector support for liability reform in New Zealand

26 MBIE has undertaken wide-reaching consultation with almost 50 sector leaders and engaged with Queensland, Victoria, New South Wales, ACT, state/territory building regulators and Canberran federal officials. MBIE also hosted a liability roundtable which brought together Australian and New Zealand legal fraternity, and building, construction and insurance stakeholders.

27 Across 50 industry representatives there was near unanimous support for a liability rule change, providing that there is sufficient structural support to ensure building owners can protect themselves against unscrupulous players, and things going wrong.

28 Australia's building and construction sector operates under a proportionate liability framework, with individual states and territories using various tools to ensure accountability for defects. These include mandatory insurance for builders and surveyors, compulsory building warranties, robust licensing and professional development requirements, and strong dispute resolution and mediation services.

29 Most Australian state jurisdictions operate last-resort insurance schemes, requiring homeowners to exhaust all remediation options before accessing support. Queensland is the exception, where a first-resort model sees defects addressed upfront, and the scheme recovers costs from responsible parties. Victoria Building Authority announced their move to a first-resort model on July 1 2025[1], following success seen in Queensland. This model provides faster resolution for homeowners and streamlines liability recovery.

Supporting mechanisms to protect homeowners

30 To address the potential impact on homeowners that can arise from proportionate liability I am proposing officials explore potential supporting mechanism to protect consumers. The key criteria include a system that:

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[1] https://www.vba.vic.gov.au/_resources/documents/news-and-events/media-releases/2025/BPC-Day-One.MR.pdf

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Requiring home warranty Confidential advice to Government

32 Private home warranty schemes already exist in the market and can be expanded. Main providers of home warranty products currently available in New Zealand which cover residential building only, can be classified into the following:

32.1 **Member schemes** available only to organisation members (Certified Builders' Halo guarantee and Master Builders' Master Build 10-Year Guarantee)

32.2 **An independent scheme** (Stamford Insurance's Building Warranty Insurance, available to any builder approved by Stamford's quality criteria).

32.3 **Building company schemes** provided by large building companies for houses they build (e.g. Signature Homes and Classic Builders).

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5vcau1vji 2025-09-04 09:39:01

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Reforming Building Consent Authorities

Supporting BCA consolidation gives more choice to players in the system

41 Cabinet agreed in September 2024 that MBIE investigate reforming the BCA structure to drive consistency, certainty and efficiency, and make it easier for people to build [ECO-24-MIN-0192 refers]. Cabinet also recognised that liability rules would be an area of possible reform and noted that consultation with the sector would include the role that insurance can play in the system.

42 I outlined then that there were several issues with the current BCA system. These issues spanned resource constraints (personnel, costs and time), uncertainty, inconsistency and fragmentation.

43 MBIE officials undertook thorough engagement with over 90% of BCAs and 40 other stakeholder organisations representing builders and designers between September and December 2024. There is widespread appetite for structural reform; however, there was no consensus on a preferred option, which spanned from a single national BCA, voluntary consolidation of BCAs, or a regional model to reduce the number of BCAs but expand into larger entities.

44 I am proposing a package of reforms to the Building Act 2004 that will incentivise BCAs to consolidate their building consent functions. This will simplify the process to enter into agreements for partial- or full-function transfer, address fragmentation, improve predictability and consistency, and create economies of scale for efficiency.

45 The package of changes include:

45.1 Removing requirements for a Territorial Authority (TA) to be a BCA, and to maintain that accreditation if they transfer functions to another BCA.

45.2 Removing rules that prevent TAs from transferring their BCA functions to an organisation that is not a TA (e.g. a Council-Controlled Organisation (CCO)).

[2] This is based on all new residential dwelling building consents in year ending March 2025. Only residential, 3-storey and less building projects are in scope for this consideration.

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45.3 Regulatory changes to shift incentives towards council-led consolidation by updating and standardising consent processes and removing duplicative accreditation requirements for BCAs.

45.4 Making operational changes to support council-led consolidation like guidance, common data standards and system requirements.

Removing barriers to consolidation of BCAs in the Building Act

46 The changes will provide strong incentives for BCAs to consider consolidation and transfer of functions based on the operational cost savings they could achieve (e.g. through reduced costs of liability, accreditation, IT services etc).

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Liability settings create room for BCAs to share functions

48 The shift to proportionate liability and the proposed BCA reform has the potential to increase competition in the market and drive better consenting experiences and outcomes for consumers.

49 Responsibility-based liability means BCAs own only their risks, significantly reducing exposure compared to the status quo. This encourages private BCAs to enter a market currently hindered by disincentives and limited competition, leading to better sector outcomes.

50 MBIE officials are considering the impact of proportionate liability in the context of BCAs' sharing or transferring functions.

Giving people the choice in a changing landscape delivers benefits

51 There are two other developments in the changing BCA landscape that offer potential benefits to the system.

52 In May 2025 Building Consent Approvals Ltd (BCAL) became the first private BCA under the current legislation. They have undertaken to process and manage building consents for relatively simple residential and commercial builds nationwide, and have a commitment of faster turnaround of inspections and consent applications. This is already offering competition to traditional council operations.

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Driving consistency with a national standard for data requirements

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54 Builders and designers have told MBIE that they are often unsure what information is required in consent applications. Uncertainty here can create delays in the application process, and incur costs passed back to the homeowner.

55 This issue often arises when councils provide varied information and guidance and are delivered through different methods. Aligning materials across councils gives builders and developers greater certainty, enabling more efficient processing of applications and potentially improving application quality.

56 I am seeking Cabinet's agreement to create a nationally consistent set of data requirements to allow for consistency and predictability in the consenting system.

Implementation

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Cost-of-living Implications

58 I expect the policy decisions taken in this paper will put downward pressure on cost-of-living due to efficiency gained through consolidation of BCAs and clearer responsibility rules through liability changes.

Financial Implications

59 There are no direct financial implications arising from this paper.

Legislative Implications

60 This paper seeks agreement to amend the Building Act 2004 and also seeks agreement to draft regulations to sit under that in secondary legislation. Confidential advice to Government

Impact Analysis

Regulatory Impact Statement

61 A regulatory impact analysis panel considers that the information and impact analysis for the liability policy decisions partially meets the requirements and the BCA reform meets the requirements.

62 The Regulatory Impact Statement for Liability Reform is in Appendix 1. The Regulatory Impact Statement for BCA Reform is in Appendix 2.

Climate Implications of Policy Assessment

63 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

5vcau1vji 2025-09-04 09:39:01

Population Implications

64 There are no population implications arising from this paper.

Human Rights

65 There are no human rights implications arising from this paper.

Use of external Resources

66 Sapere conducted a cost-benefit analysis for BCA reform. NZIER were contracted to conduct economic analysis on liability rule changes. Legal professional privilege and Lovegrove Cotton were contracted to provide advice on liability rule changes.

67 MBIE consulted with its Building Advisory Panel (BAP) to contribute to this paper.

Consultation

68 Departmental consultation was undertaken with Department of Prime Minister and Cabinet, Treasury, Ministry for Regulation, Ministry of Housing and Urban Development, Ministry of Justice, Ministry for the Environment, Te Waihanga Infrastructure Commission, Department of Internal Affairs.

Communications

69 I intend to announce the decisions taken in this paper in due course, via a press release from my office or through a media standup.

Proactive Release

70 I intend to release this Cabinet paper proactively, subject to redaction as appropriate under the *Official Information Act 1982.*

Recommendations

The Minister for Building and Construction recommends that the Committee:

Making responsibility a focus of liability settings in building and construction

1. **Note** that current joint and several liability settings have a chilling effect on productivity and efficiency in the building consent system;

2. **Agree** to change liability rules in the building and construction sector from joint and several to proportionate liability;

3. **Agree** that drafting instructions be issued to PCO to give effect to the changes to liability settings in the Building Act 2004;

4. **Note** that the private market is sufficient starting point to support the transition to proportionate liability Confidential advice to Government

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5. **Direct** officials to develop options for supporting mechanisms, for the move to proportionate liability, Confidential advice to Government home warranty requirement to protect consumers;

6. **Agree** that I report back to Cabinet on decisions on supporting mechanisms such as a warranty system Confidential advice to Government before the end of 2025.

Building Consent Authority Structural Reform

7. **Note** that following Cabinet decisions in September 2024 officials undertook extensive consultation on options for Building Consent Authority ("BCA") structural reform (ECO-24-MIN-0192);

8. **Note** that the current fragmented building consent system, which comprises 68 separate BCAs, is leading to inconsistency, uncertainty and inefficiency, which makes it harder to build;

9. **Note** that New Zealand's first private BCA was established in May 2025 and other commercial entities have also expressed interest in becoming established as BCAs;

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11. **Agree** for the Minister for Building and Construction issue drafting instructions to PCO to:

    a. enable voluntary consolidation through such methods as removing requirements for a Territorial Authority (TA) to be a BCA, and to maintain that accreditation if they transfer functions to another BCA; and removing rules that prevent TAs from transferring their BCA functions to an organisation that is not a TA (e.g. a Council-Controlled Organisation (CCO)).

    b. update and standardise consent processes and remove duplicative accreditation requirements for BCAs.

12. **Agree** that as part of this change MBIE officials work with BCAs and the sector to create a nationally consistent set of data requirements that allow for consistency and predictability and remove barriers in the system for consolidation.

13. **Agree** that the Minister for Building and Construction is authorised to further clarify and develop policy matters relating to the proposals in this Cabinet paper in a manner not inconsistent with the policy recommendations contained in the paper;

14. **Invite** the Minister for Building and Construction to issue drafting instructions to the Parliamentary Counsel Office to implement the decisions set out above through a bill to amend the Building Act 2004.

Authorised for lodgement.
Hon Chris Penk
Minister for Building and Construction

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