



COVERSHEET

| | | | |
|-------------------------------|--|-----------------------------|---------------------------|
| Minister | Hon Chris Penk | Portfolio | Building and Construction |
| Title of Cabinet paper | Strengthening consumer protections in the Building Act | Date to be published | 15 December 2025 |

| List of documents that have been proactively released | | |
|--|---|--|
| Date | Title | Author |
| November 2025 | Strengthening consumer protections in the Building Act | Office of Hon Chris Penk, Minister for Building and Construction |
| 12 November 2025 | Strengthening consumer protections in the Building Act ECO-25-MIN-0190 Minute | Cabinet Office |
| 10 October 2025 | Regulatory Impact Statement – Supporting mechanisms for proportionate liability in the building and construction sector | MBIE |
| 5 November 2025 | Regulatory Impact Statement – Increasing the maximum fine and suspension term for Licensed Building Practitioners | MBIE |

Information redacted

YES / NO (please select)

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for reasons of Commercial information, Protecting the privacy of natural persons, Confidential advice to Government and Free and frank advice.

Regulatory Impact Statement: Supporting mechanisms for proportionate liability in the building and construction sector

| | |
|----------------------------|---|
| Decision sought | Final policy decisions are sought from Cabinet on the design of an initial package of supporting mechanisms for the shift to proportionate liability in the building and construction sector. These decisions relate to primary legislation change, with supporting regulations to be designed and taken to Cabinet at a later stage. |
| Agency responsible | Ministry of Business, Innovation and Employment |
| Proposing Ministers | Building and Construction |
| Date finalised | 10 October 2025 |

The Minister is proposing to amend the *Building Act 2004* and enable regulations to be made to address the increased risk to consumers resulting from the liability rule change. This includes:

- requiring a home warranty for all new residential houses, small apartment buildings and renovations over \$100,000, that involve restricted building work and require a building consent.
- enabling requirements to be set for professionals providing advice or services relating to the design of building work to hold professional indemnity insurance.

The Minister also proposes establishing registration requirements in secondary legislation for currently unregulated guarantee providers¹. These would include independent actuarial assessments, and a set of minimum standards assessed by an independent audit. Additional publication and reporting obligations on all providers will support consumer awareness and enable MBIE to monitor performance and market trends. These insights will inform future decisions on the design of supporting mechanisms.

Summary: Problem definition and options

What is the problem?

The shift to proportionate liability in the building sector increases the risk that homeowners may receive only partial compensation when defects occur and responsible parties are insolvent, unavailable, or have exited the market. This risk is compounded when a builder becomes insolvent during the construction process, leaving homeowners with incomplete building work and limited avenues for resolution or recourse under the *Building Act* alone.

Consumer protection tools like warranties and professional indemnity (PI) insurance are available but can be underused or not well understood by homeowners. Around 46 per cent of new builds are covered by a defects home warranty, with even lower uptake for renovations². While the value of PI insurance is well understood in the commercial market, residential homeowners are often not

¹ Two types of warranties exist – guarantees or insurance-backed products. Refer **Annex One** for definitions.

² Based on 30,358 building consents for houses and townhouses/flats/units to year end March 2025. Figure based on known warranties provided against building consents. MBIE has received a mix of actual and estimate warranty figures from providers and there may be some volume builders providing guarantees on their builds that we do not know about.

equipped to verify whether it is in place or adequate across all professionals providing advice and services for their building work.

These issues are partly due to low consumer awareness - building a home is typically a once-in-a-lifetime event, making it hard for homeowners to navigate risks in an unfamiliar system. However, even when awareness improves, behavioural biases such as optimism bias (believing things will go smoothly) and present bias (focusing on immediate costs over future benefits) can lead homeowners to underestimate long-term risks and deprioritise protective measures. Without intervention these market failures will continue, and homeowners will face greater financial exposure under the new liability regime when they can no longer rely on deep pocketed parties to fill a compensation gap, such as building consent authorities (BCAs).

What are the views of stakeholders?

There is a clear expectation from all parts of the building sector that a shift to proportionate liability will stand alongside specific mechanisms to protect homeowners. MBIE's engagement with warranty providers, building industry peak bodies, and consumer protection advocates found universal support for a mandatory home warranty requirement.

MBIE officials heard from the Insurance Council of New Zealand and design industry peak bodies that professional indemnity insurance is readily available for professions involved in building design (eg architects, designers, engineers, and surveyors), with broadly high uptake. Some peak bodies already require PI insurance as a condition of membership and support formalising these requirements through legislation to improve professional accountability and increase consumer confidence.

What is the policy objective?

The proposal aims to strengthen consumer protection in the shift to proportionate liability by addressing the increased risks to residential homeowners associated with the "empty chair" scenario.³ Specifically, it seeks to:

- address market failures that prevent uptake of consumer protection tools
- strengthen accountability for defective design work, which is not well covered by warranty products.

In achieving these objectives, it is important to ensure any interventions or requirements are not so costly or complex that they could limit competition and innovation, unduly increase build or compliance costs, and constrain housing supply.

What policy options have been considered, including any alternatives to regulation?

Education and awareness activities will support all options, informing stakeholders about the shift to proportionate liability and clarifying their rights and responsibilities. However, addressing information gaps alone is not considered sufficient, given the behavioural biases that exist and the fact that individuals rarely engage with the building system, making it harder to navigate the system confidently and make informed decisions.

In line with Ministerial and Cabinet direction, the initial package of supporting mechanisms will focus on residential homeowners, who are less equipped to manage building risk under the new regime. Cabinet directed officials to develop options for supporting mechanisms for the move to proportionate liability, including an opt-out home warranty requirement to protect consumers; and the Minister also clarified that this included requiring professional indemnity insurance. Cabinet also directed officials to develop options for a deposit security scheme. This has since been ruled out as a feasible option (refer paragraphs 53-58).

This RIS considers the following options:

³ The empty chair scenario refers to a gap in coverage created under a proportionate liability system when liable parties are insolvent or absent, exposing claimants to the risk of not receiving full compensation.

Option 1: Do nothing / counterfactual

- the market is left to respond to the shift in proportionate liability (expected in late 2027)
- some increase in demand for warranties is expected from the education and awareness activity, however, the infrequent nature of building projects for homeowners and behavioural bias will limit uptake.
- work is underway aimed at improving builder performance including an increase in penalties for negligence or misconduct. However, these are not expected to have a significant impact on the empty chair problem.
- initiatives to address poor workmanship or business practices are progressing on a longer timeline, with meaningful system-wide change expected to develop over a matter of years
- uncovered homeowners will be more exposed to financial risk from defects and incomplete work involving insolvent or unavailable parties.

Option 2: Consumer-led protections

- introduce default home defects warranties for certain residential building work, with the ability for homeowners to actively opt-out
- homeowners may choose to take up additional cover for deposit loss and non-completion
- require design and structural professionals to declare their PI cover to improve transparency and enable informed decision-making by consumers.

Option 3: Compulsory consumer safeguards (preferred option)

- compulsory warranty cover for specified residential building work, with no opt-out for homeowners
- certain design and structural professionals required to hold PI insurance
- legislation includes a suspension mechanism if market coverage fails (eg a provider exits), ensuring building system continuity.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

Yes. Both the Cabinet paper and the RIS recommend Option 3: Compulsory consumer safeguards.

Summary: Minister's preferred option in the Cabinet paper**Costs (Core information)**

Most monetised costs are expected to ultimately fall to homeowners. These include:

- warranty premiums paid direct to providers - for a typical \$500,000 build, the cost of a defects warranty currently ranges from approximately \$1,250 (approximately 0.24% of build value) for a guarantee product to around \$2,750 (0.55%) for an insurance-backed warranty.
- costs for unaffiliated builders to meet warranty eligibility (eg trade organisation membership fees, upskilling) may be passed on to homeowners, however this is expected to be spread across all clients so would have a low impact at the individual level.

There could be an additional cost to some builders who may face revenue loss if they are unable to access warranty cover or secure alternative work. Costs to warranty providers include meeting new registration and reporting requirements. MBIE intends to recover provider registration costs via fees and fund an initial education campaign (estimated at around \$100,000) from baseline.

Benefits (Core information)

The greatest gains are for those homeowners who, under the counterfactual, would not have purchased a warranty but are now required to under the proposed policy. If something goes wrong and the empty chair problem arises (eg the builder is unavailable or insolvent), these homeowners will not have to bear the majority of the cost. Reputable builders and professionals may experience increased demand as consumers become more discerning and confident in the system. Those not currently meeting performance expectations will be incentivised to lift their standards to remain competitive,

contributing to a more capable and accountable industry. Collectively, these changes support higher building standards, better business practices, and a more transparent and resilient system. Existing domestic warranty providers will benefit from higher demand, increasing revenue through premiums and associated membership fees. Regulators benefit from improved data visibility, enabling better oversight and decision-making.

Balance of benefits and costs (Core information)

While all parties experience costs and benefits, these largely offset each other. The key difference is that risk is pooled and shifted to those better equipped to manage it, with the greatest gains for homeowners who would not voluntarily take up cover. These homeowners will face an additional one-off cost but will also benefit from clearer recourse in the event of defects and avoid the financial and emotional burden of resolving disputes and in some cases, going to court. In the short term, unaffiliated builders may incur costs to meet warranty provider standards, with some facing lost revenue if they do not meet an appropriate standard. However, these are outweighed by broader system-wide benefits: improved building standards, clearer homeowner protections, and stronger builder accountability. Over time, better builder performance may result in less defects, delivering long-term value to both homeowners and the sector.

Implementation

MBIE is preparing an implementation plan to support the transition to proportionate liability, with the Minister agreeing to a one-year lead-in following enactment of the *Building Act Amendment Bill* (expected prior to the 2026 election). This will include a new function to register warranty providers. To support consumer understanding and choice, MBIE will publish a list of registered providers that meet the minimum standards and require providers to publish plain-language information about coverage and limitations ahead of the rule change. An education campaign will be delivered in the lead-in to the rule change, including guidance for sector professionals and public awareness efforts. Further engagement with stakeholders will be required to develop regulations (which will progress in parallel with the Bill), including setting regular reporting requirements for warranty providers to enable monitoring of the regime and support overall building system performance.

Limitations and Constraints on Analysis

Targeted consultation was undertaken. Due to time constraints, MBIE focussed its engagement on key affected parties to understand their views and potential impacts of the proposals. Full public consultation on proposed warranty requirements in 2019 has also informed this RIS.

Limited or low-quality evidence available. There is limited data on the extent of issues faced by consumers under the current liability settings due to fragmented reporting and private settlements. MBIE sought to fill evidence gaps as much as possible through stakeholder engagement and external research. Improving data collection is a key aim for this proposal to ensure the new arrangements achieve their intended outcomes and that any unforeseen risks or gaps are identified.

Assumptions have been made around behaviour under a proportionate liability model. The shift to proportionate liability marks a major change in New Zealand's legal framework. Assumptions on how stakeholders will respond have been made based on other jurisdictions and feedback from targeted engagement.

Cabinet and Ministerial direction have limited the scope of options. MBIE has direction that the supporting mechanisms should minimise taxpayer cost and support a market-led approach with limited government intervention, while aligning with broader goals to improve building sector productivity and initially focusing on areas where homeowners are most vulnerable to risk (residential building work). Cabinet noted that the private market is a sufficient starting point to support the transition to proportionate liability, and that the Minister is not proposing that the Crown be directly involved in a warranty scheme – limiting MBIE's analysis to market-led options.

I have read the Regulatory Impact Statement, and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:

Protect privacy of natural persons

Micheal Warren
Manager, System and Markets Policy

3 October 2025

| Quality Assurance Statement | |
|---|-------------------------|
| Reviewing Agencies: Ministry of Business, Innovation and Employment, Ministry for Regulation | QA rating: Meets |
| Panel Comment: A Quality Assurance Panel from MBIE and the Ministry for Regulation has reviewed the Regulatory Impact Statement (RIS) prepared by the Ministry of Business, innovation and Employment titled Supporting mechanisms for proportionate liability in the building and construction sector on 10 October 2025. The Panel consider that the information and impact analysis summarised in the RIS meets the Quality Assurance criteria. | |

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Background

1. In August 2025, Cabinet agreed to amend the *Building Act 2004* (the Building Act) to change liability settings for the building and construction sector from the current joint and several to proportionate liability and directed officials to develop supporting mechanisms to protect consumers under this change.⁴
2. Under joint and several liability, claimants can use the courts to recover full damages from any one liable party (often ‘deep pocket’ solvent parties like BCAs and major developers), regardless of that party’s actual contribution to the harm.
3. Proportionate liability significantly improves fairness for liable parties by ensuring each party is only liable for the portion of harm they caused. It removes the disproportionate and involuntary burden currently placed on BCAs.
4. Despite this improvement in fairness at a system level, there would be a gap in coverage created under a proportionate liability system when liable parties are insolvent or absent, exposing claimants to the risk of not receiving full compensation. If this occurs, homeowners may be left out of pocket and unable to remedy defective building work.
5. MBIE’s engagement on the liability rule change found a clear expectation that a shift to proportionate liability would be expected to stand alongside specific mechanisms to protect homeowners such as home warranties and deposit protection.
6. This view is shared by the Government which has announced that supporting mechanisms are being investigated, including requiring professional indemnity insurance and home warranties.
7. A glossary of key terms and definitions used in this RIS is attached at **Annex One**.

Challenges facing the building sector

8. The New Zealand construction sector is highly sensitive to macroeconomic shifts, experiencing sharp fluctuations in demand during economic cycles – a pattern known as the ‘boom-bust’ cycle. These downturns often trigger a spike in insolvencies, as firms face reduced cashflow and mounting financial pressure.
9. Small builders, particularly sole traders, are most vulnerable in these conditions. With limited capacity to retain staff or absorb financial shocks, they operate on thin profit margins that heighten insolvency risk. This can compromise consumer protections, as deposits may be diverted to cover immediate cashflow needs or left stranded in abandoned projects.
10. When a building firm becomes insolvent, there is often no formal record of how many homeowners are affected. Many buyers choose not to pursue compensation (especially if no warranty cover is in place) preferring to cut their losses rather than “throw good money after bad”.
11. In the year to June 2025, there were 722 insolvency events in the building and construction sector. While this is high in absolute terms, it represents a relatively small proportion of the 71,900 registered construction firms. MBIE notes that many of these insolvencies stem from challenging market conditions and limited business capability, rather than deliberate misconduct.

⁴ Regulatory Impact Statement: Shift to Proportionate Liability for Building and Construction.

12. As ‘unsecured creditors’ consumers are unlikely to be paid in an insolvency event. Of the 2,210 insolvency reports filed to year June 2025, only 62 had a rate paid to unsecured creditors above 0, with the majority receiving less than 10 cents on the dollar.
13. Phoenixing⁵ is another issue for the industry. This occurs when a company - often in financial distress - is deliberately liquidated, and its assets, staff, and operations are transferred to a new company, leaving behind unpaid debts. The new entity often has a similar name and continues trading as if nothing happened.
14. While relatively uncommon, such events can be costly and distressing for affected parties. These incidents not only erode trust in the sector but also reinforce public perceptions of poor governance and regulatory loopholes being exploited.

The Building Act provides implied warranties, but requires liable parties to be solvent

15. The primary purpose of the Building Act is to ensure that buildings are safe, healthy, durable, and sustainable, while also promoting accountability and consumer protection in the building industry.
16. Under the Building Act, all residential building work is covered by implied warranties:
 - a 12-month defect period where there is an obligation on the builder to remedy any defects
 - a 10-year long-stop where the owner may need to prove negligence caused a defect to get redress.
17. Implied warranties are automatic, applying regardless of the cost of the building project, whether there is a written contract or what the contract terms are. They cover almost all aspects of building work from compliance with the Building Code to good workmanship and timely completion of building work.
18. To activate the implied warranties (if no other resolution is available), a claimant will need to take a dispute to court and prove loss or damage as a result, particularly when there are multiple parties contributing to the fault or loss. This can be costly and time consuming and also relies on the liable party being solvent, which may not be the case.
19. Many builders, including group home companies, will uphold these implied warranties, sometimes going beyond what is required, as a matter of reputation. The issue for homeowners arises when the builder is no longer around or is unwilling to return to fix defects, which is increasingly likely as the home approaches the 10-year long stop.

Warranties are available for additional protection and faster resolution

20. Homeowners who are building a new home or renovating an existing property may obtain warranty coverage in addition to the protections provided by the Building Act.
21. In this RIS, the term ‘warranty’ is used to cover both:
 - **guarantees** which ensure the builder (or a replacement builder if the original builder is insolvent or absent) comes back on site to remedy the issue. These include:
 - **member schemes** available only to organisation members (Certified Builders’ Halo Guarantee and Master Builders’ Master Build Guarantee)
 - **building company schemes** provided by large building companies for houses they build (eg Signature Homes, Classic Homes).
 - **insurance-backed products** which pay out to allow the homeowner to remedy an issue, with the insurer managing the resolution process. These are currently only available from Stamford Insurance.

⁵ Builder phoenixing is when a construction company deliberately liquidates, leaving behind debts and unfinished work, and then re-establishes itself under a new name or structure to continue trading, avoiding accountability.

Table 1 Standard conditions of current market offering (three largest providers)

| | Master Builders Guarantee | Halo Residential Guarantee | Stamford Insurance |
|------------------------|--|---|--|
| Liability exposure | Builder only | Builder only | Assumed any liable party |
| Commercial information | | | |
| Loss of deposit | \$50k or 10% of sum insured | Not currently covered ⁶ | \$200k or 10% of sum insured |
| Non-completion | \$500k or 20% of sum insured | Not currently covered | \$200k or 10% of sum insured |
| Non-structural defects | 2 years cover for \$1m or up to sum insured | 2 years cover for \$250k per claim / \$10m total, or sum insured | 2 years cover for \$2.5m or up to sum insured |
| Structural defects | 10 years cover for \$1m or up to sum insured | 10 years cover for \$250k per claim / \$10m total, or sum insured | 10 years cover for \$2.5m or up to sum insured |
| Design defects | No cover | Covered as above | Covered as above |
| Consequential damage | No cover | Covered as above | Covered as above |

22. To access a warranty product, the builder will need to meet the provider’s performance requirements, which are generally stricter for insurance-based cover compared to a guarantee.

What will happen if no action is taken

- 23. The counterfactual assumes that changes to the Building Act introducing proportionate liability will be passed before the 2026 election. This change will take effect one year after the law is enacted. Which liability rule applies will be based on the time of building consent issuance, not retrospectively (eg a house consented under joint and several will be subject to that liability rule).
- 24. For homeowners, we expect an increase in awareness of their rights and responsibilities through media, industry communications and the planned education activity, which is likely to result in some increased demand for warranty cover.
- 25. However, without additional intervention, it is expected that a range of factors will limit uptake including behavioural bias, some homeowners not being informed about warranty cover, and its value, builders may be reluctant to promote or sell warranty cover, which could be viewed as undermining their reputation. It is therefore likely that some homeowners will experience the impacts of the empty chair scenario if the government does not intervene to boost warranty uptake.
- 26. The barriers to uptake of warranties will similarly prevent homeowners from voluntarily deciding to require PI cover from professionals involved in design work. Without intervention, gaps and inconsistencies in PI insurance coverage will persist, leaving homeowners vulnerable.
- 27. MBIE has heard from existing warranty providers that the market is already preparing its response to the rule change, including strengthening and extending existing products.
- 28. Lloyd’s of London has re-entered New Zealand’s construction market (after leaving in 2019), with a Lloyd’s syndicate underwriting Stamford’s warranty product from mid-2025.

Commercial information

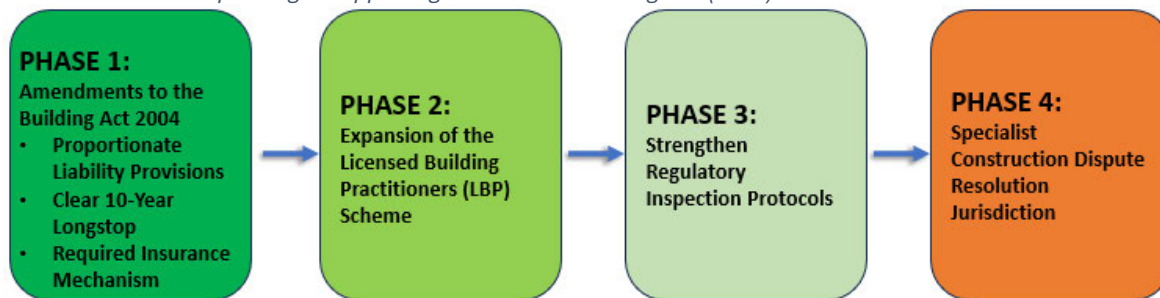
⁶ Commercial information

29. With a more balanced liability rule, participants can expect the building consent process to be quicker and less burdensome. However, some warranty providers have raised concern that reducing this burden on BCAs could lead to less rigor in performing their inspections and, subsequently, more defects going undetected. We anticipate that insurance providers will closely monitor developments and, where risk is identified, may respond by increasing premiums, imposing more restrictive policy terms, or withdrawing coverage where the risk of insuring is deemed unacceptably high.

Lessons from Australia

30. Australian states made the shift from joint and several to proportionate liability in the 1990s and 2000s. While varied across states, all feature mandatory warranty requirements, with varying levels of government backing.
31. Today, Queensland’s model is seen as the ‘gold standard’, featuring a mandatory home warranty insurance scheme run by the Queensland Building and Construction Commission (QBCC), extended mandatory professional indemnity insurance requirements (including to licenced building practitioners), backed by a robust licencing framework and a professional development regime. In June 2025, Victoria passed legislation adopting a similar Queensland-style system.
32. New Zealand’s current building warranty insurance market and occupational licencing regimes are insufficient to support a full-scale insurance warranty scheme in the short term without government backing. However, there are levers that can improve consumer protections and increase responsibility in the immediate shift to proportionate liability.
33. A phased approach is supported by Adjunct Professor Kim Lovegrove, an experienced and globally well-regarded construction lawyer who played a principal role in Australia’s liability reforms. In a June 2025 report, Professor Lovegrove recommended that New Zealand prioritise high-impact, foundational reforms, while allowing for more complex capacity-building and institutional enhancements in subsequent stages⁷.

Figure 1 Recommended phasing of supporting mechanisms - Lovegrove (2025)



Other work underway

34. The shift to proportionate liability is part of a broader work programme designed to improve efficiency, responsibility and lower costs across the building sector, which includes:
- **BCA consolidation** – Cabinet has agreed to remove regulatory barriers to better enable BCAs to share their building consent functions or transfer them to other BCAs.
 - **Self-certification** – the Government is introducing two new self-certification schemes so that responsibility for certifying some lower-risk work can move from BCAs to select building companies, plumbers and drainlayers.

⁷ June 2025. Liability reform options for the New Zealand *Building Act 2004* for the Ministry of Business, Innovation and Employment.

- **Granny flats** – consenting requirements are being removed for ‘granny flats’ under 70 square metres to reduce compliance costs and speed up building.
- **Penalties** – higher penalties are being considered to ensure licensed building practitioners are held accountable for negligence or intentional misconduct.
- **Reviewing licensing requirements** – current licenced building practitioner skills maintenance requirements are being reviewed, including considering whether they will remain fit-for-purpose as more responsibility is placed on practitioners.

What is the policy problem or opportunity?

35. The shift to proportionate liability in the building sector increases the risk that homeowners may receive only partial compensation when building defects occur and responsible parties are insolvent, unavailable, or have exited the market. This risk is compounded by incomplete building work and disappearing builders, which leave homeowners without resolution or recourse.
36. Consumer protection tools like warranties and professional indemnity insurance are available but can be underused or poorly understood by homeowners. Only around 46 per cent of new builds are covered by home warranty products, with even lower uptake for renovations.
37. This is partly due to low consumer awareness - building a home is typically a once-in-a-lifetime event, making it hard for homeowners to navigate risks in an unfamiliar system. Additionally, behavioural bias market failures such as optimism- and present-bias cause homeowners to underestimate future risks and deprioritise long-term protections.
38. Without intervention to address these market failures, homeowners will face greater financial exposure under the new liability regime, particularly in a sector with high insolvency rates and uneven coverage for design-related risks.

What objectives are sought in relation to the policy problem?

39. The objective is to strengthen consumer protection in the shift to proportionate liability by addressing the increased risks to residential homeowners associated with the empty chair scenario. Specifically, it seeks to:
 - address market failures that prevent uptake of consumer protection tools
 - strengthen accountability for defective design work, which is not well covered by warranty products.
40. In achieving these objectives, it is important to ensure that any interventions or requirements are not so costly or complex that they could limit competition and innovation, unduly increase build or compliance costs, and constrain housing supply.
41. This is consistent with the direction provided by Cabinet and the broader Government aim for the supporting mechanisms to be consistent with other policies and strategies to improve building sector productivity and performance.
42. Within these objectives there is a trade-off between providing consumers with adequate protection and not driving up costs or reducing competition in the building market.

What consultation has been undertaken?

43. In September 2024, MBIE officials met with Australian experts and regulators to gather insights on Australia’s building regulatory systems, including their liability rule changes in the early 1990s and early 2000s. These meeting had a wide range of participants in the Australian building and construction system:
 - Commonwealth officials involved in federal building policy.
 - State building officials, responsible for administering and developing building regulatory regimes in the Australian Capital Territory, Victoria and New South Wales.

- State building insurance providers.
 - Building surveyors/private building certifiers.
 - Building industry membership organisations.
44. In February 2025, MBIE officials held targeted conversations with the QBCC, which operates Queensland’s home warranty scheme, and Victoria’s Department of Treasury and Finance, which drove the recent changes to Victoria’s home warranty scheme, to better understand how home warranty insurance operates as a supporting mechanism for proportionate liability.
45. A Liability Roundtable hosted by MBIE in April 2025 also informed this analysis. This was attended by key stakeholders from the building and construction, insurance and legal sectors as well as experts from Australia, including Prof Kim Lovegrove as facilitator.
46. Since Cabinet’s decisions on proportionate liability, MBIE has carried out further targeted engagement on the supporting mechanisms. A high-level summary of this engagement is provided below.

Table 2 Summary of targeted engagement August - September 2025

| Group | Feedback |
|---|--|
| Warranty providers including Registered Master Builders Association, NZ Certified Builders (Halo), Stamford Insurance, BuiltIn, Signature Homes and Classic Homes. | Broadly supportive of the proposed consumer protections. Noted the value of making home warranty coverage mandatory and noted their capacity to scale up to respond to market demand. Free and frank advice [redacted] |
| Banks including the New Zealand Banking Association and Free and frank [redacted] | Broadly supportive of the proposed consumer protections. Free and frank advice [redacted] |
| Building sector through discussions with Master Builders, NZ Certified Builders, the NZ Construction Industry Council and the Building Industry Federation. | Stressed the importance of suitable supporting mechanisms and noted the risks around them not addressing high-rise residential. |
| Individual builders through one-to-one interviews held on behalf of MBIE by The Research Agency. | Broadly agreed with the value guarantees provided to consumers. Noted risks to the cost of construction and business continuity related to deposit schemes and that warranties would increase costs for consumers. |
| Design and structural peak bodies including Architectural Designers NZ, Association of Consulting and Engineering, NZ Institute of Architects, NZ Institute of Building Surveyors, and Engineering NZ. | Peak bodies were overall supportive of mandating PI requirements, with many already requiring PI as a condition of membership or holding firm expectations that members would have voluntary cover. Free and frank advice [redacted] |

⁸ Other main banks were invited to meet with MBIE but had not responded at the time of writing.

| | |
|---|---|
| Consumers , whose views were represented by the Home Owners and Buyers Association of New Zealand (HOBANZ) and the Building Disputes Tribunal ⁹ . | Broadly supportive of the proposed consumer protections. Stressed the importance of mandatory home warranty coverage given poor consumer knowledge. |
|---|---|

47. Officials also sought the views of MBIE’s Building Advisory Panel¹⁰ and engaged with internal subject matter experts from finance, insolvency, service delivery and consumer protection teams.
48. There will be further opportunities for the public and industry to provide feedback on the draft Bill during the Select Committee process.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

49. The following criteria will be used to compare options:

| Criterion | Description |
|---------------------------|--|
| Effectiveness | The option should reduce the risk to consumers of uncompensated loss or unremedied defects, ie the proportionate liability empty chair. |
| Accountability | The option should increase accountability and responsibility of builders and design professionals, promoting high performance and good business practices. |
| Building sector stability | There should be minimal negative impacts on the cost and supply of housing. The Government’s priority is to improve the supply of affordable housing and make it easier and cheaper to build, including by reducing costs for builders and homeowners. |

What scope will options be considered within?

50. The initial package of supporting mechanisms is intended to lay the foundations for future work to build upon, prioritising enhanced consumer protection under proportionate liability, as directed by Cabinet.
51. The scope of feasible options has been limited by the approach set out in the previous Cabinet paper, that the supporting mechanisms should:
 - place minimal financial burden on the taxpayer
 - build on existing public mechanisms and is cost-neutral long-term
 - support a market-led approach, with light touch government involvement
 - be consistent with Government aims in relation to improving building sector productivity and performance.

⁹ The Building Disputes Tribunal is a private entity. Recommendations from a 2022 Consumer Protection Review for a public disputes tribunal have not yet been responded to.

¹⁰ The Building Advisory Panel is a strategic advisory group established by MBIE. Members include technical experts, suppliers and peak body and local government representatives. Its primary role is to provide independent, high-level advice on key issues facing the building and construction sector.

52. Further, Cabinet noted that the private market is a sufficient starting point to support the transition to proportionate liability, and that the Minister is not proposing that the Crown be directly involved in a warranty scheme.
53. The Minister has provided direction that the initial package of supporting mechanisms initially applies to low-rise residential homes (three-storeys and under), where buyers are less equipped to manage risk.

A deposit security scheme has been ruled out as an initial supporting mechanism

54. Per Cabinet direction, a deposit security scheme was considered to reduce risk to homeowners of losing money when a builder fails to start or complete work.
55. Under the proposal, if a builder takes a deposit (which is currently voluntary), it would be required to be held by a third-party and paid to the builder at an agreed trigger near or at completion. MBIE considered a variety of options for potential deposit-takers including:
 - by an approved third-party, eg one of the existing warranty providers
 - in escrow by a law firm or other provider of the service (Commercial information [redacted])
 - by the government, for example by MBIE in a similar way to how rental bonds are held by Tenancy Services (Free and frank advice [redacted])
56. MBIE sought to understand the impacts of such a proposal through research with builders carried out by The Research Agency (TRA) and economic analysis by Deloitte.
57. TRA's research found strong opposition for a deposit security scheme from builders of all sizes, with participants raising concern for cashflow and ongoing operations without access to deposits for required set up costs (with some larger builders raising concerns on behalf of smaller players).
58. Deloitte's analysis focussed on the impact to the wider economy of the funds being removed from circulation. While the draft report found there could be some positive effect on GDP (based on an assumption that builders would use financial services to fund their cashflow gaps and wellbeing effects from imputed rents¹¹), there would be a negative impact on delivery of construction services of approximately \$100-400 million per year.
59. Given these findings, the risk of disrupting an emerging market for deposit protection products and weak alignment with the Government's preference for a market-led approach, the Minister has decided not to progress this option.

What options are being considered?

60. As noted earlier, all options will be complemented by strong education and awareness activities. This is outlined in more detail in the implementation section.

Option 1 – Do nothing / counterfactual

61. Under a 'do nothing' option, other work will progress aimed at improving builder performance including an increase in penalties for Licenced Building Practitioners (LBPs) relating to negligence or misconduct¹². However, these are not expected to have a significant impact on the empty chair problem.
62. Other initiatives aimed at addressing phoenixing and improving LBP performance, including business/financial capability, are progressing on a longer timeline, with the details and meaningful system-wide change expected to develop over a matter of years.

¹¹ Imputed rent is the estimated market rent a person would pay to live in their own home, representing the value of the housing services they receive from owning their property as used in GDP measurements to accurately measure households' consumption of housing services.

¹² LBPs are professional who have been assessed and licensed by the government to carry out specific, restricted building work across different licence classes.

63. Reform is also progressing that removes the BCA oversight role for certain building work (eg self-certification and granny flats) potentially adding risk for consumers of defective work not being detected during the build process.
64. **Home warranties:** Warranty cover for building defects is available through the private market. The type of product (ie guarantee vs insurance) available to a homeowner may depend on their chosen builder, and the limitations and conditions of cover vary between providers.
65. Under this option, the market is left to respond to the shift in proportionate liability and a likely increase in demand for cover, although full coverage is unlikely due to ongoing barriers to uptake.
66. There are no minimum standards for guarantee providers to adhere to (unlike insurers who are required to comply with standards set by the Reserve Bank of New Zealand), and it can be difficult for consumers to understand what is being offered, including any limitations or conditions.
67. Although many homeowners do take up warranty cover, it's not yet widespread - approximately 46 per cent of new residential builds are covered, and even fewer renovations. Lower consumer uptake is driven by behavioural biases which make people more likely to invest in visible aspects of the build or rely on a builder's reputation, rather than securing long-term protection through a warranty.
68. Builders not having capacity to deal with paperwork and being hesitant to imply the buyer needs protection for their service are other causes of low uptake. **Commercial information**
[REDACTED]
69. Homeowners without a warranty in place would need to rely on the implied warranties set out in the Building Act, and other consumer protection regulation, which rely on the liable parties being available to make good any problem. Achieving restitution from these pathways can be challenging over the 10-year timeframe covered, especially where a home has changed ownership (and the new owner does not know who all the liable parties are) or a liable party has left the market.
70. The market response could include introducing new products or new providers entering the market. While all providers we talked to were open to increasing their coverage, future actions could involve providers limiting access / eligibility if there are concerns about increased risk exposure. For example, we heard specific concerns that increased risk could mean providers would choose not to cover self-certified and remotely inspected homes.
71. **Professional indemnity insurance (PI):** The Insurance Council of New Zealand (ICNZ) and key peak bodies have told us that there is no shortage of PI insurance products for professions contributing to design work, with a currently competitive New Zealand market. However, coverage can be inconsistent among some groups, and the market can change quickly in response to a major shock or shift in overseas reinsurance availability.
72. Peak bodies report it is common for architects, designers, engineers and building surveyors to have PI cover either voluntarily or as a requirement of their employment or peak body membership.
73. For example, the Architectural Designers New Zealand (ADNZ) requires its 500 certified professional members (qualified architectural designers or registered architects) to have a minimum of \$250k cover **Confidentiality** [REDACTED] Many ADNZ professional members hold more than \$1M in cover.
74. MBIE understands it is common for professionals to hold 'run-off' insurance to cover any liabilities that arise after they stop practicing. Again, this is usually required through commercial contracts with no formal requirements in place.

75. The expectation that all of these professionals will have PI may not be the reality in practice, especially for residential work where consumers may not know which professionals carry PI insurance, what is an acceptable level, or the implications of not having cover.
76. Under proportionate liability, an uninsured design professional poses a greater risk to the homeowner without the BCA to pick up additional liability if they become an empty chair. If the design professional is unable or unwilling to defend a claim or pay their share of damages, the homeowner will be left without redress.

Option 2 – Consumer-led protections

77. This option focuses on lighter touch regulatory interventions that improve information asymmetries but leave the decision to the consumer as to what risk they are willing to bear once proportionate liability is in effect.

Conditions for warranty and PI cover

78. A 10-year defects cover warranty is required by default for all residential new builds or renovations involving restricted building work (RBW) that requires a consent, valued at \$100,000 or above. Under Option 2 only, the homeowner may opt out of cover by way of a declaration or waiver.
79. RBW is residential design, construction or alteration work that requires a building consent and involves or affects a home's primary structure, weathertightness and certain fire safety design.
80. The benefits of using RBW as a condition for warranty cover include its simplicity - since builders are already familiar with the definition - and it captures the key elements of building work that pose the greatest safety, health, and financial risks to homeowners and users.
81. MBIE consulted with warranty providers on a suitable threshold based on their experience with covering renovations, responses ranged from \$65,000 to \$200,000. A \$100,000 threshold is intended to capture a level of risk that most homeowners are less willing to self-insure, without adding unnecessary compliance costs or risking disrupting productivity in the building sector.
82. Deposit loss and non-completion cover will remain optional, allowing consumer choice and reflecting limited evidence on the scale of a problem. The defect warranty is considered a priority due to the flow-on impact defective building can have on subsequent homebuyers.
83. There are non-regulatory levers that will be considered to improve consumer protections in the deposit and non-completion space, including education and updating MBIE's standard contract to reflect best practice for deposits.
84. These conditions do not place any limitations on builders offering, or consumers seeking, a warranty product for lower value work. Education activity would encourage homeowners to consider its benefits for projects of any value.
85. Under this option, PI cover is not mandatory, but any person providing advice or services relating to the design of building work must disclose their PI insurance arrangements to their clients, including where PI insurance is not held.
86. Similar requirements apply for builders under part 4A of the Building Act, whereby certain information must be disclosed to a client before an agreement is entered. However, research shows these are ineffective without ongoing consumer awareness activity.
87. Peak bodies could play a role in promoting awareness of the changes amongst their members.

Role of building warranty providers

88. Building warranty providers will be required to register with MBIE to ensure a base level of assurance and transparency

89. Guarantee providers will require an independent audit to assess that they are capable of meeting actuarial and operational requirements, such as capital adequacy, valuation of liabilities, risk management strategies, and the ability to stand by their claims for a 10-year period. These requirements will be set in regulations.
90. Insurance-based warranty products already comply with solvency standards set by the Reserve Bank of New Zealand and will be automatically registered. While guarantee providers have been improving their products, requiring them to undertake annual external auditing will ensure financial adequacy for current and future providers.
91. All providers will be required to publish online the conditions and exclusions of their warranty in a clear, plain language way that can be understood by the homeowner.
92. All providers will be required to submit regular, standardised data reports to MBIE to strengthen transparency and oversight in the building sector. This information will be aggregated to protect commercial sensitivities and privacy, while enabling MBIE to identify trends, risks, and further opportunities. These will be further engaged on as part of regulations development.

Role of regulated parties

93. The homeowner will be responsible for considering the available warranty products and being informed of the risks of not having cover. Homeowners may choose to actively opt out home warranty cover by way of a declaration or waiver.
94. The lead builder is responsible for ensuring the homeowner has access to a defects warranty product and facilitating contact with the warranty provider, if required, before commencing qualifying building work.
95. Builders must have access to a market provided warranty to be able to carry out qualifying building work as a lead contractor, even if the homeowner opts out.
96. Based on the current market offering, this option would require builders without access to warranties to either join one of the two builders' associations, be approved by an insurer or broker to offer their product, develop a bespoke warranty product, or work under the umbrella of a group home builder. It is possible that new providers may enter the market to leverage the expected lift in demand for warranties.
97. Professionals in scope of the PI requirements are responsible for disclosing to the homeowner whether they have PI cover and being clear on the implications of this for the homeowner.
98. The homeowner can decide whether to engage a design professional, taking into consideration their ability to be financially accountable through insurance.

Role of regulators

Confidential advice to government

Option 3: Compulsory consumer safeguards

Conditions for warranty and PI cover

103. For warranties, the same conditions apply as for Option 2 – a 10-year defects cover warranty is required for all residential new builds or renovations involving restricted building work

(RBW) that requires a consent, valued at \$100,000 or above. However, under Option 3, the opt-out provision is removed.

- 104. For PI, professionals involved in building design work would be required to hold PI insurance. The details of this scheme are yet to be developed and require further consultation. If agreed by Cabinet, MBIE intends to set enabling provisions for PI insurance requirement regulations in legislation. Officials would then engage further with industry to develop appropriate regulatory and operational requirements for the regime including the applicable professions and minimum requirements.
- 105. For PI, professionals involved in building design work would be required to hold PI insurance. The details of this scheme are yet to be developed and require further consultation. If agreed by Cabinet, MBIE intends to set enabling provisions for PI insurance requirement regulations in legislation. Officials would then engage further with industry to develop appropriate regulatory and operational requirements for the regime including the applicable professions and minimum requirements.
- 106. Given known limitations and vulnerability of New Zealand’s insurance market to external forces, it is proposed to enable both warranty and PI requirements to be suspended through secondary legislation in the event that the market cannot provide sufficient cover eg if a major provider were to leave New Zealand (as has happened in the past with Lloyd’s).

Role of regulated parties

- 107. The same requirements apply for builders as in Option 2.
- 108. Certain design and structural professionals will be required to hold PI insurance, meeting any requirements set in regulations relating to their profession or role in design work.
- 109. It will be the homeowner’s responsibility to carry out due diligence when selecting a builder and ‘shop around’ for the best warranty product that suits their needs, providing evidence of the cover as part of their consent application.
- 110. Homeowners should still carry out due diligence to understand a professionals level of cover so they can make informed choices. Requiring PI will give homeowners access to compensation in cases where the professional’s contribution results in loss or defects.

Role of regulators

- 111. MBIE will be responsible for registering and ongoing monitoring and enforcement of warranty providers, including that reporting and publication requirement are being met.
- 112. BCAs will be responsible for sighting proof of warranty cover before issuing a consent, and Territorial Authorities will be responsible for recording the warranty on a property’s file / LIM.
- 113. MBIE will be responsible for monitoring and enforcing PI insurance requirements.

How do the options compare to the counterfactual

- 114. The options have been assessed against the selected criteria reflecting the policy objectives. The qualitative scoring is summarised below, followed by a more detailed evaluation.

Key:

| | | | | |
|---------------------------------|----------------------------|----------------------------|---------------------------|--------------------------------|
| ++ | + | 0 | - | -- |
| Much better than the status quo | Better than the status quo | The same as the status quo | Worse than the status quo | Much worse than the status quo |

Table 3 Analysis of options against criteria

| | Option 1: Do nothing | Option 2: Consumer- led protections | Option 3: Compulsory consumer safeguards |
|---|-------------------------|--|---|
| Effectiveness How successfully the option reduces financial risk for consumers under proportionate liability | 0 | + | ++ |
| Accountability Strengthens the obligation of builders and designers to ensure their work meets required standards | 0 | + | ++ |
| Building sector stability Minimal negative impacts on the cost and supply of housing | 0 | - /0 | - |
| Overall assessment | 0 | 1.5 | 3 |

Evaluating options against the counterfactual

Option 2: Consumer-led protections

Effectiveness

115. Allowing homeowners to opt-out of a home warranty provides consumer choice and would increase warranty uptake, however it would be unlikely to fully mitigate the risk to homeowners facing the empty chair scenario.
116. It can be challenging to ensure homeowners are well-informed - especially given how rarely they engage with the building system. Additionally, they may receive varying guidance from different parties, which could influence their decision not to proceed with the warranty.
117. Disclosure requirements for builders in the Building Act are frequently not complied with, requiring ongoing consumer awareness activity to ensure homeowners are informed of their rights and can confidently require the documentation.
118. Additionally, behavioural biases mean homeowners tend to underestimate future risks and prioritise short-term gains. This makes them more likely to invest in visible aspects of the build or rely on a builder's reputation, rather than securing long-term protection through a warranty.
119. Stakeholders have raised concerns around an opt-out provision undermining the effectiveness of a warranty regime, and that it could dilute consumer understanding of the value of cover.

Accountability

120. Requirements imposed on warranty providers will strengthen the existing market and contribute to MBIE's monitoring capabilities to inform future advice and development of supporting mechanisms through improved data collection.
121. Warranty requirements could improve building standards and business practices as lower performing builders are required to up lift their performance to access and retain warranty cover.
122. This approach also encourages higher standards in documentation and risk management throughout the design and construction process, as practitioners will be subject to ongoing scrutiny from providers.

123. There may be a modest increase in accountability for design and structural professionals through disclosure requirements. However, in the residential market, this benefit could be limited if homeowners are unaware of the disclosures or unable to act on them effectively.

Building sector stability

124. There could be some short-term disruption with a risk that some builders may not be able to gain access to cover due to not meeting association or insurance requirements, for example due to having a poor financial record or poor reputation.
125. However, anecdotally, providers told us that builders who don't initially meet the requirements are often very close and can make small improvements to qualify – we note that the type of builders seeking cover may already be more aligned with the standards than the others within the sector who remain unaffiliated.
126. There is a risk to sector stability (including competition and price) if builders cannot access a warranty product and carry out their role under the new regime. This is partly mitigated by the lead-in period allowing builders to lift performance and by the threshold allowing them to move into different roles, eg smaller renovations or working as a sub-contractor. The Government has already sent signals that these requirements will apply, allowing builders to begin preparing.
127. Allowing poor-performing builders who fail to meet performance requirements to continue operating without change may pose a greater long-term risk to sector stability. It could undermine consumer confidence and increase the likelihood of unresolved issues in the market.
128. Requiring professionals involved in design work to disclose their level of cover is not expected to have an impact on over building sector stability.

Option 3: Compulsory consumer safeguards (preferred option)

Effectiveness

129. Requiring warranties for all qualifying builds will result in the greatest overall consumer protection and remove the temptation for a homeowner to opt-out for a small saving, or to spend money on another part of the build.
130. PI insurance primarily protects professionals against claims for losses arising from their work, however it also indirectly increases the likelihood that a professional will remain engaged to defend a claim rather than exit the market due to insolvency. This will also benefit other clients of the design professional, reducing the risk to them of incomplete work.

Accountability

131. Requirements imposed on warranty providers will strengthen the existing market and contribute to MBIE's monitoring capabilities to inform future advice and development of supporting mechanisms through improved data collection.
132. Builders and professionals not currently meeting performance expectations will be incentivised to lift their standards to remain competitive, contributing to a more capable and accountable industry.
133. This approach also encourages higher standards in documentation and risk management throughout the design and construction process, as practitioners will be subject to ongoing scrutiny from providers.
134. There will be a greater improvement in accountability under Option 3, with universal coverage supporting professionals to act within their scope of expertise and be financially accountable for any errors or omissions.

Building sector stability

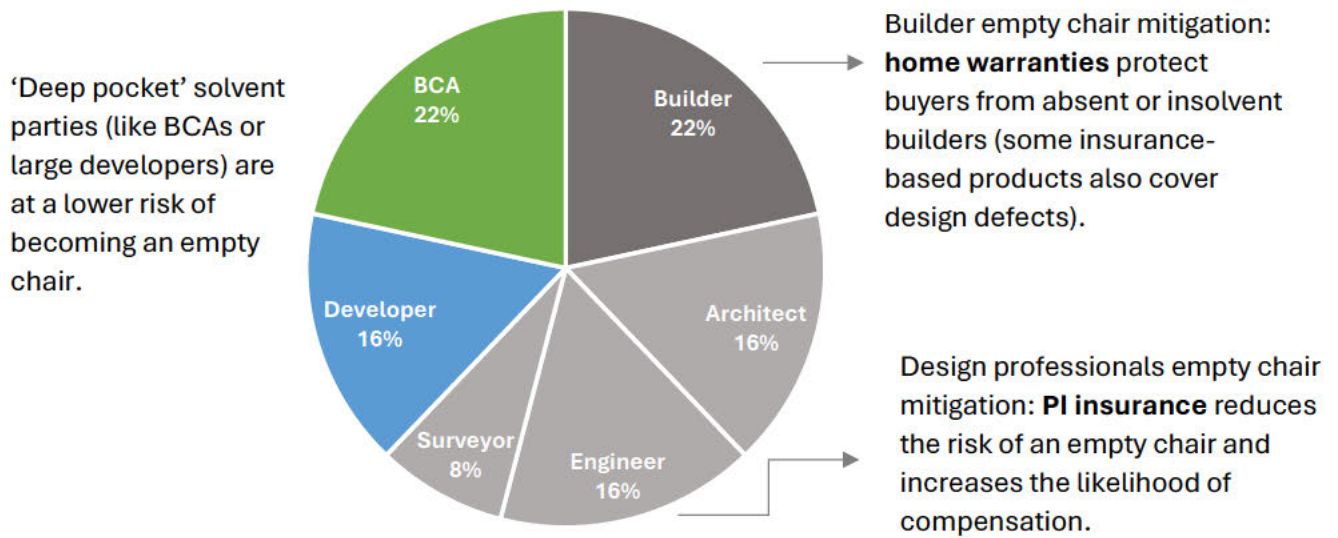
135. As with Option 2, there could be some short-term disruption if builders are not able to continue in their current roles due to not meeting performance requirements.

136. Additionally for Option 3, given it is mandatory, the risk of disruption through a major warranty provider pulling out of the market needs to be mitigated. It is proposed this is done through an ability to suspend requirements through secondary legislation.
137. While there is currently a competitive PI insurance market and a growing warranty market, the availability of insurance can tighten quickly based on claims experience, changes in international markets, and the impact of natural disasters or other systemic shocks that increase risk exposure and reduce insurer appetite.
138. Feedback from warranty providers suggests Lloyd's is re-entering the market in a much stronger position than when it left in 2019. Interest from Australia to enter New Zealand's warranty market is another strong signal – with compulsory warranties improving certainty for these providers.
139. All providers MBIE spoke with indicated they can scale up to meet demand, though the extent of builder adjustments needed introduces some uncertainty – this would be monitored in the lead-up to proportionate liability and the requirement coming into effect.
140. There is likely to be a small increase in the cost of construction for homeowners who would not otherwise have purchased a building warranty without a mandatory requirement. MBIE estimates that warranty premiums paid direct to providers for a typical \$500,000 build currently range from approximately \$1,250 (approximately 0.24% of build value) for a guarantee product to around \$2,750 (0.55%) for an insurance-backed warranty.
141. There may also be costs for unaffiliated builders to meet warranty eligibility (eg trade organisation membership fees, upskilling) may be passed on to homeowners, however this is expected to be spread across all clients so would have a low impact at the individual level.
142. Given PI insurance is readily available, there is no identified risk to overall sector stability. Any risk of sufficient cover not being available at a future date is mitigated through allowing the requirement to be suspended through secondary legislation.
143. PI cover promotes stability by enabling design and structural professionals to stay in business and potentially improves professional standards through setting standards and requirements for policy holders.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

144. *Option 3: Compulsory Consumer Safeguards* is the preferred option to achieve the objectives for the initial package of supporting mechanisms.
145. This option best meets the criteria set out in Table 1 and compared in Table 3, and addresses areas where homeowners are most at risk of an empty chair scenario for residential builds.
146. A typical residential build will include a lead builder (and subcontractors for which the lead builder is ultimately responsible) and one or more design or structural professionals, eg an architect or structural engineer.
147. The below chart provides a hypothetical example of an empty chair scenario if the builder and design professionals are not around to meet their portion of liability under the new regime, and how the proposed supporting mechanisms would address this problem.

Figure 2 Hypothetical example of empty chair scenario for homeowner



The market is ready to respond to a compulsory warranty requirement

148. The below table shows an approximate status quo for warranty coverage, and the effect on the current gap (based on the 30,358 consents issued in year end March 2025) if all Master Builders and Certified Builders (Halo) members utilised their organisation's warranty product.

Commercial information

| |
|--|
| |
|--|

149. If all Master Builders and Certified Builders (Halo) members were to take up the warranties they qualify for, coverage could reach approximately **Commercial** of residential building activity. This figure does not account for:

- unaffiliated builders who may join trade organisations
- increased uptake of insurance products or growth in group builder schemes
- the fact that a building consent signals intent to build, not guaranteed construction - meaning the full coverage gap is unlikely to need to be filled in any given year.

150. MBIE's engagement with existing warranty providers supports a compulsory approach and provides assurance of the robustness of the current market offering:

- providers are willing and able to scale up coverage – some to two- or three-times current levels
- providers have improved or are improving the quality of their offerings including:

- introducing targeted monthly financial reviews of members, driven by risk indicators (credit score, movement in credit score, number of guarantees)
 - strengthened membership criteria, including financial checks of businesses and a minimum credit score requirement
 - implementing pre-claim management processes
 - developing guides for homeowners and builders to set expectations and provide education
 - streamlining claims process and engaging independent assessors for claim review.
 - all providers were open to sharing aggregated data and continuing to work with MBIE to support ongoing monitoring and evaluation.
151. Based on the above, MBIE considers the market has capacity to respond to a compulsory warranty requirement, with scope for new providers to enter and further expand coverage.
152. Of the five unaffiliated builders interviewed by TRA, none raised concern about their ability to access a warranty product, with several saying they would join an association to access the guarantee. There was a high level of support from builders for mandatory warranties over opt-out as offering better consumer protection.
153. Several other stakeholders, including HOBANZ and warranty providers support mandatory home warranty cover, with some advocating for this to be an insurance-based product which is not feasible in the current market with only one provider offering insurance cover for building defects.

Is the Minister’s preferred option in the Cabinet paper the same as the agency’s preferred option in the RIS?

154. Yes. MBIE’s analysis supports the Minister’s preferred option for the initial package of supporting mechanisms. The increased monitoring capabilities will allow MBIE to evaluate its success with the ability to intervene further if needed.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

155. The marginal costs and benefits are shown below. There is some double counting within as costs to one party are a benefit to another (eg the cost of warranty cover is paid from homeowner to provider). Including both shows the distributional effects of the proposal.

| Affected groups | Comment | Impact | Evidence Certainty |
|--|--|--------|--------------------|
| Additional costs of the preferred option compared to taking no action | | | |
| Warranty providers (Domestic) | Providers will face covering the costs when warranties that would not have been bought under the counterfactual are used. Reporting and publication requirements may require some initial and ongoing compliance costs as systems are updated. There will be fees payable to MBIE associated with becoming registered. | Medium | Medium |
| Regulated groups: Builders / design professionals and engineers | There will be some additional cost/compliance burden on builders who choose to become affiliated with a home warranty provider (including membership fees of between approximately \$1,000 to \$3,000 per year to access a Master Builders or Halo guarantee). | Low | Medium |

| | | | |
|---|---|------------|------------|
| | <p>Design professionals and engineers without PI cover will need to purchase at an average cost of around \$1,500 - \$3,000 per year depending on level of cover, which can vary greatly. It is common for firms to cover the cost of employees' PI cover. There may be an additional optional cost to join an association for access to a discounted PI package.</p> <p>There could be an additional cost to some builders who may face revenue loss if they are unable to access warranty cover or secure alternative work.</p> | | |
| Regulators – MBIE and BCAs | <p>MBIE will have one off legislative and policy development costs and ongoing implementation, monitoring and evaluation costs. There will also be a cost for the education and awareness campaigns, Confidential advice to [REDACTED]</p> <p>BCAs/TAs may have some additional administrative costs depending on their role, Confidential advice to government [REDACTED]</p> | Low-medium | High |
| Homeowners | <p>There may be a one-off cost for home warranty cover (ie for those who would not have paid for cover voluntarily). Signature Homes includes a guarantee as part of its overall build contract, others charge a one-off fee. The current cost of cover for a \$500,000 build (defects cover only, GST included) varies:</p> <ul style="list-style-type: none"> • Commercial [REDACTED] : \$2,750 (0.55% of total) • [REDACTED] : \$1,515 (0.30%) • [REDACTED] : \$1,495 (0.30%) • [REDACTED] \$1,200 (0.24%). <p>The wide range of warranty options and uncertainty around market pricing and buyer choices mean that any national-level cost estimate would be inherently imprecise.</p> <p>There will also be additional costs to homeowners from BCAs relating to the consenting process and tracking of warranty status.</p> | Low | Medium |
| Non-monetised costs | <p>We expect the overall cost impact to be low, with costs falling to homeowners for warranty cover and builders who need to adjust practices to meet warranty provider requirements. The extent of this varies, making it difficult to estimate monetised costs accurately.</p> | Low-medium | Medium |
| Additional benefits of the preferred option compared to taking no action | | | |
| Warranty providers (Domestic) | <p>Providers are likely to benefit from higher demand eg increased revenue from premiums and membership fees for trade organisations. Reputational benefits will arise from being registered with MBIE and increased exposure. Providers will also see benefits from improved perceptions of the quality of their offering: minimum standards will lift the performance of the home warranty market across the board and help distance future products from previous issues. All current providers are domestically owned; this could change as new providers enter the market.</p> | Medium | Medium |
| Builders and other design professionals and engineers | <p>Reputable builders backed by good warranties could benefit from increased demand as customers improve due diligence to manage their risk.</p> | Low | Low-Medium |

| | | | |
|-------------------------------|---|------------|--------|
| | <p>Warranty requirements could improve building standards and business practices as lower performing builders are required to up lift their performance access and retain warranty cover.</p> <p>Design professionals taking up PI will benefit should they need to defend against a claim.</p> | | |
| Regulators - MBIE and BCAs | Improved access to data will give MBIE and BCAs greater oversight of building defects and inform robust future decisions. | Low-medium | Medium |
| Homeowners | <p>Homeowners who purchase warranties under the policy (but would not have voluntarily) will have peace of mind, on-sale benefits, and simpler recourse than relying on Building Act implied warranties, if it is needed. All homeowners (and subsequent purchasers) will benefit from warranties being easier to take advantage of even once a sale has occurred. Publication requirements will give all homeowners access to easy-to-understand information, helping them navigate decisions with confidence.</p> <p>While there are one-off costs, we expect reduced costs to homeowners at an aggregated level associated with a more certain experience in getting defects remedies.</p> | Medium | Medium |
| Non-monetised benefits | The greatest gains are for homeowners who, under the counterfactual, would not have purchased a warranty but are now required to under the proposed policy. If something goes wrong and the empty chair problem arises (eg the builder is unavailable or insolvent), these homeowners will not have to bear the majority of the cost. Benefits for warranty providers and builders are somewhat offset by costs, however there is an overall benefit from the changes supporting higher building standards, better business practices, and a more transparent and resilient system. | Medium | Medium |

Section 3: Delivering an option

How will the proposal be implemented?

156. MBIE is developing an implementation plan for the proposed liability supporting mechanisms. During the one-year transition to proportionate liability:
- builders can respond to the new requirements by improving their practice and establish a track record of performance to qualify for warranty or deposit security products.
 - new entrants to the warranty market, including insurers, can develop products and bring them to market in advance of the rule change. This will increase coverage and uptake of warranty products, making them more successful.
 - MBIE has already gathered limited data from warranty providers on uptake and defect claims. Providers have indicated a willingness to continue sharing information, which will support MBIE’s monitoring and preparation ahead of formal reporting requirements being introduced.
 - MBIE and the sector can partner on an extensive public education approach and engage about what the change to proportional liability means, and how they can best protect and advocate for their interests.
 - MBIE will establish registration requirements for warranty providers.
157. MBIE has engaged with warranty providers on the types of data they can provide on an annual basis. These reporting requirements are expected to come into effect in early 2027 to enable early oversight of the current market state.

158. Commercially sensitive data would be stored securely by MBIE's Building and Tenancy Services domain team and supplied to policy teams in an aggregated format.
159. MBIE also intends to bring in publication requirements for providers in advance of the liability rule change. This would require information of what is included in the warranty and any limitations or conditions to be set out on a public website in plain English.
160. MBIE intends to use the transition period to deliver a comprehensive education and engagement campaign to ensure the sector is well placed to respond. Including:
 - guidance for builders, professionals and consumers
 - enabling BCAs to integrate the changes into the existing consent process
 - public education, to ensure homeowners are aware of the value of warranties, deposit protection and PI cover, and can effectively advocate for their own interests and make informed decisions.
 - potentially partnering with sector organisations, including homeowner representatives like HOBANZ and industry organisations like Master Builders, real estate companies, mortgage brokers, and key financial institutions like banks and insurers to expand the scope and coverage of the education campaign.
 - design professionals and engineers through industry bodies to support early and widespread uptake of PI insurance.
161. Leveraging existing channels that consumers interact with during the building process, or when building a house that could still be under warranty (eg banks, lawyers, real estate agents) will be an effective way to spread the message and inform buyers of their rights and responsibilities under the new regime.
162. Confidential advice to government
[REDACTED]

How will the proposal be monitored, evaluated, and reviewed?

163. MBIE plans to gather data from warranty providers voluntarily in early- to mid-2026 to provide a baseline for monitoring of coverage and claims. This information may not be as complete as future data collected if some relevant data is not yet captured. Regular reporting will be required once the regulations are in effect.
164. MBIE is developing a monitoring framework for home warranty uptake in the lead-up to proportionate liability including:
 - **tracking uptake of home warranty products** through engaging directly with warranty providers to collect regular data on coverage rates
 - **identify barriers** to compliance and areas requiring policy or market intervention with targeted surveys and ongoing engagement with builders, developers, and industry bodies to understand practical challenges such as cost, product availability, and awareness
 - **detect early signs of stress in the building sector** linked to warranty availability or affordability, by monitoring building consent volumes, construction start delays, and insurance market signals, supported by feedback from councils and industry stakeholders.
165. Feedback from consumers and industry will be collected through existing MBIE surveys and channels. This information will support MBIE's monitoring activities by identifying themes and areas that may require further regulatory or non-regulatory action.
166. A monitoring regime for PI requirements will be established following development of the regulations, it is expected this will mostly be managed through Boards governing registered professions and peak bodies.

Annex One: Key terms and definitions

| Professionals providing advice or services relating to the design of building work | |
|--|---|
| Architect / Registered Architect | A protected term only able to be used by an architect registered under the Registered Architects Act 2005 |
| Building surveyor | A professional who inspects, tests, and monitors buildings and constructions to ensure they are built and maintained correctly |
| Designer | A qualified building designer, including an architectural designer, who has not registered as an architect under the Registered Architects Act 2005, who may focus on residential and smaller commercial projects. Can include Licenced Building Practitioners holding a design class licence |
| Engineer | Engineers commonly involved in building work include structural engineers, geotechnical, mechanical and fire engineers. |
| Warranties and insurance | |
| Guarantee (referred to as a warranty in the RIS) | Building defect guarantees act as a promise to ensure the builder (or a replacement builder if the original builder is insolvent or absent) comes back on site to remedy the issue. Guarantees are not an insurance product and have varying levels of cover and exclusions |
| Insurance (referred to as a warranty in the RIS) | Insurance-backed warranties will pay out to allow the homeowner to remedy an issue, with the insurer managing the resolution process. Insurance providers are required to comply with standards set by the Reserve Bank of New Zealand (guarantee providers are not). |
| Professional Indemnity Insurance (PI Insurance) | Insurance to protect individuals and businesses who provide professional services or advice against claims of negligence, error, or omission in their work. It commonly covers the costs of legal defence, and any damages or settlements awarded to a client who suffers financial loss due to a professional mistake |
| Other common terms | |
| BCA | A Building Consent Authority, registered under the Building Act 2004, responsible for approving building consents and other functions under the Building Act |
| Defect | Failure of building work to achieve acceptable industry levels of quality or performance, including noncompliance with the building Code, non-agreed variations from consented drawings, failure to meet agreed contractual specifications, or premature product failure. It does not cover minor issues that fall within acceptable tolerances |
| Lloyds of London | A large insurance and reinsurance market located in London |
| Unaffiliated builder | A builder who is not a member of a building trade representative organisation, including the Master Builders Association and New Zealand Certified Builders, which provides a home defect warranty product. |