



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

Building System Legislative
Reform Programme

Summary of submissions

AUGUST 2019





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

Ministry of Business, Innovation and Employment (MBIE)

Hikina Whakatutuki - Lifting to make successful

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1 Introduction

1.1 Purpose

In April 2019, the Ministry of Business, Innovation and Employment (MBIE) released the Building System Legislative Reform Programme discussion paper for public consultation. The proposals in the discussion paper aim to lift the quality of building work and deliver fairer outcomes to parties when things go wrong.

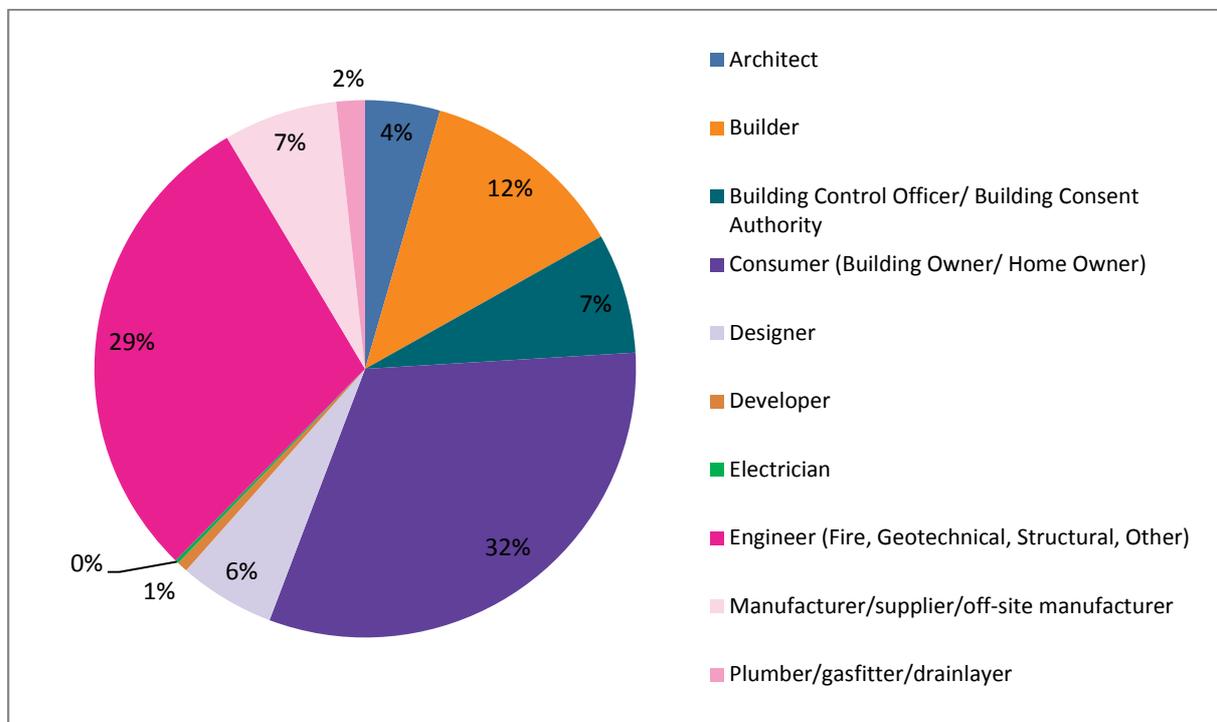
When public consultation on the proposed reforms closed on 21 June 2019, MBIE had received 470 submissions. There were 305 online submissions and 165 written submissions. MBIE will use the submissions to inform its advice to the government on the proposed reforms.

1.2 Snapshot of all submitters to the consultation

MBIE received 215 submissions from organisations and 255 from individuals. The majority of submissions came from engineers, builders and consumers.

Major stakeholders who submitted include: Auckland Mayoral Housing Taskforce, Building Industry Federation, Property Council New Zealand, Fletchers, Building Officials Institute of New Zealand (BOINZ), BRANZ, Engineering New Zealand, Chartered Professional Engineers Council, Insurance Council of New Zealand, Local Government New Zealand, Master Plumbers, New Zealand Institute of Architects, Prefab New Zealand, Registered Master Builders, Certified Builders, CTV Building Families Group and local councils.

Figure 1: Occupations of submitters



1.3 The consultation process

MBIE consulted on proposals for five areas of the building regulatory system:

1. Building products and methods
2. Occupational regulation of Licensed Building Practitioners (LBP); engineers; and plumbers, gasfitters and drainlayers (PGD)
3. Risk and liability
4. Building levy
5. Offences, penalties and public notification.

The discussion paper invited people to respond to a number of questions, which were included in an online questionnaire. Submitters could also make a written submission. The discussion paper is available on the [MBIE website](#). In addition, MBIE met with a number of key stakeholders to understand their views of the proposals and test how the proposals could be refined further.

1.4 How this document works

This document is a summary of the submissions MBIE received, including some of the key themes and issues raised by submitters. The document is in two sections.

The first section is a summary of the key themes that emerged through submissions across the programme and in each of the five areas of proposed reform. The second section looks at the detailed feedback on each of the proposals. This covers the proposals and questions asked in the discussion paper.

1.5 Meaning of terms used

This document is designed to give the reader a general idea of the numbers of submitters making similar comments throughout the document. The numerical values of terms used are outlined in Table 1 below.

Table 1: Definitions of numerical terms

| Term | Number of submissions |
|------------------------|-------------------------|
| One / single / a | 1 |
| A few / a couple | 1–3 |
| Several / a number of | 3–7 |
| Group or a collection | 7–15 |
| Many or a large number | Up to 50% of submitters |
| Most or the majority | Over 50% of submitters |

1.6 Disclaimer

Some, but not all, submissions have been directly quoted in this document. All submitters were notified that their submission or the content included in the summary or other report could be made public. Making a submission was considered consent to making the submission public, unless the submitter clearly specified otherwise.

1.7 What we heard

1.7.1 Submitters' views on the overall reform programme

The majority of submitters agreed that system-wide change is needed and support most of the proposals at a high level.

Areas where there was strong agreement or support for the proposals included products definitions, modern methods of construction (MMC), requiring a guarantee or insurance product for residential new builds and significant alterations, enabling the levy to be used for broader stewardship purposes and restricting safety-critical engineering work.

Areas where there was strong disagreement, or where submitters suggested the assumptions behind the proposals should be revisited, included establishing a new voluntary certification scheme for engineering, liability settings and reducing the building levy.

Submitters were keen to work closely with MBIE to refine the proposals and work on the detailed design of the policy. Submitters warned against implementing the reforms too quickly and favoured a logical and sequential change process.

1.7.2 Summary of key points by area

Submitters' views on building products and methods

The majority of submitters supported the proposals for building products and methods. Most submitters believed that product information would support good decision-making by designers and building consent authorities (BCAs). Monitoring and enforcement were seen as key to the proposal being successful.

Submitters who did not support this proposal came from two different perspectives – either they considered that the costs of providing information outweighed any benefits or the proposal did not go far enough. Councils and other key industry organisations called for the government to have a stronger role by verifying the information or providing a central register of building products.

Only a small number of submissions on MMC came from manufacturers or suppliers. The key stakeholder, Prefab New Zealand, viewed the proposals positively. Submitters were supportive of the proposals but raised a number of questions about the design and implementation of the proposed framework.

Submitters' views on licensed building practitioners

The majority of submitters supported broadening the definition of restricted building work to include more complex, non-residential building work. The long-term benefits of the proposal were seen as outweighing the short-term, negative impact it would have on the builder skills shortage. There was some concern that if the threshold was too high or complex some high-risk buildings would not be captured.

There was strong support for raising competency standards, implementing a code of ethics and improving monitoring and enforcement, but there was concern about the scheme's ability to actually manage quality and improve behaviour. While submitters appeared to support a fit and proper person test, there was variable understanding on what this test would mean. Some raised concerns about the impact on human rights if a fit and proper person test was introduced.

Submitters suggested a variety of ways the scheme could be improved, including introducing tiered licensing, better regulating activities for site management, and better assessment of supervision competence.

Submitters' views on engineers

Most submitters did not support introducing a new voluntary certification scheme. The majority of submitters thought that the Chartered Professional Engineers (CPEng) scheme, or CPEng with changes, could provide assurance of general competence and should be improved rather than replaced. Some raised concerns with the governance arrangements of CPEng. Many, including Engineering New Zealand, submitted that assurance of general competence should be self-regulated by the profession. Many also appeared to confuse CPEng with Engineering New Zealand's Chartered Member class.

Most submitters supported restricting engineering work but there was a wide range of views on what the definition of restricted engineering work should be and where the thresholds should be set. Concerns were raised about the potential impact on the wider design workforce and how this change will fit with a system of other regulated practitioners. Many submitters said there would need to be sufficient resources to upskill the workforce.

The majority of submitters supported establishing a new licensing scheme to regulate who can carry out restricted engineering work and believed it would increase protections for the public. Many suggested licensing a wider range of engineering specialties, including those outside of the building sector. A number of submitters thought that the objectives of the licensing scheme could be achieved through improvements to CPEng. This would require significant change.

There was strong support for greater engagement with the sector on the proposals, implementing changes over a period of time and supporting the changes with education and guidance.

Submitters' views on removing exemptions for plumbers, gasfitters and drainlayers

The majority of submitters, including the three trade associations and the majority of local councils, supported plumbing work being undertaken by a licensed person. The proposals were viewed as increasing accountability and the quality of the work.

Concerns were raised about the support that would be available to allow those currently working under an exemption to continue to work under supervision.

Submitters' views on risk and liability

The majority of submitters supported the proposal to require a guarantee and insurance product for residential new builds and significant alterations. They did not support allowing homeowners to opt out of being covered. Submitters had significant concerns about the potential impacts on the building sector and the ability of the current insurance market to offer a viable and quality product. Some considered that there should be a greater focus on measures to lift the quality of building work to reduce the risk of defects in the first place.

The majority of submitters considered that the liability settings for BCAs should be changed to address risk adverse consenting behaviour or because it would be 'fairer'. BCAs and some other sector participants strongly supported introducing proportionate liability. Those submitters who supported leaving the liability settings unchanged did so because they were concerned about the negative impact on other parties in the process and considered BCAs as being best placed to bear the final responsibility for defects.

A group of submitters saw a viable, quality market for insurance products as being a necessary precursor to any change in the liability settings.

Submitters' views on the building levy

The majority of submitters did not support reducing the rate for the building levy. Most submitters were BCAs and industry bodies who wanted to use the levy surplus to fund their activities (which is out of scope of the purpose for which the levy is collected). There was also some confusion about which levy they were submitting on. A few submitters thought it was the building research levy.

Submitters supported standardising the levy threshold so it is consistent across BCAs. There was support for any changes to the levy rate and threshold to take place from 1 July 2020 to coincide with the timing of any other changes to council fees.

The majority of submitters supported allowing MBIE to spend the building levy on building sector stewardship. Some suggestions for use of the building levy included activities the levy is already used for.

Submitters' views on offences and penalties and public notification

The majority of submitters supported having different penalty levels for individuals and organisations and increasing the maximums for financial penalties. The existing penalties were not seen as having sufficient deterrence. Those opposed to the increase were concerned that there could be a serious, negative impact on small businesses, or considered that the increase would be unnecessary if there was better enforcement by BCAs and the courts. There was support to also review the amounts set for infringement notices, although this was not proposed in the discussion paper.

A majority of submitters supported extending the time to lay a charge to 12 months as an appropriate time period for enforcement agencies to undertake research and collect evidence. There was also strong support to amend the definition of public notification so that newspaper advertisements would no longer be required.

Submitter suggestions that are outside the scope of the legislative reform programme

Submitters made a range of suggestions that are outside the scope of the legislative reform programme. Many of these submissions indicate MBIE should be playing a more active role in the sector. This was seen through suggestions that included a central product register, increased education and training, increased enforcement, greater support for BCAs on the more technical aspects of their role (such as determining compliance with the Building Code) and more consistency in the consenting process including through a centralised consenting function.

Other suggestions included:

- implementing the risk-based consenting provisions in the Building Act 2004
- reintroducing producer statements into the Building Act and requiring BCAs to accept these as evidence of compliance with the Building Code, if signed by a licensed practitioner
- restricting engineering work outside the building sector, for example, the drinking water supply system
- holding companies more accountable, for example through the licensed building practitioner (LBP) scheme.

1.7.3 Snapshot of submissions received by proposal

Of the proposals, engineers, building products and methods, and risk and liability received the most submissions.

Figure 2: Submissions on each proposal

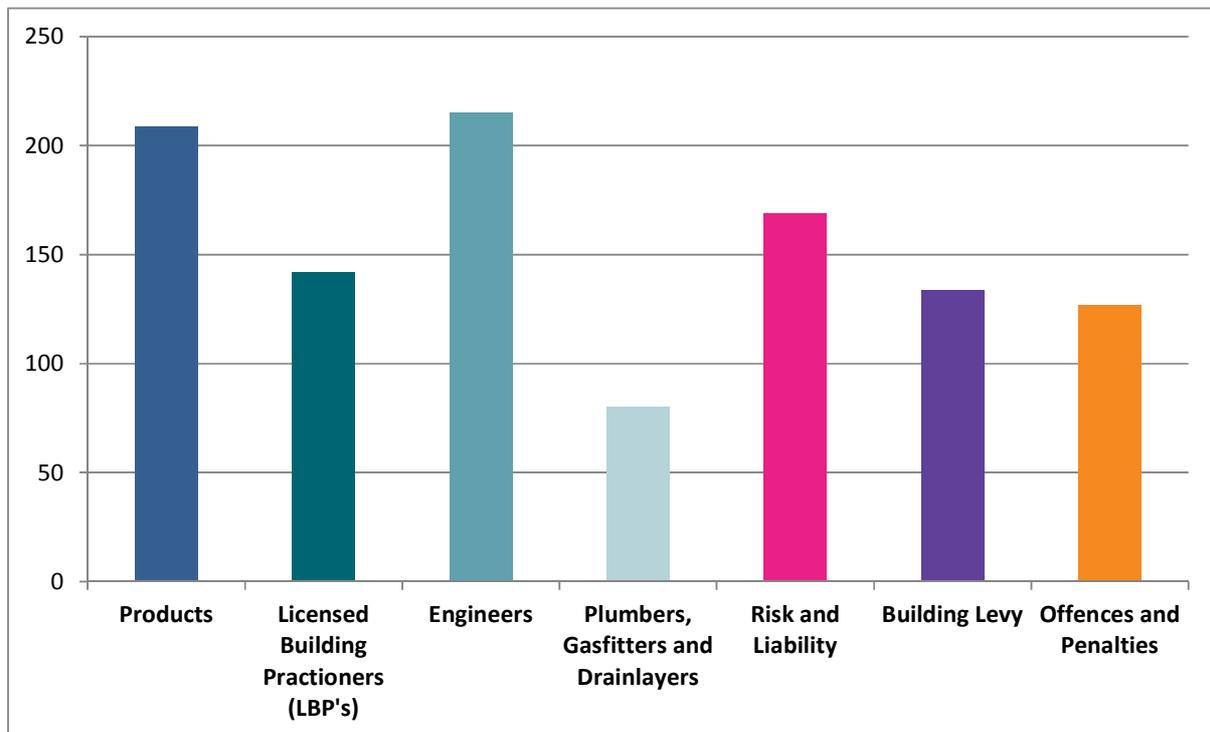


Figure 3: Submitters on each area by profession or interest group

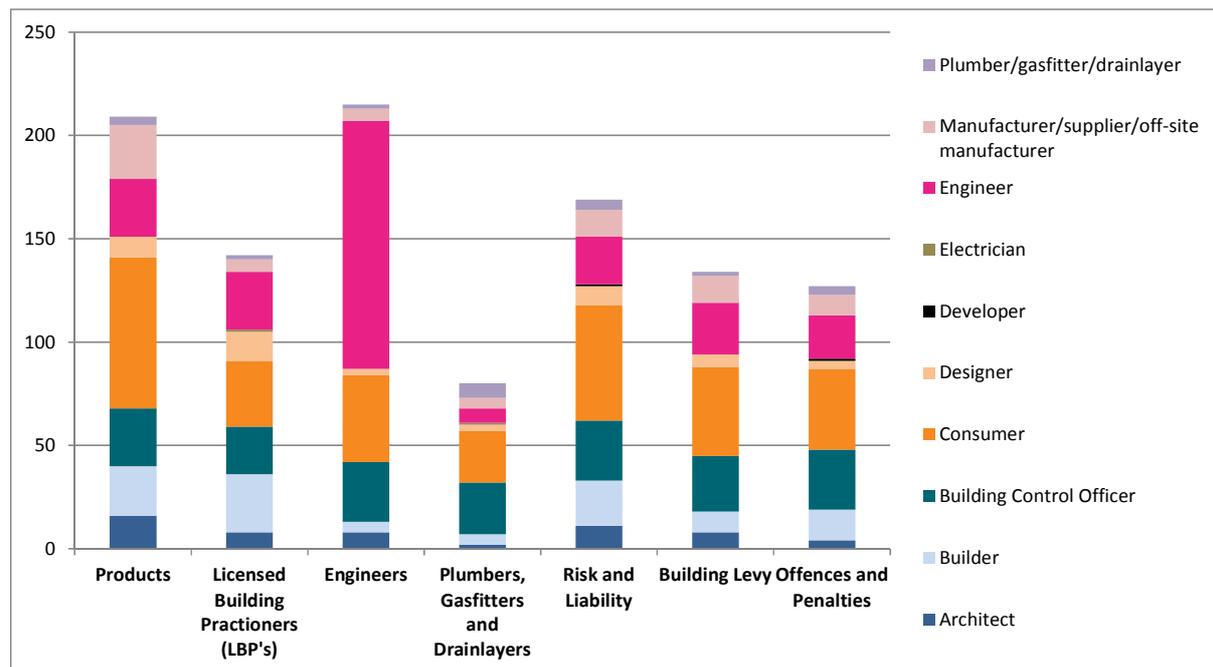


Figure 3 above shows the trends among groups of submitters: building control officers (BCOs) and building consent authorities (BCAs) accounted for approximately 13–20% of the submitters on all proposals, but were 31% of the submitters on risk and liability.

Of the submissions on occupational regulation for engineers, 56% were from engineers. Manufacturers and suppliers made up just 6% of all submitters, but in the products space contributed 12% of the submissions.

2 Building products and methods

2.1 Proposals

Stakeholders were asked for feedback on seven proposals:

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

2.1.1 Summary of key points

There was widespread support for the building products and methods proposals. Submitters noted the importance of the proposals and the broader benefits they have over the wider reform programme.

The majority of submitters supported expanding the purpose of the Building Act. Many submitters agreed to the proposed definitions of 'building product' and 'building method', and commented that comprehensive and clear definitions are important to them and the wider sector. A collection of submitters believed the definitions provided scope to accommodate new and emerging technologies, and a number agreed with this but also mentioned that the definitions were too broad.

Submitters agreed that any product information provided to the sector needs to be reliable. This may be by making sure the information is verified, makes reference to Code Clauses or is included in a national product register. Feedback also indicated the monitoring and enforcement of product information will be a key part of ensuring the success of proposals. More information will support designers and BCAs to make good decisions about building products included in building plans.

A large number of submitters agreed there was a need to clarify roles and responsibilities but had further and conflicting commentary on what these definitions could and should look like.

Submitters agreed that clearly defining roles and responsibilities would help address issues with product substitution and variation processes. A few submitters felt that six months was an adequate timeframe for the industry to adjust to the clarified roles and responsibilities, and a few felt that giving people more time could result in upskilling people in the industry.

Some submitters mentioned that clarification of roles and responsibilities should reach more broadly across the building supply chain, specifically importers.

Many submitters also felt that changes in responsibilities for manufacturers and suppliers should align with the transition time period for minimum information.

The majority of submitters supported allowing MBIE to compel information to support an investigation into building products and methods. There were mixed views on whether the ability to share information with other regulators would have unintended consequences. Most of the unintended consequences identified related to the power to compel information to be provided.

2.2 Proposals 1 and 2: Widen purpose of Building Act and provide clear definitions

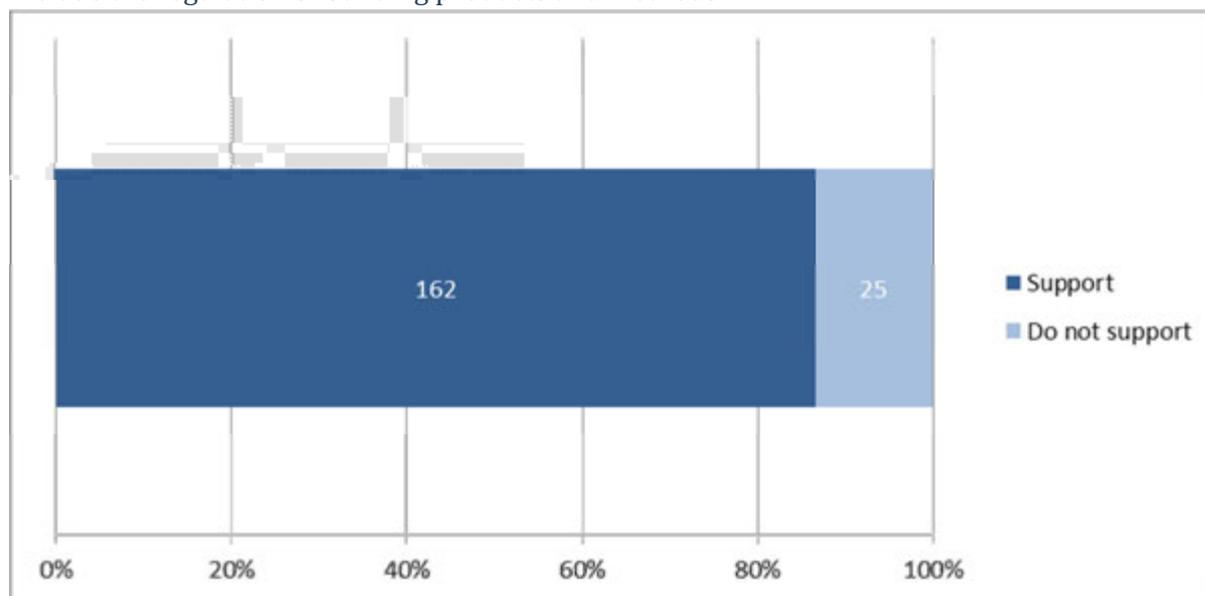
| | |
|-------------|---|
| P 1. | Widen the purpose of the Building Act to include the regulation of building products and methods. |
|-------------|---|

| | |
|-------------|---|
| P 2. | Provide clear definitions for 'building product' and 'building method'. |
|-------------|---|

2.2.1 Who submitted on these proposals?

- 187 responded to the proposal on widening the purpose of the Building Act.
- 175 responded to the definition of 'building product' and 176 responded to the definition of 'building method'.
- 87% (162) supported expanding the purpose of the Building Act and 13% (25) did not support.
- 76.5% (134) supported the proposed definition of 'building product' and 23.5% (41) did not support.
- 74.5% (131) supported the proposed definition of a 'building method' and 25.5% (45) did not support.

Figure 4: Submitters' support for the proposal to widen the purpose of the Building Act to include the regulation of building products and methods



Submitters who supported expanding the purpose of the Building Act to include the regulation of building products and methods and their use, did so because they felt products and methods are a key part of the overall compliance and quality assurance for a safe building. The proposal was viewed as helping to improve quality of products and encourage everyone to adhere to the same rules.

A few submitters felt that it was impossible to regulate every building product and method in New Zealand and the regulation would need to be flexible in order to be future-proof. Some expressed concern that further regulation could drive up cost, decrease market supply and curb innovation in the sector.

The New Zealand Building Industry Federation, which represents the supply chain of the industry, supported the intent of the proposal, although it seeks more clarity and guidance from MBIE on what the practical benefits will be.

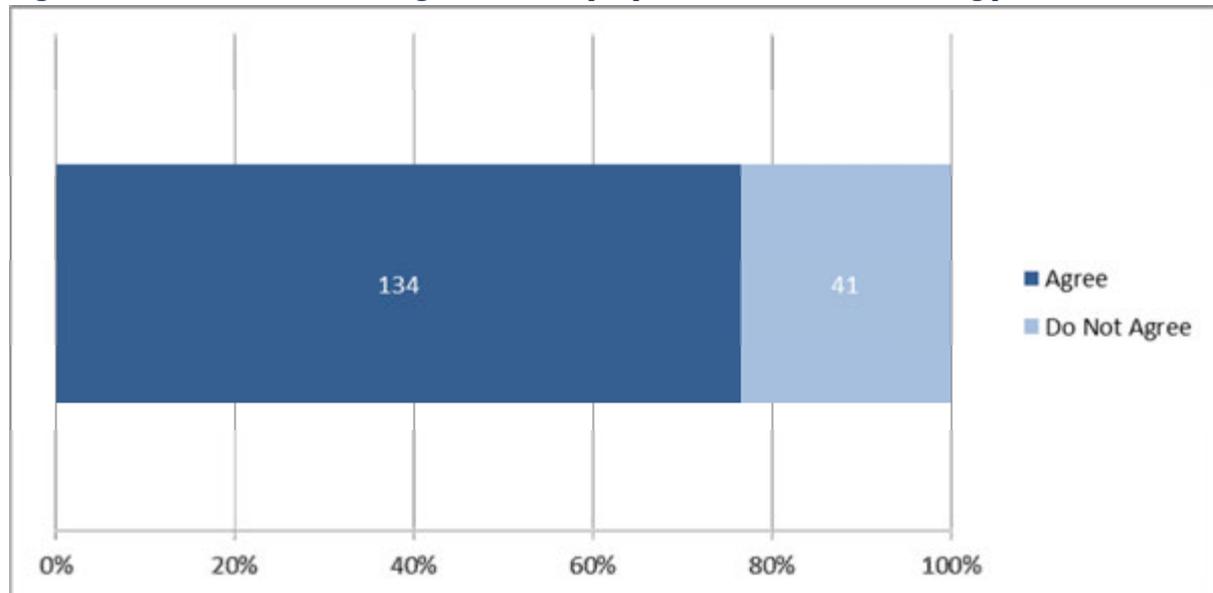
Most BCAs supported expanding the Building Act and would like to see a result where the risk of non-compliance is balanced with the cost of providing evidence of compliance.

“Widening the purpose of the Act to include the regulation of building products and methods highlights the importance of these two factors in achieving safe and durable buildings.”

Tauranga City Council (BCA)

Q 2.2 Do you agree with the proposed definition of 'building product'?

Figure 5: Do online submitters agree with the proposed definition of 'building product'?



The proposal was to clearly define 'building product' in the Building Act. The definition proposed is "any component or system that could be reasonably expected to be incorporated into building work. A system is a set of at least two components supplied and intended to be used together to be incorporated into building work".

The majority of submitters supported the definition of building product and felt it would ensure the product quality would be lifted. Those who supported it also felt there would be consistency and clarity in specification, as well as compliance that would create a greater transparency as to why products and methods are accepted.

A couple of submitters who opposed the proposed definition thought it was still vague and did not clarify the difference between a product and building system. They also felt the definition needed to show how a product adhered to the Building Code.

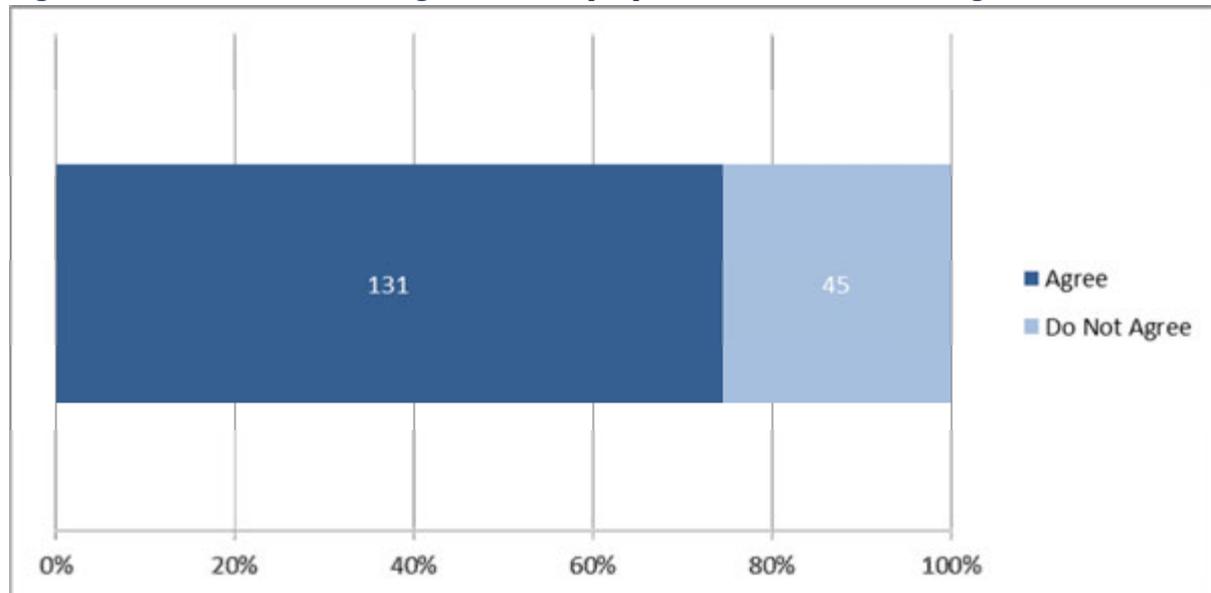
The New Zealand Building Industry Federation expressed concern that there may still be confusion around a 'building product' and 'building system'. It suggested there be a separate definition of a building system.

"Should a product or system fail it needs to be clear if the building product failed or the system."

A building product manufacturer

Q 2.3 Do you agree with the proposed definition of 'building method'?

Figure 6: Do online submitters agree with the proposed definition of 'building method'?



The proposal was to clearly define 'building method' in the Building Act. The definition proposed is "a specific way of using a product or system in building work".

Many of the online submitters felt the definition for 'building method' was appropriate, noting the importance of it being broad enough to allow for future technologies. Supporters also felt that the definition was clear and unlikely to be misinterpreted, and could support improving building work quality.

A collection of submitters who did not support the definition felt that more clarity was needed on what a 'building system' was and how a system differentiates from a building method.

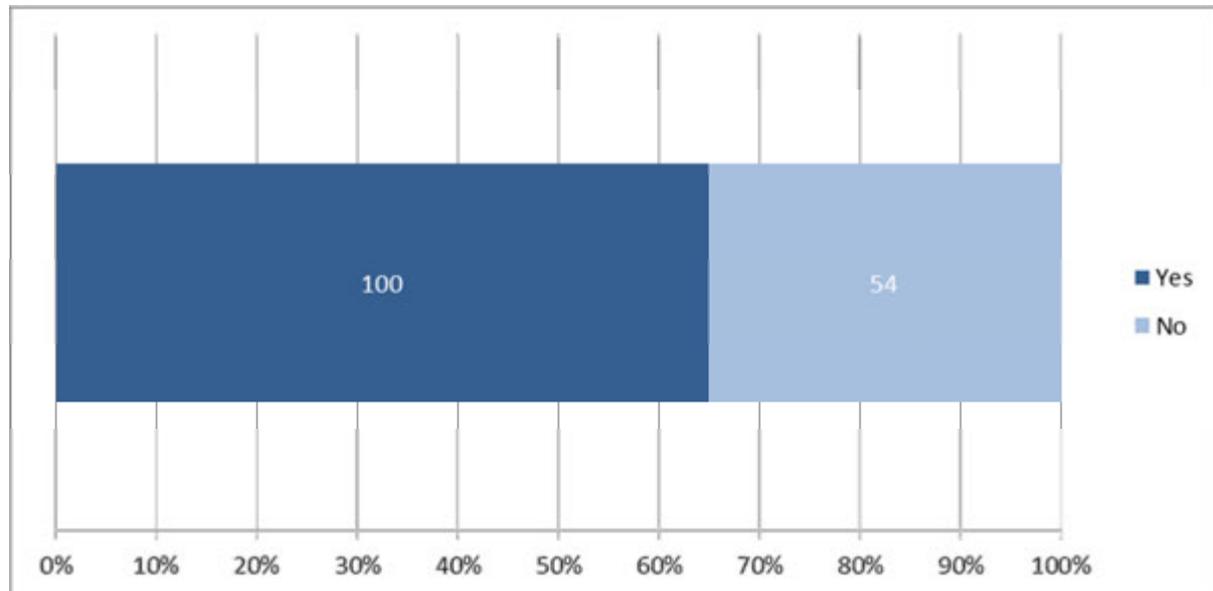
Written submissions agreed with the proposed definition of a 'building method' but commented on the importance of removing any ambiguity, and further defining such words as 'intend' and 'intended for use'. The New Zealand Building Industry Federation supported the proposal and was of the view that it was to the point and concise.

"The definition should help to achieve the overall objective of improving the quality of building work in New Zealand."

Kevin Anderson (engineer)

Q 2.4 Do these definitions provide sufficient scope to account for new and emerging technologies?

Figure 7: Do online submitters feel these definitions provide sufficient scope to account for new and emerging technologies?



The majority of online submitters considered that the proposed broad definitions account for new and emerging technologies. Those who thought the definitions were broad also indicated the importance of innovation in the New Zealand building industry.

Several BCAs felt further work was required on the definitions to ensure there was room to support new and emerging technologies. BCAs expressed concern with the amount of liability that sat with them, which made them hesitant about new technologies.

The New Zealand Building Industry Federation felt the definitions were sufficiently broad to capture emerging and future technologies.

2.3 Proposal 3: Require product manufacturers and suppliers to provide information about their building products

P 3. Require product manufacturers and suppliers to supply information about their building products. Set minimum standards for that information. This would not apply to building methods.

Q 2.5 Do you support the proposal to require manufacturers and suppliers to supply information about their building products?

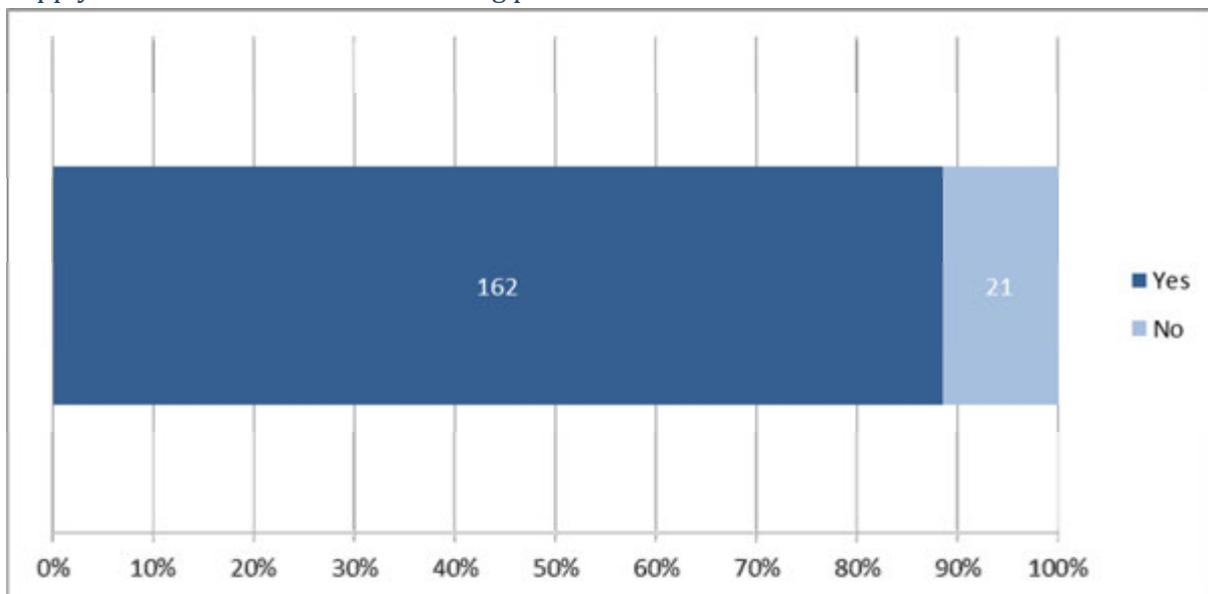
Q 2.6 (For designers, builders and Building Consent Authorities) Will the proposed minimum information requirements for building products help you make good decisions about products?

| | |
|--------|--|
| Q 2.7 | (For designers, builders and Building Consent Authorities) Do you need any other information to help you decide whether a building product will result in building work that complies with the Building Code? |
| Q 2.8 | (For manufacturers and suppliers) How closely do the proposed minimum information requirements reflect what you already provide? |
| Q 2.9 | (For manufacturers and suppliers) Will there be an impact on your business to provide the proposed minimum product information for your products? |
| Q 2.10 | (For manufacturers and suppliers) What is your estimated cost increase? Please include any relevant information on how you calculated your estimate (e.g. the number of products you produce or supply). |

2.3.1 Who submitted on these proposals?

- A total of 183 submissions responded to this proposal. There were 104 online submissions and 79 written submissions.
- Fourteen submitters were architects, 22 builders, 27 building control officers, 21 engineers, 22 manufacturers, 10 designers, three plumbers/gasfitters/drainlayers and six building owners. The remaining 58 identified themselves as 'other'.
- 113 submitters represented organisations and 70 submitters represented individuals.
- New Zealand Building Industry Federation made a submission.

Figure 8: Do submitters support the proposal to require product manufacturers and suppliers to supply information about their building products?



Overall, there was support for the proposal to require information on building products. Submitters believed it would help them make good decisions about building products.

Submitters thought that meeting new requirements would largely depend on the time taken for regulatory bodies to set clear requirements and for manufacturers and suppliers to compile existing information to comply with information standards.

Many of those who supported the change noted that the information needed to be reliable and provided in a standardised format.

Some submitters noted that care needs to be taken in how information requirements are set, particularly in the case of scope and limitations, to ensure the right information is provided.

Those who were opposed to the proposal stated that it is either costly to provide, already provided, does not create meaningful change or that the overall proposal did not go far enough. These comments reflected two distinct perspectives. The first and more common was the need for more regulation of building products to ensure we do not have major building failures. The second was that further regulation would largely just add further costs, and that good designers and BCAs consider the quality of information provided when considering building products, implying that this meant further regulation would not add value.

The majority of submitters said the proposal needs to go further to include information on:

- how the product complies with the Building Code
- sustainability of the product
- verification that the product will be durable and meet the intended life of the building
- who can undertake installation and construction
- associated risks of the products and methods.

The majority of submitters said a national product library is required for these proposals to work. Submitters stated a library would address issues such as managing old, iterative and new information on products. It would also speed up the consenting process for BCAs as they would not have to request additional information on products.

Councils were unified in their support and many noted the need for a national product library. BCAs implied this would reduce the effort required to assess the quality of building products.

The New Zealand Building Industry Federation indicated the need for adequate enforcement for any new regulations.

“It is our belief that the measures proposed will strengthen the existing system if adequately enforced with sufficient resources. We believe that a lack of enforcement is giving rise to doubts about commitment of the Crown to ensuring the adequacy of the current system. Provision will also need to be made for “notices to fix” and fines/penalties for breaches of the revised Section 14.”

New Zealand Building Industry Federation

2.4 Proposal 4: Clarify responsibilities for building products and methods

P 4. Clarify responsibilities of manufacturers, suppliers, designers and builders for building products and methods.

2.4.1 Who submitted on this proposal?

- A total of 168 responded to the proposals around roles and responsibilities. There were 102 online submissions and 66 written submissions.
- Fourteen submitters were architects, 21 builders, 22 building control officers, 10 designers, 20 manufacturers, 19 engineers, and six homeowners or their representatives.
- 101 submitters represented organisations and 67 submitters represented individuals.
- New Zealand Building Industry Federation made a submission.

Of the submitters who answered questions about this proposal, 83% (139) of submitters supported the proposals to clarify roles and responsibilities for manufacturers, suppliers, designers and builders.

Q 2.11 Do you support the proposals to clarify roles and responsibilities for manufacturers, suppliers, designers and builders?

Q 2.12 Is the current threshold and process for variations to consent appropriate for all circumstances?

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

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

Q 2.15 Do you think the impact of the proposed changes to the regulation of building products and building methods would be positive or negative? What do you think the impact might be?

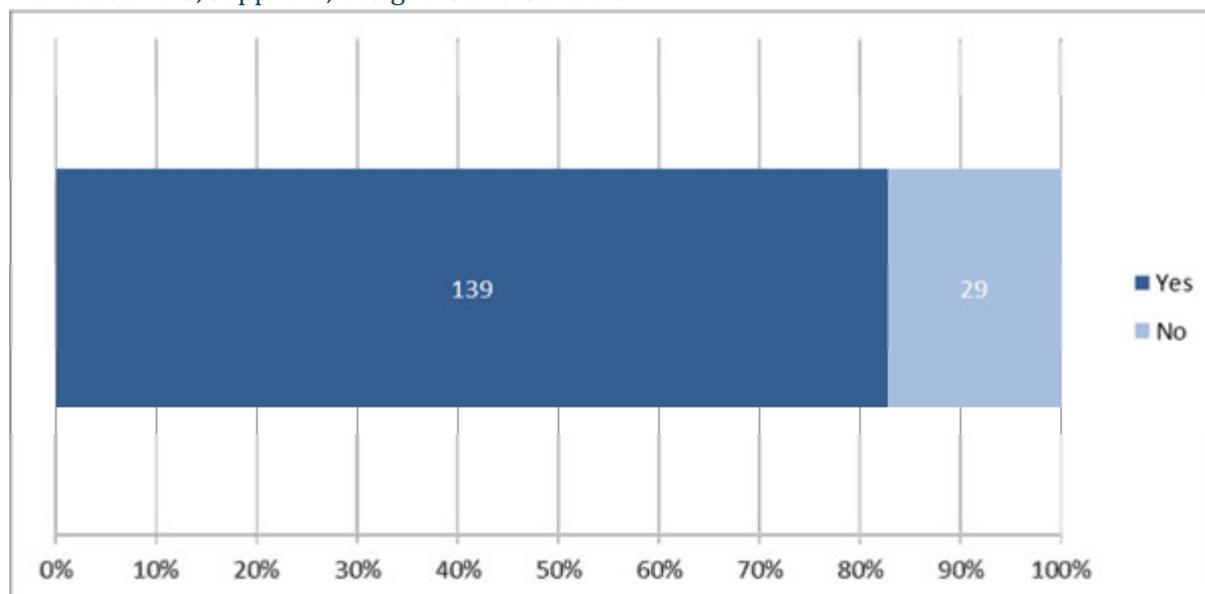
Q 2.16 How do you think the proposed changes to the regulation of building products and building methods would change how you and your business/organisation operates?

Of the 168 online responses, a large number thought that clarifying roles and responsibilities would support the sector to have a better understanding about the purpose of a product. It would also support suppliers and users to use the right product for the right purpose in the right manner.

The written submissions echoed these and also mentioned that the current guidance around substitutions needs to be reviewed to clearly articulate process and expectations. Current MBIE guidance, website and legislation do not align. A few submissions said that there needs to be further work on defining major and minor substitutions.

A number of online and written submitters stated they thought mandating a minimum amount of information on products would help clarify current roles and responsibilities.

Figure 9: Do submitters support the proposals to clarify roles and responsibilities for manufacturers, suppliers, designers and builders?



BCAs generally thought clarifying roles and responsibilities would support them to do their part of the building process well.

The New Zealand Building Industry Federation felt that importers’ roles and responsibilities should also be clarified and noted there is potential for the supplier to take on a financial burden on behalf of the importer.

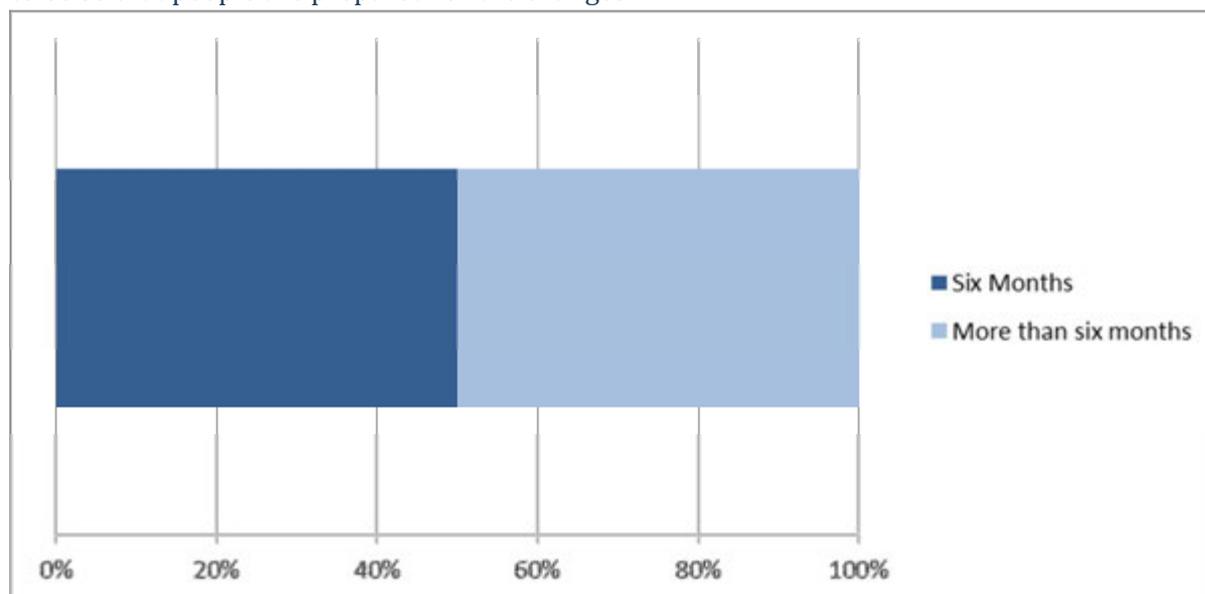
Q 2.18 How long do you think the transition period for the changes to responsibilities needs to be so that people are prepared for the changes?

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

Of the 102 online survey responses, 45 thought that the transition period should be longer than six months. Submitters felt it would take a while for the construction industry and its supply chain to transition, and lead times were needed to educate about the changes.

Many submitters felt that clarifying roles and responsibilities should come into force before the minimum requirement for product information and expressed this would lead to positive impacts. Another impact would be a quality improvement of products. Some designers felt it may shift liability on to them and away from manufacturers.

Figure 10: How long do you think the transition period for the changes to responsibilities needs to be so that people are prepared for the changes?



BCAs expressed how important guidance and training was to support the transition.

The New Zealand Building Industry Federation reiterated the importance of the importers' roles and responsibilities being clarified and felt six months seemed an adequate timeframe for any transition.

2.5 Proposal 5: Provide MBIE with the power to compel information

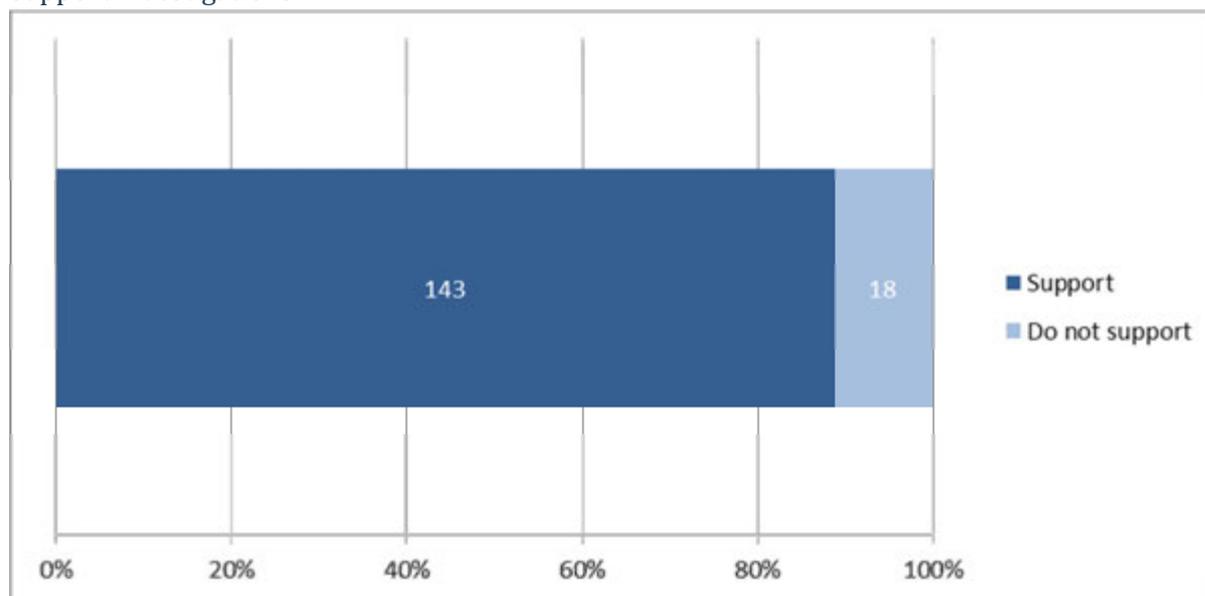
P 5. Give MBIE the power to compel information to support an investigation into a building product or method.

2.5.1 Who submitted on this proposal?

- A total of 161 responded to the proposal around MBIE's ability to compel information to support an investigation into building products and methods. There were 92 online submissions and 69 written submissions.
- Thirteen submitters were architects, 19 builders, 20 manufacturers/suppliers, 23 building control officers, 9 designers, 19 engineers and 1 building owner, and five homeowners or their representatives.
- 98 submitters represented organisations and 63 submitters represented individuals.
- New Zealand Building Industry Federation made a submission.

Of the submitters who answered this question about investigative functions, 89% (143) supported MBIE's ability to compel information to support an investigation into building products and methods.

Figure 11: Do submitters support the proposal to give MBIE the power to compel information to support investigations?



The majority of submitters supported MBIE having the power to compel information to support an investigation into building products or methods. The majority of submissions support MBIE having greater regulatory powers to require people to provide information. Some noted it is only useful if it is seen as a deterrent, as MBIE has made limited use of its existing powers. There were also concerns around this proposal working for imported products.

Submitters supported the proposal because it is needed to check compliance, would enable MBIE to fulfil its role, and would ensure a successful investigation. The proposal was seen as helping to promote accountability and transparency. Several submitters considered the proposal would have wider impacts on building products by providing a more level playing field, lifting the quality of building products and improving confidence in the sector.

A few submitters viewed this proposal as complementing other proposals in the discussion paper such as the requirement to provide information about building products and for building products to be fit for their intended purpose.

A small proportion of submitters opposed the proposal because they felt that the existing powers were sufficient, or due to concern that MBIE did not have the appropriate expertise to undertake an investigation.

Several submitters thought there should be safeguards on the power, such as only being exercised where the information was relevant and necessary for the investigation, and protections for commercially sensitive or propriety information. A couple of submitters were concerned about MBIE having adequate resourcing to undertake investigations.

There were mixed views on whether the ability to share information with other regulators would have unintended consequences.

Several submitters were concerned about the security of the information and that commercially sensitive information could be given to competitors or made public. Most of the unintended consequences identified by submitters related to the ability of MBIE to compel information to be provided, rather than the sharing of that information.

Positive unintended consequences were that it might encourage manufacturers and suppliers to “lift their game” and it would reveal a lack of robust QA processes. Negative unintended consequences identified were: increased compliance costs, misuse of the power, being provided incorrect information, disagreements about who is responsible for defects, delays to building work, and the need for remedial work where products or methods were found to be defective.

2.6 Proposal 6: Strengthen product certification framework

P 6. Strengthen the framework for product certification for building products and methods.

Q 2.20 **(For product manufacturers and suppliers)** Would the changes proposed to the framework for product certification make product certification a more attractive compliance pathway for your products?

Q 2.21 **(For designers)** How would the proposed settings to the framework for product certification impact your product specification in building designs?

Q 2.22 **(For building consent authorities)** Would the changes to the product certification scheme’s settings increase your confidence that a product or method with a product certificate will perform as intended?

2.6.1 Summary of key points

The majority of submitters expressed a desire to recognise international certification schemes and other third party certification.

2.6.2 Who submitted on these proposals?

- A total of 114 responded to this proposal. There were 70 online submissions and 44 written.
- Eight submitters were architects, 12 builders, 20 building control officers, 12 engineers, 17 manufactures, seven designers, one plumber/gasfitter/drainlayer, and one homeowner.
- 72 submitters represented organisations and 42 submitters represented individuals.
- BRANZ made a submission.

Many of the written submissions expressed concerns about potential cost increases.

A few online submitters said that there should be better enforcement of the existing mechanisms to protect homeowners.

Designers were asked to indicate how the proposed settings to the framework for product certification would impact their product or method specification in building designs. There were 28 responses to this question (15 online submissions and 13 written submissions). Of these, a couple of submitters who indicated strengthening the framework for product certification would improve their use said this would provide efficiencies at consent.

BCAs were asked if the changes to the product certification scheme settings would increase their confidence that a product or method with a product certificate will perform as intended. There were 29 responses to the question (13 online submissions and 16 written submissions), and 12 submissions came from BCAs. Ten BCAs responded 'yes' and two responded 'no'. Two building control officers (BCOs) submitted on their own accord responding 'no'. A few submitters noted that increased monitoring and intervention by MBIE would give them more confidence.

2.7 Proposal 7: Enable a regulatory framework for modern methods of construction

P 7. Enable a regulatory framework for modern methods of construction, including off-site manufacture.

2.7.1 Summary of key points

Most submitters supported the proposal, agreeing these were the correct elements of a regulatory framework for MMC.

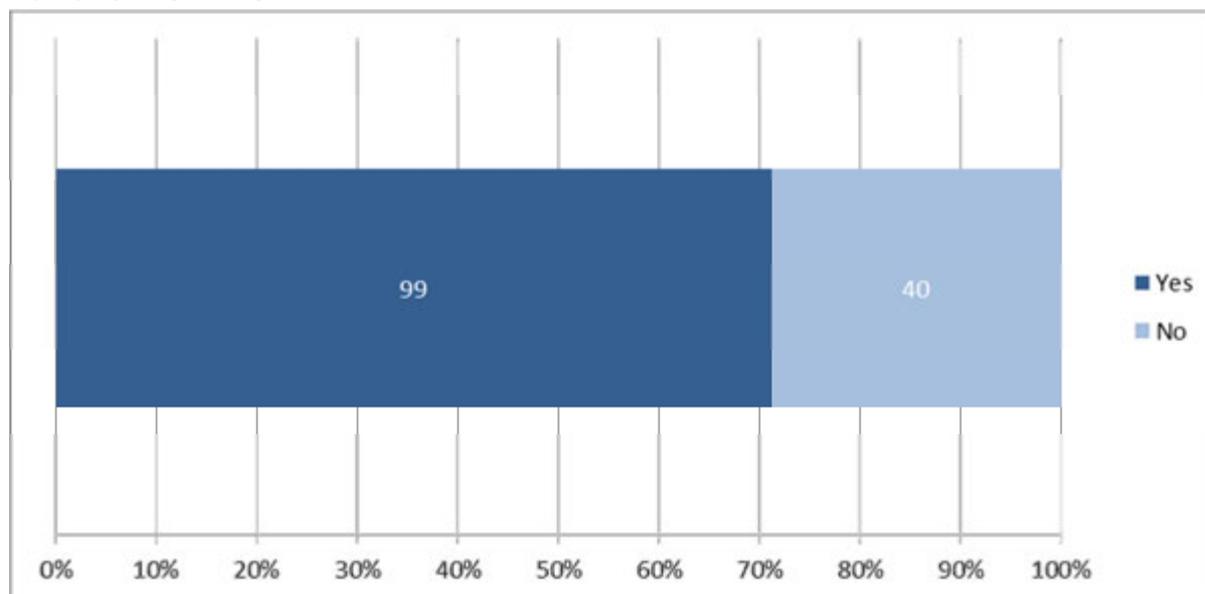
Some submitters raised questions about how the proposed changes would be designed and implemented. These points will be considered as the scheme design progresses.

Low response volumes from manufacturers, suppliers and off-site manufacturers make it difficult to gauge the likely uptake of a manufacturer certification scheme, but the response from Prefab NZ (a key stakeholder) was positive.

2.7.2 Who submitted on these proposals?

- A total of 139 submissions were received on MMC. There were 60 online submissions and 79 written.
- Ten submitters were architects, 20 builders, 23 building control officers, eight designers, 17 engineers, 15 manufacturers/suppliers/off-site manufacturers, four homeowners and 2 plumbers/gasfitter/drainlayers. The remaining 40 identified themselves as 'other'.
- Prefab NZ made a submission.

Figure 12: Do submitters believe these are the correct features for a future-proofed regulatory framework for MMC?



The majority of submitters supported the proposed framework for MMC, and felt the impact of such a framework would be positive.

The majority of responding councils supported the proposals.

Only a small number of respondents identified as manufacturers, suppliers or off-site manufacturers. From these, responses were mixed, with just over half supporting the proposals. However, Prefab NZ, a key representative of the off-site sector, expressed support for the framework, particularly the manufacturer certification scheme, saying:

“We do not see this having many downsides, mainly upsides. All our manufacturing Members have already established QA systems for the manufacture of their offsite systems, and these would continue to be maintained. Removing the unnecessary overlay or duplication of the BCA inspection role at the offsite premises would only help.”

Prefab NZ

Other key industry stakeholders who expressed broad or ‘in principle’ support for the framework included Fletcher Residential, the Auckland Mayoral Housing Taskforce, BOINZ, Engineering NZ, NZIOB and LGNZ.

The main feedback from submitters concerned risk and liability, and ensuring these were clearly and correctly apportioned under the framework. Several submitters also questioned how the framework would apply to MMC from overseas. Several submitters expressed concerns about the ability of the manufacturer certification scheme to handle variation between builds and sites.

Prefab NZ and others raised questions and key points to consider in the detailed design and implementation of the framework.

Q 2.23 Are these the correct features for a future-proofed regulatory framework for MMC?

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

The majority of respondents agreed these were the correct features, and stated the proposal would have a positive or strongly positive impact.

The main point raised was related to ensuring risk and liability is correctly apportioned under the framework. Some submitters questioned how the framework would apply to MMC from overseas.

A relatively small number of respondents identified themselves as manufacturers, suppliers or off-site manufacturers, but of these the majority said these were the correct features and that the impact would be positive or strongly positive.

Prefab NZ supported the proposals.

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

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

The number of respondents to these questions who identified themselves as manufacturers, suppliers or off-site manufacturers was very low. Three each responded 'yes' and 'no' when asked if they would use the scheme. Five manufacturers (via the online survey or survey template) indicated a positive or strongly positive impact, while three indicated no impact. It is difficult to draw conclusions from such low numbers.

Prefab NZ, a key stakeholder for this proposal, answered 'yes' to question 2.26, and provided a list of key areas of concern for the scheme's detailed design and implementation – for example, that the scheme must be accepted by all BCAs, and offer benefits over and above existing solutions.

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

The response to this question was mixed. Of the 16 BCAs who responded online, eight said the proposal would have a positive or strongly positive impact, seven said no impact, and one said negative impact.

BCAs' comments were split between supportive feedback broadly stating they already had arrangements in place with other BCAs and negative feedback expressing concerns about the risk and liability they would face. This would come either from accepting others' decisions or by having their decisions accepted more broadly.

"We already accept CCC's issued by another BCA (relocated houses and buildings), with the site specific work subject to a separate building consent. However the acceptance of a building consent approval and partial inspection by another BCA may be problematic with regards to limitations of signoff and liability."

Western Bay of Plenty District Council

2.8 Other themes and issues

- Several submitters expressed concern about the quality and variability of MMC. Several submitters said it was difficult to comment on the framework without further detail about how it would work. A few submitters mentioned a national/centralised consenting function for MMC. A few submitters, including Prefab NZ, raised concerns that the use of the term MMC would be confusing or problematic.
- A few submitters said that there should be better enforcement of the existing mechanisms to protect homeowners.
- A few submitters suggested that products should require third-party testing and product assurance for particular types of products.
- Unclear how imported overseas products will be regulated and investigated.
- Proposals need to support innovation and increasing efficiency in the consenting process; these proposals across the reform programme are creating new ways to limit innovation.
- Enforcement is only effective if the legal system ensures the liable parties are accountable – the current system is not effective.
- Plumbing and electrical products should be removed from the definition of building products, provide minimum information requirements (use watermark), and be regulated with a public health focus, for example Health Act 1956 or Plumbers, Gasfitters, and Drainlayers Act 2006.
- Building products and methods require regulations that are flexible enough to support innovation, while at the same time ensuring buildings are safe and durable.

3 Occupational Regulation

3.1 Licensed Building Practitioners

3.1.1 Proposals

Stakeholders were asked for feedback on two proposals:

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

3.1.1.1 Summary of key points

The majority of submitters supported broadening the definition of restricted building work to include more complex, non-residential building work. The long-term benefits of the proposal were seen as outweighing the short-term, negative impact it would have on the builder skills shortage. There was some concern that if the threshold was too high or complex some high-risk buildings would not be captured.

There was strong support for raising competency standards, introducing a code of ethics and improving monitoring and enforcement, but there was concern about the scheme's ability to actually manage quality and raise behaviour. While submitters appeared to support a fit and proper person test, there was variable understanding on what this test would mean.

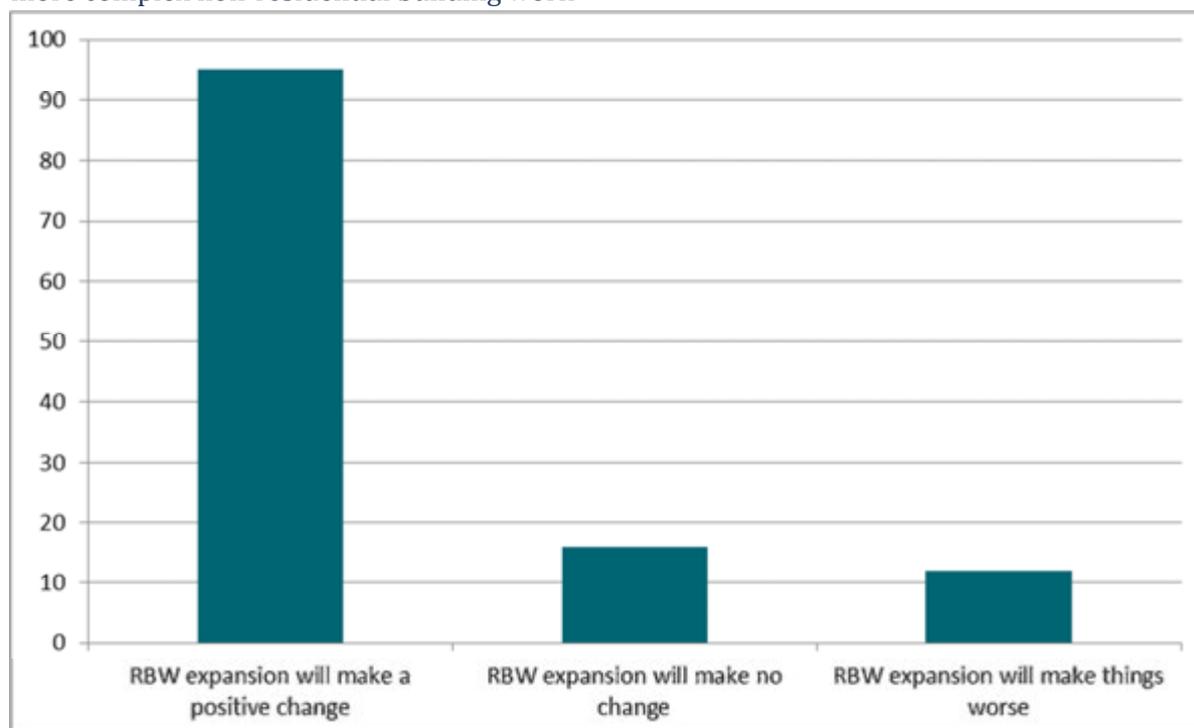
3.1.1.2 Who submitted on these proposals?

- There were 142 submissions received on these proposals. Of them, 85 were online and 57 written.
- The submitters consisted of 81 professionals (architects, designers, builders, electricians, engineers and plumbers), 23 building consent authorities, 32 consumers (home and building owners or 'others') and 6 manufacturer or suppliers.
- Of major stakeholders, the following submitted: Wellington City Council, Christchurch City Council, Auckland Council, NZ Registered Architect Board, Engineering NZ, Structural Engineering Society New Zealand, Property Council of NZ, Hutt City Council, Tauranga City Council, Local Government New Zealand, Building and Construction Apprenticeships, NZ Specialist Trade Contractor Federation, NZ Geotechnical Society, The Fletcher Construction Company, Fletcher Residential, Ryman Healthcare, Auckland Council and the Auckland Mayoral Housing Taskforce, Building Practitioners Board, Insurance Council of New Zealand, and the NZ Institute of Architects.

3.1.2 Proposal 1: Broaden the definition of restricted building work

| | |
|----------------|--|
| P 1. | Broaden the definition of restricted building work (RBW) to include more complex non-residential building work. |
| Q 3.1.1 | How effective do you think expanding the scope of RBW would be in managing risks to public safety in the building sector? |
| Q 3.1.2 | Do you agree with the proposed threshold for the definition of RBW? |
| Q 3.1.3 | (For builders) What impacts do you think the proposals for RBW would have on you and your business (including type of work, recruitment, training and costs)? |
| Q 3.1.4 | What impacts do you think the proposals for RBW would have on homeowners, building owners and building occupants? |
| Q 3.1.5 | How do you think the proposed changes to the LBP scheme would affect the behaviour of LBPs? |
| Q 3.1.6 | What impact do you think expanding the scope of RBW would have on the construction sector skill shortage? |

Figure 13: Submitter views on broadening the definition of restricted building work to include more complex non-residential building work



The majority of the feedback from submitters such as Engineering NZ and Christchurch City Council was supportive, with the view being that omitting complex buildings left a gap in the system. The Insurance Council of New Zealand stated no buildings are exempt from risk, and more should be subject to the LBP scheme. The expansion was expected to increase assurance for owners and occupiers, and improve the level of confidence in the sector.

The majority who supported expanding RBW expected it would negatively impact on the skills shortage. A group of submitters viewed this as a short-term issue when taking a ‘whole of life’ view (with the rise in costs offset by savings in the long term). Most argued on balance that the worsened shortage was not sufficient enough to outweigh the advantages of the proposal.

Several submitters raised concerns that proposals would fail unless building owners and companies were made more accountable in the building system.

Most objections to the proposal were on the basis that the threshold for being included was too high or complex. Tasman District Council was concerned that the proposed threshold “may not capture some high risk buildings”.

Submitters who disagreed with the substance of the proposal cited concerns over the higher construction costs, stating that builders would demand more, there would be increased red tape and exposure to liability, and that some people may be discouraged from seeking apprenticeships. A few argued commercial buildings had sufficient risk management, and several argued that more inspections and auditing was a better solution. Another argument was that the issue was not one of low standards but poor training and education, and a focus on work history rather than upfront examinable competence would better highlight poor practice.

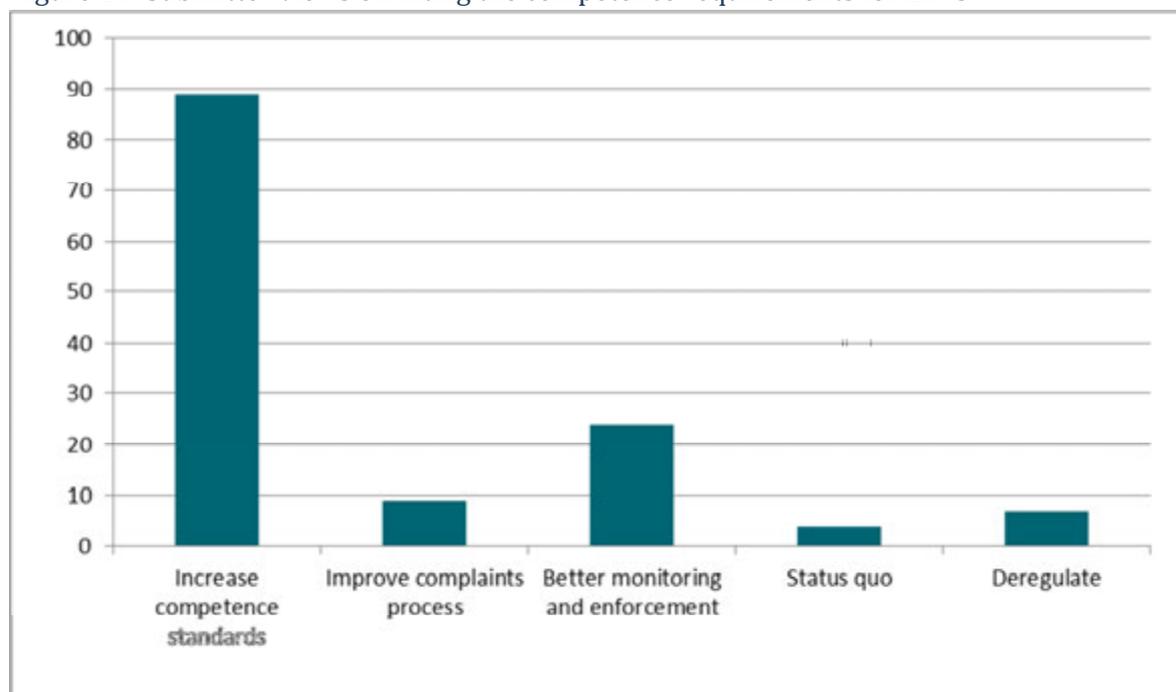
3.1.3 Proposal 2: Raise the competence standard for LBPs

| | |
|-------------|--|
| P 2. | <p>Raise the competence standard for LBPs to enter and remain in the LBP scheme. This includes proposals to:</p> <ul style="list-style-type: none"> • Introduce a tiered licensing system for LBPs to establish a progression pathway, including a specific licence for supervision. • Simplify the licence class categories. • Introduce behavioural competence requirements for LBPs. |
|-------------|--|

| | |
|-----------------|---|
| Q 3.1.7 | How effective do you think raising the competence standards for the LBP scheme would be in increasing confidence in the LBP scheme? |
| Q 3.1.8 | What impact would changing the competence standards for the LBP scheme have on builders, building companies, building sector associations and training organisations? |
| Q 3.1.9 | (For builders) Would introducing tiered licence classes make you more likely to apply to become an LBP? |
| Q 3.1.10 | (For builders) If you’re already an LBP, would you be likely to apply to become licensed under a new supervision licence class? |
| Q 3.1.11 | (For builders) Do you still see potential value in having a site licence for residential and commercial building projects? How can a site licence contribute to the coordination of building work? |
| Q 3.1.12 | (For builders) Who do you think should be responsible for coordinating building work on a site and what skills are required for this type of role? |
| Q 3.1.13 | Do you think that the introduction of a fit and proper person test and a code of ethics for LBPs would help to ensure that building professionals are held accountable and improve the public’s confidence in the LBP scheme? |

| | |
|----------|--|
| Q 3.1.14 | Do you agree the proposed timeframe for the changes to the LBP scheme is sufficient? |
| Q 3.1.15 | What should we consider in setting the transition timeframe? |
| Q 3.1.16 | If you have any other comments on the proposals for LBPs, please tell us? |

Figure 14: Submitter views on lifting the competence requirements for LBPs



There was clear support for increasing the competence standards required to become an LBP, with the chart above showing nearly 90 submitters supporting it.

The Insurance Council of New Zealand listed better standards of competence as important, “as insurer confidence will be reflected in premiums for liability insurance and the decision on whether to enter the building warranty market or not”. The NZ Geotechnical Society also stated that it would significantly improve quality of design and construction, and result in better whole-of-life decisions.

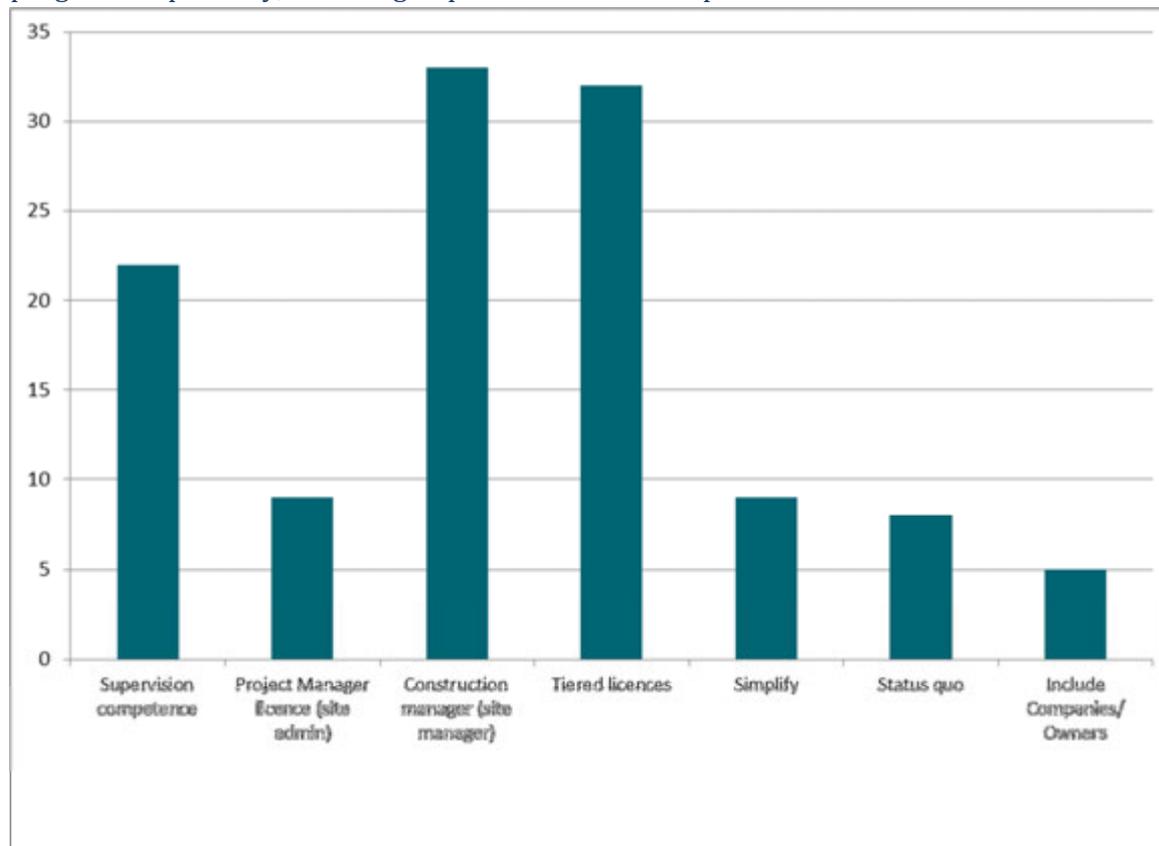
LGNZ expressed frustration that while local government has stepped up to meet the expectations of the Building Act, other parts of the sector need to follow suit. A builder also made a point that if the LBP scheme becomes a more effective mark for competence, it will have a knock-on effect and push building associations to focus more on marketing their brand as an additional quality mark.

There was also consistent support for improving the complaints process and monitoring and evaluation. The resource-intensive complaints process was listed as a barrier to effective self-correction in the scheme, as it meant poor work was not penalised, and builder shortages meant there was no punishment from the market.

Several submitters favoured monitoring and enforcement to take the form of inspections of the LBPs' work (as opposed to inspections to simply determine if work was compliant). Marlborough District Council stated there was a need for better monitoring and enforcement, as the "only redress has been complaints and we have not observed much of an improvement as a result of an upheld complaint".

The main opposition to this proposal relates to the perceived inability of the scheme to actually manage quality. Some asserted that raising the standards LBPs need to meet will not change behaviour. It was submitted that inspections, auditing and better ability to penalise poor behaviour is the real problem.

Figure 15: Submitter views on introducing a tiered licensing system for LBPs to establish a progression pathway, including a specific licence for supervision



Overall, submitters supported change, with diversity on what that change should look like. Most submitters support what would amount to a more complex scheme. The more popular proposals were specific competence in the area of supervision, tiered licensing, and a role that mirrored clerks of work (construction site manager).

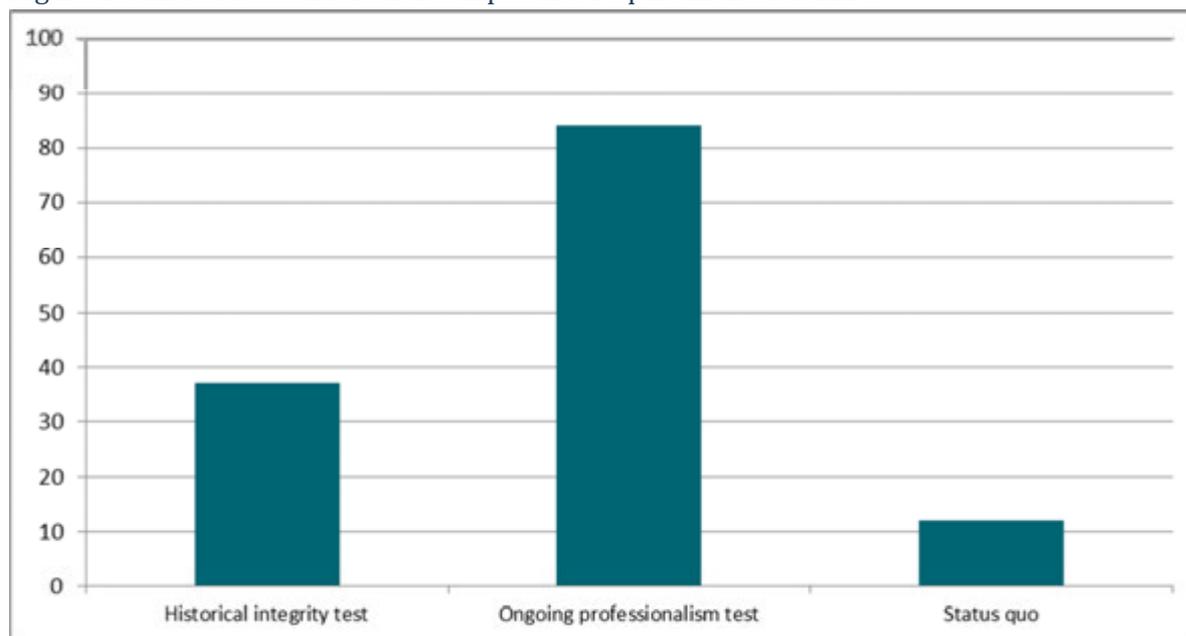
The most support was for a central clerk-of-works or equivalent figure, but a common concern was for the individual who could be exposed to a heightened level of risk, and the shortage impacts that could have if the market did not supply enough people.

Monitoring and enforcement was also raised as being critical for any of these sub-proposals being used effectively. There needed to be a way to follow up on how well LBPs were doing in regards to supervision, site administration or management, and in higher tiers.

Most changes to structure eventually tied back to accountability, i.e. better supervision competency so there were clearer lines of accountability; a central responsible person accountable for the overall build; and tiered licenses to more correctly reflect expertise and provide a stronger lever for accountability.

There was some desire to include companies and also building owners in the LBP scheme, or at least the wider system. One submitter argued building owners and developers should be clearly liable under the Building Act at least in part for alterations or new buildings they commission while the property is in their ownership, due to their outsized role in making important construction decisions.

Figure 16: Introduce behavioural competence requirements for LBPs



Analysis of the submissions showed that submitters wanted a regulatory tool to hold LBPs to account for professional ethical conduct.

Most submitters supported the introduction of both a Code of Ethics and a Fit and Proper Person (FPP) test, however there was variability in the understanding of what an FPP test was. The NZ Metal Roofing Manufacturers Ltd stated that FPP “*would discourage people [...] do support a Code of Ethics as it should have been in the Scheme from the start*”.

BCITO submitted that any FPP test should be tailored to reflect convictions that could impact adversely on the person’s fitness to carry out or supervise work, with the Building Practitioner Board having discretion and consideration of natural justice principles, as opposed to a blanket ban which would be “potentially problematic”. Submitters such as Registered Master Builders also raised concerns that entrance tests predicated on a person meeting a threshold for lawfulness had human rights implications and affected Government-led rehabilitation and reintegration programmes.

Other submitters linked this proposal to other proposals, with Calder Stewart Construction stating that professionalism was important for growing competence, and Whanganui District Council agreeing, supporting it in tandem with tiered licensing.

3.1.4 Other themes and issues

- Councils should be more involved in building quality.
- There should be government audits of quality assurance processes in the building sector.
- There should be more consideration of the own-build scheme.
- Restricted building work does not consider building costs.
- Building owners and developers should be more accountable for their role in poor decision-making.
- Companies should be licensed and held to account.
- LBPs should be able to self-certify, or work towards self-certification.
- Improve training and education providers.
- Actively discourage 'DIY/home handyman attitudes'.
- Academic focus for skill requirements can disadvantage more practically-minded builders.
- Only overseers will seek to upskill to supervise.
- Consider penalties for building companies that engage LBPs outside of their areas of practice.

3.2 Occupational Regulation – Engineers

3.2.1 Proposals

Stakeholders were asked for feedback on three proposals:

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

3.2.1.1 Summary of key points

Most submitters did not support establishing a new voluntary certification scheme to provide assurance of general competence. Many consider that CPEng is already providing this or could do this with some improvements. A large number, including Engineering New Zealand and its affiliated technical groups, consider that assurance of general competence should be regulated by the profession. Many mistakenly perceived CPEng to be a profession-led self-regulatory scheme; many also appeared to confuse CPEng with Engineering New Zealand’s Chartered Member class.

Most submitters supported restrictions, but there is a wide range of views on what the definition should be. A group submitted that all work considered to be engineering work should be restricted.

Most supported the establishment of a new licensing scheme. Many agreed the scheme should be able to be used for other specialities.

3.2.1.2 Who submitted on these proposals?

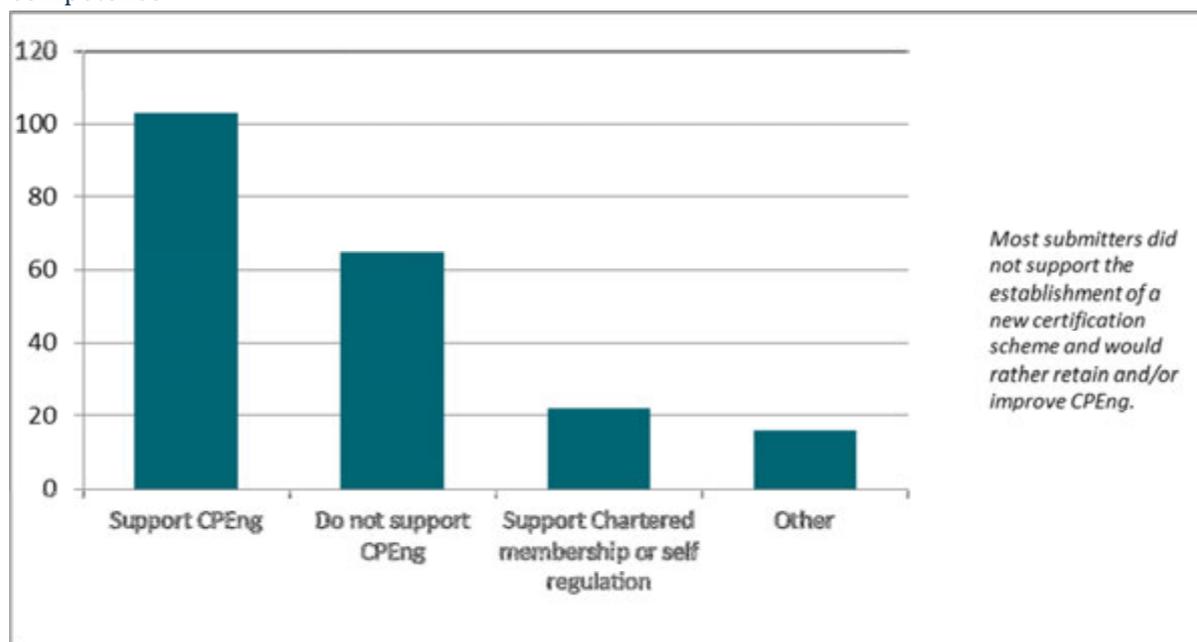
- A total of 215 submissions were received on these proposals (6 submitters who made both online and written submissions have been counted as online submitters only). There were 108 online submissions and 107 written submissions.
- 120 were engineers, 29 building control officers, 18 other building practitioners, and two homeowners.
- The following major stakeholders made submissions: Engineering New Zealand and affiliated groups, the Chartered Professional Engineers Council, the Association of Consulting Engineers New Zealand, Engineers Australia, the Engineering Council UK, the Property Council of New Zealand, Insurance Council New Zealand, Local Government New Zealand, Inner City Wellington, BOINZ, the Homeowners and Buyers Association of New Zealand, Consumer New Zealand, the Electricity Engineers’ Association, Institution of Chemical Engineers, Institution of Civil Engineers, the New Zealand Institute of Architects, the CTV Building Families Group, major engineering firms including Beca, Tonkin and Taylor, WSP Opus, Aurecon New Zealand and Holmes Group, Fletcher Construction, KiwiRail, Fire and Emergency New Zealand, Auckland, Wellington and Christchurch councils, the Auckland Mayoral Housing Taskforce, Engineering Associates Registration Board and the New Zealand Registered Architects Board.

3.2.2 Proposal 1: Establish new voluntary certification scheme for engineers

P 1. Establish a new voluntary certification scheme that provides assurance of an engineer's professionalism and general competency and phase out Chartered Professional Engineer (CPEng).

Most submitters did not support the establishment of a new certification scheme and would rather retain and/or improve CPEng.

Figure 17: Support for CPEng, or CPEng with change, as a mark of professionalism and general competence



Of the 104 online survey responses and 102 written submissions, the majority of respondents thought that CPEng, or CPEng with change, could adequately provide a mark of professionalism and general competence.

A few key stakeholders, including Local Government New Zealand, the Insurance Council, the CTV Building Families Group and HOBANZ supported the proposal. Most of the key stakeholders that did not support the proposal considered assurance of general competency could be provided through CPEng with changes.

Many key stakeholders commented on the duplication and confusion created by two marks of general competency, both administered by Engineering New Zealand.

A group, including Engineering New Zealand and its affiliated technical groups, and some large firms, thought the general competency mark should be regulated by the profession through Engineering New Zealand. KiwiRail submitted that the title must have statutory standing and rigor.

"CPEng is internationally respected and aligned to international standards of professional competence, such as the IEA professional competences."

An overseas regulator of engineers

Q 3.2.1 Do you agree that there is a need for a statutory mark for engineers of professionalism and general competence to solve complex engineering problems?

Q 3.2.2 How well do you think CPEng currently provides this assurance? What do you think needs to change?

Q 3.2.3 Do you agree that a new title is needed for engineers that have been certified? If so, do you have a view on what that title should be?

Of the 112 online survey responses, 76% (85) agreed there was a need for a statutory mark for engineers of professionalism and general competence.

The majority believed this assurance was provided by CPEng or could be provided through CPEng with some change. A large number did not believe this assurance was provided by CPEng. A number of respondents would prefer Engineering New Zealand's Chartered Member class.

Key themes were that CPEng was recognised in New Zealand and internationally as a mark of quality, but there was confusion and duplication between CPEng and Engineering New Zealand's Chartered Member class. Many submitters demonstrated misunderstanding of the statutory basis of CPEng. Some identified concerns over governance. Responses regularly asked for better assessment processes and means to demonstrate practice areas.

There were mixed views on whether a new title was needed. 17 suggested 'certified engineer', 22 'chartered engineer' and 64 'other'. Common 'other' recommendations were 'licensed' and 'registered'. However, a large number of respondents used 'other' to tell us there was no need to change.

Of the 41 fire, structural and geotechnical engineers who submitted online, 85% (35) agreed with the need for a statutory mark of professionalism and general competence. The majority (54%) did not believe CPEng provided this.

Similar themes were identified in the written submissions. Approximately half agreed with the need for a statutory mark of general competence. Those who did not agree considered regulation of general competence should sit with the profession and/or changing CPEng would add yet another layer of confusion to the building regulatory space.

Q 3.2.4 For engineering work on buildings that does not require specialised skills, do you think certification would provide sufficient assurance of general competence and reduce the risks of substandard work?

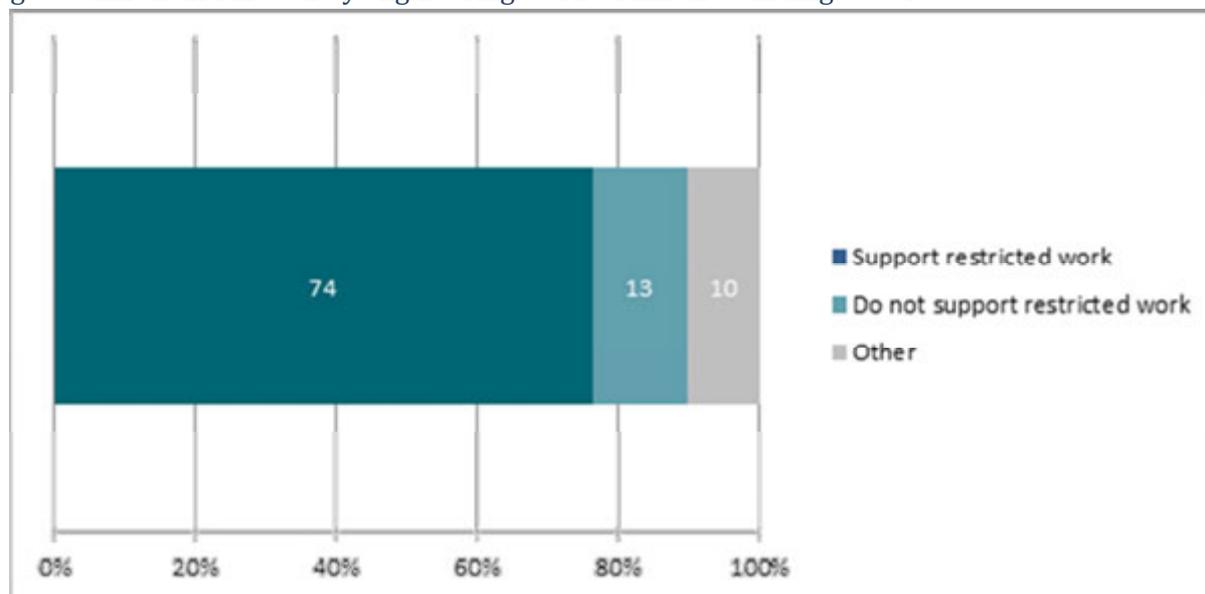
Out of the 103 online responses to this question, 53% (55) agreed that certification would provide sufficient assurance of general competence and reduce substandard work for work that did not require specialised skill. It is unclear how many of the 55 believe that changes to CPEng could also provide this assurance.

Most respondents stated that this certification is already provided by CPEng, could be provided through changes to CPEng, or that all work requires some specific skills. Respondents warned of multiple layers causing confusion. Many respondents felt they did not have enough information to answer the question.

3.2.3 Proposal 2: Restrict safety-critical engineering work

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

Figure 18: Support for restricting who can carry out or supervise safety-critical structural, geotechnical and fire-safety engineering work within the building sector



The majority of submitters supported some restrictions to engineering work.

Many of the written submitters caveated their response with comment on the need to phase implementation and ensure resources for upskilling the workforce in the future. Of those who did not agree with restricting engineering work, a key theme was concern about the added administrative, training, and recruitment costs. Many commented on the need to work through the detail of definitions, including what is meant by safety critical, to fully comment on this proposal's impact on the building sector.

The majority of key stakeholders agreed with the proposal to restrict safety-critical engineering work in the building sector. Several questioned the use of the term 'safety-critical' or the use of criteria, such as building size, building use and ground conditions to determine what work is restricted. A number thought restrictions should be based on a wider consideration of public protection rather than limited to risk to life.

A few, including Beca and the Structural Engineering Society New Zealand, submitted that the restrictions should include all specific engineering design. Several, including Inner City Wellington, suggested restrictions should include seismic assessments.

Fire and Emergency New Zealand submitted that restrictions should be broader than life safety. The Society of Fire Protection Engineers noted the challenges of restricting fire engineering design when most designs follow the Acceptable Solutions, which can be produced by anyone. The Institution of Fire Engineers argued there was a disproportionate focus on design and noted that failings are often the result of multiple failures across the system.

The New Zealand Geotechnical Society submitted that engineering geology should be treated in the same manner as geotechnical engineering. A number suggested restrictions should include other engineering disciplines including mechanical and electrical engineering. The New Zealand Registered Architects Board, the New Zealand Institute of Architects and BOINZ submitted that the restrictions should include all design work, not just engineering.

“We support stronger regulation of engineering work, especially where the risks are high, and would like to see a framework developed that ensures strong accountability, governance and leadership.”

Consumer New Zealand

“The history of failures in relatively new buildings is a clear indication that something needs to change.”

HOBANZ

Q 3.2.5 Do you agree that life safety should be the priority focus determining what engineering work is restricted?

Of 109 online survey responses, 79% (86) agreed that life safety should be the priority focus to determine what work is restricted. A group of these noted that various types of structures present risks to life and a risk assessment matrix or similar would be required to determine when a licensed engineer is needed. A number submitted that public protection should include minimising the risk of financial or economic loss.

Of those that disagreed, common themes were that there is a problem with the current system or with the concept of criteria to define what work should be restricted.

Of the 70 engineers that responded, 79% (55) agreed that life safety should be the priority focus for determining what work is restricted.

A number of the written submitters contended that all engineering work should be restricted, as all engineering work has an inherent risk of harm.

Q 3.2.6 What combination of the following factors should be used to determine what engineering work is restricted: building size, building use, ground conditions, other?

Of 102 online survey responses asking what factors should be used to determine what work is restricted:

- 59% (60) agreed with building size
- 70% (71) agreed with building use
- 57% (58) agreed with ground conditions
- 68% (69) proposed other factors.

Common themes from respondents who proposed other factors included occupancy numbers, structural complexity, materials used, building importance level, seismic zone, or criticality of building or consequence of failure.

A number commented the factors did not take into account life safety risks of other structures. Several proposed a risk matrix.

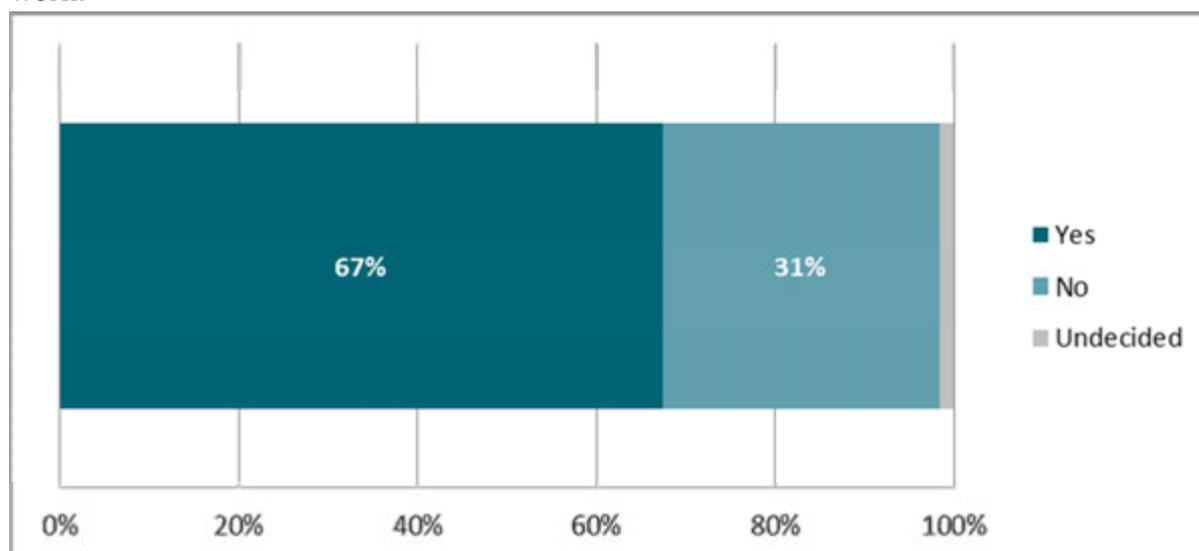
A number argued that all structures have capacity to cause harm and proposed that restrictions should include any structural design that falls outside the Acceptable Solutions. One noted that assessment of ground conditions requires a competent geotechnical engineer to do the investigation.

3.2.4 Proposal 3: Establish new licensing scheme for engineering work

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

The majority of respondents indicated a licensing regime would improve public protection.

Figure 19: Will this effectively reduce the risks to public safety from substandard engineering work?



Of the 104 online survey responses and the 45 written submissions, 85% (126) thought a new licensing scheme should be established.

An analysis of only the written submissions showed mixed rationale, specifications, and often confusion with current regulatory setting requirements. However, many viewed licensing as a better alternative. Many considered there is a need for a system approach to all building work. Much of the support highlighted the need to phase implementation to prevent unintentionally shocking the market.

Most key stakeholders supported the establishment of a new licensing scheme to regulate who can do restricted engineering work. The Insurance Council believed the proposed categories will likely give insurers greater confidence and may encourage greater acceptance of risk. A number agreed the licensing scheme needed to be flexible enough to accommodate other disciplines, including those outside the building sector.

A number, including the Chartered Professional Engineers Council, Auckland Council and Beca considered that the objectives of licensing could be achieved through changes to the CPEng scheme.

“There needs to be a transparent system to determine which engineers have the level of competence to do engineering work which if done poorly presents a risk to public safety. CPEng does not provide this assurance, because it does not set transparent competency standards or reflect accountability to an external regulator.”

CTV Building Families Group

| | |
|----------|--|
| Q 3.2.7 | In your opinion, does geotechnical, structural and fire safety engineering work pose the greatest life-safety risk in the building sector? |
| Q 3.2.7a | Do you think there are any other engineering specialities that pose greater life-safety risks in the building sector that are not included here? |

Of the 98 online respondents, a significant majority agreed that fire safety, geotechnical, and structural engineering work pose the greatest risk in the building sector.

However, the majority also identified at least one other engineering speciality, including some outside the building sector. Electrical, water, mechanical, aeronautical, civil, façade, engineering geology (separate from geotechnical engineering), and weather-tightness were identified as posing risks to life safety.

Respondents commented that a focus on life safety needs to include most engineering specialities and sub-specialities.

Many of the written submissions that agreed with the proposal to establish a new licensing scheme agreed it should include fire safety, geotechnical, and structural engineering. Many made suggestions to expand licensing to a wider group of engineering specialities, including those outside the building sector.

Significantly more respondents to the online survey who didn't identify as fire, structural, or geotechnical engineers identified other specialities as having the greatest risk. Of the 39 fire, structural, and geotechnical engineers that responded, 11 identified that other fields pose a greater risk. Of the 28 'Engineer – other' that responded, 54% (15) identified that other specialities pose a greater risk.

Q 3.2.8 3.2.8 Do you agree that engineers should satisfy the requirements for certification before they could be assessed for licensing?

Of the 102 online respondents, a majority responded that an engineer should satisfy requirements for certification before being assessed for licensing.

Q 3.2.9 What impact do you think the restrictions and licensing would have on the number of engineers who can carry out or supervise engineering work on buildings that require technical competence in a specialised field?

Of the 99 online respondents, a majority (60%) said that restrictions and licensing would have a negative (43) or strongly negative impact (16) on the number of engineers who can carry out or supervise engineering work.

Q 3.2.9a Do you feel that there are enough engineers with the necessary technical competence to meet any new demand?

Of the 100 online respondents, 63 responded 'no'.

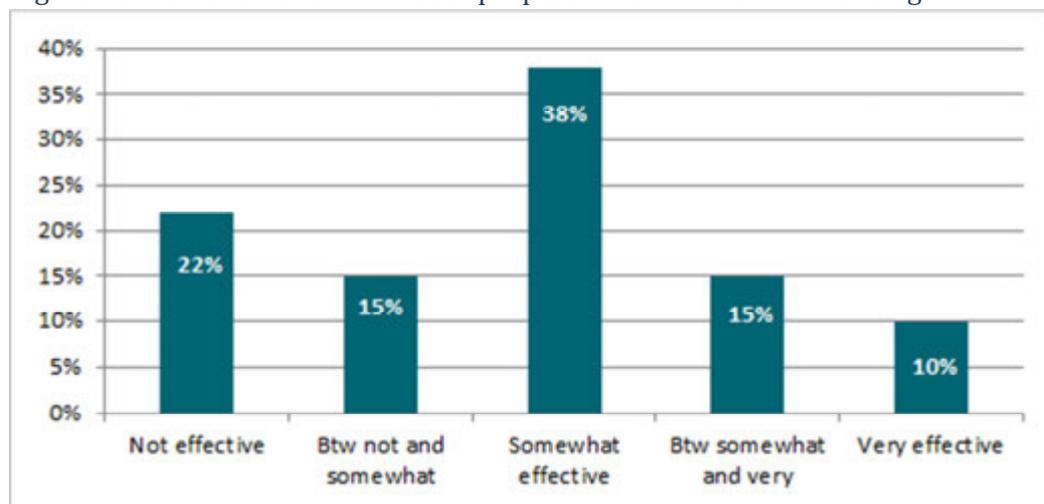
Q 3.2.10 What impact do you think the restrictions and licensing would have on the cost of engaging an engineer?

Of the 101 online respondents, the majority (76%) of respondents said that there would be a negative (50) or strongly negative (26) impact.

Q 3.2.11 How effective do you think the proposed restrictions and licensing would be in reducing the risks to public safety from substandard engineering work?

Of the 104 online respondents, 63% (65) considered restrictions and licensing would be at least somewhat effective in reducing the risks to public safety from substandard work.

Figure 20: Perceived effectiveness of proposed restrictions and licensing



Key themes from online submissions included the need to have a holistic approach to licensing. This would include such things as considering when a licence is needed, peer review, the use of producer statements, and addressing the needs of consumers so the system is not degraded. Submitters also said the proposals would increase accountability as it would stop engineers acting outside their competence and promote the public's knowledge of limitations. There was some confusion about licensing and how it fits with restrictions.

An analysis of the written submissions revealed the submitters' views on the effectiveness of licensing were dependent on how the scheme is implemented.

Of the 40 fire, structural, and geotechnical engineers who responded to the online survey, 63% (25) identified some effectiveness of introducing this regime.

Q 3.2.12 If you engage a licensed engineer, would you feel confident that the engineer has the necessary technical competence to do the work?

Of the 96 online respondents, 74% (71) said they would have confidence in a licensed engineer.

Q 3.2.13 Do you agree with the proposed grounds for discipline of licensed and certified engineers?

Q 3.2.14 Is there anything else that you think should be grounds for discipline? Are there any proposed grounds for discipline that you think should be modified or removed?

Of the 87 online respondents, 72% (63) said they agree with the grounds for discipline.

Other suggested grounds for discipline included breaches of professional conduct and code of ethics, and practising outside area of expertise.

Q 3.2.15 What things should we consider when we develop transitional arrangements? What supports would you need to help you during this transition?

The following points were made:

- Engagement with the sector.
- Several people suggested that a long transition is needed and that MBIE should not rush into this without thorough process and understanding.
- Considering other engineering specialities that will be unintentionally impacted by these changes.
- Education and process guidance is vital. This includes how this fits in with the wider regulatory system and what CPEng means in the interim.
- Those that are recognised in the current system should be recognised in the new system.

Q 3.2.16 (For engineers who currently do not have CPEng or higher) Would you be likely to apply for a licence (fire safety, geotechnical, structural)?

Of the 39 online respondents, 69% (27) without CPEng said that they would not get a licence after these changes.

This question appears to not be well understood as the most common response was questioning the value of such a licence as they already have CPEng.

A number of written responses commented that people would not bother if licensing was voluntary.

Q 3.2.17 If you have any other comments on the proposals for engineers, please tell us.

A collection of stakeholders urged MBIE to work closely with key stakeholders to define what work is restricted, and the design of the licensing scheme.

Many submitters noted the need for a system that is simple and easy to understand. Information and education were seen as essential to successful implementation.

A number commented on the uncertainty the proposals generate for engineers that currently have or are considering obtaining CPEng and the need for a clear transition plan.

Several submitters noted that the reliance by BCAs on producer statements means that engineers are effectively self-certifying their work. One submitter noted there is no consistent means by which the quality of design is assessed against the requirements of the Building Code. A number also commented on the lack of data on the quality of engineering design. A number proposed some method of auditing a selection of designs submitted for consent.

A number of submitters proposed mandating the peer review of engineering designs and monitoring (or signing off) that construction has been completed in accordance with the design.

Several submitters suggested the regulator should be able to suspend a practitioner's certification or licence while a disciplinary investigation is underway.

3.3 Occupational Regulation – Plumbers, Gasfitters and Drainlayers

3.3.1 Proposals

Stakeholders were asked for feedback on two proposals:

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

3.3.1.1 Summary of key points

The majority of submitters, including the three trade associations and the majority of local councils, supported plumbing work being undertaken by a licensed person. The proposals were viewed as increasing accountability and the quality of the work. Concerns were raised about the support available to allow those currently working under an exemption to continue to work under supervision.

Key concerns regarding the changes were:

- Supervision quality will be critical in ensuring work carried out in future meets Building Code requirements.
- Continuing professional development and ensuring tradespeople are competent to be completing work will be critical to the success of proposed regulatory settings.
- Some rural homeowners and farming practices may be adversely affected by the changes to householder and rural exemptions.

3.3.1.2 Who submitted on these proposals?

- A total of 80 submissions were received on the proposals for the Plumbers, Gasfitters, and Drainlayers Act 2006.
- There were 25 building control officers, 7 plumbers/gasfitters/drainlayers, 5 builders, 7 engineers and 4 homeowners.
- Key stakeholders who submitted included the PGD Board, Master Plumbers, PGD Federation and the Milking and Pumping Trade Association.

The PGD Board, Master Plumbers and the PGD Federation all agreed that all three exemptions needed repealing.

3.3.2 Proposal 1: Repeal specific sanitary plumbing exemptions

P 1. Repeal specific sanitary plumbing exemptions for householders in specified areas and for rural districts.

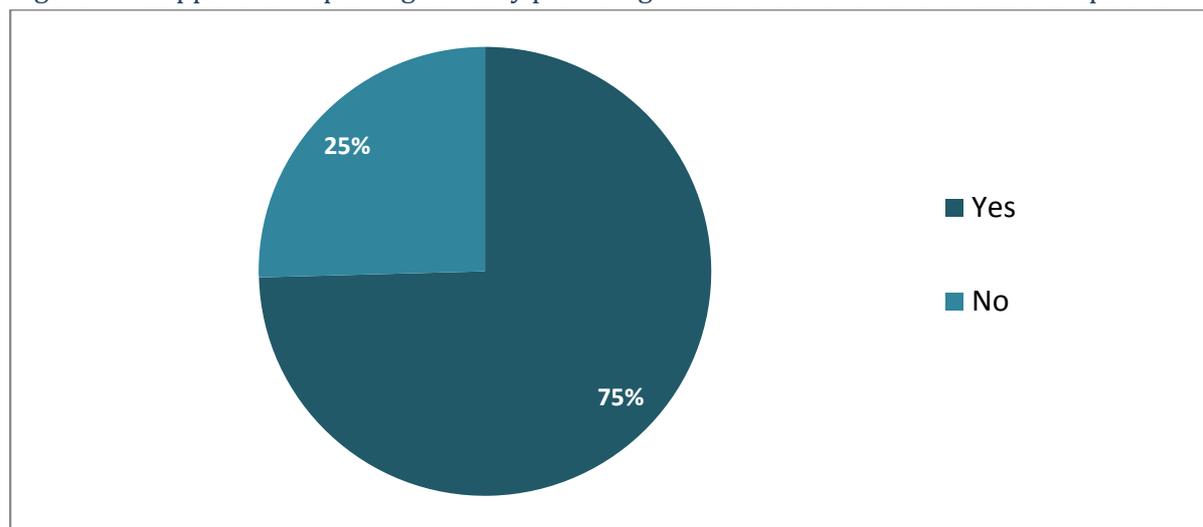
Q 3.3.1 Have you encountered instances of hazards or health issues from sanitary plumbing work completed by unlicensed people?

Q 3.3.2 How often do you find work undertaken under a householders or a rural areas exemption that does not comply with the requirements of relevant codes and standards?

Q 3.3.3 Do you think that a person should be qualified to do sanitary plumbing work on your property?

There was broad support for the proposed repeal of householder and rural areas exemptions across the online and written submissions. Generally, support was driven by a perception that restricted PGD work requires competency that justifies a licence and poses significant risk to the public. Those who did not support the changes generally considered modern plumbing work to be low skill and did not consider the risk to be significant.

Figure 21: Support for repealing sanitary plumbing householder and rural areas exemptions



PGD tradespeople and councils noted instances of substandard work and indicated the changes would lead to higher levels of competency and accountability.

The Milking and Pumping Trade Association made joint and separate submissions with farming and irrigation organisations stating that repealing householder and rural exemptions would significantly impact the completion of irrigation and pumping stations in rural areas.

Feedback from other stakeholders indicated that a repeal of householder and rural areas exemptions would be relatively straightforward and the proposed approach would have little or no adverse impacts.

3.3.3 Proposal 2: Repeal exemptions for restricted sanitary plumbing, gasfitting and drainlaying

P 2. Repeal exemptions for restricted sanitary plumbing, gasfitting and drainlaying work under supervision.

Q 3.3.4 How often do you find substandard work carried out under a supervision exemption?

Q 3.3.5 What benefits (if any) do you see from regulating people who are currently exempted if they work under supervision?

Q 3.3.6 What potential issues (if any) do you see from removing the exemptions for doing restricted work under supervision?

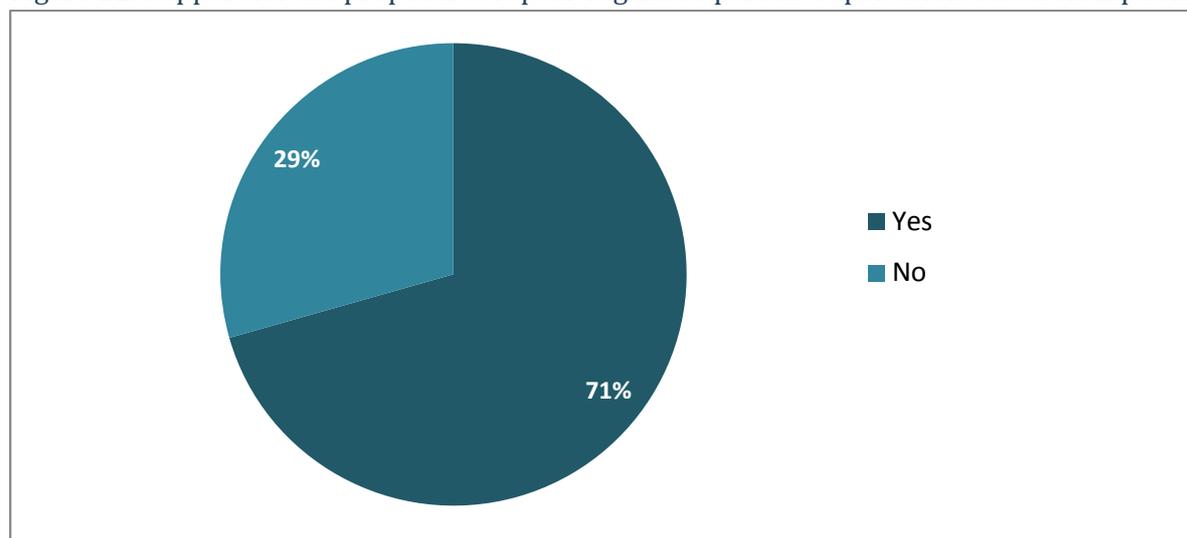
Q 3.3.7 What impacts (such as business impacts) would removing the supervision exemptions have on how your business is managed?

Q 3.3.8 Do you support allowing people currently working under supervision exemptions to continue working as a regulated person under a new registration and licence?

Q 3.3.9 Is anything else required to support the transition of exempted tradespeople to a new registration and licence?

As with repealing householder and rural areas exemptions, there was broad support for the proposed repeal of supervision-based exemptions across the online and written submissions. Again, support was driven by a perception that restricted PGD work requires competency justifying a licence and poses significant risk to the public. Those who did not support the changes generally considered modern plumbing work to be low skill and did not consider the risk to be significant.

Figure 22: Support for the proposal to repeal 'regulated person' supervision-based exemptions



The PGD Board provided data on the number of complaints received that relate to issues with supervision exemption holders, noting that currently the Board has no practicable way to address these complaints without levers to hold supervisees to account for their work and conduct.

One council noted cases where it would encounter substandard work, ask the builder and/or LBP whether a licensed plumber had completed the work, and then subsequently have to direct the builders to get a licensed plumber to come in to remedy the work as it did not meet the Building Code.

Some respondents noted the quality of supervision will be important in achieving the desired outcomes of the proposal. Lack of quality supervision was a common comment made by respondents.

3.3.4 Other themes and issues

There is some perception by groups outside the PGD industry that plumbing and drainlaying particularly are a 'captive market' rather than a justifiably regulated industry.

There is some perception by members of the building industry generally that improving inspection quality by councils is a possible way to ensure completed work is compliant with the Building Code instead of removing exemptions.

Master Plumbers, the PGD Board and the Milking and Pumping Trade Association all commented on the need to make wider changes to the PGD Act. In particular, self-certification, complaints, discipline and prosecution processes and the definitions of restricted plumbing and drainlaying work.

4 Risk and Liability

4.1 Proposals

Stakeholders were asked for feedback on two proposals:

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

4.1.1 Summary of key points

While submitters supported the idea of requiring a guarantee or insurance product (GIP) for residential new builds and significant alterations, submitters questioned the ability of the current insurance market to offer a viable, quality GIP.

Submitters noted the GIP proposal was reliant on successfully reforming the building sector first through implementing the other proposals in the discussion paper. Better quality buildings and clearer roles, responsibilities and accountabilities will increase insurer confidence and enable insurers to make an informed decision about participation in the market.

Submitters also identified significant concerns with the potential impacts of the proposal on the building and construction sector, including that it may constrain the supply of builders and how they will operate in the market, as well as increase the cost of building.

BCAs and some other sector participants strongly support a change to the liability settings as they consider it will better reflect BCAs' role in the building process and may mitigate risk-averse behaviour. The majority of submitters who advocated for a change to settings were also proponents for proportionate liability rather than a cap.

Respondents who agreed that liability would not need to be changed indicated that BCAs were in the best place to bear 'final responsibility'. A significant number of submitters noted that any move to limit BCA liability (either through a cap or a move to proportionate liability) will negatively impact other parties in the building process. In particular, it will unfairly leave plaintiff homeowners further exposed and increase inefficiency in the system (through increased litigation).

4.1.2 Who submitted on these proposals?

- A total of 169 submissions were received on risk and liability. There were 86 online submissions and 83 written submissions.
- Of the submitters, the largest category was BCAs with 29. There were also 22 builders, 23 engineers, 13 manufacturers or suppliers, 11 architects, 9 designers and five plumbers.
- Three major players from the insurance sector, some major consumer organisations, and representation from the legal profession also submitted. Other representation consisted of homeowners, developers and property managers.
- Of the submissions, 72 were from individuals and 97 from organisations.

- Of major stakeholders to the risk and liability proposals, submissions were received from Lloyds, Stamford Insurance, the Insurance Council of New Zealand, Registered Master Builders, Master Build Services Limited, Certified Builders, Roofing Association of New Zealand, Consumer New Zealand, Home Owners and Buyers Association Inc. (HOBANZ), the Auckland Mayoral Housing Taskforce, Local Government New Zealand (LGNZ) and many BCAs.

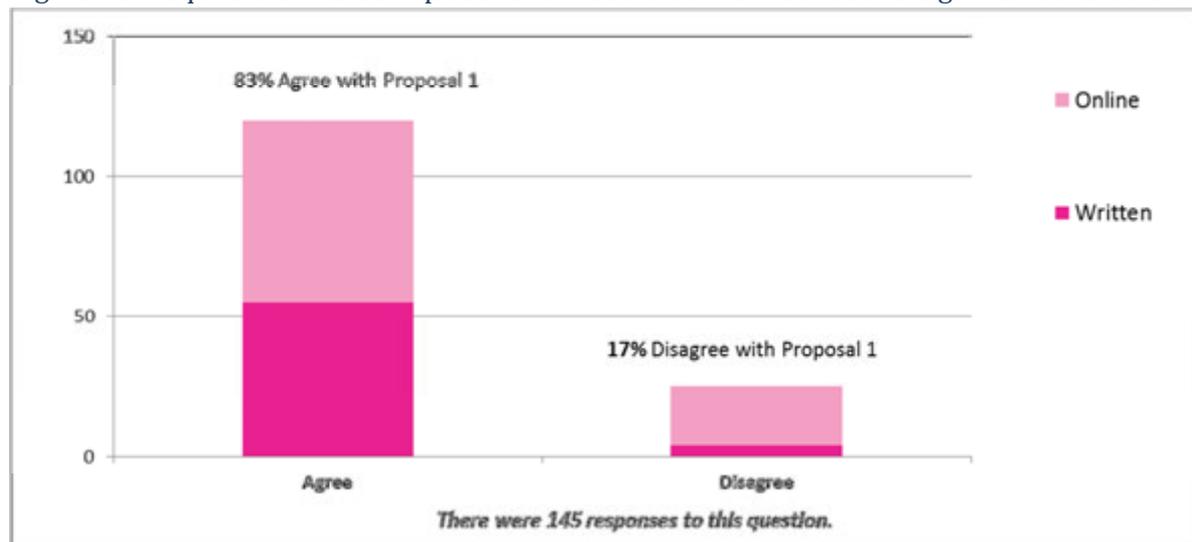
4.2 Proposal 1: Require guarantee and insurance products

P 1. Require guarantee and insurance products for residential new builds and significant alterations, and allow homeowners to actively opt out.

Q 4.1 Do you support the proposal to require guarantee and insurance products for residential new builds and significant alterations?

Most submitters supported the idea of GIPs.

Figure 23: Require a GIP to be in place for all residential new builds and significant alterations



Of the online survey respondents, 76% supported the proposal to require a GIP. The most common reason for supporting the proposal was to provide better protection for homeowners. Supporting reasons included the complexities of the building process, as homeowners are in a more 'vulnerable' position and it generally being prudent to take out insurance on an asset. However, several submitters noted the importance of any mandatory insurance product being robust and drawn from a competitive market.

Of those online submitters who did not support the proposal, reasons cited included the need for homeowners to retain freedom of choice, and concerns over the impact of a GIP requirement on the cost of building (in the short term).

The majority of written submitters were also supportive of the proposal to require a GIP, with support evenly spread among all submitter groups. However, several submitters were of the view that there are many theoretical and practical issues requiring further consideration before the proposal could be implemented. Submitters suggested a cautious approach to reform and for MBIE to undertake more work to ensure its viability and manage potential unintended consequences.

The key concern raised was whether the current GIP market was available and willing to support the proposal, both now and in the longer term. Submitters cautioned the need for significant insurance and actuarial advice on numerous matters like availability of cover, costs, reinsurance risks, exclusions and limitations on cover. Some submitters suggested MBIE should be looking at a model that includes government involvement in some way.

Many councils and LGNZ noted their support was for a compulsory insurance regime. Some thought GIPs should also extend to commercial work and some noted support was conditional on “necessary changes to the current liability framework and restrictions on the ability of insurers to progress claims against BCAs.” They noted that in absence of specific statutory provisions to the contrary, insurers would have rights of subrogation to bring proceedings against other parties in the building process, including BCAs.

HOBANZ stressed the importance of differentiating between guarantee and insurance products. Its support was confined to insurance cover (not guarantees from trade organisations), with the policy coming from an independent provider, covering not only the builder but the designer and various specialist engineers involved in the design and construction of the dwelling.

The three insurance industry submitters also expressed caution, including Lloyds, which underwrites insurance products currently available on the New Zealand market.

“Caution should be exercised about making any assumptions that there will be sufficient capacity, both now and in the future, to cover the entire residential building market for the mandatory offering of guarantee and insurance products.”

Lloyds

Q 4.2 Do you think homeowners should be able to actively opt out of having a guarantee and insurance product?

Support among online submitters was fairly even with 51% agreeing that homeowners should be able to opt out. However, of submitters who supported mandatory GIPs, 38% thought that homeowners should be able to opt out.

Similarly, the majority of the written submitters who supported the GIP proposal did not support the ability to opt out. The key reasons include homeowners not necessarily understanding the ramifications, insurance premiums becoming less competitive, and the premium pool being insufficient to entice insurers to the industry if participation was optional.

Reasons for not supporting opt-out were concerned about adding a layer of complexity to the scheme. Some submitters were concerned about the impact on future purchases of the property, and others cited the possibility that homeowners would opt out of insurance and then attempt to claim against BCAs or builders later. There were concerns that homeowners would not be able to make a sufficiently informed choice, and others said that maximum uptake would help to ensure a competitive insurance market.

Reasons for supporting the opt-out chiefly revolved around freedom of choice considerations.

The Auckland Mayoral Housing Taskforce, Consumer New Zealand, HOBANZ, Engineering New Zealand, the Insurance Council of New Zealand and many BCAs expressed their preference for a scheme without opt-out. LGNZ and some BCAs such as Auckland Council submitted the scheme must be mandatory.

Of the written submitters who supported opt-out, it was recognised that a balance needed to be struck between raising awareness and allowing risk-averse consumers to make an informed decision. Support for opt-out was mostly conditional on homeowners being fully aware of the potential consequences of their decision. Opt-out was also recognised as a mechanism to ensure that risk-neutral investors, especially with small building projects, were not unfairly disadvantaged.

Many submitters suggested there must be a way to ensure the neutrality of builders so that homeowners are not influenced against buying GIPs and have adequate information to make an informed decision. Several submitters suggested that strict regulations setting out information requirements and penalties for builders who act with bias would be essential.

Stamford Insurance noted an opt-out element might provide the best option in a limited market as it would increase consumer awareness of the limitations of the Building Act and improve the take-up of guarantee and insurance products.

“Stamford is very supportive of government intentions to improve consumer protection and believes every new home and significant building contract should come with an independent 10-year warranty. However, a compulsory scheme would be untenable in the present market with such a high demand for new homes against the background of a limited insurance market. Obviously, any proposals must not harm the supply side.”

Stamford Insurance

Q 4.3 Should there be conditions on when homeowners are able to opt out? What should these conditions be?

Most submitters did not think there should be conditions on opt-out.

Of the online respondents to this question, 47% thought there should be conditions. Suggestions for homeowners who should not be required to get a GIP included small/low-value works, owner-builders, or homeowners who were otherwise aware of and able to bear the risk.

An analysis of written submissions showed that while the majority did not think there should be any conditions on opt-out, almost all thought safeguards should be put in place to ensure that homeowners are fully informed prior to deciding.

Many submitters were of the view there must be a concerted effort to inform homeowners of the risks of building or carrying out significant alterations, and the protections offered by a guarantee or insurance product. The advice should be impartial and homeowners should be required to sign a statement confirming that they understand what the offered product would provide and what opting out would mean. Consumer New Zealand believes it would be inappropriate for this information to be provided by the builder.

A few submitters supported a cooling-off period that would allow a consumer to cancel a product within five working days of acceptance and the decision to opt-out being noted on the Land Information Memorandum so it could be of use to future and potential homeowners. A few submitters thought consumers should have to waive the right to make a claim against anyone, if they opt out.

“There must be safeguards put in place to ensure a homeowner has been fully informed about what the offered GIP would provide, and what opting out would mean.”

The Insurance Council of New Zealand

Q 4.4 What types of buildings do you think should be required to have a guarantee and insurance product?

Most submitters thought that all residential dwellings should be covered.

Of the 72 online responses to this question, 85% supported the inclusion of standalone residential dwellings, 93% supported the inclusion of medium-density housing, 93% supported the inclusion of high-density housing and 86% supported the inclusion of mixed-use buildings (submitters could choose more than one response to this question). Several submitters commented that all residential dwellings should be covered, while a few thought that standalone dwellings should be excluded from a mandatory requirement, as they tend to be lower risk.

The majority of written submitters were of the view that all homeowners, irrespective of building typology, should be able to be covered by a GIP.

However, several submitters including GIP providers cautioned MBIE to carry out further work on different typologies in collaboration with providers, especially high-density buildings over six stories. These submitters noted the growing number of apartment and mixed-use buildings, as well as the fact that current providers do not or may choose not to provide cover in the future, due to the construction and ownership complexity of these buildings.

The Insurance Council of New Zealand submitted that insurers are not likely to have the necessary capacity to insure a high-rise apartment building for non-completion or defects. For these reasons, high-rise apartment buildings should not be included within any GIP scheme.

GIP providers expressed willingness to work on this issue with MBIE.

Q 4.5

What threshold do you think the requirement for a guarantee and insurance product should be set at?

Many respondents to the online survey thought residential building work over \$30,000 was an appropriate level to require GIPs (31%), followed by residential building work that would impact structure or weather-tightness of the building (28%), residential building work over \$100,000 (22%), and 'other' (19%).

An analysis of written submissions also showed the majority favoured a threshold being set at residential building work over \$30,000, with many noting this aligns with the current threshold in the Building Act for requiring a written contract, which will make it easier to implement and communicate.

Many submitters noted a relatively low threshold such as \$30,000 might mean less builders being available to undertake work (as a greater number might not be able to access a GIP). Several submitters noted a low threshold would negatively impact the livelihoods of builders in New Zealand. Some submitters commented that if builders could not access GIPs, the Government would need to intervene.

Several submitters flagged that, depending on the threshold MBIE chooses, there is a risk MBIE could create an unintentional second regulator of the LBP scheme. GIP providers use their own criteria to determine membership to an association or cover for an insurance product, in order to manage potential liabilities. This would add complexity to the system, and could stifle innovation and increase costs. Some LBPs may not be able to undertake restricted building work if they do not meet these additional criteria and this would have implications for the pipeline of residential work forecasted.

Both Consumer New Zealand and HOBANZ supported a \$30,000 threshold, with Consumer New Zealand noting a threshold of \$100,000 would be inappropriate as costs of remediating substandard work, even for work below the \$100,000 threshold, can be substantial.

The Insurance Council of New Zealand noted preference for the lower threshold of \$30,000 as it would mean most alterations would require a GIP. This would provide protection for a greater number of homeowners as well as help establish the premium pool that is used to pay builders warranty claims.

"If a viable premium pool is not established in a short period of time, meaning there may not be enough premiums collected to pay claims, then this is likely to negatively impact on the sustainability of builders warranty insurance products being available for the New Zealand market."

The Insurance Council of New Zealand

Q 4.6

Do you have any views on the minimum standards that should be set for a guarantee and insurance product?

For example: the type of product, the types of events that are covered, the minimum level of cover, the period of cover, the nature of redress, the maximum claim value, dispute resolution processes, the ability to transfer to new owners.

There were a range of comments on the question about minimum standards on the online survey. There were no dominant themes; however, a few respondents mentioned it was important the product was affordable and transferable.

The majority of written respondents supported a comprehensive GIP product covering non-completion, loss of deposits paid to the builder, and structural defects including weather-tightness failures for a 10-year period. Submitters emphasised the GIP must be transferable and the homeowner, not the builder, should be the policy holder. A clear dispute resolution process was also seen as important for both homeowners and GIP providers.

Consumer New Zealand and HOBANZ emphasised that any GIP must be robust, with minimum standards that provide adequate protection so that consumers are not left exposed when things go wrong. They recommended that New Zealand draw from the experience of the insurance industry, both here and overseas, to put the best possible products and structure in place.

Consumer New Zealand was also of the view that for standards to be effective, standard form insurance contracts would also need to be brought under the Fair Trading Act's ban on unfair terms. Standards should also specify the cover to be provided, timeframes for lodging claims and dispute resolution processes. Cover for critical building work should be uncapped.

Registered Master Builders Association supported the proposal but suggested further work be carried out with GIP providers and the Insurance Council on minimum standards. They said that standards need to be *"flexible and light touch to allow for a wide range of products, existing product variation (to reflect market changes) and new product entrance"*. In addition, these standards need to *"ensure the GIP does not carry the entire risk of the building work. If too much risk is on the GIP, then the provider could make it unlikely they would cover the building work to make the cost of the cover extremely high to balance out the risk profile"*.

Q 4.7

What financial and prudential requirements do you think should be placed on providers, to ensure there is a continuing supply of guarantee and insurance products?

For example: reinsurance or other insurance backing, solvency, auditing requirements, security and prudential requirements.

Of 45 online responses, several said that insurance cover as a minimum should be required. A few respondents also mentioned Government cover, either as a backstop or as the manager of the scheme.

Many written submitters noted the considerable differences in the regulatory frameworks that exist between guarantee companies and insurers. Many submitters considered that prudential requirements should be a part of the minimum standard of a GIP.

The Insurance Council of New Zealand noted that the Reserve Bank's review of the Insurance (Prudential Supervision) Act 2010 would be a more appropriate forum to consider any necessary changes to financial and prudential requirements. They noted the current regime includes requirements for licensed insurers to hold sufficient solvency and/or reinsurance to meet a 1:1000-year seismic event, which is one of the world's highest solvency requirements.

Several submitters questioned whether the Government would underwrite GIPs or step in should there be a failure in the industry. These submitters caution MBIE about the experience in other jurisdictions and recommend the Government work closely with the industry and other jurisdictions to develop a workable solution.

"We consider robust requirements should be placed on providers to ensure consumers are not left exposed. The recent liquidation of CBL Corporation illustrates the need to have comprehensive requirements. As many as 10,000 people with Homefirst 10-year building guarantees were left exposed when CBL was put into liquidation."

Consumer New Zealand

Q 4.8 If residential new builds and significant alterations are required to have a guarantee and insurance product, what do you think the impacts will be?

Generally, submitters to the online survey thought that a GIP requirement would have positive impacts across the board: on homeowners (78%), builders (52%), BCAs (62%) and guarantee and insurance providers (78%). Several comments mentioned that costs to homeowners would increase, but that the additional protection for them would be beneficial. There were mixed opinions as to whether BCA behaviour would change, and several respondents noted that insurers would do well out of the change.

Written submitters noted a wide range of possible impacts to homeowners, builders, GIP providers, BCAs and the Government. These impacts included (but are not limited to):

- Increased costs to the homeowner.
- Improved awareness by the homeowner of the risks associated with building.
- Consumers will be better protected.
- Homeowners with GIPs might find that their houses are worth more if they decide to sell, as evidence of a GIP might be a quality mark.
- Increased costs to the builder if they currently do not offer an insurance product (if builders are required to pay fees to join an organisation offering GIPs, this would increase the cost of hiring builders and the increased costs would likely be passed on to homeowners during construction). It was also noted that independent schemes do not require membership but do have certain criteria such as a proven track record, finances, qualifications that might limit the number of builders available to offer a GIP and, if the scheme is compulsory, may remove them from the market.
- Increased awareness of builders when undertaking work.
- Greater incentives for better quality builds and the overall quality of work in the industry would improve.

- Builders who consistently delivered substandard work would go out of business because they would pose a greater risk and be unable to obtain cover or pay higher premiums, and failures of specific products would be picked up more quickly.
- Regulation of builders through insurance companies that offer insurance products, creating another check and balance on builders and their work. This also links with fit and proper persons and the code of ethics (section 3.1) proposal, therefore lifting the industry's professionalism and quality of buildings.
- Increased profits for the insurance industry offering building insurance products.
- Government may need to intervene in the market given supply constraints (presently builders warranty insurance is sold by just two providers that are backed by one syndicate (Canopus) of Lloyds of London).

“This proposal is dependent on the private insurance market being able to meet the increase in demand for GIPs. Furthermore, the Government will have to take care that one provider does not form a monopoly, and if there was a collapse the Government may have to step in to bail out the providers.”

Wellington Community Justice Project

Q 4.9 (For builders) How difficult will it be for you to gain eligibility to offer a guarantee and insurance product?

A large number of submitters thought it would be difficult to gain eligibility to offer a product.

Of the online respondents, 42% thought they would find it not very difficult and 36% said that they would find it very difficult or somewhat difficult. Some online submitters mentioned they were already members of trade associations, which meant they were already eligible to offer a product, with 21% responding they already offer one.

Of the written submitters who commented, a large number also thought it would be somewhat difficult, very difficult or even impossible to access a GIP. A number also expressed concern about the affordability of products. Many stated that the scheme would fall over without Government intervention, and that the Government should anticipate some builders to exit the industry.

GIP providers also cautioned MBIE:

“Even where underwriters are willing and able to provide capacity for this class of business, it is possible that there will be sections of the building industry who they are not willing to underwrite because of performance, solvency or other risk factors.”

Lloyds

Q 4.10 How long do you think the transition period for guarantee and insurance products needs to be to ensure providers, builders and BCAs are prepared for the changes?

Of the online survey respondents, 28% answered less than two years, 43% answered two years and 29% answered more than two years.

The majority of written submitters also supported a transition timeframe of two years or more, noting it will have significant effects on providers, builders and BCAs. A large number of submitters noted this will depend on the GIP market.

Consumer New Zealand and HOBANZ considered a transition period of less than two years would be appropriate.

The Insurance Council of New Zealand suggested that the proposal be delayed for two years after the other proposed legislative reforms are introduced in full effect. This will enable the prospective new builders warranty insurers to observe changes to the residential construction sector before committing their capital. As some of the transition periods under the proposed changes in the discussion paper are six years, this would mean the scheme would not be implemented for at least another eight years.

It cautions that evidence of improved competency, accountability and building standards is needed before more insurers look to offer builders warranty products. Any information MBIE can provide insurers about the performance of the building sector (once the proposed changes are implemented) will help in their decision-making as to whether they should offer a builder's warranty insurance. The success of the other reforms will play a key role in future insurance offerings.

"We believe it would be best for other changes proposed in the discussion paper to first be implemented, followed by an observation period of two years, before consideration is given to a GIP scheme, and whether that scheme would be mandatory. This will allow insurers, other than the one currently in the market, to make an informed decision based on the performance of the building sector, as to whether they will enter the builders warranty market."

The Insurance Council of New Zealand

Q 4.11 Is anything else needed to support the implementation of guarantee and insurance products?

Comments made in this section of the online survey included that a compulsory scheme should be backed by Government in some way and there should be a focus on improving quality across the system.

Several written submissions stressed that the building environment is rapidly evolving and other reforms should be implemented before GIPs are required.

A large number of those who supported the proposal also noted the need for consumers to be informed when procuring building work or buying existing buildings, and supported a consumer education campaign.

HOBANZ stresses that education for all parties involved in funding and selling properties is critical, noting that if banks are not prepared to lend on properties where insurance is not in place, then very few homeowners are likely to opt out.

“HOBANZ would appreciate the opportunity to explore the ways in which we can assist MBIE with the education of consumers as this fulfils one of our principal purposes.”

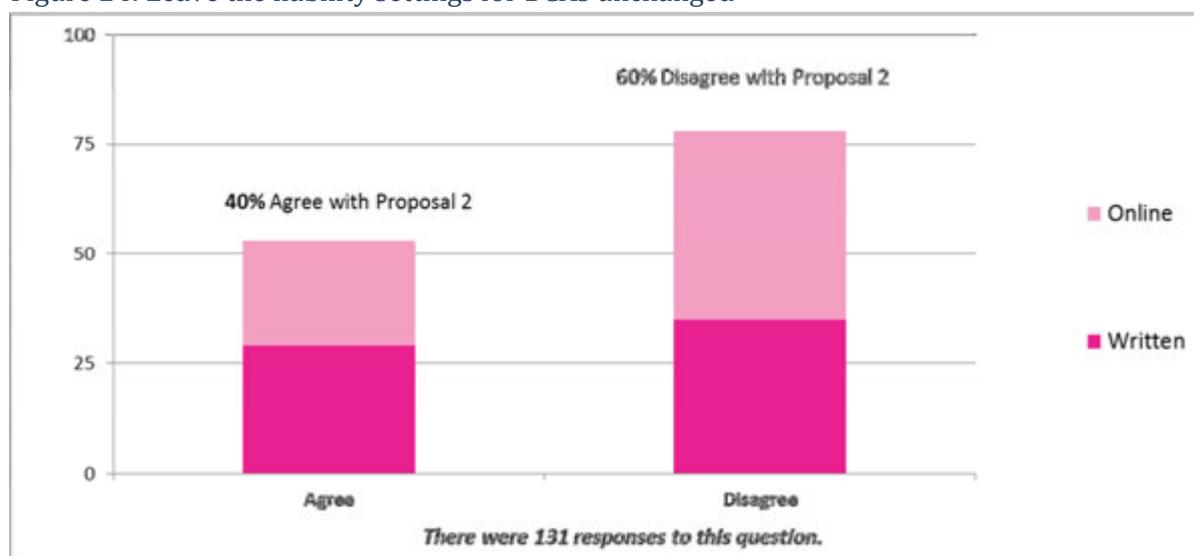
HOBANZ

4.3 Proposal 2: Leave liability settings unchanged for BCAs

P 2. Leave the liability settings for building consent authorities unchanged.

The majority of submitters were opposed to this proposal.

Figure 24: Leave the liability settings for BCAs unchanged



Of the respondents to the online survey, 36% agreed that liability settings should remain unchanged. However, there may have been some confusion over the phrasing of the question, because some of the free-form comments made by the respondents who answered ‘yes’ indicated that they in fact thought that liability settings for BCAs should be changed.

Respondents who agreed liability should remain unchanged indicated that BCAs were in the best place to bear ‘final responsibility’. One of the most prevalent responses amongst those who thought liability settings did need to be changed was the impact of the liability burden on BCAs causing risk-averse consenting behaviour. ‘Fairness’ was also mentioned by some respondents.

Of the 83 written submissions, 64 responded to this question. Of the 64, 55% (35) were against the proposal and thought liability settings should change, with the majority favouring a shift away from current settings.

Of the 35 written submitters who opposed the proposal, 63% were BCAs and the remainder were a mix representing the property sector, construction sector, designers and manufacturers. The 29 written submitters who supported the proposal included banks, homeowners, consumer representatives, the legal sector, building sector and the insurance industry.

Those written submitters who supported the proposal did so because they are concerned about the negative impact on other parties. Many submitters, such as the Law Society, referred to the Law Commission's 2013 review of the appropriate liability model in New Zealand, noting there is no justification for departing from current settings for BCAs. A group of submitters said there must not be any changes to BCA liability until satisfactory GIPs are available to consumers, while others said that BCA liability settings should remain as they are, even if GIPs are introduced. This will provide protection for matters that fall outside the insurance coverage period, or where consumers opt out.

Taking both written and online submitters and excluding the 28 BCAs (131 responses of which 103 answered the question), a 50:50 split exists between wanting a change to liability settings and not wanting a change.

Submitters representing the insurance industry were of the view that the proposal must be the preferred option as it still ensures purchasers have some protection against defects in all circumstances. They noted the limited interest in the market (for GIPs) currently and that capping or removing liability of the BCAs would make GIPs less viable, as providers would find it harder to recover the costs of their claims from other parties. This would likely either drive those few players away or significantly increase the cost of cover.

Many submitters expressed concern for any move to proportional liability, as it would support BCAs at the expense of homeowners and mean a more litigious environment that doesn't necessarily benefit the consumer.

The Roofing Association of New Zealand summed up the sentiment of these submitters:

"If the BCA has a limited liability then others may have to wear the difference. The home owner is in a battle and a waiting game."

Roofing Association of New Zealand

Of the written submitters who opposed this proposal, a large number (particularly many BCAs) strongly recommended that liability should be proportionate, and restricted to the roles of the BCAs in the administration of the building consent process. Local Government New Zealand (LGNZ) submitted that the role and duty of care of BCAs to building owners should be limited and clarified in law. It noted BCAs cannot take the same measures as other participants to avoid or limit their accountability and often suffer the financial consequences of being the last man standing, which shifts the burden to ratepayers and the community generally.

LGNZ and many BCAs who opposed the proposal are of the view that behaviour and competency in the construction sector will not change or improve under current liability settings. Some advocated for MBIE to clarify the roles and responsibilities of the parties in the building system. This will ensure that building designers and practitioners know they are accountable to consumers for the quality of their work.

“The current approach of joint and several liability enables some players to avoid accountability and weakens incentives to deliver quality products. A combination of compulsory insurance and proportional liability is needed to incentivise the industry to strive for high quality solutions. Also, the current liability settings which see the council as the ‘last man standing’ disproportionality impact on the ratepayer and lead to risk adverse and time-consuming processes.”

Office of the Mayor of Auckland

Q 4.12 If the government decides to make all the other changes in this discussion paper, do you agree that that the liability settings for BCAs will not need to be changed?

Of the 67 online submitters who answered this question, 64% did not agree that BCA liability settings should be left unchanged. Four of the submitters who disagreed with leaving liability settings unchanged were BCAs. (Note the majority of BCAs who submitted sent in a written submission.) As stated previously, many of these cited that outcomes often appeared to be unfair. On one hand they could be unfair to ratepayers, while on another hand they could be unfair to homeowners. One respondent suggested *“[t]he proposed solutions offer further complication, will slow down the process, add paperwork, increase costs and not address liability or improve the quality of outcomes”*.

A large number of written submitters thought that, irrespective of the other changes proposed, liability settings for BCAs should not be changed. Registered Master Builders Association expressed doubt that making residential builders offer a GIP would change BCA risk-averse behaviour and recommended MBIE examine risk-based consenting alongside the LBP scheme.

Many noted it would be a good thing if liability settings lead to risk-averse consenting, and noted that in their views BCAs are not influenced by potential liability when considering consent applications.

Of the submitters opposed to the proposal (to leave settings unchanged), most thought BCA liability should change irrespective of whether the other proposals are implemented. This included the majority of the BCAs who commented on this issue.

“Without a change to the liability settings, the reform will fall short of what is required, whether or not a mandated guarantee and insurance product is put in place.”

Local Government New Zealand

Q 4.12a What area of work do you think will have the biggest impact on BCA consenting behaviour?

Of the online survey respondents, 81% thought that risk and liability would have the biggest impact. Of the other projects, products was the most popular at 41% (respondents were able to select more than one answer). Many comments addressed BCAs’ risk aversion caused by their liability burden. Of non-liability factors, a couple of submitters mentioned the importance of having clear product information available.

An analysis of written submissions showed that most thought products would have the biggest impact, followed by risk and liability, occupational regulation, the building levy and then offences and penalties.

A large number were of the view that a centralised consenting process would have the biggest impact on consenting behaviour.

“The Government needs to work with the insurance industry stakeholders and BCAs to develop a fit for purpose consenting system. We doubt by making residential builders offer GIPs that there will be any change in BCA risk adverse behaviour.”

Master Build Services Limited

Q 4.13 If the government decides to limit BCA liability, do you support the proposal to place a cap on BCA liability?

The majority of respondents to the online survey (58%) supported a cap. Some respondents who supported a cap cited that ratepayers should not have to bear the cost. Respondents who did not support a cap cited a variety of reasons. Some believed that it would be unfair to other participants in the building process. Others noted BCAs still need incentives to do good work, and one respondent cited BCAs are the best placed to look after individuals in the system who have been adversely affected.

The majority of written submitters who responded to the question do not support a cap. This included those submitters who were for and against the proposal to leave the liability settings unchanged.

The main reason for opposing a cap among those who oppose the proposal (current settings) is because they prefer proportional liability instead.

The main reason for opposing a cap among those who support the proposal (current settings) is because they think a move away from joint and several liability would be unfair and unjust to other parties.

“We do not believe BCA liability can be capped without also capping liability for other key players in the building process. If BCA liability is capped, the liability of engineers and designers should also be capped in the interests of fairness and proportionality.”

Engineering New Zealand

Q 4.14 If there is a cap on BCA liability, do you agree that the cap should be set at 20%?

Of the online respondents 37% agreed with setting a cap at 20%. Some respondents thought the cap should be lower than 20%. Some respondents who were not in favour of a cap at all were concerned about where the rest of the liability would sit; however, others thought that a cap of 20% was about right, based on previous case law.

For those written submitters who commented on the level of the cap, there was an even split between those who supported a level of 20% and those who did not. This included those submitters who preferred a move to proportional liability, but in its absence acknowledged they will support a cap. Submitters acknowledged it would unfairly affect some plaintiffs.

Many noted this level of cap would be broadly consistent with New Zealand court decisions. Submitters noted their preference for a percentage cap as it would be easy to administer and understand as opposed to a dollar cap. Another reason for this preference is that a dollar-based cap would be difficult to apply and may unfairly disadvantage owners of expensive property.

“Whilst a 20% cap on BCA liability would be an improvement to the current settings, we maintain our position that proportional liability is the most appropriate liability setting that will best encourage change and increase quality across the sector.”

Auckland Council

Q 4.15 If there is a cap on BCA liability, do you think BCAs should have to pay more than 20% if they have contributed to more than 20% of the losses?

Responding to the question of whether BCAs should have to pay more than 20% if they have contributed to more than 20% of the losses, 62% of the online respondents said ‘yes’. Some respondents mentioned they did not think BCAs could possibly be liable for more than a small amount due to their role in the process.

The majority of written submitters also thought that BCAs should have to pay more than 20% if they have contributed to more than 20% of the losses.

“In regard to a cap on BCA liability, it may be necessary to remove this cap if BCA has contributed to more than 20% of the losses. This would reduce the unfairness as otherwise the builders, designers and any other parties would likely be shouldering more than their share of the cost. A blanket cap of 20% would be easier for courts to implement as they would not have to determine the extent of the BCA contribution to the losses.”

Wellington Community Justice Project

Q 4.16 What do you think would be the impacts of placing a cap on BCA liability?

Online respondents acknowledged that restricting BCA liability may have a negative impact on other parties in the system. However, several respondents felt that overall it would be positive for the system, because it would make other parties more aware of their own liability and incentivise those parties to take more responsibility for it.

An analysis of the written submissions highlighted the tension between those who think capping would be unfair on homeowners and those who think not capping would be unfair on ratepayers.

BCA submitters noted the following impacts of a cap: ratepayers would not be subject to subsidising the failures of other industry entities, other sector players would lift their performance, it would be a less risk-averse process for BCAs and a more efficient building consent process.

Some submitters thought that any cap on BCA liability would undermine the more general policy goals of the reform, because joint and several liability is seen as a valuable protective measure for consumers of building products and services. It also creates an incentive for good risk management.

Others noted that if builders are still able to phoenix, together with BCA liability being capped, the homeowner may not have any responsible parties to pursue for damage. This will mean the homeowner is left to cover the cost of most of the damage, which will likely drive insurance premiums higher.

“Changing joint and several liability by introducing a cap for BCAs would support only BCAs at the expense of blameless plaintiff homeowners who would be exposed to all the risks of absent defendants and uncollectible liability shares. In our view that would be egregiously unfair and unjust for blameless plaintiffs.”

Parker and Associates, Barristers and Solicitors

Q 4.17 If you have any other comments on the proposals for risk and liability, please tell us.

The most common comments made in online and written submissions were:

- The key consideration for the GIP proposal is the ability and willingness of the insurance market to provide, and that if the scheme is to progress a lot more work is needed with the industry to work through the details.
- Look at other jurisdictions and give consideration to a government backed scheme, including looking at an approach like that of ACC (as it would mitigate the risks of cherry-picking and un-insurability).
- The GIP proposal might not be the best way to respond to issues of industry quality, performance or education; it’s an ‘ambulance at the bottom of the cliff’.
- Focus on high-quality standards that are well supervised and enforced so that the risk of poor-quality products and workmanship is minimalised.
- There will likely be some resistance with cost being blamed initially until there is a clear understanding of the benefits, hence early sharing of information and educating the public on the scheme will be essential to its success. If this is done right, there could be early adopters prior to the date it becomes compulsory.

5 Building Levy

5.1 Proposals

Stakeholders were asked for feedback on three proposals:

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

5.1.1 Summary of key points

The majority of submitters did not support reducing the building levy rate. Most submitters were BCAs and industry bodies who wanted to use the levy surplus to fund their activities that are out-of-scope of the purpose for which the levy is collected. There was also some confusion about which levy they were submitting on. A few submitters thought it was the building research levy.

Submitters supported standardising the levy threshold so it is consistent across BCAs. The majority of submitters supported allowing MBIE to spend the building levy on building sector stewardship. Some suggestions for the building levy included activities the levy is already used for.

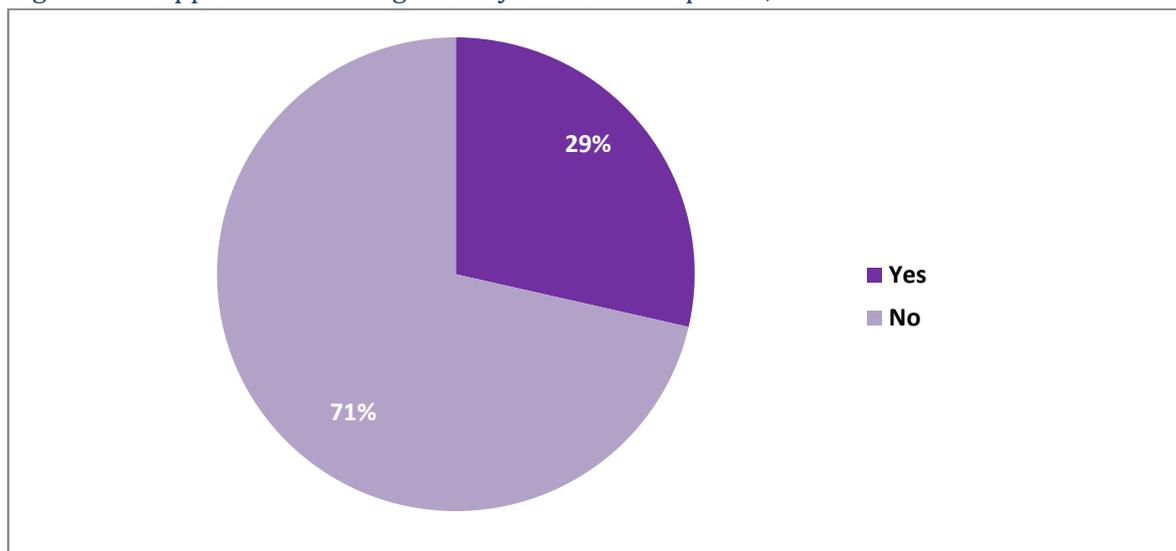
5.1.2 Who submitted on these proposals?

- There were 133 submissions (47 online and 86 written) on the building levy proposals.
- Submitters included 24 engineers, 28 building control officers, 14 architects or designers, 13 product manufacturers, 12 builders or plumbers, four homeowners and one building owner. The largest group of submitters (37) classified themselves as 'other'.
- There were submissions from 28 BCAs who collect the levy from building owners on behalf of MBIE.

5.2 Proposal 1: Reduce building levy rate

| | |
|-------|--|
| P 1. | Reduce the rate of the levy from \$2.01 to \$1.50 including GST (per \$1,000). |
| Q 5.1 | Do you agree that the levy rate should be reduced from \$2.01 to \$1.50? |
| Q 5.2 | (For building consent authorities) What impact, if any, would a reduced levy rate have on building consent authorities? |
| Q 5.3 | Other than reduced building consent costs, what are the other impacts from reducing the current levy rate? |
| Q 5.4 | (For building consent authorities) How long would you need to implement the proposed changes to the building levy rate and threshold? |

Figure 25: Support for lowering the levy rate to \$1.50 per \$1,000



Overall, 71% of submitters did not agree the levy should be reduced from \$2.01 to \$1.50 per \$1,000 spent. Those who submitted online were split almost 50:50 on whether it should be reduced, but those who made written submissions were opposed by nearly 5 to 1.

Most submitters felt the levy surplus should be spent on a range of other activities including:

- Stewardship activities
- Assisting in developing the capacity and capability of the sector (including education and training for workers, guidance for councils and professionals, and support for councils including subsidies for council accreditation)
- Providing building Standards for free and funding the maintenance of building Standards
- Insurance schemes for building owners
- Setting up and running a product registration service
- Investigations of building and construction practices and producers.
- Supporting innovation and productivity in the sector.

However, there were only a few submitters who either self-identified as a building owner or represented an organisation that might pay the building levy for construction activity, such as building aged-care residential facilities.

A few submitters thought there should be no restrictions on the use the levy could be put to.

“The construction sector has many problems ranging from low productivity, poor business performance, quality issues, skills shortages and poor health and safety performance. The levy should be used to address these issues.”

NZ Specialist Trade Contractors

Of the BCAs who responded on the likely impact of a reduction, 12 indicated it would either have no impact or a positive impact. Five BCAs indicated it would either have a negative or strongly negative impact on them by reducing the amount of money collected to administer levy collection without reducing the workload.

5.3 Proposal 2: Standardise the building levy threshold

P 2. Standardise the threshold at \$20,444 including GST.

Q 5.5 Do you have any comments on standardising the threshold at \$20,444?

Overall comments from submitters supported standardising the threshold at \$20,444 so it is consistent across all BCAs. Many BCAs indicated that they already set the threshold at the proposed amount and this change would have no impact.

Most submitters agreed that any changes to the rate and threshold should be implemented on 1 July 2020 as this coincides with the timing of other changes to council fees schedules.

A group of submitters suggested that the threshold should be reviewed or increased as it has not changed since it was introduced in 1991. A collection of submitters suggested setting it at a round number.

Only a few submitters thought the threshold should exclude GST. Only one submitter commented that there should be no threshold.

5.4 Proposal 3: Amend Building Act to enable levy to be spent on stewardship activities

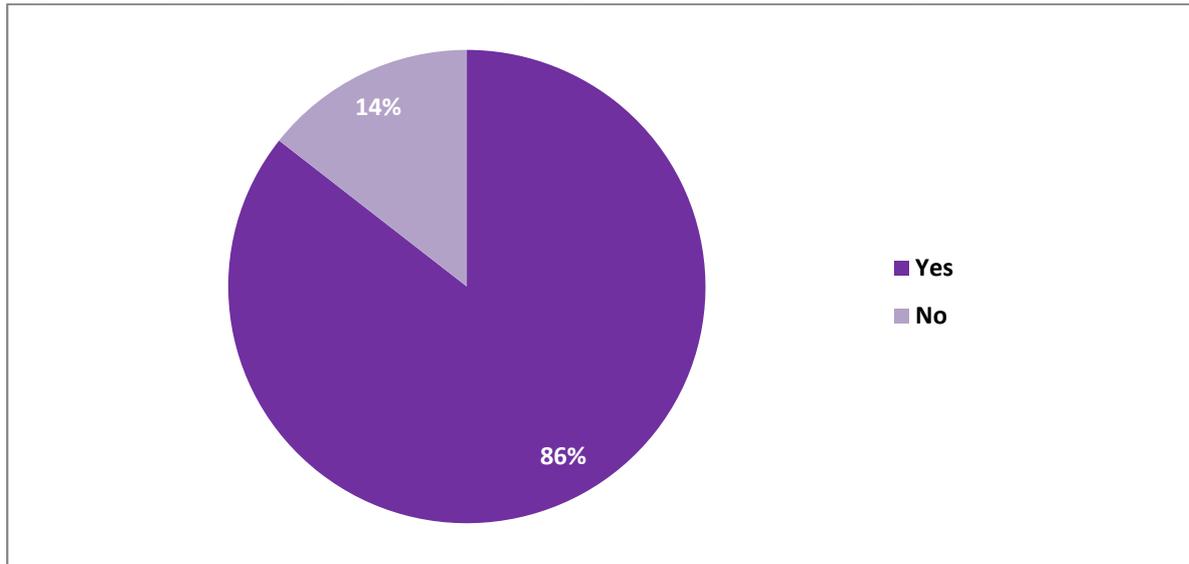
P 3. Amend the Building Act to enable MBIE's chief executive to spend the levy for purposes related to broader stewardship responsibilities in the building sector.

Q 5.6 Do you agree that the Building Act should be amended so MBIE's chief executive may spend the levy for purposes relating to building sector stewardship?

Q 5.7 Do you agree with the proposed start date of 1 July 2020 for the changes to the building levy rate and threshold?

Q 5.8 If you have any other comments on the proposals for building levy, please tell us.

Figure 26: Support for using the Building Levy to fund sector stewardship



The vast majority of submitters (86%) supported amending the Building Act so that MBIE’s Chief Executive may spend the levy for purposes relating to building sector stewardship.

A few submitters suggested that stewardship should have a broad definition. Many submitters suggested that the levy should be used for activities it already funds, including education, investigations, and reviewing the Building Code. Several submitters suggested the Levy should be used for research or to support upskilling those involved in the industry. A group of submitters suggested the levy should be used to either make Standards freely available or to update and maintain them.

A few submitters commented that the building levy should only be spent in a way that directly benefits the building owners who pay the levy.

“The money should be spent on things that directly benefit homeowners or potential homeowners.”

Will Manning, homeowner

Of the submitters who opposed expanding the scope of the levy, a few doubted MBIE’s ability to appropriately use the funding.

5.5 Other themes and issues

Several submitters suggested that the surplus levy could be used to establish a government-operated guarantee or insurance scheme.

6 Offences, penalties and public notification

6.1 Proposals

Stakeholders were asked for feedback on four proposals:

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

6.1.1 Summary of key points

The majority (68%) of submitters believe that the current maximum penalty amounts in the Building Act are not appropriate.

Over half (58%) of submitters agreed with the proposed increases to maximum penalties.

The majority of submitters (76%) supported introducing higher penalties for organisations. Over half (55%) of respondents also thought all of these proposals would have either a positive (43%) or strongly positive impact (12%) on the building industry if they were implemented.

The majority of submitters (71%) thought that 12 months was an appropriate time for a relevant enforcement agency to lay a charge.

The majority of submitters (78%) also agreed that public notification should no longer be required in newspapers, while many submitters (65%) thought that publication on the internet and in the Gazette would be sufficient. A number of submitters disagreed with this question (35%).

6.1.2 Who submitted on these proposals?

- 127 submissions were received on these proposals. Of those, 53 were online and 74 were written submissions.
- There were 79 submitters who represented organisations, and 48 who represented their own views.
- A number of key stakeholders commented on the proposals. They included several territorial authorities, Fletcher Construction, manufacturing, distribution and residential groups, Calder Stewart, CTV Building Families Group, the Employers and Manufacturers Association, Plumbers, Gasfitters and Drainlayers Federation and the Building Practitioners Board.

6.2 Proposal 1: Increase maximum financial penalties

| | |
|------|---|
| P 1. | Increase the maximum financial penalties for all persons. |
|------|---|

In general, over half of respondents (58%) agreed with the proposal to increase the maximum financial penalties in the Building Act. The common rationale for this response was that at present

the penalties are not a deterrent. They have not been updated since 2004 and inflation has, in essence, created lesser fines. They should align to other legislative instruments, particularly the Health and Safety at Work Act 2015.

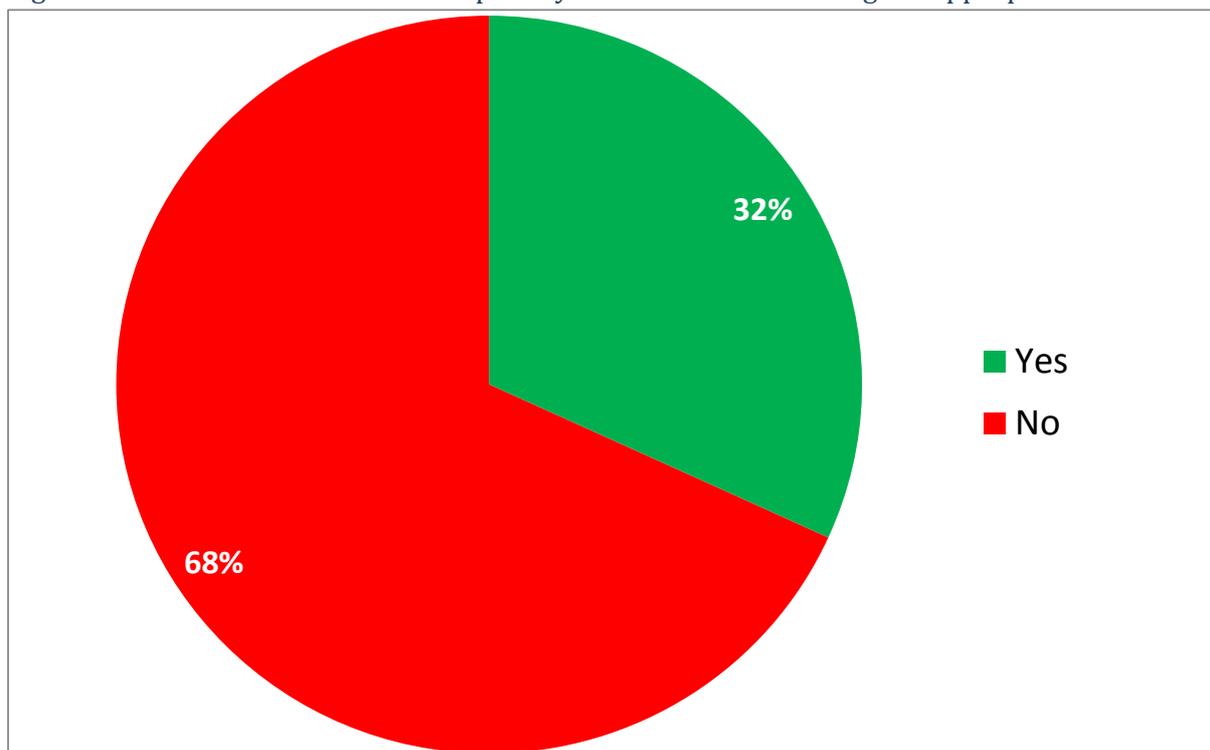
This proposal is also seen as providing greater parity and consistency across legislation that deals with public safety. Sending a strong message was seen as a key theme among respondents.

Those who disagreed with the proposal (42%) believed that as courts don't impose the maximums on individuals currently, any increase would be pointless. The best way to move forward at present is for courts to actually begin enforcing them. Additionally, the increases are seen as a large jump over the current penalties and may have serious impacts on smaller operators.

Reviewing infringement fines was also mentioned as another area of greater importance than maximum penalties.

Q 6.1 Are the current maximum penalty amounts in the Building Act appropriate?

Figure 27: Are the current maximum penalty amounts in the Building Act appropriate?



Regarding maximum penalty amounts in the Building Act, 68% of submitters who responded to this question believed they are not appropriate at present. They are not seen as sufficient deterrents or doing enough to promote proper performance and behaviour. In fact, because they are so low, they “act as disincentives to prosecutions by Councils (especially the smaller ones)”. A ‘sliding scale’ of proportionality to the size of the building project was offered as an alternative method of increasing maximum fines.

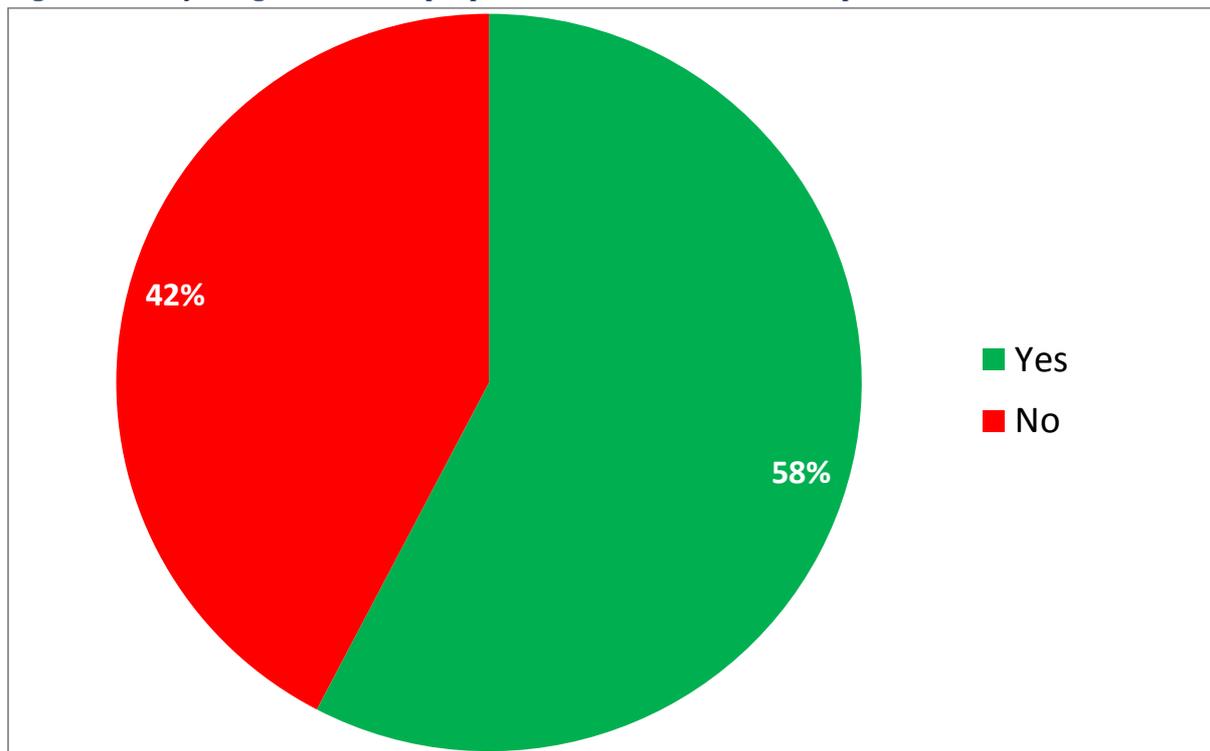
Fletchers Manufacturing and Distribution, Leighs Construction and the CTV Building Families Group all agreed that current penalties are not high enough and support the proposal to increase them.

Those who believed that current maximum penalties were appropriate (32%), think that the issue is actually the lack of enforcement by BCAs and the courts. There is a perception that the only people being fined are those with less ability to challenge decisions legally or pay the fines at the current levels.

A few submitters (6) did not answer the yes/no section of the question but acknowledged that some form of financial penalty is necessary – what it should be is more difficult to state.

Q 6.2 Do you agree with the proposed increases to maximum penalties?

Figure 28: Do you agree with the proposed increases to maximum penalties?



The majority (58%) of submitters agreed with the proposed increases to the maximum penalties. A benefit of this proposal is that *“the increased penalty levels to significant sums signal the serious intent of non-compliance. Benchmarking and alignment with H+S penalty levels provides for industry consistency”* (Jasmax). This view is shared with a large number of BCAs and territorial authorities, and industry groups including Fletchers (all divisions that submitted), Jasmax, Leighs Construction and the Specialist Trade Contractors Federation.

Two in five submitters disagreed with the proposed maximum penalties, stating that either current penalties are too high, the framework is inconsistent with many of the offences currently in the Building Act and, again, the courts do not impose the maximum anyway.

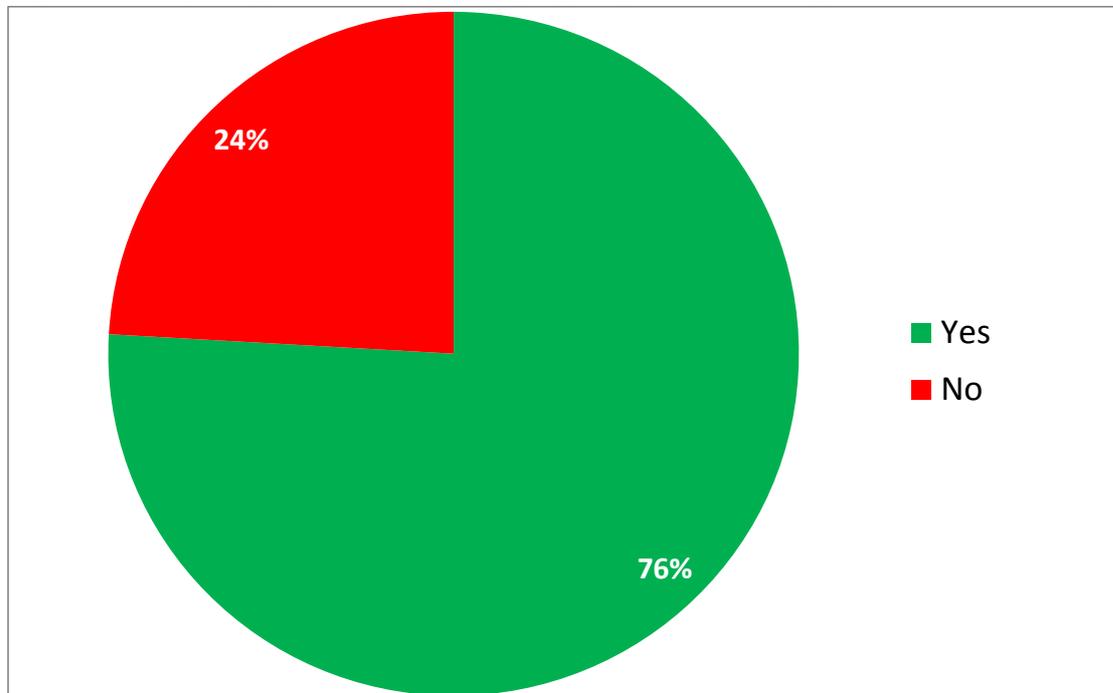
Those submitters who did not offer a yes or no to the question generally supported the proposal but offered caution as the unintended impacts may be more litigation and costs added on to consumers. A number of submitters did not respond to the question.

6.3 Proposal 2: Set different maximum penalties for individuals and organisations

P 2. Set the maximum penalty levels differently for individuals and organisations.

Q 6.3 Do you agree with introducing higher penalties for organisations?

Figure 29: Do you agree with introducing higher penalties for organisations?



The majority of respondents who submitted on this proposal and question (76%) agreed with introducing higher penalties for organisations. Organisations were seen as *“responsible for ensuring that their members carry out work to a high standard that ensures public safety. They need to have rigorous practices in place to achieve this. Setting a fine at a level that compels the organisation to maintain these practices is important. That level will generally be higher for organisations than for individuals”* (CTV Building Families Group).

This proposal had widespread agreement from across the industry – from BCAs and TAs to large construction organisations, specific trade groups and homeowners.

Those who disagreed with the proposal (24%) suggested penalties should reflect the cost and risks associated with the error. An individual has much potential to incur these costs and risks as an organisation. However, an organisation would likely be involved in higher valued projects than an individual.

Q 6.4 What impacts on the building industry could arise from this proposal if it is implemented?

Over half (55%) of submitters thought these proposals would have a positive or very positive impact on the building industry. Though these changes were seen as significant, the possible financial implications are mitigated by the behavioural signals that the changes send. That is, better behaviour will be promoted, and those who currently demonstrate these behaviours should not be worried about the proposals. It was also seen as creating a more level playing field for responsible operators as the risks of supplying non-complying services or products are significant and real.

However, there still needs to be intensive regulatory oversight to make any positive change happen and be successful.

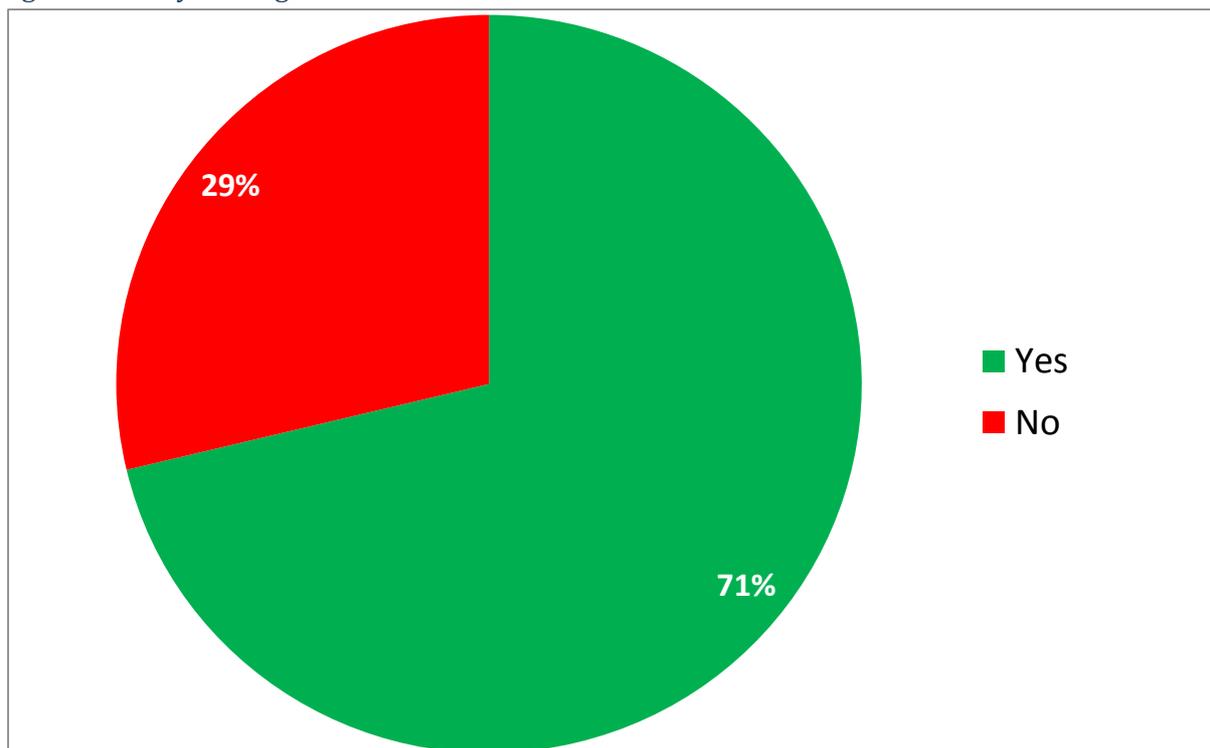
Of all submitters who answered this question, 45% thought this proposal would have no impact (15%), a negative impact (18%) or a strongly negative impact (12%) on the building industry. The main concerns raised were that the proposals would increase costs to the consumers, and perceived heavy-handedness would lead to people retiring or moving away from the industry and exacerbating the current skills shortage. These views were mainly shared by individuals, Calder Stewart, the PGD Board and a few district councils.

6.4 Proposal 3: Extend timeframe for laying a charge under the Building Act

P 3. Extend the time relevant enforcement agencies have to lay a charge under the Building Act, from six months to 12 months (section 378 of the Building Act).

Q 6.5 Do you think 12 months is an appropriate time period for relevant enforcement agencies to lay a charge?

Figure 30: Do you think 12 months is an appropriate time period for relevant enforcement agencies to lay a charge



A majority of submitters (71%) agree with the proposal to increase the time to lay a charge to 12 months and believe this is an appropriate time period for relevant enforcement agencies to do so. Submitters believe 12 months better provides for a more adequate timeframe in which research can be done and evidence presented. It was acknowledged that building offences can often be complex and involve a variety of people, products, events and interpretations.

It was also stated that it may “allow for other avenues to be pursued for compliance and give a more realistic time frame for an ‘every opportunity given’ type approach to encourage compliance with a firm backstop with an extended time frame given” (Whangarei District Council).

This proposal had widespread support from all of the BCAs and TAs, as well as key stakeholders such as Registered Master Builders, Engineering NZ, all of Fletchers, the New Zealand Society for Earthquake Engineering, the Property Council and Leighs Construction.

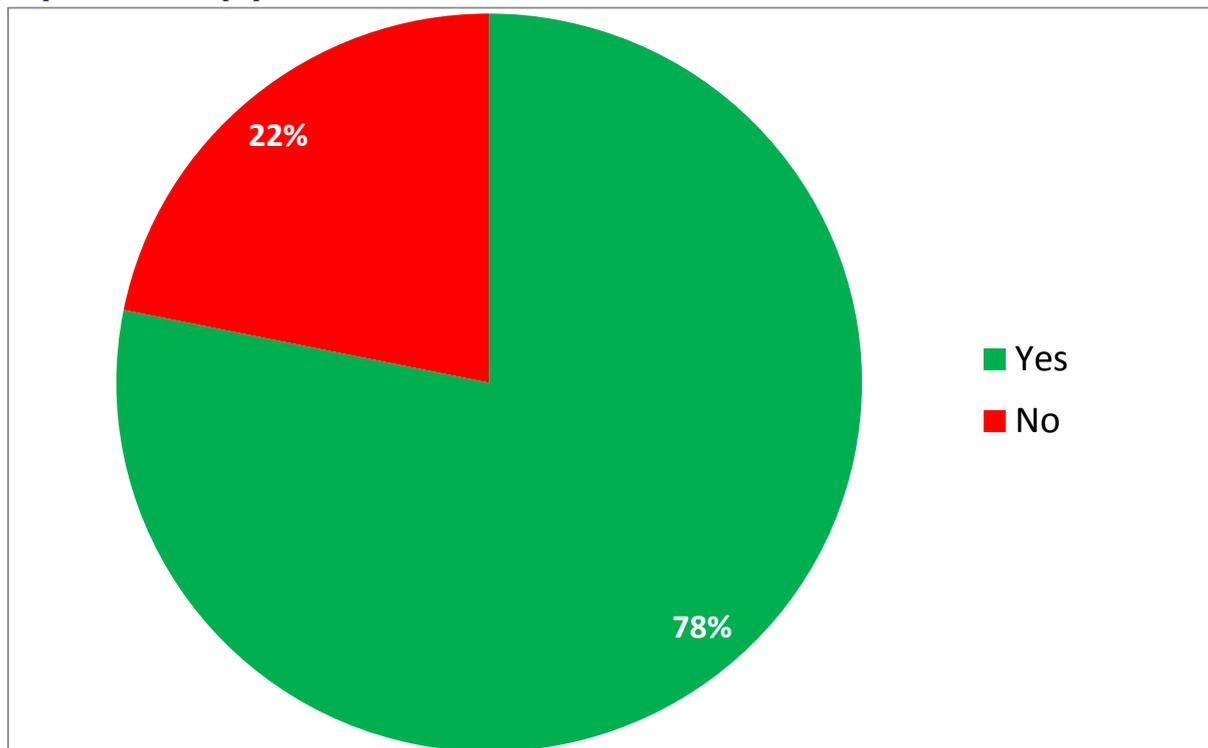
A small number (29%) disagreed with the proposal as they felt that six months was enough time. There was also concern that the proposal would create disparity between the Resource Management Act and the Building Act. Those who disagreed represented themselves and were more likely to be builders, designers and engineers.

6.5 Proposal 4: Modify the definition of ‘publicly notify’

P 4. Modify the definition of ‘publicly notify’ in section 7 of the Building Act.

Q 6.6 Do you agree that public notification under the Building Act should no longer be required in newspapers?

Figure 31: Do you agree that public notification under the Building Act should no longer be required in newspapers?



The majority of submitters agreed with the proposal to modify the definition of ‘publicly notify’ in the Building Act. In particular, 78% agreed that public notification in newspapers should no longer be required.

The main rationale was that it shows the industry is moving with the times, newspapers are no longer the most reliable method of reaching a specific or targeted audience and, due to the decline of the print medium, newspapers are *“no longer relevant nor meaningful where there are fewer local media outlets and when the internet is the primary and most readily accessible source of information”* (Engineering New Zealand).

A small number of submitters (22%) disagreed with the proposal. The main arguments for keeping the requirement to publicly notify in newspapers were that many people still rely on newspapers, the currently ‘completely slack’ attitude of MBIE to releasing publications and that transparency is paramount.

“The public must be aware for enforcement to occur. They can be no grey areas. Public notification sends a clear message to not only the building industry, but also those that are charged with ensuring compliance, the home owner.”

Darren Love

| | |
|-------|---|
| Q 6.7 | Do you agree that publication on the internet and in the New Zealand Gazette is sufficient? |
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| Q 6.8 | If you have any other comments on the proposals for offences, penalties and public notification, please tell us. |
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A majority of submitters (65%) agreed that publication online and in the New Zealand Gazette specifically would be sufficient in carrying out the functions under section 7 of the Building Act. Primarily, the submitters who agreed were district councils and sector organisations.

The rationale provided by submitters focused on the fact that the Gazette provides one publication that everyone can access, shows adaptation to a changing world and recognises the primacy of the internet in accessing technology – *“there is a need to adapt to modern ways of information dissemination”* (Auckland Council). However, it was noted that consideration needs to be given to people who may not be able to reliably access the internet, and to complementing the Gazette notice with information through social media.

A minority (35%) of submitters did not agree that Gazette publication and elsewhere online was sufficient. They noted that people may not be aware of the Gazette or read it. Submitters who raised this point included large building organisations, industry groups and a few district councils.

“The consultation document is silent on the potential websites MBIE could use for publishing the information. We do not believe that people necessarily know or would access the New Zealand Gazette to source information. The New Zealand Gazette website is difficult to navigate and to locate.”

Leighs Construction

6.6 Out-of-scope responses

A number of themes and issues were raised that are outside the scope of the proposals, including:

- MBIE's role should be broadened so that it acts as a centre of excellence for the sector to promote good practice, innovative ideas and guidance, Standards and Acceptable Solutions as well as provide more support to the whole sector for upskilling and building capability.
- MBIE should provide more leadership and support to BCAs in support of their duties, including judgements on Building Code compliance.
- Consenting provisions needs to be reviewed:
 - Several submitters suggested implementing risk-based consenting provisions in the Building Act.
 - A group of submitters proposed that producer statements be reintroduced into the Building Act. Many submitters noted that the reliance by BCAs on producer statements means that engineers are effectively self-certifying their work.
- Roles and responsibilities of BCAs versus designers need to be clear in law, so that designers and practitioners are accountable to owners for their work and BCAs are accountable to the central regulator for their administration of building regulatory requirements. Some functions could be done centrally, such as product approval.
- Several submitters supported introducing universal design principles for residential buildings.

7 Conclusion

The proposals in the discussion paper aim to address some of the long-standing problems that have prevented the sector from reaching its potential.

The majority of the 470 submitters supported the programme objectives and agreed system change is needed. They provided valuable insight from the sector on the detail of the proposals and will help inform next steps. MBIE will now use the submissions received during consultation as part of a range of evidence to inform its advice to Government.

