



December 2013

Building Amendment Act 2013

All residential builders and their clients will be affected by changes to the Building Act 2004 that became law in late November 2013.

Immediate changes introduced by the Building Amendment Act 2013 include:

- higher penalties for work done without a consent
- changes to the types of work that don't require a building consent (Schedule 1 of the Building Act is amended)
- councils get powers to restrict entry to buildings near dangerous buildings
- the Ministry of Business, Innovation and Employment (MBIE) has more power to hold building consent authorities (BCAs) to account.

A fact sheet on the immediate changes can be downloaded from:

www.dbh.govt.nz/UserFiles/File/Building/Building%20law%20and%20compliance/fact-sheet-1-building-amendment-act-2013-immediate-changes.pdf

Changes to come in late-2014 include:

- written contracts become compulsory for all work over a specified amount
- builders must provide certain information about themselves
- a 12-month defect repair period is introduced during which builders must fix any defects pointed out by the consumer
- new remedies for breaches of implied warranties are introduced.

A fact sheet on the future changes can be downloaded from:

www.dbh.govt.nz/UserFiles/File/Building/Building%20law%20and%20compliance/fact-sheet-2-building-amendment-act-2013-changes-in-2014.pdf

Penalties for breaching the law are tough, for example, the fine for doing work without a building consent is doubled to \$200,000.

Specific information on what this means for builders can be downloaded from:

www.dbh.govt.nz/UserFiles/File/Building/Building%20law%20and%20compliance/building-amendment-act-2013-what-does-it-mean-builders.pdf

Work not needing a building consent

Schedule 1 of the Building Act covers building work that does not need a building consent. The latest amendment introduces a new Schedule 1:

- Part 1 covers general exemptions and limitations – things like repairs, maintenance and extremely small or simple structures.
- Part 2 covers sanitary plumbing and drainlaying carried out by anyone authorised under the Plumbers, Gasfitters and Drainlayers Act 2006.
- Part 3 covers building work designed or reviewed by a chartered professional engineer.

New council powers to restrict entry to buildings

The Building Act already gives territorial authorities (TAs) the power to prevent people from approaching, using or occupying a dangerous, earthquake-prone or insanitary building. The new amendment extends these powers to 'affected' buildings. For example, now a TA can restrict entry to a building that is not earthquake prone itself but is next door to an at-risk building.

MBIE gets greater powers holding BCAs to account with regard to complaints

The Chief Executive of MBIE has more flexibility and powers around investigating any issue involving a BCA. With respect to a complaint:

- the MBIE Chief Executive can put timeframes around BCAs providing information
- a BCA's failure to make written submissions regarding the complaint does not limit the MBIE Chief Executive's right to proceed with an investigation
- progress on a remedial action by a BCA as a result of a complaint must be monitored and reported on.

New consumer protections

Major new consumer protections are introduced to the Building Act in a new part: Consumer rights and remedies in relation to residential building work. Scheduled to come into force from late-2014, this part:

- requires builders to provide certain information before a contract is signed
- sets minimum requirements for residential contracts over a certain value
- explains implied warranties in these contracts
- provides remedies for breaches of implied warranties
- requires builders to fix defective residential building work if notified within 1 year of completion without question
- requires builders to give clients certain information on completion of work.

This section does not cover design work or the relationship between the head building contractor and subcontractors.

Information disclosure is mandatory

For building work above a certain sum or at a client's request, the builder must provide certain disclosure information, including a checklist. A builder who doesn't hand over the required information can be fined up to \$2,000. A builder who knowingly gives false information or leaves out key facts can be fined up to \$20,000.

Information may include:

- the legal status of the builder, including whether they are an individual, a partnership or a company (and if the builder is a limited liability company, the role and business history of each director)
- whether the builder has been involved in any disputes
- the skills, qualifications, and licensing status of the building practitioners doing the work.

The building checklist may include:

- an explanation of the legal obligations of the client and the builder
- an outline of the risks of paying in advance for building work
- a summary of dispute resolution options
- sources of further information.

Written contracts become mandatory

For building work above a certain minimum sum, there must be a written and dated contract, and it must meet any requirements set out in regulations.

New remedies for breaches of implied warranties for work on household units

In residential contracts, the following warranties are implied and are taken to form part of the contract:

- The building work will be carried out competently, in accordance with the contract plans and specifications and the consent.
- Materials will be fit for purpose and will be new unless otherwise stated in the contract.
- The work will meet all legal requirements.
- The work will be done with reasonable care and skill and completed by the date (or within the period) specified in the contract or, if no date or period is specified, within a reasonable time.
- The unit will be suitable for occupation on completion.
- If the contract states a particular purpose for the work or the owner wants a particular result, the building work and materials used will be reasonably fit for purpose or be of a nature and quality to achieve that result.

Builders can't contract out of this. It applies to the work of the builder and of anyone – employees and subcontractors – the builder is responsible for.

The client may require the builder to fix the work and repair or replace defective materials. If the builder does not fix things within a reasonable time, the client may have the work done by someone else and recover from the builder all reasonable costs incurred or they can cancel the contract.

Where the breach of warranty is substantial or cannot be fixed, the client may get compensation from the builder for any reduction in value of the building work below the price they paid, or they may cancel the contract.

The client may also obtain damages from the builder for any loss or damage resulting from the breach (other than loss or damage through reduction in the value) that the builder should have known was possible.

Builders can't contract out of these provisions.

Builders must fix defects up to 1 year after completion

Within 1 year of the completion of building work, if a defect is found and it can be remedied, clients can notify the builder and ask them to remedy the defect.

The builder must remedy the defect (including repairing or replacing defective materials supplied by the builder) within a reasonable time.

The builder may also have to pay the client for any loss or damage to the client resulting from the defect (other than loss or damage through reduction in value) that they should have known the defect could cause.

This applies only to contracts entered into after this section comes into force in 2014. It doesn't apply if the problem wasn't the fault of the builder or anyone the builder was responsible for or if the householder neglected maintenance or failed to act as soon as the defect became apparent.

Information must be provided on completion of the contract

As soon as practicable after completing building work under a residential contract, the builder must give the client and the TA the documentation listed in regulations. This might include things such as guarantees relating to the work and maintenance requirements.

Changes to terminology

The term 'compliance document' is replaced in the Building Act by 'acceptable solution or verification method' or, in a few cases, replaced by 'acceptable solution' alone.

Well I'll be dammed

The Building Amendment Act 2013 also makes many changes regarding dams.

This is a brief summary only. For full details, obtain a copy of the Building Amendment Act 2013. It will be available online at www.legislation.govt.nz.