

Building System Legislative Reform

Submission from NZ Specialist Trade Contractors Federation (STCF)

STCF represents the majority of Specialist Trade Contractors in the New Zealand construction sector. Members include the industry representative bodies for the electrical, wall and ceiling, climate control, plumbing, gasfitting, drainlaying, concrete, painting, roofing, fire prevention, steel construction, scaffolding and rigging sectors. Our members play a vital role in providing the highly-skilled personnel required to meet New Zealand's current and future construction needs. We advocate on behalf of our members to help support a strong and healthy industry, well equipped to meet the demands of NZ society.

This submission is based on the sections and questions of the Building Legislative Reform Discussion Document.

Part 2- Building Products

2.1 STCF agrees the Building Act should be expanded to include Building Products and Methods.

Consumers should have surety that building products, systems and methods are fit for purpose and will stand up to NZ conditions.

Products that fall under other NZ legislation with broader requirements than the Building Act, such as Plumbing and Electrical products should be excluded from the legislation. Building methods covering the incorporation of these products into the building should be included in the Building Act.

2.2 STCF agrees with the definition, subject to provisions outlined in comment 2.1 regarding plumbing, electrical and other high risk products.

2.3 STCF agrees with the definition of Building Method subject to inclusion of commentary regarding installation of high risk products.

2.4 The definitions provide enough scope to allow for new technologies. Caution is required with new products which pose high risks to consumers or the service life of the building. Products falling outside recognised standards should be subject to rigorous testing before being accepted.

2.5 STCF agrees manufacturers and suppliers should supply information on their products. Further, importers of products should be deemed to have the same responsibility as a manufacturer and should provide evidence of product performance, quality management and proof of insurance to cover product failure.

2.6 Proposed information will assist in selecting materials, the information should be based on recognised standards or testing.

2.7 The information should describe how the product conforms to the code. Information should also be available on the supplier and their ability to meet any claims should the product not perform as stated.

2.11 STCF supports the clarification of roles. As for 2.5, the responsibility and liability of importers should match that of the manufacturer.

2.12 STCF agrees the current threshold is appropriate.

2.13 MBIE should be given power to compel information to support investigations.

2.14 STCF does not believe there would be any negative unintended consequences from MBIE being able to compel information, indeed the information could assist other agencies to improve system performance.

2.15 The proposed changes to regulation of building products and methods, subject to conditions mentioned in 2.1, 2.2, 2.3 would have a strong positive influence on the sector. Clear roles and responsibilities for parties throughout the supply chain will give greater certainty to all stakeholders.

2.16 Regulation of building products and methods will generally benefit members of trade organisations who are conscientious in delivering compliant buildings. The benefits will depend on the level of enforcement by the regulator.

2.17 The transition period should be less than two years for existing products and any new product should comply immediately, otherwise we may see an influx of low grade products on to the market during the transition period.

2.18 As for 2.17, the transition period should be six months.

2.19 Clarified roles and responsibilities should be introduced concurrently with requirements for product information.

2.23 STCF agrees with proposal 7 subject to suitable rigour in manufacturers quality assurance systems.

BCAs should have consistent standards across NZ, issues between BCAs should be ruled on by the regulator rather than imposing duplication and associated costs on providers and consumers.

2.24 Proposal 7 will have a positive impact on the sector, reducing compliance and duplication. Enforcement of rigorous quality management systems on manufacturers will improve the reputation and confidence in the sector.

Section 2 Additional Comments

The STCF is generally supportive of the proposed changes. As per our previous answers we believe:

- products covered by other legislation such as plumbing and electrical product should be specifically excluded from the Building Act.
- products that do not conform to known and accepted standards should be subject to rigorous testing, especially products subject to weathertightness and other high risks.
- importers of building products should be treated as if they are the manufacturer of the product and should provide relevant evidence of quality control as well as conformance to performance standards. Importers should indemnify suppliers down the supply chain for damages resulting from the products not performing as stated in the product information.

Part 3.1 Occupational regulation of the Licensed Building Practitioner (LBP) scheme

3.1.1 Expanding the scope of RBW will be somewhat effective however the STCF believes the scope is still too narrow. RBW should be extended to cover all residential and commercial buildings requiring building consent as well as any work which could influence the structural or weathertightness performance of the building.

3.1.2 STCF believes the proposed threshold is too narrow, as per 3.1.1

3.1.3 Broadening the scope of RBW will have a positive influence on the sector. Improved levels of competence will improve career prospects in the sector and lift the public perception of construction work. Any increase in costs will be offset by removing the shoddy operators from the sector; this will have a knock on effect of lowering insurance and compliance costs as standards rise.

3.1.4 Proposals for RBW will positively benefit building owners and occupants and improve consumer confidence in the construction sector.

3.1.5 Proposed changes will increase demand for LBPs and enhance career paths in the sector. Greater responsibilities placed on LBPs may discourage wage earners from registering as LBPs due to unfair commercial risk being placed on workers.

3.1.6 Proposed changes are not likely to impact current skills shortages so long as a suitable transition is available to upskill tradespeople into LBP competence.

3.1.7 Lifting competence standards for LBPs will have a very positive increase in confidence in the scheme. Current perceptions are that the required level of competence is too low.

3.1.8 Lifting competence standards will have a positive effect on all stakeholders, however, there will be no significant benefit unless the businesses throughout the supply chain are registered. Increasing responsibilities and liabilities on LBPs who are employees will not reduce risk for consumers and may have a negative influence on career progression.

3.1.9-12 STCF believes a tiered LBP scheme may mitigate some of the negative consequences outlined in 3.8, however there will be little net improvement to the sector unless the licensing scheme is extended to businesses. There is little benefit in increasing liabilities of employees.

3.1.13 STCF agrees with the introduction of a fit and proper person test and a code of ethics. Again, this will have minimal impact on improving the performance of the sector without licensing of businesses.

3.1.14 The proposed transition period is too long.

3.1.15 The main consideration should be the time required for any reassessment and upskilling. Long transition periods always result in a last minute rush and are not productive. A shorter transition will be beneficial but will require adequate resources to ensure stakeholders are informed of changes and new requirements.

3.1.17 Additional comments. As per earlier answers the STCF believes:

- RBW should cover all types of residential and commercial building (Excluding buildings not currently requiring a building consent) and should include any work that could affect the structural integrity or weathertightness of the building.
- changes to the LBP scheme are needed, however they will have minimal impact on the performance of the building system. Licencing of businesses through the supply chain will have an immediate and significant positive influence on the sector and ensure risk is being managed appropriately rather than being passed on to “the last person standing”.

3.3.1-7 STCF agrees with all the proposed changes to remove exemptions for sanitary plumbing work and that all sanitary plumbing work should be completed by qualified licensed practitioners.

3.3.8-9 A new class of practice license may be required for a limited time to allow those practicing under the exemption to transition to become qualified and licensed.

Part 4 Risk and Liability

4.1 STCF supports compulsory guarantee and insurance products for residential construction including significant alterations. The guarantee and insurance products must cover all elements of the project and not exclude specific elements, e.g., plumbing.

There should also be a requirement for all specialist trades working on the project to hold appropriate insurance to cover their work.

4.2-3 Homeowners should have the ability to opt out, however the mechanism to opt out should require an acknowledgement from the homeowner that they are accepting the risks not insured and this should be attached to the LIM for the property.

4.4 Guarantee and insurance requirements should be applied to all the types of buildings in the question. The risks in multi-unit construction have the same effect on individual unit owners as those who own single unit properties, in fact it can be more difficult to solve problems where there is a body corporate with multiple shareholders.

4.5 The threshold should be set at all work over \$30,000 or that could impact the structure or weathertightness of the building. A small job completed on the building envelope could create a problem of significant magnitude and this risk needs to be mitigated.

4.6 As stated in 4.1 the products must cover all elements of the project without exclusions. Specialist trades subcontracting to the builder or developer should also hold appropriate insurance to cover their work and consequences of failure of their work.

4.7 Insurance and guarantee products should be registered with MBIE who can conduct due diligence on the resources of the product owner.

4.8-9 Requirements for provision of guarantee and insurance products will have a significant positive effect on all stakeholders.

Some building or specialist trade businesses may not be able to obtain products due to track record or lack of quality assurance. These businesses will be forced to improve or may have to cease trading which is ultimately good for the industry and the consumer.

BCAs will be less likely to be required to meet more than their share of cost in the event of a failure if these products are compulsory, especially if owners who opt out must agree they are effectively their own insurers.

Guarantee and insurance providers will see an increase in demand, and it is likely other participants will enter the market. The product owners may have problems finding enough skilled and experienced staff to adequately assess the risk for projects, this would be alleviated if licencing of businesses is introduced concurrently. Part of the licencing requirement should be provision of adequate indemnity insurance.

4.10 A two year transition should be adequate to prepare for changes. Any longer may encourage a rush of projects to be completed before the scheme is introduced.

4.11 Registration of building and specialist trade businesses would work alongside compulsory guarantees and insurance. The requirements for registration would spread risk and prevent the insurance industry from having to be a quasi-regulator, therefore reducing costs of products and encouraging more providers to enter the market.

4.12 Liability settings for BCAs should be set at the level of their contribution to the failure. They are a part of the building system and should share risk appropriately. This risk will be significantly reduced and shared more appropriately if the proposed changes are introduced.

4.12a “Products” and “Risk and Liability” will have the greatest effect on BCA consenting behaviour. Greater surety on the performance of products, systems and methods will reduce risk which will be further mitigated by compulsory guarantee and insurance.

4.13-16 As per 4.12, STCF believes the BCAs liability should be capped at the level of their contribution to a problem. Liability on all parties should be shared according to their contribution and adequately insured.

4.17 Other comments STCF believes:

- a licensing system for building and specialist trade businesses should be introduced in conjunction with the implementation of compulsory guarantees and insurance, and improvements to the LBP scheme and extension of RBW.
- Providers of guarantee and insurance products will have a bigger appetite to supply products if they have surety that businesses have been pre-qualified as having sufficient expertise and resources to complete the work they are insuring.

Part 5 Building Levy

5.1-3 STCF believes the levy should be kept at the current rate. 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.

The industry is rightly expected to contribute to development of standards, training and other sector issues, generally through trade and professional associations who have voluntary memberships. Effectively industry participants who belong to industry associations are subsidising those who do not, and arguably the latter group are the most likely create problems through their cavalier attitude to the industry.

For example, the STCF receives no funding from the levy but contributes to a broad range of industry initiatives through a small number of volunteers. MBIE uses the STCF to engage with a large portion of the sector, but the work is unfunded and completed at the expense of a few individuals.

Participants on NZ Standards committees are a further example of individuals who contribute personal time and money for the benefit of the entire sector.

MBIE should establish a Steering Group from across the sector to apportion the use of the funds from the levy. MBIE should receive a portion of the levy to maintain their role in Building Systems however industry stewardship is best shared with industry participants who should be funded accordingly.

5.5 The threshold for the levy should be standardised. The threshold should be set exclusive of GST.

5.6 The STCF believes the levy should be used for industry stewardship but does not agree this should be allocated by MBIE.

The fund should be allocated according to our answer 5.1-3

5.7 We agree with the proposed start date.

Part 6. Offences, penalties and public notification

6.1-2 STCF agrees current penalties are inadequate and should be increased as per the proposal in line with other legislation such as the Health and Safety at Work Act.

6.3 STCF agrees there should be greater penalties for organisations. Penalising an LBP who is an employee on the same level as a person directing a business is grossly unfair and defies natural justice.

Again, STCF believes building and specialist trade businesses should be registered as well as LBPs. It is the business that is best able to manage the risks, not the LBP.

6.4 Increasing penalties will have a positive influence across the sector as has been demonstrated by stronger enforcement of HSW legislation. Effectiveness will depend on the level of enforcement by the regulator. Without enforcement, poor performers will just continue to undercut businesses who comply with legislation.

6.5 STCF agrees the time limit for laying a charge should be extended to 12 months; however, we are concerned that this extension of the limit should not mean the regulator takes longer to bring charges against a defendant unless that time is required.

Charges laid under HSW Act are almost always laid at the end of the 12 month limit with court action proceeding over the following months. This causes extended delays in getting important learnings to industry, extended periods of extreme stress inflicted on stakeholders who may be party to a prosecution and a serious drop in productivity of affected businesses.

STCF believes charges should be laid within 6 months with the ability to extend this to 12 months if the regulator can show it is not reasonably practicable to complete an investigation in 6 months.

6.6-7 STCF agrees with proposals to remove the requirement to notify through newspapers; notification through the gazette and on the internet are sufficient. Similar to WorkSafe, MBIE should have a subscription service where subscribers receive timely updates of prosecutions.

6.8 Other comments.

- The size of penalties handed down by judiciary tends to be mostly related to the defendant's ability to pay and therefore prosecutors may be reluctant to bring charges against a defendant that is not likely to result in a large fine that will be seen as a lesson to others. This can result in a successful business being prosecuted for an offence that a poorly run business will not be prosecuted for as they would not have the ability to pay a fine.
- A registration system for building and specialist trade businesses would provide the opportunity for the regulator to suspend or cancel a businesses licence or reduce the types of work the business could perform. This would provide another option to the imposition of fines and could provide more effective outcomes for industry and greater protection to consumers.

Contact details:

This submission has been prepared by Graham Burke on behalf of the NZ Specialist Trade Contractors Federation.

Graham can be contacted for further comment or explanation:

graham@safe2u.co.nz

0212493459



Graham Burke

President

NZ Specialist Trade Contractors Federation