

Construction Industry Council (CIC) Position Statement on Building Reform

January 2020

Introduction/Background

1. The New Zealand Construction Industry Council (CIC) is a not-for-profit peak industry association representing around 30 member associations in the building and construction sector.
2. A number of the member associations of the CIC have provided their own specific feedback on the Building System Legislative Reform consultation conducted in 2019. Amongst the CIC membership there is general support to reform current building regulations.
3. The CIC have identified several strategic workstreams. Building regulatory reform is one of these. Other strategic workstreams include Vocational Education, Construction Sector Accord, Industry Attractiveness, Fair and Equitable Contracts and Sustainability.
4. The CIC and its members welcome the opportunity to be engaged in the co-design future building regulations. They represent the users of the building regulatory system and are here to help!!!
5. The CIC recognise that the Construction Sector Accord (CSA) Government-led priority work area to improve building regulatory systems and consenting processes will also intersect with proposals contained in this position statement.
6. This position statement represents a general combined view of CIC members on the key parts of the regulatory reform contained in the April 2019 MBIE discussion paper and the decisions the regulator and/or Minister has made subsequent to the consultation process. It is acknowledged that some views expressed in this position statement may not align with the views of some CIC members.

General CIC observations on Building Regulatory Reform

7. The CIC welcome the Government's commitment to regulatory reform and acknowledges that such opportunities to shape and influence regulation do not come around very often. The CIC members had high expectations when the reforms were announced in 2019 and are seeking to be engaged in the ongoing work MBIE needs to undertake to implement the reforms.
8. The processes proposed to facilitate Modern Methods of Construction (MMC) are a significant improvement – the other reforms that have been agreed to proceed are considered by the CIC to make little substantive change to the way most building projects are delivered.
9. Whilst the proposed reforms did not cover the Building Code System the CIC strongly support work be undertaken to prioritise updating the Building Code System to ensure it is current and functional.
10. CIC supports the proposed changes to broaden the way the Building Levy may be allocated by the regulator; however, CIC are concerned that the decision to reduce the building levy rate may have unintended consequences. The costs to support industry betterment, such as implementing the work of the CSA, educating the building industry on future new regulations as well as the unknown costs that could result from broadening the scope of what the levy can be spent on could be compromised if the decision to reduce the building levy is applied.
11. The CIC believe building industry transformation will require a change in industry culture and behaviours. In response to an environment of risk and liability, relationships will be critical. The reforms proposed so far do not propose changes to the settings for risk and liability. Change and transformation, will need these settings to be reviewed as a matter of priority. In the interim, Government and industry behavioural change can provide a positive first step.

Comments on the specific parts of the building regulatory reform

Products

12. The proposals to require the provision of minimum product information are welcomed by members of the CIC. The CIC have concerns relating to enforcement of new regulations, product substitution and ensuring critical building products have systems in place to achieve building code compliance.
13. No mechanism to monitor or enforce new building product regulations is proposed - is it otherwise left to market forces to self-regulate and use agencies such as the Commerce Commission to intervene when breaches are identified? To determine enforcement requirements the CIC would encourage a discussion with those that are likely to be involved in the enforcement, such as BCAs and supporting institutions, to assist with developing processes and understanding implications.
14. Robust processes and requirements need to be developed for product substitution to ensure code compliance is not compromised, including processes for decision making, competence requirements of decision makers and liability for resulting non-compliance. The CIC would welcome the opportunity to co-design the processes and requirements.
15. The strengthening of the CodeMark scheme to certify products meet the Building Code is welcomed – under the proposed reforms it is still a voluntary scheme so its ability to make significant changes to ensure (targeted) building products routinely comply is limited. Mandating that critical building products must demonstrate compliance with the building code/cited Standards is considered an essential underpinning requirement for building outcome improvements. The CIC would advocate regular third-party auditing of building products and systems approved in building regulatory schemes.

Occupational Regulation

16. It is understood that new proposals are being developed for this part of the reform programme. The CIC are eager to participate in developing the new proposals with the intent that occupational regulation schemes are strong and robust, so public trust and confidence is maintained.

Risk and Liability

17. The opportunity to achieve significant improvements in consenting processes and holistic treatment of risk and liability in the opinion of the CIC was a missed opportunity.
18. The CIC understand that the CSA has targeted building consenting as a key lever to improve the performance of the building sector and it is understood that there is support from their work to look at establishing a single national building consent authority (replacing the approximately current 70 BCAs). The CIC strongly support investigating the viability of establishing a more robust and streamlined consenting system and consider this reform has significant potential to transform the building sector by improving consenting consistency, quality and efficiency. The CIC are eager to contribute to this work.
19. This work could be further enhanced by implementing the regulations that support undertaking risk-based consenting so that a new consenting system can more logically allocate resources to target the projects where the consequences and risks are greatest. Work to establish if this is likely to be more efficient, and development of an implementation plan, needs to be undertaken. The CIC would encourage consultation with industry to determine if there is wider support to progress this.

Building Levy

20. The regulator has made the decision to broaden the way the building levy may be used and reduce the building levy rate. The majority of CIC submissions supported maintaining the building levy at its current rate and that the building regulator should look to invest the accumulated surplus generated by the building levy on aspects that support the building regulatory system such as standards development.
21. Going forward the CIC would like to be involved in the process of deciding how building levy money is invested to ensure betterment and value for the industry is achieved.

Offences, penalties and public notification

22. There is generally agreement with the proposals on this part of the regulator's reform programme. However, the potential to quickly change practitioner behaviour through an effective and enhanced infringement offences mechanism appears to be missed.

Conclusions / next steps

23. The CIC support the Government initiatives to undertake reform of the building sector and given our representation and interests CIC are seeking to collaborate and partner with the building regulator in its ongoing work to design new regulations.
24. The key matters that the CIC want to work with MBIE to improve the building regulatory system are:
 - Ensure mechanisms are in place to enforce any new regulations for building products with a focus on checking that critical building products comply with the Building Code and cited Standards and developing robust processes for product substitution
 - Deciding how building levy money will be invested to ensure maximum value for industry, public outcomes and Government
 - Investigate the feasibility of establishing a more streamlined and efficient consenting system with the potential incorporation of regulations that support risk-based consenting
 - Develop strong and robust occupational regulation schemes
 - Updating the building code system to ensure it is current and functional