

A User's Guide to The New Zealand *Building Act 2004*

Part 1 - Definitions & Outlines of responsibilities

- Purpose
- Meaning of building
- Roles of regulatory bodies under the Act
- Responsibilities of parties to a building contract



Part 2 - Building

- Building code
- Compliance Documents
- Building Consents
- Building Levy
- Limitations and restrictions on Building Consents
- Restricted Building Work
- Code Compliance certificates
- Certificates of acceptance
- Compliance schedules
- Alterations of existing buildings
- Definitions of dangerous, earthquake prone and insanitary buildings

Part 3 - Regulatory Responsibilities and accreditation

- Functions duties and powers of chief executive generally
- Power of chief executive to make determinations
- Power of chief executive to register persons as building consent authorities for the purpose of the Act
- Appeal from chief executive decisions
- Functions, duties, and powers of territorial & regional authorities generally
- Powers of territorial& regional authorities to carry out inspections
- Enforcement powers

Part 4 - Regulation of building practitioners

- Purposes of licensing building practitioners
- How to become licensed
- Automatic licensing of some professions
- Licensing cancellation and suspension
- Register of licensed building practitioners
- Offences relating to licensing

- Discipline
- Powers and procedure of board on disciplinary matters
- Appeals from decisions
- Building Practitioners Board
- Rules

Part 5 - Miscellaneous Provisions

- Offences relating to building control
- Offences relating to administration of Act
- Miscellaneous offences
- Proceedings for infringement offences
- Proceedings for offences generally
- Civil proceedings and defences
- Limitation of defence
- Implied terms

Part 1 - Definitions & Outlines of responsibilities

Part 1 (ss 2 – 14F)

Purpose

The Act's main purpose is to protect the public from dangerous buildings by creating a regulatory framework.

The stated purposes of the Act are:

- . “(a) to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—
 - . (i) people who use buildings can do so safely and without endangering their health; and
 - . (ii) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and
 - . (iii) people who use a building can escape from the building if it is on fire; and
 - . (iv) buildings are designed, constructed, and able to be used in ways that promote sustainable development:
- . (b) to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.”

Meaning of building

The definition of building in the Act includes a temporary or permanent, movable or non-movable structure. This includes:

- mechanical and electrical systems
- fences
- swimming pools
- vehicles that are immovable and occupied by people on a long term basis
- masts and telecommunication poles.

Furthermore the Act provides certain structures that are deemed not to be buildings for the purposes of the Act, including:

- NUO systems (systems owned or controlled by a network utility operator)
- Ski towers
- Boats
- Scaffolding

Roles of regulatory bodies under the Act

Chief Executive

The chief executive has a broad role under the Act. The chief executive is responsible for

- Issuing and reviewing compliance documents
- Warning against or banning the use of particular building methods or products
- Monitoring building methods and reporting to the Minister
- Publishing guidance information on the building code
- Registering building consent authorities
- Disseminating information and educating on building control
- Appointing the Registrar
- Taking enforcement action under the Act

Building Consent Authorities (BCA's)

A BCA under the Act is primarily responsible for:

- Issuing building consents
- Inspecting building work
- Issuing notices to fix
- Issuing code compliance certificates
- And issuing compliance schedules

Responsibilities of parties

This section acts as a guideline only and broadly defines the responsibilities of the parties to a building contract.

Responsibilities of owners

An owner is responsible for:

- Obtaining all the necessary documents and approvals
- Ensuring that the building work carried out complies with the building consent and the building code

Responsibilities of owner-builders

An owner builder has an additional responsibility to that of an owner. They must ensure that any Restricted Building Work (RBW) carried out under the owner-builder exemption complies with the building consent and the plans and specifications

Responsibility of designer

A designer is responsible for ensuring that the plans and specifications or advice given would result in the as built product complying with the code.

Responsibilities of builder

A builder is responsible for:

- Ensuring that the building work complies with the building consent and the plans and specifications
- Ensuring that the building work complies with the code

A licensed building practitioner is also responsible for ensuring that restricted building work is carried out and supervised in accordance with the Act, and that they are licensed in a class to supervise that form of work.

Responsibilities of BCA

A BCA is responsible for checking that:

- An application for a building consent complies with the code
- The work has been carried out in accordance with the consent
- Issuing building consents and certificates in accordance with the Act

Building

Part 2 (ss 15 – 168)

Building Code



The Building Act requires that all buildings must comply with the building code. The purpose of the building code is to prescribe functional requirements for buildings and performance criteria which their intended use must comply with. A building will satisfy Code compliance if a Building Consent Authority (BCA) is satisfied that the building complies with the building regulations that set out ways a building can achieve code compliance.

Building Consents

Buildings cannot be constructed, demolished, removed or altered without consent. The Act makes it an offence for a person to carry out any building work that is not in accordance with a building consent. The Act provides specific exceptions to the above rule. One such exception is if the work needs to be carried out urgently to protect life or health or to prevent serious damage to property. A person however must still apply for a certificate of acceptance as soon as practicable if work is carried out in this way.

An owner intending to carry out building work may apply for a single building consent for the whole work or make a series of applications for each stage of the work.

A building consent application must be in the prescribed form and accompanied by the plans and specifications for the work. Once the BCA has received a complying application, the BCA in general has 20 days to grant or refuse the application. The BCA must approve the application if it is satisfied on reasonable grounds that the plans and work carried out will comply with the building code. If the application is refused, the BCA must provide the applicant with reasons for the refusal.

A building consent will lapse if building work is not carried out within 12 months after the date of issue.

Limitations and Restrictions on Building Consents

The Act places limitations on building consents being issued in regards to land that are subject to natural hazards. There are certain exceptions, the primary exception is if the building will not accelerate or worsen the natural hazard and adequate provision has been made to protect the land, the building works or other property that may suffer due to the works.

The Act places further restrictions on works on land that is comprised of 2 or more allotments of 1 or more existing sub divisions. The Act requires that a condition be placed on the consent that the lots not be transferred or leased unless in conjunction with any specified other allotments.

Restricted building work carried out by licensed building practitioners.

The Act requires that all restricted building work (RBW) be carried out or supervised by a licensed building practitioner. It is an offence to carry out or supervise RBW if you are not licensed to do so or do not have the requisite license type for the work concerned.

Restricted building work includes:

- (a) bricklaying or blocklaying work:
- (b) carpentry work:
- (c) external plastering work:
- (d) foundations work:
- (e) roofing work.

Restricted Building Work Carried out by owner-builders

The Act creates a specific exemption for owner builders, in order to allow homeowners to carry out works on their own homes. To come within this exemption a person must:

- have a relevant interest in the land whether legal or equitable, including a right of occupancy
- reside in the building or intend to
- Carry out the building work themselves or with the help of unpaid friends and family
- have not carried out RBW work in relation to a different property within the last 3 years.
- The building work can not be
 - Low risk building work
 - Simple residential building work
 - Commercial building work

Consent completion certificates

After all building work has been carried out in relation to a building consent, the owner must apply as soon as practicable to the BCA for a consent completion certificate. The general rule is the BCA that issued the building consent must also issue the consent completion certificate. The primary exception to this rule is if the owner and the original BCA agree, a consent completion certificate may be issued by a different BCA. If no BCA will issue a consent completion certificate an application may be made to a territorial authority. The territorial authority may issue a certificate of acceptance only if it is satisfied to the best of its knowledge and belief and on reasonable grounds, that, insofar as it could ascertain the building work complies with the building code.

The Act requires that a BCA or territorial authority provide written reasons for their decision if they decide to refuse the application.

Compliance schedules

The Act distinguishes primarily between buildings used as a single household unit and buildings not used in this manner. If a building is used as a single household unit it needs a compliance schedule if it has a cable car attached to it or servicing it. This requirement may be fulfilled if one or more of the buildings that a cable car is attached to or services has a compliance schedule.

In regards to buildings that are not being used as single household unit they require a compliance schedule if they have a specified system or a cable car attached to it or servicing it. A specified system is

defined in the Act as one that is contained or attached to the building and contributes to its proper functioning, for example a sprinkler system.

It is the owner's responsibility to obtain a compliance schedule. If the owner fails to obtain a schedule they commit an offence and are liable to pay a fine not exceeding \$20,000. The BCA must issue a compliance schedule with consent completion certificate if one is required and they are satisfied that the specified systems for the building are capable of performing to the requisite standards.

Annual Building Warrant of fitness

If a compliance schedule has been issued for a building the owner of the building must ensure that that the BCA is supplied with an annual building warranty of fitness. The building warranty for fitness inspection must be carried out by an independently qualified person. The inspection must be carried out in order to ascertain whether the specified systems are performing and will continue to perform to their requisite standards.

Alterations to existing buildings

The Act requires that a BCA only grant permission to alter a building if the building will continue to comply with provisions of the building code to at least the same extent as before the alteration. The Act makes special reference to code compliance with regard to the means of escape from fire and access and facilities for persons with disabilities.

Change of use, extension of life and subdivision of buildings

The Act requires an owner to give written notice to the territorial authority if an owner intends to:

- change the use of a building,
- extend the life of a building that has a specified intended life or
- subdivide land in a manner that affects the building.

The territorial authority must be satisfied on reasonable grounds that any of the above changes will comply with the building code as nearly as is reasonably practicable. The primary provisions that must be complied with are means of escape from fire and access to the building for persons with disabilities.

Dangerous, earthquake prone or insanitary buildings

A territorial authority has wide powers in respect to: dangerous, earthquake prone or insanitary buildings. The Act provides that a territorial authority may:

- put up a fence to prevent access to the building,
- put up notices in a prominent place or adjacent to the building warning building not to approach the building,
- provide written notice that work must be carried out on the building,
- reduce or remove the danger or
- prevent the building remaining insanitary.

This is an inclusive list of the powers a territorial authority may wield and this list does not limit their powers in any way.

Furthermore a territorial authority may apply to a District Court to carry out work on the building if the notice to carry out work is not being complied with. If work is carried out in this manner, the cost of the work carried out becomes a charge on the land that is recoverable from the owner.

Regulatory responsibilities and accreditation

Part 3 (ss 168A – 281D)

Functions duties and powers of the chief executive generally

The chief executive is responsible for the administration and implementation of the Act. The Act requires the chief executive to monitor current and emerging trends in building design and building technology that may affect:

- the building code and compliance documents
- any warnings or bans issued under the Act
- any guidance information published by the chief executive.



The chief executive must annually report on the above listed issues to the Minister.

Powers of chief executive to make determinations

'The Chief executive has the power to make determinations, in relation to either or both of the following:

- a) whether particular matters comply with the building code
- b) the exercise, failure or refusal to exercise or proposed exercise of a power or decision by a BCA or a territorial authority.'

The types of decisions by a BCA or territorial authority that the chief executive can make a determination on are:

- building consents
- extensions of time
- consent completion certificates
- compliance schedules
- notices to fix
- waivers or modifications of the building code
- certificates of acceptance
- exemptions from building consent requirements
- amendments to compliance schedules
- alterations of buildings & change in use
- earthquake prone, dangerous or insanitary buildings
- certificates for public use

A party seeking such a determination must make an application to the chief executive. The applicant must then provide a copy of the application to any other party named in the application or effected by it either before or immediately after they give the application to the chief executive.

The chief executive may refuse the application if the in the chief executive's opinion:

- the applicant is not genuine or is vexatious or frivolous,

- the applicant is not a party,
- the chief executive has made a determination or is about to make on the same matter.

The determination powers of the chief executive are extremely powerful and severe. The chief executive may make determinations on his or her own initiative without an application being made under the Act. Decisions and exercises of powers by BCA's and territorial authorities are suspended until the chief executive has made a determination on a certain matter.

Furthermore the Act limits the jurisdiction of the courts in relation to these matters. A person is prevented from commencing a proceeding in the High Court or the District Court if the matter that gives rise to the proceeding can be the subject of a determination. This broad rule however does have exceptions such as:

- if the chief executive has made or refuses to make a determination on the matter
- it does not affect injunctive proceedings
- and specific other exceptions listed in the Act.

There is a very short time frame for a determination to be made under this part of the Act. Once the chief executive receives the applications they have 10 days to decide whether they will or will not make a determination on the matter. The chief executive then has 60 days from the date of application to make a determination unless the parties agree otherwise.

The Act is aimed at providing the parties to the proceeding with an expeditious outcome. The Act states that the chief executive must avoid unnecessary delay and formality and receive any relevant evidence whether or not it would be admissible in a court of law. The chief executive may also consider related applications together and require parties to provide documents relating to the application.

A determination by the chief executive is binding on the parties. The Act makes it clear that each party bears their own costs unless the chief executive believes a party has unreasonably contributed to the delay, in which case the chief executive may order that party to pay some or all of the other parties costs.

Power of the Chief Executive to register persons as building consent authorities

The chief executive has the power to register building consent authorities. So long as a BCA meets the accreditation criteria set out by the building consent accreditation body, and has adequate means to cover any civil liability that may arise from them performing their functions in this capacity the chief executive should register them. Once registered the chief executive must check at least once every 3 years that the BCA has maintained the requisite levels of accreditation, if this is the case the BCA can continue performing their functions.

Functions duties and powers of Territorial and Regional Authorities

In general a reference to a territorial or regional authority can be read as a reference to a regional or city council. The Act provides that these councils must perform the duties of a BCA in their region. A territorial authority may share its duties with another BCA by agreement, however they must continue to keep certain information about buildings so that members of the public can be informed of their obligations under the Act and participate effectively under the Act.

Powers of BCA to carry out inspections and enter land

An authorized officer of a BCA is entitled at all times during normal working hours or while building work is being carried out to enter the premises and inspect the land and building.

Furthermore the Act requires owners/occupiers and any person engaged in the building work including owner builders and friends and family to assist the authorized officer of the BCA to inspect all parts of the building and/or building work.

Enforcement Powers

A territorial authority has the power to authorize its officers to issue infringement notices if they observe a person committing an infringement or have reasonable cause to believe that an infringement offence is being or has been committed. The territorial authority must supply the enforcement officer with warrant to use these powers.

Regulation of building practitioners

Part 4 (ss 282 - 362)



The purposes of licensing building practitioners is to “assess and record building practitioners as having certain skills and knowledge relevant to building work; and to license building practitioners so that, in regard to restricted building work, licensed building practitioners can carry it out or supervise it”.

Licensing and disciplining of building practitioners

This part of the Act deals with how a building practitioner may become licensed for the purposes of the Act. An individual is entitled to be licensed if they satisfy the Registrar that they meet the applicable minimum standards for licensing and that they are not precluded from being licensed because of an action taken by the Building Practitioners Board (the Board). The individual must also ensure that a similar license given under another enactment has not been suspended or cancelled within the last 5 years. If all the above are met an individual is entitled to be licensed as a building practitioner once they have paid the prescribed fee and their application has been approved.

An individual must make their license application to the Registrar in the prescribed form and in accordance with the rules. The Registrar must make a decision to either accept the application if all of the above factors are met or decline the application. If the application is approved the Registrar must:

- license the applicant,
- send the applicant evidence that he or she has been licensed,
- enter the person’s name in the register and
- issue a registration number to the applicant.

If the Registrar is not satisfied that a person should be licensed the Registrar must notify the person of this decision and their rights to appeal.

Currently there are seven different licensing classes. These are:

- Design
- Site
- Bricklaying and Blocklaying (includes concrete foundation walls)
- Carpentry (includes Foundations and lightweight profile metal roofing)
- External Plastering
- Foundations
- Roofing¹

¹ ‘How to get a licence’, 2012, *New Zealand Ministry of Business, Innovation & Employment*, <http://www.dbh.govt.nz/lbp-get-licensed#aid3>.

Continuation of licensing

Once a license has been issued it continues in force until it is cancelled or suspended under the Act. The Registrar must assess at the frequency required by the rules, or at any time, whether a licensed building practitioner is continuing to meet the applicable minimum standards. The Rules at the time of writing currently require the Registrar to assess a license every 2 years from the date of issue. If a person is continuing to meet the applicable standards the license continues in force subject to the annual levy and communication obligations of the practitioner.

If the Registrar forms the opinion that the practitioner does not meet the applicable minimum standards outlined in the rules, the Registrar must suspend the license until the practitioner satisfies the Registrar that they can meet the standards, the suspension must also be recorded in the register. If the practitioner fails to satisfy the Registrar within 12 months of the suspension the Registrar will cancel the license and remove the practitioner's name from the register.

Automatic licensing of certain professions

The Act grants automatic licensing to certain professions that are licensed under other enactments. Registered architects and chartered professional engineers are two professions that are deemed to be licensed building practitioners under this section however they do not have to pay the levy nor apply for a license under this Act.

Licensing cancellation and suspension

The Registrar must cancel a person's license and remove their name from the register:

- If the person requests for their license to be canceled by written notice,
- In accordance with the above procedure if a person fails to satisfy the Registrar that they meet the applicable minimum standards,
- In accordance with s318 of the Act which relates to disciplinary penalties handed down by the Building Practitioners Board
- Or if the Practitioner fails to pay fines and/or other costs.

The Registrar must suspend a person's license in the below circumstances:

- If the person requests for the licensed to be suspended in writing. If a license is suspended in this manner and not due to any other reason, it may be revived by providing written notice to the Registrar.
- If the practitioner is subject to disciplinary proceedings and in the Registrar's opinion the license should be suspended for the duration of the proceedings in order to protect the public.
- If the Board directs the Registrar to record a suspension in the register due to disciplinary proceedings brought against the practitioner either as a penalty or for the non-payment of fines and costs.

If a license is suspended a person is no longer a licensed building practitioner for the purposes of the Act for the term of the suspension. At the end of the period of suspension the license will be immediately revived if there is no other ground for why it should be suspended.

The register

The purpose of the register is to enable members of the public to glean relevant information on building practitioners such as how to contact them, the status and relevant history of a persons licensing and whether they have been disciplined in the last 3 years. From this information members of the public will be more informed in their decision to choose a suitable building practitioner for their project.

In order to keep the register accurate practitioners are required to contact the Registrar within 10 working days of any changes in circumstances such as a change in business name or change in address. The Registrar is in turn required to update the register and also to contact all practitioners on an annual basis. The Registrar must ask practitioners whether they wish to continue to be licensed and whether the information on the register is accurate. The practitioner is required to answer both these questions within 20 working days and to pay the prescribed levy.

Offences relating to licensing

A person commits an offence if they hold themselves out as a person who is licensed to carry out building work or building inspection work of a type that they are not licensed to carry out. A person also commits an offence if they fail to produce evidence of being licensed as required by the Act or they fail to give written notice of their change in circumstances within 10 business days.

Code of ethics and competence

A building practitioner must not breach the prescribed code of ethics. (Apparently one has not yet been prescribed. Consider rewording).

The Act requires that licensed building practitioner not misrepresent their competence and only carry out work within their competence.

Discipline

Anyone is entitled to make a complaint about a licensed building practitioner to the Board. The Board must as soon as practicable investigate the complaint and determine whether they will proceed with it. The Board is not restricted to only investigating notified complaints but may also conduct its own inquiries. The Act specifies the grounds for when the Board can discipline a licensed practitioner. The grounds are:

- If the practitioner is convicted of an offence that is punishable by a term of 6 months in jail
- A licensed building practitioner has carried out or supervised building work or building inspection work in a negligent or incompetent way
- A person has carried out or supervised work that they are not licensed to carry out or supervise
- A person carries out work that does not comply with the building consent
- Holding oneself out to carry out work that is beyond the scope of ones license
- Make false or misleading representations to the Registrar
- Failing to provide the owner with the record of work
- Breaching the code of ethics
- Conducting oneself in a manner that brings the regime for building practitioners into disrepute

Disciplinary Penalties

The Board has many powers to discipline recalcitrants. These include:

- Fines
- Cancellation of licenses
- Suspension of licenses
- Restrict the type of work a person may carry out or supervise
- Order a person be censured
- Order a person to undertake training

The Board may also order the person to pay the costs and incidental cost to the inquiry by the Board.

Powers and procedure of Board on disciplinary matters

The Board must act as an independent organ in performing its disciplinary functions. The Board may receive evidence of any statement, document, information, or matter that in its opinion may assist it to deal with the proceeding. The Board may receive evidence that would not be admissible in a court. The Board may receive evidence by written statements or by witnesses appearing before it.

Enforcement of Actions

The Board's decisions still have power and effect whether a person remains a licensed building practitioner.

Appeal from decisions

A person may appeal to the Board against decisions of the Registrar in respect of:

- Declining a license
- Cancelling a license
- Suspending a license

A person must appeal to the District Court against any decision from the Board.

An appeal must be lodged within 20 working days from the date at which the appellant received notice of the decision. The appeal must be lodged in writing in the correct form. The original decision will have effect regardless of a pending appeal until the decision of the appeal authority is made.

The appeal is heard by way of rehearing with the restriction that the appeal authority must not review any part of the decision not appealed against. The appeal authority has the power to confirm, reverse, or modify the decision and can take any other action that the decision maker could have made.

The decision of the appeal maker is final unless the appeal relates to a point of law, where on it can be appealed from the District Court to the High Court. The appeal authority has the additional power of referring the matter back for reconsideration with a direction that the initial decision maker reconsider a certain aspect or the whole matter. The appeal authority has absolute discretion as to costs under the *Act*.

Furthermore the appeals process is different to a traditional court appeal. The case is heard as a merits review meaning that the appellate jurisdiction may rehear evidence and make their own decision based on the facts rather than confirming a decision or allowing an appeal on a specific point of law.

Building Practitioners Board (BPB)

The BPB was established to

- approve rules relating to licensed building practitioners,
- receive, investigate and hear complaints and discipline licensed building practitioners
- hear appeals regarding decisions from the Registrar
- review and report on its functions and duties to the Minister.

The Board must be made up of at least 6 people, and not more than 8, chosen by the Governor-General on the recommendation of the Minister. The Minister will make recommendations having regard to the functions and duties of the Board, and at least one member must be a barrister or solicitor of over 5 years standing.

The Board must provide an annual report at the end of the financial year for the minister. The reports objective is to provide information to the Minister so that her/she can assess the performance of the Board over the previous year. Once the report has been given to the Minister it must be made available for the public and it is the Minister's responsibility to present the report to Parliament no more than 10 days after they receive it.

Rules

The Act in numerous locations refers to the rules of minimum competency standards; these are the LBP standards. The rule must set the minimum standards for each license class and how these standards can be met. The rules made must be consistent with the purposes of the Act and the chief executive may consult with building practitioners or any person the chief executive reasonable believes to be representative of licensed building practitioners. The Board must approve a rule for it to come into force. If the Board rejects a rule it must indicate the grounds on which by which it objects to the rule and must direct the chief executive to submit a revised proposal. A revised proposal must either be accepted by the board or amended by it and approved after giving the chief executive notice. After this process the rule must be submitted to the Minister for final approval before it comes into force.

Miscellaneous provisions

Part 5 (ss 362A - 451)

Offence relating to building control

If a person owns, occupies or controls a building that is open to the public they have additional responsibilities to ensure that the building is safe. Such a person may not use, or permit the use of any part of the building that is affected by building work if the relevant building consent and code compliance certificates have not been issued. A person who breaches this section has committed an offence and is liable for a fine not exceeding \$200 000. A person may be allowed to use the building if a territorial authority has issued a certificate for public use under the procedure outlined in the Act.

It is an offence for a residential property developer to complete the sale of a household unit or allow the purchaser to enter into possession of the unit before a code compliance certificate has been issued. This however can be varied by written agreement.

Offences relating to administration of Act

There are various offences that deal with the administration of the Act such as:

- intentionally not complying with a direction given by a person authorized under the Act to give such a direction
- impersonating a BCA or an officer or employee of a BCA
- obstructing a person from exercising their powers conferred by the Act
- to remove or deface notices that have been put up in accordance with the Act
- making a false or misleading statement in evidence that is required to be supplied by the Act

The Act provides that all offences may be tried summarily rather than the alternative, which is a more serious conviction. The Act also provides a time limit for a prosecution to be laid being no more than 6 months after the chief executive; BCA or relevant person becomes aware of the offence or should have become aware.

Civil Proceedings and defences

No civil proceedings can be brought against the chief executive, or any agent or employee of the chief executive or territorial or regional authority if the act or omission was done by them in good faith under this Act.

Any civil proceedings brought against a BCA in relation to its functions in issuing consents or code compliance certificates must be brought in tort and not in contract.

Furthermore no civil proceedings can be brought against a BCA for things done or omitted to be done in good faith and in reliance on certain documents prescribed in the Act or a determination of the chief executive.

Limitation defences

- “(1) The Limitation Act 2010 applies to civil proceedings against any person if those proceedings arise from—

- . (a) building work associated with the design, construction, alteration, demolition, or removal of any building; or
- . (b) the performance of a function under this Act or a previous enactment relating to the construction, alteration, demolition, or removal of the building.
- . (2) However, no relief may be granted in respect of civil proceedings relating to building work if those proceedings are brought against a person after 10 years or more from the date of the act or omission on which the proceedings are based.
- . (3) For the purposes of subsection (2), the date of the act or omission is,—
 - (a) in the case of civil proceedings that are brought against a territorial authority, a building consent authority, a regional authority, or the chief executive in relation to the issue of a building consent or a code compliance certificate under Part 2 or a determination under Part 3, the date of issue of the consent, certificate, or determination, as the case may be; and
 - (b) in the case of civil proceedings that are brought against a person in relation to the issue of an energy work certificate, the date of the issue of the certificate.”

Implied terms

The Act provides various implied terms and warranties that abrogate any contractual provision that is inconsistent with the Act’s terms. Many of the warranties relate solely to household units and the primary warranties are:

- building work will be carried out in a proper and workman like manner
- building work will accord with the plans and specifications
- materials used will be suitable for their purpose
- unless otherwise stated materials will be new
- work will be carried out with reasonable care and skill
- work will be completed by the specified date or a reasonable time if no date is stated
- the household unit will be suitable for occupation
- if it is a contract for a particular purpose the building will be reasonably fit for that purpose

These warranties may also be relied upon by an owner of land who is not a party to the building contract.

Furthermore these warranties cannot be waived, varied or abrogated.