



Building Amendment Act 2013: Changes that come into effect immediately

The Building Amendment Act 2013, which was enacted in November 2013, is the result of a comprehensive review of the Building Act 2004. It is part of a package of changes that introduce new measures to improve the building and construction sector. The aim is to deliver good quality, affordable homes and buildings and contribute to a prosperous economy.

Clearer
accountabilities
for all.

The focus of the amendments in Building Amendment Act 2013 is:

- Clearer accountabilities for consumers, building practitioners and building consent authorities.
- Consumer protection and stronger obligations to “put things right”.

Some amendments come into force immediately and some will come into effect in 2014, after regulations come into force.



What are the changes that come into effect right now?

- Changes to the types of work that do not require a building consent (under Schedule 1).
- Higher penalties for doing building work without the appropriate consents.
- There have been some changes to sections dealing with alterations to existing buildings and change of use, to make the intention clear.
- Councils have more powers to restrict entry to buildings that may be near dangerous buildings.
- The Ministry of Business, Innovation and Employment (MBIE) has more power to hold building consent authorities to account.
- Some immediate changes to the way dams are defined and measured.



IMPORTANT

The collective term for publications that detail methods of complying with the Building Code has been changed. The term used, since 2005, was “compliance document”. This term has now been replaced by the terms “acceptable solution” and “verification method”. Documents with the title “compliance document” will continue to be available until their titles are progressively amended over time. The acceptable solutions and verification methods contained in “compliance documents” are still valid and are unaffected by the change in the title.

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What does this mean for building practitioners or DIY?

Changes to Schedule 1 make it easier to navigate

- Schedule 1 (Exempt building work) has been reformatted, rewritten and split into three parts:
 - **Part 1 (General):** building work that is not covered by Parts 2 and 3, and includes the Council's discretion to exempt any building work.
 - **Part 2:** Sanitary plumbing and drainlaying carried out by people authorised under Plumbers, Gasfitters and Drainlayers Act 2006.
 - **Part 3:** building work for which design is carried out or reviewed by a chartered professional engineer.
- The language is more consistent. The term "building work" replaces a variety of words such as "construct", "alter" or "install". A different word is only used where there is a need to define the type of building work involved i.e. to specify that the work is to "repair" or to "demolish".
- Some exemptions have been re-worked to exempt more low risk work and limit potentially higher risk work. For example, you can repair and replace all or part of a one-storey privately owned outbuilding without a building consent. Previously, the exemption only applied to damaged outbuildings.
- There are some new general requirements that apply to buildings. They are as follows:
 - if a building is required to be licensed under the Hazardous Substances and New Organisms Act 1996 then work on that building requires a building consent.
 - a building's level of compliance with the Building Code must not be adversely affected once the exempt building work is completed (this brings Schedule 1 into line with other sections of the Building Act).
- Only a registered person who is authorised (as defined in the Plumbers, Gasfitters and Drainlayers Act) can do certain plumbing and drainlaying work without a building consent.

The changes don't affect exempt work that was started before the new Schedule 1 came into force.

Remember, even if building work does not require a building consent, all building work must comply with the Building Code.

There are higher penalties for work done without the appropriate consent [Section 40]

- The maximum penalty for constructing, altering, demolishing or removing buildings, without consent from a building consent authority, has increased from \$100,000 to \$200,000.
- The infringement fee for carrying out building work without consent has increased from \$750 to \$1000.

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Some sections of the Building Act have been reworded, to make them easier to understand

The sections that have been reworded deal with alterations (s112), change of use (s115) and subdivisions (s116A).

The amendments do not change existing requirements that cover means of escape from fire, access and facilities for disabled people, protection of other property and, in the case of change of use, sanitary facilities, structural performance and fire-rating performance.

The new wording deals with the Building Code compliance of the building as a whole:

- If the building complied with the Building Code before the alteration, change of use or subdivision, it must continue to comply with the Building Code after the work is completed.
- If the building did not comply with the Building Code before the alteration, change of use or subdivision, then:
 - the new building work must comply with the Building Code.
 - any parts not affected by the new building work (or which don't have to meet specific requirements) must continue to comply with the Building Code to the same extent as before the work began.

Specific requirements apply depending on the building work being done, so it is important to check the relevant sections of the Building Act before building work begins.

Some existing rights and obligations under the Building Act have been clarified

There are new sections dealing with: Certificates of Work and Licensed Building Practitioner (LBP) liability; and the legal obligations of building product manufacturers. These sections do not change the law, but they outline rights and obligations that already exist.

LBP liability related to Certificate of Work [Section 45]

- Design work that is Restricted Building Work must be carried out, or supervised, by a Licensed Building Practitioner (LBP). The LBP then provides a Certificate of Work that accompanies an application for a building consent for the design work concerned.
- Section 45 of the Act has been amended to make it clear that providing a Certificate of Work does not create new or additional liability for a design LBP, over and above the liabilities that already exist for negligent or incompetent work or breach of contract.

NOTE: This section also applies to Certificates of Work issued by Registered Architects and Chartered Professional Engineers.

Legal obligations of product suppliers or manufacturers under the Building Act [Section 14G]

- A supplier or manufacturer of building products is responsible for ensuring those products comply with the Building Code **as long as** the products are installed according to the data, plans, specifications and advice supplied by the manufacturer.

NOTE: This section also makes it clear who is classed as a manufacturer or supplier.

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What additional powers have been given to Councils?

- Councils can now prevent people from approaching or entering “affected buildings”. [Sections 121A and 124 – 128A]
Buildings that are adjacent to, adjoining, or nearby dangerous buildings or dams are “affected buildings”. Councils now have the power to put up notices, fences or hoardings to warn, or prevent, people from approaching or entering affected buildings.
- There is a new type of Section 124 notice that allows Councils to restrict entry into insanitary, dangerous or affected buildings for particular purposes or to particular people. This type of Section 124 can be issued for an initial 30 day period and then re-issued once, for a further maximum period of 30 days.



What additional powers have been given to MBIE?

The process for dealing with complaints about Building Control Authorities (BCAs) has been made more efficient. Amendments have been made to sections 200, 202-204, 207A and 207B of the Act:

- MBIE is not required to seek any information or submissions from a BCA at the early stage of deciding whether to accept or decline a complaint. MBIE may still request information at this early stage, but BCAs cannot insist that information or submissions be made.
- If the BCA fails to make written submissions within a reasonable time, MBIE can proceed with an investigation, or make a determination, in regard to a complaint.
- MBIE can require BCAs to monitor progress and report on any remedial actions they are required to take as a result of the investigation into a complaint.
- MBIE has the ability to undertake inspections of a building to review the quality of the BCA’s work.
- MBIE can investigate a Council’s failure to perform its functions. People who fail to provide information or documents MBIE has requested in relation to an investigation could be fined. [Sections 207A and 207B]

MBIE can authorise people to issue infringement notices and recover payment of infringement fees: [Sections 371A - 371D and 374]

- MBIE enforcement officers will have a warrant to clearly state their functions and powers.
- MBIE enforcement officers have the ability to issue infringement notices for infringement offences (for example, failing to disclose certain information to consumers).
- MBIE can recover infringement fees, in situations where an enforcement officer, authorised by MBIE, has issued the infringement notice.

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? What are the immediate changes affecting the way dams are defined and measured?

- The definition of a 'large dam' has changed to a dam that is 4 or more metres in height and holds 20,000 or more cubic metres of fluid
- The method for measuring the height of the dam is provided
- For the purposes of measuring the height of a dam, a definition of 'crest of the dam' is provided.



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Ministry of Business, Innovation and Employment (MBIE)
Hikina Whakatutuki Lifting to make successful

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

MBIE combines the former Ministries of Economic Development, Science and Innovation, and the Departments of Labour and Building and Housing.

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New Zealand Government