

# Consultation submission form

## Review of the Building Consent System



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## How to make a submission

The Government has commenced a substantive review of the building consent system. A better building consent system is a key priority of the Government and is necessary to support transformation of our housing market to unlock productivity growth and make houses more affordable.

The aim of the review of the building consent system is to modernise the system to provide assurance to building owners and users that building work will be done right the first time, thereby ensuring that buildings are well-made, healthy, durable and safe.

## How to make a submission

The Ministry of Business, Innovation and Employment (MBIE) is seeking your feedback on:

- what role you think the government should have in providing assurance that buildings are healthy, durable and safe
- the desirable outcomes from the building consent system
- an initial assessment of the key issues that are barriers to achieving those outcomes.

When completing this submission form, please provide comments and reasons explaining your choices. Your feedback provides valuable information and informs decisions about the proposals.

You can submit this form by 5pm, Sunday 4 September 2022 by:

- Sending your submission as a Microsoft Word document to **building@mbie.govt.nz**
- Mailing your submission to:

Consultation: Review of the Building Consent system  
Building System Performance  
Building, Resources and Markets  
Ministry of Business, Innovation and Employment  
PO Box 1473

Wellington 6140  
New Zealand

### Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on the review of the building consent system. We may contact submitters directly if we require clarification of any matters in submissions.

## How to make a submission

### Release of information

MBIE may upload PDF copies of submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to requests under the *Official Information Act 1982*. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the *Official Information Act 1982*.

### Private information

The *Privacy Act 2020* establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

### Submitter information

MBIE would appreciate if you would provide some information about yourself. If you choose to provide information in the “About you” section below it will be used to help MBIE understand the impact of our proposals on different occupational groups. Any information you provide will be stored securely.

#### A. About you

Name: Jane Brown

Email address: [jane@icnz.org.nz](mailto:jane@icnz.org.nz)

#### B. Are you happy for MBIE to contact you if we have questions about your submission?

Yes  No

#### C. Are you making this submission on behalf of a business or organisation?

Yes  No

If yes, please tell us the title of your company/organisation.

Te Kāhui Inihua o Aotearoa / The Insurance Council of New Zealand (ICNZ)

#### D. The best way to describe your role is:

- Building Consent Authority  Industry organisation (please specify below)  
 Business  Individual  
 Other (please specify below)

Please specify here.

#### E. If you represent a Business the best way to describe it is:

- Designer/ Architect  Builder  
 Sub-contractor  Engineer  
 Developer  Other (please specify below)

## Submitter information

**F.** If you are an individual the best way to describe you is:

- |   |   |
|---|---|
| <input type="checkbox"/> Designer/ Architect      | <input type="checkbox"/> Builder                      |
| <input type="checkbox"/> Sub-contractor           | <input type="checkbox"/> Engineer                     |
| <input type="checkbox"/> Building Consent Officer | <input type="checkbox"/> Developer                    |
| <input type="checkbox"/> Homeowner                | <input type="checkbox"/> Other (please specify below) |

**G.** Privacy information

- The *Privacy Act 2020* applies to submissions. Please tick the box if you do **not** wish your name or other personal information to be included in any information about submissions that MBIE may publish.
- MBIE may upload submissions or a summary of submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). If you do **not** want your submission or a summary of your submission to be placed on our website, please tick the box and type an explanation below:

I do not want my submission placed on MBIE's website because... [insert reasoning here]

**H.** Confidential information

- I would like my submission (or identifiable parts of my submission) to be kept confidential and **have stated** my reasons and ground under section 9 of the Official Information Act that I believe apply, for consideration by MBIE.

If you have ticked this box, please tell us what parts of your submission are to be kept confidential.

# Section 1: Introduction and strategic context

Building consent systems aim to provide assurance that buildings are healthy, durable and safe. Government intervention is typically directed at addressing the following problems that can occur in the building market:

**Information gaps:** many building owners and other users of buildings have insufficient knowledge or skill to assess the quality of building design or building work, or properly identify and manage risk.

**Risk of harm:** protecting building owners and other users from the risk of serious harm that could arise from poor design or building work.

**Cost of defects:** building defects can be very expensive to repair once work is completed. Buildings have a long life and defects may show up long after construction. It can be difficult for an owner to determine who is at fault and obtain redress.

## Questions for the consultation

### 1. What do you think the primary focus of the building consent system should be?

The primary focus of the building consent system should be to support the overall performance of the building system (including to meet the standards in the Building Code) in ensuring that completed buildings are healthy, safe, and durable.

The role of government in the building process varies around the world:

- Some countries delegate specific roles to private third parties, such as the review of plans, conducting risk assessments of projects or carrying out inspections during construction.
- Australia allows private building surveyors to directly oversee building design and inspection.
- Nearly all countries surveyed by the World Bank Doing Business report allow private third-party inspections. However, the task of issuing the final permit (the equivalent of the code compliance certificate) remains largely the responsibility of local authorities.

### 2. What role should government have in providing assurance that buildings are healthy, safe and durable?

ICNZ believes that the government's role should largely remain at the level identified on page 17 of the Discussion Document (ie. intervening to address information gaps, risk of harm, and cost of defects). We would, however, support the use of stage construction inspections and a more prominent role for MBIE as the regulator in this space.

## Section 1: Introduction and strategic context

3. Are there any building consent functions that could be delegated to or provided by another party?

Yes

No

Not sure

If so, please explain your response.

While we recognise there are potential benefits in allowing building consent functions to be delegated to another party, there has been a negative insurance experience where this has happened previously in the building sector. The poor performance of the private building certifiers scheme that was introduced in the early 2000s saw such an influx of liability claims that the profession became uninsurable. There is a risk that if building consent functions are delegated without the issues identified in the Discussion Document having been remedied, building professionals may have similar difficulties securing appropriate insurance cover (as would be required if they were performing outsourced functions).



## Section 2: Desirable outcomes

MBIE has identified four critical outcomes that the building consent system should primarily seek to achieve.

**Outcome 1: Efficiency.** The building consent system is efficient in providing assurance to building owners and users. It is risk-based, has proportionate compliance costs, and allows for innovation.

**Outcome 2: Roles and responsibilities.** Roles and responsibilities are clear and based on participants' respective ability to identify and manage risks. All participants across the system have a good understanding of their own responsibilities and the extent they can rely on others for assurance.

**Outcome 3: Continuous improvement.** The system is responsive, flexible and agile, and seeks to continually improve through performance and system monitoring, good information flows and feedback loops.

**Outcome 4: Regulatory requirements and decisions.** Regulatory requirements are clear, and decisions are robust, predictable, transparent and broadly understood.

### Questions for the consultation

4. Do you agree these four critical outcomes are necessary to ensure the building consent system provides high levels of assurance to the public that buildings are healthy, safe and durable?

Yes                       Somewhat                       No                       Not sure

Please explain your views.

ICNZ agrees that all four of these outcomes are necessary to improve the building consent system to a standard that supports healthy, safe and durable buildings.

5. Are there any other outcomes that are critical to ensure buildings are healthy, safe and durable?

Yes                       No                       Not sure

Please explain your views.

ICNZ is satisfied that the outcomes identified in the Discussion Document are the appropriate ones.

## Section 2: Desirable outcomes

6. How well is the system currently performing against the four identified outcomes? Please explain your views.

	Poor	Fair	Good	Very Good	Excellent
Efficiency	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roles and responsibilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Continuous improvement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Regulatory requirements and decisions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your views.

As insurers do not have day-to-day involvement in the use of the building consent system, we are not in a place to respond to this question.

## Section 3: Issues with the current system

MBIE has identified five issues that are constraining the ability of the system to achieve the desirable outcomes expected of this system. In turn, this compromises the ability of the building consent system to provide assurance that building work will be 'done right the first time', thereby ensuring that buildings are well-made, healthy, durable and safe.

Many of these issues are complex and long-standing. While these issues are presented separately, they are intrinsically related and collectively affect the performance of the overall system.

We welcome your feedback on these issues and other any other issues. In particular, what is the cause of these issues, what are their impacts, how could a better consent system address these, and what would that system look like?

### Issue 1: Roles, responsibilities and accountability

Roles and responsibilities across the system are not always well understood, accepted, applied or consistently enforced. There is sometimes an over-reliance on building consent authorities to provide assurance of compliance with the Building Code.

### Questions for the consultation

7. How well understood are roles and responsibilities across the sector?

Very poorly understood

Somewhat understood

Understood

Well understood

Very well understood

Please explain your views.

As insurers do not have day-to-day involvement in the use of the building consent system, we are not in a place to respond to this question.

8. Does the building consent system allocate responsibility appropriately to those best able to identify and manage the associated risks?

Yes

Somewhat

No

Not sure

Please explain your views.

As insurers do not have day-to-day involvement in the use of the building consent system, we are not in a place to respond to this question.

## Section 3: Issues with the current system

### Issue 1: Roles, responsibilities and accountabilities

**9.** Does the building consent system provide sufficient incentives for each party to meet their responsibilities and 'get it right the first time'?

Yes                       Somewhat                       No                       Not sure

Please explain your views.

In ICNZ's view, and despite the findings in the Risk, Liability and Insurance in the Building Sector Policy Position Statement, there is a perception that BCAs will be there as a "safety net" if something goes wrong and the responsible parties are no longer available. We do not believe that at present, there is sufficient clarity in roles and responsibilities, or incentives in place, for the parties in the building consent system to perform their role correctly.

**10.** Should other parts of the sector (outside of building consent authorities) have a greater role in providing assurance that buildings are safe, durable and healthy? If yes, what would the risks and mitigations be?

Yes                       No                       Not sure

Please explain your views.

Please see our above response to question 3.

If yes, what would the risks and mitigations be?

**11.** Are some parts of the sector more prepared than others to take on more of the responsibility for providing assurance?

Yes                       No                       Not sure

Please explain your views.

No comment.

**Section 3: Issues with the current system**

**Issue 2: Capacity and capability**

# Section 3: Issues with the current system

## Issue 2: Capacity and capability

Building consent authorities face capacity and capability constraints in dealing with an increased volume and complexity of building work. Sector workforce capacity and capability constraints can also undermine the performance of the system.

### Questions for the consultation

**12.**How significant are building consent authority capacity and capability constraints on the performance of the system?

Not significant at all	Somewhat significant	Significant	Quite Significant	Very significant
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your views.

As insurers do not have day-to-day involvement in the use of the building consent system, we are not in a place to respond to this question.

What are the most significant impacts of building consent authority capability and capacity constraints on the performance of the building consent system? Please explain your views?

As above.

**13.** How significant are sector workforce capacity and capability constraints on the performance of the system?

Not significant at all	Somewhat significant	Significant	Quite Significant	Very significant
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please explain your views.

Difficulties in recruiting and high turnover are common issues amongst many sectors at present. This can create time pressures and mean that staff are not trained properly, which increases the risk of defective and/or non-compliant work.

What are the most significant impacts of sector workforce capability and capacity constraints on the performance of the building consent system? Please explain your views.

## Section 3: Issues with the current system

### Issue 2: Capacity and capability

There is a risk with capability and capacity constraints that work quality will be negatively impacted, which, from an insurance perspective, risks an increase in professional indemnity (negligence) claims.

#### 14. How could the impacts of capacity and capability constraints be mitigated?

While capacity and capability constraints are currently affecting everyone, insurers are not in a position to propose mitigations in a building consenting context.

#### 15. Are there any barriers to a more efficient use of technical expertise across the system?

Yes

No

Not sure

Please tell us what these barriers might be.

As insurers do not have day-to-day involvement in the use of the building consent system, we are not in a place to respond to this question.

## Section 3: Issues with the current system

### Issue 3: System agility

## Section 3: Issues with the current system

### Issue 3: System agility

All consents go through the same basic process, which is not always responsive to the level of risk, complexity of the building work, or type of project. The current system does not always deal well with new or innovative practices or products or the design-and-build approach. Nor is it sufficiently responsive to the building needs and aspirations of Māori.

### Questions for the consultation

**16.** Do you agree that the consent system is not sufficiently agile for the way in which we design, procure and build today and in the future?

Strongly disagree	Disagree	Neither agree or disagree	Agree	Strongly agree
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your views.

As insurers do not have day-to-day involvement in the use of the building consent system, we are not in a place to respond to this question.

If you agree, how does rigidity in the building consent system impact consenting outcomes and productivity in the building sector?

**17.** What changes would you suggest to the building consent system to make it more agile?

Those who interact with the building consent system on a day-to-day basis would be better placed to respond to this question.

## Section 3: Issues with the current system

### Issue 3: System agility

**18.** Does the current building consent process constrain or limit the use of traditional Māori methods of construction?

Yes                       Somewhat                       No                       Not sure

Please explain your views.

No comment.

**19.** Does the current building consent process add constraints to the development of Māori-owned land that other landowners don't face?

Yes                       Somewhat                       No                       Not sure

Please explain your views.

No comment.

**20.** What Māori perspective or set of values do building consent authorities need to take into account when considering and processing consent applications for iwi/hapū/Māori-led building and construction projects?

No comment.



## Section 3: Issues with the current system

### Issue 4: Performance monitoring and system oversight

## Section 3: Issues with the current system

### Issue 4: Performance monitoring and system oversight

The performance of the system is insufficiently monitored, and information flows are poor. MBIE is not yet the strong central regulator that was contemplated in the original system design.

#### Questions for the consultation

**21.** What can be done to improve monitoring of the building consent system?

ICNZ agrees with the comment that MBIE is not yet a strong central regulator and suspects that there are many in the building sector who would not even know who the regulator in this space is. We believe that MBIE needs to take a more visible role and encourage greater uniformity within the consenting system, rather than allowing the continuation of the current fragmented approach.

**22.** What information or data relating to the consenting system performance would you find useful?

No comment.

**23.** Are you aware of any barriers to collecting and sharing information across the sector?

Yes

No

Not sure

Please explain your views.

Those who interact with the building consent system on a day-to-day basis would be better placed to respond to this question.

## Section 3: Issues with the current system

### Issue 4: Performance monitoring and system oversight

**24.** Are you aware of additional data and information sources that we could be using to inform our understanding of the system performance?

Yes

No

Please explain your views.

**25.** Is there anything else MBIE could do to better meet its system oversight and stewardship responsibilities?

No comment.

### Section 3: Issues with the current system

#### Issue 5: Fragmented implementation

The processing of building consent applications is devolved to territorial authorities who are building consent authorities, which has led to variability and unpredictability in the consent process and its outcomes. This fragmentation adds to the overall costs of the system due to duplication and variable processes, tools and functions being implemented across building consent authorities, and difficulties maintaining a professional workforce.

#### Questions for the consultation

**26.** Building consent processing is devolved and carried out by individual territorial authorities under the current system. How does this structure affect the consenting performance and building outcomes?

From a risk perspective, having a fragmented structure with many different systems for building consenting raises the likelihood that something will go wrong. In terms of capacity and capability of those working in the system, it will either limit peoples' ability to move between BCAs, or mean that if they do, they will likely have to learn about a new system, which can be time-consuming.

**27.** What aspects of the current consenting system structure work well?

Those who interact with the building consent system on a day-to-day basis would be better placed to respond to this question.

**28.** What aspects of the current consenting system structure do not work well?

Those who interact with the building consent system on a day-to-day basis would be better placed to respond to this question.

**29.** How does the current devolved consenting system structure impact consent applicants and building owners?

ICNZ agrees with the issues identified in the Discussion Document such as inconsistent and variable outcomes. For example, if a builder operates under the jurisdiction of two different BCAs that may mean two different consent application processes, processing times, experiences and outcomes, even for similar projects. Issues such as these will likely only serve to undermine the trust and confidence that building owners have in BCAs and the building system.

## General questions

**30.** What improvements or changes are required to the current consenting system structure to reduce fragmentation in implementation and deliver better consenting outcomes?

ICNZ believes that the consenting system could be enhanced by using a singular, electronic system which allows for uniform consenting practices amongst all BCAs. It would also mean that those in the building sector who operate within the jurisdiction of one or more BCAs would not have to familiarise themselves with multiple systems and could expect greater consistency in how consents are processed.

Having one, agreed consenting system which employs best practice standards would mean that there is less opportunity for things to go wrong.

**31.** Is there any duplication or overlap between the building consent and resource consent processes, or any other legislation?

Yes

No

Not sure

Please explain your views, including any impacts.

As insurers do not have day-to-day involvement in the use of the building consent system, we are not in a place to respond to this question.

**32.** How could the relationship between the building consent and resource management systems be improved?

As insurers do not have day-to-day involvement in the use of the building consent system, we are not in a place to respond to this question.

## General questions

**33.** Do you have any other comments?

No further comments.