



Department of
Building and Housing
Te Tari Kaupapa Whare



Building Act 2004

Information for
building owners
and managers



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Introduction

The Building Act 2004 sets out duties for building owners. This is particularly so if you are the owner of a communal, commercial or industrial building.

Changes were made to some of these processes on 31 March 2005.

It is the owner's responsibility to:

- apply for a building consent for any proposed building work (this includes construction, alteration, demolition and siteworks)
- provide the necessary information with the building consent application to confirm compliance with the New Zealand Building Code
- notify the council when a change of use is proposed (the Building Act 2004 introduces a new definition of change of use)
- apply for a code compliance certificate on completion of building work
- ensure that inspection, maintenance and reporting procedures are carried out where required by any compliance schedule (the Building Act 2004 introduces changes to the compliance schedule and building warrant of fitness regime)
- maintain the building in a safe and sanitary condition at all times.

Buildings with compliance schedules

Buildings containing certain safety and essential systems, known as specified systems, require a compliance schedule. These specified systems ensure a building is safe and healthy for members of the public to enter, occupy or work in. The building owner must ensure continued effective operation of those features and systems and sign an annual building warrant of fitness.

Under the Building Act 2004, all buildings other than single residential buildings will require a compliance schedule and annual warrant of fitness if they contain any of the following.

- Automatic systems for fire suppression (eg, sprinkler systems).
- Automatic or manual emergency warning systems for fire or other dangers.
- Electromagnetic or automatic doors or windows (eg, ones that close on fire alarm activation).
- Emergency lighting systems.
- Escape route pressurisation systems.
- Riser mains for use by fire services.
- Automatic back-flow preventers connected to a potable water supply.
- Lifts, escalators, travelators, or other systems for moving people or goods within buildings.
- Mechanical ventilation or air-conditioning systems.
- Building maintenance units providing access to exterior and interior walls of buildings.
- Laboratory fume cupboards.
- Audio loops or other assistive listening systems.
- Smoke control systems.
- Emergency power systems for, or signs relating to, a system or feature specified for any of the above systems or features.

From 2008, all buildings that have a cable car, including single residential buildings, will require a compliance schedule for it. (A single residential building will require a compliance schedule only for the cable car and not for any of the other features listed above.)

BUILDING CONSENT AUTHORITIES AND COUNCILS

The compliance schedule is a document issued by a building consent authority (BCA). City and district councils are BCAs.

BCAs issue building consents, undertake inspections during construction, and issue code compliance certificates, notices to fix and compliance schedules. BCAs can charge a fee for these services.

In addition to providing a BCA service, councils have a range of other building-related responsibilities, including monitoring the compliance schedule and building warrant of fitness regime. Councils can also charge a fee for these services.

Compliance schedule content

The compliance schedule lists the building's specified systems and the inspection, maintenance and reporting procedures needed to keep them in good order.

Applications for a building consent need to contain compliance schedule information for:

- a new building with any specified systems
- building work in an existing building that includes modifying or adding to the specified systems – this will require an amendment to an existing compliance schedule.

The BCA will require details of the design features of the specified systems and the proposed procedures for inspection, maintenance and reporting to be included in the compliance schedule.

Amending compliance schedules

A council and a building owner can agree to amend a compliance schedule as required, at any time. This can be triggered by:

- a building consent application
- the request of a building owner
- the decision of the council at any time
- a suggestion from an appropriately qualified inspector.

Where an appropriately qualified inspector recommends an amendment to a compliance schedule, the owner has the right to make submissions and enter into dialogue with the council before the council makes its decision on whether to accept or refuse the recommendation.

An application for an amendment to a compliance schedule must be made on a form prescribed in regulations, which will be available from your council.

There may be buildings that have not had their compliance schedule updated since issue. The council may inspect and review the compliance schedule for these buildings.

Independent qualified person (IQP)/licensed building practitioner (LBP)

Systems need specialist inspection by an appropriately qualified inspector. An IQP is a person (or firm) approved by the council as qualified to inspect certain compliance schedule items and ensure that the necessary maintenance occurs. 'Independent' means that the person has no financial interest in the building. IQPs will be licensed under the licensed building practitioners regime. Licensing becomes mandatory from 30 November 2009.

Compliance schedule statements and building warrants of fitness

A 'building statement of fitness' is now called a compliance schedule statement.

A compliance schedule statement is issued by the council as temporary public notification of compliance schedule requirements. It is replaced after 12 months by the building warrant of fitness. The owner must display the compliance schedule statement in a public part of the building.

A building warrant of fitness is signed by the building owner (or manager) stating that the requirements of the compliance schedule have been fully met in the previous 12 months, and that the specified systems will continue to perform as required. Forms are available from councils.

The council keeps the original copy of the form, and a duplicate copy must be displayed on the premises. The owner must update the warrant of fitness every 12 months.

An owner must also provide the council with copies of Form 12, which is issued by an IQP or an LBP and certifies that the inspection, maintenance and reporting procedures stated in the compliance schedule have been complied with over the last 12 months. The council will keep these forms on record for the life of the building. It will consider any recommendations made on inspection and, where necessary, make any changes to the compliance schedule after giving the owner an opportunity to provide comments.

Owner's responsibility

The owner is legally obliged to ensure that:

- all necessary inspections, maintenance and reporting are done by an appropriately qualified person
- the building is maintained in a safe and sanitary condition at all times
- the compliance schedule is readily available for inspection by authorised persons
- a current building warrant of fitness is prepared and displayed.

Tenants and the owner

The building owner's responsibilities are clear, whether or not the building is tenanted by others. The owner, however, can delegate those responsibilities to an employee of the owner or to someone else under a contract or a lease. Tenants could also be liable where they breach the Act.

An owner, and anyone acting on the owner's behalf in signing a building warrant of fitness, is liable for making any false statement in the warrant.

People employed by the owner

In most instances the owner will engage specialists for the design and construction of all or part of any proposed building work. Such specialists can be architects, engineers, design drafting agencies, builders, plumbers and electricians. For compliance schedule procedures typical specialists can be building maintenance companies, lift engineers and electricians who are appropriately qualified.

The owner can choose who to employ to do the work or give advice. If, however, the Act is breached the owner is likely to be fully liable, but any agents of the owner do not necessarily escape liability.

Safeguarding owner's investment

The Building Act is not concerned with the appearance of completed building work, contractual matters between the owner and builder (apart from the introduction of mandatory warranties for residential building work), nor with protection of capital investment.

BCAs check for compliance with the Building Act and regulations (including the Building Code) that are concerned with safeguarding the health and safety of people. Only when Code compliance may be affected or the Building Act breached do inspections cover finish and quality.

CHANGE OF USE

The Building Act 2004 introduces a new definition for 'change of use'. This determines when a change in a building's use will require upgrading to certain systems and elements. For example, a residential villa becomes a restaurant, a warehouse becomes an apartment, a garage becomes a studio and sleep out. The Building Code requirements may differ from one type of use to another.

An owner of a building must give written notice to the council if they propose to change the use of a building, or extend the life of a building with a specified intended life.

An owner must also provide notice to the council if they propose to subdivide land in a manner that affects a building.

The council will then provide the owner with written notice if it is satisfied the building in its new use complies with provisions in the Building Code relating to:

- means of escape from fire, protection of other property, sanitary facilities, structural performance, fire-rating performance
- access and facilities for people with disabilities.

It must also comply with the other provisions in the Building Code to at least the same extent as before the change of use.

If the use of a building is being changed to include household units where these did not previously exist, the building must then comply as nearly as is reasonably practicable with the Building Code in all respects. This will be assessed by the council.

ALTERATIONS TO EXISTING BUILDINGS

The Building Act 2004 makes clear that if part of a building is altered, the upgrade provisions are triggered for the whole building.

Upgrade provisions relate only to means of escape from fire and access and facilities for people with disabilities (if relevant). All other aspects of the building must continue to comply with the Building Code to at least the same extent as before the alteration.

Councils have discretion to allow alterations to take place without the building complying with the relevant provisions of the Building Code, but only if it is satisfied that:

- if the building were to comply with the relevant provisions of the Building Code the alteration would not take place, and
- the alterations will result in improvements to the means of escape from fire or access and facilities for people with disabilities, and
- the improvements outweigh any detriment likely to arise as a result of the other non-compliance with the Building Code.

Owners contemplating changes to their buildings should seek council agreement to the extent of upgrading required. This will be dependent on the particular building proposal and should be done at an early stage to avoid delays in obtaining a building consent.

NEW ZEALAND FIRE SERVICE COMMISSION ADVICE

The Building Act 2004 introduces new procedures for processing building consents. In certain cases, the building consent authority will consult with the New Zealand Fire Service Commission on some building consent applications.

TWO YEAR DECISION PERIOD FOR CCCs

If an application for a code compliance certificate has not been made within 2 years from the date a building consent is granted, or other agreed period, a BCA must make the decision whether to issue the code compliance certificate or not, or whether any further period can be agreed between the BCA and the owner.

BUILDING WORK AND PREMISES INTENDED FOR PUBLIC USE

Under the Act, a new public safety measure creates an offence concerning the use of premises intended for public use that are affected by building work for which a building consent has not been granted (but is required) or where no code compliance certificate or certificate for public use has been issued.

Owners are recommended to check whether their buildings have any outstanding documentation for building work, and if so to contact their council.

More information is available in the leaflet *'New Safety Measures for Premises Intended for Public Use'*.

Penalties

The Building Act 2004 contains a number of provisions to protect public health and safety that are important for building owners and managers. There is a range of penalties for failing to comply with these provisions.

Any person who carries out building work without a building consent could be liable for a fine of up to \$100,000 with a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues. Exempt work is listed in Schedule 1 of the Act.

If a person is the owner of a building for which a compliance schedule is required but no compliance schedule has been obtained, they are liable for a fine of up to \$20,000 with a further fine of \$2,000 for each day the offence is continued.

Building owners can be fined up to \$20,000 for failing to display a building warrant of fitness, or displaying of a false or misleading building warrant of fitness.

Building owners who fail to give written notice of a change of use commit an offence and are liable to a maximum fine of \$5,000.

The offence of allowing members of the public to use public premises affected by building work carries a fine of up to \$200,000 with a further fine not exceeding \$20,000 for every day or part of a day during which the offence has continued.

It is also an offence carrying a fine of up to \$100,000 to use or permit the use of a building for a use for which is not safe or sanitary or if it has inadequate means of escape from fire.

More information

For more information, visit the Building Act
2004 website:

 [**www.building.govt.nz**](http://www.building.govt.nz)

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Disclaimer:

While we have tried to make this educational information as accurate as possible, it does not cover every situation and should not be regarded as legal advice.

This document is also available on the Department's website: www.dbh.govt.nz

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