



Department of
Building and Housing
Te Tari Kaupapa Whare

Proposal for an owner builder exemption to the restricted building work regime

June 2008



Contents

INTRODUCTION 1

The Licensed Building Practitioner Scheme **1**

Owner builder exemption **1**

BACKGROUND 2

What is the restricted building work regime? **2**

What effect does the restricted building work regime currently have on owner builders? **2**

What is the purpose of the exemption? **3**

What is the proposed exemption? **3**

ELEMENTS OF BEING AN OWNER BUILDER 4

PROPOSED CHANGES TO THE ACT 6

PROPOSED CHANGES TO OTHER LEGISLATION 7

WHAT HAPPENS NEXT 8

SUBMISSION FORM 9

APPENDICES 11

Appendix 1 – Glossary of terms **11**

Appendix 2 – Alternative options **13**

Appendix 3 – Restricted building work offence provisions **13**

Appendix 4 – Implied warranties **14**

Introduction

THE LICENSED BUILDING PRACTITIONER SCHEME

Launched in November 2007, the scheme is one of the key changes introduced by the Building Act 2004 (the Act). Since then, practitioners in the building industry have been able to apply to be licensed in a range of classes depending on the type of work they do.

In total, there are 13 licensing classes. These cover things like carpentry, site supervision, design and some specialist trades, like roofing and plastering.

To become licensed, people have to show they have the skills, knowledge and experience to do their work competently. There is a formal assessment of their skills and once they're licensed, they have to keep learning and training in their particular field(s).

From November 2010, it is intended that some design and construction work will only be able to be done or supervised by licensed practitioners. This is called 'restricted building work'.

Restricted building work will be work that is critical to the integrity of a building.

OWNER BUILDER EXEMPTION

The Government has proposed that owner builders will be exempt from the restricted building work regime. This would allow homeowners to do restricted building work on their own houses (without the need to use licensed building practitioners) while still protecting future owners of the property.

However, the proposed exemption will require a change to the Act.

The Government wants your views about the proposed exemption and the amendments needed to the Act.

This consultation will run until Friday 1 August.

Background

WHAT IS THE RESTRICTED BUILDING WORK REGIME?

The Act requires restricted building work to be carried out or supervised by a licensed building practitioner. This requirement is in addition to getting a building consent and is to ensure the restricted building work complies with the Building Code.

The aim of the regime is to help ensure building work that is 'critical to the integrity' of a building meets the Building Code requirements. It does this by requiring all restricted building work to be done or supervised by a licensed building practitioner.

The detail of what will be restricted building work has not yet been developed. The earliest it could come into force would be 30 November 2010.

WHAT EFFECT DOES THE RESTRICTED BUILDING WORK REGIME CURRENTLY HAVE ON OWNER BUILDERS?

None yet. However, once the regime applies (at the earliest from 30 November 2010), owner builders will have to employ licensed building practitioners for any restricted building work that is part of the owner builder's project.

It is important to note restricted building work is only a limited part of all building work that is carried out. Traditional 'do it yourself' building work is unlikely to be restricted. New Zealand's DIY traditions have changed in recent years. Fewer people build their own home from scratch or do major building work on existing homes without involving a professional builder.

A lot of the work people do on their own homes does not even need a building consent, such as redecorating. When it comes to work that does need a consent, people rarely attempt to do the complex work that is likely to be restricted building work.

Recent research carried out by the Registered Master Builders Federation (the 'DIY and Building Supervision' survey by Colmar Brunton, June 2007) showed:

- 96% of New Zealanders agree with the statement that a building professional should oversee the building of a new home
- 93% of New Zealanders agree that adding a new room to an existing house should be overseen by a building professional
- New Zealanders consider 'DIY' work to be either painting or general maintenance and repair work.

In separate research carried out by the Department of Building and Housing, less than 2% of medium-high risk building work (the sort of work that may be restricted building work) was done by owner builders. This 2% is the work that will be covered by the proposed exemption.

Proposal

The Government has decided that having to employ (pay) licensed building practitioners is an unnecessary cost for owner builders. There is little history of problems with building work done by owner builders, so regulating their work may not be necessary to achieve the purpose of the Act. The Government would like to hear your views on the proposal for an exemption to the restricted building work regime for owner builders.

The exemption applies only to restricted building work. Owner builders will not be exempt from other requirements in the Act, such as getting a building consent and complying with the Building Code. Those requirements are the core aspects of building regulation and, for the health and safety of all New Zealanders, must apply to everyone who does building work.

The proposed exemption focuses on who is carrying out restricted building work. There are some other alternatives to the proposed exemption. These are described in Appendix 2 of this document. If you think one of the alternatives is better than what the Government is proposing, please tell us, and explain why you think so. We would also like you to tell us what you think the proposed exemption would be likely to cost you.

WHAT IS THE PURPOSE OF THE EXEMPTION?

The purpose of the exemption is to allow homeowners to do restricted building work on their own houses while still protecting future owners of the property. It also aims:

- to ensure owner builders do not face unnecessary costs when doing restricted building work on their own homes
- to ensure consumers (especially future owners of the house) are informed about who did restricted building work on the house
- to hold owner builders accountable for their work by providing warranties and documentation. This would protect consumers and prevent unlicensed builders using the owner builder exemption to do restricted building work.

WHAT IS THE PROPOSED EXEMPTION?

The restricted building work regime is set out in sections 84–88 of the Act. This includes the offences that would be committed if restricted building work is done or supervised by someone other than a licensed building practitioner. The relevant sections of the Act are in Appendix 3 of this document.

An exemption to the regime would work by allowing a defence to the restricted building work offences. For example, it could be a defence if someone can prove they are an owner builder. This means they would be able to do any restricted building work they choose.

The definition of an ‘owner builder’ will need to be covered in the Act. In the next section, we describe a number of things that would need to be proven, before someone can claim to be an ‘owner builder’. Please give us your comments on each proposed element.

Elements of being an owner builder

The following elements are proposals for how an owner builder can be clearly identified as distinct from another unlicensed person doing restricted building work. Some or all of these elements will be put forward as final proposals to the Government based on the feedback we receive from this consultation.

Element 1 – the person must be an individual

The person claiming to be an owner builder cannot be a company or other incorporated body (eg, an incorporated society or charitable trust) or a partnership.

Element 2 – the person must own the land the restricted building work is to be carried out on

The individual could own the land in partnership (eg, with a spouse or partner) or be the beneficiary of a family trust that owns the land. Other forms of co-ownership would not qualify the person as being an owner builder.

Element 3 – the person must live or intend to live in the building being constructed or altered

An owner builder cannot be someone who builds or alters a house intending to immediately sell it to another person (eg, a 'spec' builder). The purpose of the exemption is for people to be able to work on their own homes, not on homes that belong to (or will soon belong to) other people.

Element 4 – the person must not be engaged in the trade of residential building

This element reinforces element 3. An owner builder cannot be someone who regularly does residential building work that they earn an income from. They also cannot be someone who builds and then sells houses on a regular basis. We propose this element be in the form of a specific limit on the number of times a person can claim the owner builder defence over a period of time. Our proposal is once every five years. This is in line with similar provisions in Australian states¹ that define owner builders.

Element 5 – the person must do the restricted building work themselves

The owner builder cannot oversee or supervise another unlicensed person (whether they are paid or not) doing restricted building work. This does not mean the owner builder has to do every single aspect of the work on the building project – it is only the restricted building work the owner builder has to do themselves.

Element 6 – the person must only do construction work

The defence does not apply to building design. If the design is restricted building work, that design must be done by an appropriate licensed building practitioner. Again this does not mean the whole building project has to be designed by a licensed building practitioner. Only design work that is restricted building work has to be done by a licensed building practitioner.

¹ New South Wales: one every five years, Western Australia: one every six years, Victoria: one every three years, Queensland: one every six years, Northern Territory: one every six years, Tasmania: two every ten years. Also California: two times in three years, British Columbia: once every 18 months.

Element 7 – the person must be the applicant for the building consent and code compliance certificate for the restricted building work

This element supports elements 1 and 2. It also ensures the restricted building work is consented before it is started and not afterwards² so the restricted building work can be clearly identified in the building records for future reference.

Element 8 – the person must sign a statutory declaration stating all the other elements are met

A statutory declaration is a legal document that must be signed in front of someone like a lawyer or Justice of the Peace. A statutory declaration is the simplest way of recording and establishing the owner builder defence. Under the Act, it is already an offence to make a false or misleading statement in a document such as the declaration. The declaration would have to accompany the application for building consent and code compliance certificate. There would be a set form for the declaration that people can download online. The declaration would be kept on the building consent authority building file for future reference. The building consent authority may charge a small fee for receiving, processing and storing the declaration.

² There is a process for obtaining a 'certificate of acceptance' under the Act that allows building work to be checked for Code compliance after it has been completed if a building consent was not obtained before the work started. However, this process is not appropriate for the owner builder defence.

Proposed changes to the Act

To ensure good record-keeping, consumer protection and compliance with the owner builder defence, we propose to make some amendments to the Act. Again, some or all of these proposals will be put forward as final recommendations to Government. Please give us your comments on the amendments described below.

Amendment 1 – power for the building consent authority to decline a building consent or code compliance certificate

This amendment would give building consent authorities a new power to decline to issue a building consent or code compliance certificate for restricted building work if:

- there is no owner builder declaration (element eight on page six) filed with the application

or

- the owner builder declaration does not meet the requirements of elements 1–7 on page six.

Amendment 2 – copies of the declaration to be given to the territorial authority

This would mean all building consent authorities have to send copies of all the owner builder declarations they receive to the territorial authority. Under the Act, the territorial authority is responsible for keeping all records and information about building work done within its district.

Amendment 3 – extension of implied warranties to owner builder work

The Act contains a number of warranties that are implied into every contract (whether written or oral) to do building work. The warranties are similar to provisions in the Consumer Guarantees Act 1993 (that apply when other types of goods or services are purchased) and are set out in detail in Appendix 4 to this document. Because an owner builder does not do their work under contract (as they cannot contract with themselves) the warranties do not currently apply to work done by owner builders. The Act would be changed for the benefit of future owners so the warranties would apply to all building work (not just restricted building work) done by owner builders.

Amendment 4 – disclosure on sale of house

Anyone selling a house has to disclose to the purchaser, in writing, any restricted building work done on the house by an owner builder.

Amendment 5 – recording information on land title

This will require building consent authorities to give a copy of all owner builder declarations to the Registrar-General of Land. The Registrar-General will then be required to record on the certificate of title any restricted building work that was done by an owner builder.

Proposed changes to other legislation

We are proposing two other regulatory changes to achieve full record-keeping and disclosure – whether these changes are in the final proposals to Government will depend on the feedback from this consultation. Please give us your comments on these.

Change 1 – Local Government Official Information and Meetings Act 1987

This Act provides for a document called a Land Information Memorandum (LIM) to be issued by a territorial authority. The Act lists what information must be included in the LIM. We propose to add to that list 'information about any restricted building work carried out by an owner builder'.

Change 2 – Regulations under the Building Act 2004

We propose to use a regulation to require territorial authorities to regularly report to the Department on the number of owner builder declarations they receive and the types of restricted building work the declarations relate to. This will enable us to monitor the use of the exemption and ensure it is working as intended.

What happens next?

Please send us your responses to the questions on the previous page and any other comments by 5pm **Friday 1 August 2008**. You can send your comments by post to:

Owner builder exemption consultation
Department of Building and Housing
P O Box 10–729
Wellington

Or you can hand deliver them to:
Owner builder exemption consultation
Department of Building and Housing
Level 6
86 Customhouse Quay
Wellington

Or you can email them to:
info@dbh.govt.nz

Please put 'Owner builder exemption consultation' in the subject line of your email.

The Department will consider all comments received and a summary of the comments will be published on the Department's website:
www.dbh.govt.nz

The Department will then make a final recommendation to the Government on the detail of the owner builder exemption. When the legislation needed to put the exemption in place is introduced to Parliament it will be considered by a Select Committee. Any member of the public can make a submission on the legislation to the Select Committee. This means you will have a further opportunity to comment on the detail of the exemption at that time if you wish to.

Please note that all correspondence and comments on this matter may be the subject of a request under the Official Information Act 1982. If there is any part of your correspondence that you consider could properly be withheld under the Act, please include comment to that effect and give reasons why you would want it withheld.

QUESTIONS

Q3. What costs do you think owner builders will face under the proposed exemption?

Q4. Do you think the elements of the exemption are a fair balance between (a) enabling owner builders to work on their own homes and (b) the interests of consumers (future owners)?

Q5. Do you agree with each of the elements of the exemption? Which elements do you disagree with or think should be changed? Please describe any alternatives you have in detail.

Q6. Are there any of the proposed amendments to the Act that you disagree with or think should be done differently? Again, please describe your suggestions in detail.

Q7. Do you agree with the proposed addition to the LIM and the requirement for territorial authorities to provide information to the Department? If you disagree with these two proposals, please explain why and give any alternatives you think will achieve the same result.

Appendices

APPENDIX 1 – GLOSSARY OF TERMS

TERM	MEANING/EXPLANATION
Act	Building Act 2004
Building Act 2004	A statute passed by Parliament in 2004 that reformed New Zealand's building control legislation following 'leaky homes' issues. Some of the new provisions in the Act that did not exist in New Zealand law previously are: registration of building consent authorities, product certification, licensing of building practitioners, restricted building work and implied warranties in all building work. A copy of the Act can be obtained from any Bennetts Government bookshop or online at www.legislation.govt.nz
Building Code/Code	Regulations made under the Building Act 2004. The Code sets performance standards that all building work must comply with (whether it needs a building consent or not). The Code applies nationally across New Zealand. A copy of the current Code is in the Building Regulations 1992 and those regulations can be obtained from any Bennetts Government bookshop or online at www.legislation.govt.nz
Building consent/consent	An authorisation required under the Building Act 2004 before any building work is carried out. The consent is issued by a building consent authority and describes how the building work will be done to ensure it complies with the Building Code. Certain building work is exempt from this requirement, mainly work that is very low risk (eg, general repairs and maintenance, decks less than 1 metre high and fences less than 2 metres high).
Building consent authority	An organisation registered with the Department that has been independently accredited as having the necessary systems and processes to effectively carry out building consenting and related functions under the Building Act 2004. To date all registered building consent authorities are territorial and regional authorities.
Code compliance certificate	A document issued by a building consent authority on completion of building work. The building consent authority will inspect the building work to determine whether it has been carried out in accordance with the building consent. If it has, it will issue a code compliance certificate that confirms the building work is Code compliant.
Department	The Department of Building and Housing. The central government agency responsible for regulation and monitoring of the building and housing sector.
LBP	A licensed building practitioner. A professional builder or designer who has had his or her competency independently assessed and is licensed under the Licensed Building Practitioner Scheme run by the Department.
LIM	Land Information Memorandum. An information document issued by a territorial authority on request and payment of a fee. The LIM states all the information the territorial authority has on its files about the land the LIM relates to (eg, town planning zoning, contamination, water supply and natural hazards (such as earthquake fault line)).
Owner builder	Also sometimes known as 'DIYer'. Basically a person who does building work on their own home or other property they own (eg, holiday home, bach).

TERM	MEANING/EXPLANATION
Restricted building work	<p>Is defined in the Building Act 2004 as follows:</p> <p>“restricted building work—</p> <p>(a) means building work that is—</p> <p>(i) critical to the integrity of a building, for example, its envelope and structure; and</p> <p>(ii) of a kind declared by the Governor-General by Order in Council to be building work that must be carried out or supervised by a licensed building practitioner who is licensed to carry out or supervise that work; and that Order in Council may relate, without limitation, to certain types or categories of buildings, or parts of buildings specified in the Order in Council; and</p> <p>(b) includes design work (relating to building work) that is design work of a kind declared by the Governor- General by Order in Council to be restricted building work for the purposes of this Act; and</p> <p>(c) does not include any building work for which, in accordance with section 41, a building consent is not required.”</p>
Territorial authority	<p>A local council. Territorial authorities have record keeping and enforcement functions and powers under the Building Act 2004.</p>

APPENDIX 2 – ALTERNATIVE OPTIONS

Below are two alternative ways restricted building work done by owner builders can be dealt with separately from work done by licensed building practitioners. If you think one of these alternatives is better than the proposals on pages 4–7 of this document, please let us know.

Alternative 1 – risk based threshold

This option focuses on the complexity of the building work being done. The exemption would apply to building work considered to be of such low risk that it should not be restricted building work. Such building work would be able to be carried out by anyone, whether they are an owner builder or another unlicensed person. The description of the 'exempt' work would be included in the Order in Council defining restricted building work. Under this option, for example, a one or two storey timber-framed house of simple design, limited size and traditional cladding could be built from scratch by any unlicensed person.

Alternative 2 – registration system

Under this option a centralised/national owner builder registration system would be established. Any person wanting to do work as an owner builder would have to be registered as such. Registered owner builders would be able to carry out restricted building work. Most of the Australian states run such registration systems and the New Zealand system would be modelled on them. It would require owner builders to demonstrate an appropriate level of competency to do building work and also require them to pay a fee in order to be registered.

APPENDIX 3 – RESTRICTED BUILDING WORK PROVISIONS

Below are the relevant sections of the Act dealing with the restricted building work regime.

84. Licensed building practitioner must carry out or supervise restricted building work

All restricted building work must be carried out or supervised by a licensed building practitioner who is licensed to carry out or supervise the work.

85. Offences relating to carrying out or supervising restricted building work

- (1) A person who is not a licensed building practitioner commits an offence if he or she carries out restricted building work while not supervised by a licensed building practitioner who is licensed to carry out or supervise the carrying out of restricted building work of that kind.
- (1A) A licensed building practitioner commits an offence if he or she—
 - (a) carries out restricted building work of a kind that he or she is not licensed to carry out or supervise the carrying out of; or
 - (b) supervises the carrying out of restricted building work of a kind that he or she is not licensed to carry out or supervise the carrying out of.
- (2) A person who commits an offence under this section is liable to a fine not exceeding \$20,000.

86. Offence to engage another person to carry out or supervise restricted building work if the person is not licensed building practitioner

- (1) A person commits an offence if the person—
- (a) engages another person to carry out or supervise restricted building work; and
 - (b) knows that the other person is not—
 - (i) a licensed building practitioner; or
 - (ii) a licensed building practitioner who is licensed to carry out or supervise the restricted building work.
- (2) A person who commits an offence under this section is liable to a fine not exceeding \$20,000.

APPENDIX 4 – IMPLIED WARRANTIES

The wording below is an exact copy of section 397 of the Act. Section 397 sets out warranties that are implied into every contract for carrying out building work on a household unit (ie, house, townhouse, apartment).

That the building work will be carried out—

- (i) in a proper and competent manner; and
- (ii) in accordance with the plans and specifications set out in the contract; and
- (iii) in accordance with the relevant building consent.

That all materials to be supplied for use in the building work—

- (i) will be suitable for the purpose for which they will be used; and
- (ii) unless otherwise stated in the contract, will be new.

That the building work will be carried out in accordance with, and will comply with, all laws and legal requirements, including, without limitation, this Act and the regulations.

That the building work will—

- (i) be carried out with reasonable care and skill; and
- (ii) be completed by the date (or within the period) specified in the contract or, if no date or period is so specified, within a reasonable time.

That the household unit, if it is to be occupied on completion of building work, will be suitable for occupation on completion of that building work.

If the contract states the particular purpose for which the building work is required, or the result that the owner wishes the building work to achieve, so as to show that the owner relies on the skill and judgement of the other party to the contract, that the building work and any materials used in carrying out the building work will—

- (i) be reasonably fit for that purpose; or
- (ii) be of such a nature and quality that they might reasonably be expected to achieve that result.





Published in June 2008 by
Department of Building and Housing
PO Box 10-729,
Wellington, New Zealand

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

You can copy all or some of this document
only if you are using it for education or
public information, and you say it came
from us. You cannot copy any of this
document in any way for commercial
use, and you cannot keep it in a retrieval
system unless you ask us first.

ISBN: 978-0-478-32712-0 (document)
ISBN: 978-0-478-32711-3 (website)