

## **LETTER SENT TO TERRITORIAL AUTHORITIES 23 NOVEMBER 2004**

### **Building Act 2004, Section 363 – Public use of Buildings**

I am writing in regard to the implementation of section 363 of the Building Act 2004.

#### **Section 363**

This section is about ensuring public safety in buildings intended for public use. It makes it an offence to permit the public use of a building for which no building consent, or code compliance certificate, has been granted.

Section 363 commences on 30 November 2004. However, it is our view that the section does not become fully effective, from the perspective of territorial authorities' discretionary ability to initiate prosecutions, until 31 March 2005. That is because section 363 refers to building consents and code compliance certificates issued under the 2004 Act, which can only take place from 31 March 2005.

That is also the date when building consents and code compliance certificates issued under the 1991 Act are deemed (by the transitional provisions) to be issued under the 2004 Act. Therefore, from 31 March 2005, prosecutions can be taken under section 363 in relation to building consents or code compliance certificates issued under both the 1991 and 2004 Acts.

This letter is to advise you that we are currently developing initial guidance material regarding implementation of this section and will have this available by the end of November 2004.

Territorial authorities have a window in which to develop operational policy for section 363. The guidance material we are producing will assist territorial authorities in development of that policy.

The material will include:

- advice on the intent of the policy behind the legislation
- definitional guidance, for example what buildings are intended for public use and which of these buildings are covered by the legislation
- principles that territorial authorities could adopt in regard to formulating their approach to enforcement, and prosecution.

We currently have a team working on the guidance material and we will seek input from the Joint Building Controls Taskforce before finalising our material.

**Other Guidance Material**

As you will be aware, a number of significant provisions in the 2004 Act commence on 31 March 2005. Additional section 363 guidance material will be included in a comprehensive guidance document on the new Act for territorial authorities. This will be available in early 2005.

This document will cover the following matters: the miscellaneous provisions of the Act, certificates of acceptance, notices to fix, warrants of fitness, code compliance certificates, building consents, project information memoranda and the functions, duties and powers of territorial authorities and building consent authorities.

Additional advice and information on the new Act can be found in our regular publication about the Building Act 2004, *Newsline*, in *BIA News* (which will be renamed *CodeWords* when the BIA transitions to the Department of Building and Housing at the end of this month) and on the Building Act 2004 website, [www.building.govt.nz](http://www.building.govt.nz).

Please note this letter has also been sent to your senior building control official.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Ryan', with a stylized flourish at the end.

John Ryan  
**Chief Executive**  
**Building Industry Authority**