



BUILDING BASICS

YOUR BUSINESS – SUPPLEMENT

June 2017 Update

A number of changes in laws and regulations, standards and other obligations have been introduced since this book was published. This June 2017 update includes these changes.

Page 19

BUSINESS PLANS

In the paragraph on Business Mentors New Zealand, replace the sentence “There is a registration fee, but beyond this, the mentoring service is free for up to 2 years.” with this:

After payment of a registration fee, mentoring is available for 6 months with the start-up mentoring programme and 12 months with the business mentoring programme.

Page 24

PAYROLL

In the first paragraph, the minimum pay rates can now be found at www.employment.govt.nz/hours-and-wages/pay/minimum-wage.

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MATERIAL TAKE-OFFS

Regarding the fifth bullet point reference to Rawlinsons Handbook, Rawlinsons ceased publishing the *Rawlinsons New Zealand Construction Handbook* after the 2013/14 edition. An alternative source of information is QV costbuilder, a subscription-based online service at qvcostbuilder.co.nz.

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CONSTRUCTION CONTRACTS ACT

In the third paragraph (“It applies to most construction work ...”), delete the words “... contracts for design, surveying and quantity surveying consultants’ work or ...”

Delete the fourth paragraph “There are some special requirements depending on whether the contract is classed as residential (being done for a homeowner) or commercial.”

After the second paragraph (“The CCA is mandatory, and no-one can contract out of it.”), add these paragraphs:

The Act was amended in 2015 following a comprehensive review.

The definition of ‘construction work’ was amended to include design, engineering and quantity surveying work (collectively called ‘related services’). This means parties to a contract for this type of work will have access to the default payment provisions in the Act and the adjudication process if disputes occur. This expanded definition came into force on 1 September 2016.

The definition of ‘construction site’ was amended to include land where building work is planned but has not yet started. This means that designers, engineers and quantity surveyors can use the Act even if physical building work is not yet under way.

The original Act treated residential construction contracts and commercial construction contracts differently. Now, the Act’s default payment provisions and adjudication processes are open to parties in both residential and commercial contracts. (There is one exception: it is still not possible to seek charging orders against an owner who is a residential occupier of the building site. This includes family trusts.)

Other significant changes to the Construction Contracts Act took effect on 31 March 2017. From that date, retention money withheld under commercial construction contracts must be held on trust. In other words, head contractors must hold an amount payable to their subcontractors on trust as security for the work they do.

Head contractors are now subject to trustee duties and must keep proper records of retention money. Subcontractors are entitled to see these records. Retention money must be paid to subcontractors, and if it isn’t, interest must be paid on it from the date it was due.

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PROGRESS PAYMENTS AND PAYMENT CLAIMS

In the list of four bullet points, change the first one (“the number of progress payments under the contract”) to:

“the number of progress payments under the contract (the 2015 amendment makes it clear that parties can agree on a single payment)”

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THE ADJUDICATION PROCESS

To the fifth bullet point (“Within 5 working days, the respondent may serve a written response and supporting documents to the adjudicator and the other party.”), add these sentences:

Under the 2015 changes to the Act, claimants now have a right of reply to a response within 5 working days. Adjudicators can ignore any new matters raised in the reply and can also allow the respondent an additional response within 2 working days.

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In ‘Employment agreements’, the listed website no longer exists. Change to:

The Employment New Zealand website (www.employment.govt.nz) has useful information, tips and resources. The website also has an employment agreement builder tool that allows you to enter particulars into a template to create a tailored agreement (www.employment.govt.nz/starting-employment/employment-agreements).

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The MBIE information about The Big 6 no longer exists. Information about employee performance can now be found at www.employment.govt.nz/workplace-policies/employee-performance.

Pages 63–64

STATUTORY LIABILITY INSURANCE

The Health and Safety in Employment Act 1992 was replaced by the Health and Safety at Work Act 2015 from 4 April 2016.

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LICENSING

In this section, replace ‘MBIE Building and Housing Group’ with ‘MBIE’.

Replace the last sentence “However, the emphasis on education and training will increase the longer the scheme is in place, and it is currently proposed that, from 2015, licensing will be qualifications based.” with this:

However, the emphasis on education and training will increase the longer the scheme is in place, and it is proposed that, eventually, licensing will require a qualification.

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At the top of the page, the website and email contact details for the Licensed Builder Practitioners Scheme are now www.lbp.govt.nz/lbp and licensing@lbp.govt.nz.

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RESTRICTED BUILDING WORK

In the second to last paragraph under the subheading *External moisture management systems*, change the website www.builditright.govt.nz to www.lbp.govt.nz.

Delete the last sentence “The MBIE Building and Housing Group has produced a series of publications for each of the licence classes associated with this kind of work, for example, *Carpentry: What restricted building work means for you.*”

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SKILLS MAINTENANCE AND CONTINUING PROFESSIONAL DEVELOPMENT

Replace the existing text for this section with the following:

The Registrar checks that you have maintained your knowledge and skills against the minimum licensing standards. This reassessment takes the form of participation in a skills maintenance programme.

Changes to the current skills maintenance programme were introduced on 2 November 2015. LBPs whose skills maintenance period ends before 2 November 2017 follow the old skills maintenance programme. LBPs whose skills maintenance period ends after 2 November 2017 are in the new programme.

The new scheme has brought in a combination of compulsory and elective activities. The two compulsory parts are:

- reading the Codewords/LBP Knowledge link items relevant to your licence class and completing a quiz for each one
- showing at least two examples of on-the-job learning relevant to your licence class in the 2-year skills maintenance period. These can be things like learning to use a product you haven't used before or completing a job on a site that is new to you, such as one in an extra-high wind zone.

A form for recording on-the-job learning can be downloaded from the LBP website.

You also need to carry out a certain number of elective activities. As with the old skills maintenance programme, each hour on an elective activity earns you 1 point. The number of points you need to get depends on the licence class. Elective activities include things like attending conferences, seminars, lectures and trade events; reading trade magazines; spending time with a mentor; learning about on-the-job safety, and so on.

Of course, you need to record your activities/points and keep receipts, magazine subscription invoices and so on as evidence. There is an LBP online system that makes record keeping easier. It also makes applying for relicensing much easier when the time comes.

For further information on skills maintenance, see www.lbp.govt.nz/lbp/im-an-lbp/skills-maintenance.

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STANDARDS

Replace NZS 4246:2010 *Energy efficiency – Installing insulation in residential buildings*

with NZS 4246:2016 *Energy efficiency – Installing bulk thermal insulation in residential buildings*.

HISTORIC PLACES ACT

The Historic Places Act 1993 has been replaced by the Heritage New Zealand Pouhere Taonga Act 2014. The requirements outlined remain essentially the same. The website is now www.heritage.org.nz.

Page 85

HEALTH AND SAFETY

Replace the second paragraph with this:

WorkSafe, in consultation with industry, has developed a number of codes of practice and guidelines relating to specific construction hazards – see www.worksafe.govt.nz.

Delete this heading and the paragraphs underneath it:

HEALTH AND SAFETY IN EMPLOYMENT (HSE) ACT 1992

Replace with the following:

HEALTH AND SAFETY AT WORK ACT 2015

The new Health and Safety at Work Act 2015 came into force on 4 April 2016, replacing the Health and Safety in Employment Act 1992.

The new law covers a person conducting a business or undertaking (PCBU), which will often be a company but could be an individual. The PCBU must ensure, as far as is reasonably practicable, the health and safety

of employees, contractors, subcontractors and other workers they engage. Action will depend on the level of risk involved and what a business can control.

The law also has a new duty of consultation. This means that all those with a duty under the law – the builder, subcontractors and others – must consult, cooperate and coordinate as far as reasonably practicable to ensure compliance with the duty.

Workers or officers, including directors, are not the PCBU, but they have separate personal liability. Directors can be prosecuted if they don't exercise due diligence to ensure the PCBU complies with its duties and obligations. They will need to know about how health and safety is being taken care of on the job.

Regulations have been developed to cover risk and workplace management, worker participation, asbestos (see below) and major hazard facilities.

Delete this heading and the paragraphs underneath it:

HEALTH AND SAFETY IN EMPLOYMENT REGULATIONS 1995

Replace with the following:

HEALTH AND SAFETY AT WORK (GENERAL RISK AND WORKPLACE MANAGEMENT) REGULATIONS 2016

These regulations explain the duties of PCBUs in relation to managing risks, exposure and health monitoring in the workplace. They also set out specific duties related to ensuring the health and safety of young persons in the workplace.

Some examples include:

- identifying hazards and putting control measures in place
- providing information, supervision, training and instruction for workers on risks and hazards
- providing adequate workplace facilities and first aid
- ensuring workers have personal protective equipment.

WorkSafe has produced publications giving guidance on these regulations. *General Risk and Workplace Management* Parts 1 and 2 can be downloaded from the website www.worksafe.govt.nz.

HEALTH AND SAFETY AT WORK (WORKER ENGAGEMENT, PARTICIPATION, AND REPRESENTATION) REGULATIONS 2016

These regulations aim to ensure effective worker participation. They outline the duties of the PCBU in relation to work groups, health and safety representatives and health and safety committees. This includes information on:

- who can be a health and safety representative and how they are chosen
- who can be on a health and safety committee and the requirements of the committee
- training for health and safety representatives.

WorkSafe has produced a publication giving guidance on these regulations. *Worker representation through Health and Safety Representatives and Health and Safety Committees* can be downloaded from the website www.worksafe.govt.nz.

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Delete this heading and the paragraphs underneath it:

HEALTH AND SAFETY IN EMPLOYMENT (ASBESTOS) REGULATIONS 1998

Replace with the following:

HEALTH AND SAFETY AT WORK (ASBESTOS) REGULATIONS 2016

New regulations concerning asbestos came into force on 4 April 2016. These replace the 1998 regulations. These regulations impose additional duties on PCBUs in relation to work involving asbestos and also introduced a new licensing system for asbestos removalists.

NEW LICENSING SYSTEM FOR ASBESTOS REMOVAL

As part of the new asbestos regulations, a new national licensing system for asbestos removal was introduced on 4 April 2016. Three types of licence are available under the new asbestos regulations, which cover what types of asbestos can be removed:

Class A licence

Any type or quantity of asbestos or asbestos-containing material (ACM), including:

- any amount of friable asbestos or ACM
- any amount of asbestos-contaminated dust or debris (ACD)
- any amount of non-friable asbestos or ACM.

Class B licence

- Any amount of non-friable asbestos or ACM.
- ACD associated with removing any amount of non-friable asbestos or ACM.

Asbestos assessor licence

- An asbestos assessor provides air quality monitoring during removal work, inspects the finished job and provides a clearance certificate.
- A licensed asbestos assessor will be required to assess Class A asbestos removal work from 4 April 2018 onwards.

No licence is required for:

- removing up to and including 10 m² of non-friable asbestos or ACM, cumulatively, over the whole course of the removal project for the site
- removing small quantities of ACD that is not associated with removing friable or non-friable asbestos.

Current certificate of competence holders can continue removing asbestos (in the categories specified on their certificate) and supervise asbestos removal until their certificate expires.

The *Approved Code of Practice: Management and Removal of Asbestos* sets out how to comply with the legal requirements around asbestos, including the 2016 Regulations. The code can be used in court as evidence of whether or not someone complied with the requirements of health and safety law.

The Approved Code of Practice replaced the old *New Zealand Guidelines for the Management and Removal of Asbestos* on 3 November 2016.

There is good information about the new rules around working with asbestos on the website www.worksafe.govt.nz.

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HAZARDOUS SUBSTANCES AND NEW ORGANISMS ACT 1996

Replace the reference to the “Health and Safety in Employment Act” with the “Health and Safety at Work Act”.

Replace the last paragraph with this:

There is good information about employers’ responsibilities around health and safety at www.worksafe.govt.nz and www.sitesafe.org.nz.

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GUARANTEES FOR SERVICES

In the last line, change the web address to www.consumerprotection.govt.nz/for-business.

Before the section

WARRANTIES UNDER THE BUILDING ACT

add this new section:

BUILDING ACT

The Building Act contains a number of consumer protections. These apply to all contractors (such as builders, painters, plumbers, kitchen suppliers and so on) that directly contract to the owner where the contract value is over \$30,000 including GST.

The requirements include:

- a written contract for building work over \$30,000 (including GST)
- practitioners must provide the MBIE-prescribed checklist to clients before a contract is signed if the building work is likely to cost \$30,000 or more or if clients request it
- there is prescribed minimum content for contracts plus default conditions that apply where contracts are deficient or non-existent
- there are general remedies for breaches of implied warranties
- there is an automatic 12-month defect repair period that begins when the work has been completed, and contractors must fix any defects that a client notifies them about in writing
- on completion of the contract, contractors must give to the client:
 - a copy of any current insurance policy held for the building work (policies that expire before the work is finished are not counted)
 - guarantees or warranties for materials or services used in the building work and information such as how to make a claim
 - whether the guarantees or warranties are transferable to new owners and whether or not they must be signed and returned to the issuer
 - details on maintenance requirements for the work, especially if this is required to meet Building Code, guarantee or warranty requirements.

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MARKETING

Replace the second paragraph with this:

Sector information is available from many sources, including Statistics New Zealand (www.stats.govt.nz), MBIE (www.mbie.govt.nz), training organisations and trade associations.

CREATING A MARKETING PLAN

Replace the website shown with www.business.govt.nz/how-to-grow/boosting-sales/marketing-and-sales.

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PERSONAL PROTECTIVE EQUIPMENT (PPE)

The Health and Safety in Employment Act was replaced by the Health and Safety at Work Act on 4 April 2016.

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MAINTENANCE

Replace the sentence “Electrical tools used on construction sites should be tested and tagged every 3 months by a competent person.” with this:

Electrical equipment on building sites must be tested and tagged every 3 months. See AS/NZS 3012:2010 Electrical installations – Construction and demolition sites.

DEPRECIATION

In the last paragraph, replace the web address with www.ird.govt.nz/business-income-tax/depreciation.

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RECOGNISED ORGANISATIONS AND ASSOCIATIONS

At the bottom of the page, change the Building Industry Federation website to www.bifnz.co.nz.

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Change the New Zealand Institute of Surveyors website to www.surveyors.org.nz.

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FOLLOW-UP

After the five bullet points at the bottom of the page, add this paragraph:

Consumer protections in the Building Act that came into force on 1 January 2015 include an automatic 12-month defect repair period. This begins when the work has been completed.

Contractors must fix any defects that a client notifies them about in writing. Things must be put right within a reasonable timeframe. If the contractor believes that a defect is not their fault or the fault of the products they have used, they must prove this if there is a dispute.

Also, after the work is completed, the contractors must give to the client details of insurance they hold, copies of guarantees/warranties that apply and maintenance requirements. You can find help with maintenance requirements on the BRANZ website www.maintenanceschedules.co.nz.

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CONTRACTS

Replace the fifth paragraph “Contracts are due to become a legal requirement for all building work with a value of over \$20,000, but they also provide useful protection for both parties on smaller jobs.” with this:

A written contract is compulsory for residential building work costing \$30,000 or more (including GST) whenever the contractor has been given the job directly by the homeowner.

Even on smaller jobs where written contracts are not a legal requirement, contracts can still provide useful protection for both parties.

All contracts for work costing \$30,000 or more must contain certain key information. A good way to ensure compliance with the law is to use an off-the-shelf contract form.

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OFF-THE-SHELF CONTRACT FORMS

Change the date of the standard NZS 3910 from 2003 to 2013: NZS 3910:2013 *Conditions of contract for building and civil engineering construction*.

Page 164

TEMPORARY SITE ACCOMMODATION AND ABLUTIONS

Change “Health and Safety in Employment Regulations” to “Health and Safety at Work (General Risk and Workplace Management) Regulations 2016”.

Page 167

PROJECT INFORMATION MEMORANDUM

Third bullet, change “Historic Places Trust” to “Heritage New Zealand”.

Page 168

RESOURCE CONSENTS

Delete the last two paragraphs on this page (starting “The MBIE Building and Housing Group ...”)

Add these paragraphs to the bottom of the page:

The Resource Legislation Amendment Act 2017, which became law on 18 April 2017, made significant changes to five different Acts, including the RMA. Some changes to the RMA took effect immediately, others have transitional periods. The majority of changes to the resource consent process come into force on 18 October 2017.

Among the changes:

- The RMA has a new section that requires councils to treat boundary activities as permitted if written approval is given by the relevant neighbour(s) and certain information is supplied to the council. Examples of boundary activities include yard setbacks, recession planes/height planes or fence rules where these relate to the boundary.

- Councils now have discretion to exempt activities from needing a resource consent for ‘marginal or temporary’ rule breaches if certain criteria are met, such as any adverse effects of the activity on a person being “less than minor”.
- There is a new fast-track process for resource consent applications that are district land use activities with controlled activity status, if an electronic address for service has been provided. Fast-track applications must be processed in 10 working days. Previously, all non-notified resource consent applications were subject to the same 20-working-day process, regardless of how simple the proposal was.
- There is a new step-by-step process to determine whether to notify resource consent applications.
- Regulations may preclude notification of certain activities or limit who may be considered ‘affected’.
- Decision makers on resource consents or notices of requirement must have regard to any measures proposed to achieve positive effects on the environment to offset or compensate for any adverse effects.
- RMA public notices must be clear and concise and available on publicly accessible websites.
- Subdivision of land is permitted unless it contravenes a rule in a national environmental standard or district plan.
- Councils have new functions to ensure that there is sufficient residential and business development capacity to meet expected demand.

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BUILDING CONSENTS

In the list of bullet points headed “Some typical examples of work that requires building consent include:”, note the following updates:

- repiling of all or part of a building

Replacing some old rotten wooden house piles with new treated timber piles in the same positions does not require a consent as long as the work is not complete or substantial replacement.

- demolition of a sound building

Full demolition of a detached building up to 3 storeys high does not require building consent, whether or not it is damaged. However, partial demolition is not exempt from building consent, other than as permitted by exemption 31 (Removal of a building element).

- plumbing and drainage work (except repair of existing)

There is an exemption for sanitary plumbing and drainlaying carried out by people authorised under the Plumbers, Gasfitters, and Drainlayers Act 2006. For example, if a registered certifying plumber replaces an old toilet pan and cistern with a new close-coupled toilet suite, this does not require building consent.

- constructing a shed greater than 10 m²

An existing 1-storey detached privately owned shed can be demolished and replaced without a building consent, provided the new shed fits within the same footprint as the original and the building is not intended for human habitation.

- building fences or walls higher than 2 m

Building work relating to fences (including garden walls) up to 2.5 metres high does not need a building consent. (Fences to spa pools and swimming pools do require building consent, however.)

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EXEMPT BUILDING WORK

In the list of bullet points headed “The following are some examples of work that does not require a building consent:”, note the following updates:

- Building a small garden shed (under 10 m² in area).

An existing 1-storey detached privately owned shed can be demolished and replaced without a building consent, provided the new shed fits within the same footprint as the original and the building is not intended for human habitation.

- Installing any fabric, glass or metal awning on any building that is on the ground or first storey level and does not exceed 15 m².

Awnings up to 20 m² can now be installed without building consent.

- Constructing a deck from which it is not possible for a person to fall more than 1 m even if the deck collapses.

The limit is now 1.5 m.

- Building a fence (except a fence as defined in section 2 of the Fencing of Swimming Pools Act 1987) to a height not more than 2 m above ground.

The limit is now 2.5 m.

- Installation, replacement or removal of a window (including a roof window) or an exterior doorway, provided structural stability is unchanged and the replacement is not to address a weathertightness or durability failure in the specified minimum durability period required by the Building Code.

The exemption applies only to dwellings of up to 2 storeys.

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CLEAN-UP, REINSTATEMENT, MAKING GOOD AND REMEDIAL WORK

Replace the paragraph “Building contracts often set a time (the defects liability period) in which making good must be undertaken, which can be as little as 1 month or as long as 12 months.” with this:

Consumer protections in the Building Act include an automatic 12-month defect repair period. This begins when the work has been completed. Contractors must fix any defects that a client notifies them about in writing. Things must be put right within a reasonable timeframe. If the contractor believes that a defect is not their fault or the fault of the products they have used, they must prove this if there is a dispute.

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MAINTENANCE RECORD FOR CLIENT

Replace the second paragraph “While there is no formal obligation on the builder to provide anything more than the warranties, certificates and other documentation associated with the job, taking the time to discuss things that an owner should do or things they should check for as time passes is another way a builder can stand apart from the crowd.” with this:

Changes to The Building Act that came into force on 1 January 2015 place a requirement for contractors to provide the client with certain information at the completion of the contract. This includes:

- a copy of any current insurance policy for the building work (policies that expire before the work is finished are not counted)
- guarantees or warranties for materials or services used in the building work and information such as how to make a claim
- whether the guarantees or warranties are transferable to new owners and whether or not they must be signed and returned to the issuer

- details on maintenance requirements for the work, especially if this is required to meet Building Code, guarantee or warranty requirements.

Beyond just passing over (or sending) the required information, taking the time to discuss things that an owner should do or things they should check for as time passes is another way a builder can stand apart from the crowd.

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Delete the first bullet point (Consumer Build).

Replace the second bullet point with this:

- Registered Master Builders – the Home Maintenance Checklist is available on the Homeowner Info section of their website under Useful Documents. See www.masterbuilder.org.nz.

Replace the third bullet point with this:

- BRANZ – www.maintainingmyhome.org.nz is a free searchable web-based guide developed for New Zealand homes and conditions, and www.maintenanceschedules.co.nz is a free web-based tool for creating maintenance schedules.



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