



December 2014

Another year whizzes by

The end of the year is almost on us. While it's a good time to reflect, builders in particular need to be considering next year now, as some significant changes will occur on January 1.

The end of the year is a good time to consider what is ahead of us and also to reflect:

- Projects successfully completed – were our clients satisfied and happy?
- Are there areas where we could have done things better or more safely?
- Relationships with clients, designers, subtrades and BCAs – could they have been managed better?

What do your customers think of you?

MBIE has recently surveyed people who have had building work done, and the key findings from unhappy clients were:

- we are poor at doing what we say we will do and when we will do it
- a frustration that buildings were not finished on time
- when a variation was requested, the costs of that variation were not identified or explained to them
- difficulty in getting builders back to fix defects.

Important changes on 1 January

The changes to the Building Act focus on building work and consumer protection. While they will have a more direct impact on builders, designers need to be aware of the changes, particularly if they are providing full contract documentation for the building work.

- All building work over \$30,000 (GST inclusive) must be done under a formal written contract.
- For incomplete contracts (where the minimum required conditions are not included) and where there is no contract, default provisions will be applied.
- There is a requirement for builders to provide a disclosure statement that outlines their legal status. This includes whether they work as an individual, a partnership or a company (and if the contractor is a limited liability company, the role and business history of each director).
- There is a requirement to confirm that the client having building work done has been referred to the MBIE prescribed checklist.
- Builders must disclose whether they have been involved in any disputes and the skills, qualifications and licensing status of the building practitioners doing the work.
- There is an automatic no-questions 12-month defect repair period that applies.
- There is a new requirement to supply the client with information on warranties and maintenance after completion.
- New remedies for breaches of implied warranties come into force.
- Builders must ensure that the owner is aware of the MBIE checklist that covers the building process.

The law changes don't just apply to builders but to residential work done by any tradesperson.

Stop press

The MBIE [prescribed checklist](#) and the sample [disclosure statement](#) are now available.

What is an implied warranty?

An implied warranty is one under a sales contract, whether written or oral, that provides a guarantee that the item sold is new, merchantable and fit for the purpose intended. On the MBIE website, it states that the following warranties are implied and are taken to form part of the contract:

- The building work will be done properly, competently and in accordance with the plans and specifications.
- All the materials used will be suitable and, unless otherwise stated in the contract, new.
- The building work will be consistent with the Building Act and the Building Code.
- The building work will be carried out with reasonable care and skill and completed within the time specified or within a reasonable time if no time is stated.
- The household unit will be suitable for occupation at the end of the work.

If the contract states any particular outcome and the owner relies on the skill and judgement of the contractor to achieve it, the building work and the materials will be fit for purpose. They must also be of a nature and quality suitable to achieve that result.

Builders can't contract out of an implied warranty. It applies to the work of the builder and of anyone – employees and subcontractors – the builder is responsible for.

Are you current?

Most designers and builders involved in residential building work should have a copy of at least E2/AS1 and NZS 3604, but are they the latest versions? All Acceptable Solutions, standards and BRANZ publications undergo revision and amendment, and you do need to be working from the current or latest version.

- For NZS 3604 *Timber-framed buildings*, it should have 2011 on the front cover and include Amendments 11 and 12, which are given in [B1/AS1](#)
- For [E2/AS1](#), it should be the Third Edition including Amendment 6.
- The BRANZ [House Building Guide](#) should be the 3rd edition.

Getting it taped – correctly

There are a number of bitumen-based flexible flashing tapes on the market that have a metallic looking finish. However, appearances can be deceiving – some have an aluminium foil laminate face and others are a metallised polyester, and it is difficult to distinguish between them.

It is also becoming more common for sealant to be used to form the E2/AS1 airseal around windows and doors. Where the sealant is in contact with the metallised polyester plasticiser, migration from the sealant can draw out oil from the bitumen adhesive layer and destroy the sealant. It can also result in visible staining as the affected bitumen leaches from the tape.

Where you propose to use a metallised polyester-faced tape and a sealant airseal, consult both product suppliers for a solution.

Leaching may also occur with an aluminium foil-faced tape where the foil is damaged and the sealant comes into contact with the bitumen. As far as BRANZ is aware, sealant airseals are compatible with an acrylic or butyl tape.

How is your understanding?

One of the areas where not much heed is paid to is understanding the industry we work in. While we often hear complaints about it, do we really fully understand it?

Some examples include statements like:

'I've built it in accordance with the Code' – The New Zealand Building Code does not tell us how to build, it tells us how our buildings should perform. Acceptable Solutions give us examples of how we can build to comply.

‘Why do I need to do all this extra stuff? I’ve never had a building that leaks’ – Maybe this person has been super lucky as all buildings will leak at some time in their life. The aim of changes in Code clause E2 *External moisture* (where cavities have been part of the scene since 2005) is to ensure buildings we design can cope with that occasional water entry. Alternatively, we need to ensure they are a low weathertightness risk if we want to use a direct-fixed cladding that has less of the desired redundancy.

‘I’ve got a copy of the Code in the ute’ – The document being referred to is typically NZS 3604 or an Acceptable Solution, typically E2/AS1, neither of which are the ‘Code’. E2/AS1 is an Acceptable Solution for Building Code clause E2 *External moisture*, which, if followed, is deemed to comply with the Code’s performance requirements. Similarly, Acceptable Solution B1/AS1 for Code clause B1 *Structure* references NZS 3604 (incorporating the B1/AS1 amendments) as a means of compliance for timber-framed structures.

‘The product we are using is BRANZ approved’ – It is common for a BRANZ Appraisal to be incorrectly considered an approval – in fact, they are an assessment of fitness for purpose if used within the scope of the Appraisal. The only approval currently available is a CodeMark certification. If use is strictly in accordance with the CodeMark certification, the product or system is deemed to comply with the specified Building Code clauses and therefore must be accepted by the BCA.

‘BCAs use RFIs to delay the consent process’ – While this may occur, in a number of cases, the request for information (RFI) is warranted as the documentation does indeed lack sufficient detail. One area designers need to brush up on is providing verifiable evidence that their proposed alternative methods will meet the Building Code objectives, functional requirements and performance. It is common for them to be included without explanation.

‘You guys at BRANZ make the rules’ – While we provide Building Research Levy-funded input into Acceptable Solutions, Verification Methods and standards development, we don’t make the rules.

‘It’s got a Code of Compliance’ – This is a term used regularly in the media and by many in the industry. The correct term should be a ‘Code Compliance Certificate’, and this is changed to Consent Completion Certificate under the 2012 Building Amendment Act.

‘Building permit’ – This became ‘building consent’ in 1992, but we still see ‘permit’ commonly used.

‘BRANZ is a just another government department’ – Not at all true. BRANZ is an independent and impartial research, testing, consulting and information company owned by the Building Research Association of New Zealand, which itself is an independent incorporated society. BRANZ is overseen by a [Board](#) with significant building, construction, science and business experience. The BRANZ Board is elected by BRAC ([Building Research Advisory Council](#)) made up 17 people representing a range of building industry organisations.

It’s Santa time yet again!

From all of us at BRANZ who help bring you *Guideline*, we wish you a Merry Christmas and a Happy (and hopefully prosperous) New Year.

