

Who's Liable Now?

NZ's Building Reform Shifts the Blame Game

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28 August 2025

Introduction

The [Government is proposing significant reform](#) to the liability framework for building defects. This move, aimed at reducing the financial burden on local councils, has the potential to reshape the construction landscape, redefine accountability, and expose homeowners and builders to new risks.

Current Framework: Joint and Several Liability

New Zealand currently operates under a joint and several liability system. This means that when multiple parties contribute to a build (e.g. a builder, subcontractors, and the local council), each can be held jointly and severally liable for any building defects that arise.

In multi-defendant proceedings, it is common for defendants to bring crossclaims against one another to apportion responsibility. For example, a builder may be found 80% responsible for a defect due to their role in carrying out the work, while a council may be found 20% responsible for failing to identify the defect during inspections. However, under the current system, if the builder is insolvent, the council will be liable to the homeowner for the full amount, despite its limited responsibility.

As a result, councils are frequently targeted in litigation or settlements by homeowners because:

- they have “deep pockets” funded by ratepayers;
- builders are often insolvent or have ceased trading by the time defects are discovered;
- builders often do not hold professional indemnity insurance, and where they do, coverage for workmanship and water ingress is often excluded.

This has led councils to effectively act as insurers of last resort.

Proposed Reform: Proportionate Liability

The Government plans to shift to a proportionate liability system, under which each party is only responsible for their share of the defect. Using the example above, the council's liability would be capped at 20%.

Impact of Changes

For Councils and Ratepayers:

The primary benefit is reduced exposure to litigation. Less ratepayer money will be spent on legal proceedings and settlements, allowing councils to redirect funds to other priorities.

For the Consenting Process:

The Government has identified that the current liability framework has made councils risk-

averse, contributing to delays in the consenting process. While the proposed changes may reduce these delays, there is a risk that councils may become less incentivised to rigorously assess building plans and inspections, potentially increasing the likelihood of defects going undetected.

Insurance Uncertainty

At this stage, it remains unclear how insurance arrangements will operate under the new framework. Insurers have historically sought to limit their exposure to building defects and water ingress; particularly in the wake of the leaky building crisis. Given this, we are sceptical that insurers will be motivated to offer comprehensive products covering all such risks.

Any required insurance coverage is likely to be a cost passed on to consumers, potentially increasing the overall cost of new builds. If there is a gap in coverage, or if a builder fails to maintain the required policy, homeowners may be left relying on the builder's solvency to recover the bulk of their defect claims. This presents a significant risk, especially where builders are no longer trading or are unable to meet their financial obligations.

Implications for Homeowners

Homeowners may become more discerning about the financial stability of their chosen building company. We anticipate a shift toward engaging larger, more established builders who are more likely to remain in operation when defects arise and who are better positioned to maintain adequate insurance coverage. This approach may offer greater assurance that defect claims can be pursued effectively, even years after construction.

What's Next?

For the Government's proposed changes to succeed, they will need to be supported by enforceable insurance requirements and robust regulatory oversight.

The bill is expected to be introduced into Parliament early next year and will need to progress through the legislative process. At this stage, there is no need for concern, as the final form of the law is not yet known, and it remains to be seen whether it will pass at all.

If you are a builder, designer, or planning to build a home and want to understand how these proposed changes could affect you, or what steps you can take to prepare, please contact our Dispute Resolution team.