



THE SHIFT TO PROPORTIONATE LIABILITY: WHAT IT MEANS IN PRACTICE

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Presented by:

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JOINT AND SEVERAL V PROPORTIONATE

Joint and several

- The current position in NZ
- Where two or more parties are liable for the same loss, each is liable for the full amount of the loss. Parties with deep pockets sometimes pay more than their share (often Councils at ratepayer expense)
- Contribution can be sought (s17(1)(c)) Law Reform Act, subject to solvency risk

Proportionate liability

- The Court apportions responsibility between the applicable parties
- Each party is liable only for its proportionate share
- Insolvency risk sits with the claimant

THE BILL

THE BILL – STATUS

- a. The Building Amendment Bill amends the Building Act. Introduced to Parliament and passed its first reading on 2 July 2026
- b. Select Committee to receive public submissions from industry, councils, insurers, and consumer groups. (15 November 2026)

THE BILL – SCOPE

- a. Applies to claims for loss or damage arising out of or relating to defective building project work
- b. “Building project work” is defined broadly to include:
 - i. building work;
 - ii. design work for, or in connection with, the construction or alteration of a building
 - iii. performance or function of territorial authorities.
- c. Building work is work for or in connection with a building. A building is a structure intended for occupation (by people, animals, stuff)
- d. Civil infrastructure? Only if for or in connection with a building
- e. No distinction between residential/consumer and commercial

PROPORTIONATE LIABILITY

WHEN IT APPLIES FROM

393D Proportionate liability for apportionable claims

- (1) In a proceeding involving an apportionable claim,—
 - (a) the liability of a defendant who is a concurrent wrongdoer in relation to that claim is limited to an amount reflecting that proportion of the loss or damage claimed that the court or adjudicator considers just and equitable, having regard to the extent of the defendant's responsibility for the loss or damage; and
 - (b) the court may give judgment, or the adjudicator may make a decision, against the defendant for not more than that amount.
- Proportionate liability applies in relation to:
 - building work for which a building consent was issued on or after that subpart comes into force; or
 - if no consent required, building work that is started on or after that subpart comes into force
- Proportionate liability (subpart 2A) comes into force one year after Royal assent

ARBITRATIONS, ADJUDICATIONS, CONTRACTING OUT

- Expressly includes arbitration
 - Arbitration Act is amended. Requires arbitrators to determine proportionate liability where it applies
- Expressly includes Construction Contracts Act 2002 adjudications
 - CCA likewise amended to require adjudicators to apply proportionate liability where it applies
- Doesn't apply to claims dealt with by alternate dispute resolution by agreement (mediation, negotiation, settlement agreements)
- For non-residential buildings and larger residential buildings (i.e. those over 10 metres high or outside the definition of "house" or "small-to-medium apartment building") "current contracting practices can continue".
NB: Contract terms don't limit claims by subsequent purchasers/third parties – but proportionate liability will

EXAMPLE 393D

A property owner contracts with a head contractor to construct a new house. The head contractor subcontracts the roofing aspects of the construction to a roofing subcontractor. A building defect in the roof of the new house causes a \$100,000 loss, which is a single apportionable claim even if separate causes of action may exist in contract and tort. The owner brings a breach of contract claim in court against the head contractor. The head contractor joins the roofing subcontractor and the building consent authority as parties to the proceeding.

The court issues a decision that holds the head contractor responsible for 70% of the damages, the roofing subcontractor responsible for 20% of the damages, and the building consent authority responsible for 10% of the damages.

BUILDING WARRANTY (SUBPART 2C)

- a. 1 year of adequate cover for all building work that is defective, starting from the time prescribed under the regulations; and
- b. 10 years of adequate cover for all building work that is defective that consists of structural defects, starting from the time prescribed under the regulations.
- c. Start date not currently clear. Nor is 'adequate cover' incl. what the insurer can legitimately exclude.
- d. Applies to a residential building project involving restricted building work that requires a building consent if the project is for building work in relation to:
 - a or a new small-to-medium apartment building (<10m height); or
 - renovation work in relation to existing residential unit/house where the estimated value exceeds \$100,000.
- e. A "small-to-medium apartment building" means a building containing 2 or more residential units or residential facilities, that does not contain parts that are neither residential units nor residential facilities, and that has a maximum calculated height of less than 10 metres.
- f. Subject to any carve-outs by regulation.
- g. Registration 3 months from Royal assent. Warranty provisions come into force 1 year from assent.

BUILDING WARRANTY (CONT.)

- h. The obligation falls on the homeowner-client. Must be a contract or other arrangement that is legally enforceable by the homeowner-client (or a subsequent owner).
 - The benefit of the home warranty must be transferable to any subsequent owner of the property to which the warranty relates during the period in which cover is provided. Runs with the property, not the original client.
- i. Warranty providers must be registered. If Lloyd's underwriters are liable under the home warranty, the Lloyd's cover holder that arranged the warranty must be a registered home warranty provider.
- j. Before granting BC, BCA must consider whether a warranty exists and is adequate. If not, BCA to issue a certificate preventing works from commencing until warranty obtained. Doesn't affect processing of consent application.
- k. An offence to carry out any building work in contravention of a certificate (\$50k/\$150k).

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THANK YOU



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