

23 August 2024

Kia ora Select Committee,

Re: Building (Earthquake-prone Building Deadlines and Other Matters) Amendment Bill

On behalf of the Association of Building Compliance, we would like to make a submission to the Select Committee on behalf of our 938 members. Our membership consists of people who are registered Independent Qualified Persons, Building Officials (Building Compliance Auditors, Compliance Schedule developers and Building Consent processors), Fire and Emergency NZ Advisors Risk Reduction and Building Compliance industry people.

Our submission relates to the proposed new section of the Building Act 108A Duties of independently qualified person. We have provided comments in relation to each point of the proposed amendment.

108A Duties of independently qualified person

- 1) An independently qualified person must not state (whether in a building warrant of fitness or any other document) that the inspection, maintenance, or reporting procedures in a compliance schedule relating to a specified system (for example, a lift or ventilation system) have been complied with during the previous 12 months if those inspection, maintenance, or reporting procedures for that system have not been fully complied with during that period.

We do not disagree with this proposed section. The IQP's should be held accountable for the work they undertake. However, it should not only be the IQP's who are held accountable, it should also be the owners, designers, fire engineers, installers and council officials who are also liable if the work that they undertake is done incorrectly. Is it the role of the IQP to question the design? The approval of the design? Any alternative solutions? The final inspection for Code of Compliance? The decisions made and accepted prior to the IQP being engaged are not the responsibility of the IQP to enforce. They are there to confirm that the specified system installed in the building performs in accordance with the performance standard and will continue to perform. Currently if an IQP picks up a fault with the building that has been accepted by council then it is a hard path and an unpaid path for the IQP to correct. Auckland City Council has a 3-year backlog of these issues. If the IQP submits a change to the specified system via a Form 11 request, it takes time for it to be processed, so what does the IQP inspect against? The Compliance Schedule which is wrong, or the proposed changes submitted in the

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Form 11 which are not approved yet? Either way is not correct in accordance with the Act. So, will they be prosecuted for this?

- 2) Every person who acts in breach of subsection (1) commits an offence.
- 3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that—
 - a) the failure to comply with subsection (1) was due to—
 - i) a reasonable mistake; or
 - ii) reasonable reliance on information supplied to the defendant by another person; or

The information supplied to the IQP comes from multiple sources and is not limited to the following:

- Compliance Schedule produced by the Council – this is often lacking in detailed information as to the location of the specified systems and their components in the building, which standard applies for inspection and maintenance procedures.
 - If an alternative solution is used for the compliance pathway for the building, this is often not shown on the compliance schedule. Most IQP's would refer to the Acceptable Solutions for guidance on building compliance.
 - Building Act s112 allows for “As near as reasonably practicable” solutions to be accepted by councils. These decisions sometimes allow for a lesser standard of compliance than the Acceptable Solutions i.e. not require panic bolts on crowd buildings with more than 100 occupants. These decisions are often not communicated to the wider community who use or inspect the building and not reflected on the Compliance Schedule. It is hard for the IQP to know this and often they accept what was previously accepted. This is because the IQP is often different each year and unless there are signs of a change being made then they accept what is there if it works correctly.
 - Information of maintenance and testing is often held by other companies which are different to the IQP. This information is sometimes not forthcoming if there are financial issues. This information should be lodged against the building after the maintenance and inspections have been completed and the financial issue should be separate. This would allow IQP's access to it or new contractors access to it, to assist with ensuring that the building is safe for the users. This sort of practice is prevalent and has been exacerbated by the introduction of the new MBIE forms, B-RaD and S-RaD, which allow IQP's to submit incomplete documentation for buildings and be accepted by some, not all council.
- b) the defendant took reasonable precautions and exercised due diligence to avoid the failure.
- 4) A person who commits an offence under subsection (1) is liable on conviction, —
 - a) in the case of an individual, to a fine not exceeding \$50,000;
 - b) in the case of a body corporate, to a fine not exceeding \$150,000.

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The above can be summarised into the following main issues:

Compliance Schedules

- Lack of information and detail on the compliance schedule
- Often only part of the Fire design report or no fire design report is included with the Compliance Schedule

IQP Registration

- There are currently seven IQP registration panels which work independently of one another. Each one has its own rules and requirements for registration
- Each one requires a registration fee. An IQP who works nationwide has to register seven times and pay seven registration fees
- **We strongly recommend** that a national IQP registration panel be adopted to provide consistency and ease of processing for all IQP's

National Building Compliance Register

- Currently an IQP completes an inspection on behalf of the owner and submits to the owner the completed Form 12A. If the building is not compliant then a Form 12A is not issued.
- Building Owners who do not like a failed building inspection will often go to another IQP for another inspection hoping that without the building history and no evidence provided of the failed inspection, the new IQP will then pass the building and supply a Form 12A. This is referred to as "shopping around".
- All inspections whether failed or passed should be lodged with a council so that if a failed inspection is lodged and the next is passed, then a Building Audit could be carried out by the council to check if the building is actually compliant.
- If the failed inspection is lodged then the subsequent IQP could see the defects and ensure they inspect them more closely to ensure they have been rectified.
- **We recommend** that a national building compliance register is developed similar to one for a vehicle to ensure consistency and safety for users of the building.

IQP Qualifications

- There are some installation qualifications for specified systems but there is no formal qualification for IQP's. Each IQP registration panel asks for different requirements of an IQP to be registered in their region
- A national qualification for all IQP's should be adopted with specialized additions for each specified system. This should include a core qualification covering the legislation, roles and responsibilities, followed by specialty components for each of the specified systems
- **We recommend** that this qualification becomes the benchmark for the IQP registration and be phased in over 5 years i.e. existing IQP's will have 5 years to gain the core qualification

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Council Qualifications

- Council Building Consent Officials are required to either have a Regulation 18 qualification or be working towards one or be able to undertake one. The official is often not fully conversant with the integral parts of building design and just follows a checklist process without the underpinning knowledge.
- This lack of knowledge and understanding often is transferred into the quality of the Compliance Schedules that are produced. More training is required in this area and should be undertaken prior to being able to produce Compliance Schedules
- The Territorial side of the Council which administers the Compliance Schedules and Building Warrant of Fitness Regime do not require a qualification to undertake the role. Part of their role is to conduct building audits. With their lack of knowledge, they are often making decisions which are wrong and are causing additional work for IQP's to rectify at their own a cost to their own. We can provide many examples of this happening throughout the country
- **We recommend** that Building Officials should all have a minimum standard of knowledge and/or qualifications to undertake the role prior to starting it.

Building Compliance Documentation

- Access to the building Fire Design report, Compliance Schedule and history is often hard to get and each council has their own policy on access to it and charging for it
- IQP's already have to pay for registration, relevant NZ Standards or international ones to be able to conduct business and now they are asked to pay for information which the council should supply with the Compliance Schedule
- This information is the information relied upon to conduct an inspection so that they do not conflict with the proposed Section 108A
- **We recommend** that access to this information is made publicly available for the IQP's/Building Owners to download from the councils at no cost

We believe that you are looking at only one aspect of building compliance and laying all the failures of previous people involved with the building at the feet of the IQP. When the IQP has no involvement with the building design, decision making of consents, commissioning tests and final inspections for code of compliance, why should they be the only ones held liable for failures?

We believe that this legislation should be a part of a complete package of legislation changes to ensure that all parties are held responsible, not just the last person involved. Current coronial cases that are being carried out would suggest that it is not just one factor that causes failure, and it is because of this that the whole system needs to be looked at.

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We would happily work with Government to help provide such guidance and support to develop this whole piece of legislation.

Please feel free to contact me directly should you need further information.

Nga mihi nui,

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