

Out of Joint: New Zealand Construction Industry Moves Towards Proportionate Liability

For decades, liability for defective building work in New Zealand has been joint and several.

Under this system, when multiple parties are responsible for defects—such as builders, architects, and councils—any one of them can be held liable for the entire cost of fixing the problem, even if their role was minor. In practice, councils often end up paying the bill because they are solvent and have deep pockets. This has long been criticised as a disproportionate burden on ratepayers.

A Landmark shift¹

In August 2025, the Government announced plans to replace joint and several liability with proportionate liability. This change has been described as "the biggest change to the building system since the Building Act", and being philosophical at its core it aims to "put responsibility where it belongs" to ease the cost burden on ratepayers.

The promulgation of this law in mid-2026 will drastically shift the way construction contracts are drafted, interpreted and litigated.

Why the change

Four key objectives underpin the change:

1. **Maximising efficiency:** Councils' fear of liability slows down the **consenting**

process. Reducing their exposure should make Councils less risk-averse when consenting and certifying building work, speeding up approvals and getting projects underway sooner.

2. **Fairness:** Each party will only be responsible for their own mistakes. This prevents one party from having to pay for the sins and omissions of another. The joint and several approach often sees Councils and insured practitioners stepping in to foot the bill when other parties become insolvent. Proportionate liability aims to reduce this burden, preventing defendants from absorbing residual loss and protecting ratepayer funds from subsidising the negligence of insolvent parties.
3. **Broader protection:** The reform aims to protect ratepayers and industry professionals from disproportionate financial burdens.
4. **Parliamentary intent:** Councils were never meant to act as insurers of last resort. They didn't voluntarily enter the market and can't obtain insurance that fully covers their risk.

Implications

While proportionate liability would address a major imbalance, it brings a new

¹ <https://www.beehive.govt.nz/release/biggest-building-consent-system-reform-decades>

Out of Joint: New Zealand Construction Industry Moves Towards Proportionate Liability
(Continued)

challenge. The current scheme ensures that plaintiffs can recover the entirety of their loss from any of the remaining liable defendants and can rely on Councils as insurers of last resort. Proportionate liability would mean there is a greater risk that plaintiffs may be left without an effective remedy against loss caused by insolvent or uninsured defendants.

Guidance from overseas jurisdictions

However, New Zealand isn't starting from scratch. Australia has operated under proportionate liability for 30 years, with nine different state-based models. One key takeaway: **insurance matters**.

For example, in Victoria, proportionate liability was paired with mandatory insurance for architects, builders, engineers, designers, surveyors and certifiers. This insurance covers situations, for example, where the builder dies, becomes insolvent or disappears. Coverage includes costs to complete the work, fix defects, and even temporary accommodation (up to policy limits).

By contrast, most standard New Zealand insurance policies *for builders do not cover defective workmanship*. While some professional bodies require professional indemnity insurance, minimum cover levels are often low.

For the new regime to work, stronger insurance requirements are essential – otherwise plaintiffs risk bearing the cost of unrecoverable losses.

Additional considerations

Will parties be allowed to opt out? In some Australian states, the legislation expressly permits parties to contract out of the legislation. This has allowed parties to avoid proportionate liability where the contract between them makes express provision for rights, obligations and liabilities which differ from those provided by the legislation. This will apply even if the contract does not expressly state the parties have opted out of proportionate liability.

Insurance market readiness: New Zealand's insurance market lacks products specifically designed to cover large-scale defect claims. Past experiences with leaky buildings have also made insurers reluctant to provide cover for weathertightness. To support the proposed proportionate liability regime, the insurance market will need to update its risk models and make an insurance offering tailored to the construction sector. Insurers are more likely to do so if legislation makes insurance mandatory, which will create a broad premium pool. However, as with other insurances, the cost of premiums for this type of insurance would be passed on to customers.

Complex litigation: Plaintiffs will likely have to join all potentially liable parties to avoid shortfalls in recovery. This can result in adverse cost orders where a party is not found liable, increasing the overall costs and risks for parties affected by defects. Since liability will be apportioned between defendants, plaintiffs are also likely to require additional expert evidence to help the court

**Out of Joint: New Zealand Construction Industry Moves
Towards Proportionate Liability**
(Continued)

assess each party's share of fault, adding further cost and complexity to proceedings.

The Bottom Line

Proportionate liability seeks to improve fairness and efficiency but has risks and it is not a silver bullet. Without robust insurance requirements and clear rules on contracting out, plaintiffs could be left exposed. Construction disputes are likely to become more complex, risky and expensive. The next 12 months will be critical as the legislation takes shape – and the industry adapts to a new era of shared responsibility.

Want to know more?

If you have any questions about proportionate liability and how it could affect you, please contact our specialists in [Construction](#) and [Dispute Resolution](#).