

Legislative requirements of the BCA accreditation scheme

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This section of the website summarises the sections of the Building Act 2004 (the Act) that give effect to the building consent authority accreditation scheme. It includes reference to proposals that the Ministry of Business, Innovation and Employment will make to government to amend the Act in order to clarify and improve the scheme when an opportunity arises.



Summary of legislative requirements

Sections 12 and 212 of the Building Act 2004 (the Act) require that a territorial authority perform the duties of a building consent authority (BCA) within its district. Sections 13 and 241 of the Act require that a regional authority perform the duties of a BCA within its region for dams. To perform the duties of a BCA, both territorial and regional authorities must be accredited by the accreditation body and registered by the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE).

Territorial authorities can choose to make arrangements with another BCA to undertake their consenting functions. Both territorial and regional authorities can formally transfer their functions. Many make arrangements to work together to deliver their consenting functions. A formal transfer requires a special consultative process under the Local Government Act 2002.

Private organisations and people can also be accredited and registered. They must be registered to be a BCA and to independently perform building control functions under the Act. In all other cases an accredited organisation must be working under the powers and authorities of an accredited and registered BCA.

The accreditation body is required to determine a scope of accreditation for private organisations and people seeking accreditation (section 252 of the Act). This includes determining the kinds of buildings the private organisation or person can undertake building control work for. To be registered, MBIE's Chief Executive must be satisfied that the organisation or person has adequate means to cover any civil liabilities that might arise from their performance of the BCA functions.

A summary of the Act's provisions for the BCA accreditation scheme (the scheme) is outlined below. Where it is noted that a provision is 'to be proposed', this indicates an intention to recommend to government that an amendment be made to the Act to further support the successful operation of the scheme. This will occur when an appropriate opportunity for legislative change arises.

The Building Act 2004 (<http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM306036.html>) is available on the Legislation website.

Roles and responsibilities of territorial and regional authorities, and BCAs

Section 12

This section sets out the different roles of territorial authorities and BCAs.

Territorial authority functions include:

- issuing project information memoranda and certificates of acceptance
- amending compliance schedules
- granting waivers and modifications to the Building Code
- performing functions relating to dangerous, insanitary or earthquake-prone buildings
- other specified functions.

BCA functions include:

- performing building control functions such as issuing building consents, code compliance certificates, compliance schedules and notices to fix
- inspecting work that has been granted a building consent.

Understanding the distinction between territorial authority and BCA roles and functions is important in order to understand the overall scheme as the scheme only applies to BCA roles and functions.

Section 13

Section 13 sets out the role of regional authorities performing the functions of a BCA related to dams including considering and approving dam classifications, and the dam safety assurance programme.

Section 14

This section describes the areas of a dam that are the responsibility of the regional authority and the areas of a dam that are the responsibility of the territorial authority, including that:

- regional authorities are responsible for the parts of the building that are a dam
- territorial authorities are responsible for any part of the building that is not a dam.

Section 212

This section requires a territorial authority to perform the functions of a BCA within its district and in any coastal marine area adjacent to its district that is not part of another district in relation to:

- any application for a building consent
- any building consent granted under that application.

This section also requires a BCA that is part of a territorial authority to provide specified building consent applications to the New Zealand Fire Service Commission.

A territorial authority's responsibility under this section is subject to any transfer of responsibility for all or some of its BCA functions to another territorial authority under section 233.

This section of the Act exempts territorial authorities from performing building control functions for:

- dams in their area
- any functions that have been transferred to another territorial authority.

Section 215

This section requires that a territorial authority be accredited and registered as a BCA at all times in order to deliver its consenting functions.

Section 241

This section requires that a regional authority be accredited and registered as a BCA at all times in order to delivery its consenting functions in relation to dams.

A regional authority's responsibility under this section is subject to any transfer of responsibility for all or some of its functions to another regional authority under section 244.

[Notice that Copies of Certain Applications for Building Consent Must be Provided to the New Zealand Fire Service Commission \(https://gazette.govt.nz/notice/id/2012-go2694\)](https://gazette.govt.nz/notice/id/2012-go2694) is available in the New Zealand Gazette.

Arrangements for the delivery of BCA functions and the formal transfer of functions

Section 213

This section provides for a territorial authority to:

- perform the functions of a BCA itself
- to make arrangements for another BCA to perform the functions
- to take a combination of these approaches to delivering consenting functions within its region.

An arrangement with another BCA or BCAs can be by contract or any other means. The original intention for this section was to make it easy for BCAs to enter into arrangements for the delivery of BCA functions.

Section 214

This section sets out the liability arrangements where arrangements are made for the delivery of BCA functions.

A territorial authority can:

- retain full liability for the acts and omissions of the other BCA
- enter into an agreement apportioning liability between the two parties.

The issue of liability is one to be determined as part of the arrangement between the two BCAs. As with section 213, there is flexibility to allow for a diverse set of arrangements.

Sections 233–236

These sections enable a territorial authority to formally transfer its functions, duties and powers granted under the Act to another territorial authority. To do so, it must use the special consultative procedure in section 83 of the Local Government Act 2002.

A territorial authority transferring its functions must enter into a formal agreement in respect of the transfer.

The effect of the transfer is that the receiving territorial authority may perform the function, duty or power as if it was conferred on it under the Act. A transfer can be cancelled at any time consistent with the terms of the agreement.

To be proposed

A proposal will be made for the inclusion of a section in the Act that enables a regional authority to:

- perform the functions of a BCA in relation to dams itself
- to make arrangements for another BCA to perform the functions
- to take a combination of these approaches to delivering consenting functions for dams.

An arrangement with another BCA or BCAs will be by contract or any other means.

To be proposed

A proposal will be made for the inclusion of a section in the Act that sets out the liability arrangements where regional authority arrangements are made for the delivery of BCA functions relating to dams.

A regional authority will be able to:

- retain full liability for the acts and omissions of the other BCA
- enter into an agreement apportioning liability between the two parties.

The issue of liability will be one to be determined as part of the arrangement between the two BCAs. There will be flexibility for a diverse range of arrangements.

Sections 244–247

These sections enable a regional authority to transfer any of their functions, duties and powers granted under the Act to another regional authority. To do so, it must use the special consultative procedure in section 83 of the Local Government Act 2002.

A regional authority transferring its functions must enter into a formal agreement in respect of the transfer.

The effect of the transfer is that the receiving regional authority may perform the function, duty or power as if it was conferred on it under the Act. A transfer can be cancelled at any time consistent with the terms of the agreement.

Section 83 of the Local Government Act (<http://www.legislation.govt.nz/act/public/2002/0084/latest/DLM172328.html>) can be found on the Legislation website.

Appointment of the building consent accreditation body and accreditation scheme matters

Section 248

This section enables MBIE's Chief Executive to appoint a person/organisation as the building consent accreditation body and to revoke this appointment at any time. Only a single organisation or person may be appointed at any one time.

MBIE's Chief Executive acts as the accreditation body if no other person/organisation is appointed to act in this position.

Section 249

This section requires MBIE's Chief Executive to specify the minimum frequency of accreditation assessments and any other matters of relevance to the accreditation body's delivery of accreditation assessments in the New Zealand Gazette.

A BCA must be assessed at least every three years, but may be assessed more frequently.

To be proposed

A proposal will be made for the inclusion of a section in the Act that enables MBIE's Chief Executive to gazette a range of technical matters related to the scheme that are best detailed out of primary and secondary legislation. It will enable such matters to be updated as the consenting system continues to evolve.

Initial accreditation assessments and accreditation requirements

Section 250

This section enables the accreditation body to accredit an organisation or person applying to be a BCA upon the payment of the prescribed fee.

Section 251

This section requires the accreditation body to be satisfied that the person applying to be accredited meets the criteria and standards for accreditation set out in the Building (Accreditation of Building Consent Authorities) Regulations 2006 (the Regulations).

To be proposed

A proposal will be made for the inclusion of a section in the Act that enables an employee or agent of the accreditation body to accompany a BCA onto a property for the purposes of undertaking an accreditation assessment of the BCA.

To be proposed

A proposal will be made for the inclusion of a section in the Act that clarifies that all BCAs can have limited scopes of accreditation and registration, and provide that they must transfer any consenting functions they are not accredited to undertake to another accredited BCA. This will enable territorial authorities to reduce their consenting functions while ensuring that a full range of consenting functions remains available within a region.

Section 252

This section applies to a BCA that is not also a territorial or regional authority. It requires that the accreditation body determines the scope of accreditation for a private person applying to be a BCA. It states that the scope of accreditation can relate to one or more types of building for which the private BCA can undertake consenting functions.

This section enables the private BCA to request a change in the scope of its accreditation at any time.

Section 253

This section describes the requirements for accreditation applications made under section 250, including that the application:

- be made in writing
- be in the prescribed manner (if any)
- contain the prescribed information (if any).

Section 255

This section requires the accreditation body to notify MBIE's Chief Executive when it grants or revokes accreditation. It requires notification to be given within seven days and in the manner required by the Chief Executive.

[Building \(Accreditation of Building Consent Authorities\) Regulations 2006](http://www.legislation.govt.nz/regulation/public/2006/0399/latest/DLM424665.html) (<http://www.legislation.govt.nz/regulation/public/2006/0399/latest/DLM424665.html>) is available on the Legislation website.

[Applying to become an accredited organisation](https://www.building.govt.nz/building-officials/bca-accreditation/apply-become-accredited-organisation/) (<https://www.building.govt.nz/building-officials/bca-accreditation/apply-become-accredited-organisation/>) has further information.

Initial registration assessment process and registration requirements

Section 191

This section enables MBIE's Chief Executive to enter a BCA's name on the BCA register if an application is made by that BCA under section 194 of the Act.

Section 192

This section sets out the criteria that a BCA must meet before it can be registered, including that it must:

- hold a Certificate of Accreditation from the building consent accreditation body
- meet any other criteria for registration.

If the applicant for registration is a private person or organisation, it must have adequate means to cover any civil liabilities that may arise in performing consenting functions. This section describes the kinds of information that MBIE's Chief Executive can use to decide whether a private BCA has adequate means.

Section 194

This section describes the requirements for registration applications made under section 191 of the Act, including that the application:

- be made in writing
- be made in the prescribed manner (if any)
- contain the prescribed information (if any)
- be accompanied by the prescribed fee (if any).

The prescribed forms and information, and the prescribed fee are set out in the Building (Registration of Building Consent Authorities) Regulations 2007.

Section 195

This section requires MBIE's Chief Executive to decide whether to register a BCA and give written notice of their decision as soon as practicable after receiving the application. The written notice must state any reasons for not granting registration (if this is the Chief Executive's decision).

[The Building \(Registration of Building Consent Authorities\) Regulations 2007](http://www.legislation.govt.nz/regulation/public/2007/0300/latest/DLM973528.html) (<http://www.legislation.govt.nz/regulation/public/2007/0300/latest/DLM973528.html>) are available on the Legislation website.

[Building Consent Authorities Register](https://www.building.govt.nz/building-officials/find-a-bca/) (<https://www.building.govt.nz/building-officials/find-a-bca/>)

[Registering to become a BCA](https://www.building.govt.nz/building-officials/bca-accreditation/registering-become-bca/) (<https://www.building.govt.nz/building-officials/bca-accreditation/registering-become-bca/>) has further information on registration requirements.

Effect of registration as a BCA

Section 193

Section 193 states that a registered BCA can perform BCA functions. It limits the BCA functions of private BCAs to their scope of accreditation.

Ongoing assessment for registration purposes

Section 196

This section requires that every three years MBIE's Chief Executive assesses whether a registered BCA continues to meet the registration criteria described in section 192. It also enables the Chief Executive to assess whether a registered BCA continues to meet the registration criteria described in section 192 at any other time.

If a registered BCA continues to meet the criteria for registration, this section provides that it is entitled to maintain its registration.

To be proposed

A proposal will be made for the inclusion of a section in the Act that provides the ability to remove a BCA, or a BCA's scope of accreditation from the register where it transfers all or some of its functions or scopes.

Remedial powers

Section 200

This section enables MBIE's Chief Executive to receive complaints about the performance of a BCA. It requires the Chief Executive to notify a BCA as soon as is practicable, and to decide whether to accept or decline the complaint.

If the Chief Executive decides to accept the complaint, they must inform the complainant and the BCA, and then proceed to investigate the complaint.

To be proposed

A proposal will be made for the inclusion of a section in the Act to enable a BCA's Chief Executive to request intervention and support where a BCA is struggling, failing or negligent in its duties.

Section 201

This section enables MBIE's Chief Executive to investigate matters related to the performance of a BCA (without receiving a complaint). Where the Chief Executive decides to undertake an investigation, they must notify the BCA.

Section 202

This section deals with the notification procedures for an MBIE Chief Executive investigation and provides the BCA with a reasonable opportunity to make written submissions on the matter being investigated.

Section 203

This section contains a range of remedial powers that may be used after a MBIE Chief Executive investigation.

The powers include the:

- issue of warnings
- ability to require a BCA to take specific actions within specified times
- ability to require a BCA to monitor and report on its activities to MBIE's Chief Executive.

In the case of a private BCA, there is also a power enabling MBIE's Chief Executive to suspend and revoke registration. In the case of a territorial or regional authority, MBIE's Chief Executive may recommend that the Minister appoint one or more persons to act in place of the BCA.

Section 204

<http://mbie5.cwp.govt.nz/building-officials/bca-accreditation/legislative-requirements-bca-accreditation-scheme/>

This section contains a range of powers that enable MBIE's Chief Executive to monitor the performance of territorial and regional authorities, and BCAs. These powers include investigating complaints, carrying out reviews and assisting the Minister to determine if they should appoint one or more persons to act in place of the territorial or regional authority, or BCA.

The powers provide that MBIE's Chief Executive may have access to information or the place information is kept, require the territorial or regional authority, or BCA to provide information and/or answer questions, and by written notice, enter land or buildings to carry out investigations.

Suspension, revocation and reinstatement of accreditation as a BCA

To be proposed

A proposal will be made for the inclusion of a section in the Act to enable a BCA's accreditation to be suspended by the accreditation body (if appropriate) while the remedial powers under section 203 are in operation. This would mean that the BCA's accreditation was effectively 'on hold'. A BCA would not be able to claim to be accredited and the accreditation body would not be required to state its assurance that all accreditation requirements were met. However, suspension would not affect the BCA's ability to deliver building consent functions which are linked to its registration (not its accreditation).

Section 254

This section enables accreditation to be revoked or a scope of accreditation to be amended by the accreditation body or MBIE's Chief Executive. It restricts the circumstances in which revocation can occur to when the accreditation body or MBIE's Chief Executive:

- is satisfied that the BCA no longer meets the accreditation standards and criteria
- has given the BCA a reasonable opportunity to be heard.

This section prohibits the revocation of accreditation within three months of the accreditation criteria and standards being amended where the BCA no longer meets the standards because of the amendments.

Suspension, revocation and reinstatement of registration as a BCA

Section 197

This section requires MBIE's Chief Executive to undertake specific activities if they decide that a registered BCA no longer meets the registration criteria.

Where the BCA is also a territorial or regional authority

The section requires MBIE's Chief Executive to recommend to the Minister that the Minister appoint one or more people to act in place of the territorial or regional authority for any or all of its BCA functions.

Where the BCA is a private BCA

The section requires MBIE's Chief Executive to suspend a private BCA's status and enter this suspension in the BCA register. Then, if the private BCA does not meet the registration criteria within 12 months after the suspension, the Chief Executive must revoke the private BCA's registered status and remove it from the register.

Section 198

This section provides that a private BCA that has been suspended under section 197 is not registered during the period of suspension. It states that the BCA's registered status is revived at the end of the suspension unless registration has been suspended again or registration has been revoked.

This section enables MBIE's Chief Executive to let a suspended BCA perform limited functions during suspension if it is in the public interest, and enables them to put conditions on the authorisation or revoke it at any time.

Offences and penalties related to registration

Section 199

This section states that a person commits an offence if they are not registered as a BCA and are performing the functions of a BCA. It also provides that a private BCA commits an offence if it performs any BCA functions that do not fall into its scope of accreditation. It provides for a fine of up to \$200,000 for committing an offence under this section.

Regulation-making powers

Section 402

This section enables the government to make regulations for the scheme, including:

- the form or content of applications, or any other required documentation
- prescribing information to be provided to the MBIE's Chief Executive
- for territorial authorities and BCAs in relation to the buildings and building work they consent
- for regional authorities and owners of dams in relation to dams that require consent
- the minimum terms and conditions of an insurance policy for section 192
- the approval of schemes of insurance for the purposes of section 191
- the standards and criteria for accreditation as a BCA
- fees
- any other matters contemplated by the Act.



New Zealand Government

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- with compliance with the Building Act, it is published under section 175 of the Building Act
- with a Weathertight Services claim, it is published under section 12 of the Weathertight Homes Resolution Services Act 2006.