

Review of the liability rules for the building and construction sector



What we were asked to do	<p>As part of the review of the Building Act (largely due to weather tightness issues) Sapere and Buddle Findlay were asked to conduct a review of the Joint and Several Liability rule governing the building and construction sector in New Zealand.</p>
How we approached the project	<p>We applied a law and economics lens to the issue and sought to analyse the underlying incentive structures, transactions costs and consequent behaviour of the actors involved and identify and assess alternatives to the existing rule.</p> <p>The assessment primarily considered the allocative efficiency of the respective rules from a social welfare perspective. That is, of the alternative rules which would minimise total social cost (which was defined as the sum of expected precautionary/care costs and expected loss/damage costs). While we did not undertake any primary research as such, we did make use of a conceptual model that assisted in the description and assessment of alternative rules.</p>
Our findings	<p>Buddle Findlay and Sapere did not find evidence (either in law or economics) that a change to the current rule of Joint and Several Liability would improve accountability. Rather, other rules for allocating liability look more unpalatable and are only likely to worsen the situation.</p> <p>The end product was a significant report that included input from stakeholders and an expert advisory group, insights from key literature and other jurisdictions and recommendations couched in terms of net benefits.</p> <p><i>continued over</i></p>

Our findings	The recommendations were adopted by the department who commissioned the work and the results of the study were also used by the Law Commission in their investigation into the application of the Joint and Several Liability rule more widely in New Zealand.
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