

# BuildLaw: In Brief

## High Court confirms Building Act 10-year longstop applies to third-party claims relating to 'building work'

In 2013 the Ministry of Education initiated proceedings against, among others, Carter Holt Harvey (CHH) seeking damages for the costs to remove and replace the CHH cladding product, Shadowclad, in relation to about 833 leaky school buildings, which it says is a defective product, and also for the costs of consequent repairs where it is alleged the Shadowclad product allowed water ingress, causing damage to surrounding building structures. The Crown also points to potential health and safety issues arising as a result of the allegedly defective product permitting the growth of mould spores, with consequent adverse health implications.

In 2016, the Supreme Court (in *Carter Holt Harvey v Minister of Education* [2016] NZSC, [2017] 1 NZLR 78) held that the manufacture of building products or materials is not 'building work' protected by the 10-year longstop which means a manufacturer of building products is not protected by the 10-year longstop and can be sued more than 10 years after the construction of a defective building. The Supreme Court emphasised the nature of the Ministry's claim against CHH, namely a product liability claim. In doing so, it rejected CHH's submission that at its core, the claim was a proceeding relating to building work'. The Court declined to comment on whether other parties could be sued in turn by a liable product manufacturer, leaving this point open.

Following the Supreme Court's decision, Carter Holt served contribution claims against 54 Councils in respect of 833 leaky school buildings in two separate proceedings. A large proportion of these schools were constructed more than 10 years before the proceedings had been filed by Carter Holt.

The Councils applied in the High Court to set aside/strike out the claims in respect of those schools that were more than 10 years old.

In a judgment released on 26 January this year, Justice Fitzgerald has confirmed that, despite product manufacturers being able to be sued outside the 10-year longstop period, the longstop provisions in the 1991 and 2004 Building Acts apply to contribution claims and those product manufacturers are not able to join parties involved in the construction of the relevant building, unless they do so within the 10-year period.

The good news (at least for now) for all contractors and councils involved in carrying out 'building work' as that term is defined in the Building Act, is that they remain protected 10 years after the date of the act or omission alleged to have caused loss and damage.







## Collapse of UK's second largest construction company



The recent news that Carillion, the UK's second largest construction company, will enter into compulsory liquidation has sent shockwaves throughout the sector and put thousands of jobs at risk across the UK.

Describing itself as an 'integrated support services business', it employed 43,000 staff globally, about half of those in in the UK, and it held about 450 governmental contracts spanning the UK education, justice, defence and transport ministries. Major construction contracts included the planned HS2 high speed railway line, the Royal Opera House, the Library of Birmingham, the Tate Modern, and the hoop-shaped building of GCHQ.

It managed the Smart Motorways traffic control system and supplied school dinners as well as maintaining about half of the UK's prisons and Young Offender Institutions. Its responsibilities included cleaning, landscaping and catering.

Carillion was the second-biggest supplier of maintenance services to Network Rail.

It also operated in Canada, the Middle East and the Caribbean and was a big supplier of construction services to the Canadian government.

In 2016, Carillion had sales of £5.2bn and until July boasted a market capitalisation of almost £1bn. But it ran into trouble after losing money on big contracts and running up huge debts and it finally buckled in January 2018 under the weight of a massive £1.5bn debt.

Despite discussions between Carillion, its lenders and the government, no deal could be reached to save the company.

While the true cause of Carillion's collapse is unknown, it ran into problems with cost overruns on three troubled and delayed UK public sector construction projects: the £350m Midland Metropolitan Hospital in Sandwell, the £335m Royal Liverpool Hospital on Merseyside, and the £745m Aberdeen bypass - delayed because of slow progress in completing initial earthworks. Delayed payments from Middle East contracts and the expensive withdrawal from other projects in the Middle East are commonly cited as significant contributing factors.

## Government acts to make building rules easier to access and understand

The Government is making it easier for people to understand and apply best practice when designing and constructing buildings.

"By launching a new building system search engine and sponsoring five commonly used building standards and a handbook, we hope to see improved compliance with the Building Code, and even more importantly, safer homes and buildings", says Minister for Building and Construction Jenny Salea.

"The online search engine, Building CodeHub helps people locate the latest building rules and guidance information for designing and constructing buildings," says Ms Salea. "It's the definitive source of up-to-date rules and guidance from a range of sources."

"New Zealand's building regulator the Ministry of Business, Innovation and Employment (MBIE), has sponsored some of the most commonly-used standards, making them freely available to all users," says Ms Salea.

"We anticipate that providing free access to these standards, will make it easier for consumers to understand the building code



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requirements and apply best practice methods when undertaking home building projects.”

The sponsored standards and handbook, which can be accessed from the Standards New Zealand website, are:

- Design for access and mobility: Buildings and associated facilities (NZS 4121:2001) - provides solutions for making buildings and facilities accessible to and usable by people with disabilities.
- Housing, alterations and small buildings contract (NZS 3902:2004) - a plain English standard building contract.
- Thermal insulation - housing and small buildings (NZS 4218:2009) - helps establish the levels of thermal insulation for houses and small buildings.
- Interconnected smoke alarms for houses (NZS 4514:2009) - provides information about the placement and audibility of smoke alarms.
- Safety barriers and fences around swimming pools, spas and hot tubs (NZS 8500:2006) - describes barriers for residential pools including ways to assess their strength.
- Handbook on Timber-framed buildings (selected extracts from NZS 3604:2011) - figures and tables to help design and construct timber-framed buildings up to three storeys high.

“MBIE will continue to make the building system more accessible with further enhancements to Building CodeHub and considering ways to improve access to more design and construction building standards,” says Ms Salesa.

## New ethical requirements for architects



The purpose of registration is to ensure that architects are competent and reputable, so that the public can rely on them. To this end, in all their dealings, architects must

comply with the Code of Minimum Standards of Ethical Conduct for Registered Architects, which binds them to a standard of conduct.

A new updated ethical code for architects came into force on 1 January 2018. This includes an obligation to agree on written terms of appointment for provision of professional services.

The Registered Architects Amendment Rules 2017 amend the Registered Architects Rules 2006 and replace the 'Code of minimum standards of ethical conduct for registered architects' with an updated code.

New obligations for registered architects include:

- if the architect's advice is not followed, there is an obligation to advise the recipient of the advice of any risk of significant harm or damage that may result;



- an obligation to report any architectural matter with which the architect is professionally involved that could put the safety of any person at risk;
- an obligation to provide professional services only after written terms of appointment are agreed; and
- an obligation to advise clients of significant issues in a timely manner.

The written terms of appointment must cover the scope of the work, the allocation of responsibilities, any limitation of responsibilities, fees or the method for calculating fees, and how billing will occur.

The new rules also make some changes to the disciplinary hearing processes.

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