

WARNING SIGNS EMERGE REGARDING VIABILITY OF BUILDING GUARANTEE SCHEMES

By Gareth Lewis

MBIE's Building System Legislative Reform Package includes a proposal to require compulsory guarantee and insurance products (GIPs) for residential new builds and significant alterations. In August 2019 MBIE published a summary of the public submissions on its Reform Package. 76% of submitters supported the proposal to require GIPs, although some submitters expressed doubts that the insurance market would be prepared to support the proposal and others suggested Government involvement by way of a backstop cover.

The reservations expressed by some of the submitters has been borne out in recent news reports in New Zealand and Australia which cast doubt as to whether building guarantee schemes of this type are financially viable.

The Sydney Morning Herald recently reported that the New South Wales Government paid out more than \$200 million in one year to prop up a home warranty scheme with further increases expected. The scheme enables owners of homes and apartment buildings of 3 levels or less to make an insurance claim in respect of defects if the builder becomes insolvent, dies, disappears or has their license suspended. The premiums are paid by builders but over time these have been insufficient to meet claims. In 2010 the NSW stepped in to cover unfunded claims and it has since amassed more than \$639 million liabilities. There is no warranty scheme for apartment buildings above 3 levels as both private insurers and the government pulled out due to the risk in 2003.

More recently the Stuff website reported two private guarantees offered by New Zealand building companies, the Stamford Insurance 10-

year new build guarantee and the New Zealand Certified Builders' Halo 10-year guarantee, have lost their underwriter and cover will end when the policies expire in December 2019 and January 2020. This has led to some calls for a mandatory nationwide warranty of the type being investigated by MBIE.



In view of New Zealand's record of poor building work over the last 30 years the prospects of private insurers providing long term cover, whether for private guarantee schemes or industry wide compulsory guarantees, appears to be slim. That leaves the Government as the only funding option, but there is unlikely to be much appetite for taxpayers to foot the bill for the indeterminate liability it would face. If and when the reputation of the New Zealand's building industry improves insurance cover may become available but that is unlikely to be for some time.

In the meantime, a more productive focus for regulatory reform is likely to be the strengthening of the processes within building consent authorities to ensure everything possible is being done to avoid defective building work in the first place.

ABOUT THE AUTHOR



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Gareth has specialist expertise in construction claims, body corporate disputes and employment law. He has over 22 years experience in litigation.

Gareth is proactive in his approach to legal issues, ensuring common goals are clearly understood & expectations managed. He takes a commercially realistic, pragmatic approach with clients.

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