

BuildLaw in Brief

The construction industry combatting climate change

New Zealand joins environmentalist nations with our first Emission Reduction Plan (**ERP**), due to be published in May 2022. The ERP includes specific strategies and policies for five industries, one of which is building and construction. The building and construction industry will rely on [MBIE's Building for Climate Change Framework](#). This Framework encourages the design and construction of durable, energy-efficient buildings made of low-carbon recyclable materials. It does this by introducing caps on embodied carbon into the building consent process. It also sets mandatory caps on operation emissions. New builds must apply the framework, and this will extend to refurbishments and retrofits over time. The main goal is to reduce greenhouse gas emissions and improve energy efficiency in buildings and construction.

Victoria Government extends cladding claim time frame

[Changes to the Building Act 1993](#) allow Victoria's building owners 15 years to take legal action for cladding claims. This extension ensures customer protection for unsafe building products and acknowledges the complexity of cladding-related claims. This is especially relevant in the climate of the Covid-19 pandemic. This extraordinary legislation separates cladding claims without sound justification. The extension may lead to increased uncertainty and burden for builders and building professionals.

Increased regulations of plant and structure

2022 will be the year! A draft plant and structure plan will be released by the New Zealand Government early next year to address the considerable number of workplace injuries and fatalities in plant (machines, vehicles, equipment) and structures (scaffolding and excavations).

Between 2008 and 2019, an average of 54 people a year died from injuries involving plant due to *outdated, complex and incomplete* health and safety requirements. The plan intends to introduce layered controls targeting high-risk plant items, and increased obligations on manufacturing suppliers and designers.

A preview of the changes includes the imposition of mandatory processes for guarding plant and safer alterations measures to avoid mobile plant collisions. Plant developers, including designers, suppliers, importers, and manufacturers, will be required to provide safer plant. This is intended to reduce harm to workers. Additionally, businesses requesting or ordering new designs for plant will be required to include reasonably foreseeable risks and hazards in the structure of the plant.

Prevention policies with penalties for infringement will be the key driver in implementing the new health and safety reforms.

A class action update

The New Zealand class action litigation involving James Hardie and its Harditex cladding product is a good start for a discussion on the Law Commission's review of class action claims. The [Law Commission review](#) examines the lack of a detailed framework for the procedural aspect of a class action. Currently, [High Court Rule \(HCR\) 4.24](#) sets out the framework for a class action, stating that if it is from other jurisdictions, it is a representative action. The preliminary view from the Commission was that *class actions and litigation funding improves access to justice and are, in principle, beneficial, and that a legislative regime is desirable*.

In the interim, the courts have discussed how to regulate class action litigation. They have expressed concerns on whether the benefit of a class action and litigation funding may outweigh any negative impact. The recent unsuccessful class action against James Hardie is a good example of the issue of funders' lack of access to litigation funding. The conclusion in the James Hardie case was that, at the eleventh hour, Harbour Litigation Funding was



reluctant to continue funding the case, leaving the homeowners without any way to pay for the litigation. As part of the settlement, Harbour Litigation Funding agreed to pay James Hardie \$1.25 million. The homeowners did not receive any compensation. This highlights an issue the Law Commission identified with class actions and litigation funding. Expensive litigation costs make class action funding a key issue until a clear regulatory framework on class action claims is established in New Zealand. The aim of any solution must be to ensure adequate checks and balances on the process.

Get ahead of legislation changes

The United Kingdom is expecting legislative amendments and the introduction of policies in the building and construction industry. The Health and Safety Executive has published a [set of principles for high-rise residential buildings](#) to prepare the industry for safety case requirements. A safety case will be required for occupied high-rise residential buildings that are over 18 metres in height or with at least seven storeys. The principles discuss risk and harmful mechanisms with effective measures to prevent and mitigate risk. It is anticipated that these principles will encourage domestic businesses and organisations to critically assess their buildings and structures. Early consideration of existing control measures, specifications and seeking insight about policies in the new legislation will assist the industry with the seamless adoption of any amendments.

Construction forecast – next decade

It is forecast that in the next decade, growth in the construction industry will be 35 per cent. [‘The Construction Global Forecast to 2030’](#) by Oxford Economic highlights the mitigation efforts made by the construction industry to rebound through fiscal stimulus to drive activity into 2022. Residential construction is the largest driver of global construction, accounting for 44 per cent of global construction in 2020. Non-buildable residential markets such as commercial spaces and offices are incrementally recovering from the effects of the Covid-19 pandemic. Over the next decade both residential and commercial construction will be working on minimising the issues relating to natural resources, diversification, and the pandemic.

The principal analysis of the next decade includes the near-term and long-term risks to the economic

outlook due to Covid-19 and other variants that may weaken and impede the financial markets and construction industry. Near-term effects include the continued bottlenecks in the supply chain, with a significant cost increase for core construction materials and the inflationary effects of the same. Noted long-term effects include high debt levels (eg, Japan, which is at 236% of GDP) and tightening funding infrastructure. It is noted however that the stringent and complex policies imposed on the construction industry to decarbonise supply chains to meet the Net Zero target will be the construction sector’s biggest challenge over the next decade.

