

10 July 2020

Committee Secretariat
Environment Select Committee
Parliament Buildings
Wellington

Dear Committee Members,

Insurance Council of New Zealand submission on the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill 2020

Thank you for the opportunity to submit on the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill (the Bill) which was introduced to Parliament on 8 May 2020.

The Insurance Council of New Zealand (ICNZ) represents general insurers that insure about 95 percent of the New Zealand general insurance market, including about a trillion dollars' worth of New Zealand property and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

We wish to appear before the Committee to speak to our submission.

In this submission we provide some general comments on the Bill, and in particular, its impact on liability insurance.

Submission

ICNZ supports the comments made in the explanatory note to the Bill about the improvements that are needed to achieve a high-performing building sector with high-quality building outcomes. Insurers are well placed to comment on the numerous issues which have affected the industry in recent years. ICNZ agrees that buildings and the building products used in them must have structural integrity and be durable, as well as there being a need for other specific safety fundamentals such as an efficient fire performance system. These elements are essential for the insurability of buildings, and for the availability of related insurances such as liability for the professional bodies involved in the design, manufacture, certification, and construction processes.

ICNZ agrees that the present building legislative framework is not delivering necessary quality and assurance, which results in buildings that are not built to a suitable standard of safety or durability. As ICNZ has previously explained in our submission on the [Building System Legislative Reform Discussion Paper](#), there is insurer apprehension around the quality of New Zealand's building stock, as evidenced by low insurer appetite for providing building warranty products in New Zealand. This apprehension has partly arisen in relation to the ongoing leaky building crisis which has had an enormous impact on insurers and which continues to see insurers settling claims for buildings that were constructed in the late 90s and early 2000s. The leaky building crisis is demonstrative of the type of systemic building issues in New Zealand which continue to impact on insurer decision-making. We note that since previous discussions with MBIE on the topic of building warranty insurance, the one insurer who was offering cover has withdrawn from the New Zealand market.

ICNZ strongly supports initiatives to improve the quality of building products used in construction in New Zealand. This includes the introduction of minimum requirements for information about building products and strengthening the product certification scheme as proposed in the Bill. These steps will assist building designers and building consent authorities in establishing that certain products are fit for purpose and will meet the minimum durability requirements set out in legislation. Further, they will help to provide insurers with greater confidence in the robustness of checks and balances in the building sector.

We note that product certification bodies (PCBs) and modular component manufacturer certification bodies (MCMCBs) must meet certain criteria in order to be registered, one of which is to meet any prescribed requirements relating to cover for civil liabilities that may arise in the performance of their functions. There will need to be effective operational and audit requirements for PCBs and MCMCBs to give liability insurers the confidence needed to provide these entities with coverage and affordable terms. We note that the Bill does not provide detail on what the operational and audit requirements will be, but it is important that PCBs and MCMCBs operate to a high and consistent standard so as to limit the chance of liability claims. It will also be important for insurers to be part of any conversation about these requirements when it does take place, to ensure that cover for civil liabilities is available. We again reference the low insurer appetite for building warranty insurance and stress that the availability of liability insurance should not be assumed.

In discussing the use of PCBs and MCMCBs it is worth noting that private building certification was tried in the early 2000s. Unfortunately, negligent work by certifiers led to an influx of claims and subsequent difficulties for them in securing professional indemnity insurance. With insurance and liability issues unable to be resolved, the private building certifier industry eventually collapsed.

Another cautionary tale relating to the building sector and liability insurance can be found in Australia where, in 2019, the insurance market withdrew a significant amount of professional indemnity coverage for those parties involved in building cladding design and certification, as well as fire design certification due to an unprecedented increase in liability claims. This resulted in extensive construction work delays as certifiers could no longer purchase professional liability insurance.

While we support the objectives of the legislative reform, we note that ICNZ members continue to hold concerns about the safety of new building products, particularly around insulation and cladding products that have high fire spread characteristics. For example, ICNZ and its members are aware of a particular brand of modular construction for dwellings and other building types that has timber

framing cavities insulated with expanded polystyrene. The company has been informed that their product is compliant with the Building Code, however insurers globally have experienced significant fire losses with expanded polystyrene insulated building products such as these, to such an extent that there is now reduced capacity to insure buildings with these insulation products.

PCBs and MCMCBs will also need to be particularly cautious when certifying building products and modular component systems with high fire spread characteristics. A number of New Zealand's fire test standards are inadequate and could provide PCBs and MCMCBs with a false sense of security. The standards are inadequate in that they are based on small-scale tests on building products that do not reflect the reality of fire spread risk on a full-scale building. ICNZ made a recent submission to MBIE on this point, supporting better full-scale testing of building products and systems.

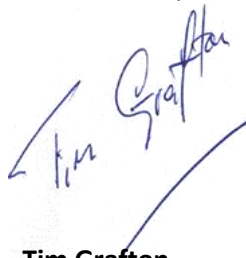
Conclusion

ICNZ supports the intent of the Bill to strengthen regulation of building products and building methods. A robust and effective building system is integral for insurers to be able to continue to support the building sector. We also support solutions which will proactively address the quality of buildings and building products alike, rather than responding to problems after they have arisen.


It will be important that insurers are involved in any consultation regarding specific insurance coverage needs, as well as the detail on what operational and audit requirements PCBs and MCMCBs will need to work to, to ensure that insurers are afforded the necessary confidence to be able to offer cover.

Thank you again for the opportunity to submit on the Bill. If you have any questions, please contact our Insurance Manager John Lucas on (04) 495 8006 or by emailing john@icnz.org.nz.

Yours sincerely,



Tim Grafton
Chief Executive



John Lucas
Insurance Manager



Jane Brown
Legal Counsel