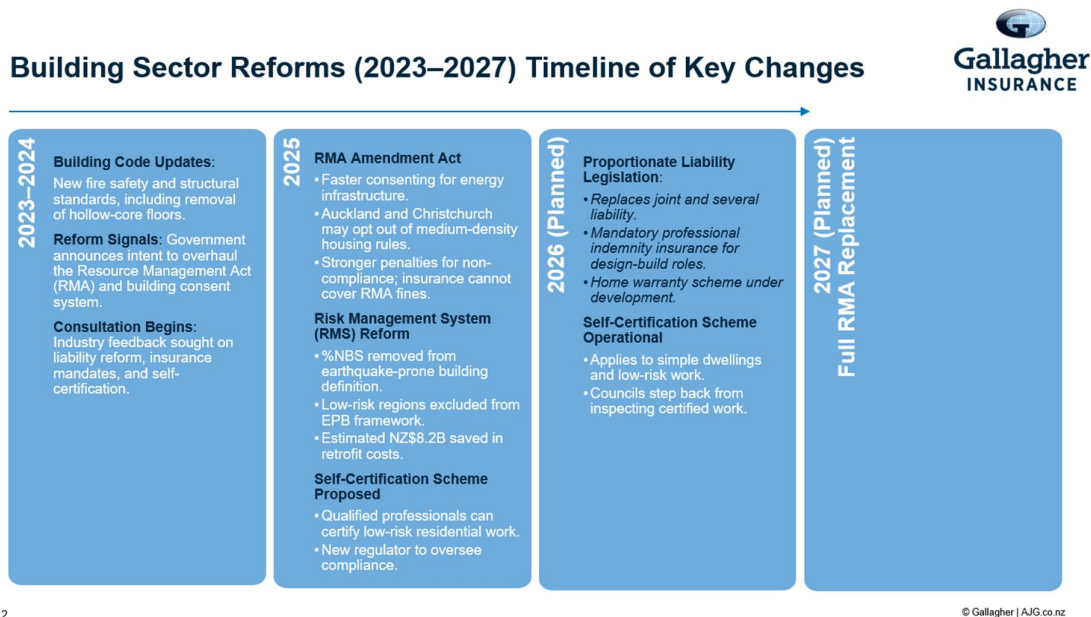


A gentler kind of foolishness

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I have been watching the various reforms changing the risk ecosystem of the building industry unfolding with great interest. Particularly the move to Proportionate Liability, which was ably presented by @KimLovegrove and @MarkColthart at the #SCLNZ lecture last month. But there's also plenty of other reforms coming through that will change the way the industry works, nicely summarized here by #gallagherinsurance at their panel discussion at #BusinessCanterbury.



Previously, I had been very much in favour of a universal “Building Insurance” approach to managing risk – it’s used elsewhere in the world, with France being a strong example and schemes of one sort or another in various states in Australia also in place. In theory, insurers have the resources to crunch the numbers on builders and developers in a meaningful way and weed out bad behaviour. @DavidChandler, the former NSW Building Commissioner (who instigated the iCERT scheme which certifies developers) used to tell some amusing anecdotes of seemingly scientifically predictable correlations between the record of bad behaviour off-site like driving violations or impersonating police officers, found by his in-house research team, and the record of bad behaviour on-site, which he would find in his inspections like poorly installed windows and bad mortar mixes.

While still broadly in favour of long-run project insurance to which the end user is a party, and tentatively positive about the move to proportionate liability, the measures being instigated which we are told will remove both cowboys and the chronically risk-

averse who can only be appeased by miles of expensive red tape, do not address our widespread vulnerability to three gentler kinds of foolishness. Those vulnerabilities are in play now and all will continue to thrive in the new risk and regulatory ecosystem and have the potential to cripple the industry.

The first kind of foolishness is where optimism exceeds actual ability, the second is the way we devalue hard-earned wisdom by calling it “common sense” and the third is to believe that some omnipotent and omniscient external party will save us from ourselves.

On common sense: A recent LinkedIn post caught my eye, with the writer complaining that they had paid \$65,000 towards building a granny flat before even breaking ground. Mostly for geotechnical and flooding reports, if I recall. The sentiment was that “common sense” could have got you that far for free.

I don’t disagree that a well-experienced builder, familiar with the area, its geology, its weather and the local housing typology, could have meaningfully and accurately advised whether the site was a flood-risk, slip-risk, planning-risk and what the most appropriate foundation type and structural type should be. I argue that this is not “common sense”. This is a depth of experience and wisdom that has been earned over decades of practice and understanding of their environment and materials. The fact that it comes verbally from someone with more calluses than degrees, does not mean that it has no value and that someone who is benefiting from the wisdom shouldn’t be paying for it, somehow. Otherwise, the industry is not being valued correctly, and the wise and experienced party is unfairly not being awarded their true worth.

The challenge then arises to accredit and identify this wisdom in a reliable way which the market can recognise and reward. The LBP system was supposed to sort this out...

The LBP scheme has been called toothless, which it isn’t. It has teeth. What it lacks is comprehensive oversight of the industry that would inform it where those teeth should be applied. Unless the breach is so bad that the media brings it to the Building Practitioners’ Board’s attention directly, it relies on someone to make a complaint to start an investigation that would lead to the necessary disciplinary action.

A builder may breach by being an uncaring “bad” person and they may also breach by being a well-meaning “good” person who is simply more optimistic about their abilities or the materials that they are using than they should be. Potentially in ways that a client untrained in the precise nuances of, say, the correct angle of a brick tie, or the intriguing differences in chemical make-up of different insulated panels would not have a hope of recognising. Building is a complicated business and it’s easy to make mistakes. If client and builder have a cheerful relationship and they are both blissfully ignorant of defects

in the work, how would the regulating Board know? Council building inspectors may raise the flag, but when we move to self-certification, this back-stop is removed.

Even if defects are noticed, a complaint will possibly de-licence a mostly-good person which may then completely ruin their business, livelihood and life, not to mention hobble all the projects they have in hand and possibly render those buildings uninsurable, to the detriment of the client and their conscience. So how often will the client want to report them to the Building Practitioners Board?

The Building Practitioners Board cannot award the complainant any compensation or make the LBP fix defective work or hear complaints regarding payment disputes, or commercial or contractual disputes including employment disputes, so reporting to the Board is unlikely to be high on the priority list for all but the most aggrieved or publicly-spirited.

The value of the LBP scheme is undermined because the optimistic and cheerful may continue in business and practices beyond their actual abilities. A licence cannot then be the visible differentiator that it should be. *

One of the key challenges to the consumers in the construction market is the identification of capable suppliers – mandatory insurance in our new regime is supposed by some to fix this. Worthy and competent operators will be able to offer insurance for their work and their worthiness will be determined by the deep and experienced resources of professional insurance risk assessors. Competent operators will be easy to identify as they'll all be wearing green badges saying "Insured"



Image by @kimlovegrove

The foolishness that we are falling into here is that a benevolent external force will save us from ourselves. They might, just not for free**. Premiums will be affordable if

everyone buys a policy. Done well, they will accurately commercialise the reputation and experience of said builder, counting their previous successful jobs, their credit rating, their years in business, their knowledge of the relevant local conditions for that particular project, in a way that other qualifications cannot. If everyone buys a policy, affordability increases, but there will be a crunch on resources to assess competencies and accurately price policies, and, in time, to assess and rectify claims where mistakes were made and competency was lacking. Even with insurance in place, rectification from a policy is rarely an instant fix, as this tragic story related by @John Gray of #HOBANZ at #Gallagher's event attests.

<https://www.1news.co.nz/2023/06/05/dunedin-couple-exhausted-after-battle-over-unfinished-unconsented-home/>

If lack of delivery in rectification, or lack of availability of the right insurance product causes demand to fall, premiums will rise higher to compensate and fewer people will be able to afford a green badge. We are then back where we started, but without the insurer-of-last-resort, the council, holding the safety net of joint and several liability.

So, @New Zealand, we are heading into a new field to play in. Let's not be foolish.

@OurInsurers, are you ready?

* Perhaps we could oblige any action brought to arbitration, adjudication or court to report to the BP Board also? But when we get down to it, is the stick approach the right motivator if the root cause is foolishness, not wickedness?

**And the investment in this regulatory model will likely end up offshore.