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The enforceability of extended contractual warranties for contract works – can the hurdles of applicable limitation periods be overcome? – *Laina Chan*

The practice has arisen in bespoke contracts for infrastructure projects for contractors to provide extended warranties for works. Such warranties can be staggered depending upon the element the warranty is provided for. While such clauses have been included for presumably appropriate consideration, there is an issue as to their enforceability as they may run foul of applicable limitation periods. For example, sections 14 and 16 of the Limitation Act 1969 (NSW) prescribe limitation periods of, respectively, six years for actions in tort and for breach of contract, and 12 years for actions founded on a deed. Section 109ZK of the Environmental Planning and Assessment Act 1979 (NSW) precludes bringing a building action beyond 10 years after the issue of a final occupation certificate. This article explores how the US, UK and Australia have grappled with this issue and considers whether it is possible to contract out of limitation periods to ensure the enforceability of extended contractual warranties.	170
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