

Legal alert - WorkSafe New Zealand issues position statement on earthquake related hazards

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"...if you are doing what you are supposed to be doing under the Building Act, then we [WorkSafe New Zealand] are not going to enforce to a higher standard in relation to your building's earthquake resilience under the HSE Act."

WorkSafe New Zealand has advised that it will not pursue enforcement action under the Health and Safety in Employment Act 1992 (HSE Act) for serious harm caused by earthquake prone buildings where the Building Act 2004 has not been breached.

In August 2013 the Government released its policy for dealing with earthquake prone buildings. Legislation will be introduced to require territorial authorities to complete a seismic assessment of all non-residential and multi-unit, multi-storey buildings within five years of the legislation taking effect. Building owners will then have another 15 years to strengthen a building to meet 34% of the New Building Standard (NBS) or demolish the building.

Quite apart from the above obligations, owners of earthquake prone buildings which are places of work, and employers, have obligations under the HSE Act to take "all practicable steps" to ensure that those who occupy the work place are not harmed by hazards (including building related hazards caused by earthquakes). It was previously thought that ensuring a place of work met 34% of NBS would not determine liability under the HSE Act and that an owner or employer's obligations under the HSE Act were more onerous than the obligations under the Building Act.

The key points of note from WorkSafe are:

- A building owner who complies with the Building Act is not required to meet a higher standard in relation to the structural integrity of the building in order to comply with the HSE Act. In other words if you are an owner who complies with the 15 year timeframe to strengthen an earthquake prone building you should not face prosecution under the HSE Act (though there is some risk still of a private prosecution).
- If you are a building owner who does not comply with the Building Act and someone is harmed following an earthquake (or there is a near miss), you can still face prosecution under the Building Act and the HSE Act.
- Building owners and employers must continue to identify risks caused by non-structural components of buildings such as ceilings, verandas or glass which could fall and injure persons and take all practicable steps to manage such hazards.
- Building owners and employers must secure chattels and equipment that could cause serious harm in the workplace.

We caution that the WorkSafe position statement is not expressed in absolute terms. Without legislative amendment to either the Building Act or HSE Act the position of WorkSafe could be altered at any time. In practice, however, a building owner should be able to rely on these new guidelines without fear of prosecution under the HSE Act. Building owners and employers should continue to monitor the structural integrity of the building after seismic events and seek professional assessments by a competent structural engineer, where appropriate.

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