

# Departmental Disclosure Statement

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Building (Earthquake-prone Buildings) Amendment Bill
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2013 No 182
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

13 November 2013

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## Part One: General Policy Statement

This Bill amends the Building Act 2004 to give effect to reforms announced in August 2013 to improve the system for managing earthquake-prone buildings.

A clear view has emerged that from society's perspective the current system for managing earthquake-prone buildings is not achieving an acceptable level of risk. Many earthquake-prone buildings are not being dealt with in a timely and cost-effective manner.

This Bill introduces a revised system for managing earthquake-prone buildings that strikes a balance between protecting people from harm in an earthquake and managing the costs of strengthening or removing buildings. The new system provides a significantly greater role for central government, particularly in relation to leadership and direction, to make better use of the capability and resources of central and local government.

This Bill is the result of a comprehensive review undertaken by Government, and is broadly in line with the recommendations in Volume 4 of the Canterbury Earthquakes Royal Commission's Final Report.

The amendments in the Bill include—

- requiring territorial authorities to undertake a seismic capacity assessment of existing non-residential buildings and multi-storey and multi-unit residential buildings in their districts within 5 years from commencement (with certain buildings to be prioritised for assessment) using a methodology to be specified and published by the Ministry of Business, Innovation and Employment;
- providing for a register of information on the seismic capacity of buildings to be held by the Ministry of Business, Innovation and Employment;
- clarifying the current threshold for defining an earthquake-prone building, including that it applies to parts of buildings as well as whole buildings;
- clarifying that the level of work required for earthquake-prone buildings is only such that the building, or the affected part, is no longer earthquake-prone;
- requiring work on existing earthquake-prone buildings to be undertaken within a single national time frame—within 20 years of the legislation taking effect (i.e. assessment by territorial authorities within 5 years and work completed within 15 years of assessment);
- providing for work on priority buildings (to be defined in regulations) to be prioritised;
- providing for exemptions from requirements to undertake work for certain buildings;
- providing that owners of buildings that are Category 1 historic places under the Historic Places Act 1993 may apply to the relevant territorial authority for an extension of up to 10 years to complete the work, and the owners must manage risk if an extension is granted;
- enabling territorial authorities (that are building consent authorities) to issue building consents for required work on buildings that are earthquake-prone without requiring other upgrades (for access and facilities for people with disabilities and for means of escape from fire);
- providing for a much greater role for central government, including in relation to monitoring system performance, and providing direction and guidance.

The Bill has been drafted on the basis of the current law. However, because some aspects of the Government's reforms relate to legislation that has not yet been passed, the Bill will need to be amended once this occurs to fully reflect the decisions made by the Government. For example, the Bill will need to be amended to enable owners of buildings on the soon-to-be established National Historic Landmarks List under the Heritage New Zealand Pouhere Taonga Bill to apply for an extension of up to 10 years to complete strengthening work.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
The following documents are available at <a href="http://www.dbh.govt.nz/epb-policy-review">http://www.dbh.govt.nz/epb-policy-review</a> : <ul style="list-style-type: none"><li>• Cabinet Minute: <i>Improving the system for managing earthquake-prone buildings</i> (2013)</li><li>• Cabinet Paper: <i>Improving the system for managing earthquake-prone buildings</i> (2013)</li><li>• Regulatory Impact Statement (RIS): <i>Improving the system for managing earthquake-prone buildings</i> (2013)</li></ul> Volume 4 of the Canterbury Earthquakes Royal Commission's Final report (2012), covering earthquake-prone buildings, is available at: <a href="http://canterbury.royalcommission.govt.nz/">http://canterbury.royalcommission.govt.nz/</a>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
The RIS: <i>Improving the system for managing earthquake-prone buildings</i> (23 July 2013) can be accessed at: <a href="http://www.dbh.govt.nz/epb-policy-review">http://www.dbh.govt.nz/epb-policy-review</a>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>YES</b>
On 11 July 2013, the Regulatory Impact Analysis Team in Treasury provided the following opinion of the RIS:  "The Regulatory Impact Analysis Team (RIAT) has reviewed the RIS prepared by the Ministry of Business, Innovation and Employment and associated supporting material, and considers that the information and analysis summarised in the RIS meets the quality assurance criteria."	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>YES</b>
<p>The following matters in the Bill vary materially from the policy options analysed in the RIS.</p> <ul style="list-style-type: none"> <li>• Owners of buildings that are Category 1 historic places under the Historic Places Act 1993 (and once amended at a later date, those on the soon to be established National Historic Landmarks List under the Heritage New Zealand Pouhere Taonga Bill) are eligible to apply for an extension of the timeframe for carrying out required work. The RIS considered the option of owners of buildings that are Category 1 and 2 historic places under the Historic Places Act 1993 being eligible to apply for an extension of the timeframe.</li> <li>• Territorial authorities (that are building consent authorities) being able to issue building consents for earthquake strengthening works on buildings that are earthquake-prone without requiring other upgrades under section 112(1) of the Building Act 2004. The RIS considered this issue in detail in relation to upgrades to access and facilities for people with disabilities, but did not consider this issue in any detail in relation to upgrades for means of escape from fire (which is also now covered by the Bill).</li> <li>• To enable territorial authorities to better manage the issuing of seismic work notices and exemption notices under the new system, the Bill includes an ability for territorial authorities to require building owners to attach notices to their earthquake-prone buildings. In order to enforce this requirement, a new offence provision has been included for a building owner that fails to display a seismic work notice or exemption notice when required to by their territorial authority. The new offence consists of a fine of up to \$20,000 and is based on the offence provision for failing to display a building's warrant of fitness (set out in section 108 of the Building Act 2004). The RIS did not consider any additional offence provisions in relation to managing earthquake-prone buildings.</li> </ul>	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>YES</b>
<p>The most up to date information on these matters can be accessed at:  <a href="http://www.dbh.govt.nz/epb-policy-review">http://www.dbh.govt.nz/epb-policy-review</a></p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>The most up to date information on these matters can be accessed at:  <a href="http://www.dbh.govt.nz/epb-policy-review">http://www.dbh.govt.nz/epb-policy-review</a></p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

#### 3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The Ministry of Foreign Affairs and Trade was consulted on the content of this Bill. In confirming the Bill's consistency with international legal obligations related to equitable access to buildings, MFAT advises that it referred to the following relevant sources of international law and practice:

- United Nations Convention on the Rights of Persons with Disabilities
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Committee on the Rights of Persons with Disabilities – relevant decisions and guidance
- United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (1993).

### Consistency with the government's Treaty of Waitangi obligations

#### 3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Iwi around New Zealand were contacted\* and invited to make submissions on the consultation document that was released on this issue, and to attend public meetings held around New Zealand on this matter in February 2013. All views expressed by submitters were taken into consideration in the development of the policy the Bill gives effect to.

\* The contact list was based on mandated iwi/hapu identified on Te Puni Kokiri's 'Te Kahui Mangai' Iwi/Hapu Contacts database.

### Consistency with the New Zealand Bill of Rights Act 1990

#### 3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>



## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
<p>The Bill restates existing offence provisions in respect of earthquake-prone buildings in the Building Act 2004 and clarifies who they apply to.</p> <p>Clause 23 (new section 133AY) of the Bill creates a new offence provision for building owners failing to display a seismic work notice, or an exemption notice, with a maximum fine of \$20,000. This new offence provision is considered necessary to give effect to the policy decisions in respect of improving the system for managing earthquake-prone buildings. This new offence provision is based on an existing offence provision in the Building Act 2004 for failing to display a building warrant of fitness (section 108).</p>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>Consultation on the offence provisions was undertaken with the Ministry of Justice in the preparation of the Bill.</p>	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
<p>To improve information and disclosure, the Bill establishes a building seismic capacity register (clauses 33 to 35 refer). The Bill provides that the purpose of the register is to enable members of the public to know whether a building is earthquake-prone and information about that building. For existing buildings, the Bill provides that the register will include information identifying each building, the outcome of the seismic capacity assessment, and details of notices issued by the territorial authority setting out the obligations of building owners if the building is earthquake-prone (but not building owner details). For new buildings, the register will include sufficient details to identify the building, the date on which the Code Compliance Certificate was issued, and a statement that the building is not earthquake-prone.</p> <p>The Bill provides that the content of the register may be expanded through regulations. However, the Bill also provides that this additional information may have restricted public access (either through regulations, or if the Chief Executive of the Ministry of Business, Innovation and Employment considers it not necessary, or it is not desirable, for the information to be publicly available). The Bill also provides that the Chief Executive may supply any information contained on the register: to an entity in the State services (within the meaning in the State Sector Act 1988) if the Chief Executive is satisfied that it is necessary or desirable for that entity to have the information to assist in the exercise of its powers or the performance of its functions under any enactment, and to any person, with the permission of the person to whom the information relates.</p> <p>The Ministry considers the purpose statement of the register appropriately conveys the intent for which the information can be used, and that the provisions in the Bill are justified given the significant public interest in making this information available. The Ministry also considers that the State service information sharing provisions in the Bill include sufficient safeguards to ensure appropriate use of the information on the register.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p>The Office of the Privacy Commissioner was consulted on the issues in section 3.5 above while the Bill was being drafted.</p> <p>The Office of the Privacy Commissioner advised that some information on the register is personal information. While the register will not contain building owner details, it will set out the obligations of building owners and in some cases these owners will be natural persons (instead of companies, trusts or other entities). However, given the limited nature of the personal information on this register the Office of the Privacy Commissioner has recommended that it not be included as a public register under Schedule 2 of the Privacy Act.</p> <p>The Office of the Privacy Commissioner suggested that the Ministry explore whether additional restrictions commonly used on public registers might be practical, however the Ministry did not identify any that were applicable given the purpose and nature of the register.</p>	

### External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>The policy to be given effect by this Bill has been informed by an extensive public consultation process. 535 submissions were received on the consultation document released in December 2012 outlining proposals to improve the system for managing earthquake-prone buildings. More than 1,000 people attended public and stakeholder meetings held around New Zealand on this issue in February 2013. Further information on the detail of this consultation and feedback received (including a summary of submissions on the consultation document) is available at <a href="http://www.dbh.govt.nz/epb-policy-review">http://www.dbh.govt.nz/epb-policy-review</a>.</p> <p>A workshop between officials from the Ministry of Business, Innovation and Employment, Local Government New Zealand and selected territorial authorities was also held in late May 2013.</p>	

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
<p>A sector reference group was established as part of the policy process. The group provided input in the lead up to the release of the consultation document in December 2012. Further information on the details of this group is available at <a href="http://www.dbh.govt.nz/epb-policy-review">http://www.dbh.govt.nz/epb-policy-review</a></p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>YES</b>
<p>Provisions are included in the Bill to help manage the transition from the current system for managing earthquake-prone buildings in the Building Act 2004 to the system in this Bill (new Schedule 1AA refers). Some of these provisions may be considered to have retrospective application.</p> <p>Notices issued under section 124 of the Building Act 2004 prior to the commencement of the Bill (requiring work to be undertaken on earthquake-prone buildings) will be reissued where the time remaining on the notice is more than 15 years and all of the provisions of the Bill will apply. This provision could mean, for example, that an owner who had previously planned to strengthen based on a 30 year timeframe will now have to revise those plans for a 15 year timeframe.</p>	

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>
<p>Clause 23 (new section 133AY) of the Bill creates a new offence provision for building owners failing to display a seismic work notice, or an exemption notice, with a maximum fine of \$20,000. This new offence provision is considered necessary to give effect to the policy decisions in respect of improving the system for managing earthquake-prone buildings. This new offence provision is based on an existing offence provision in the Building Act 2004 for failing to display a building warrant of fitness (section 108).</p>	

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>

## Significant decision-making powers

<p><b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person’s rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b></p>	<p><b>YES</b></p>
<p>Clause 23 (new section 133AF) of the Bill provides that territorial authorities must undertake a seismic capacity assessment of existing non-residential and multi-storey/multi-unit residential buildings in their districts within 5 years from commencement (with certain buildings to be prioritised for assessment), using a methodology to be specified and published by the Ministry of Business, Innovation and Employment. Clause 23 (new section 133AR) of the Bill provides that a building owner may provide alternative evidence of their building’s seismic capacity.</p> <p>If a building (or part of a building) is deemed to be earthquake-prone, territorial authorities will issue seismic work notices requiring work to be undertaken within 15 years so that the building (or the relevant part of it) is no longer earthquake-prone (clause 23, new sections 133AL to 133AP refer). Owners of certain buildings (that meet criteria to be specified in regulations) may apply for an exemption from the requirement to carry out work on their buildings (clause 23, new section 133AS refers). Owners of buildings that are Category 1 historic places under the Historic Places Act 1993 are eligible to apply to their territorial authority for an extension of the timeframe – a territorial authority may grant an extension of up to an additional 10 years, in which case a seismic work notice will be re-issued (clause 23, new section 133AT refers).</p> <p>The Bill also provides that territorial authorities must set timeframes for certain seismic work in relation to priority buildings (clause 23, new sections 133AZ to 133AZC refer). These policies must be developed following the special consultative procedure in section 83 of the Local Government Act 2002. These provisions enable territorial authorities to set timeframes for seismic work to be carried out on priority buildings that are shorter than the national timeframe of 15 years.</p> <p>Clause 28 of the Bill provides that parties to a determination may apply to Chief Executive of the Ministry of Business, Innovation and Employment for a binding determination on any territorial authority decision making power in respect of earthquake-prone buildings under the Bill, with the exception of the timeframes referred to in the paragraph above, and in respect of a decision to apply to the District Court to carry out work.</p>	

## Powers to make delegated legislation

<p><b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b></p>	<p><b>YES</b></p>
<p>The Bill recreates the power to define the term ‘moderate earthquake’ in regulations (clause 38 refers). This term is a critical element of the definition of an earthquake-prone building in the Bill.</p> <p>Regulations are also required to define priority buildings (clause 37 refers). These regulations are a critical input into the timeframe certain building owners will have to undertake required work, and on the assessment prioritisation process (see section 4.6 above and section 4.8 below for further information).</p> <p>The principles in the Deemed Regulations Report of the Regulations Review Committee have been taken into consideration.</p>	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>Other regulations are required to give effect to the provisions in the Bill, including to:</p> <ul style="list-style-type: none"> <li>• prescribe the criteria for granting an exemption from the requirement to carry out work on an earthquake-prone building</li> <li>• prescribe the criteria for territorial authorities to apply when deciding whether or not to require upgrades to access and facilities for people with disabilities, and means of escape from fire, when required work is undertaken on an earthquake-prone building</li> <li>• prescribe information that must be kept on the seismic capacity register and whether public access to that prescribed information must be restricted.</li> </ul> <p>The Bill also includes an empowering provision to enable the making of delegated legislation in the form of a methodology for seismic capacity assessments by territorial authorities (clause 23, new section 133AG refers). The Bill provides that the methodology, set by the Chief Executive of the Ministry of Business, Innovation and Employment, must specify:</p> <ul style="list-style-type: none"> <li>• how a territorial authority is to assess a building's seismic capacity</li> <li>• how a territorial authority is to prioritise the assessment of buildings within its district, with particular reference to priority buildings</li> <li>• the engineering tests, the results of which a territorial authority must accept as alternative evidence of a building's seismic capacity</li> <li>• how a territorial authority is to evaluate, as evidence of a building's seismic capacity, engineering tests completed before the day on which the provisions come into force.</li> </ul> <p>The Bill includes consultation requirements for setting the methodology, and notification provisions. The Bill also provides that the methodology is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives.</p> <p>The methodology relates to detailed and technical matters, and flexibility is needed to enable the methodology to be updated periodically. Providing for the methodology to set in this way will also enable any unforeseen issues to be dealt with effectively.</p> <p>The principles in the Deemed Regulations Report of the Regulations Review Committee have been taken into consideration.</p>	

**Any other unusual provisions or features**

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>