

8 March 2013

Earthquake-Prone Building Review
Infrastructure and Resource Market Group
Ministry of Business, Innovation and Employment
PO Box 10729
Wellington 6143

By e-mail: epbreview@dbh.govt.nz

Building Seismic Performance Consultation

Thank you for the opportunity to provide feedback to the Ministry of Business, Innovation & Employment (MBIE) on 'Building Seismic Performance: Proposals to improve the New Zealand earthquake-prone buildings' (Consultation Document).

One significant issue that has come to our attention is the difference in approaches between the Health and Safety in Employment Act 1992 (HSE Act) and the Building Act 2004 in respect of seismic upgrades for earthquake-prone buildings. Under the Building Act, a building is considered earthquake-prone if it will not resist at least 33% of the basic seismic design load under the Building Code for a new building in the same area. Under the HSE Act by comparison, an employer must take "all practicable steps" to protect employees, customers and third parties from serious harm.

The difference between the strict test in the Building Act and the principles-based test in the HSE Act provides uncertainty for businesses. A number of our members have vacated buildings which, while complying with the Building Act test, have been deemed internally to be below the standard required under the HSE Act. This has resulted in some banks having to find new premises, while continuing to pay for the old premises because they are technically compliant and so have no legal ability to cancel the lease.

There is an urgent need to address this issue. The preferred approach is for Government to issue guidance that provides a business will generally have complied with the HSE Act if it has met the earthquake-prone threshold of 33% of Code. The onus would remain on each property owner to consider the individual circumstances of each building to determine if additional strengthening measures are needed to protect employees, customers and others from serious harm.

Over the longer term, new legislation or regulations that are enacted should remove inconsistencies between existing legislation and set out prescriptive earthquake-prone building requirements for businesses. A prescriptive approach would create certainty and encourage a more consistent approach.

If you would like to discuss this submission further, please contact me directly.

Yours sincerely

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