

Building (Earthquake-prone Buildings) Amendment Bill

Submission of the New Zealand Law Society Te
Kāhui Ture o Aotearoa

11 February 2026

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**the Law Society**) welcomes the opportunity to comment on the Building (Earthquake-prone Buildings) Amendment Bill (**the Bill**).
- 1.2 The Bill proposes significant changes to the current regulatory framework for managing earthquake-prone buildings, which was inserted into the Building Act 2004 (**the Act**) following the Canterbury Earthquakes. The explanatory note to the Bill states that it intends to “establish a more proportionate and risk-based regulatory system for managing earthquake-prone buildings.”
- 1.3 This submission has been prepared with the assistance of the Law Society’s Public Law Committee.¹ The Law Society does not wish to be heard on this submission.

2 Transitional provisions – reliance on Henry VIII clause

- 2.1 The Bill includes a Henry VIII clause. A Henry VIII clause is a legislative provision that allows primary legislation to be amended, suspended, or overridden by regulation. As a matter of principle, such provisions are undesirable as they empower the Government of the day to override the will of Parliament, and typically only Parliament should be able to amend its own laws. Accordingly, the Law Society tends to carefully scrutinise such provisions. The expectation is that they will be used only where necessary, with appropriate constraints and safeguards.²
- 2.2 Schedule 1, clause 24 of the Bill provides the Governor-General with a time-limited power to make regulations for transitional and savings purposes. These regulations may override, modify, or disapply the primary legislation or provide for any other matter considered necessary for an orderly transition.
- 2.3 The drafting of this clause appears to be largely consistent with the Regulation Review Committee’s principles on the use of transitional override powers.³ It is reasonably arguable that these powers meet the Committee’s “demonstrably essential” threshold given the scale, complexity, and private and public implications of the subject-matter and the substantive change in regulatory approach (from the status quo to targeting just the highest risk buildings).⁴ There may be transitional matters that occur that were not easily anticipated and the ability to direct via regulations allows a swifter response than enacting new legislation.
- 2.4 We note the power is limited in that it cannot be used (and the Regulations cannot remain in force) any later than 2 years after the date of the clause coming into force. The

¹ More information about this committee can be found on the Law Society’s website: <https://www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/>

² See, for example: Legislation Design and Advisory Committee *Legislation Guidelines* (2021) at 15.1, and Dean R Knight and Edward Clark, *Regulations Review Committee Digest* (7th ed, New Zealand Centre for Public Law, 2020) at Chapter 14, Part IV.

³ Regulations Review Committee *Regulation-making powers that authorise transitional regulations to override primary legislation* (15 July 2014), at 7.

⁴ If “demonstrably essential”, Parliament can delegate the power to amend, suspend, override or repeal primary legislation through regulation, see Mary Harris and David Wilson (eds) *McGee Parliamentary Practice in New Zealand* (4th ed, Oratia Books, Auckland, 2017) at 465 (5th ed at 41.6.4) and Regulations Review Committee, above, n 3, at 5.

regulations may also be disallowed by Parliament or declared invalid by the courts. However, the power does go further than providing for additional transitional detail, and enables the making of regulations “in place of” the primary legislation. Removal of the terms “in place of” would better ensure the appropriateness of the power.

3 Retrospective application - new sections 133Z and 133X

- 3.1 The Bill allows the owner of an earthquake-prone building to apply for an extension of up to a maximum of 15 years to complete seismic works. Building owners who have not met a remediation deadline under the previous system may apply afresh for an extension of up to 15 years (with some limitations). This means there is a limited retrospective effect contained in the Bill to the benefit of those building owners (essentially retrospectively extending their expired remediation period).
- 3.2 There is a presumption that legislation will have prospective, not retrospective effect.⁵ However, it can be appropriate in certain circumstances, including where it is only to the benefit of those affected.⁶
- 3.3 There is a policy and public law balance here in that this limited retrospective effect is not necessarily removing any existing beneficial rights or entitlements but it may unfairly benefit private individuals who have not complied with prior statutory obligations to complete seismic works. This private benefit may be balanced against the Bill’s aim of high-risk earthquake-prone buildings being made safe and the likely increased financial burdens for these individuals to comply with their remediation obligations under the new system. There is also the ability for territorial authorities to step in and carry out remediation works on these buildings, and recover the costs of doing so, from the building owner – which may mitigate against any private building owners seeking to further delay remediation of high risk buildings.
- 3.4 Like Henry VIII clauses, the proposed retrospective application of legislation requires careful consideration of both the appropriateness of the retrospectivity and possible implications. The Law Society acknowledges it is limited in this instance, however draws it to the attention of the Select Committee.

4 Discretionary powers of territorial authorities

- 4.1 Territorial authorities (TAs) will be required to identify priority buildings and earthquake-prone buildings in their districts (in accordance with new section 133H), and may then, for example:
- impose safety requirements (new section 133ZD).
 - decide to carry out seismic work including demolition of an earthquake-prone building, and recover costs (new section 133ZE).
 - enforce compliance using fines and penalties (new section 133ZH).
- 4.2 There is some discretion for TAs in how they make these decisions, which may lead to differing approaches across districts, resulting in variation of public safety outcomes. It

⁵ Legislation Act 2019, section 12.

⁶ LDAC, above, n 2, at 12.1.

is unclear whether this risk will eventuate, but it may be useful to include in the Bill a statutory requirement for post-legislative or stewardship review of the operation of the new system. This could aim to understand, amongst other matters, how these discretions are being exercised and whether there is a need for statutory direction.

5 Exemptions from requirement to carry out seismic work and Building Code Compliance - new sections 133ZG and 133W

- 5.1 New section 133W provides that the owner of an earthquake-prone building subject to an EPB notice may apply to a TA for an exemption to carry out seismic work on the building. If satisfied that the building has the prescribed characteristics (those prescribed by regulations made pursuant to section 401C(1)(b) of the Act), the TA must grant the exemption.
- 5.2 New section 133ZG applies to alterations to buildings that are earthquake-prone and subject to an EPB notice. On application for a building consent for alteration of an earthquake-prone building subject to an EPB notice, to deal with the required seismic work, the TA must allow the application without requiring compliance with the provisions of the building code relating to escape from fire or disability access. However, the TA must draw those provisions of the building code to the attention of the building owner. This is a change in approach. At present, section 133AT of the Act provides the TA with a discretion to require the building owner to comply with those provisions of the building code.
- 5.3 While this may be practical, and to a certain extent may promote consistency across districts, it does have safety and accessibility implications. We query whether consideration ought to be given to retaining a residual discretion, which can be exercised in prescribed circumstances.

6 Heritage buildings designated as earthquake-prone - new section 133U

- 6.1 Under new section 133U, if a heritage building is designated as earthquake-prone, the TA must notify Heritage New Zealand Pouhere Taonga. There is no statutory direction on how, if at all, heritage considerations apply within the regime (or how both statutory regimes work together). This could lead to conflict and require clarification through the courts.
- 6.2 Although this continues the status quo, it may be better to provide clarity and certainty in the bill as to how the new regulatory system will apply to heritage buildings given many heritage buildings are likely to meet the Bill's statutory criteria for designation as a high-risk building.



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