

CLIENT BRIEFING

LANDLORD RESPONSIBILITIES UNDER THE NEW HEALTH AND SAFETY AT WORK ACT 2016

As of 1 April 2016, the new Health and Safety at Work Act (the Act) legislation came into force, bringing with it a number of key changes for businesses operating in New Zealand. These changes also have an impact on landlords – commercial or residential. Landlords are considered persons conducting a business or undertaking (PCBU).

In addition to landlord responsibilities under the Residential Tenancies Act, under our new laws there are duties and obligations for PCBUs to proactively manage the health and safety of workers, contractors and tenants.

An individual, company or trust that owns and does not occupy a property and rents that property out to others is considered to be liable to comply with all new legislation. Under the Act they will owe duties as a PCBU when engaging contractors such as a plumber, electrician, builder or the like, for any work on the property.

POSSIBLE PENALTIES:

PCBUs and individuals who breach any of the provisions of the Act may be liable for fines of up to the following limits:

RECKLESS CONDUCT IN RESPECT OF HEALTH & SAFETY DUTY (BEING RECKLESS ABOUT THE RISK TO AN INDIVIDUAL OF DEATH OR SERIOUS INJURY)

Individual (not a PCBU):	Imprisonment not exceeding 5 years; and/or fine up to \$300,000
Individual (PCBU):	Imprisonment not exceeding 5 years; and/or fine up to \$600,000
Body Corporate:	Fine up to \$3 million

FAILURE TO COMPLY WITH HEALTH & SAFETY DUTY (EXPOSING AN INDIVIDUAL TO RISK OF DEATH OR SERIOUS INJURY)

Individual (not a PCBU):	Fine up to \$150,000
Individual (PCBU):	Fine up to \$300,000
Body Corporate:	Fine up to \$1.5 million

FAILURE TO COMPLY WITH HEALTH & SAFETY DUTY (NO EXPOSURE TO DEATH OR SERIOUS INJURY/ ILLNESS)

Individual (not a PCBU):	Fine up to \$50,000
Individual (PCBU):	Fine up to \$100,000
Body Corporate:	Fine up to \$500,000

I AM A LANDLORD. WHAT DO I NEED TO DO?

A landlord cannot solely rely on the contractor to manage health and safety risks and cannot take an 'all care; no responsibility' approach with contractors whom they have on the property; it is unlawful to contract out of the Act's duties.

Landlords must proactively manage the health and safety of the worksite (the property) and be able to produce evidence that they have paid attention to health and safety implications. Lack of knowledge or awareness is no defence in the event of a serious harm or incident leading to an investigation and/or prosecution.

To comply with their duties, there are a number of practical steps that a landlord can take:

- Installation of smoke alarms within three metres of each bedroom door or every room where a person sleeps. If it is a multi-storey tenanted house there must be a smoke alarm on each floor. This is now a mandatory requirement from 1 July 2016 under the Residential Tenancies Act. It does remain the tenant's obligation to replace expired batteries.
- Landlords have until 1 July 2019 to ensure their residential rental home has insulation to keep the home warm in the winter and cool in the summer. All landlords are required to provide a statement on new tenancy agreements about the location, type and condition of insulation in the home for any new tenancy from 1 July 2016.

If there is construction or renovation work taking place onsite, landlords should:

- Ensure their contractors are sufficiently competent to perform the work and have their own individual health and safety plan
- If possible, meet with the contractor on site at the property and discuss risks and health and safety requirements and make notes of the meeting and discussion
- For major works, consider appointing a project manager or property manager to manage the risks for contractors (although this will not excuse a landlord from liability)

Despite all due care being taken, incidents can still happen. Legal representation in a WorkSafe investigation can end up being a costly exercise. Whilst fines issued under the Act are not insurable by law, there is insurance available to cover the legal costs for representation in an investigation and to cover the reparations ordered to be payable to the victim or victim's family.

In light of the new health and safety regime and legal landscape, we recommend Statutory Liability insurance as a landlord/property owner for your protection. We have included a sample quotation based upon a single rented property below:

Limit of Indemnity: \$1,000,000 any one claim and in the annual aggregate

Excess: \$500

Annual Premium: \$100 (excl. GST)

If you wish to better protect your liability exposure as a landlord/property owner, please contact your Marsh representative on 0800 627 744, who will be happy to assist.

marsh.co.nz

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