

# Health and Safety in Residential Property Investment

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Over the past year there have been a lot of changes to rules for owners of residential investment properties. The majority of these changes have been well publicised in the media, being topics of public interest. These include the acceptable level of methamphetamine contamination in a property, increased insulation requirements, the requirement for fire alarms in all properties and, more recently and possibly most controversially, the Osaki case – which has drastically reduced the landlord's ability to claim for negligent damage of the investment property.

However, some of the biggest changes to the industry over the last year have largely gone unnoticed. These are the changes to Health and Safety at Work Act 2015 (HSW Act).

On 1 April 2016 the new HSW Act came into force. The objective of the new law is to provide further protection to employees in the workplace. Although the HSW Act does not specifically define a business, it does define a 'person conducting a business or undertaking' (PCBU) in very broad terms, which includes every residential landlord, as owning an investment property is certainly an undertaking, even if there is room to argue whether a single residential property investment can be considered a business.

The obligations imposed by the Act are also imposed on company directors, trustees, people holding positions comparable to company directors and anyone else who holds a position that allows them to exercise influence over the management of the PCBU. Simply put this means that not only the Landlord, but family members, solicitors, accountants or anybody else, whether or not they are listed as a director or trustee for the property owner, could be held responsible for breaches of the Act.

The fines and penalties for breaches of the Act have been greatly increased. Should a landlord/business fail to meet their obligations under the Act and face prosecution, the maximum fines or penalties are up to \$3 million for a PCBU; and \$600,000 and/or a five year imprisonment term for an individual or officer of a PCBU. Ignorance of what is happening will be no defence. The Act also prevents PCBUs from insuring against fines, so while indemnity insurance may cover any court costs, the actual fines must be paid by the PCBU or the individual.

In practice, a landlord is required to ensure that a property is provided as a safe and healthy environment for tenants and as far as reasonably practicable the health and safety of

workers engaged in work on the property. This means that every time a contractor is sent to the property they must be informed of any Health and Safety issues that are present at the property, such as a dangerous dog, or difficult access. It also means that landlords have a duty to ensure that the contractor undertaking any maintenance is competent and appropriately qualified to do that work. They can meet this duty by assuring themselves that they are contracting a bonafide reputable company. The changes and the penalties able to be imposed under the Act, should be a sufficient incentive to end the days of the old number eight wire do-it-yourself Kiwi attitude to carrying out maintenance on a residential rental property. To do so may well be a breach under the Act, unless the landlord or person carrying out the work can demonstrate that they were fully qualified to carry out that job and that their qualifications were current.

Another aspect of the law is that once a landlord has become aware of issues at a property they must take all reasonably practicable steps to deal with issues in a competent manner. For example, if they notice during a routine inspection, or if a tenant notifies them that some boards on the deck are rotten, they will not be able to simply deal with the issue by putting plywood over the offending boards so that no one stands on the rotten wood. Rather, they will be obliged to determine whether the problem is more widespread and in any event apply a permanent fix rather than merely undertaking a stop-gap measure.

Australia has had a similar Health & Safety Act for many years and provides an indication of how the HSW Act might be enforced in New Zealand. Certain aspects of the changes can be illustrated by reference to two cases, the first in New Zealand prior to the HSW Act coming into force; and another in Australia after their equivalent legislation had already come into force.

In New Zealand a case in Timaru involved a property management company being fined \$50,000 for engaging an unqualified contractor to remove a gas heater. The gas supply was not capped off and when the new tenant moved in and ordered a new gas cylinder, up to 35kg of gas leaked into the house overnight. Fortunately for all concerned, the incident didn't result in serious injury.

In Australia a landlord and property manager were both taken to court and ordered to pay \$840,000. The tenant in the property had seriously hurt themselves when they accidentally broke a window pane on the front door of the house. The issue was that a contractor had, over a period of seven years, twice been to the house to repair other windows that had been broken. The contractor was a handyman, rather than a qualified glazier. Had they used a qualified glazier it is likely the glazier would have noticed that the pane in the door was not of the required safety glass and therefore taken steps to replace it, and by doing so preventing the injury from occurring.

How WorkSafe New Zealand intends to enforce the HSW Act in relation to residential rental properties remains to be seen. It is likely to take a few test cases to gain a full

understanding of the implications. Where a property is professionally managed, we would imagine that WorkSafe will look primarily to the property manager should an incident occur, as the property manager will have responsibility for the day to day management and oversight of the property. However, to be able to rely on this protection, the landlord may need to show that they have contracted the management to a qualified agent or reputable property management company. Therefore the use of experienced professionals is strongly recommended

Please contact [Crockers](#) if you own a residential rental property and wish to discuss any aspect of property management or if you have any concerns about these new rules.

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