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OVERSEAS INVESTMENT REFORMS INJECT BILLIONS INTO LOCAL ECONOMY

The Government's work to boost overseas investment and remove barriers to doing business with New Zealand is delivering billions for the local economy and Kiwi businesses, Associate Finance Minister David Seymour and Immigration Minister Erica Stanford says.

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GLAISTER KEEGAN LEGAL UPDATE FOR OUR CLIENTS

inbrief

1ST QUARTER 2026



CHANGES TO THE EARTHQUAKE PRONE BUILDING SYSTEM: A RISK BASED APPROACH TO SAFETY

The Government has announced proposed changes to the Earthquake-Prone Building (EPB) system aiming at making the system more proportionate and risk-based and targeting higher seismic risk areas and buildings that pose greater safety risks.

The proposed changes include:

- **Removal of NBS system** – The New Building Standard (NBS) system currently used to assess the seismic performance of a building will be removed. The NBS ratings will not be used to identify EPB's.
- **Low-risk areas removed and reclassification of Coastal Otago** – Auckland, Northland and the Chatham Islands will be removed from the EPB system due to their low seismic risks. Coastal Otago will be reclassified as a medium seismic hazard area and will continue to fall within the EPB system.

CONTINUED ON PG 3

HOW FIXED IS YOUR FIXED TERM TENANCY?

A recent Tenancy Tribunal decision gives us an opportunity to consider the strengths and limitations of fixed term tenancies.

BACKGROUND

Shadrock was a tenant under a fixed-term residential tenancy. She attempted to terminate her tenancy, citing that the rent was too expensive. The landlord reminded her that she had a fixed-term tenancy and could not end it by notice. Shortly thereafter, she tried to terminate the tenancy under s 56B of the Residential Tenancies Act, which allows tenants to urgently withdraw from residential tenancies if they have been victims of family violence. She could not, however, provide the evidence required by the Act.

Shadrock eventually vacated the premises and the landlord re-took possession. The landlord sought an order from the Tenancy Tribunal seeking payment of the bond to them, payment for rent up to the date they had re-taken possession, and other costs (including the costs to repair water damage that had occurred to the premises).

The Tribunal found that the tenant had no grounds to terminate the lease under s 56B, ordered that the entirety of the bond be released to the landlord, and that the tenant pay an amount to the landlord for cleaning and carrying out repairs to the premises.

S 56B RESIDENTIAL TENANCIES ACT 1986

This section permits a tenant to withdraw from a residential tenancy (whether periodic or fixed term) with 2 days' notice, provided qualifying evidence is provided showing that either the tenant or a dependent of the tenant has been the victim of family violence while a tenant of the premises.

The qualifying evidence must be given by one of a broad number of prescribed people, such as a medical professional, police employee, social worker, school principal, or lawyer, and can be:

- a written statement that they reasonably believe that the tenant or their dependent has been a victim of family violence;
- the first page of a family protection order;
- a Police safety order; or

- a charging document under s 14 of the Criminal Procedure Act 2011 relating to family violence against the tenant.

All of the above must show or state that the violence occurred while the tenant was a tenant of the premises. If the tenant is the sole tenant under the lease, the lease immediately terminates. If there are remaining tenants, the rent is temporarily reduced for two weeks and a special procedure determines how the bond is to be treated.

TERMINATION OF A FIXED-TERM RESIDENTIAL TENANCY

Landlords and tenants are obviously limited in their ability to terminate a fixed-term tenancy prior to its expiry. Aside from the provisions of s 56B, a tenant may terminate a fixed-term tenancy:

- where the premises is destroyed or otherwise rendered uninhabitable; or
- where the premises has been contaminated above the prescribed maximum safe level.

A landlord may also terminate a fixed-term tenancy with 14 days' notice where a tenant has assaulted the landlord, a member of the landlord's family, or the landlord's agent.

The Tenancy Tribunal may also order a residential tenancy to be terminated where the tenant is chronically arrears in rent, has seriously breached the tenancy agreement, or has committed incidents of anti-social behaviour.

TENANT'S LIABILITY FOR DAMAGE TO THE PREMISES

In Shadrock's case, the tenant was found to have carelessly, but not intentionally, caused water damage to the premises from a series of accidental floods in the kitchen and bathroom.

Section 49B(3)(a) of the Residential Tenancies Act sets out a tenant's liability for damage to premises:

- When caused carelessly and covered by the

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CHANGES TO THE EARTHQUAKE PRONE BUILDING SYSTEM

- **Targeted building types** – Buildings of three or more storeys with heavy construction (e.g. concrete) and unreinforced masonry buildings that are not in Auckland, Northland and the Chatham Islands will remain under the EPB system.
- **Tiered risk mitigation requirements** –
The new risk mitigation requirements include:
 - a requirement to remain on the national EPB register
 - façade securing
 - targeted retrofit
 - full retrofit,
 and these requirements will apply according to the location of the building and the building type.
- **No automatic fire and accessibility upgrades** –
The requirement for concurrent fire and accessibility upgrades will be removed so that seismic work will not automatically trigger these upgrades.
- **Deadline extension** – Building owners will be able to apply for seismic work deadline extensions subject to conditions. Councils can grant up to 15-year extension to the seismic work deadline.
- **Priority building status** – Priority building status will no longer automatically apply to government agencies (such as hospitals, fire stations or schools). Only unreinforced masonry that risks pedestrians or vehicles and buildings that could block emergency routes will qualify as priority buildings.

It is expected by the Government that the proposed changes will remove around 55% of EPBs (approximately 2,900 buildings) from the EPB system and save building owners around \$8.2 billion.

The proposed changes will be implemented through the Building (Earthquake-prone Building System Reform) Amendment Bill, which is expected to be passed into law in 2026.

If you would like to discuss any of these proposed changes or how they may affect your building(s), feel free to get in touch with our property team.



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HOW FIXED IS YOUR FIXED TERM TENANCY?

landlord's insurance, the tenant's liability is limited to either the landlord's excess, or four weeks' rent (whichever is lesser).

- When caused carelessly and not covered by the landlord's insurance, the tenant's liability is limited to four weeks' rent.
- When caused intentionally, the tenants will be liable for the costs of repair, and an insurer will be entitled to pursue the tenant for the full costs of repair.

A TRAP FOR UNWARY PLAYERS

A fixed term tenancy of longer than 90 days does not automatically end on the scheduled end date – it will instead automatically become a periodic tenancy unless either the landlord or the tenant give written notice to the other between 21 and 90 days before the end of the term, confirming that the tenancy will end on the end date.

CONCLUSION

Even if a fixed term tenancy is brought to an end correctly, there can be unanticipated costs for the tenant. Both parties – landlord and tenant – need to be aware of their rights and obligations when a tenancy ends, whether it is a fixed-term or periodic tenancy.



IF A NEIGHBOUR'S STRUCTURE DOESN'T ACTUALLY BLOCK YOU FROM USING A RIGHT OF WAY, IS IT REALLY A BREACH?

The Circumstances

Wimax New Zealand Limited ("Wimax") and the Fuge family ("the Fuges") own properties that share a common driveway on land owned by Wimax, which is subject to a right of way in favour of the Fuges.

The right of way area is about 6.2 metres wide. A sealed driveway was formed on the right of way in the early 1960s, which does not take up the right of way's entire width. An easement instrument was registered in 1964 and was updated in 2017 without making any changes to the right of way area itself.

A number of historical structures owned by Wimax encroached on the right of way area, but not on the sealed driveway. In 2018, the Fuges discovered this fact and requested that Wimax remove them. Wimax declined to do so, and the dispute was referred to arbitration.

THE DISPUTE

It was agreed that for the Fuges to have a cause of action for nuisance, Wimax's structures needed to substantially interfere with the Fuges' use the right of way for its intended purpose. It was also agreed that neither the Fuges nor the previous owners of their land had any difficulties in using the sealed driveway to access their property, despite the encroachment of the structures on the right of way area.

The arbitrator found in favour of Wimax, but on appeal the High Court found in favour of the Fuges. Both parties took the matter to the Court of Appeal.

At the Court of Appeal the judge noted that the arguments between the parties had evolved into a question of whether the Fuges were entitled to succeed in a claim for nuisance in circumstances where Wimax's structures did not interfere with the current use of the right of way, but might impact the Fuges' possible future plans to develop their property (the Fuges argued that the presence of Wimax's structures would prevent a widening of the sealed driveway).

The Court of Appeal reversed the High Court's decision, finding that the Fuges would only have a cause of action in nuisance if Wimax's structures:

- (a) substantially interfered with the Fuges' use of the right of way, and
- (b) interfered with the Fuges's use of the right of way at the time of the offending action.

Since neither of the above applied, the Court of Appeal reversed the High Court's decision and found in favour of Wimax.

The Fuges have appealed to the Supreme Court, who will address the question of whether it is necessary to decide the issue by reference to the Fuges' present requirements, and not the "reasonable possibility of future development."

The Supreme Court heard the appeal on 17 February 2026, but as at the time of writing has yet to issue its judgment.

TAKEAWAYS

1. The mere presence of the structures on the easement area, even though they were found not to interfere with the neighbours' easement rights, has led to lengthy and costly litigation and has no doubt degraded the relationship between the neighbours.
2. The Court of Appeal emphasised that its analysis of whether there was substantial interference with the Fuges' use and enjoyment of the right of way was one of "fact and degree" – in other words, something not necessarily cut-and-dried or immediately obvious to everyone involved.
3. Although Wimax was successful at the Court of Appeal and may still prevail at the Supreme Court, it would be prudent for landowners to avoid encroachments on easement areas, where possible.
4. If you have land that is either burdened by, or has the benefit of, a right of way or any other type of easement, it is vital that you understand its terms, your rights, and your obligations.

Talk to the Property Team at Glaister Keegan if you have any questions or concerns about your own property.



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EMPLOYMENT LAW UPDATES

Several changes impacting on employer/employee relationships have been introduced under the Employment Relations Amendment Act 2026 with effect from 21 February 2026.

NEW REMUNERATION THRESHOLD FOR UNJUSTIFIED DISMISSAL CLAIMS:

A new provision has been implemented whereby employees earning more than \$200,000 per year will no longer be able to raise a personal grievance for unjustified dismissal, or unjustified disadvantage relating to the dismissal. It is necessary to be aware that the \$200,000 annual income threshold is based on total remuneration - this includes not only salary but also bonuses, commissions, share-related benefits and other allowances actually paid in the year before dismissal.

Employers are no longer required to comply with the usual unfair dismissal procedures, such as providing reasons or following good faith obligations, when dismissing high earner employees. Those employees do still retain rights to bring grievances on other grounds (eg discrimination, harassment, etc).

On a practical level, there is a lead in period of 12 months for current employees, before the change takes effect, and even after that initial period the new threshold does not automatically override existing terms and policies in employment agreements.

The Act does allow parties to opt out of the new provisions.

Action: Employers and employees affected by the changes should look to renegotiate the terms of their employment agreements before the end of the transition period if appropriate. Unless there are specific provisions imposing obligations on the employer to follow a fair and reasonable process and have justifiable reason for termination, the employee will be subject to termination at will. It is however still possible for parties to opt out of the new sections under the Act and to allow an employee to retain the right to claim unjustifiable dismissal. Another option is to look at an extended notice period so an employee will have a reasonable time in which to look for a new job.

CHANGES TO JUSTIFICATION FOR DISMISSALS AND REDUCTION IN REMEDIES:

The new law introduces stronger consequences where an employee's conduct has contributed to a personal grievance. The amendments provide that contributory conduct can significantly reduce or eliminate remedies that were commonly previously awarded. Minor procedural defects will no longer automatically result in a

dismissal being unjustified, unless the defects result in unfair treatment.

If an employee's own behaviour contributed to the situation, for example misconduct, dishonesty, or refusal to obey reasonable instructions, the compensation which might be awarded may be reduced by up to 100%.

Where the actions of the employee amounted to serious misconduct then the Employment Relations Authority or Employment Court will not award any remedy at all.

CONTRACTOR V EMPLOYEE – NEW “GATEWAY” TEST:

The amendment aims to provide more upfront certainty for employers and workers to determine whether they are a contractor or an employee. The historical position has been that Courts (or the Employment Relations Authority) looked at the real nature of the working relationship between the parties to determine the worker's status. The Employment Relations Act now sets out prescribed criteria that, if met, will recognise a worker as a specified contractor and exclude them from the definition of an employee.

The key criteria are:

1. There is a written agreement specifying that the worker is an Independent Contractor (or not an employee);
2. The worker is not restricted from performing work for others;
3. The worker is not under control as to how and when the work is done, or is allowed to sub-contract the work;
4. The business/employer cannot terminate the arrangement if the worker turns down additional work;
5. The worker had a reasonable opportunity to seek independent advice before entering into the agreement.

If any of the gateway test criteria are not met, the existing common law test of employment status will still be used.

CONCLUSION – ACTION:

In light of the changes which have been introduced it will be important to review and amend terms of existing employment agreements, particularly for employees on or approaching the high threshold remuneration level, within the next 12 months.

When entering into a new arrangement to engage a worker or to undertake work, consider whether the criteria are met to be defined as an independent contractor rather than employer.

When actions or conduct of an employee bring disciplinary action into consideration, take into account whether the employee's behaviour is of such a level that it may impact on the justification for dismissal.



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GLAISTER KEEGAN WELCOMES NEW TEAM MEMBERS TO THE PRIVATE CLIENT TEAM



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Monique Mackie is a Special Counsel in the Private Client, Trusts, Estate Planning & Asset Protection team at Glaister Keegan. She has over twenty years' experience practising in the area of Trusts and Personal Asset Planning. Prior to specialising in this area of practice, she also worked in the tax team of a large New Zealand law firm. This experience allows Monique to bring an understanding of structuring and commercial considerations when advising clients. Monique prides herself on being approachable, caring and professional while providing expert legal advice on such an important area of law for individuals and families.



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