

New Zealand

REPEALED: See Act, 19 No.



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1941, No. 17

Title.

AN ACT to make Provision with respect to the Insurance of Property against War Damage.

[13th October, 1941

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title and commencement.

1. (1) This Act may be cited as the War Damage Act, 1941.

(2) This Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Proclamation.

2. (1) In this Act, unless the context otherwise requires,— Interpretation.

“ Commission ” means the War Damage Commission constituted under this Act:

“ Contract of fire insurance ” means a contract whereby any property is insured against loss or damage by fire (including fire consequent on earthquake), whether the contract includes other risks or not; but does not include any contract of marine insurance or any contract of reinsurance:

“ Enemy ” means any enemy of His Majesty in the present war:

“ Insurance company ” means any person who on his own account or on behalf of any other person undertakes liability under any contract of fire insurance:

“ Insured person ”, in relation to any property insured by virtue of section fourteen of this Act, means the person for the time being entitled to the benefit of the contract of fire insurance in force in respect of that property; and in relation to any property insured under any contract under this Act, means the person for the time being entitled to the benefit of that contract:

“ Minister ” means the Minister of Finance:

“ Person ” includes a corporation sole, and also a body of persons, whether corporate or unincorporate:

“ Property ” means any real or personal property situated in New Zealand:

“ The present war ” means the war with the German Reich that commenced on the third day of September, nineteen hundred and thirty-nine, and includes any war in which His Majesty may be at any time engaged with any State that is for the time being allied to the German Reich in connection with the said war:

“ War damage ” means—

(a) Damage occurring (whether accidentally or not) as the direct result of action taken by the enemy, or action taken in combating the enemy, or in repelling an imagined attack by the enemy:

(b) Damage occurring (whether accidentally or not) as the direct result of measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of any such damage as aforesaid:

(c) Accidental damage occurring as the direct result—

(i) Of any precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying-out of any attack by the enemy; or

(ii) Of precautionary or preparatory measures involving the doing of work on land and taken under proper authority in any way in anticipation of enemy action,—

being, in either case, measures involving a substantial degree of risk to property:

(d) Accidental damage occurring as the direct result of any explosion or fire which involves any explosives or munitions or other dangerous things required for war purposes and which happens or is caused by, through, or in connection with the manufacture, storage, or transportation of any such explosives, munitions, or other dangerous things:

Provided that the measures mentioned in paragraph (c) of this definition do not include the imposing of restrictions on the display of lights or measures taken for training purposes:

Provided also that this definition does not include any damage for which compensation is payable under any enactment other than this Act.

(2) For the purposes of the definition of the term "war damage" in the last preceding subsection, such action against the enemy as is referred to in paragraph (a) of that definition—

(a) Shall, in relation to any ship or aircraft taking part in such action, be deemed to continue until the ship or aircraft has returned to its base:

(b) Includes naval, military, or air reconnaissances and patrols.

(3) For the purposes of this Act a renewal of a contract of insurance shall be deemed to be a new contract.

3. This Act shall bind the Crown.

Act to bind
the Crown.

War Damage Commission.

4. (1) For the purposes of this Act there shall be a Commission to be called the War Damage Commission.

War
Damage
Commission.

(2) The Commission shall consist of—

(a) The Minister (who shall be the Chairman):

(b) The Secretary to the Treasury:

(c) Four other members (of whom one shall be appointed as the Deputy Chairman) to be appointed in that behalf by the Governor-General and to hold office during his pleasure.

(3) The Commission shall be a body corporate with perpetual succession and a common seal, and shall be capable of holding real and personal property, of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer.

5. The Commission shall be charged with the duty of executing the provisions of this Act relating to the insurance of property against war damage, and shall exercise such other functions as are conferred upon it by this Act or by any regulations made thereunder.

Functions of
Commission.

6. (1) Any contract which if made between private persons must be by deed shall, when made by the Commission, be in writing under the common seal of the Commission.

Contracts of
Commission.

(2) Any contract which if made between private persons must be in writing signed by the persons to be charged therewith, may, when made by the Commission, be in writing signed by any person acting on behalf of and under the express or implied authority of the Commission.

(3) Any contract which if made between private persons may be made verbally without writing may, when made by the Commission, be made verbally without writing by any person acting on behalf of and under the express or implied authority of the Commission.

(4) The common seal of the Commission shall not be affixed to any document except pursuant to a resolution of the Commission, and the execution of any document so sealed shall be attested by two members of the Commission.

Meetings of
Commission.

7. (1) Meetings of the Commission shall be held at such times and places as the Commission or the Chairman from time to time determines.

(2) At all meetings of the Commission three members shall constitute a quorum.

(3) The Chairman at any meeting of the Commission shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(4) In the absence of the Minister from any meeting the Deputy Chairman, if present, shall be the Chairman of that meeting, and if he is not present the members present shall appoint one of their number to act as Chairman at that meeting.

(5) In the absence from any meeting of the Commission of any member being an officer of any Department of the Public Service, he may authorize any other officer of that Department to attend the meeting in his stead. While any person is attending any meeting pursuant to this subsection he shall be deemed to be a member of the Commission.

(6) Subject to the provisions of this Act and of any regulations made thereunder the Commission may regulate its procedure in such manner as it thinks fit.

Officers of
Commission.

8. There may from time to time be appointed as officers of the Public Service such officers as may be deemed necessary for the purposes of this Act.

War Damage Fund.

9. There is hereby established in the Public Account a separate account to be called the War Damage Fund. War Damage Fund.

10. (1) There shall be paid into the War Damage Fund— Moneys payable into War Damage Fund.

(a) The proceeds of all premiums and other moneys payable to the Commission:

(b) All fines and penalties recovered under this Act or the regulations made thereunder:

(c) Any other moneys that may otherwise be lawfully payable into the War Damage Fund.

(2) All moneys payable into the War Damage Fund by any person, and all debts and other moneys for the time being owing to the Commission by any person, whether on account of premiums or otherwise, and whether they are accrued due or not, are hereby declared to be the property of the Crown and recoverable accordingly by the Commission as from debtors to the Crown.

(3) All such moneys are hereby declared to be public moneys within the meaning of the Public Revenues Act, 1926. See Reprint of Statutes, Vol. VII, p. 10

11. (1) There shall from time to time, without further appropriation than this section, be paid out of the War Damage Fund— Moneys payable out of War Damage Fund.

(a) All claims admitted or sustained against the Commission in respect of the insurance of property by virtue of this Act or in respect of contracts of insurance or indemnity made by the Commission, and all expenditure in connection with any such claims:

(b) All moneys required to repay any advances made under the next succeeding section.

(2) There shall also from time to time be paid out of the War Damage Fund, in accordance with the appropriation of Parliament, all salaries and allowances and other expenditure incurred in the administration of this Act.

12. If the moneys for the time being in the War Damage Fund are not sufficient to meet the claims thereon, the Minister may advance to the Fund from the War Expenses Account an amount sufficient to meet the deficiency. Advances to War Damage Fund from War Expenses Account.

Disposal of
surplus in
War Damage
Fund.

13. Any moneys that remain in the War Damage Fund after all claims or outstanding claims against the Fund have been settled or provided for and all advances made under the last preceding section have been repaid shall be applied in accordance with the appropriation of Parliament for the purpose of granting financial assistance to persons suffering loss or damage by reason of any earthquake or other disaster.

Insurance against War Damage.

Property
insured against
fire deemed to
be insured
against war
damage to
same amount.

14. (1) Subject to the provisions of this Act and of any regulations made thereunder, where in respect of any period after the commencement of this Act any property is insured to any amount under any contract of fire insurance made in New Zealand with an insurance company after the commencement of this Act and during the present war, the property shall at all times during that period be insured under this Act to the same amount against war damage.

(2) In respect of the insurance of any property by virtue of this section the insurance company with which the property is insured against fire shall pay a war damage premium in accordance with this Act at such time and in such manner as may be prescribed.

(3) Upon the making of any such contract of fire insurance the war damage premium at the rate then prescribed, computed in respect of the period of the contract of fire insurance, shall thereupon become a debt due by the insurance company to the Commission.

(4) The amount of the war damage premium for which any insurance company at any time becomes liable under this section in respect of any contract of fire insurance shall thereupon become a debt due by the insured person to the insurance company, and may be recovered by the company accordingly. If at any time before the debt is fully discharged any other person becomes an insured person under the contract of fire insurance the amount remaining unpaid shall thereupon become a debt due by him to the insurance company, without prejudice to the liability of any other person. Where two or more persons are liable for any amount under this subsection their liability shall be joint and several.

(5) Subject to the provisions of any regulations made under this Act, the Commission may from time to time—

- (a) Allow to insurance companies such discounts as the Commission thinks fit in respect of premiums paid by them under this section:
- (b) Upon or subject to such conditions as the Commission thinks fit, release any insurance company wholly or partly from its liability in respect of any premium or part of a premium under this section which in the opinion of the Commission is irrecoverable by the insurance company from the insured person.

(6) Where there is expressed or implied in any mortgage, lease, instrument, or document, whether executed before or after the commencement of this Act, any covenant, condition, or power relating to the insurance against loss or damage by fire of any property to which this section applies, then, subject to the provisions of any regulations made under this Act and to the provisions of any express agreement in that behalf, the covenant, condition, or power shall be deemed to be extended so as to apply, so far as it is applicable and with the necessary modifications, with respect to the insurance of the property against war damage by virtue of this section.

15. (1) On application made by any person having an insurable interest in any property the Commission may agree to insure that property under this Act against war damage for such period and to such amount as the Commission thinks fit.

Commission may insure property against war damage to the extent that it is not insured against fire.

(2) A contract may be made under this section for the insurance of any property that is not insured by virtue of the last preceding section, or for the insurance to an additional amount of any property that is insured to any amount by virtue of that section.

(3) A war damage premium at the rate for the time being prescribed shall be payable to the Commission by the applicant on the making of any contract of insurance under this section.

16. (1) Subject to the provisions of this Act and of any regulations made thereunder and of the contract of war damage insurance (if any), if, during the period for which any property is insured under or by virtue of

Commission to make good war damage to insured property.

this Act against war damage, the property or any part thereof is destroyed or damaged by war damage the Commission shall be liable to make good (by payment or reinstatement or repair, at the option of the Commission) all such loss or damage to an amount not exceeding in respect of the property or any part thereof the amount to which the property or that part thereof is respectively so insured.

(2) Subject to the provisions of any regulations made under this Act, any payments or expenditure for which the Commission may be liable under this section shall be made at such time or times as the Commission in any case thinks fit, being not later than one year after the termination of the present war.

Miscellaneous.

Commission may insure manufacturers of munitions against third-party risks.

17. On application made by any person engaged in the manufacture, storage, or transportation of explosives or munitions or other dangerous things required for war purposes or by any person entitled to any estate or interest in any premises or vehicle used for any such purpose, the Commission may agree to indemnify that person to such extent as it thinks fit from liability to pay damages (inclusive of costs) on account of the destruction or damage of any property of any other person or persons where that destruction or damage is the result of an accident happening during the period of the contract of indemnity and is sustained or caused by or through or in connection with such manufacture, storage, or transportation.

Annual report and accounts to be presented to Parliament.

18. (1) The Minister shall within three months after the expiration of every financial year cause to be prepared a report on the operations of the Commission for that year.

(2) The said report, together with statements of account to be prepared by the Commission in accordance with section fifty-seven of the Finance Act, 1932, shall be laid before Parliament within fourteen days after it has been received by the Minister if Parliament is then in session, and, if not, shall be laid before Parliament within fourteen days after the commencement of the next ensuing session.

19. No stamp duty shall be payable on any statutory declaration, or on any agreement, receipt, or other instrument made, given, or executed for any of the purposes of this Act.

Exemptions
from stamp
duty.

20. (1) The Governor-General may from time to time, by regulations made under this Act, establish an Adjustment Court consisting of a Judge or former Judge of the Supreme Court and two other members or two or more such Courts. Every such Adjustment Court, in addition to the jurisdiction expressly conferred upon it by this Act or by any regulations made thereunder, shall have all the powers inherent in a Court of record.

Power to
establish
Adjustment
Courts to
adjust
liabilities
of persons
suffering
loss by war
damage.

(2) The functions of every such Adjustment Court shall be to adjust the liabilities of persons interested in property that is destroyed or damaged by war damage, and to exercise such jurisdiction in relation thereto and generally in relation to this Act, and such incidental powers, as may be conferred upon it by any regulations made under this Act.

(3) The general purpose of any such adjustment in relation to any person so interested shall be to ensure that the liabilities secured on any property do not exceed the value of that property, that the rent of any leasehold property does not exceed the rental value of that property, and that the total amount and terms of payment of his liabilities are such that he may reasonably be expected to meet them as they become due, either out of his own moneys or by borrowing on reasonable terms.

21. (1) The Governor-General may from time to time, by Order in Council, make all such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

Regulations.

(2) Without limiting the general power hereinbefore conferred, it is hereby declared that regulations may be made under this section for all or any of the following purposes:—

- (a) Providing for and regulating the conduct of the business of the Commission:
- (b) Prescribing the powers, functions, and duties of the Commission:

- (c) Providing for and regulating the reinsurance by the Commission of risks for which it is liable:
- (d) Classifying property for the purposes of this Act, and exempting or excluding any class or classes of property from any of the provisions of this Act:
- (e) Prescribing conditions upon or subject to which any property or class of property is insured by virtue of this Act, and conditions upon or subject to which any contract of insurance or indemnity may be made by the Commission:
- (f) Prescribing the rates of premiums to be paid for the insurance of any class of property by virtue of this Act and in respect of contracts of insurance or indemnity made by the Commission:
- (g) Requiring any persons or classes of persons to apply to the Commission for contracts of insurance or indemnity:
- (h) Providing for the apportionment of war damage premiums among persons interested in any property or class of property, and for the partial indemnity of insured persons against their liability for war damage premiums by persons so interested:
- (i) Providing for the destination and apportionment of moneys payable by the Commission in settlement of claims:
- (j) Providing for the cancellation, avoidance, or surrender of contracts of insurance or indemnity under this Act, and for the refund of premiums or any part thereof:
- (k) Providing for and regulating the collection, receipt, and payment of moneys under this Act:
- (l) Requiring insurance companies to make returns and to keep books and accounts for the purposes of this Act, and providing for the audit and investigation thereof:
- (m) Prescribing the remuneration and allowances and expenses to be paid to members of the Commission who are not officers of the Public Service:

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- (n) Prescribing the jurisdiction, powers, and procedure of any Adjustment Courts established under this Act:
- (o) Providing for and regulating the appointment of members and deputy members of any such Adjustment Court, and prescribing the remuneration and allowances and expenses to be paid to them:
- (p) Making any other provisions deemed necessary or expedient in relation to any such Adjustment Courts:
- (q) Prescribing forms for the purposes of this Act:
- (r) Prescribing punishments for offences against the regulations.
- (3) No regulation made under this section shall be deemed to be invalid on the ground that it delegates to or confers on the Governor-General or any other person or body any discretionary authority.
- (4) Any regulations under this section may be made so as to come into force on any date specified therein in that behalf, whether before or after the date of the making of the regulations.
- (5) All regulations purporting to be made under the authority of this section shall, until revoked, have the force of law as if they were enacted in this Act.
- (6) All regulations made under this section shall be laid before Parliament within fourteen days after the making thereof if Parliament is then in session, and, if not, shall be laid before Parliament within fourteen days after the commencement of the next ensuing session.
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