

## DISASTER INSURANCE BILL

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### EXPLANATORY NOTE

THIS Bill provides for the compulsory insurance of homes against earthquake and certain other kinds of disaster. The insurance must generally be for replacement, and may be bought either from an insurance company or from the Disaster Insurance Commission. Homes not otherwise insured are deemed to be insured by the Commission. The premium is a debt to the Commission.

The main function of the Commission is to ensure that all homes are insured, unless they qualify for an exemption or have a valuation of less than \$20,000.

The Commission will set its own premiums, and will issue policies for any insurance provided by it. It will be accountable for its financial performance to the Minister of Finance in accordance with section 13 (except subsection (2) (a)) and Part III of the State-Owned Enterprises Act 1986.

*Clause 1* relates to the Short Title and date of commencement. The date of commencement is 1 July 1990.

*Clause 2* defines various terms used in the Bill. The more important definitions are as follows:

“Disaster” means an earthquake, natural landslip, volcanic eruption, hydro-thermal activity, or tsunami; and includes fire occasioned by or through or in consequence of any of the foregoing events:

“Disaster damage” means any loss, destruction, or damage occurring as the direct result of any disaster; and includes loss or damage occurring (whether accidentally or not) as a direct result of measures taken under proper authority to avoid the spreading of, or otherwise to mitigate the consequences of, any such loss or damage:

“Earthquake cover policy” means, in relation to any home, any policy of insurance issued by an insurance company or by the Commission that—

(a) Insures the home against all kinds of disaster damage; and

(b) Has an excess of not more than 2.5 percent of the value of the policy or \$2,000, whichever is the greater; and

(c) Complies with this Act and with all regulations in force under this Act:

“Home” means any building, including domestic outbuildings, having a Government valuation of more than \$20,000 situated in New Zealand

that is being used as the principal place of residence of any natural person; and includes any building that is used both as a principal place of residence of any natural person and for any other purpose if the part of the building used as the principal place of residence constitutes 50 percent or more of the total area of the building; and also includes the following property situated within the land holding on which the home is situated:

- (a) The land on which the home is situated; and
- (b) All land within 8 metres, in a horizontal line, of the home; and
- (c) All land within 60 metres, in a horizontal line, of the home which constitutes the main access way or part of the main access way to the home from the boundary of the land holding on which the home is situated; and
- (d) All water supply, drainage, and sewerage services, and structures appurtenant thereto,—
  - (i) Serving the home or surrounding land; and
  - (ii) Situated within 60 metres, in a horizontal line, of the home; and
  - (iii) Owned by the owner of the home or of the land on which the home is situated:

“Indemnity insurance policy” means an earthquake cover policy that insures the home for an amount not less than the fair market value of the home plus the cost of any demolition that may be required by a council under section 623 of the Local Government Act 1974:

“Landslip” means subsidence of a land mass other than by settlement, soil shrinkage, or compaction; and includes movement from any hill, mound, bank, slope, cliff, or face of earth or rock of a mass of earth or rock which, before movement, formed an integral part of the hill, mound, bank, slope, cliff, or face.

*Clause 3* provides that the Act is to bind the Crown.

## PART I

### DISASTER INSURANCE COMMISSION

*Clause 4* reconstitutes the Earthquake and War Damage Commission as the Disaster Insurance Commission.

The general conduct of the business of the Commission is entrusted to a Board constituted in accordance with the First Schedule to the Bill.

*Clause 5* provides for the Commission to have the following functions:

- (a) To monitor compliance with Part II of the Bill;
- (b) To provide insurance against disaster damage of homes in accordance with Part II of the Bill;
- (c) To provide insurance against disaster damage of any property if the Board and the owner of the property so agree.

*Clause 6* sets out the powers of the Commission.

*Subclause (1)* provides that the Commission is to have such powers as are conferred on it by the Act or by any regulations in force under the Act, or as are reasonably necessary or expedient to enable it to carry out its functions.

*Subclause (2)* provides that the Commission may from time to time—

- (a) In respect of any insurance liability of the Commission, effect reinsurances with any person carrying on a reinsurance business in or out of New Zealand:

- (b) Contract with any person to assist the Commission in fulfilling any of its functions (including the undertaking of research relating to the functions of the Commission) under the Act or regulations in force under the Act.

*Clause 7* empowers the Commission to invest its funds in accordance with the Trustee Act 1956.

*Clause 8* provides for the capital of the Commission.

*Subclause (1)* provides that the capital of the Commission is to be \$500,000,000 in shares of \$1 each, which shall be deemed to have been subscribed for and paid up in full by the Minister of Finance on behalf of the Crown on the commencement of the Earthquake and War Damage Amendment Act 1988, namely 1 October 1988.

*Subclause (2)* empowers the Governor-General, on the advice of the Minister given after consultation with the Board, by Order in Council to increase or reduce the share capital of the Commission to such amount as may be prescribed in the order.

*Subclause (3)* provides that no shares in the capital of the Commission are to be allotted or transferred to, or held by, any person other than the Minister on behalf of the Crown.

*Subclause (4)* empowers the Minister, on behalf of the Crown, to—

- (a) Subscribe for or otherwise acquire any shares issued by the Commission on any increase of its share capital pursuant to *subclause (2)*;
- (b) Receive any money paid by the Commission on a reduction of its share capital pursuant to *subclause (2)*;
- (c) Exercise any of the Crown's rights and powers as the holder of any shares in the Commission.

*Subclause (5)* provides that all money required to be paid by the Minister in respect of the subscription for, or other acquisition of, shares in the Commission (other than the share capital of \$500,000,000 referred to in *subclause (1)*) is to be paid from the Crown Bank Account out of money appropriated by Parliament for the purpose.

*Clause 9* provides for the accountability of the Commission.

Section 13 (except subsection (2)(a)) and Part III of the State-Owned Enterprises Act 1986 apply to and in respect of the Commission and the Board as if—

- (a) The Commission were both a State enterprise within the meaning of section 2 of that Act and a company named in the Second Schedule to that Act; and
- (b) Every reference in that section and that Part to the shareholding Ministers or to the responsible Minister were a reference to the Minister of Finance; and
- (c) Every reference in that section and that Part to a Director were a reference to a Commissioner.

*Clause 10* empowers the Minister of Finance to give to the Commission in writing such general directions as the Minister thinks fit as to the policy to be followed by the Commission in the exercise of its functions or powers.

The Commission, in the exercise of its functions and powers, is required to give effect to any such written directions.

A copy of every such direction given by the Minister to the Commission in any financial year is to be published in the *Gazette* and laid before Parliament as soon as practicable after it is given and is also to be included in the annual report of the Commission for that year.

*Clause 11* exempts the Commission from the payment of income tax.

However, *subclause (2)* provides that the Commission is to pay into the Crown Bank Account from time to time sums in lieu of income tax. Such sums are to be of such amount and are to be paid at such times as the Minister of Finance from time to time determines after consultation with the Board of the Commission.

*Clause 12* provides that if the assets of the Commission are not sufficient to meet the lawful claims on the Commission, the Minister of Finance must provide to the Commission out of public money such sums by way of grant as may be necessary to meet the deficiency upon such terms and conditions as the Minister determines.

*Clause 13* provides for the Commission to pay to the Crown each year, on such date as the Minister of Finance determines, a fee to be determined from time to time by the Minister in respect of the facilities provided by *clause 12*.

## PART II

### DISASTER INSURANCE OF HOMES

*Clause 14* provides that, unless exempted pursuant to *clause 18*, every owner of a home is to ensure that the home is insured at all times for replacement under an earthquake cover policy issued by an insurance company or the Commission for either of the following amounts:

- (a) The full amount required to replace the home calculated in accordance with regulations in force under the Act;
- (b) An amount that is not less than the amount prescribed for the purposes of this section by regulations in force under the Act.

*Clause 15* provides that during any period when any home that is required to be insured under an earthquake cover policy for its replacement value is not so insured—

- (a) The home, by virtue of this clause, shall be insured under an earthquake cover policy issued by the Commission on such terms and conditions as are determined from time to time by or under any regulations in force under the Act; and
- (b) Such policy shall be deemed to constitute a contract between the Commission and the owner of the home.

The owner of any home that is insured by the Commission by virtue of *subclause (1)* must pay to the Commission an insurance premium, interest thereon, and the costs incurred by the Commission in collecting such amounts, all as calculated in accordance with the terms and conditions determined pursuant to that subclause.

*Clause 16* provides for the recovery of amounts due to the Commission under *clause 15*.

*Clause 17* provides for the recovery of additional amounts for the late payment of money due to the Commission.

If any person becomes liable to pay any additional amount under this clause, the Commission may, if it considers that in the circumstances it would be just and equitable to do so, either remit the additional amount or any part of it, or postpone the time for payment of the additional amount or any part of it for such period as it thinks fit, or both.

*Clause 18* empowers the Commission to grant exemptions from the requirement to insure homes under the Act.

*Subclause (1)* provides that the Commission may grant such an exemption to any person in respect of a home if it is satisfied that, should a disaster occur, the

person is likely to have sufficient assets to enable the rebuilding of the home without recourse to insurance proceeds.

*Subclause (2)* provides that, subject to *subclause (3)*, the Commission may at any time, by written notice, exempt any person from the requirements of *clauses 14 and 15* in respect of any home on the condition that the person insures the home under an indemnity insurance policy in accordance with regulations in force under the Act.

*Subclause (3)* provides that the Commission may not grant an exemption under *subclause (2)* unless it is satisfied that the amount prescribed pursuant to *clause 14* in respect of the home, less the current land value of the land holding on which the home is situated, is more than twice the value of improvements constituting the home.

*Subclause (4)* provides that, for the purposes of the Bill, if the current land value or the value of improvements of any land holding includes land or improvements not coming within the definition of a home, the Commission may estimate how much of that land value or value of improvements applies to that part or those parts of the land holding which does or do come within the definition of a home.

*Subclause (5)* provides that the Commission may, by giving 30 days' written notice, amend or revoke any notice given pursuant to this clause.

*Clause 19* provides for each owner of a home (where there is more than 1) to be jointly and severally liable for all amounts payable to the Commission in respect of the home.

*Clause 20* empowers the Commission to make agreements with any local authority for the collection by the local authority of any amounts owing to the Commission in respect of any earthquake cover policy.

*Clause 21* provides for the recovery of any debt owed to the Commission in any Court of competent jurisdiction.

### PART III

#### GENERAL PROVISIONS

*Clause 22* provides that every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who—

- (a) Makes any false or misleading statement to the Commission knowing it to be false or misleading; or
- (b) Produces any false or misleading evidence to the Commission knowing it to be false or misleading; or
- (c) In any other way knowingly misleads the Commission.

*Clause 23* empowers the making of regulations for all or any of the following purposes:

- (a) Prescribing methods for determining the amount required to replace a home;
- (b) Prescribing terms and conditions that earthquake cover policies must contain, or prohibiting or restricting the inclusion in such policies of specified terms and conditions, or both;
- (c) Prescribing, or empowering the commission to prescribe, forms required for the purposes of the Act;
- (d) Providing for such other matters as are contemplated by or necessary for giving full effect to the Act and for its due administration.

*Clause 24* repeals and revokes redundant Acts and regulations.

*Clause 25* abolishes the Earthquake and War Damage Fund and the Disaster and Landslip Fund and provides that all money, including investments, standing to the credit of those funds is to be transferred to and deemed to be part of the assets of the Commission.

*Clause 26* provides for the temporary continuation of existing earthquake and war damage cover and disaster and landslip damage cover.

*Clause 27* relates to transitional provisions.

*Subclause (1)* declares the reconstituted Disaster Insurance Commission to be the same body corporate as the old Earthquake and War Damage Commission.

*Subclause (2)* provides for existing employees of the old Commission to become employees of the new Commission on the same terms and conditions of employment.

*Subclauses (3) to (5)* preserve the superannuation rights of existing employees under the Government Superannuation Fund Act 1956.

*Clause 28* adds the Disaster Insurance Commission to Part II of the First Schedule to the Ombudsmen Act 1975. This will also result in the Commission being subject to the Official Information Act 1982.

*Clause 29* amends section 48 of the Fire Service Act 1975 by removing the restriction requiring the Fire Service levy to be levied on the indemnity value of insured property.

*First Schedule:* This Schedule sets out detailed provisions relating to—

- (a) The constitution of the Commission's Board:
- (b) The Chairman and Deputy Chairman of the Board:
- (c) The terms of office of commissioners, grounds for removal from office of commissioners, and disqualification from holding appointment:
- (d) Extraordinary vacancies:
- (e) Meetings of the Board:
- (f) Disclosure of interest by commissioners:
- (g) The passing of resolutions without the Board meeting:
- (h) Contracts of the Commission:
- (i) Execution of documents on behalf of the Commission:
- (j) Appointment of personnel:
- (k) Provision of superannuation subsidies for employees:
- (l) Commissioners and employees being deemed not to be in the service of the Crown:
- (m) Commissioners and employees not being personally liable:
- (n) Delegation of powers by the Commission:
- (o) The remuneration of commissioners.

*Second Schedule:* This Schedule sets out the redundant Acts and regulations repealed and revoked by *clause 24*.

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*Hon. Peter Neilson*

## DISASTER INSURANCE

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### A BILL INTITLED

**An Act to require insurance of homes against damage caused by earthquakes and certain other natural disasters, and to repeal the Earthquake and War Damage Act 1944**

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BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Disaster Insurance Act 1989.

(2) This Act shall come into force on the 1st day of July 1990.

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

- “Board” means the Board of the Commission constituted in accordance with the **First** Schedule to this Act:
- “Commissioner” means a member of the Board:
- “Commission” means the Disaster Insurance Commission of New Zealand constituted by this Act: 5
- “Crown” means Her Majesty the Queen in right of New Zealand:
- “Disaster” means an earthquake, natural landslip, volcanic eruption, hydro-thermal activity, or tsunami; and includes fire occasioned by or through or in consequence of any of the foregoing events: 10
- “Disaster damage” means any loss, destruction, or damage occurring as the direct result of any disaster; and includes loss or damage occurring (whether accidentally or not) as a direct result of measures taken under proper authority to avoid the spreading of, or otherwise to mitigate the consequences of, any such loss or damage: 15
- “Earthquake cover policy” means, in relation to any home, any policy of insurance issued by an insurance company or by the Commission that— 20
- (a) Insures the home against all kinds of disaster damage; and
  - (b) Has an excess of not more than 2.5 percent of the value of the policy or \$2,000, whichever is the greater; and 25
  - (c) Complies with this Act and with all regulations in force under this Act:
- “Home” means any building, including domestic outbuildings, situated in New Zealand where the value of improvements constituting the home is more than \$20,000 and which is being used as the principal place of residence of any natural person; and includes any building that is used both as a principal place of residence of any natural person and for any other purpose if the part of the building used as the principal place of residence constitutes 50 percent or more of the total area of the building; and also includes the following property situated within the land holding on which the home is situated: 30
- (a) The land on which the home is situated; and
  - (b) All land within 8 metres, in a horizontal line, of the home; and
  - (c) All land within 60 metres, in a horizontal line, of the home which constitutes the main access way or 35
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part of the main access way to the home from the boundary of the land holding on which the home is situated; and

5 (d) All water supply, drainage, and sewerage services, and structures appurtenant thereto,—

(i) Serving the home or surrounding land; and

(ii) Situated within 60 metres, in a horizontal line, of the home; and

10 (iii) Owned by the owner of the home or of the land on which the home is situated:

“Indemnity insurance policy” means an earthquake cover policy that insures the home for an amount not less than the fair market value of the home plus the cost of any demolition that may be required by a council under section 623 of the Local Government Act 1974:

15 “Insurance company” means any body corporate (other than the Commission) or any underwriter which or who is bona fide in the business of undertaking liability under contracts of insurance against any damage other than disaster damage, with persons who are not associated with that body corporate or underwriter:

20 “Landslip” means subsidence of a land mass other than by settlement, soil shrinkage, or compaction; and includes movement from any hill, mound, bank, slope, cliff, or face of earth or rock of a mass of earth or rock which, before movement, formed an integral part of the hill, mound, bank, slope, cliff, or face:

25 “Land value” means the land value appearing in the district valuation roll as provided under the Valuation of Land Act 1951:

30 “Local authority” has the same meaning as in section 2 of the Rating Powers Act 1988:

35 “Minister” means the Minister of Finance:

“Owner”, in relation to any home, means the legal owner of that home; and includes the owner’s agent:

40 “Underwriter” means any person by whom a deposit has been deemed to have been made under section 3A of the Insurance Companies Deposits Act 1953:

“Value of improvements” means the value of improvements appearing in the district valuation roll as provided under the Valuation of Land Act 1951.

(2) For the purposes of this Act, a person is an “associated person” of another person if—

- (a) That person directly or indirectly controls the other person, or vice versa; or
- (b) That person owns, directly or indirectly, 20 percent or more in nominal value of the equity share capital (as defined in section 158 of the Companies Act 1955) of the other person, or vice versa; or
- (c) Both that person and the other person are, by virtue of **paragraph (a) or paragraph (b)** of this subsection, associated persons of the same third person.

**3. Act to bind the Crown**—This Act shall bind the Crown. 10  
Cf. 1944, No. 15, s. 3

## PART I

### DISASTER INSURANCE COMMISSION

**4. Disaster Insurance Commission**—(1) There shall be a corporation to be called the Disaster Insurance Commission of New Zealand, which shall be the same corporation as the corporation known as the Earthquake and War Damage Commission immediately before the commencement of this Act. 15

(2) 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. 20

(3) The general conduct of the business of the Commission shall be entrusted to a Board constituted in accordance with the **First Schedule** to this Act. 25

(4) The provisions of the **First Schedule** to this Act shall have effect as to the constitution and proceedings of the Board and other matters relating thereto. 30

Cf. 1944, No. 15, s. 4; 1988, No. 142, s. 3 (1)

**5. Functions of Commission**—The Commission shall have the following functions:

- (a) To monitor compliance with Part II of this Act:
- (b) To provide insurance against disaster damage of homes in accordance with Part II of this Act: 35
- (c) To provide insurance against disaster damage of any property if the Board and the owner of the property so agree.

Cf. 1944, No. 15, s. 5; 1988, No. 142, s. 3 (1) 40

**6. Powers of Commission**—(1) The Commission shall have such powers as are conferred on it by this Act or by any regulations in force under this Act, or as are reasonably necessary or expedient to enable it to carry out its functions.

5 (2) Without limiting subsection (1) of this section, the Commission may from time to time—

(a) In respect of any insurance liability of the Commission, effect reinsurances with any person carrying on a reinsurance business in or out of New Zealand:

10 (b) Contract with any person to assist the Commission in fulfilling any of its functions (including the undertaking of research relating to the functions of the Commission) under this Act or regulations in force under this Act.

15 Cf. 1944, No. 15, s. 6; 1988, No. 142, s. 3 (1)

**7. Powers of investment**—(1) Any money in the funds of the Commission and available for investment may be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds.

20 (2) Notwithstanding anything to the contrary in section 13D (1) of the Trustee Act 1956, the Board shall, in exercising the power of investment, exercise the care, diligence, and skill required by section 13B of that Act.

**8. Capital of Commission**—(1) The capital of the  
25 Commission shall be \$500,000,000 in shares of \$1 each, which shall be deemed to have been subscribed for and paid up in full by the Minister on behalf of the Crown on the commencement of the Earthquake and War Damage Amendment Act 1988.

30 (2) The Governor-General, on the advice of the Minister given after consultation with the Board, may by Order in Council increase or reduce the share capital of the Commission to such amount as may be prescribed in the order.

(3) No shares in the capital of the Commission shall be  
35 allotted or transferred to, or held by, any person other than the Minister on behalf of the Crown.

(4) The Minister may, on behalf of the Crown,—

(a) Subscribe for or otherwise acquire any shares issued by the Commission on any increase of its share capital pursuant to subsection (2) of this section:

40 (b) Receive any money paid by the Commission on a reduction of its share capital pursuant to subsection (2) of this section:

(c) Exercise any of the Crown's rights and powers as the holder of any shares in the Commission.

(5) All money required to be paid by the Minister in respect of the subscription for, or other acquisition of, shares in the Commission (other than the share capital of \$500,000,000 5 referred to in subsection (1) of this section) shall be paid from the Crown Bank Account out of money appropriated by Parliament for the purpose.

Cf. 1944, No. 15, s. 7 (1), (2), (4), (5), (6); 1988, No. 142, 10  
s. 3 (1)

**9. Accountability**—Section 13 (except subsection (2)(a)) and Part III of the State-Owned Enterprises Act 1986 shall apply to and in respect of the Commission and the Board as if—

- (a) The Commission were both a State enterprise within the 15 meaning of section 2 of that Act and a company named in the Second Schedule to that Act; and
- (b) Every reference in that section and that Part to the shareholding Ministers or to the responsible Minister 20 were a reference to the Minister; and
- (c) Every reference in that section and that Part to a Director were a reference to a Commissioner. 20

Cf. 1944, No. 15, s. 8; 1988, No. 142, s. 3 (1)

**10. Directions by Minister**—(1) The Minister may from time to time give to the Commission in writing such general 25 directions as the Minister thinks fit as to the policy to be followed by the Commission in the exercise of its functions or powers.

(2) The Commission, in the exercise of its functions and powers, shall give effect to any written directions given to it by 30 the Minister under subsection (1) of this section.

(3) Where a direction is given by the Minister to the Commission under this section in any financial year, the Minister shall, as soon as practicable after giving the direction, publish in the *Gazette* and lay before Parliament a copy of the 35 direction. A copy of the direction shall also be included in the annual report of the Commission for that year.

Cf. 1944, No. 15, s. 9; 1988, No. 142, s. 3 (1)

**11. Exemption from income tax**—(1) The Commission is hereby declared to be exempt from the payment of income tax 40 under the Income Tax Act 1976.

(2) The Commission shall pay into the **Crown Bank Account** from time to time sums in lieu of income tax; and such sums shall be of such amount and shall be paid at such times as the Minister from time to time determines after consultation with the Board.

Cf. 1944, No. 15, s. 24; 1988, No. 142, s. 9

**12. Deficiency in assets of Commission**—If the assets of the Commission are not sufficient to meet the lawful claims on the Commission, the Minister shall, without further appropriation than this section, provide to the Commission out of public money such sums by way of grant as may be necessary to meet the deficiency upon such terms and conditions as the Minister determines.

Cf. 1944, No. 15, s. 13; 1988, No. 142, s. 6 (1)

**13. Fees payable to Crown by Commission**—There shall be payable by the Commission to the Crown each year, on such date as the Minister after consultation with the Board determines, a fee to be determined from time to time by the Minister after consultation with the Board in respect of the obligation of the Minister under **section 12** of this Act.

Cf. 1944, No. 15, s. 13A; 1988, No. 142, s. 7

## PART II

### DISASTER INSURANCE OF HOMES

**14. Compulsory disaster insurance of homes**—Subject to **section 18** of this Act, every owner of a home shall ensure that the home is insured at all times for replacement under an earthquake cover policy issued by an insurance company or the Commission for either of the following amounts:

(a) The full amount required to replace the home calculated in accordance with regulations in force under this Act:

(b) An amount that is not less than the amount prescribed for the purposes of this section by regulations in force under this Act.

**15. Home not otherwise insured deemed to be insured by Commission**—(1) During any period when any home that is required by this Act to be insured under an earthquake cover policy for its replacement value is not so insured—

(a) The home, by virtue of this section, shall be insured under an earthquake cover policy issued by the Commission

on such terms and conditions as are determined from time to time by or under any regulations in force under this Act; and

(b) Such policy shall be deemed to constitute a contract between the Commission and the owner of the home. 5

(2) The owner of any home that is insured by the Commission by virtue of **subsection (1)** of this section shall pay to the Commission an insurance premium, interest thereon, and the costs incurred by the Commission in collecting such amounts, all as calculated in accordance with the terms and conditions determined pursuant to that subsection. 10

**16. Notices requiring payment to Commission**—(1) The Commission may serve upon the owner of any building a notice calling for payment of any amount which the Commission believes is due to it under **section 15 (2)** of this Act. 15

(2) An owner of any building who has been served with a notice pursuant to **subsection (1)** of this section shall pay to the Commission the amount specified in the notice within 60 days of service unless within that period the owner—

(a) Certifies to the Commission, in the prescribed form, that the building is not required by this Act to be insured; or 20

(b) Produces evidence that satisfies the Commission that the building is insured for its replacement value under an earthquake cover policy. 25

(3) For the purposes of this section a notice shall be deemed to have been served on any person—

(a) When it is served personally; or

(b) Three days after it is posted to the last place of residence or business of the person known to the Commission; or 30

(c) Three days after it is posted to an address specified by the person for this purpose; or

(d) If the person is absent from New Zealand and has an agent or attorney in New Zealand, when it is served on, or three days after it is posted to, that agent or attorney in the manner specified in **paragraphs (a) to (c)** of this subsection; or 35

(e) When it is left at the building to which the notice relates.

**17. Additional amounts for late payment**—(1) Where a person on whom a notice has been served under **section 16** of this Act fails to pay in full the amount specified in the notice to the Commission in accordance with that section, the person 40

shall upon demand by the Commission pay the following amounts to the Commission, in addition to the amount specified in the notice:

- 5 (a) Where the amount specified in the notice remains wholly or partly unpaid after the last day for payment in accordance with **section 16 (2)** of this Act, an amount equal to 10 percent of so much of the amount specified in the notice as then remains unpaid; plus
- 10 (b) Where the amount specified in the notice remains wholly or partly unpaid 3 months after the last day for payment in accordance with **section 16 (2)** of this Act, a further amount equal to 10 percent of so much of the total of the amount specified in the notice and the amount added pursuant to **paragraph (a)** of this
- 15 subsection as then remains unpaid; plus
- (c) Where the amount specified in the notice remains wholly or partly unpaid 6 months after the last day for payment in accordance with **section 16 (2)** of this Act, a
- 20 further amount equal to 10 percent of so much of the total of the amount specified in the notice and the amounts added pursuant to **paragraphs (a) and (b)** of this subsection as then remains unpaid.

(2) If any person has become liable to pay any additional amount pursuant to **paragraphs (a) to (c)** of **subsection (1)** of this

25 section, the Commission may, if it considers that in the circumstances it would be just and equitable to do so, either remit the additional amount or any part of it, or postpone the time for payment of the additional amount or any part of it for such period as it thinks fit, or both.

30 **18. Exemptions**—(1) The Commission may by written notice at any time or times exempt any person from the requirements of **Part II** of this Act in respect of any home if the Commission is satisfied that, should a disaster occur, the person is likely to have sufficient assets to enable the rebuilding of the

35 home without recourse to insurance proceeds.

(2) Subject to **subsection (3)** of this section, the Commission may at any time, by written notice, exempt any person from the requirements of **sections 14 and 15** of this Act in respect of any home specified in the notice on the condition that the

40 person insures the home under an indemnity insurance policy in accordance with regulations in force under this Act.

(3) The Commission may not exempt any person pursuant to **subsection (2)** of this section unless it is satisfied, when giving the notice, that the amount prescribed pursuant to **section 14** of this

Act in respect of the home, less the current land value of the land holding on which the home is situated, is more than twice the value of improvements constituting the home.

(4) For the purposes of this Act, if the current land value, or the value of improvements, of any land holding includes land or improvements not coming within the definition of a home, the Commission may estimate how much of that land value or value of improvements applies to that part or those parts of the land holding which does or do come within the definition of a home.

(5) The Commission may, by giving 30 days' written notice, amend or revoke any notice given pursuant to this section.

**19. Each owner jointly and severally liable**—Where there is more than one owner of a home (whether the owners own the home jointly or as tenants in common), the owners shall be jointly and severally liable for all amounts payable to the Commission under this Act in respect of the home; and the Commission may serve a notice upon, and take proceedings against, any such owner without being required to also serve a notice upon, or take proceedings against, any other owner or owners.

**20. Collection of amounts by local authorities**—(1) The Commission may make agreements with any local authority for the collection by the local authority of any amounts owing by any person to the Commission in respect of any earthquake cover policy.

(2) Notwithstanding anything in the Rating Powers Act 1988, any local authority may make agreements with the Commission for the collection of such amounts.

**21. When and how amounts may be sued for**—(1) Subject to subsection (3) of this section, if any person who is liable to pay any amount to the Commission fails to pay the amount on the date on which it becomes due, the Commission may recover the amount from that person as a debt in any Court of competent jurisdiction.

(2) Notwithstanding anything in subsection (1) of this section, where, pursuant to that subsection, proceedings are taken for the recovery of any amount, the Commission may in those proceedings recover any other subsequent unpaid amount payable in respect of the same home which became due before the date of commencement of the proceedings.



(3) Notwithstanding anything in any other Act, any person authorised by the Commission to collect amounts, may sue for the amounts in the name of the Commission, and for that purpose may make all affidavits or declarations, and do all other acts, deeds, matters, and things, which the plaintiff is required to make or do in the Court in which he or she is suing.

### PART III

#### GENERAL PROVISIONS

**22. False or misleading statements**—Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who—

- (a) Makes any false or misleading statement to the Commission knowing it to be false or misleading; or
- (b) Produces any false or misleading evidence to the Commission knowing it to be false or misleading; or
- (c) In any other way knowingly misleads the Commission.

Cf. 1944, No. 15, s. 21c (1) (a); 1983, No. 140, s. 3 (1)

**23. Regulations**—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing methods for determining the amount required to replace a home:
- (b) Prescribing terms and conditions that earthquake cover policies must contain, or prohibiting or restricting the inclusion in such policies of specified terms and conditions, or both:
- (c) Prescribing, or empowering the Commission to prescribe, forms required for the purposes of this Act:
- (d) Providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

Cf. 1944, No. 15, s. 15, s. 26 (g), (p), (r); 1983, No. 140, s. 4 (1)

**24. Repeals, revocations, and amendment**—(1) The enactments specified in Part I of the Second Schedule to this Act are hereby repealed.

(2) The regulations specified in Part II of the Second Schedule to this Act are hereby revoked.

(3) Section 163 (2) (c) of the Public Finance Act 1977 is hereby amended by omitting the expression “16,”.

**25. Abolition of Fund**—(1) The Earthquake and War Damage Fund and the Disaster and Landslip Fund established under the Earthquake and War Damage Act 1944 and under regulations made under that Act are hereby abolished.

(2) All money, including investments, standing to the credit of the Earthquake and War Damage Fund and the Disaster and Landslip Fund, on the day that this Act comes into force, shall be transferred to and deemed to be part of the assets of the Commission. 5

(3) All money that, if this Act had not been passed, would be payable into or out of the Earthquake and War Damage Fund and the Disaster and Landslip Fund shall be paid to or by the Commission. 10

(4) Every reference to the Earthquake and War Damage Fund or the Disaster and Landslip Fund in any other Act, regulations, order, agreement, deed, instrument, application, notice, or other document whatsoever shall, unless the context otherwise requires, be read as a reference to the assets of the Commission. 15

**26. Temporary continuation of existing earthquake and war damage cover**—(1) All property which was insured under or by virtue of the Earthquake and War Damage Act 1944, the Earthquake and War Damage Regulations 1984, and the Earthquake and War Damage (Land Cover) Regulations 1984 immediately before the commencement of this Act shall continue to be insured in accordance with the provisions of that Act and those regulations, as if that Act and those regulations had not been repealed and revoked until the date on which the policy of fire insurance (as a result of which the property is so insured) expires or until the first renewal date of that policy following the commencement of this Act, whichever is the earlier. 20 25 30

(2) Every owner of a home to which **subsection (1)** of this section applies shall be deemed to have complied with Part II of this Act in respect of the home until the date on which the policy of fire insurance (as a result of which the home is so insured) expires or until the first renewal date of that policy following the commencement of this Act, whichever is the earlier. 35

**27. Transitional provisions**—(1) The Commission as constituted by this Act is hereby declared to be the same body corporate as the body corporate called the Earthquake and War Damage Commission existing immediately before the 40

commencement of this Act, and the continuity, status, and operation of the Commission shall in no way be affected, nor shall any property, powers, rights, authorities, duties, functions, liabilities, or obligations of the Commission, or any legal or other proceedings instituted or to be instituted by or against the Commission, be affected, by the enactment of this Act.

(2) Every person employed by the Commission immediately before the commencement of this Act shall, on the commencement of this Act, be deemed to have been appointed as an employee of the reconstituted Commission on the same terms and conditions of employment (including those relating to salaries and allowances) as applied in respect of that person immediately before such commencement.

(3) Any person who, immediately before the commencement of this Act, was an officer or employee of the Commission and was a contributor to the Government Superannuation Fund Act 1956 shall be deemed, for the purposes of the Government Superannuation Fund Act 1956, to be employed in the Government service so long as that person continues in the service of the reconstituted Commission; and the Government Superannuation Fund Act 1956 shall apply to that person in all respects as if the service with the reconstituted Commission were Government service.

(4) Subject to the Government Superannuation Fund Act 1956, nothing in subsection (3) of this section shall entitle any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

(5) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with subsection (3) of this section, to a person who is in the service of the reconstituted Commission and is a contributor to the Government Superannuation Fund the term “controlling authority”, in relation to that person, means the reconstituted Commission.

**28. Amendment to Ombudsmen Act 1975**—The Ombudsmen Act 1975 is hereby amended by inserting in Part II of the First Schedule, in its appropriate alphabetical order, the following item:

“The Disaster Insurance Commission.”

**29. Amendment to Fire Service Act 1975**—Section 48 of the Fire Service Act 1975 (as substituted by section 8 (1) of the Fire Service Amendment Act 1986) is hereby amended by repealing subsections (6) and (7).

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## SCHEDULES

### FIRST SCHEDULE

Section 4 (3), (4)

#### PROVISIONS RELATING TO BOARD

**1. Constitution of Board**—The Board shall consist of not less than 5, and not more than 9, commissioners appointed by the Governor-General on the recommendation of the Minister, who in making the recommendations shall have regard to the knowledge and experience in business of the persons recommended.

Cf. 1944, No. 15, Schedule, cl. 1; 1988, No. 142, s. 10

**2. Chairman and Deputy Chairman**—(1) One of the commissioners appointed under clause 1 of this Schedule shall be so appointed as the Chairman of the Commission, and one shall be so appointed as the Deputy Chairman of the Commission.

(2) During any vacancy in the office of Chairman, or in the absence of the Chairman from any meeting of the Board, or in the event of the Chairman being incapacitated by illness or other cause from performing the duties of the office, the Deputy Chairman shall have and may exercise all the powers of the Chairman.

Cf. 1944, No. 15, Schedule, cl. 2; 1988, No. 142, s. 10

**3. Terms of office of commissioners**—(1) Subject to this clause, every commissioner shall be appointed for such term as is specified in the appointment, being a term not exceeding 3 years, but may from time to time be reappointed.

(2) Any commissioner may at any time resign from office by written notice given to the Minister.

(3) Any commissioner may at any time be removed from office by the Governor-General for disability, neglect of duty, conflict of interest, or misconduct proved to the satisfaction of the Governor-General.

(4) Any commissioner shall be disqualified from holding office if—

(a) That commissioner is a member of Parliament; or

(b) That commissioner is a bankrupt who has not been discharged, or whose order of discharge is suspended for a time not yet expired or is subject to conditions not yet fulfilled.

(5) Any commissioner shall be deemed to have vacated office if absent without the leave of the Board from 3 successive meetings of the Board, except by reason of illness.

Cf. 1944, No. 15, Schedule, cl. 3; 1988, No. 142, s. 10

**4. Extraordinary vacancies**—(1) If any commissioner dies or resigns office or is removed from office or is disqualified from office or is deemed to have vacated office, the vacancy shall, as soon as is practicable, be filled by the appointment of another commissioner; and if the term of the vacating commissioner has not expired at the time of appointment, the new commissioner shall hold office for the residue of the term of the vacating commissioner.

(2) The powers of the Board shall not be affected by any vacancy on the Board.

Cf. 1944, No. 15, Schedule, cl. 4; 1988, No. 142, s. 10

FIRST SCHEDULE—*continued*

PROVISIONS RELATING TO BOARD—*continued*

**5. Meetings of Board**—(1) The first meeting of the Board after the commencement of this clause shall be held at a time and place to be appointed by the Chairman.

(2) Subsequent meetings shall be held at such times and places as the Board may from time to time appoint.

(3) Notwithstanding subclause (2) of this clause, the Chairman or any 2 commissioners may call a meeting of the Board.

(4) At all meetings of the Board the quorum shall be at least one-half of all the commissioners who for the time being are in office and are entitled to vote and, in any event, shall not be less than 3 commissioners.

(5) The Chairman shall preside at all meetings of the Board at which the Chairman is present.

(6) If the Chairman is absent from a meeting of the Board—

(a) The Deputy Chairman shall preside if present:

(b) The commissioners present shall appoint one of their number to preside if the Deputy Chairman is not present.

(7) All questions arising at any meeting of the Board shall be decided by a majority of the votes of the commissioners present who are entitled to vote and do vote, and, if there is an equality of votes, the Chairman or other person presiding at the meeting shall have a casting vote.

(8) Subject to this Act, the Board may regulate its own procedure as it thinks fit.

Cf. 1944, No. 15, Schedule, cl. 5; 1988, No. 142, s. 10

**6. Commissioners to disclose interest**—(1) Any commissioner who is directly or indirectly interested in any arrangement or agreement made or entered into, or proposed to be made or entered into, by the Commission shall, as soon as possible after the relevant facts have come to that commissioner's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) Any disclosure of interest by a commissioner shall be recorded in the minutes of the Board; and, unless otherwise provided by a resolution of the Board, the commissioner shall not be entitled to vote in respect of, or take part in, the deliberations or decisions of the Board relating to the arrangement or agreement in which that commissioner is interested.

Cf. 1944, No. 15, Schedule, cl. 6; 1988, No. 142, s. 10

**7. Passing of resolution without meeting**—A resolution in writing signed, or assented to by letter, telegram, cable, telex, or other written message, by a majority of the commissioners for the time being entitled to receive notice of a meeting of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and held.

Cf. 1944, No. 15, Schedule, cl. 7; 1988, No. 142, s. 10

**8. Contracts of Commission**—(1) Subject to clause 9 of this Schedule, any contract that, if made between private persons, must be by deed shall, if made by the Commission, be in writing under the common seal of the Commission.

(2) Any contract that, if made between private persons, must be in writing signed by the persons to be charged therewith shall, if made by the Commission, be in writing either under the common seal of the

FIRST SCHEDULE—*continued*PROVISIONS RELATING TO BOARD—*continued*

Commission or signed by any person acting on behalf of and under the express or implied authority of the Commission.

(3) Any contract that, if made between private persons, may be made orally may, if made by the Commission, be made in the manner specified in **subclause (1)** of this clause as in the case of a deed or in the manner specified in **subclause (2)** of this clause as in the case of a contract required to be in writing, or orally by any person acting on behalf of and under the express or implied authority of the Commission.

Cf. 1944, No. 15, Schedule, cl. 8; 1988, No. 142, s. 10

**9. Execution of documents on behalf of Commission—**(1) The Commission may from time to time, in writing under its common seal, authorise any commissioner or commissioners or employee or employees or contracted personnel of the Commission to execute any deeds, instruments, or other documents on behalf of the Commission, and may at any time in the same manner revoke any such authority.

(2) Any authority under this section to any employee or employees of the Commission may be given to—

- (a) A specified employee or employees; or
- (b) An employee or employees of a specified class; or
- (c) The holder or holders for the time being of a specified office or of an office or offices of a specified class.

(3) Every person purporting to execute any document on behalf of the Commission pursuant to this clause shall, in the absence of proof to the contrary, be presumed to be acting in accordance with an authority under this clause.

Cf. 1944, No. 15, Schedule, cl. 9; 1988, No. 142, s. 10

**10. Appointment of personnel—**(1) The Board may from time to time appoint such employees as are necessary for the efficient and economical carrying out of its functions.

(2) Employees of the Commission shall be employed on such terms and conditions of employment as the Board from time to time determines, which terms and conditions shall be consistent with the Board being a good employer within the meaning of section 4 (2) of the State-Owned Enterprises Act 1986. The Board may pay to any such employees such remuneration and other payments as the Board from time to time determines.

(3) Notwithstanding **subclauses (1) and (2)** of this clause, persons may, in such circumstances as may be determined by the Board, be engaged under individual contracts for such terms of office or appointment, and on such terms, as the Board may determine.

Cf. 1944, No. 15, Schedule, cl. 10; 1988, No. 142, s. 10

**11. Commission may provide superannuation subsidy—**The Board may, for the purpose of providing a superannuation fund or retiring allowance for any of the employees or contracted personnel of the Commission, subsidise out of the funds of the Commission any scheme approved by the Board.

Cf. 1944, No. 15, Schedule, cl. 11; 1988, No. 142, s. 10

FIRST SCHEDULE—*continued*

PROVISIONS RELATING TO BOARD—*continued*

**12. Commissioners, employees, etc., not in service of Crown—**Subject to **section 26** of this Act, no person shall be deemed to be employed in the Government service for the purposes of the Government Superannuation Fund Act 1956 or in the State services for the purposes of the State Sector Act 1988, by reason only of that person being a commissioner or an employee of the Commission.

Cf. 1944, No. 15, Schedule, cl. 12; 1988, No. 142, s. 10

**13. Commissioners and employees not personally liable—**No commissioner or employee of the Commission, in the absence of fraud or unless the act or omission amounts to an offence, shall be personally liable in respect of any act or thing done or omitted by that person in the exercise or bona fide purported exercise of any authority conferred by or pursuant to this Act.

Cf. 1944, No. 15, Schedule, cl. 13; 1988, No. 142, s. 10

**14. Delegation of powers—**(1) The Commission may from time to time, by resolution recorded in its minutes, delegate all or any of its powers to any person, position, or class of persons or positions, either as to matters in general, or in any particular case or matter, or any particular class or classes of cases or matters.

(2) Subject to any general or special directions given or conditions attached by the Board, the persons to whom any functions, powers, authorities, discretions, rights, or duties are delegated under this clause may exercise those functions, powers, authorities, discretions, or rights and carry out those duties in the same manner and with the same effect as if they had been conferred or imposed on them directly by this Act and not by delegation.

(3) Every person purporting to act pursuant to any delegation under this clause shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(4) Every delegation under this clause shall be revocable at will, but that revocation shall not affect in any way anything done under the delegated authority and shall not take effect until notified to the delegate.

(5) No delegation under this section shall prevent the exercise of any function, power, authority, discretion, or right, or the carrying out of any duty, by the Commission.

Cf. 1944, No. 15, Schedule, cl. 14; 1988, No. 142, s. 10

**15. Remuneration of commissioners—**(1) The remuneration of the commissioners shall from time to time be determined by the Minister, and shall be deemed to accrue from day to day.

(2) The commissioners shall be entitled to be paid from the Fund all travelling, hotel, and other expenses properly incurred by them in carrying out their duties as commissioners.

Cf. 1944, No. 15, Schedule, cl. 15 (1), (3); 1988, No. 142, s. 10

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## SECOND SCHEDULE

Section 24 (1), (2)

## PART I

*Enactments Repealed*

- 1944, No. 15—The Earthquake and War Damage Act 1944. (R.S. Vol. 6, p. 207.)
- 1951, No. 42—The Earthquake and War Damage Amendment Act 1951 (R.S. Vol. 6, p. 224.)
- 1951, No. 79—The Fees and Travelling Allowances Act 1951: So much of the First Schedule as relates to the Earthquake and War Damage Commission and so much of the Second Schedule as relates to the Earthquake and War Damage Act 1944. (R.S. Vol. 6, p. 403.)
- 1971, No. 51—The Stamp and Cheque Duties Act 1971: Section 11 (2) (e) and so much of the Third Schedule as relates to the Earthquake and War Damage Act 1944. (R.S. Vol. 23, p. 771.)
- 1975, No. 9—The Ombudsmen Act 1975: So much of Part II of the First Schedule as relates to the Earthquake and War Damage Commission. (R.S. Vol. 21, p. 682.)
- 1983, No. 140—The Earthquake and War Damage Amendment Act 1983.
- 1985, No. 16—The Earthquake and War Damage Amendment Act 1985.
- 1985, No. 173—The Earthquake and War Damage Amendment Act (No. 2) 1985.
- 1987, No. 27—The Earthquake and War Damage Amendment Act 1987.
- 1988, No. 142—The Earthquake and War Damage Amendment Act 1988.
- 1989, No. 44—The Public Finance Act 1989: So much of the First Schedule as relates to the Earthquake and War Damage Act 1944.

## PART II

*Regulations Revoked*

Title	Statutory Regulations Serial Number
The Earthquake and War Damage Regulations 1984	1984/71
The Earthquake and War Damage (Land Cover) Regulations 1984	1984/144
The Earthquake and War Damage Regulations 1984, Amendment No. 1	1984/145
The Earthquake and War Damage (Land Cover) Regulations 1984, Amendment No. 1	1985/267
The Earthquake and War Damage Regulations 1984, Amendment No. 2	1988/72