

A BILL INTITULED

An Act to make provision with respect to the insurance of residential property against damage caused by certain natural disasters

BE IT ENACTED by the Parliament of New Zealand as follows: 5

1. Short Title and commencement—(1) This Act may be cited as the Earthquake Commission Act 1992.

(2) This Act shall come into force on the 1st day of *(July 1993)* January 1994.

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

“Board” means the Board of the Commission constituted in accordance with the **First Schedule** to this Act:

“Commission” means the Earthquake Commission constituted under this Act: 15

“Commissioner” means a member of the Board:

Struck Out

“Contract of fire insurance” means a contract whereby any residential property is insured against loss, destruction, or damage by fire, whether the contract includes other risks or not; but does not include— 20

(a) Any contract of marine insurance or any contract of reinsurance; or

(b) Any contract whereby any property is insured against any form of natural disaster damage, unless the contract also includes insurance against loss or damage by fire (other than natural disaster fire): 25

New

“Contract of fire insurance” means a contract whereby any property is insured against physical loss or damage by fire (other than natural disaster fire), whether the contract includes other risks or not; but does not include any contract of marine insurance or any contract of reinsurance: 30

“Contract of natural disaster insurance” means a contract whereby any property is insured against natural 35

disaster damage, whether the contract includes other risks or not; but does not include any contract of marine insurance or any contract of reinsurance:

New

5 “Dwelling” means, subject to any regulations made under
this Act, any self-contained premises which are the
home or holiday home, or are capable of being and
are intended by the owner of the premises to be the
10 home or holiday home, of one or more persons:
“Erosion” means erosion by the normal action of the wind
or sea or of a lake, river, or other body of water:

“Fund” means the Natural Disaster Fund continued in
existence under this Act:
“Goods and services tax” means goods and services tax
15 payable under the Goods and Services Tax Act 1985:
“Insurance company” means any person who undertakes
liability under any contract of fire insurance or any
contract of natural disaster insurance:
20 “Insured person”, in relation to any property insured
under 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 or (in the case of
property that is residential land) in respect of the
residential building situated on that land; and, in
25 relation to any contract of insurance made under this
Act, means the person for the time being entitled to
the benefit of that contract:

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30 “Land” includes those items set out in paragraphs (g) to (i)
of the definition of the term “residential property”:

New

“Land” does not include improvements as defined in
section 2 of the Valuation of Land Act 1951:

“Minister” means the Minister of Finance:

Struck Out

- “Natural disaster” means an earthquake, natural landslip, volcanic eruption, hydrothermal activity, or tsunami:
- “Natural disaster damage” means—
- (a) Any loss or destruction of, or damage to, property occurring as the direct result of a natural disaster or natural disaster fire: 5
 - (b) Any loss or destruction of, or damage to, property 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, destruction, or damage; but does not include any loss, destruction, or damage for which compensation is payable under any other enactment: 10 15

New

- “Natural disaster” means—
- (a) An earthquake, natural landslip, volcanic eruption, hydrothermal activity, or tsunami; or
 - (b) Natural disaster fire; or 20
 - (c) In the case only of residential land, a storm or flood:
- “Natural disaster damage” means, in relation to property,—
- (a) Any physical loss or damage to the property occurring as the direct result of a natural disaster; or 25
 - (b) Any physical loss or damage to the property 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 natural disaster, but does not include any physical loss or damage to the property for which compensation is payable under any other enactment: 30
- “Natural disaster fire” means fire occasioned by or through or in consequence of (a natural disaster) an earthquake, natural landslip, volcanic eruption, hydrothermal activity, tsunami, or (in the case only of residential land) a storm or flood: 35

5 “Natural landslip” means the movement (whether by way of falling, sliding, or flowing, or by a combination thereof) of ground-forming materials composed of natural rock, soil, artificial fill, or a combination of such materials, which, before movement, formed an integral part of the ground; but does not include the movement of ground due to below-ground subsidence, soil expansion, soil shrinkage, soil compaction, or (*soil creep*) erosion:

10 *Struck Out*

“Residential property” means any building in New Zealand which is occupied solely as 1 or more household units; and includes—

15 (a) Any building occupied both as a household unit and used for any other purpose if the part of the building used as a household unit constitutes 50 percent or more of the total area of the building; and

20 (b) Any building which provides long-term accommodation for the elderly or which is a boardinghouse or a lodginghouse; and

(c) Every building, structure, and improvement appurtenant to the household unit used for the purposes of the household of the occupier of the household unit or the purposes of the residents of any building to which **paragraph (b)** of this definition applies—

25 and also includes the following property situated within the land holding on which any such building is situated:

30 (d) The land on which the building is situated; and

(e) All land within 8 metres, in a horizontal line of any such building; and

(f) That part of the land holding which—

35 (i) Is within 60 metres, in a horizontal line, of any such building; and

(ii) Constitutes the main access way or part of the main access way to the building from the boundary of the land holding or is land supporting such access way or part; and

40 (g) All water supply, drainage, and sewerage services, and structures appurtenant thereto,—

Struck Out

- (i) Serving any such building or surrounding land; and
- (ii) Situated within 60 metres, in a horizontal line, of the building; and 5
- (iii) Owned by the owner of the building or land holding:
- (h) All bridges and culverts situated within any area specified in **paragraphs (d) to (f)** of this definition: 10
 - (i) All retaining walls and their support systems within 60 metres, in a horizontal line, of any such building. 10

New

- “Person” includes any individual person, a corporation sole, a corporate aggregate, an unincorporated body of persons, and any association or combination of individual persons or corporate or unincorporate bodies: 15
- “Personal property” means property that is located in or on a residential building; and includes property that is usually so located but is temporarily removed from the building for any reason; but does not include any property used solely or principally for commercial purposes: 20
- “Physical loss or damage”, in relation to property, includes any physical loss or damage to the property that (in the opinion of the Commission) is imminent as the direct result of a natural disaster which has occurred: 25
- “Replacement value” means—
 - (a) In relation to a residential building, any costs which would be reasonably incurred in respect of— 30
 - (i) Demolition and removal of debris, to the extent that is essential to enable the building to be replaced or reinstated; and
 - (ii) Replacing or reinstating the building to a condition substantially the same as but not better or more extensive than its condition when new, modified as necessary to comply with any applicable laws; and 35

New

- 5 (iii) Complying with any applicable laws in relation to the replacement or reinstatement of the building; and
- 5 (iv) Other fees or costs payable in the course of replacing or reinstating the building, including architects' fees, surveyors' fees, and fees payable to local authorities; and
- 10 (b) In relation to any personal property, the lesser of—
- 15 (i) The cost of replacing the property with similar property, in a condition equal to but not better or more extensive than its condition when new:
- 15 (ii) The cost of reinstating the property to a condition substantially the same as but not better or more extensive than its condition when new:
- 20 “Residential building” means—
- 25 (a) Any building, or part of a building, or other structure (whether or not fixed to land or to another building, part, or structure) in New Zealand which comprises or includes one or more dwellings, if the area of the dwelling or dwellings constitutes 50 percent or more of the total area of the building, part, or structure:
- 30 (b) Any building or part of a building (whether or not fixed to land, or to another building, part, or structure) in New Zealand which provides long-term accommodation for the elderly, if the area of the building which provides long-term accommodation for the elderly constitutes 50 percent or more of the total area of the building, part, or structure:
- 35 (c) Every building or structure appurtenant to a dwelling referred to in **paragraph (a)**, or a building or part of a building referred to in **paragraph (b)**, of this definition and that is used for the purposes of the household of the occupier of the dwelling or for the purposes of the residents of the building or part:
- 40 (d) All water supply, drainage, sewerage, gas, electrical, and telephone services, and structures appurtenant thereto—

New

- (i) Serving a dwelling referred to in paragraph (a), or a building or part of a building referred to in paragraph (b), of this definition or surrounding land; and 5
- (ii) Situated within 60 metres, in a horizontal line, of the dwelling or building or part; and
- (iii) Owned by the owner of the dwelling or building or part, or by the owner of the land on which the dwelling or building or part is situated: 10
- “Residential land” means, in relation to any residential building, the following property situated within the land holding on which the residential building is lawfully situated: 15
- (a) The land on which the building is situated; and
- (b) All land within 8 metres in a horizontal line of the building; and
- (c) That part of the land holding which— 20
- (i) Is within 60 metres, in a horizontal line, of the building; and
- (ii) Constitutes the main access way or part of the main access way to the building from the boundary of the land holding or is land supporting such access way or part; and 25
- (d) All bridges and culverts situated within any area specified in paragraphs (a) to (c) of this definition; and
- (e) All retaining walls and their support systems within 60 metres, in a horizontal line, of the building which are necessary for the support or protection of the building or of any property referred to in any of paragraphs (a) to (c) of this definition. 30

(2) For the purposes of this Act, a renewal of a contract of insurance shall be deemed to be a new contract. 35

3. Act to bind the Crown—This Act shall bind the Crown.

PART I

EARTHQUAKE COMMISSION

4. Earthquake Commission—(1) There shall continue to be a Crown entity called the Earthquake Commission which 40

shall be the same body corporate as that existing under the name of the Earthquake and War Damage Commission immediately before the commencement of this Act.

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5 (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.

10 (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.

New

15 (2) The Commission shall be a body corporate with perpetual succession and a common seal, and shall have and may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity.

20 (3) All decisions relating to the operation of the Commission shall be made by or under the authority of the Board of the Commission, in accordance with the Commission's statement of intent under the Public Finance Act 1989.

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)* to the Commission or the Board.

30 (5) The persons holding office as members of the Board of the Earthquake and War Damage Commission immediately before the commencement of this Act shall, on the commencement of this Act, be deemed to have been appointed as members of the Board under this Act, but their term of office under this Act shall be deemed to have commenced on the date on which they were appointed or last reappointed to the first-mentioned Board.

Struck Out

35 **5. Functions of Commission**—The Commission shall have such functions as are conferred on it by this Act.

Struck Out

6. Powers of Commission—The Commission shall have such powers as are conferred on it by this Act and as are reasonably necessary or expedient to enable it to carry out its functions.

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New

5. Functions of Commission—(1) The functions of the Commission are—

- (a) To administer the insurance against natural disaster damage provided under this Act: 10
- (b) To collect premiums payable for the insurance provided under this Act:
- (c) To administer the Fund and, so far as is reasonably practicable, protect its value, including by the investment of money held in the Fund: 15
- (d) To obtain reinsurance in respect of the whole or part of the insurance provided under this Act:
- (e) To facilitate research and education about matters relevant to natural disaster damage, methods of reducing or preventing natural disaster damage, and the insurance provided under this Act: 20
- (f) Such other functions as may be conferred on it by—
 - (i) This Act or any other Act; or
 - (ii) The Minister, by written notice to the Commission after consultation with the Commission. 25

(2) Where a notice is given to the Commission under subsection (1) (f) (ii) of this section, the Minister shall, as soon as practicable after the giving of the notice, publish in the *Gazette* and lay before the House of Representatives a copy of the notice. 30

6. Powers of Commission—The Commission shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions.

7. Capital of Commission—(1) The capital of the Commission shall be \$1,500,000,000, in shares of \$1 each, which shall be deemed to have been subscribed for and paid up 35

in full from the Fund by the Minister on behalf of Her Majesty the Queen on the 1st day of October 1988.

5 (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) The share capital of the Commission shall not be increased otherwise than in accordance with **subsection (2)** of this section.

10 (4) The Commission shall not allot any shares in its capital to any person other than Her Majesty the Queen or a nominee holding shares on behalf of Her Majesty.

(5) The Minister may, on behalf of Her Majesty the Queen,—

15 (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:

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

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

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

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30 (7) All sums paid or deemed to be paid by the Minister in respect of the subscription for, or other acquisition of, shares in the Commission shall be deemed to form part of the Fund.

Struck Out

35 **8. Commission to be Crown entity**—The Fourth Schedule to the Public Finance Act 1989 (as added by **section 38 of the Public Finance Amendment Act (No. 3) 1992**) is hereby amended by omitting the item relating to the Earthquake and War Damage Commission, and substituting the following item:
 “Earthquake Commission.”

New

8. Commission to be Crown entity—(1) The Fourth and Sixth Schedules to the Public Finance Act 1989 (as added by section 41 of the Public Finance Amendment Act 1992) are hereby amended by omitting the item relating to the Earthquake and War Damage Commission, and substituting in each case the following item: 5

“Earthquake Commission.”

(2) The Seventh Schedule to the Public Finance Act 1989 (as added by section 41 of the Public Finance Amendment Act 1992) is hereby amended by omitting the item relating to the Earthquake and War Damage Commission. 10

9. Minister may determine dividend—The Minister, by written notice to the (*Board,*) Commission, after consultation with the Commission, may determine the amount of dividend payable by the Commission in respect of any financial year or years, and the (*Board*) Commission shall comply with the notice. 15

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10. Power to borrow—With the prior written consent of the Minister and subject to such terms and conditions as the Minister considers fit to impose, the Commission may borrow money; and (for the purpose of securing any money so borrowed) may mortgage, charge, or pledge any right, title, estate, or interest in any of its property. 20 25

New

10. Exemption from income tax—(1) The Commission is hereby declared to be exempt from the payment of income tax 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 Commission. 30

11. Audit Office to be auditor of Commission—(1) The Audit Office shall be the auditor of the Commission, and for that purpose shall have and may exercise all such powers as it has under the Public Finance Act 1977 in respect of public money and public stores.

New

(2) Without limiting **subsection (1)** of this section, the Commission may, after consultation with the Audit Office and with the approval of the Minister, appoint a person or firm that is qualified for appointment as an auditor of a company to be an additional auditor of the Commission.

12. Directions by Minister—(1) The Minister may from time to time (after consulting, where practicable, those persons likely to be affected by the direction) give to the Commission in writing such 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 the Minister under **subsection (1)** of this section.

(3) Where a direction is given to the Commission under **subsection (1)** of this section, the Minister, as soon as practicable after the giving of the direction, shall—

(a) Publish a copy of the (*notice*) direction in the *Gazette*; and
(b) Lay a copy of the direction before the House of Representatives.

(4) Every direction given under section 9 of the Earthquake and War Damage Act 1944 (as substituted by section 3 of the Earthquake and War Damage Amendment Act 1988) and in force on the commencement of this Act shall be deemed to have been given under this section.

13. Natural Disaster Fund—(1) For the purposes of this Act, there shall continue to be a fund to be known as the Natural Disaster Fund (being the same (*account*) fund as that existing under the name of the Earthquake and War Damage Fund immediately before the commencement of this Act).

(2) The Disaster and Landslip Fund, continued in existence by regulation 11 of the Earthquake and War Damage Regulations 1984, shall cease to be a separate fund within the Natural Disaster Fund from the commencement of this Act and

all money held in the Disaster and Landslip Fund shall be amalgamated with the money held in the Natural Disaster Fund.

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(3) All money in bank accounts established by the Commission, and all investments and other assets of the Commission, shall be deemed to form part of the Fund. 5

(4) All money which is required to be paid into or out of the Fund may be paid into or out of any bank account established by the Commission. 10

14. Money payable into Fund—(1) There shall from time to time be paid into the Fund—

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

(b) All fines and penalties recovered under this Act or any regulations in force under this Act: 15

(c) All other money that (*may be*) is lawfully payable into the Fund.

(2) All money in the Fund, and all money payable into the Fund by any person, and all debts and other money 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 Commission and recoverable accordingly by the Commission. 20 25

15. Money payable out of Fund—There shall, from time to time, be paid out of the Fund—

(a) All claims admitted or sustained against the Commission in respect of the insurance of any property under this Act and all expenditure in connection with any such claims: 30

(b) All refunds of premiums or any part thereof made by the Commission:

(c) All premiums and other expenditure in connection with the reinsurance of any liability of the Commission: 35

(d) Such sums as the Commission may from time to time decide to grant to any person or body of persons engaged in research into any matter relevant to the Commission's functions:

New

5 (da) Such sums as the Commission may from time to time decide to spend for the purposes of informing or educating any persons about any matter relevant to the Commission's functions:

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10 (e) All money required to repay any advances made under **section 16** of this Act, or to pay any interest or principal payable out of the Fund under that section:
 (f) Except as provided by **subsection (2)** of this section, all salaries and allowances and other expenditure incurred in the administration of this Act:
 (g) All money payable by the Commission in the exercise of its powers under this Act.

15 *New*

(e) All money required to repay any money borrowed by it under **section 16** of this Act, or to pay any interest or fees in relation to any such money:
 20 (f) All dividends payable under **section 9** of this Act, sums payable under **section 10 (2)** of this Act, and fees payable under **section 17** of this Act:
 (g) All salaries, remuneration, and allowances and other expenditure incurred, or other money payable by the Commission under, or in the administration of, this
 25 Act, or in the exercise of the Commission's functions or powers under this Act, or in accordance with regulations made under this Act.

30 **16. Deficiency in Fund**—If the assets of the Commission (including the money for the time being in the Fund) are not sufficient to meet the *(lawful claims on)* liabilities of 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 or advance as may be necessary to meet the deficiency upon such terms and
 35 conditions as the Minister determines.

17. Fees payable to Crown by Commission—There shall be payable by the Commission to the Crown each year, on such date as the Minister determines, a fee to be determined from time to time by the Minister in respect of the *(facilities provided)* obligation imposed by section 16 of this Act. 5

PART II

INSURANCE OF RESIDENTIAL PROPERTY AGAINST NATURAL
DISASTER*Struck Out*

18. Residential property insured against fire deemed to be insured against natural disaster damage—(1) Subject to the provisions of this Act and of any regulations in force under this Act, where, in respect of any period, any person enters into a contract of fire insurance with an insurance company in respect of any residential property situated in New Zealand or renews any such contract of fire insurance on or after the **1st day of July 1993**, the residential property shall at all times during that period be deemed to be insured under this Act against natural disaster damage to the amount which is the lesser of the replacement value of the property or the maximum amount, plus the value of any land covered under this section suffering natural disaster damage. 10 15 20

(2) The maximum amount for the purposes of this section shall be \$100,000 or such higher amount as may be fixed from time to time by the Governor-General by Order in Council. 25

(3) Upon the making of any contract of fire insurance to which this section applies, the natural disaster 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. 30

(4) The amount of the natural disaster 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 or her to the insurance 35 40

Struck Out

company, without prejudice to the liability of any other person. Where 2 or more persons are liable for any amount under this subsection their liability shall be joint and several.

5 (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:

10 (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.

15 (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 in force 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 is applicable and with the necessary modifications, with respect to the insurance of the property against natural disaster damage under this section.

20 (7) Where this section refers to replacement value of property or maximum amounts, such values or amounts shall be read as exclusive of goods and services tax.

30 **19. Insurance of personal property**—(1) Subject to the provisions of this Act and of any regulations in force under this Act, where in respect of any period any person enters into a contract of fire insurance with an insurance company in respect of any personal property situated in or on residential property or renews any such contract of insurance after the **1st day of July**
35 **1993**, the personal property shall at all times during that period and while it remains in or on residential property be deemed to be insured under this Act against natural disaster damage for an amount which is the lesser of the replacement value of the
40 personal property or the maximum amount.

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(2) The maximum amount for the purposes of this section shall be \$20,000 or such higher amount as may be fixed from time to time by the Governor-General by Order in Council.

(3) Where this section refers to replacement value of property or maximum amounts, such values or amounts shall be read as exclusive of goods and services tax. 5

(4) Nothing in this section shall apply in respect of—

(a) Motor vehicles:

(b) Motor cycles: 10

(c) Trailers:

(d) Caravans:

(e) Pleasure craft.

20. Voluntary insurance against natural disaster damage—(1) On application made by any person having an insurable interest in any residential property, the Commission may agree to insure that property under this Act for such period and to such amount and upon or subject to such conditions as the Commission thinks fit against natural disaster damage. 15 20

(2) A contract may be made under this section—

(a) For the insurance of any residential property that is not so insured under **section 18** of this Act; or

(b) For the insurance to an additional amount of any residential property that is so insured to any amount under **section 18** of this Act; or 25

(c) For the insurance of any residential property in substitution for the insurance thereof under **section 18** of this Act.

(3) Upon the making of a contract under this section, a premium at the prescribed rate or, where no rate is prescribed, at such rate as the Commission thinks fit shall be payable to the Commission by the applicant. 30

21. Commission to make good natural disaster damage to insured property—Subject to the provisions of this Act and of any regulations in force under this Act and of the contract of natural disaster insurance (if any), if, during the period for which any property is insured under this Act against natural disaster damage, the property suffers natural disaster damage, the Commission may, at its option, settle any claim by 35 40

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5 payment, replacement, or repair, to an amount not exceeding, in respect of the property or any part thereof, the lesser of the maximum amount or the amount to which the property or that

10 (2) Subject to the provisions of any regulations in force 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 1 year after the amount of the damage has been duly determined (which determination shall be made as

15 soon as reasonably practicable in the circumstances of each case).

20 (3) The Commission may decline any claim made against it in respect of natural disaster damage where the loss or damage was caused by or exacerbated by earlier natural disaster damage for which the Commission made payment, and that payment was not used to repair the property.

22. Insurance to be subject to Act and regulations—
The insurance of any property against natural disaster damage, whether under **section 18** or **section 19** or **section 20** of this Act, shall be subject to the provisions of this Act and of any regulations in force under this Act.

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23. Insurance otherwise than under this Act—(1) Where on the occurrence to any property of any loss or damage against which it is insured under **section 18** or **section 19** or **section 20** of this Act, the property is also insured against that loss or damage under any contract or contracts made otherwise than under this Act, the insurance of the property under this Act (to the amount to which it is so insured) shall be deemed to be in respect of so much of that loss or damage as exceeds the sum

30 of—

35 (a) The total amount payable under that contract or those contracts in respect of that loss or damage; and

(b) The proportion of the loss or damage to be borne by the insured person under the conditions applying to the insurance of the property under this Act.

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(2) Notwithstanding anything to the contrary in any contract whereby any property is insured against any loss or damage otherwise than under this Act, where the property is or has at any time been also insured against that loss or damage under **section 18** or **section 19** or **section 20** of this Act, the contract shall have effect in all respects as if the property were not and had never been insured under this Act.

*New**Insurance*

18. Residential buildings—(1) Subject to any regulations made under this Act and to the **Third Schedule** to this Act, where a person enters into a contract of fire insurance with an insurance company in respect of any residential building situated in New Zealand, the residential building shall, while that contract is in force, be deemed to be insured under this Act against natural disaster damage for its replacement value to the amount (exclusive of goods and services tax) which is the least of—

- (a) If the contract of fire insurance specifies a replacement sum insured for which the building is insured against fire under that contract, the amount of that sum insured: 20
- (b) If the contract of fire insurance does not specify such a replacement sum insured but does specify an amount to which the building is to be insured under this Act, that amount: 25
- (c) The amount arrived at by multiplying the number of dwellings in the building (being the number determined in accordance with **subsection (3)** of this section) by \$100,000 or such higher amount as may be fixed from time to time for the purposes of this paragraph by regulations made under this Act. 30

(2) An amount specified for the purposes of **subsection (1) (b)** of this section shall not be less than the amount calculated by multiplying a sum of not less than \$1,000, or such higher sum as is fixed from time to time for the purposes of this subsection by regulations made under this Act, by the area in square 35

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metres of the residential building. Where a contract specifies a lesser amount, the amount specified is deemed to be \$1,000 or such higher sum as is fixed from time to time for the purposes of this subsection by regulations made under this Act, by the area in square metres of the residential building.

(3) For the purposes of **subsection (1) (c)** of this section, a residential building is deemed to comprise one dwelling unless the existence of a higher number of dwellings in the building is disclosed to the insurance company at the time that the contract of fire insurance is entered into.

19. Residential land—Subject to any regulations made under this Act and to the **Third Schedule** to this Act, where a residential building is deemed to be insured under this Act against natural disaster damage, the residential land on which that building is situated shall, while that insurance of the residential building is in force, be deemed to be insured under this Act against natural disaster damage to the amount (exclusive of goods and services tax) which is the sum of, in the case of any particular damage,—

(a) The value, at the site of the damage, of—

(i) If there is a district plan operative in respect of the residential land, an area of land equal to the minimum area allowable under the district plan for land used for the same purpose that the residential land was being used at the time of the damage; or

(ii) An area of land of 4000 square metres; or

(iii) The area of land that is actually lost or damaged—

whichever is the smallest; and

(b) The indemnity value of any property referred to in paragraphs (d) and (e) of the definition of the term “residential land” in **section 2 (1)** of this Act that is lost or damaged.

20. Personal property—Subject to any regulations made under this Act and to the **Third Schedule** to this Act, where a person enters into a contract of fire insurance with an insurance company in respect of any personal property situated in New Zealand, the property shall, while that contract is in force, be deemed to be insured under this Act against natural disaster

New

damage for its replacement value (or, if it is insured against fire on any less favourable basis, that basis) to the amount (exclusive of goods and services tax) which is the lesser of—

- (a) If the contract of fire insurance specifies a maximum amount to which property is insured against fire under the contract, that amount: 5
- (b) The sum of \$20,000 or such greater amount as may be fixed from time to time for the purposes of this section by regulations made under this Act. 10

21. Property not insured under this Act—(1) Sections 18 to 20 of this Act shall not apply to—

- (a) Any property of a kind specified in the **Second Schedule** to this Act; or
- (b) Any property of a kind specified for the purposes of this section in regulations made under this Act. 15
- (2) Nothing in **subsection (1)** of this section shall limit—
 - (a) Either of **paragraphs (c) and (d)** of the definition of the term “residential building” in **section 2 (1)** of this Act; or
 - (b) Either of **paragraphs (d) and (e)** of the definition of the term “residential land” in **section 2 (1)** of this Act. 20

22. Voluntary insurance against natural disaster damage—(1) On application made by any person having an insurable interest in any residential building, residential land, or personal property, the Commission may enter into a contract to insure that building, land, or personal property under this Act against natural disaster damage for such period and to such amount (not exceeding the amount which would apply if the property were insured under any of **sections 18 to 20** of this Act) and upon or subject to such conditions as the Commission thinks fit. 25 30

- (2) A contract may be made under this section—
 - (a) For the insurance of any residential building, residential land, or personal property that is not insured under any of **sections 18 to 20** of this Act; or 35
 - (b) For the insurance of any residential building, residential land, or personal property in substitution for the insurance of that building, land, or personal property under any of **sections 18 to 20** of this Act.

New

(3) Upon the making of a contract under this section, a premium at the rate prescribed for the purposes of this section or, where no such rate is prescribed, at such rate as the Commission thinks fit shall be payable to the Commission by the applicant.

Premiums

23. Premiums payable to Commission—(1) When a contract of fire insurance of a kind referred to in any of sections 18 to 20 of this Act is made, there shall be payable by the insurance company to the Commission a premium, at the rate prescribed by regulations made under this Act, for the insurance against natural disaster damage provided by this Act.

(2) The amount of a premium for which any insurance company becomes liable under this section in respect of any contract of fire insurance shall, upon the making of the contract, 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 or her to the insurance company, without prejudice to the liability of any other person. Where 2 or more persons are liable for any amount under this subsection their liability shall be joint and several.

(3) Notwithstanding subsection (2) of this section, where a premium is payable by an insurance company pursuant to subsection (1) of this section and the insurance company does not carry on business in New Zealand—

(a) The premium shall be a debt due by the insured person to the Commission jointly and severally with the insurance company, and may be recovered by the Commission accordingly:

(b) 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 become a debt due by him or her to the Commission, without prejudice to the liability of any other person:

(c) Where 2 or more persons are liable for any amount under this subsection their liability shall be joint and several.

New

(4) Subject to 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 payable by them under this section: 5
- (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. 10

23A. Payment of premiums by insurance companies—

(1) The amount of the premiums for which any insurance company becomes liable under **section 23** of this Act in any month shall be paid by the company to the Commission within 2 months after the end of that month. 15

(2) Each payment to the Commission under **subsection (1)** of this section shall be accompanied by a certificate by an officer or agent of the insurance company, stating that, according to the books of the company, and to the best of his or her knowledge and belief, the payment is correct. 20

23B. Secrecy of information—(1) The amount of every payment under **section 23A** of this Act, and all certificates under that section, and all information obtained, and all extracts made in order to verify the certificates, shall be kept secret by the Commission and by every commissioner and employee of the Commission. 25

(2) Nothing in **subsection (1)** of this section shall prohibit—

- (a) The publication of the amounts of premiums received, and cover provided, by the Commission during or in respect of any period in a manner which does not enable the premiums or amounts of cover attributable to a particular insurance company or companies to be identified; or 30
- (b) The use of any of the information referred to in **subsection (1)** of this section for the purposes of this Act or any regulations made under this Act. 35

New

23c. Insurance companies to keep records—Every insurance company shall at all times keep in safe custody all records of contracts of fire insurance in respect of which it becomes liable to pay a premium under this Act, including full particulars of each contract, the amount of the premium, and the date of its payment to the Commission.

Conditions of Insurance

23b. Conditions of insurance in Third Schedule—In addition to all other conditions imposed by this Act or by regulations made under this Act—

- (a) The insurance of any residential building, residential land, or personal property under sections 18 to 20 of this Act shall be subject to the conditions set out in the Third Schedule to this Act; and
- (b) The insurance of any residential building, residential land, or personal property under section 22 of this Act shall, except as otherwise provided in the contract of insurance under that section, be subject to the conditions set out in the Third Schedule to this Act.

23E. Certificates of certain events to be registered against land—(1) If—

- (a) The insurance of any residential building or residential land is cancelled under clause 4 of the Third Schedule to this Act; or
- (b) The Commission issues a limitation of liability notice under subclause (1) or subclause (2) of clause 5 of the Third Schedule to this Act in respect of any residential building or residential land—
- the Commission shall forward a certificate to that effect to the appropriate District Land Registrar who shall, without fee, register it against the title to the land on which the residential building is or was situated or the residential land, as the case may be.
- (2) Every such certificate shall set out—
- (a) The description of the land; and
- (b) A statement of the provisions of subsection (4) of this section.
- (3) The validity of a certificate under this section shall not be affected by any misdescription in it of the land concerned, if

New

sufficient information appears on the face of the certificate for the District Land Registrar to identify the land.

(4) The Commission shall, on written application by any person affected by any action of the Commission referred to in **subsection (1)** of this section, supply to that person reasons in writing for that action. 5

(5) If the Commission is satisfied, pursuant to **clause 4 (3)** or **clause 5 (5)** of the **Third Schedule** to this Act, that a certificate given under this section is no longer applicable to any land against which the certificate is registered, the Commission shall give notice of discharge of the certificate to the District Land Registrar, and the District Land Registrar shall, without fee, note the discharge against the title to the land. 10

(6) Every certificate or notice of discharge under this section shall be signed by the Commission or by some person authorised by the Commission for that purpose. 15

23F. Settlement of claims—(1) Subject to any regulations made under this Act—

(a) A claim may be made in respect of any insurance under this Act only by a person who has an insurable interest in the property concerned; and 20

(b) Without limiting **section 23H** of this Act, where more than one person has such an insurable interest, the Commission shall in settling any claim have due regard to the respective insurable interests. 25

(2) Subject to any regulations made under this Act and, where a contract has been entered into under **section 22** of this Act, to the provisions of that contract, if, during the period for which any property is insured under this Act, the property suffers natural disaster damage, the Commission shall settle any claim (by payment, replacement, or reinstatement, at the option of the Commission) to the extent to which it is liable under this Act. 30

(3) Where any property is insured under this Act for its replacement value and the Commission is satisfied that goods and services tax has been paid or will be payable by an insured in the course of replacing or reinstating the property, the amount of any payment under **subsection (2)** of this section shall be increased by the amount of goods and services tax paid or payable by the insured. 35 40

New

(4) Subject to any regulations made under this Act and without limiting the liability of the Commission under this Act, any payments or expenditure for which the Commission may be liable under this section shall be made as soon as reasonably practicable, and in any event not later than 1 year after the amount of the damage has been duly determined (which determination shall be made as soon as reasonably practicable).

(5) The Commission may make ex gratia payments in respect of natural disaster damage to property that is not insured under this Act where a premium has been paid under this Act in respect of that property in the belief that the property was insured under this Act.

23c. Insurance otherwise than under this Act—

(1) Where on the occurrence to any property of natural disaster damage against which it is insured under any of **sections 18 to 20**, or **section 22**, of this Act, the property is also insured against that damage under any contract or contracts made otherwise than under this Act, the insurance of the property under this Act (to the amount to which it is so insured) shall be deemed to be in respect of so much of that natural disaster damage as exceeds the sum of—

- (a) The total amount payable under that contract or those contracts in respect of that natural disaster damage; and
- (b) The proportion of the natural disaster damage to be borne by the insured person under the conditions applying to the insurance of the property under this Act.

(2) **Subsection (1)** of this section shall not apply with respect to any contract of insurance made otherwise than under this Act to the extent that the contract provides for cover in excess of the amount to which cover is provided under this Act.

(3) Notwithstanding anything to the contrary in any contract whereby any property is insured against natural disaster damage otherwise than under this Act, where the property is or has at any time also been insured against that natural disaster damage under any of **sections 18 to 20**, or **section 22**, of this Act, the contract shall have effect in all respects as if the property were not and had never been insured under this Act.

New

23H. Application of conditions in other documents— 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 any of **sections 18 to 20**, or **section 22**, of this Act applies, then, subject to any regulations made under this Act and to the provisions of any express agreement to the contrary, the covenant, condition, or power shall be deemed to be extended so as to apply, so far as is applicable and with the necessary modifications, with respect to the insurance of the property against natural disaster damage under this Act.

PART III

MISCELLANEOUS PROVISIONS

Struck Out

24. Reinsurance—The Commission may from time to time, in respect of any liability of the Commission under this Act, effect reinsurance with any person carrying on business in or out of New Zealand.

25. Power to inspect property, obtain information, and enter land—(1) For the purpose of obtaining any information that may be reasonably required by the Commission for the purposes of this Act, any person specifically or generally authorised in writing in that behalf by the Commission may from time to time—

- (a) Inspect and examine any property and any books, accounts, vouchers, records, or documents:
- (b) Require any person to produce any books, accounts, vouchers, records, or documents in his or her possession or under his or her control, and allow copies of or extracts from any such books, accounts, vouchers, records, or documents to be made or taken:
- (c) Require any person to furnish, in a form to be approved by or acceptable to the Commission, any information or particulars that may be required by the Commission:

(d) Subject to the provisions of **sections 26** and **27** of this Act, at any reasonable time enter any land, building, or place.

(2) Every such written authorisation shall contain—

- 5 (a) A reference to this section; and
- (b) The full name of the authorised person; and
- (c) A statement of the powers conferred on the authorised person by **subsection (1)** of this *(section.)* section; and

New

10 (d) The purpose for which those powers may be exercised.

(3) Every person shall have the same privileges in relation to—

- 15 (a) The production to any authorised person of any books, accounts, vouchers, records, or documents; and
- (b) The furnishing to any authorised person of any information or particulars; and
- (c) The answering of questions put by any authorised person—

under this section as witnesses have in Courts of law.

New

20 (4) A person authorised by the Commission for the purposes of **subsection (1)** of this section shall not make a record of, divulge, or communicate to any person, any information acquired in exercising the powers conferred by that subsection

25 except—

- (a) To the Commission; or
- (b) For the purposes of this Act; or
- (c) For the purposes of any Court proceedings; or
- (d) For such purposes as may be specified in any other Act.

30 **26. Provisions applying in respect of entry**—(1) If practicable, before *(the)* a power of entry conferred by **section 25** *((1) (d))* of this Act is exercised, an officer of the Commission or any person authorised on behalf of the Commission shall give to the occupier of the land, building, or place affected

35 reasonable written or oral notice specifying—

- (a) That entry on or into the land, building, or place is authorised under **section 25** of this Act; and
- (b) The purpose for which entry is required; and

- (c) How and when entry is to be made.
- (2) If entry is made on or into any land, building, or place under **section 25** of this Act without notice and the occupier is not present during the period of entry, written advice of the making of entry and of the purpose of entry shall be given to the occupier as soon as practicable after entry. 5
- (3) Every person exercising any power of entry under **section 25** of this Act shall have with him or her the appropriate written authorisation, and evidence of his or her identity, and shall produce them to the occupier of the land, building, or place— 10
- (a) If practicable, on first entering the land, building, or place; and
- (b) Whenever subsequently reasonably required to do so by the occupier. 15

27. Power to issue warrant authorising entry—(1) If entry on or into any land, building, or place under **section 25** of this Act is required for the purpose of ascertaining whether an offence against this Act has been committed, the authorised person shall make an application in writing on oath to a District Court Judge, Justice of the Peace, or Registrar or Deputy Registrar of any Court who, if he or she has reason to believe that entry is necessary for that purpose, may issue a warrant directed to the authorised person by name authorising him or her to enter the land, building, or place; and in any such case the provisions of **section 26** of this Act shall not apply. 20 25

- (2) A person who applies for a warrant under this section shall, having made reasonable inquiries, disclose in the application—
- (a) Details of every previous application, made in the immediately preceding period of 28 days, for a warrant to search the land, building, or place specified in the application; and 30
- (b) The result of (the) each such previous application; and
- (c) Details of the offence suspected. 35
- (3) Every warrant issued under **(subsection (1) of)** this section shall contain—
- (a) A reference to this section; and
- (b) The full name of the person authorised to enter; and
- (c) A description of the land, building, or place in respect of which it was issued; and 40
- (d) The date on which it was issued and the date on which it expires.

5 (4) Every (*such*) warrant issued under this section shall authorise the person named in it, at any reasonable time within 4 weeks after the date on which it is issued, to enter the land, building, or place described in the warrant and to do on or in the land, building, or place all such things as are necessary to ascertain whether an offence against this Act has been committed.

10 (5) Every person exercising any power under subsection (4) of this section shall have with him or her the appropriate warrant, and evidence of his or her identity, and shall produce them to the occupier of the land, building, or place—

(a) If practicable, on first entering the land, building, or place; and

15 (b) Whenever subsequently reasonably required to do so by the occupier.

(6) Every such warrant shall be executed in accordance with such reasonable conditions as may be specified in the warrant when it is issued.

20 **28. Offences**—(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who—

25 (a) Intentionally makes any statement that is both incorrect and material in any information or particulars furnished (whether in writing or not) under section 25 of this Act or under any regulations in force under this Act; or

(b) Intentionally makes any material omission from any information or particulars so furnished; or

30 (c) Intentionally destroys or mutilates or renders illegible any entry in any record, book, or account required to be kept under or for the purposes of this Act or any regulations in force under this Act, or wilfully makes a false or fraudulent entry in or omission from any such record, book, or account.

35 (2) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 and, if the offence is a continuing one, to a further fine not exceeding \$100 for every day or part of a day during which the offence has continued who—

40 (a) Resists, obstructs, deceives, or attempts to deceive, any person who is exercising or attempting to exercise any power or function under section 25 or section 27 of this Act; or

- (b) *(Fails)* Without lawful excuse, fails to comply in any respect with any requirement under section 25 of this Act; or

New

- (c) Without lawful excuse, acts in contravention of or fails to comply with either of sections 23b and 23c of this Act. 5

(3) Any offence against this section committed by any employee or agent in the course of employment or agency shall be deemed to have been also committed by his or her employer or principal if it is proved that the act or omission constituting the offence occurred with the employer's or principal's authority, permission, or consent. 10

Struck Out

29. Exemption from income tax—(1) The Commission is hereby declared to be exempt from the payment of income tax under the Income Tax Act 1976. 15

(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. 20

30. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

Struck Out

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- (a) Providing for and regulating the conduct of the business of the Commission:
- (b) Prescribing the duties of the Commission:
- (c) Classifying residential property or personal property for the purposes of this Act, and exempting or excluding any class or classes of residential property or personal property from any of the provisions of this Act: 30
- (d) Prescribing conditions upon or subject to which any residential property or personal property or class of residential property or personal property is insured 35

Struck Out

- by virtue of this Act and conditions upon or subject to which any contract of insurance or indemnity may be made by the Commission:
- 5 (e) Prescribing the rates of premiums to be paid for the insurance of any class of residential property or personal property by virtue to this Act and in respect of contracts of insurance or indemnity made by the Commission, so that different rates may be
- 10 prescribed in different cases or classes of cases; and prescribing how much of any natural disaster premium is payable in respect of different classes of insurance:

New

- 15 (a) Specifying any kind of property for the purposes of **section 21 (b)** of this Act or exempting any class of residential buildings, residential land, or personal property from any or all of the provisions of this Act:
- 20 (b) Prescribing conditions (being contemplated by or additional to those specified in, and not inconsistent with, this Act) upon or subject to which any residential buildings, residential land, or personal property, or class of residential building, residential land, or personal property, are insured under any or
- 25 all of **sections 18 to 20 and 22** of this Act:
- (c) Prescribing the rates of premiums payable under this Act; and different rates may be prescribed in different cases or classes of cases:
- 30 (f) Empowering the Commission to determine the method of calculation of premiums payable under this Act, but so that any such determination is subject to any regulation prescribing the rates of premiums:

Struck Out

- 35 (g) Providing for the apportionment of natural disaster premiums among persons interested in any residential property or personal property of class of

Struck Out

residential property or personal property, and for the partial indemnity of insured persons against their liability for natural disaster premiums by persons so interested:

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New

(g) Providing for the apportionment of premiums payable under this Act among persons interested in any residential buildings, residential land, or personal property or class of residential buildings, residential land, or personal property, and for the partial indemnity of insured persons against their liability for premiums by persons so interested:

10

(h) Providing for the destination and apportionment of money payable by the Commission in settlement of claims:

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Struck Out

(i) Empowering the Commission to limit the amount of its maximum liability for damage to any residential property or personal property to the amount for which the property is insured at the time the damage first occurred where that amount is less than the maximum amount referred to in **section 15 (2)** of **section 17** of this Act, and empowering the Commission in its discretion to increase that amount from time to time up to but not exceeding the maximum amount:

20

25

(j) Providing for the surrender of insurances and 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 money under this Act:

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Struck Out

(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:

5

New

(l) Requiring insurance companies to make returns and to keep books and accounts for the purposes of this Act:
 (la) Providing for the audit and investigation of records, books, and accounts required to be kept by this Act or by regulations in force under this Act:

10

(m) Prescribing, or making provision for the Commission to prescribe or provide, forms for the purposes of this Act:

New

(ma) Authorising the payment of money from the Fund:

15

(n) Prescribing offences in respect of the contravention of or non-compliance with any regulations in force under this Act, and the amounts of fines that may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$500:

20

(o) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

New

(2) Subject to **subsection (3)** of this section, the Governor-General may from time to time, by Order in Council, in accordance with the recommendation of the Minister, make regulations which deem any class of premises to be, or not to be, a “dwelling” for the purposes of this Act.

25

(3) The Minister shall not make a recommendation under **subsection (2)** of this section in relation to any class of premises unless the Commission has advised the Minister that doubts have arisen as to whether that class of premises is a dwelling for

30

New

the purposes of this Act and that an Order in Council is desirable to clarify the matter.

31. Transitional provisions relating to staff—(1) 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.

(2) 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.

(3) Subject to the Government Superannuation Fund Act 1956, nothing in **subsection (2)** 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.

(4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with **subsection (2)** 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.

32. Amendment to Ombudsmen Act 1975—The Ombudsmen Act 1975 is hereby amended by omitting from Part II of the First Schedule the item relating to the Earthquake and War Damage Commission, and substituting the following item:

“The Earthquake Commission.”

33. Repeals and revocations—(1) The enactments specified in Part I of the ~~(Second)~~ Fourth Schedule to this Act are hereby repealed.

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

34. Temporary continuation of existing earthquake and war damage cover—(1) All property which was insured under or by virtue of section 14 of the Earthquake and War Damage Act 1944 and any regulations in force under that Act, immediately before the commencement of this Act, shall
10 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 expiry of the policy of fire insurance by virtue of which the said section 14
15 applied to the property or the close of the **31st day of December 1994**, whichever is the earlier.

(2) Every contract of insurance entered into under section 15 of the Earthquake and War Damage Act 1944 and in force on the commencement of this Act shall continue in force, as if that
20 Act and the regulations in force under that Act had not been repealed and revoked, until the contract expires or until the close of the **31st day of December 1994**, whichever is the earlier.

PART IV

25 TRANSITIONAL PROVISIONS IN RESPECT OF NON-RESIDENTIAL PROPERTY

35. Insurance of non-residential property—(1) Any person who—

Struck Out

30 (a) Has an insurable interest in any non-residential property; and
(b) Enters into, or obtains an assignment of, a contract of fire insurance in respect of that property—
may apply to the Commission for the insurance of the property against natural disaster damage; and the Commission may
35 agree to insure the property under and in accordance with this section for a period not extending beyond the term of the contract of fire insurance.

(2) No contract of natural disaster insurance entered into by the Commission under this section shall provide for cover

Struck Out

exceeding 75 percent of the indemnity value of the property insured after—

- (a) The **31st day of December 1994**; or
 - (b) The date on which any contract of fire insurance in respect of that property entered into on or after the **1st day of January 1993** but before the **1st day of January 1994** expires or ceases to apply to the property—
- whichever is the earlier.

New

(a) Has an insurable interest in any property that is not a residential building, personal property, or land (in this section called “non-residential property”); and

(b) Enters into, or obtains an assignment of, a contract of fire insurance in respect of that property—

may apply to the Commission for the insurance against natural disaster damage of that property and, if the property is a building, of any associated land; and the Commission may agree to insure the property and any associated land under and in accordance with this section for a period not extending beyond the term of the contract of fire insurance.

(2) No contract of natural disaster insurance entered into by the Commission under this section shall provide for cover exceeding 75 percent of the indemnity value of the property insured.

(3) No contract of natural disaster insurance entered into by the Commission under this section shall provide for cover exceeding 50 percent of the indemnity value of the property insured after—

- (a) The **31st day of December (1995) 1994**; or
- (b) The date on which any contract of fire insurance in respect of that property entered into on or after the **1st day of January (1994) 1993** but before the **1st day of January (1995) 1994** expires or ceases to apply to the property—

whichever is the earlier.

(4) No contract of natural disaster insurance entered into by the Commission under this section shall provide for cover

exceeding 25 percent of the indemnity value of the property insured after—

- (a) The **31st day of December (1996) 1995**; or
 - 5 (b) The date on which any contract of fire insurance in respect of that property entered into on or after the **1st day of January (1995) 1994** but before the **1st day of January (1996) 1995** expires or ceases to apply to the property—
- whichever is the earlier.

10 (5) Nothing in this section shall require any person to insure any non-residential property against natural disaster damage.

(6) Subject to **subsections (2) to (4)** of this section, the Commission, in its discretion, shall determine the terms and conditions applicable to any contract of natural disaster

15 insurance entered into under this section, including the period of cover and the premium payable.

(7) The Commission shall not—

- (a) Accept any application for insurance made under this section after the **31st day of December 1995**;
- 20 (b) Enter into any contract of insurance under this section which extends beyond the **31st day of December 1996**.

(8) Nothing in this Act shall prevent any person from entering into a contract of insurance with an insurance company that is limited to an excess over the value of the

25 property already insured by the Commission.

Struck Out

(9) The provisions of **sections 21 and 22** of this Act, with the necessary modifications, shall apply in respect of every contract of insurance entered into under this section.

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New

(9) For the purposes of this section, “associated land” means, in relation to any building, the following property situated within the land holding on which the building is lawfully situated:

- 35 (a) The land on which the building is situated; and
- (b) All land within 8 metres in a horizontal line of the building; and
- (c) That part of the land holding which—

New

- | | |
|--|----|
| (i) Is within 60 metres, in a horizontal line, of the building; and | |
| (ii) Constitutes the main access way or part of the main access way to the building from the boundary of the land holding or is land supporting such access way or part; and | 5 |
| (d) All bridges and culverts situated within any area specified in paragraphs (a) to (c) of this subsection; and | |
| (e) All retaining walls and their support systems within 60 metres, in a horizontal line, of the building which are necessary for the support or protection of any property referred to in any of paragraphs (a) to (c) of this subsection. | 10 |

SCHEDULES

FIRST SCHEDULE

Section 4 (3), (4)

PROVISIONS RELATING TO BOARD

1. Constitution of Board—(1) 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.

New

- (2) Every commissioner—
- (a) Shall be paid such remuneration as the Board may from time to time determine, except that the aggregate amount for commissioners' remuneration in respect of any financial year shall not exceed an amount approved by the Minister for that purpose; and
 - (b) Shall be entitled to be paid all travelling, hotel, and other expenses properly incurred by the commissioner in carrying out his or her duties as commissioner; and
 - (c) Subject to the provisions of this Act, shall be appointed on such terms and conditions as the Governor-General on the recommendation of the Minister from time to time determines.

2. Chairperson and deputy chairperson—(1) One of the commissioners appointed under clause 1 of this Schedule shall be so appointed as the *(presiding member) chairperson* of the Commission, and one shall be so appointed as the deputy *(presiding member) chairperson* of the Commission.

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

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 Minister for disability, neglect of duty, conflict of interest, or misconduct proved to the satisfaction of the Minister.

(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.

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

(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.

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.

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 (*presiding member*) chairperson.

(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 (*presiding member*) chairperson 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 (*presiding member*) chairperson shall preside at all meetings of the Board at which the (*presiding member*) chairperson is present.

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

(a) The deputy (*presiding member*) chairperson shall preside if present:

(b) The commissioners present shall appoint one of their number to preside if the deputy (*presiding member*) chairperson 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 (*presiding member*) chairperson 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.

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.

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

7. Passing of resolution without meeting—A resolution in writing signed, or assented to by letter, (*telegram*) facsimile, 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.

New

7A. Teleconference meeting—(1) The contemporaneous linking together by telephone or other means of communication of a number of commissioners, being not less than the relevant quorum provided by **clause 5 (4)** of this Schedule, whether or not one or more of the commissioners is out of New Zealand, shall be deemed to constitute a meeting of the Board; and all of the provisions of this Schedule shall apply to that meeting, if the following conditions are met:

- (a) Notice shall have been given, by telephone or other means of communication, to every commissioner for the time being entitled to receive notice of a meeting of the Board; and
- (b) Each of the commissioners taking part in the meeting by telephone or other means of communication must—
 - (i) Be linked by telephone or such other means for the purposes of the meeting; and
 - (ii) At the commencement of the meeting acknowledge, to all the other commissioners taking part, the commissioner's presence for the purpose of a meeting of the Board; and
 - (iii) Be able throughout the meeting to hear each of the other commissioners taking part; and
 - (iv) On any vote, individually express his or her vote to the meeting.

(2) A commissioner shall not leave a meeting held under **subclause (1)** of this clause by disconnecting the commissioner's telephone or other means of communication unless the commissioner has previously obtained the express consent of the chairperson or other person presiding at the meeting. A commissioner shall be conclusively presumed to have been present, and to have formed part of the quorum, at all times during the meeting by telephone or other means of communication unless the commissioner previously obtained the express consent of the chairperson or other person presiding to leave the meeting.

(3) A minute of the proceedings at a meeting held under **subclause (1)** of this clause shall be sufficient evidence of those proceedings, and the observance of all necessary formalities, if certified as a correct minute by the chairperson or other person presiding at the meeting.

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

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

Commission, be in writing either under the common seal of the 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.

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.

Struck Out

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, out of the Fund, 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.

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.

FIRST SCHEDULE—*continued*

PROVISIONS RELATING TO BOARD—*continued*

New

10. Appointment of personnel—(1) Without limiting sections 4 (2) and 6 of this Act, the Commission may from time to time appoint such employees as are necessary for the efficient and economical carrying out of the functions of the Commission.

(2) Each employee of the Commission shall be employed on such terms and conditions of employment as are from time to time agreed between the Commission and the employee, which terms and conditions shall be consistent with the Commission being a good employer within the meaning of section 4 (2) of the State-Owned Enterprises Act 1986. The Commission may, out of the Fund, pay to any such employee such remuneration and other amounts as are payable to that employee.

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

(4) Nothing in this clause shall limit the power of the Commission under sections 4 (2) and 6 of this Act to appoint consultants, contractors, agents, or other persons for the purposes of providing advice or other services to the Commission.

11. Commission may provide superannuation subsidy—Without limiting sections 4 (2) and 6 of this Act, the Commission 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 Fund any scheme approved by the Commission.

12. Commissioners, employees, etc., not in service of Crown—Subject to section 31 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.

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.

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.

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

(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.

New

(2) Subject to any general or special directions given or conditions attached by the Board, the persons to whom any powers are delegated under this clause may exercise those powers in the same manner and with the same effect as if they had been conferred 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 section 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.

Struck Out

(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.

New

(5) No delegation under this section shall prevent the exercise of any power by the Commission.

Struck Out

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 remuneration payable to the commissioners under **subclause (1)** of this clause shall be paid out of the Fund.

FIRST SCHEDULE—*continued*

PROVISIONS RELATING TO BOARD—*continued*

Struck Out

(3) 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.

New

15. The seal—(1) The Board shall provide for the safe custody of the seal of the Commission, which shall be in such form as the Board shall decide. The seal shall be used only by the authority of a resolution of the Board, or of a committee of the Board authorised in that behalf, and every document to which the seal is affixed shall be signed by 2 persons, each of whom is—

- (a) A commissioner; or
- (b) A person appointed by the Board for the purpose of signing that document or documents of that kind.

(2) The seal of the Commission shall be judicially noticed in all Courts and for all purposes.

New

Section 21 (1) (a)

SECOND SCHEDULE

PROPERTY NOT INSURED BY ACT

1. Any property that is not tangible property.
2. Any motor vehicle (being a vehicle drawn or propelled by mechanical power), or any parts of, or accessories to, a motor vehicle.
3. Any trailer (being a vehicle without motive power that is capable of being drawn or propelled by a motor vehicle and that is not being used as a dwelling), or any parts of, or accessories to, a trailer.
4. Any vessel (being anything made to float, whether it is fixed or free, and whether or not it has any means of propulsion), or any parts of, or accessories to, a vessel.
5. Any aircraft, or anything in or on an aircraft.
6. Any bush, forest, tree, plant, or lawn.
7. Any growing crops (including fruit trees and vines) or cut crops in the open fields.
8. Any explosives.
9. Any animals, including livestock and pets.
10. Any road, street, drive, path, bridge, or culvert other than a gangway, ladder, access platform, or other form of access, constructed in a residential building or being an integral part of a residential building.
11. Any drain, channel, tunnel, or cutting, unless used to connect parts of one or more residential buildings.
12. Any dam, breakwater, mole, groyne, fence, pole, or wall that does not constitute an integral part of a residential building.
13. Any reservoir, swimming pool, bath, spa pool, tank, or water tower, other than—
 - (a) A reservoir, swimming pool, bath, spa pool, tank, or water tower that constitutes an integral part of, and that is within, a residential building; or
 - (b) A reservoir or tank used in a residential building as a storage vessel for any liquid product; or
 - (c) A water tank forming part of the water supply to a residential building; or
 - (d) A septic tank.
14. Any tennis court, whether inside or outside and whether lawn or not.
15. Any jetty, wharf, or landing.
16. Any paving or other artificial surface.
17. Any jewellery, precious stones, money, works of art, securities, documents, or stamps.

New

THIRD SCHEDULE

Sections 23o (a), (b),
23E (1), (a), (b), (5)

CONDITIONS APPLYING TO INSURANCE UNDER THIS ACT

1. Excess—In respect of any natural disaster damage to any one property occurring during any period of—

(a) 48 consecutive hours as the direct result of a natural disaster other than natural disaster fire; or

(b) 7 consecutive days as the result of natural disaster fire—

the Commission shall not be liable to pay or contribute more than the amount by which the amount payable under section 23F of this Act in respect of the natural disaster damage exceeds the excess specified in regulations made under this Act.

2. No cover for consequential losses—No insurance under this Act covers any consequential loss (including loss by theft, vandalism, loss of profits, or business interruption).

3. Circumstances where Commission may decline claim—The Commission may decline (or meet part only of) a claim made under any insurance of any property under this Act where—

(a) The natural disaster damage to which the claim relates was caused or exacerbated by earlier natural disaster damage for which the Commission made payment and that payment was not used to repair the property; or

(b) The insured person has failed to comply with any law or bylaw, or any requirement pursuant to any law or bylaw, and that failure has caused or exacerbated the natural disaster damage; or

(c) In the case of any property of a kind referred to in—

(i) Paragraph (c) or paragraph (d) of the definition of the term “residential building” in section 2 (1) of this Act; or

(ii) Paragraph (d) or paragraph (e) of the definition of the term “residential land” in section 2 (1) of this Act—

the property was not constructed in accordance with standards considered appropriate for that property at the time of construction, and the failure to meet those standards has caused or exacerbated the natural disaster damage; or

(d) The certificate of title for the land comprising the property, or on which the property is situated, contains an entry under section 36 (2) of the Building Act 1991; or

(e) There is or has been on the part of the insured person (whether to the Commission or its agents or to the insurance company concerned)—

(i) Any wilful and material misdescription of any of the property, or of any building or land in or on which the property is situated; or

(ii) Any misrepresentation as to any matter material for the purpose of estimating the value of the property; or

(f) The claim is in any respect fraudulent; or

New

THIRD SCHEDULE—*continued*CONDITIONS APPLYING TO INSURANCE UNDER THIS ACT—*continued*

- (g) The natural disaster damage is caused or contributed to by the wilful act or negligence of the insured person, or of any previous owner or occupier of the property where the insured person was aware of that wilful act or negligence at the time the insured person acquired the property.

4. Cancellation of insurance in certain circumstances—(1) Where—

- (a) The Commission settles a claim in respect of any property by payment of the full amount to which that property is insured under this Act; and
- (b) The property in respect of which the claim is settled is neither replaced nor reinstated to the satisfaction of the Commission—
the Commission may cancel the insurance under this Act by giving written notice to the insured person of such cancellation.
- (2) Subject to **subclause (3)** of this clause, every cancellation under **subclause (1)** of this clause shall remain in force notwithstanding—
- (a) The subsequent renewal of the contract of fire insurance relating to the property, or (if the property is residential land) to the building situated on the land, as the case may be; or
- (b) The subsequent issue of a new contract of fire insurance covering that property or building; or
- (c) A subsequent change in the person in whom is vested any insurable interest in that property or building.
- (3) Where the Commission has cancelled any insurance under **subclause (1)** of this clause in respect of any property, the Commission may reinstate the insurance if—
- (a) It receives written application for the reinstatement by any person affected by the cancellation; and
- (b) It considers that the cancellation should no longer apply.

5. Commission may limit its liability in certain circumstances—

- (1) Where the Commission considers that any property is in imminent danger of suffering natural disaster damage, the Commission may, by written notice to the insured person, limit its liability for any such damage occurring after the time of receipt of the notice by the insured person to the amount for which the property is insured under this Act at that time.
- (2) Where—
- (a) Any natural disaster damage has occurred to—
- (i) Any residential building, residential land, or personal property as the direct result of a natural landslide; or
- (ii) Any residential land as the direct result of a storm or flood;
and
- (b) The Commission considers that—
- (i) The property or any part of the property is likely to suffer the same, or substantially the same, loss or damage again; and

*New*THIRD SCHEDULE—*continued*CONDITIONS APPLYING TO INSURANCE UNDER THIS ACT—*continued*

(ii) The likelihood of such loss or damage could reasonably be or have been avoided—

the Commission may give notice to the insured person to the effect that it may decline any further claim for any such loss or damage.

(3) Where the Commission gives notice under **subclause (2)** of this clause, it may decline any claim in respect of any such loss or damage occurring after the date on which the notice is received by the insured person.

(4) Subject to **subclause (5)** of this clause, every limitation of liability under **subclause (1)** or **subclause (2)** of this clause shall remain in force notwithstanding—

- (a) The subsequent renewal of the contract of fire insurance relating to the property, or (if the property is residential land) to the building situated on the land, as the case may be; or
- (b) The subsequent issue of a new contract of fire insurance covering that property; or
- (c) A subsequent change in the person in whom is vested any insurable interest in the property.

(5) Where the Commission has limited its liability under **subclause (1)** or **subclause (2)** of this clause in respect of any property, the Commission may remove the limitation if—

- (a) It receives written application for removal of the limitation by any person affected by the limitation; and
- (b) It considers that the limitation should no longer apply.

6. Reinstatement of insurance on payment of claim—Subject to **clauses 4** and **5** of this Schedule, on the payment by the Commission of any amount for any natural disaster damage to any property, the insurance under this Act shall continue to the same extent as before the natural disaster damage occurred, but the Commission shall be entitled to charge the insured person (or deduct from that payment) for the continuation of the insurance an amount calculated in accordance with regulations made under this Act.

7. Reporting of claims—(1) On the occurrence of any natural disaster damage to any property insured under this Act, the insured person shall at his or her own expense—

- (a) Within 30 days (or such longer time as may be prescribed by regulations made under this Act) give notice thereof, either orally or in writing, to the Commission; and
- (b) As soon as practicable deliver to the Commission—
 - (i) A claim in writing for the natural disaster damage, including, in particular, such account as is reasonably practicable of all property lost or damaged, and of the respective amounts claimed in respect of each such item of property, having regard to their value at the time of the natural disaster damage; and

New

THIRD SCHEDULE—*continued*CONDITIONS APPLYING TO INSURANCE UNDER THIS ACT—*continued*

(ii) Particulars in writing of all other insurances covering that property (if any).

(2) Notwithstanding **subclause (1)** of this clause, if natural disaster damage is not immediately apparent, or if the insured person is unable by his or her absence or incapacity, or by other disability suffered by him or her and proved to the satisfaction of the Commission, to give notice, or deliver a claim to the Commission, at or within the required time, it shall be sufficient compliance with this clause for notice to be given to the Commission as soon as the natural disaster damage is apparent or the insured person is able to do so, so long as the notice is given within 3 months (or such longer time as may be prescribed by regulations made under this Act) after the natural disaster damage has taken place, and the Commission is not prejudiced by the lapse of time.

(3) The insured person shall, at his or her own expense, give to the Commission—

(a) Such particulars, plans, specifications, books, vouchers, invoices, duplicates, or copies thereof; and

(b) Such documents, proof, and information—
which relate to a claim and the origin and cause of the natural disaster damage, and the circumstances under which the damage occurred, as may be reasonably required by the Commission.

(4) The insured person shall, at the request of the Commission, provide a statutory declaration of the truth of a claim and of any matter connected with it.

(5) The Commission may appoint any person as its agent to receive any notices under this clause and to inquire into claims, but no settlement may be effected without the authority of the Commission. All expenses incurred by any such agent, with the approval of the Commission, shall be payable by the Commission.

8. Rights of Commission as to salvage—(1) On the occurrence of any natural disaster damage to any property insured under this Act, the Commission or its agent may—

(a) Enter and take possession of the land or building or dwelling where the natural disaster damage occurred; or

(b) Take possession of or require to be delivered to it any of the property; or

(c) Keep possession of the property and examine, sort, arrange, remove, or otherwise deal with it; or

(d) Where the property is a residential building, or land insured in connection with that building, move the building to another site; or

(e) Sell or otherwise dispose of the property.

(2) The powers conferred by **subclause (1)** of this clause may be exercised at any time until notice is given to the Commission by the insured person in

*New*THIRD SCHEDULE—*continued*CONDITIONS APPLYING TO INSURANCE UNDER THIS ACT—*continued*

writing that he or she makes no claim or, if any claim is made, until the claim is finally determined or withdrawn.

(3) The Commission shall not by any act done in the exercise or purported exercise of its powers under *subclause (1)* of this clause incur any liability to the insured person or diminish its right to rely on any of the conditions of the insurance in answer to any claim.

(4) If the insured person or any person on his or her behalf does not comply with the requirements of the Commission, or hinders or obstructs the Commission in the exercise of its powers, under this clause, the Commission may decline any claim made under the insurance under this Act.

(5) The insured person shall not in any case be entitled to abandon any property to the Commission, whether or not possession of it is taken by the Commission.

9. Replacement of property—(1) The Commission may at its option replace or reinstate any property that suffers natural disaster damage, or any part thereof, instead of paying the amount of the damage, but—

(a) The Commission shall not be bound to replace or reinstate exactly or completely, but only as circumstances permit and in a reasonably sufficient manner; and

(b) To the extent that the damage is to residential land and consists of or results from ground-forming materials or other debris on the land (including as a consequence of a natural landslip), the Commission shall not be bound to replace or reinstate other than by removal of the debris.

(2) If the Commission elects to replace or reinstate any property or wishes to consider whether it shall so elect, the insured person shall furnish the Commission with such plans, specifications, measurements, quantities, and other particulars as the Commission may require. No acts done or caused to be done by the Commission with a view to replacement or reinstatement shall be deemed to be an election by the Commission to replace or reinstate.

10. Relocation of building—(1) Instead of paying the amount of any natural disaster damage to, or reinstating, a residential building or residential land, the Commission may, at its option, relocate the building concerned on the same site or, where that site is unsuitable because of damage which it has suffered or is likely to suffer, to a different site determined by the Commission, being a site that is reasonably equivalent in all material respects to the existing site immediately before the damage occurred.

(2) If the Commission elects to relocate a residential building, it shall—

(a) Pay all costs of relocation; and

(b) Reinstate the building to the same condition as the building was in immediately before the natural disaster damage occurred, except

*New*THIRD SCHEDULE—*continued*CONDITIONS APPLYING TO INSURANCE UNDER THIS ACT—*continued*

that the Commission shall not be bound to reinstate exactly or completely, but only as circumstances permit and in a reasonably sufficient manner; and

- (c) Where the building is moved to a different site, provide the insured person with a legal right or interest in the different site of the same kind as the right or interest that the insured person had in the previous site; and, upon provision to him or her of this right or interest, the insured person shall transfer to the Commission his or her right or interest in the previous site.

11. Subrogation of rights—The insured person shall at the expense of the Commission, and whether before or after the Commission settles any claim under this Act, do and permit to be done all such acts and things as may be necessary or reasonably required by the Commission for the purpose of enforcing any rights and remedies, or of obtaining any relief or indemnity from other persons, to which the Commission is or would upon its settling any such claim be entitled or subrogated.

12. Mitigation—The insured person shall at all times take reasonable precautions for the safety of the insured property, having regard to its nature; and, in particular, if at any time any part of the insured property or any premises in which any part of the insured property is situated suffer natural disaster damage, the insured person shall take all reasonable steps to preserve the insured property from further natural disaster damage or from natural disaster damage, as the case may be.

13. Amount payable for claims—(1) Where any claim is made under this Act in respect of natural disaster damage to any property and, because of circumstances relating to the cause of the damage, the claim cannot be settled promptly, the Commission may in its discretion settle the claim on the basis of the value of the property at the time of the settlement of the claim notwithstanding the fact that the value is higher than the value at the time the natural disaster damage occurred.

(2) Subject to **subclause** (1) of this clause, the Commission may settle any claim under this Act on the basis of the amount it would have cost to replace or reinstate the property at the time of the occurrence of the natural disaster damage to the property.

(SECOND) FOURTH SCHEDULE

PART I

Section 33 (1)

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.)
- 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. 8—The Official Information Amendment Act 1987: So much of the Fourth Schedule as relates to the Earthquake and War Damage Regulations 1984.
- 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.
- 1991, No. 109—The Earthquake and War Damage Amendment Act 1991.

PART II

Section 33 (2)

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
The Earthquake and War Damage Regulations 1984, Amendment No. 3	1992/194