

Version
as at 28 October 2021



Earthquake Commission Act 1993

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Commencement see section 1(2)

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Treasury.

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

1 Short Title and commencement

- (1) This Act may be cited as the Earthquake Commission Act 1993.
- (2) This Act shall come into force on 1 January 1994.

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—

board means the board of the Commission referred to in section 4B

Commission means the Earthquake Commission constituted under this Act

Commissioner means a member of the board

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

contract of natural disaster insurance means a contract whereby any property is insured against natural disaster damage, whether the contract includes other risks or not; but does not include any contract of marine insurance or any contract of reinsurance

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 home or holiday home, of 1 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 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

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 relation to any contract of insurance made under this Act, means the person for the time being entitled to the benefit of that contract

land does not include improvements as defined in section 2 of the Valuation of Land Act 1951

Minister means the Minister of Finance

natural disaster means—

- (a) an earthquake, natural landslip, volcanic eruption, hydrothermal activity, or tsunami; or
- (b) natural disaster fire; or
- (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
- (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

natural disaster fire means fire occasioned by or through or in consequence of an earthquake, natural landslip, volcanic eruption, hydrothermal activity, tsunami, or (in the case only of residential land) a storm or flood

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 erosion

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

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

replacement value, in relation to a residential building, means any costs which would be reasonably incurred in respect of—

- (a) demolition and removal of debris, to the extent that is essential to enable the building to be replaced or reinstated; and
- (b) 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
- (c) complying with any applicable laws in relation to the replacement or reinstatement of the building; and
- (d) 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

residential building means—

- (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 1 or more dwellings, if the area of the dwelling or dwellings constitutes 50% or more of the total area of the building, part, or structure:
- (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% or more of the total area of the building, part, or structure:
- (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), 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:
- (d) all water supply, drainage, sewerage, gas, electrical, and telephone services, and structures appurtenant thereto—
 - (i) serving a dwelling referred to in paragraph (a), or a building or part of a building referred to in paragraph (b), or surrounding land; and
 - (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

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:

- (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—
 - (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
 - (d) all bridges and culverts situated within any area specified in paragraphs (a) to (c); 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).
- (2) For the purposes of this Act, a renewal of a contract of insurance shall be deemed to be a new contract.

Section 2(1) **board**: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **personal property**: repealed, on 1 July 2019, by section 12 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Section 2(1) **replacement value**: replaced, on 1 July 2019, by section 12 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

3 Act to bind the Crown

This Act shall bind the Crown.

3A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 3A: inserted, on 19 February 2019, by section 4 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Part 1 Earthquake Commission

4 Earthquake Commission

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

- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) *[Repealed]*
- (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.

Section 4(2): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 4(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 4(4): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

4A Crown Entities Act 2004 to apply

- (1) The Commission is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (2) The Crown Entities Act 2004 applies to the Commission except to the extent that this Act expressly provides otherwise.

Section 4A: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

4B Membership of Commission's board

- (1) The Commission's board must have no fewer than 5, and no more than 9, members.
- (2) The members of the Commission are the board for the purposes of the Crown Entities Act 2004.

Section 4B: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

5 Functions of Commission

- (1) The functions of the Commission are—
 - (a) to administer the insurance against natural disaster damage provided under this Act:
 - (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:
 - (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:
 - (f) such other functions as may be conferred on it by—
 - (i) this Act or any other Act; or
 - (ii) the Minister, in accordance with section 112 of the Crown Entities Act 2004.
- (2) *[Repealed]*
- Section 5(1)(f)(ii): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).
- Section 5(2): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

6 Powers of Commission

[Repealed]

Section 6: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

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 in full from the Fund by the Minister on behalf of Her Majesty the Queen on 1 October 1988.
- (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).
- (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,—
 - (a) subscribe for or otherwise acquire any shares issued by the Commission on any increase of its share capital pursuant to subsection (2):
 - (b) receive any money paid by the Commission on a reduction of its share capital pursuant to subsection (2):
 - (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 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)) shall be paid out of public money appropriated by Parliament for the purpose.

- (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.
- (8) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

| | | |
|---------------------|--|-------------------------------|
| Publication | PCO must publish it on the legislation website and notify it in the <i>Gazette</i> | LA19 s 69(1)(c) |
| Presentation | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| Disallowance | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

This note is not part of the Act.

Section 7(8): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

8 Commission to be Crown entity

[Repealed]

Section 8: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

9 Minister may determine dividend

The Minister, by written notice to the 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 Commission shall comply with the notice.

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 2007.
- (2) The Commission shall pay into a 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.

Section 10(1): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 10(2): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

11 Auditor-General to be auditor of Commission

- (1) *[Repealed]*
- (2) Without limiting section 4 of the Public Audit Act 2001, the Commission may, after consultation with the Auditor-General 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.

Section 11: substituted, on 1 July 2001, by section 53 of the Public Audit Act 2001 (2001 No 10).

Section 11(1): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 11(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

12 Directions by Minister

- (1) In directing the entity in accordance with section 103 of the Crown Entities Act 2004, the Minister must, if practicable, first consult with those persons likely to be affected by the direction.
- (1A) The Minister may, in giving any written directions in relation to the exercise of the Commission's functions under section 5(1)(c) or section 5(1)(d), or both, take account not only of the objects and policy of this Act, but also of 1 or more of the following matters:
 - (a) the Crown's current and possible future overall financial position, having regard to the requirement in section 16 to grant or advance public money to meet any deficiency in the Commission's assets to meet its liabilities:
 - (b) the Crown's current and possible future overall financial position, taking into account the interests of the Crown in the bodies referred to in section 27(3)(a) to (f) of the Public Finance Act 1989:
 - (c) the Commission's current and possible future overall financial position.
- (1B) Without limiting subsections (1) and (1A), written directions may specify detailed requirements or prohibitions, or both, to which the Commission must give effect in exercising its functions under section 5(1)(c) and section 5(1)(d).
- (2) *[Repealed]*
- (2A) *[Repealed]*
- (2B) *[Repealed]*
- (3) *[Repealed]*
- (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 section 103 of the Crown Entities Act 2004.

Section 12(1): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 12(1A): inserted, on 27 March 1998, by section 2 of the Earthquake Commission Amendment Act 1998 (1998 No 9).

Section 12(1A): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 12(1A)(b): amended, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

Section 12(1B): inserted, on 27 March 1998, by section 2 of the Earthquake Commission Amendment Act 1998 (1998 No 9).

Section 12(1B): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 12(2): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 12(2A): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 12(2B): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 12(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 12(4): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

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 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.
- (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.
- (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.
- (5) Section 100 of the Crown Entities Act 2004 does not apply to an investment that is part of the Fund.

Section 13(5): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

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:
 - (c) all other money that 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.

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

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 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 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 obligation imposed by section 16.

Part 2

Insurance of residential property against natural disaster

Insurance

18 Residential buildings

- (1) Subject to any regulations made under this Act and to Schedule 3, 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:
 - (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:
 - (c) the amount arrived at by multiplying the number of dwellings in the building (being the number determined in accordance with subsection (3)) by \$150,000 or such higher amount as may be fixed from time to time for the purposes of this paragraph by regulations made under this Act.
- (2) An amount specified for the purposes of subsection (1)(b) shall not be less than the amount calculated by multiplying \$2,500, 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. Where a contract specifies a lesser amount, the amount specified is deemed to be the amount calculated by multiplying \$2,500, 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), a residential building is deemed to comprise 1 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.

Section 18(1)(c): amended, on 1 July 2019, by section 8(1) of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Section 18(2): amended, on 1 July 2019, by section 8(2) of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Section 18(2): amended, on 1 July 2019, by section 8(3) of the Earthquake Commission Amendment Act 2019 (2019 No 1).

19 Residential land

Subject to any regulations made under this Act and to Schedule 3, 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 4 000 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) that is lost or damaged.

20 Personal property

[Repealed]

Section 20: repealed, on 1 July 2019, by section 9 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

21 Property not insured under this Act

- (1) Sections 18 and 19 shall not apply to—
 - (a) any property of a kind specified in Schedule 2; or
 - (b) any property of a kind specified for the purposes of this section in regulations made under this Act.
- (2) Nothing in subsection (1) shall limit—
 - (a) either of paragraphs (c) and (d) of the definition of the term residential building in section 2(1); or
 - (b) either of paragraphs (d) and (e) of the definition of the term residential land in section 2(1).

Section 21(1): amended, on 1 July 2019, by section 12 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

22 Voluntary insurance against natural disaster damage

- (1) On application made by any person having an insurable interest in any residential building or residential land, the Commission may enter into a contract to insure that building or land 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 section 18 or 19) and upon or subject to such conditions as the Commission thinks fit.

- (2) A contract may be made under this section—
 - (a) for the insurance of any residential building or residential land that is not insured under section 18 or 19; or
 - (b) for the insurance of any residential building or residential land in substitution for the insurance of that building or land under section 18 or 19.
- (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.

Section 22(1): amended, on 1 July 2019, by section 10(1) of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Section 22(1): amended, on 1 July 2019, by section 10(2) of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Section 22(2)(a): replaced, on 1 July 2019, by section 10(3) of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Section 22(2)(b): replaced, on 1 July 2019, by section 10(3) of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Premiums

23 Premiums payable to Commission

- (1) When a contract of fire insurance of a kind referred to in section 18 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), where a premium is payable by an insurance company pursuant to subsection (1) 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.
- (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:
 - (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.

Section 23(1): amended, on 1 July 2019, by section 12 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

24 Payment of premiums by insurance companies

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

25 Secrecy of information

- (1) The amount of every payment under section 24, 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.
- (2) Nothing in subsection (1) 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
 - (b) the use of any of the information referred to in subsection (1) for the purposes of this Act or any regulations made under this Act.

26 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

27 Conditions of insurance in Schedule 3

In addition to all other conditions imposed by this Act or by regulations made under this Act—

- (a) the insurance of any residential building or residential land under section 18 or 19 shall be subject to the conditions set out in Schedule 3; and
- (b) the insurance of any residential building or residential land under section 22 shall, except as otherwise provided in the contract of insurance under that section, be subject to the conditions set out in Schedule 3.

Section 27(a): amended, on 1 July 2019, by section 12 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Section 27(b): amended, on 1 July 2019, by section 12 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

28 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 Schedule 3; or
- (b) the Commission issues a limitation of liability notice under subclause (1) or subclause (2) of clause 5 of Schedule 3 in respect of any residential building or residential land—

the Commission shall forward a certificate to that effect to the Registrar-General of Land 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).

(3) The validity of a certificate under this section shall not be affected by any misdescription in it of the land concerned, if sufficient information appears on the face of the certificate for the Registrar-General of Land 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), supply to that person reasons in writing for that action.

- (5) If the Commission is satisfied, pursuant to clause 4(3) or clause 5(5) of Schedule 3, 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 Registrar-General of Land, and the Registrar-General of Land shall, without fee, note the discharge against the title to the land.
- (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.

Section 28(1): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 28(3): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 28(5): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

29 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
 - (b) without limiting section 31, where more than 1 person has such an insurable interest, the Commission shall in settling any claim have due regard to the respective insurable interests.
- (2) Subject to any regulations made under this Act and, where a contract has been entered into under section 22, 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.
- (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) shall be increased by the amount of goods and services tax paid or payable by the insured.
- (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.

30 Insurance otherwise than under this Act

- (1) Where on the occurrence to any property of natural disaster damage against which it is insured under section 18 or 19, or section 22, 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) 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 section 18 or 19, or section 22, the contract shall have effect in all respects as if the property were not and had never been insured under this Act.

Section 30(1): amended, on 1 July 2019, by section 12 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Section 30(3): amended, on 1 July 2019, by section 12 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

31 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 section 18 or 19, or section 22, 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.

Section 31: amended, on 1 July 2019, by section 12 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Part 3

Miscellaneous provisions

31A Collection and disclosure of information

- (1) The Commission may collect information for any of the following purposes:
 - (a) administering this Act;
 - (b) performing its functions;
 - (c) facilitating natural disaster preparedness, response, or recovery (including settlement of insurance claims by insurance companies).
- (2) Information collected by the Commission for any of the purposes referred to in subsection (1) is taken to have been collected—
 - (a) for all of those purposes; and
 - (b) if it is property-related information, for the purpose of making the information available (including to the public).
- (3) The Commission may make available any information in its possession if it believes on reasonable grounds that doing so is necessary to prevent or lessen a serious threat to public health or public safety or to the life or health of any individual.
- (4) This section does not limit the Privacy Act 2020 or any other right the Commission may have to collect or disclose information.
- (5) In this section,—

property-related information means information about property (whether generally or in relation to 1 or more identified properties), including information about—

 - (a) natural disaster damage to the property; and
 - (b) any claims made under this Act in relation to the property (including information about the assessed cost of replacing or reinstating damaged property, reinstatement methods, and settlement amounts)

serious threat has the same meaning as in section 7(1) of the Privacy Act 2020.

Section 31A: inserted, on 19 February 2019, by section 5 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Section 31A(4): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Section 31A(5) **serious threat**: amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

32 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 gen-

- erally 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 33 and 34, at any reasonable time enter any land, building, or place.
- (2) Every such written authorisation shall contain—
- (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); and
 - (d) the purpose for which those powers may be exercised.
- (3) Every person shall have the same privileges in relation to—
- (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.
- (4) A person authorised by the Commission for the purposes of subsection (1) shall not make a record of, divulge, or communicate to any person, any information acquired in exercising the powers conferred by that subsection 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.

33 Provisions applying in respect of entry

- (1) If practicable, before a power of entry conferred by section 32 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 reasonable written or oral notice specifying—

- (a) that entry on or into the land, building, or place is authorised under section 32; 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 32 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.
- (3) Every person exercising any power of entry under section 32 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—
- (a) if practicable, on first entering the land, building, or place; and
 - (b) whenever subsequently reasonably required to do so by the occupier.

34 Power to issue warrant authorising entry

- (1) If entry on or into any land, building, or place under section 32 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, Community Magistrate, 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 33 shall not apply.
- (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
 - (b) the result of each such previous application; and
 - (c) details of the offence suspected.
- (3) Every warrant issued under 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
 - (d) the date on which it was issued and the date on which it expires.
- (4) Every 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.

- (5) Every person exercising any power under subsection (4) 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
 - (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.

Section 34(1): amended, on 30 June 1998, by section 7 of the District Courts Amendment Act 1998 (1998 No 76).

35 Offences

- (1) Every person commits an offence and is liable on conviction to a fine not exceeding \$2,000 who—
 - (a) intentionally makes any statement that is both incorrect and material in any information or particulars furnished (whether in writing or not) under section 32 or under any regulations in force under this Act; or
 - (b) intentionally makes any material omission from any information or particulars so furnished; or
 - (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.
- (2) Every person commits an offence and is liable on 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—
 - (a) resists, obstructs, deceives, or attempts to deceive, any person who is exercising or attempting to exercise any power or function under section 32 or section 34; or
 - (b) without lawful excuse, fails to comply in any respect with any requirement under section 32; or
 - (c) without lawful excuse, acts in contravention of or fails to comply with either of sections 25 and 26.
- (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.

Section 35(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 35(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

36 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
 - (a) specifying any kind of property for the purposes of section 21(1)(b) or exempting any class of residential buildings or residential land from any or all of the provisions of this Act:
 - (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 or residential land, or class of residential building or residential land, are insured under any or all of sections 18, 19, and 22:
 - (c) prescribing the rates of premiums payable under this Act; and different rates may be prescribed in different cases or classes of cases:
 - (d) 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:
 - (e) providing for the apportionment of premiums payable under this Act among persons interested in any residential buildings or residential land, or class of residential buildings or residential land, and for the partial indemnity of insured persons against their liability for premiums by persons so interested:
 - (f) providing for the destination and apportionment of money payable by the Commission in settlement of claims:
 - (g) providing for and regulating the collection, receipt, and payment of money under this Act:
 - (h) requiring insurance companies to make returns and to keep books and accounts for the purposes of this Act:
 - (i) 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:
 - (j) prescribing, or making provision for the Commission to prescribe or provide, forms for the purposes of this Act:
 - (k) authorising the payment of money from the Fund:
 - (l) 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:

- (m) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.
- (2) Subject to subsection (3), 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.
- (3) The Minister shall not make a recommendation under subsection (2) 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 the purposes of this Act and that an Order in Council is desirable to clarify the matter.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

| | | |
|---------------------|--|-------------------------------|
| Publication | PCO must publish it on the legislation website and notify it in the <i>Gazette</i> | LA19 s 69(1)(c) |
| Presentation | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| Disallowance | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

This note is not part of the Act.

Section 36(1)(a): amended, on 1 July 2019, by section 12 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Section 36(1)(b): amended, on 1 July 2019, by section 12 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Section 36(1)(e): amended, on 1 July 2019, by section 12 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Section 36(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

37 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) 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), 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.

38 Amendment to Ombudsmen Act 1975

[Repealed]

Section 38: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

39 Repeals and revocations

- (1) The enactments specified in Part 1 of Schedule 4 are hereby repealed.
- (2) The regulations specified in Part 2 of Schedule 4 are hereby revoked.

40 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 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 applied to the property or the close of 31 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 Act and the regulations in force under that Act had not been repealed and revoked, until the contract expires or until the close of 31 December 1994, whichever is the earlier.

Part 4

Transitional provisions in respect of non-residential property

41 Insurance of non-residential property

- (1) Any person who—
 - (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% 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% of the indemnity value of the property insured after—
- (a) 31 December 1994; or
 - (b) the date on which any contract of fire insurance in respect of that property entered into on or after 1 January 1993 but before 1 January 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% of the indemnity value of the property insured after—
- (a) 31 December 1995; or
 - (b) the date on which any contract of fire insurance in respect of that property entered into on or after 1 January 1994 but before 1 January 1995 expires or ceases to apply to the property—
- whichever is the earlier.
- (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), the Commission, in its discretion, shall determine the terms and conditions applicable to any contract of natural disaster 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 31 December 1995;
 - (b) enter into any contract of insurance under this section which extends beyond 31 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 property already insured by the Commission.

- (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:
- (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—
 - (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
 - (d) all bridges and culverts situated within any area specified in paragraphs (a) to (c); 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).

Schedule 1AA

Transitional, savings, and related provisions

s 3A

Schedule 1AA: inserted, on 19 February 2019, by section 6 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Part 1

Provisions relating to Earthquake Commission Amendment Act 2019

1 Collection and disclosure of information

Information collected by the Commission before section 5 of the Earthquake Commission Amendment Act 2019 comes into force is taken to have been collected for all of the purposes referred to in section 31A(1) and (2).

2 Reporting of claims

- (1) Clauses 7 and 13 of Schedule 3, as in force before the commencement date, continue to apply in relation to a claim relating to natural disaster damage that occurred before that date.
- (2) In this clause, **commencement date** means the date on which section 7 of the Earthquake Commission Amendment Act 2019 comes into force.

3 New regime phased in over 12 months

- (1) The new regime applies in relation to all contracts on and after the commencement date unless subclause (2) provides otherwise.
- (2) If the period of cover under a contract (the **existing contract**) began before the commencement date,—
 - (a) the old regime continues to apply in relation to the existing contract; and
 - (b) if the existing contract is renewed 1 or more times after the commencement date, the old regime also applies in relation to each renewed contract.
- (3) However, subclause (2) ceases to have effect (and the old regime therefore ceases to apply) in relation to the existing contract and each renewed contract at the beginning of the first anniversary date of the existing contract after the commencement date.
- (4) In this clause,—

anniversary date of the existing contract means the anniversary of the first day of the period of cover under,—

 - (a) if the existing contract was not a renewal of a previous contract, the existing contract; or

- (b) if the existing contract was a renewal in a series of 1 or more previous contracts, the first contract in the series

commencement date means the date on which Part 2 of the Earthquake Commission Amendment Act 2019 comes into force

contract means—

- (a) a contract of fire insurance of a kind referred to in section 18 or 20; or
(b) a contract entered into by the Commission under section 22

new regime means this Act as amended by Part 2 of the Earthquake Commission Amendment Act 2019

old regime means this Act as in force immediately before Part 2 of the Earthquake Commission Amendment Act 2019 comes into force.

Schedule 1AA clause 3: inserted, on 1 July 2019, by section 11 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Schedule 1

Provisions relating to board

s 4(4)

1 Constitution of board

[Repealed]

Schedule 1 clause 1: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

2 Chairperson and deputy chairperson

[Repealed]

Schedule 1 clause 2: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

3 Terms of office of commissioners

[Repealed]

Schedule 1 clause 3: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

4 Extraordinary vacancies

[Repealed]

Schedule 1 clause 4: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

5 Meetings of board

[Repealed]

Schedule 1 clause 5: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

6 Commissioners to disclose interest

[Repealed]

Schedule 1 clause 6: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

7 Passing of resolution without meeting

[Repealed]

Schedule 1 clause 7: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

8 Teleconference meeting

[Repealed]

Schedule 1 clause 8: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

9 Contracts of Commission

[Repealed]

Schedule 1 clause 9: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

10 Execution of documents on behalf of Commission

[Repealed]

Schedule 1 clause 10: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

11 Appointment of personnel

[Repealed]

Schedule 1 clause 11: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

12 Commission may provide superannuation subsidy

Without limiting sections 16 and 17 of the Crown Entities Act 2004, 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.

Schedule 1 clause 12: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

13 Commissioners, employees, etc, not in service of Crown

[Repealed]

Schedule 1 clause 13: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

14 Commissioners and employees not personally liable

[Repealed]

Schedule 1 clause 14: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

15 Delegation of powers

[Repealed]

Schedule 1 clause 15: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

16 The seal

[Repealed]

Schedule 1 clause 16: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 2 Property not insured by this Act

s 21(1)(a)

- 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 1 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.

Schedule 3

Conditions applying to insurance under this Act

ss 27(a), (b), 28(1)(a), (b), (5)

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 29 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); or
 - (ii) paragraph (d) or paragraph (e) of the definition of the term residential land in section 2(1)—

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 record 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 an entry under section 74 of the Building Act 2004; 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
- (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.

Schedule 3 clause 3(d): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Schedule 3 clause 3(d): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

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), every cancellation under subclause (1) 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) 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 or residential land as the direct result of a natural landslip; 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
 - (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), 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), every limitation of liability under subclause (1) or subclause (2) 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) 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.

Schedule 3 clause 5(2)(a)(i): amended, on 1 July 2019, by section 12 of the Earthquake Commission Amendment Act 2019 (2019 No 1).

6 Reinstatement of insurance on payment of claim

Subject to clauses 4 and 5, 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 the time allowed by subclause (2) 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
 - (ii) particulars in writing of all other insurances covering that property (if any).
- (2) The notice under subclause (1)(a) must be given to the Commission—
 - (a) not more than 3 months after the damage occurred (or any longer period prescribed by regulations made under this Act); or
 - (b) subject to subclause (2B), after the period set out in paragraph (a) has expired but not more than 2 years after the damage occurred (or any longer period prescribed by regulations made under this Act).
- (2A) However, the regulations may permit the Commission to accept notice given after the time limit applying under subclause (2)(b) if—
 - (a) either or both of the following apply:
 - (i) the natural disaster damage could not reasonably have been discovered in time to enable the insured person (acting reasonably promptly) to give notice within the time limit applying under subclause (2)(b);
 - (ii) the insured person is unable to give notice within the time limit applying under subclause (2)(b) because of absence, incapacity, or other disability; and
 - (b) the notice is given—
 - (i) as soon as is reasonably practicable after the natural disaster damage is discovered or as soon as the insured person is reasonably able to give notice; and
 - (ii) in any event, within the time specified in the regulations.
- (2B) If notice is given after the time limit applying under subclause (2)(a), the Commission may decline the claim if the lapse of time before the notice was given materially prejudices the Commission's ability to assess the claim.

- (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.

Schedule 3 clause 7(1)(a): amended, on 19 February 2019, by section 7(1) of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Schedule 3 clause 7(2): replaced, on 19 February 2019, by section 7(2) of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Schedule 3 clause 7(2A): inserted, on 19 February 2019, by section 7(2) of the Earthquake Commission Amendment Act 2019 (2019 No 1).

Schedule 3 clause 7(2B): inserted, on 19 February 2019, by section 7(2) of the Earthquake Commission Amendment Act 2019 (2019 No 1).

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) may be exercised at any time until notice is given to the Commission by the insured person in 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) 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 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), 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.

Schedule 4

s 39(1)

Part 1 Enactments repealed

Earthquake and War Damage Act 1944 (1944 No 15) (RS Vol 6, p 207)

Earthquake and War Damage Amendment Act 1951 (1951 No 42) (RS Vol 6, p 224)

Earthquake and War Damage Amendment Act 1983 (1983 No 140)

Earthquake and War Damage Amendment Act 1985 (1985 No 16)

Earthquake and War Damage Amendment Act (No 2) 1985 (1985 No 173)

Earthquake and War Damage Amendment Act 1987 (1987 No 27)

Earthquake and War Damage Amendment Act 1988 (1988 No 142)

Earthquake and War Damage Amendment Act 1991 (1991 No 109)

Fees and Travelling Allowances Act 1951 (1951 No 79) (RS Vol 6, p 403)

Amendment(s) incorporated in the Act(s).

Official Information Amendment Act 1987 (1987 No 8)

Amendment(s) incorporated in the Act(s).

Public Finance Act 1989 (1989 No 44)

Amendment(s) incorporated in the Act(s).

Stamp and Cheque Duties Act 1971 (1971 No 51) (RS Vol 23, p 771)

Amendment(s) incorporated in the Act(s).

Part 2 Regulations revoked

s 39(2)

Earthquake and War Damage (Land Cover) Regulations 1984 (SR 1984/144)

Earthquake and War Damage (Land Cover) Regulations 1984, Amendment No 1 (SR 1985/267)

Earthquake and War Damage Regulations 1984 (SR 1984/71)

Earthquake and War Damage Regulations 1984, Amendment No 1 (SR 1984/145)

Earthquake and War Damage Regulations 1984, Amendment No 2 (SR 1988/72)

Earthquake and War Damage Regulations 1984, Amendment No 3 (SR 1992/194)

Earthquake Commission Amendment Act 1998

| | |
|----------------|------------------|
| Public Act | 1998 No 9 |
| Date of assent | 27 March 1998 |
| Commencement | see section 1(2) |

1 Short Title and commencement

- (1) This Act may be cited as the Earthquake Commission Amendment Act 1998, and is part of the Earthquake Commission Act 1993 (“the principal Act”).
- (2) This Act comes into force on the day on which it receives the Royal assent.

3 Previous directions declared valid

Every direction given, or deemed to be given, under section 12 of the principal Act before the commencement of this Act, and every action done or omitted by the Commission to give effect to such a direction, is and has always been valid.

Notes

1 *General*

This is a consolidation of the Earthquake Commission Act 1993 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Secondary Legislation Act 2021 (2021 No 7): section 3

Privacy Act 2020 (2020 No 31): section 217

Earthquake Commission Amendment Act 2019 (2019 No 1)

Land Transfer Act 2017 (2017 No 30): section 250

Criminal Procedure Act 2011 (2011 No 81): section 413

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

Crown Entities Act 2004 (2004 No 115): section 200

Public Finance Amendment Act 2004 (2004 No 113): section 37(1)

Building Act 2004 (2004 No 72): section 414

Public Audit Act 2001 (2001 No 10): section 53

District Courts Amendment Act 1998 (1998 No 76): section 7

Earthquake Commission Amendment Act 1998 (1998 No 9)

Public Finance Act 1989 (1989 No 44): section 65R(3)