

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 30 November 1983.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. K. R. Allen

EARTHQUAKE AND WAR DAMAGE AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Earthquake and War Damage Act 1944

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

1. **Short Title**—This Act may be cited as the Earthquake and War Damage Amendment Act 1983, and shall be read together with and deemed part of the Earthquake and War
10 Damage Act 1944* (hereinafter referred to as the principal Act).

*R.S. Vol. 6, p. 207

No. 36—2

2. Property insured for more than indemnity value—

(1) Section 14 of the principal Act is hereby amended by repealing subsection (2A) (as inserted by section 2 (1) of the Earthquake and War Damage Amendment Act 1951), and substituting the following subsection: 5

“(2A) Where the contract of fire insurance provides for settlement of any claim for damage to or destruction of the property upon a basis more favourable to the insured person than its indemnity value, the following provisions shall apply:

“(a) Subject to paragraph (c) of this subsection, the property shall be deemed to be insured under this section to the amount of its indemnity value only: 10

“(b) The earthquake and war damage premium in respect of each period of the insurance shall be computed—

“(i) If the property concerned is a dwelling and its indemnity value is specified in the contract of fire insurance, on the specified indemnity value: 15

“(ii) In any other case, on the amount of the indemnity value of the property as approved by the Commission after being certified at the commencement of that period by a person approved by the Commission, being a registered architect or a valuer registered under the Valuers Act 1948 or an engineer registered under the Engineers Registration Act 1924 or a quantity surveyor registered under the Quantity Surveyors Act 1968: 20 25

“Provided that if no such certificate is approved by the Commission in respect of any period the premium shall be computed on the amount to which the property is insured under the contract: 30

“(c) Notwithstanding the provisions of section 16 of this Act, if—

“(i) The earthquake and war damage premium has been computed in accordance with paragraph (b) (i) of this subsection; and 35

“(ii) The contract of fire insurance specifies an indemnity value which is less than 80 percent of the actual indemnity value of the insured property at the time of any loss or damage—

the Commission may in its discretion determine that it shall be liable for only a proportion of the loss or damage, being the same proportion that the specified indemnity value bears to 80 percent of the actual indemnity value; but in no case shall the 40

Commission be liable for more than the specified indemnity value. If the insured property consists of more than 1 item, this paragraph shall apply in respect of each item.”

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New

(1A) The said section 14 is hereby amended by adding the following subsection:

“(7) In this section, ‘dwelling’ means any building or part of a building that is occupied solely as a private residence; and includes every building, structure, or improvement appurtenant to the dwelling and used for the purposes of the household of the occupier of the dwelling.”

(2) Section 57 (2) of the Architects Act 1963 is hereby consequentially repealed.

15 **3. New sections substituted**—(1) The principal Act is hereby amended by repealing section 21, and substituting the following sections:

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

25 “(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 possession or under his control, and allow copies of or extracts from any such books, accounts, vouchers, records, or documents to be made or taken:

30 “(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:

35 “(d) Subject to the provisions of **sections 21A and 21B** of this Act, at any reasonable time enter any land, building, or place.

“(2) Every such written authorisation shall contain—

“(a) A reference to this section; and

40 “(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.

“(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.

“21A. **Provisions applying in respect of entry**—(1) If practicable, before the power of entry conferred by **section 21 (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 reasonable written or oral notice specifying—

“(a) That entry on or into the land, building, or place is authorised under *(this section)* **section 21** 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 *(this section)* **section 21** of this Act without notice and the occupier is not present during the period of entry, written advice of the making of entry *(under this section)* 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 *(this section)* **section 21** of this Act shall have with him the appropriate written authorisation, and evidence of his 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.

“21B. **Power to issue warrant authorising entry**—(1) If entry on or into any land, building, or place 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 has reason to believe that entry is necessary for that purpose, may issue a warrant directed to the authorised person by name authorising him to enter the land, building, or place; and in any such case the provisions of **section 21A** of this Act shall not apply.

“(2) 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

5 “(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.

“(3) Every such warrant shall authorise the person named in
10 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.

15 “(4) Every person exercising any power under **subsection (3)** of this section shall have with him the appropriate warrant, and evidence of his identity, and shall produce them to the occupier of the land, building, or place—

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

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

“21c. **Offence to make incorrect statement, etc.—**

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

30 “(a) Wilfully makes any statement that is both incorrect and material in any information or particulars furnished (whether in writing or not) under **section 21** of this Act or under any regulations in force under this Act; or

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

35 “(c) Wilfully 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.

40 “(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—

“(a) Resists, obstructs, deceives, or attempts to deceive, any person who is exercising or attempting to exercise any power or function under **section 21** or **section 21B** of this Act or under any regulations in force under this Act; or

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“(b) Fails to comply in any respect with any requirement under **section 21** of this Act or under any such regulations.

“(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 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.”

(2) Regulation 20 (1) of the Earthquake and War Damage Regulations 1956 is hereby amended by revoking paragraphs (b) to (d).

4. Regulations—(1) The principal Act is hereby amended by repealing section 26, and substituting the following section:

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

“(a) Providing for and regulating the conduct of the business of the Commission:

“(b) Prescribing the powers, functions, and duties of the Commission:

“(c) Applying all or any of the provisions of this Act, with such exceptions and modifications (if any) as may be prescribed in the regulations, to damage arising from tempest, storm, flood, encroachment of the sea, hydrothermal activity, volcanic activity, or other natural disaster:

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“(ca) Providing for the extension of insurance under this Act or under any such regulations to cover—

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“(i) Land on which is situated any building or specified class of building which is covered by such insurance:

“(ii) Any defined area of land surrounding such land:

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“(iii) Any property situated on or under any such land or surrounding land:

- 5 “(d) Empowering the Commission, in its discretion, to determine that any provision of any regulations in force under this Act or any condition of insurance set out in any such regulations shall or shall not apply to or in respect of any class of claim or any class of property:
- “(e) Classifying property for the purposes of this Act, and exempting or excluding any class or classes of property from any of the provisions of this Act:
- 10 “(f) Prescribing conditions upon or subject to which any property or class of property is insured by virtue of this Act and conditions upon or subject to which any contract of insurance or indemnity may be made by the Commission:
- 15 “(g) Prescribing the rates of premiums to be paid for the insurance of any class of property by virtue of this Act and in respect of contracts of insurance or indemnity made by the Commission, so that different rates may be prescribed in different cases or classes of cases; and prescribing how much of any earthquake and war damage premium is payable in respect of *(earthquake damage insurance and how much is payable in respect of war damage insurance)* different classes of insurance:
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- “(ga) Empowering the Commission to determine the method of calculation of premiums but so that any such determination is subject to any regulation prescribing the rates of premiums:
- 30 “(h) Providing for the apportionment of earthquake and war damage premiums among persons interested in any property or class of property, and for the partial indemnity of insured persons against their liability for earthquake and war damage premiums by persons so interested:
- 35 “(i) Providing for the destination and apportionment of money payable by the Commission in settlement of claims:
- 40 “(j) Empowering the Commission to limit the amount of its maximum liability for damage to any property to the amount for which the property is insured at the time damage first occurred, and empowering the Commission in its discretion to increase that amount from time to time:

- “(k) Providing for the cancellation, avoidance, modification, reduction, or surrender of insurances and of contracts of insurance or indemnity under this Act, and for the refund of premiums or any part thereof:
- “(l) Providing for and regulating the collection, receipt, and payment of money under this Act: 5
- “(m) 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: 10
- “(n) Prescribing, or making provision for the Secretary of the Commission to prescribe or provide, forms for the purposes of this Act:
- “(o) Prescribing offences in respect of the contravention of or non-compliance with any regulations made 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 \$1,000 and, where the offence is a continuing one, a further amount not exceeding \$100 for every day or part of a day during which the offence has continued: 15 20
- “(p) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.”
- (2) The following enactments are hereby consequentially repealed: 25
- (a) Section 4 of the Finance Act (No. 2) 1948:
- (b) So much of the Second Schedule to the Fees and Travelling Allowances Act 1951 as relates to section 26 of the principal Act: 30
- (c) The Earthquake and War Damage Amendment Act 1964.