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## RESIDENTIAL LAND DAMAGE

### ANALYSIS

Title	12. Discharge of liability to make good damage
1. Short Title and commencement	13. Applications to borrow
2. Interpretation	14. Repayment of loans from special disaster rate
3. Act to bind the Crown	15. Compensation from other persons
<i>Local Disaster Fund</i>	16. Advances from the Consolidated Account
4. Local Disaster Fund	<i>Repair of Local Authority Property</i>
5. The local authority's credit with the Fund	17. Application of moneys for repair of local authority property
<i>Special Disaster Rate</i>	18. Borrowing from the Fund to repair property
6. Special disaster rate	19. Minister to determine whether applications to borrow may proceed
7. Levying special disaster rate in subsequent years	20. Repayment of loans
<i>Landslip and Flood Damage</i>	<i>Miscellaneous Provisions</i>
8. Application of Act	21. Amendments to other enactments
9. Landslip or flood damage	22. Regulations
10. Applications by owners of residential land	Schedule
11. Reference of applications to arbitration	

### A BILL INTITULED

#### An Act to provide assistance for the owners of residential land damaged by landslip or flood

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

1. Short Title and commencement—(1) This Act may be cited as the Residential Land Damage Act 1978.

No. 79—1

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council; and different dates may be so appointed for the purpose of different provisions of this Act.

**2. Interpretation—**(1) In this Act, unless the context otherwise requires— 5

“Assessed cost”, means the cost of reinstating or repairing any damage resulting to the residential land as at the date of the occurrence of the landslip or flood which caused it, and includes the cost of removing 10  
landslip or flood debris, except to the extent that removal of such debris is necessary for repair of damage to a dwelling-house or to the contents of a dwelling-house;

“Damage”, means physical damage to land, or to any 15  
of the following types of property on land—

(a) Any retaining wall, fence, or wall;

(b) Any drain or channel;

(c) Any path or driveway;

(d) Any reservoir, swimming bath, water tower, 20  
or septic tank;

“Fault”, has the same meaning as in the Contributory Negligence Act 1947;

“Flood”, means any inundation of residential land by 25  
water however caused;

“Fund”, means the Local Disaster Fund established by section 4 of this Act;

“Landslip”, means any subsidence of a substantial land mass other than by settlement, soil shrinkage, or 30  
compaction, and includes movement from any hill, mound, bank, slope, cliff, or face of earth, sand, or rock which before movement formed an integral part of the hill, mound, bank, slope, cliff, or face, however caused, and includes any erosion of land caused 35  
by the action of seawater;

“Local authority”, subject to section 8 of this Act, means a borough council, county council, district council, or town council;

“Minister”, means the Minister of Finance;

“Residential land”, means rateable property that is 40  
separately rated and is used, or is intended to be used, as a place of residence by any person.

(2) For the purposes of the definition of the phrase "assessed cost" in subsection (1) of this section, the cost of reinstating or repairing damage to residential land shall be deemed to be reduced by an amount equal to any sums payable to the owner of the land in respect of such damage, under any contract or contracts of insurance.

(3) In respect of any residential land which is also used for commercial or industrial or business or farming purposes, the definition of the term "damage" in subsection (1) of this section shall not include any physical damage to the land which relates to its use for any of those purposes, and no compensation shall be payable under this Act for any damage which is not of the nature of a loss of residential amenity.

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

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*Local Disaster Fund*

4. Local Disaster Fund—(1) There is hereby established in the National Provident Fund a separate account to be called the Local Disaster Fund.

(2) There shall from time to time be paid into the Fund:

20 (a) The moneys raised from the levying of the special disaster rate under sections 6 and 7 of this Act;

(b) All interest, profits, and other earnings arising from investment of the Fund;

(c) All other money lawfully payable into the Fund.

25 (3) There shall be charged to the Fund:

(a) All moneys repaid to a local authority pursuant to section 12 (1) of this Act;

(b) All moneys borrowed by a local authority pursuant to section 13 (2) of this Act;

30 (c) All moneys paid to the Consolidated Account or Loans Redemption Account under section 16 of this Act;

(d) All moneys repaid to a local authority for the purpose of carrying out any works specified in section 17 of this Act;

35 (e) All moneys borrowed by a local authority for the purpose of carrying out any works specified in section 18 of this Act.

5. **The local authority's credit with the Fund**—The National Provident Fund Board shall keep a record of all moneys paid into the Fund by each local authority from the levying of the special disaster rate under sections 6 and 7 of this Act (less any amounts applied to paying principal and interest on any loan pursuant to section 14 of this Act); from this sum shall be deducted any moneys repaid to the local authority under section 12 (1) of this Act which have not been recovered by the Fund by virtue of section 15 of this Act; and the figure thus arrived at shall be the amount standing to the credit of the local authority in the Fund for the purposes of sections 7 (2), 12 (2), and 17 (1) of this Act.

*Special Disaster Rate*

6. **Special disaster rate**—(1) Any local authority may levy a rate (in this Act referred to as the special disaster rate) on all residential land situated within its district and liable for any rate under the Rating Act 1967.

(2) Any special disaster rate levied in accordance with this section shall be calculated at such a rate as is determined by the local authority but shall not exceed one cent for each \$100 of rateable value of the land subject to the rate.

(3) The proceeds of the special disaster rate shall be paid into the Fund by the local authority.

(4) The provisions of the Rating Act 1967 shall apply to the levying of the special disaster rate so far as they are not inconsistent with any provision in this Act.

7. **Levying special disaster rate in subsequent years**—(1) Subject to the provisions of this section, every local authority which levies a special disaster rate pursuant to section 6 of this Act shall cause such a rate to be levied in the next, and in each succeeding, rating year, at a rate not less than that levied in the first rating year in which such a rate was levied by the local authority.

(2) When at the commencement of any rating year the amount standing to the credit of the local authority in the Fund exceeds .2 per cent of the total rateable value of the residential land situated within its district, the local authority may determine not to levy a special disaster rate for that year, or to levy such a rate at a lesser rate than that levied in the previous rating year.

(3) Where a local authority has determined pursuant to subsection (2) of this section not to levy a special disaster rate, or to levy it at a lesser rate, the provisions of subsection (1) of this section shall apply to the local authority in respect of future rating years, in a case where no special disaster rate has been levied, as if it had been levied at a nil rate for that year, and in a case where a lesser rate has been levied, at the actual rate levied for that year.

(4) The provisions of subsections (3) and (4) of section 6 of this Act shall apply to the levying of the special disaster rate under this section and to the application of the proceeds of such a rate.

*Landslip and Flood Damage*

**8. Application of Act**—For the purposes of section 9 and the subsequent provisions of this Act, references to a local authority apply only to a local authority which has levied a special disaster rate under sections 6 and 7 of this Act.

**9. Landslip or flood damage**—(1) Subject to the provisions of subsection (2) of this section, where any residential land is damaged as a result of landslip or flood, the local authority, within whose district the land is situated shall be liable to make good (by payment or reinstatement or repair, at the option of the local authority) such damage to the owner of the land to an amount not exceeding 75 percent of the assessed cost.

(2) Where any damage to residential land within subsection (1) of this section is caused as a result of the fault of the owner of that land or partly as a result of his fault, the liability of the local authority to make good such damage to the owner shall, in the former case, be wholly extinguished, and, in the latter case, be reduced by such a proportion as the fault of the owner bears to the amount of damage suffered.

(3) The liability and the extent of the liability of the local authority under this section shall be established in the manner prescribed by sections 10 and 11 of this Act.

**10. Applications by owners of residential land**—(1) An owner of residential land wishing to have any damage made good under section 9 of this Act shall, within 1 month of the

occurrence of the landslip or flood which he claims caused the damage, apply to the local authority within whose district the land is situated in the prescribed form.

(2) The local authority shall, within 1 month of receiving an application under subsection (1) of this section either: 5

(a) Offer in writing to make good any specific damage to the owner—

(i) By payment of a specified sum; or

(ii) By reinstatement or repair of such damage; 10

or

(b) Advise the owner in writing that it does not consider that it is liable to him under section 9 of this Act, and in such a case give reasons for its opinion.

(3) Any offer by the local authority under subsection (2)

(a) (i) or (ii) of this section shall, if accepted in writing by the owner, be final for the purposes of establishing the liability and the extent of the liability of the local authority under section 9 of this Act. 15

(4) In any case in which an owner accepts an offer by a local authority under subsection (2) (a) (ii) of this section he shall be liable to the local authority to contribute 25 percent of the cost of reinstating or repairing the damage in respect of which the offer was made. 20

**11. Reference of applications to arbitration—**(1) Where—

(a) An offer is made by the local authority under section 10 (2) (a) (i) or (ii) of this Act, and, not less than 1 month after the receipt of that offer by the owner it has not been accepted by him; or 25

(b) The local authority advises the owner under section 10 (2) (b) of this Act that it does not consider that it is liable to him under section 9 of this Act— 30

the owner may require that his application be referred to arbitration to such person as may be appointed for the purpose by the Minister.

(2) Any such reference shall be revocable at any time before the award of the arbitrator is given, by the owner notifying the Minister and the local authority in writing that he does not wish to proceed with the arbitration. 35

(3) In any case in which the arbitrator holds the local authority liable to the owner under section 9 of this Act, the local authority shall make an offer under section 10 (2) (a) 40

(i) or (ii) of this Act to make good that damage in terms of the award, and subsection (4) of that section shall apply to the acceptance of any such offer by the owner.

5 (4) The award of the arbitrator (whether or not it is accepted by the owner) shall be final for the purposes of establishing the liability and the extent of the liability of the local authority under section 9 of this Act.

**12. Discharge of liability to make good damage—**(1) Subject to the provisions of this section the moneys required  
10 to make good any damage under section 9 of this Act shall be paid out of the Fund to the order of the local authority.

(2) In any case where the amount standing to the credit of the local authority in the Fund is insufficient to enable it to discharge its liability to make good any damage under  
15 section 9 of this Act, the local authority shall apply to the Minister for permission to borrow from the Fund to enable it to discharge its liability to make good that damage.

(3) Any application by a local authority for permission to borrow from the Fund for the purposes of this section  
20 shall be determined in accordance with section 13 (1) of this Act.

**13. Applications to borrow—**(1) On any application being made to the Minister under section 12 (2) of this Act for permission to borrow from the Fund, the Minister shall grant  
25 permission to borrow if he is satisfied that liability has been established against the local authority under section 9 of this Act and that the amount standing to the credit of the local authority in the Fund is insufficient to enable it to discharge its liability under that section.

(2) Where the Minister grants permission to borrow under  
30 subsection (1) of this section there shall be paid out of the Fund, by way of advances to the local authority, such a sum as is specified in the Minister's permission.

**14. Repayment of loans from special disaster rate—**Any  
35 moneys borrowed from the Fund by a local authority, to enable it to discharge its liability under section 9 of this Act shall be repaid from the proceeds of the special disaster rate, and for this purpose, the proceeds of that rate paid to the Fund shall be applied first in paying principal and interest  
40 on such amounts borrowed by the local authority in accordance with the terms of the loan or loans.

**15. Compensation from other persons—**(1) Where any local authority has made good damage to an owner of residential land pursuant to section 9 of this Act and that damage occurred under circumstances creating a legal liability under the general law of New Zealand in some person to pay damages to the owner of the land in respect of the said damage or any part thereof, the owner's rights against that person, to the extent that the owner has received a benefit in money or moneys worth under this Act shall, notwithstanding anything in any Act or rule of law to the contrary be transferred to and vest in, the Attorney-General, or the Attorney-General on the relation of the local authority or of any other person, on behalf of the Local Disaster Fund.

(2) No agreement between an owner of residential land and any other person, nor any waiver, assignment, or other disposition made by, or payment made to, the owner shall be effective to defeat or affect the rights transferred under subsection (1) of this section.

**16. Advances from the Consolidated Account—**(1) If the moneys for the time being in the Fund are not sufficient to meet lawful claims for the purposes of section 9 of this Act, the Minister may, without further appropriation than this section, advance to the Fund from the Consolidated Account such sums as may be necessary to meet the deficiency.

(2) All moneys advanced to the Fund under subsection (1) of this section shall, from the date of the advance, constitute a capital liability of the Fund to the Consolidated Account.

(3) Interest on the amount of the capital liability of the Fund under this section shall, without further authority than this section be paid out of the Fund to the Consolidated Account at such rate or rates and at such times as the Minister from time to time prescribes.

(4) If the Minister is satisfied, at any time while the Fund has a capital liability under this section, that there are in the Fund moneys in excess of the amounts reasonably required for the purposes of the Fund, he may direct that the whole or any part of the excess be transferred from the Fund to the Loans Redemption Account.

(5) All moneys transferred under subsection (4) of this section shall be deemed to be repaid in reduction of the capital liability of the Fund to the Consolidated Account.

*Repair of Local Authority Property*

17. **Application of moneys for repair of local authority property**—(1) A local authority may apply any moneys, not exceeding the amount standing to its credit in the Fund, for the purpose of making good and repairing any damage to property vested in the local authority which results from landslip or flood.

(2) Any moneys applied pursuant to this section shall be paid out of the Fund to the order of the local authority.

18. **Borrowing from the Fund to repair property**—(1) A local authority may apply to the Minister for permission to borrow from the Fund for the purpose of making good and repairing any damage to property vested in the local authority which results from landslip or flood.

(2) Any application by a local authority to the Minister for permission to borrow from the Fund for the purposes of subsection (1) of this section shall be determined in accordance with section 19 of this Act.

19. **Minister to determine whether applications to borrow may proceed**—(1) On any application being made to the Minister under section 18 of this Act for permission to borrow from the Fund, the Minister shall not determine that the application may proceed unless he is satisfied that—

(a) Any moneys borrowed from the Fund would be properly expended for the purposes set out in section 18 (1) of this Act; and

(b) Having regard to the likely extent of future claims on the Fund for the purposes of section 9 of this Act, a sufficient reserve is available to meet repayments and loans to local authorities for the purposes of that section, without resort to an advance to the Fund from the Consolidated Account.

(2) Where the Minister determines under subsection (1) of this section that an application for permission to borrow from the Fund for the purposes of section 18 of this Act may proceed, he shall refer the application to the Local Authorities Loans Board for determination under the Local Authorities Loans Act 1956.

(3) In any case where approval is given under the Local Authorities Loans Act 1956 for borrowing from the Fund for the purposes of section 18 of this Act, there shall be paid out of the Fund, by way of advances to the local authority, such a sum as is approved for the purpose.

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**20. Repayment of loans**—Any moneys borrowed from the Fund by a local authority for the purposes of carrying out any works specified in section 18 (1) of this Act shall be repaid from the proceeds of the General rate (and not the special disaster rate), in accordance with the terms of the loan or loans.

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*Miscellaneous Provisions*

**21. Amendments to other enactments**—The enactments specified in the Schedule to this Act are hereby amended to the extent indicated in that Schedule.

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

- (a) Prescribing the form in which applications are to be made to local authorities under section 10 (1) of this Act; 20
- (b) Prescribing the form in which claims are to be referred to arbitration under section 11 (1) of this Act;
- (c) Prescribing the terms under which loans are to be advanced to local authorities from the Fund pursuant to section 13 (2) of this Act; 25
- (d) Prescribing the terms under which loans may be advanced to local authorities from the Fund for the purposes of carrying out any works specified in section 18 (1) of this Act; 30
- (e) Prescribing such matters as are necessary for carrying out the provisions of this Act.

## SCHEDULE

Section 21

## ENACTMENTS AMENDED

Title of Act	Nature of Amendment
1950, No. 55, The National Provident Act 1950 (1957 Reprint, Vol. 10, page 787)	By inserting in section 4 (1) (as substituted by section 4 (1) of the National Provident Fund Amendment Act 1955), after the word "shall", the words "subject to the <u>Residential Land Damage Act 1978</u> ". By inserting in section 4 (5), after the words "subsidiary account", the words "or out of the Local Disaster Fund under the <u>Residential Land Damage Act 1978</u> ".
1956, No. 63, The Local Authorities Loans Act 1956 (Reprinted 1974, Vol. 3, p. 2301)	By adding to section 18 after paragraph (k) the following paragraph: “(1) Loans made under section 13 of the <u>Residential Land Damage Act 1978</u> for the purpose of discharging liabilities under <u>section 9</u> of that Act”.