

New Zealand



ANALYSIS

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| <p>Title.</p> <ol style="list-style-type: none"> 1. Short Title. Commencement. 2. Interpretation. 3. Act to bind the Crown. <p style="text-align: center;">EARTHQUAKE AND WAR DAMAGE COMMISSION</p> <ol style="list-style-type: none"> 4. Earthquake and War Damage Commission. 5. Functions of Commission. 6. Contracts of Commission. 7. Meetings of Commission. 8. Officers of Commission. 9. Members and officers of Commission not personally liable. <p style="text-align: center;">EARTHQUAKE AND WAR DAMAGE FUND</p> <ol style="list-style-type: none"> 10. Earthquake and War Damage Fund. 11. Moneys payable into Fund. 12. Moneys payable out of Fund. 13. Any deficiency to be made good out of Consolidated Fund or by borrowing. <p style="text-align: center;">INSURANCE AGAINST EARTHQUAKE AND WAR DAMAGE</p> <ol style="list-style-type: none"> 14. Property insured against fire deemed to be insured against earthquake and war damage. | <ol style="list-style-type: none"> 15. Voluntary insurance against earthquake damage and war damage. 16. Commission to make good earthquake or war damage to insured property. 17. Insurance to be subject to Act and regulations. 18. Insurance otherwise than under this Act. <p style="text-align: center;">MISCELLANEOUS</p> <ol style="list-style-type: none"> 19. Commission may insure manufacturers of munitions against third-party risks. 20. Reinsurance. 21. Power of Commission to inspect property and obtain information. 22. Persons negotiating contracts of fire insurance deemed to be agents if the insurance company is not carrying on business in New Zealand. 23. Annual report and accounts to be presented to Parliament. 24. Exemption from land-tax and income-tax. 25. Exemptions from stamp duty. 26. Regulations. 27. Repeals and savings. |
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1944, No. 15

AN ACT to make Provision with respect to the Title.
 Insurance of Property against Earthquake Damage
 and War Damage. [5th December, 1944

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

- Short Title.** 1. (1) This Act may be cited as the Earthquake and War Damage Act, 1944.
- Commencement.** (2) This Act shall come into force on the first day of January, 1945.
- Interpretation.** 2. (1) In this Act, unless the context otherwise requires,—

“ Commission ” means the Earthquake and War Damage Commission constituted under this Act:

“ Contract of fire insurance ” means a contract whereby any property is insured against loss or damage by fire, whether the contract includes other risks or not; but does not include any contract of marine insurance or any contract of reinsurance; and does not include any contract whereby any property is insured against any form of earthquake damage unless the contract also includes insurance against loss or damage by fire other than earthquake fire:

“ Earthquake damage ” means—

(a) Damage occurring as the direct result of earthquake or of earthquake fire:

(b) Damage occurring (whether accidentally or not) as the direct result of measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of any such damage as aforesaid:

Provided that this definition does not include any damage for which compensation is payable under any enactment other than this Act:

“ Earthquake fire ” means fire occasioned by or through or in consequence of earthquake:

“ Enemy ” means any enemy of His Majesty in any war:

“ Fund ” means the Earthquake and War Damage Fund established under this Act:

- “ Insurance company ” means any person who undertakes liability under any contract of fire insurance:
- “ Insured person ”, in relation to any property insured under section fourteen of 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; and in relation to any contract of insurance or indemnity made under this Act means the person for the time being entitled to the benefit of that contract:
- “ Minister ” means the Minister of Finance:
- “ Person ” includes a corporation sole, and also a body of persons, whether incorporated or not:
- “ Property ” means any real or personal property situated in New Zealand:
- “ War damage ” means—
- (a) Damage occurring (whether accidentally or not) as the direct result of action taken by the enemy, or action taken in combating the enemy, or in repelling an imagined attack by the enemy:
 - (b) Damage occurring (whether accidentally or not) as the direct result of measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of any such damage as aforesaid:
 - (c) Accidental damage occurring as the direct result—
 - (i) Of any precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying-out of any attack by the enemy; or
 - (ii) Of any precautionary or preparatory measures involving the doing of work on land and taken under proper authority in any way in anticipation of enemy action,—being, in either case, measures involving a substantial degree of risk to property:

(d) Accidental damage occurring as the direct result of any explosion or fire which involves any explosives or munitions or other dangerous things required for war purposes and which happens or is caused by, through, or in connection with the manufacture, storage, or transportation of any such explosives, munitions, or other dangerous things:

(e) Damage occurring (whether accidentally or not) as the direct result of measures taken under proper authority with a view to destroying any property for the purpose of preventing it from falling into the hands of the enemy or being used by the enemy:

Provided that the measures mentioned in paragraph (c) of this definition do not include the imposing of restrictions on the display of lights or measures taken for training purposes:

Provided also that this definition does not include any damage for which compensation is payable under any enactment other than this Act.

(2) For the purposes of the definition of the term "war damage" in the last preceding subsection, such action against the enemy as is referred to in paragraph (a) of that definition—

(a) Shall, in relation to any ship or aircraft taking part in such action, be deemed to continue until the ship or aircraft has returned to its base:

(b) Includes naval, military, or air reconnaissances and patrols.

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

3. This Act shall bind the Crown.

EARTHQUAKE AND WAR DAMAGE COMMISSION

4. (1) For the purposes of this Act there shall be a Commission, to be called the Earthquake and War Damage Commission.

Act to bind
the Crown.

Earthquake
and
War Damage
Commission.

(2) The Commission shall consist of—

(a) The Minister (who shall be the Chairman):

(b) The Secretary to the Treasury:

(c) The State Fire Insurance General Manager:

(d) Four other members to be appointed by the Governor-General and to hold office during his pleasure.

(3) The Governor-General may from time to time appoint one of the members of the Commission (other than the Minister) to be the Deputy Chairman of the Commission, and to hold office as such during the pleasure of the Governor-General.

(4) The Commission shall be a body corporate with perpetual succession and a common seal, and shall be capable of holding real and personal property, of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer.

(5) The Commission shall be deemed to be the same body corporate as the War Damage Commission constituted under the War Damage Act, 1941.

1941, No. 17

(6) The members of the Commission who are not officers of the Public Service shall be paid such salaries or other remuneration as may from time to time be fixed by the Minister, and such travelling allowances and expenses as may be prescribed by regulations made under this Act.

5. The Commission shall be charged with the duty of executing the provisions of this Act, and shall exercise such other functions as are conferred upon it by this Act or by any regulations made thereunder.

Functions of
Commission.

6. (1) Any contract which if made between private persons must be by deed shall, when made by the Commission, be in writing under the common seal of the Commission.

Contracts of
Commission.

(2) Any contract which if made between private persons must be in writing signed by the persons to be charged therewith, may, when made by the Commission, be in writing signed by any person acting on behalf of and under the express or implied authority of the Commission.

(3) Any contract which if made between private persons may be made orally may, when made by the Commission, be made orally by any person acting on behalf of and under the express or implied authority of the Commission.

(4) The common seal of the Commission shall not be affixed to any document except pursuant to a resolution of the Commission, and the execution of any document so sealed shall be attested by two members of the Commission.

Meetings of
Commission.

7. (1) Meetings of the Commission shall be held at such times and places as the Commission or the Chairman from time to time determines.

(2) At all meetings of the Commission four members shall constitute a quorum.

(3) The Chairman at any meeting of the Commission shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

(4) In the absence of the Minister from any meeting the Deputy Chairman, if present, shall be the Chairman of that meeting, and if he is not present the members present shall appoint one of their number to act as Chairman at that meeting.

(5) In the absence from any meeting of the Commission of any member, being an officer of any Department of the Public Service, he may authorize any other officer of that Department to attend the meeting in his stead. While any person is attending any meeting pursuant to this subsection he shall be deemed to be a member of the Commission.

(6) Subject to the provisions of this Act and of any regulations made thereunder, the Commission may regulate its procedure in such manner as it thinks fit.

Officers of
Commission.

8. There may from time to time be appointed as officers of the Public Service such officers as may be required for the purposes of this Act.

Members and
officers of
Commission
not personally
liable.

9. No member or officer of the Commission shall be personally liable for any liability of the Commission, or for any act done or omitted by the Commission or by any member or officer thereof in good faith in pursuance or intended pursuance of the powers and authority of the Commission.

EARTHQUAKE AND WAR DAMAGE FUND

10. (1) There is hereby established in the Public Account a separate account to be called the Earthquake and War Damage Fund. Earthquake and War Damage Fund.

(2) The War Damage Fund established under the War Damage Act, 1941, is hereby abolished. 1941, No. 17

11. (1) All moneys standing to the credit of the War Damage Fund on the commencement of this Act shall, without further authority than this section, be transferred to and deemed part of the Earthquake and War Damage Fund. Moneys payable into Fund.

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

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

(b) All fines and penalties recovered under this Act or the regulations made thereunder:

(c) All moneys that would have been lawfully payable into the War Damage Fund if this Act had not been passed:

(d) Any other moneys that may be lawfully payable into the Fund.

(3) All moneys payable into the Fund by any person, and all debts and other moneys 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 Crown and recoverable accordingly by the Commission as from debtors of the Crown.

(4) All such moneys are hereby declared to be public moneys within the meaning of the Public Revenues Act, 1926. See Reprint of Statutes, Vol. VII, p. 10

12. (1) There shall from time to time, without further appropriation than this section, be paid out of the Fund— Moneys payable out of Fund.

(a) All claims admitted or sustained against the Commission in respect of the insurance of any property under this Act or in respect of contracts of indemnity made by the Commission, 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) All moneys required to repay any advances made under the next succeeding section, or to pay any interest or principal payable out of the Fund under that section.

(2) There shall also from time to time be paid out of the Fund, in accordance with the appropriation of Parliament, all salaries and allowances and other expenditure incurred in the administration of this Act.

Any deficiency to be made good out of Consolidated Fund or by borrowing.

13. (1) If the moneys for the time being in the Fund are not sufficient to meet the lawful claims thereon, the Minister shall, without further appropriation than this section, but subject to the next succeeding subsection, advance to the Fund from the Consolidated Fund such sums as may be necessary to meet the deficiency.

(2) If in the opinion of the Minister the whole or any part of any such deficiency cannot conveniently be met from the Consolidated Fund, the Minister shall borrow, on the security of and charged upon the public revenues of New Zealand, such sums of money as may in his opinion be necessary to meet the deficiency or that part of it, or to repay to the Consolidated Fund the whole or any part of any advances made under subsection one of this section.

(3) The sums so borrowed shall bear interest at such rate as the Minister prescribes.

(4) All moneys borrowed under the authority of this section shall be paid into the Earthquake and War Damage Fund.

(5) This section shall be deemed to be an authorizing Act within the meaning of the New Zealand Loans Act, 1932, and the moneys hereby authorized to be borrowed shall be borrowed under and subject to the provisions of that Act accordingly.

(6) All moneys advanced to the Fund under subsection one of this section or paid into the Fund under subsection four of this section and not repaid shall, from the date of the advance or payment, constitute a capital liability of the Fund to the Consolidated Fund.

(7) 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 Fund at such rate or rates and at such times as the Minister from time to time prescribes. Different rates may be prescribed in respect of different moneys advanced or paid to the Fund.

(8) If the Minister is satisfied, at any time while the Fund has a capital liability under this section, that there are available 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, and the amount so directed shall, without further authority than this section, be transferred accordingly, and be utilized for the redemption of such securities charged on the public revenues of New Zealand as the Minister may determine. All moneys transferred under this section shall be deemed to be repaid in reduction of the capital liability of the Fund to the Consolidated Fund.

INSURANCE AGAINST EARTHQUAKE AND WAR DAMAGE

14. (1) Subject to the provisions of this Act and of any regulations made thereunder, where in respect of any period after the commencement of this Act any property is insured to any amount under any contract of fire insurance made in New Zealand with an insurance company after the commencement of this Act, the property shall at all times during that period be deemed to be insured under this Act to the same amount against earthquake damage and war damage.

Property insured against fire deemed to be insured against earthquake and war damage.

(2) In respect of the insurance of any property under this section the insurance company with which the property is insured against fire shall pay an earthquake and war damage premium in accordance with this Act at such time and in such manner as may be prescribed.

(3) Upon the making of any such contract of fire insurance the earthquake and war damage premium at the rate then prescribed, computed in respect of the

period of the contract of fire insurance, shall thereupon become a debt due by the insurance company to the Commission.

(4) The amount of the earthquake and war damage premium for which any insurance company at any time becomes liable under this section in respect of any contract of fire insurance shall thereupon become a debt due by the insured person to the insurance company, and may be recovered by the company accordingly. If at any time before the debt is fully discharged any other person becomes an insured person under the contract of fire insurance the amount remaining unpaid shall thereupon become a debt due by him to the insurance company, without prejudice to the liability of any other person. Where two or more persons are liable for any amount under this subsection their liability shall be joint and several.

(5) Subject to the provisions of any regulations made under this Act, the Commission may from time to time—

(a) Allow to insurance companies such discounts as the Commission thinks fit in respect of premiums paid by them under this section:

(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.

(6) Where there is expressed or implied in any mortgage, lease, instrument, or document, whether executed before or after the commencement of this Act, any covenant, condition, or power relating to the insurance against loss or damage by fire of any property to which this section applies, then, subject to the provisions of any regulations made under this Act and to the provisions of any express agreement in that behalf, the covenant, condition, or power shall be deemed to be extended so as to apply, so far as it is applicable and with the necessary modifications, with respect to the insurance of the property against earthquake damage and war damage under this section.

15. (1) On application made by any person having an insurable interest in any property the Commission may agree to insure that property under this Act for such period and to such amount and upon or subject to such conditions as the Commission thinks fit against earthquake damage and war damage or against earthquake damage only or against war damage only.

Voluntary insurance against earthquake damage and war damage.

(2) A contract may be made under this section (whether in respect of earthquake damage or war damage or both)—

- (a) For the insurance of any property that is not so insured under section fourteen of this Act; or
- (b) For the insurance to an additional amount of any property that is so insured to any amount under section fourteen of this Act; or
- (c) For the insurance of any property in substitution for the insurance thereof under section fourteen of this Act.

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

16. (1) Subject to the provisions of this Act and of any regulations made thereunder and of the contract of earthquake or war damage insurance (if any), if, during the period for which any property is insured under this Act against earthquake damage or war damage, the property or any part thereof is destroyed or damaged by earthquake damage or by war damage, as the case may be, the Commission shall be liable to make good (by payment or reinstatement or repair, at the option of the Commission) all such loss or damage to an amount not exceeding in respect of the property or any part thereof the amount to which the property or that part thereof is respectively so insured.

Commission to make good earthquake or war damage to insured property.

(2) Subject to the provisions of any regulations made under this Act, any payments or expenditure for which the Commission may be liable under this section shall be made at such time or times as the Commission in any case thinks fit, being—

- (a) In the case of earthquake damage, not later than one year after the amount of the damage has been duly determined (which determination

shall be made as soon as reasonably practicable in the circumstances of each case); and

- (b) In the case of war damage, not later than one year after the termination of the war during which the damage has occurred.

Insurance to be subject to Act and regulations.

17. The insurance of any property against earthquake damage or against war damage, whether under section fourteen or under section fifteen of this Act, shall be subject to the provisions of this Act and of any regulations made thereunder.

Insurance otherwise than under this Act.

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

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

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

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

MISCELLANEOUS

Commission may insure manufacturers of munitions against third-party risks.

19. (1) On application made by any person engaged in the manufacture, storage, or transportation of explosives or munitions or other dangerous things required for war purposes or by any person entitled to any estate or interest in any premises or vehicle

used for any such purpose, the Commission may agree to indemnify that person to such extent as it thinks fit against liability to pay damages (inclusive of costs) on account of the destruction or damage of any property of any other person or persons where that destruction or damage is the result of an accident happening during the period of the contract of indemnity and is sustained or caused by or through or in connection with such manufacture, storage, or transportation.

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

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

21. (1) For the purpose of obtaining any information that may be required by the Commission for the purposes of this Act the Commission, or any person authorized in writing in that behalf by the Commission, may from time to time— **Power of Commission to inspect property and obtain information.**

(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 to allow copies of or extracts from any such books, accounts, vouchers, records, or documents to be made:

(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) Enter any land, building, or place.

(2) Every person commits an offence against this section who—

(a) Resists, obstructs, deceives, or attempts to deceive any person who is exercising or attempting to exercise any power or function under this section:

(b) Makes any false or misleading statement or any material omission in any information or particulars furnished under this section:

(c) Fails to comply in any respect with any requirement under this section.

(3) Every person who aids, abets, counsels, or procures or is in any way knowingly concerned with the commission of an offence against this section shall be deemed to have committed an offence against this section.

(4) Any offence against this section committed by a servant or agent in the course of his employment shall be deemed to have been also committed by his employer or principal.

(5) Every person who commits an offence against this section shall be liable on summary conviction,—

(a) In the case of an individual, to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds and (if the offence is a continuing one) to a further fine not exceeding five pounds for every day during which the offence continues:

(b) In the case of a company or other corporation, to a fine not exceeding two hundred pounds, and (if the offence is a continuing one) to a further fine not exceeding twenty pounds for every day during which the offence continues.

22. (1) Where any person (hereinafter referred to as the agent) in the course of his business negotiates, directly or indirectly (whether through a broker or otherwise), any contract of fire insurance between any insurance company as hereinbefore defined that is not carrying on business in New Zealand and any other person (hereinafter referred to as the insured person),—

(a) The agent shall for the purposes of this Act be deemed to be the agent of the insurance company (whether or not he is also the agent of the insured person):

(b) The contract shall for the purposes of this Act be deemed to be made in New Zealand:

Persons negotiating contracts of fire insurance deemed to be agents if the insurance company is not carrying on business in New Zealand.

(c) The agent shall be subject jointly and severally with the insurance company to all obligations and liabilities imposed on the insurance company in relation to the contract by or under this Act or by or under any regulations made under this Act:

(d) The agent may exercise all the rights, remedies, and powers conferred on the insurance company in relation to the contract by or under this Act or by or under any regulations made under this Act.

(2) The fact that any person issues any cover-note in respect of a contract of fire insurance or gives any information that fire insurance has been effected, or issues any receipt or other document acknowledging the receipt of a premium in respect of a contract of fire insurance, or receives any premiums, proposals, or requests for fire-insurance business shall, for the purposes of this section, be conclusive evidence that that person is engaged in the business of negotiating contracts of fire insurance.

23. (1) The Minister shall within three months after the expiration of every financial year cause to be prepared a report on the operations of the Commission for that year.

Annual report and accounts to be presented to Parliament.

(2) The said report, together with statements of account to be prepared by the Commission in accordance with section fifty-seven of the Finance Act, 1932, shall be laid before Parliament within fourteen days after it has been received by the Minister if Parliament is then in session, and, if not, shall be laid before Parliament within fourteen days after the commencement of the next ensuing session.

1932, No. 11

24. The Commission is hereby declared to be exempt from the payment of land-tax and income-tax under the Land and Income Tax Act, 1923.

Exemption from land-tax and income-tax. See Reprint of Statutes, Vol. VII, p. 271

25. No stamp duty shall be payable on any statutory declaration or on any agreement, receipt, or other instrument made, given, or executed for any of the purposes of this Act.

Exemptions from stamp duty.

Regulations.

26. (1) The Governor-General may from time to time, by Order in Council, make all such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power hereinbefore conferred, it is hereby declared that regulations may be made under this section 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) 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:
- (d) 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:
- (e) 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:
- (f) 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:
- (g) Providing for the destination and apportionment of moneys payable by the Commission in settlement of claims:

- (h) Providing for the cancellation, avoidance, modification, reduction, or surrender of insurances by virtue of this Act and of contracts of insurance or indemnity under this Act, and for the refund of premiums or any part thereof:
- (i) Providing for and regulating the collection, receipt, and payment of moneys under this Act:
- (j) 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:
- (k) Prescribing the travelling allowances and expenses to be paid to members of the Commission who are not officers of the Public Service:
- (l) Prescribing forms for the purposes of this Act:
- (m) Prescribing punishments for offences against the regulations.

(3) No regulation made under this section shall be deemed to be invalid on the ground that it delegates to or confers on the Governor-General or the Commission or any other person or body any discretionary authority.

(4) Any regulations under this section may be made so as to come into force on any date specified therein in that behalf, whether before or after the date of the making of the regulations.

(5) All regulations made under this section shall be laid before Parliament within fourteen days after the making thereof if Parliament is then in session, and, if not, shall be laid before Parliament within fourteen days after the commencement of the next ensuing session.

27. (1) The War Damage Act, 1941, and the War Damage Amendment Act, 1942, are hereby repealed.

(2) The Earthquake Damage Emergency Regulations 1944 are hereby revoked.

(3) All appointments, Orders in Council, regulations, insurances, contracts, claims, liabilities, and generally all acts of authority that originated under any of the provisions of the enactments hereby repealed

Repeals and savings.

1941, No. 17

1942, No. 4

Serial number

1944/29

or revoked, and are subsisting or in force on the commencement of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

(4) All matters and proceedings commenced under any such enactment and pending or in progress on the commencement of this Act may be continued and completed under this Act.
