

Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill

Government Bill

As reported from the Local Government and
Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to amend the Weathertight Homes Resolution Services Act 2006 by establishing financial assistance measures for eligible owners of leaky buildings (dwellinghouses). The proposed assistance measures are the result of negotiations between the Government, territorial authorities, and banks, and aim to improve owners' access to finance to repair their buildings and divert litigation costs toward repair costs. The assistance measures would be voluntary, with eligible home owners having the ability to "opt in". Under the provisions of this bill, owners of leaky homes who "opted in" would

be able to take civil proceedings against other parties but would forgo that right against the Crown, the relevant territorial authority, or other contributing parties.

Under the proposed financial assistance measures 25 percent of repair costs would be paid by the Government and 25 percent by the relevant local authority—if it was the consenting authority and agreed to participate in the proposed scheme. The latter provision would not apply if the consenting authority was an independent certifier. Building owners would pay the remaining 50 or 75 percent of repair costs. Eligible owners of leaky dwellinghouses would have to apply within five years of the assistance measures becoming operational. Some of us are concerned that many affected owners may not have the financial resources to opt into the scheme.

We note that, in the Greater Auckland area, the Auckland Council estimates there are 3,301 properties with active claims. The council stated that it expects that a maximum of 12,000 new claims could be lodged, although it anticipates that less than half might actually lodge a claim.

We were told that one of the risks of leaky buildings is that they can harbour a number of moulds and fungi, including the mould *stachybotrys*, and are concerned with their potential impact on people's health.

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

Dividing the bill into Parts

We recommend dividing the bill into Parts 1 and 2. This is intended to clearly demarcate proposed amendments to the Weathertight Homes Resolution Services Act 2006 (the principal Act) from proposed amendments to the Public Finance Act 1989.

Commencement

We recommend amending clause 2 so that different provisions may be brought into force by one or more Orders in Council on different dates, and so that any provision not brought into force by Order in Council at an earlier date would come into force on the first anniversary of the date of Royal assent.

Clause 2 provides for the bill to be brought into force by the Governor-General by Order in Council. This provision is intended to allow technical and operational details of the financial assistance measures to be developed, including the form and content of contribution agreements. The Regulations Review Committee recommended that the bill be amended to include a commencement date, as commencement of legislation by Order in Council should be used in “rare and exceptional circumstances” only.¹

The proposed amendment to clause 2 reflects the recommendations of the Regulations Review Committee and would provide flexibility so that technical details of the financial assistance measures may be developed.

Financial assistance measures definitions

We recommend amendments to new section 125B as inserted by clause 6. These include deleting the definitions of “affected dwelling-house” and “financial assistance package”, as we consider them to be unnecessary.

We recommend amending the definition of “qualifying claimant” to mean one who has an eligible claim and meets the “contribution criteria” for the package of financial assistance measures. The bill as introduced used the term “eligibility criteria”, and we recommend this change to distinguish financial assistance measures criteria from existing Weathertight Homes Resolution Service criteria.

Proposed amendments to new section 125B also include amending the definitions of “agreed repair costs” and “associated costs” to include costs claimants might have already incurred, as it is likely that some owners who are currently in the Weathertight Homes Resolution Services process have already started repairs and would be eligible for the measures, and to clarify that associated costs could include a contribution to pre-finance valuation and resource consent costs.

¹ Regulations Review Committee, *Investigation into the Commencement of Legislation by Order in Council*, 1996, I.16K.

Assessors

We recommend amending clause 6 by inserting new section 125DA to allow assessors to prepare a concise assessor's report and to provide any other advice or recommendation in connection with the provision of financial assistance measures under the bill in addition to functions in Part 1 of the principal Act.

A full assessor's report would only be necessary if a home owner wished to use the Weathertight Homes Resolution Service for mediation or adjudication with other parties. A concise assessor's report would be quicker and cheaper than a full report for home owners participating in the proposed financial assistance measures to obtain. In a few cases, the damage to a dwellinghouse might need to be reassessed once repair work has begun and the full extent of any damage has become apparent. In such instances, the ability to access the expertise of an assessor and obtain a recommendation on the damage would be helpful.

Assessors are at present protected from liability when carrying out functions under section 122 of the principal Act, and new section 125DA would extend this protection to new functions carried out in connection with the financial assistance measures.

Restrictions on civil proceedings

We recommend amending new section 125F as inserted by clause 6 to make it clear when the restrictions on civil proceedings would take effect on any additional contributing party if the contribution was a financial payment (once the claimant has received the first payment payable by that party under the contribution agreement), a service (once the services are completed), or goods (on delivery of those goods to the claimant).

Appendix

Committee process

The Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill was referred to the Local Government and Environment Committee on 9 December 2010. The closing date for submissions was 18 February 2011. We received and considered 39 submissions from interested groups and individuals. We heard nine submissions.

We received advice from the Department of Building and Housing. The Regulations Review Committee reported to the committee on the powers contained in clause 2.

Committee membership

Chris Auchinvole (Chairperson)
Brendon Burns (from 9 February 2011)
Dr Cam Calder
Charles Chauvel (until 9 February 2011)
Hon Ruth Dyson (from 9 February 2011)
Hon George Hawkins (until 9 February 2011)
Chris Hipkins (until 9 February 2011)
Rahui Katene
Nikki Kaye
Sue Kedgley
Hon Heather Roy
Phil Twyford (from 9 February 2011)
Louise Upston
Nicky Wagner

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Maurice Williamson

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Act **2010**.
- 2 Commencement** 5
~~This Act comes into force on a date to be appointed by the Governor-General by Order in Council.~~
- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates. 10
- (2) Any provisions of this Act that are not in force on the day that is the first anniversary of the date on which this Act receives the Royal assent come into force on that anniversary date.
- 3 Principal Act amended** 15
This Act amends the Weathertight Homes Resolution Services Act 2006.

Part 1
Amendments to principal Act

- Amendments to principal Act* 20
- 4 New section 3 substituted**
Section 3 is repealed and the following section substituted:
- “3 Purpose of this Act**
The purpose of this Act is—
- “(a) to provide owners of dwellinghouses that are leaky 25
buildings with access to speedy, flexible, and cost-effective procedures for the assessment and resolution of claims relating to those buildings; and
- “(b) to provide for certain matters relating to the provision of 30
a package of financial assistance measures to facilitate the repair of those buildings.”

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Part 1 cl 5

5 Overview of this Act

Section 4 is amended by inserting the following heading and paragraph after paragraph (h):

“Financial assistance package

“(ha) **Part 1A** provides for certain matters relating to the provision of a package of financial assistance measures to facilitate the repair of leaky buildings:”.

5A Interpretation

Paragraph (b) of the definition of **civil proceedings** in section 8 is amended by omitting “sections 84 and 105” and substituting “sections 84, 105, **125F, and 125FA**”.

6 New Part 1A inserted

The following Part is inserted after Part 1:

“Part 1A

“Financial assistance package 15

“Preliminary

“125A Purpose of this Part

The purpose of this Part is to facilitate the repair of leaky buildings by providing for certain matters relating to the provision of a package of financial assistance measures to qualifying claimants. 20

“125B Interpretation

“(1) In this Part, unless the context otherwise requires,—

“additional contributing party—

“(a) means either or both of the following: 25

~~“(i) the relevant territorial authority, if it agrees to make a financial contribution towards the agreed repair costs of the affected dwellinghouse concerned:~~

“(i) the relevant territorial authority, if it agrees to— 30

“(A) participate in the provision of the package of financial assistance measures to qualifying claimants; and

-
- “(B) make, under a contribution agreement, a financial contribution towards the agreed repair costs of the dwellinghouse concerned:
- “(ii) any other party (if any) who agrees to make a contribution (whether financial or otherwise) towards the agreed repair costs of the affected dwellinghouse concerned; but 5
- “(b) does not include a claimant or a lender
- ~~“affected dwellinghouse means a dwellinghouse to which an eligible claim relates 10~~
- ~~“agreed repair costs—~~
- ~~“(a) means the costs or expenses that a claimant may incur under a contribution agreement to effect any repair; and~~
- ~~“(b) includes any associated costs; but~~
- “(a) means the costs or expenses that— 15
- “(i) a claimant may incur, or has incurred, to effect any repair agreed in a contribution agreement; and
- “(ii) are agreed with the claimant; and
- “(b) includes— 20
- “(i) any associated costs:
- “(ii) the agreed value of any non-financial contribution made by any additional contributing party that is not a relevant territorial authority; but
- “(c) does not include any legal costs or expenses 25
- “associated costs** means the reasonable costs of any of the following that a claimant may incur under, and within the terms of, a contribution agreement:
- “(aa) a valuer’s report on the valuation of a dwellinghouse before the repair is commenced: 30
- “(a) design work in relation to or in connection with any repair:
- “(b) project management in relation to or in connection with any repair:
- “(c) building consent in relation to or in connection with any repair: 35
- “(ca) resource consent under the Resource Management Act 1991 in relation to or in connection with any repair:

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- “(d) alternative accommodation for the claimant in connection with or as a result of any repair:
- “(e) storage for the claimant’s furniture, household appliances, and other household effects in connection with or as a result of any repair if the furniture, household appliances, and other household effects were in the affected dwellinghouse at the time of commencement of the repair 5
- “**contributing party** means the Crown
- “**contribution agreement** means a written agreement that— 10
 - “(a) is entered into between—
 - “(i) a claimant and the contributing party; or
 - “(ii) a claimant, the contributing party, and any additional contributing party; and
 - “(b) sets out the terms and conditions for the provision of financial assistance measures to the claimant 15
- “**financial assistance measures** means the measures that comprise—
 - “(a) a financial support facility in the form of direct financial contributions to a claimant from the contributing party and, if applicable, any additional contributing party towards the agreed repair costs of an affected dwellinghouse: 20
 - “(a) a financial support facility that is in the form of,—
 - “(i) in the case of the contributing party and, if applicable, any additional contributing party that is a relevant territorial authority, a financial contribution towards the agreed repair costs of a dwellinghouse; and 25
 - “(ii) if applicable, in the case of any other additional contributing party, any or all of the following contributions towards the agreed repair costs of a dwellinghouse: 30
 - “(A) a financial contribution:
 - “(B) the provision of a service: 35
 - “(C) the supply of goods:
 - “(b) a credit support facility in the form of a guarantee or indemnity given to a lender under **section 125G(2)** in respect of any loan advanced by the lender to a claimant

for the sole purpose of meeting the balance of the agreed repair costs of an affected dwellinghouse that are not otherwise covered by the direct financial contributions referred to in **paragraph (a)**

“(b) a credit support facility that is in the form of a guarantee or indemnity given to a lender under **section 125G(2)** in respect of— 5

“(i) any loan advanced by the lender to a claimant for the sole purpose of meeting the balance of the agreed repair costs of a dwellinghouse that are not otherwise covered by the financial contributions referred to in **paragraph (a)**; 10

“(ii) any loan advanced by the lender to a claimant as a result of the restructuring or refinancing of the loan described in **subparagraph (i)** 15

“financial assistance package means the package of financial assistance measures announced by the Minister on or about 17 May 2010

“lender means a financial institution of a type specified under **section 125H(1)(a)** that satisfies the criteria specified for it under **section 125H(1)(b)** 20

“qualifying claimant means a claimant who meets the eligibility criteria (if any) for the financial assistance package specified by the chief executive by notice in the *Gazette*

“qualifying claimant means a claimant who— 25

“(a) has an eligible claim in respect of a dwellinghouse; and

“(b) meets the contribution criteria that are specified by the chief executive by notice in the *Gazette* in respect of the package of financial assistance measures

“relevant territorial authority, in relation to ~~an affected dwellinghouse~~ a dwellinghouse, means the territorial authority for the district in which the ~~affected~~ dwellinghouse is situated 30

“repair—

“(a) means any repair to ~~an affected dwellinghouse~~ a dwellinghouse that is the subject of a contribution agreement that the parties to the agreement have agreed is directly necessary to— 35

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- “(i) rectify any damage to the ~~affected~~ dwellinghouse as a consequence of its penetration by water because of some aspect of its design, construction, or alteration, or of materials used in its construction or alteration; and 5
- “(ii) make the ~~affected~~ dwellinghouse weathertight; and
- “(b) includes demolishing the ~~affected~~ dwellinghouse and rebuilding or re-erecting it, if provided for under the contribution agreement 10
- “**territorial authority** means a territorial authority within the meaning of the Local Government Act 2002.
- “(2) In this Part, unless the context otherwise requires, **approved, chief executive, civil proceedings, claim, claimant, court of competent jurisdiction, damages, department, dwellinghouse, eligible claim, leaky building**, and **Minister** have the meanings given to them by section 8. 15
- “Applications for financial assistance measures*
- “**125C Application for financial assistance measures** 20
A qualifying claimant who wishes to obtain any financial assistance measures in relation to ~~an affected dwellinghouse~~ a dwellinghouse may apply to the chief executive in the approved manner.
- “**125D Deadline for application for financial assistance measures** 25
An application under **section 125C** must be made no later than the expiry of the period of 5 years after the date of commencement of this section.
- “Assessments relating to applications for financial assistance measures* 30
- “**125DA Assessors may prepare concise assessor’s report relating to application for financial assistance measures and provide other advice or recommendation**
- “(1) In addition to any functions, duties, or powers of an assessor under Part 1, an assessor may carry out either or both of the 35

following functions if requested to do so by the chief executive:

“(a) prepare a concise assessor’s report in relation to a dwellinghouse for which an application under **section 125C** for financial assistance measures has been made: 5

“(b) provide any other advice or recommendation in relation to the repair of the dwellinghouse concerned (including, for example, a reassessment of the damage to a dwellinghouse after the repair has commenced).

“(2) To avoid doubt, section 122 applies to an assessor in the performance of any of the functions under **subsection (1)**. 10

“(3) A concise assessor’s report is a report stating—

“(a) the work needed to make a dwellinghouse weathertight; and

“(b) the estimated cost of that work. 15

“(4) A concise assessor’s report may (but is not required to) contain information about—

“(a) the nature and extent of the damage caused by water penetrating a dwellinghouse; and

“(b) what caused that damage. 20

*“Restrictions on civil proceedings relating to
financial assistance measures*

“125E Protection from liability

“(1) No civil proceedings may be brought against the ~~contributing party~~ Crown, the department, the Treasury, or any of the persons specified in **subsection (2)** to recover damages for any loss or damage that is due directly or indirectly to the repair of ~~an affected dwellinghouse~~ a dwellinghouse in accordance with a contribution agreement or the provision of any financial assistance measures to a claimant. 25
30

“(2) The persons referred to in **subsection (1)** are—

“(a) a Minister of the Crown:

“(b) the chief executive:

“(c) the Secretary to the Treasury:

“(d) an employee, ~~agent,~~ or contractor of the ~~department or the Treasury~~ Crown. 35

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- “(3) **Subsection (1)** applies whether the loss or damage is caused by any person taking any action or omitting to take any action, so long as the act or omission occurred in the exercise or performance of his or her functions, duties, or powers in relation to the repair of ~~an affected dwellinghouse~~ a dwellinghouse in accordance with a contribution agreement or the provision of any financial assistance measures. 5
- “(4) A person is not exempted from liability under **subsection (1)** for any act or omission to act that constitutes bad faith or gross negligence on the part of the person. 10
- “**125F Restriction on naming or joining contributing party or additional contributing party as defendant or third or subsequent party in certain civil proceedings, or otherwise seeking remedy or relief from them**
- “(1) Neither a claimant nor any other person may name, join, or seek to name or join the contributing party and, if applicable, any additional contributing party as a defendant or a third or subsequent party in any civil proceedings relating to ~~an affected dwellinghouse~~ a dwellinghouse if— 15
- “(a) the ~~affected~~ dwellinghouse is or was the subject of a contribution agreement; and 20
- “(b) the civil proceedings relate to the circumstances that gave rise to the need to repair the ~~affected~~ dwellinghouse in accordance with the contribution agreement.
- “(2) Neither a claimant nor any other person may apply in any civil proceedings for any remedy or relief from the contributing party and, if applicable, any additional contributing party relating to ~~an affected dwellinghouse~~ a dwellinghouse if— 25
- “(a) the ~~affected~~ dwellinghouse is or was the subject of a contribution agreement; and 30
- “(b) the civil proceedings relate to the circumstances that gave rise to the need to repair the ~~affected~~ dwellinghouse in accordance with the contribution agreement.
- “(3) This section does not apply if the contribution agreement is terminated before any payment is made under that agreement by the contributing party or, if applicable, any additional contributing party. 35

- “(3) A restriction under **subsection (1) or (2)** takes effect in respect of the contributing party when the claimant receives the first payment from the contributing party under the contribution agreement.
- “(4) A restriction under **subsection (1) or (2)** takes effect in respect of any additional contributing party when— 5
- “(a) the claimant receives the first payment from the additional contributing party under the contribution agreement, if the contribution from that additional contributing party under the agreement is in the form of a financial contribution: 10
- “(b) the provision of a service by the additional contributing party under the contribution agreement is completed, if the contribution from that additional contributing party under the agreement is in the form of the provision of a service to the claimant: 15
- “(c) the supply of goods by the additional contributing party under the contribution agreement is completed, if the contribution from that additional contributing party under the agreement is in the form of the supply of goods to the claimant. 20
- “(5) If the contribution from an additional contributing party under a contribution agreement is a combination of the forms described in **subsection (4)**, a restriction under **subsection (1) or (2)** takes effect in respect of the additional contributing party at the earliest time that any of **subsection (4)(a) to (c)** applies. 25

“Effect of contribution agreement on civil proceedings relating to dwellinghouse

- “125FA Effect of contribution agreement on civil proceedings relating to dwellinghouse 30
- “(1) This section applies to civil proceedings that—
- “(a) are not restricted under **section 125F**; and
- “(b) relate to a dwellinghouse that is or was the subject of a contribution agreement. 35
- “(2) In assessing damages in any civil proceedings to which this section applies, the court or tribunal must, to the extent that

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it is relevant, take into account any contributions made under the contribution agreement.

*“Guarantees or indemnities may be given by
Minister*

- “125G Minister may give guarantee or indemnity** 5
- “(1) The purpose of this section is to facilitate the provision of financial assistance measures that are in the form of a credit support facility to lenders.
- ~~“(2) For the purpose of this section, the Minister may, on behalf of the Crown, give a written guarantee or indemnity in respect of any loan advanced by a lender to a claimant if the sole purpose of the loan is to meet the balance of the agreed repair costs of an affected dwellinghouse that are not otherwise covered by the financial contributions provided to the claimant by the contributing party and, if applicable, any additional contributing party under a contribution agreement.~~ 10 15
- “(2) For the purpose of this section, the Minister may, on behalf of the Crown, give a written guarantee or indemnity in respect of—
- “(a) any loan advanced by a lender to a claimant if the sole purpose of the loan is to meet the balance of the agreed repair costs of a dwellinghouse that are not otherwise covered by the financial contributions provided to the claimant by the contributing party and, if applicable, any additional contributing party under a contribution agreement. 20 25
- “(b) any loan advanced by a lender to a claimant as a result of the restructuring or refinancing of the loan described in **paragraph (a)**.
- “(3) The Minister must give the guarantee or indemnity on any terms and conditions specified by the Minister of Finance under **section 125I**. 30
- “(4) If the contingent liability of the Crown under the guarantees or indemnities given under **subsection (2)** exceeds \$10 million, the Minister must, as soon as practicable after the guarantees or indemnities are given,— 35

- “(a) publish in the *Gazette* a statement that the guarantees or indemnities have been given; and
- “(b) present the statement to the House of Representatives.
- “(5) The statement may contain any details about the guarantees or indemnities that the Minister considers appropriate. 5

“125H Minister of Finance may specify types of financial institutions and criteria

- “(1) The Minister of Finance may, by notice, specify—
 - “(a) types of financial institutions in respect of which guarantees or indemnities may be given under **section 125G(2)**; and 10
 - “(b) criteria for financial institutions to satisfy before those guarantees or indemnities may be given.
- “(2) Different criteria may be specified for different types of financial institutions. 15
- “(3) The Minister of Finance—
 - “(a) must publish the notice in the *Gazette*; and
 - “(b) may withhold from the notice information that he or she considers to be commercially sensitive.

“125I Minister of Finance may specify terms and conditions of guarantees or indemnities 20

- “(1) The Minister of Finance may specify the terms and conditions on which guarantees or indemnities may be given under **section 125G(2)**, including (without limitation)—
 - “(a) the monetary limits of the guarantees or indemnities; and 25
 - “(b) the form and content of the guarantees or indemnities; and
 - “(c) the maximum limit of the Crown’s contingent liability under the guarantees or indemnities; and 30
 - “(d) the period during which the guarantees or indemnities may be given.
- “(2) If the Minister of Finance specifies the terms and conditions on which guarantees or indemnities may be given under **section 125G(2)**, he or she must, as soon as practicable, publish in the 35

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Part 2 cl 7

Gazette a statement that the terms and conditions have been specified.

“(3) The statement may contain any details about the terms and conditions that the Minister considers appropriate.

“125J Recovery of money paid under guarantee or indemnity 5

“(1) Any money paid by the Crown under a guarantee or indemnity given under **section 125G(2)** constitutes a debt due to the Crown from the person for whom the guarantee or indemnity was given.

“(2) A debt referred to in **subsection (1)**— 10

“(a) is recoverable in any court of competent jurisdiction:

“(b) may be paid over any period of time and on any terms and conditions that the Minister of Finance thinks fit:

“(c) may be written down by the Minister of Finance (except that the debt must not be written down below its market value other than in accordance with an appropriation, or other authority, by or under an Act). 15

“(3) This section does not limit or affect any other rights that the Crown may have as guarantor or indemnifier.

“125K Payments in respect of guarantee or indemnity 20

Any money paid by the Crown under a guarantee or indemnity given under **section 125G(2)** may be incurred without further appropriation, and must be paid without further authority, than this section.”

Part 2 25

**Consequential amendment to, and
relationship with, Public Finance Act
1989**

*Consequential amendment to, and relationship
with, Public Finance Act 1989* 30

7 Consequential amendment to Public Finance Act 1989

(1) This section amends the Public Finance Act 1989.

(2) The definition of **public security** in section 65D(2) is amended by omitting “or the Crown Retail Deposit Guarantee Scheme

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Act 2009” and substituting “, the Crown Retail Deposit Guarantee Scheme Act 2009, or **section 125G** of the Weathertight Homes Resolution Services Act 2006”.

8 Act does not limit Public Finance Act 1989

Except as provided in **section 7**, nothing in this Act or the amendments made by this Act limits or affects the operation of the Public Finance Act 1989. 5

Legislative history

23 November 2010

Introduction (Bill 258–1)

9 December 2010

First reading and referral to Local Government and Environment Committee
