



Weathertight Homes Resolution Services (Remedies) Amendment Act 2007

Public Act 2007 No 33
Date of assent 28 August 2007
Commencement see section 2

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Weathertight Homes Resolution Services (Remedies) Amendment Act 2007.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1**Purpose and application of Part 2****3 Principal Act amended**

Part 2 amends the Weathertight Homes Resolution Services Act 2006.

4 Purpose of Part 2

The purpose of Part 2 is to amend the principal Act so a claim brought under it, and that is an eligible claim,—

- (a) may be for general damages (for example, for relevant mental distress), or for any other remedy, that could be claimed in a court of law in relation to, or for consequences of, all or any of specified damage, deficiencies, loss of value, and penetration of water; and
- (b) may be resolved by a determination that is made under it by the tribunal and that is or includes an order requiring the payment of general damages (for example, for relevant mental distress).

5 Claims affected by amendments made by Part 2

(1) The amendments made by Part 2 apply only to the following claims:

- (a) claims brought under the principal Act after the commencement of this Act; and
- (b) claims brought under the principal Act, but not withdrawn, terminated, or otherwise disposed of (for example, through resolution by a settlement agreement, or by a determination by the tribunal), before the commencement of this Act; and

- (c) claims adjudication of which was initiated under the Weathertight Homes Resolution Services Act 2002 (in this Act called the **former Act**) before the transition date and that,—
 - (i) under section 149 of the principal Act must, if they are not withdrawn before they are disposed of under the former Act, be dealt with in accordance with section 148 of the principal Act by a person specified in section 149(1) of the principal Act; and
 - (ii) are not withdrawn, terminated, or otherwise disposed of before the commencement of this Act.
- (2) The claims in subsection (1)(a) and (b) include claims—
 - (a) brought under the former Act; and
 - (b) of the kind specified in subsection (1)(c); and
 - (c) that are withdrawn and adjudicated under the principal Act in accordance with section 150 or 153, and subject to the relevant modifications specified in subpart 6 of Part 2, of the principal Act.
- (3) A reference in subsection (1)(b) to a claim brought under the principal Act includes a claim to which subpart 3, 4, or 5 of Part 2 of the principal Act applies, and therefore to which Part 1 of the principal Act applies—
 - (a) as if it were a claim brought under the principal Act; and
 - (b) subject to the relevant modifications specified in subpart 3, 4, or 5 of Part 2 of the principal Act.
- (4) A claim disposed of through resolution by a determination of the tribunal, an adjudicator, or a person specified in section 149(1) of the principal Act is disposed of for the purposes of subsection (1) even if that determination is or may be subject to an appeal, a review proceeding, or both.
- (5) If, under subsection (1), the amendments made by Part 2 apply or (as the case requires) do not apply to a claim, they apply or (as the case requires) do not apply to it both—
 - (a) on adjudication at first instance by the tribunal, an adjudicator, or a person specified in section 149(1) of the principal Act; and
 - (b) on any appeal or rehearing, and for the purposes of any review proceeding.

Part 2

Amendments to principal Act

6 Interpretation

Section 8 is amended by inserting the following definitions in their appropriate alphabetical order:

“**damages** means any form of monetary compensation or damages (however described)

“**general damages** means damages that—

“(a) cannot be objectively quantified in monetary terms; and therefore

“(b) are assessed and quantified in broader terms

“**mental distress** means all or any of the following:

“(a) emotional or mental anxiety;

“(b) distress or stress

“**relevant mental distress**, in relation to a claim, means mental distress suffered as a consequence of all or any of the damage, deficiencies, loss of value, and penetration of water specified in section 50(1)(a) to (e)”.

7 New section 50 substituted

Section 50 is repealed and the following section substituted:

“50 What remedies may be claimed

“(1) As long as it is an eligible claim, a claim under this Act may be for any remedy that could be claimed in a court of law in relation to, or for consequences of, all or any of the following:

“(a) deficiencies that enabled the penetration of water into the building concerned:

“(b) the penetration of water into the building concerned:

“(c) damage or loss of value caused by the penetration of water into the building concerned:

“(d) loss of value caused by the fact that there are deficiencies in the building concerned:

“(e) deficiencies that are likely in future to enable the penetration of water into the building concerned.

“(2) **Remedy**, in subsection (1), includes (without limitation) general damages (for example, for relevant mental distress).

“(3) Subsections (1) and (2)—

“(a) are not limited or affected by subsection (2)(d), (3)(d), or (4)(d) of section 42; but

“(b) are subject to section 91 (which relates to costs of adjudication proceedings).”

8 How to initiate adjudication

Section 62(3)(c) is amended—

- (a) by omitting “relief or”; and
- (b) by inserting “(see section 50)” after “remedy”.

9 Tribunal’s determination: substance

Section 90(1) is repealed and the following subsections are substituted:

- “(1) The tribunal may make any order that a court of competent jurisdiction could make in relation to a claim in accordance with principles of law.
- “(1A) An order under subsection (1) may require the payment of general damages (for example, for relevant mental distress).
- “(1B) Subsection (1A) does not limit subsection (1).”

10 Claim may continue under former Act or be withdrawn

Section 148(1) is repealed and the following subsection substituted:

- “(1) The claim must be dealt with—
 - “(a) as if Part 1 had not been enacted; and
 - “(b) under the former Act as modified by section 148A.”

11 New section 148A inserted

The following section is inserted after section 148:

“148A How former Act modified for section 148(1)

The former Act must for the purposes of section 148(1) be treated as if it had been amended in the manner specified in Schedule 4.”

12 New Schedule 4 added

The principal Act is amended by adding the Schedule 4 set out in the Schedule.

s 12

Schedule

New Schedule 4 added to principal Act

s 148A

Schedule 4

Modifications to former Act for section 148(1)

Section 5

Insert in their appropriate alphabetical order:

“**damages** means any form of monetary compensation or damages (however described)

“**general damages** means damages that—

“(a) cannot be objectively quantified in monetary terms; and therefore

“(b) are assessed and quantified in broader terms

“**mental distress** means all or any of the following:

“(a) emotional or mental anxiety;

“(b) distress or stress

“**relevant mental distress**, in relation to a claim, means mental distress suffered as a consequence of all or any of the damage, deficiencies, loss of value, and penetration of water specified in section 26A(1)(a) to (d).”

New section 26A

Insert after section 26:

“26A What remedies may be claimed

“(1) As long as it is an eligible claim, a claim under this Act may be for any remedy that could be claimed in a court of law in relation to, or for consequences of, all or any of the following:

“(a) deficiencies that enabled the penetration of water into the building concerned:

“(b) the penetration of water into the building concerned:

“(c) damage or loss of value caused by the penetration of water into the building concerned:

“(d) loss of value caused by the fact that there are deficiencies in the building concerned.

“(2) In subsection (1),—

“**deficiency**, in relation to a building, means any aspect of its design, construction, or alteration, or of materials used in its construction or alteration, that has enabled water to penetrate it

Schedule 4—*continued*

New section 26A—*continued*

“**remedy** includes (without limitation) general damages (for example, for relevant mental distress).

“(3) Subsections (1) and (2)—

“(a) are not limited or affected by section 7(2); but

“(b) are subject to section 43 (which relates to costs of adjudication proceedings).”

Section 42

Insert after section 42(1):

“(1A) An order under subsection (1) may require the payment of general damages (for example, for relevant mental distress).

“(1B) Subsection (1A) does not limit subsection (1).”

Legislative history

21 May 2007	Introduction (Bill 123–1)
24 May 2007	First reading and referral to Social Services Committee
15 June 2007	Reported from Social Services Committee (Bill 123–2)
24 July 2007	Committee of the whole House
8, 9, 14 August 2007	Recommitted (Bill 123–3)
21 August 2007	Third reading
28 August 2007	Royal assent

This Act is administered by the Department of Building and Housing.
