



Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Act 2011

Public Act 2011 No 50
Date of assent 22 July 2011
Commencement see section 2

Contents

	Page
1 Title	3
2 Commencement	3
3 Principal Act amended	3
Part 1	
Amendments to principal Act	
4 New section 3 substituted	3
3 Purpose of this Act	3
5 Overview of this Act	3
6 Interpretation	4
7 New Part 1A inserted	4
Part 1A	
Financial assistance package	
<i>Preliminary</i>	
125A Purpose of this Part	4
125B Interpretation	4
<i>Applications for financial assistance measures</i>	
125C Application for financial assistance measures	7
125D Deadline for application for financial assistance measures	7
	1

	<i>Assessments relating to applications for financial assistance measures</i>	
125E	Assessors may prepare concise assessor's report relating to application for financial assistance measures and provide other advice or recommendation	7
	<i>Restrictions on civil proceedings relating to financial assistance measures</i>	
125F	Protection from liability	8
125G	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	9
	<i>Effect of contribution agreement on civil proceedings relating to dwellinghouse</i>	
125H	Effect of contribution agreement on civil proceedings relating to dwellinghouse	10
	<i>Guarantees or indemnities may be given by Minister</i>	
125I	Minister may give guarantee or indemnity	10
125J	Minister of Finance may specify types of financial institutions and criteria	11
125K	Minister of Finance may specify terms and conditions of guarantees or indemnities	12
125L	Recovery of money paid under guarantee or indemnity	12
125M	Payments in respect of guarantee or indemnity	13

	Part 2	
	Consequential amendment to, and relationship with, Public Finance Act 1989	
8	Consequential amendment to Public Finance Act 1989	13
9	Act does not limit Public Finance Act 1989	13

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Act 2011.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act amended**
This Act amends the Weathertight Homes Resolution Services Act 2006.

**Part 1
Amendments to principal Act**

- 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Section 3 is repealed and the following section substituted: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 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 a package of financial assistance measures to facilitate the repair of those buildings.”
- 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:”.

6 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, 125G, and 125H”.

7 New Part 1A inserted

The following Part is inserted after Part 1:

**“Part 1A
“Financial assistance package
“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.

“125B Interpretation

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

“additional contributing party—

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

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

“(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 dwellinghouse concerned; but

“(b) does not include a claimant or a lender

“agreed repair costs—

“(a) means the costs or expenses that—

“(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—
- “(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
- “**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:
- “(a) a valuer’s report on the valuation of a dwellinghouse before the repair is commenced:
- “(b) design work in relation to or in connection with any repair:
- “(c) project management in relation to or in connection with any repair:
- “(d) building consent in relation to or in connection with any repair:
- “(e) resource consent under the Resource Management Act 1991 in relation to or in connection with any repair:
- “(f) alternative accommodation for the claimant in connection with or as a result of any repair:
- “(g) 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 dwellinghouse at the time of commencement of the repair
- “**contributing party** means the Crown
- “**contribution agreement** means a written agreement that—
- “(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
- “**financial assistance measures** means the measures that comprise—
- “(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
- “(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:
 - “(A) a financial contribution:
 - “(B) the provision of a service:
 - “(C) the supply of goods:
- “(b) a credit support facility that is in the form of a guarantee or indemnity given to a lender under section 125I(2) in respect of—
 - “(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):
 - “(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)

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

“**qualifying claimant** means a claimant who—

- “(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 a dwellinghouse, means the territorial authority for the district in which the dwellinghouse is situated

“**repair**—

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

- “(i) rectify any damage to the 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
- “(ii) make the dwellinghouse weathertight; and
- “(b) includes demolishing the dwellinghouse and rebuilding or re-erecting it, if provided for under the contribution agreement

“**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.

“Applications for financial assistance measures

“**125C Application for financial assistance measures**

A qualifying claimant who wishes to obtain any financial assistance measures in relation to a dwellinghouse may apply to the chief executive in the approved manner.

“**125D Deadline for application for financial assistance measures**

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*

“**125E 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 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:
 - “(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).
- “(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.
- “(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.

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

“125F Protection from liability

- “(1) No civil proceedings may be brought against the 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 a dwellinghouse in accordance with a contribution agreement or the provision of any financial assistance measures to a claimant.
- “(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 Crown.
- “(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 a dwellinghouse in accordance with a contri-

tribution agreement or the provision of any financial assistance measures.

“(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.

“**125G 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 a dwellinghouse if—

“(a) the dwellinghouse is or was the subject of a contribution agreement; and

“(b) the civil proceedings relate to the circumstances that gave rise to the need to repair the 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 a dwellinghouse if—

“(a) the dwellinghouse is or was the subject of a contribution agreement; and

“(b) the civil proceedings relate to the circumstances that gave rise to the need to repair the dwellinghouse in accordance with the contribution agreement.

“(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—

“(a) the claimant receives the first payment from the additional contributing party under the contribution agreement, if the contribution from that additional contribut-

ing party under the agreement is in the form of a financial contribution:

- “(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:
 - “(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.
- “(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.

“Effect of contribution agreement on civil proceedings relating to dwellinghouse

“125H Effect of contribution agreement on civil proceedings relating to dwellinghouse

- “(1) This section applies to civil proceedings that—
- “(a) are not restricted under section 125G; and
 - “(b) relate to a dwellinghouse that is or was the subject of a contribution agreement.
- “(2) In assessing damages in any civil proceedings to which this section applies, the court or tribunal must, to the extent that it is relevant, take into account any contributions made under the contribution agreement.

“Guarantees or indemnities may be given by Minister

“125I Minister may give guarantee or indemnity

- “(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—
- “(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;
 - “(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 125K.
- “(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,—
- “(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.

“125J 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 125I(2); and
 - “(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.
- “(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.

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

“(1) The Minister of Finance may specify the terms and conditions on which guarantees or indemnities may be given under section 125I(2), including (without limitation)—

“(a) the monetary limits of the guarantees or indemnities; and

“(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

“(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 125I(2), he or she must, as soon as practicable, publish in the *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.

“125L Recovery of money paid under guarantee or indemnity

“(1) Any money paid by the Crown under a guarantee or indemnity given under section 125I(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)—

“(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).

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

“**125M Payments in respect of guarantee or indemnity**

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

**Part 2
Consequential amendment to, and
relationship with, Public Finance Act
1989**

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

9 Act does not limit Public Finance Act 1989

Except as provided in section 8, nothing in this Act or the amendments made by this Act limits or affects the operation of the Public Finance Act 1989.

Legislative history

23 November 2010	Introduction (Bill 258–1)
9 December 2010	First reading and referral to Local Government and Environment Committee
20 April 2011	Reported from Local Government and Environment Committee (Bill 258–2)
12 May 2011	Second reading
5 July 2011	Committee of the whole House
7 July 2011	Reported from committee of the whole House (Bill 258–3)
12 July 2011	Third reading
22 July 2011	Royal assent

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