

Weathertight Homes Resolution Services (Remedies) Amendment Bill

Government Bill

As reported from the Social Services Committee

Commentary

Recommendation

The Social Services Committee has examined the Weathertight Homes Resolution Services (Remedies) Amendment Bill and recommends that it be passed with the amendments shown.

The bill amends the Weathertight Homes Resolution Services Act 2006. A recent High Court decision means that neither the Weathertight Homes Resolution Services Act 2002 nor the 2006 Act permits adjudicators or the Weathertight Homes Tribunal to award general damages for mental distress and anxiety. The amendments are to give the adjudicators and the tribunal the same ability as courts of law to make awards for general damages for relevant mental distress. The amendments are of a technical nature.

Appendix

Committee process

The Weathertight Homes Resolution Services (Remedies) Amendment Bill was referred to the committee on 24 May 2007. We received and considered one submission.

We received advice from the Department of Building and Housing, the New Zealand Law Society, and the Ministry of Justice.

Committee membership

Russell Fairbrother (Chairperson)

Sue Bradford

Steve Chadwick

Bob Clarkson

Judith Collins (Deputy Chairperson)

Hon Harry Duynhoven

Dr Paul Hutchison

Lynne Pillay

Heather Roy

Katrina Shanks

Judy Turner

**Weathertight Homes Resolution
Services (Remedies) Amendment**

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon Clayton Cosgrove

Weathertight Homes Resolution Services (Remedies) Amendment Bill

Government Bill

Contents

	Page
1 Title	1
2 Commencement	1
3 Principal Act amended	2
Part 1	
General provisions	
4 Purpose of this Act	2
5 Claims affected by amendments made by this Act	2
Part 2	
Amendments to principal Act	
9 Interpretation	5
10 New section 50 substituted	5
50 What remedies may be claimed	5
11 How to initiate adjudication	6
12 Tribunal's determination: substance	6
13 Claim may continue under former Act or be withdrawn	6
14 New section 148A inserted	6
148A How former Act modified for section 148(1)	6
15 New Schedule 4 added	6
Schedule	
New Schedule 4 added to principal Act	

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. 5

- 3 Principal Act amended**
This Act amends the Weathertight Homes Resolution Services Act 2006.

Part 1
General provisions 5

- 4 Purpose of this Act**
The purpose of this Act 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 10
 - (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). 15
- 5 Claims affected by amendments made by this Act**
- (1) The amendments made by this Act apply only to the following claims: 20
 - (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 25
 - (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,— 30
 - (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 35

- (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 (*in the way contemplated by **section 7(a)***) 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.

Struck out (unanimous)

- (4) The former Act applies to a claim that was the subject of the proceeding *Hartley & Another v Balemi & Others* (High Court, Auckland, CIV 2006-404-002589, 29 March 2007, Stevens J) as if this Act had not been enacted.
- (5) **Subsection (4)** overrides **subsections (1) to (3)**.

New (unanimous)

- (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 this Act 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—

New (unanimous)

- | | | |
|-----|--|---|
| (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. | 5 |

Struck out (unanimous)

- | | | |
|----------|---|----|
| 6 | Amending affected claims to include remedies available | |
| | Nothing in this Act prevents the claimant concerned from amending a claim of the kind specified in section 5(1)(b) or (c) , at any time before it is withdrawn, terminated, or otherwise disposed of, to include in it a claim for any remedy that may be claimed under— | 10 |
| | (a) section 50 of the principal Act (as substituted by section 10 of this Act); or | |
| | (b) section 26A of the former Act (a modification of that Act required by section 148A of the principal Act inserted by section 14 of this Act). | 15 |
| 7 | Ability to withdraw claim under former Act to have it adjudicated under principal Act not affected by this Act | |
| | Nothing in this Act prevents a claim of the kind specified in section 5(1)(c) from being— | 20 |
| | (a) 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; or | |
| | (b) withdrawn under section 30 of the former Act (as contemplated by section 148(4) of the principal Act). | 25 |
| 8 | Determinations not affected by this Act | |
| | This Act does not affect determinations made before the commencement of this Act, whether they are made— | |
| | (a) by the tribunal, and under the principal Act; or | 30 |
| | (b) by an adjudicator or a person specified in section 149(1) of the principal Act, and under the former Act. | |

Part 2 Amendments to principal Act

9 Interpretation

Section 8 is amended by inserting the following definitions in their appropriate alphabetical order: 5

“**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 10

“(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 (*claimant*) claim, 15
means mental distress suffered (*by the claimant*) 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)**”.

10 New section 50 substituted

Section 50 is repealed and the following section substituted: 20

“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: 25

“(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: 30

“(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). 35

“(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).”

11 How to initiate adjudication

Section 62(3)(c) is amended—

- (a) by omitting “relief or”; and 5
- (b) by inserting “(see **section 50**)” after “remedy”.

12 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. 10
- “(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)**.” 15

13 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— 20
 - “(a) as if Part 1 had not been enacted; and
 - “(b) under the former Act as modified by **section 148A**.”

14 New section 148A inserted

The following section is inserted after section 148:

- “**148A How former Act modified for section 148(1)** 25
 - 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**.”

15 New Schedule 4 added

The principal Act is amended by adding the **Schedule 4** set out in the **Schedule**. 30

Schedule cl 15
New Schedule 4 added to principal Act

Schedule 4 s 148A
Modifications to former Act for section 148(1)

Section 5	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	10
“(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	15
“ relevant mental distress , in relation to a (<i>claimant</i>) <u>claim</u> , means mental distress suffered (<i>by the claimant</i>) 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) .”	20
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:	25
“(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:	30
“(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	35

Schedule 4—*continued*

New section 26A—*continued*

construction or alteration, that has enabled water to penetrate it

“**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

5

“(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).

10

“(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

