

House of Representatives

# Supplementary Order Paper

Wednesday, 23 September 2015

**Weathertight Homes Resolution Services Amendment Bill**

*Proposed amendments for the consideration of the Committee of the whole House*

**Key:**

- **this is inserted text**
- **~~this is deleted text~~**

**Note:** This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**



### **Explanatory note**

This Supplementary Order Paper makes 3 amendments to the Weathertight Homes Resolution Services Amendment Bill, which in turn amends the Weathertight Homes Resolution Services Act 2006 (the **principal Act**).

*Clause 2*, the commencement clause, is amended so that only the amendments made by *clause 7* are brought into force on 23 February 2015 (being the date on which the Bill was introduced into the House of Representatives). The rest of the Bill will now come into force on the day after the date on which it receives the Royal assent.

*Clause 7* is amended solely to remove those provisions in the clause relating to the insertion of *new subpart 9 of Part 2* into the principal Act. Those amendments are moved into *new clause 8*. This is necessary to avoid *new subpart 9* coming into force on the date on which the Bill was introduced.

*New clause 8* is inserted into the Bill to house the amendments to the principal Act that are moved from *clause 7*. The amendments are unchanged, except as follows:

- a new paragraph is added to the definition of affected claimant in *new section 165* to clarify that the claimant's claim must have been brought under the principal Act within 10 years of the date of the issue of the code compliance certificate for the building work in question (or, if more than 1 certificate was issued, the day on which the final certificate was issued):
- the requirement in *new section 165* for a claimant to still own the dwelling-house immediately before 23 February 2015 is amended so that the critical date is now that on which the section comes into force. This is to avoid catching into the definition in that clause claimants who dispose of a dwellinghouse between the date on which the Bill was introduced and the date on which *new section 165* comes into force (being the day after the date on which Royal assent is given).

### **Departmental disclosure statement**

The Ministry of Business, Innovation, and Employment considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.

**The Honourable Dr Nick Smith, in Committee, to propose the amendments shown in the following document.**



*Hon Dr Nick Smith*

# **Weathertight Homes Resolution Services Amendment Bill**

Government Bill

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

**1 Title**

This Act is the Weathertight Homes Resolution Services Amendment Act **2014**.

**2 Commencement**

- (1) This Act **Section 7** is deemed to have come into force on 23 February 2015.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

**3 Principal Act**

This Act amends the Weathertight Homes Resolution Services Act 2006 (the **principal Act**).

**Part 1**  
**Amendments to Part 1A**

**4 Section 125B amended (Interpretation)**

- (1) In section 125B(1) and (2), after “In this Part”, insert “and **subpart 8** of Part 2”.
- (2) In section 125B(1), replace the definition of **qualifying claimant** with:  
**qualifying claimant** has the meaning given in **section 125BA**
- (3) In section 125B(1), insert in their appropriate alphabetical order:  
**2011 Gazette notice** means the notice published in the *Gazette* on 28 July 2011, at pp 3198 and 3199, issued under this Act and entitled “Contribution Criteria: Financial Assistance Package”  
**participating territorial authority** means the relevant territorial authority if it has agreed to participate in the package of financial assistance measures

**5 New sections 125BA and 125BB and cross-heading inserted**

After section 125B, insert:

**125BA Meaning of qualifying claimant**

- (1) In this Part, **qualifying claimant** means a claimant who has an eligible claim in respect of a dwellinghouse and who—
  - (a) meets—
    - (i) the contribution criteria specified by the chief executive in either clause 1 of the 2011 *Gazette* notice (as amended by the Weather-tight Homes Resolution Services Amendment Act **2014**) or any other notice in the *Gazette* that the chief executive has issued for the purposes of setting contribution criteria; and
    - (ii) the contribution criteria specified in **subsection (2)**; or
  - (b) in the chief executive’s opinion, is taking all reasonable steps to meet the contribution criteria described in **paragraph (a)**.
- (2) The contribution criteria referred to in **subsection (1)(a)(ii)** are as follows:
  - (a) if the claimant has applied for adjudication under this Act (regardless of whether the claimant has commenced mediation or adjudication) and the relevant participating territorial authority was either named as a party in the application or later joined to the application, then—
    - (i) the participating territorial authority must agree to the claimant receiving a financial contribution under the package of financial assistance measures; and
    - (ii) the claimant must withdraw from adjudication in accordance with section 67; and
  - (b) if the claimant has applied for or is involved in any other civil proceedings relating to the weathertightness of the dwellinghouse to which the relevant participating territorial authority is named as a party, or has been joined as a party,—
    - (i) the participating territorial authority must agree to the claimant receiving a financial contribution under the package of financial assistance measures; and
    - (ii) the claimant must discontinue the civil proceedings entirely; and
    - (iii) if the claimant has applied for mediation or adjudication under the Act in respect of the same dwellinghouse, the claimant must also comply with **paragraph (a)(ii)**.
- (3) To avoid doubt, a claimant is not required to withdraw an application for adjudication under **subsection (2)(a)**, or to discontinue civil proceedings under **subsection (2)(b)**, until all other applicable criteria that a person needs to meet in order to become a qualifying claimant are met.

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*Eligibility for financial assistance measures*

**125BB Eligibility for financial assistance measures**

- (1) All qualifying claimants are eligible for financial assistance measures from the Crown.
- (2) Only those qualifying claimants who also meet the criteria specified in clause 2 of the 2011 *Gazette* notice (or the equivalent clause in any other *Gazette* notice) are eligible for financial assistance measures from participating territorial authorities.

**Part 2**

**Consequential amendments, validations, and transitional amendments**

**6 Section 4 amended (Overview of this Act)**

Replace section 4(i) with:

- (i) Part 2—
  - (i) repeals the Weathertight Homes Resolution Services Act 2002; and
  - (ii) makes consequential amendments; and
  - (iii) specifies how Part 1 of this Act applies to, and who is to deal with, claims under the Weathertight Homes Resolution Services Act 2002 that have not been disposed of before the transition date (1 April 2007); and
  - (iv) validates certain matters in relation to the 2011 *Gazette* notice; and
  - (v) deems certain claims to be eligible claims under the Act.

**7 New ~~subparts 8 and 9~~ subpart 8 of Part 2 inserted**

In Part 2, after subpart 7, insert:

Subpart 8—Validations connected to 2011 *Gazette* notice

**161 Validation of clauses 1B and 1C of 2011 *Gazette* notice**

Clauses 1B and 1C of the 2011 *Gazette* notice were validly made and have always been valid.

**162 Certain decisions not invalid because of lack of agreement by participating territorial authority**

- (1) A decision referred to in **subsection (2)** is not invalid merely because a participating territorial authority did not agree to the claimant receiving a financial contribution under the package of financial assistance measures.



- (2) This subsection refers to a decision, made before 23 February 2015, that a claimant was not a qualifying claimant because the criteria in clause 1B or 1C of the 2011 *Gazette* notice were not met.

**163 Certain applications continue on basis of law as amended**

- (1) This section applies to an application made under section 125C but not decided before the commencement of this section.
- (2) For the purposes of determining the application, the amendments made by the Weathertight Homes Resolution Services Amendment Act **2014** must be treated as having been in force on and from the time the application was made.

**164 Amendments to 2011 *Gazette* notice**

- (1) This section amends the 2011 *Gazette* notice.
- (1A) Delete all the words after the heading “**Contribution Criteria: Financial Assistance Package**” and before the heading “**Definitions**”.
- (2) In clause 1, delete “To qualify for a contribution from the Crown, all of the criteria in this clause 1 must be met.”.
- (3) Revoke clauses 1B and 1C.
- (4) In clause 2, delete “Subject to clause 2C, to qualify for a contribution from a Participating Territorial Authority:”.
- (5) Revoke clause 2A.

~~Subpart 9—Certain claimants deemed to have eligible claims~~

**165 Meaning of affected claimant**

In ~~section 166~~, **affected claimant** means a person to whom the following circumstances apply:

- (a) the person brought a claim under section 9 in respect of the construction or alteration of a dwellinghouse for which—
- (i) 1 or more code compliance certificates were issued for the relevant building work; and
  - (ii) the certificate or certificates were issued before 1 January 2012; and
- (b) the chief executive or the chair decided, within the period starting on 1 April 2007 and ending on 10 June 2014, that the claim was not an eligible claim; and
- (c) the sole reason for the chief executive’s or the chair’s decision was that the claim failed to satisfy the criteria in, as the case may be, section 14(a), 15(e), 16(a), 17(a), or 18(e); and
- (d) in reaching that decision, the chief executive or the chair treated the date on which the dwellinghouse was constructed or altered as a date earlier

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~~than the date on which the code compliance certificate for the relevant building work was issued (or, if more than 1 code compliance certificate was issued, the date on which the final code compliance certificate was issued); and~~

- ~~(e) immediately before 23 February 2015, the person still owned the dwellinghouse.~~

**166 Affected claimants deemed to have eligible claims**

- ~~(1) An affected claimant is deemed to have an eligible claim under this Act in respect of the dwellinghouse concerned, and the provisions of this Act and the 2011 *Gazette* notice (as amended by the Weathertight Homes Resolution Services Amendment Act **2014**) apply accordingly, subject to the rest of this section.~~
- ~~(2) A claim must be treated as eligible on and from the date on which the claim would have been an eligible claim if the chief executive or the chair had originally decided the claim in the person's favour.~~
- ~~(3) Clause 1G of the 2011 *Gazette* notice does not apply to an affected claimant.~~
- ~~(4) A claim must be treated as satisfying the requirements of clause 1H(i) and (ii) and I(i) and (ii) of the 2011 *Gazette* notice.~~
- ~~(5) To avoid doubt, this section does not automatically confer on an affected claimant the status of a qualifying claimant.~~

**8 New subpart 9 of Part 2 inserted**

In Part 2, after subpart 8 (as inserted by **section 7** of this Act), insert:

Subpart 9—Certain claimants deemed to have eligible claims

**165 Meaning of affected claimant**

In **section 166**, **affected claimant** means a person to whom the following circumstances apply:

- (a) the person brought a claim under section 9 in respect of the construction or alteration of a dwellinghouse for which—
- (i) 1 or more code compliance certificates were issued for the relevant building work; and
- (ii) the certificate or certificates were issued before 1 January 2012; and
- (b) the claim was brought within the period of 10 years immediately before the day on which the code compliance certificate was issued (or, if more than 1 certificate was issued, the day on which the final certificate was issued); and

- (c) the chief executive or the chair decided, within the period starting on 1 April 2007 and ending on 10 June 2014, that the claim was not an eligible claim; and
- (d) the sole reason for the chief executive's or the chair's decision was that the claim failed to satisfy the criteria in, as the case may be, section 14(a), 15(c), 16(a), 17(a), or 18(c); and
- (e) in reaching that decision, the chief executive or the chair treated the date on which the dwellinghouse was constructed or altered as a date earlier than the date on which the code compliance certificate for the relevant building work was issued (or, if more than 1 certificate was issued, the date on which the final certificate was issued); and
- (f) on the commencement of this section, the person still owned the dwellinghouse.

**166 Affected claimants deemed to have eligible claims**

- (1) An affected claimant is deemed to have an eligible claim under this Act in respect of the dwellinghouse concerned, and the provisions of this Act and the 2011 *Gazette* notice (as amended by the Weathertight Homes Resolution Services Amendment Act **2014**) apply accordingly, subject to the rest of this section.
- (2) A claim must be treated as eligible on and from the date on which the claim would have been an eligible claim if the chief executive or the chair had originally decided the claim in the person's favour.
- (3) Clause 1G of the 2011 *Gazette* notice does not apply to an affected claimant.
- (4) A claim must be treated as satisfying the requirements of clause 1H(i) and (ii) and I(i) and (ii) of the 2011 *Gazette* notice.
- (5) To avoid doubt, this section does not automatically confer on an affected claimant the status of a qualifying claimant.