

House of Representatives  
Supplementary Order Paper

Thursday, 7 July 2011

Weathertight Homes Resolution Services  
(Financial Assistance Package) Amendment Bill

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*Proposed amendments*

Phil Twyford, in Committee, to move the following amendments:

*Clause 6: new section 125F*

To omit this section (line 11 on page 10 to line 27 on page 11) and substitute the following section:

**“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) Upon the claimant entering into a contribution agreement,—
- “(a) the contributing party, and any additional contributing party, is discharged from any liability to the claimant in respect of the claim other than the obligation to make payments under the contribution agreement; and
  - “(b) the claimant is not entitled to name, or join, the contributing party and, if applicable, any additional contributing party as a defendant or respondent in any civil proceedings relating to the claim; and
  - “(c) subject to **subsection (2)**, no other person is—
    - “(i) entitled any remedy or relief from the contributing party and, if applicable, any additional contributing party relating to the claim that is the subject of the contribution agreement; and
    - “(ii) entitled to name, or join, the contributing party and, if applicable, any additional contributing party as a party to any civil proceedings relating to the claim that is the subject of the contribution agreement.

- “(2) Despite **subsection (1)(c)**, a person who is not a party to a contribution agreement is entitled to a remedy or relief from the contributing party and, if applicable, any additional contributing party and to name, or join, the contributing party and, if applicable, any additional contributing party, as a party to any civil proceedings relating to the claim that is the subject of the contribution agreement if they satisfy the court or tribunal hearing the civil proceeding that—
- “(a) there is an arguable claim against the contributing party and, if applicable, any additional contributing party; and
- “(b) it is more likely than not that the liability of the contributing party and, if applicable, any additional contributing party, will exceed the amount of the contribution to be paid by that party under the contribution agreement.
- “(3) In any civil proceeding against the contributing party or any additional contributing party joined as a party to civil proceedings under **subsection (2)**, the court or tribunal will deduct any contribution paid by that party under the contribution agreement from any remedy or relief awarded against the party.

*Clause 6: new section 125FB:*

To insert the following section after section 125FA (after line 2 on page 12):

**“125FB Enforcement of contribution agreements**

Every contribution agreement is enforceable as if it were a determination of the tribunal under **section 90**.

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### Explanatory note

This Supplementary Order Paper amends the Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill.

*Section 125F* removes the absolute bar on third party claims against a contributing party under a contribution agreement. In its place there is a presumption against such claims which has to be displaced by the party seeking to join the contributing party in the proceedings proving (on the balance of probabilities) that the claim can succeed and that the contributing party’s liability will exceed the amount of the contribution they have paid or agreed to pay. Such claims can be brought but only if the party seeking to bring the claim against the contributing party, satisfies the court or tribunal hearing the proceeding, that there is an arguable claim against the contributing party and it is more likely than not that the contributing party will have to pay an amount in excess of the contribution which is being paid by that party, under the contribution agreement.

*Section 125FB* is inserted to provide an enforcement provision which allows contribution agreements and any obligations assumed by a party under a contribution agreement to be enforced as if it were a determination of the tribunal and will have full effect from the time it is agreed.

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