

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

Government Bill

As reported from the committee of the whole House

This bill was formerly part of the Weathertight Homes Resolution Services (Remedies) Amendment Bill as reported from the Social Services Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- This bill, comprising Parts 1 and 2 and the Schedule
  - The Building (Consent Authorities) Amendment Bill, comprising Part 3.
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## Key to symbols used in reprinted bill

### As reported from a select committee

#### Struck out (unanimous)

<b>Subject to this Act,</b>	Text struck out unanimously
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#### New (unanimous)

Subject to this Act,	Text inserted unanimously
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<i>(Subject to this Act,)</i>	Words struck out unanimously
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<u>Subject to this Act.</u>	Words inserted unanimously
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### As reported from the committee of the whole House

#### Struck out

<b>Subject to this Act,</b>	Text struck out
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#### New

Subject to this Act,	Text inserted
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*Hon Clayton Cosgrove*

# **Weathertight Homes Resolution Services (Remedies) 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 (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

**Struck out**

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

**Part 1**  
**((General provisions))**  
**Purpose and application of Part 2**

5

**New**

- 3A Principal Act amended**  
**Part 2** amends the Weathertight Homes Resolution Services Act 2006.

- 4 Purpose of ((this Act)) Part 2** 10  
The purpose of ((this Act)) 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 15  
(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). 20

- 5 Claims affected by amendments made by ((this Act)) Part 2**  
(1) The amendments made by ((this Act)) Part 2 apply only to the following claims: 25  
(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 30

- 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,— 5
- (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 10
- (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— 15
- (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. 20
- (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— 25
- (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. 30

**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)**. 35

**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
- (5) If, under **subsection (1)**, the amendments made by ~~(this Act)~~ **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— 10
- (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.

**Struck out (unanimous)**

- 6 Amending affected claims to include remedies available** 15  
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—
- (a) section 50 of the principal Act (as substituted by **section 10** of this Act); or 20
  - (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).
- 7 Ability to withdraw claim under former Act to have it adjudicated under principal Act not affected by this Act** 25  
Nothing in this Act prevents a claim of the kind specified in **section 5(1)(c)** from being—
- (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 30
  - (b) withdrawn under section 30 of the former Act (as contemplated by section 148(4) of the principal Act).

**Struck out (unanimous)**

- 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
  - (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:
- “**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 *(claimant)* claim, 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:
- “**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. 5
- “(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 10
- “(b) are subject to section 91 (which relates to costs of adjudication proceedings).”
- 11 How to initiate adjudication** 15
- Section 62(3)(c) is amended—
- (a) by omitting “relief or”; and
- (b) by inserting “(see **section 50**)” after “remedy”.
- 12 Tribunal’s determination: substance**
- Section 90(1) is repealed and the following subsections are substituted: 20
- “(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). 25
- “(1B) **Subsection (1A)** does not limit **subsection (1)**.”
- 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— 30
- “(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)**

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.**” 5

**15 New Schedule 4 added**

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

. . . . .

10

cl 15 **Schedule  
New Schedule 4 added to principal Act**

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

<b>Section 5</b>	5
Insert in their appropriate alphabetical order:	
“ <b>damages</b> means any form of monetary compensation or damages (however described)	
“ <b>general damages</b> means damages that—	
“(a) cannot be objectively quantified in monetary terms; and therefore	10
“(b) are assessed and quantified in broader terms	
“ <b>mental distress</b> means all or any of the following:	
“(a) emotional or mental anxiety:	
“(b) distress or stress	15
“ <b>relevant mental distress</b> , 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 <b>section 26A(1)(a) to (d)</b> .”	20

**New section 26A**

Insert after section 26:

“ <b>26A What remedies may be claimed</b>	
“(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 <b>subsection (1)</b> ,—	
“ <b>deficiency</b> , 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 10  
general damages (for example, for relevant mental distress).

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

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**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)

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