

Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Weathertight Homes Resolution Services Act 2006 to facilitate the delivery of a financial assistance package to eligible owners of leaky homes (**eligible homeowners**). The financial assistance package aims to help improve eligible homeowners' access to finance required to repair their homes and to divert litigation costs toward repair costs. The high-level design parameters of the financial assistance package are—

- the Crown and the participating territorial authority will each provide a 25% direct payment to agreed repair costs. However, the participating territorial authority will only make a direct payment if it signed off the work;
- if an eligible homeowner opts into the scheme, the homeowner must agree not to sue the participating territorial authority and the Crown (eligible homeowners will still be able to pursue legal action against other parties);
- the Crown will provide assistance to eligible homeowners in accessing bank finance for the remaining agreed repair costs by offering credit support to banks (by way of a limited Crown

guarantee or indemnity) for loans made to eligible homeowners who can meet the banks' lending criteria.

The key features of the Bill include—

- capping the liability of participating territorial authorities (in accordance with a contribution agreement) and the liability of any other contributing parties (for instance, other solvent defendants) for claims being addressed through the financial assistance package. This will help ensure that the financial assistance package diverts litigation costs toward repair costs. If participating territorial authorities or other contributing parties are joined to litigation where they have paid a contribution through the financial assistance package, they will face both the cost of the package and potential ongoing costs of litigation, if any:
- removing the Crown's liability for the failure of repairs made under the financial assistance package and any losses suffered as a result of the actions of the Department of Building and Housing or the Crown under the financial assistance package process. The amendment recognises that the Crown is making a significant contribution to solving the leaky-home problem where it has no liability to do so:
- authorising the appropriate Minister to give a Crown guarantee or indemnity in respect of loans for repairs made under the financial assistance package:
- limiting the period in which eligible homeowners may apply to enter the financial assistance package to 5 years from the time the financial assistance package becomes operational.

Regulatory impact statement

The Department of Building and Housing produced a regulatory impact statement on 6 September 2010 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.dbh.govt.nz/UserFiles/File/Weathertightness/Cabinet-papers/pdf/fap-for-leaky-homes-ris.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Bill will come into force on a date to be appointed by the Governor-General by Order in Council. The reason for the deferred commencement is to allow technical details of the financial assistance package to be developed before these provisions come into force (including the form and content of contribution agreements).

Clause 3 provides that the Bill amends the Weathertight Homes Resolution Services Act 2006 (the **principal Act**).

Clause 4 substitutes a *new section 3*. *New section 3* restates the purpose of the principal Act to include an additional purpose relating to *new Part 1A* (as inserted by *clause 6*). That purpose is to provide for certain matters that underpin the provision of a package of financial assistance measures to facilitate the repair of leaky buildings.

Clause 5 makes a minor consequential amendment to section 4, which provides an overview of the principal Act.

Clause 6 inserts a *new Part 1A* into the principal Act (*new sections 125A to 125K*).

New section 125A sets out the purpose of *new Part 1A*, which 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.

New section 125A confirms that *new Part 1A* is not intended to deal comprehensively with all aspects of the financial assistance package, but is only concerned with certain specific matters that need to be addressed in primary legislation. Those matters include the provision of immunity to the Crown and certain individuals, restrictions on certain civil proceedings, and the framework required for the provision of a Crown guarantee or indemnity in relation to the financial assistance package. Many of the detailed provisions relating to the financial assistance package are not covered by the Bill because they can be dealt with administratively by the chief executive of the Department of Building and Housing.

New section 125B(1) contains definitions of terms used in *new Part 1A*. Key terms include—

- affected dwellinghouse, which is defined to mean a dwellinghouse to which an eligible claim relates; and

- agreed repair costs, which is defined to mean the costs and expenses that a claimant may incur under a contribution agreement to effect any repair; and
- contribution agreement, which is defined to mean a written agreement that sets out the terms and conditions for the provision of financial assistance measures to the claimant; and
- financial assistance measures, which is defined to mean measures that comprise a financial support facility in the form of direct financial contributions to a claimant towards the agreed repair costs of an affected dwellinghouse and a credit support facility in the form of a Crown guarantee or indemnity given to a lender in respect of any loan advanced by the lender to a claimant for the sole purpose of meeting the balance of the agreed repair costs of an affected dwellinghouse that are not otherwise covered by the direct financial contributions to the claimant; and
- repair, which is defined to mean any repair to an affected dwellinghouse that is the subject of a contribution agreement that the parties to the agreement have agreed is directly necessary to rectify any damage to the affected 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 to make the affected dwellinghouse weathertight.

New section 125B(2) clarifies that certain terms that are defined in section 8 of the principal Act and used, but not defined, in *new Part 1A* have the meanings given to them by section 8. These terms include civil proceedings, claim, claimant, dwellinghouse, and eligible claim.

New section 125C provides that a qualifying claimant who wishes to obtain any financial assistance measures in relation to an affected dwellinghouse may apply to the chief executive of the Department of Building and Housing in the approved manner. A qualifying claimant is a claimant who meets the eligibility criteria (if any) for the financial assistance package specified by the chief executive of the Department of Building and Housing by notice in the *Gazette*.

New section 125D provides that an application for financial assistance measures must be made no later than 5 years after the commencement of the section.

New section 125E protects the contributing party (ie, the Crown), the Department of Building and Housing, the Treasury, and certain individuals from liability for any loss or damage that is due directly or indirectly to the repair of an affected dwellinghouse or the provision of any financial assistance measures to a claimant.

New section 125F sets out certain restrictions on civil proceedings relating to an affected dwellinghouse if the dwellinghouse is or was the subject of a contribution agreement and the civil proceedings relate to the circumstances that gave rise to the need to repair the dwellinghouse in accordance with that agreement. The restrictions relate to naming or joining the contributing party (ie, the Crown) and, if applicable, any additional contributing party (ie, the territorial authority for the district in which the affected dwellinghouse is situated) as a defendant or a third or subsequent party in such civil proceedings and to seeking any remedy or relief from them. These restrictions will not apply if the contribution agreement is terminated before any payment is made under it by the contributing party or, if applicable, any additional contributing party.

New section 125G authorises the Minister for Building and Construction to give, on behalf the Crown, a guarantee or indemnity in respect of a 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 an affected dwellinghouse that are not otherwise met by the direct financial contributions provided to the claimant under a contribution agreement. (Section 65ZC of the Public Finance Act 1989 makes it unlawful for guarantees or indemnities to be given on behalf of or in the name of the Crown unless expressly authorised by an Act.)

The Minister must give the guarantee or indemnity on any terms and conditions specified by the Minister of Finance.

New section 125H provides that the Minister of Finance may specify types of financial institutions for which guarantees or indemnities may be given under *new section 125G* and criteria that those financial institutions must satisfy.

New section 125I provides that the Minister of Finance may specify terms and conditions on which guarantees or indemnities may be given under *new section 125G*.

New section 125J provides that any money paid by the Crown under a guarantee or indemnity given under *new section 125G* constitutes a debt due to the Crown from the person to whom the guarantee or indemnity was given.

New section 125K provides legislative authority for payments made by the Crown under a guarantee or indemnity given under *new section 125G*.

Clause 7 makes a consequential amendment to the definition of public security in section 65D(2) of the Public Finance Act 1989.

Clause 8 deals with the relationship between the Bill and the Public Finance Act 1989. It provides that, with the exception of the consequential amendment made by *clause 7*, nothing in the Bill or the amendments made by the Bill limits or affects the operation of the Public Finance Act 1989.

Hon Maurice Williamson

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Services (Financial Assistance
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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Act **2010**.
 - 2 Commencement**
This Act comes into force on a date to be appointed by the Governor-General by Order In Council. 5
 - 3 Principal Act amended**
This Act amends the Weathertight Homes Resolution Services Act 2006.
- Amendments to principal Act* 10
- 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 5
- “(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

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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.”. 15

6 New Part 1A inserted

The following Part is inserted after Part 1:

“Part 1A

“Financial assistance package

20

“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. 25

“125B Interpretation

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

“**additional contributing party**—

- “(a) means either or both of the following: 30
 - “(i) the relevant territorial authority, if it agrees to make a financial contribution towards the agreed repair costs of the affected dwellinghouse concerned:

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- “(ii) any other party (if any) who agrees to make a contribution (whether financial or otherwise) towards the agreed repair costs of the affected dwellinghouse concerned; but
- “(b) does not include a claimant or a lender 5
- “**affected dwellinghouse** means a dwellinghouse to which an eligible claim relates
- “**agreed repair costs**—
- “(a) means the costs or expenses that a claimant may incur under a contribution agreement to effect any repair; and 10
- “(b) includes any associated costs; 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: 15
- “(a) design work in relation to or in connection with any repair:
- “(b) project management in relation to or in connection with any repair:
- “(c) building consent in relation to or in connection with any repair: 20
- “(d) alternative accommodation for the claimant in connection with or as a result of any repair:
- “(e) storage for the claimant’s furniture, household appliances, and other household effects in connection with 25
or as a result of any repair if the furniture, household appliances, and other household effects were in the affected dwellinghouse at the time of commencement of the repair
- “**contributing party** means the Crown 30
- “**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 35
- “(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 in the form of direct financial contributions to a claimant from the contributing party and, if applicable, any additional contributing party towards the agreed repair costs of an affected dwellinghouse: 5

“(b) a credit support facility in the form of a guarantee or indemnity given to a lender under **section 125G(2)** in respect of any loan advanced by the lender to a claimant for the sole purpose of meeting the balance of the agreed repair costs of an affected dwellinghouse that are not otherwise covered by the direct financial contributions referred to in **paragraph (a)** 10

“**financial assistance package** means the package of financial assistance measures announced by the Minister on or about 17 May 2010 15

“**lender** means a financial institution of a type specified under **section 125H(1)(a)** that satisfies the criteria specified for it under **section 125H(1)(b)** 20

“**qualifying claimant** means a claimant who meets the eligibility criteria (if any) for the financial assistance package specified by the chief executive by notice in the *Gazette*

“**relevant territorial authority**, in relation to an affected dwellinghouse, means the territorial authority for the district in which the affected dwellinghouse is situated 25

“**repair**—

“(a) means any repair to an affected dwellinghouse that is the subject of a contribution agreement that the parties to the agreement have agreed is directly necessary to— 30

“(i) rectify any damage to the affected 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 35

“(ii) make the affected dwellinghouse weathertight; and

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“(b) includes demolishing the affected 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. 5

“(2) In this Part, unless the context otherwise requires, **approved, chief executive, civil proceedings, claim, claimant, court of competent jurisdiction, damages, department, dwelling-house, eligible claim, leaky building**, and **Minister** have the meanings given to them by section 8. 10

“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 an affected dwellinghouse may apply to the chief executive in the approved manner. 15

“**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. 20

“Restrictions on civil proceedings relating to financial assistance measures

“**125E Protection from liability**

“(1) No civil proceedings may be brought against the contributing party, 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 an affected dwellinghouse in accordance with a contribution agreement or the provision of any financial assistance measures to a claimant. 25 30

“(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 or contractor of the department or the Treasury.
- “(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 an affected dwellinghouse in accordance with a contribution agreement or the provision of any financial assistance measures. 5
- “(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. 10
- “**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** 15
- “(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 an affected dwellinghouse if— 20
- “(a) the affected 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 affected dwellinghouse in accordance with the contribution agreement. 25
- “(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 an affected dwellinghouse if— 30
- “(a) the affected 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 affected dwellinghouse in accordance with the contribution agreement. 35
- “(3) This section does not apply if the contribution agreement is terminated before any payment is made under that agreement

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by the contributing party or, if applicable, any additional contributing party.

*“Guarantees or indemnities may be given by
Minister*

- “125G Minister may give guarantee or indemnity** 5
- “(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 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 an affected 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. 10 15
- “(3) The Minister must give the guarantee or indemnity on any terms and conditions specified by the Minister of Finance under **section 125I**.
- “(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,— 20
- “(a) publish in the *Gazette* a statement that the guarantees or indemnities have been given; and 25
- “(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.
- “125H Minister of Finance may specify types of financial institutions and criteria** 30
- “(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 125G(2)**; and
- “(b) criteria for financial institutions to satisfy before those guarantees or indemnities may be given. 35

- “(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. 5

“125I 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 125G(2)**, including (without limitation)— 10
- “(a) the monetary limits of the guarantees or indemnities; and
 - “(b) the form and content of the guarantees or indemnities; and 15
 - “(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 125G(2)**, he or she must, as soon as practicable, publish in the *Gazette* a statement that the terms and conditions have been specified. 20
- “(3) The statement may contain any details about the terms and conditions that the Minister considers appropriate. 25

“125J Recovery of money paid under guarantee or indemnity

- “(1) Any money paid by the Crown under a guarantee or indemnity given under **section 125G(2)** constitutes a debt due to the Crown from the person for whom the guarantee or indemnity was given. 30
- “(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: 35

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“(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. 5

“125K Payments in respect of guarantee or indemnity

Any money paid by the Crown under a guarantee or indemnity given under **section 125G(2)** may be incurred without further appropriation, and must be paid without further authority, than this section.” 10

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

7 Consequential amendment to Public Finance Act 1989

(1) This section amends the Public Finance Act 1989. 15

(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 125G** of the Weathertight Homes Resolution Services Act 2006”. 20

8 Act does not limit Public Finance Act 1989

Except as provided in **section 7**, nothing in this Act or the amendments made by this Act limits or affects the operation of the Public Finance Act 1989.