

**Reprint**  
**as at 1 April 2007**

**Weathertight Homes Resolution  
Services Act 2002**

Public Act    2002 No 47  
Date of assent    26 November 2002  
Commencement    see section 2

Weathertight Homes Resolution Services Act 2002: repealed, on 1 April 2007,  
by section 126 of the Weathertight Homes Resolution Services Act 2006 (2006  
No 84).

**Contents**

	Page
1    Title	4
2    Commencement	4
<b>Preliminary provisions</b>	
3    Purpose	4
4    Overview	4
5    Interpretation	5

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

**The Weathertight Homes Resolution Services Act 2002 is administered by the Department of Internal Affairs.**

6	Act binds the Crown	7
	<b>Assessment and evaluation of claims</b>	
7	Criteria for eligibility of claims for mediation and adjudication services	8
8	Assessors	8
9	Application for assessor's report	9
10	Assessor's report	9
11	Evaluation panels	10
12	Evaluation of assessor's report	10
	<b>Mediation of claims</b>	
13	Mediation services	11
14	Access to mediation services	12
15	Procedure in relation to mediation services	12
16	Confidentiality	13
17	Settlements	14
18	Enforcement of terms of settlement agreed or authorised	15
19	Mediation services not to be questioned as being inappropriate	15
20	Independence of mediation personnel	16
21	Other mediation services	16
	<b>Adjudication of claims</b>	
22	Right to refer claims to adjudication	17
23	Effect on other dispute resolution procedures	18
24	Appointment of adjudicators	18
25	Manner of provision of adjudication services	18
	<b>Procedure for initiating adjudication</b>	
26	How to initiate adjudication	19
27	Assignment of adjudicator to claim	20
28	Response to adjudication claim	20
	<b>Conduct of adjudication proceedings</b>	
29	Jurisdiction of adjudicators	20
30	Withdrawal of adjudication proceedings	21
31	Termination of proceedings by adjudicators	21
32	Consolidation of adjudication proceedings	21
33	Joinder of parties	22
34	Removal of party from proceedings	22
35	Duties of adjudicator	23
36	Powers of adjudicator	23
37	When adjudicator's powers not affected	24

38	Adjudicator may draw inferences and determine claim based on available information	25
39	Other provisions relating to adjudication proceedings	25
	<b>Adjudicator's determination</b>	
40	Adjudicator's determination: timing	25
41	Adjudicator's determination: form	26
42	Adjudicator's determination: substance	27
43	Costs of adjudication proceedings	27
	<b>Appeal from adjudicator's determination</b>	
44	Right of appeal	28
45	Procedure for commencing appeal	29
46	Determination of appeal	29
47	Effect of appeal on adjudicator's determination	30
	<b>Enforcement of adjudicator's determination</b>	
48	Duty to comply with adjudicator's determination	30
49	Enforcement of adjudicator's determination	30
	<b>Miscellaneous matters relating to adjudication</b>	
50	Parties may be represented at adjudication proceedings	31
51	Adjudication proceedings usually to be in public	31
52	Records of adjudication	32
53	Adjudication determinations to be made available	32
54	Adjudicators not compellable witnesses	33
55	Application of other enactments to adjudications	33
	<b>Miscellaneous provisions</b>	
56	Service of notices	34
57	Mediator or adjudicator may decline to deal with claim	34
58	Transfer of claim to court	34
59	Transfer of proceedings from court	35
60	Transfer of proceedings from arbitration	35
61	Exclusion of liability	36
62	Regulations	36
63	Rules of Court: District Courts	37
64	Legal Services Act 2000 amended	37
	<b>Schedule</b>	<b>38</b>
	<b>Adjudicators and adjudications</b>	

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**The Parliament of New Zealand enacts as follows:****1 Title**

This Act is the Weathertight Homes Resolution Services Act 2002.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

**Preliminary provisions****3 Purpose**

The purpose of this Act is to provide owners of dwelling-houses that are leaky buildings with access to speedy, flexible, and cost-effective procedures for assessment and resolution of claims relating to those buildings.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

**4 Overview**

In general terms, this Act provides for the following matters:

(a) *Assessment and evaluation of claims in relation to leaky buildings*

Sections 7 to 12 provide a mechanism for owners of dwellinghouses who consider that their dwellinghouse is a leaky building to—

- (i) submit their claim; and
- (ii) have it, and the nature of the particular problem, assessed and evaluated; and
- (iii) be provided with an assessor's report:

(b) *Mediation of claims*

Sections 13 to 21 make provision for access to a special mediation service that is available to dwellinghouse owners with eligible claims. The claiming owner and any of the other parties against whom the claim is made may agree to refer the claim to mediation, with provision for binding settlements by agreement:

(c) *Compulsory adjudication of claims*

Sections 22 to 55, and the Schedule, set up a mechanism whereby dwellinghouse owners can have their eligible claims referred to adjudicators whose powers and procedures are flexible and whose determinations, subject to appeal, are binding and enforceable:

(d) *Miscellaneous provisions*

Sections 56 to 64 set out various miscellaneous matters that underpin the substantive provisions of this Act.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). See sections 128 to 160 of that Act for the transitional provisions. See clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## 5 Interpretation

In this Act, unless the context otherwise requires,—

**adjudication** means an adjudication initiated by a claimant under section 26, or by a transfer of proceedings under section 59 or section 60

**adjudicator** means a person appointed under section 24 to determine a claim that has been referred to adjudication

**approved** means approved by the chief executive

**arbitral tribunal** has the meaning given to it by section 2(1) of the Arbitration Act 1996

**arbitration** has the meaning given to it by section 2(1) of the Arbitration Act 1996

**assessor** means an assessor appointed under section 8

**chief executive** means the chief executive of the Department

**civil proceedings** includes—

- (a) arbitration; and

- (b) for the purposes of sections 16 and 54, proceedings before an adjudicator under this Act or under the Construction Contracts Act 2002

**claim** means a claim by the owner of a dwellinghouse that the owner believes—

- (a) is a leaky building; and
- (b) has suffered damage as a consequence of it being a leaky building

**claimant** means an owner of a leaky building—

- (a) who makes an application under section 9(1); or
- (b) whose claim is transferred to mediation or adjudication under section 59 or section 60

**court of competent jurisdiction** means—

- (a) a High Court; or
- (b) a District Court, if the amount claimed or in issue does not exceed the amount to which the jurisdiction of the District Court is limited in civil cases

**Department** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**Disputes Tribunal** means a Disputes Tribunal established under section 4 of the Disputes Tribunals Act 1988

**dwellinghouse** —

- (a) means any building, or any apartment, flat, or unit within a building, that is intended to have, as its principal use, occupation as a private residence; and
- (b) includes any gate, garage, shed, or other structure that is an integral part of the building; but
- (c) does not include a hospital, hostel, hotel, motel, rest home, or other institution

**eligible claim** means a claim by the owner of a dwellinghouse that has been evaluated by an evaluation panel as meeting the criteria set out in section 7(2)

**evaluation panel** means a panel convened under section 11

**leaky building** means a dwellinghouse into which water has penetrated as a result of any aspect of the design, construction, or alteration of the dwellinghouse, or materials used in its construction or alteration

**mediation** means mediation initiated under this Act

**mediator** means a person appointed to provide mediation services under section 13

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**notice of adjudication** means the notice referred to in section 26

**owner**, in relation to a dwellinghouse, includes a shareholder of a company, the principal purpose of which is to own the dwellinghouse or the dwellinghouses within the building concerned

**parties**, in relation to a claim, means the claimant and any 1 or more respondents in relation to that claim

**prescribed** means prescribed by regulations under this Act

**respondent** means a person against whom a claim is made

**working day** means any day other than—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; and
- (b) the day observed in the appropriate area as the anniversary of the province of which the area forms a part; and
- (c) a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **6 Act binds the Crown**

This Act binds the Crown.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of

that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

### **Assessment and evaluation of claims**

#### **7 Criteria for eligibility of claims for mediation and adjudication services**

- (1) A claim may be dealt with under this Act only if—
  - (a) it is a claim by the owner of the dwellinghouse concerned; and
  - (b) it is an eligible claim in terms of subsection (2).
- (2) To be an eligible claim, a claim must, in the opinion of an evaluation panel, formed on the basis of an assessor's report, meet the following criteria:
  - (a) the dwellinghouse to which the claim relates must—
    - (i) have been built; or
    - (ii) have been subject to alterations that give rise to the claim—

within the period of 10 years immediately preceding the date that an application is made to the chief executive under section 9(1); and

- (b) the dwellinghouse is a leaky building; and
- (c) damage to the dwellinghouse has resulted from the dwellinghouse being a leaky building.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

#### **8 Assessors**

- (1) The chief executive must employ or engage persons to prepare reports on claims.
- (2) The chief executive must employ or engage only persons that, in the chief executive's opinion, are suitable to be appointed as assessors, having regard to their knowledge, skills, and experience.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **9 Application for assessor's report**

- (1) An owner of a dwellinghouse who wishes to make a claim may apply to the chief executive to have an assessor's report prepared in relation to the claim.
- (2) An application must be in the approved form (if any) and must be accompanied by the prescribed fee (if any).
- (3) On receiving an application that complies with this section the chief executive must make an initial assessment as to whether the information in the application indicates that the claim meets or is capable of meeting the criteria set out in section 7.
- (4) If the chief executive considers that the information does indicate that the claim meets or is capable of meeting those criteria, the chief executive must arrange for an assessor's report to be prepared on the claim.
- (5) If the chief executive does not consider that the information indicates that the claim meets or is capable of meeting those criteria, the chief executive must—
  - (a) decline to arrange for an assessor's report to be prepared; and
  - (b) advise the claimant of that decision and the reasons for it.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). See sections 128 to 160 of that Act for the transitional provisions. See clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **10 Assessor's report**

- (1) An assessor's report is a report setting out—
  - (a) whether or not, in the assessor's opinion, the claim to which the report relates meets the criteria set out in section 7(2); and
  - (b) if the report states that the claim meets those criteria, the assessor's view as to—
    - (i) the cause of water entering the dwellinghouse; and
    - (ii) the nature and extent of any damage caused by the water entering the dwellinghouse; and
    - (iii) the work needed to make the dwellinghouse watertight and repair that damage; and

- (iv) the estimated cost of that work; and
  - (v) the persons who should be parties to the claim.
- (2) When an assessor's report is completed, the chief executive must—
  - (a) give a copy of it to the claimant; and
  - (b) refer it to an evaluation panel convened under section 11.
- (3) The claimant may, within 10 working days after receiving the copy of the assessor's report, make a submission on the report to the evaluation panel to which the report has been referred.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **11 Evaluation panels**

- (1) The chief executive must convene 1 or more evaluation panels.
- (2) An evaluation panel may consist of such number of persons as the chief executive thinks fit.
- (3) A member of an evaluation panel may also be an assessor, but an assessor may not be a member of an evaluation panel when that panel is considering an assessor's report prepared by that assessor.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **12 Evaluation of assessor's report**

- (1) An evaluation panel must evaluate every assessor's report referred to it under section 10(2) and decide whether the claim to which the report relates meets the criteria set out in section 7(2).
- (2) In evaluating an assessor's report under subsection (1), an evaluation panel—
  - (a) must consider—
    - (i) the assessor's report; and
    - (ii) any submission made by the claimant under section 10(3); but
  - (b) is not required to consider any other information.

- (3) An evaluation panel must, in relation to each assessor's report referred to it,—
  - (a) advise the claimant of its decision as to whether or not the claimant's claim complies with the criteria set out in section 7(2) to be an eligible claim; and
  - (b) if it considers that the claim does not comply with those criteria, advise the claimant of its reasons for that view.
- (4) In the event that the evaluation panel determines that a claim does not meet the criteria set out in section 7(2), the claimant may write to the chief adjudicator within 10 days of receipt of the decision requesting that the decision of the evaluation panel be reviewed.
- (5) The chief adjudicator, on receipt of a letter from the claimant seeking a review, must consider whether or not the decision of the evaluation panel appears to be manifestly unjust.
- (6) In the event that the chief adjudicator determines that the decision of the evaluation panel appears to be manifestly unjust, the chief adjudicator must refer the decision back to the evaluation panel for a new evaluation of whether or not the claim meets the criteria set out in section 7(2).

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **Mediation of claims**

### **13 Mediation services**

- (1) The chief executive must employ or engage persons to provide mediation services to assist persons to resolve, promptly and effectively, eligible claims.
- (2) The chief executive decides how the mediation services are to be provided.
- (3) Any of the mediation services may be provided, for example,—
  - (a) by a telephone, fax, Internet, or email service; or
  - (b) by specialists who—
    - (i) respond to requests or themselves identify how, where, and when their services can best support the object of this Act; or

- (ii) provide their services in the manner, and at the time and place, that are most likely to resolve the eligible claim in question; or
  - (iii) provide their services in all of the ways described in this paragraph.
- (4) Subsection (3) does not limit subsection (2).

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

#### **14 Access to mediation services**

- (1) The claimant and any of the other parties to an eligible claim may agree to refer the claim to mediation under this Act.
- (2) A referral to mediation must be in the approved form (if any) and must be accompanied by a fee of \$200 (or such other amount as is prescribed).
- (3) The form must be signed by all parties to the mediation.
- (4) The owner of the dwellinghouse to which the claim relates is responsible for the payment of the fee referred to in subsection (2).

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

#### **15 Procedure in relation to mediation services**

- (1) Where mediation services are provided, the mediator who provides the services decides what services are appropriate to the particular case.
- (2) The mediator, in providing those services,—
  - (a) may, having regard to the object of this Act and the needs of the parties, follow such procedures, whether structured or unstructured, or do such things as he or she considers appropriate to resolve the claim promptly and effectively; and
  - (b) may receive any information, statement, admission, document, or other material, in any way that he or she thinks fit, whether or not it would be admissible in judicial proceedings.

- (3) A mediator does not have power to determine any matter, even if the mediator is required to do so by the parties.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **16 Confidentiality**

- (1) Except with the consent of the parties or the relevant party, a person who—
- (a) provides mediation services; or
  - (b) is a party to a mediation; or
  - (c) is a person employed or engaged by the Department; or
  - (d) is a person who assists either a mediator or a person to whom mediation services are provided—
- must keep confidential any statement, admission, or document created or made for the purposes of the mediation (including a settlement under section 17) and any information that, for the purposes of the mediation, is disclosed orally in the course of the mediation.
- (2) No person who provides mediation services may give evidence in any civil proceedings, whether under this Act or any other Act, about—
- (a) the provision of the services; or
  - (b) anything related to the provision of the services that comes to his or her knowledge in the course of the provision of the services.
- (3) No evidence is admissible in any court, or before any person acting judicially, of any statement, admission, document, or information that, by subsection (1), is required to be kept confidential.
- (4) Nothing in the Official Information Act 1982 applies to any statement, admission, document, or information disclosed or made in the course of the provision of mediation services to the person providing those services.
- (5) Nothing in this section—
- (a) prevents the discovery or affects the admissibility of any evidence (being evidence that is otherwise discoverable or admissible and that existed independently of the me-

diation process) merely because the evidence was presented in the course of the provision of mediation services; or

- (b) prevents the gathering of information by the Department for research or educational purposes so long as the parties and the specific matters in issue between them are not identifiable; or
- (c) prevents the disclosure by any person employed or engaged by the chief executive to any other person employed or engaged by the chief executive of matters that need to be disclosed for the purposes of giving effect to this Act.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **17 Settlements**

- (1) Where a claim is resolved, in whole or in part, by agreement, whether through the provision of mediation services or otherwise, any person—
  - (a) who is employed or engaged by the chief executive to provide the services; and
  - (b) who holds a general authority, given by the chief executive, to sign, for the purposes of this section, agreed terms of settlement,—may, at the request of the parties to the claim, and under that general authority, sign the agreed terms of settlement.
- (2) A person who receives a request under subsection (1) must, before signing the agreed terms of settlement,—
  - (a) explain to the parties the effect of subsection (4); and
  - (b) be satisfied that, knowing the effect of that subsection, the parties affirm their request.
- (3) A person who signs the agreed terms of settlement must give a statutory declaration in the approved form (if any) that the requirements of this section have been complied with.
- (4) Where, following the affirmation referred to in subsection (2) of a request made under subsection (1), the agreed terms

of settlement to which the request relates are signed by the person empowered to do so,—

- (a) those terms are final and binding on, and enforceable by, the parties; and
- (b) except for enforcement purposes, no party may seek to bring those terms before a court, whether by action, appeal, application for review, or otherwise.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

### **18 Enforcement of terms of settlement agreed or authorised**

- (1) Any agreed terms of settlement that are, under section 17, enforceable by the parties, may be enforced by the District Court in the same manner as an order made or judgment given by the District Court.
- (2) The terms of settlement referred to in subsection (1) must be filed in the District Court before they can be enforced.
- (3) Where any agreed terms of settlement include a requirement that a party to the claim pay money to the claimant, sections 48 and 49 apply to that requirement as if it were imposed by an adjudicator's determination.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

### **19 Mediation services not to be questioned as being inappropriate**

- (1) No mediation services may be challenged or called in question in any proceedings on the ground—
  - (a) that the nature and content of the services was inappropriate; or
  - (b) that the manner in which the services were provided was inappropriate.
- (2) Nothing in subsection (1) or in section 17 prevents any agreed terms of settlement signed under section 17 from being challenged or called in question on the ground that the provisions

of subsection (2) of that section (which relate to knowledge about the effect of a settlement) were not complied with.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **20 Independence of mediation personnel**

- (1) The chief executive must ensure that any person employed or engaged to provide mediation services under section 13—
  - (a) is, in deciding how to handle or deal with any particular claim or aspect of it, able to act independently; and
  - (b) is independent of any of the parties to whom mediation services are being provided in a particular case.
- (2) The chief executive, in managing the overall provision of mediation services, is not prevented by subsection (1) from giving general instructions about the manner in which, and the times and places at which, mediation services are to be provided.
- (3) Any such general instructions may include general instructions about the manner in which mediation services are to be provided in relation to particular types of matters or particular types of situations or both.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **21 Other mediation services**

Nothing in this Act prevents any person seeking and using mediation services other than those provided by the chief executive under this Act.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of

that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **Adjudication of claims**

### **22 Right to refer claims to adjudication**

- (1) The owner of a dwellinghouse that is the subject of an eligible claim has the right to refer the claim to adjudication, except as provided in subsection (3).
- (2) Subsection (1) has effect despite any provision of any existing agreement or contract that requires or provides for—
  - (a) the submission to arbitration of any matter; or
  - (b) the making of an arbitral award as a condition precedent to the pursuit of any other proceedings or remedy.
- (3) An owner of a dwellinghouse may not, however, refer an eligible claim to adjudication, or continue adjudication proceedings, if, and to the extent that, the subject matter of the claim is the subject of—
  - (a) an arbitration that has already commenced; or
  - (b) proceedings initiated by the claimant (including by way of counterclaim) by way of—
    - (i) proceedings in a court or a Disputes Tribunal; or
    - (ii) proceedings under section 177 of the Building Act 2004.
- (4) Subsection (3) does not limit the power of any party to apply for proceedings to be transferred to adjudication under section 59 or agree that they be transferred under section 60.
- (5) In this section, existing agreement or contract means an agreement or contract entered into before the commencement of this Act.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

Subsection (3)(b)(ii) was amended, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72) by substituting the words “section 177 of the Building Act 2004” for the words “section 17 of the Building Act 1991”. *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

**23 Effect on other dispute resolution procedures**

- (1) If a claimant who has referred a claim to adjudication under this Act initiates proceedings of a kind referred to in section 22(3)(a) or (b) during the course of the adjudication,—
  - (a) the claimant must notify the adjudicator; and
  - (b) that notification is to be treated as a notice of withdrawal under section 30, and that section applies accordingly.
- (2) Nothing in this Act prevents the other parties to an adjudication from submitting any matter in relation to a claim to another dispute resolution procedure (for example, to the courts, to arbitration, or to mediation).

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

**24 Appointment of adjudicators**

- (1) Adjudication under this Act is performed by adjudicators appointed under this section.
- (2) Each adjudicator is appointed by the Governor-General on the recommendation of the Minister.
- (3) The Minister must recommend for appointment only persons that, in the Minister's opinion, are suitable to be appointed as adjudicators, having regard to their knowledge, skills, and experience.
- (4) One adjudicator is appointed by the Governor-General as the chief adjudicator.
- (5) The provisions of Part 1 of the Schedule apply to adjudicators.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

**25 Manner of provision of adjudication services**

- (1) The chief adjudicator decides how the adjudication services under this Act are to be provided.
- (2) Adjudication services may be provided, for example,—
  - (a) by a telephone, fax, Internet, or email service; or
  - (b) by adjudicators who—

- (i) respond to requests or themselves identify how, where, and when their services can best support the object of this Act; or
  - (ii) provide their services in the manner, and at the time and place, that are most likely to resolve the claim in question; or
  - (iii) provide their services in all of the ways described in this paragraph.
- (3) Subsection (2) does not limit subsection (1).

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

### **Procedure for initiating adjudication**

#### **26 How to initiate adjudication**

- (1) Adjudication is initiated by a claimant in relation to an eligible claim serving written notice, in the approved form and manner, of the claimant's intention to refer the claim for adjudication (**the notice of adjudication**) on—
- (a) the other party or parties to the adjudication; and
  - (b) the Department.
- (2) The notice of adjudication must state—
- (a) the date of the notice; and
  - (b) the nature and a brief description of the claim and of the parties involved; and
  - (c) the relief or remedy that is sought; and
  - (d) the names and addresses of the parties to the adjudication; and
  - (e) if available, the addresses that the parties have specified for the service of notices.
- (3) Every copy of the notice that is served on another party to the adjudication must be accompanied by a copy of the assessor's report that relates to the claim, and may be accompanied by any other documents.
- (4) The copy of the notice that is served on the Department must be accompanied by a fee of \$400 (or such other amount as is prescribed), less the amount of any fee for mediation services paid by the claimant under section 14.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **27 Assignment of adjudicator to claim**

The chief adjudicator must assign an adjudicator to act in relation to a claim to which a notice under section 26 relates.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **28 Response to adjudication claim**

- (1) A respondent may serve on the adjudicator a written response to the adjudication claim—
  - (a) within 25 working days after receiving that claim; or
  - (b) within any further time that the parties to the adjudication agree; or
  - (c) within any further time that the adjudicator may allow if the adjudicator considers that, in the circumstances, the additional time is reasonably required to enable the respondent to complete the written response.
- (2) The response may be accompanied by any other documents.
- (3) The respondent must serve a copy of the response and any accompanying documents on the claimant and every other party to the adjudication, either before or immediately after they are served on the adjudicator.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **Conduct of adjudication proceedings**

### **29 Jurisdiction of adjudicators**

- (1) In relation to any claim that has been referred to adjudication, the adjudicator is to determine—
  - (a) the liability (if any) of any of the parties to the claimant; and

- (b) remedies in relation to any liability determined under paragraph (a).
- (2) In relation to any liability determined under subsection (1)(a), the adjudicator may also determine—
  - (a) the liability (if any) of any respondent to any other respondent; and
  - (b) remedies in relation to any liability determined under paragraph (a).

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

### **30 Withdrawal of adjudication proceedings**

- (1) An adjudication claim may be withdrawn if—
  - (a) the claimant serves written notice of withdrawal on the adjudicator, unless a respondent objects to the withdrawal and the adjudicator recognises a legitimate interest on the respondent's part in obtaining a determination in respect of the claim; or
  - (b) the parties agree on the withdrawal.
- (2) An adjudicator is not required to determine a claim withdrawn in accordance with this section.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

### **31 Termination of proceedings by adjudicators**

An adjudicator must terminate the adjudication proceedings if the adjudicator considers, on reasonable grounds, that the proceedings should not have commenced, or should not be continued, in terms of section 22(3) or section 23(1).

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

### **32 Consolidation of adjudication proceedings**

If 2 or more adjudication proceedings are pending, the adjudicator may, with the written consent of all of the parties to

those adjudication proceedings, determine those adjudication proceedings at the same time.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

### **33 Joinder of parties**

- (1) An adjudicator may order that a person be joined as a respondent in an adjudication if the adjudicator considers that—
  - (a) the person ought to be bound by, or have the benefit of, an order of the adjudicator; or
  - (b) the person's interests are affected by the adjudication; or
  - (c) for another reason it is desirable the person be joined as a respondent.
- (2) An adjudicator may make an order under subsection (1) on the application of any party or on the adjudicator's own initiative.
- (3) Where an adjudicator makes an order under subsection (1)—
  - (a) the adjudicator must also order the claimant to serve a notice that complies with section 26 on—
    - (i) the person joined as a respondent; and
    - (ii) the other parties to the adjudication; and
    - (iii) the Department; and
  - (b) section 28 then applies to the person joined as a respondent.
- (4) Nothing in subsection (3)(a) requires a claimant to furnish a copy of the assessor's report to any person other than the newly joined respondent, or to pay a further fee under section 26(4).

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

### **34 Removal of party from proceedings**

An adjudicator may, on the application of any party or on the adjudicator's own initiative, order that a person be struck out as a party to the adjudication proceedings if the adjudicator considers it fair and appropriate in all the circumstances.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

### **35 Duties of adjudicator**

- (1) An adjudicator must—
- (a) act independently, impartially, and in a timely manner; and
  - (b) avoid incurring unnecessary expense; and
  - (c) comply with the principles of natural justice; and
  - (d) disclose any conflict of interest to the parties to an adjudication; and
  - (e) if paragraph (d) applies, withdraw from the adjudication unless those parties agree otherwise.
- (2) If a party agrees to an adjudicator continuing to act under subsection (1)(e), the party forfeits any right to object to the adjudicator acting on the basis of any conflict of interest disclosed by the adjudicator under subsection (1)(d) prior to that agreement.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

### **36 Powers of adjudicator**

- (1) An adjudicator may—
- (a) conduct the adjudication in any manner that he or she thinks fit, including adopting an inquisitorial process; and
  - (b) request further written submissions from the parties to the adjudication, but must give the relevant parties an opportunity to comment on those submissions; and
  - (c) request the parties to the adjudication to provide copies of any documents that he or she may reasonably require; and
  - (d) set deadlines for further submissions and comments by the parties; and

- (e) appoint an expert adviser to report on specific issues (as long as the parties are notified before the appointment is made); and
  - (f) call a conference of the parties; and
  - (g) carry out an inspection of the dwellinghouse to which the claim relates (as long as the consent of the owner or occupier is obtained before entry to any land or premises is made); and
  - (h) request the parties to do any other thing during the course of an adjudication that he or she considers may reasonably be required to enable the effective and complete determination of the questions that have arisen in the adjudication; and
  - (i) issue any other reasonable directions that relate to the conduct of the adjudication.
- (2) The parties to the adjudication must comply with any request or direction of the adjudicator made or given in accordance with this section.
- (3) If the owner or occupier referred to in subsection (1)(g) is a party to the adjudication, that party's consent must not be unreasonably withheld.
- (4) An adjudicator also has the powers specified in Part 2 of the Schedule.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

### **37 When adjudicator's powers not affected**

The adjudicator's power to determine a claim is not affected by—

- (a) the failure of a respondent to serve a response on the claimant under section 28; or
- (b) the failure of any of the parties to—
  - (i) make a submission or comment within the time allowed; or
  - (ii) provide specified information within the time allowed; or

- (iii) comply with the adjudicator's call for a conference of the parties; or
- (iv) do any other thing that the adjudicator requests or directs.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

**38 Adjudicator may draw inferences and determine claim based on available information**

If any failure of the kind referred to in section 37 occurs in an adjudication, the adjudicator may—

- (a) draw any inferences from that failure that he or she thinks fit; and
- (b) determine the claim on the basis of the information available to him or her; and
- (c) give any weight that he or she thinks fit to any information provided outside any period that he or she requested or directed.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

**39 Other provisions relating to adjudication proceedings**

The provisions of Part 2 of the Schedule have effect in relation to adjudications.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

**Adjudicator's determination**

**40 Adjudicator's determination: timing**

- (1) An adjudicator must determine a claim—
  - (a) within 35 working days after the end of the period referred to in section 28(1) during which the respondent may serve on the adjudicator a written response to an adjudication claim (or, if there are 2 or more respond-

- ents, within 35 working days after the end of the latest-ending period for response applicable to any of the respondents under section 28(1)); or
- (b) within any further time that the parties to the adjudication agree.
- (2) An adjudicator must give a copy of the determination to every party to the adjudication as soon as practicable after making a determination.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). See sections 128 to 160 of that Act for the transitional provisions. See clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

#### **41 Adjudicator's determination: form**

- (1) An adjudicator's determination—
- (a) must be in the approved form (if any); or
  - (b) if there is no approved form,—
    - (i) must be in writing; and
    - (ii) must contain the reasons for the determination; and
    - (iii) in a case where the adjudicator determines that a party to the adjudication is liable to make a payment, must include a statement setting out the consequences for the party if the party takes no steps in relation to an application to enforce the adjudicator's determination by entry as a judgment.
- (2) Within 2 working days after the date on which a copy of the determination is given to the parties to the adjudication under section 40(2), an adjudicator may, on his or her own initiative, correct in the determination any errors in computation or any clerical or typographical errors or any errors of a similar nature.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). See sections 128 to 160 of that Act for the transitional provisions. See clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

**42 Adjudicator's determination: substance**

- (1) An adjudicator may make any order that a court of competent jurisdiction could make in relation to a claim in accordance with principles of law.
- (2) However, if an adjudicator makes an order under subsection (1) that requires a person to take any action other than the payment of money, the adjudicator must also determine an amount of money that is payable by the person required to take the action, and a date by which that amount is payable if that person fails or refuses to take the action before that date.
- (3) If an adjudicator determines that a party to the adjudication is liable to make a payment to another party, the adjudicator may make that determination subject to any conditions that the adjudicator thinks fit.
- (4) An adjudicator may determine that the liability of a party to the adjudication depends on another party to that adjudication meeting any conditions that the adjudicator may impose.
- (5) If a claim is settled by agreement between the parties before the adjudicator's determination is given, the adjudicator—
  - (a) must terminate the adjudication proceedings; and
  - (b) if requested by the parties, may record the settlement in the form of a determination on agreed terms.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). See sections 128 to 160 of that Act for the transitional provisions. See clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

**43 Costs of adjudication proceedings**

- (1) An adjudicator may determine that costs and expenses must be met by any of the parties to the adjudication (whether those parties are or are not, on the whole, successful in the adjudication) if the adjudicator considers that the party has caused those costs and expenses to be incurred unnecessarily by—
  - (a) bad faith on the part of that party; or
  - (b) allegations or objections by that party that are without substantial merit.
- (2) If the adjudicator does not make a determination under subsection (1), the parties to the adjudication must meet their own costs and expenses.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

### **Appeal from adjudicator's determination**

#### **44 Right of appeal**

- (1) A party to a claim that has been determined by an adjudicator may appeal on a question of law or fact that arises from the determination.
- (2) An appeal must be filed in—
  - (a) the District Court if the amount at issue does not exceed \$200,000; and
  - (b) the High Court if the amount at issue exceeds \$200,000.
- (3) For the purposes of subsection (2), the amount at issue in relation to a determination is—
  - (a) the amount of any money required to be paid under the determination by the person filing the appeal (including any amount determined under section 42(2)); or
  - (b) if the appeal relates to a determination in which the adjudicator has declined to require payment of any amount of money (or money's worth in terms of section 42(2)) to a claimant, or has required payment of an amount of money (or money's worth in terms of section 42(2)) that is less than the amount claimed by the claimant, the amount claimed unsuccessfully by the claimant.
- (4) A claimant may abandon so much of a claim to which an appeal relates as exceeds \$200,000 in order to bring the appeal within the jurisdiction of the District Court.
- (5) Where an appeal is commenced by a person who is required to pay money to a party to a claim, the person may bring the appeal within the jurisdiction of the District Court by paying the other person the difference between the amount required to be paid under the determination and \$200,000.
- (6) Section 182 of the Building Act 2004 does not apply to an appeal under this section.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of

that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

Subsection (6) was amended, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72) by substituting the words “Section 182 of the Building Act 2004” for the words “Section 17(3) of the Building Act 1991”. *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

#### **45 Procedure for commencing appeal**

- (1) An appeal under section 44 must be made by filing a notice, in the prescribed form, in the court nearest to the location of the dwellinghouse (or any of the dwellinghouses) to which the appeal relates.
- (2) The notice must be filed—
  - (a) within 20 working days after the date of the determination to which the appeal relates; or
  - (b) within any further time that the relevant court may allow on application made before or after the expiration of the period referred to in paragraph (a).

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

#### **46 Determination of appeal**

- (1) In its determination of any appeal, the court may do any 1 or more of the following things:
  - (a) confirm, modify, or reverse the determination or any part of it;
  - (b) exercise any of the powers that could have been exercised by the adjudicator in relation to the claim to which the appeal relates.
- (2) A determination under subsection (1)—
  - (a) has effect as if it were a determination made by an adjudicator for the purposes of this Act; and
  - (b) is a final determination of the claim.
- (3) Subsection (2)(b) does not prevent any proceedings between the claimant and respondent to the adjudication to which the appeal relates from being heard and determined at the same time as the appeal.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

**47 Effect of appeal on adjudicator's determination**

An appeal under section 44 does not operate as a stay of the adjudicator's determination unless a District Court Judge, or as the case may be a High Court Judge, on application so determines.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

### **Enforcement of adjudicator's determination**

**48 Duty to comply with adjudicator's determination**

A party to the adjudication must comply with an adjudicator's determination.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

**49 Enforcement of adjudicator's determination**

- (1) Every adjudicator's determination is deemed to be an order of the District Court, and, subject to this section, may be enforced accordingly.
- (2) Where application is made to a District Court for the issue of any process to enforce an adjudicator's determination provided for by section 42(2) (determining an amount of money that is payable by a person required to take any action other than the payment of money), the Registrar must give written notice of the application to the party against whom enforcement is sought.
- (3) If that party does not file in the Court, within 10 working days after receiving notice of the application, a notice of objection in the prescribed form, the order may, after the expiry of that period, be enforced under subsection (1).

- (4) The notice referred to in subsection (3) may be given only on the ground that it is the belief of the party giving it that the order of the adjudicator has been fully complied with and that the party therefore disputes the entitlement of the applicant to enforce it.
- (5) If the party against whom enforcement is sought files the notice referred to in subsection (3) within the prescribed time, the District Court must determine the matter.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

### **Miscellaneous matters relating to adjudication**

#### **50 Parties may be represented at adjudication proceedings**

- (1) A party to a claim that has been referred to adjudication may be represented by the representatives (whether legally qualified or not) that the party considers appropriate.
- (2) Subsection (1) is subject to the adjudicator's power to direct that the number of representatives present at a conference of the parties is to be limited to allow for the efficient conduct of proceedings.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

#### **51 Adjudication proceedings usually to be in public**

- (1) Except as provided in subsection (2), the proceedings of an adjudicator must be conducted in public.
- (2) An adjudicator may, on the application of any party to the proceedings, and after having due regard to the interests of the parties and to the public interest, order that the whole or any part of the proceedings be held in private.
- (3) An adjudicator may, on the application of any party to the proceedings, and after having due regard to the interests of the parties and to the public interest, make an order prohibiting the publication of any report or description of the proceedings

or of any part of the proceedings at any hearing before the adjudicator (whether held in public or in private), but no such order may prohibit the publication of any decision of the adjudicator.

- (4) Despite any order made under subsection (3), the adjudicator may permit a report or description of the proceedings or of any part of the proceedings to be included in any publication that is of a bona fide professional or technical nature.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **52 Records of adjudication**

- (1) The chief executive is responsible for ensuring the safe custody of the records and papers relating to adjudications conducted under this Act for the time being in the chief executive's possession or under the chief executive's control.
- (2) Except where an adjudicator otherwise orders under section 51 or under clause 13 of the Schedule, the records and papers must be available for public inspection, on payment of the prescribed fee (if any), at all reasonable times.
- (3) Any person may, on application to the chief executive and on payment of the prescribed fee (if any), require the chief executive to supply to that person a true copy of any record or paper for the time being in the custody or under the control of the chief executive and available for public inspection under subsection (2).
- (4) A certificate, given under the hand of an adjudicator, to the effect that any such copy is a true copy of the paper to which it relates is, in the absence of proof to the contrary, sufficient evidence that it is a true copy of that record or paper.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **53 Adjudication determinations to be made available**

- (1) The chief executive must give public notice of every determination of an adjudicator.

- (2) Copies of each determination of an adjudicator, which must include the adjudicator's reasons for each determination, must be available by purchase from the Department at a reasonable price.
- (3) Every notice published under subsection (1) is deemed for the purposes of clause 6 of Part I of the First Schedule of the Defamation Act 1992 to be a fair and accurate report of the proceedings of a court in New Zealand.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

#### **54 Adjudicators not compellable witnesses**

An adjudicator may not be required to give evidence in any civil proceedings on anything connected with an adjudication that has come to his or her knowledge in the course of adjudication proceedings.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

#### **55 Application of other enactments to adjudications**

- (1) For the purposes of the Limitation Act 1950, and any other provision that imposes a limitation period, the making of an application under section 9(1) is deemed to be the filing of proceedings in a court.
- (2) Adjudications must be treated as—
  - (a) proceedings for the purposes of section 24 of the Insolvency Act 1967; and
  - (b) actions or proceedings for the purposes of section 42 of the Corporations (Investigation and Management) Act 1989; and
  - (c) legal proceedings for the purposes of section 248 of the Companies Act 1993.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of

that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

### Miscellaneous provisions

#### 56 Service of notices

Any notice or any other document required to be served on, or given to, any person under this Act, or under any regulation made under this Act, is sufficiently served if—

- (a) the notice or document is delivered to that person; or
- (b) the notice or document is left at that person's usual or last known place of residence or business in New Zealand; or
- (c) the notice or document is posted in a letter addressed to the person at that person's place of residence or business in New Zealand; or
- (d) the notice or document is sent in the approved manner (if any).

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

#### 57 Mediator or adjudicator may decline to deal with claim

- (1) A mediator or an adjudicator may decline to deal with a claim if, in the opinion of the mediator or adjudicator,—
  - (a) the subject matter of the claim is trivial; or
  - (b) the claim is frivolous or vexatious; or
  - (c) the claimant is not pursuing the matter in good faith.
- (2) In any case where a mediator or adjudicator decides to decline to deal with a claim, the mediator or adjudicator must inform the parties of that decision and state the reasons for that decision.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

#### 58 Transfer of claim to court

An adjudicator may order a claim to be transferred to a District Court or the High Court in its ordinary civil jurisdiction if—

- (a) the claim presents undue complexity; or
- (b) the claim presents a novel claim; or
- (c) the subject matter of the claim is related to the subject matter of proceedings that are already before the court—

so that, in the adjudicator's view, it is more appropriate for a court to determine the claim.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

#### **59 Transfer of proceedings from court**

- (1) Where proceedings relating to a claim have been commenced in a District Court, a District Court Judge may, on the application of any party, or on the Judge's own motion, order that the proceedings be transferred to mediation or adjudication.
- (2) Where proceedings relating to a claim have been commenced in a High Court, a High Court Judge may, on the application of any party or on the Judge's own motion, order that the proceedings be transferred to mediation or adjudication.
- (3) Where proceedings are transferred under subsection (1) or subsection (2), the adjudicator or mediator may have regard to any notes of evidence transmitted to him or her by the Judge, and it is not necessary for that evidence to be given again in the adjudication or mediation unless the adjudicator or mediator requires it.
- (4) An order to transfer proceedings under subsection (1) or subsection (2) may be made only if—
  - (a) the parties to the proceedings agree to the transfer; or
  - (b) the Judge making the order believes that the transfer is in the best interests of justice.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

#### **60 Transfer of proceedings from arbitration**

- (1) Where an arbitration relating to a claim has commenced, the arbitral tribunal may, with the agreement of the parties to the

arbitration, order that any proceedings before it be transferred to mediation or adjudication.

- (2) Where proceedings are transferred under subsection (1), the adjudicator or mediator may have regard to any notes of evidence transmitted to him or her by the arbitral tribunal, and it is not necessary for that evidence to be given again in the adjudication or mediation unless the adjudicator or mediator requires it.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **61 Exclusion of liability**

- (1) An adjudicator, a mediator, an assessor, or a member of an evaluation panel is not under any civil or criminal liability for anything done, or omitted to be done, in the course of the exercise or intended exercise of any of the adjudicator's or mediator's or assessor's or member of the panel's functions, duties, or powers under this Act.
- (2) Subsection (1) does not exclude the liability of an adjudicator or mediator or assessor or member of an evaluation panel for anything done or omitted to be done in bad faith.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## **62 Regulations**

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing fees for the purposes of this Act:  
(b) prescribing forms for the purposes of this Act:  
(c) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

**63 Rules of Court: District Courts**

- (1) In addition to all other powers conferred by the District Courts Act 1947, the Governor-General may, by Order in Council, make rules regulating the practice and procedure of District Courts in proceedings under this Act.
- (2) Rules may be made under subsection (1) only with the concurrence of—
  - (a) the Chief District Court Judge; and
  - (b) 2 or more members of the Rules Committee established under section 51B of the Judicature Act 1908 of whom at least 1 is a District Court Judge.
- (3) In the absence of any rules under this section, or in any situation not covered by any of those rules, the rules in relation to civil proceedings for the time being in force under the District Courts Act 1947 apply, with all necessary modifications, to proceedings under this Act.

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

**64 Legal Services Act 2000 amended**

- (1) Section 4(1) of the Legal Services Act 2000 is amended by omitting from paragraph (a) of the definition of **civil proceedings** the words “or the Domestic Violence Act 1995”, and substituting the words “the Domestic Violence Act 1995, or sections 22 to 55 of the Weathertight Homes Resolution Services Act 2002”.
- (2) Section 7(1) of the Legal Services Act 2000 is amended by adding the following paragraph:
  - “(p) proceedings before an adjudicator under the Weathertight Homes Resolution Services Act 2002.”

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

**Schedule**

ss 24(5), 36(4), 39

**Adjudicators and adjudications**

This Act was repealed, as from 1 April 2007, by section 126 Weathertight Homes Resolution Services Act 2006 (2006 No 84). *See* sections 128 to 160 of that Act for the transitional provisions. *See* clause 2 Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

## 1

**Appointment of adjudicators****1 Appointment**

- (1) Every adjudicator takes office from the date stated in the notice of appointment.
- (2) A person is not an employee (as defined in section 2 of the State Sector Act 1988) as a result of being appointed as an adjudicator.
- (3) A person appointed as an adjudicator may hold that office concurrently with any other office.

**2 Term of office**

- (1) Except as otherwise provided in this schedule, an adjudicator—
  - (a) holds office for a term not exceeding 3 years; and
  - (b) may be reappointed.
- (2) An adjudicator's term of office referred to in subclause (1)(a) must be stated in the notice of appointment.

**3 Resignation**

An adjudicator may at any time resign from office by written notice given to the Minister.

**4 Vacation of office**

- (1) An adjudicator may at any time be removed from office by the Governor-General for incapacity affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.
- (2) An adjudicator is deemed to have vacated his or her office if he or she is adjudged bankrupt under the Insolvency Act 1967.

1—*continued*

**5 Salaries and allowances**

- (1) There is to be paid to each adjudicator, out of public money, without further appropriation than this clause,—
  - (a) a salary at such rate or in accordance with such scale of rates as the Higher Salaries Commission from time to time determines; and
  - (b) subject to subclause (2), such allowances as are from time to time determined by the Higher Salaries Commission.
- (2) There is to be paid to each adjudicator, in respect of time spent travelling in the exercise of the adjudicator's functions, travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951; and the provisions of that Act apply accordingly as if the adjudicator were a member of a statutory Board and the travelling were in the service of a statutory Board.
- (3) In the case of the chief adjudicator, the rate of salary and the allowances determined may be higher than those for the other adjudicators.
- (4) Nothing in subclause (1) prevents in an appropriate case payment to an adjudicator of a salary and allowances on a per diem basis.

2

Provisions having effect in relation to  
adjudications

**6 Privileged communications**

- (1) Where any party to an adjudication is represented by a person other than a barrister or solicitor, any communications between that party and that person in relation to the adjudication proceedings and to the matter in issue (if it has been before an adjudicator) are as privileged as they would have been if that person had been a barrister or solicitor.
- (2) In subclause (1), **party**, in relation to an adjudication, includes any person who is allowed to appear or be represented in the adjudication proceedings.

*2—continued***7 Evidence**

Any party to an adjudication may give and call evidence.

**8 Witness summons**

- (1) For the purposes of any adjudication, the adjudicator may, on the application of any party to the adjudication, or of the adjudicator's own volition, issue a summons to any person requiring that person to attend the adjudication and give evidence at the hearing of those proceedings.
- (2) A summons may not be issued under subclause (1) to an adjudicator.
- (3) The summons must be in the prescribed form, and may require the person to produce before the adjudicator any books, papers, documents, records, or things in that person's possession or under that person's control in any way relating to the adjudication.

**9 Witnesses' expenses**

- (1) Every person attending before an adjudicator on a summons, and every other person giving evidence before an adjudicator, is entitled, subject to subclause (2), to be paid, by the party calling that person, witnesses' fees, allowances, and travelling expenses according to the scales for the time being prescribed by regulations made under the Summary Proceedings Act 1957, and those regulations apply accordingly.
- (2) The adjudicator may disallow the whole or any part of any sum payable under subclause (1).
- (3) On each occasion on which the adjudicator issues a summons under clause 8, the adjudicator must fix an amount that, on the service of the summons, or at some other reasonable time before the date on which the witness is required to attend, is to be paid or tendered to the witness.
- (4) The amount fixed under subclause (3) is to be the estimated amount of the allowances and travelling expenses (but not fees) to which, in the opinion of the adjudicator, the witness will be entitled, according to the prescribed scales, if the witness attends at the time and place specified in the summons.

*2—continued*

**10 Power to take evidence on oath**

- (1) The adjudicator may take evidence on oath, and for that purpose any adjudicator, or any other person acting under the express or implied direction of the adjudicator, may administer an oath.
- (2) On any indictment for perjury it is sufficient to prove that the oath was administered in accordance with subclause (1).

**11 Party competent as witness**

Any party to proceedings before an adjudicator is competent to give evidence in those proceedings and may be compelled to give evidence as a witness.

**12 Power to dispense with evidence**

In any adjudication the adjudicator may, if he or she thinks fit, dispense with any evidence on any matters on which all parties to the adjudication have agreed.

**13 Power to prohibit publication**

- (1) Despite section 52, in any adjudication the adjudicator may order that all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published, and any such order may be subject to such conditions as the adjudicator thinks fit.
- (2) Where proceedings are resolved by the adjudicator making a determination on agreed terms under section 42(5), the adjudicator may make an order prohibiting the publication of all or part of that determination, subject to such conditions as the adjudicator thinks fit.

**14 Discovery**

- (1) The adjudicator may, in relation to discovery, make any order that a District Court may make under section 56A or section 56B of the District Courts Act 1947; and those sections apply accordingly with all necessary modifications.

*2—continued*

- (2) Every application for an order under section 56A or section 56B of the District Courts Act 1947 (as applied by subclause (1)) is to be dealt with in accordance with regulations made under this Act.

**15 Power to award interest**

- (1) Subject to subclause (2), in any adjudication for the recovery of any money, the adjudicator may, if he or she thinks fit, order the inclusion, in the sum for which a determination is given, of interest, at such rate, not exceeding the 90-day bill rate plus 2%, as the adjudicator thinks fit, on the whole or part of the money for the whole or part of the period between the date when the cause of action arose and the date of payment in accordance with the judgment.
- (2) Subclause (1) does not authorise the giving of interest upon interest.

**16 Power to proceed if any party fails to attend**

If, without good cause shown, any party to a claim before the adjudicator fails to attend or be represented, the adjudicator may act as fully in the matter before him or her as if that party had duly attended or been represented.

**17 Proceedings not invalid for want of form**

No decision or order of the adjudicator, and no proceedings before the adjudicator, are to be held bad for want of form, or be void or in any way vitiated by reason of any informality or error of form.

**18 Proceedings to continue on change of adjudicator**

Where an adjudicator cannot continue to hear a claim and another adjudicator is appointed to continue with the claim, any proceedings then in progress do not abate and are not affected, but are to continue and are to be dealt with by the new adjudicator as if no change had taken place, but the new adjudicator may require evidence to be retaken where necessary.

*2—continued*

**19 Urgency**

Where any party to any proceedings applies to the adjudicator to accord urgency to the hearing of a claim, the adjudicator must consider that application and may, if satisfied that it is necessary and just to do so, order that the proceedings be heard by the adjudicator as soon as practicable.

**20 Proceedings not to abate by reason of death**

- (1) Proceedings before the adjudicator do not abate by reason of the seat of any adjudicator being vacant for any cause whatever, or of the death of any party to the claim.
  - (2) In the latter case, the legal personal representative of the deceased party is to be substituted for the deceased party.
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**Contents**

- 1 General
  - 2 About this eprint
  - 3 List of amendments incorporated in this eprint (most recent first)
- 

**Notes****1 General**

This is an eprint of the Weathertight Homes Resolution Services Act 2002. It incorporates all the amendments to the Weathertight Homes Resolution Services Act 2002 as at 1 April 2007. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

**2 About this eprint**

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

**3 List of amendments incorporated in this eprint  
(most recent first)**

Weathertight Homes Resolution Services Act 2006 (2006 No 84): section 126

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