

**Reprint
as at 1 January 2011**



**Weathertight Homes Resolution
Services Act 2006**

Public Act 2006 No 84
Date of assent 18 December 2006
Commencement see section 2

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Weathertight homes resolution services

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Note

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

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

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- 1 Title**
This Act is the Weathertight Homes Resolution Services Act 2006.
- 2 Commencement**
- (1) The following come into force on the day after the date on which this Act receives the Royal assent:
- (a) section 1 and this section:
 - (b) subpart 7 of Part 2 (transitional provisions relating to appointments, etc).

- (2) The rest of this Act comes into force on 1 May 2007, unless it is brought into force on an earlier date to be appointed by the Governor-General by Order in Council.

Section 2(2): Weathertight Homes Resolution Services Act 2006 (except sections 1 and 2 and subpart 7 of Part 2) brought into force, on 1 April 2007, by the Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21).

Part 1

Weathertight homes resolution services

Subpart 1—Purpose, overviews, and other preliminary provisions

3 Purpose of this Act

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.

Compare: 2002 No 47 s 3

4 Overview of this Act

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

Purpose, overviews, and other preliminary provisions

- (a) subpart 1 of Part 1 sets out preliminary provisions:

Eligibility criteria

- (b) subpart 2 of Part 1 specifies criteria for eligibility of claims for adjudication and mediation services:

Types of claims in respect of multi-unit complexes

- (c) subpart 3 of Part 1 provides for the bringing of claims in relation to multi-unit dwellinghouse complexes (company-share complexes, cross-lease complexes, and unit title complexes) that have been penetrated by water:

Assessment and evaluation of claims, remedies, lower-value claims, and termination of claims

- (d) subpart 4 of Part 1 provides a mechanism for any person who considers that his or her dwellinghouse is a leaky building to—

- (i) bring a claim; and

- (ii) have it, and the nature of the particular problem, assessed and evaluated; and
- (iii) be provided with an assessor's report:
- (e) subpart 4 of Part 1 also contains provisions on what remedies may be claimed, the procedures for lower-value claims, and termination of claims:
Compulsory adjudication of claims
- (f) subparts 5, 7, and 8 of Part 1 and Schedule 3 set up a mechanism whereby dwellinghouse owners with eligible claims can apply to have them adjudicated by a Weathertight Homes Tribunal whose powers and procedures are flexible and whose determinations, subject to appeal, are binding and enforceable:
Mediation of claims
- (g) subpart 6 of Part 1 provides for access to a special mediation service that is available to dwellinghouse owners with eligible claims. The claimant 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:
Miscellaneous provisions
- (h) subpart 9 of Part 1 sets out various miscellaneous matters that underpin the substantive provisions of Part 1:
Repeals, transitional provisions, etc
- (i) subparts 1 to 7 of Part 2 repeal the Weathertight Homes Resolution Services Act 2002, make consequential amendments, and specify how Part 1 applies to, and who is to deal with, claims under that former Act that have not been disposed of before the transition date.

Compare: 2002 No 47 s 4

5 Overviews of types of claims

- (1) A diagrammatic overview of the types of claims under this Act by owners of dwellinghouses is set out in Schedule 1.
- (2) A diagrammatic overview of the types of claims under this Act by representatives of multi-unit complexes is set out in Schedule 2.
- (3) The diagrams are intended as a guide only.

6 Owner claims: other relevant procedural provisions

- (1) Under sections 52 and 53, the chief executive and the tribunal must terminate a claim in respect of a single dwellinghouse in a multi-unit complex when damage is discovered to another dwellinghouse, or to a common area, in the complex.
- (2) Under section 55, a change of ownership of a dwellinghouse (including a single dwellinghouse in a multi-unit complex), other than a change of that kind occurring by operation of law, terminates a claim in respect of that dwellinghouse.
- (3) Under section 56, the chief executive has power to terminate claims not pursued.
- (4) This section is intended as a guide only.

**7 Representative claims in respect of multi-unit complexes:
other relevant procedural provisions**

- (1) Under section 23, if the rules, constitution, or lease requires more than 80% of owners to agree to a decision that relates to bringing, managing, or resolving a claim, or to an administrative decision relating to the claim, only 80% of owners are required to agree to the decision.
- (2) Under section 26, further owners may join a multi-unit complex claim under section 19 or 21 before, or with the tribunal's consent after, adjudication is initiated.
- (3) Under section 28, the owner of a dwellinghouse in a multi-unit complex may, at any time and by written notice to the representative, withdraw from a multi-unit complex claim under section 19 or 21. The withdrawal does not affect the ability of the representative to continue with the claim.
- (4) Under section 29, the representative in a section 19 or 21 claim must notify the chief executive or tribunal (as applicable) of any change of ownership of a dwellinghouse. The claim proceeds in respect of the remaining dwellinghouses only, but the new owner may be able to join the claim under section 26.
- (5) Under sections 52 and 53, the chief executive and the tribunal must terminate the following claims in the following circumstances:
 - (a) a claim in respect of a single dwellinghouse in a multi-unit complex that is not a stand-alone complex (under

- section 15) when a claim is brought in respect of, or certain penetration of water is likely to have damaged, 1 or more other dwellinghouses, or common areas, in the complex:
- (b) a common areas only claim (under section 17) when a claim is brought in respect of, or certain penetration of water is likely to have damaged, 1 or more dwellinghouses in the complex:
 - (c) a stand-alone complex claim (under section 18) when a claim is brought in respect of, or certain penetration of water is likely to have damaged, 1 or more common areas in the complex.
- (6) Under section 30, for the purposes of representative claims in respect of a multi-unit complex, this Act applies, unless the context otherwise requires, as if—
- (a) every reference in it to a dwellinghouse included a reference to the multi-unit complex or stand-alone complex concerned; and
 - (b) every reference in it to the owner of a dwellinghouse included a reference to the representative of the owners of the dwellinghouses in the multi-unit complex or stand-alone complex concerned; and
 - (c) every reference in it to a party or parties included a reference to the representative of the owners of the dwellinghouses in the multi-unit complex or stand-alone complex concerned.
- (7) Section 24 ensures that, except for the voting relief in sections 22 and 23, nothing in the Act limits any obligations of a body corporate or the obligations of any person under the rules or constitution of a body corporate or under any lease.
- (8) Under section 25, nothing in the voting relief provisions in sections 22 and 23 is to be taken into account when determining whether or not unit title rules are valid.
- (9) Under section 56, the chief executive has power to terminate claims not pursued.
- (10) This section is intended as a guide only.

8 Interpretation

In this Act, unless the context otherwise requires,—

adjudication means an adjudication initiated by a claimant under section 62, or by a transfer of proceedings under section 120 or 121

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 31

assessor's report means an eligibility assessor's report or a full assessor's report

chair means the member appointed under section 103(4)

chief executive means the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act (except any justice provisions)

civil proceedings includes—

- (a) arbitration; and
- (b) for the purposes of sections 84 and 105, proceedings before the tribunal under this Act or a member or under the Construction Contracts Act 2002

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

- (a) has been penetrated by water because of some aspect of its design, construction, or alteration, or of materials used in its construction or alteration; and
- (b) has suffered damage as a consequence of its penetration by water

claimant—

- (a) means a person—
 - (i) who applies to the chief executive to have an assessor's report prepared in respect of a building; or
 - (ii) whose claim is transferred to adjudication under section 120 or 121; and
- (b) includes a claimant's successor by operation of law

company-share complex means a complex containing dwellinghouses owned by a flat-owning or office-owning company that has issued 1 or more licences to occupy in relation to a specified residential flat or residential flats in it

complex means a building, complex, or group of buildings

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

cross-lease complex means a complex containing dwellinghouses held under the arrangement commonly referred to as a cross-lease title

damages means any form of monetary compensation or damages (however described)

deficiency, in relation to a building, means any aspect of its design, construction, or alteration, or of materials used in its construction or alteration, that has enabled (or, as the case requires, is likely in future to enable) water to penetrate it

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 (except any justice provisions)

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

dwellinghouse—

- (a) means a building, or an apartment, flat, or unit within a building, that is intended to have as its principal use occupation as a private residence; and
- (b) in the case of a dwellinghouse that is a building, includes a gate, garage, shed, or other structure that is an integral part of the building; and
- (c) in the case of a dwellinghouse that is an apartment, flat, or unit within a building, includes a door, gate, garage, shed, or other structure that—
 - (i) is an integral part of the building; and
 - (ii) is intended for the exclusive use of an owner or occupier of the dwellinghouse; but

- (d) does not include a hospital, hostel, hotel, motel, rest home, or other institution

eligibility assessor's report means a report of the kind described in section 41

eligibility criteria means the criteria set out in sections 14 to 18

eligible claim means a claim by the owner of a dwellinghouse that has been evaluated under section 48 by the chief executive, or reconsidered under section 49 by the chair, as meeting the eligibility criteria

full assessor's report means a report of the kind described in section 42

general damages means damages that—

- (a) cannot be objectively quantified in monetary terms; and therefore
- (b) are assessed and quantified in broader terms

invasive testing—

- (a) means testing—
- (i) to measure the moisture content of any area, component, material, or space; or
- (ii) to establish the extent (if any) to which any means have been used to try to accomplish particular outcomes relating to weathertightness; or
- (iii) to establish the presence, absence, size, extent, construction, installation, composition, or adequacy of any component or material; or
- (iv) to establish the presence or absence of mould or other fungal growth; or
- (v) to establish the extent or nature of any mould or other fungal growth; and
- (b) if undertaken for the purposes of any such testing, includes—
- (i) inserting a probe into or through any material, component, area, or space; and
- (ii) taking a sample of any material or component, or any substance within any area or space; and
- (iii) temporarily removing a part of any cladding or part of a roof, floor, deck, verandah, ceiling, or

internal or external wall, or any soil, paving, or backfilling material

justice provisions means the provisions of this Act for the administration of which the Ministry of Justice is, with the authority of the Prime Minister, responsible

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

lower-value ceiling means the value prescribed under section 123(b)

lower-value claim means a claim—

- (a) where the owner of the dwellinghouse concerned has obtained a full assessor's report, the claim has been declared eligible, and either—
 - (i) the work needed to make the dwellinghouse weathertight and repair the damage in respect of which the claim is brought has not been done, and the estimated cost (stated in the report) of that work is not above the lower-value ceiling; or
 - (ii) the work needed to make the dwellinghouse concerned weathertight and repair the damage in respect of which the claim is brought has been done; and—
 - (A) the owner holds receipts for all payments required to be made for that work; and
 - (B) the total of the payments for which the owner holds receipts is not above the lower-value ceiling; or
- (b) where the owner of the dwellinghouse concerned has obtained an eligibility assessor's report, the claim has been declared eligible; and
 - (i) the owner holds receipts for all payments required to be made for the work needed to be done to make the dwellinghouse weathertight and repair the damage in respect of which the claim is brought; and

- (ii) the total of the payments for which the owner holds receipts is not above the lower-value ceiling

mediation means mediation initiated under this Act

mediator means a person appointed to provide mediation services under section 77

member means a person appointed under section 103 to be a member of the tribunal

mental distress means all or any of the following:

- (a) emotional or mental anxiety;
- (b) distress or stress

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 (except any justice provisions)

Ministry means the Ministry of Justice

multi-unit complex means a complex (which may, but need not, be a stand-alone complex) that—

- (a) contains 2 or more dwellinghouses; and
- (b) contains 1 or more, or no, common areas; and
- (c) is a company-share complex, cross-lease complex, or unit title complex

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 company-share complex 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

relevant mental distress, in relation to a claim, means mental distress suffered as a consequence of all or any of the damage, deficiencies, loss of value, and penetration of water specified in section 50(1)(a) to (e)

representative,—

- (a) for the owners of dwellinghouses in a company-share complex, means the company; and
- (b) for the owners of dwellinghouses in a cross-lease complex, means any person (whether one of those owners

- or not) authorised (whether to replace another person earlier so authorised or not) under section 19 or 20, to take action under this Act in respect of dwellinghouses, common areas, or both, in that complex; and
- (c) for the owners of dwellinghouses in a unit title complex, means the body corporate (within the meaning of the Unit Titles Act 1972) of the units and common property shown on the unit plan whose deposit created the stratum estates under which they are held; and
 - (d) for the owners of dwellinghouses in a stand-alone complex, despite paragraphs (a) to (c), means any person authorised (whether to replace another person earlier so authorised or not) by or under section 21 to take action under this Act in respect of dwellinghouses in that complex

respondent means a person against whom a claim is made

Secretary means the Secretary for Justice

stand-alone complex means a multi-unit complex—

- (a) each, or 1 or more, of the dwellinghouses contained in which is either—
 - (i) a building containing no common areas; or
 - (ii) part of a building consisting entirely of dwellinghouses and containing no common areas; and therefore
- (b) which may, but need not, contain, in addition to the 1 or more dwellinghouses to which paragraph (a) applies, either or both of the following:
 - (i) 1 or more buildings consisting entirely of common areas;
 - (ii) 1 or more buildings consisting of 1 or more dwellinghouses and 1 or more common areas

transition date means 1 May 2007 unless an earlier date is appointed under section 2(2), in which case it means that earlier date so appointed

tribunal means the Weathertight Homes Tribunal established by section 101

unit title complex means a complex containing dwelling-houses held under stratum estates under the Unit Titles Act 1972

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.

Compare: 2002 No 47 s 5

Section 8 **damages**: inserted, on 29 August 2007, by section 6 of the Weathertight Homes Resolution Services (Remedies) Amendment Act 2007 (2007 No 33).

Section 8 **general damages**: inserted, on 29 August 2007, by section 6 of the Weathertight Homes Resolution Services (Remedies) Amendment Act 2007 (2007 No 33).

Section 8 **mental distress**: inserted, on 29 August 2007, by section 6 of the Weathertight Homes Resolution Services (Remedies) Amendment Act 2007 (2007 No 33).

Section 8 **relevant mental distress**: inserted, on 29 August 2007, by section 6 of the Weathertight Homes Resolution Services (Remedies) Amendment Act 2007 (2007 No 33).

9 How claim is brought under this Act

A person brings a claim under this Act in respect of a dwelling-house by applying for an assessor's report in respect of it.

10 How claim becomes eligible claim

A claim has been declared eligible under this Act if the chief executive has decided under section 48, or the chair has decided under section 49, that it meets the eligibility criteria.

11 Act binds the Crown

This Act binds the Crown.

Compare: 2002 No 47 s 6

12 Assistance and guidance for claimants and respondents

- (1) For all provisions of this Act, the chief executive, and for justice provisions, the Secretary, may, at whatever stage a claimant or respondent may be in the processes provided for by those provisions (or before any of those processes have begun) assist and guide him or her on those processes.
- (2) The assistance and guidance given may include assistance or guidance on—
 - (a) assessor's reports, the advantages of early repair, the informal dispute resolution process, or the mediation and adjudication process;
 - (b) other possible means of resolving a particular dispute;
 - (c) the implications for the claim concerned if the dwelling-house concerned has damage or deficiencies not related to weathertightness.
- (3) Subsection (2) does not limit subsection (1).

Subpart 2—Eligibility criteria**13 Criteria for eligibility of claims for mediation and adjudication services**

To be an eligible claim, a claim must, in the chief executive's opinion under section 48 (or in the chair's opinion under section 49), formed on the basis of an assessor's report, meet the criteria stated in—

- (a) section 14 (dwellinghouse claim); or
- (b) section 15 (claim in respect of single dwellinghouse in multi-unit complex that is not stand-alone complex); or
- (c) section 16 (multi-unit complex claim); or
- (d) section 17 (common areas only claim); or
- (e) section 18 (claim in respect of 1 or more dwellinghouses in stand-alone complex).

Compare: 2002 No 47 s 7

14 Dwellinghouse claim

The criteria are that the claimant owns the dwellinghouse to which the claim relates; and—

- (a) it was built (or alterations giving rise to the claim were made to it) before 1 January 2012 and within the period

of 10 years immediately before the day on which the claim is brought; and

- (b) it is not part of a multi-unit complex; and
- (c) water has penetrated it because of some aspect of its design, construction, or alteration, or of materials used in its construction or alteration; and
- (d) the penetration of water has caused damage to it.

15 Claim in respect of single dwellinghouse in multi-unit complex that is not stand-alone complex

The criteria are that the claimant owns the dwellinghouse to which the claim relates; and—

- (a) the dwellinghouse is part of a multi-unit complex; and
- (b) that complex is not a stand-alone complex; and
- (c) the dwellinghouse was built (or alterations giving rise to the claim were made to it) before 1 January 2012 and within the period of 10 years immediately before the day on which the claim is brought; and
- (d) water has penetrated the complex because of some aspect of its design, construction, or alteration, or of materials used in its construction or alteration; and
- (e) the penetration of water—
 - (i) has caused damage to the dwellinghouse; but
 - (ii) has not caused damage to any other part of the complex.

16 Multi-unit complex claim

The criteria are that the claimant is the representative of the owners of the dwellinghouses in the multi-unit complex to which the claim relates; and—

- (a) the complex was built (or alterations giving rise to the claim were made to it) before 1 January 2012 and within the period of 10 years immediately before the day on which the claim is brought; and
- (b) water has penetrated the complex because of some aspect of its design, construction, or alteration, or of materials used in its construction or alteration; and
- (c) the penetration of water has caused damage to the complex.

17 Common areas only claim

The criteria are that the claimant is the representative of the owners of the dwellinghouses in the multi-unit complex to which the claim relates; and—

- (a) a common area in the complex was built (or alterations giving rise to the claim were made to it) before 1 January 2012 and within the period of 10 years immediately before the day on which the claim is brought; and
- (b) water has penetrated the complex because of some aspect of its design, construction, or alteration, or of materials used in its construction or alteration; and
- (c) the penetration of water—
 - (i) has caused damage to the common area; but
 - (ii) has not caused damage to any dwellinghouse in the complex.

18 Claim in respect of 1 or more dwellinghouses in stand-alone complex

The criteria are that the claimant is the representative of the owner or owners of the dwellinghouse or dwellinghouses (being a dwellinghouse or dwellinghouses in a stand-alone complex) to which the claim relates; and—

- (a) the dwellinghouse, or each of the dwellinghouses, is either—
 - (i) a building containing no common areas; or
 - (ii) part of a building consisting entirely of dwellinghouses and containing no common areas; and
- (b) the dwellinghouse, or each of the dwellinghouses, is either—
 - (i) a dwellinghouse that is a separate building; or
 - (ii) a dwellinghouse that is part of a building consisting entirely of dwellinghouses all of whose owners are, or are some of, the owners bringing the claim; and
- (c) the dwellinghouse or dwellinghouses were built (or alterations giving rise to the claim were made to it or them) before 1 January 2012 and within the period of 10 years immediately before the day on which the claim is brought; and

- (d) water has penetrated the complex because of some aspect of its design, construction, or alteration, or of materials used in its construction or alteration; and
- (e) the penetration of water—
 - (i) has caused damage to the dwellinghouse or dwellinghouses; but
 - (ii) has not caused damage to any common area in the complex.

Subpart 3—Procedure for representative claims in respect of multi-unit complexes

Types of claims in respect of multi-unit complexes

19 Representative claims in respect of dwellinghouses in multi-unit complexes

The representative of some or all of the owners of dwellinghouses in a multi-unit complex may bring a claim under this Act in respect of those dwellinghouses, and any common areas, as if those dwellinghouses and areas were a single dwellinghouse, and as if the representative were its owner, if—

- (a) each owner has given the representative a written notice—
 - (i) authorising the representative to bring and resolve a claim; and
 - (ii) authorising invasive testing by an assessor relating to the owner's dwellinghouse; and
- (b) the owners together own at least 75% of the dwellinghouses in the complex; and
- (c) subsection (1), (2), or (3) (as the case requires) of section 22 has been complied with; and
- (d) the representative (or, if the representative is a body corporate, an officer or member of the representative) attaches to the application for an assessor's report—
 - (i) a written notice authorising invasive testing by an assessor relating to any common areas in the complex; and

- (ii) a statutory declaration that paragraphs (a) and (b), and subsection (1), (2), or (3) (as the case requires) of section 22, have been complied with.

20 Representative claims in respect of common areas only in multi-unit complexes

The representative of some or all of the owners of dwellinghouses in a multi-unit complex may bring a claim under this Act in respect of any common areas as if those areas were a single dwellinghouse, and as if the representative were its owner, if—

- (a) subsection (1), (2), or (3) (as the case requires) of section 22 has been complied with; and
- (b) the representative (or, in the case of a body corporate, an officer or member of the representative) attaches to the application for an assessor's report—
 - (i) a written notice authorising invasive testing by an assessor relating to those areas; and
 - (ii) a statutory declaration that subsection (1), (2), or (3) (as the case requires) of section 22 has been complied with.

21 Representative claims in respect of dwellinghouses in stand-alone complexes

- (1) The representative of some or all of the owners of 1 or more dwellinghouses in a stand-alone complex may bring a claim under this Act in respect of those dwellinghouses if—
 - (a) each of those dwellinghouses is either—
 - (i) a building containing no common areas; or
 - (ii) part of a building consisting entirely of dwellinghouses and containing no common areas; and
 - (b) each of those dwellinghouses is either—
 - (i) a dwellinghouse that is a separate building; or
 - (ii) a dwellinghouse that is part of a building consisting entirely of dwellinghouses all of whose owners are, or are some of, the owners bringing the claim; and
 - (c) each owner has given the representative a written notice—

- (i) authorising the representative to bring and resolve a claim (unless the person concerned is taken to be the representative under subsection (2), in which case that kind of authorisation is not required); and
 - (ii) authorising invasive testing by an assessor relating to the owner's dwellinghouse.
- (2) A person is taken to be the representative of the owner of 1 or more dwellinghouses in a stand-alone complex for the purpose of a claim under this section (without any written authorisation under subsection (1)(c)(i) or section 27(1)(b)(i) or (2)(b)(i)) if—
 - (a) each dwellinghouse in respect of which the claim is made is owned by that owner; and
 - (b) the person is that owner or, if that owner is a body corporate, a member or officer of that body corporate.
- (3) This Act, with all necessary modifications, applies to a claim under subsection (1) in respect of 2 or more dwellinghouses as if those dwellinghouses were a single dwellinghouse owned by the owner or owners concerned.

*Authorising and making decisions on claim
under section 19 or 20*

22 How authority to bring representative claims in respect of dwellinghouses in multi-unit complexes to be obtained

- (1) In the case of a company-share complex, a claim cannot be brought under section 19 or 20 unless, at a general meeting of the company concerned, a resolution authorising the company to take the actions stated in subsection (4) has been passed by the affirmative vote of at least the lower of the following:
 - (a) 80% of the persons entitled to vote;
 - (b) the percentage of the persons entitled to vote—
 - (i) that is provided for in the company's constitution; or
 - (ii) that the company's constitution has, in some other way, the effect of requiring.
- (2) In the case of a cross-lease complex, a claim cannot be brought under section 19 or 20 unless the representative concerned has

- been given a written notice authorising the representative to take the actions stated in subsection (4) by—
- (a) the owners of at least 80% of the dwellinghouses in the complex; or
 - (b) if the lease documents relating to those dwellinghouses contain provisions to the effect that the owners of at least an identifiable percentage of the dwellinghouses in the complex must authorise actions of a kind that include those actions, at least the lower of the following:
 - (i) the owners of 80% of the dwellinghouses in the complex;
 - (ii) the owners of the identifiable percentage of the dwellinghouses in the complex.
- (3) In the case of a unit title complex, a claim cannot be brought under section 19 or 20 unless, at a general meeting of the body corporate of the complex, a resolution authorising the body corporate to take the actions stated in subsection (4) has been passed by the affirmative vote of at least the lower of the following:
- (a) 80% of the persons entitled to vote;
 - (b) the percentage of the persons entitled to vote—
 - (i) that is provided for in the rules of the body corporate; or
 - (ii) that those rules have, in some other way, the effect of requiring.
- (4) The actions referred to in subsections (1) to (3) are—
- (a) to bring and resolve a claim under this Act relating to the multi-unit complex concerned; and
 - (b) to take other actions incidental to bringing, running, or settling the claim; and
 - (c) to authorise invasive testing by an assessor relating to the common areas of that multi-unit complex.
- (5) The taking of the actions stated in subsection (1), (2), or (3) is authority enough for the representative concerned to take the actions stated in subsection (4).
- (6) Subsection (5) overrides anything to the contrary in—
- (a) the constitution of a flat-owning or office-owning company; or

- (b) the lease of any dwellinghouse in a cross-lease complex; or
- (c) the rules of the body corporate of a unit title complex.

23 How administrative decisions relating to representative claims in respect of multi-unit complexes to be made

- (1) In this section, **administrative decision** means a decision relating to a claim under section 19 or 20 made after the claim has been brought.
- (2) If the representative bringing a claim under section 19 or 20 is a body corporate, every administrative decision relating to the claim must be made in accordance with its rules or constitution, but as modified by subsections (3), (4), and (7).
- (3) The governing or managing body of a body corporate can make an administrative decision by the affirmative vote of at least the lower of the following:
 - (a) 80% of the members of the governing or managing body who are entitled to vote:
 - (b) the percentage of the members of the governing or managing body who are entitled to vote—
 - (i) that is provided for in the rules or constitution of the body corporate; or
 - (ii) that those rules have, or that constitution has, in some other way, the effect of requiring.
- (4) A general meeting of a body corporate can make an administrative decision by resolution passed by the affirmative vote of at least the lower of the following:
 - (a) 80% of the persons who are entitled to vote:
 - (b) the percentage of the members of the body corporate who are entitled to vote—
 - (i) that is provided for in the rules or constitution of the body corporate; or
 - (ii) that those rules have, or that constitution has, in some other way, the effect of requiring.
- (5) To the extent (if any) that an administrative decision must be made by a representative in accordance with any lease or licence, it must be made in accordance with the lease or licence as modified by subsections (6) and (7).

- (6) A body of persons acting under a lease or licence can make an administrative decision by the affirmative vote of at least the lower of the following:
- (a) 80% of the persons who are entitled to vote;
 - (b) the percentage of the persons acting under the lease or licence who are entitled to vote—
 - (i) that is provided for in the lease or licence; or
 - (ii) that the lease or licence has, in some other way, the effect of requiring.
- (7) Subsections (3), (4), and (6) override anything to the contrary in—
- (a) the constitution of a flat-owning or office-owning company; or
 - (b) the lease of, or any licence relating to, any dwelling-house in a cross-lease complex; or
 - (c) the rules of the body corporate of a unit title complex.

24 Act does not generally limit or affect certain matters

The provisions of this Act (other than those of sections 22(6) and 23(7)) do not limit or affect—

- (a) any obligation of a body corporate, procedural or otherwise, under any enactment other than this Act, or under its rules or constitution; or
- (b) any obligation of the governing or managing body of a body corporate, procedural or otherwise, under any enactment other than this Act, or under the rules or constitution of the body corporate; or
- (c) any obligation of any person, procedural or otherwise,—
 - (i) under any enactment other than this Act relating to leases or licences; or
 - (ii) under any lease or licence.

25 Voting provisions not to affect validity of unit title rules

- (1) In the determination of whether or not any rules of the body corporate of a unit title complex are valid, regard must not be had to—
- (a) subsection (3), (5), or (6) of section 22; or
 - (b) subsection (3), (4), or (7) of section 23.

- (2) Subsection (1) applies to the body corporate of a unit title complex whether or not action has been taken under section 19 or 20 in respect of the unit title complex.

*Changes in owners involved in claim under
section 19 or 21*

26 Adding further owners to representative claims in respect of multi-unit complexes or stand-alone complexes

- (1) Before adjudication of a claim under section 19 or 21 has been initiated, the representative can, in the way stated in section 27(1), add the owner of a dwellinghouse in the multi-unit complex or stand-alone complex concerned to the claim.
- (2) After adjudication of a claim under section 19 or 21 has been initiated, a further owner of a dwellinghouse in the multi-unit complex or stand-alone complex concerned can, in the way stated in section 27(2), be added to the claim by the representative, but only with the tribunal's consent.
- (3) The owner of a dwellinghouse in the stand-alone complex concerned must not be added under subsection (1) or (2) to a claim under section 21 unless section 21(1)(b)(i) or (ii) applies to the dwellinghouse.
- (4) If an assessor's report relating to the multi-unit complex or stand-alone complex concerned has already been completed when the owner is added then, having regard to the claim concerned and any evidence already obtained, the chief executive may do, or the tribunal may request the chief executive to do, one of the following:
- (a) have a further assessment done, and provide an addendum to the original assessor's report; or
 - (b) proceed without having a further assessment done.

27 How addition under section 26(1) or (2) effected

- (1) To add the owner of a dwellinghouse in a multi-unit complex or stand-alone complex to a claim in respect of the complex under section 26(1), the representative must give the chief executive—
- (a) a written notice that the owner wishes the claim to extend to his or her dwellinghouse; and

- (b) a copy of a written notice from the owner—
 - (i) authorising the representative to take action (unless the person concerned is taken to be the representative under section 21(2), in which case that kind of authorisation is not required); and
 - (ii) authorising invasive testing by an assessor relating to the owner's dwellinghouse.
- (2) To add the owner of a dwellinghouse in a multi-unit complex or stand-alone complex to a claim in respect of the complex under section 26(2), the representative must—
 - (a) apply to the tribunal, in writing, and in a form (if any) approved for the purpose by the chair, for its consent under section 26(2); and
 - (b) give the tribunal a copy of a written notice from the owner—
 - (i) authorising the representative to take action (unless the person concerned is taken to be the representative under section 21(2), in which case that kind of authorisation is not required); and
 - (ii) authorising invasive testing by an assessor relating to the owner's dwellinghouse; and
 - (c) obtain the tribunal's consent under section 26(2).

28 Withdrawal of authority

- (1) The owner of a dwellinghouse in a multi-unit complex may at any time, by written notice to the representative concerned, withdraw the owner's authority under subparagraphs (i) and (ii) of section 19(a).
- (2) The owner of a dwellinghouse in a stand-alone complex may at any time, by written notice to the representative concerned, withdraw the owner's authority under subparagraphs (i) and (ii) of section 21(1)(c) or, if applicable, the owner's authority as representative under section 21(1)(c)(ii) and (2).
- (3) The withdrawal of the authority does not affect the ability of the representative to proceed with the claim concerned.
- (4) The effect of the withdrawal of the authority is that the claim—
 - (a) ceases to relate to the dwellinghouse concerned; but
 - (b) may proceed in respect of the other dwellinghouses to which it relates.

- (5) Within 5 working days of being notified of the withdrawal of an owner's authority, a representative must give written notice of the withdrawal—
 - (a) to the chief executive, if adjudication has not been initiated; or
 - (b) to the tribunal and all parties, if adjudication has been initiated.

29 Notifying changes of ownership after claim brought in respect of dwellinghouses in multi-unit complex or stand-alone complex

- (1) Within 5 working days of becoming aware of a change in the ownership of a dwellinghouse to which a claim under section 19 or 21 relates, the representative concerned must give written notice of the change—
 - (a) to the chief executive, if adjudication has not been initiated; or
 - (b) to the tribunal and all parties, if adjudication has been initiated.
- (2) The effect of a change in the ownership of a dwellinghouse to which a claim under section 19 or 21 relates is that the claim ceases to relate to that dwellinghouse; but—
 - (a) the claim may proceed in respect of the other dwellinghouses to which it relates; and
 - (b) the new owner may be added to the claim under section 26.
- (3) Subsection (2)(b) is subject to subsections (1) to (3) of section 26.
- (4) For the purposes of this section, a change in the ownership of a dwellinghouse arising out of an agreement for its sale and purchase occurs on the day on which the sale and purchase is settled.
- (5) **Change in the ownership of a dwellinghouse**, in this section,—
 - (a) does not include a change of that kind occurring by operation of law; and
 - (b) if the dwellinghouse is property subject to a trust, does not include a change in the trustee or trustees; and

- (c) if the dwellinghouse is owned by a company (whether the company owns other dwellinghouses within the building concerned or not), does not include a change in shareholding that results in control of the company passing to 1 or more different persons.

*How Act applies to claims under section 19, 20,
or 21*

30 Application of Act to representative claims in respect of multi-unit complexes or stand-alone complexes

For the purposes of a claim under section 19 or 20 or 21, this Act applies, unless the context otherwise requires, as if—

- (a) every reference in it to a dwellinghouse included a reference to the multi-unit complex or stand-alone complex concerned; and
- (b) every reference in it to the owner of a dwellinghouse included a reference to the representative of the owners of the dwellinghouses in the multi-unit complex or stand-alone complex concerned; and
- (c) every reference in it to a party or parties included a reference to the representative of the owners of the dwellinghouses in the multi-unit complex or stand-alone complex concerned.

Subpart 4—Assessment and evaluation of claims, remedies, lower-value claims, and termination of claims

Assessment and evaluation of claims

31 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.

Compare: 2002 No 47 s 8

32 Application for assessor's report

- (1) An owner of a dwellinghouse who wishes to bring a claim in respect of it may apply to the chief executive—
 - (a) to have an assessor's report prepared in respect of it; or
 - (b) to have an assessor's report that was prepared in respect of it on the application of a former owner approved as suitable for the owner's claim.
- (2) On receiving an application under subsection (1)(a) or (b) that complies with all applicable requirements in sections 34 to 36, 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 eligibility criteria.
- (3) 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.
- (4) 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.

Compare: 2002 No 47 s 9

33 Restriction if assessor's report prepared for claim brought in respect of dwellinghouse by former owner

- (1) An owner of a dwellinghouse in respect of which an assessor's report has already been prepared in relation to a claim brought in respect of the dwellinghouse by a former owner must not apply to the chief executive under section 32(1)(a) unless—
 - (a) the owner or some former owner has applied to the chief executive under section 32(1)(b); and
 - (b) the chief executive has refused to approve the assessor's report already prepared as suitable for the owner's or former owner's claim.
- (2) This section overrides section 32(1)(a).

34 Requirements for application under section 32(1)(a)

- (1) An application under section 32(1)(a) to have an assessor's report prepared must be accompanied by the prescribed fee (if any); and
 - (a) must be in the approved form (if any); and
 - (b) must be accompanied by all permissions necessary to enable an assessor to inspect the inside and outside of the building concerned, and to conduct any testing (invasive or not) he or she considers necessary, at a time reasonably convenient to him or her; and
 - (c) in the case of a claim that satisfies the criteria in section 15, must be accompanied by the statutory declaration referred to in section 36(a); and
 - (d) in the case of a claim that satisfies the criteria in section 17, must be accompanied by the statutory declaration referred to in section 36(b); and
 - (e) in the case of a claim that satisfies the criteria in section 18, must be accompanied by the statutory declaration referred to in section 36(c).
- (2) Paragraphs (a) to (e) of subsection (1) apply, subject to subsection (3), to both—
 - (a) full assessor's reports; and
 - (b) eligibility assessor's reports.
- (3) Paragraphs (c) to (e) of subsection (1) do not apply to a full assessor's report in respect of a claim if an eligibility assessor's report in respect of the claim has already been prepared.

35 Requirements for application under section 32(1)(b)

- An application under section 32(1)(b) to have an assessor's report approved as suitable—
- (a) must be in the approved form (if any); and
 - (b) must be accompanied by the prescribed fee (if any); and
 - (c) in the case of a claim that satisfies the criteria in section 15, must be accompanied by the statutory declaration referred to in section 36(a); and
 - (d) in the case of a claim that satisfies the criteria in section 17, must be accompanied by the statutory declaration referred to in section 36(b); and

- (e) in the case of a claim that satisfies the criteria in section 18, must be accompanied by the statutory declaration referred to in section 36(c).

36 Statutory declarations required

Sections 34(1)(c) to (e) and 35(c) to (e) require the following statutory declarations:

- (a) in the case of a claim that satisfies the criteria in section 15, a statutory declaration made by the owner (or, if the owner is a body corporate, an officer or member of the owner) of the dwellinghouse concerned that—
 - (i) to the best of his or her knowledge, the penetration of water concerned has not caused damage to any common area, or any other dwellinghouse, in the multi-unit complex concerned; and
 - (ii) he or she does not suspect, and knows of no reason for suspecting, that the penetration of water concerned has caused damage to any common area, or any other dwellinghouse, in that complex; and
- (b) in the case of a claim that satisfies the criteria in section 17, a statutory declaration made by the representative concerned (or, if the representative is a body corporate, an officer or member of the body corporate) that—
 - (i) to the best of his or her knowledge, the penetration of water concerned has not caused damage to any dwellinghouse in the multi-unit complex concerned; and
 - (ii) he or she does not suspect, and knows of no reason for suspecting, that the penetration of water concerned has caused damage to any dwellinghouse in that complex; and
- (c) in the case of a claim that satisfies the criteria in section 18, a statutory declaration made by the representative concerned (or, if the representative is a body corporate, an officer or member of the body corporate) that—
 - (i) to the best of his or her knowledge, the penetration of water concerned has not caused damage

to any common areas in the stand-alone complex concerned; and

- (ii) he or she does not suspect, and knows of no reason for suspecting, that the penetration of water concerned has caused damage to any common areas in that complex.

37 Application of Limitation Act 2010 to applications for assessor's report, etc

- (1) For the purposes of the Limitation Act 2010 (and any other enactment that imposes a limitation period), the making of an application under section 32(1) has effect as if it were the filing of proceedings in a court.
- (2) This section is subject to sections 54, 133, 141, 146, 152, and 155.

Compare: 2002 No 47 s 55

Section 37 heading: amended, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

Section 37(1): amended, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

38 Assessor's reports are eligibility reports or full reports

An assessor's report may be an eligibility assessor's report or a full assessor's report.

39 Assessor's reports not to be done in certain cases

- (1) No full assessor's report may be done in respect of a claim if all damage to the dwellinghouse concerned has been repaired and it has been made weathertight.
- (2) No eligibility assessor's report may be done in respect of a claim if a full assessor's report has previously been applied for (or, before the transition date, an assessor's report has been applied for) in respect of the same claim.
- (3) This section overrides section 32(3).

40 Eligibility report does not generally prevent claimant applying for and obtaining full report on same claim

- (1) Obtaining an eligibility assessor's report stating that, in the assessor's opinion, the claim to which it relates meets the eligi-

bility criteria does not prevent a claimant from later applying for and obtaining a full assessor's report in respect of the same claim.

- (2) This section is subject to section 39.

41 Eligibility assessor's report

- (1) An eligibility assessor's report is a report stating only—
- (a) whether or not, in the assessor's opinion, the claim to which it relates meets the eligibility criteria; and
 - (b) the matters required by subsections (2) to (4).
- (2) An eligibility assessor's report for a claim that satisfies the criteria in section 15 must also state—
- (a) whether or not the assessor suspects that the penetration of water concerned has caused damage to any common area, or any other dwellinghouse, in the multi-unit complex concerned; and
 - (b) any grounds the assessor has for suspecting that the penetration of water concerned has caused damage to any common area, or any other dwellinghouse, in that complex.
- (3) An eligibility assessor's report for a claim that satisfies the criteria in section 17 must also state—
- (a) whether or not the assessor suspects that the penetration of water concerned has caused damage to any dwellinghouse in the multi-unit complex concerned; and
 - (b) any grounds the assessor has for suspecting that the penetration of water concerned has caused damage to any dwellinghouse in that complex.
- (4) An eligibility assessor's report for a claim that satisfies the criteria in section 18 must also state—
- (a) whether or not the assessor suspects that the penetration of water concerned has caused damage to any common areas in the stand-alone complex concerned; and
 - (b) any grounds the assessor has for suspecting that the penetration of water concerned has caused damage to any common areas in that complex.

Compare: 2002 No 47 s 10(1)

42 Full assessor's report

- (1) A full assessor's report is a report stating—
 - (a) the matters required by section 41(1); and
 - (b) if, and only if, in the assessor's opinion, the claim to which it relates meets the eligibility criteria, the matters required by subsections (2) to (4).
- (2) If the report states that the claim meets the criteria in section 14 or 15 or 18, the report must also state the assessor's view on—
 - (a) why water penetrated the dwellinghouse concerned; and
 - (b) the nature and extent of the damage caused by the water penetrating the dwellinghouse; and
 - (c) the work needed to repair the damage; and
 - (d) the work needed to make the dwellinghouse weathertight (both in relation to the deficiencies that enabled the damage to occur and in relation to any deficiencies that are likely in future to enable damage to be caused to the dwellinghouse by water penetrating it); and
 - (e) the estimated cost of the work referred to in paragraphs (c) and (d); and
 - (f) the persons who should be parties to the claim.
- (3) If the report states that the claim meets the criteria in section 16, the report must also state the assessor's view on—
 - (a) why water penetrated the multi-unit complex concerned; and
 - (b) the nature and extent of the damage caused by the water penetrating the multi-unit complex (whether damage to dwellinghouses or damage to common areas, but not including damage to parts of the complex that are neither a dwellinghouse nor a common area); and
 - (c) the work needed to repair the damage; and
 - (d) the work needed to make weathertight the dwellinghouses and common areas in the multi-unit complex (both in relation to the deficiencies that enabled the damage to occur and in relation to any deficiencies that are likely in future to enable damage to be caused to dwellinghouses or common areas by water penetrating them); and

- (e) the estimated cost of the work referred to in paragraphs (c) and (d); and
 - (f) the persons who should be parties to the claim.
- (4) If the report states that the claim meets the criteria in section 17, the report must also state the assessor's view on—
- (a) why water penetrated the multi-unit complex concerned; and
 - (b) the nature and extent of the damage to common areas caused by the water penetrating the multi-unit complex; and
 - (c) the work needed to repair the damage; and
 - (d) the work needed to make weathertight the common areas in the multi-unit complex (both in relation to the deficiencies that enabled the damage to occur and in relation to any deficiencies that are likely in future to enable damage to be caused to common areas by water penetrating them); and
 - (e) the estimated cost of the work referred to in paragraphs (c) and (d); and
 - (f) the persons who should be parties to the claim.

Compare: 2002 No 47 s 10(1)

43 Full report does not cover eligibility of claim if eligibility report obtained states that claim is eligible

If a claimant has already obtained an eligibility assessor's report stating that, in the assessor's opinion, the claim to which it relates meets the eligibility criteria, a full assessor's report in respect of the same claim—

- (a) must—
 - (i) state only the assessor's view on the matters set out in subsection (2), (3), or (4) (as the case requires) of section 42; and
 - (ii) have a copy of the eligibility assessor's report attached to it; and
- (b) has effect as a report complying with section 42.

44 Copy of assessor's report must be given to claimant

When an assessor's report is completed, the chief executive must give a copy to the claimant.

Compare: 2002 No 47 s 10(2)(a)

45 Claimant may make submission on assessor's report stating that claim does not meet eligibility criteria

Within 20 working days after receiving the copy of an assessor's report stating that, in the assessor's opinion, the claim to which it relates does not meet the eligibility criteria, the claimant may make a submission on it to the chief executive so the chief executive can make his or her evaluation decision under section 48.

Compare: 2002 No 47 s 10(3)

46 Assessor who suspects claim must be terminated must advise chief executive and cease preparing report

- (1) This section applies to an assessor preparing a full assessor's report in respect of a claim for which an eligibility assessor's report has already been prepared if the assessor suspects that—
 - (a) penetration of water has caused damage to other parts of the multi-unit complex concerned; and
 - (b) the damage of that kind will or may affect whether the claim is an eligible claim.
- (2) The assessor must advise the chief executive of the assessor's suspicions, and not complete the full assessor's report unless the chief executive advises that section 52 does not require the claim to be terminated.

47 Assessment may be abandoned if inspection and testing not possible

- (1) If an assessor has been unable to inspect the inside and outside of the dwellinghouse or building concerned, and to conduct any testing (invasive or not) he or she considers necessary, at a time reasonably convenient to him or her (whether because the permissions provided are inadequate or have been withdrawn, or for any other reason), the chief executive may authorise him or her—

- (a) to abandon the assessment process until the necessary inspection and testing can be done; or
 - (b) in the case of a claim under section 19 or 21, if the chief executive thinks it appropriate to do so, to abandon the assessment process in relation to the dwelling-house or building, and complete it in relation to the other dwellinghouses or buildings (or both) to which the claim concerned relates.
- (2) An authorisation under subsection (1)(b) has the effect that the claim concerned—
- (a) ceases to relate to the dwellinghouse or building in relation to which the chief executive has authorised the assessor concerned to abandon the assessment process; but
 - (b) may proceed in respect of the other dwellinghouses or buildings (or both) to which it relates.

48 Chief executive to evaluate assessor's reports

- (1) The chief executive must evaluate every assessor's report (other than a full assessor's report made in respect of a claim that was held to meet the eligibility criteria when an eligibility assessor's report was evaluated), and decide whether the claim to which it relates meets the eligibility criteria.
- (2) In evaluating the report, the chief executive must consider only the report itself and any submission made by the claimant under section 45.
- (3) The chief executive must give the claimant written notice stating—
- (a) the chief executive's decision as to whether or not the claim meets the eligibility criteria; and
 - (b) if the chief executive has decided that the claim does not meet those criteria, his or her reasons for that decision.

Compare: 2002 No 47 s 12(1)–(3)

49 Reconsideration of chief executive's decision

- (1) Within 20 working days of receiving notice under section 48(3) of a decision that his or her claim does not comply with the eligibility criteria, the claimant may write to the chair—
- (a) asking for the decision to be reconsidered; and

- (b) making any supporting submissions the claimant wishes to make on the claim's compliance with the eligibility criteria.
 - (2) If the claimant writes to the chair asking for the decision to be reconsidered, the chair must decide whether or not the claim meets the eligibility criteria.
 - (3) The chair must give the claimant and the chief executive written notice stating—
 - (a) the chair's decision as to whether or not the claim meets the eligibility criteria; and
 - (b) the chair's reasons for that decision.
 - (4) If the chair decides that the claim meets the eligibility criteria, his or her decision replaces that of the chief executive.
- Compare: 2002 No 47 s 12(4)–(6)

Remedies that may be sought by claimants

50 What remedies may be claimed

- (1) As long as it is an eligible claim, a claim under this Act may be for any remedy that could be claimed in a court of law in relation to, or for consequences of, all or any of the following:
 - (a) deficiencies that enabled the penetration of water into the building concerned;
 - (b) the penetration of water into the building concerned;
 - (c) damage or loss of value caused by the penetration of water into the building concerned;
 - (d) loss of value caused by the fact that there are deficiencies in the building concerned;
 - (e) deficiencies that are likely in future to enable the penetration of water into the building concerned.
- (2) **Remedy**, in subsection (1), includes (without limitation) general damages (for example, for relevant mental distress).
- (3) Subsections (1) and (2)—
 - (a) are not limited or affected by subsection (2)(d), (3)(d), or (4)(d) of section 42; but
 - (b) are subject to section 91 (which relates to costs of adjudication proceedings).

Section 50: substituted, on 29 August 2007, by section 7 of the Weathertight Homes Resolution Services (Remedies) Amendment Act 2007 (2007 No 33).

Lower-value claims

51 Overview of procedures for lower-value claims

- (1) Under section 80(2), a claimant with a lower-value claim may, with the consent of any of the other parties, refer it directly to mediation under this Act if—
 - (a) the claimant has applied to the chief executive in the manner required by that subsection for lower-value claims dispute resolution assistance; and
 - (b) no application has yet been made to the tribunal to have the claim adjudicated.
- (2) Under section 60(7), if a claim is a lower-value claim, a claimant who would otherwise have the right under section 60(1) to apply to the tribunal to have the claim adjudicated must not apply to have the claim adjudicated unless the claimant has—
 - (a) applied under section 80(2)(a) for lower-value claims dispute resolution assistance; and
 - (b) received from the chief executive a certificate that he or she is satisfied that the claimant has made reasonable attempts to resolve the claim under the lower-value claims dispute resolution assistance process.
- (3) Under section 83, if, in any particular case, no application has yet been made to the tribunal to have a lower-value claim adjudicated, the chief executive may, if satisfied that the parties are near resolution of, and likely to resolve, the dispute, if allowed more time, allow for the claim a maximum period of mediation longer than the period stated in section 82.
- (4) Section 58 states aims that the tribunal must try to achieve in relation to the adjudication of a lower-value claim.
- (5) Under section 59, the following apply to the adjudication of a lower-value claim:
 - (a) requirements to deal with the claim on the papers and not to hold a hearing or a preliminary conference, unless it is for some reason appropriate or necessary to hold one; and
 - (b) a restriction on the tribunal approving the referral of the claim to mediation.

- (6) Under section 90(5), the fact that a claim is a lower-value claim does not prevent the value of the tribunal's determination from exceeding the lower-value ceiling.
- (7) This section is intended as a guide only.

Termination of claims

52 Chief executive must terminate certain claims if situation alters

- (1) This subsection applies to a claim brought in respect of a dwellinghouse in a multi-unit complex if—
 - (a) it satisfies the criteria in section 15; but
 - (b) after it is declared eligible and before adjudication has been initiated,—
 - (i) a claim is brought in respect of another dwellinghouse, or common areas, in the complex; or
 - (ii) the chief executive is satisfied that it is likely that water penetrating the complex because of some aspect of its design, construction, or alteration, or of the materials used in its construction or alteration, has damaged 1 or more other dwellinghouses, or common areas, in the complex.
- (2) This subsection applies to a claim brought in respect of a multi-unit complex if—
 - (a) it satisfies the criteria in section 17; but
 - (b) after it is declared eligible and before adjudication has been initiated,—
 - (i) a claim is brought in respect of a dwellinghouse in the complex; or
 - (ii) the chief executive is satisfied that it is likely that water penetrating the complex because of some aspect of its design, construction, or alteration, or of the materials used in its construction or alteration, has damaged 1 or more dwellinghouses in the complex.
- (3) This subsection applies to a claim brought in respect of a dwellinghouse or dwellinghouses in a stand-alone complex if—
 - (a) it satisfies the criteria in section 18; but

- (b) after it is declared eligible and before adjudication has been initiated,—
 - (i) a claim is brought in respect of a common area in the complex; or
 - (ii) the chief executive is satisfied that it is likely that water penetrating the complex because of some aspect of its design, construction, or alteration, or of the materials used in its construction or alteration, has damaged 1 or more common areas in the complex.
- (4) If subsection (1), (2), or (3) applies to a claim, the chief executive must terminate it.
- (5) The termination of a claim under subsection (4) does not prevent—
 - (a) the bringing of any claim under section 19; or
 - (b) the adding of the owner of a dwellinghouse to some other claim under section 26.

53 Tribunal must terminate claims in certain circumstances

- (1) This subsection applies to a claim brought in respect of a dwellinghouse in a multi-unit complex if—
 - (a) it satisfies the criteria in section 15; but
 - (b) after adjudication has been initiated,—
 - (i) a claim is brought in respect of another dwellinghouse, or common areas, in the complex; or
 - (ii) the tribunal is satisfied that it is likely that water penetrating the complex because of some aspect of its design, construction, or alteration, or of the materials used in its construction or alteration, has damaged 1 or more other dwellinghouses, or common areas, in the complex.
- (2) This subsection applies to a claim brought in respect of a multi-unit complex if—
 - (a) it satisfies the criteria in section 17; but
 - (b) after adjudication has been initiated,—
 - (i) a claim is brought in respect of a dwellinghouse in the complex; or
 - (ii) the tribunal is satisfied that it is likely that water penetrating the complex because of some aspect

- of its design, construction, or alteration, or of the materials used in its construction or alteration, has damaged 1 or more dwellinghouses in the complex.
- (3) This subsection applies to a claim brought in respect of a dwellinghouse or dwellinghouses in a stand-alone complex if—
- (a) it satisfies the criteria in section 18; but
 - (b) after adjudication has been initiated,—
 - (i) a claim is brought in respect of a common area in the complex; or
 - (ii) the tribunal is satisfied that it is likely that water penetrating the complex because of some aspect of its design, construction, or alteration, or of the materials used in its construction or alteration, has damaged 1 or more common areas in the complex.
- (4) If subsection (1), (2), or (3) applies to a claim, the tribunal—
- (a) must—
 - (i) notify the claimant that it intends to terminate the claim; and
 - (ii) notify the claimant of the grounds (as stated in paragraph (b) of that subsection) on which it intends to terminate the claim; and
 - (iii) notify the claimant that he or she has a reasonable time within which to comment on whether the tribunal is justified in being satisfied of the matter stated in paragraph (b)(ii) of that subsection; and
 - (iv) consider any comments made by the claimant within a reasonable time of being notified under subparagraph (iii); and
 - (b) if still satisfied of the matter stated in paragraph (b)(ii) of that subsection, must terminate the claim.
- (5) The termination of a claim under subsection (4) does not prevent the bringing of any claim under section 19 or the adding of the owner of a dwellinghouse to some other claim under section 26.

54 Application of section 37 if claim terminated under section 52(4) or 53(4)

- (1) This section applies if, within 1 year after the termination under section 52(4) or 53(4) of a claim to which section 52(1) or (2) or (3) or 53(1) or (2) or (3) applies,—
 - (a) a claim is brought under section 19 in respect of dwellinghouses including the dwellinghouse in respect of which the terminated claim was brought; or
 - (b) an owner of the dwellinghouse in respect of which the terminated claim was brought is added to a claim under section 19 brought after the terminated claim was brought.
- (2) Section 37 applies to the claim under section 19 as if it were brought when the terminated claim was brought.

55 Termination of claim where ownership changes

- (1) A change in the ownership of a dwellinghouse on or after the transition date terminates any claim made in respect of that dwellinghouse alone by its former owner.
- (2) For the purposes of this section, a change in the ownership of a dwellinghouse arising out of an agreement for its sale and purchase occurs on the day on which the sale and purchase is settled.
- (3) **Change in the ownership of a dwellinghouse**, in this section,—
 - (a) does not include a change of that kind occurring by operation of law; and
 - (b) if the dwellinghouse is property subject to a trust, does not include a change in the trustee or trustees; and
 - (c) if the dwellinghouse is owned by a company (whether the company owns other dwellinghouses within the building concerned or not), does not include a change in shareholding that results in control of the company passing to 1 or more different persons.

56 Termination of claims not pursued

- (1) The chief executive may, if he or she believes that a claimant who has not yet applied to the tribunal to have a claim adjudicated is not making enough effort to resolve it, give the

- claimant written notice that the chief executive will terminate it unless within 20 working days (or any longer period stated in the notice) the claimant either—
- (a) satisfies the chief executive that enough effort to resolve it is being made; or
 - (b) applies to the tribunal to have it adjudicated.
- (2) The chief executive may terminate a claim unless within 20 working days (or any longer period stated in the notice) after receiving a notice under subsection (1), the claimant either—
- (a) satisfies the chief executive that enough effort to resolve it is being made; or
 - (b) applies to the tribunal to have the claim adjudicated.
- (3) If a claim is terminated under subsection (2), no further claim may be brought under this Act in respect of the dwellinghouse (or common areas or multi-unit complex) concerned by the claimant or by his or her successor by operation of law.
- (4) However, if a claim is terminated under subsection (2) in respect of a dwellinghouse in a multi-unit complex, subsection (3) does not prevent—
- (a) a claim from being brought under this Act in respect of that multi-unit complex; or
 - (b) a claim brought under this Act in respect of that multi-unit complex from including that dwellinghouse.

Subpart 5—Adjudication of claims

Nature of adjudication proceedings, and aims and procedure for lower-value claims

57 Adjudications to be managed to achieve purpose of Act

- (1) The tribunal must manage adjudication proceedings in a manner that tends best to ensure that they are speedy, flexible, and cost-effective; and, in particular, must—
- (a) encourage parties where possible to work together on matters that are agreed; and
 - (b) use, and allow the use of, experts and expert evidence only where necessary; and
 - (c) try to use conferences of experts to avoid duplication of evidence on matters that are or are likely to be agreed; and

- (d) try to prevent unnecessary or irrelevant evidence or cross-examination.
- (2) In managing adjudication proceedings, the tribunal must comply with the principles of natural justice.
- (3) Subsection (2) does not require the tribunal to permit the cross-examination of a party or person; but the tribunal may in its absolute discretion do so.

58 Aims in relation to adjudication of lower-value claims

- (1) The tribunal must try to achieve the following aims in relation to the adjudication of a lower-value claim:
 - (a) ensure that the process is much faster, simpler, and cheaper than the adjudication of a claim that is not a lower-value claim:
 - (b) minimise the involvement of lawyers and other representatives:
 - (c) keep the cost of the process at a level appropriate to the amount of the claim:
 - (d) handle procedural issues (like joining parties) quickly and efficiently, and in particular (where possible) avoid, or at least minimise, the need for submissions on them:
 - (e) minimise the adducing of evidence other than the assessor's report and evidence as to actual repair costs:
 - (f) maximise the use of informal means to resolve the dispute.
- (2) Subsection (1) is subject to sections 57(2) and 68, but overrides anything to the contrary in subparts 5, 7, 8, and 9 of this Part and Part 2 of Schedule 3.

59 Procedure for adjudication of lower-value claims

- (1) The following provisions apply to the adjudication of a lower-value claim:
 - (a) the tribunal must deal with the claim on the papers unless satisfied on reasonable grounds that—
 - (i) the cost of repairing the damage in respect of which the claim is brought is, or is likely to be, above the lower-value ceiling; or
 - (ii) for some other reason it is appropriate to hold a hearing:

- (b) a preliminary conference must not be held unless the tribunal is satisfied that it is necessary to hold one:
 - (c) the tribunal must not approve referring the claim to mediation unless satisfied that it is highly likely that the claim will be resolved by mediation.
- (2) Subsection (1) overrides anything to the contrary in subparts 5, 7, 8, and 9 of this Part and Part 2 of Schedule 3.

*Adjudication and other dispute resolution
procedures*

60 Right to apply for adjudication of claims

- (1) The owner of a dwellinghouse has the right to apply to the tribunal to have the claim adjudicated if it is an eligible claim.
- (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) **Existing agreement or contract**, in subsection (2), means one entered into before 27 November 2002.
- (4) However, the right referred to in subsection (1), and its exercise, are restricted by subsections (5), (7), and (8).
- (5) An owner of a dwellinghouse may not, however, apply to have an eligible claim adjudicated, 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.
- (6) Subsection (5) does not limit the power of any party to apply for proceedings to be transferred to adjudication under section 120 or agree that they be transferred under section 121.
- (7) If a claim is a lower-value claim, a claimant who would otherwise have the right to apply to the tribunal to have it adjudi-

cated must not apply to have it adjudicated unless the claimant has—

- (a) applied under section 80(2)(a) for lower-value claims dispute resolution assistance; and
 - (b) received from the chief executive a certificate that he or she is satisfied that the claimant has made reasonable attempts to resolve the claim under the lower-value claims dispute resolution assistance process.
- (8) A claimant who would otherwise have the right to apply to the tribunal to have a claim adjudicated must not apply to have it adjudicated unless—
- (a) the claimant has a full assessor's report in respect of the claim; or
 - (b) the work needed to make the dwellinghouse concerned weathertight and repair the damage in respect of which the claim is brought has been done, and the claimant holds receipts for all payments required to be made for that work.

Compare: 2002 No 47 s 22

61 Effect on other dispute resolution procedures

- (1) If a claimant who has applied to the tribunal to have a claim adjudicated under this Act initiates proceedings of a kind referred to in section 60(5)(a) or (b) during the course of the adjudication,—
- (a) the claimant must notify the tribunal; and
 - (b) that notification is to be treated as a notice of withdrawal under section 67, 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).

Compare: 2002 No 47 s 23

*Procedure for, and effect of, initiating
adjudication*

62 How to initiate adjudication

- (1) A claimant initiates the adjudication of a claim by applying to the tribunal, in writing and in a form (if any) approved for the purpose by the chair, to have the claim adjudicated, and serving a copy of the application for adjudication on—
 - (a) the other party or parties to the adjudication; and
 - (b) the department.
- (2) The application to the tribunal must be accompanied by—
 - (a) a copy of the decision of the chief executive under section 48 (or the decision of the chair under section 49) on the eligibility of the claim; and
 - (b) the prescribed fee (if any).
- (3) The application in writing in the approved form (if any) must state—
 - (a) the date of the application; and
 - (b) the nature and a brief description of the claim and of the parties involved; and
 - (c) the remedy (*see* section 50) 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.
- (4) Every copy of the application 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.
- (5) Until the commencement of the first regulations prescribing a fee for the purposes of subsection (2)(b), this Act has effect as if a fee of \$400 is prescribed.

Compare: 2002 No 47 s 26

Section 62(3)(c): amended, on 29 August 2007, by section 8(a) of the Weather-tight Homes Resolution Services (Remedies) Amendment Act 2007 (2007 No 33).

Section 62(3)(c): amended, on 29 August 2007, by section 8(b) of the Weather-tight Homes Resolution Services (Remedies) Amendment Act 2007 (2007 No 33).

63 Status and effect of adjudication proceedings under other enactments

Adjudication proceedings—

- (a) must be treated as proceedings for the purposes of section 76 of the Insolvency Act 2006; and
- (b) must be treated as actions or proceedings for the purposes of section 42 of the Corporations (Investigation and Management) Act 1989; and
- (c) must be treated as legal proceedings for the purposes of sections 248 and 321(1)(b) of the Companies Act 1993.

Section 63(a): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Other provisions relating to adjudication

64 Assignment of member to act as tribunal

The chair—

- (a) must assign a member to act as the tribunal in relation to a claim to which an application under section 62 relates; and
- (b) may assign himself or herself.

Compare: 2002 No 47 s 27

65 Preliminary conferences

As soon as the tribunal thinks practicable after a member has been assigned to act as the tribunal in relation to a claim (and whether or not a response has been received under section 66), it must call a preliminary conference of the parties to consider making, and (if possible) make, procedural and other decisions under this Act to try to ensure that the claim is dealt with in the manner best suited to—

- (a) its particular circumstances and those of the parties; and
- (b) its speedy and cost-effective resolution.

66 Response to adjudication claim

(1) A respondent may serve on the tribunal 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 tribunal may allow if the tribunal 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 tribunal.

Compare: 2002 No 47 s 28

67 Withdrawal of claim from adjudication

- (1) A claim may be withdrawn from adjudication—
 - (a) if the parties agree to its withdrawal; or
 - (b) if the claimant serves written notice of withdrawal on the tribunal, and either—
 - (i) no respondent objects to the withdrawal; or
 - (ii) the tribunal does not recognise a legitimate interest on the part of any respondent who objects to the withdrawal in obtaining a determination in respect of the claim.
- (2) The tribunal does not have to determine a claim withdrawn in accordance with subsection (1).

Compare: 2002 No 47 s 30

68 Parties may be represented at adjudication proceedings

- (1) A party to a claim that is being adjudicated by the tribunal may be represented by the representatives (whether legally qualified or not) that the party considers appropriate.
- (2) Subsection (1) is subject to the tribunal'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.

Compare: 2002 No 47 s 50

69 Adjudication proceedings usually to be in public

- (1) The proceedings of the tribunal must, except as provided in subsection (2), be conducted in public.

- (2) The tribunal 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) The tribunal 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 tribunal (whether held in public or in private), but no such order may prohibit the publication of any decision of the tribunal.
- (4) Despite any order made under subsection (3), the tribunal may permit a report or description of the proceedings or of any part of the proceedings to be included in any publication that is genuinely of a professional or technical nature.

Compare: 2002 No 47 s 51

70 Protection and privileges of witnesses

Every person has the same privileges as witnesses have in a court of law, in relation to—

- (a) giving information to the tribunal; and
- (b) giving evidence to, or answering questions put by, the tribunal; and
- (c) producing papers, documents, records, or things to the tribunal.

71 Privileges and immunities of counsel

Every counsel appearing before the tribunal has the same privileges and immunities as counsel in a court of law.

72 Matters tribunal may determine in adjudicating claim

- (1) In relation to any claim in respect of which an application has been made to the tribunal to have it adjudicated, the tribunal can determine—
 - (a) any liability to the claimant of any of the parties; and
 - (b) any remedies in relation to any liability determined.
- (2) In relation to any liability determined, the tribunal can also determine—

- (a) any liability of any respondent to any other respondent;
and
- (b) remedies in relation to any liability determined.

Compare: 2002 No 47 s 29

73 Powers of tribunal in adjudication proceedings

- (1) The tribunal may do any or all of the following things in relation to adjudication proceedings or the parties to them:
 - (a) conduct the proceedings in any manner it thinks fit, including adopting processes that enable it to perform an investigative role:
 - (b) request further written submissions from any party, as long as it then gives the relevant parties an opportunity to comment on those submissions:
 - (c) request the parties to provide copies of any documents that it reasonably requires:
 - (d) consider any evidence or orders from a former owner's adjudication proceedings that it thinks relevant and applicable to the claim, as long as it—
 - (i) informs the parties that it intends to do so; and
 - (ii) gives them the opportunity to comment:
 - (e) set deadlines for further submissions and comments by the parties:
 - (f) appoint an expert adviser to report on specific issues, as long as the parties are notified before the appointment is made:
 - (g) call a conference of the parties:
 - (h) inspect the dwellinghouse to which a claim relates, as long as the consent of the owner or occupier is obtained before any land or premises are entered:
 - (i) request the parties to do any other thing during the course of the proceedings that it considers may reasonably be required to enable the effective and complete determination of the questions that have arisen in them:
 - (j) for a claim whose referral to mediation it has consented to, set a maximum period of mediation shorter than the period stated in section 82:
 - (k) after considering advice from the mediator, and being satisfied that the parties are near resolution of and likely

to resolve their dispute if allowed more time, allow, for a claim whose referral to mediation it has consented to, a maximum period of mediation longer than the period stated in section 82:

- (1) issue any other reasonable directions relating to the conduct of the proceedings.
- (2) The parties to adjudication proceedings must comply with any request or direction of the tribunal made or given under this section.
- (3) If the owner or occupier referred to in subsection (1)(h) is a party to the proceedings concerned, his or her consent must not be unreasonably withheld.
- (4) The tribunal also has the powers specified in Part 2 of Schedule 3.

Compare: 2002 No 47 s 36

74 Parties' failures to act do not affect tribunal's powers to determine claim

The tribunal's powers to determine a claim are not affected by—

- (a) the failure of a respondent to serve a response on the claimant under section 66; or
- (b) the failure of any party to—
 - (i) make a submission or comment within the time allowed; or
 - (ii) give specified information within the time allowed; or
 - (iii) attend, or participate in, a conference of the parties called by the tribunal; or
 - (iv) do any other thing the tribunal asks for or directs.

Compare: 2002 No 47 s 37

75 Tribunal may draw inferences from parties' failures to act and determine claim based on available information

If any failure of the kind referred to in section 74 occurs in adjudication proceedings, the tribunal may—

- (a) draw from the failure any reasonable inferences it thinks fit; and

- (b) determine the claim concerned on the basis of the information available to it; and
- (c) give any weight it thinks fit to information that—
 - (i) it asked for, or directed to be provided; but
 - (ii) was provided later than requested or directed.

Compare: 2002 No 47 s 38

76 Further provisions in Part 2 of Schedule 3

Part 2 of Schedule 3 applies to adjudication proceedings.

Compare: 2002 No 47 s 39

Subpart 6—Mediation of claims

77 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, video conference, 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).

Compare: 2002 No 47 s 13

78 Independence of mediation personnel

- (1) The chief executive must ensure that any person employed or engaged to provide mediation services under section 77—

- (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.

Compare: 2002 No 47 s 20

79 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.

Compare: 2002 No 47 s 21

80 Access to mediation services

- (1) With the consent of the tribunal, the claimant and any of the other parties to a claim in respect of which an application has been made to the tribunal to have it adjudicated may jointly refer the claim to mediation under this Act.
- (2) A claimant with a lower-value claim may, with the consent of any of the other parties, refer it directly to mediation under this Act if—
- (a) the claimant has applied to the chief executive, in the approved form, for lower-value claims dispute resolution assistance; and
 - (b) no application has yet been made to the tribunal to have the claim adjudicated.
- (3) A claim cannot be referred to mediation under this Act except under subsection (1) or (2).
- (4) A referral to mediation must be in the approved form (if any).

- (5) The form must be signed by all parties to the mediation and, in the case of a claim referred under subsection (1), the tribunal.
Compare: 2002 No 47 s 14

81 Procedure in relation to mediation services

- (1) If 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.
- (4) A mediation process—
- (a) may not continue beyond any maximum period set for it under section 73(1)(j); and
 - (b) may not in any case continue beyond the applicable maximum period stated in section 82.
- (5) Subsection (4) is subject to sections 73(1)(k) and 83.
Compare: 2002 No 47 s 15

82 Time-frames for mediation

The following maximum periods apply to mediation:

- (a) for claims under section 19, 40 working days;
- (b) for all other claims (whether mediation occurs before or during adjudication), 20 working days.

83 Chief executive may for certain lower-value claims allow longer maximum period of mediation

If, in any particular case, no application has yet been made to the tribunal to have a lower-value claim adjudicated, the chief

executive may, if satisfied that the parties are near resolution of, and likely to resolve, the dispute, if allowed more time, allow for the claim a maximum period of mediation longer than the period stated in section 82.

84 Confidentiality

- (1) A person to whom subsection (2) applies must, unless he or she is authorised to do otherwise by the parties or the relevant party, keep confidential—
 - (a) any statement, admission, or document created or made for the purposes of the mediation (including a settlement under section 85); and
 - (b) any information that, for the purposes of the mediation, is disclosed orally in the course of the mediation.
- (2) This subsection applies to a person who—
 - (a) provides mediation services; or
 - (b) is a party to a mediation; or
 - (c) is the chief executive; or
 - (d) is a person employed or engaged by the department; or
 - (e) is a person who assists either a mediator or a person to whom mediation services are provided.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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 mediation 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.

Compare: 2002 No 47 s 16

85 Settlements

- (1) If a claim is resolved, in whole or in part, by agreement, whether through the provision of mediation services or otherwise, any person to whom subsection (2) applies and who holds a general authority referred to in subsection (2) may, at the request of the parties to the claim, and under that general authority, sign the agreed terms of settlement.
- (2) This subsection applies to a 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.
- (3) 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 (5); and
 - (b) be satisfied that, knowing the effect of that subsection, the parties affirm their request.
- (4) 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.

- (5) If, following the affirmation referred to in subsection (3) 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.

Compare: 2002 No 47 s 17

86 Use of settlements for research, education, etc

- (1) A mediator who signs agreed terms of settlement under section 85(1) must, within 10 working days of doing so, copy those agreed terms to the chief executive.
- (2) Agreed terms of settlement copied to the chief executive under this section—
- (a) may be used by the department for research or educational purposes so long as the parties and the specific matters in issue between them are not identifiable; and
 - (b) may be disclosed by the chief executive, or by any person employed or engaged by the chief executive, to any person, or any other person, who is so employed or engaged, if the disclosure is necessary for the purposes of giving effect to this Act.

87 Enforcement of terms of settlement agreed or authorised

- (1) Any agreed terms of settlement that are, under section 85, 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) If any agreed terms of settlement include a requirement that a party to the claim pay money to the claimant, sections 97 and 98 apply to that requirement as if it were imposed by a determination of the tribunal.

- (4) This section applies, despite section 29 of the District Courts Act 1947, even if the amount at issue (whether on balance of account or otherwise) is more than \$200,000.

Compare: 2002 No 47 s 18

88 Mediation services not to be questioned as being inappropriate

- (1) No mediation services may be challenged or called into question in any proceedings on the ground—
- (a) that the nature and content of the services were inappropriate; or
 - (b) that the manner in which the services were provided was inappropriate.
- (2) Nothing in subsection (1) or in section 85 prevents any agreed terms of settlement signed under section 85 from being challenged or called into question on the ground that the provisions of subsection (3) of that section (which relate to knowledge about the effect of a settlement) were not complied with.

Compare: 2002 No 47 s 19

Subpart 7—Determination of claims in
adjudication proceedings

Tribunal's determination

89 Tribunal's determination: timing

- (1) The tribunal must determine a claim—
- (a) either—
 - (i) if there has been mediation, within 35 working days after the last mediation process has been referred back to the tribunal from mediation; or
 - (ii) if there has been no mediation, within 35 working days after the end of the period referred to in section 66(1) during which the respondent may serve on the tribunal a written response to an adjudication claim (or, if there are 2 or more respondents, within 35 working days after the end of the latest-ending period for response applicable to any of the respondents under section 66(1)); or

- (b) within any further time that the parties to the adjudication agree.
- (2) The tribunal must give a copy of the determination to every party to the adjudication as soon as practicable after making a determination.

Compare: 2002 No 47 s 40

90 Tribunal's determination: substance

- (1) The tribunal may make any order that a court of competent jurisdiction could make in relation to a claim in accordance with principles of law.
 - (1A) An order under subsection (1) may require the payment of general damages (for example, for relevant mental distress).
 - (1B) Subsection (1A) does not limit subsection (1).
- (2) However, if the tribunal makes an order under subsection (1) that requires a person to take any action other than the payment of money, the tribunal 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 the tribunal determines that a party to the adjudication is liable to make a payment to another party, the tribunal may make that determination subject to any conditions that the tribunal thinks fit.
- (4) The tribunal may determine that the liability of a party to the adjudication depends on another party to that adjudication meeting any conditions that the tribunal may impose.
- (5) The fact that a claim is a lower-value claim does not prevent the value of the tribunal's determination from exceeding the lower-value ceiling.
- (6) If a claim is settled by agreement between the parties before the tribunal's determination is given, the tribunal—
 - (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.

Compare: 2002 No 47 s 42

Section 90(1): substituted, on 29 August 2007, by section 9 of the Weathertight Homes Resolution Services (Remedies) Amendment Act 2007 (2007 No 33).

Section 90(1A): inserted, on 29 August 2007, by section 9 of the Weathertight Homes Resolution Services (Remedies) Amendment Act 2007 (2007 No 33).

Section 90(1B): inserted, on 29 August 2007, by section 9 of the Weathertight Homes Resolution Services (Remedies) Amendment Act 2007 (2007 No 33).

91 Costs of adjudication proceedings

- (1) The tribunal 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 it 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 tribunal does not make a determination under subsection (1), the parties to the adjudication must meet their own costs and expenses.

Compare: 2002 No 47 s 43

92 Tribunal's determination: form

- (1) The tribunal's determination of an adjudication—
 - (a) must be in writing; and
 - (b) must state the tribunal's reasons for it; and
 - (c) if the tribunal 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 he or she takes no steps in relation to an application to enforce the determination.
- (2) After a copy of the determination is given to the parties to an adjudication under section 89(2), the tribunal may, on its own initiative, correct any errors in it that are—
 - (a) errors in computation; or
 - (b) clerical or typographical errors; or
 - (c) errors of a similar nature.

Compare: 2002 No 47 s 41

Appeal from tribunal's determination

93 Right of appeal

- (1) A party to a claim that has been determined by the tribunal 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 90(2)); or
 - (b) if the appeal relates to a determination in which the tribunal has declined to require payment of any amount of money (or money's worth in terms of section 90(2)) to a claimant, or has required payment of an amount of money (or money's worth in terms of section 90(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) If 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.

Compare: 2002 No 47 s 44

94 Procedure for commencing appeal

- (1) An appeal under section 93 must be made by filing a notice of appeal, in accordance with the rules of the relevant court, in the court nearest to the location of the dwellinghouse (or any of the dwellinghouses) to which the appeal relates.

- (2) The notice of appeal 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).

Compare: 2002 No 47 s 45

95 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 tribunal 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 the tribunal 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.

Compare: 2002 No 47 s 46

96 Effect of appeal on tribunal's determination

An appeal under section 93 does not operate as a stay of the tribunal's determination unless a District Court Judge or, as the case may be, a High Court Judge on application so determines.

Compare: 2002 No 47 s 47

Enforcement of tribunal's determination

97 Duty to comply with tribunal's determination

A party to the adjudication must comply with a determination of the tribunal.

Compare: 2002 No 47 s 48

98 Enforcement of tribunal's determination

- (1) Every determination of the tribunal must be treated as an order of the District Court, and, subject to this section, may be enforced accordingly.
- (2) If application is made to a District Court for the issue of any process to enforce a determination of the tribunal provided for by section 90(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, 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 tribunal 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 10-working-day period specified in subsection (3), the District Court must determine the matter.
- (6) This section applies, despite section 29 of the District Courts Act 1947, even if the amount at issue (whether on balance of account or otherwise) is more than \$200,000.

Compare: 2002 No 47 s 49

99 Records of adjudication

- (1) The tribunal is responsible for ensuring the safe custody of the records and papers relating to adjudications conducted under this Act.
- (2) The records and papers must be available for public inspection, on payment of the relevant fee (if any), at all reasonable times, unless an order of the tribunal under section 69 or under clause 14 of Schedule 3 requires otherwise.

- (3) Any person may, on application to the tribunal and payment of the relevant fee (if any), require the tribunal 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 tribunal and available for public inspection under subsection (2).
- (4) A certificate signed by a member and to the effect that a copy of that kind is a true copy of the record or paper to which the certificate relates is, in the absence of proof to the contrary, sufficient evidence that the copy is a true copy of that record or paper.
- (5) **Relevant fee**, in relation to the public inspection, or to the supply of a true copy, of a record or paper, under this section, means the fee (if any) prescribed by regulations made under the District Courts Act 1947 as payable in respect of civil proceedings under that Act or other Acts for the search of a document, or for a copy of any notes, judgment, or order, or of any other document, respectively.

Compare: 2002 No 47 s 52

100 Adjudication determinations to be made available

- (1) The tribunal—
 - (a) must give public notice of every determination it makes; and
 - (b) must copy every determination it makes to—
 - (i) the chief executive; and
 - (ii) the Secretary.
- (2) Copies of each determination of the tribunal, which must include the tribunal's reasons for each determination, must be available by purchase from the Ministry at a reasonable price.
- (3) Every notice published under subsection (1) must, for the purposes of clause 6 of Part 1 of Schedule 1 of the Defamation Act 1992, be treated as a fair and accurate report of the proceedings of a court in New Zealand.

Compare: 2002 No 47 s 53

Subpart 8—Weathertight Homes Tribunal

Establishment, exercise of powers, and members and officers

101 Weathertight Homes Tribunal established

- (1) This section establishes the Weathertight Homes Tribunal.
- (2) The tribunal comprises all members.
- (3) The chair presides over the tribunal.

102 Exercise of powers of tribunal

The duties, functions, and powers of the tribunal are performed and exercised by its members.

103 Appointment of members of tribunal

- (1) Each member is appointed by the Governor-General on the recommendation of the Minister of Justice.
- (2) The recommendation of the Minister of Justice must be made after consultation with the Minister (as defined in section 8).
- (3) The Minister of Justice must recommend for appointment only people who, in the opinion of that Minister, are suitable to be appointed as members, having regard to their knowledge, skills, and experience.
- (4) One member must be appointed by the Governor-General as the chair of the tribunal.
- (5) The provisions of Part 1 of Schedule 3 apply to members.

Compare: 2002 No 47 s 24

104 Conflicts of interest

- (1) A member who, in performing and exercising the duties, functions, and powers of the tribunal, has a conflict of interest, must—
 - (a) disclose it to the parties to the adjudication proceedings concerned; and
 - (b) withdraw from those proceedings unless those parties agree otherwise.
- (2) A party who under subsection (1)(b) agrees to a member's continuing to act forfeits any right to object to the member's

acting on the basis of any conflict of interest disclosed by the member under subsection (1)(a) before the party agreed.

Compare: 2002 No 47 s 35

105 Members not compellable witnesses

A member 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.

Compare: 2002 No 47 s 54

106 Manner of provision of adjudication services

- (1) The chair decides how the adjudication services under this Act are to be provided.
- (2) Adjudication services may be provided, for example,—
 - (a) by a telephone, video conference, fax, internet, or email service; or
 - (b) by members 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).

Compare: 2002 No 47 s 25

107 Chair may delegate duties

- (1) The chair may delegate to another member all or any of the chair's duties under the following sections:
 - (a) section 27(2)(a) (approval of form of application for tribunal's consent under section 26(2));
 - (b) section 49 (reconsideration of chief executive's decision on whether claim meets eligibility criteria);
 - (c) section 62(1) and (3) (approval of form of application for adjudication);
 - (d) section 64 (assignment of member to act as tribunal):

- (e) section 101(3) (presiding over tribunal):
 - (f) section 106 (manner of provision of adjudication services):
 - (g) section 113(1)(a) (written approval of chair to referral of question of law to High Court):
 - (h) section 114 (practice directions):
 - (i) section 117(d) (approval of manner of sending notice or other document as sufficient service or sufficient giving of it for purposes of Act or regulations):
 - (j) section 124(2) (notification to territorial authorities for land information memorandum purposes):
 - (k) clause 9(3) of Schedule 3 (approval of form of witness summons).
- (2) The delegation—
- (a) must be in writing and signed by the chair:
 - (b) must specify the duties delegated, and the person or persons to whom they are delegated (the **delegates**):
 - (c) does not prevent the chair from performing the duties delegated, or affect his or her responsibility for actions of the delegates:
 - (d) is revocable at will by written notice to the delegates:
 - (e) may be made subject to any terms and conditions stated in it the chair thinks fit:
 - (f) may permit some or all of the delegates to delegate further the duties delegated, subject to any terms and conditions stated in it the chair thinks fit.
- (3) A delegate—
- (a) may perform the duties delegated in the same manner and with the same effect as if they had been conferred or imposed on the delegate directly by this Act; but
 - (b) must perform them (and may further delegate them to the extent that the delegation permits) only in accordance with any terms and conditions stated in the delegation.

108 Registrar and other staff of tribunal

- (1) A Registrar of the tribunal may be appointed under the State Sector Act 1988 to enable it to perform its functions, and exercise its jurisdiction, effectively.

- (2) The Secretary may designate as many employees of the Ministry to act as other officers of the tribunal as may be required for that purpose.
- (3) The officers designated must act under the general direction of the Secretary.
- (4) The Secretary must provide all other employees required to give the tribunal the services and resources necessary for that purpose.
- (5) Any person appointed as Registrar under subsection (1) may hold that position either separately or in conjunction with any other office or position in the Ministry.
- (6) An employee designated under subsection (2) or provided under subsection (4) may also hold any other office or position in the Ministry.

*Tribunal's powers, etc, relating to adjudication
proceedings*

109 Termination of proceedings by tribunal

The tribunal must terminate adjudication proceedings if it considers, on reasonable grounds, that they should not have been commenced, or should not be continued, in terms of section 60(5) or 61(1).

Compare: 2002 No 47 s 31

110 Consolidation of adjudication proceedings

If 2 or more adjudication proceedings are pending, the tribunal may, with the written consent of all of the parties to them, determine them at the same time.

Compare: 2002 No 47 s 32

111 Joinder of parties

- (1) The tribunal may order that a person be joined as a respondent in adjudication proceedings if it considers that—
 - (a) the person ought to be bound by, or have the benefit of, an order of the tribunal; or
 - (b) the person's interests are affected by the proceedings; or

- (c) for any other reason it is desirable that the person should be joined as a respondent.
- (2) The tribunal may make an order under subsection (1) on the application of any party or on its own initiative.
- (3) If the tribunal makes an order under subsection (1),—
 - (a) it must also order the claimant to serve a notice that complies with section 62(2)(a), (3), and (4) on—
 - (i) the person joined as a respondent; and
 - (ii) the other parties to the adjudication; and
 - (iii) the department; and
 - (b) section 66 then applies to the person joined as a respondent.
- (4) Subsection (3)(a) does not require a claimant to give a copy of the assessor's report to any person other than the newly joined respondent, or to pay a further fee under section 62(2)(b).

Compare: 2002 No 47 s 33

112 Removal of party from proceedings

- (1) The tribunal may, on the application of any party or on its own initiative, order that a person be struck out as a party to adjudication proceedings if the tribunal considers it fair and appropriate in all the circumstances to do so.
- (2) This section is subject to section 57(2).

Compare: 2002 No 47 s 34

113 Questions of law may be referred to High Court

- (1) If a question of law arises during adjudication proceedings, the tribunal—
 - (a) may (if the duties, functions, and powers of the tribunal in relation to the adjudication are not being performed and exercised by the chair, with the written approval of the chair) refer the question to the High Court, in the manner (if any) prescribed by rules of court, for its opinion; and
 - (b) may, if it thinks fit, delay the proceedings until it receives the court's opinion.

- (2) The High Court must give the tribunal its opinion on the question; and the tribunal must then continue the adjudication in accordance with the opinion.

114 Practice directions

The chair may issue practice directions, not inconsistent with this Act, relating to the making of applications to the tribunal or the hearing and determination of adjudication proceedings by the tribunal.

Offences, and contempt of tribunal

115 Offences

Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$2,000, who—

- (a) assaults, threatens, or intimidates, or intentionally insults, the tribunal or any member, or any officer of the tribunal, during a sitting of the tribunal, or in going to, or returning from, any sitting; or
- (b) intentionally interrupts the proceedings of the tribunal or otherwise misbehaves while the tribunal is sitting; or
- (c) intentionally and without lawful excuse disobeys an order or direction of the tribunal in the course of any proceedings before the tribunal; or
- (d) fails or refuses to comply with a witness summons issued by the tribunal.

116 Person in contempt of tribunal may be excluded from proceedings

- (1) The tribunal may order the exclusion from a sitting of the tribunal of any person whose behaviour, in the tribunal's opinion, constitutes an offence against paragraph (a), (b), or (c) of section 115; and any member of the police may take any steps reasonably necessary to enforce the person's exclusion.
- (2) Subsection (1) applies whether or not the person whose exclusion is ordered is charged with the offence.

Subpart 9—Miscellaneous provisions

117 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 or given 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 usual or last known place of residence or business in New Zealand; or
- (d) the notice or document is sent in any manner approved for the purpose by the chair.

Compare: 2002 No 47 s 56

118 Mediator or tribunal may decline to deal with claim

- (1) A mediator or the tribunal may decline to deal with a claim if, in the opinion of the mediator or the tribunal,—
 - (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) However, no mediator may exercise the power conferred by subsection (1) in respect of a claim unless—
 - (a) the claim is a lower-value claim in respect of which mediation services are being provided; and
 - (b) adjudication of the claim has not been initiated.
- (3) If in any case a mediator or the tribunal decides to decline to deal with a claim, the mediator or the tribunal must inform the parties of that decision and state the reasons for that decision.

Compare: 2002 No 47 s 57

119 Transfer of claim to court

The tribunal may order a claim to be transferred to a District Court or the High Court in its ordinary civil jurisdiction if, in the tribunal's view, it is more appropriate for a court to determine the claim for all or any of the following reasons:

- (a) the claim presents undue complexity:

- (b) the claim presents a novel claim:
- (c) the subject matter of the claim is related to the subject matter of proceedings that are already before the court.

Compare: 2002 No 47 s 58

120 Transfer of proceedings from court

- (1) If 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 adjudication.
- (2) If proceedings relating to a claim have been commenced in the 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 adjudication.
- (3) If proceedings are transferred under subsection (1) or (2), the tribunal may have regard to any notes of evidence transmitted to it by the Judge, and it is not necessary for that evidence to be given again in the adjudication unless the tribunal requires it.
- (4) An order to transfer proceedings under subsection (1) or (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.

Compare: 2002 No 47 s 59

121 Transfer of proceedings from arbitration

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

Compare: 2002 No 47 s 60

122 Exclusion of liability

- (1) This section applies to—
- (a) the chief executive and the Secretary; and
 - (b) every member, assessor, and mediator; and
 - (c) every officer, agent, or employee of the tribunal.
- (2) Unless he or she has acted in bad faith, no person to whom this section applies is under any criminal or civil liability in respect of—
- (a) any act done or omitted in the course of performing or exercising any of his or her functions, duties, or powers under this Act; or
 - (b) any words spoken or written at, or for the purposes of, the hearing of any mediation or adjudication; or
 - (c) anything in any notice given under this Act.

Compare: 2002 No 47 s 61

123 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 a value to be a ceiling for determining how claims are to be dealt with;
- (c) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Compare: 2002 No 47 s 62

124 Notifications to territorial authorities for land information memorandum purposes

- (1) The chief executive must notify a territorial authority (as soon as is reasonably practicable after the event, and in enough detail to enable particulars to be included in a land information memorandum issued by a territorial authority under section 44A of the Local Government Official Information and Meetings Act 1987) of any of the following events occurring in relation to a dwellinghouse in its district:

- (a) an application under section 32(1) by an owner of the dwellinghouse who wishes to bring a claim in respect of it—
 - (i) to have an assessor's report prepared in respect of it; or
 - (ii) to have an assessor's report that was prepared in respect of it on the application of a former owner approved as suitable for the owner's claim:
 - (b) the decision of the chief executive under section 48 that a claim is, or is not, eligible:
 - (c) the decision under section 49 of the chair on review that a claim is, or is not, eligible:
 - (d) the termination under section 52 (which requires the chief executive to terminate certain claims if the situation alters) of a claim:
 - (e) the decision of the chief executive under section 56 to terminate a claim not pursued:
 - (f) the signing of agreed terms of settlement under section 85:
 - (g) the discontinuance or termination, for any other reason (for example, under section 55 and because of a change of ownership), and if known to the department, of a claim.
- (2) The chair must notify a territorial authority (as soon as is reasonably practicable after the event, and in enough detail to enable particulars to be included in a land information memorandum issued by a territorial authority under section 44A of the Local Government Official Information and Meetings Act 1987) of any of the following events occurring in relation to a dwellinghouse in its district:
- (a) the termination of a claim under section 53:
 - (b) the withdrawal of a claim under section 67:
 - (c) the determination of a claim under section 90:
 - (d) the termination of adjudication proceedings under section 109:
 - (e) the transfer of a claim to court, under section 119:
 - (f) the transfer of proceedings to adjudication, under section 120 or 121:

- (g) the discontinuance or termination, for any other reason (for example, under section 55 and because of a change of ownership), and if known to the tribunal, of a claim.

125 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.

Compare: 2002 No 47 s 63

Part 2

**Repeal, consequential amendments, and
transitional provisions**

**Subpart 1—Repeal and consequential
amendments**

126 Repeal of former Act

The Weathertight Homes Resolution Services Act 2002 (2002 No 47) (the **former Act**) is repealed.

127 Consequential amendments

- (1) The Building Act 2004 is amended—
 - (a) by omitting from section 398(2)(b) “2002” and substituting “2006”; and
 - (b) by repealing so much of Part 1 of Schedule 4 (enactments amended) as relates to the former Act.

- (2) Section 27(2) of the Construction Contracts Act 2002 is amended—
 - (a) by omitting “an adjudicator” and substituting “a member”; and
 - (b) by omitting “2002” and substituting “2006”; and
 - (c) by omitting “or adjudicator” in each place where it appears and substituting in each case “or member”.
- (3) The item relating to the former Act in Part 1 of Schedule 2 of the Insolvency Act 2006 is amended—
 - (a) by omitting “**2002 (2002 No 47)**” and substituting “**2006 (2006 No 84)**”; and
 - (b) by omitting “55(2)(a)” and substituting “63(a)”; and
 - (c) by omitting “24” and substituting “32”; and
 - (d) by omitting “sections 31 to 35” and substituting “section 76”; and
 - (e) by omitting “4(2) of the Schedule” and substituting “5(2) of Schedule 3”.
- (4) The Legal Services Act 2000 is amended—
 - (a) by omitting from the definition of **civil proceedings** in section 4(1) “sections 22 to 55 of the Weathertight Homes Resolution Services Act 2002” and substituting “subparts 5, 7, 8, and 9 of Part 1 of the Weathertight Homes Resolution Services Act 2006”; and
 - (b) by omitting from section 7(1)(p) “an adjudicator” and substituting “the tribunal”; and
 - (c) by omitting from section 7(1)(p) “2002” and substituting “2006”.
- (5) Section 44A(2) of the Local Government Official Information and Meetings Act 1987 is amended by inserting the following paragraph after paragraph (e):

“(ea) information notified to the territorial authority under section 124 of the Weathertight Homes Resolution Services Act 2006.”.
- (6) Schedule 4 (officers whose remuneration is to be determined by Authority) of the Remuneration Authority Act 1977 is amended by inserting the following item after the item relating to the members of the Waitangi Tribunal:

“The chair of the tribunal under the Weathertight Homes Resolution Services Act 2006.”

Subpart 2—Overview of transitional provisions for claims under former Act that are not disposed of before transition date

128 Categories of claims under former Act

Subparts 3 to 6 of this Part apply to claims under the former Act that, before the transition date, are not withdrawn, terminated, or otherwise disposed of (for example, through resolution by a settlement agreement, or by an adjudicator’s determination), and are in one of the following categories:

- (a) claims whose eligibility is undecided—subpart 3:
- (b) claims that it has been decided are eligible, but that are not in mediation or adjudication—subpart 4:
- (c) claims that it has been decided are eligible, and that are in mediation—subpart 5:
- (d) claims that it has been decided are eligible, and that are in adjudication—subpart 6.

Subpart 3—Claims whose eligibility undecided before transition date

129 Claims to which this subpart applies

- (1) This subpart applies to a claim (the **claim**) if, on the close of the day before the transition date, an evaluation panel has not decided whether it meets the criteria set out in section 7(2) of the former Act.
- (2) This subpart also applies to a claim (the **claim**) if, on the close of the day before the transition date, an evaluation panel has decided that it does not meet those criteria but, within 10 working days of receiving the decision, the claimant wrote to the chief adjudicator requesting that the decision of the evaluation panel be reviewed, and—
 - (a) the chief adjudicator has not considered whether or not the decision appears to be manifestly unjust; or
 - (b) the chief adjudicator has determined that the decision appears to be manifestly unjust, but has not referred it back to the evaluation panel for a new evaluation of

whether or not it meets the criteria set out in section 7(2) of the former Act; or

- (c) the chief adjudicator has referred it back to the evaluation panel for a new evaluation of whether or not it meets the criteria set out in section 7(2) of the former Act, but the evaluation panel has not completed a new evaluation.

130 How Part 1 applies to claim

- (1) Part 1 applies to the claim as if it was one brought under this Act and that had reached the same stage, or the nearest equivalent stage, under this Act, and, in particular,—
 - (a) sections 13 (eligibility criteria) and 50 (what remedies may be claimed) apply to it as if those sections were in force when it was brought; and
 - (b) any adjudication of it must be undertaken by the tribunal, on an application under section 62 to have it adjudicated.
- (2) This section is subject to sections 131 to 133.

131 Making submission to chief executive if assessor thinks claim does not meet eligibility criteria

- (1) A claimant's ability under section 45 to make to the chief executive a submission on an assessor's report stating that, in the assessor's opinion, the claim to which it relates does not meet the eligibility criteria,—
 - (a) is available to the claimant in relation to an assessor's report on the claim if (and only if), before the transition date, the assessor's report had not already been referred to an evaluation panel; and
 - (b) if available, is available as if the assessor's report were a full assessor's report.
- (2) This section overrides section 130.

132 Lower-value claims provisions apply to claim

- (1) Sections 58, 60(7), and 80(2), and all other provisions of this Act relating to lower-value claims, apply to the claim.

- (2) This section overrides section 130, but is subject to section 133.

133 Provisions that apply instead or as well if claim relates to dwellinghouse, etc, in multi-unit complex

- (1) If the claim relates to 1 or more dwellinghouses, or to 1 or more common areas, or to both, in a multi-unit complex,—
- (a) section 13 (eligibility criteria) does not apply to it, and section 7(2) of the former Act applies to it; and
 - (b) the following sections apply to it as if it were a claim to which subpart 4 of this Part applies:
 - (i) section 137 (lower-value claims provisions do not apply to claim):
 - (ii) section 138 (consolidation of adjudication of claims relating to multi-unit complexes):
 - (iii) section 139 (availability of wider remedies in adjudication):
 - (iv) section 140 (claim history must be notified to territorial authorities for land information memorandum purposes):
 - (v) section 141 (new claim in respect of same dwellinghouse, etc, in multi-unit complex).
- (2) This section overrides sections 130 and 132.

Subpart 4—Claims that it has been decided are eligible, but that are not in mediation or adjudication, before transition date

134 Claims to which this subpart applies

This subpart applies to a claim (the **claim**) if, before the transition date,—

- (a) it has been decided that the claim meets the criteria set out in section 7(2) of the former Act; but
- (b) neither mediation nor adjudication of the claim has been initiated under the former Act.

135 How Part 1 applies to claim

- (1) Part 1 applies to the claim as if it was one brought under this Act and that had reached the same stage, or the nearest equiva-

lent stage, under this Act, and, in particular, any adjudication of it must be undertaken by the tribunal, on an application under section 62 to have it adjudicated.

- (2) This section applies even if the claim does not comply with section 13 (eligibility criteria).
- (3) This section is subject to sections 136 to 141.

136 Mediation fee paid may be applied to adjudication fee

- (1) If the claimant has, before the transition date, paid the fee then required by section 14 of the former Act,—
 - (a) the amount paid does not have to be refunded; but
 - (b) if the claimant initiates adjudication on or after that date, the fee payable must be reduced by the amount paid.
- (2) This section overrides section 135.

137 Lower-value claims provisions do not apply to claim

- (1) Sections 58, 60(7), and 80(2), and all other provisions of this Act relating to lower-value claims, do not apply to the claim.
- (2) This section overrides section 135.

138 Consolidation of adjudication of claims relating to multi-unit complexes

- (1) This section applies to the adjudication of the claim if,—
 - (a) on or after the transition date, the claimant applies to the tribunal to have it adjudicated; and
 - (b) the dwellinghouse to which it relates is part of a multi-unit complex.
- (2) The tribunal must, unless it thinks consolidation inappropriate in the particular circumstances of any particular claim, consolidate into as few adjudications as possible (and preferably a single adjudication) all eligible claims (whether or not they are claims to which this subpart applies) relating to the same multi-unit complex.
- (3) In acting under subsection (2), the tribunal must—
 - (a) take into account the stage any relevant adjudications have already reached; and

- (b) balance the likely cost and inconvenience to the parties to the claims concerned of consolidating or not consolidating the claims.
- (4) The adjudication of claims consolidated under subsection (2) must, as far as is possible, proceed—
 - (a) as if it were the adjudication of a single claim; but
 - (b) with the parties to each of the claims retaining the right to be separately represented.
- (5) This section overrides section 135.

139 Availability of wider remedies in adjudication

- (1) This section applies to the adjudication of the claim if, on or after the transition date, the claimant applies to the tribunal to have it adjudicated.
- (2) The tribunal must widen the claim so that the remedies available to the claimant include as many of the remedies available to a new claimant as the tribunal thinks appropriate in the particular circumstances of the claim.
- (3) Subsection (2) does not apply unless the claimant has—
 - (a) applied to the tribunal to have the claim widened; and
 - (b) given the tribunal written consent to invasive testing (or further invasive testing) of the dwellinghouse concerned.
- (4) In deciding under subsection (2) whether to widen the claim (and if so, how far), the tribunal must take into account the possible cost and inconvenience to the parties.
- (5) On or after deciding under subsection (2) to widen the claim, the tribunal may ask the chief executive for a further full assessor's report.
- (6) A further full assessor's report asked for under subsection (5) must not relate to all or any matters required by section 42(2) to (4) unless the tribunal, on or after asking for the report, also asks for it to relate to them.
- (7) This section applies to claims that—
 - (a) relate to the same multi-unit complex; and
 - (b) are adjudicated together under section 138.
- (8) Subsection (7) does not limit subsections (1) to (6).
- (9) This section overrides section 135.

140 Claim history must be notified to territorial authorities for land information memorandum purposes

- (1) Section 124(1) applies to the claim—
 - (a) in respect of events to which that subsection applies that occur on or after the transition date; and
 - (b) as if events of that kind that occurred before the transition date, and that are known to the department, occurred on that date, and as if the chief executive must notify the relevant territorial authority of them as soon after that date as it is reasonably practicable to do so.
- (2) Section 124(2) applies to the claim—
 - (a) in respect of events to which that subsection applies that occur on or after the transition date; and
 - (b) as if events of that kind that occurred before the transition date, and that are known to the tribunal, occurred on that date, and as if the chair must notify the relevant territorial authority of them as soon after that date as it is reasonably practicable to do so.
- (3) This section overrides section 135.

141 New claim in respect of same dwellinghouse, etc, in multi-unit complex

- (1) The claim may, if it relates to a dwellinghouse, common areas, or both, in a multi-unit complex, be withdrawn, at the claimant's discretion and without complying with section 67, for the purpose only of enabling the claimant, as soon as is practicable, to be part of, or to join, a new claim brought in respect of the dwellinghouse, common areas, or both under section 19, 20, or 21.
- (2) If the claimant is part of, or joins, a new claim of the kind referred to in subsection (1), Part 1 applies to the new claim.
- (3) Subsection (2) is subject to subsections (4) and (5).
- (4) If, within 1 year after the claim is withdrawn to enable a new claim of the kind referred to in subsection (1) to be brought, a claim of that kind is brought, section 37 applies to the new claim as if it were brought when the claim was brought.
- (5) Subsection (4) applies whether the claim concerned was withdrawn before, on, or after the transition date.

- (6) This section overrides section 135, and does not limit the application to the claim of section 67.

Subpart 5—Claims that it has been decided
are eligible, and that are in mediation, before
transition date

142 Claims to which this subpart applies

This subpart applies to a claim (the **claim**) if, before the transition date,—

- (a) it has been decided that the claim meets the criteria set out in section 7(2) of the former Act; and
- (b) mediation of the claim has been initiated under the former Act.

143 How Part 1 applies to claim

- (1) Part 1 applies to the claim as if it was one brought under this Act and that had reached the same stage, or the nearest equivalent stage, under this Act, and, in particular, any adjudication of it must be undertaken by the tribunal, on an application under section 62 to have it adjudicated.
- (2) This section applies even if the claim does not comply with section 13 (eligibility criteria).
- (3) This section is subject to sections 144 to 146.

144 Consolidation of mediation of claims relating to multi-unit complexes

- (1) This section applies to the mediation of the claim if the dwellinghouse to which the claim relates is part of a multi-unit complex.
- (2) The mediation may, with the consent of the parties to each claim concerned, be completed as part of a single mediation relating to 2 or more claims (whether or not claims to which this subpart applies) relating to the same multi-unit complex.
- (3) This section overrides section 143.

145 Availability of wider remedies in mediation

- (1) The mediation of the claim—

- (a) may, with the consent of the parties, be completed on the basis that the remedies available to the claimant include any of the remedies available to a new claimant under section 50; but
 - (b) must otherwise be completed on the basis that the remedies available to the claimant are limited to those that were available before the transition date.
- (2) This section applies to claims that—
 - (a) relate to the same multi-unit complex; and
 - (b) are mediated together under section 144.
 - (3) Subsection (2) does not limit subsection (1).
 - (4) This section overrides section 143.

146 Sections 136 to 141 apply to claim

- (1) The following sections apply to the claim as if it were a claim to which subpart 4 of this Part applies:
 - (a) section 136 (mediation fee paid may be applied to adjudication fee):
 - (b) section 137 (lower-value claims provisions do not apply to claim):
 - (c) section 138 (consolidation of adjudication of claims relating to multi-unit complexes):
 - (d) section 139 (availability of wider remedies in adjudication):
 - (e) section 140 (claim history must be notified to territorial authorities for land information memorandum purposes):
 - (f) section 141 (new claim in respect of same dwelling-house, etc, in multi-unit complex).
- (2) This section overrides section 143.

Subpart 6—Claims that it has been decided
are eligible, and that are in adjudication,
before transition date

*Application of subpart and whether claim under
former Act*

147 Claims to which this subpart applies

This subpart applies to a claim (the **claim**) if, before the transition date,—

- (a) it has been decided that the claim meets the criteria set out in section 7(2) of the former Act; and
- (b) adjudication of the claim has been initiated under the former Act.

148 Claim may continue under former Act or be withdrawn

- (1) The claim must be dealt with—
 - (a) as if Part 1 had not been enacted; and
 - (b) under the former Act as modified by section 148A.
- (2) Subsection (1) does not prevent the claimant from withdrawing the claim before it has been disposed of under the former Act.
- (3) Withdrawal of the kind contemplated by subsection (2) may be done at the claimant's discretion, and without complying with section 30 of the former Act, but may be done for the purpose only of enabling the claimant, as soon as is practicable,—
 - (a) to make an application to the tribunal, under section 62, to have the withdrawn claim adjudicated, in accordance with section 150 or 153(1)(a); or
 - (b) to be part of, or to join, a new claim, brought, under section 19, 20, or 21, in respect of the same dwelling-house, common areas, or both, in accordance with section 153(1)(b).
- (4) Subsection (3) does not limit the application to the claim of section 30 of the former Act.

Section 148(1): substituted, on 29 August 2007, by section 10 of the Weather-tight Homes Resolution Services (Remedies) Amendment Act 2007 (2007 No 33).

148A How former Act modified for section 148(1)

The former Act must for the purposes of section 148(1) be treated as if it had been amended in the manner specified in Schedule 4.

Section 148A: inserted, on 29 August 2007, by section 11 of the Weathertight Homes Resolution Services (Remedies) Amendment Act 2007 (2007 No 33).

149 Who deals with claims to which section 148 applies

- (1) A claim to which section 148 applies must, if it is not withdrawn before it is disposed of under the former Act, be dealt with in accordance with that section by—
 - (a) the person who, under subsection (6), is to be taken for the purposes of this section to be, and to have the duties, functions, and powers of, the chief adjudicator; or
 - (b) one of the persons who, at the close of the day before the transition date, held under the former Act the office of adjudicator but not also the office of chief adjudicator; or
 - (c) one of the persons appointed as adjudicators in accordance with subsection (3) or (4).
- (2) The adjudicators referred to in subsection (1)(b) remain in office for the period reasonably necessary to enable them to exercise and perform their duties, functions, and powers in respect of claims to which this section applies.
- (3) However, if any of the adjudicators referred to in subsection (1)(b) resigns or is removed from office before the end of the period referred to in subsection (2), another adjudicator may be appointed, under section 24(2) and (3) of the former Act (as if those subsections had not been repealed), for the same period and purposes for which that adjudicator would otherwise have remained in office.
- (4) To enable claims to which this section applies to be dealt with in accordance with section 148 by adjudicators additional to those referred to in subsection (1)(b) or appointed in accordance with subsection (3), additional adjudicators of that kind may be appointed under section 24(2) and (3) of the former Act (as if those subsections had not been repealed).
- (5) To avoid doubt, adjudicators referred to in subsection (1)(b) or appointed in accordance with subsection (3) or (4) are paid

salaries and allowances in accordance with clause 5 of the Schedule of the former Act.

- (6) For the purposes of this section, and until it is no longer reasonably necessary for those purposes, the person who holds office as the chair (whether because section 156(1) applies to the person or otherwise) is to be taken to be, and to have the duties, functions, and powers of, the chief adjudicator.
- (7) This section does not limit section 148(1).

*How matters may proceed if claim under former
Act withdrawn*

150 Owner of dwellinghouse not in multi-unit complex may apply to have withdrawn claim adjudicated by tribunal

- (1) If the claim is withdrawn as contemplated by section 148(2), and it related to a dwellinghouse that is not in a multi-unit complex, the claimant may apply to the tribunal, under section 62, to have the withdrawn claim adjudicated.
- (2) This section applies even if the claim does not comply with section 13 (eligibility criteria).

151 How Part 1 applies to adjudication of withdrawn claim in respect of dwellinghouse not in multi-unit complex

- (1) If, under section 150, the claimant applies to the tribunal to have the withdrawn claim adjudicated, Part 1 applies to the application for adjudication, to the adjudication, and to all later steps, in respect of the withdrawn claim, as if it were a claim brought under this Act.
- (2) This section is subject to section 152.

152 Exceptions to sections 151 and 154

- (1) The application for adjudication need not be accompanied by the prescribed fee (if any).
- (2) The tribunal may consider any written evidence (including an assessor's report) submitted for the adjudication, under the former Act, of the withdrawn claim.
- (3) The following sections apply to the claim as if it were a claim to which subpart 4 of this Part applies:

- (a) section 137 (lower-value claims provisions do not apply to claim):
 - (b) section 139 (availability of wider remedies in adjudication):
 - (c) section 140 (claim history must be notified to territorial authorities for land information memorandum purposes).
- (4) If, within 1 year after the claim is withdrawn to enable an application to be made to the tribunal, in accordance with section 150(1), to adjudicate it, an application of that kind is made, section 37 applies to the withdrawn claim as if it were a claim—
- (a) brought when the withdrawn claim was brought; but
 - (b) brought under this Act (as if it were then in force).
- (5) Subsection (4) applies whether the claim concerned was withdrawn before, on, or after the transition date.

153 Dwellinghouse or common areas in multi-unit complex

- (1) If the claim is withdrawn as contemplated by section 148(2), and it related to a dwellinghouse, common areas, or both, in a multi-unit complex, the claimant may—
- (a) apply to the tribunal, under section 62, to have the withdrawn claim adjudicated; or
 - (b) be part of, or join, a new claim brought, in respect of the dwellinghouse, common areas, or both, under section 19, 20, or 21.
- (2) This section applies even if the claim does not comply with section 13 (eligibility criteria).

154 How Part 1 applies to adjudication of withdrawn claim under former Act in respect of multi-unit complex

- (1) If, under section 153(1)(a), the claimant applies to the tribunal to have the withdrawn claim adjudicated, Part 1 applies to the application for adjudication, to the adjudication, and to all later steps, in respect of the withdrawn claim, as if it were a claim brought under this Act.
- (2) This section is subject to section 138 (which relates to consolidation of adjudication of claims relating to multi-unit com-

plexes, and applies to the claim as if it were one to which subpart 4 of this Part applies), and also to section 152.

155 How Part 1 applies to new claim in respect of same dwellinghouse, etc, in multi-unit complex

- (1) If, under section 153(1)(b), the claimant is part of, or joins, a new claim brought, in respect of the same dwellinghouse, common areas, or both, under section 19, 20, or 21, Part 1 applies to the new claim.
- (2) Subsection (1) is subject to subsections (3) to (6).
- (3) The application for adjudication of the new claim need not be accompanied by the prescribed fee (if any).
- (4) The tribunal may consider any written evidence (including an assessor's report) submitted for the adjudication, under the former Act, of the withdrawn claim.
- (5) If, within 1 year after the claim is withdrawn to enable a new claim of the kind referred to in subsection (1) to be brought, a claim of that kind is brought, section 37 applies to the new claim as if it were brought when the withdrawn claim was brought.
- (6) Subsection (5) applies whether the claim concerned was withdrawn before, on, or after the transition date.

**Subpart 7—Transitional provisions relating
to appointments, etc**

156 Chief adjudicator to be taken to have been appointed as chair on day after assent

- (1) This subsection applies to the person who, on the commencement of this section, holds the office of chief adjudicator under section 24(4) of the former Act.
- (2) The person to whom subsection (1) applies is to be taken to have been appointed on the commencement of this section as chair under section 103(4) of this Act (as if that subsection were then in force)—
 - (a) for a term that, immediately before that commencement, represented the remainder of that person's term as chief adjudicator; and

- (b) subject to the conditions of employment that applied to the person as chief adjudicator immediately before that commencement; and
 - (c) subject to any determination made under clause 6(1) of Schedule 3, with any determination of that kind prevailing if, and to the extent that, it is more favourable to the person than any of the conditions of employment referred to in paragraph (b).
- (3) The Remuneration Authority is not obliged to make a determination under clause 6(1) of Schedule 3 of the salary and allowances of the person to whom subsection (1) applies before the time when that person's salary and allowances would have been next reviewed under the conditions of employment referred to in subsection (2)(b).

157 Chair's role before transition date

- (1) Before the transition date, the person to whom section 156(1) applies—
- (a) may exercise powers of the chair in enactments to which section 2(2) applies, but only in accordance with section 11 of the Interpretation Act 1999; and
 - (b) must not be paid a salary or allowances, or otherwise remunerated, in respect of the office of chair.
- (2) This section overrides section 156.

158 Chief adjudicator before and after transition

The person to whom section 156(1) applies,—

- (a) unless he or she earlier resigns or is removed from that office, continues to hold office under the former Act as the chief adjudicator, and to be paid salaries and allowances under that Act in respect of that office, until the transition date; but
- (b) ceases on the close of the day before that date to hold, and to be remunerated in respect of, that office, but on and after that date and while he or she holds office as chair is, under section 149(6), to be taken for the purposes of section 149, and until it is no longer reasonably necessary for those purposes, to be, and to have the duties, functions, and powers of, the chief adjudicator.

159 Powers of appointment not limited or affected

Sections 156 to 158 do not limit or affect—

- (a) the application of section 11 of the Interpretation Act 1999, after the commencement of this section but before the transition date, to the power to appoint the chair under section 103(4); or
- (b) the power, before that date, to appoint adjudicators under section 24(2) and (3) of the former Act; or
- (c) the power, before that date, to appoint a chief adjudicator under section 24(4) of the former Act.

160 Appointment of tribunal members and officers, etc, after enactment but before transition date

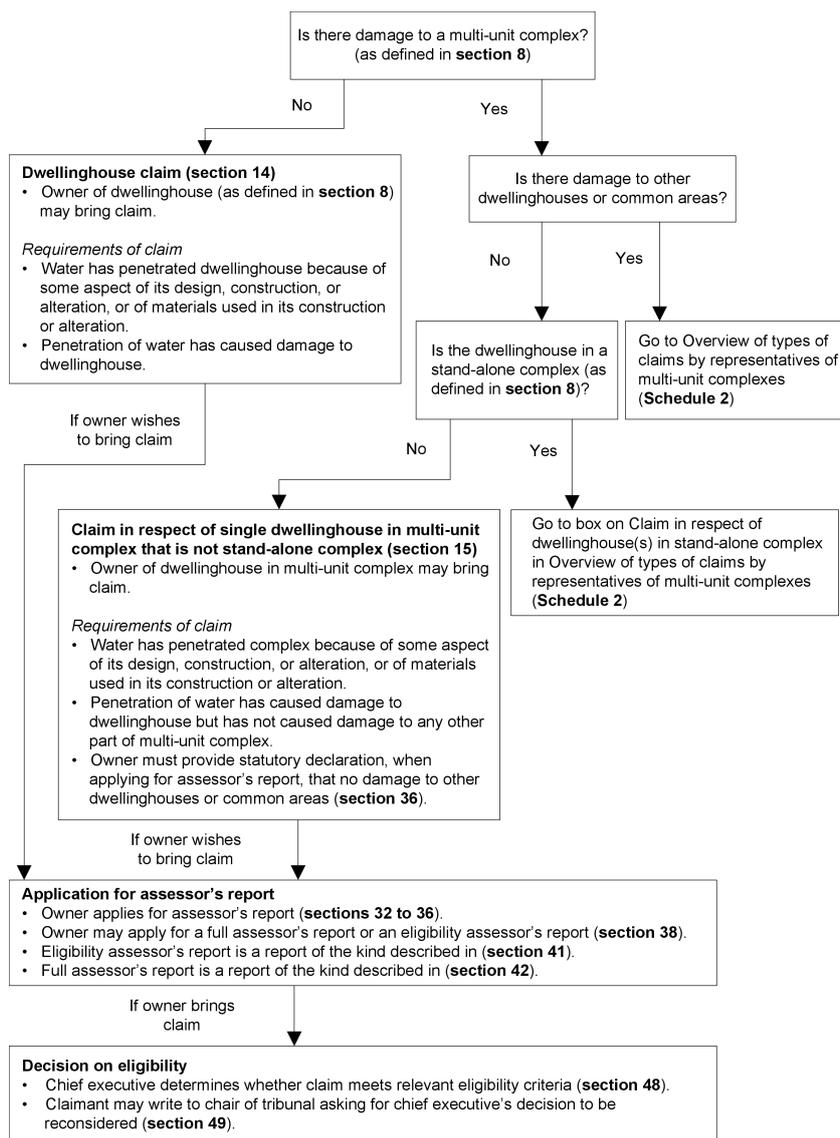
This Act does not limit or affect the exercise, in accordance with section 11 of the Interpretation Act 1999, of powers to do, before the transition date, the following acts or things under the following enactments:

- (a) appoint members of the tribunal under section 103(1):
 - (b) appoint a Registrar under section 108(1):
 - (c) designate or provide employees of the Ministry to act as other officers of the tribunal under section 108(2) or (4):
 - (d) any other act or thing for the purposes of any other provision of Part 1.
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Schedule 1

Overview of types of claims by owners of dwellinghouses

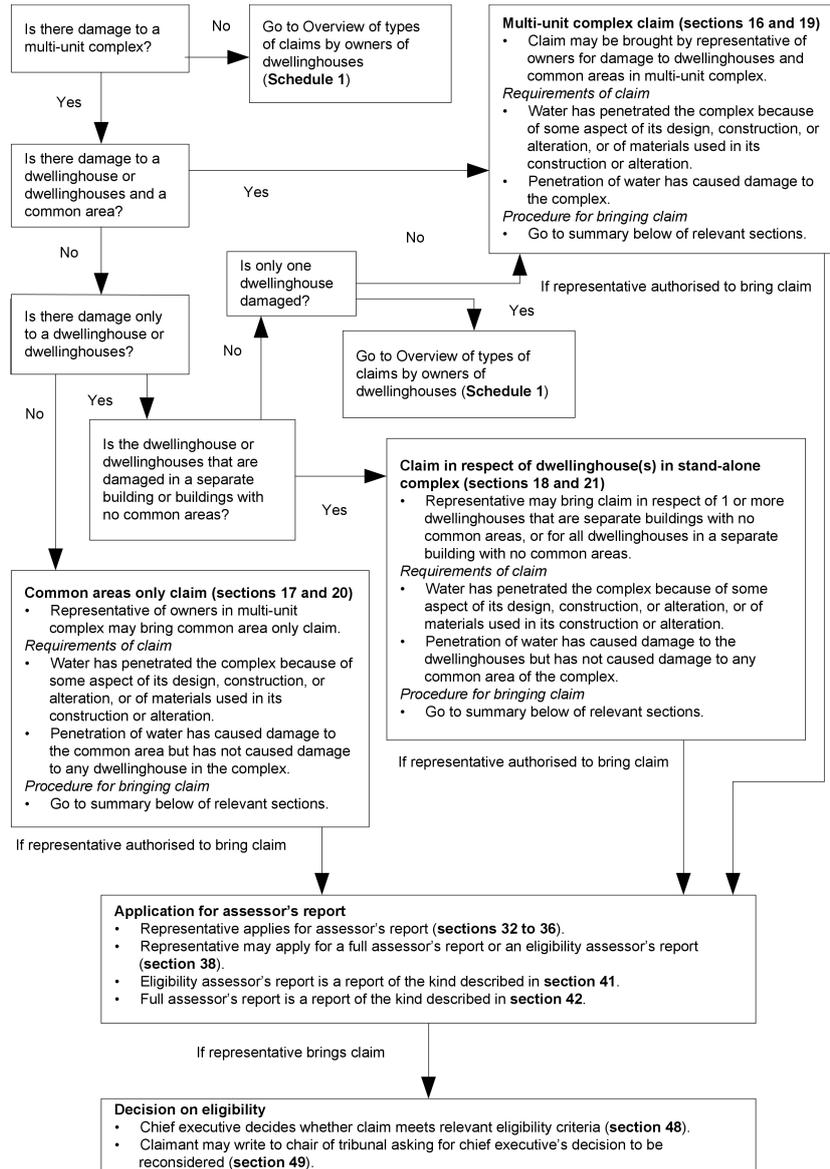
s 5(1)



Schedule 2

Overview of types of claims by representatives of multi-unit complexes

s 5(2)



Summary of procedure for bringing multi-unit claim (sections 16, 19, and 22)

- Owners appoint representative (as defined in **section 8**).
- Owners of 75% of the dwellinghouses authorise representative to bring and resolve claim for their dwellinghouses (**section 19**).
- Same owners of 75% of the dwellinghouses consent to invasive testing on their dwellinghouses (**section 19(a)**).
- At a general meeting dwellinghouse owners authorise representative to bring a claim for the multi-unit complex, and authorise invasive testing of the common areas (**section 22(4)**).
- Representative brings claim for all common areas and some or all dwellinghouses (**section 19**).
 - Representative provides consent to invasive testing on common areas (**section 19(d)(i)**).
 - Representative provides statutory declaration that above procedures complied with (**section 19(d)(ii)**).

Summary of procedure for bringing common areas only claim (sections 17, 20, 22, and 36(b))

- Owners appoint a representative (as defined in **section 8**).
- At a general meeting dwellinghouse owners authorise representative to bring a claim for common area, and authorise invasive testing of the common area (**section 22(4)**).
- Representative brings claim for common areas (**section 20**).
 - Representative provides consent to invasive testing on common areas (**section 20(b)**).
 - Representative must provide statutory declaration that no damage to dwellinghouses (**section 36(b)**).

Summary of procedure for bringing stand-alone complex claim (sections 18, 21, and 36(c))

- Owners appoint a representative (as defined in **section 8**) unless **section 21(2)** applies.
- Owners authorise the representative to bring and resolve a stand-alone complex claim in respect of their dwellinghouses (**section 21(1)(c)(i)**).
- Owners consent to invasive testing on their dwellinghouses (**section 21(1)(c)(ii)**).
- Representative brings stand-alone complex claim for dwellinghouses.
 - Representative provides consent to invasive testing on dwellinghouses.
 - Representative must provide statutory declaration that no damage to common areas (**section 36(c)**).

Schedule 3 ss 73(4), 76, 103(5)
Members and adjudications

Part 1

Appointment of members

1 Appointment

- (1) Every member 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 a member.
- (3) A person appointed as a member may hold that office concurrently with any other office.

2 Term of office

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

3 Oath of office

Each member must, before entering on the exercise of any of his or her functions under this Act, swear or affirm before a Judge of the High Court that he or she will faithfully and impartially perform his or her duties as a member.

4 Resignation

A member may at any time resign from office by written notice given to the Minister of Justice.

5 Vacation of office

- (1) A member 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) A member is deemed to have vacated his or her office if he or she is adjudged bankrupt under the Insolvency Act 2006.

Part 1—*continued*

Schedule 3 clause 5(2): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

6 Salaries and allowances

- (1) There is to be paid to the chair out of public money, without further appropriation than this clause,—
 - (a) a salary at a rate, or in accordance with a scale of rates, determined by the Remuneration Authority; and
 - (b) allowances (if any) determined by the Remuneration Authority.
- (2) There is to be paid to each member other than the chair remuneration by way of fees, salary, and allowances (including travelling allowances and expenses) in accordance with the Fees and Travelling Allowances Act 1951; and that Act applies accordingly as if he or she were a member of a statutory board within the meaning of that Act.

Part 2

Provisions having effect in relation to
adjudications**7 Privileged communications**

- (1) If 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 the tribunal) 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.

8 Evidence

Any party to an adjudication may give and call evidence.

Part 2—*continued*

9 Witness summons

- (1) For the purposes of any adjudication, the tribunal may, on the application of any party to the adjudication, or of the tribunal'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) No summons under subclause (1) may be issued to a member.
- (3) The summons must be in a form (if any) approved for the purpose by the chair, and may require the person to produce before the tribunal 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.

10 Witnesses' expenses

- (1) Every person attending before a member on a summons, and every other person giving evidence before the tribunal, 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 tribunal may disallow the whole or any part of any sum payable under subclause (1).
- (3) On each occasion on which the tribunal issues a summons under clause 9, the tribunal 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 tribunal, the witness will be entitled, according to the prescribed scales, if the witness attends at the time and place specified in the summons.

Part 2—*continued***11 Power to take evidence on oath**

- (1) The tribunal may take evidence on oath, and for that purpose any member, or any other person acting under the express or implied direction of the tribunal, 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).

12 Party competent as witness

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

13 Power to dispense with evidence

In any adjudication the tribunal may, if it thinks fit, dispense with any evidence on any matters on which all parties to the adjudication have agreed.

14 Power to prohibit publication

- (1) In any adjudication the tribunal 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 an order of that kind may be subject to any conditions the tribunal thinks fit.
- (2) Subclause (1) overrides section 99.
- (3) If proceedings are resolved by the tribunal making a determination on agreed terms under section 90(6), the tribunal may make an order prohibiting the publication of all or part of that determination, subject to any conditions it thinks fit.

15 Discovery

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

Part 2—*continued*

- (2) Every application for an order under section 56A or 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.

16 Power to award interest

- (1) In any adjudication for the recovery of any money, the tribunal may, if it thinks fit and subject to subclause (2), 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 tribunal 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.

17 Power to proceed if any party fails to attend

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

18 Proceedings not invalid for want of form

No decision or order of the tribunal, and no proceedings before the tribunal, 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.

19 Proceedings to continue on change of member acting as tribunal

If the member acting as the tribunal for the purpose of hearing a claim cannot continue to hear the claim and another member 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 member as if no

Part 2—*continued*

change had taken place, but the new member may require evidence to be retaken where necessary.

20 Urgency

If any party to any proceedings applies to the tribunal to accord urgency to the hearing of a claim, the tribunal 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 tribunal as soon as practicable.

21 Proceedings not to abate because of death

If, in proceedings before the tribunal, a party to the claim concerned dies,—

- (a) the proceedings do not abate because of the death; but
 - (b) the legal personal representative of the deceased party must be substituted for that party.
-

Schedule 4

s 148A

Modifications to former Act for section 148(1)

Schedule 4: added, on 29 August 2007, by section 12 of the Weathertight Homes Resolution Services (Remedies) Amendment Act 2007 (2007 No 33).

Section 5

Insert in their appropriate alphabetical order:

“**damages** means any form of monetary compensation or damages (however described)

“**general damages** means damages that—

“(a) cannot be objectively quantified in monetary terms; and therefore

“(b) are assessed and quantified in broader terms

“**mental distress** means all or any of the following:

“(a) emotional or mental anxiety:

“(b) distress or stress

“**relevant mental distress**, in relation to a claim, means mental distress suffered as a consequence of all or any of the damage, deficiencies, loss of value, and penetration of water specified in section 26A(1)(a) to (d).”

New section 26A

Insert after section 26:

“26A What remedies may be claimed

“(1) As long as it is an eligible claim, a claim under this Act may be for any remedy that could be claimed in a court of law in relation to, or for consequences of, all or any of the following:

“(a) deficiencies that enabled the penetration of water into the building concerned:

“(b) the penetration of water into the building concerned:

“(c) damage or loss of value caused by the penetration of water into the building concerned:

“(d) loss of value caused by the fact that there are deficiencies in the building concerned.

“(2) In subsection (1),—

“**deficiency**, in relation to a building, means any aspect of its design, construction, or alteration, or of materials used in its

construction or alteration, that has enabled water to penetrate it

“**remedy** includes (without limitation) general damages (for example, for relevant mental distress).

“(3) Subsections (1) and (2)—

“(a) are not limited or affected by section 7(2); but

“(b) are subject to section 43 (which relates to costs of adjudication proceedings).”

Section 42

Insert after section 42(1):

“(1A) An order under subsection (1) may require the payment of general damages (for example, for relevant mental distress).

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

Weathertight Homes Resolution Services (Remedies) Amendment Act 2007

Public Act 2007 No 33
Date of assent 28 August 2007
Commencement see section 2

1 Title

This Act is the Weathertight Homes Resolution Services (Remedies) Amendment Act 2007.

2 Commencement

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

Part 1

Purpose and application of Part 2

5 Claims affected by amendments made by Part 2

- (1) The amendments made by Part 2 apply only to the following claims:
- (a) claims brought under the principal Act after the commencement of this Act; and
 - (b) claims brought under the principal Act, but not withdrawn, terminated, or otherwise disposed of (for example, through resolution by a settlement agreement, or by a determination by the tribunal), before the commencement of this Act; and
 - (c) claims adjudication of which was initiated under the Weathertight Homes Resolution Services Act 2002 (in this Act called the **former Act**) before the transition date and that,—
 - (i) under section 149 of the principal Act must, if they are not withdrawn before they are disposed of under the former Act, be dealt with in accordance with section 148 of the principal Act by a

-
- person specified in section 149(1) of the principal Act; and
- (ii) are not withdrawn, terminated, or otherwise disposed of before the commencement of this Act.
- (2) The claims in subsection (1)(a) and (b) include claims—
 - (a) brought under the former Act; and
 - (b) of the kind specified in subsection (1)(c); and
 - (c) that are withdrawn and adjudicated under the principal Act in accordance with section 150 or 153, and subject to the relevant modifications specified in subpart 6 of Part 2, of the principal Act.
 - (3) A reference in subsection (1)(b) to a claim brought under the principal Act includes a claim to which subpart 3, 4, or 5 of Part 2 of the principal Act applies, and therefore to which Part 1 of the principal Act applies—
 - (a) as if it were a claim brought under the principal Act; and
 - (b) subject to the relevant modifications specified in subpart 3, 4, or 5 of Part 2 of the principal Act.
 - (4) A claim disposed of through resolution by a determination of the tribunal, an adjudicator, or a person specified in section 149(1) of the principal Act is disposed of for the purposes of subsection (1) even if that determination is or may be subject to an appeal, a review proceeding, or both.
 - (5) If, under subsection (1), the amendments made by Part 2 apply or (as the case requires) do not apply to a claim, they apply or (as the case requires) do not apply to it both—
 - (a) on adjudication at first instance by the tribunal, an adjudicator, or a person specified in section 149(1) of the principal Act; and
 - (b) on any appeal or rehearing, and for the purposes of any review proceeding.
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Contents

- 1 General
 - 2 Status of reprints
 - 3 How reprints are prepared
 - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
 - 5 List of amendments incorporated in this reprint (most recent first)
-

Notes

1 *General*

This is a reprint of the Weathertight Homes Resolution Services Act 2006. The reprint incorporates all the amendments to the Act as at 1 January 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint
(most recent first)***

Limitation Act 2010 (2010 No 110): section 58

Weathertight Homes Resolution Services (Remedies) Amendment Act 2007 (2007 No 33)

Weathertight Homes Resolution Services Act 2006 Commencement Order 2007 (SR 2007/21)

Insolvency Act 2006 (2006 No 55): section 445