



**Local Government
New Zealand**
te pūtahi matakōkiri

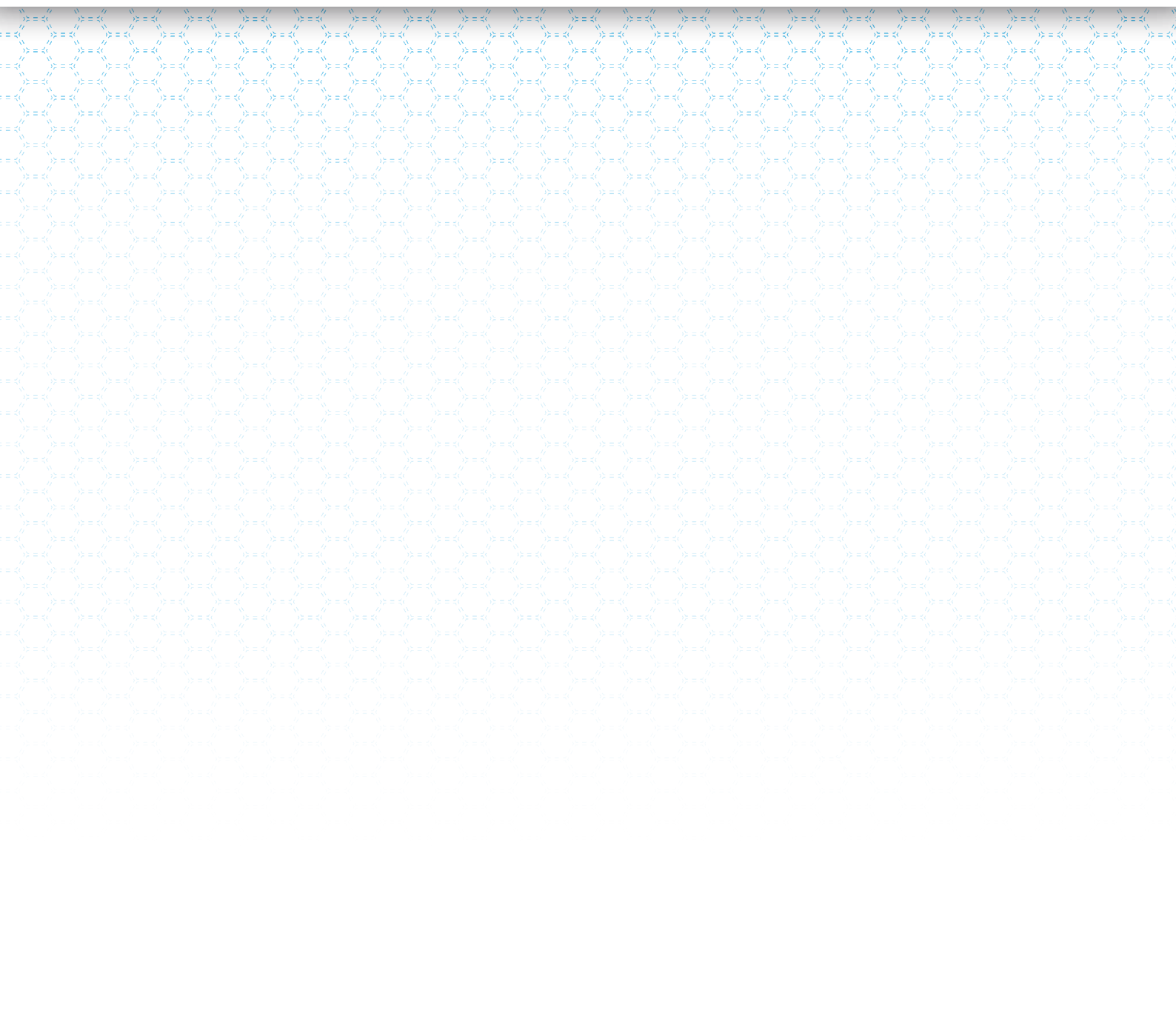


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INTRODUCTION

1. *Local Government New Zealand* thanks the Local Government and Environment Select Committee for the opportunity to make this submission in relation to the Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill.
2. *Local Government New Zealand* makes this submission on behalf of the National Council, representing the interests of all local authorities of New Zealand.

It is the only organisation that can speak on behalf of local government in New Zealand. This submission was prepared following consultation with local authorities. Where possible their various comments and views have been synthesised into this submission.

In addition, some councils will also choose to make individual submissions. The *Local Government New Zealand* submission in no way derogates from these individual submissions. Auckland Council and Wellington City Council are the councils most affected by claims to the Weathertight homes Resolution Services and we urge the select committee to particularly consider those submissions.

3. *Local Government New Zealand* prepared this submission following:
 - an analysis of the Bill
 - analysis of feedback from councils.
4. This final submission was endorsed under delegated authority by:
 - Lawrence Yule, President, National Council
 - Eugene Bowen, Chief Executive *Local Government New Zealand*.
5. *Local Government New Zealand* wishes to be heard by the Local Government and Environment Select Committee to clarify the points made by this written submission as necessary.
6. *Local Government New Zealand* requests the opportunity to review the draft Bill before it is finalised.

RECOMMENDATIONS

7. *Local Government New Zealand* makes the following recommendation:
 - Amend section 125F so that the Crown and councils can be discharged from existing proceedings if a contribution agreement is put in place.

LOCAL GOVERNMENT NEW ZEALAND POLICY PRINCIPLES

8. In developing a view on the provisions in this Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill we have drawn on the following high level principles that have been endorsed by the National Council of *Local Government New Zealand*. We would like

the Local Government and Environment Select Committee to take these into account when reading this submission.

- **Local autonomy and decision-making:** communities should be free to make the decisions directly affecting them, and councils should have autonomy to respond to community needs.
- **Accountability to local communities:** councils should be accountable to communities, and not to Government, for the decisions they make on the behalf of communities.
- **Local difference = local solutions:** avoid one-size-fits-all solutions, which are over-engineered to meet all circumstances and create unnecessary costs for many councils. Local diversity reflects differing local needs and priorities.
- **Equity:** regulatory requirements should be applied fairly and equitably across communities and regions. All councils face common costs and have their costs increased by Government, and government funding should apply, to some extent, to all councils. Systemic, not targeted funding solutions.
- **Reduced compliance costs:** legislation and regulation should be designed to minimize cost and compliance effort for councils, consistent with local autonomy and accountability. More recognition needs to be given by Government to the cumulative impacts of regulation on the role, functions and funding of local government.
- **Cost-sharing for national benefit:** where local activities produce benefits at the national level, these benefits should be recognised through contributions of national revenues.

COMMENTS

General

9. Councils with experience of resolving claims through the Weathertight Homes Resolution Services (WHRS) have found the process to be very costly for all parties, time consuming and litigious. Thus, councils welcome the development of the Financial Assistance Package (FAP) for leaky building owners. Local government has continued to work closely with the Department of Building and Housing (DBH) to refine the terms of the FAP and to develop operational processes around it. The process used has been usefully collaborative and we commend DBH for their approach.
10. Territorial authorities have, however, been concerned about the potential for ongoing civil liability, notwithstanding the making of a payment to a building owner with a weathertightness issue, in accordance with a contribution agreement entered into under the FAP. Cross-claims by co-defendants or by third or subsequent party actions can lead to potential litigation. Councils have worked with DBH to develop legislation to protect territorial authorities that participate in the FAP from continued exposure to liability through cross-claims or third party claims. However, we are concerned that this issue has not been adequately resolved through the Bill.

11. Many councils resolved to opt into the FAP, subject to the resolution of six discrete issues. The most significant of these issues was:

Third party legislation being introduced and passed ... or if legislation is not passed, an alternative agreement being reached that indemnifies council for all liability and associated costs.

12. *Local Government New Zealand* broadly supports the Bill but we consider some details need to be reconsidered as described in detail below. The relationship between the eligibility criteria and the provisions of the Bill need to be fully understood to determine whether the provisions of the Bill apply to existing claims or not.

Ongoing liability section 125F

13. The Bill partially addresses local government's concerns about the potential for ongoing civil liability. However, we are concerned that while the specific provisions of proposed section 125F deal adequately with future claims, its application to existing claims is unclear.
14. From consideration of the draft criteria it seems that there may be an assumption that a council (or the Crown) can unilaterally extract itself from existing proceedings, or be released from proceedings by a claimant. If it were true, that could be made a condition of the contribution agreement.
15. Unfortunately, that is not the case. If there are existing proceedings and a council (or the Crown) has been joined as a defendant by some other defendant (such as an architect, builder, or product manufacturer) then statutory authority is needed to release the council (and the Crown) from the proceedings.
16. The following redraft of section 125F addresses this point:

"(1) Where an affected dwellinghouse is or becomes the subject of a contribution agreement and there are civil proceedings that relate to the circumstances that gave rise to the need to repair the affected dwellinghouse in accordance with the contribution agreement:

"(a) neither a claimant nor any other person may name, join, or seek to name or join the contributing party nor, if applicable, any additional contributing party as a defendant or a third or subsequent party in those proceedings;

"(b) neither a claimant nor any other person may apply in those proceedings for any remedy or relief from the contributing party nor, if applicable, any additional contributing party; and

"(c) where the contributing party or any additional contributing party is a defendant or third or subsequent party in those civil proceedings –

"(i) no person, Court or tribunal may award, determine or order any remedy or relief against the contributing party or, if applicable, any additional contributing party; and

"(ii) the contributing party or additional contributing party may apply to be discharged, and must be discharged, from the proceedings without any order being made as to costs payable to or by that party.

"(2) This section does not apply if the contribution agreement is terminated before any payment is made under that agreement by the contributing party or, if applicable, any additional contributing party.

"(3) This section prevails over section 72."

Note: The definition of "civil proceedings" in section 8 needs to be amended by adding a reference to section 125F in paragraph (b).

CONCLUSION

17. *Local Government New Zealand* is generally supportive of the Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill.
18. *Local Government New Zealand* thanks the Local Government and Environment Select Committee for the opportunity to comment on this Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill.