



# Cabinet Business Committee

CBC Min (02) 10/9

Copy Number:

## Minute of Decision

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### Weathertightness Advisory and Dispute Resolution Service

On 30 October 2002 the Cabinet Business Committee, having been authorised by Cabinet with Power to Act [CAB Min (02) 28/25]:

- 1 **noted** that on 16 October 2002 the Cabinet Policy Committee directed the Department of Internal Affairs, Ministry of Justice, Department for Courts, and other agencies as appropriate, to report to the group of Ministers in the week beginning 21 October with a fully developed mediation and adjudication process, including advice on the costs and the funding options, and the legislative changes required [POL Min (02) 17/4, 5 and 6];
- 2 **noted** the proposals of the Expert Panel for the establishment of an advisory and a dispute resolution service, attached as Annex 1 of the paper under CBC (02) 163;
- 3 **agreed**, for the purposes of drafting legislation to establish an information advisory and disputes resolution service for homeowners with buildings affected by weathertightness problems, to the proposals in Annex 1, subject to each of the following decisions:

#### ***Compulsory versus voluntary mediation***

- 3.1 the proposed approach to mediation be agreed on the basis that is voluntary only;

#### ***Adjudication model***

- 3.2 the adjudication service be modelled where appropriate on the Employment Relations Act model;

#### ***Relationship of the service to other disputes resolution services***

- 3.3 provision be made for claims currently before the courts to transfer into the proposed dispute resolution service either on the initiative of one or more of the parties involved or on the initiative of the presiding judge;
- 3.4 homeowners who register a claim with the disputes services be required to make a decision on whether to continue into mediation, adjudication or to follow other options on completion of the initial assessment stage and that homeowners who choose to follow an alternative path would have access to the assessors report;
- 3.5 homeowners choosing to enter the mediation process would be encouraged to stay with the process until either a settlement is reached or the mediation breaks down and, if the mediation breaks down, would again make a decision on whether to follow adjudication or whether pursue an alternative option;

- 3.6 adjudicators have the power (with or without the parties' agreement) to transfer proceedings to the courts where a case presents either undue complexity or novel claims;

**Criteria for use of service**

- 3.7 the Panel's proposed criteria that the damage be "not caused by any action or inaction of the owner" not apply;
- 3.8 the Panel's proposed criteria that "the estimated cost of rectification must exceed \$7,500" not apply;
- 3.9 the disputes service have the power to refuse a complaint that is trivial, vexatious or not in good faith, in terms modelled on the equivalent powers available in the Ombudsmen and Health and Disability Commissioner Acts;
- 3.10 the Panel's proposed criteria that "the applicant must have made a genuine but unsuccessful attempt to resolve the dispute with involved parties" not apply;

**Range of matters to be considered and orders that may be made**

- 3.11 the range of matters able to be considered by the mediation service will cover any issues agreed to by the parties;
- 3.12 the range of matters able to be considered by the adjudication service for redress be equivalent in scope to those that a court could award;

**Right to representation**

- 3.13 the legislation not limit rights to legal representation;
- 3.14 the legislation make clear the intent to operate the service in a way focused on finding solutions and not requiring representation;
- 3.15 the legislation amend the Legal Services Act to insert the adjudication service into the list of proceedings for which legal aid is available;

**Right of party to object to being named**

- 3.16 other parties named by the claimant have the right to object to the claim on limited grounds;

**Appeal Rights**

- 3.17 appeals be limited to errors of fact or law, as with District Court cases, but that a full rehearing would be permitted in exceptional circumstances having regard to the nature, range and complexity of the issues, the number of parties, and other matters such as the adequacy of the record of the initial proceedings and the reasons for the decision;

**Enforcement**

- 3.18 mediation agreements should be binding contracts between the parties that are able to be enforced as a court order or summary judgment once they are written and executed;

- 3.19 all mediated agreements and adjudications include a monetary order as an alternative to an order for rectification or specific performance or remedial work;

**Fees and costs**

- 3.20 homeowners not be charged at the point of first access to the advice and disputes resolution services;
- 3.21 homeowners be charged a flat fee of \$200 should their dispute progress to mediation;
- 3.22 homeowners be charged a flat fee of \$400 should their dispute progress to adjudication, or \$200 if a fee has previously been paid for mediation;
- 3.23 an appropriate sharing of costs could be considered as part of any mediated outcome;
- 3.24 an adjudicator may award costs;
- 3.25 the Chief Executive of the department that has responsibility for the disputes resolution process be granted the power to waive fees in demonstrated instances of financial hardship;

**Confidentiality and public disclosure of outcomes**

- 3.26 the details of mediation proceedings would remain confidential to the parties;
- 3.27 the details of adjudication proceeding be publicly available;
- 3.28 information on the outcomes of adjudication proceedings would be published in summary form;
- 3.29 a database of non-identifying information from the advice and assessment service would be maintained to inform policy;
- 3.30 exemptions be made for the mediation and adjudication processes from the Official Information Act;

- 4 **agreed** that the group of Ministers with weathertightness responsibilities established by CAB Min (02) 26/12 be given power to make decisions on the detail of the above proposals for the purposes of drafting legislation;
- 5 **agreed** that the service be known as the Weathertight Homes Resolution Service;
- 6 **agreed** that the information advisory and dispute resolution service be initially established in the Department of Internal Affairs;
- 7 **directed** officials from the Department of Internal Affairs, the Treasury, the State Services Commission, Ministry of Housing and the Ministry of Economic Development to consider the placement beyond 30 June 2003 of both the information advisory service and the disputes resolution service in the context of the current review of the Building Act;

- 8 **noted** that the Weathertightness Expert Panel estimated the cost of running the proposed advisory, assessment and dispute resolution service for the 26 months to 31 December 2004 as ranging between \$15 million and \$50 million but that officials consider the more likely range of costs to be between \$15 million and \$25 million;
- 9 **directed** officials from the Department of Internal Affairs and the Treasury to report to Cabinet Policy Committee on 13 November 2002 on:
- 9.1 the details of appropriations necessary to establish and fund the advice and disputes services;
- 9.2 a communications strategy to raise public awareness of issues of weathertightness and publicise the advice and disputes resolution services;
- 10 **directed** the Department of Internal Affairs to publish on its the weathertightness website details of the proposed service based on the Expert Panel report [annex 1 of the paper under CBC (02) 163] together with Cabinet's decisions;
- 11 **invited** the Minister of Internal Affairs to issue drafting instructions to Parliamentary Counsel Office in respect of the decisions in paragraphs 3, 4, 5 and 6 above;
- 12 **invited** the Leader of the House to decide on the timing and management of the legislation in consultation with the group of Ministers with weathertightness responsibilities, and other Parliamentary parties;
- 13 **agreed** to give priority to the drafting of the legislation;
- 14 **noted** that the above decisions will be announced in the week beginning 4 November 2002.

Sarah Egan  
Secretary

Reference: CBC (02) 163

**Present:**

Rt Hon Helen Clark (Chair)  
Hon Dr Michael Cullen  
Hon Steve Maharey  
Hon Phil Goff  
Hon Annette King  
Hon Jim Sutton  
Hon Margaret Wilson  
Hon Lianne Dalziel  
Hon George Hawkins  
Hon Paul Swain  
Hon Rick Barker

**Officials Present:**

Office of the Prime Minister  
Department of the Prime Minister and Cabinet

**Copies to: (see over)**

**Copies to:**

Cabinet Business Committee  
Chief Executive, DPMC  
Mary Anne Thompson, DPMC  
Secretary to the Treasury  
Chief Executive, Ministry of Economic Development  
Secretary for Justice  
Director-General of Health  
State Services Commissioner  
Solicitor-General  
Chief Executive, Department for Courts  
Secretary of Labour  
Chief Executive, Te Puni Kokiri  
Chief Executive, Ministry of Economic Development (Commerce)  
Minister of Internal Affairs  
Secretary for Internal Affairs  
Minister for the Environment  
Secretary for the Environment  
Minister of Housing  
Chief Executive, Housing New Zealand Corporation  
Chief Executive, Ministry of Housing  
Chief Executive, Ministry of Pacific Island Affairs  
Minister of Women's Affairs  
Chief Executive, Ministry of Women's Affairs  
Minister of Local Government  
Secretary for Internal Affairs (Local Government)  
Minister with Responsibility for Auckland Issues  
Head, Ministry of Consumer Affairs  
Associate Minister of Health (Hon Damien O'Connor)  
Chief Parliamentary Counsel  
Legislation Coordinator

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