



In this issue we focus on the Weathertight Services assistance for Leaky Homes.

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ARTICLES FROM THE DEPARTMENT OF BUILDING AND HOUSING WEBSITE – EATHERTIGHT E-NEWS

Background

Ensuring a building provides shelter from the weather is one of its primary functions.

In recent times, changes in lifestyle have led to more complex building designs, new systems and construction practices. Combined with a shift away from defined building solutions and fewer apprenticeship schemes, that has put more demands on buildings to be properly designed, built and approved to ensure they remain continually weathertight throughout their lives. Increasing numbers of reports of leaks in relatively new buildings also heightened interest in weathertightness.

From early 2000, growing evidence pointed to common problems associated with design features. These included flat roofs, complex building shapes and junctions, parapets, narrow or no eaves, monolithic claddings, untreated framing, sealed decks, built-in balconies and inadequate flashings around windows and doors. Problems were often present in high-density, multi-unit developments.

In 2002, the Building Industry Authority (which became part of the new Department of Building and Housing in November 2004) commissioned the Weathertightness Overview Group to enquire into the weathertightness of New Zealand buildings and concerns about leaking and rotting houses.

Hunn Report

Later that year, this group produced the Report of the Overview Group on the Weathertightness of Buildings (commonly known as the Hunn Report). This outlined systemic failures in the building industry that led to inadequate building practices causing leaking, and called for far-reaching changes across the construction industry.

The Hunn Report identified solutions on several fronts to improve building practices. These ranged from improved education and training schemes to the publication of more guidance information on construction practices and materials, such as how to design and build for effective weather resistance and the durability of timber framing.

The New Zealand Building Act 2004 became fully effective from April 2005. This introduced several new initiatives to improve building practices and compliance procedures.

The Department of Building and Housing was given broader powers to deal with the issues and to offer guidance. It was also given the power to initiate an amended system of certification of building methods and products (previously known as product accreditation) for compliance with the New Zealand Building Code.

The amended Acceptable Solution E2/AS1 for the Building Code Clause E2 External Moisture became operative from 1 July 2005, after a one-year lead-in. E2/AS1 includes material specifications and specific details for common wall and roof cladding materials. (It is not mandatory to use this Compliance Document, however it represents a common benchmark for achieving weathertightness.)

From 30 November 2010, builders and designers will be required to be licensed for particular aspects of building work. This licensing requirement will help raise skills and the standards of finished buildings, and ensure improved performances in weathertight building.

PricewaterhouseCoopers Report

The Department of Building and Housing commissioned PricewaterhouseCoopers to undertake an independent report into the size and cost of the weathertightness issue.

The report, which was released in December 2009, showed there is a wide range of the possible number of homes affected, from a low of 22,000 to a high of 89,000. The wide range reflects the fact there is a high level of uncertainty about the number of homes affected that prevents an exact, and accurate, estimate to be made. Nevertheless, the report estimated it is most likely approximately 42,000 homes (called the 'consensus forecast') built between 1992 and 2005 have been affected.

The consensus forecast is derived from the analysis of hard data and the views of industry experts who were consulted about this report. The evidence suggests that only a minority of leaky homes have been repaired to date.

Of the leaky homes covered by the re-estimate approximately:

3,500 have already been repaired;

9,000 are likely to have failed or will fail outside the 10 year limitation period for legal liability.

Using the 'consensus forecast', it is therefore likely up to around 30,000 dwellings have already failed, but not been repaired, or will fail in the future (within 10 years of the date they were built).



Weathertight Services help for owners of leaky homes

You now have two ways to get help through the Department of Building and Housing.

The Financial Assistance Package (FAP)

or

Dispute resolution through the Weathertight Homes Tribunal.

The Department of Building and Housing has been assessing claims and helping homeowners settle disputes since 2006. A recent review found not enough homes were getting repaired as intended when the Weathertight Homes Tribunal was established.

The government introduced the Financial Assistance Package (FAP) to help get more homes fixed faster.

The FAP will ensure more time and money is spent on repairing leaky homes instead of disputing the problem.

Combination of options

It is possible to repair your home with financial assistance and then seek to recover costs through the Weathertight Homes Tribunal from parties who have not contributed to your repair costs.

It is important to remember that's it's your choice which route you take to resolve your leaky home problem. Our Claims Advisors are there to help at every stage in the process.

THE FINANCIAL ASSISTANCE PACKAGE (FAP)

The Financial Assistance Package (FAP) to repair and rebuild your property

Under the FAP you (the qualifying homeowner) share the agreed actual repair cost of repairing your home with the government and your local council, if it approved the original work and is participating in the FAP.

The government and council each pay 25 per cent of the repair cost and you pay the remaining 50 per cent. However, if your council didn't sign off on the building work, or has chosen not to participate in the FAP, you will need to agree to pay 75 per cent of the costs to get payments under the scheme.

To use the FAP, you (the homeowner) must agree not to sue contributing councils and the government, although you can still pursue other liable parties such as builders, developers and manufacturers of defective products.

The FAP offers homeowners the certainty of a financial contribution and helps to get more leaky homes fixed faster.

Repair costs are agreed in the Homeowner Agreement and can include:

- the cost of repairs, or full demolition and rebuild if that is recommended in the Full or Concise Assessor's Report

- associated costs including:

 - design work

 - project management

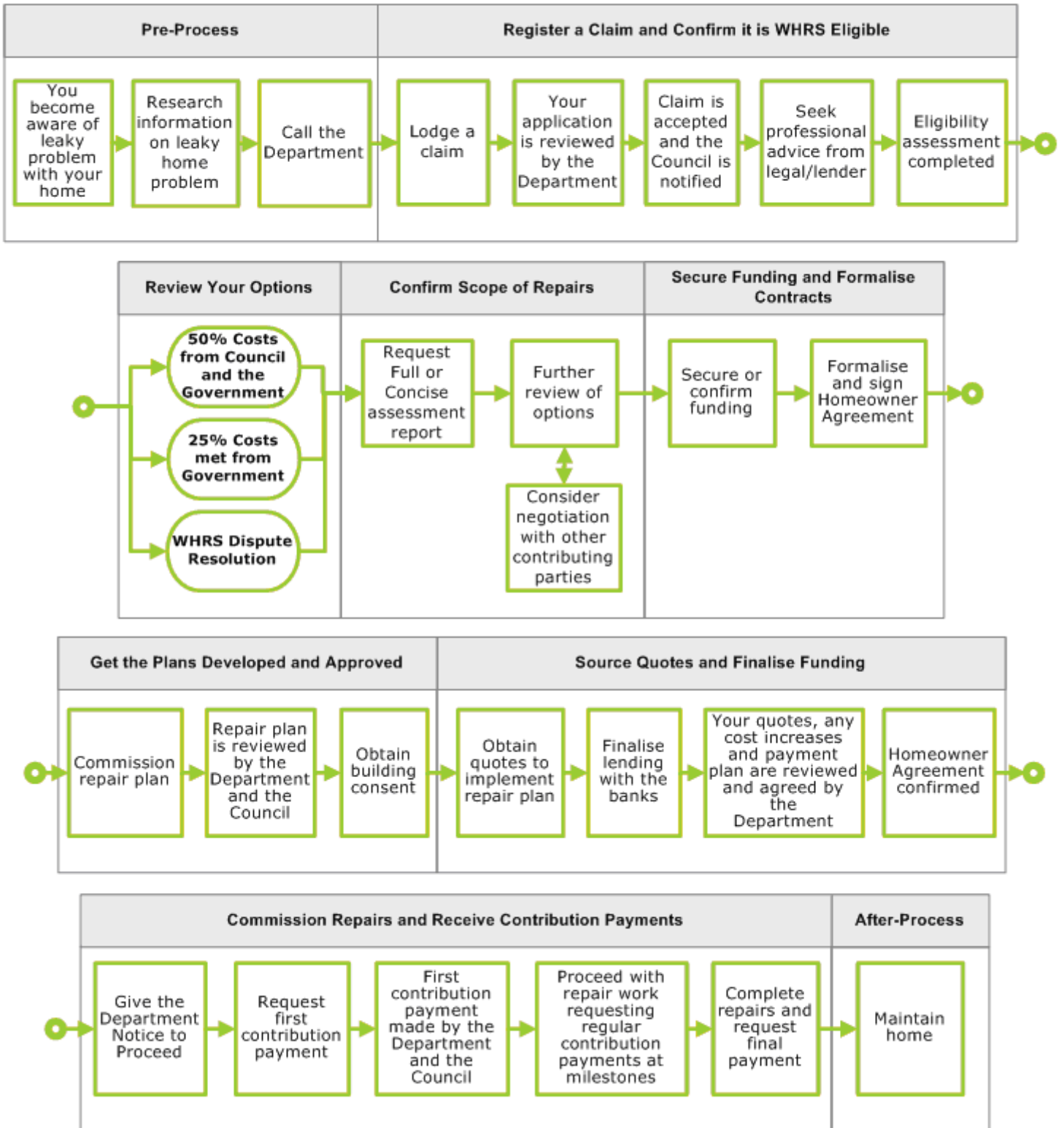
 - building and resource consent fees

 - valuation fees needed for obtaining a loan

 - alternative accommodation and furniture storage (to a capped maximum)

An overview of the Financial Assistance Package process

Leaky Homes Financial Assistance Package Homeowner Journey



Dispute resolution through the Weathertight Homes Tribunal

On this page

- Weathertight Homes Tribunal
- Lower-value claims process
- Standard claims process
- Enforcement
- Other resolution options

Dispute resolution is where you directly engage with parties to your claim and seek damages. This may involve mediation, negotiation or adjudication.

The same remedies can be sought at the Weathertight Homes Tribunal as they could in a court of law.

You can claim for:

- Penetration of water because of some aspect of the design or construction of the dwelling
- Damage or loss of value from the water ingress
- Loss of value caused by the fact the building is deficient .

You have to prove that any loss you have suffered is the fault of some aspect of the design, construction or alteration of the building, or from materials used in the building.

You may also claim for:

- General damages including stress and distress and “consequential losses” that resulted from the cost of repairs, for example:
 - interest on borrowed money
 - relocation costs
 - alternative accommodation costs and loss of rent if the house had been tenanted.

Legal expenses are not usually claimed for but the Tribunal can award them if a party acts in bad faith or where allegations are made without merit. This doesn't stop voluntary contributions being offered by parties in mediation.

Details about eligibility for dispute resolution can be found in the Eligibility section.

If a claim is found to be eligible for dispute resolution, the claimant can:

- start or continue repairs
- proceed to resolution

Resolution is the process of settling a claim. The claimant's options may depend on their estimated or actual repair costs.

Weathertight Homes Tribunal

The existing disputes and resolution process was established under the Weathertight Homes Resolution Services Act 2006 on 1 April 2007 to provide fast, flexible and cost-effective procedures for resolving leaky home disputes.

It is to be administered by two government agencies; the Department of Building and Housing and the Ministry of Justice.

The Department of Building and Housing receives claim applications and provides assessment, information, guidance and mediation services.

The Weathertight Homes Tribunal, supported by the Ministry of Justice, is a judicially independent Tribunal that provides adjudication for claims.

Read how mediation works through the Weathertight Homes Tribunal »

The Weathertight Homes Resolution Services Act offers two separate dispute resolution paths.

1. Lower-value claims process

Claimants with claims for which the estimate or actual repair costs total \$20,000 or less can apply for the Department's lower-value claims dispute resolution assistance (see lower-value claims process).

This process offers access to negotiation and mediation.

Negotiation is an informal discussion about the claim where parties try to reach a solution by themselves. Although the Department assists in arranging the negotiation, the claimant chairs and runs the negotiations.

Mediation is a meeting where a mediator provided by the Department helps parties to a claim to agree on a solution. The mediator is neutral and does not make any decisions about the claim.

If mediation is unsuccessful, claimants can apply to the Weathertight Homes Tribunal for adjudication based on papers relating to the claim.

For more information see the relevant lower-value claims process section. »

2. Standard claims process

Claimants with claims for which estimated or actual repair costs total \$20,000 or more can apply to the Weathertight Homes Tribunal for resolution by adjudication. There is a fee of \$408.89 (including GST) for this.

A Ministry of Justice case manager will administer the claim from this point and a Tribunal member will be appointed.

Adjudication has the following stages

Pre-hearing: A preliminary conference will be held to consider matters such as joining and/or removing applications, and setting out a timetable for the adjudication and a mediation date if applicable.

Mediation opportunity: The Tribunal may refer the claim to a time-limited mediation.

Adjudication hearing: The hearing is a judicial proceeding where the Tribunal clarifies and tests evidence presented to them.

Decision: After a hearing the Tribunal produces a legally binding decision.

If the claim is settled during the mediation, the hearing will not be needed. A binding and legally enforceable agreement will have been signed by the parties and witnessed by the mediator.

The Tribunal has further information on the adjudication process on its website and in their brochure. Copies are available from Weathertight Services.

For more information see Eligible lower-value claims: homeowner options or Eligible standard claims: homeowner options. »

Enforcement

Resolutions under the Act are enforceable in the District Court, as follows.

Negotiated agreements can be enforced in the District Court only if a Weathertight Services mediator signs a statutory declaration after a written agreement is reached.

Any agreed settlement reached at mediation is binding on those agreeing to it and can be enforced in the District Court.

A Tribunal decision following an adjudication is the equivalent of an order of a District Court. It may be enforced in the same way as a court order.

Other resolution options

There is no obligation on a claimant to use the dispute resolution process or the Weathertight Homes Tribunal. Claimants can also use:

- The Financial Assistance Package
- The court system
- The Disputes Tribunal (if your claim is for an amount less than \$15,000 or less than \$20,000 if everyone involved agrees to participate)
- Private negotiation
- Private mediation or arbitration.

Claimants do not have to close their claim while they try these other options. However, a claimant cannot undertake adjudication with the Weathertight Homes Tribunal while they are undertaking proceedings through the courts or the Disputes Tribunal.

Dispute resolution overview of mediation

Mediation is voluntary and informal. An impartial person (the mediator) helps people with a dispute to find their own solution. Mediators are independent and professional. They focus on helping parties solve the problem, and the parties decide their own outcome.

The mediator will not make a decision for the parties or anyone else at the mediation, or give legal advice of any kind. Any agreed settlement is binding on those agreeing to it and can be enforceable in the District Court.

Mediation has several advantages.

- It requires a constructive, co-operative approach.
- Parties can develop and agree upon workable and mutually acceptable solutions – often outcomes that could not be achieved at adjudication or court.
- Confidentiality applies to anything agreed to or disclosed in mediation.
- Mediation is likely to be less expensive, and is relatively quick compared with adjudication or the courts.
- The presence of the mediator can also ensure that power imbalances between parties are minimised.

The Department offers mediation services for lower-value claims (claims \$20,000 and below) and standard claims (more than \$20,000) when they are referred from the Weathertight Homes Tribunal.

Lower-value claims mediation

If the claimant decides to go to mediation, they will need to fill in a form. This officially refers the claim to mediation. A settlement advisor then contacts other parties and confirms their participation. The claimant may still go ahead with mediation with some parties if they don't get all potential parties agreeing to participate.

There are statutory time limits that mean a mediation must take place within 20 working days for a stand-alone house, and 40 working days for a multi-unit complex from the date the claim is referred to mediation.

The settlement advisor will identify any further information or steps needed before the mediation. The mediation itself should only take half a day. It will be held in a location as close as practicable to the property involved.

If the claim is resolved, an agreed settlement is signed. If agreement is not reached the claimant may choose to go on to adjudication.

A settlement advisor will send parties a lower-value claims mediation information sheet if the claimant chooses to go to mediation.

Standard claims mediation

Mediation for standard claims can take place after a claimant has applied to the Weathertight Homes Tribunal for adjudication, and before the claim has reached the hearing stage. A Tribunal member, in discussion with all the parties, decides whether mediation is appropriate. If it is, the member will issue an order referring the claim to mediation.

A Ministry of Justice case manager then liaises with the Department to obtain an impartial mediator. The case manager will arrange for the mediation and will inform the parties of all the details.

The Tribunal can set a specific limit on the time in which the mediation must be held. The Weathertight Homes Resolution Service Act allows 20 working days for stand-alone claims or 40 days for multi-unit complex claims. The time allowed by the Tribunal can be extended only by application to the Tribunal with the mediator's support.

It may be allowed only where it is evident that the claimant and parties made every effort to settle in the time provided, and that a settlement will occur if further time is allowed.

It is important that claims are resolved as quickly as possible to ensure houses are repaired as quickly as possible, and parties can resolve their dispute.

Dispute resolution negotiation for lower-value claims

Negotiation is an informal, flexible way of finding a solution between the claimant and the parties involved with the construction of the dwellinghouse. The Department can assist in arranging the negotiation but the negotiation will be chaired by the claimant. We strongly recommend that any agreement negotiated is put into writing to protect all parties. A weathertight mediator can sign such an agreement after it has been put together if the parties wish it to be enforceable in a District Court.

If the claimant and parties choose to proceed with negotiation, a settlement advisor will discuss with them how a negotiation may work. However, the settlement advisor will not attend or chair any negotiation session.

Some things the settlement advisor can do are:

- Inform the claimant and parties of common pitfalls
- Provide a template for the settlement
- Arrange a venue for the claimant and parties to meet
- Assist the claimant and parties in how to conduct the discussions
- Facilitate the exchange of position statements before the negotiation
- Provide a mediator to sign a statutory declaration after a written agreement is reached making the agreement enforceable in court.

If the claimant and parties choose to pursue negotiation the settlement advisor will send them an information sheet with more detail on the process.

Dispute resolution lower-value claims

The Weathertight Home Resolution Service Act 2006 establishes a lower-value claims process for claims whose repair costs, or the weathertight assessor's estimate of the repair costs, are \$20,000 or below. The \$20,000 value is set by regulation and may change in the future.

A settlement advisor will be assigned to the claim when the claimant chooses to use this process.

The advisor will help the claimant and the other parties resolve the claim through negotiation or mediation. There is no fee for this service.

This process has four possible stages:

- Initial contact stage – the settlement advisor contacts all parties the claimant has requested, checks if any further parties should be invited to participate and usually organises a telephone conference where administrative details and the possibility of negotiation and mediation are discussed.
- Negotiation – if the claimant and the parties agree, they can try negotiation where everyone gathers together to discuss the issues and try to work out a resolution. The negotiation session is chaired by the claimant. See the section on negotiation for more information
- Mediation – if the claimant and the parties agree, they can try mediation using a professional mediator, provided by the Department free of charge to help facilitate the meeting. See the section on mediation for more information.
- Adjudication – if negotiation and/or mediation are unsuccessful the claimant can pursue parties in more formal adjudication through the Weathertight Homes Tribunal. There is a fee of \$408.89 for this. See the Weathertight Homes Tribunal website [for more information](#).

Eligibility

These criteria apply whether you choose to use the Weathertight Homes Tribunal to resolve your leaky home dispute, or to apply for the FAP to repair your home.

An application to the Department of Building and Housing must be made by the owner of the dwelling, or be authorised by the owner. The Weathertight Homes Resolution Services Act criteria are:

- Water has penetrated the dwelling because of some aspect of the design or construction or alteration of materials used in its construction or alteration

- The dwelling is damaged as the result of water penetrating from the outside in
- The dwelling was built (or altered if applicable) in the 10 years immediately before you lodge your claim.

If your home is part of a multi-unit complex there are some additional requirements. You will need to read the Information pack for homeowners in multi-unit complexes.

The Eligibility Report

When the Department accepts your application you will be allocated a Claims Advisor we will also get in touch to organise an Eligibility Assessment. A qualified assessor will do some initial testing of your home and provide a written report about its state of weathertightness, whether it meets our general eligibility criteria and, if it does, whether it is likely to need targeted or full repairs.

The assessor will also look at information from your local council that is relevant to your claim, including proof of its construction date.

Remember, the Eligibility Report establishes whether you have an eligible claim. You'll make the decision whether to participate in the FAP later in the process.

The 10-year limitation period

There is a 10-year time limit from when your home was built for lodging claims with the Department, including those for the FAP. Home owners close to the 10-year limit can "stop the clock" by lodging a claim now.

Working out your home's "built date"

It is important that the "built date" on your claim is as accurate as possible because your claim will be turned down if it is lodged outside of the 10-year period. The Eligibility Report will establish the built date and whether your claim is within the 10-year period.

Your home will generally be considered "built" when it is considered completed to the extent required by the building consent. So usually the built date is taken from the time a Code Compliance Certificate was applied for. However, if the intended final inspection on your home revealed problems, the built date will likely be the day that the last significant work was completed prior to your home passing its actual final inspection.

In cases where, no building consent was issued for the work, or your home did not receive a final inspection, or there was a significant delay in completing building work, the Department will need to look at other information and factors to establish the built date.

When working out the built date we can consider several forms of evidence. These could include;

- Council records
- Quotes or invoices for materials or labour
- Statements or letters from utility companies showing electricity or gas connection dates
- Photographic evidence
- The word of your neighbour
- Any other information you think could be relevant.

Further detail on the "built date" is contained in the Application Form for the Financial Assistance Package.

What is the definition of actual damage?

The Eligibility Report must show damage caused from water leaking in from the outside of your property. Damage from internal leaks is not covered. Damage resulting from leaks due to building alterations is covered but damage from leaks due to maintenance issues on the property is not.

Simply showing potential for damage, such as a lack of flashings on your home, is not enough on its own to qualify for a claim without proof there is actual damage from water getting in.

Participating in the Financial Assistance Package

Once you've met the criteria above and your claim has been accepted, there are some extra conditions that apply.

These include:

- That you forego your right to sue your local council over the leaks (if your council is participating in the package)
- Agree to fund half the agreed cost of your home's repair yourself (or 75 per cent of the cost if your council is not participating).

To participate in the FAP you'll also need to do the following:

- Have a Full or Concise Assessment on the home. This is additional to the Eligibility Assessment already done. More on the assessments can be found in Bringing a Claim for FAP.
- Agree to a Repair Plan with the Department and your local council, if it is participating. See Information pack about repair and payment.
- Provide proof you are able to pay your share of the repair costs outlined in the agreed repair plan. That may involve getting your bank's approval to lend you the money for your share. See Information pack about funding.
- Sign a Homeowner Agreement.

The full Financial Assistance Package Contribution Criteria are available »

If your Council is participating in the FAP scheme

Most councils have agreed to participate in the FAP. A list of those can be found here or you can call us on 0800 116 926.

After your Eligibility Report is completed we will then clarify if your council is participating and, if it is, whether the council may accept your claim as being capable of qualifying for financial assistance.

The council will only contribute to the FAP if it was responsible for signing off on the work that led to your leaks and has a duty of care to you.

In this case that means it issued either a final or interim Code Compliance Certificate for the building work or that it failed to give you a Notice to Fix, or a Notice to Rectify any defects with the work, or otherwise advise you of the defects, when it did the final inspection.

The Council does not have a duty of care to you if:

- It relied on a certificate from a private certifier when it issued the final or interim Code Compliance Certificate; or
- It issued a Code Compliance Certificate following a determination from the Department of Building and Housing.

If you've started legal action against your council

A condition of receiving money from the Government and your council is that you waive all current rights to sue the council over weathertightness problems with your property.

If your council is participating in the FAP scheme and you have already reached a settlement over weathertightness problems, you are not eligible for financial assistance under the FAP.

But if you've already begun legal action against the council, you can ask them to agree for you to participate in the FAP on the condition you withdraw completely from legal action against it.

If your Council is not participating in the FAP scheme

You can apply for the Government-only contributions of 25 per cent of the cost of fixing your home provided you agree to meet the remaining 75 per cent cost yourself.

You may still sue your council if you want, because any future or past settlements against a non-participating council have no effect on your eligibility to the Government's contribution.

Contributions from other parties

Under the FAP you still have the right to sue other liable parties like builders, developers and manufactures of defective building products, or you may simply want to ask them to contribute towards your share.

This can be made "in kind", for example as goods or services put toward the repair, rather than cash.

But, once you receive this money or service, you cannot take legal action against them for weathertightness damage to your property.

Bringing a claim

On this page

- Stop the clock
- Assessment - this is a two stage process
- Choosing an application form for a claim
- The claimant's role in the process
- The claim on council records
- Length of time for process

Important things to consider before making a claim

There are some serious implications of taking a claim under the Weathertight Homes Resolution Services Act. Your claims advisor will keep you informed about these as you move through the claims process, but the following are the main things consider:

Both the FAP and dispute resolution involve invasive testing of your home. Holes will be drilled into its cladding to confirm the weather tight issues. These will be repaired as best as possible after testing, but you will be responsible for completely repairing the damage.

Both options involve some financial cost.

When you make a claim that will be recorded on your property's Land Information Memorandum (LIM), regardless of the outcome.

Information you provide about your claim may be available under the Official Information Act or to other parties to your claim. This can include personal information you provide, such as the impact of stress.

Remember, if in doubt call the Department of Building and Housing. The goal is to get more homes fixed as soon as possible. We are committed to helping you throughout the process.

Stop the clock

Under the Weathertight Homes Resolution Service Act 2006, a 10 year limit was set for bringing a claim. That meant that your house had to have been built or altered (if the alterations leak) within 10 years of the date of lodging a claim. There is no change to the 10 year limit under the Financial Assistance Package. Homeowners are advised to register with the Department of Building and Housing as soon as possible to start the claim process.

Homeowners close to the 10 year limit can “stop the clock” by lodging a correctly completed claim now.

Once a claim is lodged, and following an assessment organised by the Department of Building and Housing, eligible homeowners may choose to take up the financial assistance offered by the Government and their local territorial authority.

You can start your claim by completing the relevant claim application form on this site.

Assessment - this is a two stage process

A claim is allocated to a Claims Advisor who will establish whether the claim is capable of meeting the eligibility criteria. If your claim is accepted, we commission an Eligibility Assessment on your claim. This involves invasive testing of your home and a search of other information held about your property.

The report will:

- Confirm if your claim is eligible under the Weathertight Homes Resolution Services Act
- Indicate whether your property is likely to need targeted repairs or a full re-clad.

Following the eligibility assessment, the Chief Executive of the Department of Building and Housing will decide whether the claim is eligible to proceed to the next assessment stage. If in the assessor’s opinion the claim is ineligible, the claimant will be given a chance to make a submission to the Chief Executive on eligibility before a decision is made (see Guidelines for claimant submissions).

If the Chief Executive decides that the claim is ineligible and the claimant disagrees with the decision, they can appeal to the Chair of the Weathertight Homes Tribunal to have their claim eligibility reconsidered.

The Eligibility Assessment will recommend one of two types of report, depending on the extent of damage and whether you have plans to take legal action.

1. Full Assessor’s Report

The Full Assessor’s Report gives a detailed analysis of the home and the full scope of work needed to fix it. If you’re planning dispute resolution or other legal action you’ll need this report to support that.

A Full Assessor’s Report costs \$511.11 (including GST) for a stand-alone property or single unit claim, \$1,022.22 (including GST) for a duplex (2 units) or \$1,533.33 (including GST) for a multi-unit complex.

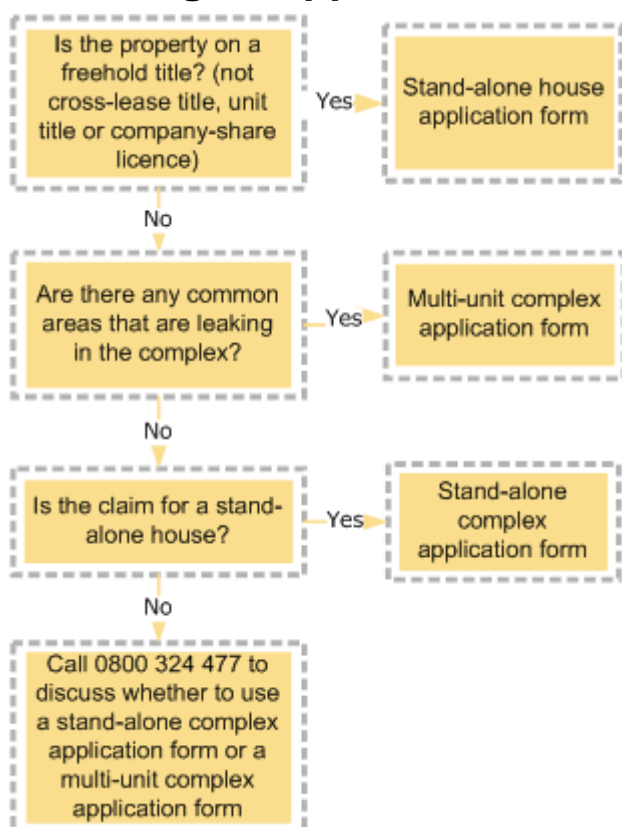
2. Concise Assessor’s Report

If your Eligibility Assessment found that a full re-clad is needed the Department may recommend a Concise Report.

This provides the scope and estimated cost of a full re-clad of your home. The Concise Report is less detailed because a full re-clad replaces the entire building envelope. This Report cannot be used as evidence to support litigation.

The Concise Assessor's Report is provided at no cost.

Choosing an application form for a claim



If your property is on a freehold title (not on a cross-lease title, unit title or company-share licence) use the stand-alone house application form. If the property is not on a freehold title and there are common areas affected by leaking use the multi-unit complex application form. If there are no common areas affected by leaking and the claim is for a stand-alone house use the stand-alone complex application form. If you are unsure, or if your property does not fit any of these circumstances, call us on 0800 324 477 to discuss which form to use.

The claimant's role in the process

The claimant will make all decisions about which options to take during the process.

We can inform the claimant about their options and the process. However, they may wish to consider other people who can help them. This could be a family member, friend, building expert or a lawyer to support the claimant and help them understand their case.

The aim of the process is to get the house or complex repaired as soon as possible. It is not fair to the claimant or the other parties involved for the process to be unnecessarily drawn out.

The claim on council records

We are required under the Weathertight Homes Resolution Services Act to notify the territorial authority when:

- A claim is brought
- The claim is decided to be eligible or ineligible
- The claim is resolved or closed.

The council is required to record this notification in its property file on the house or complex, which is publicly accessible.

Most claim information held by the Department of Building and Housing is also subject to the Official Information Act 1982. If the Department receives a request for information, it is assessed according to that Act and we may have to release information about the claim.

Length of time for process

Each claim is different, so it's not possible to say exactly how long the process will take.

The main things that affect how long a claim may take are:

- The type of assessment report the claimant chooses
- The resolution process the claimant decides to follow
- How willing and/or how available other parties are to take part in negotiation, mediation or adjudication
- The law requires some steps in the process to take a set period of time, to make sure all parties are treated fairly.

Keep us informed

So we can provide claimants with the best assistance, it is important that they inform us of any relevant changes in their situation such as if they undertake repairs, pursue their claim through other resolution options or sell their house or unit. If the claimant sells their house we must close their claim.

Claims closed when not enough effort made to resolve them

It is important that leaky homes are repaired as quickly as possible. For this reason, the Department of Building and Housing may close a claim if we feel the claimant is not making enough effort to resolve the claim and there is no valid reason for this. Once the claim is closed, the claimant cannot bring a new claim for the same property. We understand that circumstances may mean that we are unable to contact the claimant, so claimants should let us know of any extended absences.

Repairs and maintenance

There are advantages to repairing a leaky house or complex as early as possible. Early repair:

- Prevents damage increasing
- Provides an exact amount to claim (the actual cost of the repair).

If you are a claimant and you decide to repair, you should contact your Claims Advisor to discuss this. Information sheets are available on maintenance and repairs and on repairs and the resolution process.

It is important that you maintain your house or complex adequately, as lack of maintenance can contribute to water getting in. If you have not undertaken normal maintenance, this can affect the settlement of your claim.

Even if you do not take the option to repair your house or complex, it is important to mitigate as much further damage as possible. This may involve temporary repairs to leaks, such as sealing points of water entry, as soon as you are aware of them.

Maintenance and repairs

Once you decide to repair your leaking property, it is important to get expert help to plan and undertake repair work properly. As a homeowner it is also important to undertake routine maintenance, because not doing so can contribute to leaking problems. This can result in a smaller settlement during the dispute resolution process, on the basis that the homeowner contributed to the problem by not maintaining the house properly.

1 Routine house maintenance

The Building Code sets out the expected lifetimes of the different components of a house, which rely on a certain level of maintenance being undertaken in that time. There are various things that you can and should do to maintain your house, such as:

- Clearing all gutters, downpipes and balcony drains of blockages so that rainwater can drain away quickly
- Inspecting roofs for areas of corroded roofing material that could allow water to enter
- Repainting cladding at intervals recommended by the paint and/or cladding manufacturer to maintain an impervious coating
- Keeping the dirt level in gardens below the bottom edges of cladding to prevent moisture soaking up inside the cladding.

A comprehensive booklet called *Maintaining your Home* is published by BRANZ Ltd and is available from BRANZ, building supply shops and bookshops.

2 Mitigating damage if your house is leaking

If you discover that your home is leaking, it is important to mitigate the damage until permanent repairs can be made.

- If you can find out where the moisture is getting into the house, try to block any leaks temporarily, but don't rely on a temporary repair for too long.
- Lower the levels of dirt in gardens alongside the house to at least 150 mm below the bottom edge of the cladding to help keep dry the bottom plate timbers in a wall.
- Temporarily seal cracks in monolithic claddings (such as fibre cement, stucco or plaster over polystyrene).
- Temporarily reseal windows where necessary. Some poorly installed windows rely on silicone sealants to maintain weathertightness, but these sealants deteriorate with 5 years in the sun.

3 Scenarios for repairing a leaky house

Organising permanent repairs to your house requires careful thought about each step, for example, identifying moisture in the walls and its source, and designing and supervising repairs. Fixing problems so that they do not recur can involve quite extensive repairs. There are no general rules on repairs as every house is different. The scope of repairs should reflect the design of your house, as well as the leaking problems. This scope needs to be developed by an experienced building professional, preferably with experience in remedial work for leaky buildings. For names of experts in this area, visit the New Zealand Institute of Building Surveyors (NZIBS) website at www.nzibs.org.nz

Repairing the damage could involve some or all of the following work:

- Windows – If the windows have been installed incorrectly without flashings, they usually have to be removed and re-installed with the correct flashings and sill tape. This will often damage interior wall coverings.
- Cladding – If fibre-cement claddings have been installed without control joints that allow the sheets to move, the cladding often needs to be removed (in part or along entire faces) so that the sheets can be refitted with the appropriate joints in place.
- Cladding – Replacing decayed framing timber can require the removal of cladding up to 1 m from the boundaries of the decay. Removal of cladding can also result in damage to internal wall linings such as Gib board, and these may have to be replaced.

- Cavity – The council may require that a cavity be installed along some or all facades as a condition of the building consent for the repair. This will happen if the cladding is a high-risk cladding such as fibre-cement, and the design features of the house are also deemed high risk by the council. If a cavity is required and there is not one there already, all existing cladding must be taken off and new cladding installed over the cavity.
- Balcony – Balustrades damaged by rot usually have to be demolished and rebuilt. If you have a balcony where you suspect the balustrades are damaged by water, be aware that rot will have reduced their structural strength. Avoid the area and get an expert to inspect it.
- Decking – If a deck is leaking where it meets the house, the deck's waterproofing membrane will probably have to be lifted and re-laid. Cladding adjacent to the deck may also have to be replaced to ensure a watertight seal between deck and wall. The repair work must be done thoroughly and professionally if it is to protect the house in future. Doing the work thoroughly can mean considerable disruption during repairs. Conversely, some repair proposals may be cheaper and less intrusive, but could also be inferior in quality and may leak again.

4 Organising an effective repair contract

Organising an effective repair contract requires a 'scope of works', which is a full description of what needs to be done. This includes drawings of the important details and a contract with a builder to ensure you get what you are going to pay for. It is important to seek professional help with this. There are four main steps.

- Specification – Define what has to be done as precisely as possible, using as many drawings as you consider necessary. Use the specification to define the quality of the building materials you want used, for example, treated timber rather than untreated timber. Use an impartial expert like an architect or building surveyor to help you with this, even if you feel comfortable that a builder you know can both design and carry out the repairs. You are better to use your builder to do the work, but to use the impartial expert to do the detailed drawings and to write the specification.
- Building consent – Get a building consent for the repair work, because your local council has experience of what has been required in other leaky building repair projects. Their building inspectors will also monitor the work to ensure it complies with the Building Code.
- Building contract – Have the work done within the framework of a building contract and signed by the builder and you as the homeowner. You could talk to the expert who is drawing up the scope of works for you or a building expert about what should be in this contract. This ensures you know what it is likely to cost and that you have control over the quality of the building materials used.
- Repair work – Use a building expert with experience in weathertightness to supervise the repairs (this may be the person who drew up the scope of works for you), because every repair job, no matter how small, will benefit from some level of expert supervision. You will have to pay for this, but it is a good way of ensuring all aspects of the work are done properly and that the risks of further leak problems are small. Repairing the damage could involve some or all of the following work.

5 'Betterment' of your house as a result of repairs

'Betterment' refers to house repairs that make the house better, or of a higher standard, than it was when it was built. Such repairs are generally not included in settlements under the Weathertight Homes Resolution Services Act 2006 (the Act). Betterment usually

involves the use of new techniques and materials, reflecting the fact that knowledge and practice of how best to achieve the degree of weathertightness specified in the Building Code has improved significantly in recent years. The new standards are outlined in the Department of Building and Housing's weathertightness compliance document (E2/AS1), which is available at www.dbh.govt.nz/building-code-compliance-documents. This is a largefile, so you may want to download only part of it. When your house was first built, you (or the original owner) had a reasonable expectation that it would be built to the acceptable standards at the time. Courts have over the years upheld the right of owners to obtain redress if this did not happen. The same principles have been applied in adjudications under the Act. However, courts have generally not allowed owners to receive settlements that include the cost of improvements (or betterment) that would take the house beyond the acceptable standard at the time of construction. Adjudications under the Act have generally done the same. This means, for example, that you should not automatically expect to get your entire house reclad and repainted when repairs are only necessary to one small corner of the cladding, or to get new carpet with no allowance for normal wear and tear. It means, for example, that you may need to install treated timber in place of untreated timber. If you think you have special reasons for recovering some or all of these betterment costs, such as that the particular work should have been done at the time of construction, you can make a case for this to the adjudicator. Every case is judged on its merits, and these things will be decided on a case-by-case basis.

Further information

Please contact your claims advisor on 0800 324 477 if you have any queries. The Department of Building and Housing (the Department) also has information sheets on the following topics to help claimants through the claims process.

- Repairs and the resolution process
- Bringing a claim under the Weathertight Homes Resolution Services Act 2006 – information for owners of stand-alone houses, and information for owners in multi-unit complexes
- Assessing your house
- Mediation

These are available by phone on 0800 324 477 or from our website at www.dbh.govt.nz. For practical, consumer-focused information on buying, building, renovating and maintaining homes, visit www.consumerbuild.org.nz

Repairs and the resolution process

Claimants who have made a claim under the Weathertight Homes Resolution Services Act 2006 (the Act) can initiate repairs to their house at any stage of the process. Following are some things to consider if you plan to undertake repair work at different stages of the claims process.

Repairs done before claims eligibility and assessment

If you have completed repairs before a Department of Building and Housing (the Department) assessor has assessed your home, you are only entitled to an eligibility assessor's report. This report provides only the assessor's opinion on your claim's eligibility to use the resolution process (because the assessor has no damage to investigate). A full assessor's report includes details of damage and repair costs.

Repairs done after settlement of your claim

Waiting until a settlement has been made to undertake repairs can increase the repair costs and the amount of damage to the house. Where possible, it is best to undertake repairs as soon as possible to prevent the damage worsening after your eligibility for the resolution process has been confirmed. You then have an actual repair cost, or a very good idea of the cost, to claim as part of the resolution of your claim.

Repairs done before settlement of your WHRS claim

Remember that if you incur repair costs and your claim is subsequently decided ineligible for the resolution process, those costs will be your responsibility. You will have to seek other means of recovering the costs from those you believe to be responsible for the damage to your house. Here are the main things to think about if you plan to undertake repairs before your claim is resolved. You will need to:

- Pay for the repairs before any claims settlement is received
- Keep all receipts for repair work
- Take photos of the affected areas before, during and after repairs
- Retain any other evidence of water entry, the damage and repair costs
- Ensure investigation of the leaking problem, its cause, and the design and supervision of repairs are done properly and professionally, so that the problem is appropriately recorded and solved permanently (parties to your claim may argue that aspects of the work did not need to be done. You should have a 'scope of works' setting out exactly what has to be done to repair the house and how the work will be done and supervised.)
- Be able to identify any upgrading or 'betterment' of your house as part of the repairs, as the cost of this will need to be separated from the claim
- Invite parties involved in building your house to inspect the damage while you are getting it repaired, as this can reduce matters of contention later on in the resolution process (your claims advisor can provide you with some information about locating these parties).

It is recommended that you seek your own legal advice before you start any repairs. You should also discuss your repair plans with your claims advisor, because the damage you are having repaired is the basis of your claim. Information on how to ensure the repair work is carried out properly and professionally is available in the information sheet Maintenance and repairs. It is important that you are not disadvantaged during the mediation or adjudication process. Even if you cannot, for financial or other reasons, or do not want to undertake full repairs yet, it is important to limit further damage. For example, you could do temporary repairs, such as using sealants where you know water is coming in. If you do not try to limit damage that you are aware of, you may be responsible for the costs of some of that damage.

Further information

Please contact your claims advisor on 0800 324 477 if you have any questions. The Department also has information sheets on the following topics to help you through the claims process.

- Maintenance and repairs

- Bringing a claim under the Act – information for owners of stand-alone houses and information for owners in multi-unit complexes
- Assessing your house
- Mediation

These are available by phone request or from our website at www.dbh.govt.nz. For practical, consumer-focused information on buying, building, renovating and maintaining homes, visit www.consumerbuild.org.nz

Mould

Background

It is thought that some types of mould that might grow in damp buildings can have health implications for the home's occupants. If your home has mould growing inside, please take particular note of the information in this information sheet. It summarises information released by the Ministry of Health, the BRANZ Ltd and the Department of Labour's Occupational Safety and Health Service. Mould occurs naturally in our environment and most moulds are harmless to healthy individuals. However, some moulds can release substances that are potentially toxic and should be treated with caution. The information in this information sheet is a guide only. If you are in any doubt about whether you are at risk, please contact your territorial authority to have moulds checked out, or your GP if you have health concerns (see More information below).

Identification

If mould is present in a form that is likely to cause health effects, it will be very visible. *Stachybotrys* and other toxic moulds often grow only inside wall cavities. When the mould is contained in a sealed environment, it is not a threat to the home's occupants. However, if the mould spreads to walls and floors and is visible, or if wall cavities are opened, the spores can be released. Formal identification of harmful moulds, such as *Stachybotrys chartarum* (*S. chartarum*), can only be carried out at laboratories. *S. chartarum* is a greenish black mould that grows on material with a high cellulose content, such as fibreboard, that has become extremely wet and has remained wet for some time. Excessive indoor humidity resulting in condensation on the walls will further promote its growth. While *S. chartarum* is growing and is still wet, a wet slime covers its spores and prevents the spores from becoming airborne. It is only when the mould dries out and the spores become airborne that they can become a problem.

Clean-up procedures

Spores are more easily released when mouldy materials dry out, so it is important to clean up any mouldy areas when they are still wet. You should wear protective clothing that is easily cleaned or discarded, rubber gloves and a face mask (ask for a respirator with P1 particulate filters at a hardware store).

- The Ministry of Health and BRANZ Ltd recommend cleaning away any mould with commercial mould cleaner or hypochlorite bleach as soon as it appears on internal surfaces. Apply 1½ cups of household bleach to 4 litres of water and leave for 10 minutes before rinsing and drying.
- Any affected materials that are removed should be wrapped in plastic before being disposed of. In extreme cases, porous materials such as carpets and curtains may be difficult to thoroughly clean and may have to be thrown out. Your territorial authority will be able to advise you on this (see More information below).
- If there are extensive areas of mould and dampness in your home or if you have allergic reactions, it may be best to seek experienced advice on its removal, including whether to employ a professional cleaner.

More information

If the occupants of your house suffer health problems after exposure to moulds, we recommend that you contact your GP for a medical assessment. If your doctor thinks your symptoms are related to living in a leaky home, ask them to refer your case to a health protection officer at the Public Health Service. Contact your territorial authority (city or district council) if you want to find out if the mould in your house is a health risk to the occupants. The BRANZ Ltd brochure *Dealing with Mould* is available free of charge to homeowners through the BRANZ website at www.branz.org.nz/free-publications/. Further reading is also available on the US Environmental Protection Agency website at www.epa.gov/mold/moldresources.html

Effects

When moulds and fungi reproduce, they release countless tiny spores that can become airborne. Health problems can arise when large numbers of these spores are inhaled, ingested or come into contact with the skin. Some moulds can produce adverse health effects such as allergies,

aggravation of respiratory problems, eye and skin irritation, headaches, nausea and flu-like symptoms. At greatest risk are people with pre-existing asthma and those with weakened immune systems, as well as infants and the elderly. Most people who experience adverse effects associated with mouldy buildings fully recover following removal and clean-up of the mould contamination.

Prevention

If you have mould growing in your home, it is important you clean it up before you dry out the house. Better ventilation, more heating and higher levels of insulation can prevent the growth of moulds. Simple measures such as using an extractor fan in the bathroom and kitchen are effective forms of ventilation. Heating and insulation increase the capacity of the air to hold moisture and prevent high humidity. Mould cannot grow without high humidity or condensation.

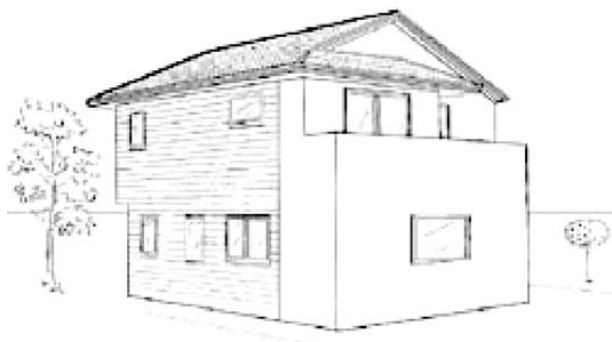
Decks, balconies and balustrades

Background

Some decks, balconies and balustrades of leaky homes could be at risk of collapsing. If your house has a deck or balcony, this information sheet summarises information about the risks to decks and balconies of leaky homes. Structures that may pose a risk are those that rely on timber beams for structural support. Those at greatest risk include balconies on buildings with lightweight claddings that imitate concrete or masonry, balconies and decks supported by untreated kiln-dried timber, and balconies on which water pools. A balustrade is a barrier built around the edge of a balcony or deck. Those at greatest risk include enclosed balustrades covered with what appears to be solid cladding that imitates concrete or masonry (see drawing below). Water can leak inside the cladding where it gets trapped and rots the framing timber. Often any potential problems are hidden behind balustrades or under balconies and may not be immediately noticeable.

Risk factors and warning signs

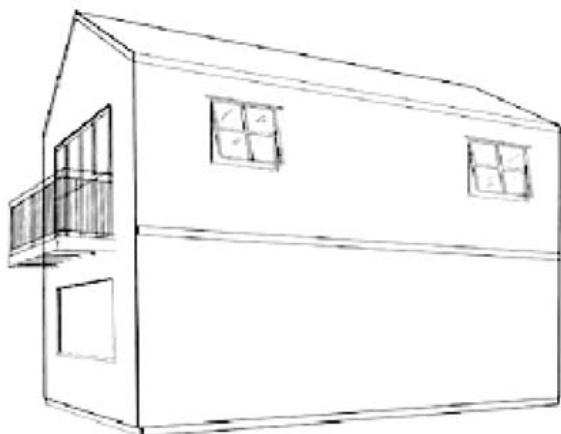
- Balconies where support beams are constructed of untreated kiln-dried timber.
- Balustrades and balconies clad with lightweight materials imitating concrete or masonry.
- Balconies and balustrade tops where water pools and doesn't drain away.
- Balconies and balustrades that move or where there are damp spots, cracks or stains near where the balcony joins the main part of the building, or the balustrade joins the balcony.
- Balustrades that have hand rails that penetrate into the house and/or balustrade wall.
- Cracked plaster, mould growth or colour change in the plaster finish.



Home showing typical cantilevered balcony
Drawings supplied by BRANZ

What to do

If you think that your deck, balcony or balustrade may be at risk, you should stop using it until you have had it checked by a suitably qualified expert. The following organisations will be able to identify people in your area with the necessary qualifications.



Home showing typical enclosed balustrade

- BRANZ Ltd (0900 5 90 90 or www.branz.co.nz, look under 'Advice'/'Accredited Adviser Listing')
- New Zealand Institute of Building Surveyors (0800 113 400 or www.nzibs.org.nz, look under 'Find a Member').

More information

BRANZ Ltd brochure Safety Checks for Decks and Balconies is available free of charge to homeowners through the BRANZ website at www.branz.org.nz/free-publications/

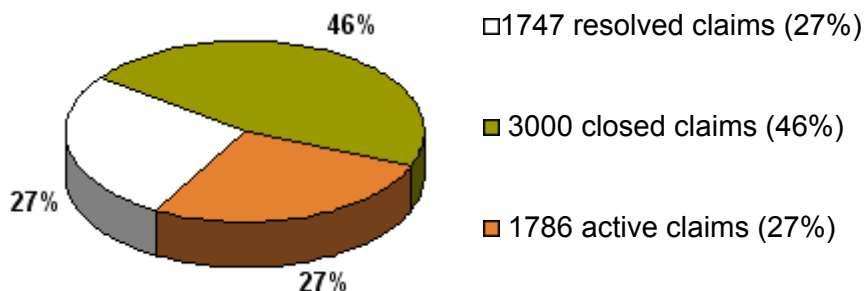
Adjudication decisions

The Weathertight Homes Resolution Services Act 2006 transferred the adjudication functions of the Act to the Weathertight Homes Tribunal supported by the Ministry of Justice. To view decisions visit their website

Weathertight Homes Resolution Service (WHRS) claims statistics August 2011

As at 1 September 2011 the Department has received 6533 claims lodged for 9011 properties and completed assessments for 9284 properties. Under the WHRS Act 2006 we accept applications for multi-unit properties as single claims.

Total claims



Weathertight Services Active Claims by Territorial Authority:

Council that issued the building consent	Number of properties with active claims as at 1 September 2011	Number of active claims as at 1 September 2011
Auckland Council	0	0
Auckland City Council	2389	667
Franklin District Council	7	7
Manukau City Council	146	78
North Shore City Council	366	223
Papakura District Council	3	3
Rodney District Council	85	76
Waitakere City Council	443	194
Total for Auckland	3439	1248
Ashburton District Council	0	0
Buller District Council	0	0
Carterton District Council	0	0
Central Hawkes Bay District Council	1	1
Central Otago District Council	0	0

Chatham Islands Council	0	0
Christchurch City Council	178	94
Clutha District Council	0	0
Dunedin City Council	3	3
Far North District Council	6	6
Gisborne District Council	2	2
Gore District Council	0	0
Grey District Council	0	0
Hamilton City Council	26	26
Hastings District Council	5	5
Hauraki District Council	1	1
Horowhenua District Council	2	2
Hurunui District Council	2	2
Hutt City Council	15	15
Invercargill City Council	1	1
Kaikoura District Council	0	0
Kaipara District Council	1	1
Kapiti Coast District Council	14	11
Kawarau District Council	0	0
MacKenzie District Council	0	0
Manawatu District Council	1	1
Marlborough District Council	7	7
Masterton District Council	0	0
Matamata-Piako District Council	2	2
Napier City Council	3	3
Nelson City Council	3	3
New Plymouth District Council	4	4
Opotiki District Council	1	1
Otorohanga District Council	0	0

Palmerston North City Council	6	6
Porirua City Council	14	14
Queenstown-Lakes District Council	21	9
Rangitikei District Council	0	0
Rotorua District Council	6	6
Ruapehu District Council	0	0
Selwyn District Council	6	6
South Taranaki District Council	0	0
South Waikato District Council	0	0
South Wairarapa District Council	2	2
Southland District Council	0	0
Stratford District Council	0	0
Tararua District Council	0	0
Tasman District Council	6	6
Taupo District Council	5	4
Tauranga City Council	185	88
Thames-Coromandel District Council	13	13
Timaru District Council	1	1
Upper Hutt City Council	5	5
Waikato District Council	4	4
Waimakariri District Council	5	5
Waimate District Council	0	0
Waipa District Council	0	0
Wairoa District Council	0	0
Waitaki District Council	0	0
Waitomo District Council	0	0
Wanganui District Council	2	2
Wellington City Council	389	138
Western Bay of Plenty District Council	15	15
Westland District	0	0

Council		
Whakatane District Council	6	6
Whangarei District Council	17	17
TOTAL	4425	1786

INVERCARGILL CITY COUNCIL'S POSITION ON THE FINANCIAL ASSISTANCE PACKAGE

The Invercargill City Council's position is that Council will not be signing up to be a party to this package.

The reasons are that Invercargill has not been affected to any great extent by the leaky home situation. While this package may suit other Councils it appears **not** to be a suitable package for the Invercargill City Council at this time.