



Department of
Building and Housing

Te Tari Kaupapa Whare

Bringing a WHRS claim under the Weathertight Homes Resolution Services Act 2006

Information for owners of stand-alone houses



01	INTRODUCTION
01	ROLE OF WEATHERTIGHT SERVICES
02	WHAT IS A WHRS CLAIM
02	WHO CAN CLAIM
03	WHAT REMEDIES MAY BE CLAIMED
03	YOUR ROLE IN THE PROCESS
04	WHRS CLAIM PROCESS DIAGRAM
06	YOUR WHRS CLAIM ON COUNCIL RECORDS
06	PUBLIC ACCESS TO INFORMATION ABOUT YOUR WHRS CLAIM
06	RECEIVING YOUR WHRS CLAIM
07	ASSESSING YOUR WHRS CLAIM
08	WHRS CLAIM ELIGIBILITY
08	OPTIONS AFTER ELIGIBILITY IS CONFIRMED
08	REPAIRS
09	MITIGATING DAMAGE
09	MAINTENANCE
09	FINANCE FOR REPAIRS
09	RESOLUTION
11	OTHER RESOLUTION OPTIONS
12	KEEP US INFORMED
12	FURTHER INFORMATION
13	GLOSSARY

Introduction

This booklet explains the process for WHRS claims brought under the Weathertight Homes Resolution Services Act 2006 (the WHRS Act) for leaky, stand-alone, residential houses. (A separate booklet is available for the owners of properties in multi-unit residential complexes, such as townhouses or apartment blocks.)

The WHRS Act provides owners of leaky houses with the following weathertight homes resolution services:

- a low-cost assessment of the weathertightness problems with the house
- access to dispute resolution services
- assistance and guidance at all stages of the process (this is also provided to other parties).

The purpose of the WHRS Act is to provide speedy, flexible and cost-effective procedures for resolving leaky home disputes as an alternative to the courts.

The WHRS Act is administered by two government agencies.

- Weathertight Services at the Department of Building and Housing receives claim applications and provides assessment, information, guidance and mediation services.

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

In this booklet 'the Ministry' refers to the Ministry of Justice and 'the Tribunal' refers to the Weathertight Homes Tribunal.

ROLE OF WEATHERTIGHT SERVICES

Weathertight Services' role is to provide assistance and guidance on:

- bringing a WHRS claim
- assessment of the weathertightness problems with the house
- the advantages of early repair
- ways of resolving the WHRS claim.

Weathertight Services also provides assessment, information, guidance and mediation services.

WHAT IS A WHRS CLAIM

A WHRS claim involves two processes: assessment and resolution. You, the claimant, bring the WHRS claim by making an application to Weathertight Services for an assessor's report. If your WHRS claim is eligible, you may proceed to the resolution process. During the resolution process you make claims against parties (respondents) you think are responsible for your loss (eg, damage to your house).

Most claimants will need to apply to the Tribunal for adjudication initially. Other resolution options are detailed on page 11.

Respondents (the other parties to the claim) are the people or companies you think may have some liability. You can seek compensation from the respondents for your loss. You need good reason for naming someone as a respondent, because the resolution process requires you to provide well-prepared evidence as to why they are liable (responsible) for your loss. An example of how a respondent may be liable is for negligence or contractual defects during design, building or inspection.

The WHRS claim is resolved when a solution is agreed by those involved through negotiation or mediation, or a decision on the claim is made through adjudication by the Weathertight Homes Tribunal of the Ministry of Justice.

WHO CAN CLAIM

To bring a WHRS claim, the:

- claim must be brought by the **owner(s)** of the house
- house must be used principally for **residential** purposes
- house must have been built or altered within the **10 years** immediately preceding the date of lodging the claim
- house must be or have been **leaking** (water is entering the house from outside)
- house must be **damaged** as a result of the leaks.

You can download a claim form from our website at www.dbh.govt.nz or call 0800 324 477 and we will post you one.

You can post or courier the form back to us at:

Weathertight Services
Department of Building and Housing
Level 6, 86 Customhouse Quay
PO Box 10-729
Wellington

or fax it to 0800 116 189.

WHAT REMEDIES MAY BE CLAIMED

A WHRS claim may be for any remedy that could be claimed in a court of law for:

- the entry of water into the building(s) concerned
- damage or loss of value caused by the entry of water into the building(s)
- loss of value caused by the fact that the building(s) is not weathertight
- making the building(s) weathertight in relation to the defects that enabled the entry of water into the building(s)
- making the building(s) weathertight in relation to the defects that are likely to enable the entry of water into the building(s) in future.

If you apply to the Tribunal you must pay your own costs and expenses relating to making the WHRS claim unless the Tribunal considers that a party has caused these costs and expenses to be incurred unnecessarily by bad faith or allegations that are without substantial merit.

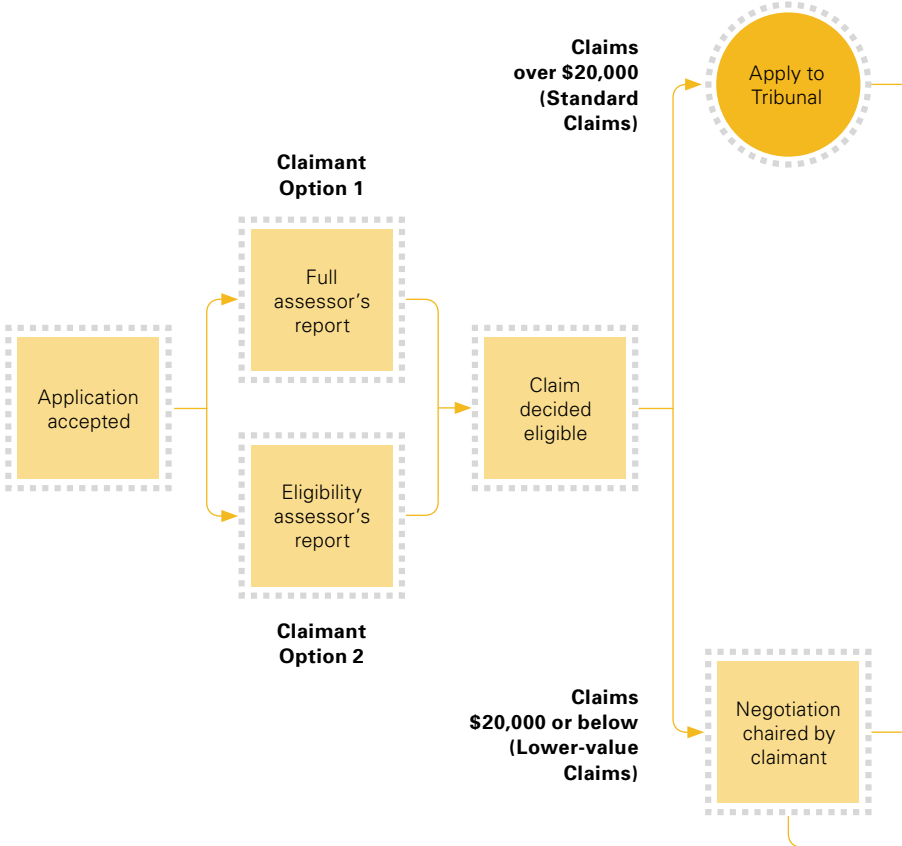
YOUR ROLE IN THE PROCESS

You, as the WHRS claimant, will make all decisions about which options to take during the process. You will also need to decide which parties to make your WHRS claim against and why. This will be easier if you understand the process and the weathertightness problems specific to your WHRS claim.

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

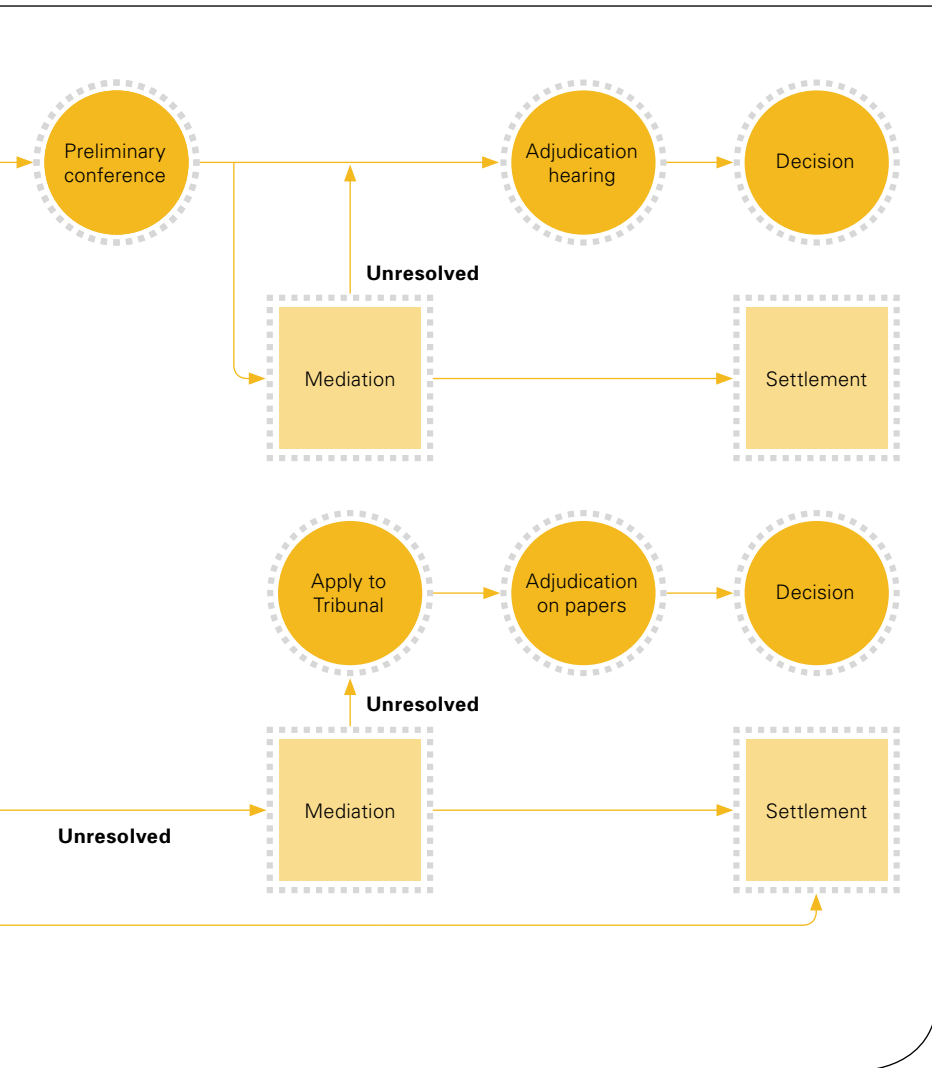
The aim of the process is to get your house repaired as soon as possible. It is not fair to you or the other parties involved for the process to be unnecessarily drawn out.

WHRS CLAIM PROCESS



Key:

- Weathertight Services
- Weathertight Homes Tribunal



YOUR WHRS CLAIM ON COUNCIL RECORDS

We are required under the WHRS Act to notify your local council (territorial authority) when you bring a WHRS claim, when it is decided to be eligible or ineligible, and when it is resolved or closed. Your council is required to record this notification in its property file on your house, which is publicly accessible.

By applying for a building consent for the repair work, you will make the council aware that repairs are starting. The council will inspect the repairs and, if the repairs comply with the Building Code, issue a code compliance certificate. This forms an official record that the house has been fixed.

PUBLIC ACCESS TO INFORMATION ABOUT YOUR WHRS CLAIM

Members of the public can get certain information about your claim from the council. For example, someone who is thinking of buying a house can get a land information memorandum (LIM) report on the house from the council. Most WHRS claim information held by Weathertight Services is also subject to the Official Information Act 1982.

If we receive a request for information, it is assessed according to that Act and we may have to release information about your WHRS claim.

RECEIVING YOUR WHRS CLAIM

When Weathertight Services receives your WHRS claim, the claim is allocated to a claims advisor. They will work with you, as required, to establish whether your WHRS claim is capable of meeting the eligibility criteria (see 'Who can claim').

If your WHRS claim is declined, your claims advisor will explain why and inform you of your options.

If it is accepted, your claims advisor will let you know and discuss the assessment of your house with you.

Your claims advisor will be your contact point throughout the first stage of the process. They can provide assistance and guidance on assessment, the advantages of repair, the options available for resolving your dispute and preparation for resolution under the WHRS Act. When you move into the resolution stage, you will have a different contact person. If you apply to the Tribunal, your contact person will be a case manager from the Ministry. If you undertake lower-value WHRS claim dispute resolution with Weathertight Services,

your contact person will be a settlement advisor from Weathertight Services.

ASSESSING YOUR WHRS CLAIM

If your WHRS claim is accepted for an assessor's report, we will commission an expert assessor to investigate your house and provide a report to Weathertight Services. We will send a copy of the report to you.

There are two report options. Your claims advisor will help you decide which one is the better option for your claim.

1. A **full assessor's report** will cost you \$500. This is the better option if you want a comprehensive assessment before deciding whether to repair first or resolve your WHRS claim first. It identifies the actual and potential weathertightness damage, necessary repairs, the cost of repair, and parties that the assessor considers should be involved in the resolution process.
2. An **eligibility assessor's report** is free of charge. This is a limited report to decide eligibility only. This option is for you if you are confident that you can access the finance and expertise to undertake the full repair process before proceeding to the resolution process with full receipts.

This also means getting potential respondents involved and keeping a careful record of evidence as you repair.

If you have already repaired your property before applying to Weathertight Services, your only option is an eligibility assessor's report. If there has been a previous assessor's report on your property, you may be required to use the former assessor's report – your claims advisor can explain your options.

You will be given more information explaining the differences between the two reports before you have to choose. If you initially choose an eligibility assessment, this does not stop you from later requesting a full assessment before proceeding to resolution (unless you have already repaired the property).

The assessor's investigation of your house will include 'invasive testing' to measure moisture content and assess the damage to your home. This means the assessor in most cases will:

- drill holes in walls (inside and outside)
- cut approximately A4-sized holes in walls (inside and outside)
- take samples of wood or mould.

Invasive testing enables the assessor to assess the extent of the damage and the cost of repairs.

Because of the nature of invasive testing, the WHRS Act requires your consent. We will not accept your application for an assessor's report unless you give us this consent when you bring your WHRS claim. Photos showing sites where invasive testing has occurred are on our website (www.dbh.govt.nz).

The assessor will explain the reason for doing the invasive tests and show you where they will cut or drill the holes. They will make temporary repairs to the drill-holes and cut-outs, but you will be responsible for final reinstatement of any temporary repairs.

The assessor will not undertake invasive testing on houses that have already been fully repaired.

WHRS CLAIM ELIGIBILITY

Before your WHRS claim can proceed to resolution, we must decide whether it is eligible.

The assessor's report on your house will record the assessor's opinion as to whether your WHRS claim is eligible to proceed to the resolution stage.

The Chief Executive of the Department of Building and Housing will make a decision on whether your WHRS claim is eligible. There is an option for review if the Chief Executive decides your WHRS claim is ineligible, which will be explained to you should it be required.

OPTIONS AFTER ELIGIBILITY IS CONFIRMED

If your WHRS claim is decided eligible, you can:

- start or continue repairs
- start resolution.

REPAIRS

There are advantages to repairing your house as early as possible. Early repair:

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

If you decide to repair, you should contact your claims advisor to discuss this.

MITIGATING DAMAGE

Even if you do not take the option to repair your house, it is important to take steps to prevent 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

It is important that you maintain your house 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. Information on maintenance is available from the ConsumerBuild website (www.consumerbuild.org.nz).

FINANCE FOR REPAIRS

If you are unable to obtain finance for repairs from your private lender, loan guarantees or loans at market interest rates may be available through Housing New Zealand Corporation. These guarantees and loans are available to claimants with eligible WHRS claims who meet certain criteria. You can get more information from your claims advisor.

RESOLUTION

Resolution is the process of settling your WHRS claim. The aim is to establish who is liable for the damage and what compensation they should make. The resolution process may involve negotiation, mediation or adjudication. Most claimants will need to apply to the Tribunal for adjudication initially.

- Negotiation is informal discussion about the WHRS claim to try to reach a solution that parties agree to. Weathertight Services assists in arranging the negotiation but the claimant chairs the negotiation session.
- Mediation is a meeting chaired by a mediator provided by Weathertight Services. The mediator helps you and other parties try to find an agreed solution. The mediator is neutral and does not make any decisions about the WHRS claim.
- Adjudication takes place in the Weathertight Homes Tribunal, under the direction of a Member of the Tribunal who decides who is liable and what compensation they should make.

There are two separate resolution paths available, depending on the value of your WHRS claim. They are:

1. the lower-value WHRS claims process for claims for which repair costs or Weathertight Services assessor's report estimate total \$20,000 or less
2. the standard WHRS claims process for all other claims.

1. Lower-value WHRS claims process

Claimants with WHRS claims for which repair costs or Weathertight Services assessor's report estimate total \$20,000 or less can apply for Weathertight Services' lower-value WHRS claims dispute resolution assistance.

The \$20,000 value is set by regulation and may change in future. You can check the current value on our website.

The value of individual WHRS claims is determined by either:

- a full assessor's report, or
- receipts you have kept from repairs already made.

If your WHRS claim is for \$20,000 or less, a settlement advisor will be assigned to your claim. The settlement advisor will help you and the other parties organise resolving the claim through negotiation or mediation. There is no fee for this service.

If you cannot settle, you can apply to the Weathertight Homes Tribunal for resolution by adjudication. At the time this booklet was printed there is a fee of \$400 for this. You can check the current fee on the Tribunal's website (www.justice.govt.nz/wht).

2. Standard WHRS claims process

Standard WHRS claims can apply to the Weathertight Homes Tribunal for resolution by adjudication. At the time this booklet was printed there is a fee of \$400 for this. You can check the current fee on the Tribunal's website (www.justice.govt.nz/wht).

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

Adjudication has the following stages.

- **Pre-hearing**

The pre-hearing stage of adjudication involves processes such as joining and removing respondents. A preliminary conference will be held to consider matters, such as joinder and removal applications and to set out a timetable for the adjudication and a mediation date, if applicable.

- **Mediation opportunity**

The Tribunal may refer the WHRS 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 your WHRS claim is settled during the mediation opportunity, the hearing will not be needed, but the settlement can be recorded as a decision if the parties request it.

The Tribunal has further information on the adjudication process on its website at www.justice.govt.nz/wht and in their brochure, copies of which are available from Weathertight Services.

OTHER RESOLUTION OPTIONS

There is no obligation on you to use Weathertight Services' resolution process or the Weathertight Homes Tribunal. You are free to seek resolution by other means, including:

- the court system
- the Disputes Tribunal (for small claims)
- private negotiation
- private mediation or arbitration.

You do not have to close your WHRS claim while you try these other options. However, you cannot undertake adjudication with the Weathertight Homes Tribunal while you are undertaking proceedings through the courts or the Disputes Tribunal.

KEEP US INFORMED

So we can provide you with the best assistance, it is important that you inform us of any relevant changes in your situation. If you are undertaking repairs or pursuing your WHRS claim through other resolution options, please tell us. Also, if you sell your house during the process, let us know as we must close your WHRS claim.

It is important that leaky homes are repaired as quickly as possible. For this reason, Weathertight Services may close a WHRS claim if we feel you are not making enough effort to resolve your claim and there is no valid reason for this. Once your WHRS claim is closed, you cannot bring a new claim. We understand that circumstances may mean that we are unable to contact you, so please let us know of any extended absences.

FURTHER INFORMATION

If you require further information please:

- visit our website at www.dbh.govt.nz
- phone our call centre on 0800 324 477
- fax us on 0800 116 189

Information sheets on various aspects of the WHRS claims process will be sent to you at the appropriate stages of processing your claim. You can get them earlier if you wish, either by phoning us or by visiting our website. The information sheets cover topics including:

- assessing your house
- invasive testing
- mediation
- repairs.

For practical, consumer-focused information on buying, building, renovating and maintaining homes, visit www.consumerbuild.org.nz

GLOSSARY

the WHRS Act

the Weathertight Homes Resolution Services Act 2006

claimant

the owners of the house

decision

a determination of liability made by the Tribunal

Department

Department of Building and Housing

house

used in this booklet to mean 'dwellinghouse' as defined in the WHRS Act

Ministry

Ministry of Justice

multi-unit complex

a property owned under unit title, cross-lease title or company-share licence

parties

the claimant and respondents

respondents

people or companies against whom a WHRS claim is made

stand-alone house

house on a fee simple title

Tribunal

Weathertight Homes Tribunal

weathertight homes resolution services

the services provided by Weathertight Services and the Tribunal to resolve leaky home disputes

Weathertight Services

Weathertight Services in the Department of Building and Housing provides assessment, information, guidance and mediation services under the WHRS Act

WHRS claim

A claim brought under the WHRS Act

Published in March 2007
by Department of Building and Housing
PO Box 10-729
Wellington
New Zealand

This document is also available on the
Department's website: www.dbh.govt.nz

You can copy all or some of this guide only
if you are using it for education or public
information, and you say it came from us.
You cannot copy any of this guide in any
way for commercial use, and you cannot
keep it in a retrieval system unless you
ask us first.

ISBN 0-478-29788-2 (document)
ISBN 0-478-29789-0 (website)

