



Weathertightness background

The term "leaky homes" refers to those buildings where water has penetrated the building envelope or cladding system and is not able to drain or dry for some time. The problem affects apartments, townhouses and stand-alone homes, mostly built between 1992 and 2005.

The Weathertight Homes Resolution Services Act 2006 is the primary legislation governing the Weathertight Homes Resolution Services claims process. The aim of this process is to help owners of leaky homes settle disputes over who is responsible for their leaky home.

In July 2009, a PricewaterhouseCoopers report commissioned by the Department of Building and Housing estimated that between 22,000 and 89,000 homes were affected in New Zealand with a consensus forecast of 42,000 dwellings that are likely to be leaky homes. This includes standalone homes and units within complexes.

At the time of the report, around 9,000 of these homes were estimated to be outside the 10-year liability limit. The report estimates only a minority of all leaky homes - around 3,500 - have been repaired to date, which leaves a total of 29,500 households. It is estimated a further 6,000 dwellings have fallen outside the 10-year liability limit since the report was produced, which leaves an estimated 23,500 eligible dwellings to be fixed.

During 2009/10 a review was carried out to identify how more homes could be repaired faster. The review found that the current process, the Weathertight Homes Resolution Services, is not resulting in as many homes getting repaired as was intended. It identified a range of barriers including:

- access and affordability of finance - affected homeowners simply can't raise a bank loan when the security they would otherwise use - their home - might be next to worthless because of water damage and rot.
- the high cost of repairs.
- the high transaction costs (time and money) for resolving a dispute and the uncertainty about outcomes of the dispute resolution process.

- the high level of stress associated with repairing a leaky home.

In response, the Government has developed a Financial Assistance Package that aims to get homes repaired without recourse to costly disputes.

The Financial Assistance Package is another option for owners of leaky homes to get their homes fixed. It will be in addition to the current disputes and litigation process. In exchange for a combined Government and territorial authority direct payment of 25 per cent each of agreed repair costs, those homeowners who participate in the package forgo the right to sue local authorities or the Crown. Homeowners still have the option to pursue other liable parties such as builders, developers and manufacturers of defective products.

The Financial Assistance Package will see the Government meeting 25 per cent of eligible homeowners' agreed repair costs on receipt of work done, with local authorities contributing 25 per cent and homeowners funding the remaining 50 per cent, backed by a loss sharing arrangement underwritten by the Crown, provided applicants can meet standard lending criteria.

The Government is anticipating its share of the Financial Assistance Package will be around \$1 billion over five years. This is based on an estimated 70 per cent of affected homeowners within the 10-year liability limit taking up this package.

It is estimated there are 23,500 eligible households, so if as officials predict 70 per cent of them take up this Financial Assistance Package that equates to 16,450 leaky homes fixed.

Those affected homeowners who are eligible under the Weathertight Homes Resolution Services Act 2006 will be able to apply for the Financial Assistance Package.

The current eligibility criteria for a leaky home will continue to apply, i.e. the dwelling is used as a private residence; it is up to 10 years since construction or alterations that have leaked; there is water ingress (leaking); the leaking has caused damage. It is the intention that homeowners who currently have unresolved claims in the system will be able to apply for the Financial Assistance Package.

Territorial authorities will not be making a contribution to repair costs if they were not involved in the building work (i.e. where inspection and sign-off was done by a private

building certifier). However, owners in those cases will still be eligible for Government assistance.

The territorial authority areas most affected by the leaky homes issue are Auckland, Tauranga, Christchurch and Wellington.

The current dwellings, which are the subject of Weathertight Homes Resolution Services Act claims, are located in:

- Greater Auckland area: 75 percent of total dwellings under claim
- Wellington: 9 per cent of total dwellings under claim
- Tauranga: 4 per cent of total dwellings under claim
- Christchurch: 4 per cent of total dwellings under claim



Health impacts of leaky homes

Damp and some mould or fungi can have serious health implications for people living in a leaky home and can worsen the symptoms of illnesses such as asthma, bronchitis and other breathing disorders. In addition, some fungi which grow within wet wall cavities are toxic and may cause flu like symptoms.

For more information about the health effects of leaky homes visit
<http://www.consumerbuild.org.nz/publish/leaky/leaky-health-risks.php>



Financial Assistance Package

This fact sheet outlines in more detail the Financial Assistance Package introduced by the Government to help eligible homeowners repair their homes faster.

The Financial Assistance Package will see the government meet 25 per cent of eligible homeowners' agreed repair costs, territorial authorities contributing 25 per cent and homeowners funding the remaining 50 per cent.

The homeowners' contribution will be backed by a loss sharing agreement underwritten by the Crown, provided applicants can meet bank lending criteria.

The package is another option for owners of leaky homes to get their homes fixed. It will be in addition to the current disputes and litigation process. In exchange for a combined Government and territorial authority contribution, homeowners who participate in the package forgo the right to sue territorial authorities or the Crown in relation to the claim.

Under the proposal, homeowners would still have the option to pursue other liable parties such as builders, developers and manufacturers of defective building products.

Following formal invitation in September 2010, the majority of the most affected territorial authorities have agreed to participate. These represent an estimated 90% of current weathertight claims.

The package does not require all territorial authorities to participate, and some may opt in at a later stage. Where territorial authorities are not part of the package, the support to affected home owners will be limited to government contributions as there will be no contribution from the territorial authority.

Territorial authorities will not be making a contribution to repair costs if they were not involved in the building work (i.e. where inspection and sign-off was done by a private building certifier). However, owners in those cases will still be eligible for Government assistance and they will retain the option to pursue claims against the territorial authority and other parties if they wish. The package is available from 29 July 2011.



Ten-year time limit – “Stop the clock”

Home owners who think they may have a leaky home should lodge a claim under the Weathertight Homes Resolutions Services Act with the Department of Building and Housing. This ‘stops the clock’ on the 10-year limitation for claims.

It is intended home owners with eligible claims under the Weathertight Homes Resolutions Services Act will be able to access the Financial Assistance Package when it is operational.



Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill

Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill received Royal Assent on 22 July 2011.

The Bill contains provisions necessary to facilitate the delivery of the Financial Assistance Package. These include an amendment to cap liability for local councils and the Government when they make contributions under the package.

Under the \$1 billion package, qualifying home owners will receive a 25 per cent contribution from the Government and may receive 25 per cent from their local council. The contributions will be based on actual agreed repair costs.

The package is voluntary and offers an additional option to the current Weathertight Homes Resolution Service. Home owners who discover they have a leaky home must lodge a claim within 10 years of the completion of building work to access the financial assistance package.

The package is available from 29 July 2011.



The 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).

The executive summary for the PwC report is attached. For further information on the report, please use these links:

- <http://www.dbh.govt.nz/UserFiles/File/News/WHRS/pdf/PWC-weathertightness-estimating-cost-full-report.pdf>
- <http://www.dbh.govt.nz/pwc-weathertightness-questions-and-answers>

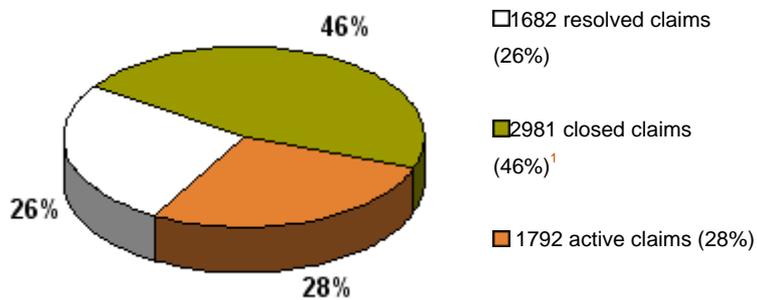


Weathertight Homes Resolution Service (WHRS) claims statistics June 2011

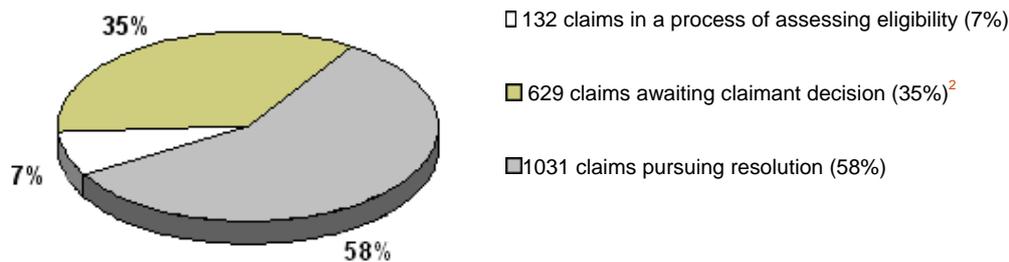
As at 30 June 2011 the Department has received 6455 claims lodged for 8782 properties and completed assessments for 9275 properties.

Under the WHRS Act 2006 we accept applications for multi-unit properties as single claims.

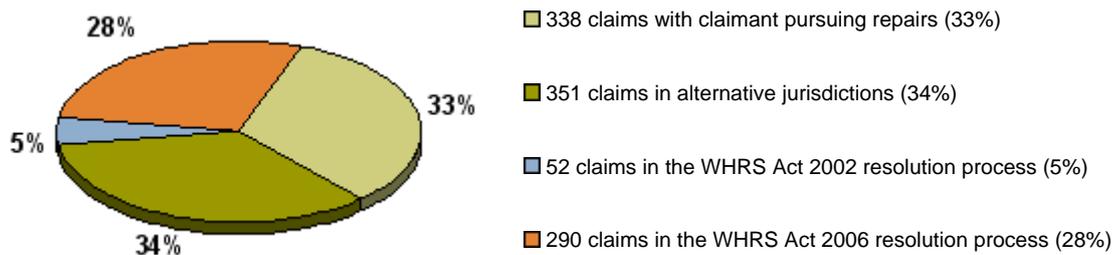
Total claims



Active claims



Claims pursuing resolution





Weathertight Services Active Claims by Territorial Authority region in which they occur:

Regions with the highest number of active claims as of 31 March 2011 include Auckland Council, Tauranga City Council, Christchurch City Council and Wellington City Council.

If you would like to access statistics on the number of Weathertight Services Active Claims affecting all Territorial Authority regions in New Zealand, please go to <http://www.dbh.govt.nz/ws-claims>



Department of
Building and Housing
Te Tari Kaupapa Whare

Further information

Affected homeowners can keep up-to-date with progress on the proposed package by signing up for the Department of Building and Housing's Weathertight e-Newsletter. To subscribe, please visit this link: <http://www.dbh.govt.nz/weathertight-enews-index>. It will deliver the latest weathertight information to your email inbox.

If you have a specific question about your circumstances, please contact the Department of Building and Housing, phone 0800 116 926 or by email info@dbh.govt.nz.

Media enquiries: Sam Prescott, Department of Building and Housing

Phone: 04 817 4267

Mobile: 027 227 4823

Email: Sam.Prescott@dbh.govt.nz



Frequently asked questions

1. WHO IS THE PACKAGE FOR?

The Financial Assistance Package is another option for owners of leaky homes to get their homes fixed. It will be additional to the current dispute resolution process under the Weathertight Homes Resolution Service Act and homeowners will still have the option to pursue other liable parties such as builders, developers and manufacturers of defective products through the Weathertight Homes Tribunal or in the courts.

2. IS THE GOVERNMENT LIABLE FOR THE PROBLEM?

The government has never been found liable to owners of leaky homes. Responsibility for the causes of leaky homes can be laid at the doorstep of a lot of people and organisations, but litigation has not provided useful outcomes for many homeowners. Owners of leaky homes need an alternative to litigation to get their homes fixed.

The government recognises the magnitude of the problem and is implementing the Financial Assistance Package to help.

3. HOW MUCH WILL THE GOVERNMENT'S SHARE OF THE FINANCIAL ASSISTANCE PACKAGE COST THE TAXPAYER?

The government is anticipating its share of the Financial Assistance Package will be around \$1 billion over five years. This is based on an estimated 70 per cent of affected eligible homeowners taking up this Package.

4. WHY SHOULD TAXPAYERS/RATEPAYERS SUBSIDISE THE FINANCIAL ASSISTANCE PACKAGE?

There is no easy solution to this problem. The priority is getting homes fixed and moving beyond the current state of endless disputes and litigation. This is a New Zealand-wide problem. This government will play its part in supporting homeowners to move forward.

This is a massive issue for many thousands of New Zealanders and their families who are suffering the social, health and financial impact of leaky homes. This solution provides another way of helping New Zealand out of this bind.

5. WHY DOESN'T THE GOVERNMENT CONSIDER PURSUING THOSE ARCHITECTS/BUILDERS/DEVELOPERS RESPONSIBLE FOR LEAKY HOMES THAT HAVE SINCE WOUND UP THEIR COMPANIES?

The government has no role in pursuing compensation on behalf of homeowners. The main priority for government is to assist those affected homeowners to get their homes fixed effectively and quickly.

6. HOW IS THE GOVERNMENT ENSURING AN ISSUE LIKE LEAKY HOMES DOES NOT HAPPEN AGAIN?

The Building Act 2004 made changes aimed at reducing the risk of building failures and increasing the skills of those working in the building industry, and include accreditation of building consent authorities, introduction of licensing of building practitioners, a review of the building code and product certification.

In addition, specific measures relating to weathertightness became effective in February 2005.

The low number of new claims relating to houses built, since the Building Act 2004, is an indication that the building failure rate has been significantly reduced.

7. WILL INVESTORS WHO OWN LEAKY HOMES BE ABLE TO APPLY FOR THE FINANCIAL ASSISTANCE PACKAGE?

Yes, the Package does not discriminate between different types of owners. The aim is to get more leaky homes fixed faster.

8. WHAT ARE THE IMPACTS OF LEAKY HOMES?

The social, economic and health costs of leaky homes are affecting New Zealanders.

Damp and some mould or fungi can have serious health implications for people living in a leaky home and can worsen the symptoms of illnesses such as asthma, bronchitis and other breathing disorders. In addition, some fungi which grow within wet wall cavities are toxic and may cause flu like symptoms.

More information about the health effects of leaky homes can be found at:

[www.consumerbuild.org.nz/
publish/leaky/leaky-health-risks.php](http://www.consumerbuild.org.nz/publish/leaky/leaky-health-risks.php)

Information about the social and economic impacts of leaky homes can be found in the PriceWaterhouseCoopers (PWC) report – Weathertight Estimating the cost at:

[www.dbh.govt.nz/
about-weathertightness-background](http://www.dbh.govt.nz/about-weathertightness-background)

9. WHAT IF A COUNCIL DOESN'T PARTICIPATE?

The Package does not require every council to participate, and some may opt in at a later stage.

Following formal invitation in September 2010, the majority of the most affected local authorities have agreed to participate. These represent an estimated 90 per cent of likely weathertight claims. In areas where local councils are not participating in the Package, affected homeowners may still be eligible for a government contribution. Homeowners in those areas will retain the option to pursue claims against the local council and other parties if they wish.

10. WHY ARE PARTICIPATING LOCAL COUNCILS NOT GOING TO CONTRIBUTE TO REPAIRS COSTS IN SOME CASES?

Councils will not contribute to repair costs if they were not involved in the building work (i.e. where inspection and sign-off was done by a private building certifier).

Eligible home owners would still get the government's 25 per cent contribution to agreed repair costs but would need to fund the remaining 75 per cent.

11. WITH COUNCILS FACING BUDGET CONSTRAINTS, WON'T RATEPAYERS BE LEFT FOOTING THE BILL?

Ratepayers are already footing the bill as councils currently carry a significant liability and risk. They are also footing the legal bill from the costly litigation process. Some councils have already made provision for rates increases to carry the cost of their claims. This proposal provides a means for local councils to manage the cost to ratepayers of the leaky homes problem in their district through limiting liability and creating certainty.

12. WHAT ABOUT THE COMPANIES RESPONSIBLE FOR PRODUCING DEFECTIVE PRODUCTS - SHOULDN'T THEY BE HELD RESPONSIBLE?

Homeowners will retain any existing right to pursue manufacturers of defective products through the Weathertight Homes Tribunal or the courts to obtain financial redress.

13. WHY NOT EXTEND THE 10-YEAR CLAIM LIMIT - WHAT IF A HOMEOWNER DOESN'T DISCOVER A PROBLEM UNTIL LATER?

The government has considered this issue and has decided to leave the 10-year limit as it stands. The 10-year limit is well established and applies to all building work under section 393 of the Building Act, not just building work giving rise to leaks. This was also in the 1991 Building Act. It puts a necessary boundary around claims. The Limitation Act 2010 applies limitations for bringing many different types of claims, not just those relating to building work. Statutory limitations exist to provide clarity for the parties involved.

As time passes, it becomes harder to identify the causes of damage to homes and more difficult to link problems in a building to the original construction.

A report into leaky homes by PWC concludes that the vast majority of leaky homes will show evidence of failure within the 10-year period, this was also noted in the 2002 Hunn report.

14. WHY IS LEGISLATION REQUIRED?

Local councils have indicated strong support for the Package, but they were concerned that even if the homeowner agrees not to sue them, they could still incur further costs if another party sued by the homeowner decided to join the council as a party to their dispute with the homeowner. The only way to provide councils with the level of certainty they require is to legislate so that when the council provides a 25 per cent direct contribution towards the agreed repair costs of a leaky home under the Package the council is protected from any further claim related to the same building issues.

15. WILL THE APPLICATION FOR THE FINANCIAL ASSISTANCE PACKAGE BE RECORDED ON A PROPERTY'S LAND INFORMATION MEMORANDUM?

Yes. Because the Financial Assistance Package is provided under the Weathertight Homes Resolution Services Act, the claim will be noted on the LIM as are all claims under the Weathertight Homes Resolution Services Act. When the weathertightness remediation work is completed, that is also noted on the LIM.