



Department of
Building and Housing
Te Tari Kaupapa Whare

Eligible standard WHRS claim: homeowner resolution options

Your WHRS claim is eligible for the resolution services available under the Weathertight Homes Resolution Services Act 2006. You are eligible to apply to the Weathertight Homes Tribunal because the remediation cost set out in the assessor report, or the receipts from your repairs, total more than \$20,000.

DISPUTE RESOLUTION OPTIONS

You have several options for resolving your dispute at this point. These are:

- adjudication with a mediation opportunity through the Weathertight Homes Tribunal
- District or High Court proceedings, depending on the amount of your claim
- pursuing a private settlement through private negotiation, mediation or arbitration
- taking no further action and repairing the house without pursuing parties.

Your claims advisor will be able to discuss your options and your particular situation with you.

REPAIRS

If you have not already done so, you may wish to begin repairs and then proceed to resolution using accurate costs of repair. This should be discussed with your claims advisor before you begin. Your claims advisor has information sheets that can help you when you are considering repairing your home. It is vital that you keep detailed records and photos of all work undertaken if you intend to proceed to dispute resolution after repairs are complete. You should consider asking parties that were involved in the construction or alteration of your home to come and have a look at the damage while you are repairing, as this can reduce points of contention during the dispute resolution process.

Even if you cannot undertake full repairs of your home, it is important that you mitigate the damage as much as possible. You can achieve this by undertaking temporary repairs, such as using sealants on known points of water penetration. It is likely that mitigating damage will be discussed at adjudication. See the information sheets on repairs for further information – Repairs and the resolution process and Repairs and maintenance.

WHAT IS THE WEATHERTIGHT HOMES TRIBUNAL?

The Ministry of Justice supports the Weathertight Homes Tribunal (the Tribunal), a judicially independent Tribunal that provides adjudication for WHRS claims. Members of the Tribunal control the proceedings and produce a legally binding decision.

Claimants with eligible WHRS claims over \$20,000 can apply to the Tribunal to have the claim adjudicated. The claim will be given a separate case number and a Ministry of Justice case manager will administer the process. Please refer to the booklet on adjudication produced by the Weathertight Homes Tribunal for more information or go to their website at www.justice.govt.nz/wht

WHAT IS ADJUDICATION?

Adjudication is a formal, judicial process in which an independent person (the Tribunal Member) decides liability in the parties' dispute. Adjudication is undertaken by the Weathertight Homes Tribunal (the Tribunal).

There are four main stages to adjudication.

1 Pre-hearing stage

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.

2 Opportunity for mediation

You and the respondents can at any time request permission from the Tribunal Member to mediate the WHRS claim. The Member may initiate mediation themselves if they feel it is appropriate. If the Member allows the mediation they will then set down a timetable for this to occur. This will be discussed at the pre-hearing stage.

3 Adjudication hearing

If the mediation attempt is unsuccessful, the adjudication will proceed as timetabled at the pre-hearing stage. This is a judicial hearing in a court-like setting where the Tribunal Member will clarify and test evidence to make a decision. Limited cross-examination may also be allowed.

4 Decision

After the hearing is complete, the Tribunal will produce a legally binding decision on liability. This decision can be appealed by the parties to the District or High Courts.

WHAT IS MEDIATION?

The Tribunal can refer a WHRS claim to mediation within the adjudication process. This is usually done at the preliminary conference. Weathertight Services can provide a mediator at no cost to the parties. The Ministry of Justice (the Ministry), which supports the Tribunal, will make all arrangements for the mediation.

Mediation is a voluntary and informal process where an impartial person (the mediator) helps people with a dispute work together to find their own solution. Mediators are independent, professional people and their focus is on helping you to solve the problem. You, together with the other people in the mediation, decide your own outcome.

The mediator will help the parties work out what the issues are, the positions of each party and possible options for resolution. The mediator will not make a decision for you 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 directly 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 disclosed or agreed to in mediation.
- Mediation is likely to be less expensive than adjudication or court action and the process is relatively quick compared with adjudication or the courts.
- The presence of the mediator can also ensure power imbalances between parties are minimised.

There are statutory time limits to mediation that ensure the WHRS claim is not unduly delayed. A stand-alone house claim is allowed 20 working days. A multi-unit complex or stand-alone complex is allowed 40 working days. The Tribunal can set a time limit that they think is appropriate for the mediation. They will also set the date that the mediation will take place.

More information on mediation can be found in our information sheet on mediation for standard WHRS claims available from our website (www.dbh.govt.nz). The booklet will be provided to all parties to the adjudication.

WHAT HAPPENS NEXT?

Adjudication

The Department will provide you with an application form to apply to the Tribunal. Your claims advisor will help you complete the application form. You will then need to serve your application on the Tribunal (accompanied by the filing fee of \$400) and on the respondents. Your claims advisor can provide you with advice on how to serve the documents. Further information on service is included below.

The Tribunal Member will issue an initial procedural order that will timetable the adjudication process. This will include the date of the preliminary conference, the date

you must supply your statement of claim and the date the respondents must respond to your claim.

Tribunal Members have considerable powers. They may, among other things:

- request additional information or submissions
- order people to become respondents if they think it is desirable
- ask for additional documents
- appoint experts
- carry out site visits of the building concerned
- decide that a particular party must pay costs and expenses in limited circumstances.

The parties to the adjudication are required to comply with any request or directive of the Tribunal Member.

The Tribunal Member will make a decision on the information provided to him or her. The decision will state which parties are liable and what remedies there should be. This decision must be treated as an order of the District Court and may be enforced in the same way as a District Court order.

SERVICE

Once you have completed your application and have all the documents required by the application form you must serve the application and the documents on the Tribunal and on the respondents you have named. If you have a legal advisor, they can undertake this service for you. Your claims advisor can also provide you with guidance on how to undertake this process and on finding appropriate addresses for the respondents.

The following are the main points to consider when serving.

- A document is served if it is:
 - delivered to that person
 - left at that person's usual or last known place of residence or business in New Zealand
 - posted in a letter addressed to that person at that person's place of residence or business in New Zealand.
- The WHRS Act requires that a copy of Weathertight Services assessor's report is served along with the application. Other documents that you need to serve will be detailed on the application form.

- The Tribunal may require proof of service. This means you should have a record of who was served, what address they were served at and what was served. The best way to do this is to courier the documents and retain the tracking label. You should also take copies of the courier packet once it is addressed to show exactly what address the documents were sent to. If you choose to send them by normal post you should also keep copies of the original documents and the addressee list.
- The addresses you serve the documents on should be physical addresses where possible – not PO boxes.
- Service can only be undertaken by email if you obtain the consent of the respondent concerned before service occurs.
- If an address cannot be found for the respondent but you know of a family member or close associate who knows their whereabouts, you can apply to the Tribunal for permission to undertake substituted service on that person.
- When copying documents for service, the copies should be of good quality and in colour if appropriate. This is particularly applicable for any reports that contain photographs detailing damage.

FURTHER INFORMATION

Please contact your claims advisor on 0800 324 477 if you have any queries.

You can request information sheets by calling 0800 324 477, or download them from our website at www.dbh.govt.nz. The information sheets cover topics including:

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

For information on the Tribunal, visit www.justice.govt.nz/wht

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