



Department of
Building and Housing

Te Tari Kaupapa Whare

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

Information for owners or representatives
of multi-unit complexes



01	INTRODUCTION
02	ROLE OF WEATHERTIGHT SERVICES
02	THE WHRS CLAIM PROCESS
03	WHAT REMEDIES MAY BE CLAIMED
03	THE MULTI-UNIT COMPLEX
06	WHRS CLAIM PROCESS DIAGRAM
08	BRINGING A WHRS CLAIM
09	THE REPRESENTATIVE
10	THE WHRS CLAIM ON COUNCIL RECORDS
10	PUBLIC ACCESS TO INFORMATION ABOUT THE WHRS CLAIM
10	RECEIVING THE WHRS CLAIM
11	ASSESSING THE WHRS CLAIM
12	WHRS CLAIM ELIGIBILITY
12	OPTIONS AFTER ELIGIBILITY IS CONFIRMED
13	REPAIRS
13	MITIGATING DAMAGE
13	MAINTENANCE
13	FINANCE FOR REPAIRS
13	RESOLUTION
15	OTHER RESOLUTION OPTIONS
16	KEEP US INFORMED
16	FURTHER INFORMATION
16	HELP WITH GETTING STARTED
17	GLOSSARY

Introduction

This booklet explains the process for WHRS claims brought under the Weathertight Homes Resolution Services Act 2006 for multi-unit complexes. (A separate booklet is available for the owners of stand-alone houses.)

The Weathertight Homes Resolution Services Act 2006 (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, supported by the Ministry of Justice, a judicially independent tribunal that provides adjudication for WHRS claims.

The owners of units in a leaky multi-unit complex can bring one WHRS claim for the complex. This allows all the weathertightness issues in that complex to be dealt with at the same time. The owners can bring a WHRS claim to obtain an assessment of the damage to the complex and seek resolution.

A multi-unit complex WHRS claim must be brought by a representative authorised by the unit owners in the complex.

This booklet is addressed to both the representative and the owners as both must know about the process.

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 complex
- the advantages of early repair
- ways of resolving the WHRS claim.

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

THE WHRS CLAIM PROCESS

If the owners in a multi-unit complex decide they want to bring a WHRS claim, they authorise a representative to bring it on their behalf. There is one WHRS claim for the whole complex. The representative then acts as the claimant, with the authority of the owners. Decisions about the claim must be made according to the WHRS Act and the rules or constitution that govern the complex.

A WHRS claim involves two processes: assessment and resolution. The representative brings the WHRS claim by applying to Weathertight Services for an assessor's report. If the WHRS claim is eligible, the claim

may proceed to the resolution process. In the resolution process the claimant makes claims against parties (respondents) they think are responsible for their loss (eg, damage to units and/or common areas).

Most claimants will need to apply to the Tribunal for adjudication initially. Other resolution options are detailed on page 15.

Respondents (the other parties to the claim) are the people or companies the claimant considers may have some liability. The claimant can seek compensation from the respondents for their loss. There needs to be good reason for naming someone as a respondent. The resolution process requires the claimant to provide well-prepared evidence as to why the respondents are liable (responsible) for the claimant's 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 Tribunal.

In this booklet the term **claimant** may refer to the owners or representatives or both.

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 for 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.

THE MULTI-UNIT COMPLEX

A multi-unit complex is a building or group of buildings in a complex containing multiple units. There are different types of multi-unit complex, but all require an authorised representative to bring a WHRS claim.

Before bringing a WHRS claim it is important to identify the type of:

- complex
- property
- claim.

The **type of WHRS claim** to be made, such as multi-unit complex or stand-alone complex, depends on:

- the type of property involved (unit property, common property)
- the amount of the property involved (one unit, some units or units and common areas).

The **way the claim is made**, such as authorisation requirements, depends on the type of complex (unit title, cross-lease or company-share).

This is explained overleaf.

Different types of multi-unit complex

A multi-unit complex can be one of three different types depending on the legal title.

1. Unit title complex

This is the most common form of ownership in a multi-unit complex. Each person owns their unit and also shares ownership of the 'common property' with the other owners. The body corporate (all the owners of the units) administers the complex and is responsible for the common property. Each complex will have its own body corporate rules.

2. Cross-lease complex

A number of people share in the ownership of a piece of land. The houses built on the land are usually flats or townhouses, but can also be unconnected houses. The owners lease their homes from each other on long-term leases. A memorandum of lease details the specific arrangements in each complex.

3. Company-share complex

A company owns the complex and residents are shareholders with a licence to occupy their particular unit.

In this booklet we have used the term 'unit' to mean dwellinghouse as defined in the WHRS Act, including units, flats or townhouses in any of the multi-unit complex types above.

Different types of property

A multi-unit complex can consist of one or more of the following types of property.

- Unit property – property that is owned by one unit owner(s)
- Shared property – property owned by more than one (but not all) unit owners, for example, a shared wall between units
- Common areas – property owned by all unit owners in common. This can include the roof, balconies, external cladding and so on, but varies between complexes

These types of property are defined on the unit plan or flat plan that is attached to the certificate of title. Weathertight Services' assessor will identify what kind of property is involved by looking at the unit or flat plan. They may also consult a surveyor to clarify the boundaries between units and common areas, which may vary between complexes.

Different types of WHRS claim

There are four different types of WHRS claim that can be made. The type of WHRS claim depends on the nature and extent of the property that has been damaged, not on the type of complex.

1. The multi-unit complex WHRS claim

This is the most common type of WHRS claim. In a multi-unit complex WHRS claim, the claim is for a group of units and any common areas.

2. The stand-alone complex WHRS claim

A stand-alone complex WHRS claim can only be made if there are no common areas affected. It can be made for the following unit(s) within a multi-unit complex.

- One or more units that are each separate buildings with no common areas
- All units in one or more separate buildings with no common areas

The owners of all the units in each separate building must authorise the WHRS claim to be brought and invasive testing (see pages 8 and 12) to be carried out.

If Weathertight Services becomes aware that there is a common area in the multi-unit complex that has been damaged, the stand-alone complex WHRS claim will be terminated as a multi-unit complex WHRS claim would need to be brought.

3. The common-areas-only WHRS claim

A common-areas-only WHRS claim can be made for any common area that has been damaged, as long as no unit in the complex has been damaged.

If Weathertight Services becomes aware that individual units are damaged, the common-areas-only WHRS claim will be terminated as a multi-unit complex WHRS claim would need to be brought.

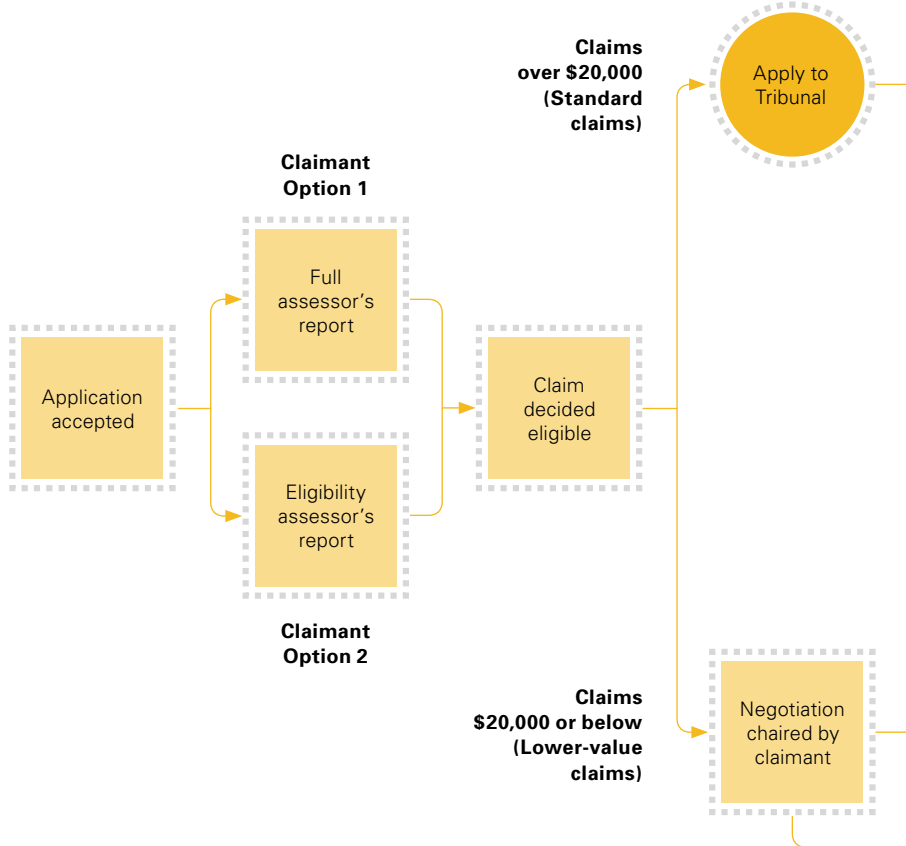
4. The single-unit WHRS claim

A single-unit WHRS claim can only be made when:

- no other unit has been damaged
- no common areas have been damaged.

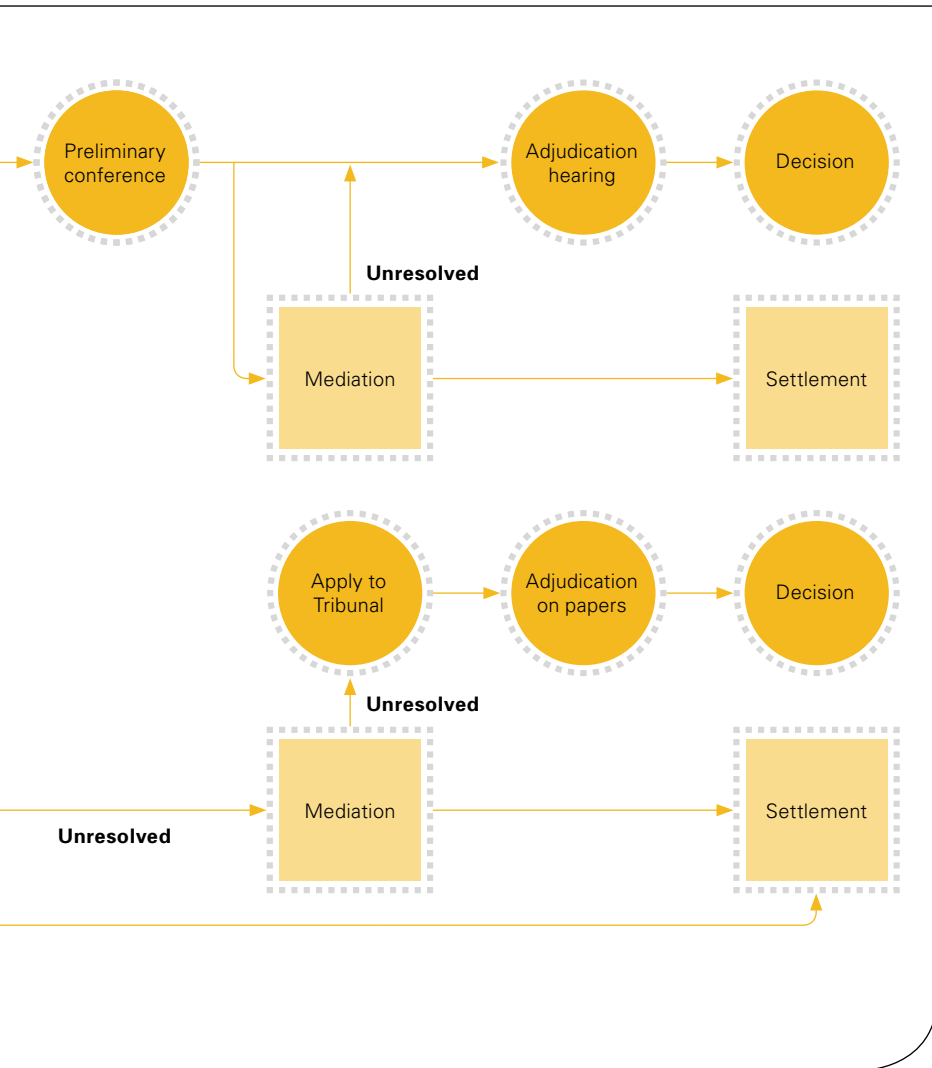
If Weathertight Services becomes aware that other units or common areas are damaged, the single-unit WHRS claim will be terminated as a WHRS claim for the whole complex would need to be brought.

WHRS CLAIM PROCESS



Key:

- Weathertight Services
- Weathertight Homes Tribunal



BRINGING A WHRS CLAIM

1. The WHRS claim must meet or be capable of meeting the eligibility criteria.

The eligibility criteria under the WHRS Act for a multi-unit complex are that the:

- WHRS claim must be brought by the authorised **representative** of the owner(s) of the units that are the subject of the claim (unless the claim is for a single unit only)
 - units claimed for must be principally for **residential** use (rental properties are permitted but not time-share or commercial properties within the complex)
 - units and/or common areas must have been built or altered within the **10 years** immediately preceding the date of lodging the WHRS claim
 - complex must be or have been **leaking**
 - complex must have been **damaged** as a result of the leaking.
2. The WHRS claim and invasive testing must be properly authorised.

Authorisation requirements differ depending on the complex type.

- For a unit title complex, at least 80 percent of those entitled to vote must authorise the body corporate to bring the WHRS claim and authorise invasive testing of any common areas involved unless a lower percentage is allowed by the body corporate rules of the complex. If unit property is involved, the owners of at least 75 percent of the residential units must authorise invasive testing of their units.
- For a cross-lease complex, the owners of at least 80 percent of the units must authorise the nominated representative to bring the WHRS claim and authorise invasive testing of any common areas involved unless a lower percentage is allowed in the lease documents. If unit property is involved, the owners of at least 75 percent of the residential units must authorise invasive testing of their units.
- For a company-share complex, at least 80 percent of those entitled to vote must authorise the company to bring the WHRS claim and authorise invasive testing of any common areas involved unless a lower percentage is allowed by the company's constitution. If unit property is involved, the owners of at least 75 percent of the residential units must authorise invasive testing of their units.

3. The claim form must be completed.

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 call the 0800 number for help to complete the form.

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.

When the assessor's report is produced, it will be sent to the representative who is responsible for making it available to the owners involved.

The requirements for who can be a representative are as follows.

- For a multi-unit complex WHRS claim or common-areas-only WHRS claim, the appropriate representative must bring the claim. This depends on the complex type.
 - For a unit title complex, the **body corporate** must be the representative that brings the WHRS claim.
 - For a cross-lease complex, a **nominated representative** must be the representative that brings the WHRS claim.
 - For a company-share complex, the **company** must be the representative that brings the WHRS claim.
- For a stand-alone complex WHRS claim, a **nominated representative** must bring the claim. To authorise the representative to bring the WHRS claim, every owner must provide the representative with written authorisation.
- For a single-unit WHRS claim, the **owner** is deemed to be the representative and may bring the claim.

THE REPRESENTATIVE

The representative must bring a multi-unit complex WHRS claim on the owners' behalf. The representative will be the main point of contact and all documentation for the WHRS claim will be sent to the representative. This includes the report written by Weathertight Services' assessor. If owners have any queries they should contact their representative.

The representative's responsibilities will include arranging access to all units and common areas covered by the WHRS claim so the assessor can investigate them.

THE WHRS CLAIM ON COUNCIL RECORDS

We are required under the WHRS Act to notify the local council (territorial authority) when a WHRS claim is brought, when it is decided to be eligible or ineligible and when it is resolved or closed. The council is required to record these events on its files. The council will have a file on each unit and these files are publicly accessible.

When the claimant applies for a building consent to begin the repair work the council will become 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 complex has been fixed.

PUBLIC ACCESS TO INFORMATION ABOUT THE WHRS CLAIM

Members of the public can get certain information about the WHRS claim from the council. For example, someone who is thinking of buying a unit can get a land information memorandum (LIM) report on the unit 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 the WHRS claim.

RECEIVING THE WHRS CLAIM

When Weathertight Services receives a WHRS claim, the WHRS claim is allocated to a claims advisor. They will work with the claimant, as required, to establish whether the WHRS claim is capable of meeting the eligibility criteria (see 'Bringing a WHRS claim' on page 8).

If the WHRS claim is declined, the claims advisor will explain the reason to the representative and discuss their options.

If the WHRS claim is accepted, the claims advisor will let the representative know and discuss the assessment of the complex.

The WHRS claims advisor will be the representative's contact point throughout the first stage of the process. They can provide the representative with assistance and guidance on assessment,

the advantages of repair, the options for resolving the dispute and preparation for resolution under the WHRS Act. When the WHRS claim moves into the resolution stage, the representative will have a different contact person. If the claimant applies to the Tribunal the representative's contact person will be a case manager from the Ministry. If the claimant undertakes lower-value WHRS claim resolution with Weathertight Services, the representative's contact person will be a settlement advisor from Weathertight Services.

ASSESSING THE WHRS CLAIM

If the WHRS claim is accepted for an assessor's report, we will commission an expert assessor to investigate the property and provide a report to Weathertight Services. A copy will be sent to the representative.

There are two report options. The claims advisor will provide the claimant with information and guidance on the best option for the claim.

1. A **full assessor's report** will cost \$1,500 for a multi-unit complex, \$1,000 for a duplex (two units) or \$500 for a single unit.

This is the better option if the claimant wants a comprehensive assessment before deciding whether to repair first or resolve the claim first. It identifies 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 is the better option if the claimant is confident that they can access the financial and expert resources 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 the claimant carries out the repair.

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

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

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

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

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 the consent of the owners of at least 75 percent of the units in the complex. We cannot accept the WHRS claim without this consent. Photos showing sites where invasive testing has occurred are on our website (www.dbh.govt.nz).

The assessor will make temporary repairs to the drill holes and cut-outs, but the claimant will be responsible for final reinstatement of any temporary repairs.

Invasive testing will not be undertaken on property that has already been fully repaired.

WHRS CLAIM ELIGIBILITY

Before the WHRS claim can proceed to resolution, we must decide that it is eligible.

The assessor's report on the complex will record the assessor's opinion as to whether the 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 it is eligible. There is an option for review if the Chief Executive decides the WHRS claim is ineligible, which will be explained to the claimant if required.

OPTIONS AFTER ELIGIBILITY IS CONFIRMED

If the WHRS claim is found to be eligible the claimant can:

- start or continue repairs
- start resolution.

REPAIRS

There are advantages in repairing the complex as early as possible.

Early repair:

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

If the owners in the complex decide to repair, the representative should contact their WHRS claims advisor to discuss this.

MITIGATING DAMAGE

Even if the owners do not take the option to repair, 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 the complex is maintained adequately as lack of maintenance can contribute to water getting in. If the owners have not undertaken normal maintenance, this can affect the settlement of the WHRS claim. Information on maintenance is available from the ConsumerBuild website (www.consumerbuild.org.nz).

FINANCE FOR REPAIRS

If owners are unable to obtain finance for repairs from their 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 owners with eligible claims who meet certain criteria. More information is available from your claims advisor.

RESOLUTION

Resolution is the process of settling the 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 the claimant and other parties try to find an agreed solution. The mediator is neutral and does not make 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 the 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
- receipts the claimant has kept from repairs already made.

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

If the parties cannot settle, the claimant can apply to the Weathertight Homes Tribunal and a Tribunal Member will adjudicate the claim. 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 the WHRS claim is settled during the mediation opportunity, the hearing and decision 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 the claimant to use Weathertight Services' resolution process or the Weathertight Homes Tribunal.

When a WHRS claim has been brought, the claimant remains free to seek resolution of the claim by other means, including:

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

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

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. If the owners are undertaking repairs or if their WHRS claim is being pursued through other resolution options, the representative should tell us. Also, if any unit is sold during the WHRS claim, the representative must tell us within 5 working days.

It is important that leaky homes are repaired as quickly as possible. For this reason, Weathertight Services may close a claim if the claimant is not making enough effort to resolve the claim and there is no valid reason for this. Once the WHRS claim is closed, in most cases the claimant cannot bring a new claim for this property. We understand that circumstances may mean that we are unable to contact people, 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 the representative at the appropriate stages of processing the claim. Claimants can get them earlier if they wish, either by phoning us or visiting our website. The information sheets cover topics including:

- assessing a multi-unit complex
- invasive testing
- mediation
- repairs.

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

HELP WITH GETTING STARTED

Weathertight Services' claims advisors can provide assistance and guidance right from the start, when owners are getting together and thinking about bringing a WHRS claim. Please contact us on 0800 324 477. In some cases we are able to provide presentations to the owners in a complex about bringing a WHRS claim.

GLOSSARY

the WHRS Act

the Weathertight Homes Resolution Services Act 2006

claimant

owners or representatives or both

decision

a determination of liability made by the Tribunal

Department

Department of Building and Housing

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 at adjudication

Tribunal

Weathertight Homes Tribunal

unit

used in this booklet to mean 'dwellinghouse' as defined in the WHRS Act, including units, flats or townhouses

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 0-478-29790-4 (document)
ISBN 0-478-29791-2 (website)

