



**MATERIAL FOR TERRITORIAL AUTHORITY CHIEF  
EXECUTIVES ON THE KEY FEATURES OF SCHEME  
DESIGN FOR FINANCIAL ASSISTANCE PACKAGE FOR  
OWNERS OF LEAKY HOMES\***

\*Financial assistance package involves:

- Government and territorial authorities each providing a 25% direct payment to agreed owner repair costs
- Government providing assistance to owners to access bank finance for remaining agreed repair costs by way of loan guarantees to banks for loans made to owners eligible for the assistance and who can meet the bank's lending criteria.

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## KEY FEATURES OF SCHEME DESIGN FOR FINANCIAL ASSISTANCE PACKAGE FOR OWNERS OF LEAKY HOMES

As agreed by Joint Ministers on 24 August 2010

### 1. The eligibility criteria for the financial assistance package

| Eligibility Criteria   | Comment  |
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| <p>1. All existing WHRS Act 2006 criteria will apply (10 year limit, dwelling leaky and damaged), including the restriction that only dwellings built before 1 Jan 2012, can apply.</p>  | <p>Status quo – any person meeting definition of “owner” in WHRS Act may apply, the scheme does not discriminate based on who owns the dwelling.</p>   |
| <p>2. Applications to the scheme must be made within 5 years of its start date (i.e: if start date is 1 March 2011, last date to apply to scheme is 29 February 2016).</p>   | <p>Previous Cabinet decision, slightly modified to align with expected start date of the financial assistance package.</p>   |
| <p>3. Dwellings already repaired are not eligible for the financial assistance package, but they can pursue claim in Weathertight Homes Tribunal or Courts.</p>  | <p>Ensures financial assistance package is used to repair homes, not as compensation for repairs already done. If compensation is sought by the homeowner, it is more appropriate they litigate.</p>   |
| <p>4. Dwellings already covered by a settlement with the territorial authority (whether privately, in Court or under WHRS Act) are not eligible for the financial assistance package.</p>  | <p>To prevent owners from “double dipping” where they have already agreed to or been awarded compensation.</p>   |
| <p>5. Application may be partially eligible for the financial assistance package, i.e: eligible for Government contribution/loan guarantee, but not TA contribution, if:</p> <ul style="list-style-type: none"> <li>(a) Established legal precedents for liability/duty of care of territorial authorities are that the TA is not liable.</li> <li>(b) Territorial authority did not inspect or issue code compliance certificates (including interim code compliance certificates) for the dwelling (see also private certifier scenarios below).</li> <li>(c) Territorial authority issued a code compliance certificate for building work relating to weathertightness as directed by a Department of Building and Housing determination.</li> <li>(d) Territorial authority issued a code compliance certificate for non-weathertightness related building work only.</li> </ul> | <p>Covers as many detailed scenarios as can currently be predicted where the council did not sign off the building work and therefore is not liable.</p> <p>Paragraph (a) ensures eligibility decisions always follow case law, e.g: councils do not have a duty of care in relation to buildings that are non-residential uses, see also paragraph (f) regarding multi-units.</p> |

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| <p>(e) Dwelling “signed off” by private certifiers, as described below:</p> <ul style="list-style-type: none"><li>(i) Private certifier processed the consent application, performed inspections and issued a code compliance certificate. The private certifier then forwarded documents to the territorial authority only for the purpose of adding them to the property file.</li><li>(ii) TA issued code compliance certificate based solely on certificate from private certifier issued under s. 56 Building Act 1991.</li><li>(iii) Territorial authority approved plans and issued building consent, then a private certifier undertook all inspections and issued a code compliance certificate.</li><li>(iv) Territorial authority became involved part-way through building work, typically when a private certifier closed its business. The private certifier issued an interim code compliance certificate and handed the file over to the territorial authority. <u>If</u> the interim code compliance certificate covered weathertightness, then the homeowner is not eligible for the territorial authority contribution, unless the territorial authority subsequently inspected the weathertightness-related work.</li><li>(iv) Territorial authority inspected weathertightness-related building work, identified problems, and issued a notice to fix (or notice to rectify under Building Act 1991) or otherwise advised the homeowner of defects in the work. The notice to fix or advice was not actioned by the homeowner. As a result no code compliance certificate has been issued.</li><li>(vi) For avoidance of doubt, dwelling is eligible for territorial authority contribution if, in addition to involvement of private certifier, the territorial authority undertook one or more inspections and/or issued a code compliance certificate covering weathertightness.</li></ul> |  |
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| <p>(f) <u>Multi-units only</u>: If building has mixed uses (some residential, some non-residential), owners of non-residential units will not be eligible for financial assistance package. If territorial authority has already settled a claim in relation to an individual unit, the owner of that unit is not eligible for the financial assistance package.</p> |  |
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**2. Transition rules for existing claimants under WHRS Act**

| Transition Rules  | Comment   |
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| <p><b>1.</b> Subject to eligibility requirements, any person with an active claim under WHRS Act (2002 or 2006) at the date financial assistance package “goes live” can choose to opt in to the package if:</p> <ul style="list-style-type: none"> <li>- repairs have not started or not been completed (i.e: code compliance certificate issued) and the claimant has a full assessment</li> <li>- no attempt has yet been made to mediate a settlement of the claim or, in the course of a mediation, both parties agree to opt in to the package.</li> </ul>                            | <p>To transition, the homeowner must meet the eligibility criteria for the financial assistance package.</p> <p>Cut off point for transition strikes fair balance between giving homeowner choice and the rights of defendants who have incurred costs to defend claims against them.</p> <p>Existing claimants who have completed repairs cannot transition – this is consistent with eligibility rule for the financial assistance package that repaired homes are not eligible because the package is to help people repair their homes, not provide compensation.</p> |
| <p><b>2.</b> Within 14 days of “go live” of the package all existing claimants with full assessments must decide whether they want to opt in to the package. If they want to, their claim will be put “on hold” for 3 months, during which time the claimant must take whatever actions are necessary for them to opt in (e.g: discuss with their bank). At the end of the 3 months the claimant must have formally (in writing) notified the Department they are opting in, if they haven’t the claim will be taken off “hold” and they will have to continue with WHRS Act processes.</p> | <p>Time limit to provide certainty to defendants. Claimants will be able to decide if they want the option of the financial assistance package fairly quickly, but some will need further time before they can fully opt in.</p> <p>In practice the time limit will be applied by the Department informing all claimants that they will be treated as wanting to opt in unless they tell the Department otherwise within 14 days.</p>   |
| <p><b>3.</b> Existing claimants without a full assessment can decide to opt in to the financial assistance package after they receive the full assessment and must do so within 3 months of receiving the full assessment.</p>  | <p>Aligns with main scheme design where new claimant is required to decide whether to opt in to financial assistance package after they have a full assessment.</p>   |

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| <p><b>4.</b></p> | <p>If there are no other (non-territorial authority) parties, the WHRS Act claim continues to stay “on hold” until the financial assistance package process is completed in order to preserve limitation rights. If there are other parties, the WHRS Act claim process re-starts against those other parties only.</p>  | <p>Important administrative procedure to ensure “clock” has “stopped” on 10 year limit and enable claimant to transfer back to WHRS at a later stage in the process if circumstances change, e.g: they cannot afford to pay their share of repair costs.</p>  |
| <p><b>5.</b></p> | <p>If claimant has started repairs, building consent documents must be submitted to the Department together with information from claimant’s designer/head contractor that compares consent documents with the WHRS Act full assessment and explains any differences, including cost differences.</p> <p>The Department and territorial authority agree scope and cost of repairs and calculate amount of direct contribution based on that information. If claimant disagrees with the Department/territorial authority agreed scope/cost, claimant can go back to WHRS Act process.</p>  | <p>Allows for some retrospective assessment of repair scope and cost for claimants who started repairs before the financial assistance package was announced.</p> <p>However, if the Department and council cannot agree on the scope and cost retrospectively, the claimant will not be able to transition.</p> <p>The Department is currently advising claimants who are doing repairs to keep good records to ensure a retrospective assessment can be done.</p>   |
| <p><b>6.</b></p> | <p>Claims closed by the Department for being “tardy” (claimant not making enough effort to resolve) under s. 56 of WHRS Act 2006 cannot reapply or be re-opened – s. 56(3) of WHRS Act prohibits them from being re-started.</p>   | <p>Status quo.</p>  |
| <p><b>7.</b></p> | <p>Claims that are closed for reasons other than “tardy” (see 6 above), the current owner can lodge a new claim for same dwelling if:</p> <ul style="list-style-type: none"> <li>- still inside the 10 year limit and meets all other WHRS Act 2006 eligibility criteria</li> <li>- repairs have not been completed (failed repairs are an entirely new claim and not covered by transition rules)</li> <li>- claim was not resolved in any way (e.g: mediated under WHRS Act, private negotiated settlement, adjudicated in Tribunal or Courts)</li> </ul> <p>and claim is only to access the financial assistance package, they cannot go back into the Weathertight Homes Tribunal processes.</p> | <p>Many previous claimants closed their claims because they had no parties to sue (e.g: private certifier signed off the building work and all other parties had disappeared or were insolvent), or they could no longer afford the cost and stress of litigation.</p> <p>The Department does not know what actions claimants then took to repair their home (or not). A large number of these claims are now likely to be outside the 10 year limit, but if some of these previous claimants can be helped by the financial assistance package, they should be given the opportunity to apply.</p> <p>However, they will not need access to the dispute resolution options (Weathertight Homes Tribunal) as they have already effectively decided that option is not right for them when they closed their original claim.</p> |

### **3. Matters that will be “agreed repair costs” and therefore covered by the direct contributions**

The following costs will be covered by the direct contribution payments:

- Building work costs for agreed scope of repair work (see below for process for agreeing scope), including a contingency of a maximum of 10% and including GST
- Design work costs
- Project management of repair process (if required)
- Alternative accommodation, including storage of household effects (if required): 50% (25% Crown, 25%TA) of total of “actual and reasonable” costs, to maximum total payment of \$5,000 (\$2,500 Crown, \$2,500 TA).
- Building consent costs.

Costs that will not be covered by the direct contribution payments include: general damages for stress etc, loss of income, loss of profits. These costs are not directly related to the repair of the home and cannot be objectively established in the ‘no fault’ approach of the financial assistance package.

### **4. High level process for Department of Building and Housing and territorial authority role in determining the “agreed repair costs”**

| <b>Department and territorial authority role in determining the “agreed repair costs”</b> |  | <b>Comment</b>   |
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| <b>1.</b>   | The Department (DBH) arranges for an independent expert to carry out a full assessment (per WHRS Act, status quo) based on guidance in the Department’s Weathertightness Diagnosis document (due for publication in August 2010).  | Status quo   |
| <b>2.</b>   | The assessment is accepted by the DBH, territorial authority and homeowner as the sole information about scope and nature of repair on which claim will proceed through financial assistance package.  | To provide independent expert view of scope of repairs.                              |
| <b>3.</b>   | Claimant gets (and pays for) plans, specifications and estimated costs for repair work (“a repair and payment plan”):<br>[NB: “claimant” in the case of multi-unit buildings will be the representative, e.g: body corporate, of the owners]<br>- Claimant encouraged to choose practitioner to do design from people recommended by DBH – DBH only recommends practitioners who are registered/licensed or have appropriate industry organisation membership. NOTE: after 2012 all weathertightness design work will be required to be done by Licensed Building Practitioners. | Process designed to ensure good quality repairs and proper spending of public money. |

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|                  | <ul style="list-style-type: none"> <li>- Design done in accordance with DBH Remediation Guide and for building work required to carry out scope and nature of repairs identified in full assessment. Designs must demonstrate how the dwelling will be made weathertight, but the repair and payment plan is not required to be specified to the level of detail required for building consent.</li> <li>- Repair and payment plan content is limited to weathertightness repairs only, no betterment (see definition below). Building work for other defects must not be included, however claimant should seek advice from designer about possibility of other defects at this stage.</li> <li>- Designer is responsible for plan meeting Building Code requirements.</li> <li>- Cost of building work estimated using a schedule approach (must include contingency in case new/additional damage is discovered when repair work starts and GST) and plan specifies milestones in repair work when direct contribution payments will be made.</li> </ul> |   |
| <p><b>4.</b></p> | <p>DBH and TA review the repair and payment plan to approve:</p> <p>(a) that work specified in the repair and payment plan will:</p> <ul style="list-style-type: none"> <li>o repair the existing damage</li> <li>o make the dwelling weathertight (“future likely damage”) as per the scope identified in the full assessment (including approval of incidental work required as a result of the remediation, e.g: replacement of insulation, that is not betterment)</li> </ul> <p>but no views on the Code compliance of the work are given, and</p> <p>(b) timing and sequence of milestone payments for direct contribution (but amount of direct contribution is not confirmed at this stage).</p>  | <p>Process for how DBH and TA will approve the repair and payment plan is yet to be decided. DBH/TA agreement is key platform for later decisions on exact amount of direct contribution to be paid to homeowner.</p> |
| <p><b>5.</b></p> | <p>DBH advises claimant, in writing, of DBH/TA approval. DBH/TA approval enables claimant/designer to develop detailed plans and specifications to “consentable” form based on the repair and payment plan.</p>   | <p>Expectation that designer will develop more detailed plans and specifications for purpose of building consent.</p>   |
| <p><b>6.</b></p> | <p>If DBH and TA do not approve the repair and payment plan, DBH advises claimant, in writing, of amendments required to plan in order for DBH/TA to approve. Claimant either makes amendments (and re-submits to DBH/TA for approval) or exits FAP.</p>  | <p>If claimant wants to do work that DBH/TA believe is “betterment”, the claimant will not be able to progress through the FAP unless they pay the costs of the “betterment” themselves.</p>                          |



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| <p><b>7.</b></p>  | <p>Owner chooses contractor (3 quotes/tenders required) and enters into written contract for the work in the agreed repair and payment plan. Contract for building work required to specify:</p> <p>(a) “head” or “lead” contractor who will be responsible for, and liable for, the entire repair work process. NOTE: From 2012 work will have to be done by Licensed Building Practitioners and it can be specified that head/lead contractor must be licensed in the Site Class</p> <p>(b) fixed price for the work plus a provisional sum for the weathertightness-related work that cannot be included in the fixed price (e.g: amount of timber that will need to be replaced) + contingency of maximum of 10% of the weathertightness work.</p> | <p>Competitive quote/tender will not be required for specialised remediation work where there are few available contractors able to do the work.</p> <p>Sector support the contract “formula” of fixed price + provisional sum + contingency.</p>    |
| <p><b>8.</b></p>  | <p>Appropriate staff member (with expertise in weathertightness remediation work) from relevant TA attends building site at early stage of building work (e.g: when cladding has been removed) to discuss with head/lead contractor the work covered by the provisional sum.</p> <p>Amount of provisional sum in contract is confirmed following this discussion (and contract amended accordingly).</p> <p>DBH accepts decision of TA staff member on the confirmed amount of the provisional sum. A contingency of maximum of 10% of total cost for weathertightness work (including confirmed provisional sum) can still be included in the contract after the provisional sum is confirmed.</p>  | <p>TA will be acting as “agent” of DBH in this process, DBH will accept decision of TA.</p>  |
| <p><b>9.</b></p>  | <p>DBH and TA (or just DBH if not eligible for TA contribution) calculate/agree amount of direct contribution based on contract price (fixed price + confirmed provisional sum + contingency + GST).</p> <p>DBH advises owner and their bank (if necessary) of amount of direct contribution and that agreement by DBH/TA to pay the contribution is now “unconditional”.</p> <p>At this point owner must proceed to carry out repairs and cannot “opt out” of FAP (can opt out any time prior to this e.g: if financial circumstances change).</p>  | <p>All parties involved in discussions on scheme design agree and support final confirmation of direct contribution taking place at this stage in the process. At this stage there is high certainty about the actual scope and cost of repairs.</p> |
| <p><b>10.</b></p> | <p>If at any stage in the above process, the scope and nature of the repair work is considered to be required to go beyond that identified in the full assessment, the homeowner can ask DBH for a re-assessment.</p> <p>Similarly, as repair work progresses, if the scope of work in the repair and payment plan needs to be changed, the homeowner can ask DBH and territorial authority to approve a new/amended repair and payment plan.</p>  | <p>Final check and balance to ensure repairs are done right the first time.</p>  |

## **5. Definition of “betterment”**

Betterment is excluded from coverage by the financial assistance package and is defined as follows:

Betterment is:

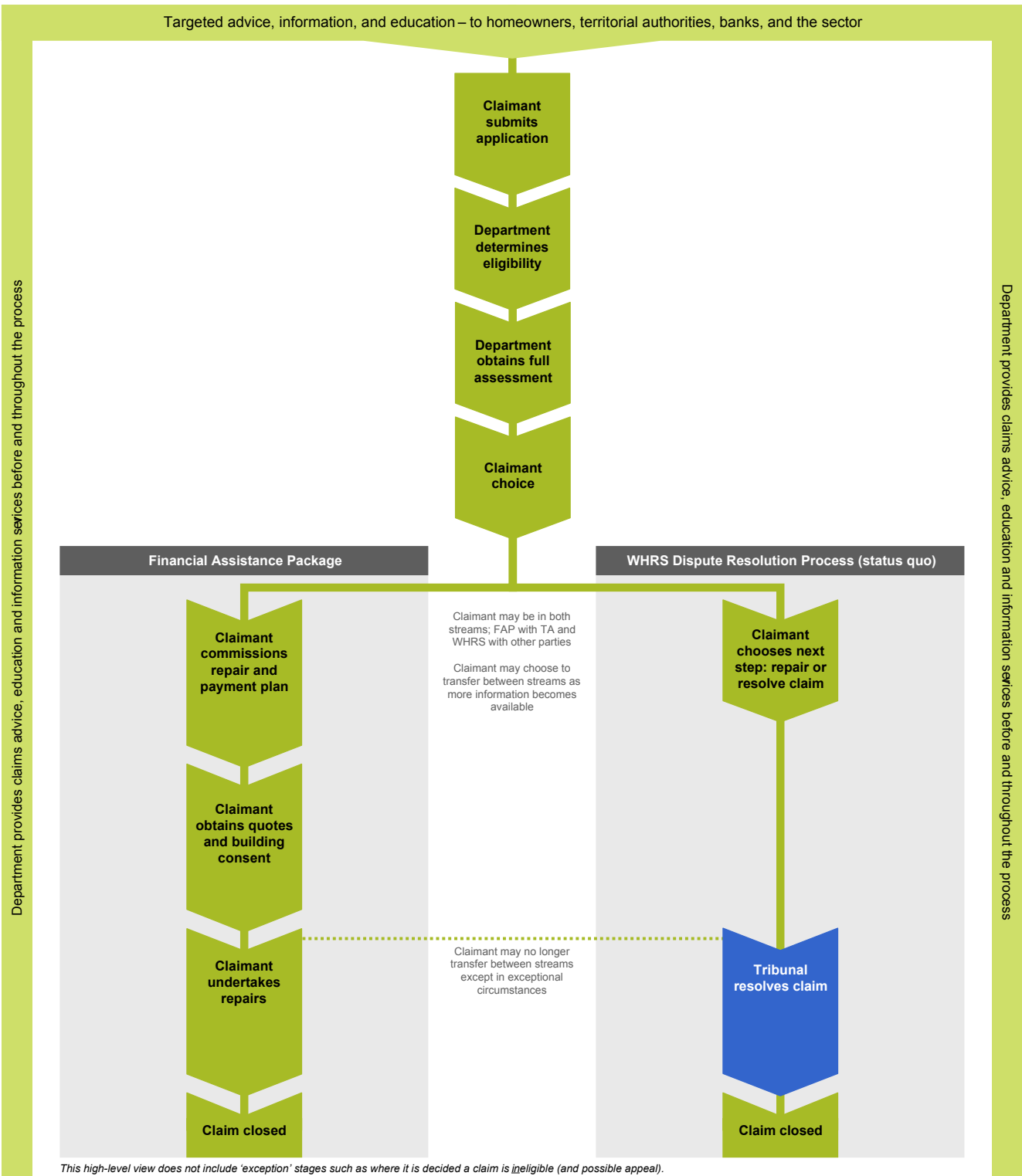
- building work that is not required to achieve code compliance for weathertightness
- building elements or materials that do not need to be replaced to enable proper repair
- the least cost-effective option of two (or more) possible code compliant solutions.

Work, elements or materials required to ensure the dwelling is no less than the standard/quality it was before it leaked is NOT betterment. For example, in a multi unit dwelling, if existing fire rating is required to be replaced because a cavity system is replacing a face sealed cladding system, the replacement of the fire rating is NOT betterment.

**SUPPORTING MATERIAL: CLAIMS PROCESS OVERVIEW**

**Leaky Homes Repair System – Claim Process Overview**  
 Leaky Homes Repair System comprises the Financial Assistance Package (FAP) and the WHRS Dispute Resolution Process

Summary diagram: Navigation aid for Financial Assistance Packagesystem design document.



Department supporting processes include:

- transition provisions for pre-existing claims
- transfers between financial assistance package and dispute resolution process streams
- financial and legal control activities, including information and payment transfers with TAs and banks.