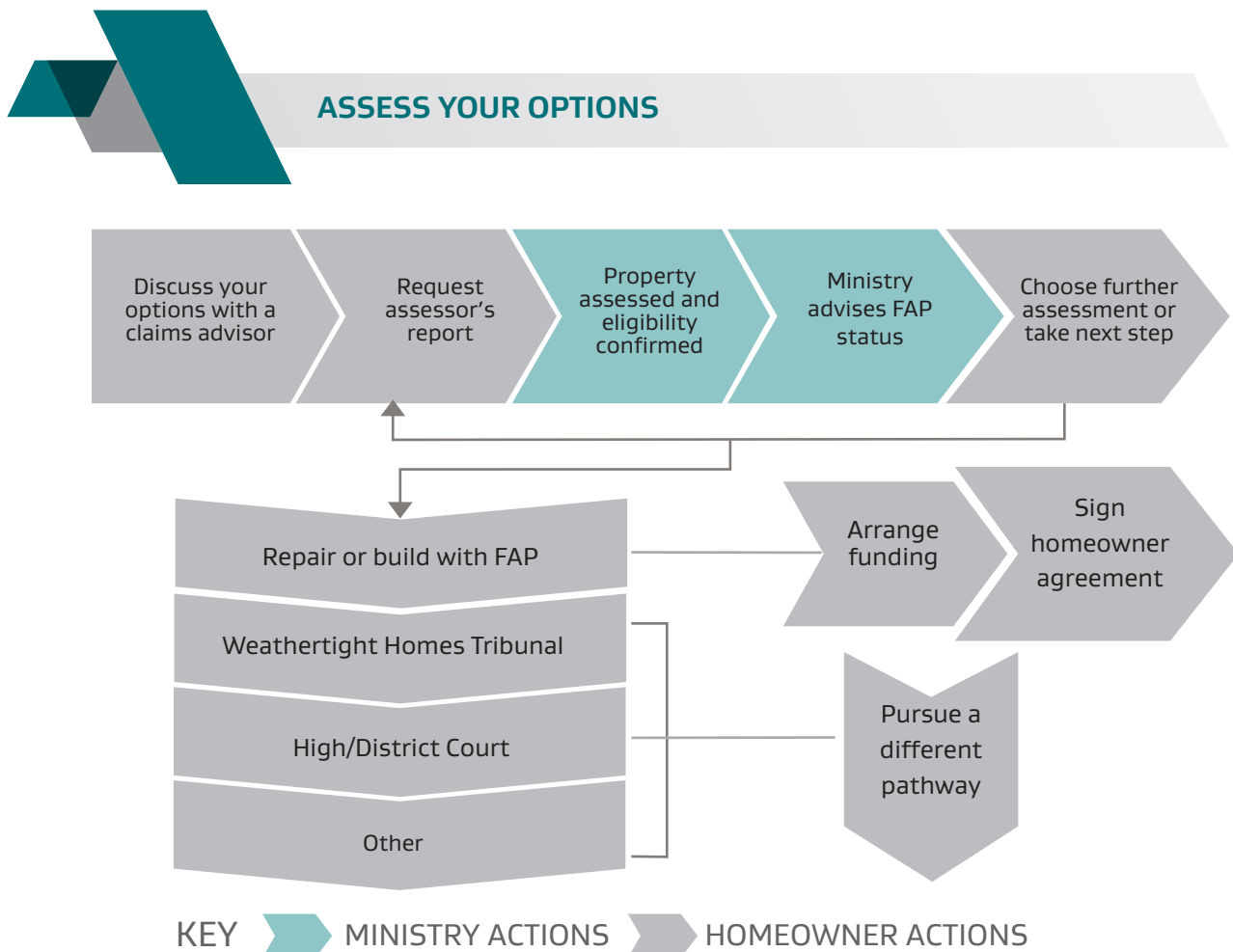




# Leaky Homes Financial Assistance Package (FAP) Options and choices information pack

This information pack discusses the claim assessment process, making a decision on using the Financial Assistance Package (FAP), deciding on other options, obtaining funding to repair and entering into a homeowner agreement, if you decide to use FAP.

The diagram below is a stage on the homeowner journey through the process of repairing your leaky home where you engage with builders to obtain and eventually accept a quote to repair. It sets out the actions needed by the homeowner, Ministry and council (if the council is contributing towards FAP payments), in order for the FAP payments to be agreed.



## introduction

Once eligibility has been confirmed the aim is to provide you with information on all your available options so that you can make a fully informed decision on which pathway to take.

Note: This information pack is concerned primarily with the Financial Assistance Package. Full information on bringing a claim is available on the Ministry of Business, Innovation & Employment (the Ministry) web site. The term “repair” also includes “demolition and rebuild” except where expressly stated.

## Key points

- › Once your claim is accepted, your claims advisor will advise you of the broad options for progressing your claim.
- › You must have an eligible claim to proceed with the FAP.
- › A decision regarding the eligibility of your claim will be made after an assessor’s report on your dwelling has been carried out.
- › You will need to weigh up the information in your assessor’s report and your personal situation before committing to a specific course of action.
- › If your dwelling is unrepaired and you are currently in legal proceedings with a participating council, and you would like to participate in the FAP, then you will need to obtain agreement from the council before you can access the FAP. You will also need to discontinue the legal proceedings.
- › You can start preparing to repair your dwelling under the FAP while you are negotiating with the council regarding the discontinuation of any legal proceedings – speak with your claims advisor about the steps you can take to help progress your potential FAP claim.
- › In order to participate in the FAP, you will be required to demonstrate that you can fund your share of the cost of repairing your dwelling.
- › A homeowner agreement must be signed before proceeding with design work under the FAP.

## Walking through the process

Prior step: Your claim is accepted and the council is notified.

- › You and your claims advisor discuss your plans and options.
- › You receive your assessor’s report.
- › The Ministry confirms that your claim is eligible (note that this does not necessarily mean you will qualify to participate in the FAP).
- › The Ministry advises you whether your claim, at this stage, is capable of qualifying for the FAP.
- › You may need to commission a further assessment of your dwelling.
- › You take legal advice on your options.
- › You decide which option best suits your repair using the FAP or something else.

## Notification of your interest in the FAP

All claims are notified to the local council and noted on your property’s land information memorandum. If you are interested in repairing through the FAP a decision on the council’s involvement is not made until your claim is confirmed eligible (see below).



**Want to know more about the Weathertight Homes Tribunal?** <http://www.justice.govt.nz/tribunals/wht>

## Discuss your available options

Your claims advisor will discuss your situation with you and work towards a shared understanding of your situation and options.

This will include discussion of:

- › your reasons for making a claim
- › different types of assessor's reports
- › the implications of having an eligible or ineligible claim
- › the type of fix required and the implications for you (targeted repair, full re-clad or rebuild)
- › what is included in the assessor's cost estimate
- › repairing versus other options
- › health and safety issues with leaky homes
- › implications and options if you are in legal proceedings with parties, especially the council.

## Request assessor's report

The Ministry contracts qualified assessors to provide reports on your damaged property and to make recommendations on your eligibility of your claim under the Act.

There are three types of assessor's report available:

- › eligibility assessor's report
- › full assessor's report
- › concise assessor's report.

Your choice of reports will depend to a large extent on your situation and intentions. You may need to commission two reports in certain circumstances

## Eligibility assessor's report

An eligibility assessor's report involves limited invasive testing of your home and a search of other information held about your property. After evaluating the eligibility report, the Ministry will determine whether or not your claim is eligible under the Weathertight Homes Resolution Services Act 2006.

If your claim is found eligible, then you will need to obtain either a full assessor's report or a concise assessor's report in order to progress your claim. The Ministry will recommend the most appropriate type of follow-up report and the claims advisor will assist you in making the decision.

## Full assessor's report

The full assessor's report includes extensive invasive testing and gives a detailed analysis of the home and the scope of work needed to fix it. The report provides a cost estimate for the repair work and names parties who may have contributed to the deficiencies causing the leaks (note that while a full assessor's report names people who may be parties to any claim, it does not establish liability).

A full assessor's report gives you the most information and provides for the broadest range of options for resolution. If you are selling your home, it enables you to do so with full disclosure (you should seek legal advice regarding any obligations you may have when selling a leaky home), and is essential if you are planning to engage in dispute resolution processes or other legal action.

You can obtain a full assessor's report without having an eligibility report completed first – talk to your claims advisor about whether this is the best option for you

## Concise assessor's report

The Ministry may recommend you obtain a concise assessor's report if you already have an eligibility report and the assessor has indicated that a full re-clad or demolish and rebuild of your home will be required.

This provides the scope and estimated cost of a full re-clad or a demolition and rebuild of your home. The concise report is less detailed because a full re-clad replaces the entire building envelope. A rebuild requires little in the way of specification by the assessor.

Concise assessor's reports do not identify potential parties and cannot be used as evidence to support litigation. They are designed expressly for the purposes of FAP.

See the *assessment process fact sheet* for more information.

## Ministry advises FAP status

The decision whether or not your claim is eligible under the Act is made by the Ministry's chief executive, after evaluation of the assessor's report and any submissions made by the claimant.

Once your claim has been found eligible, the Ministry will advise you whether your claim is capable of qualifying for the FAP.

If you are currently in legal proceedings with the council, as a party you will need to check whether the council is willing to negotiate a withdrawal of those proceedings and agree to your participation in the FAP.

## Initial compliance with the contribution criteria

The council will only contribute to the cost of your repairs if it considers it owes a duty of care to you and if you meet all other relevant criteria.

Some examples of situations where the council will not contribute to your repair costs are if the council:

- › relied on a certificate from a private certifier when it issued the final or interim code compliance certificate
- › issued a code compliance certificate for your house because it was required to do so by a determination from the Ministry
- › did not inspect your dwelling or issue a code compliance certificate
- › issued a notice to fix for weathertight issues and a code compliance certificate was never issued.

The government may still contribute to the cost of your repairs even if the council does not owe you a duty of care, so long as you meet all the other criteria.

Neither the government nor the council will contribute to the cost of your repairs if the property has been the subject of a previous settlement with a participating council in relation to the weathertightness damage.

You should seek advice from your lawyer on your ability to meet the contribution criteria and qualify for the FAP.

See the contribution criteria for more information at [www.dbh.govt.nz/fap-contribution-criteria](http://www.dbh.govt.nz/fap-contribution-criteria)

## Choose further assessment or take next step

If you are deemed capable of qualifying for the Financial Assistance Package, you have a number of options:

- › if you started with an eligibility assessment you will need to obtain a concise assessor's report (if offered) or a full assessor's report
- › repair your dwelling under the FAP
- › pursue a different pathway
- › legal action through the Weathertight Homes Tribunal
- › legal action through the courts
- › other e.g. sell with full disclosure.

## What to consider:

If you are currently in legal proceedings involving the council and you wish to participate in the FAP, you will need to discontinue your legal proceedings and the council will need to agree that you may participate in the FAP.

If you are going to pursue legal action (rather than repair under the FAP), then you should consider repairing your home before pursuing any legal action – this will help establish the actual cost of your repair, and may help strengthen any claim you may have against parties.

- › You can ask other parties to contribute to your repair costs in exchange for an indemnity against further legal action in relation to your claim – if you are repairing under the FAP, you may agree with these other parties that they will be added to the homeowner agreement as an additional contributor. See the *additional contributing parties & in-kind arrangements fact sheet*.
- › If you repair under the FAP, then you can still pursue legal action against parties who did not contribute to the repair under the FAP once the FAP process is concluded. Contributions you received under the FAP may be taken into consideration by the court or Tribunal.
- › There may be other factors that will inform your decision about the option for resolution that is best for you. We strongly recommend you consult with your legal advisor regarding the best option for your circumstances.

## Repairing or building with FAP

If you decide to repair your home under the FAP and you meet all of the contribution criteria and the requirements of the homeowner agreement, the government and the council (if contributing) will each contribute 25% of the agreed repair costs.

Your share of costs will include:

- › all repair-related costs not covered by FAP contributions
- › the full cost of any work that goes beyond addressing weathertightness problems – known as “betterment”. Betterment is explained further in the *scope of repair info pack*, and the *betterment fact sheet*.
- › other costs such as:
  - › any legal costs and expenses
  - › laboratory tests and analysis (that you commission)
  - › remediation and engineering fees (if not identified in the assessor’s report)
  - › repairing damage to interior fittings and fixtures (if not identified in the assessor’s report)
  - › painting of interior walls and ceilings, other than areas directly affected by repair work
  - › costs incurred for the purposes of bank finance (beyond 50% of the original valuation fee)
  - › lost rent, borrowing costs, consequential losses, damages.

## What to consider:

- › If you opt to participate in the FAP, you will waive all current and future rights to sue the council if they are contributing or any other contributing party over weathertightness problems with your property.
- › Note the process for agreeing a repair plan with the Ministry is very robust, with the objective being that repairs carried out under the FAP will leave your home weathertight – it is therefore unlikely that weathertight repairs carried out under the FAP will fail.
- › You need to fund your share of the costs, including the entire cost of any additional building work you intend doing.
- › Parties to your claim may agree to contribute cash or work or materials “in-kind” towards the repair, in exchange for an indemnity from legal action. These parties may become additional contributors under the homeowner agreement.
- › You need to manage the repair process or engage a designer or a project manager to do this on your behalf.

- › Repairing gives you certainty of costs if you intend undertaking legal action against other parties once you finish. Remember that you can only take legal action against parties who did not contribute to the repair under the FAP, and any contributions you received under the FAP may be taken into consideration by the court or Tribunal dealing with any subsequent legal action.
- › Repairing also means you address the health issues associated with living in a leaky dwelling.

## Taking legal action through the Weathertight Homes Tribunal or the courts

The same remedies can be sought in the Weathertight Homes Tribunal (WHT) as in any other court.

You should seek independent legal advice regarding what remedies you can apply for, and what you will be required to prove, as part of any legal action you may choose to take.

## Comparing FAP with the Weathertight Homes Tribunal or the courts

Below is a summary of the differences between the FAP and Weathertight Homes Tribunal (WHT)/court routes:

Factor	FAP	Weathertight Homes Tribunal/courts
<b>Timeframes</b>	Bringing a claim and getting to the point where repairs can start typically takes between one and two years	Time to adjudication or mediation: 8 - 11 months.  High Court proceedings take substantially longer than the WHT.  These times exclude the time it takes to repair
<b>Claimable costs</b>	25% or 50% of the following: <ul style="list-style-type: none"> <li>• repair (construction) costs</li> <li>• design fees</li> <li>• project management fees</li> <li>• building and resource consent fees</li> <li>• alternative storage and accommodation costs (capped maximum of \$5000)</li> <li>• 50% of the valuer's fee</li> </ul> <p>Note that you will only receive contributions for costs that are agreed repair costs, as defined in the homeowner agreement</p>	Damage or loss of value from penetration of water because of some aspect of the design or construction of the dwelling  General damages including stress and distress  Consequential losses that resulted from the cost of repairs, for example: <ul style="list-style-type: none"> <li>• interest on borrowed money;</li> <li>• relocation costs</li> <li>• alternative accommodation costs and loss of rent if the house had been tenanted</li> </ul>
<b>Basis of contributions</b>	Actual cost of approved repairs (not including betterment)	Assessor's reports and: <ul style="list-style-type: none"> <li>• independent reports (if unrepaired), or</li> <li>• invoices (if repaired)</li> </ul>
<b>Amounts available</b>	Qualifying claimants receive a contribution of 25% of the agreed repair cost from each of the government, and the council (if contributing), with the potential for subsequent legal action against non-contributing parties	Amount awarded or agreed is uncertain. Zero outcome if no parties
<b>Affordability</b>	You need to be able to fund your share of repair costs	You can claim in the WHT without repairing if you can't afford to repair first
<b>Potential legal costs</b>	The legal costs of reviewing the homeowner agreement are not claimable under FAP	Legal representation in the WHT is recommended but these costs cannot be claimed

## What to consider:

- › If litigating, the length of time will depend on the approach taken by your lawyer, the responses of other parties, and court processes.
- › The financial outcomes under either option are difficult to predict at the outset of each process. Under the FAP, it is certain that qualifying claimants will receive a financial contribution. The likely amount of the contribution will become clearer as the claim progresses through the FAP process, but the exact amount will not be known until the end of the process.
- › The amount likely to be received under settlement from the parties is also uncertain – homeowners could negotiate to receive substantially more than they would have received by way of contributions under the FAP, but there is no certainty of this.
- › We recommend you repair before taking action against parties in the WHT. The longer repairs are delayed, the higher the possibility that the WHT or a court will reduce damages awarded to you due to your contributory negligence.

For more detailed information on the Weathertight Homes Tribunal go to [www.justice.govt.nz/tribunals/wht](http://www.justice.govt.nz/tribunals/wht)

Note: all information provided from this point forward deals with repairs through the FAP only

## Repair or build with FAP Arranging funding

The Ministry will need to know you can afford your share of costs before the government and the council will commit to paying contributions. At this stage, because actual costs are unknown, your ability to afford the repair will be considered using the estimate in your assessor's report. This will be reviewed again once you have identified a preferred tender and have costs approved by the Ministry.

The following shows how your costs might be calculated in a typical full re-clad scenario:

Factor	Example of costs
Estimated repair cost	\$250,000
plus estimated associated costs (design, consent fees, etc)	+ \$25,000
plus alternative accommodation and storage costs (max)	+ \$5,000
<b>A. Sub-total of estimated costs</b>	<b>\$280,000</b>
less Government contributions (25%)	- \$70,000
less council contributions, if applicable (25%)	- \$70,000
less cash contributions from other parties (if known)	- \$25,000
less in-kind contributions from other parties (if known)	- \$20,000
<b>B. Sub-total of contributions</b>	<b>- \$185,000</b>
<b>A - B = Estimated repair costs less contributions</b>	<b>\$95,000</b>
<b>C. Other work you expect to do, if any (betterment)</b>	<b>+ \$75,000</b>
<b>A - B + C = YOUR SHARE OF ESTIMATED COSTS</b>	<b>\$170,000</b>

## Cash contributions from parties to your claim

Parties to your claim who have been identified in your assessor's report may agree to contribute to the cost of your repair. This is a matter for negotiation between you and the parties. A letter of agreement documenting any contributions from these parties should be provided to the Ministry. Any agreement reached will also need to be documented in your homeowner agreement by way of a signed additional contributing party addendum.

## Cash contributions from other people

Cash contributions from other parties (such as a relative or friend) are private arrangements that you can document by way of a letter. The funds will only be deemed as cash (and therefore included in the review of affordability) once they are transferred to you. People who make contributions but who are not parties to your claim will not be additional contributing parties

## In-kind contributions from parties to your claim and other parties

Third parties such as builders and suppliers may also offer contributions in the form of goods or services rather than cash. This is acceptable and is a potential way of reducing your costs.

Work and materials in-kind are deemed to be approved costs and subject to contributions from the government and the council (if contributing). Any in-kind contributions also need to be documented under a signed additional contributing party addendum.

## More information

- › *Assessment process fact sheet*
- › *Additional contributing parties & in-kind arrangements fact sheet*

## Evidence of funding

If you own a standalone dwelling, you must demonstrate to the Ministry's satisfaction that you can fund your share of the estimated cost, by either:

- › a loan pre-approval from your bank (once you meet their standard lending criteria), or
- › a bank statement or other evidence that you have the cash assets required.

If you own a unit in a multi-unit building:

- › you must either pay your share of the costs into a repair trust account administered by your representative, e.g. your body corporate, or provide your representative with confirmation of loan finance and/or cash assets; and

- › your representative must provide a completed multi-unit funding summary and evidence that it can raise sufficient funds from all the owners to complete the repairs.

Note:

- › Your funding requirements will only be fully known once your payment plan is approved, following the tendering process (refer to the *quote information pack*).
- › You can also contribute towards costs by undertaking repair work in kind; this is discussed further in the *quote information pack*.

## Access to bank funding

Most retail banks are part of a loss sharing arrangement. This means the government shares some of the losses a bank incurs if the borrower of an eligible repair-related loan defaults.

This is an arrangement between the government and the banks to assist homeowners to get access to funding. You should check your banking officer is aware of the loss share arrangement when seeking finance for your repair.

Homeowners must still meet bank lending criteria; the loss sharing arrangement is not a guarantee of your loan. If you should end up having to sell your property at a loss, then you will still be expected to repay the debt outstanding whether or not your bank recoups some of their losses under the loss sharing arrangement.



## Sign homeowner agreement

Once you've got evidence you can afford your share of the repairs and you have met the pre-signing requirements (the Ministry will let you know when you have done this) you will be offered a homeowner agreement. The homeowner agreement will be between you, the Ministry on behalf of the government and your council if they are contributing.

The agreement is a legal document setting out the obligation of all parties under the FAP. It describes the government's and council's role in approving aspects of your repair and sets out how the amount of the contributions you will be eligible to receive will be established, including:

- › the costs you are eligible to claim FAP contributions towards
- › the way you will be paid and the requirements you need to meet to qualify for payments
- › the scope and cost of repairs
- › your ability to meet all costs
- › the quotes for work
- › the progress of work against agreed milestones, before any contribution payments are made.

After you have signed the homeowner agreement, there will still be contribution criteria to be met, such as having an approved repair plan and payment plan. These criteria will be met as you progress through the FAP process. The homeowner agreement will only become unconditional (and you will qualify for FAP contributions) once you have met all the contribution criteria. To receive contribution payments, you will need to ask the Ministry to issue the first milestone payment by signing a notice to proceed. See the *quote information pack* for more information.

Your lawyer should review the homeowner agreement with you before you sign it.

Note: No payments will be made to you by the council and/or the government unless you meet all the requirements of the homeowner agreement and issue a *notice to proceed*.

## Next step: Commission a repair plan

A homeowner agreement needs to be signed before you commission a repair plan from your architect or designer.

See the *scope of repair information pack* and *repair plan example fact sheet*.

## More information

- › [www.dbh.govt.nz-weather-tight-services](http://www.dbh.govt.nz-weather-tight-services) (info on bringing a WHRS claim)
- › *Assessment process fact sheet*
- › *Weather-tight invasive testing video*
- › *Information pack for homeowners with multi-unit complexes*
- › *Additional contributing parties & in-kind arrangements fact sheet*

## Would you like to know more about council contributions?

<http://www.dbh.govt.nz/fap-contribution-criteria>



## Need more information?

Visit our website [www.dbh.govt.nz/weather-tight-services](http://www.dbh.govt.nz/weather-tight-services) or call your claims advisor on 0800 116 926.