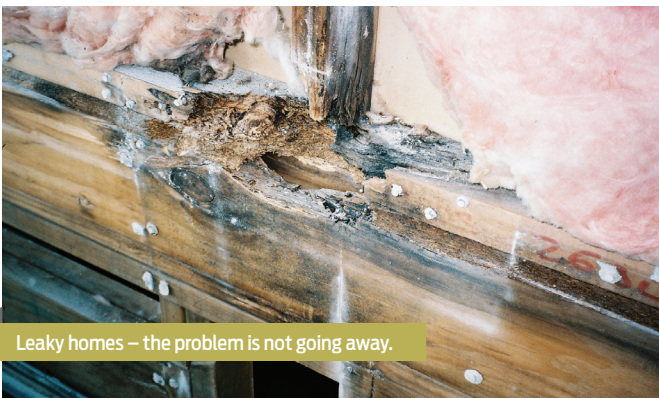


# A lingering legacy

For all the money, agencies and professional interests involved, the leaky homes situation drags on. Claims are falling outside the 10-year limitation period, and getting accurate numbers is difficult.

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Leaky homes – the problem is not going away.

**ACROSS THE COUNTRY**, leaky home claims and repairs remain a significant time and cost burden for homeowners, local councils and others held liable for defects. Leaky homes have become their own multi-billion dollar mini industry, generating significant work for some, and there is no end in sight.

The number of homes that will be repaired and the total bill may never be fully known. A 2009 PricewaterhouseCoopers (PwC) report into the scale of the problem included estimates from a low of 22,000 to a high of 89,000 homes affected, but concluded that the most likely estimate was 42,000 homes could need repair at a total cost of \$11.3 billion.

## Assessment and repair

The government established the Weathertight Homes Resolution Services Act 2006 to provide consistent procedures for resolving leaky home disputes across the country. This Act led to the creation of two government-provided mechanisms to help homeowners - the Weathertight Homes Resolution Service (WHRS) and its associated Weathertight Homes Tribunal and the Financial Assistance Package (FAP) scheme.

## Claims and actions

Between 2002 and June 2014, the WHRS received 7,064 leaky home claims. Of the claims, 1,114 are currently active, 2,157 are now resolved and 3,793 have been discontinued (claims can be discontinued for a number of reasons, including being withdrawn, ineligible or being outside the 10-years-since-construction claims timeframe).

The total of 7,064 claims over the 12-year period covers 11,014 properties - indicating a good proportion of claims are for multi-property buildings. The 11,014 total is just over a quarter of the 42,000 properties estimated in 2009 as needing repair.

WHRS statistics show that, through their processes, a claim comes in at an average legal cost of around \$30,000 for each party involved.



Building under wraps during remediation.

Most payouts to homeowners are between \$25,000 and \$410,000, obviously varying in line with the degree of house damage.

### **Financial help as an alternative**

Under the government's 2011 Financial Assistance Package (FAP), homeowners receive a 25% payment from each of the government and their local authority - although the local authority only has to pay their 25% if they signed off the building work.

In exchange for this payout, a homeowner forgoes the right to claim against the local authority or the Crown. However, homeowners still have the option to pursue other liable parties such as builders, developers and manufacturers of defective products.

#### **Claims so far**

It was the government's aim that the FAP divert costs away from litigation and directly into repair, to get on with job.

Since it began, 1,394 claims have been made. As at the end of July 2014, the MBIE and councils had assessed that 1,104 claims for the FAP (representing 3,356 homeowners) qualified for the government contribution under the FAP criteria.

At that date, MBIE had \$20.43 million FAP repair contracts for 436 homes, equating to an estimated \$81.73 million in home repairs

undertaken using the FAP (this excludes betterment, which are additional homeowner-funded improvements).

### **Higher courts as an option**

Outside of the government-provided WHRS and FAP, some choose to independently go through the higher Courts. In October last year, there were 428 active cases before the High Court, mostly in Auckland. Many claims taken to the High Court are ended by confidential settlement, meaning the outcomes and payout will never be known.

### **Why are claim numbers so low?**

Adding up the number of claims in the WHRS, the FAP and in higher Courts gives a total of 8,866 claims.

Even though some claims cover more than one dwelling, this still accounts for well less than half of the 2009 estimate of 42,000 dwellings that need repair.

Why are claim numbers so small? Home Owners and Buyers Association (HOBANZ) president John Gray says that, by the time people realise their options, they've fallen outside the 10-year claims limitation of the WHRS and FAP. ➤



Also, record keeping is not comprehensive, as the government does not record repairs to leaky homes unless they were fixed under the WHRS or FAP.

The government also doesn't collect information on repairs to homes where initial repairs have failed.

John Gray says that, by not recording information about leaky homes, ministry officials haven't got to grips with the problem. 'I know of three claims that have been filed in recent times for failure of a repair that was undertaken under a previous WHRS claim. So we're coming round to a secondary failure and a second claim under the WHRS.'

**Claims and repairs case studies**

A look at three recent Wellington cases suggests leaky repair issues are going to be around for a long time, with each case its own unique legal and logistical saga.

**Stadium Gardens Apartments**

The 91-unit Stadium Gardens Apartments were fully remediated in 2013 after the body corporate's successful claim against its builders and Wellington City Council.

It was discovered that the remedial work required was more

substantial than initially assessed and would run into many millions of dollars. The \$12.7 million claim was settled confidentially in March 2010, after three rounds of mediation and just 2 days before it was set down for a 10-week High Court hearing.

During repair, an unexpected volume of rotten timber was discovered, slowing progress and increasing costs. Given the confidential settlement, it is not known if the payout was sufficient to cover the total repair and legal bills.

**Glenmore Street townhouses**

In February 2014, residents of a leaky Glenmore Street townhouse block won a \$1.9 million claim against Wellington City Council for its handling of the 2001 development by now-liquidated Daytona Development.

Justice Ronald Young said that, while many of the defects were caused by the developer's negligence, the council's attention to its statutory obligation was 'hopelessly inadequate'.

Residents Jim and Brenda McColl received a \$25,000 award for damages from stress caused by their home failing and their attempts to gain compensation. The McColls expected it would take about a year to fix all the problems before they could sell and move on.

The payout will be used to address defects in cladding, window and door junctions, roof junctions, subfloors, internal gutters, plumbing and decks.

**St Paul's Apartments**

The \$20 million leaky building claim lodged by owners of Wellington's 2009-built St Paul's Apartments has gathered momentum after an October 2013 court victory for their body corporate.

The ruling allowed 41 apartments that had previously been ruled ineligible for compensation to be able to join the claim alongside the building's other 73 apartments. The body corporate is making claims against council and several companies involved in the building's construction, three of which have since been liquidated.

As HOBANZ reported, St Paul's body corporate chairman John O'Connell, says the building is leaking from the roof, and there are defects with the fixing and sealing of concrete and zinc cladding. 'Three years ago, we spent \$160,000 to \$200,000 doing temporary repairs to the roof, and part has failed again.'

Apartment owners are following mediation procedures set down by the Weathertight Homes Tribunal. Through 2014, parties are gathering evidence to support their claims about the building's performance, with a Tribunal hearing set for March 2015. 'There's a long way to go yet,' says John O'Connell. ◀



Water-damaged beams.