



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

Evaluation of the Financial Assistance Package

October 2013



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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Ministry of Business, Innovation and Employment (MBIE)

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MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

MBIE combines the former Ministries of Economic Development, Science and Innovation, and the Departments of Labour and Building and Housing.

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1.0 Executive summary

This report presents and summarises findings from an evaluation of the Financial Assistance Package (FAP) for leaky homes. It has been written by the Infrastructure and Resource Markets Research, Evaluation and Analysis team within the Strategy and Governance group of the Ministry of Business, Innovation and Employment (MBIE).

The purpose of the evaluation is to answer three high level evaluation questions:

1. Is the FAP scheme enabling more leaky homes to get repaired?
2. Is the FAP scheme helping the sector move forward from a history of dispute and litigation?
3. What was the cost to the Crown of administering FAP compared with the cost of the remediation work that has been completed?

A mixed-methods approach was used for the evaluation. This included document analysis, interviews and the analysis of administrative data. In total 27 people were interviewed for this study. These included homeowners, claimant representatives, claims advisors and technical team members from within MBIE. Also interviewed were key informants from across three councils, the Weathertightness Tribunal and mediation services. Given the complexity and sensitivity of the weathertightness issue, an iterative synthesis process was employed whereby the evaluation team referred back to senior MBIE personnel, where relevant, to clarify findings or to check assumptions.

One of the key concerns of the evaluation team was to ensure a balanced approach was taken, which did not privilege any one view point. Also of concern was that FAP was evaluated within the broader context of the leaky homes issue and against its specific purpose. This has been achieved through the inclusion of sections related to the background to the leaky homes crisis, a summary of the relevant legislation and a description of the overall influence of the Weathertightness Homes Resolution Services (WHRS) on the residential building stock.

In 2009, a key report into the leaky homes crisis suggested that up to 42,000 homes could be at risk of failing due to weathertightness issues¹. FAP is one option for owners of these leaky homes to seek resolution of the problems they face. Its purpose is to enable more homes to be repaired and to support a move away from dispute and litigation. FAP is a construction process with financial support, not a compensation scheme. It is essentially an assisted repair scheme. As such, it has checks and balances within its processes to ensure homes are repaired to the standard necessary for the home to be code compliant and of no lesser standard than it was prior to leaking. These repairs are also to be undertaken at a reasonable cost.

These checks and balances have resulted in what some perceive to be unnecessary bureaucracy in the FAP process. While there was general agreement, amongst those interviewed, that FAP was a good idea there was markedly less agreement with the way in which FAP has been implemented. This was particularly true for the homeowners and claimant representatives interviewed. The key areas of concern appear to be related to the way in which “betterment” is defined and the difference between quotations obtained by homeowners for repairs and what the WHRS technical

¹ Pricewaterhouse Coopers. (2009). *Weathertightness – Estimating the cost*. Report prepared for the Department of Building and Housing.

team and Councils consider to be justifiable or reasonable costs, under the WHRS Act. Homeowners and claimant representatives also talked of the difficulties they had in dealing with the large amounts of paper work required throughout the FAP process.

The data reported here suggest that FAP has been successful in getting more houses repaired but that the overall number of people taking up FAP is limited. For those people who can afford their contribution to the overall repair costs and cannot, or do not want to, enter dispute or litigation, FAP appears to be a welcome alternative. In some cases it makes the difference between being able to afford undertaking the repairs and not. It also appears to be moving a few people away from dispute, particularly those who are already within the WHRS options.

However, the overall number of claims within FAP is low. If one accepts the 42,000 dwellings estimate, those within FAP as of February 2013 (n= 656) account for only 1.6% of these. Further, FAP accounts for only 6.4% of all WHRS claims (10, 303 dwellings as at February 2013) with a number still in dispute resolution through the Tribunal and/or mediation, or inactive.

Reasons suggested by participants for the relatively low uptake of FAP include both the extent to which some law firms have promoted litigation and dispute as better alternatives for those with leaky homes and some negative publicity about FAP. It was suggested by one participant that FAP was implemented too late and that insufficient attention was given to ensuring those within the building industry supported it. Others have also suggested that the contributions from the Crown and/or Council are insufficient for some to be able to afford any remediation.

It also appears that FAP was implemented before the processes had been tested and as such the WHRS staff have been on a steep learning curve since its initial implementation. Over time, processes and documentation have been modified to reflect learnings. However, these changes are staged and learning is dependent on sufficient numbers of claims moving through each phase of the FAP process.

Trend data suggest the proportion of claims within FAP could increase. FAP has only been operational since 2011 and as such has had a limited timeframe to impact on the overall leaky home situation compared with other WHRS options. Further, options for litigation or dispute are likely to be increasingly limited as more parties become unable to pay. Increasingly, the Councils are likely to be the 'last man standing' in any dispute.

Given the increasing focus on the affordability and quality of the residential building stock in New Zealand, it is important for both the Crown and councils to continue to focus on supporting the repair of leaky homes. There could be value in promoting FAP and reminding homeowners that the 10-year limit is fast approaching for many homes.

There is benefit in better understanding the current situation regarding leaky homes. We do not know how many have been repaired or are simply being left to deteriorate. Nor is it known, for sure, whether the problem really is as widespread as the Price Waterhouse Cooper report, completed in 2009, suggested. There may be value in completing another large scale study as part of any overall consideration of the affordability and quality of New Zealand homes.

2.0 Background

This section of the report considers the key events that led to the decision to amend the Weathertight Homes Resolution Services Act 2006 to include FAP and the wider context within which FAP has been implemented. The information provided here has been collated from a range of MBIE documents as shown in the footnotes.

2.1 A timeline of key events

Figure 1 summarises the main events leading to the amendment to the Weathertight Homes Resolution Services Act, 2006, No 84. It includes legislative and regulatory changes and two influential reports. These are discussed in more detail in this section of the report.

Figure 1: Timeline of major events

1992	Building Act 1991 and new Building Code came into force
1995	The use of untreated timber was allowed in certain circumstances
2002	The Hunn report was published (see below for more detail)
2002	The Weathertight Homes Resolution Services Act 2002 was passed
2003	Untreated timber was no longer allowed to be used in framing for exterior walls
2004	Building Act 2004 was brought into force
2005	An amended Building Code Compliance document (E2/AS1) was issued requiring stucco and monolithic cladding systems to be used only over a cavity
2007	The Weathertight Homes Resolution Services Act 2006 came into force (the Tribunal and mediation options)
2009	The Pricewaterhouse Coopers report (2009) was published (see below for more information)
2011	Amendment of the Weathertight Homes Resolution Services Act 2006
2014	Scheduled review of the provision of technical services within weathertight (January to March)

2.2 The Government response to the weathertightness issue

In 2002, the Government launched a Select Committee inquiry to examine the nature, extent and causes of the growing weathertightness issue. Both the inquiry and a Government review in 2003, separately determined there were significant issues with the weathertightness of certain residential dwellings constructed in the mid-late 1990s.

The *Report of the Overview Group on the Weathertightness of Buildings to the Building Industry Authority*² (commonly known as the Hunn Report) identified a number of factors that had contributed to leaky buildings and included 25 recommendations that aimed to “*address and remedy the systemic building failures that had led to the weathertightness crisis*”³.

The findings of the Hunn Report prompted the Government to seek to understand and address two aspects of weathertightness:

- the technical causes of weathertightness, including how they could be addressed and how to assist home owners to assess their homes
- how to resolve disputes between home owners and the construction sector.

The Government’s response was the **Weathertight Homes Resolution Services Act 2002**. The purpose of this Act was to, “*provide owners of dwellinghouses that are leaky buildings with access to speedy, flexible, and cost-effective procedures for assessment and resolution of claims relating to those buildings*”. In general terms, the Act provided for the assessment and evaluation of claims in relation to leaky buildings, the mediation of claims and the compulsory adjudication of claims⁴.

The 2002 Act made provision for home owners to have access to free assessment reports and low cost resolution services. It did not, however, recognise claims by body corporates and required individual claims and case numbers for all units and apartments in multi-unit complexes. The 2002 Act was administered by the Department of Internal Affairs.

The reviews mentioned above (the Select Committee inquiry and the Government review) found that the technical issues relating to weathertightness were largely confined to buildings constructed with monolithic external cladding (fibre cement, stucco or coated polystyrene) installed over untreated timber and without a drainage cavity between the cladding and external walls⁵. The use of these claddings appears to have coincided with more complicated building designs and construction methods that were vulnerable to water penetration and had low resistance to damage when it did occur. In response to these findings, the government introduced the **Building Act 2004**⁶.

The Building Act 2004 repealed the Building Act 1991 and introduced a number of changes to the laws governing building work. This Act and the changes made to it are an important part of the background and overall context for the administration of FAP. The leaky homes issue was a central driver for the review of the 1991 Act and the subsequent regulatory changes. The aim of the 2004

² <http://www.dbh.govt.nz/UserFiles/File/Weathertightness/Reports/pdf/bia-report-17-9-02.pdf>

³ From <http://www.dbh.govt.nz/ws-reports>

⁴ The Act is available online at <http://www.legislation.govt.nz/act/public/2002/0047/latest/DLM163904.html>

⁵ Pricewaterhouse Coopers. (2009). *Weathertightness – Estimating the cost*. Report prepared for the Department of Building and Housing.p.1

⁶ This Act is available online at <http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM306036.html>

Act was to improve control of, and encourage better practices in, building design and construction to ensure similar problems did not occur in the future. Remediation work on leaky homes under the FAP is required to be sufficient to ensure the dwelling meets the building code standards as described in the Building Act 2004.

The Act introduced:

- a review of the Building Code for more clarity about building standards and more guidance about how to meet those standards
- licensing of building practitioners and accreditation of building consent authorities, aimed at providing more certainty that the people doing and certifying the work have the necessary skills
- more scrutiny in the monitoring process that checks building and design work, and oversight of the sector by the government
- the removal of the private building certifier regime which had been in force under the former Act.

Since its introduction in 2004, the Building Act has been amended several times⁷. These changes have included additional regulation of building work and the setting of performance standards for buildings. At the time this report was written Building Amendment Bill (No 4) was before the house. This bill, along with Building Amendment Bill (No 3) introduced in November 2010, is part of a package of changes designed to improve the performance of the building and construction sector.

In 2006, initiatives to assist home owners to have their homes remediated were introduced via the **Weathertight Homes Resolution Services Act 2006**. These initiatives focussed on improving assessments, claims management, dispute resolution processes and consumer information and protection.

Key initiatives introduced were:

- enabling multi-unit complex claims to be brought through a type of class action
- provision for claims to be adjudicated by the Weathertight Homes Tribunal
- provision for settlements and determinations to be enforced in the District Court.

The Tribunal operates under the auspices of the Ministry of Justice, while the administration of the 2006 Act itself was transferred to DBH (now MBIE).

Other initiatives included a streamlined approach for lower-value claims and the requirement that existing and new weathertightness claims had to be placed on Land Information Management (LIM) reports.

On the 23rd of July 2011 amendments to the **Weathertight Homes Resolution Services Act 2006** came into force. The purpose of the amended act was to:

⁷ <http://www.dbh.govt.nz/ba-about-the-building-act>

- *to provide owners of dwellinghouses that are leaky buildings with access to speedy, flexible and cost-effective procedures for the assessment and resolution of claims relating to those buildings*
- *to provide for certain matters relating to the provision of a package of financial assistance measures to facilitate the repairs of those buildings*⁸.

The first of these provisions was already existent with the main amendment being the second provision. This new provision meant that the owners of leaky homes were provided with two paths through which they could receive assistance through WHRS. These were:

- The Financial Assistance Package (FAP) offering financial contributions towards the repair of their home.
- Dispute resolution, either through the lower value resolution process, or through mediation and adjudication using the Weathertight Homes Tribunal (already available through the 2006 Act).

It should be noted that homeowners do not have to utilise the services of the WHRS. They can choose to negotiate or enter mediation privately. They can also choose to sell their home as is or ignore any problems. Another option is to repair their home themselves. We have no way of determining the extent to which each of these other options has been taken up. While we could potentially ask Building Consent Authorities for information regarding the nature of repairs undertaken on homes this was outside the scope of the current work. It is likely that their building consent information could tell us the number of repairs that were related to the relevant building code clause (E1 or E2). We do not know how difficult that would be to obtain.

2.3 Estimating the size of the weathertightness problem

Early attempts to estimate the potential size of the weathertightness problem by Pricewaterhouse Coopers (PWC) in 2005 were based on an assumption that 30% of the 'at risk' dwellings might fail (12,000 dwellings). Subsequent, anecdotal evidence suggested the problem was much greater⁹.

In 2009, the Government recognised the need for further information to deepen its understanding of the size of the weathertightness problem, the potential economic costs of that problem and the distribution of those costs across various parties. There was a specific need to understand:

- the total number of affected dwellings
- how many dwellings had been repaired
- how many were beyond the statutory 10 year limit on liability
- who was bearing what costs, under current policy.

In response to this request, PWC undertook a detailed analysis of the information available. They estimated that between 22,000 and 89,000 dwellings could be affected, with an estimated 42,000 failures. Further, they estimated that approximately 9,000 of the failures would occur beyond the 10-year limitation period for legal liability. The total economic cost of remediation of the 42,000

⁸ <http://www.legislation.govt.nz/act/public/2006/0084/latest/DLM403537.html>

⁹ PWC report, 2009. p.1

failures was estimated to be \$11.3 billion (in 2008 dollars). This included both stand-alone dwellings and multi-unit complexes.

PWC also noted that building failure rates since 2006 (two years after the Building Act 2004 was brought into force) appeared much lower than had been reported previously. A likely cause for this decrease was that changes in the regulatory requirements and building practices since 2003 (Figure 1) had addressed the major structural issues responsible for weathertightness issues identified in the past¹⁰.

At the time of the PWC report there were approximately 4,500 dwellings registered with the Weathertight Homes Resolution Services (WHRS), significantly less than the estimated overall number of building failures. PWC also estimated that approximately 3,500 dwellings had been repaired. PWC suggested a number of possible reasons for these low numbers including:

- problems that were not yet visible and which the homeowners were unaware of
- the denial by homeowners of the existence and/or severity of any problems
- the inability of some homeowners to pay for any major repair
- the transaction costs of pursuing a claim
- informal settlements with builders and/or homeowners fixing the problem themselves
- procedural barriers to bringing claims on behalf of all owners within a multi-unit complex
- the slower manifestation of problems in drier areas of the country¹¹.

2.4 The impact of leaky homes

The impact of leaky homes has been felt by various parties. In the regulatory impact statement (RIS), prepared by Department of Building and Housing (DBH) prior to the 2011 amendment to the WHRS Act, the following impacts were noted with regard to the situation at that time¹²:

- Home owners were experiencing a reduction in property values resulting in a loss of equity.
- A range of parties were incurring legal and other costs to participate in dispute resolution and litigation. Legal costs were noted to be typically between \$20,000 and \$40,000 for each party involved.
- The Crown was incurring costs of approximately \$19 million per year to run dispute resolution and related services (The Tribunal and mediation). While the disputes were being settled not all homes were being repaired. This was because there is no requirement for any settlement to be spent on repairs.
- People were experiencing health difficulties as a result of leaky homes.
- Even after a dispute was settled many home owners were left with substantial repair bills and insufficient capital or equity to meet the costs. The average cost of repairs for stand-alone dwellings was estimated to be between \$27,500 and \$410,000. For multi-unit complexes the estimate was between \$16,250 and \$156,250 per unit.
- Approximately 23,500 leaky homes were considered to be less than ten years old at the time.

¹⁰ PWC report, 2009, p.3

¹¹ PWC report, 2009, p.1

¹² <http://www.dbh.govt.nz/ris-financial-assistance-package>

3.0 Reading this report

The following is a brief explanation of key terminology used in the report.

- **Capable for FAP.** This means that as well as being eligible for WHRS a claim also meets the specific criteria for FAP. The term is used by WHRS personnel to distinguish the two.
- **Councils and Territorial Authorities.** The term *Council* has been used to refer to a specific Council, whereas *territorial authorities* has been used more generically to refer to all councils.
- **Crown and Government.** The term *Crown* has been used to reflect a more specific notion while *Government* refers to central government in general.
- **Dispute resolution.** In this report dispute resolution refers to mediation and or arbitration through the WHRS Tribunal.
- **Eligible for WHRS.** Being eligible for WHRS means a claim meets the criteria for a leaky home as set out in the legislation.
- **Litigation.** In this report litigation refers to taking a claim to the High Court.
- **Multi-unit complexes.** These are blocks of units or apartments where there is a body corporate or common title requiring a single representative to be responsible for the claim with the WHRS. Prior to the 2006 Act individual claims were lodged for each unit. The 2006 Act was changed to require complexes to lodge class action claims.
- **Standalone dwellings.** These are individual homes which are not joined to any others. Owners lodge a single claim with WHRS.
- **The Financial Assistance Package.** This package was established through the 2011 amendment to the 2006 Act. It provides for contributions to the repairs of leaky homes from the Crown and participating Councils under certain circumstances.
- **Weathertight Homes Tribunal.** This Tribunal was established through the Weathertight Homes Resolution Services Act 2006 and was operational in April 2007. It is administered by MBIE and the Ministry of Justice. Both arbitration and mediation services are available. Where reference is made to the Tribunal, this refers to the Weathertight Homes Tribunal.

The two main acronyms used throughout this report are:

- FAP – Financial Assistance Package
- WHRS - Weathertight Homes Resolution Services.

Throughout this report the perspectives of those who were interviewed are referenced across four key informant groupings as indicated below. The identifier acronym will appear in brackets after direct quotes and in some instances to reference where technical, or specific, information is reported.

Table 1: Participant identifiers

Identifier	Participant roles
GO	Officials working across the WHRS teams
TA	Council personnel
HO	Home owners
CR	Claimant representatives

4.0 Method

This report has been informed by a mixed methodology evaluation. Data have been collected through semi-structured interviews, document review and a quantitative analysis of WHRS administrative and monitoring data.

4.1 Evaluation purpose

The purpose of the evaluation was to answer three high level questions:

1. Is the FAP scheme enabling more leaky homes to get repaired?
2. Is the FAP scheme helping the sector move forward from a history of dispute and litigation?
3. What was the cost to the Crown of administering FAP compared with the cost of the remediation work that has been completed?

These questions are considered in the Conclusions section of the report.

Also within scope for the evaluation are any insights that could improve the effectiveness and efficiency of the scheme, although this was not the primary purpose of the evaluation. These are discussed in the final section of the report. Out of scope was any new research on the extent of the wider weathertightness problem and alternative policy solutions to the weathertightness problem.

4.2 Evaluation participants

We interviewed a total of 27 people for this evaluation. Three of these interviews involved more than one participant. Table 2 summarises these participants by category of role as they relate to FAP, and weathertightness in general, and highlights the breadth of perspectives that were collected. This breadth was important to ensure a balanced view of the FAP scheme was obtained.

Table 2: Participant numbers by category of role

Participant roles	n
Claims advisors (MBIE)	5
Technical team (MBIE)	2
WHRS managers (MBIE)	2
Mediation and Tribunal officials	2
Government officials from WHRS	11
Home owners – standalone	8
Homeowners – unit in multi-complex	1
Homeowners	9
Claimant representatives	4
Council personnel	3
TOTAL PARTICIPANTS	27

In addition to the initial interviews, the evaluation team engaged in an iterative information gathering process with senior members of the WHRS team within MBIE. Through this process we were able to check ideas and to clarify questions that arose during data analysis.

4.2.1 The Homeowners

The following two tables summarise key information from the homeowner stories which are described in Appendix One. This information is presented here to describe the range of experiences across the participants and any potential limitations resulting from the small number of interviewees.

As Table 3 shows, only one of the home owners was part of a multi-complex claim (Paul, Beth and Sue). This is potentially a limitation as multi-complex claims have particular concerns within FAP related to the requirement for 100% agreement from unit owners. However, it should be noted that the claimant representatives interviewed generally speak for multi-complex claims.

There was only one instance where a Council made FAP contributions (Bob and May), with the others primarily being privately certified meaning a council contribution was not available. In Harry's case his local council is not part of the FAP scheme and as such will not contribute.

Table 3: Summary of the homeowner stories

Names	Home type	Claim status	Council Contribution
Tom & May	Standalone	Completed (repaired prior)	No, private certifier
Paul, Beth & Sue	Multi-complex unit	Completed (repaired prior)	No, not certified
Bob & May	Standalone	Completed	No, private certifier
Mike & Mona	Standalone	Completed	Yes
Hank	Standalone	Completed	No, private certifier
Nick	Standalone	Completed	No, private certifier
David	Standalone	On hold	No, private certifier
Ben & Ann	Standalone	On hold	No, not certified
Harry	Standalone	On hold	No, not part of FAP

Table 4 summarises the options participant homeowners have with regard to any further dispute and the decisions they have made. Gaps in this table reflect that this information was not discussed. Two of the homeowners are currently in mediation with other parties in an attempt to recoup at least some of their personal contribution to the repairs.

Table 4: Participant homeowner choices with regard to dispute/litigation

Names	Capability of builder to pay	Other reasons for not going to litigation	In mediation?
Tom and Mary	No, Bankrupt	-	-
Paul, Beth and Sue	No, Not in business any longer	-	-
Bob and May	-	Too expensive Not want to get involved with the builder	-
Mike and Mona	-	Too expensive and difficult	The builders
Hank	No, Insufficient funds	Faulty materials to blame Builder personal acquaintance	-
Nick	-	-	The prior owners The presale check builder
David	No, Bankrupt	-	-
Ben and Ann	-	Too expensive	-
Harry	-	Moral grounds Designer and builder personal acquaintances	-

4.3 Methodological considerations

The complexity and sensitivity of weathertightness problems meant there were several methodological considerations taken into account during both data analysis and report development. These included:

- ensuring FAP was evaluated based on its stated policy objectives
- considering FAP as one of a suite of options for homeowners rather than as a total solution for the leaky homes problem
- ensuring that all perspectives were considered within a balanced discussion that took into account the wider context within which FAP is implemented
- comparing FAP against other options for resolution and the consequences of each of them in order to better understand the decisions influencing the uptake of FAP
- taking into consideration the requirements of any building process when making judgements on the efficiency of the FAP processes.

These considerations influenced not only the design of the evaluation, but also the data collected and the report structure.

The initial intention was to interview claims advisors, homeowners, claimant representatives and Council personnel only. In the final evaluation design additional participants from across the WHRS technical team were included, to ensure a more balanced approach. WHRS Managers were

contacted after the interviews for clarification and to deepen understanding where initial findings appeared inconsistent.

Included in this report are references to the wider legislative context, other weathertightness options for homeowners and background information related to the decisions made when the FAP scheme was first designed. The result has been a more detailed and lengthy report than initially intended. This was necessary to ensure a balanced and comprehensive discussion.

4.4 Limitations

While every attempt has been made to get the full range of perspectives for this report it is important to note that the overall number of interviews was limited. As such, there is no claim of representativeness, particularly with regard to the homeowners. Having said that, the similarities of experience reported in their stories (see Appendix One) suggests strong face validity to the findings.

Given the potential to identify individual participants, it has not been possible to be precise in terms of the source of a particular viewpoint. This is to protect the ethical rights of participants including their privacy. In some instances, there could have been value in more accurately identifying participants where their views are supported by technical or other expertise. Similarly, in some instances participant views will be coloured by their personal experiences and responsibilities and the absence of identifying particulars does not show that context.

5.0 An overview of Weathertight Homes Resolution Services

In this section we provide a snapshot of the claims within the WHRS based on MBIE administrative data¹³. We also provide information on the other options available to homeowners through the WHRS before a more detailed discussion of FAP is provided in the remainder of the report.

5.1 Homeowner options

Homeowners with a leaky home have a number of options available to them. These can be grouped into four broad categories:

1. lodging a claim with the Weathertight Homes Resolution Services within MBIE
2. litigation through the High Court
3. acting independently – doing nothing, self-repair, selling as is
4. private mediation or negotiation.

For those who lodge a claim with the Weathertight Homes Resolution Services (WHRs) there are essentially three options open to them. Their choices are dependent on: whether their home is repaired already; whether they want to/can enter into dispute; the value of the repairs. The three WHRS options are:

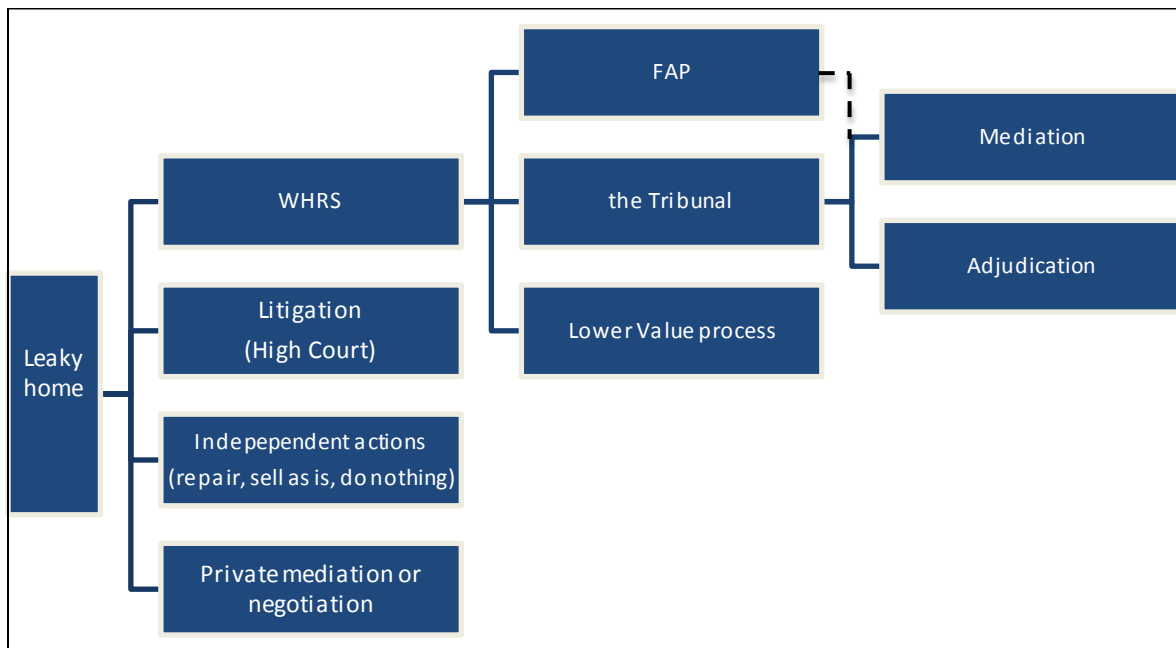
- They can choose to proceed with the FAP scheme, provided their home has not been repaired and they meet the criteria for FAP capability. In the initial stages of FAP those who had repaired their homes prior to the FAP scheme being announced were able to utilise FAP provided they were not in litigation with their Council.
- They can choose to proceed to the Tribunal and work through mediation and/or adjudication if their claim is over \$20,000 (standard claims).
- They can choose to proceed through the lower values claims process which is one of mediation and negotiation, provided their claim is \$20,000 or less. If unsuccessful the claimant still has recourse to the Tribunal.

Utilising the FAP scheme does not prevent claimants from entering mediation or dispute with other parties outside the Council or Crown to gain some compensation for their contribution to repair costs.

These option paths are presented in Figure 2. In this section we consider both litigation and dispute and why homeowners might choose these options over FAP. In subsequent sections of the report we discuss the uptake of WHRS options overall and for FAP as a subset of these.

¹³ The data is predominantly as at the end of February 2013 although in some instances we have used more recent data as indicated in the text.

Figure 2: Option paths for owners of leaky homes



5.1.1 The Weathertight Homes Tribunal

Outside of litigation in the High Courts, the Weathertight Homes Tribunal (the Tribunal) is the formal avenue for dispute resolution in relation to weathertightness. Provision for the Tribunal was made in the 2006 Act. It is administered by the Ministry of Justice and its purpose is “to provide speedy, cost-effective and independent adjudication for leaky home claims”¹⁴.

The process is that claims are assessed by MBIE personnel within the WHRS team to determine eligibility. Those over \$20,000 can then choose to apply to the Tribunal for adjudication as one of the options available to them. Those under \$20,000 follow a more streamlined process within MBIE, but can apply to the Tribunal subsequently, if settlement is not reached. The Tribunal can refer claimants whose claims are over \$20,000 to mediation. Claimants can also choose mediation.

The Tribunal is the only multi-party tribunal in existence and the legislative context for the leaky homes problem is complex. The Tribunal considers action based in more than one Act including the Fair Trading Act and the Building Act. Common Law is also a consideration (GO). For these reasons, it may be more difficult for individuals to utilise the Tribunal without legal representation than is the case for other tribunals (GO).

In the Tribunal, as in the Courts, the legal case is based on ‘joint and several liability’. All parties who can be deemed responsible for at least part of the problem are considered to potentially be 100% liable. The result is the ‘last man standing’ situation; where anyone who is able to pay can be forced to meet the entire cost of the claim regardless of the extent of their involvement.

This has led to a view amongst some participants that there are other “victims” in the Leaky Homes story beyond the homeowners, that really there “are no winners except the lawyers” (GO). During the interviews examples were given of sub-contractors who “acted in good faith when doing the

¹⁴ <http://www.justice.govt.nz/tribunals/wht>

work, built homes based on the knowledge at the time and then found they were responsible for [the consequences of] poor knowledge” GO.

In a subsequent section we discuss the current status of WHRS claims but at this point it is worth noting that of the 1,510 active claims as at February 2013, 143 (9%) were at the Tribunal. This represents 532 dwellings. In total 2016 claims have been resolved either through mediation or adjudication since the inception of the Tribunal.

5.1.2 Litigation

The time that different options became available is likely to have been a key determinant of the choices homeowners have made about resolution. While the 2002 legislation provided provision for the assessment and resolution of claims it was not until 2007 that the Tribunal was available as an alternative to litigation in the High Court. FAP was not established until 2011, meaning that homeowners had no formal option outside of litigation or dispute resolution until then. One participant suggested that FAP “*was implemented five years too late*”; that it would have been more successful in moving people away from litigation and dispute if implemented earlier (GO).

This view was supported by other participants who commented on the extent to which lawyers had been proactive in promoting litigation when the leaky homes crisis first became apparent. As a result of this activity, it is likely that by the time FAP was introduced a number of people were “*already well down the litigation or dispute path*” with lawyers advising them they would get significantly more money through legal action than through FAP (TA).

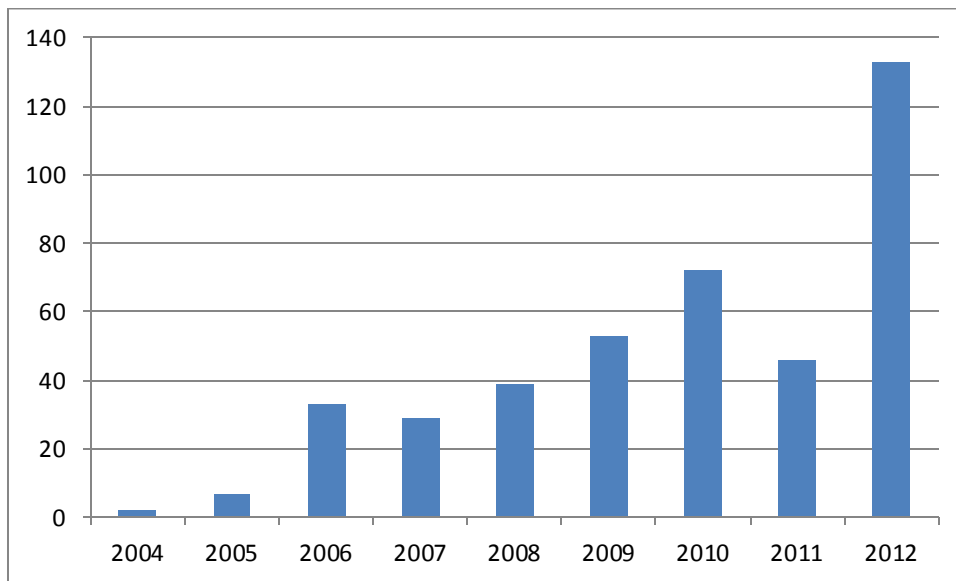
A recent flyer¹⁵ in letterboxes in Wellington provides some evidence that this advertising is still occurring. It states that “*New Zealand’s leading leaky building lawyers are now available to help recover compensation for leaky home owners*” and urges the recipients to “*act now*”. It notes that up to 50% is available through the “*government compensation package*”, but states that they “*can get people compensation of more than 100% of their repair costs*”.

Data supplied by the Ministry of Justice show there are currently 428 active proceedings in the Auckland High Court. The Auckland High Court accounts for approximately 90% of all weathertight cases filed and as such is a reliable indicator of the status of litigation. These figures do not include any cases filed that have since been closed. It should be noted that the very large number of active proceedings in 2012 will be, at least, partially due to the time it takes for litigation. It is likely that very few 2012 cases have been closed.

Of particular note, is the apparent decline in the number of cases in 2011 (n=46) which was the year FAP was implemented and the subsequent increase in 2012 (n=133). However, even accounting for the fact that some of the 2011 cases are likely to have been resolved there does seem to be evidence to suggest that the initial implementation of FAP could have had an impact on the number of cases being filed. This is supported by the higher number of cases still active from both 2009 (n=53) and 2010 (n=72).

¹⁵ A scanned image of the flyer was provided by a participant in the interviews.

Figure 3: Auckland High Court weathertight active cases by year filed



5.1.3 Comparing options

In both the Tribunal and the Courts, claimants have recourse for more compensation than they do through FAP. They can claim for ‘consequential losses’ that resulted from the cost of repairs such as loss of rent or loss of income. They can also claim for general damages including stress. While legal expenses are not usually claimed the Tribunal can award them if it chooses¹⁶. None of these options are included in FAP. There is also more flexibility outside of FAP around the cost of repairs, with many homeowners repairing first and claiming against that amount.

Both the Tribunal and litigation are arguably more risky than FAP, where the homeowner is guaranteed at least 25% of the repair cost. With any form of litigation or arbitration there are no guarantees of success (GO, TA). However, the WHRS legislation, as opposed to FAP, is based on the principle of joint and several liability. This means a Council can be joined if it is proven they had a duty of care. As a result it is possible a homeowner could get more than 50% reparation even if the Council is the ‘last man standing’. Where the costs to repair, or rebuild, are substantial this can mean a significant increase in the payment homeowners receive. It should be noted that of the nine homeowners interviewed for this study only Mike and Mona were receiving the 25% council contribution. Mike and Mona were also in mediation with their builder.

FAP, as an assisted repair scheme, provides certain benefits that are not often publicised and may not be well understood by those homeowners making decisions (GO, TA). Central to these is that the house is repaired, under the scrutiny of experts, who have thoroughly checked both the repair plan and the costs. However, there are differing views regarding the standard of the repairs. Some interview participants disputed that the repairs are to a high standard; with one suggesting that the repairs are *“to a minimum standard [and are at] risk of failing again”* (CR). Others argued that homeowners can feel confident that the repair has been done to a high standard, will be compliant with the Building Code, certified and completed in a cost-effective manner. As one participant said *“while keeping our 25% down we are also keeping the homeowner 50% down”* (TA).

¹⁶ <http://www.dbh.govt.nz/ws-dispute-resolution>

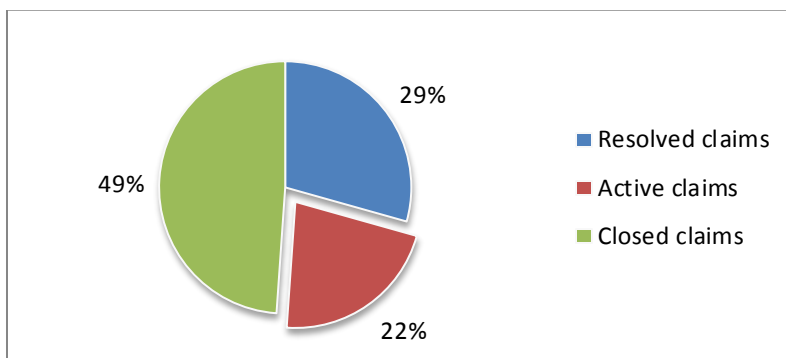
Also worth noting, given the perception that the FAP process is too lengthy (HO, CR), is that in April 2013 of the 428 active cases in the High Court, 163 had been filed in 2010 or earlier. This suggests that litigation can be a very lengthy process and as noted elsewhere it does not include completing the required repairs to make the dwelling weathertight and Building Code compliant.

5.2 Claims lodged with WHRS

In this section, we provide a snapshot of the claims lodged with WHRS as at February 2013¹⁷. Since WHRS was formed late in 2002 (as a result of the 2002 Act) a total of 6,945 claims have been lodged. These claims represent 10,303 dwellings. The greater number of dwellings is reflective of the number of units within multi-complex claims.

Figure 4 depicts the status of those 6945 claims. As it shows 22% (n=1510) were active and 29% (n=2039) had been resolved in February 2013. Nearly half, (49%, n=3396) had been closed.

Figure 4: Status of overall WHRS claims



5.2.1 Resolved claims

Resolved claims are those where an agreement on the resolution of the claim has been reached and no further action is expected from the claimant. Table 5 summarises the means through which these claims were resolved. Of interest is:

- Only 13 claims were resolved through the Lower Values Claims process which probably reflects how few claims under \$20,000 are actually lodged with WHRS.
- 605 claims were resolved prior to mediation or adjudication suggesting individuals negotiating their own solutions.
- The majority of claims have been resolved through mediation (59%).

¹⁷ While more recent data are available we have the most detail on the February data and for this reason have used it. Overall numbers do not change significantly between February and May the latest data available.

Table 5: Means of resolution for WHRS claims resolved as at February 2013

	n	%
Resolution through mediation while at Tribunal	625	31
Claim resolved prior to mediation or adjudication	605	30
Resolution through mediation	566	28
Resolution through Tribunal adjudication	158	8
Resolution through adjudication	62	3
Resolution through Lower Value Dispute Resolution	13	1
Resolution at pre-mediation	10	<1

5.2.2 Closed claims

Claims can be closed either by the claimant or the WHRS. Table 6 summarises the reasons for claims being closed as at February 2013. Of interest are:

- 31% of these were closed by the claimant or not continued with after registration. Many of these may be 'stop the clock'¹⁸ claims registered when FAP was first announced.
- 23% were closed because the property has been sold.
- 2% have been closed because of a lack of action by the claimant. Interviews with MBIE staff did suggest they were reluctant to close claims where they knew claimants were struggling to fund their contribution to the repairs.

Table 6: Reasons for claims being closed as at February 2013

	n	%
Discontinued by claimant or not continued with after registration	1067	31
Property sold	769	23
Ineligible claim	741	22
Claim withdrawn under the 2006 Act	608	18
Claim not progressing – no action by claimant for some time	78	2
Claim transferred to another jurisdiction (Courts)	75	2
Termination by Tribunal due to insufficient activity	58	2

¹⁸ This is discussed in more detail subsequently, but essentially claimants could lodge a claim when FAP was first announced to ensure they remained within the 10-year limitation period.

5.2.3 Active claims

Active claims are those claims which have been lodged with WHRS and remain open. They are either awaiting confirmation of eligibility or going through the resolution processes (be it through FAP, the Tribunal and mediation or the Lower Value Claims process). Claims that are pursuing resolution through the Tribunal remain active WHRS claims until the Tribunal provides information on the resolution that the claim has reached.

As shown in Table 7, there were 1510 active WHRS claims as at February 2013 representing 4,564 dwellings. Of these 1510 claims:

- 376 claims (25%) are in the FAP process. This includes 25 claims which are also at either the Tribunal or Court. Claims within FAP are for a total of 656 dwellings or 15% of all dwellings for which there is an active claim. This suggests that most FAP claims are for standalone homes.
- The largest number of claims (n=413, 27%) are awaiting claimant decision. This represents 1262 dwellings or 28% of all dwellings for which there is an active claim.
- Only 9% of active claims (n=143) are at the Tribunal.
- 24% of dwellings (n=1114), for which there is an active claim, were being assessed at February 2013. However, this is only 9% of all active claims suggesting these may include a large number of multi-complex claims.
- Again there are very few Low Value Resolution claims.

Table 7: Status of active claims as at February 2013

	Claims		Dwellings	
	n	%	n	%
Awaiting claimant decision	413	27	1262	28
In FAP process	351	23	585	13
Alternative jurisdictions (courts)	174	12	406	9
Being repaired	146	10	366	8
At the Tribunal	143	9	532	12
Being assessed	129	9	1114	24
Awaiting closure	84	6	183	4
Eligibility	43	3	43	1
Multiple resolutions (FAP & Tribunal/Court)	25	2	71	2
Low-Value Resolution	2	<1	2	<1
TOTAL	1510		4564	

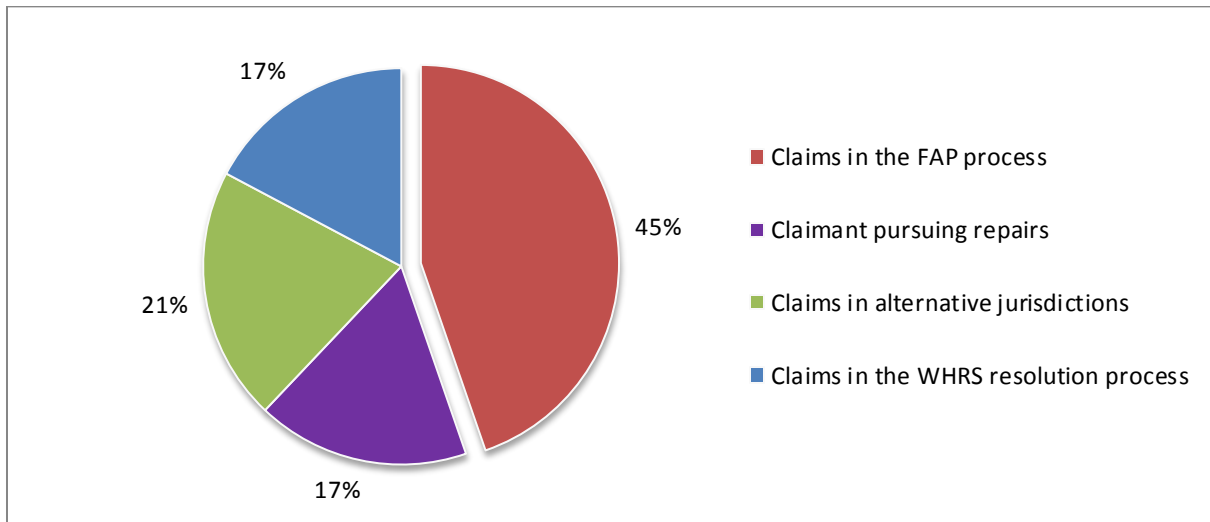
5.2.4 Claims pursuing resolution

The claim status presented in Table 7 reflects both claims that were actively pursuing resolution (n=841), and those that were essentially on hold waiting for decisions to be made either by the claimant or by the WHRS (n=669).

Figure 5 presents the means by which the 841 claims were being pursued. As it shows FAP accounts for 45% of all actively pursued claims (n=376). This is compared with 145 claims (n=17%) that are in the WHRS resolution processes and 174 that are in the courts (alternative jurisdictions).

There is no way of knowing what those claimants pursuing repairs (n=146 claims or 366 dwellings) will do but FAP will not be an option for them so one could assume they will proceed to dispute or litigation. Taking this into account one could argue that claimants are slightly more likely to choose dispute or litigation, whether through the Tribunal or the Courts, than FAP.

Figure 5: Means by which resolution is being pursued



5.2.5 WHRS claims over time

Figure 6 presents the number of claims lodged with WHRS by the month they were lodged. Data are from January 2007 to avoid any confusion around the change from single claims for units with multi-complexes to the current system of one claim for all units with in a multi-complex.

The number of claims per month varies between 5 in April 2013 and 63 in October 2011. The average number of claims per month over this time was 25.

There are four distinct peaks to the number of claims:

- It does appear that the number of claims may have increased when the 2006 Act was first enforced and the Tribunal implemented. However, this was not sustained with the number of claims per month dropping to 25 in April 2007 and then remaining below 35 until May 2010 when they reached 52.
- The increase in May 2010 may have been due to initial announcements about the FAP scheme. As with the Tribunal, the number of claims per month then drops off until October 2011 when they peak at 63.
- The implementation of FAP is potentially, at least partially, the reason for the peak in 2011.
- The reason for the peak in 2012 cannot be linked to any activity directly related to the WHRS. One possible reason could be that many homes are rapidly approaching the 10-year limit.

Figure 6: Number of claims lodged with WHRS by month lodged

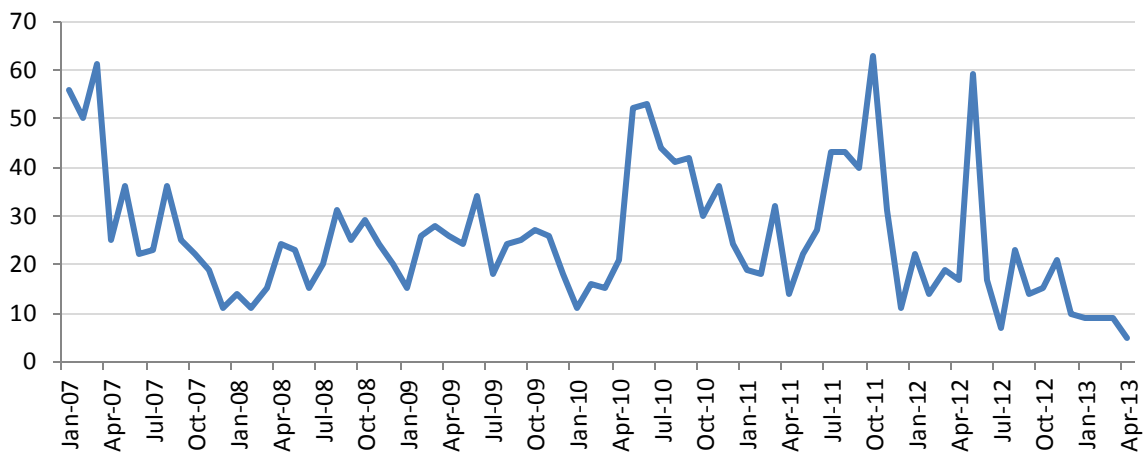
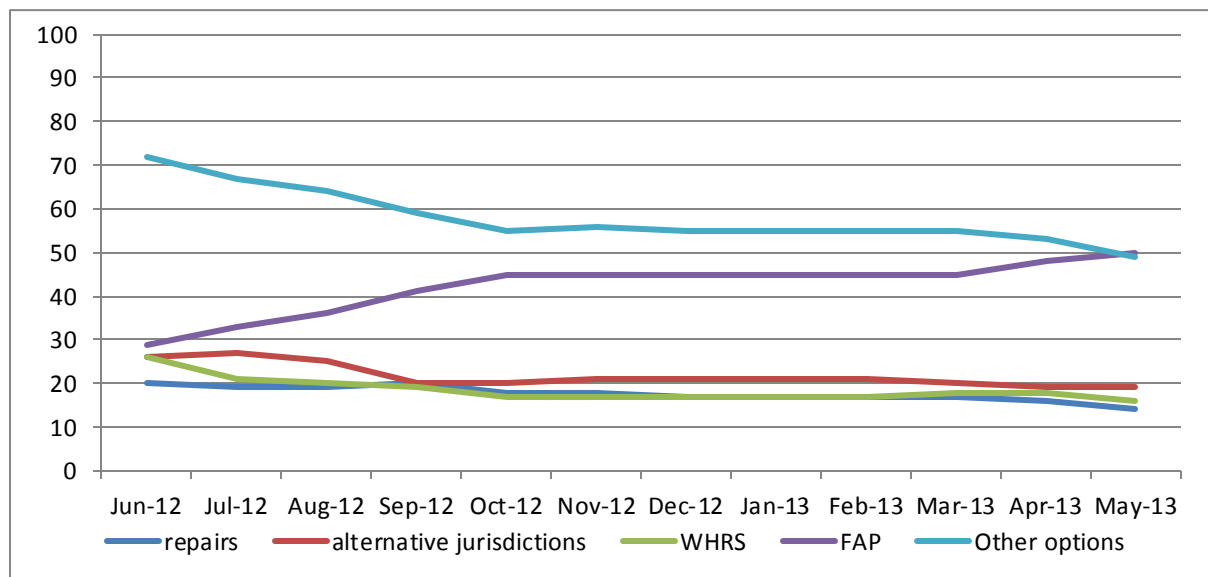


Figure 7 presents the data related to claims pursuing resolution for a 12 month period from June 2012 through to May 2013. It shows the percentage of WHRS claims actively pursuing resolution for each of the options presented in Figure 5 above. It also includes the percentage NOT pursuing resolution through FAP but either in alternative jurisdiction, in WHRS dispute or undertaking repairs (Combined under the category “other options”).

Of note is that from June to October 2012 the number of claimants pursuing resolution through FAP increased markedly compared with the other options. The proportions then remained consistent until March 2013 when the proportion of claimants utilising FAP increases to the point where they are 50% of all claimants actively pursuing resolution. Whether this is a trend that will continue to see FAP increasingly move people away from dispute options remains to be seen. The extent to which home owners are able to pursue litigation or dispute, where the Council is not party to any action, may be a key factor influencing this change.

Of the other options alternative jurisdictions (litigation) appears to be slightly more popular than WHRS. There is no way of knowing whether those pursuing repairs will choose litigation or the Tribunal. They cannot choose FAP.

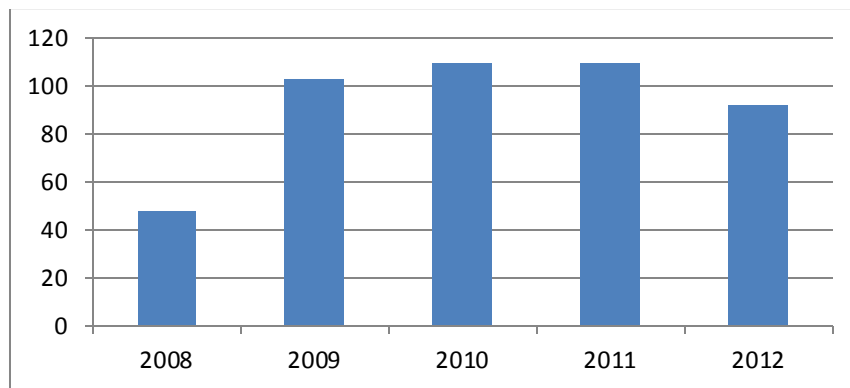
Figure 7: The percentage of WHRS claims pursuing different resolution options overtime



5.2.6 Claims being resolved through the Tribunal overtime

Figure 8 presents the total number of claims that were received at the Tribunal per year between 2008 and 2012. As it shows, the total number increased from 48 in 2008 to 103 in 2009 and has remained relatively consistent since then. The decrease in 2012 could be related to the number of homes being outside the 10-year limit or the extent to which proactive homeowners are already in the WHRS system or alternative jurisdictions (courts).

Figure 8: Total number of claims received at the Tribunal by year received

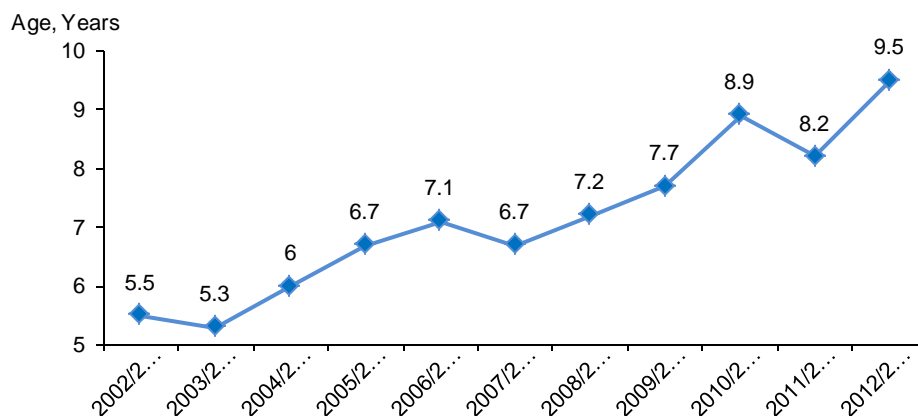


5.3 The impact of the 10-year limit

Most of the dwellings with related WHRS claims were built or altered between 1993 and 2003 (Figure 9). Since the WHRS was established a decade ago, the average age of the dwellings, for which a claim has been lodged, has increased from an average of 5.5 years in the 2003 financial year to 9.5 years in the 2013 financial year.

The average is now very close to the 10-year limit set for bringing a claim. How this limit impacts on the number of claims being lodged with the WHRS, and therefore FAP, should be revealed within the next year or two. It is possible it is already having an effect on the number of new claims in that there is a smaller pool of dwellings with eligible claims. It is also possible there could be a large number of late claims as time runs out for people to act.

Figure 9: Average dwelling age when WHRS claim lodged



6.0 The Financial Assistance Package

In this section of the report we discuss the findings from the evaluation as they pertain to FAP. Before we consider the data gathered through the interviews we have provided a summary of some of the key aspects of the FAP scheme and the design decisions made prior to the 2011 amendment to the 2006 Act. It is important to reflect on these when evaluating FAP, in particular the homeowners' experiences of the process and satisfaction with the contributions provided. Critical to remember is that the overarching purpose of FAP was to repair homes and move away from dispute and that it was not a compensation scheme.

6.1 Defining aspects of FAP

Detail available in the Regulatory Impact Statement (RIS)¹⁹ regarding the amendments to the 2006 Act highlights the detailed analyses undertaken by DBH when designing the FAP scheme. It also highlights the complexity of the problem with regard to the repair of leaky homes, potential future liability for the Crown and/or territorial authorities and the sensitivity of the overall weathertightness issue.

Of concern was the cost to the Crown of administering dispute resolution and related services (at that time approximately \$19 million per year) and the extent to which homes were not being repaired at the end of the dispute. For FAP to improve this situation actual repair, rather than compensation, had to be included.

6.1.1 Stopping the clock

Given the time lag between the announcement of the FAP scheme²⁰ (May 2010) and the changes to legislation taking effect (July 2011), provision was made for homeowners to either lodge a claim with WHRS in order to 'stop the clock' on the 10-year limitation (see next section) or to access FAP after they had made repairs. Further, all existing claimants had until 29 October 2011 to express an interest in FAP.

These provisions meant some homeowners would have already completed their repairs when they moved their claim to FAP from the disputes option. It also meant that some claimants would have lodged a claim in order to 'stop the clock' on the 10-year limitation while they made decisions about what they wanted to do.

As already suggested the 'stop the clock' claims may explain some of the inactive claims.

¹⁹ <http://www.dbh.govt.nz/ris-financial-assistance-package>

²⁰ <http://www.beehive.govt.nz/release/government-announces-leaky-homes-package>

6.1.2 The 10-year limit

When the WHRS system was established, the eligibility criteria to access the services required dwellings to have been built in the 10 years prior to application. This was included on the basis of the long stop in the Building Act 2004. Concern was expressed by some participants that a number of dwellings will not be repaired within the 10-year limit, causing a longer term problem for the building stock in New Zealand (GO, TA).

The 10 year long stop is contained in section 393 of the Building Act 2004 and provides that “*civil proceedings relating to building work may not be brought against a person after 10 years or more from the date of the act or omission on which the proceedings are based*”²¹. This is, in effect, identical to section 91(2) of the Building Act 1991. The 10-year limit is, therefore, well established in legislation.

The Building Act 2004 long stop results in homeowners being unable to recover losses for leaky home damage, where the house is more than 10 years old. Due to the WHRS eligibility criteria, these homeowners cannot access the services in the WHRS Act. This is considered justifiable, given they would also be unlikely to succeed in adjudication because of the long stop in the Building Act 2004. These two factors indirectly impact on the repair of houses outside the 10-year limit; when the owners cannot recover damages they often cannot repair. However, there are also situations where owners have recovered damages and have not used the money they receive to repair (GO).

Under the usual limitation period the homeowner may have had longer to bring a claim (depending on the circumstances and when the issues were ‘reasonably discoverable’). This is not an issue created by WHRS, it comes from the 10 year ‘long stop’ for civil proceedings relating to building work in section 393 of the Building Act 2004. However, it is a concern for achieving the desired outcome of getting homes repaired and improving New Zealand’s building stock because owners of homes outside the long stop cannot access WHRS services

The impact of the 10 year long stop was considered when the FAP was being designed, but no change was made to extend the WHRS or FAP to other claimants because:

- the costs of providing the FAP would have increased greatly
- the 10 year long stop is well established in building law
- territorial authorities were only willing to contribute where they would be liable to the homeowner through adjudication or litigation.

6.1.3 A question of liability

One of the key purposes of FAP was to move away from a disputes culture and into one where the repair of homes was the outcome. To promote territorial authority agreement to participate, it was necessary to ensure any liability to them was managed. A number of options were considered that would reduce the risk of litigation for Councils and facilitate their participation.

The preferred option, and the one eventually accepted, was to ensure that any homeowner who decided to utilise the FAP scheme could not then enter any form of litigation or dispute with their Council. In this way, the territorial authorities who participated in FAP were indemnified against litigation. Councils were only liable for the 25% contribution where they had certified the dwelling as part of the building consent process.

In making provision for FAP, it was necessary for the Government to ensure that repairs funded under FAP addressed the issues identified in the assessment of the damage and the public money it contributed was spent appropriately. It was felt that this could be managed through robust checks and balances being put in place. These included²² :

1. An independent assessment of the nature and extent of the existing damage to the home and where damage might occur in the future, if not repaired. This would be considered the definitive assessment by both home owners and territorial authorities avoiding costly disputes over the extent of damage.
2. Approval of a 'repair and payment plan', prepared by a qualified designer contracted by the homeowner. This was to ensure the building work was restricted to building elements related to the weathertightness defects only and to prevent "gold plated" repairs being done.

6.1.4 Council and Crown contributions

When FAP was announced it was anticipated that the Crown's share of costs would be around \$1 billion over five years. This was based on an estimated 70% of affected homeowners within the 10-year liability limit taking up this package²³. Current forecasts are that Crown FAP contributions to repairs to the end of the 2012 financial year will be \$7.785 million²⁴. This does not include the administrative costs.

In the interviews, there was some discussion concerning whether the FAP contribution was sufficient to either ensure participation or to make participation worthwhile for homeowners. While this was generally the case when only the Crown 25% was available, there was also some suggestion that even the 50% available when a Council is involved was not enough to balance the costs of attaining the contribution (GO, HO, CR). These costs include time and money as well as less flexibility in the repairs to be done (HO, CR).

Early policy documentation suggests higher contribution percentages were initially considered. It is not clear why the 25% was agreed ultimately but it is likely to be related to cost-benefit analyses. The FAP initiative would have been finalised based on the PWC estimated 42,000 failures. It is likely

²² <http://www.dbh.govt.nz/ris-financial-assistance-package>

²³ <http://www.beehive.govt.nz/release/government-announces-leaky-homes-package>

²⁴ WHRS administrative data with June 2013 forecast.

the estimated overall size of the problem will have been a key factor in determining the amount to be contributed.

6.1.5 Homeowner contributions

In order to be eligible for FAP, homeowners have to prove they have access to sufficient funds to complete the repairs. This can be a substantial amount of money, particularly where the Council did not sign off the building work. Affordability is likely to be a barrier for many homeowners.

There also appears to be some sense of frustration amongst homeowners that they should have to pay for something that was not their fault. One interviewee did suggest that many homeowners do not want to borrow the money for their contribution and that their unwillingness to do so is perhaps a greater barrier than their capacity to do so (GO). This view is supported in David's story (Appendices).

The FAP scheme includes provision for the Government to provide assistance to owners to access bank finance for their 50% of the repair fees. This is by way of loan guarantees to banks for loans made to owners eligible for the assistance and who meet the bank's lending criteria. This means that the Government shares some of the losses with the bank, if the borrower of an eligible, repair-related loan defaults²⁵.

In addition to the loan guarantee, MBIE has worked with major banks to ensure a nominated person is available to work with homeowners, where they do not meet lending criteria but where there may be benefits to the bank in extending the necessary credit to ensure the dwelling is repaired and that maximum return can be gained from its sale. In such instances, the equity attained through repair would balance the risk of the loan.

6.1.6 Further dispute

While the Territorial Authorities and Crown are granted indemnity from litigation once a claim has become subject to a contribution agreement, claimants can still pursue other parties such as their builder or private certifiers. One of the participants did suggest that pursuing the other parties made sense (GO). Once the FAP process is complete and their home is repaired one could argue that moving into dispute with the other parties would be a relatively simple step to take.

Certainly, given the question of affordability of repairs for homeowners, it could be argued that recouping any cost has value. However, there seems to be a general perception that any form of dispute requires a lawyer, and hence legal fees. While this is not the case with mediation or the Tribunal, it is likely that most homeowners would not enter dispute without a lawyer (GO). Also, making it unlikely that claimants would see benefits in pursuing other parties is that, as time passes, the ability to recoup costs from other parties will be decreasing (GO).

In the homeowner interviews, this possibility was discussed and two of the ten participant homeowners were in mediation with other parties. The rest indicated that either there was no one they could sue or they felt it was inappropriate to do so (see Table 4).

²⁵ Information available through the Information pack about funding:
<http://www.dbh.govt.nz/userfiles/file/publications/weathertightness/fap/fap-funding-info-pack.pdf>

6.1.7 Betterment

The FAP Information Pack for Designers defines betterment as “*any work that goes beyond addressing weathertightness problems*”²⁶. Betterment, as it relates to FAP, is specifically defined in the Homeowner Agreement. Different meanings may be used in the courts or the Weathertight Homes Tribunal. The FAP information pack includes a detailed list of what constitutes betterment with regard to FAP. In very general terms, the only repairs that FAP contributions apply to are for the repair of those defects that are required to achieve building code compliance for weathertightness or are “*justifiably required to be repaired to ensure that the property is not of a lesser standard than before it required the repair*”²⁷.

There are two major categories that betterment can be classified under:

- The first is related to changing the design features of a home identifying it as potentially leaky e.g. the cladding, no eaves. It has been argued that the ‘like for like’ repairs approved by the FAP technical team are inadequate in some instances and that they do not take a long term view of the housing market (CR).
- The second is when homeowners wish to make enhancements or improvements to their home while the work is being done.

FAP does not preclude owners from enhancing or altering their homes during the repair process. Provided the costs of betterment are determined separately from the weathertightness repair costs homeowners can use the contribution money to make additional changes to their homes including rebuilds. This is provided the building project meets the requirements of being code compliant. Examples given during interviews include (GO):

- Homeowners deciding to extend a room and demolish an external wall that was leaky. FAP contributions would be based on the cost of repairing that wall alone. Homeowners would pay for the rest of the extension costs.
- Homeowners deciding to demolish their home and build a smaller home on the same site.
- Homeowners wanting to change the external cladding or to add eaves to their homes.

The first example is clearly an enhancement of the home. The latter two involve removing and replacing features that are determined to be design risk features and identified as such on the MBIE website. It is these latter examples that appear to be the subject of most debate (HO, GO).

It is acknowledged in the Information Pack that there will be some instances where “*it is not so obvious where to draw the line*”. The recommendation is that designers talk with WHRS early in the process to ensure the “*homeowner remains realistic*”²⁸. As discussed subsequently there is now greater effort from both Councils and MBIE technical staff to engage directly with designers to avoid extended discussions and potential delays in the FAP process (GO, TA).

²⁶ DBH, (n.d.). Leaky Homes Financial Assistance Package: Information Pack for Designers. Available from <http://www.dbh.govt.nz/userfiles/file/publications/weathertightness/fap/fap-designers-info-pack.pdf>, p.4

²⁷ Information Pack for Designers, p.4.

²⁸ Information Pack for Designers, p.4.

All participants could see the value in either removing the stigma of a leaky home or undertaking improvements while there was a builder on site. Reasons given included capital value on sale as a result of the improvements, the convenience of one building process and potential cost efficiencies.

There was significantly less agreement with regard to the importance of clearly defining betterment and how fine the line should be between betterment and repairs. All those interviewed spoke of the frustrations surrounding betterment and the difficulty of drawing the line in some instances. The need to separate betterment from weathertightness repairs appears to have been the source of the greatest confusion and argument between homeowners and WHRS staff. This frustration generally stemmed from disagreements about what constitutes betterment (HO, CR). There was a view expressed that when Councils were also involved there was greater concern over betterment (GO, CR).

One of the claimant representatives interviewed was *“amazed at what [got] turned into betterment”*. He reported spending an *“extra forty hours with each client”* and that he was *“treated as if [he was] trying to rip off the government”*. In his opinion, after excluding what was termed betterment by the Council, homeowners actually got 35% of the repair costs not 50%. This would suggest that some homeowners have gone ahead with repairs that are more expensive than adjudged reasonable by the technical teams involved in the final costing.

Some of the homeowners interviewed commented that it was not clear enough from the outset that they would need to cost repair and betterment separately. In response, WHRS personnel interviewed pointed to the information on the Internet and the need for designers to follow the instructions provided. They did suggest that this does not always seem to have been read and/or understood (GO).

This appears to have been an area where improvements in communication have been made with both Councils and the WHRS technical team reporting increased, direct discussions with designers very early in the FAP process. One participant did suggest that part of the problem is the lack of experienced designers and that there are issues with Building Consent documentation in general. It appears that as FAP has matured and more designers are doing repeat work the separation of betterment and repair is becoming clearer (GO, TA).

6.1.8 What does FAP contribute to?

As well as the cost of repairs, or demolition and rebuilding if that is necessary, the following associated costs are also included when determining the contributions to be made:

- design work
- project management
- building and resource consent fees
- valuation fees needed for obtaining a loan
- alternative accommodation and furniture storage (capped maximum).

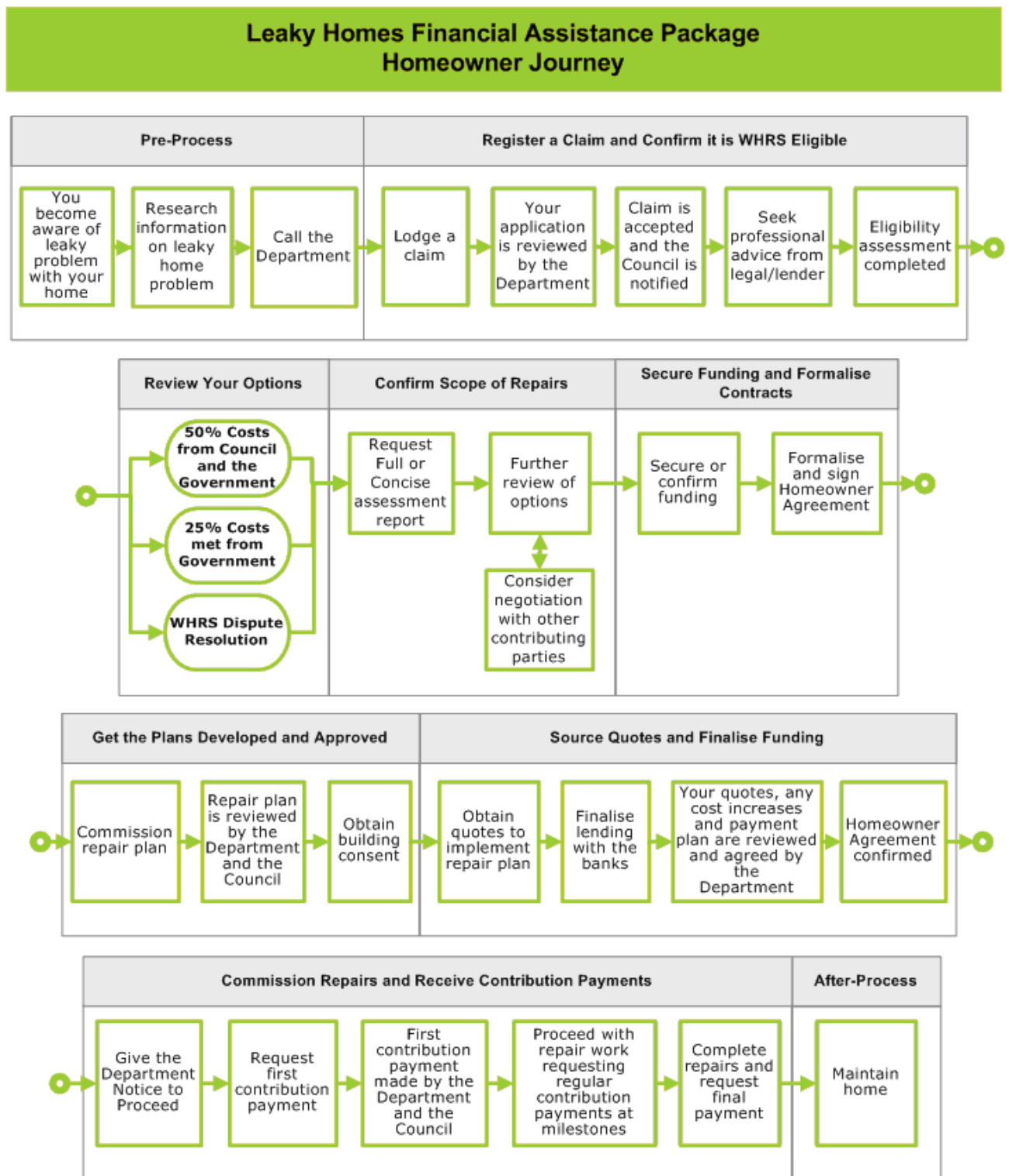
To be remembered is that FAP contributes to these; it does not pay for them. Employing a project manager, for example, could still be a significant additional cost for homeowners. One homeowner suggested project management had cost the equivalent of \$10,000 of his time. In this case, with 50% contributions, the homeowner would still need to find an additional \$5,000.

6.1.9 The homeowner journey

Figure 10 displays the homeowner journey and highlights the different stages and milestones that need to be reached before a home can be repaired. Essentially there are four key milestones. These are:

- Completion of a WHRS eligibility assessment, after which eligible homeowners decide whether to proceed with disputes resolution or FAP.
- Signing a homeowner's agreement, including securing or confirming their funding.
- Confirming the homeowner's agreement, including WHRS approval of their plans and associated repair costs.
- Completion of repairs and final payments being made by WHRS.

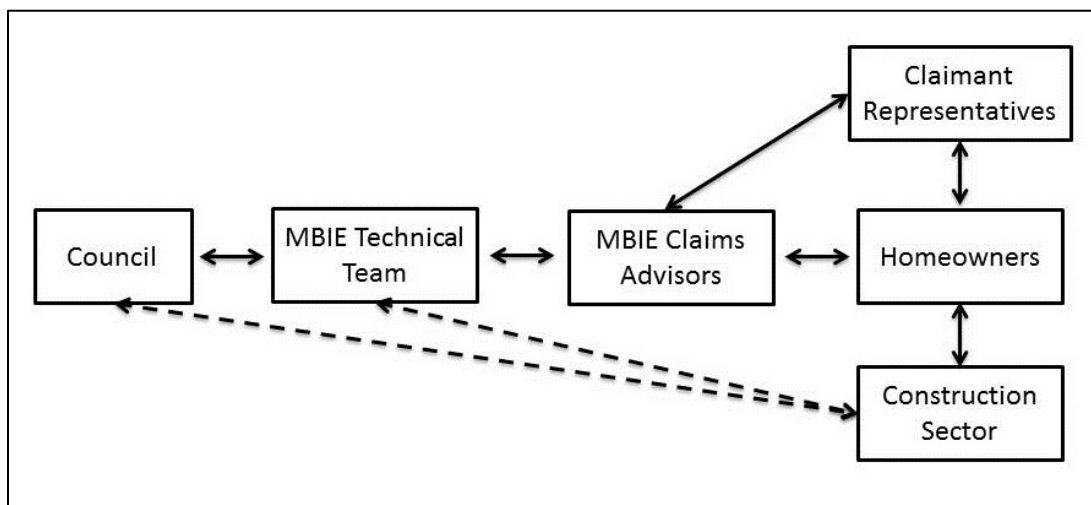
Figure 10: The homeowner journey



6.2 The People involved in the FAP Process

FAP is a detailed process involving a number of people, as shown in our participant groups. Figure 11 illustrates the FAP communication and interaction lines between these different groups of people. The solid lines are the procedural interaction lines. The dotted lines represent additional interaction, which is occurring to ensure appropriate repair plans are submitted. Evidence from the interviews suggests some of this latter communication has only begun to occur as issues with repair plans became apparent. There is also a substantial amount of guidance information available online²⁹ and sector education has been undertaken through workshops³⁰. Much of this has been available since FAP was first implemented.

Figure 11: FAP communication and interaction lines



6.2.1 The WHRS personnel

There are essentially two teams of WHRS personnel working on FAP claims: the claims advisors and the technical team. The roles and responsibilities of these two teams are very different. They are also geographically separate with many of the claims advisors in Auckland and the technical team in Wellington. Participants discussed the difficulties this created at times for communication between claims advisors and the technical team (GO, TA).

The Claims Advisors

The role of the Claims Advisors is an important one in ensuring that a claim is resolved, that it keeps moving and does not get held up. Their role is to provide information and guide or “*shepherd [homeowners and claimant representatives] through the process*” (GO). They present homeowners’ options to them, help them with administrative matters, identify the relevant documentation required, advise them about the next step and relay messages from other parties involved in the administration of FAP.

Their role is not to assist the homeowner in making their decisions or to advocate for them. Nor is it their role to provide specific expertise around the financial or construction decisions that need to be

²⁹ For example <http://www.dbh.govt.nz/fap-info-sheets>

³⁰ <http://www.dbh.govt.nz/weather-tight-workshops>

made. This is a difficult position to maintain when dealing with homeowners who may be upset, angry or frustrated and as such is similar to that of a mediator (GO). The balance they need to maintain is between empathy and sympathy; being able to understand the position the homeowner is in but not becoming personally involved in solving their problems (GO). During the interviews it was clear that there are times when they find their role difficult, that they can feel some frustration at having to pass on messages that homeowners do not always want to hear. They did mention in the interviews that there were times when they wanted to be able to give more advice (GO).

In the interviews it was suggested that a project office through which homeowners could get a broad range of advice and guidance could have been beneficial (GO, TA). It was also suggested that, rather than a single point of contact, homeowners need access to different people, with different skill sets, overtime (TA).

The technical team

The technical team are responsible for ensuring all repairs and costs are justifiable and meet Council and Crown expectations. They are often communicating directly with the Councils. They make the final decisions around betterment and what costs are justified. Increasingly, they are working directly with designers to ensure that repair plans meet their requirements from the outset and that they can progress a claim efficiently and with minimal requests for further information. They do not generally communicate directly with the homeowners, something that seems to have caused some frustration for homeowners (HO).

6.2.2 The Territorial Authorities

Territorial Authorities did not have to agree to participate in the FAP scheme and some did not as indicated in Harry's story (Appendices). They only have to contribute 25% to the repair costs if they certified the dwelling as code compliant. As illustrated in the homeowner stories certification was often completed by private certifiers, meaning the local Council did not have to contribute (see Table 3).

Where the territorial authorities are contributing 25%, they also examine the FAP documentation, and agree what is acceptable to them based on regional costs. There was a view expressed amongst respondents that when a territorial authority is involved the process is longer, more bureaucratic and less pragmatic about making decisions around betterment and other costs (GO, CR). However, territorial authorities do have a responsibility to ensure rate payer money is spent wisely (TA).

Territorial authorities were required to contribute to 50% (n=484) of the 964 FAP capable claims in April 2013, should they proceed. These claims covered a total of 1,106 dwellings. The majority of all claims (61%) were for dwellings across the Auckland Super City. That is not to say all these claims will proceed. The use of private certifiers in a number of other regions has meant these councils often do not need to contribute.

As subsequent cost data shows the territorial authority contributions to date have been only 28% of all contributions made to homeowners through the FAP scheme. This means the Crown has contributed nearly three times what the territorial authorities have.

6.2.3 The homeowners

Ten homeowners were interviewed about their experiences with FAP. Their stories, retold in Appendix One, reflect the issues faced by home owners and the decisions they have to make. No two stories are exactly the same and they highlight the diversity of contextual factors influencing the nature of their FAP experience. In some instances homeowners have limited options. In others, there is arguably more room to move. When retelling these stories we have used the words of the participants themselves as much as possible to ensure validity. At times their stories may seem inconsistent with the FAP processes and systems as they are officially described. However, this is their experience, their perception of what happened and why.

Common to all these stories is that having a leaky home in itself is a stressful experience. Given their situation many of these homeowners do not enter the FAP process in a strong position. They may lack the necessary capacity, resilience, knowledge and/or expertise to readily manage the process from their end.

All those interviewed found the process difficult, time consuming and sometimes frustrating. The extent to which they thought it was worth doing varied depending on their perception of the benefits gained, compared with the cost in terms of time and money. It may also have been influenced by whether their home had already been repaired, potentially removing much of the uncertainty and stress from the situation. The extent to which they were able to work through the different processes and to minimise frustration and delays also appears to have depended on their personal circumstances including their knowledge and expertise in a range of areas.

Most of the homeowners interviewed, were amongst the first to register with FAP. As such their experiences relate to the early days of the scheme when many of the processes were still being embedded and when the claims advisors and others were still developing their own expertise and understanding.

Some key findings from across the participant homeowner stories include:

- Only two of these participants were eligible for the 25% contribution from their Council. Of the others, two dwellings had not received a Code Compliance Certificate (CCC), six were privately certified and in one case the local council had not agreed to participate in the FAP scheme³¹. That the lack of a CCC was not due to weathertightness but some other breach of the building code is not relevant to the liability of the Council.
- In a number of instances independent assessors have given repair quotes that are higher than the WHRS assessment.
- Tom and Mary, as well as Paul, Beth and Sue, exemplify the possibility of recouping sufficient equity in their dwelling to cover the cost of repair as house prices rise. In both instances they have recovered their money and are likely to gain in capital value. This is something many homeowners may not consider and the possibility of repairing and then selling could be a way of facilitating bank loans when homeowners do not meet the standard lending criteria.

³¹ Participation for territorial authorities was voluntary although for the scheme to proceed, Auckland had to agree to participate.

- Paul's story clearly exemplifies the type of issues body corporates can face in getting 100% agreement to proceed with FAP and the multitude of reasons why this might not occur.
- Bob and May would have repaired without FAP.
- Ben and Ann have made a decision to wait. Their home is potentially a leaky home rather than being one per se. However, as it currently does not have a CCC, they would have to make repairs to ensure it was not leaky before a CCC was signed. They can afford to repair if they choose but may be feeling that they will just take any losses when they sell.
- David is an example of a landlord who has to weigh up the long term benefit of repairing the unit with simply continuing to rent it out as is and then one day selling. He lodged the claim with WHRS while overseas and now doubts it was the right thing to do. He is also an example of someone for whom fixing the leaky home is a low priority compared with the rest of his life. In this case finding the money for repairs would have an adverse effect on the things he enjoys.
- Nick's story is an example of where it is cheaper to rebuild than repair. The benefit of this is the house no longer has the stigma of being a leaky home and must be worth considering for those with major repairs.
- Both Hank and Mona have reservations about whether it is worthwhile going through the FAP scheme because of the time and costs involved. In Mona's case, she also feels that the time the process takes means the cost of the repairs went up. Interestingly, while Hank believes FAP is only worthwhile for repairs above \$25,000, Mona believes it is only worthwhile for those who have minor repairs.
- In two instances, the owners are also in mediation with other parties to recoup some of their costs. In the case of Mike and Mona this is their builder, while Nick is in mediation with the people who sold them the house and the person who did a presale check.
- Harry's story is an example of the other options available to homeowners and the decisions around affordability that are made. He can afford to repair the home, he doesn't want to spend more than he has to and believes there may be other options that will work.

6.2.4 A balancing act

The different roles and responsibilities of the groups described above mean that the FAP process is one involving a range of perspectives and expectations. Figure 12 represents these. While all participants were clear that they wanted the homes repaired they also had differing drivers to consider.

During the interviews there was some suggestion of tension between claims advisors and the WHRS technical team regarding decisions made and perceived changes to criteria (GO). This is understandable if one considers that the claims advisors are dealing with the homeowners and their representatives while the technical team (and Council) are responsible for assuring the quality and cost-effectiveness of the repairs. It is likely that geographical distance has added to any tensions or sense of "*them and us*" (GO).

There also appears to be some tension between the MBIE and the territorial authorities. While both groups want to see homes repaired the financial drivers for the territorial authorities are different to those of MBIE. There was evidence in the interviews to suggest this was not always a comfortable partnership as a result of these differences (GO). The level of checks required and the demands from

some councils were seen as counterproductive, at times, to achieving the ultimate goal of FAP, to repair homes without dispute or litigation.

Figure 12: Stakeholder perspectives on FAP

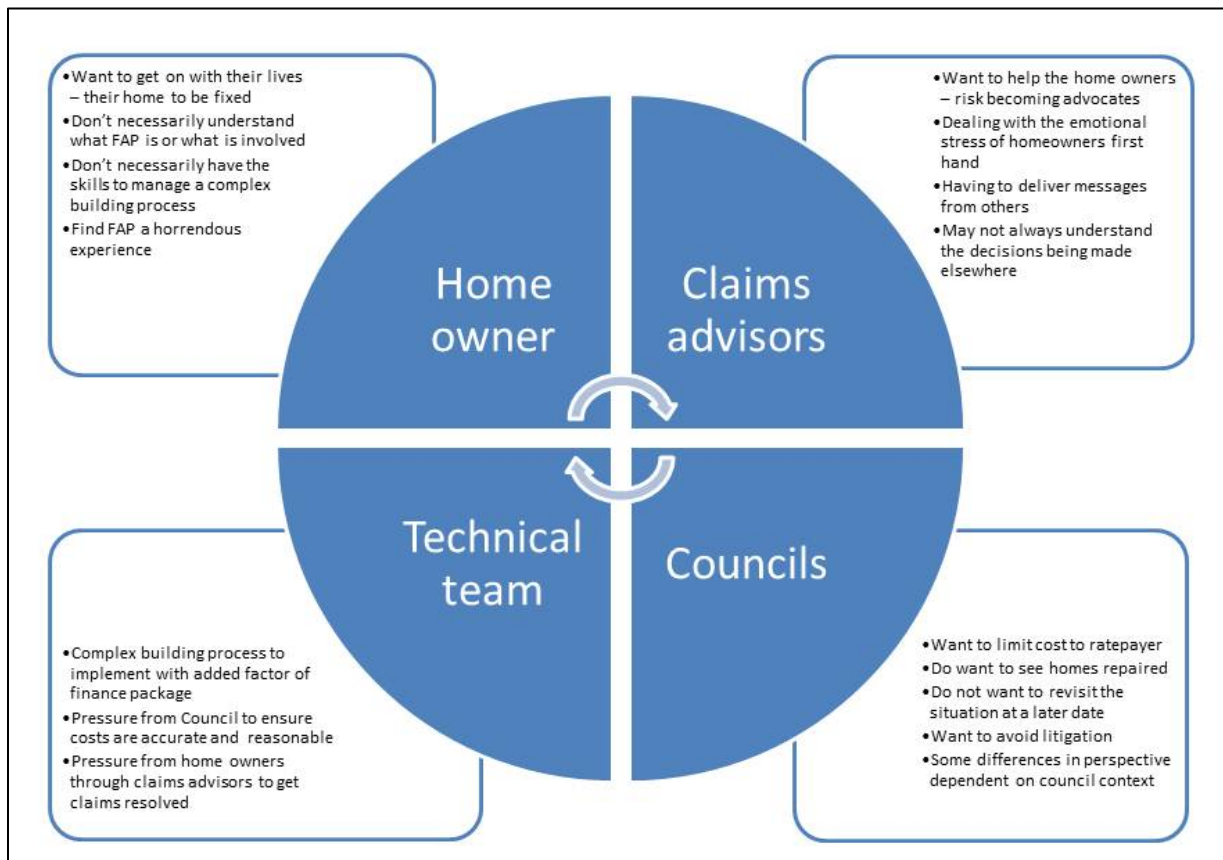
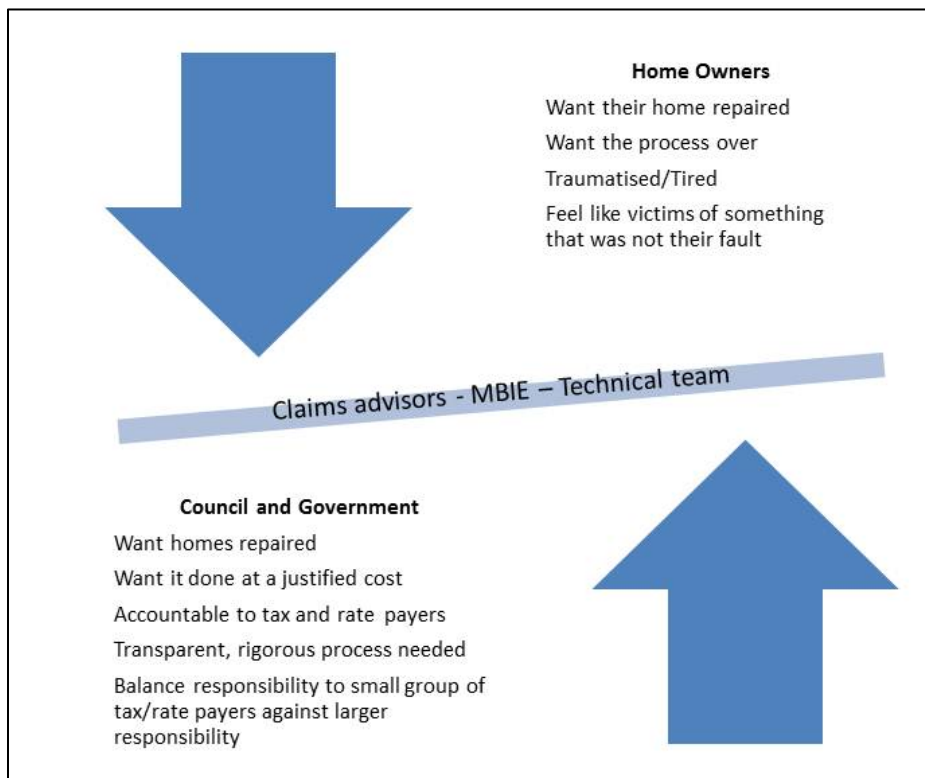


Figure 13 presents a slightly different way of considering these tensions and perspectives. It depicts the competing pressures on MBIE personnel working within the FAP process. These competing pressures explain, at least in part, the need for checks and balances, the time the FAP process can take and the frustrations homeowners feel as a result.

Figure 13: FAP as a balancing act



6.3 FAP in practice

All participants in the interviews agreed with the FAP scheme in principle, in that it has offered homeowners an alternative to litigation and dispute. For some of the homeowners interviewed it has been the only option available and they are very grateful for the contributions. For others there are questions around the value of the contributions when they consider the effort to get them.

There is less satisfaction with the processes through which FAP is administered both from homeowners and those charged with implementing FAP. These are discussed throughout this section of the report which considers such factors as the level and nature of information being provided, the level of scrutiny and paperwork, the size of the contributions and the extent to which 'betterment' is enforced. In Section 5.1, we highlighted the drivers for many of the decisions related to these concerns.

6.3.1 Implementing a new scheme

Those participants involved in the implementation of FAP talked of the difficulties experienced in the early days of the FAP scheme when they were all still learning about it and when none of the processes had been fully tested. There were no precedents for them to follow, the initial project team had been dismantled and there were geographical issues with the claims advisors predominantly based in Auckland and the technical team in Wellington (GO). Adding to the complexity was that many of the early claims that went through FAP were from people who had already repaired their homes (GO).

During the initial planning and implementation there appears to have been a lack of consultation with wider stakeholders such as industry and homeowners (TA). Some of those interviewed suggested this has led to a lack of support for the scheme which has impacted on the overall numbers of claimants (TA, GO). Combined with some of the early implementation problems this lack of consultation appears to have led to a *“bow wave of negative publicity which has been difficult to shake”* (TA).

Two years into its lifecycle, the FAP scheme is essentially still in its infancy. As time passes changes are being made and improvements to the process are evident in the early phases of the homeowner journey. MBIE is making *“staged improvements”* to streamline and remove duplication at early stages of the process, such as three forms being combined into just one for the payment plan (GO). Other stages are still maturing and the required improvements, if any, are not yet known.

The whole FAP process is not yet in an *“end state”* and ironically is unlikely to be until the final claim is completed (GO). This needs to be considered when reading the homeowner stories. When many of them began the FAP process both the claims advisors and the technical team were on *“steep learning curves”* and this probably continued as the first group of claims reached each new stage in the process.

6.3.2 A building and construction process

Although, some homeowners may have envisaged FAP to be a compensation scheme, whereby they would simply be given money to repair their homes, this is not the case (GO, TA). FAP is primarily a building and construction process, focussed on remediating leaky homes. In conjunction with this process the Government and Councils may contribute money for the repairs, provided the relevant criteria are met (GO). In considering the nature of the FAP process this needs to be remembered.

All building projects requiring building consent are complex, entail significant paperwork and multiple checks on quality. The FAP process is even more complex because there is a parallel financial transaction process occurring (GO) which adds additional steps and checks. This financial transaction should, perhaps, be viewed as similar to borrowing money from a bank to complete a building project. When discussing the perceived frustrations with the FAP process these comparisons need to be highlighted.

Adding to the difficulties of the FAP process, it is likely that homeowners, focussed on getting their homes repaired and moving on with their lives, might not be in the right frame of mind to deal with the complexities. Further, they are likely to be already stressed and frustrated at the situation they have found themselves in. As the stories reported here highlight, many of these homeowners are *“shattered”* and *“distraught”* when they discover they have a leaky home (HO). All those interviewed expressed sympathy for the homeowners and their situation.

Many of those interviewed suggested that in most instances large scale construction processes would be overseen by a project manager (often the builder or designer) rather than the homeowner. In their view, homeowners may not have realised what was required until they started. However, it does seem that claims advisors do make sure the homeowner understands the time and effort FAP will require. This is evidenced in the homeowner stories and in one case was a deterrent to continuing with FAP (HO). FAP does contribute to project management costs but given this will be

the 25% or 50% there is still an additional cost to homeowners should they choose to employ someone.

6.3.3 Justifiable costs

FAP contributions are based on 'reasonable costs' as determined by the MBIE technical team. Where the Council is contributing, they will also look at the repair plans and costs to ensure the contribution can be justified. These are the costs of repairing the dwelling to a sufficiently high standard to ensure it is code compliant and no longer leaking (GO). They are also based on knowledge of what could be construed as reasonable building costs for the particular region (GO).

The homeowner stories retold in this report suggest the variation between their original quotes and WHRS assessed costs can be large in some instances. This variance was discussed by others interviewed. While much of the variance could be attributed to the issue of betterment, some was also attributed to both "*borderline dishonesty*" and to contractors being "*overly conservative*" (TA).

Some participants felt that certain builders and designers might be so risk averse that they were 'overproofing' (TA, GO). This is where they do more than is necessary to ensure they are not held liable for any future failure. Concern was also expressed that homeowners may be quoted at higher rates for the work than is necessary. As one of the homeowners suggested, "*once government money is involved everyone has a crack*" (HO).

There were questions raised in the interviews about where the pragmatic line is between the amount of time spent finalising the repair costs and the amount of money actually saved (GO, TA, CR, HO). Even those interviewed from the Councils had slightly different views on how narrow the line had to be drawn, probably a reflection on the number of leaky homes in their region and the size of the contributions they had to make. Simpler processes are possible, such as using the initial assessors report to determine the contribution payments, or paying on the average price for certain repair types (GO). Whether there would be sufficient accountability for public funds using these methods is unclear. In addition, the territorial authorities would have to agree to a simpler process.

6.3.4 The homeowners choosing FAP

Findings from the interviews show that, in the main, homeowners who repair their dwellings through FAP are those who can already afford to repair their home, or have sufficient equity in their home to be able to borrow the money to do so. The administrative data reported earlier also suggest the majority are standalone dwellings rather than multi-complexes. This is based on the number of active claims in the FAP process (351) and the dwellings they represent (585). This is a ratio of 1.7 dwellings per claim.

The homeowner stories suggest that the people FAP works for are also people who, for whatever reason do not want to litigate or go to dispute. In the homeowner stories these include moral and personal reasons, a concern that legal costs will be too high, or that litigation is "*out of their league*" (HO). Some already knew their builder had no money and others did not feel it was correct to blame the builders. The interviews also suggest that they are not those who are really "*angry*", that "*the angries*" chose litigation or dispute to ensure "*they have their day in court*" (TA). Some homeowners may be looking to "*allocate blame rather than find a solution*" (GO).

Interview participants were asked about the type of people that FAP worked best for. This is slightly different than the people who register an interest in FAP. The comments by participants from all groups suggest that those going through the FAP process need to be:

- educated
- financially and computer literate
- resilient and resourceful
- able to project manage a construction process, or afford a project manager.

6.3.5 The FAP process as experienced by homeowners

The homeowner journey as presented earlier in Figure 10 is a detailed step-by-step process that homeowners need to follow. One of those interviewed (Hank) did try to speed the process up by completing some stages concurrently but, as he reported, this did lead to some issues (HO).

FAP is essentially two processes with two different outcomes:

1. It is a building and construction process to repair leaky homes.
2. It is a financial package providing a contribution to costs.

These two processes run concurrently requiring different forms and information with a range of checks and balances. In considering the homeowner experience as they work through this journey it is important to remember that a combination of stressful circumstances is likely to have coloured their perceptions of the FAP process, if not the outcome. It is possible it has also influenced their ability to manage the frustrations they experience. Many feel like victims, are in a position they do not want to be in and are being forced to cope with a level of detail and scrutiny they feel is unwarranted (GO, TA).

In this context, participating homeowners and claimant representatives described their experiences of the administration and management of the FAP process as difficult, complex and bureaucratic, *'like fitting a square peg in a round hole'* (CR). While they understood that public money needed to be wisely and carefully spent, justifying the scrutiny of FAP approved payments, they felt that the process could have been simpler, and that sometimes the differences in costs were not worth the time and arguments spent on them. Some of them felt there was a lack of trust and that the process was driven by the few *'who tried to get more than they deserved'* (CR) from the Crown and the Council.

Beyond the twin issues of betterment and reasonable costs, there are two procedural areas of frustration for homeowners. First is the number of forms and spreadsheets, some of which needed technical expertise and which they perceive as needing to be *"broken down to the last nail and piece of glue"* (HO). For some homeowners the initial reaction was *"oh my god, what a paper war"* (HO). Others commented that at the end of the process they felt like they *"could get a degree in FAP"* (HO).

Even homeowners who considered themselves *'intelligent'*, used to *"dealing with uncertainty and filling in forms"*, reported that they needed help to navigate their way through the process (HO). They thought it would be even harder for other *"less educated"* homeowners, *"especially older ones"* (HO). One of those interviewed did consider establishing a consultancy to support other

homeowners. As he said he would know what to do if he went through FAP again. As with MBIE staff and designers it is likely that the FAP process is much simpler once you have some experience in working through it. The difficulty for homeowners is that it is, hopefully, a once only experience.

Second, is the time the process takes. Homeowners and claimant representatives talked of perceived delays and being frustrated at the “*toing and froing*”, feeling that while they were dealing with repair plans their “*house was falling down*” (HO). While some of the MBIE personnel interviewed seemed to agree that there were delays at times, all agreed that as a building and construction process the process was necessarily lengthy. The reported delays to the process appear to be primarily related to ensuring accuracy and to the agreement of reasonable costs.

The next section of this report considers the time it takes to complete the FAP process using administrative data.

6.3.6 The time it takes to complete FAP

Administrative and monitoring data provides some clarity around the time it takes to complete the different stages of the FAP process and the impact of inaccurate or incomplete forms. As Table 8 shows on average it takes 352 days to complete the building process and for the homeowner to receive the final contribution payment. At this point their house will be repaired and a code compliance certificate granted. Notice to proceed, which is when repairs can begin, takes, on average, 261 days. The timelines here include those claims where Councils are contributing the 25%. It is very likely that this time is shortened considerably where the repair plans do not need to also attain Council approval.

Table 8: Average days taken to achieve milestones across homeowner journey

Milestone achieved	Average days taken
Confirm funding	21
Formalise Homeowner Agreement	31
Receive Territorial Authority reviewed repair plan	77
Decide repair plan	17
Receive payment plan	76
Decide payment plan	23
Notice to proceed given	16
Receive final payment	91
Total days taken on average	352

Not surprisingly, approving the repair and payment plans account for most of the time taken (77 and 76 days respectively). Administrative data related to the time in technical review for each of these, along with the final claim, has also been analysed. The times reported in the following paragraphs do not include the approval time for territorial authorities, they are the time it takes for the WHRS technical team to complete their review. In all instances, the impact of needing further consultation is obvious. Such consultation could be with the Council involved or with the homeowner/designer where information is incomplete or inaccurate.

Repair plans: In the year to date from July 2012 to April 2013, 138 repair plans were completed and three were declined. Of the 138 that were completed 48 (35%) did not require further consultation. The remaining 90 (65%) did. Where a repair plan does not require further consultation it takes, on average, 8 days for approval. Where it does require further consultation it takes, on average, 21 days to review a repair plan, an additional 13 days. The average time in technical review for repair plans was 16 days.

Payment plans: Over the same time period 58 payment plans were completed. Of these 22 (38%) did not require further consultation while 36 (62%) did. The average number of days to complete a review, where no further consultation was required was 11, compared to 35 days where consultation was required. This is an increase of 24 days. The average time in technical review for payment plans was 25 days.

Final claims: Over the same period 42 final claims were completed. Of these 23 (55%) did not require more consultation or information. The average number of days in review where no further information required was 8 days compared with 38 days where there was consultation or other information requirements. This is an increase of 30 days, the largest across the three stages. The average time in technical review for this stage was 21 days.

What these data show is that where there is a need for further consultation the process can take up to 67 extra days based on a worst case scenario across one claim. This would seem to support the view of some of those interviewed regarding the efficiency of the process when homeowners are able to provide the correct information when asked for it (TA,GO).

6.3.7 Informed decision making and processes

In considering the homeowner experiences it is important to differentiate between decisions they need to make and understanding the consequences of those decisions, and knowing what to do to successfully complete the FAP process.

The first requires homeowners to make cost-benefit decisions, to consider long term benefits versus short term. They need to consider whether repairing their home, for example, will increase its capital value and their equity sufficiently to cover the cost of repairs. In some instances they may decide they are better to sell as is and move on. Others may see it as an opportunity to improve their home. They need to decide whether the risks of dispute resolution outweigh the potential financial gain.

It seems that in some case the homeowners do require more support when making decisions about what options to take. One homeowner commented that he felt like he was in an “*abyss of not*

knowing what to do" (HO), that he needed a *"source of truth"*, where he could *"find out all his options"* (HO). But this is not the role of the claims advisors.

The claims advisors do need to support them through the process, to ensure that it keeps moving forward and that the homeowners are aware of what they need to do. The data reported above regarding the time in technical review highlights how important it is that homeowners complete all necessary forms accurately and in detail. Where the technical team need to ask for more information, or for changes to the way it is presented, the process slows down markedly.

It could be argued, based on the homeowner interviews, that there is a lack of information to support the completion of the FAP process. However, it may not be a simple case of more information, rather it may be the capacity and/or willingness of the homeowners to access and understand the raft of information that is available. The MBIE website provides substantial amounts of information including FAP information packs (7) and PDF versions of the forms and templates (19) for completing the process.

There are seven information packs available regarding FAP. These are:

- Information pack for homeowners with standalone dwellings
- Information pack for homeowners in multi-unit complexes
- Information pack about quotes
- Information pack about funding
- Information pack about repair and payment
- Information pack for designers
- Information pack for builders.

These information packs do clearly outline what is required at each stage and should enable homeowners, designers and builders to navigate the homeowner journey successfully. Evaluating the extent to which they meet the needs of the different parties involved in FAP is outside the scope of this evaluation. Reflecting on the interviews it would seem the issue is information overload and complexity rather than insufficient information. Accessibility and usability as opposed to availability need to be considered. Further, as a number of those interviewed stated FAP is a building and construction process, it was always going to be difficult for laypeople to understand what is required.

The claims advisors commented that they had asked the technical team to provide exemplars of what is required in the form of completed repair and payment plans in an attempt to ensure these were correct in the first instance. Others in the WHRS team reported they were now providing designers with examples of what was needed. It is likely that the technical team has been working at a technical level, behind the scenes and that the claims advisors may not be aware of what they are doing given the geographical distance.

6.3.8 Multi-unit complex claims

New Zealand was described by a participant as an “*immature tenancy market*” (GO). This was because living in multi-complexes is relatively new in New Zealand and expectations around collective behaviour and responsibilities is not necessarily well established or understood (GO).

The WHRS legislation was not initially well suited to the complexities of this part of the residential market and some of the issues have continued into the FAP process (GO). As already discussed the provision for class action from body corporates representing all homeowners in a multi-unit complex was only established in the 2006 legislation. Prior to this they were all considered as individual claims. Of the 964 FAP capable claims lodged with WHRS, 88 (8%) are from multi-unit complexes. However, they represent 1991 dwellings or 69% of all dwellings which are currently part of FAP capable claims.

Issues of time, complexity, betterment and reasonable cost are the same for owners of units in multi-complexes as for those with standalone dwellings. However, there are additional complexities and hurdles related to the number of owners involved in one claim. For a claim to proceed all legal owners of each unit must agree to participate in FAP. This has led to instances where a FAP claim for a multi-complex has been blocked through one or two tenants being unwilling to sign the homeowner agreement. To continue the repairs anyway could be seen as undermining their individual property rights.

As the interview data suggests getting 100% commitment is not always easy for a range of reasons including:

- overseas landlords who cannot be reached
- landlords for whom it is an investment property only
- owners for whom English is a second language
- owners who are in denial
- owners who cannot afford the repairs.

Claimant representatives interviewed noted that some unit owners were “*tardy*” paying body corporate levies. They also commented on the lack of incentive for owners who were receiving a good rental income. Paul’s story, retold in Appendix One, clearly exemplifies the difficulties that body corporates can face. Interview participants suggested that either WHRS should accept less than 100% agreement for a FAP claim to proceed (CR), or body corporates needed to have more “*legal clout*”.

Understanding this market better and how to ensure that Body Corporates and unit occupiers and owners are well informed and understand their responsibilities would seem to be an important piece of work moving forward.

6.4 A snapshot of FAP claims

The information in this section is drawn from monitoring data and provides a snapshot of FAP claims as of the end of April 2013. Regular updates of monitoring data are available on the MBE website³².

6.4.1 Expressions of interest in FAP

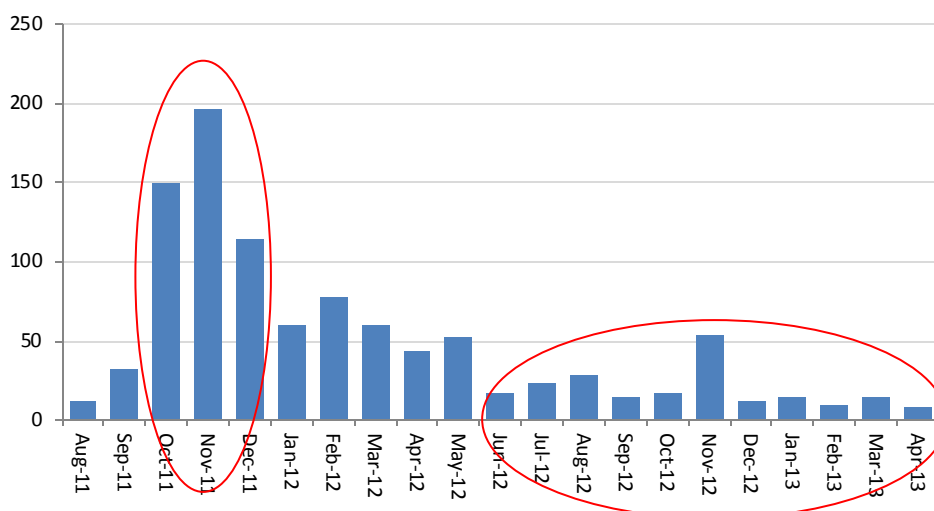
Between July 2011 and April 2013, a total of 1,235 homeowners, representing 3,900 units, expressed interest in FAP and have been assessed for capability.

As Figure 14 displays there was a large number of capability assessments at the end of 2011. Across October (n=150), November (n=197) and December (n=115) there were 462 expressions of interest. This equates to 37% of all expressions of interest since FAP was introduced. The probable reasons for this peak are:

- Existing WHRS claimants needing to express their interest in FAP by 29 October 2011, three months after the scheme started.
- 'Stop the clock' expressions when the scheme first became available.

During the first half of 2012, expressions of interest in FAP were around 50 per month. Since June 2012 expressions of interest have decreased to around 16 per month (with the exception of November). The reason for the decline in FAP interest since mid-2012 is unclear. However it is possible that the 10-year limit is having an adverse impact. This could be reversed if people are forced into action as they come to realise they are running out of options – or as their homes begin to show more signs of deterioration. The latter is likely to occur outside of Auckland in drier regions of New Zealand.

Figure 14: Homeowner expressions of interest in FAP by the month capability was determined.



³² <http://www.dbh.govt.nz/weather-tightness-index>

6.4.2: FAP capability and contributions

Of the 1,235 homeowners that have expressed an interest with FAP, 964 have been deemed to be FAP capable. Approximately half of the capable claims are eligible for both Council and Crown contributions. However, as earlier reported data show this does not mean that all FAP capable claims are pursuing resolution. Further, data related to the overall contributions made by the Crown and the Councils suggests that Crown payments are close to three times those made by participating Councils.

Table 9: FAP capability assessment outcomes

FAP contribution status	Number of claims	Percentage of assessments	Number of dwellings	Percentage of dwellings
Council and government	484	39%	1,106	28%
Government only	480	39%	1,773	45%
Total FAP capable	964	78%	2,879	74%
Not capable	271	22%	1,021	26%
Total assessed	1,235		3,900	

The four top reasons for the 22% of applications that were not deemed to be capable are:

1. The building consents for repairs/alterations were issued *before* 1st November 2009 (42%) and only repairs or alterations for which a building consent was issued on or after 1 November 2009 are eligible.
2. The claimant is currently in a civil or tribunal proceeding with a Territorial Authority (22%).
3. The claimant does not have an eligible WHRS claim (20%).
4. The claimant has previously settled with a Territorial Authority (9%).

6.4.3 FAP completed repairs

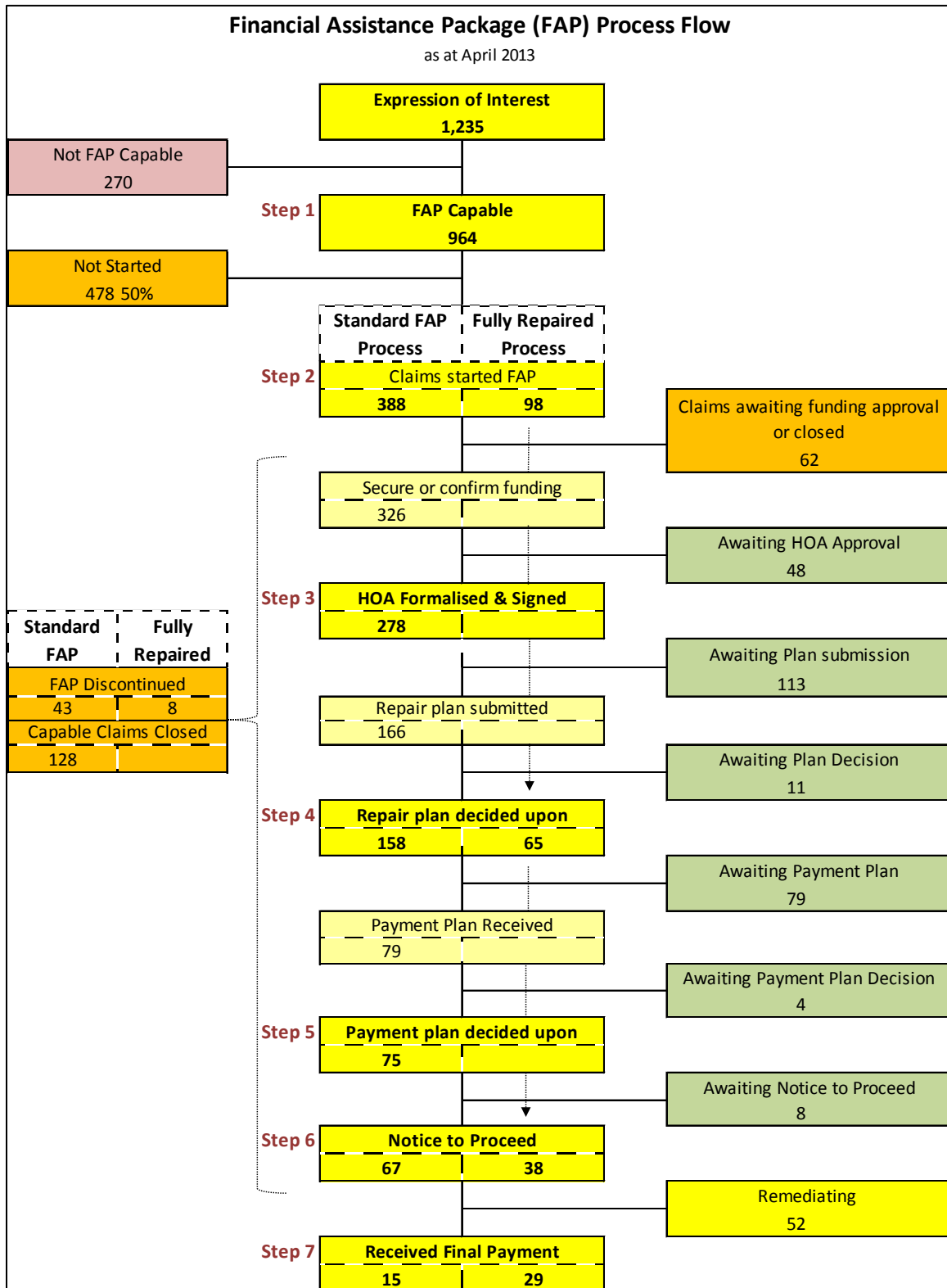
Figure 15 details the number of claims at each stage of the homeowner journey. It provides insights into the progress the 964 capable claims are making. Those following the standard process (homes not repaired) are separated from those who were able to utilise the FAP scheme despite their homes being prepared.

Of note:

- 98 claims (10%) had already repaired their homes when they expressed an interest in FAP and as such go through a shorter process.
- 478 claimants (50% of all FAP capable claims) have not yet started the process. Some like David and Harry will be deciding what to do. Others like Ben and Ann may have decided not to proceed (HO).
- 55 claims have not continued the process once they started.
- 128 capable claims have been closed.
- 44 claimants have received their final payments.

This flow chart highlights the extent to which the latter stages of the FAP process are still relatively immature in terms of their implementation. Only 15 claims have been through the entire standard process and 279 claims have only just completed the first major milestone of getting the homeowner agreement signed.

Figure 15: FAP process flowchart



6.5 The costs of FAP

The third evaluation question was related to the cost to the Crown of administering FAP compared to the remediation costs. In this section these costs are discussed.

6.5.1 Repair costs

FAP monitoring data shows that on average, for a single stand-alone leakyhouse, the estimated cost of repair is \$220,000³³. For a multi-complex claim the estimated costs for repair is on average \$2.4m, or \$95,000 per unit.

Based on these costs Table 10 outlines the different contribution levels for a claim. The 25% estimated contributions reflect the amount the Crown and Councils (where applicable) can expect to pay on average. The 50% and 75% contributions depict the costs to homeowners dependent on the inclusion of the Council.

Table 10: Average repair costs and contributions for dwellings

Type of dwelling	Cost per claim	Cost per dwelling	25% per dwelling	50% per dwelling	75% per dwelling
Multi-unit complex	\$2,360,142	\$94,716	\$23,679	\$47,358	\$71,037
Standalone	\$223,040	\$220,343	\$55,086	\$110,172	\$165,257
Overall	\$371,517	\$138,983	\$34,746	\$69,492	\$104,237

6.5.2 The costs to the Crown

The following table summarises the relevant costs to the Crown of administering the WHRS. These figures include the costs for the initial assessment of the eligibility of homes prior to the homeowner deciding whether to go into FAP or through the Tribunal. The costs have been adjusted for the 2011/2012 year to allow for \$900,000 of costs related to media advertising and extra contractors employed during the set-up of FAP.

Table 11: Costs of administering WHRS

	2009/2010	2010/2011	2011/2012	2012/2013 ³⁴
Weather-tight costs ³⁵	\$8,109,483	\$8,470,722	\$10,552,281	\$8,900,000
Total expenditure ³⁶	\$10,373,082	\$10,644,173	\$13,706,582	\$10,900,000
FAP Crown payments ³⁷	\$0	\$0	\$416,000	\$7,369,000

³³ Estimated figure based on the assessment report of the property.

³⁴ These costs are estimated to the end of June 2013.

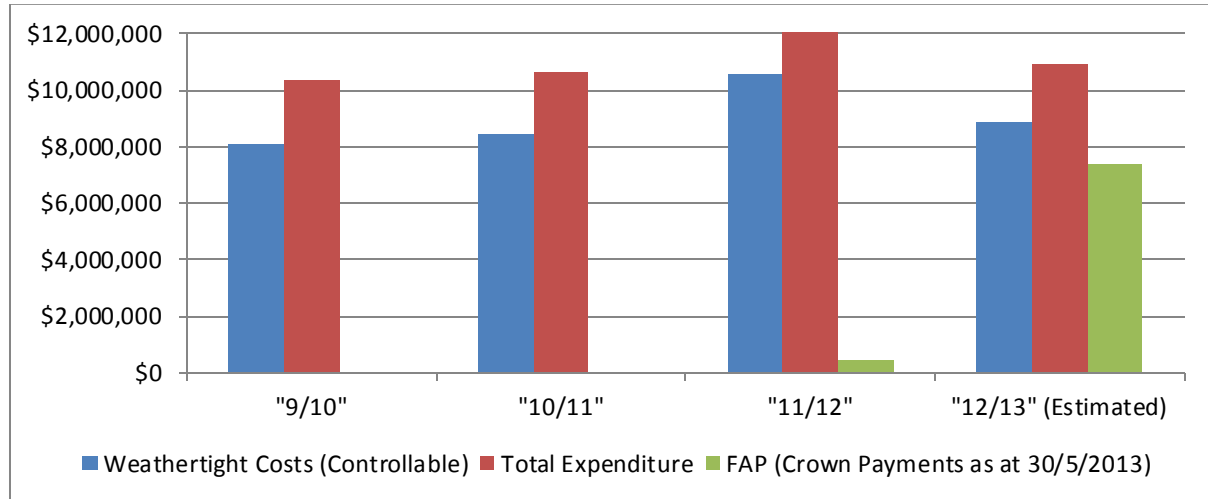
³⁵ These are the controllable costs directly related to the administration of the WHRS and include operational costs.

³⁶ Total expenditure includes corporate overheads and any costs not directly related to the operation of the WHRS.

³⁷ These are Crown payments that had been made.

What these data show is that in real terms FAP has not markedly added to the costs of administering WHRS. While there were extra costs in 2011/2012 related to the development and initial implementation of the FAP process there has been a relatively consistent increase in total WHRS administration costs overtime.

Figure 16: Comparison of WHRS administration costs and FAP contributions overtime.



In considering the cost of FAP to the Crown it is also worth considering the cost to Councils of FAP contributions. For the 115 homeowner agreements confirmed (April 2103) the agreed contribution from the Crown was approximately \$10,389,000. This compares with approximately \$3,972,000 from Councils, equating to 28% of all contributions. What these data highlight is the extent to which completed FAP claims were predominantly eligible for the Crown 25% only.

7.0 Conclusions

This section responds to the three evaluation questions based on the information and data presented in the preceding sections. These questions were:

1. Is the FAP scheme enabling more leaky homes to get repaired?
2. Is the FAP scheme helping the sector to move forward from a history of dispute and litigation?
3. What was the cost to the Crown of administering FAP compared with the cost of the remediation work that has been completed?

The first two questions are difficult to answer with any certainty from the evidence collected. Answering these with more accuracy would have required a large scale survey of homeowners and specific questions regarding the choices they have made, both outside the scope of this work.

When considering these questions it is important to remember that the total number of claims lodged with WHRS in February 2013 was 6,945. In May, this had risen to 6,978 claims; another 33 claims over 3 months. Either the initial assessment of leaky homes was overstated, or only a very small proportion of owners of leaky homes are lodging claims with WHRS. If the latter is the case, there is probably a bigger question to be asked around the current state of the other homes and what has been done, if anything, to repair them.

The data collected shows that FAP has provided homeowners with an option beyond dispute or litigation, and as such has enabled some homes to be repaired. The number of people registering claims when FAP was announced suggests that, at least, initially homeowners were very interested. It is likely this was due to a perception that FAP was a compensation scheme rather than a construction process with financial support. This is highlighted by the changes in trend data presented around the time FAP was either announced or implemented. However, the long term data shows that this interest was not sustained. Whether these people would have registered a WHRS claim without FAP; that is whether FAP has brought more people into the WHRS than would otherwise have joined cannot be determined. It is possible that numbers within WHRS processes would have declined without FAP.

Evidence from the interviews suggests mixed feedback regarding the value of the FAP contributions. There is evidence to suggest that FAP has enabled some homeowners to repair their homes, who otherwise might not have. For these homeowners the contributions have made the repairs affordable for them. There is also a sense that some of those who have utilised FAP would have repaired their homes anyway, that they had the necessary finance to do so. The comparative amounts contributed by the Crown and participating Councils suggests that FAP is largely being utilised by homeowners who cannot sue their local council.

For those who do not want to litigate or enter into dispute FAP is a welcome option. However, whether FAP has moved homeowners away from dispute and litigation is more problematic. The data presented in this report suggest it has not yet had a noticeable, long term impact on the numbers of homeowners entering dispute or litigation. The Auckland High Court numbers did appear to drop off when FAP was first announced but they then appear to have rebounded. The number of homeowners choosing to resolve their claim through dispute resolution within WHRS has

also remained constant. This is probably due to the likelihood of higher levels of reparation minimising the costs to homeowners for repairs.

However, a comparison of the options homeowners have taken for claims actively pursuing resolution over the last 12 months suggests FAP may have been successful in moving a few people away from dispute and/or litigation. Again these figures need to be read in context. In February 2013 there were only 841 claims where the claimant was actively pursuing resolution. This was 56% of all active claims, which equates to 22% of all WHRS claims. What is worth noting is that increasingly those with WHRS claims appear to be choosing FAP rather than dispute or litigation. However, there does appear to be a large group of claimants currently just waiting to make a decision.

Based on the evidence FAP appears to be catering to a small market. Specifically, to a group of homeowners who have the necessary finances to meet their contributions and who do not want to, or are unable to, litigate. This market could conceivably increase as the impact of the weathertightness issue on those in the building and related industries continues to spread.

Overtime, there will be less and less people 'left standing' and the opportunity to get money from anyone beyond the Councils will decrease. However, given 'joint and several liability' as long as a Council is joined in any action there will always be someone left to pay, provided the 10-year limit has not been reached.

Of concern though, is the very small number of claims, and dwellings, represented. In February 2013, there were only 351 claims in the FAP process. This had increased to 382 claims in May; an additional 31 claims over the three months. When one considers there have been nearly 7000 claims lodged with WHRS, FAP capable claims are only a very small proportion.

Even more marked, is the limited nature of the overall influence of FAP in the context of an estimated 42,000 failures³⁸ and claims being lodged for 10,303 dwellings at the end of February 2013. The proportion of dwellings within the FAP process (656 at February 2013) is 1.6% of estimated failures and 6.4% of all claims lodged.

With regard to the third question and the cost effectiveness of the FAP scheme, the data suggests that the additional cost of administering FAP is a very small proportion of the overall costs of administering the WHRS. There was an increase in costs in 2011/2012 when FAP was first implemented but this has since balanced out. Further, there was a spike in the number of claims being lodged with WHRS over this period so it is possible any increases are related, at least in part, to increased workload.

In conclusion, it can be argued that FAP has successfully provided an alternative for a small group of homeowners but its overall influence on the wider weathertightness issue has been very limited. It is likely that FAP has moved some people away from dispute and/or litigation and that as time passes it may become increasingly popular given the difficulty of finding people still 'standing'. It can also be argued that the administration of FAP is not expensive when considered as part of the wider WHRS programme.

³⁸ Based on the PWC figures

8.0 Next Steps

In considering next steps it is worth examining why FAP has not had a bigger influence on the resolution of the leaky homes. The evidence collected through the interviews suggests there are two key reasons:

1. Discussions with participants suggest that lawyers have been proactive in promoting their services and the benefits of dispute and/or litigation. By the time FAP was announced it is very likely the more proactive homeowners had already entered into dispute or litigation, were 'lawyered up' and unlikely to move to FAP.
2. There has reportedly been negative press about FAP including: the time it takes to complete the process; the amount of paperwork required; the scrutiny that repair plans and quotations are put under; the perception that repairs are minimal only. It was suggested that many in the building industry would actively promote other options to homeowners to avoid the paperwork and scrutiny.

While little can be done about the former it is, perhaps, worth reflecting on how the public perception of FAP could be improved and whether any further internal changes to the way the scheme is implemented are possible. There are undeniable benefits to the FAP scheme related to getting homes repaired with certainty about both the quality and the costs. The expertise that is utilised by MBIE in the FAP process is something most homeowners would not have ready access to.

Interestingly, whenever a major change to weathertightness legislation has been made there has been a peak in numbers registering. Perhaps it is worth starting to emphasise the approaching 10-year limit and the benefits of registering with WHRS for the options it provides. The negative perceptions of FAP reported here could, arguably, be limited through a different approach to the way homeowners are supported through the FAP process. The idea of more technical expertise being readily available to ensure forms are completed accurately and that minimum time is lost in clarifications would seem worth considering.

However, regardless of any efforts to actively promote and/or enhance FAP and/or the WHRS options in general a more pressing question is what has happened to the other homes expected to fail. With the increasing focus on home affordability and warrants of fitness the issue of leaky homes is likely to remain to the forefront. Even if all the homes currently deemed FAP capable complete the process that is less than 1000 leaky homes repaired. Litigation and dispute do not necessarily mean a home is repaired. Although, given people are advised to repair their home first in order to strengthen their claim it is likely the majority have been. This would suggest, based on WHRS resolution figures that just over 2000 claims have been resolved. It is not immediately clear how many dwellings these represent given the multi-complex claims.

Referring back to the PWC report this potentially leaves a very large proportion of possibly leaky dwellings whose current status is unknown. If these are dwellings where people cannot afford repairs, or where they are simply ignoring them, or they are owned by landlords who do not see any benefit to repair, the impact on the quality and availability of the New Zealand residential housing stock could be seriously impaired in the long term. It is this larger question that attention should, perhaps, now be turned to.

Appendix: Homeowner stories

Tom and Mary

Tom and Mary are an older couple. Their *“lovely, hot and sunny”* stand-alone house was finished in 2001. They had decided to replace the plaster cladding of their home and had been expecting to possibly find minor damage to the timber. However, they were *“surprised”* and *“shocked”* to discover the extent of rotten wood and that they had a leaky home. The builder, architect and council building inspector were also *“stunned and surprised”*.

There was *“dry rot which simply crumbled to the touch”* and as a result they had to replace 100% of the timber of their two storey house, including the decking. They felt *“lucky”* that there was none of the *“poisonous fungus found in some houses”*.

The repairs were completed in 2010, costing them four times as much as they had initially expected. They had to borrow all the money for the repair, but it was *“affordable”* because, as Tom explained, they both work for a *“reasonable wage”*, a position they realise not everyone is in. The alternatives to repairing their home were to demolish it and rebuild but this would have cost more, or they could have sold for the land value alone. Since repairing their home, Tom reported it had increased in value sufficiently to cover the cost of what they spent on the repairs.

Tom and Mary found about FAP through the news and registered for it as soon as it was announced, to meet the ten year limit. They did not qualify for the council contribution because it had been certified by an independent building inspector. However, Tom felt that the 25% contribution from the government *“made a huge difference”*; that it *“was fantastic”*.

They found the FAP process *“reasonably straightforward”* and *“good”*. Their claims advisor was *“fantastic, very good to deal with, very helpful, made the process good”*. At the end of the process, when Tom thanked their claims advisor, he was asked to tell the others in the office as they were *“so used to hearing only complaints”*. Tom suggested that his professional background made it easier for him to work through the forms than it might have been for others.

The two complaints Tom has about the process are:

- *“The forms were weird with hard to fathom questions”*, and many of the questions did not apply to them as they were completing the FAP process after having repaired their home.
- Tom believed that the whole process had not been explained to them at the start; that they *“went in with little comprehension...discovering things as they went along”* and as a result they had to *“keep going back to the Claims Advisor for advice”*.

Tom said they did not consider litigation as there was no one to sue. Any parties involved were *“all bankrupt or dead”*. Further, in Tom’s view, it was the design at fault so he doesn’t blame anyone specifically. This includes the Council *“who were just policing government rules”*.

Paul, Beth and Sue

Paul and his wife jointly own a unit in a 10-unit complex with their daughter. Paul was asked by the complex's body corporate to represent the owners through the leaky home process.

The units were "*rotten from the inside and mouldy*", so the council had issued them with a notice to fix. The repairs were major, involving replacing rotten timber and cladding. The initial assessment estimated the cost at \$1,000,000, but the actual repairs cost \$871,000, including project management, because, as Paul explained, they "*kept tight control*". Paul "*can't speak highly enough*" of the building company, although he said he had heard of other people being "*rorted*" by such companies.

The body corporate did not feel that litigation or dispute were options they had. The council had not signed off on a Code Compliance Certificate (CCC). This was because the complex had only an interim CCC as one owner had refused to "*come to the party about a fire wall*". The construction workers involved in building the units were no longer in business. The body corporate felt that this left them little choice but to repair or sell at a loss, which one person did, leaving them "*caught between a rock and a hard place*".

The body corporate lodged a claim with the Weathertight Homes Resolution Service (WHRS), after they had commenced repairs. They were eligible for the government 25% and as Paul said they "*would have signed anything to get something*". Their claim was lodged before the FAP process was finalised and as such it took some time for the Homeowner Agreement to be finalised. They were just completing the repairs when this occurred.

Paul found the repair process "*hard*" and particularly stressful for him because he "*was responsible to the body corporate*". He also said that it was stressful for many of the residents who "*had to move out*" while the repairs were being completed, a period of about eight months. Owners with rentals didn't get income for that length of time as their tenants moved out.

Paul "*had a hard time getting people to pay for their share of the repairs*". He said that half the owners "*struggled*" to get the money necessary. One story he relayed was about how one owner, who "*sold his unit very cheaply went bankrupt*". That buyer then immediately sold it when he found out the cost of repairs, without revealing to the next buyer that it was leaky. The new owner (the third) then struggled to get a loan for their share of the repairs. The Body Corporate had to take another owner to the High Court. "*At the last minute she came around*", but it still cost the body corporate \$10,000 in legal fees.

The "*excellent*" building company actually started the work with only 60% of the owners paying up front and the others paying gradually. The last owner paid after the CCC was granted, and as he described it, Paul "*sweated all the way through*" the process.

Paul found FAP "*confusing*", but he "*got on with the process*" and "*mapped his way through it without any assistance*". During the process the claims advisers changed a few times, with the final one somebody Paul "*can't speak highly enough about*" because he was "*so helpful*".

From his experiences, Paul would argue that there needs to be someone within the Body Corporate driving the process as he did. That person "*has to be a bully with the other owners*" when necessary.

Despite the Council notice to repair, *'it's possible to string [the council] along for some time'*. If he hadn't acted as he did, he believes *"the complex would have fallen away around them"*. Paul now believes that because *"it's so difficult with people who don't pay"*, Body Corporates should have *"legal clout"* to be able to put through mortgagee sales or *"make people pay"*. This complex has only 10 units and in his view it *"would have been so much harder with larger complexes"*.

His daughter now lives in their unit and other owners have since sold. The value of the units has gone up, and he expects that by the time they sell, they will recover their money as well as gain in capital value.

Bob and May

Bob and May are an older couple, whose family have left home. They had equity in their home enabling them to borrow the repair money by extending their mortgage. They were amongst the earliest FAP claimants.

They were eligible for the government 25% contribution only. Their certifier was working for a private company, which has since closed down. May mentioned being frustrated that the same certifier is now working for the Council and that the Council had not accepted any responsibility.

May said they were *"distraught"* when they first realised there was a problem but that they were *"one of the lucky ones"* with regard to the extent of the issue. Their home required a partial reclad due to *"shoddy workmanship"*. While this entailed fairly large repairs, they also felt it *"could have been worse"*.

It is clear they found the process difficult and time consuming. However, their attitude appears to be that the house *"just had to be fixed"*. May's reply, when asked about the overall impact on their lives, was that *"we coped"*, that *"when an issue arises you just deal with it"*.

They found out about FAP through the media and decided to contact the Department of Building and Housing (DBH). May's initial reaction was a sense of *"oh my god, what a paper war"*. But as she said, there was no choice but to work through it step by step. She described the whole FAP process as *"a huge disruption on your life"* with *"everyone treading carefully, doing things properly"*. She also said there were *"tears at the end of the phone"*.

May was very clear that they would *"not have got through it without the professional concern of their man [claims advisor] in Auckland"*, who she described as *"pleasant, amiable and always there to help."* May was stated that having a capable, knowledgeable builder is essential, one who is *"up with the play"* and able to provide what is required.

The only time she felt there was really an issue with the FAP process was towards the end. Their builder was ready to go and there was a small *"window of opportunity"* for them to get the work done. Everything had been agreed with DBH but they had been told they could not have the final go ahead. May spoke to the claims manager who said he would check with their lawyers. At this stage the process had taken eight months. They never heard back from DBH but went ahead anyway.

May was clear that even without FAP they would have repaired their home. They would not have sold their home as it was and litigation was not something they had considered. Their builder had

also worked for a friend who had similar problems. Their friend had sued the builder and this reportedly cost \$200,000 without the repairs being completed. They felt that the cost of lawyers was too great and they *“did not want to get involved with him [the builder]”*. Further, they would still have to repair their home.

Mike and Mona

Mike and Mona are both working. Their standalone house was completed about twelve years ago. It took some time for their leaky roof to surface due to the local climate. When it did there was mould in the garage and the rain *“literally poured in”*. They used to *“get wet in bed at night”*.

Mona rang the council asking for help when it first started happening. She found the council to be *“useless”*, with a *“tough luck sort of attitude”*. When a builder suggested she *“go down the leaky home route”*, she again rang the council who, wrongly, told her that *“rooves don’t count under leaky homes”*. Mona found it hard to get information about leaky homes, but eventually found some information on the Internet, including about FAP.

Mike and Mona had not really considered litigation because the legal route was *“way out of their league”*. Without someone to guide them through the legal process, they did not really understand what would be involved for them. Further it would *“cost too much”*.

Mona lodged a WHRS claim and chose the FAP option, qualifying for the council 25% contribution. To pay the remaining 50% they had to increase their mortgage, which they’re now trying to repay. Not fixing the leaky roof was not an option for them.

They are also going to go to mediation with the building company. Mediation will cost them \$500 or \$600 which, Mona feels, is *“nothing in the scheme of things”*. They found out about mediation through the Weathertight Homes Resolution Services team. They were one of the early claimants and, as such, Mona felt that the claims advisors *“did not always know what they were doing”* and were not *“overly helpful”*.

Mona felt that the FAP process was *“stressful”*, *“long and drawn out”* with *“many steps for such a basic repair job of replacing the roof”*. The cost of the repair was *“relatively small”* but was still *“a big issue for them”*. In her opinion, the *“length of time to resolution”*, for such a *“straightforward claim”*, was *“frustrating”*. One of the difficulties Mona experienced was that there were *“so many reports”*. As a result Mona has a box full of paperwork. Further, she had to make many calls to Wellington.

Had Mona known what the process would be like at the start, she probably wouldn’t have taken the FAP option. She reported that the time it took to start the repairs, from when they got the first quote, meant the building costs had gone up. Mona also felt that *“many builders didn’t want to have anything to do with it”* and that everybody was *“paranoid about getting it right”*. As a result they had, in her opinion, *“had to go through extra steps like getting scaffolding”*.

Overall, she believes that it has cost them more, in both time and money, to get the house repaired through FAP than it would have otherwise. This is despite the 50% contribution meaning they are *“somewhat better off”* than they would have been without it.

The positive from Mona's point of view is that they *"got there in the end, have a new roof and a dry home"*. To others considering FAP, she would suggest they *"consider it very carefully"*. She would recommend it for people with low cost repairs only, not for high cost repairs.

Hank

Hank and his mother shared the cost of a new home, paying 50% each. The house was next to a site where major earthworks had been undertaken and cracks had developed in their house as a result.

They planned to simply get the cracks repaired and the house painted. However, after doing some research they discovered the cladding on the house was one that was susceptible to leaking. They decided to investigate further, getting an assessor to do the tests as outlined on the Weathertight Homes Resolution Services website. The result was that the house was deemed leaky. Hank noted that the repair was not too bad as they had acted quickly and the only problems were with the cladding. In another five years, *"they would have had rotten timber"*, so were relieved they had been *"proactive"*.

When they first heard the news, they were *"surprised and shocked"*, but then decided that *"if it is what has to happen, it is what has to happen"*. Hank did consider litigation as he knew the builder and that *"there was no way any money was ever going to come from him"*. Hank also felt it was *"faulty materials rather than faulty workmanship"*.

The house had been privately certified, meaning the council was not liable, leaving them with the Government 25% only. This is something that Hank described as *"hugely disappointing"* as he believes the Council should be liable given they contracted the private certifiers and as such have overall responsibility. In his view the certifiers *"shut their door very quickly"*, meaning there was no chance of compensation from them.

While he was very *"appreciative"* that there was an option outside of litigation, Hank described the FAP process as *"horrendous"*, as *"really, really difficult"*. In his view *"an elderly or average home owner would not be able to complete it"*. He considers himself a *"fairly intelligent person – fairly switched on"* and he *"struggled"*. He did think about hiring a consultant but it would have cost too much. When it was all over he considered becoming a consultant as he could see a role for someone who knew the process.

The skills he feels are required to complete the FAP process include good communication skills, computer literacy and the necessary financial and technical skills to manage the different aspects of the project. He also feels a *"reasonable understanding of the building industry"* is needed. If people do not have these, Hank believes they need to hire a project manager, which he acknowledged would be expensive given the time the process takes.

Once they had decided to proceed with FAP, Hank decided he would simply *"follow the process step by step and keep moving forward"*. However, he did try to do things concurrently to speed the process up. This was because he *"was not prepared to wait another nine months"* and *"all the time the house was leaking"*. As discussed later, this *"almost got him in a bit of strife"* when *"it looked like [he] had taken [himself] out of eligibility"*.

Hank said that there were certainly *“times when they considered giving up”* and *“it did cost a lot of money”*. He felt that it had *“cost a fair chunk”* of the \$25,000 they received to actually get the money. Indeed, he felt they would have been *“somewhere in the same place”* if they had just paid for the repairs themselves. One concern, for Hank, was that once *“government money is involved everyone has a crack”*.

The costs included (estimates only):

- At least 100 hours of his time, equating to around \$10,000
- Legal costs - \$500
- Inspections - \$2000
- Resource consent - \$3500.

There were also costs for getting the financial spreadsheets completed. Comments he made on the process included:

- The time estimate of 100 hours was *“a low estimate”*.
- A reflection of the work involved is the *“3 inch thick folder of notes”*.
- The inspections were *“a double up”* as both the surveyor and the council inspected the house.
- The legal fees related to the *“signing away of rights”*.
- Having to pay the council for resource consent was *“really annoying given they were part of the problem and not liable”*.

Two people did come to Hank and ask whether FAP was a good option. His advice to them was that *“unless you are eligible for \$25,000 plus don’t do it”*. This was based on the need for a project manager and the costs of actually working through the process.

There were two specific times when Hank was ready to just give up. The first was when, after submitting a repair plan including the builder’s quote, they received a spreadsheet back showing them how the costing had to be done. In Hank’s view the spreadsheet required everything to be *“broken down to the last nail and piece of glue”*. His builder did not see why it had to be done that way and was *“not interested”* in redoing his costs as he had *“already got the job”*. Expertise was needed to complete the process which was a *“huge”* additional cost.

The second was when Hank had the builder start the repairs prior to final approval. This was to get it going but resulted in them nearly being declared ineligible for FAP. Hank was asked if he had already started the job and, at that point, he was ready to give up as it was all *“too hard anyway”* and they just wanted to get the house fixed and move on.

If he had to do the process again he felt that he would be *“so much wiser”*. The solution would be to sit down with their *“assigned point to point person”* and talk through the process. For example, if Hank had known about the spreadsheet he would have asked the builder to quote using it. Betterment was also an issue as they wanted to tidy up some extra things as the repairs were done. These were initially included in the main quote and they *“caused [Hank] a lot of grief”*. If working through FAP now, he would make sure the builder quoted the two things separately and they were treated as two different jobs.

Hank described his claims advisor as *“responsive but not forthcoming”*. Rather than the claims advisor providing guidance Hank felt he had to *“discover things and ask how to do things”*. In his view a *“general conversation would have been so much better”*. Hank felt that perhaps the process was *“so difficult”* because he was *“one of the early adopters”*.

Despite the difficulties and the costs incurred Hank is *“very, very happy now”*. They have a *“beautiful job out of it”*. The issue is something that could have been *“naively ignored”* and they would have *“just fixed the cracks and painted”*.

Nick

Nick and his family bought a standalone house in mid-2011 just before FAP was announced. They were going to move in after getting a leaky window fixed and the carpet replaced. However, while getting the window fixed, they found out that the leak was coming from the roof above and the window was not the problem. There were problems at the roof/wall junctions, and the skirting boards were cracked and swollen. An independent assessment of the home confirmed that it was leaky and would need a complete reclad. The assessor gave an estimate of \$520,000 for the reclad.

Nick heard about FAP when it was announced in the newspaper and also got information through DBH who sent him web links. Nick lodged a claim with Weathertight Homes Resolution Services (WHRS) and would have been one of the very early claimants. Their repair was eligible for the Government 25% through FAP. The house had been privately certified so they could not claim the Council 25%. The WHRS assessor determined a cost of \$410,000 to reclad, \$110,000 less than the private assessor.

They tried to discuss the difference in the two quotes with appropriate people within WHRS, believing that 25% of the difference was not too much for the Government to pay. The WHRS assessment had not included some things like a site foreman, which Nick talked to their claims advisor about. The claims advisor told them *“the technical team wouldn’t talk about it or discuss anything”*. Nick found that it was *“too difficult to argue”* and as no-one would meet with them they *“gave up”* deciding to *“just take what [WHRS were] offering”*.

They chose to rebuild their home without the *“stigma of a leaky home”* and Nick believes it was *“cheaper than repairing”*. During the rebuild, they rented accommodation and put their belongings into storage. The rental accommodation cost them between \$50,000 and \$60,000 and Nick considers *“the FAP rent cap of \$5,000 [to be] unfair”*. His wife took their young children overseas to stay with her parents for two months, during which time he missed out on his children’s development. At one point he slept in his office for two weeks.

During the FAP process Nick worked with three different claims advisors. He managed the process himself without other assistance, asking his claim advisor for advice. In the end, he found that *“one of them was quite helpful”*. Nick found the process difficult even though they skipped some of it because they were rebuilding rather than repairing. He felt it would have been *“even harder”* had they been repairing, *“getting all the quotes, filling in more forms and spreadsheets”*. In his view FAP *“was a heap of work”* and it *“wasn’t user friendly”*. He filled in so many spreadsheets that he feels he *“could get a degree in FAP”*.

Nick struggled with the forms *“despite having a degree and an education”* and imagines that others *“would get even more frustrated”*. He *“just filled in the boxes to get the thing through”*. He felt that the FAP forms and spreadsheets he did complete were designed for repairs not rebuilding and that this added to his difficulties. He also felt that because they were early in the process some of the *“documents were not ready”*

The rebuild cost them \$616,000 in the end, including all their costs. Their home now has eaves to make it weathertight, something not covered by FAP as it is considered betterment. Affording the rebuild has been *“really hard”*. They have had to borrow money, and Nick sold a rental property he owned with his parents.

They are now in mediation with the people who sold the house to them, along with the people who did the pre-purchase inspection. The sellers *“knew it had leaky issues but never divulged it even when asked”*. Nick believes the inspectors were *“negligent”* and *“didn’t explain’ things to them”* meaning they are *“owed duty of care”*. The legal fees *“are not cheap”*, and he realises *“there is no guarantee of the outcome”*. The mediation process has been stressful too, and *“stuffs up your whole family life”*. Even if they had been eligible for the 50% contribution through FAP, they would have probably sued the other parties.

He believes that if the Government lets Councils contract out the certification of homes, either the Government or the Council should still be liable for that 25%. While Nick was appreciative of the 25%, in that *“it’s good that the government helps”* he felt that *“25% is still low”* and that *“50% would be good”*. He did say, however, that he understood *“the Government not paying for things they don’t have to”*.

Nick is *“not sure”* whether he would recommend FAP to others or not, but feels he had *“no other choice”* there was *“nothing else”*.

David

David owns a stand-alone dwelling, which he rents out. It is in a block of 17 units, but each has a separate unit title and as such can be a separate WHRS claim. There is an attaching wall to the next unit. David thinks that a claim may have been lodged for another unit in the complex but does not think the rest have.

David was overseas when his tenants complained about a damp carpet downstairs. He asked a builder friend to look at it, who thought it might be a leaky home. The same friend suggested David should register for FAP, as he was coming up to the 10 year time limit. He did so from overseas, reading the information on the WHRS website, which he described as *“quite a bit of reading”*.

He has lodged a WHRS claim and had the assessment and testing completed. However, he has not yet signed the Homeowner Agreement. The unit needs a full reclad at a cost of \$200,000, which is more than the unit itself is worth. It was privately signed off, so he would not get the Council contribution. The builder is bankrupt and, in David’s view, he *“was a cowboy, never on the site anyway”* meaning *“there is no one to sue, no point going to mediation either”*. David is *“not keen on the legal route anyway”*, after reading others’ stories in the media.

David said the unit is currently earning “good rent” and “the tenants are fine”. The unit was part of a divorce settlement and David commented that he “doesn’t need the unit as it’s not an investment property”. David has now moved on, has a new partner and is “happy paying the mortgage on their nice home” and having “overseas trips”.

David is finding it too hard to decide what to do with the unit. He has put the decision about whether or not to repair using FAP in the “too hard basket”. For him, “the hardest thing to get your head around is that the repairs could be worth more than the house”. He is also aware that the LIM will state the unit is leaky even if it is fixed. Currently, the unit is “almost worthless” and even if he did fix it he is worried he might not get the money back when he sells it due to the stigma of having been a leaky home.

He’s unsure how he’ll make the decision, but “the money is the biggest factor”. Even with the 25% contribution through FAP he will struggle to find the money to do the repairs. In his opinion, there is really “no major benefit getting only 25% out of \$200k” as the balance is still “unaffordable”. He would get it fixed if he saw a “major benefit for himself”. He may consider selling the unit “as is” to a builder, or with some small repairs done independently of FAP. David said that he would lose some money if he did so but it would “get rid of this black cloud”. Further, the claims advisor, who is “good value”, has explained the FAP process and the time it takes and it seems like too much effort.

The claims advisor wants to know what he’s going to do and David expects to make a decision in the next month to 6 weeks. He’s going to build up his own knowledge and have a look at what others in the complex have done. One unit is for sale and he’ll “see how much it’s on the market for”. Another may have been fixed, but he’s not sure to what extent.

“Knowing what he knows now”, David said he probably wouldn’t register for FAP. If he hadn’t already lodged a claim he would have looked at it more himself, and just fixed the cladding or sold it as it was. But he was overseas at the time. Now that he’s registered for FAP it’s on the LIM (Land Information Memorandum). His view is that the government “doesn’t want to give money out” and he doesn’t “expect a change of government to fund 100%”.

Ben and Ann

Ben and Ann are a retired couple who have a family. Their stand-alone house, which is “quite nice”, was completed in 2001 and they have lived there since it was built. It has monolithic cladding. Parts of the building have a cavity, unlike other houses built at the time. They project managed the building of it themselves, contracting in trades people. The building process was overseen by a builder, but they cannot hold him responsible. Ben was not a builder himself.

They did not get a code compliance certificate (CCC) when the house was completed. This was because there were, what Ben considers to be, a “few trivial” things needing to be completed. When they later went to get the CCC the house was found to be potentially leaky due to design features including no cavity in some places and insufficient run-off from the decking. Beyond these design features they have not seen any signs of a leaky building so far.

They registered for FAP based on the recommendation of their friends and the “people who did the testing”. They qualify for only 25% because the CCC had not been issued prior to discovering the

home was potentially leaky. The initial assessment for the remediation work required was \$350,000. However, based on the WHRS assessment they would get only \$50,000 as that assessment is lower.

Ben and Ann have decided not to proceed with their WHRS claim at this stage. They have found the whole FAP process *“worrying, time consuming, and stressful”*. As a result, they have *“put the whole thing on the back burner”*, and are not doing anything or *“even thinking about it”*. It’s *“easier to just forget about it”*. After all, *“it’s potentially a leaky home, not actually a leaky home now”*. If it were actually leaking they would pursue it further. They could raise the finance for it even though it is *“a hell of a lot”* and it would take a *“slice out of their savings, not leaving much”*.

Ben and Ann did think about litigation but said they probably would not take that route because of the cost. When it comes to selling the house they will do some of the repairs but not to the extent recommended. They are aware the house still won’t get the CCC without getting it fully repaired.

Harry

Harry’s trust owns a *“fairly average size”* stand-alone house. It’s a holiday home for the family, which they use sometimes and very occasionally rent out for a day or week. It was completed in 2001. Harry has a career in senior management.

In about 2005, the *“house sprung the odd leak in the ceiling when it rained”*. Harry explained that at the time they *“didn’t think about it too much”*. However, a neighbour with some building experience said there might be issues, so Harry got an independent building consultant to check the house. This person cut out holes in the outside of the house and said it needed a full reclad at a cost of \$400,000. This consultation cost Harry \$15,000.

Harry then lodged a claim within the WHRS system for FAP. The WHRS assessment supported the findings of the earlier, independent assessment. His claims advisor, who came out to visit them about two years ago, and with whom he has had email contact ever since, has been *“really good”*. The local Council has not opted into the FAP scheme and the house was independently certified anyway so he qualifies for the 25% contribution only.

Harry did consider both mediation and litigation. He has decided against litigation at this stage on *“moral grounds”*. While he hasn’t *“ruled it out”*, he is *“unlikely to go down this route”* in the future. He has a *“personal issue”* with the designer who is a family friend, and a *“helper with the project management is also a close friend”*. He doesn’t want to draw them into litigation. Even though Harry holds the builder responsible, he *“didn’t feel it was the right thing to do”* to involve him in litigation as *“he is older, over 70 years old, and had cancer”*. He has had legal advice that he can’t *“touch the Council”*. He thinks this advice is *“utterly wrong”*, because the Council is ultimately responsible for the independent certifiers. The same situation applies with regard to mediation as the same parties would be involved.

Affordability is an issue for Harry, it’s *“too hard”* and that is even though he’s *“more fortunate than most having been in a fairly well paid job”*. He believes that *“for someone on an average wage it would be mind blowing”*. He can see why there’s *“so much stress with marriage breakups and suicides and those sorts of things”*.

He is trying to figure out how to do the minimum required, as he doesn't want to spend 75% of \$400,000. To complete the repairs through FAP they would have to *"find \$200,000 to \$300,000 which they didn't plan for a few years ago"*, and which is a *"huge amount of money"*. One of the frustrations he expressed is that the *"FAP system is not flexible at looking at other options"*. He acknowledges that the government needs to be certain that what it approves works, but believes *"it needs to be more flexible"* in order to *"lower the cost for homeowners"*.

Rather than progressing his FAP claim Harry has decided to *"deal with the house himself for now"*. His main objective is to do whatever is needed at a minimum cost yet meets legal requirements. He admitted he has been *"up blind alleys"* but he is *"trying to test his options"*. He did some research and found *"a resin you inject into the structural framing to treat timber"*. It *"freezes the house and stops it getting worse"*. He has also found *"another product you can inject is a foaming agent to kill mould"*.

Harry injected the resin about a year ago, at a cost of \$30,000. He believes that *"for now the house is okay with this" and that "it could be ok for a year or possibly 10-15 years"*. The resin *"seems to be a very significant part of the solution"*. However, he says, he could be *"back at square one if it stops working"*. Harry is also doing some *"smaller fixes" or "maintenance"* to stop further deterioration. But *"with the house being an hour away, [he] doesn't get very much done"*. He recently had a meeting at the house with various stakeholders to discuss the different options. If the resin works he believes it could be a *"revolutionary approach to leaky homes"*.

Without FAP, he would have done the same at this stage, although it may change in the future. There are still a couple of years before his WHRS claim would be closed and he has said he would consider proceeding with FAP based on one or more of the following situations.

- There are no other viable options with the other solutions not working and the house deteriorating.
- The Council entered the scheme and he could get 50%. He says there is *"no way"* he would pay 75% of \$400,000 *"unless he absolutely had to"*. If he was paying 25% he would *"very likely go ahead but 50% is marginal"*.
- There was more flexibility in the FAP system allowing him to look at other options. He doesn't think a full reclad is necessary. He has heard that in some instances houses have been found to need only a partial recladding not a full one. He wants the flexibility to allow for this, and to look at other approaches.

Harry said he had found the *"whole area extremely confusing with lawyers, consultants, WHRS all saying different things"*. There are *"so many different complexities, options, people telling you different things, all want to charge you money"* and as a result *"you don't know where to turn"*. While he has *"coped with it"* he thinks *"most people wouldn't"*. With a career in senior management, he *"deals with uncertainty all the time"*. If he's found it *"extremely difficult"*, he believes *"most people would find it completely impossible"*. In his view *"they would be completely reliant on a trusted person"* and would be *"screwed if that trusted person turned out to be untrustworthy or incompetent"*.

Harry also believes that there is not enough literature on leaky homes. He would like to see a *"coherent explanation"* about what people should do. For example, the independent consultant he

first got, at a cost of \$15,000, cut out holes on the outside cladding, which has *“made the problem worse”*. He has since learned they *“should have made cut outs to the internal gib”*. Builders *“now shake their head”* on seeing it. Harry’s own internal cutouts show the house is *“not so bad”*. As a result he is concerned there are *“rogues in the industry”*. In his opinion, a *“coordinated approach which was easily understandable to common people would be a huge step forward”*.

Despite his frustrations Harry considers that FAP is *“great”*; that *“the principle of reducing the amount of time with lawyers and litigation is great”*. However, he believes it needs *“to mature, develop more flexibility and provide more information to people”*. He thinks WHRS needs to be a *“source of truth”* where people can *“find out all their options and get information”*. For him the experience has been an *“abyss of not knowing what to do”* and *“spend[ing] money on consultants”*. He appreciates, however, that it’s a *“difficult situation”*.

Looking outside leaky buildings he also suggested that there is a need to carefully think about the position builders in New Zealand are now being put in through the need for certification. In his view builders are so worried about being sued that they make decisions on this basis, rather than on the basis of *“doing the right thing”*. Many get *“taken to the cleaners although it is not necessarily their fault”*. He also commented that there *“are some cowboys too”*.

