

Introduction to the Weathertight Homes Tribunal

Guide to adjudication of claims under the Weathertight
Homes Resolution Services Act 2006



The purpose of the Weathertight Homes Tribunal is to provide speedy, flexible, cost-effective resolution for leaky home claims brought under the Weathertight Homes Resolution Services (WHRS) Act 2006.

The Tribunal was set up in 2007 after the government recognised the difficulties with resolving leaky home claims under the WHRS Act 2002. The 2006 Act provides for enhanced services. As part of this, the Tribunal was set up and given powers to resolve disputes faster.

The Tribunal provides independent adjudication services where all parties are treated impartially. The chair and members of the Tribunal act as adjudicators of leaky home disputes. They are supported by Ministry of Justice staff who provide registration, case management and other administrative services.

Adjudication is the legal process of resolving a dispute and issuing a judgment or decision following the hearing.

What's the process for affected homeowners?

(To see a flowchart of this process, go to Figure 1: Simple overview of the claims process)

Affected homeowners first apply to the Ministry of Business, Innovation and Employment (MBIE) to have their claim assessed for eligibility under the 2006 Act. MBIE provides the assessment services for leaky home claims and also administers the Financial Assistance Package. If a claim is found eligible and the necessary repairs are assessed at, or have already cost, over \$20,000, the claimant may then apply to the Tribunal for adjudication. Claims for \$20,000 or less follow a more streamlined process within MBIE. If a settlement can't be reached, the claimant of a lower-value claim can apply to the Tribunal. Some lower value claims could instead be taken to the Disputes Tribunal.

The outcome of the adjudication process is either a settlement agreement or a legally binding decision from the Tribunal about who is liable for the defects, who should pay and how much. This is the extent of the Tribunal's powers – the Tribunal cannot fix the home. The majority of cases settle at mediation.

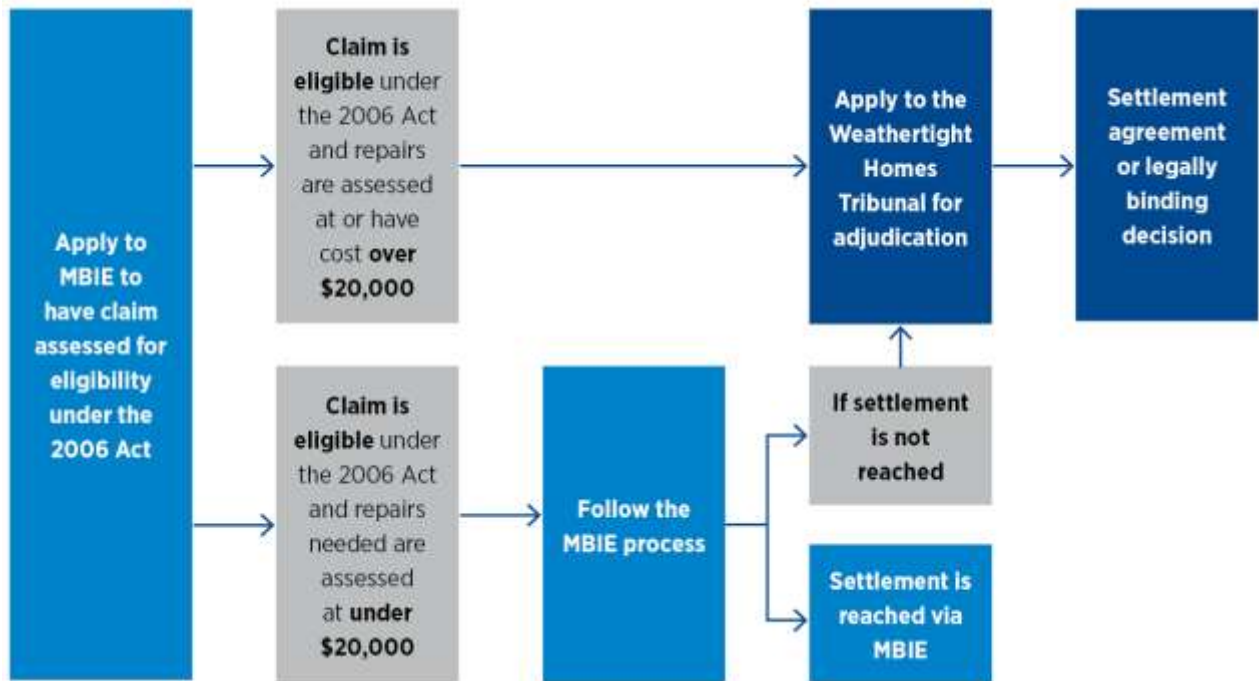


Figure 1: Simple overview of the claims process

(For more detail, go to Figure 2: Detailed overview of the claim process)

Contents

- The claim process 2**
- The Weathertight Tribunal process..... 3**
 - Applying to the Tribunal 4
 - Preliminary conference 5
 - Responding to a claim 6
 - Mediation 6
 - Experts' conference 7
 - Hearing 7
 - Decision 7
 - Appeal and judicial review 7
- Information 8**

The claim process

These are the services that can help resolve leaky home claims, the different paths that claims can take, and which services are provided by MBIE or the Tribunal. For more information about MBIE's services, visit their website at mbie.govt.nz

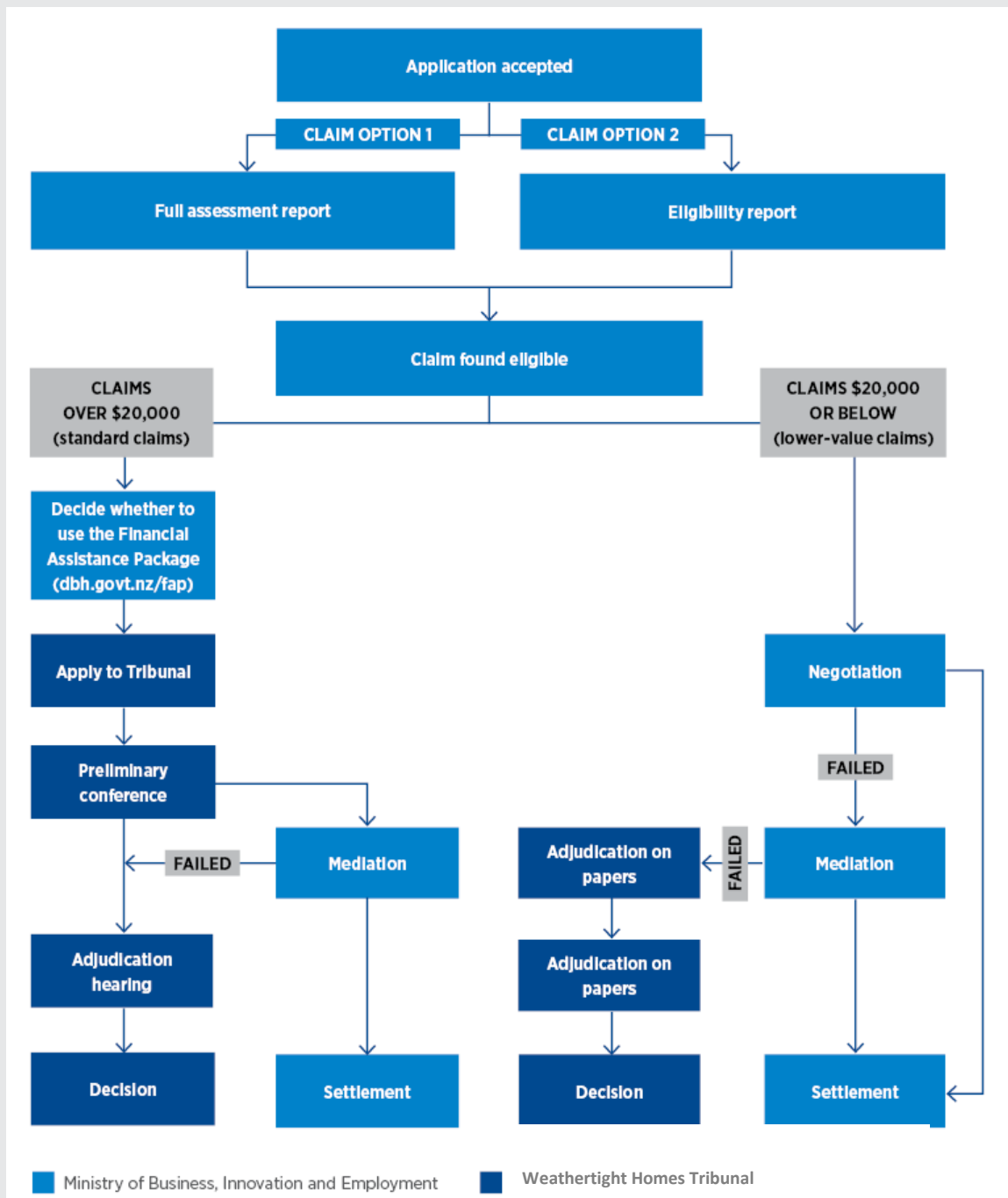


Figure 2: Detailed overview of the claim process

The Adjudication process

This flowchart shows the main stages of the adjudication process in the Tribunal.

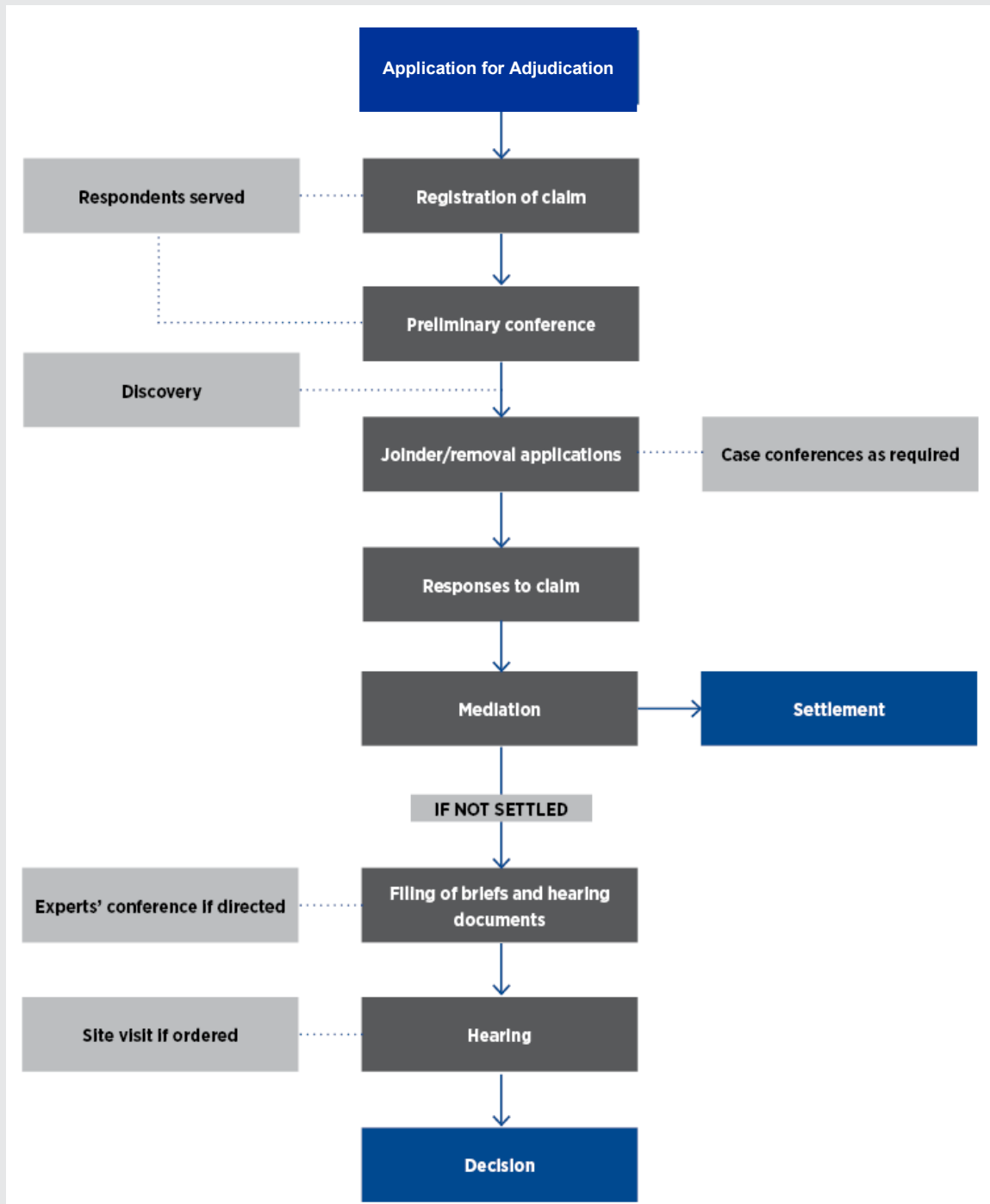


Figure 3: Overview of the Weathertight Homes Tribunal process

This section explains the main stages of the Tribunal process. The terms, procedures and requirements are explained in the information section at the end of this document.

For more detailed information, see the Chair's Directions on the Tribunal's website at justice.govt.nz/Tribunals/wht.

The guiding principle of Tribunal proceedings is to ensure a speedy, flexible and cost-effective adjudication process – so timetables, time limits and other directions of the Tribunal need to be followed. They will generally only vary if there's a good reason or if all people involved agree.

Applying to the Tribunal

To enable speedy and efficient adjudication of their claim, claimants should have all the evidence, costs and other documentation supporting their claim ready before they apply to the Tribunal. MBIE claims advisors can help claimants prepare their application.

For the Tribunal to register the application, the claimant/s needs to file all of the following in both electronic format and hard copy, where possible:

- completed Tribunal application form (which includes the claim details)
- copy of MBIE's full assessment report, or a copy of the eligibility assessment report with the receipts for the repairs
- copy of the notification from MBIE that the claim is eligible
- if the claim is for \$20,000 or less, a copy of MBIE's lower-value claims dispute resolution certificate
- any other report or expert information that will be used to support the claim
- correct names and current street addresses for the respondents (that is, the people, companies or entities) against whom the claim is being made
- list of other relevant documents on which the claimant may be relying
- application fee (\$408.89).

If you have any questions, please call the Tribunal on 0800 777 757.

The Tribunal will check that all the required information is supplied before registering the claim. If the application is incomplete, the claimant will be told what is missing and the claim will not be registered until all relevant information is provided.

Once the claim has been registered the Tribunal will serve notice on all the named respondents with copies of the relevant documents – this is called 'being served'. The Tribunal will also assign a member of the Tribunal and a case manager to the claim. Claimants and respondents should talk to the case manager if they have any questions about the adjudication process.

Preliminary conference

The preliminary conference will be held 10–30 days after the respondents have been served with the claim. At this conference the issues in dispute will be identified, the process will be explained to the parties and a timetable will be set for sorting out the claim.

The conference will:

- confirm the details of the respondents and any legal representatives if they have been appointed
- clarify the details of the claim, particularly what is disputed
- identify what relevant documents are available
- discuss whether additional respondents should be included in the claim (please refer to 'Adding parties to an application' below)
- discuss whether any named respondents need to be removed
- consider mediation
- find out if interpreters or other help is needed
- set a timetable for handling the claim.

It's important the claimant and all respondents take part in the conference, even if they have appointed a lawyer or other representative.

If the claim relates to an Auckland property the conference will be held in the Tribunal's hearing room in Auckland. For claims outside of Auckland the conference will be by phone.

Providing documents and discovery

All parties must provide all relevant documents in their possession or control that relate to the design, development and construction, inspection or sale and purchase of the dwelling or house. A timetable is set for this at the preliminary conference and after a new respondent has been joined.

Joining new parties (Joinder)

When a party identifies other people or companies who they think should be involved in the claim, they may ask to join that person or company as an additional respondent. The application must be filed in writing within the timetable set by the Tribunal. The application should include:

- the correct name and current street address of the person, company or entity
- why the proposed party should be involved
- evidence of the proposed party's liability.

Removal Applications

Respondents can ask to be removed as a party if they believe they have no liability to the claimant or other respondents. Removal applications must be filed in writing with supporting information, and must be served on the claimant and other respondents, as well as the Tribunal.

The Tribunal will set a timetable at the preliminary conference for filing removal applications. It will include dates for filing opposition and support to the application after which the Tribunal member makes a decision. If there are genuinely disputed issues of fact that can't be decided without hearing evidence from witnesses, then the removal application is unlikely to be successful.

Responses to the claim

Respondents must file their formal, written responses with the Tribunal and send copies to all other parties. A date for filing will be set in the early stages of proceedings. The response must state which matters in the claim are accepted or agreed and which matters are disputed and the reasons why.

If a respondent is disputing the defects, damage or cost of remedial work claimed, their response must include either a report from an expert or a detailed summary of the basis of the dispute. Responses must also include details of any defence the respondent plans to raise, as well as details of claims for contribution or claims against other respondents.

Mediation

Mediation is a voluntary process. It's a private meeting of the parties with a mediator appointed by MBIE where they try to resolve the claim.

What happens in mediation is confidential. If a settlement is reached the Tribunal terminates the claim once the terms of settlement are met. If mediation fails, the claim will proceed to a formal hearing.

For more information on mediation, see MBIE's mediation booklet available from MBIE or the Tribunal or on MBIE's website at:

<http://www.building.govt.nz/resolving-problems/resolution-options/weathertight-services/mediation-to-resolve-your-weathertight-claim/>

Experts' conference

An experts' conference is a meeting between expert witnesses who have filed witness statements or reports. At the meeting, the experts discuss the issues set out in the agenda prepared for the conference by the Tribunal, which is likely to include the defects, the contribution to the damage and the scope and cost of remedial work required.

The outcome will be a joint, signed statement from the expert witnesses stating the issues on which they agree and any areas of disagreement and the reasons for any disagreement.

To ensure impartiality no parties or legal representatives or advisors can go to the conference. The facilitator will be a Tribunal member who isn't involved with the claim. Apart from the joint statement, discussions at the conference are confidential and can't be used as evidence unless all parties agree.

Hearing

The hearing is a judicial proceeding that is open to the public and is run by the Tribunal member. At the hearing, the evidence (which will have been filed with the Tribunal before the hearing) will be clarified and tested.

Witnesses must be available to attend the hearing. The hearing will be held in the city closest to the leaky home unless parties agree on an alternative venue. In some circumstances, with prior approval, witnesses can attend by phone or video link.

The hearing is an investigative process – an inquiry on the part of the Tribunal member. All parties will be given an opportunity to question witnesses; however, the Tribunal member will stop questions that are unnecessary or waste time.

Decision

The assigned Tribunal member will give a written decision, including reasons, as soon as practical after the hearing. The Tribunal will send a copy of the decision to each party on the day it's made. The decision will also be published on the Tribunal's website – justice.govt.nz/Tribunals/wht

Appeal and judicial review

There's a general right of appeal against all final orders of the Tribunal. If the amount in dispute is under \$200,000 the appeal is filed in a district court. If the amount in dispute is over \$200,000 the appeal must be filed at the High Court. An appeal must be lodged within 20 working days after the date of the decision.

There's no right of appeal on any interim or procedural orders or steps, but parties may have the right to apply to the High Court for a judicial review.

Information

Adjudication on papers – for claims \$20,000 or less

Claims for \$20,000 or less are taken through a streamlined process by MBIE. However, if this process is unsuccessful, the claimant may apply to the Tribunal for adjudication 'on the papers' where a member of the Tribunal makes a decision based on the written material provided by the parties (without the parties needing to attend a formal hearing).

Fee

The adjudication fee is \$408.89, which includes the cost of any mediation. Payment must be included with the claimant's application to the Tribunal.

Dates and time limits

The dates for conferences and hearings, and time limits for filing documents, will be set by the Tribunal and need to be followed for a speedy and cost-effective adjudication of claims. If parties don't attend as ordered, the Tribunal can continue proceedings without them. An application for adjournment should be in writing, made as early as possible and give a good reason for the request.

Teleconferences

Phone conferences will take place as required. All parties will be advised of the date, time and dial-in instructions for the conference.

Legal representatives and costs

Claimants and respondents can represent themselves, use lawyers or other people to handle their case. The cost of using a representative isn't usually covered as part of the claim. The Tribunal only has limited powers to award costs in favour of a successful party.

Expert witnesses

Any party has the right to appoint an expert at their own expense. All expert witnesses must be independent and comply with the Tribunal's *Expert witness code of conduct* (available online at justice.govt.nz/Tribunals/wht/forms-and-guides).

Inspections and site visits

Respondents and their expert advisors are entitled to inspect the claimant's property. The timing and length of the inspection must be reasonable and arranged by appointment with the claimant (or their representative). If this isn't possible, inspections can be arranged through the Tribunal.

If the claim goes to hearing, a site visit may be organised before the hearing starts.

Notification on LIM

Once the adjudication process has been completed, the Tribunal will tell the relevant territorial or local authority so the dwelling's LIM (Land Information Memorandum) can be updated.

Withdrawing or terminating a claim

Claims can only be withdrawn if all the people involved agree or if the Tribunal orders it.

A claim is terminated if the dwelling house is sold or there is otherwise a change of ownership, subject to certain exceptions.

Weathertight Homes Tribunal

justice.govt.nz/Tribunals/wh/wh/contact-us

WHTenquiries@justice.govt.nz

0800 777 757

Level 6 | Auckland District Court
69 Albert Street | Auckland | 1010