

## LEAKY HOMES FINANCIAL ASSISTANCE PACKAGE

### BACKGROUND

New Zealand undoubtedly suffers from weathertightness of its buildings worth previously thought to be worth \$11 billion, but PricewaterhouseCoopers has recently placed it closer to \$23 billion (which is about the cost of the health and education budgets for a year put together). Current estimates of affected buildings comprise of 42,000 homes built in New Zealand between 1992 and 2008.

Territorial authorities felt money could be spent on fixing the homes rather than on litigation and legal fees. A “no fault” scheme of simply getting the houses fixed was lobbied and in May 2009, the Government proposed the FAP scheme.

The Department of Building and Housing have spent significant time on developing the FAP over two years and have announced this scheme on 29 July 2011 and in a media release by the Dominion Post on 6 September 2011, it was announced that 224 homeowners in Wellington alone indicated interest in pursuing the FAP scheme.

### THE PACKAGE

Under the Financial Assistance Package (“FAP”), qualifying homeowners who have leaky homes built in the last ten years can share the agreed actual repair cost of repairing their home with the government and their local council. This came into effect on 29 July 2011.

The government and territorial authority each pay 25 per cent of the repair cost and the qualifying homeowner will pay the remaining 50 per cent. It is important that the homeowner can contribute the remainder and must show security of costs. However, if their council didn’t sign off on the building work, or has chosen not to participate in the FAP, the qualifying homeowner will need to agree to pay 75 per cent of the costs to get payments under the scheme and similarly provide ability to pay the remainder.

While the homeowner may still pursue other liable parties (including builders, developers and manufacturers of defective products) they must agree not to sue their territorial authorities or the government. It can be seen as a quick solution for people who do not want to waste time or money litigating and pursuing parties. It could also be helpful for those who do not have their territorial authorities as the largest defendant in a potential legal claim as the FAP (if fully qualified) will provide certainty of a 50% financial contribution to fix the home.

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The cost of repairs, or full demolition and rebuild if that is recommended will include

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

## QUALIFICATIONS

Claimants must have an eligible claim under the Weathertight Homes Resolution Services Act 2006 and further meet the contribution criteria. Not all territorial authorities are participants in the scheme and therefore the qualifying homeowner would potentially be eligible for a 25% contribution from the crown and a further 25% from their Participating Territorial Authority (“PTA”) only if it was participant.

Qualifying homeowners can **choose** to take the FAP scheme or continue other options such as litigation as it is not a compulsory scheme. They should carefully assess whether they can afford to take the scheme as the other 50% (or 75%) would need to be met by the homeowner (bearing in mind the homeowner can still pursue other parties).

## FAP SUITABLE FOR HOME OWNERS WHO:

- Are litigation shy or risk adverse.
- Want repairs done.
- Can afford to fund or borrow repairs (ranging from 50%-75%).
- Might have their claim reduced for contributory negligence.
- Are not owed a duty of care by their local council.
- Have estimated remedial costs that do not justify investing in litigation
- Have problems with their other potential defendants if proceeding with litigation

## FILED CLAIMS

A homeowner has until 28 October 2011 to notify the Department of Building and Housing in writing to opt into the FAP if they have filed a claim before 29 July 2011. Furthermore if some remedial works have already been carried out, the Department of Building and Housing may find a different agreed repair costs to the one actually paid so care must be exercised on this point.

## CROWN CONTRIBUTION

Qualifying homeowners who meet the Crown Contribution Criteria qualify for 25% of the costs of the repair costs for the leaky home to be paid by the Crown.

The Crown Contribution will be made if:

- The qualifying homeowner must be able to show that they can fund their share of the costs of the works (50%-75%) by borrowing funds or providing own funds.
- There is no prior settlement with the PTA.

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- If there is a current civil proceeding with a PTA, the qualifying homeowner must discontinue this claim entirely.
- The qualifying homeowners must have an Assessor's Report, and agree to a repair plan with the Department of Building and Housing.

### **TERRITORIAL AUTHORITY CONTRIBUTION**

Qualifying homeowners may be eligible for a further 25% from the PTA. Not all councils have confirmed they would participate.

To qualify, qualifying homeowners must have a PTA who owes them a duty of care and must be eligible for a crown contribution. One must carefully consider whether a duty of care exists. Please feel free to contact us if you wish to review this factor.

### **ADVANTAGES**

- “No fault” basis and house gets fixed
- No time or money “wasted” on litigation
- Speedy outcome
- Supervised repair
- Homeowners can still pursue other parties

### **DISADVANTAGES**

- Homeowner must find funding for 50% (or 75%) of the repair costs
- It does not cover homes built more than 10 years ago
- Homeowners cannot recover compensation for other potential costs they could at litigation stage
- The scope of repairs are limited to the one agreed

#### **Disclaimer:**

We have taken every care to ensure that the information given is accurate, however it is intended for general guidance only and it should not be relied upon in individual cases. Professional advice should always be sought before any decision or action is taken.

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