

Market Practice Guidelines
made under section 91A of the
Home Building Act 1989

1 July 2010

Market Practice Guidelines

1. Introduction

- (a) These Market Practice Guidelines are made by the Minister administering the *Home Building Act 1989* (the **Act**) under section 91A of the Act with respect to appropriate market practices in connection with the provision of Home Warranty Insurance by or on behalf of the NSW Self Insurance Corporation (the **Insurer**).
- (b) These Market Practice Guidelines have been made after consultation with the Home Warranty Insurance Scheme Board and with the concurrence of the Minister administering the *NSW Self Insurance Corporation Act 2004*.
- (c) The Insurer is required by the *NSW Self Insurance Corporation Act 2004* to comply with these Market Practice Guidelines in exercising its powers or functions with respect to Home Warranty Insurance.
- (d) The Insurer may appoint an Insurance Agent to exercise or perform the powers and functions of the Insurer to which these Market Practice Guidelines apply and in that case the Insurance Agent must exercise or perform those powers or functions as if it was the Insurer so as to comply with, and so as to cause the Insurer to comply with, these Market Practice Guidelines and the Insurance Agent must comply with clauses 9 to 12.
- (e) An Insurance Intermediary must also comply with these Market Practice Guidelines as set out in clause 10.

2. Defined Terms

- (a) In these Market Practice Guidelines the terms defined in the Act and in the *Home Building Regulation 2004* (the **Regulation**) have the same meaning as they do under the Act or Regulation.
- (b) In these Market Practice Guidelines, unless the contrary intention appears:
 - Builder** means a person who is required by Part 6 of the Act to enter into a contract of Home Warranty Insurance but does not include an Owner-Builder;
 - Certificate** means a certificate of insurance evidencing a contract of Home Warranty Insurance issued by or on behalf of the Insurer;
 - Eligibility** refers to a statement of intent by or on behalf of the Insurer that it is prepared to issue a Certificate on the terms described in subclause 5.1;
 - Insurance Agent** means a person appointed as an agent of the Insurer under subsection 8A(4) of the *NSW Self Insurance Corporation Act 2004*;
 - Insurance Intermediary** has the same meaning as in section 3 of the *NSW Self Insurance Corporation Act 2004*;

Premium Rates means the Insurer's standard rates or range of premiums in respect of each category or class of Builder to which, or Owner-Builder work for which, it offers or proposes to offer Home Warranty Insurance or, where there is no standard rates or range of premiums, the premium determined by the methodology set out in the Underwriting Procedures Manual or as determined by the Insurer;

Note: During the transition period for the new arrangements commencing on 1 July 2010 until the date advised by the Insurer to the Insurance Agents on which its Premium Rates and its Underwriting Procedures Manual first come into effect, an Insurance Agent will use the underwriting guidelines and premiums used by the Insurance Agent in its capacity as an insurer under the Act immediately prior to 1 July 2010.

Underwriting Guidelines means the underwriting guidelines summarising relevant provisions of the Underwriting Procedures Manual approved by the Insurer and issued to the Insurance Agent from time to time; and

Underwriting Procedures Manual means the document setting out the Insurer's underwriting procedures and guidelines (including any variation) last submitted to the Director-General under clause 3 but does not include the Underwriting Guidelines.

3. Underwriting Procedures Manual and Premium Rates

3.1 Submission to Director-General

The Insurer must submit to the Director-General at least 10 Business Days before the intended date of operation, its Underwriting Procedures Manual and Premium Rates in respect of Home Warranty Insurance.

3.2 Alterations to Underwriting Procedures Manual and Premium Rates

The Insurer must submit to the Director-General at least 10 Business Days before the intended date of operation any variation of the Underwriting Procedures Manual or Premium Rates previously submitted to the Director-General.

3.3 Consistency with Market Practice Guidelines

The Insurer's Underwriting Procedures Manual and Premium Rates must be consistent with these Market Practice Guidelines and information provided to the Minister under them. The Insurer must document in its Underwriting Procedures Manual and Premium Rates submitted to the Director-General how each factor identified in subclause 5.2 is given due regard in the establishment of the Underwriting Procedures Manual and Premium Rates.

The Director-General will advise the Insurer if the Director-General is of the opinion that the Insurer's Underwriting Procedures Manual or any part of them are not consistent with these Market Practice Guidelines.

3.4 Additional information

The Insurer must provide with:

- (a) the Premium Rates provided under subclause 3.1 or subclause 3.2, such other information as may be reasonably required by the Director-General;
- (b) the information provided under subclause 3.2, a summary of past claims experience of the Insurer, specifying paid claims and reserves for reported claims.

3.5 Actuarial report required

The information provided under subclauses 3.1, 3.2 or 3.4 in relation to Premium Rates is required to be confirmed by an actuary or to be supported by an actuarial report.

3.6 Additional information and consultation

The Director-General is not required to approve or reject the Insurer's Underwriting Procedures Manual and Premium Rates but the Director-General may request the Insurer to:

- (a) provide additional information in respect of the Underwriting Procedures Manual and Premium Rates to the Director-General; and
- (b) consult with the Director-General, or officers of the Department of Services, Technology & Administration nominated by the Director-General for that purpose, in relation to the Insurer's Underwriting Procedures Manual and Premium Rates.

3.7 Consistent behaviour

The Insurer must:

- (a) consult with the Director-General or nominated officers in relation to any inconsistency in its Underwriting Procedures Manual advised under subclause 3.3 and in relation to any proposed amendments to its Underwriting Procedures Manual;
- (b) ensure that any copy of its Underwriting Procedures Manual and Premium Rates, and any information in respect of these matters, provided to each Insurance Agent is consistent with the Underwriting Procedures Manual and Premium Rates last lodged with the Director-General; and
- (c) underwrite and price Home Warranty Insurance issued by it consistently with the Underwriting Procedures Manual and Premium Rates last submitted to the Director-General.

4. Publication of Information

4.1 Publication

The Insurer must make publicly available (eg, on its internet web site or those of its Insurance Agents) and, if requested by a Builder or an Owner-Builder, provide the following information:

- (a) policy documents for all types of Home Warranty Insurance policies offered;
- (b) standard forms or information the Builder must complete or provide in order to apply for Eligibility (see clause 5) and which the Builder or Owner-Builder must complete or provide in order to apply for a Certificate;
- (c) instructions sufficient to enable the completion of the forms or to enable the provision of information;
- (d) general underwriting criteria;
- (e) after the date advised by the Insurer to the Insurance Agents on which its Premium Rates and its Underwriting Procedures Manual first come into effect, the range of or examples of the premiums that the Insurer proposes to charge sufficient to enable a non-binding indication of the likely cost of a Certificate for typical categories and classes of Builder or Owner-Builder work or, where there is no standard rates or range of premium, the methodology that the Insurer proposes to use to determine the premium;
- (f) details of Insurance Agents' and Insurance Intermediaries' service standards to Builders and Owner-Builders (see clause 7);
- (g) details of the complaints handling process required to be used by Insurance Agents and Insurance Intermediaries including complaints contact persons, phone numbers and email addresses (see clause 12); and
- (h) a list of Insurance Agents that are eligible to distribute Home Warranty Insurance on behalf of the Insurer.

4.2 Supply to Director-General

The Insurer must supply a copy of the information to be provided under subclause 4.1 to the Director-General at least 10 Business Days before it is publicly disclosed.

5. Issuing Home Warranty Insurance

5.1 Effect of Eligibility

A decision by or on behalf of the Insurer to grant Eligibility is not a binding undertaking to insure but is only a statement of intent by or on behalf of the Insurer that it is prepared to issue a Certificate in accordance with the terms and conditions of the grant of Eligibility if the issue of the Certificate is consistent with the requirements of the Underwriting Procedures Manual and these Market Practice Guidelines, unless some other fact or

matter has arisen so that under the Underwriting Procedures Manual the Insurer may vary or revoke the grant of Eligibility or not issue the Certificate.

5.2 Requirements for assessment of Eligibility

When assessing a Builder for Eligibility and the rating category and conditions on which the Eligibility is provided, the Insurer must have regard to the following factors:

- (a) unless Eligibility is conditional on a licence being provided by the Director-General, the Builder must have a current licence under the Act at the date of the Eligibility assessment;
- (b) the net tangible assets of the Builder (including assets held by persons or bodies corporate which have granted an acceptable guarantee or indemnity to the Insurer);
- (c) the Builder's net profit position;
- (d) the Builder's annual turnover;
- (e) the Builder's record of association with recent insolvencies and the record of disputes that have judged the Builder or associates to be at fault;
- (f) details of any Eligibility conditions previously imposed by an insurer prior to 1 July 2010; and
- (g) the Builder's claims experience,

but the Insurer is not limited in its assessment to the factors above and may take into account other matters including non-financial matters.

5.3 Decision to issue a Certificate to a Builder

When determining whether or not to issue a Certificate to a Builder, the Insurer must have regard to the following factors:

- (a) the Builder must have a current licence for the work covered by the Certificate on the date on which the Certificate is issued; and
- (b) any facts or circumstances that have arisen which may cause the Insurer to come to the view that issuing a Certificate would cause a detriment to the Insurer.

5.4 Requirements for assessment of Owner-Builders

When assessing an application by an Owner-Builder for Home Warranty Insurance and the premium and conditions on which the Home Warranty Insurance is provided, the Insurer must have regard to the following factors:

- (a) the Owner-Builder work must be performed or have been performed by the holder of an Owner-Builder Permit authorising its holder to do that work;
- (b) the Owner-Builder's record of association with recent insolvencies and record of disputes that have judged the Owner Builder (or his or her associates) to be at fault;
- (c) the Owner-Builder's claims experience; and

(d) a building inspection report in relation to the Owner-Builder work, but the Insurer is not limited in its assessment to the factors above and may take into account other matters including non-financial matters.

5.5 Conditions

Any terms or conditions imposed upon a Builder in respect of Eligibility, and any terms or conditions imposed upon an Owner-Builder in respect of Home Warranty Insurance, must be consistent with the Insurer's Underwriting Procedures Manual and Premium Rates provided to the Director-General.

5.6 Guarantees and indemnities

Where the Insurer requires a third party to grant to the Insurer a guarantee, indemnity or undertaking for the purposes of granting or continuing Eligibility or granting a Certificate to a Builder, or for the purposes of issuing a Certificate to an Owner-Builder, the Insurer must clearly inform the Builder or Owner-Builder as to the requirements as to such guarantee, indemnity or undertaking and advise in what circumstances and in what timeframe the guarantee, indemnity or undertaking may be released by the Insurer.

5.7 Duration of Eligibility

- (a) The Insurer must not grant Eligibility for a period greater than two years to any Builder in respect of an annual turnover of \$20 million or more.
- (b) Where a Builder referred to in paragraph 5.7(a) applies for a Certificate more than two years after a grant of Eligibility, the Insurer must re-assess the Builder for Eligibility.

5.8 Notification of Eligibility

- (a) Each quarter, or as otherwise agreed with the Director-General, the Insurer must provide to the Director-General a report of each grant of Eligibility to a Builder during the reporting period, including on any re-assessment under subclause 5.7.
- (b) The Insurer must immediately notify the Director-General and provide reasons for its decision if it imposes additional limitations or conditions on the terms of Eligibility that it has granted to any Builder with an annual turnover of \$20 million or more.

6. Compliance

The Insurer must treat all applications for Eligibility and for the issue Certificates in a manner consistent with the Insurer's Underwriting Procedures Manual, Premium Rates and with the service standards last lodged with the Director-General.

7. Service

7.1 General duty

The Insurer is required to act with promptness and efficiency in relation to all dealings with Builders and Owner-Builders including the granting or varying of Eligibility and the issuing of Certificates.

7.2 Lodge service standards

The Insurer is required to document the service standards and provide a copy of those standards or any variation of them to the Director-General at least 10 Business Days before the intended date of operation.

Note: Paragraph 4.1(f) requires service standards to be made publicly available.

7.3 Amendment of service standards

The Director-General will advise the Insurer if the Director-General is of the opinion that the service standards are not consistent with these Market Practice Guidelines.

7.4 Content of service standards

The service standards must cover, at least, the response time and general service levels required (including the use of appropriately trained underwriting staff) and the form and the nature of communications (written or oral) to Builders and Owner-Builders including in the following situations:

- (a) where application forms have not been fully completed;
- (b) requests for further information in addition to that provided by the Builder or Owner-Builder on the application forms;
- (c) when all information to assess the Builder's application for Eligibility has been received for granting Eligibility or issuing a Certificate to a Builder or Owner-Builder, the terms or conditions of acceptance or denying acceptance including the level of turnover granted;
- (d) where the Insurer amends the terms and conditions of a Builder's Eligibility; and
- (e) early communication to the Builder or Owner-Builder where the Insurer cannot meet the service standards.

7.5 Cancelling Eligibility

Where the Insurer cancels Eligibility then the Insurer must give to the Builder at least 10 Business Days' notice of that decision together with reasons for the decision in accordance with clause 8.

8. Reasons for Decisions

8.1 Documented reasons

The Insurer must document in writing and provide to Builders and Owner-Builders the reasons for:

- (a) on request of a Builder or Owner-Builder, requiring further information from the Builder or Owner-Builder;
- (b) declining Eligibility, including on a re-assessment under subclause 5.7, or declining applications for a Certificate;
- (c) not providing the level of turnover cover sought by the Builder;
- (d) any special conditions the Builder has to comply with for Eligibility or for the granting of a Certificate;
- (e) amending the terms and conditions of a Builder's Eligibility or revoking Eligibility, including on a re-assessment under subclause 5.7; and
- (f) the requirement of the Builder or Owner-Builder to obtain a guarantee, indemnity or undertaking from any third party other than where the requirement is set out in the general underwriting criteria made publicly available under paragraph 4.1(d).

8.2 Consistency

The reasons must be consistent with the Insurer's Underwriting Procedures Manual and Premium Rates lodged with the Director-General and where appropriate refer to the general underwriting criteria relied upon by the Insurer for the decision.

8.3 Matters not covered by reasons

Where reasons are provided there is no requirement for the Insurer to disclose information:

- (a) provided by third parties that is confidential or that identifies those third parties;
- (b) that may not be disclosed under law;
- (c) that is subject to legal professional privilege; or
- (d) that may prejudice the Insurer or the Insurance Agent in any further investigation or in any dispute in respect of a Home Warranty Insurance claim.

9. Outsourcing

9.1 Outsourcing

If an Insurance Agent arranges for any function of the Insurer to be carried out by another person (the **Provider**) and the Provider (or some other person acting for or providing services to the Provider) collects or holds information or documents that may be required to be produced to the Insurer under the Act or under guidelines made under section 91A of the Act, then:

- (a) on request the Insurance Agent must notify the Insurer in writing of the identity of the Provider; and
- (b) the arrangement between the Insurance Agent and the Provider (or some other person acting for or providing services to the Provider) must oblige the Provider (and that other person or persons) to provide that information or those documents to the Insurer.

9.2 Provider includes Intermediary

For the purposes of this clause 9, a Provider includes an Insurance Intermediary to whom clause 10 applies and any person who the Provider approves or authorises to collect or hold any of the information or documents on its behalf.

10. Dealing with Insurance Intermediaries

10.1 Insurance Intermediaries

Where Home Warranty Insurance is provided through an Insurance Intermediary:

- (a) where an Insurance Intermediary is acting for or providing services to an Insurance Agent – the Insurance Intermediary must, in relation to the activities or functions performed by the Insurance Intermediary:
 - (i) comply with these Market Practice Guidelines and the Underwriting Guidelines insofar as they relate to those activities or functions but for this purpose a reference to the Underwriting Guidelines is to be read as a reference to the Underwriting Guidelines last provided to the Insurance Intermediary;
 - (ii) not do anything that may result in the Insurer or the Insurance Agent failing to comply with these Market Practice Guidelines;
 - (iii) immediately notify any complaint that is made to it to the Insurance Agent for whom it acts and fully co-operate in relation to the handling of any complaint made in respect of the Insurance Intermediary by the Insurance Agent and take such steps as it may be required to take by the Insurance Agent to resolve or deal with the complaint; and
 - (iv) meet the service standards, provide the information and do those things required by subclauses 10.3 to 10.7 and as required by clause 12,

and the Insurance Agent must not deal with the Insurance Intermediary in respect of Home Warranty Insurance unless the Insurance Agent and the Insurance Intermediary have entered into an agreement in a form approved by the Insurer and which imposes those obligations on the Insurance Intermediary; or

- (b) where an Insurance Intermediary is acting on behalf of a Builder or an Owner-Builder (ie, acting in its capacity as a broker) – the Insurance Intermediary must comply with the requirements of subclauses 10.3 to 10.7 and clause 12 insofar as they relate to the Insurance Intermediary.

10.2 Notification of agreements

Each Insurance Agent must supply a copy of its agreements with each Insurance Intermediary (to the extent that each agreement is different) on request by the Insurer, together with a list of each Insurance Intermediary with which it has an agreement in respect of Home Warranty Insurance.

10.3 Service standards

Each Insurance Intermediary must either:

- (a) meet the service standards specified by the Insurance Agent in accordance with these Market Practice Guidelines insofar as they relate to the Insurance Intermediary's dealings with each Builder or Owner-Builder and the Insurance Agent; or
- (b) meet service standards which are established by the Insurance Intermediary in respect of its dealings with each Builder or Owner-Builder and the Insurance Agent and which are agreed by the Insurance Agent, which service standards satisfy the requirements of clause 7 insofar as they relate to the activities of the Insurance Intermediary.

10.4 Remuneration

The Insurance Intermediary must disclose to each Builder and Owner-Builder all remuneration received by the Insurance Intermediary including:

- (a) the dollar amount of any commission or any fees or allowances the Insurance Agent pays the Insurance Intermediary. Where the dollar amount level of commission is not calculable a description of the nature of the commission and how it is calculated is to be provided (eg, profit commission, override commission); and
- (b) any additional fees or brokerage the Insurance Intermediary charges the Builder or Owner-Builder in addition to the premium.

10.5 Notice of non-compliance

If an Insurance Agent becomes aware of a material failure by an Insurance Intermediary to comply with the terms of the agreement between the Insurance Agent and the Insurance Intermediary, or if the Insurance Agent becomes aware of complaints by Builders or Owner-Builders in respect of the performance of the Insurance Intermediary then the

Insurance Agent must require the Insurance Intermediary to rectify the non-performance or to explain the reasons for the complaints or both. If the Insurance Intermediary fails to do this to the reasonable satisfaction of the Insurance Agent, the Insurance Agent must advise the Insurance Intermediary of its non-compliance with the agreement in writing and provide a copy of that notice to the Insurer.

10.6 Information provided to the Director-General

The Insurer may report the non-performance of Insurance Agents or Insurance Intermediaries to the Director-General, and the Director-General may publish information in relation to the performance and non-performance of Insurance Agents or Insurance Intermediaries but such publication will not be made unless or until the Director-General has provided notice to the Insurer, the Insurance Agent and to each Insurance Intermediary likely to be named or affected and has consulted with the Insurer, the Insurance Agent and that Insurance Intermediary in relation to the material to be published.

10.7 Self-assessment

An agreement required under subclause 10.1 must make provision for compliance self-assessment to be conducted in respect of the performance of the Insurance Intermediary by the Insurance Intermediary's internal compliance self-assessment processes or alternatively by the Insurance Agent's external auditor. For this purpose the agreement must reserve a right to the Insurer to appoint a person to conduct an audit of the Insurance Intermediary's compliance with the requirements under the agreement between the Insurance Intermediary and the Insurance Agent.

10.8 Obligations of Insurer

The obligations of the Insurer in relation to the activities of an Insurance Intermediary are to require that each Insurance Agent takes reasonable steps to enforce the agreement between the Insurance Intermediary and the Insurance Agent and if necessary to terminate that agreement. Other than to this extent the Insurer is not liable for the activities of an Insurance Intermediary in circumstances where it would not otherwise be liable for those activities.

11. Self-Assessment and Audit of Insurance Agents

11.1 Compliance self-assessment or audit

Each Insurance Agent must establish a process of internal self-assessment or audit of its compliance with its service standards, these Market Practice Guidelines and other guidelines issued under section 91A of the Act.

11.2 Self-assessment or audit process to be supplied to the Insurer

Each Insurance Agent must provide a detailed summary of the documented self-assessment or audit process and of its results to the Insurer within six weeks after the end of each financial and calendar year ending on the last day of June and December in each year. The Insurer will provide a report to the Director-General on the results of Insurance

Agents' self-assessments and audits on a half-yearly basis or as otherwise agreed with the Director-General.

11.3 Audit of Insurance Agents

The Insurer may request that an Insurance Agent engage the Insurance Agent's external auditor or an organisation approved by the Insurer to conduct an external audit of the Insurance Agent's compliance with its agreement with the Insurer and with the Act. The scope of the external audit will be determined by the Insurer and the results of the external audit will be provided to the Insurer.

11.4 Publication

The Director-General may publish a summary of the report of the Insurer referred to in subclause 11.2. Prior to publication of this report the Director-General must provide a copy of the draft report to the Insurer for comment at least 10 Business Days before the date of its proposed publication.

12. Complaints and Disputes

12.1 Internal Dispute Resolution

Each Insurance Agent must establish and maintain an internal complaints handling process for its Home Warranty Insurance business and where an Insurance Agent holds an Australian financial services licence the Insurance Agent must apply its internal complaints handling process to Home Warranty Insurance business conducted by the Insurance Agent.

12.2 Notification

Each Insurance Agent acting on behalf of the Insurer must make details of its complaints handling process publicly available (eg, on its internet web site) and must inform each Builder that applies for Eligibility and each Owner-Builder that applies for Home Warranty Insurance that a complaints handling process exists.

Note: A complaint is to be distinguished from an inquiry. A complaint will only arise for the purposes of this provision where the person making the complaint requests the complaint to be registered or to be referred to the internal dispute handling process of the Insurance Agent. An Insurance Agent that receives a complaint must ask the complainant whether or not that person wishes the complaint to be registered or referred to the internal dispute settlement process.

12.3 Register of complaints

Each Insurance Agent must establish a register of complaints or disputes and on the register record the nature of each complaint or dispute and how and when it was resolved.

12.4 Provision of information to the Insurer and the Director-General

Each Insurance Agent must make available to the Insurer information from each register established under subclause 12.3 in respect of complaints as and when requested. The Insurer will provide a report of this information to the Director-General on a half-yearly basis or as otherwise agreed with the Director-General.

12.5 Publication

The Director-General may publish a summary of the number of complaints and the type of complaints contained on the registers established under subclause 12.3.

13. Data

13.1 Reporting

The Insurer must provide data and information to the Director-General in relation to Home Warranty Insurance policies, claims, premium and other information relating to its Home Warranty Insurance business on a quarterly basis or as otherwise agreed with the Director-General.

13.2 Consultation

The Insurer and the Director-General must consult as to the form and detail of reports to be provided by the Insurer to the Director-General under this clause 13.

13.3 Detailed information

The Director-General may request the Insurer to provide any information in respect of a particular Builder or Owner-Builder, the Certificates issued to that Builder or Owner-Builder and the claims experience under those policies.

13.4 Publication of data by the Director-General

The Director-General may publish a summary of the data obtained from the Insurer pursuant to subclause 13.1. Prior to the publication of this data the Director-General must provide a copy of the summary of the data to the Insurer for comment at least 10 Business Days before the date of its proposed publication.