

Claims Handling Guidelines
made under section 91A of the
Home Building Act 1989

1 July 2010

Claims Handling Guidelines

1. Introduction

- (a) These Claims Handling Guidelines are made by the Minister administering the *Home Building Act 1989* (the **Act**) under section 91A of the Act with respect to appropriate claims handling practices in connection with the provision of Home Warranty Insurance by or on behalf of the NSW Self Insurance Corporation (the **Insurer**).
- (b) These Claims Handling 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 Claims Handling 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 Claims Handling 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 Claims Handling Guidelines and the Insurance Agent must comply with clauses 7 and 8.
- (e) A Service Provider must also comply with these Claims Handling Guidelines as set out in clause 7.
- (f) The Claims Handling Guidelines apply to all kinds of insurance to be entered into under Part 6 of the Act.
- (g) The Claims Handling Guidelines apply to all Claims made under contracts of Home Warranty Insurance issued after the date specified by the Minister for the commencement of the operation of the Claims Handling Guidelines.

2. Defined Terms

In these Claims Handling Guidelines:

- (a) the terms defined in the Act, the *Home Building Regulation 2004* (the **Regulation**) have the same meaning as they do under the Act or Regulation;
- (b) subject to subclause 3.6 a reference to the disappearance of a Builder includes a reference to the fact that, after due search and inquiry, the Builder cannot be found;
- (c) a reference to the insolvency of a Builder includes a deemed insolvency as specified in section 99 of the Act; and

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- (d) unless the contrary intention appears:

Beneficiary means a person entitled to claim a benefit provided under a contract of Home Warranty Insurance;

Builder means a person who is required by Part 6 of the Act to enter into a contract of Home Warranty Insurance, including an Owner-Builder, and whose work is the subject of a Claim;

Claim means a claim for indemnity by a Beneficiary under a contract of Home Warranty Insurance where the Beneficiary has provided the Prescribed Claim Information to the Insurer;

Claims Procedures Manual means the document setting out the Insurer's claims handling procedures and guidelines (including any variation) last submitted to the Director-General under clause 3;

Insurance Agent means a person appointed as an agent of the Insurer under subsection 8A(4) of the *NSW Self Insurance Corporation Act 2004*;

Prescribed Claim Information means:

- (a) the name, address and telephone number of the Beneficiary and of each owner of the property the subject of the Claim;
- (b) the address of the property the subject of the Claim;
- (c) the name and address and, if known, telephone number of the Builder;
- (d) whether the Beneficiary believes that the Builder has died, disappeared or become insolvent and details of the source of that belief, including all relevant documents obtained by the Beneficiary;
- (e) where the property the subject of the Claim was purchased by the Beneficiary after completion of the work performed by the Builder, a copy of the contract for sale of the property and all attachments;
- (f) where the Beneficiary contracted directly with the Builder:
 - (i) a copy of the contract between the Beneficiary and the Builder in relation to the work;
 - (ii) copies of any documents setting out variations to the work agreed by the Beneficiary and the Builder;
 - (iii) copies of all plans and specifications relating to the work agreed to be performed by the Builder; and
 - (iv) copies of any approvals or certificates relating to the work received by the Beneficiary from any relevant public or statutory authority;
- (g) a description of all defective or incomplete work alleged by the Beneficiary together with the date on which it was first observed by the Beneficiary to be defective or incomplete;
- (h) reports obtained by the Beneficiary in relation to the work; and

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- (i) details of any prior complaints made or action taken by the Beneficiary in relation to the defective or incomplete work; and

Service Provider means a person appointed by an Insurance Agent other than an employee or officer of the Insurance Agent to investigate, assess, handle or settle a claim (or to do more than one of those things) on behalf of the Insurance Agent.

3. Claims Procedures

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 Claims Procedures Manual in respect of Home Warranty Insurance.

3.2 Alterations to Claims Procedures Manual

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

3.3 Consistency with Claims Handling Guidelines

The Insurer's claims procedures must be consistent with these Claims Handling Guidelines and information provided to the Director-General under them.

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

3.4 Additional information and consultation

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

- (a) provide additional information in respect of the Claims Procedures Manual 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 Claims Procedures Manual.

3.5 Consistent behaviour

The Insurer must:

- (a) consult with the Director-General or nominated officers in relation to any inconsistency in its Claims Procedures Manual advised under subclause 3.3 and in relation to any proposed amendments to its Claims Procedures Manual;
- (b) ensure that any copy of its Claims Procedures Manual, and any information in respect of claims handling, provided to each Insurance Agent is consistent with the Claims Procedures Manual last lodged with the Director-General; and

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- (c) handle and settle Claims made under Home Warranty Insurance issued by it consistently with the Claims Procedures Manual last lodged with the Director-General.

3.6 Disappearance of a builder

Where a Beneficiary believes that the Builder has disappeared, the Beneficiary may lodge a complaint with NSW Fair Trading in order to locate the Builder and resolve the issues in dispute.

A Beneficiary who has received written notice from NSW Fair Trading that it has been unable to locate the Builder may provide a copy of that notice to the Insurer in satisfaction of the Beneficiary's obligation to conduct due search and inquiry of the location of the Builder.

Note: Where a Beneficiary provides a copy of such notice to the Insurer, the Insurer may nevertheless conduct its own search and inquiry of the location of the Builder in accordance with paragraph 5.6(f).

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 Beneficiary, provide the following information:

- (a) information about how to notify the Insurer of a loss that might give rise to a Claim, including any form made available for that purpose by NSW Fair Trading;
- (b) claim forms or information about how to make a Claim, including the Prescribed Claim Information the Beneficiary must provide in order for the Insurer to consider its Claim;
- (c) general claims procedures;
- (d) details of the Insurer's claims service standards (see clause 5);
- (e) details of any claims service standards of Service Providers required by clause 7; and
- (f) details of the complaints handling process required to be used by Insurance Agents and Service Providers including complaints contact persons, phone numbers and email addresses (see clause 8).

Information required to be provided by this clause 4 must be provided free of charge and must be worded and presented in a clear, concise and effective manner.

4.2 Supply to Director-General

The Insurer must supply a copy of the information to be provided under this clause 4 to the Director-General at least 10 Business Days before it is publicly disclosed.

5. Service

5.1 General duty

The Insurer is required to act with promptness and efficiency in relation to all dealings with Beneficiaries including the handling and settling of Claims.

5.2 Lodge claims service standards

The Insurer is required to document the claims service standards and provide a copy to 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(d) requires service standards to be made publicly available.

5.3 Amendment of claims service standards

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

5.4 Additional information and consultation

The Director-General is not required to approve or reject the claims service standards but the Director-General may request the Insurer to:

- (a) provide additional information in respect of the claims service standards 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 claims service standards.

5.5 Content of claims service standards

The claims service standards must meet the minimum standards set out in subclause 5.6 and must cover, at least, the response time and general service levels required (including the use of appropriately trained claims staff) and the form and the nature of communications (written or oral) to Beneficiaries (if dealing directly) including in the following situations:

- (a) responding promptly to reasonable requests by Beneficiaries for assistance in making a Claim or notifying a loss that might give rise to a Claim;
- (b) informing Beneficiaries where the Prescribed Claim Information has not been received;
- (c) informing Beneficiaries of the procedure set out in subclause 3.6 where the Beneficiary believes the Builder has disappeared;
- (d) requesting further information in addition to the Prescribed Claim Information;
- (e) when the Prescribed Claim Information has been received, considering and assessing the Claim promptly having regard to the type of Claim made;
- (f) keeping the Beneficiary informed about the progress of a Claim unless a response from the Beneficiary is outstanding;

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- (g) where a reasonable period for consideration and assessment of a Claim has passed and where the Prescribed Claim Information has been provided, advising the Beneficiary whether the Claim is accepted or rejected;
 - (h) if a Claim is rejected, liability in respect of a Claim is reduced or further information is required, promptly advising the Beneficiary;
 - (i) early communication to the Beneficiary where the Insurer believes it cannot meet the claims service standards, including indicating likely response times and the way the Claim will be handled;
 - (j) where an error or mistake in dealing with a Claim is identified, taking action promptly to rectify it; and
 - (k) ensuring care is taken in assessing Claims by reference to the Prescribed Claim Information, the contract of Home Warranty Insurance and other information relevant to the Claim.

An Insurance Agent may establish its own claims service standards, in addition to the claims service standards in this subclause 5.5. These claims service standards may cover the methods and timeframes in which the Insurance Agent (or the Insurance Agent and its Service Provider) will deal with Beneficiaries in respect of Claims. Where an Insurance Agent establishes its own claims service standards they must not be lower than the claims service standards set out in this subclause 5.5 and in subclause 5.6.

5.6 Minimum claims service standards

The claims service standards of the Insurer must provide as follows:

- (a) within five business days of an Insurance Agent receiving notification from a Beneficiary of a loss that might give rise to a Claim, the Insurance Agent will acknowledge receipt of the notification;
- (b) the Insurance Agent will inform the Beneficiary that the Prescribed Claim Information is required in order for the Insurer to assess a Claim;
- (c) a Claim will be deemed to be received by the Insurer when the Insurance Agent receives from the Beneficiary all of the Prescribed Claim Information, whether or not the Beneficiary also provides other information requested by the Insurance Agent and whether or not the Claim has been entered into the Insurance Agent's computer system;
- (d) within five business days of an Insurance Agent receiving an incomplete Claim from a Beneficiary (that is, where an Insurance Agent has not received all of the Prescribed Claim Information), the Insurance Agent will inform the Beneficiary in writing what further Prescribed Claim Information is required;
- (e) within five business days of an Insurance Agent receiving a Claim, the Insurance Agent will:
 - (i) acknowledge receipt of the Claim;
 - (ii) provide an explanation of what steps the Insurance Agent will take to assess the Claim; and

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- (iii) inform the Beneficiary that the Claim will be deemed to be accepted by the Insurer after 90 days of receipt of the Claim except:
 - (A) where the Claim is accepted or denied earlier;
 - (B) where the Beneficiary otherwise agrees; or
 - (C) as otherwise provided by the Act;
 - (f) the Insurance Agent will promptly investigate whether the Builder has died, disappeared or become insolvent and:
 - (i) if at any time the Insurance Agent forms the view that the Builder has not died, disappeared or become insolvent, the Insurance Agent will inform the Beneficiary in writing within five business days and provide details of the source of that belief; and
 - (ii) within 30 days of receiving a Claim, the Insurance Agent will inform the Beneficiary in writing whether or not the Insurance Agent accepts that the Builder has died, disappeared or become insolvent or, alternatively, whether the Insurance Agent requires further information; and

Note: Subclause 6.1 requires a decision to reject a Claim be notified promptly.
 - (g) within five business days of an Insurance Agent appointing a Service Provider to inspect the property the subject of a Claim, the Insurance Agent will inform the Beneficiary of that fact in writing and will provide the contact details of the Service Provider.

5.7 Financial hardship

The Insurer must establish procedures for handling Claims where it becomes aware that a Beneficiary is experiencing severe financial hardship as a result of the event giving rise to the Claim, including giving appropriate priority to these Claims.

5.8 Supervision of Service Providers

An Insurance Agent must require each Service Provider acting on its behalf to:

- (a) operate in a professional manner;
- (b) inform Beneficiaries of their status and the identity of the Insurance Agent for whom they are acting; and
- (c) comply with the Act and these Claims Handling Guidelines.

An Insurance Agent must not authorise a Service Provider to act in matters that do not match their expertise.

5.9 Expertise of Service Providers

Each Service Provider acting on behalf of an Insurance Agent must have:

- (a) been approved by the Insurance Agent;
- (b) a current licence, registration and qualification if required by any applicable law; and

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- (c) sufficient expertise to act in relation to the matters for which they have been appointed by the Insurance Agent.

6. Reasons for Decisions

6.1 Documented reasons

The Insurer must document in writing and provide to the Beneficiary the reasons for rejecting a Claim in whole or in part, or reducing its liability in respect of a Claim, and the Insurer must promptly advise the Beneficiary of that decision and the reason for it and the availability of any applicable dispute resolution system.

The Insurer will, on request, provide copies of reports from Service Providers that are relied upon by the Insurer to reject a Claim or reduce its liability in respect of a Claim.

This subclause 6.1 is subject to subclause 6.3.

6.2 Consistency

The reasons referred to in subclause 6.1 must be consistent with the Insurer's Claims Procedures Manual lodged with the Director-General and where appropriate refer to information relied upon by the Insurer for the decision.

6.3 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 Insurance Agent in any further investigation or in any dispute in respect of a Home Warranty Insurance claim.

7. Dealing with Service Providers

7.1 Agreement with Service Providers

Where a Service Provider is acting for or providing services to an Insurance Agent in respect of Claims – the Service Provider must, in relation to the activities or functions performed by the Service Provider:

- (a) comply with these Claims Handling Guidelines insofar as they relate to those activities or functions;
- (b) not do anything that may result in the Insurer or the Insurance Agent failing to comply with these Claims Handling Guidelines;
- (c) meet the claims service standards, provide the information and do those things required by subclauses 7.2 to 7.5 and as required by clause 8;

and the Insurance Agent must not deal with a Service Provider in respect of Claims unless the Insurance Agent and the Service Provider have entered into an agreement in a form approved by the Insurer and imposes those obligations on the Service Provider.

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

7.2 Claims service standards

Each Service Provider must either:

- (a) meet the claims service standards specified by the Insurance Agent in accordance with these Claims Handling Guidelines insofar as they relate to the Service Provider's dealings with a Beneficiary; or
- (b) meet claims service standards established by the Service Provider in respect of its dealings with the Beneficiary and agreed by the Insurance Agent which claims service standards satisfy the requirements of clause 5 insofar as they relate to the activities of the Service Provider.

7.3 Self-assessment

An agreement required under subclause 7.1 must make provision for compliance self-assessment to be conducted in respect of the performance of the Service Provider by the Service Provider's internal compliance self-assessment processes or alternatively by the Service Provider'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 Service Provider's compliance with the requirements under the agreement between the Service Provider and the Insurance Agent.

7.4 Notice of non-compliance

If an Insurance Agent becomes aware of a material failure by a Service Provider to comply with the terms of the agreement between the Insurance Agent and the Service Provider or if the Insurance Agent becomes aware of complaints by Beneficiaries in respect of the performance of the Service Provider then the Insurance Agent must require the Service Provider to rectify the non-performance or to explain the reasons for the complaints or both. If the Service Provider fails to do this to the reasonable satisfaction of the Insurance Agent, the Insurance Agent must advise the Service Provider of its non-compliance with the agreement in writing and provide a copy of that notice to the Insurer.

7.5 Information provided to the Director-General

The Insurer may report the non-performance of Insurance Agents or Service Providers to the Director-General, and the Director-General may publish information in relation to the performance and non-performance of Insurance Agents or Service Providers 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 Service Provider likely to be named or affected and has consulted with the Insurer, the Insurance Agent and that Service Provider in relation to the material to be published.

7.6 Obligations of Insurer

The obligations of the Insurer in relation to the activities of a Service Provider are to require that each Insurance Agent takes reasonable steps to enforce the agreement between the Service Provider 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 a Service Provider in circumstances where it would not otherwise be liable for those activities.

8. Complaints and Disputes

8.1 Internal Dispute Resolution

Each Insurance Agent must apply its internal complaints handling process to Claims under its Home Warranty Insurance business including Claims handled or settled by the Insurance Agent's Service Provider.

Disputes relating to Service Providers must be handled by an Insurance Agent under the Insurance Agent's internal dispute resolution procedure.

8.2 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 Beneficiary that makes a Claim that a complaints handling process exists and the Insurance Agent must require any Service Provider involved in handling or settling Claims on its behalf to provide the same information in respect of the Insurance Agent's complaints handling process.

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.

8.3 Register of complaints

Each Insurance Agent must establish a register of complaints and disputes and on the register will record the nature of each complaint and dispute and how and when it was resolved. An Insurance Agent must ensure that these details are also recorded in relation to any complaints received by its Service Provider and disputes involving its Service Provider.

8.4 Provision of information to Director-General

Each Insurance Agent must make available to the Insurer information from each register established under subclause 8.3 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.

8.5 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 8.3.