

Home building compensation (claims handling) insurance guidelines

January 2018

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1. Introduction

- 1.1 The State Insurance Regulatory Authority (SIRA) is the NSW government agency responsible for regulating insurance and alternative indemnity products (building cover contracts) under the *Home Building Act 1989* (the Act).
- 1.2 These Insurance Guidelines have been made under the provisions of the Act and regulate the claims handling procedures of licence holders in respect of building cover contracts.
- 1.3 These Guidelines set out what licence holders and claimants must do in relation to claims under the home building compensation legislation being the:
 - *Home Building Act 1989* (the Act), and
 - Home Building Regulations 2014 (the Regulation).
- 1.4 These Guidelines are principles based. The principles have been developed to ensure that HBC claims are handled efficiently and in accordance with the law and that the HBC scheme is transparent, accountable, and operates honestly and fairly.

2. Commencement

- 2.1 These Guidelines apply from 1 January 2018 to claims made on building cover contracts entered into on or after 1 July 2010 under the Act (subject to transitional arrangements provided for in these Guidelines). Contracts of insurance under Part 6 of the Act that were entered into before 1 July 2010 are subject to continuing insurance industry deed obligations under Schedule 4, clause 93 of the Act.

3. Definitions

- 3.1 In these Guidelines, terms that are defined in the Act or the Regulation have the same meaning as they do in the Act or Regulation unless otherwise specified.

| Term | Definition |
|-------------------------|--|
| Act | <i>Home Building Act 1989</i> |
| building cover contract | A contract of insurance under Part 6 of the Act or a contract or arrangement for the provision of cover by means of an alternative indemnity product |
| business days | Monday to Friday, excluding public holidays |
| claim | A claim for indemnity by a claimant under a building cover contract |
| claimant | A person entitled to make a claim under a building cover contract |

| Term | Definition |
|------------------|---|
| contractor | A person who is required by Part 6 of the Act to enter into a building cover contract |
| dispute | A dispute regarding a licence holder's decision regarding the claim |
| Guidelines | Home Building Compensation (Claims Handling) Insurance Guidelines |
| licence holder | A licensed insurer or a licensed provider under the Act |
| HBC legislation | Includes the Act and Regulation and any Insurance Guidelines made under the Act |
| Regulation | Home Building Regulation 2014 |
| service provider | A person engaged by a licence holder, other than an employee or officer of the licence holder to investigate, assess, handle or settle a claim (or to do more than one of those things) on behalf of the licence holder |
| SiCorp | NSW Self Insurance Corporation |
| SIRA | State Insurance Regulatory Authority |

4. Regulatory framework

- 4.1 These Guidelines specify the minimum claims handling requirements for licence holders.
- 4.2 These Guidelines are made under sections 103EC(a) and 104E(1)(c) of the Act.
- 4.3 Under section 103ED (7) of the Act, it is a condition of a licence issued under Part 6C of the Act that licence holders comply with the relevant provisions of these Guidelines.

5. Claims management principles

- 5.1 The principles set out in these Guidelines are intended to ensure that claims are handled efficiently, honestly and fairly and encourage a transparent accountable and flexible model. The claims management model implemented by licence holders (see section 10 of these Guidelines), and those acting on behalf of licence holders, is required to adhere to the following principles:
 - 5.1.1 process claims efficiently and in accordance with the law
 - 5.1.2 respond in a timely manner
 - 5.1.3 use transparent business practices

- 5.1.4 make the claims procedures of licence holders readily accessible and available to all claimants
- 5.1.5 apply consistent service standards
- 5.1.6 apply consistent decision making processes supported by evidence, and
- 5.1.7 apply a transparent complaint and dispute handling process.

Process claims efficiently and in accordance with the law

- 5.2 Licence holders are required to conduct claims handling efficiently, honestly and fairly.

Respond in a timely manner

- 5.3 All claims made to a licence holder in relation to a building cover contract must be handled in a timely manner. The licence holder will ensure all interactions with the claimant are prompt and efficient when dealing with all aspects of the claim. All correspondence must include information on the licence holder's approach to managing complaints and SIRA's role as the regulator of Home Building Compensation.

Use transparent business practices

- 5.4 All information provided to claimants should be clear and accurate, not misleading and be expressed in plain language.
- 5.5 If a licence holder considers that any of the timeframes in these guidelines are not practical in a specific case, for example due to the complex nature of the claim, the licence holder must agree upon a reasonable alternative timetable with the relevant claimant. If the licence holder cannot reach an agreement on an alternative timetable with the claimant, the licence holder must refer the claimant in accordance with the claims handling process.

Claims procedures and complaint procedures to be made available to all claimants in an accessible format

- 5.6 Licence holders must make their claims procedures easily accessible to all potential claimants, including publishing their claims procedures on their website. A licence holder may use a range of distribution channels provided that every claimant has ready access to its claims procedures through those channels.
- 5.7 Licence holders must also provide the claimant with the procedures for a claimant to make a complaint if they are not satisfied with the service or conduct of the licence holder in relation to a claim.

Apply consistent service standards

- 5.8 The licence holder is required to act promptly and efficiently in relation to all dealings with claimants including the handling and settling of claims. The claims service standards (see 6.12 in these Guidelines) 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 claimants (if dealing directly).

Apply consistent decision making processes supported by evidence

- 5.9 The licence holder must perform a preliminary assessment once the claim form is received and advise the claimant in writing if additional information is required. The licence holder must determine whether the claim meets the requirements for cover under the relevant building cover contract.
- 5.10 A licence holder may decide to do one of the following in accordance with its obligations under the HBC legislation:
 - 5.10.1 approve and pay the claim in whole
 - 5.10.2 approve and pay the claim in part
 - 5.10.3 reduce its liability in respect of the claim, or
 - 5.10.4 reject the claim entirely.
- 5.11 The licence holder must document in writing and provide to the claimant the reasons for its decision.
- 5.12 The licence holder will, within 10 business days of a written request, provide the claimant with copies of reports from service providers that are relied upon by the licence holder to reject a claim or reduce its liability in respect of a claim. There is no requirement for the licence holder to disclose information where:
 - 5.12.1 it is confidential information provided by third parties (including identifying information)
 - 5.12.2 the information cannot be disclosed under law, or
 - 5.12.3 the information is subject to legal professional privilege.

Apply a transparent complaint and dispute handling process

- 5.13 The licence holder must apply a transparent, timely, documented approach to managing complaints and disputes.
- 5.14 The licence holder's documented approach to complaints and disputes must be readily accessible to the public, including publication on the licence holder's website and provision to the public upon request.

6. Claims process

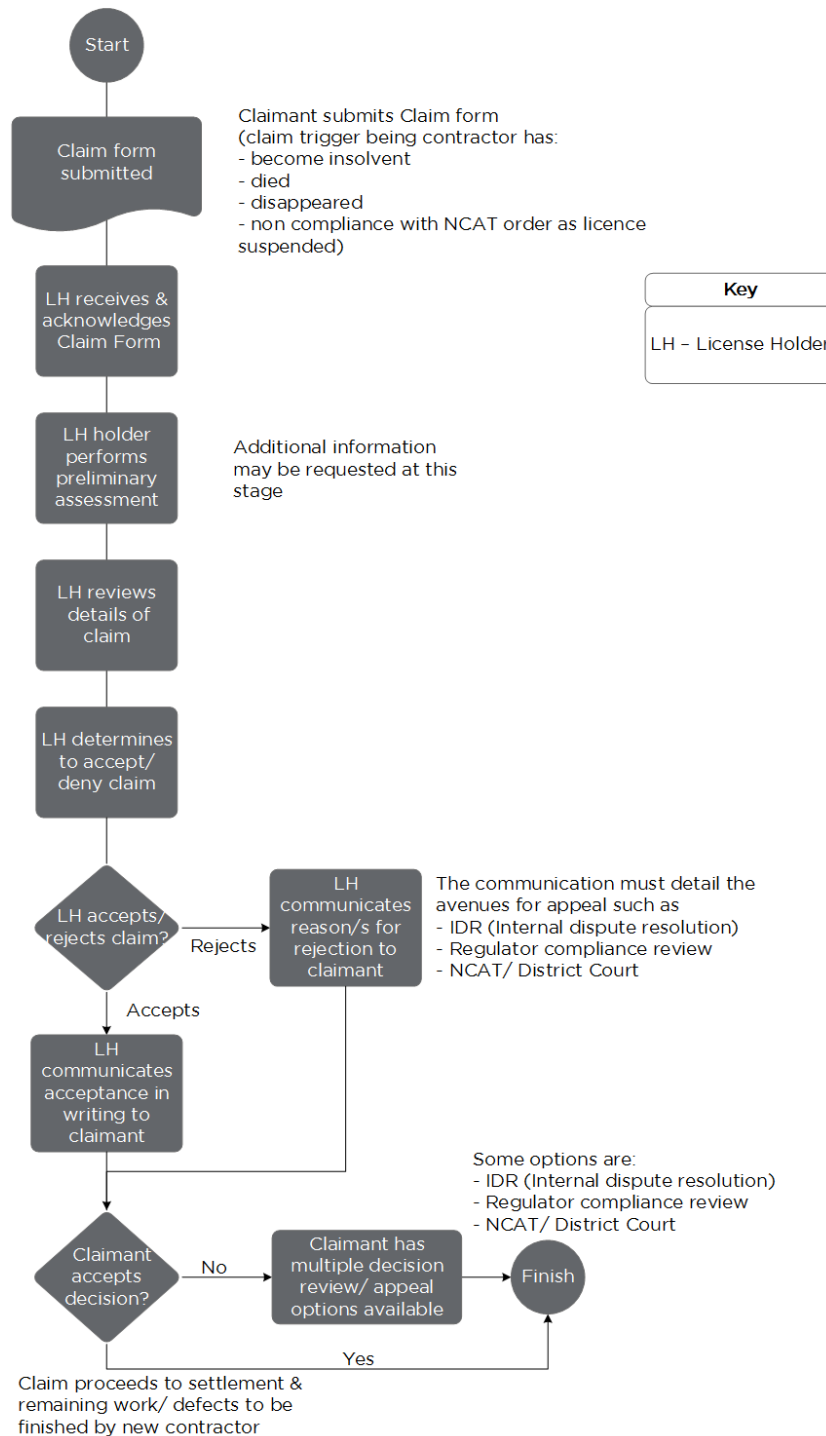
- 6.1 A claim may be made if the claimant suffers a loss that the Act or the Regulation require the building cover contract to indemnify, or for such additional losses as the building cover contract may provide, if any.

Lodging a claim

- 6.2 A consumer may make a claim on a building cover contract if one of the following events has occurred:
- 6.2.1 a contractor has become insolvent
 - 6.2.2 a contractor has died
 - 6.2.3 a contractor has disappeared¹
 - 6.2.4 a contractor's licence has been suspended due to non-compliance with an order of a court or the NSW Civil and Administrative Tribunal (NCAT) to pay an amount of money in respect of a building claim under section 42A of the Act, or
 - 6.2.5 any additional events for which the building cover contract provides.
- 6.3 A claim form must be submitted by the claimant to the licence holder (or a service provider nominated by the licence holder) to start the process. An overview of an indicative claims process can be found at Figure 1.

¹ Where a claimant believes that the contractor has disappeared, the claimant may lodge a complaint with NSW Fair Trading in order to locate the contractor and resolve the issues in dispute. A claimant who has received written notice from NSW Fair Trading that it has been unable to locate the contractor may provide a copy of that notice to the licence holder to meet the claimant's obligation to conduct due search and inquiry of the location of the contractor.

Figure 1: Indicative home building compensation claims process



Time period for lodging a claim

- 6.4 A claim must be lodged with the licence holder within the period of cover and time limits provided under the Act and Regulation or within such additional times as a building cover contract may provide.
- 6.5 Subject to limited exemptions discussed at 6.7 and 6.8 below the following limitation periods apply to claims:
- 6.6 A claim for loss or damage arising from a breach of statutory warranty (e.g. defective work) may be lodged under a Warranty Period Building Cover Contract or Combined Building Cover Contract:

- 6.6.1 within six years of the completion date² for loss or damage arising from a major defect³
- 6.6.2 within two years of the completion date for loss or damage arising from a breach of statutory warranty that is not a major defect, and
- 6.6.3 within any longer period for which the building cover contract may provide applies to certain loss or damage arising from a breach of statutory warranty, if any.
- 6.7 A claim for loss or damage resulting from non-completion of the work under a Construction Period Building Cover Contract or Combined Building Cover Contract may be lodged within 12 months after the failure to commence, or cessation of, the work (or such longer period for which the building cover contract may provide, if any).
- 6.8 A claim for loss or damage arising from a breach of statutory warranty or claim for incomplete work in circumstances of non-completion under a Construction Period Building Cover Contract may be lodged within 12 months after the failure to commence, or cessation of, the work (or such longer period for which the building cover contract may provide, if any).

Extended claim period

- 6.9 If a loss arising from a breach of statutory warranty became apparent in the last six months prior to the expiry of the relevant period of cover, a claimant will have an additional six months to lodge a claim. However, this additional period is not available for loss that arises from non-completion of work, or that arises from a breach of statutory warranty covered by a Construction Period Building Cover Contract.

Delayed claim

- 6.10 A delayed claim may be lodged with the licence holder after the period of cover if:
 - 6.10.1 the loss became apparent during the period of cover
 - 6.10.2 the loss was properly notified to the license holder during the period of cover referred to in sections 6.6 to 6.8 above, but the claim could not be made as an event referred to in 6.4 had not occurred, and
 - 6.10.3 the claimant has diligently pursued the contractor.
- 6.11 A loss is properly notified, when the claimant notifies the license holder in writing or by lodging a completed loss notification form within the period of cover.

Minimum claims service standards

- 6.12 The licence holder must provide the following claims service standards as a minimum:
 - 6.12.1 Within two business days of a licence holder receiving a loss notification form from a claimant, the licence holder will acknowledge receipt of the

² The date of completion is defined in Section 3B of the Act.

³ The meaning of 'major defect' is defined in Section 18E of the Act.

loss notification form and confirm the next steps, which will include the following information:

- a) what constitutes an event when a claim can be lodged (per 6.2)
- b) the time period within which a claim must be lodged, and
- c) a description of the claim process and information required by the licence holder to assess a claim.

6.12.2 The licence holder must inform the claimant about what prescribed claim information is required in order for the licence holder to assess a claim. The specific information is referred to below:

Figure 2: Prescribed claim information

Required information when lodging a claim

- the name, address and contact details of the claimant and of each owner of the property the subject of the claim
- the address of the property the subject of the claim
- the certificate number or other identifier of the building cover contract that is the subject of the claim, or a copy of the certificate for the cover that is the subject of the claim
- whether the claimant believes that the contractor has died, disappeared, become insolvent or any other event which allows a claim to be lodged (per 6.2) and details of the source of that belief, including all relevant documents obtained by the claimant
- if the claimant became the owner of the property after completion of the work performed by the contractor, evidence of the transfer of title
- where the claimant contracted directly with the contractor, evidence of the contract between the claimant and the contractor in relation to the work and information about the work performed
- a description of all defective or incomplete work alleged by the claimant together with the date on which it was first observed by the claimant to be defective or incomplete, and
- details of any prior complaints made or action taken by the claimant in relation to the defective or incomplete work.

Receipt of claim

6.12.3 For the purposes of clause 39 of the Regulation, a claim is deemed to be received by the licence holder on the date on which the licence holder receives the prescribed claim information from the claimant. The claim will be deemed to be received whether or not the claimant also provides other information requested by the licence holder and whether or not the claim has been entered into the licence holder's computer system.

6.12.4 If a licence holder has not received all of the prescribed claim information from a claimant within five business days of receiving some prescribed claim information, the licence holder will inform the claimant in writing within 24 hours of the further prescribed claim information that is required.

6.12.5 The licence holder must promptly investigate whether an event in which a claim may be made has occurred (referred to in 6.2 above), and:

- a) within 30 business days of receiving a claim, the licence holder will inform the claimant in writing whether or not the licence holder accepts that an event in which a claim may be made has occurred or, alternatively, whether the licence holder requires further information.
 - b) if at any time the licence holder forms the view that an event in which a claim may be made has not occurred, the licence holder will inform the claimant in writing within five business days and provide details of the source of that belief.
- 6.12.6 Within five business days of a licence holder receiving all of the prescribed claim information, the licence holder must:
- a) acknowledge receipt of the claim in writing
 - b) provide an explanation of what steps the licence holder will take to assess the claim, and
 - c) inform the claimant of the time periods and circumstances within which a licence holder is deemed to have accepted liability for the insurance claim under the Act or the Regulation.

Arrangements for the inspection of the property the subject of a claim

- 6.12.7 Within 10 business days of informing a claimant that the licence holder accepts that an event in which a claim may be made has occurred (per 6.2), the licence holder must:
- a) engage a service provider to inspect the property that is the subject of the claim or appoint a person that is an employee of the licence holder that will be responsible for inspecting the property, and
 - b) inform the claimant of that fact in writing, including the contact details of the service provider or the licence holder's appointed employee.

Supervision of inspectors acting on behalf of licence holders

- 6.12.8 The licence holder must require each service provider or employee acting on its behalf to:
- a) operate in a professional manner
 - b) inform beneficiaries of their status and the identity of the licence holder for whom they are acting, and
 - c) comply with the Act, Regulation and any relevant Insurance Guidelines.
- 6.12.9 A licence holder must not authorise a service provider or employee to act in matters for which they are not properly qualified and experienced.

Expertise of service providers

- 6.12.10 Each service provider or employee acting on behalf of a licence holder must have:
- a) been engaged by the licence holder, and
 - b) possess a current licence, registration or qualification if required under the Act or any other applicable law.

7. Claims decisions

- 7.1 All claims decisions must be provided to the claimant in writing. Where the licence holder approves the claim in part, reduces its liability, or rejects the claim entirely, it must promptly advise the claimant of that decision and the reason(s) for it.
- 7.2 The written notice to a claimant about a claim decision must detail the options available for the claimant to make a complaint about a claim or to dispute a claim decision as required by section 8 below.

8. Complaint and dispute process

- 8.1 Licence holders must have documented complaint and dispute processes, which must at a minimum incorporate:
 - 8.1.1 frontline complaint handling by the licence holder to focus on early resolution
 - 8.1.2 offering the claimant the option to request an internal review by the licence holder if the claimant is not satisfied by the frontline clarification of the decision, and
 - 8.1.3 providing information to the claimant about how to make a complaint to SIRA and that the claimant may appeal the claim decision through a court or tribunal.

Internal review

- 8.2 A licence holder must provide the option for a claimant to seek internal review of the claims decision. The following requirements must apply to the provider's internal review process:
 - 8.2.1 Internal reviews must be conducted in the way which best supports the facts and circumstances of the particular claim and the particular claimant. This may include undertaking the review on the papers, using teleconferences, videoconferences, or face to face conferences as appropriate.
 - 8.2.2 The licence holder may reasonably request information from the claimant for the purposes of the internal review.
 - 8.2.3 The licence holder must communicate its decision on the internal review, including reasons for the decision, to the claimant.
 - 8.2.4 The internal review decision of the licence holder is to be binding on the licence holder and should be applied and given effect to by the licence holder as quickly as is practicable, in accordance with the licence holder's responsibilities under these Guidelines.
 - 8.2.5 The internal review, including notification of the decision to the claimant, must take no longer than 30 business days.

Appeals to the tribunal or court

- 8.3 Where a claimant is not satisfied with a decision on a claim by an licence holder, and whether or not an internal review has been done, the claimant may appeal to the NSW Civil and Administrative Tribunal (NCAT), the District Court (where the amount involved exceeds the Tribunal's \$500,000 jurisdictional limit) or the Supreme Court.
- 8.4 The licence holder must advise the claimant that any appeal to NCAT, the District Court or the Supreme Court should be lodged within 45 days of receiving a written decision from the licence holder (or as otherwise provided by the Regulation).

Requests for a regulator compliance review

- 8.5 A claimant may request that SIRA review a licence holder's handling of a claim if the claimant believes that a licence holder has not complied with the Act, the Regulation, the Guidelines or the licence holder's documented approach to complaint and dispute management.
- 8.6 SIRA will assess the licence holder's compliance with the relevant obligations. SIRA will decide appropriate action or recommendations to a licence holder in respect of any substantiated non-compliance. A regulator compliance review is not a mechanism of appeal to review of the merits of a particular claim, and does not overturn claims decisions.

Other complaints about the licence holder

- 8.7 The claimant may lodge a written complaint about the licence holder with SIRA if they are not satisfied with the service provided by, or the conduct of the licence holder in handling the claim. If the claimant has evidence to support the complaint, it must be provided to SIRA with the written complaint.

9. Transitional requirements

- 9.1 To minimise disruption, the following transitional requirements apply for the period up to 31 December 2018.

SICorp claims handling guidelines

- 9.2 SICorp is deemed to have a Claims Management Model complying with these guidelines, including the *SICorp Claims Handling Guidelines (1 July 2010)* together with the *icare complaint and dispute handling procedure for claims and eligibility (20 July 2017)* in respect of claims until the earlier of:
- 9.2.1 31 December 2018, or
 - 9.2.2 the date on which a new or amended claims management model for SICorp commences following approval by SIRA in accordance with these Guidelines.
- 9.3 Deemed compliance is subject to SICorp submitting a claims management model to SIRA for assessment against these Guidelines by no later than 1 October 2018.

10. Claims management model filing and review process

Submission to the Authority

- 10.1 Each licence holder should submit its claims management model to SIRA at least three months before the intended date of operation or amendment. SIRA will reject or approve the model within six weeks.

Claims management model

- 10.2 The licence holder's claims management model must include:
- 10.2.1 claims procedures
 - 10.2.2 service standards
 - 10.2.3 forms and publications
 - 10.2.4 information to be made available on the licence holder's website
 - 10.2.5 complaints management processes
 - 10.2.6 roles and responsibilities, and
 - 10.2.7 claims settlement procedure and timeframes with the service provider.

Assessment and rejection of the claims management model

- 10.3 SIRA will assess the licence holder's claims management model against the following criteria:
- 10.3.1 compliance with the principles described in section 5 of these Guidelines

- 10.3.2 compliance and alignment with the Act and Regulations, and
- 10.3.3 compliance with provisions of the required information defined in 10.2.
- 10.4 Failure to demonstrate compliance with these Guidelines, and in particular, any of the above mentioned criteria may result in a rejection of the claims management model.
- 10.5 In order to complete the assessment, SIRA may request the licence holder to:
 - 10.5.1 provide additional information in respect of the claims management model to SIRA, and
 - 10.5.2 consult with SIRA, or an authorised person nominated by SIRA for that purpose, in relation to the licence holder's claims management model.
- 10.6 SIRA will complete an assessment of a licence holder's claims management model within six weeks of receipt.
- 10.7 Once SIRA confirms that an assessment is complete and the claims management model has been accepted a licence holder must apply the claims management model from the agreed commencement date.

Review of the application of the claims management model

- 10.8 SIRA may complete a review of a licence holder's claims handling processes at any time to ensure that claims are handled in accordance with legislative requirements, these Guidelines, and the approved claims management model.

11. Publication of information

General publication

- 11.1 The licence holder must make publicly available on its internet website and, if requested by a claimant, provide the following information:
 - 11.1.1 notification of loss forms and information about how to notify the licence holder of a loss that might give rise to a claim
 - 11.1.2 claim forms and information about how to make a claim, including a description of the information the licence holder requires in order to assess a claim
 - 11.1.3 general claims procedures
 - 11.1.4 details of the licence holder's claims service standards
 - 11.1.5 details of how to make a complaint to the licence holder about the handling of a claim by the licence holder or about a service provider, including complaints contact persons, phone numbers and email addresses
 - 11.1.6 details of how a claimant can seek internal review of any claims decision
 - 11.1.7 details of how a claimant may request that SIRA complete a regulator compliance review of any non-compliance with the licence holder's obligations in respect of claims handling, and

- 11.1.8 details of how to make a complaint to SIRA about the service provided by, or the conduct of, the licence holder in handling the claim.
- 11.2 Details of information required to be provided by these Guidelines must be provided free of charge and must be worded and presented in a clear, concise and effective manner.

Complaints and disputes records

- 11.3 Each licence holder must establish a register of complaints and disputes. At a minimum the register must record:
 - 11.3.1 the name and address of the claimant
 - 11.3.2 the nature of each complaint and dispute
 - 11.3.3 the date the complaint and dispute was received
 - 11.3.4 how and when each complaint and dispute was resolved
 - 11.3.5 number of complaints and disputes the licence holder could not resolve, and
 - 11.3.6 number of complaints the licence holder has received about the licence holder's conduct and service.
- 11.4 A licence holder should ensure that these details are also recorded in relation to any complaints received by its service providers and disputes involving its service providers.
- 11.5 Each licence holder must make available to SIRA information from their register of complaints and disputes as and when requested, and in the form and format specified by SIRA. This may include the digital transmission of data from the register to SIRA on such regular basis as SIRA may require.
- 11.6 SIRA may publish a summary of the number of complaints and disputes and the type of complaints and disputes contained on the registers.

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident third party (CTP) insurance and home building compensation in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers.

However to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the NSW Legislation website legislation.nsw.gov.au

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