Claims Handling Guidelines made as a condition of approval under s103A of the Home Building Act 1989

1 September 2009

Claims Handling Guidelines

1. Explanatory Note

Compliance with these Claims Handling Guidelines is a condition imposed by the Minister under Section 103A of the *Home Building Act 1989* (the ***Act***) upon the Approval granted to an Insurer for the purposes of Part 6 of the Act.

The Claims Handling Guidelines have been developed after consultation with insurers and other stakeholders in the home building industry.

The Claims Handling Guidelines apply to all kinds of contracts of insurance to be entered into under Part 6 of the Act (***Home Warranty Insurance***).

The Claims Handling Guidelines apply to all Claims made on or 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 ***Regulations***) and in the Conditions of Approval have the same meaning as they do under the Act, Regulations or Conditions of Approval;

(b) subject to subclause 3.7 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) in relation to a contract of Home Warranty Insurance issued on or after 19 May 2009, a reference to the insolvency of a Builder includes a deemed insolvency required by Section 99 of the Act; and

(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;

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) where the Claim is made under a contract of Home Warranty Insurance issued after 1 July 2002, 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

(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 the Insurer other than an employee or officer of the Insurer to investigate, assess, handle or settle a claim (or to do more than one of those things) on behalf of the Insurer.

3. Claims Procedures

3.1 Submission to Director-General

An Insurer will submit to the Director-General at least 10 Business Days before its intended date of operation, its claims procedures in respect of Home Warranty Insurance.

3.2 Alterations to claims procedures

An Insurer will submit to the Director-General at least 10 Business Days before the intended date of operation any variation in the terms of the claims procedures previously submitted to the Director-General.

3.3 Consistency with Claims Handling Guidelines

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

3.4 Requirement to amend

The Director-General may require an Insurer to amend its claims procedures if, in the opinion of the Director-General, the claims procedures or any part of them are not consistent with these Claims Handling Guidelines.

3.5 Additional information and consultation

Other than as provided in subclause 3.4, the Director-General is not required to approve or reject an Insurer's claims procedures but the Director-General may require the Insurer to:

(a) provide additional information in respect of the claims procedures to the Director-General; and

(b) to consult with the Director-General, or officers of the Department of Commerce nominated by the Director-General for that purpose, in relation to the Insurer's claims procedures.

3.6 Consistent behaviour

An Insurer will:

(a) amend its claims procedures as required under subclause 3.4 or as otherwise agreed with the Director-General;

(b) ensure that any copy of its claims procedures provided to employees or to any Service Provider or any information in respect of these matters provided to an employee or any Service Provider is consistent with the claims procedures last lodged with the Director-General;

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

3.7 Disappearance of a builder

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

A Beneficiary who has received written notice from the Office of Fair Trading that it has been unable to locate the Builder may provide a copy of that notice to an 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 an 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

An Insurer must make publicly available (eg, on its internet web site) 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 the Office of 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;

(f) details of the Insurer's complaints handling process including the Insurer's complaints contact person, phone number and email address (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.

An Insurer will 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

Insurers are 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

An Insurer must document its claims service standards (and any changes) and will provide a copy to the Director-General at least 10 Business Days before the intended date of their operation.

Note: Paragraph 4(d) requires service standards to be made publicly available.

5.3 Amendment of claims service standards

The Director-General may require an Insurer to amend its claims service standards if, in the opinion of the Director-General, the claims service standards or any part of them are not consistent with these Claims Handling Guidelines.

5.4 Additional information and consultation

Other than as provided in subclause 5.3, the Director-General is not required to approve or reject an Insurer's claims service standards but the Director-General may require the Insurer to:

(a) provide additional information in respect of the claims service standards to the Director-General; and

(b) to consult with the Director-General, or officers of the Department of Commerce nominated by the Director-General for that purpose, in relation to the Insurer's 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 Insurer's response time, general service levels (including the use of appropriately trained claims staff) and the form and 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 3.7 where the Beneficiary believes the Builder has disappeared;

(d) requesting further information in addition to the Prescribed Claim information;

(e) when the Insurer has received the Prescribed Claim Information, 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;

(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 an Insurer rejects a Claim, reduces its liability in respect of a Claim or requires further information, promptly advising the Beneficiary;

(i) communicating to the Beneficiary early where an 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 by an Insurer, taking action promptly to rectify it;

(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 Insurer 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 Insurer (or the Insurer and its Service Provider) will deal with Beneficiaries in respect of Claims. Where an Insurer 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 an Insurer must provide as follows:

(a) within 5 business days of receiving notification from a Beneficiary of a loss that might give rise to a Claim, the Insurer will acknowledge receipt of the notification;

(b) the Insurer will inform a 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 an Insurer when the Insurer receives from the Beneficiary all of the Prescribed Claim Information, whether or not the Beneficiary also provides other information requested by the Insurer and whether or not the Claim has been entered into the Insurer's computer system;

(d) within 5 business days of receiving an incomplete Claim from a Beneficiary (that is, where the Insurer has not received all of the Prescribed Claim Information), the Insurer will inform the Beneficiary in writing what further Prescribed Claim Information is required;

(e) within 5 business days of receiving a Claim, the Insurer will:

(i) acknowledge receipt of the Claim;

(ii) provide an explanation of what steps the Insurer will take to assess the Claim; and

(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 Insurer will promptly investigate whether the Builder has died, disappeared or become insolvent and:

(i) if at any time the Insurer forms the view that the Builder has not died, disappeared or become insolvent, the Insurer will inform the Beneficiary in writing within 5 business days and provide details of the source of that belief; and

(ii) within 30 days of receiving a Claim, the Insurer will inform the Beneficiary in writing whether or not the Insurer accepts that the Builder has died, disappeared or become insolvent or, alternatively, whether the Insurer requires further information; and

Note: Subclause 6.1 requires a decision to reject a Claim be notified promptly.

(g) within 5 business days of appointing a Service Provider to inspect the property the subject of a Claim, the Insurer will inform the Beneficiary of that fact in writing and will provide the contact details of the Service Provider.

5.7 Financial hardship

An 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 Insurer must require Service Providers acting on behalf of the Insurer to:

(a) operate in a professional manner;

(b) inform Beneficiaries of their status and the identity of the Insurer for whom they are acting; and

(c) comply with the Act and these Claims Handling Guidelines.

Insurers must ensure that Service Providers are not authorised by the Insurer to act in matters that do not match their expertise.

5.9 Expertise of Service Providers

An Insurer must ensure that each Service Provider acting on behalf of the Insurer has:

(a) been approved by the Insurer;

(b) a current licence, registration and qualification if required by any applicable law; and

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

6. Reasons for Decisions

6.1 Documented reasons

The Insurer must document in writing and provide to the Beneficiary the Insurer's 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 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 in any further investigation or in any dispute in respect of a claim (whether or not that claim relates to Home Warranty Insurance).

7. Dealing with Service Providers

7.1 Agreement with Service Providers

Where Claims are handled or settled by a Service Provider on behalf of the Insurer, the Insurer must not deal with that Service Provider in respect of Claims unless, under an agreement with the Insurer in relation to the activities or functions performed by the Service Provider, the Service Provider must:

(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 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.

On request by the Director-General, an Insurer will supply a copy of its agreements with each Service Provider (to the extent that each agreement is different) to the Director-General and a list of Service Providers with which it has an agreement in respect of Claims.

7.2 Claims Service Standards

An agreement required under subclause 7.1 must require the Service Provider either to:

(a) meet the claims service standards specified by the Insurer 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 Insurer which claims service standards satisfy the requirements of clause 5 insofar as they relate to the activities of the Service Provider.

Where claims service standards are established by a Service Provider and agreed by the Insurer, the Insurer will provide those claims service standards (and any changes) to the Director-General at least 10 Business Days before the intended date of their operation.

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 and to the Director-General to appoint a person to conduct an audit of the Service Provider's compliance with the requirements under the agreements between the Service Provider and the Insurer.

7.4 Notice of non-compliance

If an Insurer becomes aware of a material failure by a Service Provider to comply with the terms of the agreement between the Insurer and the Service Provider or the Insurer becomes aware of complaints by Beneficiaries in respect of the performance of the Service Provider then the Insurer 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 Insurer, the Insurer must advise the Service Provider of its non-compliance with the agreement in writing and provide a copy of that notice to the Director-General.

7.5 Information provided to the Director-General

The Director-General may publish information in relation to the performance and non-performance of Service Providers that it obtains either from the Service Provider or from an Insurer but such publication will not be made unless or until the Director-General has provided notice to the Insurer and to each Service Provider likely to be named or affected and consulted with the Insurer and that Service Provider in relation to the material to be published.

7.6 Obligations of Insurer

The obligations of an Insurer in relation to the activities of a Service Provider are to take reasonable steps to enforce the agreement between the Insurer and the Service Provider and if necessary to terminate that agreement. Other than to this extent an 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 Insurer must apply its internal complaint handling process to Claims under its Home Warranty Insurance business including Claims handled or settled by the Insurer's Service Provider.

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

8.2 Notification

An Insurer must make details of its complaints handling process publicly available (eg, on its internet web site) and inform each Beneficiary that makes a Claim under the Insurer's Home Warranty Insurance that a complaints handling process exists and the Insurer must require any Service Provider involved in handling or settling Claims on its behalf to provide the same information in respect of the Insurer'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 Insurer. An Insurer or Service Provider

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

An Insurer 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 Insurer 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

An Insurer will make available to the Director-General information from its register established under subclause 8.3 in respect of complaints as and when requested.

8.5 Publication

The Director-General may publish a summary of the number of complaints and the type of complaints contained on the register established by an Insurer under subclause 8.3 but such publication will not be made unless or until the Director-General has provided notice to the Insurer and consulted with the Insurer in relation to the material to be published.