HOUSING INDUSTRY ASSOCIATION

Submission to the
State Insurance Regulatory Authority

Draft HBCF Business Plan Guidelines
Draft HBCF Claims Handling Guidelines

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ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products.

As the voice of the industry, HIA represents some 40,000 member businesses throughout Australia. The residential building industry includes land development, detached home construction, home renovations, low/medium-density housing, high-rise apartment buildings and building product manufacturing.

HIA members comprise a diversity of residential builders, including the Housing 100 volume builders, small to medium builders and renovators, residential developers, trade contractors, major building product manufacturers and suppliers and consultants to the industry. HIA members construct over 85 per cent of the nation's new housing stock.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

> *"promote policies and provide services which enhance our members' business practices, products and profitability, consistent with the highest standards of professional and commercial conduct."*

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into manufacturing, supply, and retail sectors.

The aggregate residential industry contribution to the Australian economy is over $150 billion per annum, with over one million employees in building and construction, tens of thousands of small businesses, and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional member committees before progressing to the Association's National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The Association operates offices in 23 centres around the nation providing a wide range of advocacy and business support, including services and products to members, technical and compliance advice, training services, contracts and stationary, industry awards for excellence, and member only discounts on goods and services.

1. INTRODUCTION

On Wednesday 20 September, the Self Insurance Regulatory Authority (SIRA) released two discussions papers dealing with matters that arise as a result of the passage of the *Home Building Amendment (Compensation Reform) Act 2017* (Act). One proposes a series of requirements in relation to a business plan to be prepared by a HBC licensed provider, while the other deals with the claims management procedures of HBC licensed providers. Together they form a part of the framework for the regulation of licensed insurers providing warranty insurance products.

HIA welcomes the opportunity to provide feedback in response to these discussion papers.

In his Second Reading Speech Minister for Finance, Services and Innovation, Victor Dominello addressed the provisions of the Act dealing with the introduction of alternative indemnity products into the NSW warranty insurance market and the need for regulatory guidelines**:**

> *'In addition to insurance products, the bill will allow cover under alternative indemnity products to be offered, such as fidelity fund schemes and specialised insurance arrangements. The bill inserts a new Part 6B to set out specific provisions for alternative indemnity products. Fidelity funds are already operating in the home building compensation market in the Australian Capital Territory and the Northern Territory. Fidelity funds will be licensed and need to meet equivalent requirements to insurers under the scheme. The cover offered by these products will need to meet or exceed the minimum cover requirements of the legislation in the same way as insurance. I note that, unlike general insurers, fidelity funds are not subject to oversight by the Australian Prudential Regulatory Authority. The State Insurance Regulatory Authority will draw on its experience regulating providers that are not insurers in the other regimes that it administers to ensure that alternative indemnity products are regulated on an equal footing with insurance providers. These arrangements will be further detailed in the regulations and guidelines.'*[1]

As noted by the Minister the ability under the Act to offer alternative indemnity products that includes products not regulated by the Australian Prudential Regulatory Authority (APRA) i.e. fidelity funds has led to the need to introduce a range of supporting guidelines including those currently under consideration. However, not only do the range of the proposed requirements that are set out in the draft guidelines fall short of the extensive regulatory oversight undertaken by APRA, APRA regulated insurers that may consider entering the NSW warranty insurance market will have additional compliance obligations (over and above those imposed on some alternative indemnity products) which may perversely act as a disincentive to enter the market.

[1] 24 May 2017

As outlined on previous occasions, HIA opposes the inclusion of Fidelity Funds as an alternative indemnity product.

This is primarily for 2 reasons:

- Firstly, Fidelity Funds do not provide adequate consumer protection. The inability of a Fidelity Fund to unilaterally increase contributions poses a risk that losses as a result of claims cannot be covered nor recouped.
- Secondly, as alluded to above, Fidelity Funds are not subject to the same oversight and regulation as other APRA approved insurance products. APRA has consistently over the years drawn attention to the fact that existing fidelity funds (constituted as a trust) generally do not have adequate risk management systems and internal controls in place, or sufficient capital, to satisfy APRA's Prudential Standards. Liquidity of assets and the forms in which they may be invested, gearing, and the methodology for determining the trust's risks and liabilities are also areas where fidelity funds are not required to comply with the same standards as insurers. There is no doubt that any potential NSW home warranty fidelity fund would also fail to satisfy APRA standards.

While no system of prudential regulation ever has, or can, provide an absolute guarantee against financial failures, general insurers who meet the APRA requirements have some of the strictest prudential requirements in the world. Banks, building societies, credit unions, life and general insurance companies and most of the superannuation industry are supervised by APRA, institutions currently holding $4 trillion in assets for almost 23 million Australian depositors, policyholders and superannuation fund members. APRA works hard in applying the Standards to ensure the continued safety, sustainability and soundness of the Australian industry, and its record since its inception in 1998 has been very good.

HIA remains of the view that it is not possible to regulate fidelity funds on an equal footing with insurers regulated by APRA. Continuous prudential regulation is not straight forward. SIRA oversight will not be comparable to APRA regulation, or could provide contributors to the fund with the same level of confidence.

As reflected in the comments from the Hon. Paul Green MLC**:**

> *'…it is HIA's strong view that only products approved by the Australian Prudential Regulation Authority [APRA] be considered as alternative indemnity products. By way of example, a fidelity fund is not APRA approved and as such presents a number of risks including lower operating costs due to avoidance of APRA compliance requirements which, among other things, may have an adverse impact on creating a competitive and sustainable insurance market in New South Wales, and reduced consumer protection due to the undercapitalisation of a fidelity fund during early years of operation'.*[2]

HIA continues to press these concerns.

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[2] NSW Parliament, Legislative Council, Hansard 20 June 2017

2. DRAFT HBCF BUSINESS PLAN GUIDELINES

Is the minimum and supporting content to be supplied in a business plan appropriate (refer to section 5 of these guidelines)?

The information to be supplied in a business plan is extensive and detailed, touching on matters that may be considered commercial in confidence. This, in conjunction with the extensive ability of SIRA to share and disclose information[3] gives some cause for concern as to who may end up being privy to this information. Consequently, clarity in relation to who will have access to this information would be of benefit is essential.

Are there any elements that should be excluded, added, or further clarified to assist the preparation of business plans by providers, and subsequent evaluation by the Authority?

There should be absolute clarity on how SIRA intends to ensure that anyone operating fidelity funds is subjected to the same scrutiny, oversight, governance and guarantee of ability to pay a claim as would be afforded by a traditional insurance product.

What time horizon should the business plan cover? Is three years an appropriate horizon?

While 3 years is generally considered to be the minimum period of time covered by a business plan, this should be a decision of the licensed provider and not mandated by SIRA.

It is also of note that the guidelines require six monthly updates on the implementation of the business plan[4], HIA have 2 concerns with this approach. Firstly, it is unclear what an update would entail and, secondly six months is a relatively short time frame within which to provide such updates. HIA suggest that 12 months would seem a more appropriate time frame.

Should these guidelines set targets for performance monitoring? For example financial targets such as gross written premium and market share or non-financial targets.

No, it should not be within SIRA's remit to monitor or judge the commercial performance targets of each licensed provider. The Business Plan should only require a commitment to a set of minimum requirements.

Should business plans and progress reports submitted to the Authority include details of top-up products? If so, how should the Authority consider these when evaluating business plans?

No, any top up products outside of the minimum statutory requirements should not be within SIRA's remit.

Is it desirable to have a standard reporting template to track progress against business plan objectives or targets? What elements should be mandatory to report and how frequently?

No, licensed providers will have their own reporting methods and ways of tracking performance against their business plans objectives and targets. Further, licensed providers should not be required to report on performance other than those that relate to claims activity (loss ratios and claims settlement timeframes and customer satisfaction).

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[3] For example see s121B of the Act

[4] Draft Home Building Compensation Business Plan Guidelines at section 7.8

The Authority plans to review these business plan guidelines within 18 months. Is this the correct timeframe for review?

HIA understands that most business plans would have a 3 year minimum timeframe. As such if SIRA intends to review the guidelines the review date should also be 3 years, with the discretion to carry out such a review earlier if necessary.

3. DRAFT HBCF CLAIMS HANDLING GUIDELINES

The draft Claims Handling Guidelines are a revision of the current Claims Handling Guidelines[5] made under section 91A of the *Home Building Act 1989*. There are differences between the current and proposed Guidelines and it is unclear why some of those changes have been made.

For example, under the draft Guidelines it is required that the internal complaints procedure for a licensed insurer be consistent with the *Australian/New Zealand Standard – Guidelines for complaint management in organisations ISO 10002:2014*. This stands in stark contrast to the current requirements which require no such compliance and includes the following 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 complaint whether or not that person wishes the complaint to be registered or referred to the internal dispute settlement process."*[6]

Also of note is a different approach in relation to the transmission of data from a complaints register. Currently at a minimum this information must be reported on a half-yearly basis or as otherwise agreed, under the draft Guidelines a licensed provider will be required to provide such information when requested and on a regular basis. Further clarity on when this information must be reported would be of benefit.

Further, under the draft Guidelines, where a timeframe for dealing with a claim is not practical the HBC licensed provider will agree on a reasonable alternative timetable with the claimant. If agreement cannot be reached the provider must provide details of its complaint process[7]. The licensed provider is the best placed to understand the timeframes for managing a claim therefore should have the discretion to set those timeframes without the need for agreement with the claimant. If a claimant disagrees with this then they would be entitled to make a complaint.

Other matters of note include:

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[5] Dated 1 July 2010
[6] Claims Handling Guidelines 1 July 2010 at section 8.2 page 10.
[7] See section 6.6

- A possible incorrect reference at section 6.3 to sections 5.6 and 5.7 which are not included in the draft Guidelines.
- That proposed section 6.8.6 be amended to reflect that which is in the current guidelines at section 5.5(f). If adopted proposed section 6.8.6 would read *'keeping the claimant informed about the progress of a claim* ***unless a response from the Beneficiary is outstanding****'.*

Are there any elements that should be excluded, added, or further clarified about disputes or complaints process?

Notification timeframes of 5 days are impractical. HIA submit that anywhere 5 days is noted it should be changed to a minimum of 14 days with the ability to extend this period if justified.

What areas of these guidelines would be improved by practice notes?

All insurance providers abide by the requirements imposed by APRA as the regulator of the *Insurance Act 1973* and are well versed in claims and complaints management. We do not see that practice notes will have any impact on the behaviour of providers as they already act in accordance with those requirements.

The State Insurance Regulatory Authority plans to review these claims handling guidelines within 18 months. Is this the right timeframe for review?

This would seem to be appropriate.

Should there be a specific requirement to process claims expeditiously if the claimant is experiencing financial hardship?

Whilst the current guidelines include such a requirement[8], without a definition of 'financial hardship' one could argue anyone affected by a warranty claim may fall into this category and therefore lead to a perception that all claims will need to be dealt with expeditiously. Apart from the comments in regard to the 5 day notifications timeframes noted above, the timeframes in the draft guidelines should be adequate to deal with all circumstances.

Consequently, this should be a matter left to the discretion of the licensed insurer.

[8] Claims Handling Guidelines, 1 July 2010 see section 5.7