

# Draft home building compensation claims handling guidelines

**September 2017**

# Contents

1. Introduction.....	3
2. Commencement.....	3
3. Guideline-making powers.....	3
4. Defined terms.....	4
5. Claims process overview.....	6
6. Claims management principles.....	8
Act in good faith with all claimants.....	8
Respond in a timely manner.....	8
Use transparent and practical business practices.....	8
Make available the claims procedures to claimants in an accessible format to all claimants.....	8
Apply consistent services standards.....	9
Minimum claims service standards.....	9
Apply consistent decision making processes based on evidence.....	10
Apply a transparent complaint handling process.....	11
Apply a transparent and consistent review process.....	11
Internal review.....	12
External review.....	12
Regulator compliance review.....	12
NSW Civil and Administrative Tribunal.....	12
Timeliness of appeals.....	12
7. Claims management model filing and review process.....	13
Submission to the Authority.....	13
Claims management model.....	13
Assessment and rejection of the claims management model.....	13
Review of the application of the claims management model.....	14
8. Publication of information.....	14
General publication.....	14
Complaints records.....	14
9. Consultation questions.....	15

# 1. Introduction

- 1.1 The State Insurance Regulatory Authority (the Authority) is the NSW government organisation responsible for regulating insurance and alternative indemnity products (building cover contracts) under the *Home Building Act 1989* (the Act).
- 1.2 These guidelines have been developed to instruct HBC licensed providers in the proper management of claims under the Home Building Compensation (HBC) Scheme.
- 1.3 These guidelines establish principles to ensure claimants are treated fairly, honestly and consistently and that their claims are paid promptly.
- 1.4 These guidelines are principles based. They articulate a set of objectives and expectations for standards of claims handling processes.
- 1.5 The Authority's adoption of principles-based regulation is intended to encourage a transparent, accountable and flexible model for both claimants and HBC licensed providers.
- 1.6 The practices of HBC licensed providers, and those acting on their behalf, should align with these guidelines.
- 1.7 To assist in the interpretation of these guidelines, the Authority may publish practice notes from time to time.

## 2. Commencement

- 2.1 These guidelines apply to all claims made on or after [XX January 2018] under the HBC Scheme.

## 3. Guideline-making powers

- 3.1 These guidelines specify the minimum claims handling requirements for HBC licensed providers.
- 3.2 The Authority has developed these claims handling guidelines under [pending] section 103EC of the Act. They will support and inform claimants and HBC licensed providers (including insurers and alternative indemnity providers) in the process of managing claims against home building compensation policies in NSW.

## 4. Defined terms

4.1 In these guidelines, terms that are defined in the Act or the Home Building Regulation 2014 (the Regulation) have the same meaning as they do in the Act or Regulation unless otherwise specified.

Term	Definition
<b>The Act</b>	Home Building Act 1989 (NSW)
<b>The Authority</b>	State Insurance Regulatory Authority
<b>Building cover contract</b>	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.
<b>Business days</b>	Monday to Friday, excluding public holidays.
<b>Claim</b>	A claim for indemnity by a claimant under a building cover contract, where the beneficiary has provided the prescribed claim information to the HBC licensed provider.
<b>Claimant</b>	The beneficiary of the building cover contract; a person entitled to make a claim under a building cover contract.
<b>Complaint</b>	An expression of dissatisfaction regarding home building compensation products or services where a response or resolution is explicitly or implicitly required.
<b>Contractor</b>	A person who is required by Part 6 of the Act to enter into a contract of insurance.
<b>Dispute</b>	A dispute of a HBC licensed provider's decision on the claim.
<b>HBC licensed provider</b>	A licensed insurer or a licensed provider under the Act.
<b>Prescribed claim information</b>	Information that includes: <ol style="list-style-type: none"> <li>a) the name, address and contact details of the claimant and of each owner of the property the subject of the claim</li> <li>b) the address of the property the subject of the claim</li> <li>c) 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</li> <li>d) whether the claimant believes that the contractor has died, disappeared or become insolvent and details of the source of that belief, including all relevant documents obtained by the claimant</li> <li>e) where the property the subject of the claim was purchased by the claimant after completion of the work performed by the contractor, a copy of the contract for sale of the property and all attachments</li> <li>f) where the claimant contracted directly with the contractor:</li> </ol>

	<ul style="list-style-type: none"> <li>• a copy of the contract between the claimant and the contractor in relation to the work</li> <li>• copies of any documents setting out variations to the work agreed by the claimant and the contractor</li> <li>• copies of all plans and specifications relating to the work agreed to be performed by the contractor, and</li> <li>• copies of any approvals or certificates relating to the work received by the claimant from any relevant public or statutory authority</li> <li>• 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</li> <li>• reports obtained by the claimant in relation to the work</li> <li>• details of any prior complaints made or action taken by the claimant in relation to the defective or incomplete work.</li> </ul>
<b>Regulation</b>	Home Building Regulation 2014
<b>Service provider</b>	A person appointed by a HBC licensed provider, other than an employee or officer of the HBC licensed provider to investigate, assess, handle or settle a claim (or to do more than one of those things) on behalf of the HBC licensed provider.

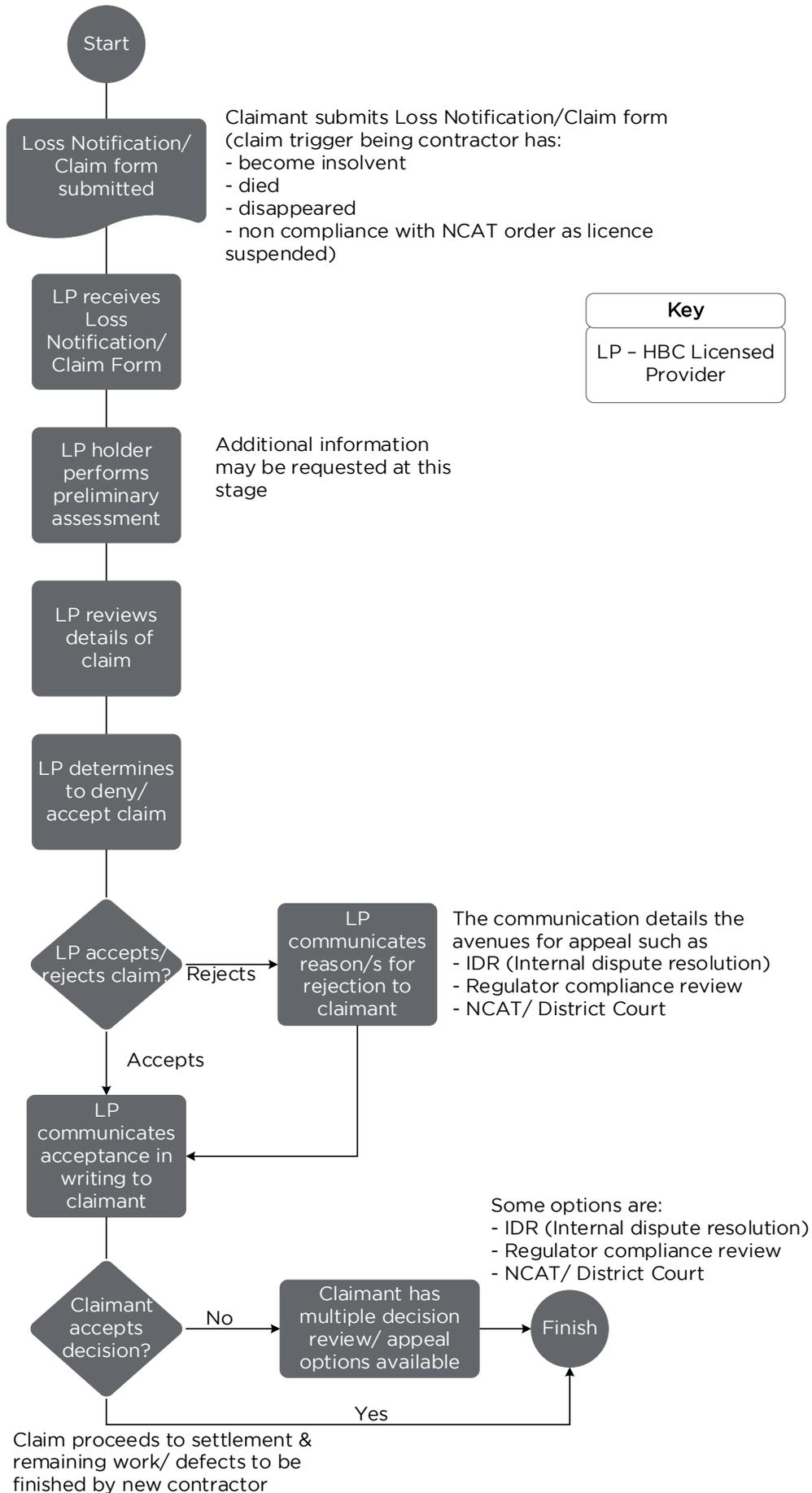
## 5. Claims process overview

- 5.1 If a homeowner suffers a financial loss because a contractor fails to start or complete the building work, or fails to fix defective work, a homeowner is able to make a claim under their building cover contract.
- 5.2 For a homeowner to make a claim, one of the following events must have occurred:
  - 5.2.1 a contractor has become insolvent
  - 5.2.2 a contractor has died
  - 5.2.3 a contractor has disappeared<sup>1</sup>, or
  - 5.2.4 a contractor's license has been suspended due to non-compliance with an NSW Civil and Administrative Tribunal (NCAT) order.
- 5.3 Some building cover contracts may have additional events that make the homeowner entitled to claim.
- 5.4 A notification of claim or a claim form is submitted by the claimant to the HBC licensed provider (or another person nominated by the HBC licensed provider) to start the process.
- 5.5 Figure 1 provides a diagram of the claims process.

---

<sup>1</sup> 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 licensed provider in satisfaction of the claimant's obligation to conduct due search and inquiry of the location of the contractor.

**Figure 1: claims process**



## 6. Claims management principles

- 6.1 The claims management model of HBC licensed providers, and those acting on its behalf, should adhere to the following principles:
- 6.1.1 act in good faith with all claimants
  - 6.1.2 respond in a timely manner
  - 6.1.3 use transparent and practical business practices
  - 6.1.4 make the claims procedures of HBC licensed providers readily accessible and available to all claimants
  - 6.1.5 apply consistent services standards
  - 6.1.6 apply consistent decision making processes based on evidence
  - 6.1.7 apply a transparent complaint handling process, and
  - 6.1.8 apply a consistent and transparent review process.

### **Act in good faith with all claimants**

- 6.2 HBC licensed providers should conduct claims handling in an honest, fair and transparent way.

### **Respond in a timely manner**

- 6.3 All claims made to a HBC licensed provider in relation to a HBC policy must be handled in a timely manner. As detailed in sections 5.6 and 5.7, the HBC licensed provider will ensure all interactions with the claimant are prompt and efficient when dealing with all aspects of the claim.

### **Use transparent and practical business practices**

- 6.4 HBC licensed providers should treat all claimants or potential claimants fairly and without discrimination.
- 6.5 All information provided to claimants should be clear and accurate, not misleading and be expressed in plain language.
- 6.6 If any of the timeframes in these guidelines are not practical, for example due to the complex nature of a claim, the HBC licensed provider will agree upon a reasonable alternative timetable with the claimant. If the HBC licensed provider cannot reach an agreement on an alternative timetable with the claimant, the HBC licensed provider will provide details of its complaints process.

### **Make available the claims procedures to claimants in an accessible format to all claimants.**

- 6.7 HBC licensed providers should make their claims procedures easily accessible to all potential claimants including on their website. A HBC licensed provider may use a range of distribution channels provided that every claimant has ready access to its claims procedures through at least one of those channels.

## Apply consistent services standards.

- 6.8 The HBC licensed provider 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 must meet the minimum standards set out in 6.7 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 claimants (if dealing directly) including in the following situations:
- 6.8.1 responding promptly to reasonable requests by claimants for assistance in making a claim or notifying a loss that might give rise to a claim
  - 6.8.2 informing claimants where the prescribed claim information has not been received
  - 6.8.3 informing claimants of the procedures where the claimant believes the contractor has disappeared
  - 6.8.4 requesting further information in addition to the prescribed claim information
  - 6.8.5 when the prescribed claim information has been received, considering and assessing the claim promptly having regard to the type of claim made
  - 6.8.6 keeping the claimant informed about the progress of a claim
  - 6.8.7 where a reasonable period for consideration and assessment of a claim has passed and where the prescribed claim information has been provided, advising the claimant whether the claim is accepted or rejected
  - 6.8.8 if a claim is rejected, liability in respect of a claim is reduced or further information is required, promptly advising the claimant
  - 6.8.9 early communication to the claimant where the HBC licensed provider believes it cannot meet the claims service standards, including indicating likely response times and the way the claim will be handled
  - 6.8.10 where an error or mistake in dealing with a claim is identified, taking action promptly to rectify it, and
  - 6.8.11 ensuring assessment is evidence based by reference to the prescribed claim information, the building cover contract and other information relevant to the claim.

## Minimum claims service standards

- 6.9 The HBC licensed provider must provide the following claims service standards as a minimum:
- 6.9.1 Within five business days of a HBC licensed provider receiving notification from a claimant of a loss that might give rise to a claim, the HBC licensed provider will acknowledge receipt of the notification.
  - 6.9.2 The claimant may not hold both construction period insurance and warranty period insurance with the same HBC licensed provider. In that instance, for the HBC licensed provider receiving the initial notification, if that HBC licensed provider believes that the claimant is entitled to claim against a different HBC licensed provider for this claim they must notify the claimant of this fact promptly.

- 6.9.3 The HBC licensed provider will inform the claimant that the prescribed claim information is required in order for the HBC licensed provider to assess a claim.
- 6.9.4 A claim will be deemed to be received by the HBC licensed provider when the HBC provider receives from the claimant all of the prescribed claim information. The claim will be deemed to be received whether or not the claimant also provides other information requested by the HBC licensed provider and whether or not the claim has been entered into the HBC licensed provider's computer system.
- 6.9.5 If an HBC licensed provider has not received all of the prescribed claim information from a claimant within five days, the HBC licensed provider will inform the claimant in writing of the further prescribed claim information that is required.
- 6.9.6 Within five business days of a HBC licensed provider receiving a claim, the HBC licensed provider will:
- a) acknowledge receipt of the claim
  - b) provide an explanation of what steps the HBC licensed provider will take to assess the claim, and
  - c) inform the claimant that the claim will be deemed to be accepted by the HBC licensed provider after 90 days of receipt of all information requested from the claimant by the HBC licensed provider to determine the claim except:
    - where the claim is accepted or denied earlier
    - where the claimant otherwise agrees, and
    - as otherwise provided by the Act.
- 6.9.7 The HBC licensed provider will promptly investigate whether the contractor has died, disappeared or become insolvent, and:
- a) if at any time the HBC licensed provider forms the view that the contractor has not died, disappeared or become insolvent, the HBC licensed provider will inform the claimant in writing within five business days and provide details of the source of that belief
  - b) within 30 days of receiving a claim, the HBC licensed provider will inform the claimant in writing whether or not the HBC licensed provider accepts that the contractor has died, disappeared or become insolvent or, alternatively, whether the HBC licensed provider requires further information, and
  - c) within five business days of a HBC licensed provider appointing a service provider to inspect the property the subject of a claim, the HBC licensed provider will inform the claimant of that fact in writing and will provide the contact details of the service provider.

## **Apply consistent decision making processes based on evidence**

- 6.10 The HBC licensed provider will perform a preliminary assessment once the receipt of notification of a claim or claim form is received and advise the claimant if additional information is required. The HBC licensed provider will determine

whether the claim meets the requirements for cover under the building cover contract and liability.

- 6.11 A HBC licensed provider may decide to:
  - 6.11.1 approve the claim in whole
  - 6.11.2 approve the claim in part
  - 6.11.3 reduce its liability in respect of the claim, or
  - 6.11.4 reject the claim entirely.
- 6.12 The HBC licensed provider must document in writing and provide to the claimant the reasons for their liability decision and must promptly advise the claimant of that decision and the reason for it and the availability of the dispute resolution system.
- 6.13 The HBC licensed provider will, on request, provide copies of reports from service providers that are relied upon by the HBC licensed provider to reject a claim or reduce its liability in respect of a claim. There is no requirement for the HBC licensed provider to disclose information where it:
  - 6.13.1 is provided by third parties that is confidential or that identifies those third parties
  - 6.13.2 may not be disclosed under law
  - 6.13.3 is subject to legal professional privilege, or
  - 6.13.4 may prejudice the HBC licensed provider or service provider in any further investigation or in any dispute in respect of a claim.

## **Apply a transparent complaint handling process**

- 6.14 A robust complaint handling process provides the claimant with confidence that they have been heard, their feedback has been considered and that the HBC licensed provider is accountable for its actions. The HBC licensed provider should have a documented internal complaint and review procedure, the terms of which must be set out in the HBC licensed provider's business plan. The internal complaints procedure should be consistent with the *Australian/New Zealand Standard – Guidelines for complaints management in organisations ISO 10002:2014*.
- 6.15 The HBC licensed provider's complaint and review procedure should be readily accessible to the public, including publication on the HBC licensed provider's website, and should be provided upon request. A HBC licensed provider who receives a complaint, (whether verbal or in writing) should handle it in accordance with the documented procedure.

## **Apply a transparent and consistent review process**

- 6.16 A HBC licensed provider must have review processes and procedures. These must include:
  - 6.16.1 internal review by the HBC licensed provider
  - 6.16.2 information on how to contact the Authority to request a regulator compliance review, and

6.16.3 information on appeal processes to the NSW Civil and Administrative Tribunal, the District Court or the Supreme Court.

## Internal review

- 6.17 The internal review must be conducted in the way which best supports the facts and circumstances of the particular claim and the particular internal review, which may include undertaking a review of the claim, using teleconferences, videoconferences, or face to face conferences as appropriate. The HBC licensed provider may reasonably request additional information from the claimant for the purposes of completing the internal review.
- 6.18 The HBC licensed provider will communicate its decision on the review to the claimant. The internal review decision of the HBC licensed provider is binding on the HBC licensed provider and should be applied and given effect to by the insurer as quickly as is practicable, in accordance with the insurer's responsibilities under these guidelines.

## External review

- 6.19 A claimant who has received an internal review decision from a HBC licensed provider may seek to refer the issues for external review. HBC licensed providers must ensure that an external review, which has been approved by the Authority, is clearly explained to claimants through the decision making conversations and documentation.
- 6.20 When a licensed provider determines the outcome of a claim, they must provide the claimant with external review options outlined in their notice of decision. These options must include a regulator compliance review, the appeals process to NSW Civil and Administrative Tribunal (NCAT), or the Supreme Court.

## Regulator compliance review

- 6.21 A regulator compliance review is undertaken by the Authority's Regulation Compliance Review Committee. A regulator compliance review will only investigate breaches of the Act, the regulations or the guidelines.

## NSW Civil and Administrative Tribunal

- 6.22 The NSW Civil and Administrative Tribunal (NCAT) can hear and determine applications lodged by home owners, traders and insurers about residential building work up to the value of \$500,000 under the *Home Building Act 1989*.

## Timeliness of appeals

- 6.23 The HBC licensed provider or service provider must advise the claimant that any appeal to NSW Civil and Administrative Tribunal, the District Court or the Authority's Regulation Compliance Review Committee should be lodged within 45 days of receiving a final written decision from the HBC licensed provider. The HBC licensed provider must notify the Authority of matters referred for external review.

Note: The Home Building Regulation 2014 provides that an appeal may, with the leave of NCAT or the court, be lodged after 45 days if an application is made to NCAT or the court for leave to lodge the appeal out of time, and in the opinion of NCAT or the court, there are special circumstances to grant leave, and NCAT or the court grants leave.

# 7. Claims management model filing and review process

## Submission to the Authority

- 7.1 Each HBC licensed provider should submit its claims management model to the Authority at least six weeks before the intended date of operation or amendment.

## Claims management model

- 7.2 The HBC licensed provider's claims management model must include:
  - 7.2.1 claims procedures
  - 7.2.2 service standards
  - 7.2.3 forms and publications
  - 7.2.4 information to be made available on the HBC licensed provider's website
  - 7.2.5 complaints management processes, and
  - 7.2.6 roles and responsibilities.

## Assessment and rejection of the claims management model

- 7.3 The Authority will assess the HBC licensed provider's claims management model against the following criteria:
  - 7.3.1 compliance with the principles described in Part 6.1 of these guidelines
  - 7.3.2 compliance and alignment with the Home Building Act and the objectives of home building compensation, and
  - 7.3.3 compliance with provisions of the required information defined in 7.2.
- 7.4 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.
- 7.5 In order to complete the assessment the Authority may request the HBC licensed provider to:
  - 7.5.1 provide additional information in respect of the claims management model to the Authority, and
  - 7.5.2 consult with the Authority, or an authorised person nominated by the Authority for that purpose, in relation to the HBC licensed provider's claims management model.
- 7.6. The Authority will complete an assessment of a HBC licensed provider's claims management model within six weeks of receipt.
- 7.7 Once the Authority confirms that an assessment is complete and the claims management model has not been rejected, a HBC licensed provider will apply the claims management model from the agreed commencement date.

## Review of the application of the claims management model

- 7.8 The Authority may complete a review over a HBC licensed provider's claims handling process to ensure that claims are handled in accordance with legislative requirements.

## 8. Publication of information

### General publication

- 8.1 The HBC licensed provider must make publicly available on its internet website and, if requested by a claimant, provide the following information:
- 8.1.1 information about how to notify the HBC licensed provider of a loss that might give rise to a claim, including any form made available for that purpose by the Authority
  - 8.1.2 claim forms or information about how to make a claim, including the prescribed claim information the claimant must provide in order for the licensed provider to consider its claim
  - 8.1.3 general claims procedures
  - 8.1.4 details of the HBC licensed provider's claims service standards
  - 8.1.5 details of how to make a complaint to the HBC licensed provider about the handling of a claim by the licensed provider or about a service provider, including complaints contact persons, phone numbers and email addresses
  - 8.1.6 details of how a claimant can seek internal and external review of any claims decision, and
  - 8.1.7 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 records

- 8.2 Each HBC licensed provider should establish a register of complaints and disputes and on the register will record the nature of each complaint and dispute, the date the complaint was received and how and when it was resolved. A HBC licensed provider should ensure that these details are also recorded in relation to any complaints received by its service providers and disputes involving its service providers.
- 8.3 Each HBC licensed provider must make available to the Authority information from their register of complaints as and when requested, and in the form and format specified by the Authority. This may include the digital transmission of data from the register to the Authority on such regular basis as the Authority may require.
- 8.4 The Authority may publish a summary of the number of complaints and the type of complaints contained on the registers.

## 9. Consultation questions

1. Are there any elements that should be excluded, added, or further clarified about disputes or complaints process?
2. What areas of these guidelines would be improved by practice notes?
3. The State Insurance Regulatory Authority plans to review these claims handling guidelines within 18 months. Is this the right timeframe for review?
4. Should there be a specific requirement to process claims expeditiously if the claimant is experiencing financial hardship?

#### 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 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](http://legislation.nsw.gov.au)

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals, or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

This material may be displayed, printed and reproduced without amendment for personal, in-house or non-commercial use.

State Insurance Regulatory Authority, Level 6, McKell Building, 2-24 Rawson Place, Sydney NSW 2000

General phone enquiries 1300 137 131 or Claims Advisory Service 1300 656 919

Website [www.sira.nsw.gov.au](http://www.sira.nsw.gov.au)

Catalogue no. SIRA08781 | ISBN 978-0-7347-4615-3 © State Insurance Regulatory Authority NSW 0917