

Notification of significant matters requirements

Home building compensation
regulation

January 2018

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1. Notifying SIRA of significant matters

1.1 Purpose

This section outlines the expectations and requirements for licensed insurers, licensed providers and the Self Insurance Corporation (collectively licence holders) to notify the State Insurance Regulatory Authority (SIRA) of significant matters.

The notification process will enable SIRA to monitor, from an early stage, significant matters that may have a regulatory impact or be of public interest for the licence holder or the NSW home building compensation scheme.

1.2 Detailed requirements

1.2.1 Notification and information requirements

A licence holder is required to:

- (a) notify SIRA of a significant matter within the timeframe specified in section 1.3 of this document
- (b) provide initial notification by completing and submitting the *Significant matters notification* form in the Appendix
- (c) supply relevant information with their *Significant matters notification* form including any originating process (if the matter is litigated), and
- (d) provide any further information relating to the progress and outcome of a significant matter within the timeframe specified in section 1.3 of this document.

1.2.2 Significant matter definition

Licence holders must notify SIRA of any significant matter

A significant matter is one that may:

- (a) involve a significant breach (or likely breach) of their responsibilities under legislation and licence conditions
- (b) prevent the licence holder from meeting any requirement for approval and/or operation as a licence holder in accordance with the home building compensation legislation
- (c) be regarded as significant because it involves legal issues or litigation that may have significant implications for the home building compensation scheme
- (d) involve a notifiable data breach of the *Privacy Amendment (Notifiable Data Breaches) Act 2017 (Cth)* (Privacy Act) that relates (in whole or in part) to the licence holders home building compensation business, or
- (e) any other matter that may have a significant regulatory impact, or be of significant public interest for the licence holder or the home building compensation scheme.

When determining whether a breach of their responsibilities under legislation and licence conditions is significant and should be reported to SIRA, licence holders should consider:

- (a) the number or frequency of similar previous breaches
- (b) the extent to which the breach or likely breach indicates that the licence holder's internal controls to ensure compliance are inadequate
- (c) the impact of the breach or likely breach on the claimant.

When determining if a legal matter is a significant matter that should be reported to SIRA, a licence holder should consider the following:

Does the legal matter involve:

- (a) questions of statutory interpretation of home building compensation law, and particularly if there is little or no existing case law, including:
 - i. recently developed case law
 - ii. recent changes to the home building compensation law including the Insurance Guidelines made under the home building compensation law
 - iii. provisions that are currently under review or proposed for change?
- (b) questions or submissions to a Court that if accepted would lead to a substantial increase in compensation for similar future claims, or a substantial increase to the number of compensable claims, or otherwise potentially place pressure on the sustainability of the scheme?
- (c) a dispute about NSW state jurisdiction or a constitutional law issue?
- (d) an appeal or application for leave to appeal to a Court?
- (e) matters where a Court has criticised the conduct of the licence holder?
- (f) complaints made to the Information and Privacy Commission NSW or the Office of the Australian Information Commissioner (OAIC)?

The following are considered a matter constituting a notifiable data breach of the Privacy Act:

A licence holder:

- (a) giving a statement to the OAIC under section 26WK of the Privacy Act
 - (b) receiving notice of a declaration by OAIC under section 26WQ of the Privacy Act or
 - (c) receiving notice of a direction by OAIC under section 26WR of the Privacy Act
- which relate in whole or in part to the licence holder's home building compensation business.

1.3 Notification timeframe requirements

A licence holder should aim to notify SIRA within two business days, but no later than five business days of becoming aware of the existence of a significant matter.

Licence holders must provide SIRA with any additional information relating to the progress or outcome of a significant matter within five business days of the additional information becoming available.

1.4 Action to be undertaken by SIRA

Once notified of a significant matter, SIRA will review the matter and take action as necessary, including:

- (a) monitoring the significant matter
- (b) seeking further information
- (c) maintaining watching briefs over matters, and
- (d) liaising with licence holders in relation to matters of significance to the NSW home building compensation scheme.

1.5 Further information

Any questions regarding the notification of significant matters can be directed to the relevant SIRA Portfolio Manager.

Phone: 13 10 50

Email: hbcproviders@sira.nsw.gov.au

2. Confidentiality

Where information is provided to SIRA, the information is protected by provisions in the *Home Building Act 1989* (the Act) and may only be disclosed in limited circumstances.

These provisions do not inhibit SIRA's ability to:

- provide information to persons or bodies specified under the Act and *Home Building Regulation 2014* for the purpose of helping those persons or bodies exercise functions under the Act
- require a licence holder to disclose to SIRA any data relating to building cover contracts, claims and other related matters under the Act
- maintain a register of particulars relating to register of home building compensation business with such particulars as required under the Act
- create comparative data to conduct research and assess the performance of the home building compensation system
- publish de-identified statistical, performance and research reports
- provide information to the responsible Minister or as directed by the Minister

Aside from these protections, personal information or health information provided to SIRA can only be handled in accordance with the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.

Access to information

Although the *Government Information (Public Access) Act 2009* (GIPA) favours disclosure of government information when an access application is made, this is subject to an overriding public interest against disclosure if the disclosure of information could be reasonably expected to prejudice the business interests of any person or corporation.

GIPA provides a consultation mechanism for a person or corporation if an access application is made for information that concerns their business, commercial or financial interests. Any objection to disclosure received in the course of consultation must be taken into account when deciding whether there is an overriding public interest against disclosure.

If SIRA decides to make that information available following an objection, it must notify the person who lodged the objection of the decision. The decision to release over objection is also subject to a right of review by the Information Commissioner or by the NSW Civil and Administrative Tribunal. Information cannot be released while review rights are pending.

Appendix

Significant matters notification



State Insurance
Regulatory Authority

This form is for licence holders notifying SIRA of a significant matter. Email the completed form to hbcproviders@sira.nsw.gov.au

| Contact details |
|------------------------|
| Name of licence holder |
| Responsible officer |
| Contact number |
| Email |

| Notification category | |
|--|--------------------------|
| This significant matter is: | Tick |
| 1. a significant breach or likely breach of legislative responsibilities | <input type="checkbox"/> |
| 2. prevents insurance operations in accordance with legislative requirements | <input type="checkbox"/> |
| 3. a significant legal matter | <input type="checkbox"/> |
| 4. significant breach of the Privacy Act | <input type="checkbox"/> |
| 5. any other significant matter | <input type="checkbox"/> |

| Summary description of facts |
|------------------------------|
| Event date (DD/MM/YYYY) |
| |

| Action taken by the licence holder |
|------------------------------------|
| |

| Recommendation/proposed action |
|--------------------------------|
| |

| Significant matters |
|--|
| 1. Significant breach or likely breach of the HBC legislative requirements |
| State the section of legislation, guidelines or licence condition that has been or is likely to be breached |
| Duration of breach (if known) |
| Description as to why the breach is significant |
| Description of the licence holder's rectification of the breach |
| Description of the licence holder's preventative action or proposed action to prevent a similar breach occurring |
| 2. Prevents insurance operations |
| |
| 3. Significant legal matter as determined |
| Name of claimant |
| Claim number |
| Policy number |
| Name of builder |
| Date first reported to licence holder |
| Legal representatives of parties |
| Other parties involved |

| Significant matters |
|--|
| Jurisdiction (e.g. High Court, Supreme Court, District Court, NCAT) |
| Matter number |
| 4. Breach of the Privacy Act |
| Copy of the statement or notice is attached. |
| Duration of breach (if known) |
| Description as to why the breach is significant |
| Description of the licence holder's rectification of the breach |
| Description of the licence holder's preventative action or proposed action to prevent a similar breach occurring |
| 5. Other significant matter |
| |

| Additional information (if required) |
|--------------------------------------|
| |

| Declaration |
|----------------------------|
| Signature |
| Name of authorised officer |
| Date (DD/MM/YYYY) |
| Position |

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

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.

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