

Market Practice Guidelines made
as a condition of approval
under s103A of the
Home Building Act 1989

1 October 2008

Market Practice Guidelines

1. Explanatory Note

Compliance with these Market Practice 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 Market Practice Guidelines have been developed after consultation with Insurers and other stakeholders in the home building industry.

The Market Practice Guidelines apply to Home Warranty Insurance other than contracts of insurance issued to owner-builders under section 95 of the Act.

2. Defined Terms

In these Market Practice Guidelines the terms defined in the *Home Building Act 1989*, the *Home Building Regulation 1997* (the **Regulation**) and in the Conditions of Approval have the same meaning as they do under the Act, Regulations or Conditions of Approval.

In these Market Practice Guidelines unless the contrary intention appears:

Builder means a person who is required by Part 6 of the Act to enter into a contract of Home Warranty Insurance but does not include an owner-builder;

Eligibility refers to a decision by an Insurer that it is prepared to issue a contract of Home Warranty Insurance within the limits and subject to the terms and conditions that are specified by the Insurer in its Eligibility decision.

Intermediary is either or both of:

- (a) an authorised representative of the Insurer; or
- (b) the holder of an Australian financial services licence that carries on a financial services business (as that term is defined or used in the *Corporations Act 2001*),

and arranges Home Warranty Insurance with the Insurer.

Premium Rates means an Insurer's usual or standard rates or range of premium in respect of each category or class of Builder to which it offers or proposes to offer Home Warranty Insurance or where there is no standard rate or range of premium the methodology that the Insurer proposes to use to determine the premium to the extent it is not set out in the underwriting guidelines.

3. Underwriting Guidelines and Premium Rates

3.1 Submission to Director-General

An Insurer is to submit to the Director-General at least 10 Business Days before its intended date of operation, its underwriting guidelines and Premium Rates in respect of Home Warranty Insurance.

3.2 Alterations to underwriting guidelines and Premium Rates

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 underwriting guidelines and any variation in Premium Rates previously submitted to the Director-General.

3.3 Consistency with market practice guidelines

An Insurer's underwriting guidelines and Premium Rates shall be consistent with these Market Practice Guidelines and information provided to the Minister under these Market Practice Guidelines. Insurers are to document in their underwriting guidelines and Premium Rates submitted to the Director-General how each factor identified in subclause 5.2 is given due regard in establishment of the underwriting guidelines and Premium Rates.

3.4 Additional Information

- (a) An Insurer must provide with the Premium Rates provided under subclause 3.1 or subclause 3.2 the proportion of each component of the premium represented by the Insurer's expenses, its assumptions relating to reinsurance premium and recoveries, commission and other fees or allowances paid to intermediaries, risk premium and profit margin.
- (b) An Insurer must provide with the information provided under subclause 3.2 a summary of past claims experience of the Insurer specifying paid claims and reserves for reported claims.

3.5 No actuarial report

The information provided under subclauses 3.1, 3.2 or 3.4 is not required to be certified by an actuary or to include an actuarial report.

3.6 Requirement to amend

The Director-General may require that an Insurer's underwriting guidelines be amended if the Director-General is of the opinion that those underwriting guidelines or any part of them are not consistent with these Market Practice Guidelines.

3.7 Additional information and consultation

Other than as provided in subclause 3.6, the Director-General is not required to approve or reject an Insurer's underwriting guidelines and Premium Rates but the Director-General may require the Insurer to:

- (a) provide additional information in respect of the underwriting guidelines and Premium Rates 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 underwriting guidelines and Premium Rates.

3.8 Consistent behaviour

An Insurer shall:

- (a) amend its underwriting guidelines as required under subclause 3.6 or as otherwise agreed with the Director-General;
- (b) ensure that any copy of its underwriting guidelines and Premium Rates provided to employees or to any Intermediary or any information in respect of these matters provided to an employee or any Intermediary is consistent with the underwriting guidelines and Premium Rates last lodged with the Director-General; and
- (c) underwrite and price Home Warranty Insurance issued by it consistently with the underwriting guidelines and Premium Rates last lodged with the Director-General.

4. Publication of Information

An Insurer must make publicly available (eg, on its internet web site) and, if requested by a Builder, provide the following information:

- (a) policy documents for all types of Home Warranty Insurance policies offered;
- (b) standard forms or information the Builder must complete or provide in order for the Insurer to consider its application for insurance;
- (c) instructions sufficient to enable the completion of the forms or to enable the provision of information;
- (d) general underwriting criteria;
- (e) the range of or examples of the premiums that the Insurer proposes to charge sufficient to enable a non-binding indication of the likely cost of Home Warranty Insurance for typical categories and classes of Builder;
- (f) details of the Insurer's service standards to Builders (see clause 7);
- (g) details of the service standards of Intermediaries (see clause 10);
- (h) details of the Insurer's complaints handling process including the Insurer's complaints contact person, phone number and email address (see clause 12); and
- (i) a list of Intermediaries that are eligible to distribute the Home Warranty Insurance of the Insurer.

An Insurer must 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. Assessment for Eligibility

5.1 Effect of Eligibility

A decision by an Insurer to grant Eligibility is not a binding undertaking to insure but is a statement of intent by the Insurer that it is prepared to issue a contract of Home Warranty Insurance within its Eligibility terms and it will do so unless some other fact or matter results in the Insurer, at its discretion, varying the terms of Eligibility or revoking it.

5.2 Requirements for assessment of Eligibility

When assessing a Builder for Eligibility and the premium and conditions on which the Eligibility is provided, an Insurer is to have regard to the following factors:

- (a) unless Eligibility is conditional on a licence being provided by the Director-General, the Builder must have a current licence under the Act at the date of the Eligibility assessment;
- (b) the Builder must have a current licence on the date on which Home Warranty Insurance cover (ie, an insurance policy or certificate) is issued;
- (c) the net tangible assets of the Builder including assets outside the Builder's corporate structure that a guarantee applies to or that are taken into account in the assessment;
- (d) the Builder's liquidity or working capital;
- (e) the Builder's annual turnover;
- (f) the Builder's record of association with recent insolvencies and record of disputes that have judged the applicant to be at fault;
- (g) details of current Eligibility, Home Warranty Insurance policies or certificates of insurance with other Insurers for incomplete work and the proportion or amount of any turnover or other like limit that has been utilised at the date of the assessment for Eligibility;
- (h) the Builder's claims experience; and
- (i) the Builder's participation in any quality assurance program in respect of their work.

Insurers are not limited in their assessment to the factors above and may take into account other matters including non-financial matters.

5.3 Conditions

Any terms or conditions imposed by the Insurer upon a Builder in respect of Eligibility must be consistent with the Insurer's underwriting guidelines and Premium Rates provided to the Director-General.

5.4 Guarantees and indemnities

Where an Insurer requires a third party to grant to the Insurer a guarantee or indemnity or undertaking for the purposes of granting or continuing Eligibility to a Builder the Insurer shall clearly inform the Builder as to the requirements as to such guarantee, indemnity or undertaking and advise in what circumstances and in what timeframe the guarantee, indemnity or undertaking may be released by the Insurer.

5.5 Duration of Eligibility

- (a) An Insurer shall not grant Eligibility for a period greater than two years to any Builder:
 - (i) who, at the date of the assessment for Eligibility, has current Eligibility with one or more other Insurers; or

-
- (ii) in respect of an annual turnover of \$20 million or more.
 - (b) Where a Builder referred to in paragraph 5.5(a) applies for a contract of Home Warranty Insurance more than two years after a grant of Eligibility, the Insurer shall re-assess the Builder for Eligibility in accordance with these Market Practice Guidelines.

5.6 Notification of Eligibility

- (a) Upon an Insurer granting Eligibility to a Builder, including on a re-assessment under subclause 5.5, it shall immediately notify the Director-General of that fact.
- (b) An Insurer shall immediately notify the Director-General, and provide reasons for its decision, if it alters the terms of Eligibility that it has granted to any Builder:
 - (i) who, at the date of the alteration, has current Eligibility with one or more other Insurers; or
 - (ii) in respect of an annual turnover of \$20 million or more.
- (c) The Director-General may notify other Insurers of information provided by an Insurer under this subclause 5.6.

6. Compliance

The Insurer shall treat all applications for Eligibility and issue contracts of Home Warranty Insurance or certificates of insurance in a manner consistent with its underwriting guidelines and Premium Rates and its service standards lodged with the Director-General.

7. Service

7.1 General duty

Insurers are required to act with promptness and efficiency in relation to all dealings with Builders including the granting or varying of Eligibility and the issuing of a contract of insurance or insurance certificates.

7.2 Lodge service standards

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

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

7.3 Amendment of service standards

The Director-General may require an Insurer to amend its service standards if, in the opinion of the Director-General, the service standards are not consistent with these Market Practice Guidelines.

7.4 Content of service standards

The service standards must cover, at least, the Insurer's response time, general service levels (including the use of appropriately trained underwriting staff) and the form and nature of communications (written or oral) to Intermediaries and Builders (if dealing directly) including in the following situations:

- (a) where the Insurers' underwriting forms have not been fully completed;
- (b) requests for further information in addition to that provided by the Builder on the Insurer's underwriting forms;
- (c) when the Insurer has received all information to assess the Builder's application for Eligibility or granting of a contract of insurance or issuing an insurance certificate, the terms or conditions of acceptance or denying acceptance including the level of turnover granted;
- (d) where an Insurer amends the terms and conditions of a Builder's Eligibility; and
- (e) early communication to the Builder where an Insurer believes it cannot meet the service standards.

7.5 Cancelling Eligibility for Insurance

Where an Insurer cancels Eligibility then the Insurer shall give to the Builder at least 10 business days' notice of that decision together with reasons for the decision in accordance with clause 8.

8. Reasons for Decisions

8.1 Documented reasons

The Insurer is to document in writing and provide to the Builder or any Intermediary acting on behalf of the Builder the Insurer's reasons for:

- (a) on request of the Builder - requiring further information from the Builder;
- (b) declining Eligibility, including on a re-assessment under subclause 5.5, or declining applications for a contract of insurance or certificate of insurance;
- (c) not providing the level of turnover cover sought by the Builder;
- (d) any special conditions the Builder has to comply with for Eligibility;
- (e) amending the terms and conditions of a Builder's Eligibility or revoking Eligibility, including on a re-assessment under subclause 5.5; and
- (f) the requirement of the Builder to obtain a guarantee, indemnity or undertaking from any third party other than where the requirement is set out in the general underwriting criteria made publicly available under paragraph 4(d).

8.2 Consistency

The reasons must be consistent with the Insurer's underwriting guidelines and Premium Rates lodged with the Director-General and where appropriate refer to the general underwriting criteria relied upon by the Insurer for the decision.

8.3 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).

9. Outsourcing

9.1 Outsourcing

If an Insurer arranges for any function relating to its home warranty insurance business to be carried out by another person (the **Provider**) and the Provider (or some other person acting for or providing services to the Provider) collects or holds information or documents that may be required to be produced under Section 103AC of the Act or under the Industry Guidelines, then the Insurer must:

- (a) on request notify the Director-General in writing of the identity of the Provider; and
- (b) ensure that the arrangement between the Insurer and the Provider (or some other person acting for or providing services to the Provider) obliges the Provider (and that other person or persons):
 - (i) to provide that information or those documents to the Insurer and to the Director-General; and
 - (ii) if required by the Director-General, to enter into a deed in favour of the Minister on terms approved by the Minister agreeing to provide the information and those documents to the Director-General.

9.2 Provider includes Intermediary

For the purposes of this clause 9, a Provider includes an Intermediary to whom clause 10 applies and any person who the Provider approves or authorises to collect or hold any of the information or documents on its behalf.

10. Dealing with Intermediaries

10.1 Employees and Australian financial services licence holders

This clause 10 does not apply to an Intermediary who is:

-
- (a) an individual who is an authorised representative or an employee of the Insurer; or
 - (b) an individual who is an authorised representative or an employee of the holder of an Australian financial services licence with whom the Insurer has entered into an agreement that meets the requirements of this clause 10.

10.2 Agreement with Intermediaries

Where the Home Warranty Insurance of an Insurer is provided through an Intermediary the Insurer shall not deal with that Intermediary in respect of Home Warranty Insurance unless:

- (a) in the case of an Intermediary who is acting for or providing services to the Insurer – the Insurer must, under an agreement with the Intermediary, require the Intermediary, in relation to the activities or functions performed by the Intermediary, to:
 - (i) comply with these Market Practice Guidelines insofar as they relate to those activities or functions;
 - (ii) not do anything that may result in the Insurer failing to comply with these Market Practice Guidelines; and
 - (iii) meet the service standards, provide the information and do those things required by subclauses 10.3 to 10.7 and as required by clause 12; or
- (b) in the case of an Intermediary who is acting on behalf of a Builder (ie, acting in its capacity as a broker), under an agreement with the Intermediary, the Insurer must require the Intermediary under an agreement to comply with the requirements of subclauses 10.3 to 10.7 and clause 12 insofar as they relate to the Intermediary.

10.3 Service Standards

An agreement required under subclause 10.2 shall require the Intermediary either to:

- (a) meet the service standards specified by the Insurer in accordance with these Market Practice Guidelines insofar as they relate to the Intermediary's dealings with a Builder and the Insurer; or
- (b) meet service standards established by the Intermediary in respect of its dealings with the Insurer and the Builder and agreed by the Insurer which service standards satisfy the requirements of clause 7 insofar as they relate to the activities of the Intermediary.

Where service standards are established by an Intermediary and agreed by the Insurer those service standards (and any changes) are to be provided to the Director-General at least 10 Business Days before the intended date of their operation.

10.4 Additional requirements

In addition to the above, an agreement required under subclause 10.2:

- (a) shall include an agreement to disclose to the Builder:
 - (i) the dollar amount of commission the Insurer pays the Intermediary including all fees and allowances. Where the dollar amount level of

commission is not calculable a description of the nature of the commission and how it is calculated is to be provided (eg, profit commission, override commission); and

- (ii) any additional fees or brokerage the Intermediary charges the Builder in addition to the Insurer's premium;
- (b) must require the Intermediary to disclose to the Builder all remuneration received by the Intermediary including all the items in subparagraphs 10.4(a)(i) and 10.4(a)(ii); and
- (c) must recognise that the Intermediary is able to apply to more than one Insurer for Eligibility on behalf of the Builder, unless the Intermediary is expressly prohibited from doing so under the terms and conditions of the agreement.

On request by the Director-General, an Insurer shall supply a copy of its agreements with each Intermediary (to the extent that each agreement is different) to the Director-General and a list of Intermediaries with which it has an agreement in respect of Home Warranty Insurance.

10.5 Self-assessment

An agreement required under subclause 10.2 shall make provision for compliance self-assessment to be conducted in respect of the performance of the Intermediary by the Intermediary's internal compliance self-assessment processes or alternatively by the Intermediary's external auditor. For this purpose the agreement shall reserve a right to the Insurer and to the Director-General to appoint a person to conduct an audit of the Intermediary's compliance with the requirements under the agreements between the Intermediary and the Insurer.

10.6 Notice of non-compliance

If an Insurer becomes aware of a material failure by an Intermediary to comply with the terms of the agreement between the Insurer and the Intermediary or the Insurer becomes aware of complaints by Builders in respect of the performance of the Intermediary then the Insurer shall require the Intermediary to rectify the non performance or to explain the reasons for the complaints or both. If the Intermediary fails to do this to the reasonable satisfaction of the Insurer, the Insurer must advise the Intermediary of its non-compliance with the agreement in writing and provide a copy of that notice to the Director-General.

10.7 Information provided to the Director-General

The Director-General may publish information in relation to the performance and non-performance of Intermediaries that it obtains either from the Intermediary 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 Intermediary likely to be named or affected and consulted with the Insurer and that Intermediary in relation to the material to be published.

10.8 Obligations of Insurer

The obligations of an Insurer in relation to the activities of an Intermediary are to take reasonable steps to enforce the agreement between the Insurer and the Intermediary and if

necessary to terminate that agreement. Other than to this extent an Insurer is not liable for the activities of an Intermediary in circumstances where it would not otherwise be liable for those activities.

Note: An Insurer may be liable under the Corporations Act for the activities of certain Intermediaries.

11. Self-Assessment and Audit of Insurer

11.1 Compliance self-assessment or audit by Insurer

An Insurer will establish a process of internal self-assessment or audit of its compliance with its service standards, these Market Practice Guidelines and other Industry Guidelines established as Conditions of Approval.

11.2 Self-assessment or audit process to be supplied to Director-General

The Insurer will provide a detailed summary of the documented self-assessment or audit process and of its results to the Director-General within six weeks after the end of each financial and calendar year ending on the last day of June and December in each year.

11.3 External audit

Upon request by the Director-General, an Insurer will engage the Insurer's external auditor or an organisation approved by the Director-General to conduct an external audit of its compliance with these Market Practice Guidelines and other Industry Guidelines established as Conditions of Approval. The scope of the external audit will be determined by the Director-General and the results of the external audit will be provided to the Director-General.

11.4 Publication

The Director-General may publish a summary of the results of self-assessment and audits of Insurers. Prior to publication of this report the Director-General shall provide a copy of the draft report to Insurers for comment at least 10 Business Days before the date of its proposed publication.

12. Complaints and Disputes

12.1 Internal Dispute Resolution

Each Insurer shall apply its internal complaint handling process to its Home Warranty Insurance business and where an Intermediary holds an Australian financial services licence the Insurer will require that the Intermediary applies its internal complaints handling process to Home Warranty Insurance business conducted by the Intermediary.

12.2 Notification

An Insurer shall make details of its complaints handling process publicly available (eg, on its internet web site) and inform each Builder that applies for Eligibility that a complaints handling process exists and the Insurer shall require any Intermediary involved in its Home

Warranty Insurance business to provide the same information in respect of its 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 or Intermediary. An Insurer or Intermediary that receives a complaint shall ask the complainant whether or not that person wishes the complaint to be registered or referred to the internal dispute settlement process.

12.3 Register of complaints

An Insurer will establish a register of complaints or disputes and on the register will record the nature of each complaint or dispute and how and when it was resolved. An Insurer will require an Intermediary that holds an Australian financial services licence to maintain a similar register and to provide reports in relation to that register to the Insurer.

12.4 Provision of information to Director-General

An Insurer will make available to the Director-General information from its register established under subclause 12.3 in respect of complaints as and when requested.

12.5 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 12.3.

13. Data

13.1 Reporting

An Insurer shall provide data and information to the Director-General in relation to Home Warranty Insurance policies, claims, premium and other information relating to its Home Warranty Insurance business following consultation under subclause 13.2.

13.2 Consultation

Insurers and the Director-General shall consult as to the form and detail of reports to be provided by the Insurer to the Director-General under this clause 13.

13.3 Detailed information

The Director-General may under these requirements require an Insurer to provide any information in respect of a particular Builder, the Home Warranty Insurance policies issued to that Builder and the claims experience under those policies.

13.4 Publication of data by the Director-General

The Director-General may publish a summary of the data obtained from Insurers pursuant to subclause 13.1. Prior to the publication of this data the Director-General shall provide a copy of the summary of the data to Insurers for comment at least 10 Business Days before the date of its proposed publication.

14. Provision of Information to other Insurers

14.1 Type of information

This clause 14 relates to the following information:

- (a) current status of Eligibility (excluding any conditions of the Eligibility);
- (b) the level of turnover provided to the Builder;
- (c) contracts of insurance or certificates of insurance for projects commenced but not yet completed (including defect periods); and
- (d) claims made in respect of the Builder.

14.2 Provision of information

Upon request from another Insurer approved under Section 103A of the Act, an Insurer shall, as soon as reasonably practicable, provide in writing to that Insurer the information to which this clause 14 applies in respect of a particular Builder.

14.3 Limits on request

An Insurer may only make a request under subclause 14.2 where the Insurer has received a proposal for Eligibility for Home Warranty Insurance from the Builder or if the Insurer is reviewing the Builder's Eligibility or the Insurer is about to issue a contract of insurance or certificate of insurance to or in respect of the Builder.

14.4 Further limits

Where Insurers have agreed protocols in relation to the provision of this information then the requirements under this clause 14 and, in particular, subclause 14.2 only require the information to be given in accordance with those protocols. A copy of any such protocol agreed by Insurers shall be lodged with the Director-General.