

Complaints against insurers

Home Building Compensation Fund

NSW Fair Trading is able to investigate complaints about insurers approved under the *Home Building Act 1989* to provide insurance under the Home Building Compensation Fund (previously called Home Warranty Insurance) in NSW. From 1 July 2010 this also includes the NSW Self Insurance Corporation which took over as the sole provider of insurance under the Fund in NSW.

A complaint means an alleged breach or failure by an insurer (including an intermediary or service provider of an insurer) to comply with legal requirements or its conditions of approval to operate in the market of insurance under the Fund (including the market practice guidelines, claims handling guidelines or any other condition imposed by the Minister).

Insurers are required to have in place effective internal complaint handling mechanisms.

Accordingly, Fair Trading can only become involved in a complaint about an insurer following the completion of the insurer's internal dispute resolution process and where the insurer has been unable to appropriately resolve the complaint.

Complaints relating directly to decisions of insurers not to indemnify a beneficiary are unable to be investigated by Fair Trading. There is a right of appeal to the NSW Civil and Administrative Tribunal available to claimants in relation to a decision of an insurer to decline (in part or whole) a claim.

Talk it over with the insurer

Discuss your complaint in the first instance with the insurer (or an intermediary or service provider of an insurer) if you are in disagreement with them and you feel that their actions show a failure to comply with the legislation (or the market practice and claims handling guidelines forming part of the insurer's conditions of approval to provide insurance under the Fund). This may clear up any misunderstanding and address your concerns. Keep records of your communication with the insurer.

Role of NSW Fair Trading

The role of Fair Trading in investigating a complaint about an insurer under the Fund includes:

- providing advice and information to complainants on their rights and directing complainants (if appropriate) to lodge their complaint, in the first instance, with the insurer
- receiving complaints about an insurer's conduct where the insurer's internal complaint mechanisms have failed to effectively resolve the complaint
- encouraging, where possible, the mediation and informal resolution of complaints
- inquiring into the conduct of an insurer in relation to any alleged failure to comply with the legislation, conditions of approval, market practice or claims handling guidelines
- determining whether an insurer has breached the legislation, conditions of approval, market practice or claims handling guidelines and, if so, the action to be taken regarding the breach.

Complaint handling process

Who can complain?

Where the matter has been unable to be resolved to your satisfaction through the insurer's internal dispute resolution process, a complaint may be made to Fair Trading. A complaint may be made by a builder, owner-builder, beneficiary or person acting on behalf of another person such as a family member, lawyer, friend or community organisation.

Method of complaint

Complaints may be lodged by downloading a complaint form, completing and forwarding it to Fair Trading or your nearest Fair Trading Centre. Or email the details of your complaint to the HWISchemeBoardSM@finance.nsw.gov.au or by fax to 02 9895 0838 and attach supporting documentation.

Generally, Fair Trading will not action anonymous complaints.

You can download a Home warranty insurer complaint form in PDF format from the Forms page on the Fair Trading website.

How can you assist?

Please help us handle your complaint by:

- clearly identifying the issues of your complaint and providing all relevant supporting documentation and information
- where possible, letting us know what kind of result or outcome you are hoping for
- letting us know if you change your address and or contact telephone number
- immediately advising us of any relevant developments or if you no longer want or need our assistance.

Initial assessment

When your complaint is received by NSW Fair Trading we will examine it and:

- acknowledge receipt of your complaint in writing within 5 days
- make initial enquiries into your complaint (this may include contacting you)
- consult with other agencies, such as the Australian Prudential Regulation Authority (APRA) or the insurer
- decide whether any further action by Fair Trading is required.

How long will it take?

Some complaints may take time to investigate. We will find out what happened from the insurer's perspective and try to resolve the problem through mediation. If the assessment has not been completed within 4 weeks we will write to you and let you know what is happening.

Complex matters may need further investigation but we will provide you with regular updates on the investigation into your complaint. In most cases, complex matters are completed within 3 months.

Possible courses of action

Some of the ways we may act on your complaint include:

Providing you with information - Some complaints arise because there is a lack of information available to you. In these circumstances, we will provide you with information that may resolve your complaint.

Referring your complaint to another agency - If complaints fall within the jurisdiction of other agencies, such as the Australian Prudential Regulation Authority (APRA), we will refer your complaint to the other agencies. A decision will be made as to the most effective way of addressing your concerns.

Informal mediation or conciliation - We may refer your complaint for informal mediation or conciliation, if suitable. You should advise us if you do not wish to become involved in an informal mediation.

Audit or investigation by Fair Trading or a consultant - Fair Trading may conduct an investigation if the issues are considerable or reflect a pattern of behaviour by an insurer.

No Further Action - Fair Trading has the discretion not to investigate complaints or to discontinue an investigation if:

- the complaint is frivolous, vexatious or not in good faith
- the subject matter is trivial
- the conduct complained of occurred too long ago to justify investigation
- alternative and satisfactory means of redress is or has been available to the complainant
- the complainant has no interest or an insufficient interest in the conduct complained of.

Telephone enquiries

We may need more information to assess or investigate your complaint. We might ring you to clarify the issues of your complaint, gain more information or arrange a time to meet with you, so remember to notify us of any change in your address and/or contact telephone number.

Complex enquiries

If your complaint is complex you may be asked to provide further details in writing or to provide copies of letters, documents or other material.

Outcome of investigations

If we undertake an investigation we will write to you or call you to tell you the outcome. If you are unhappy with it, discuss your concerns with the nominated Complaints Officer or forward your concerns in writing to the Director General or the Ombudsman.

Culturally and linguistically diverse background

If you are from a culturally and linguistically diverse (CALD) background, we will:

- consult with the Community Relations Commission of NSW and
- obtain an interpreter for you.

If you wish to speak to us over the telephone through an interpreter, you can call the Telephone Interpreter Service on 13 14 50.