

## **Consultation on Topics from the Auditor General Report on Tarion**

On October 30, 2019, the Auditor General of Ontario released the Special Audit of Tarion Warranty Corporation. Tarion is committed to building a more transparent, fair and accountable new home warranty and protection program and has made it a priority to implement the recommendations from the Auditor General's report in a timely manner.

This consultation will help to inform Tarion's path forward with implementing the recommendations of the Auditor General of Ontario.

Please consider the consultation questions listed below and submit any feedback through [submissions@tarion.com](mailto:submissions@tarion.com) or to Ontario's Regulatory Registry by August 24, 2020. While this consultation focusses on specific recommendations and questions, if you have additional comments you wish to provide us relating to any matter raised in the Auditor General of Ontario's report you can also send them to [submissions@tarion.com](mailto:submissions@tarion.com). Please title these with the heading "Additional Submissions".

Tarion recognizes that not every topic will be relevant to each individual or organization. Please provide comments on the topics that are relevant to you or your organization.

### **Importance of Pre-Delivery Inspections**

**Context:** The Pre-Delivery Inspection (PDI) takes place before homeowners occupy their new home. This is an opportunity for the builder to show homeowners how to use the home's systems and features, confirm the quality of home construction and for the homeowner to identify items that are damaged, missing or incomplete. The PDI is an important milestone in the new home buying process, as the PDI builder form serves as the record of the condition of the home before the homeowner moves in and may be referred to afterwards for warranty purposes. Currently, builders are required to provide homeowners with the Tarion Homeowner Information Package (HIP) on or before the day of the PDI, to help homeowners be more informed about the new home warranty and their rights and obligations (including the importance of the PDI).

The Auditor General's recommendation #2 is for Tarion to establish new rules and processes to help homeowners to better understand the importance of the PDI, and in particular for Tarion to:

- a) require builders to inform homebuyers about the importance of the PDI and provide them with the Homeowner Information Package at the time the purchase agreement for the home is signed;
- b) conduct random audits of builders to ensure that they comply with the above requirement or survey homebuyers to confirm builders are complying; and

- c) send out letters to homebuyers, before their occupancy date, reminding them about the importance of conducting the PDI.

In line with this recommendation, Tarion is considering regulatory changes to require builders to provide:

- homeowners with information about their warranty and protection coverage and the importance of the PDI at the time the purchase agreement for the home is signed
- Tarion with homeowner contact information at the time of sale, so that Tarion can contact homeowners sooner in the process to directly provide more information and resources to help them better understand the warranty and protection program and the PDI

## **Stakeholder Impacts**

### *Homeowners and Buyers*

- Home buyers will benefit from enhanced consumer protection as they will have more time to familiarize themselves with warranty and protection information to help understand the importance of the PDI and other elements of the warranty and protection program.
- Having new home buyer contact information available when buyers sign their purchase agreement for the home will allow home buyers to receive important information before they take possession of their new home.
- Homeowners and buyers will benefit from a consistent and province wide standard in terms of the provision of complete information on a timely basis.

### *Builders*

- There may be positive impact on new home sales, as home buyers will have greater confidence in the new home marketplace.
- Builders will be required to provide homeowners with information about the warranty and protection program at the time the purchase agreement for the home is signed.
- Builders will need to adjust processes and internal data/contact management systems so that they share homebuyer contact information with Tarion at the time the purchase agreement is signed.
- There may be less compliance risk faced by builders as Tarion would potentially assist with delivery of some of the key information directly to homeowners.

### *Tarion*

- Additional communications and educational resources will need to be developed for all impacted stakeholders.
- Tarion will have to develop processes and procedures to collect the homeowner contact information on a timely basis.

- Tarion will have the ability to communicate directly with new home buyers if the need arises.

### **Questions to Consider:**

- 1) Are there any potential challenges associated with builders providing Tarion with homeowner emails and other relevant information (e.g., address and name) at the time the purchase agreement for the homes is signed (e.g., builder conditional financing and the 10-day cooling off period for condominiums)?
- 2) In addition to the importance of the Pre-Delivery Inspection, what other information about the new home warranty and protection program is important for purchasers to know at the time the purchase agreement for the homes is signed?
- 3) What are appropriate consequences for builders if this information is not shared with homeowners at the time the purchase agreement for the home is signed?
- 4) Recognizing the Pre-Delivery Inspection form is a builder form, do you think there is benefit in expanding the MyHome Portal to allow for the information in the Pre-Delivery Inspection to be entered electronically?
- 5) Are there other considerations associated with this topic?

### **Updating the Homeowner Information Package and Other Publications**

**Context:** The Auditor General's recommendation #3 is that Tarion to clarify information about new home warranties and homeowners' rights in the Homeowner Information Package, in particular to clearly explain:

- a) the respective roles and responsibilities of builders and Tarion;
- b) that homeowners should submit warranty claims directly to their builders, not Tarion;
- c) that Tarion's role is to hold builders accountable for addressing unresolved homeowner warranty claims; and
- d) that homeowners do not lose their warranty rights with the builder if they do not ask Tarion for assistance.

Tarion is planning to develop new homeowner education tools to be implemented in various formats in 2020 to address this recommendation.

### **Stakeholder Impacts**

#### *Homeowners and Buyers*

- Homeowners will benefit from enhanced consumer protection as these measures will help improve homeowners' understanding of their rights and responsibilities.

### *Builder*

- There may be positive impact on new home sales, as home buyers will have greater confidence in the new home marketplace.
- Builders may better understand their rights and responsibilities under the warranty and Tarion's role.

### *Tarion*

- The Homeowner Information Package and other educational resources will need to be revised in order to ensure that homeowners understand their rights and responsibilities under the warranty and Tarion's role.

### **Questions to Consider:**

- 1) Are there additional areas where there is potentially confusing information on new home warranties and protections, homeowner rights and obligations or other aspects of Tarion?
- 2) Are there other considerations associated with this topic?

### **Improvements to the Customer Service Standard**

**Context:** Tarion's Customer Service Standard (CSS) is the key process for how claims are handled. The CSS was introduced in 2004 to add milestones, structure and certainty to the claims process. The CSS includes the steps a homeowner must take to submit a claim, the timelines for submitting the claim, the repair period for builders to complete a warranty repair and the steps Tarion may take (e.g., conducting a conciliation to determine if a claim is warranted). If Tarion determines a claim is warranted following the conciliation (which usually involves an inspection by Tarion), the builder must resolve the claim. In these instances, the claim is considered "chargeable" and there are consequences to the builder unless an exception to chargeability applies. Once the builder repairs the warranted item, Tarion may conduct a claim inspection to verify the repair.

In the five year period reviewed by the Auditor General of Ontario while, 97% of the total forms received by Tarion (316,524) came in within the timeframes, about 3% (9,700) of the forms submitted by homeowners to Tarion were rejected because they missed one of the submission deadline (either the first 30 days or the last 30 days). Of the 3% (9,700) that missed the deadline, about 13% of them (1,300) missed the deadline by a day, and 70% (6,740) missed by a month or less.

The Auditor General's recommendation #6 is for Tarion to change the Customer Service Standard (CSS) to improve homeowners' ability to seek assistance from Tarion, and in particular for Tarion to:

- a) remove its two 30-day deadlines and allow homeowners to submit requests for assistance at any time during the first year of ownership;

- b) eliminate the 30-day deadline to request a home inspection (Request for Conciliation);
- c) permit homeowners to update their listing of unresolved defects after submitting the initial listing; and
- d) reduce the amount of time provided to builders to resolve defects before Tarion steps in to help homeowners.

In January 2020, Tarion sought public input on interim measures to improve homeowners' ability to seek assistance from Tarion. These changes included adding 'grace periods' as an interim measure, permitting homeowners to update the list of unresolved defects during the submission periods and accepting any water penetration forms during the first year. In light of the COVID-19 outbreak and the Government of Ontario Emergency Order which temporarily suspended statutory deadlines, the timing of implementation will be reassessed.

Tarion is seeking input on long-term regulatory changes it would make to the CSS to address this recommendation, including reducing the builder repair period, which was not part of the interim measures. For the long-term measures, Tarion's goal is to develop a solution with public and stakeholder input to address the core concerns raised in the Auditor General's report.

## **Stakeholder Impacts:**

### *Homeowners and Buyers*

- Homeowners will benefit from enhanced consumer protection as these measures will help improve homeowners' ability to seek assistance from Tarion.
- Increased opportunities for homeowners to access the warranty coverage may result in additional items being eligible for coverage.
- The costs of builders adjusting internal business processes and additional opportunities for homeowners to access coverage may be passed on indirectly to consumers via the purchase price of new homes.

### *Builders*

- There may be positive impact on new home sales, as home buyers will have greater confidence in the new home marketplace.
- Builders may need to make changes to tracking systems/business processes, to accommodate the proposed changes.
- Builders and their staff will require training on the proposed changes.
- There may be more/different timelines that builders will need to track per home and potentially more conciliation inspections. This will have an impact on builder staff resources. Additionally, as the potential for more conciliations increases, the potential for more chargeable conciliations could increase.

### *Tarion*

- Tarion will need to make the necessary system changes.

- New communications materials and educational resources will be developed in order to ensure that both homeowners and builder/vendors receive information that could help them understand their rights and responsibilities under the enhanced policies.

### **Questions to Consider:**

- 1) The 30-day submissions are the first 30 days of the warranty when homeowners can submit the 30-day form and the last 30 days when homeowners submit the year end form.
  - a. Should the two 30-day deadlines be removed altogether?
  - b. Should the two 30-day deadlines be extended and/or should there be a grace period for the first submission period?
  - c. Should there be an additional mid-year submission period of 30 days or longer?
  - d. Should the 30-day deadlines be limited to particular types of claims (e.g., “cosmetic” or “fit and finish”)?
  - e. Should the types of emergency claims received in the period between the 30-day windows be broadened?
- 2) The Auditor General recommended that Tarion eliminate the 30-day deadline to submit a Request for Conciliation inspection (RFC).
  - a. Should the Request for Conciliation (RFC) deadline be eliminated?
  - b. Should the RFC deadline be extended and/or should there be a grace period to allow homeowners to submit an RFC if they miss the deadline?
- 3) The Auditor General recommended that Tarion permit homeowners to update their list of defects after submitting their initial form.
  - a. Should homeowners be permitted to submit multiple forms to the builder and Tarion?
  - b. Should homeowners be permitted to update existing forms?
- 4) The Auditor General recommended that Tarion reduce the builder repair period from the current 120 days.
  - a. What is an appropriate length for the Tarion regulated builder repair period?
  - b. Should consideration be given to the types of defect (i.e., a shorter repair period for more straightforward items, while longer repair period for more complex items)?
  - c. If multiple forms can be submitted, should each form trigger a builder repair period for the items on that form? Or should there be one builder repair period for all forms submitted within a certain period (i.e., one builder repair period for first-year claims that ends 60 days after the end of the first year of possession)?
  - d. Conciliation is a process where Tarion assesses the claim on a homeowner's warranty form and decides whether it is covered under the builder's warranty. In this process, Tarion may conduct an initial conciliation inspection followed by claims inspection to determine if the claim is resolved. If Tarion decides that the builder did not meet its warranty obligations within the builder repair period, there is a consequence to the builder called a “chargeable conciliation.” This is added

to the builder's record on the Ontario Builder Directory for 10 years and the builder will pay Tarion a fee for having to conduct the conciliation inspection. Currently, chargeability is applied if at the conciliation inspection the item is deemed warrantable. Should this process be amended so that chargeability would be applied after the claim inspection has occurred and Tarion has determined that the builder has not met its builder warranty obligation?

- 5) Seasonal Warranty Items are items on the exterior of or outside your home that can only be repaired effectively in favourable weather conditions (i.e., exterior work such as painting, caulking and mortar work and in-ground support for decks). Are there considerations for seasonal and special seasonal repairs?
- 6) Are there other considerations associated with the Customer Service Standard?

### **Timely Tarion Resolution of Homeowner Disputes With their Builder**

**Context:** Currently, Tarion is required to provide to homeowners and builders a warranty assessment report within 60 days from the date the homeowner requested a claim (or conciliation) inspection. The Auditor General's recommendation #7 requires Tarion to establish new rules for the timely resolution of homeowners' disputes with their builders, in particular that Tarion:

- a) review its regulatory timelines for delivery of decisions to ensure they are reasonable;
- b) establish a process to ensure its decisions regarding homeowners and builders are made within the required time; and
- c) promptly notify homeowners and builders in writing of the reasons for a delay if Tarion is unable to meet its own deadline.

### **Stakeholder Impacts**

#### *Homeowners and Buyers*

- Homeowners will benefit from enhanced consumer protection as they will have clearer rules about when warranty decisions will be issued and will see issues resolved in a more timely manner.

#### *Builders*

- There may be positive impact on new home sales, as home buyers will have greater confidence in the new home marketplace.
- The overall time to repair warranted defects may decrease if Tarion decisions are provided sooner.

#### *Tarion*

- Tarion would make the necessary process changes.

- Additional communications and educational resources will need to be developed for all impacted stakeholders.

### **Questions to Consider:**

- 1) What is a reasonable timeline for Tarion to provide warranty assessments to homeowners and builders?
- 2) When should the decision timeline commence? For example, should it be when a claim (or conciliation) inspection is requested or the when the inspection takes place?
- 3) Should the complexity of defects be considered when developing timelines? For example, should there be a longer timeline if experts or consultants are needed for warranty assessment?
- 4) Should there be shorter Tarion timelines for warranty assessments that are more straightforward (i.e., “fit and finish” concerns like paint splatter)?
- 5) Are there other considerations associated with the topic?

### **Mediation Process for Homeowners**

**Context:** The Auditor General stated that the current mechanisms available for homeowners to appeal Tarion decisions, namely the Licence Appeal Tribunal and the courts, are very costly and take significant time for appeals.

The Auditor General’s recommendation #8 is that Tarion should establish a timely and cost-effective internal appeals process for homeowners. Tarion is exploring offering mediations conducted by an independent third party in certain circumstances, such as after an assessment is made. Note that the builder is not a party to these mediations.

### **Stakeholder Impacts:**

#### *Homeowners and Buyers*

- Enhanced consumer protection, as homeowners will benefit from access to a no cost, quicker and independent resolution process via mediation. This could result in earlier resolution of more claims.

#### *Builders*

- There may be positive impact on new home sales, as home buyers may have greater confidence in the new home marketplace.

#### *Tarion*

- Tarion will make the necessary process changes.
- Additional communications and educational resources will need to be developed for all impacted stakeholders.



- Independent mediation will increase the costs borne by Tarion.

### **Questions to Consider:**

- 1) Is mediation by a third-party an appropriate avenue for homeowners to appeal Tarion decisions? Why or why not?
- 2) Are there additional appeal options Tarion should consider for homeowners to appeal Tarion's decisions? If so, what are they?
- 3) Should builders be accountable for payouts awarded through mediation if they are not a party to it? Why or why not?
- 4) Should a portion of the mediation costs be paid by the homeowner (e.g., the costs could be split 50/50)?
- 5) Are there other considerations associated with this topic?

### **Protections for Consumers Purchasing Pre-Construction Homes**

**Context:** Part of the Auditor General's recommendation #13 is to require builders to provide Tarion with title information for high-risk proposed construction projects and to disclose restrictions that could cause delay or cancellation of the project. Specifically, on these matters it states that Tarion should:

- a) either obtain from the builder a title search for those high-risk proposed construction projects and review it or require the builder to provide a third-party certification of this information; and
- b) establish a process to disclose publicly any restrictions found during the review that could delay or cancel the construction project.

### **Stakeholder Impacts:**

#### *Homeowners and Buyers*

- Home buyers will be better protected from purchasing pre-construction condominium units that may be delayed or cancelled by legal restrictions.
- Home buyers may benefit from enhanced consumer protection as disclosing this information may incentivize condominium builders to remove restrictions, where possible, before selling units.
- The cost of title searches and/or third-party certifications may be passed onto the homeowners in the price of condominium unit.

#### *Builders*

- There may be positive impact on new home sales, as home buyers would have greater confidence in the new home marketplace.

- Obtaining a title search or third-party certification would result in additional costs and time for each condominium.
- Builders would need to disclose relevant restrictions.

#### *Tarion*

- Additional communications and educational resources will be developed for all impacted stakeholders.
- Tarion will develop a process to ensure relevant information is disclosed.

#### **Questions to Consider:**

- 1) What type of restrictions could delay or cancel condominium construction projects that should be disclosed to the purchaser?
  - a. Are there any specific considerations for various types of condominiums (e.g. common elements condos)?
- 2) What other information would indicate a high probability the builder will not complete the condominium project?
- 3) How should restrictions be displayed so that purchasers may be aware before agreeing to purchase a new condominium unit?
- 4) Are there other considerations associated with this topic?

#### **Risk-Based Inspection Process**

**Context:** The Auditor General's recommendation #16 is that Tarion strengthen the builder-licensing process to protect homebuyers so that new homes are constructed in accordance with the Ontario Building Code, and to minimize warranty issues related to the Code and, in particular, to:

- establish clear and specific criteria to help determine when a builder's licence should be restricted or revoked for Code violations; and
- implement a risk-based inspection process to inspect homes for compliance with the Code during construction.

In response to the first part of this recommendation, Tarion has implemented a process for when a builder's licence should be restricted or revoked for Code violations.

In 2019 Tarion implemented a pilot program for risk-based inspections of relevant builders and is currently assessing the results of the pilot program. Tarion is now also seeking public input on an on-going risk-based inspection process for relevant builders to proactively identify potential deficiencies during construction, including those related to the Ontario Building Code.

## **Stakeholder Impacts:**

### *Homeowners and Buyers*

- Home buyers will benefit from enhanced consumer protection as risk-based inspections could promote better built homes.

### *Builders*

- There may be positive impact on new home sales, as home buyers will have greater confidence in the new home marketplace.
- This may promote better education to builders on building practices.

### *Tarion*

- Tarion would need to make the necessary process changes.
- Additional communications and educational resources will need to be developed for all impacted stakeholders.
- There would be additional costs to Tarion to relating to this inspection program.

## **Questions to Consider:**

1. What should the risk-based inspections focus on (e.g., specific non-compliance with the Ontario Building Code, construction phases, etc.)?
2. If inspections are done on a targeted basis, with only a percentage of homes being inspected, what percentage of homes should be inspected to minimize warranty issues related to the Ontario Building Code (e.g., less than 5%, between 5% and 10%, between 10% and 20% or more than 20%)?
3. Are there other considerations associated with this topic?

## **Enhancements to the Ontario Builder Directory**

**Context:** In 2019, Tarion made improvements to the Ontario Builder Directory including displaying past convictions for illegal building activities, as recommended by the Auditor General. Tarion has committed to adding the information as recommended by the Auditor General on the Ontario Builder Directory.

The Auditor General's recommendation #20 is for Tarion to change the Ontario Builder Directory to include additional information about builders, in particular:

- a) all results of Tarion investigations that found the builder's behaviour lacked honesty and integrity;
- b) past convictions for illegal building activities;
- c) the number and percentage of homes with major structural defects that a builder constructed each year;
- d) the amount of money a builder owes to Tarion that remains unpaid;

- e) the number of defects under warranty that a builder refused to repair; and
- f) the number of defects the builder refused to repair that were due to the builder's non-compliance with the Ontario Building Code.

Plans are underway to post the results of honesty and integrity investigations as a priority of the future regulatory authority to be designated under the New Home Construction Licensing Act, 2017 that is proposed to take over the responsibility of the Ontario Builder Directory.

### **Stakeholder Impacts:**

#### *Homeowners and Buyers*

- Home buyers will benefit from enhanced consumer protection as they will have access to additional information about builder history to make more informed purchase decisions.
- Additionally, showing additional information on the directory may incentivize more builders to resolve more claims and to do so sooner.

#### *Builders*

- Additional information will be publicly posted on individual builder profiles on the directory.

#### *Tarion*

- Tarion will make the necessary system changes
- Additional communications and educational resources will need to be developed for all impacted stakeholders.

### **Questions to Consider:**

- 1) If information is under dispute or appeal by the builder to Tarion, should it be published?
- 2) If a builder repairs a warranted item in a timely basis, should the defect be publicly reported?
- 3) Are there other considerations associated with adding this information to the Ontario Builder Directory?

### **Increasing the Warranty Compensation Caps on Claims Relating to Environmentally Harmful Substances or Hazards, Septic Systems and Condominium Common Elements**

**Context:** In addition to the above areas identified by the Auditor General, Tarion is also seeking input on increasing the warranty compensation caps on claims relating to environmentally harmful substances or hazards such as mould and radon (\$15,000), septic systems (\$25,000) and condominium common elements. Condominium common elements may include items such as the heating system, elevators, parking garage and some of the exterior items in individual

units, like balconies. The current warranty compensation cap for condominium common elements is \$50,000 times the number of units, up to a maximum of \$2.5 million. Based on feedback from homeowners, Tarion is looking to improve these warranty compensation caps to enhance consumer protection, as currently these types of claims can exceed the existing caps.

### **Stakeholder Impacts:**

#### *Homeowners and Buyers*

- Homeowners would benefit from additional consumer protection, as the full costs of these claims would now be eligible under the warranty.

#### *Builders*

- There may be positive impact on new home sales, as home buyers will have greater confidence in the new home marketplace.
- There may be additional costs to builders where claims exceed these existing warranty compensation caps.

#### *Tarion*

- Additional communications and educational resources will be developed for all impacted stakeholders.

### **Questions to Consider:**

- 1) Should the warranty compensation caps on claims relating to environmentally harmful substances or hazards (i.e., \$15,000) and septic systems (i.e., \$25,000) be increased? If so, what are the appropriate amounts for the warranty compensation caps, if any?
- 2) Should the warranty compensation cap for the per unit amount of condominium common elements be increased (e.g. \$50,000 per unit)? If so, what is the appropriate amount for the per unit warranty compensation cap (e.g., common element cap of \$100,000 per unit up to a maximum of \$2.5 million)?
- 3) Should the maximum warranty compensation cap of the condominium common elements (i.e., \$2.5 million) be increased? If so, what is the appropriate maximum amount of the warranty compensation cap?
- 4) Are there any considerations associated with this topic?

### **Compensation for Homeowners to have to Relocate During Repairs of a Warranted Item**

**Context:** In addition to the areas identified by the Auditor General, Tarion is seeking input on providing compensation to homeowners where they have to relocate during repairs arising from a warranted item. Homeowners are occasionally faced with unexpected expenses because their home is uninhabitable during the repair or remediation of a warranted item. These expenses

may include, for example, temporary accommodation, food, travelling and storage. Tarion recognizes this is an important aspect of consumer protection, and as a customer service gesture, currently provides a [Temporary Relocation Allowance](#) to help contribute towards a homeowner's expenses. Based on feedback from homeowners, Tarion is looking to increase the compensation for homeowners that have to relocate during repairs of warranted items, as well as make it a requirement for builders to provide this compensation.

### **Stakeholder Impacts:**

#### *Homeowners and Buyers*

- Homeowners would benefit from additional consumer protection, as this compensation would now be eligible under the warranty.
- Homeowners may have these warranted items resolved sooner as this may encourage builders to make repairs in a more efficient manner.

#### *Builders*

- There may be additional costs to builders to provide compensation in these instances.

#### *Tarion*

- Additional communications and educational resources will be developed for all impacted stakeholders.
- Tarion would need to make the necessary process and regulatory changes.

### **Questions to Consider:**

1. What factors should be considered when determining if a home is uninhabitable during repairs (e.g., health and safety)?
2. These types of expenses may include temporary accommodation, food, travelling and storage. Are there other types expenses that should be considered?
3. Note that the current allowance helps contribute towards a homeowner's expenses, but is not meant to provide full compensation for any and all expenses incurred. Should the current compensation be increased (i.e. currently \$150 for each day that the home cannot be lived in)? If so, what is the appropriate amount for each day that the home cannot be lived in?
4. Are there any other considerations associated with this topic?