

Tarion Consultation on Consumer Protection Initiatives - Discussion Guide

Tarion is committed to building a more transparent, fair, and accountable new home warranty and protection program for all Ontarians.

Following previous consultations on proposed policies to address the recommendations and other consumer protection initiatives in the spring and fall of 2021, Tarion is now consulting on regulatory changes to support improvements to the Customer Service Standard, an increase to the warranty compensation limit, and the creation of a Temporary Relocation Warranty.

Specifically, Tarion is consulting on proposed changes to Regulation 892 under the Ontario New Home Warranties Plan Act to:

- Extend the initial homeowner submission period by 10 days (now 40 days) and make the current grace period of 10 days at the end of the first year permanent.
- Create a mid-year submission at six months.
- Allow homeowners to add items to a running list of potential defects at any time during the first-year warranty period.
- Remove the 30-day timeline for a homeowner to request a conciliation and instead allow them to request a conciliation up to 120 days after the close of the first year for any items submitted during the first year.
- Remove the 30-day timeline for a homeowner to request a conciliation in year two of the warranty and instead allow them to request a conciliation up to 120 days after the close of the second year for any items submitted during the second year.
- Create a new requirement that Tarion must schedule a conciliation inspection within 15 days of the request being made and make changes to the current requirements for timelines of conducting the conciliation inspection and issuing the assessment report.
- Increase the warranty compensation limit available from Tarion relating to freehold homes (i.e., lot and dwelling) that do not benefit from additional Common Element protections from \$300,000 (current) to \$400,000 (proposed).
- Create a new Temporary Relocation Warranty of \$150/day, to help cover costs associated with temporary accommodations if a repair renders the home uninhabitable.

Please consider the consultation questions listed below and submit any feedback on the proposed changes to submissions@tarion.com or to Ontario's Regulatory Registry by November 14, 2022.

While this consultation focusses on specific recommendations and questions, if you have additional comments, please send them to submissions@tarion.com. Please title these with the subject "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.

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 Customer Service Standard (CSS) is the set of minimum timelines which apply to builder's after-sale warranty service in Ontario. The CSS also sets out the method by which a homeowner may make a formal claim to Tarion for assistance, and the timelines to make such claims. The CSS is supported by a digital portal offered by Tarion called MyHome. This portal assists users and provides a platform to help homeowners, builders and Tarion communicate about warranty matters.

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, with some exceptions. Once the builder repairs the warranted item, Tarion may conduct a claim inspection to verify the repair. You can find a chart which explains the current CSS process in [Appendix 1](#).

The CSS provides structure and allows for the efficient scheduling of trades and the efficient scheduling of repair appointments for finishing and cosmetic items in the home – such as paint issues, surface defects, etc. For more serious issues or if there is something which could impact health or safety, Tarion has a separate process to abridge timelines and deal with the serious issues as emergencies promptly when they arise.

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.

Tarion has conducted several consultations to address the Auditor's recommendations, first on interim measures from January to March of 2020, then on proposed options from July to September of 2020, then again from March to May of 2021, and finally on a new process from November of 2021 to February of 2022.

The interim measures increased homeowners' ability to access help from Tarion by adding 10-day grace periods to the claim submission and conciliation periods, allowed homeowners to add additional items to forms during the claim submission periods, and increased the types of claims that can be addressed anytime in the first year by expanding the definition of emergency claims to include any water penetration claims.

Subsequently, during the November 2021 consultation Tarion proposed changes to the CSS:

1. Formally incorporate the interim measures into the CSS, specifically the grace periods and ability to add additional items.
2. Create a mid-year submission at six months.
3. Allow homeowners to identify and submit defects at anytime during the first year and allow builders to have access to this information.
4. Making the expanded emergency definitions to include water penetration permanent.
5. Expand when homeowners can ask for a conciliation inspection during the first-year and second year.

Stakeholder Feedback from Fall 2021 Consultation

Overall, homeowners:

- were very supportive of grace periods, 6-month submission and 120-day deadline for conciliation requests with over 92% of homeowners agreeing with the changes and felt that they would improve Tarion's warranty process. They felt that it would provide more flexibility for homeowners and more time to assess and identify issues, specifically that the mid-year submission would help homeowners whose move-in process may have issues or would have the need to observe seasonal defects.
- broadly supported the proposed MyHome changes and suggested that Tarion should conduct user testing on changes to the MyHome platform to ensure that it is clear and accessible to new home buyers.
- agreed with the changes to the conciliation process with over 85% of the homeowners in favour.
- had a common suggestion for Tarion to improve the communication around the submission and conciliation processes to ensure homeowners understood the process and timelines.

Overall, industry stakeholders:

- were generally in support of grace periods and mid-year submissions, so long as there are deadlines for it to be a fair process, and not cause confusion for builders and homeowners.
- generally found the addition of water penetration to the emergency definitions, acceptable but asked Tarion to provide a clear definition of what would qualify under these emergencies.
- felt allowing homeowners to add defects to running lists would be acceptable if there is clear communication to manage homeowner expectations on the repair timelines.
- were also supportive of the proposed improvements to MyHome which would provide greater functionality to builders in the future (i.e., ability to see the list before the submission, leave notes, and mark repaired items).
- had mixed reactions to the proposed conciliations changes, with concerns about possible burden on builders to constantly have to schedule trades and overlapping repair timelines, with the majority indicating they were fine with the change as long as the builder still received their repair timelines.
- made a common comment that Tarion needs to ensure that these changes are clearly communicated to homebuyers to help navigate the new warranty process, timelines, and deadlines.

Other stakeholders feedback included:

- the Consumer Advisory Council (CAC) felt that that most of the changes in the proposed CSS as helpful to homeowners, specifically, such as the grace period, mid-year submission, emergency definitions, and additional flexibility around MyHome.
- Other stakeholders in the legal and real estate sectors agreed with the user interface changes to MyHome to better support consumers and also liked the proposal for the flexibility to provide builders a clear picture of what they need to repair.

Proposed Changes:

Taking the above feedback into consideration, Tarion has made adjustments to the proposed changes to the CSS.

Tarion is now seeking to make regulatory changes to Regulation 892, to allow for the implementation of these improvements to:

- Extend the initial homeowner submission period by 10 days (i.e., now 40 days) and make the current grace period of 10 days at the end of the first year permanent.
- Create a mid-year submission at six months.
- Allow homeowners to add items to a running list of potential defects at any time during the first year warranty period.
- Remove the 30-day timeline for a homeowner to request a conciliation and instead add end dates after the end of the first and second years. Specifically, expand when homeowners can ask for a conciliation inspection during the first year, by allowing homeowners to request a conciliation inspection at any time after the 40-day, mid-year, and year-end submission, up to 120 days after the close of the first year for any items submitted during the first year. Also, remove the 30-day timeline for a homeowner to request a conciliation in year two. The new deadline for homeowners to request a conciliation for year two items would be day 850. While conciliations can be requested at any time after the submission, they will only be scheduled after the applicable initial Builder Repair Period (BRP) unless it is an emergency item. This change does away with the current 30-day window within which homeowners must currently request a conciliation inspection from Tarion and addresses a concern of homeowners.
- Remove the 30-day timeline for a homeowner to request a conciliation in year two. The new deadline for homeowners to request a conciliation for year two items would be 120 days after the end of the second-year warranty period.
- Create a new requirement that Tarion must schedule a conciliation inspection within 15 days of the request being made, and make changes to the current requirements for timelines of conducting the conciliation inspection and issuing the assessment report. Tarion is proposing to remove the fixed timeline for conducting a conciliation inspection and circumstances whereby Tarion will notify the homeowner for a delay in issuing the assessment report due to circumstances beyond Tarion's control (i.e. the need for third-party expertise). Timelines for conducting an inspection could present some operational challenges and can be hindered by circumstances outside of Tarion direct control. As such, Tarion is proposing to remove the fixed timelines in the regulations and instead will set out a timeline for scheduling the inspection. Additionally, Tarion is proposing to make changes to the regulation to better clarify some circumstances which could delay a assessment report.

You can see the proposed changes in [Appendix 1](#).

Tarion is also moving forward with making the expanded emergency definitions permanent. As this consultation is on regulatory changes, and those changes are already in regulation, no further action is required to implement this change.

Further consultation on what appropriate builder repair periods would be for CSS (for example reducing it from 120 to 90 days) has been deferred. At this time, with current uncertainty created by COVID-19 including supply chain issues impacting resources needed for repairs and other health and safety implications, feedback on this issue will be difficult to obtain and current data on repair timelines is not reliable. Accordingly, a full discussion on the appropriate reduction of the builder repair periods will be reintroduced as part of the next phase of CSS improvements in 2023/2024.

Stakeholder Impacts:

Homeowners

- Homeowners will benefit from enhanced consumer protection as these measures will help improve homeowners' ability to have warranted issues addressed.
- The new processes will result in fewer timelines being missed by homeowners.
- The new processes will result in more opportunities for homeowners to seek assistance from Tarion.
- The new processes will result in more opportunities for homeowners to access the warranty coverage and may increase the number of items being covered under the warranty.
- 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 is no proposed increase to the enrolment fee or underwriting process associated with this proposal.
- Builders may need to make changes to tracking systems/business processes to accommodate the proposed changes.
- Builders and their staff will require training on changes to the CSS.
- There may be different timelines that builders will need to track per home.

Tarion

- The new process may help Tarion possibly address issues sooner than they can currently.
- Tarion will need to make the necessary internal system changes including adjustments to the MyHome portal.
- Tarion will need to help builders and their staff understand the new CSS.
- Tarion will need to develop new educational resources for homeowners and builders to ensure they understand the new process and their rights and responsibilities.
- Tarion will need to ensure it has increased capacity for inspections.

Questions for Stakeholders to Consider:

- 1) Do you feel these proposed changes strike an appropriate balance between adding flexibility to the process while still maintaining the benefit of having certain milestones?
- 2) Will adding a mid-year form address consumers who feel there is too long a gap between the current 30-day (plus grace) form and the year end form?
- 3) The proposal eliminates the 30-day window in which consumers had to request a conciliation inspection and now allow for consumers to ask for one at any time in the first year. However, this could result in overlapping inspections, and/or result in a consumer asking at the end of the year for an inspection on items noted in the first 40 days. Are these challenges manageable for homeowners/builders? Should the ability to request a conciliation inspection be more time limited to reduce the potential issues of overlapping timelines?
- 4) Under the proposal it is possible that up to 3 conciliations inspections could be open at the same time in certain circumstances (for example, due to scheduling delays or challenges) – is this an acceptable risk to consumers and builders? Or should there be an express option to consolidate open conciliations where it may be efficient to do so?
- 5) Under the proposal consumers will have a much greater ability to request conciliations, but the scheduling of the conciliation will follow the builder repair period. In some cases, the builder may indicate that they do not intend to repair one or more items. In such cases, should the homeowner be able to accelerate a conciliation, or should Tarion have the ability to abridge timelines?
- 6) What changes would you like to see Tarion make to improve the information shared between the homeowner and the builder as part of the process?
- 7) Are there other items Tarion should consider when implementing changes to the Customer Service Standard?
- 8) Do you have any other feedback on the draft amendment to Regulation 892?

Creation of a New Temporary Relocation Warranty

Context: In some instances, Homeowners must leave their home during a repair or remediation of a warranted item due to an issue which makes their home uninhabitable. While out of their home, homeowners may incur expenses for temporary accommodation, food, and storage costs. Relocation and accommodation costs are not currently directly covered in the statutory warranty but recognizing this is an important aspect of consumer protection, Tarion has been providing a Temporary Relocation Allowance to help contribute towards a homeowner's expenses as a customer service gesture.

During the spring 2021 consultation Tarion proposed changes a new warranty which would:

- Provide an amount of up to \$150 per day with a cap of \$25,000 (or \$150/day for a maximum of 23 weeks)
- Be triggered where, as a result of a warranted condition or repairs to warranted items undertaken by a builder or Tarion, the home, or an essential part of the home, cannot be used for the purpose for which it was intended and is in effect rendered uninhabitable.
- Require homeowners to show the number of days they are out of the home to qualify for the reimbursement.
- Not prohibit the builder from entering into an agreement with the homeowner to provide alternative relocation compensation.
- Require builders to provide this compensation, and this new warranty would fall within the existing maximum statutory warranty compensation limit.

Stakeholder Feedback from Spring 2021 Consultation

Overall, homeowners and other stakeholders said:

- The compensation should be higher than \$150/day, and that the number of individuals and geographical location should be considered.
- Suggested that there be a flexible or hybrid approach including linking the daily rate to the provincial Ontario Public Service rates, having a flat fee plus option, and options to provide the compensation upfront to the homeowner.
- A clear definition for what is “uninhabitable” is needed and a clear process outlined for when this warranty would be triggered – with sensitivity to possible health impacts (i.e. air issues).
- The new warranty should not count against the \$300,000 warranty compensation limit.

Overall, industry stakeholders said:

- The rate should be a flat or simple scale to make it easy for builders to administer.
- Clear definition for what is “uninhabitable” is needed and a clear process outlined for when this warranty would be triggered
- This new warranty should not override a builder’s ability to offer alternative compensation to resolve the warranted item.
- Industry asked for more details on the process for this warranty, including who will make the determination, how it will be rolled out and the definitions of “uninhabitable” – and suggested creating a builder-Tarion committee to review the new process and implementation.

Proposed Changes:

Based on the feedback from the previous consultation, Tarion adjusted the proposed policy for the relocation warranty. Now, Tarion is proposing to create a Temporary Relocation Warranty that would include the following:

- A clear definition of “uninhabitable” and when the new warranty would be applicable;
- A daily rate for compensation is \$150/day, recognizing that this amount is a contribution only;
- No receipts or proof will be required from the homeowner;
- The compensation amount will be capped at \$15,000 and would fall within the extended warranty compensation limit;
- Builders would be required to provide this compensation.
- If a dispute arises about relocation costs during the builder repair period, Tarion can be contacted to make a determination on the issue.

Under this proposed new warranty, Tarion would consider the home “uninhabitable” if the home or an essential part of the home cannot be used for the purpose for which it was intended. A home may be determined to be uninhabitable if, for example, the warranted item or the repair or remediation of that item has the following impact for more than one day:

- renders the kitchen unusable;
- renders all toilets and/or all bathtubs/showers unusable;
- renders the staircase to the upper floor unusable or unsafe;
- adversely affects the structural integrity of the home;
- involves remediation of mould or another harmful substance; or
- renders all or an essential part of the home unusable because an occupant of the home has a disability.

Once implemented, Tarion proposes to monitor the new warranty for two years in order to determine what issues arise, and then revisit the daily amount and the monetary cap, along with any additional matters.

Stakeholder Impacts:

Homeowners

- 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 incentivize 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. Is \$150 per day an appropriate amount for a homeowner that needs to leave the home? If not, why?
2. Based on warranty and claims data, Tarion has set the maximum cap at \$15,000. Are there justifiable reasons that this should be raised/lowered?
3. Should the amount of relocation compensation be tied to other factors? (i.e., individual vs family, or geography)
4. How much of a benefit is having this process simple and easy to access, for example using a fixed amount of 150 times the numbers of days not in the home, vs having the process be specific and exact (requiring a review of receipts and validation of expenses for every claim)?
5. What other types of impacts should Tarion consider when determining what is "uninhabitable?"
6. Is there any other feedback on the draft amendment to Regulation 892?

Increasing the Warranty Compensation Limit

Context: In Ontario, new home buyers benefit from a seven-year new home warranty with a maximum cap (for freehold homes and condo units) of \$300,000; with the condominium units also receiving additional coverage for common elements of up to the greater of \$100,000/per the number of units in the building or \$3.5M.

The average cost to the homeowner for the coverage (2021) is about \$1,300, paid as a one-time enrolment fee (i.e. not an annual premium). The fee is payable to Tarion by the vendor of the home.

In February 2021 the Standing Committee on Public Accounts reviewed the Auditor General's report on Tarion and made the following recommendation (among others) that "*Tarion Warranty Corporation increase the maximum limit of \$300,000 paid to homeowners when builders do not honor their warranty, to better reflect the costs of home construction in Ontario.*"

Tarion completed an analysis of the current maximum limit of \$300,000 and whether it appropriately reflects the costs of home construction in Ontario. This analysis included consideration of the following information:

- A jurisdictional review of similar claim limits;
- The current cost of construction and average price of a home (excluding the cost of land, which has no warranty);
- Historic warranty claims data;
- Inflationary indexes since 2006; and
- Impacts on enrolment fees, security, and other risk analyses.

The jurisdictional review revealed that all provinces have some form of minimum warranty coverage and coverage limits applicable to new homes. Based on 2021 data, the Ontario limit of \$300,000 was highest of all provinces, and equal to the maximum provided for in Quebec.

Tarion also looked at the compensation limit compared to the replacement cost of a home. It should be noted that while home prices continue to rise, the major cost of a new home in Ontario continues to be the value of the land upon which the home is built – not the cost of the home itself – and the new home warranty only applies to the construction not the land. For this reason, looking to the total cost of housing is not considered to be the correct value when considering construction warranty levels.

Tarion's historic claims analysis found that the number of claims that exceeded the current limit was very rare – on average less than 2% of homes with claims resolved by Tarion exceeded the limit. This number was significantly lower for condominium units with only one instance from 2000 to 2019. Accordingly, the current limit of \$300,000 was sufficient for freehold in the vast majority of claims case experience over the last 15 years and was more than sufficient for virtually every condominium unit.

However, there is some evidence that the number of cases may be increasing and based on current trends, Tarion forecasts about 60 homes to exceed the limit at current levels over the next five years. Factors which drive up the likelihood of increased claims costs include fiscal and social inflationary effects.

An analysis of various inflationary indexes suggests that the \$300,000 set in 2006 could be raised to a higher amount – between \$350,000 to \$400,000 depending on the inflationary index applied. Our claims data indicates that claims for condominium units on average tend to be less; that together with the other common element coverage for condominium units indicates the unit coverage limit does not require increase in the same way as freehold.

Tarion also assessed the cost implications to the Guarantee Fund, capital requirements, and enrolment fee levels. Each of these topics requires a dynamic analysis and is dependent on the overall economic environment (including interest rate and market volatility), current claims experience, recovery rates, and new home construction levels. At a high level any increase to a compensation limit will lead to an increase in claims paid out over time, and raise the minimum capital needed in the guarantee fund to weather a catastrophic event. However, given the low frequency of homes which breach the limit, any cost impacts would most likely be less than 2%.

In response to the initial analysis and to ensure consumers are properly protected, Tarion consulted from November 2021 to February 2022 on a proposal to:

1. Increase the freehold compensation limit up to a new limit of \$400,000; the condominium unit limit would remain unchanged due to these homes already benefiting from common elements warranties.
2. The higher level of compensation limit would be available after the designated effective date; however the increase to the builders' indemnity obligations to Tarion would be phased in over 3 years.
3. After 2024 the maximum limit for both freehold and condo units could be indexed; it could be adjusted every three years automatically using a 3-year rolling average of for example the Consumer Price Index.

Stakeholder Feedback from Fall 2021 Consultation:

Overall, homeowners:

- were supportive of the proposed increase to the compensation limit,
- had mixed feelings on treating condos and freeholds differently and felt all homes should be treated the same,
- felt that the compensation limit should be adjusted in the future to keep current using an indexed approach.

Overall, industry stakeholders:

- generally agreed with increasing the limit although some felt that \$400,000 was too high given the low number of times the limit had been reached in the past
- agreed that condominium units and freehold homes should be treated differently due to the added common element protections and the low frequency of condo unit claims more than \$300,000,
- expressed concern that in the long run this could lead to higher enrolment fees, and thus higher home prices for purchasers, and this change could also have other negative impacts, including increasing their security requirements.

Other stakeholders feedback included:

- The Consumer Advisory Council (CAC) shared the perspective of homeowners noted above, and the Canadian Condominium Institute felt that providing different levels of consumer protection for freehold and condo units will only negatively impact condo owners as they will not receive the same protections despite potentially having similar value, and that plan to index future increases would mean that the difference would likely grow over time.
- The Industry Advisory Council (IAC) shared the perspective of industry stakeholders noted above.

Proposed Changes:

Based on our initial financial analysis and the feedback received in the previous consultation, Tarion is now seeking to make regulatory changes to:

- Increase the compensation limit for homes that do not benefit from additional Common Element protections to \$400,000.
- The change would take effect for all freehold homes with agreements of purchase and sale entered into on or after a specified date, and not have retroactive application.
- The higher level of compensation limit would be available after the designated effective date; however, the increase to the builders' indemnity obligations to Tarion would be phased in over 3 years.
- At this time no inflationary indexing would be automatically applied on the limit, however the cost effects and whether the limit is appropriate would be reviewed annually based on claims experience and real time data.

Stakeholder Impacts:

Freehold Homeowners

- Future freehold homeowners will benefit from enhanced consumer protection as an increased compensation limit would help them get more overall coverage.
- While it is possible that the increase in coverage could over time result in an increase in the enrolment fees relating to homes, the increase would not be material relative to the price of homes.

Builders

- Builders may benefit from enhanced consumer confidence in their builder warranty offering.
- Enrolment fee impacts are anticipated to be zero or minimal
- Due to the very low frequency of events where the limit is exceeded, we do not anticipate any blanket impact to Tarion's underwriting requirements on builders because of this policy change.

Tarion

- Tarion will be required to compensate homeowners up to the higher limit in cases where the builder does not meet its obligations.
- Tarion will need to make the necessary internal system changes.
- Tarion will need to help builders and their staff understand the compensation limit.
- Tarion will need to update educational resources for homeowners and builders to ensure the increased compensation limit is reflected.
- Once the timing and specifics of the policy change are final Tarion will have to assess full impacts to the minimum capital requirements of the Guarantee fund to weather potential catastrophic claims events and assess any future enrolment fee impacts.
- Tarion will continually monitor the relevance of the limit and whether further increases may be needed in lieu of an automatic indexing.

Questions for Stakeholders to Consider:

1. Do you think the proposal to provide \$400,000 in coverage for construction warranty (repair) of new homes in Ontario is sufficient, insufficient, or excessive?
2. Do you agree with the idea of treating condo units and freehold homes differently in this way?
3. Are there other items Tarion should consider with increasing the warranty compensation limit?
4. Is there any other feedback on the draft amendment to Regulation 892?