

Tarion Discussion Guide – Fall 2021 Consultation

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.

Tarion is committed to continually working to improve the CSS for stakeholders. As part of that commitment Tarion is now consulting on certain specific improvements to the CSS and your feedback will help to determine Tarion's regulatory changes to support implementation of these recommendations.

Tarion is also seeking input on a proposal to increase the compensation limit for homes that do not benefit from additional Common Element protections. The current compensation limit for such homes is \$300,000.

An Improved Customer Service Standard

Context: Tarion's Customer Service Standard (CSS) is the key process for how non-emergency 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. Appendix 1.1 outlines the steps and timelines for the current CSS for year one of the warranty.

Based on input from prior consultations, the CSS provides the greatest benefit to stakeholders when it is applied to finishing and cosmetic items in the home – such as paint issues, surface defects and the like. For these items the CSS provides structure and allows for the efficient scheduling of trades and the efficient scheduling of repair appointments. The CSS is least effective where the issues raised are more serious, or 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.

Items which could be handled by Tarion as an emergency include:

- Complete loss of heat between September 15 and May 15;
- Gas leak;
- Complete loss of electricity;
- Complete loss of water;
- Complete stoppage of sewage disposal;
- Plumbing leak that requires the entire water supply to be shut off;
- Major collapse of any part of the home's exterior or interior structure;
- Water penetration through the interior walls or ceiling;
- A pool of standing water inside the home;

- Presence of unacceptable levels of hazardous substances inside the home, such as radon and mould; and/or
- Any situation where, in the opinion of Tarion, the home is not fit for occupancy due to health or safety reasons.

Items which would be addressed through the CSS process include:

- Small gap between the baseboard and floor;
- Condensation on the inside of a window;
- Squeaking stair;
- Markings bleeding through painted finish;
- Cracked countertop;
- Cabinet door is warped.

In the five-year period reviewed by the Auditor General of Ontario (as reported in her report of October 2019), 97% of the total forms (which were not emergency claims) received by Tarion (316,524) arrived within the required timeframes, while about 3% (9,700) of the forms submitted by homeowners to Tarion were rejected because they missed one of the submission deadlines (either the first 30 days or the last 30 days of the first year warranty period). 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.

Tarion sought public input on the challenges posed by the CSS as noted by the Auditor General from January to March of 2020, including hosting eight roundtables with over 250 homeowners and receiving over 100 written submissions. On September 14, 2020, Tarion either implemented or continued the following programs to better protect homeowners, including:

- Ensuring that the digital portal (MyHome), used by 98% of homeowners, was configured to send reminder notices to users to ensure homeowners were aware of the relevant timelines.
- Ensuring that the process for emergency claims was flexible enough to allow homeowners to access Tarion's assistance at any time for severe or major issues. Tarion 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. This was in addition to claims about health and safety issues, major structural defects, and health issues posed by radon and mould.
- Increasing homeowners' ability to access help from Tarion by adding 10-day grace periods to:
 - The initial 30-day claim submission period;
 - The initial 30-day request for conciliation period;
 - The year-end claim submission period with written evidence the homeowner reported items to their builder during the first-year warranty period; and
 - The year-end request for conciliation period.
- Allowing homeowners to add additional items to forms during the 30-day and year-end claim submission periods.

In the spring of 2021 Tarion conducted a further consultation using [two proposed options](#), as a framework to solicit additional feedback on broader changes to the CSS. Tarion is now seeking input on further improvements to the CSS for consideration after reviewing the feedback received from the spring consultation.

The improvements set out below were based on feedback received from earlier consultations and developed with an emphasis on areas of consensus from stakeholders.

Stakeholder Feedback from Spring 2021:

First-Year Submissions:

- Homeowner feedback on the two options were mixed. Some homeowners supported a model where complaints of any kind could be submitted to Tarion at any time. Other homeowners acknowledged some value in having milestones, and that there was some efficiency in aggregating defect lists so that builders could organize trades to service homes in an efficient way. At the same time, however, homeowners felt that serious items needed to be attended to right away. The most common criticisms from homeowners about the current CSS process were that the 30-day time frames were too short, that the builder repair periods were much too long, and that the gap between the first 30-day submission period and the year end submission was too long. Homeowners also identified the “30-day window to request conciliation” as being problematic (too complex and inflexible). In general, most were supportive of automatic form submissions, of adding additional submission periods in the first year and of changes that were flexible, yet simple for them to manage and track. Homeowners felt it was important for builders to see the lists of items anytime. There was some concern from homeowners that the ability to submit multiple submissions anytime in year one would be too confusing for homeowners, and they would lose track of items and be overwhelmed by communication from the builder and Tarion. In this context, a number of homeowners suggested that the digital platform that supports the CSS must be user friendly and make things easier, including ensuring that it sends appropriate reminders to homeowners about the relevant timelines.
- The building industry stakeholders cautioned that COVID-19 has significant impacts on builder operations, and this should be taken into account when considering changes to the Customer Service Standard. They identified that updating and auto-submitting lists will help homeowners ensure items are submitted and this would require technology improvements for better information flow between homeowners and builders. The majority preferred an additional mid-year submission period rather than submitting forms at any time in the first year. Builder stakeholders felt homeowners submitting forms at any time in the first year was not manageable from an administrative perspective and would negatively impact customer service, as well as present significant issues with conflicting timelines and problems scheduling trades and service technicians.
- Other stakeholders in the sector also gravitated towards an additional mid-year submission period and in general agreed with the suggested approach of automatically rolling items submitted anytime during the year onto the next form. Condo sector stakeholders felt that it will better benefit homeowners to edit lists and have items automatically submitted and legal professional stakeholders supported a flexible approach for homeowners, that allows builders to make repairs in a cost-effective way and does not prejudice homeowners unable to track timelines.

Request for Conciliation (RFC) Inspections:

- Homeowners almost universally agreed that the current 30 days was not sufficient for homeowners; however, there was not a consensus on whether the deadline should be removed or what an appropriate deadline should be. Some felt the solution should be simple and not complicated, some felt there should be no deadline to RFC, while some thought a 60-day timeline was adequate. Homeowners also suggested reducing or eliminating the conciliation fee.

- Building industry stakeholders did not support removing the RFC deadline, as they felt some closure on files is necessary to manage their operations. They generally supported conciliations occurring after the initial repair period has expired to allow builders opportunity to address warranted items. They also suggested changes to technology to allow builders to see the list of submitted items, to allow Tarion to cross off items on the forms when completed and to create a builder response form where builders can also interact with the listed items.
- Other stakeholders were mixed on their suggested approach to RFCs. Condo stakeholders felt that multiple deadlines for conciliations will become confusing for a homeowner, and Tarion should try and make the final solution as simple as possible. They also recommended there be a deadline for Tarion to issue warranty assessment reports within 60 days after a conciliation. Some legal professional stakeholders felt there should be no deadline to RFC and suggested changing the name “conciliation” (e.g., to “warranty assessment”) as the term is clearer to homeowners. They also suggested renaming the conciliation “fee” as a “deposit”.

Builder Repair Period (BRP):

- Homeowners felt that repairs should be done as soon as possible, supported removing the post-RFC repair period and provided a range of repair lengths – from 30 days to 120 days with most being in the 60 to 90-day range. Additionally, homeowners said they felt that Tarion should be able to step in before the BRP is over if the item is disputed.
- Building industry stakeholders’ preference for a new repair period ranged from 75 to 120 days, but overall builders felt 60 days was too short. Some building stakeholders supported a reduced repair period if existing exemptions were maintained and challenges around providing access to the builder are addressed. Builders also said that they would need considerable notice (i.e. a year) to renegotiate contracts if Tarion makes changes to the repair periods – and felt no changes should be made until after the impacts of COVID-19 on supply chain and trades are normalized. In general, they expressed that no reduction in the repair periods should be made at this time as it is already a challenge to meet due to high demand for trades, material delay, weather/time of year, local economy, COVID-19, scheduling with the homeowner, builders/trades working in increasingly more remote locations, collective bargaining in May 2022 and other industry issues.
- Other stakeholders were mixed on the proposed new BRP, with condo stakeholders feeling that a new repair period of 60 days is reasonable while some legal professions stakeholders indicated that the repair period should be no less than 90 days with the ability to apply for dispensation/exemption.

Proposal:

Based on stakeholder feedback received, Tarion is proposing the following as the next steps to continue to improve the CSS:

1. **Formally incorporate the interim measures into the CSS**, specifically incorporating the grace period into the initial submission (now 40 days), the year end grace period (with written evidence the homeowner reported items to their builder during the first-year warranty period) and ability to add additional items. This will help address homeowner concerns that the initial 30 day period is too short.
2. **Create a mid-year submission at six months**, allowing homeowners to identify issues outside of the original submission period and the year-end period. This will serve to address the issue most identified by homeowners as a current challenge – that homeowners who miss

the first submission must wait up to 10 months before being able to trigger Tarion's formal assistance (at the year-end). The mid-year submission will make Tarion's assistance more accessible to homeowners.

3. **Allow homeowners to identify and submit defects at anytime during the first year and allow builders to have access to this information.** This change leverages Tarion's MyHome portal and moves us away from the concept of "forms". Homeowners would be able to add items to a running list at any point, and this list would be aggregated at the 40-day, six months, and year-end period, generating a repair timeline. Also, as builders would now have the ability to review the list of defects at any time, they could take more proactive action to address the issue before the submission period ends and before the repair begins. This change addresses the concerns of homeowners that their defect lists may be "lost" if they miss a time period – under this model, all the homeowner defect items will be traceable using MyHome, and be accessible by the homeowner and the builder throughout the year.
4. **Making the expanded emergency definitions to include water penetration permanent.** This will allow for a more rapid response and flexible process for major issues, while allowing defects that relate more to finishing or cosmetic items to be handled in the structured framework of the CSS. This would mean that homeowners can ask Tarion for help at any time to abridge CSS timelines for major issues, including:
 - Complete loss of heat between September 15 and May 15;
 - Gas leak
 - Complete loss of electricity;
 - Complete loss of water;
 - Complete stoppage of sewage disposal;
 - Plumbing leak that requires the entire water supply to be shut off;
 - Major collapse of any part of the home's exterior or interior structure;
 - Water penetration through the interior walls or ceiling;
 - A pool of standing water inside the home;
 - Presence of unacceptable levels of hazardous substances inside the home, such as radon and mould; and/or
 - Any situation where, in the opinion of Tarion, the home is not fit for occupancy due to health or safety reasons.
5. **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. 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.
6. **Expand when homeowners can ask for a conciliation inspection under the second-year warranty,** by allowing homeowners to request a conciliation inspection at any time up to 120 days after the close of the second year for any claim forms submitted during the second year.

Further consultation on what appropriate builder repair periods would be for CSS (for example reducing it from 120 to 90 days) would be deferred to another consultation in 2022. At this time, with current uncertainty created by COVID-19 including impacts on consumers comfort level providing

access to their homes for repair, 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 next year as part of the next phase of CSS improvements.

For a chart outlining the current timelines and new proposed process please see **Appendix 1.1 and 1.2** respectively.

Implementation:

Tarion is proposing the following timeline for implementation:

- November 2021 to February 2022: public consultation
- Early 2022: finalization of changes informed by input from the public consultation
- Mid 2022: implementation of system changes and testing, development of supporting regulatory framework, stakeholder education materials, etc.
- Late 2022: implementation of CSS changes with effective date determined based on transition rules

Stakeholder Impacts:

Homeowners

- Homeowners will benefit from enhanced consumer protection as these measures will help improve homeowners' ability to have 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 improve overall 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

- Builders will be expected to make repairs to emergency items (as expanded) on a prioritized basis not limited by the CSS.
- Builders will 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 and could potentially result in more missed repair periods and conciliation inspections.

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 ensure 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) Will these proposed changes help consumers?
- 2) Are you supportive of incorporating the grace periods on first-year forms? Why or why not?
- 3) Are you supportive of the establishment of a mid-year submission for homeowners? Why or why not?
- 4) Do you feel these changes address the goal of making it easier for homebuyers to ask Tarion for assistance with warranty service requests?
- 5) Is 120 days after the year end an appropriate deadline for homeowners to request a conciliation inspection?
- 6) Should there be a deadline in advance of the conciliation inspection for homeowners to submit additional items for a conciliation inspection? If so, when should the cut off be (e.g., two weeks, one month)?
- 7) Are there improvements Tarion could make to information shared between the homeowner and the builder as part of the conciliation process?
- 8) Are there potential issues Tarion should consider for when implementing these changes for multi-phase condominium projects which could be under construction when these changes are implemented?
- 9) Are there other considerations associated with implementing a new Customer Service Standard?

Increasing the Warranty Compensation Limit

Context: Currently the statutory builder's warranty coverage for new homes has a maximum compensation limit of \$300,000 which was last updated in 2006. It is the highest compensation limit in any jurisdiction in Canada and equal to the limit in Quebec.

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 has completed the 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);
- Current warranty claims data;
- Inflationary indexes since 2006; and
- Impacts on enrolment fees, security, and other risk analyses.

The 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 cap. This number was significantly lower for condominium units with only one instance from 2000 to 2019.

However, there is some evidence that the amount of over limits cases may be increasing. In addition, based on current trends, Tarion forecasts about 60 homes to exceed the limit at current levels over the next five years.

Reviewing how indexing would have impacted the limit, based on Tarion's analysis, if the compensation limit had kept up with the Consumer Price Index (CPI) since 2006 it would now be \$384,000.

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. In addition, the new home warranty applies to the construction not the land. To examine replacement cost of a home we used a range of square foot construction costs (from a low of \$105 per square foot to a high of \$160 per square foot for 2020) and used 2300 square feet as the average size of a home (for 2020). Using these assumptions, the “average” range of replacement cost of a home (excluding land) was between \$250,000 to \$370,000.

One additional point that was considered with respect to condo units: condo units currently benefit from a \$300,000 unit cap (which is the same as a freehold home) and in addition have access to a separate common elements warranty of up to \$3.5M for the project. From that perspective, the warranty coverage available to condo units is greater than \$300,000 today (it can be looked at as the unit cover of \$300,000 plus the proportionate share of the common element limit). The proposed increase relates to homes that do not have common elements protection. Based on this idea, as well as the fact that Tarion's claims history shows that condo units claims exceeding the cap are extremely rare, the proposed increase is aimed at homes that do not benefit from the common element condominium warranty coverage.

In response to the initial analysis and to ensure consumers are properly protected, Tarion is now proposing 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 increase in maximum warranty compensation limit would be effective for purchase and sale agreements dated on or after a chosen date.**
3. **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.
4. **No increase to enrolment fees anticipated;** it is not expected that there will be any increase to enrolment fees due to the proposed cap increase during the first 3 years.
5. **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.

Tarion will take all public feedback received from this consultation and our analysis into consideration when finalizing and implementing an increased maximum warranty compensation cap. Tarion is proposing to implement the new limit in late 2022.

Stakeholder Impacts:

Freehold Homeowners

- Freehold homeowners will benefit from enhanced consumer protection as an increased compensation limit would help them get more overall coverage.
- In the long-term, higher levels of builder liability could result in a general increase to the cost of purchase prices.

Builders

- There is no proposed increase to the enrolment fee or underwriting process associated with this proposal.
- After the three-year transition period, builders will be liable for construction issues up to the new warranty compensation limit.

Tarion

- Tarion will be required to compensate homeowners up to the higher cap in cases where the builder does not meet its obligations.
- Tarion will need to make the necessary internal system changes.
- Tarion will need to ensure 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.

Questions for Stakeholders to Consider:

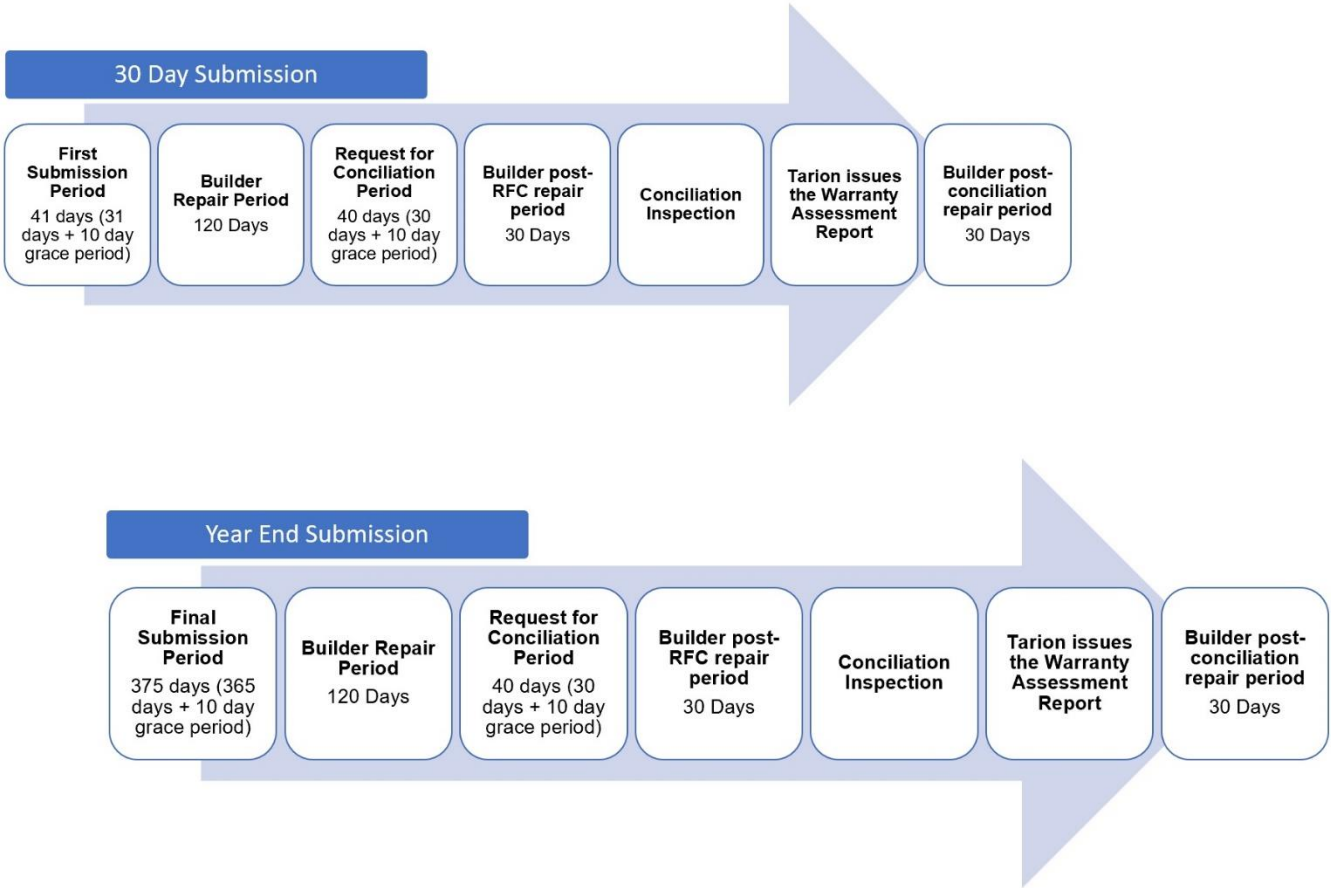
1. This proposal treats freehold homes differently than condo units. In particular, because the historical rate at which condo units have exceeded the limit is less than 0.5%, and because condo units also have access to the common element limit (which does not exist for freehold) the recommendation is to increase only the freehold limit. Do you agree with the idea of treating condo units and freehold homes differently in this way?
2. The recommendation is to increase the freehold limit to \$400,000. This would result in Ontario having the highest limit in the country. Do you feel this level of coverage will provide confidence to consumers?
3. In other jurisdictions, the warranty limit is the lesser of the stated limit and the price of the home. This means that homes would not receive coverage in excess of their purchase price where the purchase price was lower than the state limited. For example, if the warranty limit was \$400,000 and the home was sold for 375,000, the limit would be 375,000. This would in turn be reflected in a lower enrolment fee for such homes. This kind of policy would benefit small volume builders, and potentially lower some of the costs associated with lower priced homes. Should Tarion consider a flexible warranty limit increase relative to the price of a home (i.e., the lesser of \$400,000 or the purchase price of the house)?
4. The increase in the limit will increase the accountability of builders:
 - a) What unforeseen impacts could this have on builders?
 - b) Will this impact small volume vs. large volume builders differently?
 - c) Do you believe that this increase will impact the affordability of homes?
5. While homeowners would benefit from this change in 2022, the recommendation is to phase the builders' indemnity obligations in over 3 years, with full accountability in the third year and onwards. This phasing in acknowledges challenges faced by industry due to COVID-19, will lessen the immediate impact of the change on builders' internal costs assessments, and also aligns with the length of time required in the building planning, sale, and construction process. Do you have concerns or comments with that approach?

6. The proposal recommends moving to an indexed approach after the increase is phased in. Do you have comments with respect to that approach?
7. Are there other considerations associated with increasing the warranty compensation limit?

Appendix 1.1 - Timeline for Current Customer Service Standard in Year One of the Warranty



Date of Possession



Appendix 1.2 - Timeline for NEW Customer Service Standard in Year One of the Warranty



Date of Possession

41 Day Submission



NEW Mid-Year Submission



Year End Submission

