

# **New Home Warranty Program Renewal Working Group Terms of Reference**

## **1.0 Introduction**

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The government recognizes the need for government and non-government experts to work in close collaboration to implement the government's proposed plan (the plan) for new home warranty program renewal, specifically the proposed legislative changes that are required.

## **2.0 Context for Working Group**

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On March 28, 2017, the Minister of Government and Consumer Services (MGCS) announced the government's proposed plan to further protect owners of newly built homes across the province.

The working group will bring together stakeholders to collaboratively review and discuss proposed legislative changes required to implement the plan and provide feedback to government.

## **3.0 Mandate**

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The working group's overall mandate is to provide advice on legislative reforms required to implement the plan, using an evidence-based approach.

Discussions will focus on the specific legislative elements required to implement the plan, and not the plan itself or the policy rationale for the plan.

Regulatory elements and/or specific implementation details, unless necessary to inform the legislative changes, will not be discussed.

### **3.1 Key Roles and Responsibilities**

The key roles and responsibilities of working group members are:

- a) to participate in a forum to review and provide feedback on potential legislation provisions to reflect the government's plan, including providing suggested language or advice to clarify or respond to legislative issues, or input on legislative language (members may submit written feedback to MGCS on agenda topics on the day that they are being considered by the working group);
- b) to engage with working group members in an open and collaborative way when communicating advice to government; and
- c) to respect differences of opinion between working group members, recognizing that the working group's primary function is to provide advice to government from different perspectives.

MGCS will provide facilitation support for the purpose of the working group meetings. The facilitator will be unaffiliated with the subject matter.

The key roles and responsibilities of the facilitator are:

- a) creating an open environment to foster constructive dialogue among all members;
- b) facilitating an inclusive atmosphere to ensure all working members can provide meaningful input and comment on the agenda items being discussed; and
- c) communicating protocols for meetings and related matters.

The key roles and responsibilities of the Project Management Team will be:

- a) to develop meeting material to be considered by the working group including the appropriate background and context;
- b) to deliver meeting material to working group members in advance of working group meetings and to receive/answer any related questions and comments;
- c) to consider and record all feedback from the working group;
- d) to liaise with Tarion's management team to ensure transparency and collaboration;
- e) to bring proposed legislation forward to decision-makers for consideration in a timely manner; and
- f) to identify any additional targeted consultations that may be needed to inform legislative development.

### **3.2 Key Operating Principles**

Working group will be open in their deliberations with fellow working group members and ministry officials.

The working group will encourage outcomes that support a flexible, adaptable and enabling legislative framework.

Discussions and sharing of material will, subject to section 4.4 below, be on a confidential basis.

### **3.3 Agenda Setting and Reporting**

The Project Management Team will identify and seek consensus on the priority agenda items for the working group to consider.

The working group will communicate with the Project Management Team through the MGCS staff in attendance at the working group meetings or through the Assistant Deputy Minister's Office.

## **4.0 Membership**

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### **4.1 Composition of Working Group**

The working group will be comprised of approximately 12 individuals. It will consist of stakeholders who have the relevant background or expertise to make a significant contribution to the work of the working group.

The working group membership will be augmented by subject matter experts who will participate in working group meetings on an *ad hoc* basis as per section 6.0.

The members of the working group and augmenting subject matter experts will be selected by MGCS.

### **4.2 Term of Membership**

The working group will meet for half-days as necessary beginning June 6, 2017 and ending July 11, 2017.

The members of the working group will commit to membership until at least December 31, 2017 to allow the ministry to reconvene the working group if required.

### **4.3 Remuneration and Expenses**

Working group members will not receive any remuneration or reimbursement of expenses as a result of their participation with the working group.

### **4.4 Confidentiality, Ethics, Governance and Accountability**

A member of the working group shall not:

1. Use or disclose any confidential information obtained as a result of his or her participation in the working group for any purpose unrelated to the duties of the working group either during or after his or her participation, except if required to do so by law or authorized to do so by the minister;
2. Use or disclose any confidential information for the purpose of public communication including disclosure in news or social media; and
3. Use government premises, equipment or supplies for purposes unrelated to his or her role the working group.

All working group members agree to treat working group discussions and materials as confidential information to ensure effectiveness and openness to explore all suitable options. Confidential information means information that is not available to the public, including the media.

Working group members agree to keep their work on the working group separate from and independent of any other work that they may be undertaking.

## **5.0 Meetings and Working Group Support**

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### **5.1 Frequency of Meetings and Location**

The working group will meet once a week from early June to early July 2017. Meetings are estimated to be a half day in length with full day meetings considered, if required. On a limited basis, working group members may assign a delegate to attend a meeting where the member cannot attend the meeting in full or in part, provided that the name and affiliation of the delegate is communicated to MGCS at least 24 hours prior to the meeting. Any such delegate shall also keep all information obtained due to participation in the working group confidential in the same manner as regular working group members.

The meetings will be held at the MGCS office at 56 Wellesley Street West, 6<sup>th</sup> Floor, Toronto.

### **5.2 Working Group Support**

The working group will be supported by the MGCS Project Management Team in fulfilling its responsibilities in accordance with government directives and policies. Support by MGCS will include circulating an agenda and associated meeting materials at least 5 business days in advance of each meeting and the drafting of meeting minutes.

## **6.0 Ad-hoc Subject Matter Experts**

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The Project Management Team may designate individuals or organizations as *ad hoc* subject matter experts to attend one or more working group meetings, or portions thereof, to provide information and to support in the development of recommendations related to a specific issue(s).

### **6.1 Roles and Responsibilities**

*Ad hoc* subject matter expert roles and responsibilities include:

- a) receiving working group meeting agendas and materials on an as needed basis;
- b) identifying issues of interest for discussion with the working group; and
- c) providing presentations, documentation and feedback to the working group.

### **6.2 Confidentiality**

Ad-hoc subject matter experts are subject to the confidentiality provisions in section 4.4 above.

## Appendix

The following recommendations, as made by the Honourable Douglas Cunningham, Q.C in his role as independent reviewer of the *Ontario New Home Warranties Plan Act* and Tarion Warranty Corporation, specifically as it relates to required legislative changes to implement the government's plan, will be considered by the working group.

<b>The Honourable Douglas Cunningham's Recommendations</b>
<b>Regulation of Builders and Vendors</b>
A separate entity should regulate builders and vendors
The regulator entity for builders and vendors should be structured as an administrative authority
The new regulator should be subject to accountability, transparency and oversight requirements that align with provisions in place for similar administrative authorities
The legislation should articulate the purpose of builder and vendor regulation to be protecting consumers and promoting high quality new home construction
The legislation should include minimum requirements for registration as a new home builder or vendor
Appeals of registration related decisions should continue to be to the Licence Appeal Tribunal
The legislation should provide for an enhanced compliance and enforcement framework for the regulator
All new applicants for registration as a builder should be required to meet minimum technical competencies
Employees of builder registrants carrying out key functions and responsibilities of the builder such as site managers and those officers, directors, senior executives and partners as are stipulated in regulation, should be required to meet minimum technical competencies
There should be mandatory continuing education requirements for all registrants and other individuals required to meet technical competencies
A code of ethics should be established for builders and vendors
The current builder directory should be enhanced to improve the accessibility and transparency of information that is available on the directory
The regulator should adopt a proactive approach to sector outreach
The board of the new regulator should continue to have strong builder expertise
<b>Dispute Resolution and Adjudication</b>
The onus on the homeowner in advancing a warranty claim should be clearly articulated in the legislation and provide that the onus on the homeowner is to establish the credible symptoms of a defect and not the cause of a defect
<b>Rule-Making and Standards Setting</b>
Government should have final approval of rule-making on warranty protection and standards for builder and vendor registration
Government, in collaboration with affected parties, should establish more robust, transparent, inclusive and regular processes for reviewing warranty rules and standards for builder and vendor registration
Government should establish a more robust, transparent, inclusive and regular process for reviewing the Construction Performance Guidelines and consider

<b>The Honourable Douglas Cunningham's Recommendations</b>
incorporating the Guidelines into regulation
<b>Other Matters</b>
Key definitions and terms that have been problematic over the years should be clarified, including the definitions of builder and vender, what constitutes a home for warranty coverage purposes and what is meant by "previously occupied"
A review of the condominium specific provisions of warranty coverage, including timelines for submitting claims, should be undertaken to ensure they adequately address the complexities of condominium ownership and the shared responsibilities of unit owners and the condominium corporation