

Chapter 2

Section 2.01

Ministry of Government and Consumer Services

Tarion Warranty Corporation

Follow-Up on *October 2019 Special Report*

RECOMMENDATION STATUS OVERVIEW						
	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In the Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Recommendation 1	2	2				
Recommendation 2	3	3				
Recommendation 3	4	4				
Recommendation 4	1	1				
Recommendation 5	1		1			
Recommendation 6	4	1	2	1		
Recommendation 7	3	1	2			
Recommendation 8	1	1				
Recommendation 9	1		1			
Recommendation 10	4	4				
Recommendation 11	1	1				
Recommendation 12	3	3				
Recommendation 13	3	3				
Recommendation 14	1		1			
Recommendation 15	4	4				
Recommendation 16	2	2				
Recommendation 17	1		1			
Recommendation 18	2		2			
Recommendation 19	3	3				
Recommendation 20	6	6				
Recommendation 21	3		2	1		
Recommendation 22	1			1		
Recommendation 23	2	2				
Recommendation 24	2	2				
Recommendation 25	4	1	1	2		

RECOMMENDATION STATUS OVERVIEW

	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In the Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Recommendation 26	2	2				
Recommendation 27	1	1				
Recommendation 28	3	3				
Recommendation 29	4	4				
Recommendation 30	2	2				
Recommendation 31	1	1				
Recommendation 32	1	1				
Total	76	58	13	5	0	0
%	100	76	17	7	0	0

Overall Conclusion

Tarion Warranty Corporation (Tarion), as of November 16, 2021, has fully implemented 86% of the recommendations which were specifically directed toward it alone. The Ministry of Government and Consumer Services, as of November 16, 2021, has fully implemented 29% of the recommendations which were specifically directed toward it. Combined, Tarion and the Ministry have fully implemented 76% of the actions we recommended in our 2019 Special Report. Tarion and the Ministry have made progress in implementing an additional 17% of the recommendations.

The Ministry established a new regulation requiring Tarion to implement an internal appeal process that allows for simpler, less costly and homeowner-friendly appeals before requiring homeowners to go before the Licence Appeal Tribunal or a court. In addition, Tarion revised its procedures to consider all data about a builder's past building-quality and warranty performance when deciding whether to grant a future licence. Up until February 1, 2021, Tarion was responsible for licensing builders. The government designated the Home Construction Regulatory Authority (HCRA) to regulate homebuilders. Therefore, as of February 1, 2021, Tarion is no longer responsible for granting builder licences. Nonetheless,

Tarion retains information regarding builders to assist homeowners with warranty disputes.

The Ministry and Tarion have made little progress on 7% of the recommendations, including the Ministry establishing performance indicators and targets to measure Tarion's performance. Also, Tarion has not reduced the amount of time provided to builders to resolve defects before stepping in to help homeowners.

The status of actions taken on each of our recommendations is described in this report.

Background

The Ontario government has designated the non-profit Tarion Warranty Corporation (Tarion) to administer the *Ontario New Home Warranties Plan Act* under oversight of the Ministry of Government and Consumer Services (Ministry). Tarion promotes compliance of homebuilders to ensure they honour their warranties on materials and workmanship in new homes. Until February 2021, when the government designated the Home Construction Regulatory Authority (HCRA) to regulate homebuilders, Tarion was also responsible for licensing builders. At the end of 2020, 5,795 homebuilders (previously 5,600 in 2018) were licensed by Tarion and about

69,000 (60,000 in 2018) new homes were enrolled with Tarion in 2020. Tarion is responsible for promoting compliance by Ontario's approximately 5,800 licensed homebuilders regarding their statutory warranty obligations in connection with the builders' warranty on about 387,000 homes (at the end of 2020). Tarion itself offers no warranties, but helps resolve warranty disputes and provides financial aid to homeowners or arranges for repairs when it determines that builders failed to honour a warranty or declared bankruptcy.

In 2020, Tarion received about 68,000 (70,000 in 2018) requests for help, most of which were resolved with no direct intervention by Tarion, and the organization paid out \$23 million (\$17.4 million in 2018) to about 800 (800 in 2018) homeowners. Tarion receives its revenues from enrolment fees, and investment income on its Guarantee Fund. With the launch of the HCRA on February 1, 2021, Tarion stopped collecting licensing fees, decreased its average enrolment fee by \$50 and began collecting a \$145 plus HST regulatory oversight fee (on behalf of the HCRA) for every home enrolled. The regulatory oversight fee which Tarion collects is remitted back to the HCRA on a weekly basis. Tarion's annual expenditures for 2020 were about \$61 million (\$55 million in 2018). Tarion is overseen by a 12-member Board of Directors (previously a 16-member Board in 2018) and employs about 275 people.

Our audit found that some Tarion processes were difficult for homeowners to navigate, resulting in the denial of thousands of requests for help, and that the Ontario Home Builders' Association had disproportionate influence over Tarion. Laws meant to deter illegal homebuilding were largely ineffective; from 2009 to 2018, Tarion had paid homeowners about \$19.8 million to cover the cost of warranty repairs on 869 illegally built homes.

Other 2019 significant audit findings include:

- In about 65% of the 6,485 requests that Tarion assessed from 2014 to 2018, Tarion found that the builder should have fixed the defects under warranty but did not.
- Between 2014 and 2018, Tarion refused assistance on about 9,700 requests because the homeowners had missed their 30-day deadlines, many by a single day. Homeowners may ask Tarion for help with defects in their homes covered by a one-year warranty by submitting a form only in the first 30 days or the last 30 days of the first year of occupancy, unless it is an emergency. By missing the first 30-day deadline the homeowner is still eligible for the builder's warranty coverage, but Tarion will not help the homeowner by holding the builder accountable.
- Builders who refused to honour some of their warranties, causing Tarion to pay out compensation to homeowners, were able to renew their licences. Until 2012, Tarion's policy was to renew builders' licences regardless of the fact that the builders had put up homes with major structural defects. Some builders whose licences were revoked returned legally to the industry by creating a new company or partnering with an existing one.
- Tarion's online Ontario Builder Directory was missing data about some builders' poor warranty records, Building Code violations and convictions for illegally building homes, and its own investigations into complaints.
- Tarion licensed builders after homeowners alleged that they acted dishonestly and broke the law. As of June 30, 2019, Tarion had a backlog of 41 complaints about builders' dishonest conduct that it had not investigated, all of which were outstanding for more than six months. Five alleged illegal activity, but Tarion had yet to investigate or forward them to the appropriate bodies.
- Tarion's call centre fields about 90,000 calls a year. In a sample of 50 calls recorded between February 1, 2019, and March 31, 2019, we found that in 14% of cases, Tarion's response to caller questions was inaccurate and/or not helpful.
- Tarion based security deposits it collects from builders on outdated information (for example, home values that were lower than the homes' current values), while paying out claims based on current values. Over 10 years it recovered only

about 30% of the \$127 million in claim payouts it made from its Guarantee Fund.

- The information Tarion communicates about its role could lead some to believe that it, rather than builders, provides the warranty. Thus, it is not always clear to homeowners that they can submit warranty claims to their builders.
- Tarion's senior management was rewarded for increasing profits and minimizing financial aid paid to homeowners.

We made 32 recommendations, consisting of 76 action items, to address our audit findings. We received commitments from the Ministry and Tarion that they would take action to address our recommendations.

Status of Actions Taken on Recommendations

We conducted assurance work between March 2021 and September 2021. We obtained written representation from Tarion Warranty Corporation (Tarion) and the Ministry of Government and Consumer Services that effective November 16, 2021 they have provided us with a complete update of the status of the recommendations we made in the original audit two years ago.

Association Representing Builders Heavily Involved In Tarion Decisions

Recommendation 1

So that Tarion Warranty Corporation and any successor organization(s) maintain a balance between the interests of homebuyers and homebuilders (the latter as represented, for example, by the Ontario Home Builders Association), we recommend that:

- *the Ministry of Government and Consumer Services formally put in a requirement that no stakeholder group should have any advantage over any other one; and*

Status: Fully implemented.

Details

In our 2019 audit, we found that the Ontario Home Builders' Association (OHBA), who represents the interests of the province's residential homebuilders, was heavily involved in Tarion decisions, where eight of the 16 directors on its Board were members of, and nominated by, the OHBA. The relationship between the Tarion Board and the OHBA created an imbalance over the years that favoured the interests of builders at the expense of homebuyers.

In our follow-up, we found that the Minister of Government and Consumer Services issued an order on November 27, 2019, to make changes to the structure of the Tarion Board, so that no more than 34%, or four out of 12 director positions on the Tarion Board shall be drawn from builders, or individuals representing builders. The Minister also reduced the size of the Tarion Board from 16 directors to 12. These changes were done to create more balance between the interests of homebuyers and home builders, and to ensure that no stakeholder interest is favoured over another. This order was reflected in Tarion's by-laws effective April 23, 2020.

- *Tarion discontinue providing monetary sponsorship to the Ontario Home Builders Association.*

Status: Fully implemented.

Details

In our 2019 audit, we found that Tarion, for years has been sponsoring a dinner at the OHBA's annual conference, where in the last five years, payments to the OHBA for sponsorship totalled \$185,000.

In our follow-up, we found that in April 2020, Tarion drafted and approved a Sponsorship Guidelines policy which states that Tarion will not provide sponsorships to, or purchase memberships from, home builder associations including the OHBA. The policy states that Tarion, however, will continue to strive to sponsor organizations and individuals that enhance the visibility and reputation of Tarion to stakeholders and the general public, and will assist Tarion in fulfilling its core mandate and business priorities. As such, Tarion will continue to consider sponsorships proposals received from other groups

or individuals outside of builder associations, such as home inspector or real estate associations, or consumer groups, on a case-by-case basis in accordance with the policy's guidelines.

Importance of Homebuyers Understanding the Pre-Delivery Home Inspection Process

Recommendation 2

To ensure homebuyers receive sufficient time to familiarize themselves with the Homeowner Information Package so they understand the importance of the Pre-Delivery Inspection (PDI), we recommend that Tarion Warranty Corporation:

- *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;*

Status: Fully implemented.

Details

In our 2019 audit, we found that as a matter of policy, Tarion allowed builders to give homeowners the Homeowner Information Package as late as the same day of the Pre-Delivery Inspection (PDI). The PDI inspection is when homebuyers can document any defects in their home prior to taking possession. This is important because the warranty does not cover damages caused by the homeowner, or the normal use of the home after possession, and as such, documenting an item in a PDI report will prove later that these defects were not caused by the homeowner after possession. However, because of this policy, homeowners were left with little time to familiarize themselves with the Homeowners Information Package, which explains to a homebuyer their rights, the builder's obligations, and Tarion's role.

In our follow-up, we found that effective in February 2021, a new regulation was introduced so that there will no longer be a requirement for the Homeowner Information Package to be provided to the purchaser. Rather, the builder will need to provide a

'Warranty Information Sheet' to the purchaser at the time the purchase agreement is signed. The Warranty Information Sheet contains information about what is covered under the builders' warranty, information about the PDI, and information about the rights and responsibilities of the homeowner, the builder, and Tarion. In addition, the new regulation requires builders to submit to Tarion contact information for the purchaser signing the purchase agreement within 30 days of the purchase agreement being signed, to allow for earlier communication about understanding and preparing for the PDI, as well as elements of the home warranty that would apply prior to possession.

- *conduct random audits of builders to ensure that they comply with the above requirement or survey homebuyers to confirm builders are complying; and*

Status: Fully implemented.

Details

In our follow-up, we found that in order to keep track of this information, including ensuring the Warranty Information Sheet is being provided, and that the PDI is being conducted, Tarion created a tracking mechanism in its homeowner portal, which allows Tarion to audit a builder as soon as a homeowner advises Tarion that they were not provided with the Warranty Information Sheet, or did not receive a PDI prior to their possession. The homeowner portal allows homeowners to submit claims and manage their warranty online. Homeowners registered under this portal are asked a series of questions once they get possession of their home, including whether they received the Warranty Information Sheet with their purchase agreement, and whether a pre-delivery inspection was conducted with their builder. Tarion compiles a listing of the builders whose homeowners answered "no" to these questions, and audits these builders accordingly. Based on results of the audit, Tarion determines the appropriate course of action, including starting in February 2021 making recommendations to the Home Construction Regulatory Authority (HCRA) for potential licensing

conditions, as well as imposing potential conditions on terms of enrolment of future homes. In addition, Tarion conducts audits, through a random sampling approach, of those builders whose homeowners who are not registered under the homeowner portal on a monthly basis to ensure that this information is being provided to these homeowners as well.

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

Status: Fully implemented.

Details

In our 2019 audit, Tarion told us that in 2003, it began mailing out letters reminding homeowners to read thoroughly the Homeowner Information Package, which is also available on Tarion's website. However, we found that Tarion only mails out these reminder letters after homebuyers take possession of the home, which happens after the PDI.

In our follow-up, we found that as a result of the implementation of the new regulation, Tarion is communicating directly with purchasers to provide more information and resources about the Warranty Information Sheet and the PDI, as builders are now required to provide Tarion with the purchaser's contact information within 30 days of the purchase agreement being signed, in addition to providing the Warranty Information Sheet with the purchase agreement. For example, Tarion sends a welcome email to homebuyers that provides an overview of the resources available to homeowners, as well as reminding them of the importance of the pre-delivery inspection.

Recommendation 3

To provide homebuyers with less confusing information on new-home warranties and their rights, we recommend that Tarion Warranty Corporation clearly explain in its Homeowner Information Package and its other publications:

- *the respective roles and responsibilities of builders and Tarion;*

Status: Fully implemented.

- *that homeowners should submit warranty claims directly to their builders, not Tarion; and*

Status: Fully implemented.

- *that Tarion's role is to hold builders accountable for addressing unresolved homeowner warranty claims to builders; and*

Status: Fully implemented.

- *that homeowners do not lose their warranty rights with the builder if they do not ask Tarion for assistance.*

Status: Fully implemented.

Details

In our 2019 audit, we found that the information provided by Tarion to homeowners about its role in administering new home warranties could be confusing to some homeowners, because the Homeowner Information Package stated that homeowners will lose their warranty rights if they do not submit their "warranty claims" to Tarion as well as to the builder. We found this could confuse or misguide homeowners who in fact have the right to ask their builder to fix a defect at any time, as missing a Tarion deadline does not mean the homeowner loses their warranty coverage; instead, it means that Tarion will not accept requests for help or hold the builder accountable for its warranty obligation. We questioned why Tarion used the term "warranty claims" to describe homeowners' requests for Tarion's assistance, as this may lead some homeowners to believe that Tarion, rather than the builder, provides the warranty.

In our follow-up, we found that Tarion conducted a review of all of its forms of communication and identified areas for improvements, including its website and the Warranty Information Sheet (previously the Homeowner Information Package). In addition, Tarion developed learning modules and a warranty coverage brochure for homeowners. In our review of these publications, we found that Tarion clarified that homeowners should bring any warranty service requests to their builder's attention in writing as soon as possible and that warranty coverage is

provided by the builder. The materials also clarify that Tarion's role is to ensure that homeowners in Ontario receive the coverage they are entitled to under the builder's warranty. Lastly, the materials indicated that if a homeowner needs assistance with their builder's warranty from Tarion, homeowners should submit their claim to Tarion within the appropriate timelines. We also noted that Tarion removed any reference to the term "warranty claims" to describe homeowners' requests for Tarion's assistance.

Recommendation 4

To eliminate any potential confusion about the role of Tarion Warranty Corporation, we recommend that Tarion either eliminate the word "Warranty" from its name or select a new less confusing name.

Status: Fully implemented.

Details

In our audit in 2019, we found that the agency's name—Tarion Warranty Corporation—is confusing, and could also lead some consumers to believe that the warranty on their home is provided by Tarion rather than the builder.

In our follow-up, we found that Tarion removed the word "Warranty" from its name on all public facing materials including its website, social media platforms, email signatures of Tarion staff and any materials provided to homeowners, including the Warranty Information Sheet (previously the Homeowner Information Package). We noted that Tarion did not change its legal business name to eliminate the word "Warranty." Tarion told us that by December 2022, the Board will evaluate the next steps in this process, including whether Tarion's name will be changed legally.

Recommendation 5

To better protect homeowners who take occupancy of an unfinished house so that they retain their full and reasonable warranty rights, we recommend that Tarion Warranty Corporation address the issue of warranty coverage beginning before a house is finished by:

- *redefining "finished house" for the purposes of homeowners' warranty rights and coverage period so that the one-year warranty period commences only once the home meets this new definition of a finished house; or*
Status: No longer applicable.
- *developing a warranty that will protect homebuyers for unfinished items in their homes once the home has met the minimum occupancy standard, and ensuring that the one-year warranty coverage begins only after the items are finished; or*
Status: In the process of being implemented by December 2022.
- *working with the relevant ministries to expand what must be completed to meet the minimum occupancy requirement in the Ontario Building Code so that new home buyers are appropriately protected by their warranty rights.*
Status: No longer applicable.

Details

In our 2019 audit, we found that Tarion's use of the Ontario Building Code's definition of a finished house/condominium effectively diminishes homeowners' warranty rights by potentially shortening the warranty coverage period, where builders have the right to initiate their warranty coverage as of the time a house meets the Ontario Building Code's minimum occupancy requirements, which only requires that limited plumbing fixtures be complete and operational. Once the minimum occupancy requirements are met, a builder can require a homebuyer to take possession of a house, and thus, some builders could shorten their warranty coverage period by the amount of time it takes them to complete any outstanding work after the day they require the homebuyer to take possession of the unfinished house. During our 2019 audit, Tarion told us that it had no official policy to ask builders to extend the warranty for uninstalled items.

In our follow-up, we found that the Ministry engaged in discussions with the Ministry of Municipal Affairs and Housing (MMAH) and determined that the requirements of what must be completed to meet the minimum occupancy requirement in the Ontario Building Code could not practically be expanded. Alternatively, Tarion established an internal working group to develop an extended warranty to protect homebuyers for unfinished items in their homes. The working group recommended:

- extending the one-year, two-year and seven-year warranties for an item that is missing or incomplete on the date of possession; and
- starting the extended warranties on the date on which the item is completed by the builder, or on the last possible date the builder could have made a repair.

A consultation was completed in 2021 to seek public input from stakeholder groups on the new extended warranty for unfinished items at the time of possession. At the time of our follow-up, Tarion was in the process of reviewing input received from stakeholders through its public consultation. Tarion plans to implement the extended warranty for unfinished items in December 2022.

Dispute Resolution Process Difficult for Homeowners

Recommendation 6

To improve homeowners' ability to seek assistance from Tarion Warranty Corporation when they have a warranty dispute with their builder, we recommend that Tarion:

- *remove its two 30-day deadlines and allow homeowners to submit requests for assistance at any time during the first year of ownership;*
Status: In the process of implementing changes by December 2022.
- *eliminate the 30-day deadline to request a home inspection;*
Status: In the process of implementing changes by December 2022.

Details

During our 2019 audit, we found that Tarion restricted the times when homeowners may ask for its help in a warranty dispute with builders. Homeowners could only ask Tarion for help during the first 30 days and last 30 days of the first year of occupancy of their home. In addition, homeowners had a 30-day window to request an inspection from Tarion. These restrictions made it more difficult for homeowners to seek help from Tarion.

In our follow-up, we found that effective September 14, 2020, Tarion put in place temporary measures by adding a 10-day grace period for its two 30-day deadlines and its 30-day deadline to request a home inspection, to increase the time homeowners have to access help from Tarion. For formal changes to the deadlines, Tarion plans to move toward introducing a six-month deadline (in addition to the two 30-day deadlines) to provide homeowners with an opportunity to request assistance from Tarion halfway through the first year of occupancy. In addition, for serious issues, homeowners will be able to request assistance from Tarion at any time. For a home inspection, homeowners will be able to request an inspection at any time within the warranty timeframes, or a reasonable period thereafter. At the time of our follow-up, Tarion was in consultation with stakeholders to seek input on changes to its deadlines. Pending the Ministry of Government and Consumer Services approval, Tarion is in the process of seeking public input on a final proposal. Tarion plans for the changes to be implemented by December 2022.

- *permit homeowners to update their listing of unresolved defects after submitting the initial listing; and*

Status: Fully implemented.

Details

In our 2019 audit, we found that homeowners were allowed to provide only one listing of unresolved defects to Tarion in each 30-day window of the first-year warranty, and could not subsequently amend

those listings. Tarion accepted only the first listing of defects and rejected all subsequent ones.

In our follow-up, we found that effective September 14, 2020, Tarion has allowed homeowners to make amendments and additions to initial lists of unresolved defects submitted to Tarion. Homeowners can now make changes to add more items to lists over the course of the first 30 days and last 30 days of the first year of occupancy of their home. Tarion also implemented, on a temporary basis, a 10-day grace period for its two 30-day deadlines, which gives homeowners more time to request help from Tarion.

- *reduce the amount of time provided to builders to resolve defects before stepping in to help homeowners.*

Status: Little or no progress.

Details

In our 2019 audit, we found that when Tarion received a request for help from a homeowner, Tarion gave the builder 120 days to resolve the issues directly with the homeowner. As a result, homeowners had to wait a minimum of four months before they can ask Tarion for an inspection to assess the unresolved defects. When Tarion accepted a homeowner's second request for assistance, it sent another email to the builder asking it to resolve the dispute within 30 days. After 30 days, if it is not resolved, Tarion may inspect the disputed defects and decide within yet another 30 days if the builder should have repaired the defects under warranty.

In our follow-up, we found that Tarion is assessing its policy to reduce the 120-day builder repair period. Tarion told us that reducing the amount of time provided to builders to resolve defects was not practical given the implications of the COVID-19 pandemic when gaining access into homes became more difficult for builders and also, there were delays in the supply chain for obtaining repair materials. At the time of our follow-up, Tarion told us that it plans to begin a consultation with stakeholders to seek input on changes to its builder repair period in March 2022. Tarion expects to make regulatory change to reduce the 120-day builder

repair period with implementation occurring no later than December 2023.

Recommendation 7

To resolve homeowners' disputes with their builders in a timely manner, we recommend that Tarion Warranty Corporation:

- *review its regulatory timelines for delivery of decisions to ensure they are reasonable;*

Status: In the process of being implemented by December 2022.

Details

In our 2019 audit, we found that the regulation requires Tarion to decide if a disputed defect is covered by the builder's warranty within a 30-day period that begins the day after the homeowner has made a request for an inspection. We found that Tarion was late making this 30-day decision in about 45% of the warranty disputes it handled in the past five years, where on average, it took Tarion about 50 days to issue its decision to homeowners in these cases where it had missed its deadline. This further extended the wait for homeowners for their builders to fulfill their warranty obligations.

In our follow-up, we found that Tarion was in the process of seeking input from stakeholders to determine the appropriateness of its regulatory timelines for delivery of decisions. Tarion told us that it plans to make regulatory change to its timelines in December 2022 to ensure homeowners have repairs made by the builder or receive compensation from Tarion in a timely manner.

- *establish a process to ensure its decisions regarding homeowners and builders are made within the required time; and*

Status: In the process of being implemented by December 2022.

Details

In our 2019 audit, we found that Tarion was late making a decision if a disputed defect is covered by a builder's warranty in about 45% of the warranty

disputes it handled in the past five years, where on average, it took Tarion about 50 days to issue its decision to homeowners in these cases where it had missed its deadline. The regulation requires Tarion to make this decision within 30 days of a homeowner making a request for an inspection.

In our follow-up, we found that Tarion is in the process of determining what appropriate timelines are for delivery of decisions to homeowners. Once timelines are established and regulatory changes take effect, Tarion plans to establish a process to ensure that its decisions are made within the required time.

- *promptly notify homeowners and builders in writing of the reasons for a delay if Tarion is unable to meet its own deadline.*

Status: Fully implemented.

Details

In our 2019 audit, we found that when Tarion misses its own 30-day deadline for making a decision on whether a disputed defect is covered by the builder's warranty, Tarion does not notify homeowners of any delays.

In our follow-up, we found that in July 2020 Tarion started to notify homeowners in writing when a delay may result in Tarion missing its own 30-day deadline in making a decision on whether a disputed defect is covered by the builder's warranty.

Recommendation 8

For homeowners to have access to more timely and cost-effective ways to appeal decisions of Tarion Warranty Corporation, and given that about 80% of appeals are settled by Tarion after decisions are appealed but before the cases are heard at the Licence Appeal Tribunal, we recommend that Tarion implement an internal appeal process that allows for simpler, less costly and homeowner-friendly appeals before requiring homeowners to go before the Licence Appeal Tribunal or a court. For example, Tarion could consider creating an appeal mechanism through its internal Ombudsperson's Office.

Status: Fully implemented.

Details

In our audit, we found that there is no simple process for homeowners to appeal a Tarion decision; instead, homeowners have the option of going before the Licence Appeal Tribunal (Tribunal), or pursuing a costly civil case against their builder in court. We also noted that about 146, or 80%, of appeals brought by homeowners to the Tribunal between 2014 and 2018 were settled by Tarion before the full hearing. We questioned why Tarion did not offer homeowners an impartial appeals process to challenge its decisions that could cost them less money and time, given that about 80% of appeals are settled by Tarion after decisions are appealed, but before the cases are heard at the Tribunal.

In our follow-up, we found that effective November 2020, Tarion implemented a permanent mediation program that includes independent, third-party mediation as part of its dispute resolution processes. The Ministry has also ensured that the program is permanent by establishing it in a new regulation. The mediation program involves the use of an external mediator in cases where a decision has been made by Tarion, and homeowners wish to appeal Tarion's decision. The mediation takes place between the homeowner and Tarion, where Tarion will cover the costs for the mediation. Tarion advised us that it may review the costs allocation after the program has run for a period of time. The mediation is kept confidential and cannot be brought up in any subsequent Tribunal proceeding. The homeowner will choose their mediator, either from Tarion's roster or their own, and Tarion will be represented by an individual from its Warranty Services department who was not previously involved in the dispute. Additionally, homeowners are welcome to bring a support person. Through this process and their mediator, the homeowner and Tarion will try to reach a resolution, which may involve a cash settlement or re-inspection. Once a resolution has been reached, Tarion will make a determination on whether it will seek recovery from the builder.

Licensing and Regulating of Builders Needs Improvement

Recommendation 9

To ensure the licensing process of Tarion Warranty Corporation reflects the intent of the Ontario New Home Warranties Plan Act, we recommend that individuals in homebuilding companies who supervise day-to-day construction, either directly or indirectly via their employer, demonstrate they have the proven technical competence necessary for building new homes or be required to take the appropriate educational courses before being granted a licence by Tarion.

Status: In the process of being implemented by December 2023.

Details

We found in our 2019 audit that Tarion did not ask licence applicants to complete any courses to demonstrate that they have technical competence in home construction until September 2016. As such, builders who received their first licence prior to September 2016 were exempted from this new requirement, meaning that of the 5,600 currently licensed builders in Ontario, only 300 were required to meet the new requirement. We also noted that only the directors or owners of construction companies are required to complete the educational requirements introduced in 2016, and not those directly involved in supervising day-to-day construction, especially in larger companies. Large builders often employ site supervisors to directly oversee day-to-day construction, but Tarion's educational requirements do not apply to these site supervisors.

In our follow-up, we found that this recommendation was assigned to the Home Construction Regulatory Authority (HCRA) for implementation. The HCRA has issued an advisory notice to licensed builders to remind them that they are accountable, under the Act, for the conduct and competency of their employees, contractors, and agents. Possible outcomes of verified complaints could be additional training or conditions on licences.

The Ministry will consider longer-term opportunities to address competency requirements, which would require further research, consultation and government approval to update the New Home Construction Licensing Act regulations. The Ministry informed us that a longer-term solution is expected to be implemented by the HCRA by December 2023.

The HCRA intends to work with the Ministry to consider longer-term opportunities to update the *New Home Construction Licensing Act* regulations, and provide a long-term solution which addresses competency requirements for new and renewing applicants for licences. The Ministry informed us that these new requirements are expected to be implemented by the HCRA by December 2023.

Recommendation 10

To ensure builders who do not honour their warranty obligations to homeowners are held accountable and their poor warranty performances are factored into licensing decisions, we recommend that Tarion Warranty Corporation:

- *specify what evidence builders must submit to Tarion to request that inspection results be exempted from licensing decisions;*
Status: Fully implemented.
- *verify with homeowners any allegations against them by builders in all cases before approving the exemption of an inspection from a licensing decision;*
Status: Fully implemented.
- *review and update current policies to provide more guidance to inspectors for making decisions on exemptions, and require that they document their decision; and*
Status: Fully implemented.
- *publicly report the number of times each year that approval was given to exempt inspection results from licensing decisions.*
Status: Fully implemented.

Details

In our 2019 audit, we found that Tarion did not always factor a builder's record of poor warranty service into its licensing decisions. Tarion found that builders did not honour their homeowner warranty in about two-thirds, or 4,133 of its 6,485 warranty-dispute decisions between 2014 and 2018, but factored into its licensing decisions only half of these 4,133 cases. Tarion excluded the other 2,033 cases because builders alleged that homeowners prevented them from honouring their warranty. However, we found that Tarion was exempting the inspection from consideration in its licensing decision based only on information provided by the builder, without verifying the builder's explanation directly with the homeowner, as required by Tarion's own policy.

In our follow-up, we found that as of May 2020, Tarion has updated its policy to clearly specify what evidence builders must submit to apply for exemptions in licensing decisions. This policy is used by inspectors when making decisions on exemptions. Builders are now required to provide evidence to Tarion if an exemption is to be granted. For example, if a builder is requesting an exemption because a homeowner denied access to their home to repair a defect, the builder must provide correspondence with the homeowner to prove that access was denied. Tarion told us that it will then verify any evidence obtained from the builder with the homeowner.

In addition, Tarion, as part of its policy, performs monthly audits on all cases where an exemption was applied to a builder to ensure Tarion's policy is being followed. Any discrepancies with the policy are presented to Tarion's senior management on a monthly basis for further action.

We also found that effective in April 2020, Tarion updated its website to publicly report on the number of times each year that approval is given by Tarion to exempt inspection results against each builder's record.

Recommendation 11

To strengthen the builder licensing program of Tarion Warranty Corporation, we recommend that Tarion revise its procedures to consider all data about a builder's past building-quality and warranty performance when deciding whether to grant a future licence.

Status: Fully implemented.

Details

In our 2019 audit, we found that for years, Tarion had a policy in place to not factor into its licensing decisions any major structural defects caused by builders, and to not recover from builders the compensation it paid out for those defects. When Tarion licensed a builder, it did not take into consideration the homes with major structural defects that the builder constructed and sold, and the total cost Tarion incurred to resolve those issues. In July 2012, Tarion changed its policy to begin including such homes in builders' licensing decisions, but only if the house was sold after July 2012. Even with this policy change, Tarion still did not factor into its licensing decisions the fact that a home with major structural defects was constructed and sold if the builder resolves the defects.

In our follow-up, we found that in April 2020, Tarion implemented a new policy to broaden its review of a builder's past performance for licensing decisions. The new policy requires Tarion to consider in its review the total number of defects caused by builders, the severity and the type of warranty defects.

Recommendation 12

To confirm that licensed builders have access to the financial resources necessary to complete proposed projects and cover the potential costs of their warranty obligations, we recommend Tarion Warranty Corporation:

- *conduct a review to identify the best available external evidence that builders should provide*

when applying for a licence to establish that they have the financial means to complete proposed projects and honour their warranty obligations;

Status: Fully implemented.

Details

In our 2019 audit, we found that Tarion licensed builders without obtaining evidence to confirm that they have access to the financial resources necessary to complete proposed projects and cover the potential costs of their warranty obligations. More specifically, licence applicants were not required to submit to Tarion any specific documents, for instance a letter from a financial institution, which would confirm they have access to financial resources.

In our follow-up, we found that in February 2020, Tarion conducted an internal analysis to determine what evidence could be used to assess a builder's financial means. As a result of the review, Tarion revised its policy to require a letter of intent from a financial institution for most new condominium builders. A letter of intent is a declaration from the lending institution that a preliminary commitment has been made to provide funding for the proposed construction project. Tarion's revised policy states that if Tarion identifies risks with the builder, such as rapid expansion from the initial project proposed, a letter of intent may be requested from experienced condominium builders. We noted that a letter of intent is not being required for new or experienced builders of freehold homes; however, Tarion's revised policy states that if the construction project is found to be larger in scope than what was initially proposed, a letter of intent would be required.

- *review all reasons leading to the cancellation of construction projects and factor these reasons into future licensing decisions; and*

Status: Fully implemented.

- *always collect and review the required external evidence from builders before making a licensing decision.*

Status: Fully implemented.

Details

In our 2019 audit, we found that between 2009 and 2018, builders in Ontario cancelled 460 condominium projects accounting for about 33,850 units. We were unable to determine how many of these projects were cancelled for financial reasons because Tarion did not previously collect that information. Tarion began asking builders for reasons and supporting documents for cancelling condominium projects only in 2018 and, as a result, could not factor this information into licensing decisions when approving a builder for new construction projects.

In our follow-up, we found that Tarion has continued to collect information from builders on reasons for cancelling condominium projects since 2018. Since January 2018, 51 condominium projects were cancelled. From collecting information from builders, Tarion found that about 45% were cancelled due to the inability to achieve satisfactory financing, 21% due to the inability to meet the required sale threshold, and 18% were cancelled due to zoning/municipal approval delays. With the tracking of this information in its information system, Tarion now plans to use this information when evaluating the risk of future projects proposed by these builders. As of February 2021, this responsibility was transferred to the Home Construction Regulatory Authority that is now responsible for licensing new home builders. Tarion retains the authority to approve construction projects.

Recommendation 13

To better protect consumers from purchasing pre-construction homes that may later be cancelled and/or delayed by legal restrictions on construction land, we recommend that Tarion Warranty Corporation:

- *undertake a study to identify the types of construction project that would require a review of land title;*

Status: Fully implemented.

- *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

Status: Fully implemented.

Details

In our 2019 audit, we found that Tarion did no review to determine whether there were any restrictions on land that builders proposed to develop that could prevent or delay construction. Applicants also did not need to submit any documents, such as a land registry search, which would confirm there are no restrictions on the land that would delay or prevent them from commencing construction. We found that there were no laws in Ontario requiring builders to have the necessary municipal approvals, such as site plan and zoning approvals, before they can be licensed by Tarion.

In our follow-up, we found that in April 2020, Tarion conducted an internal review to determine the types of construction projects that should require a review of municipality approvals. The review found that historically, cancellations for condominium projects were significantly greater, by over 300%, than cancellations for freehold homes. Tarion concluded that reviewing restrictions on land was most appropriate for proposed condominium projects. As a result, Tarion revised its policy to include a step to request the status of municipality approvals for proposed condominium projects to assess whether this will have an impact on the viability of a construction project.

- *establish a process to disclose publicly any restrictions found during the review that could delay or cancel the construction project.*

Status: Fully implemented.

Details

In our 2019 audit, we found that in February 2019, the government asked Tarion to work with the Condominium Authority of Ontario (Authority), another provincial delegated administrative authority, to better inform consumers of the potential risks associated with buying pre-construction condominiums. By February 2020, Tarion was required to

ask builders to add new disclosures on their standard purchase and sale-agreement forms about issues that could cause cancellation of a condominium project.

In our follow-up, we found that Tarion introduced a condominium information sheet that is required to be attached to every new condominium purchase agreement, which includes a declaration from the builder that the property is free from any registered title restriction that would prevent completion of the condominium project. If the builder is not able to provide this declaration at the time of the purchase agreement, the builder must provide an explanation for how the restriction will be removed so that the proposed projects can proceed.

Recommendation 14

To better protect consumers from purchasing pre-construction homes that may later be cancelled and/or delayed by legal restrictions on construction land, we recommend that the Ministry of Government and Consumer Services explore, for potential implementation in Ontario, British Columbia's practice of not allowing builders to market or sell condominium units unless they have already deposited their plans with the land title office or have already obtained a municipal building permit.

Status: In the process of being implemented by December 2022.

Details

In our 2019 audit, we found that there were no laws in Ontario requiring builders to have the necessary municipal approvals, such as site plan and zoning approvals, before they can be licensed by Tarion. In comparison, builders in British Columbia are not allowed to market or sell condominium units unless they have already deposited certain plans with the land title office, or already obtained a municipal building permit.

In our follow-up, we found that the Ministry consulted with representatives of British Columbia and internal government stakeholders in April 2021. The Ministry is to explore potential further consultation with the sector that would be impacted.

Recommendation 15

To ensure homeowners' complaints against builders are properly investigated, we recommend that Tarion Warranty Corporation:

- *establish and release publicly a builder code of conduct that clearly defines actions and behaviours by builders that would constitute dishonest conduct and/or lack of ethics and integrity;*
Status: Fully implemented.

- *establish clear consequences for builders who breach the code of conduct;*
Status: Fully implemented.

Details

In our 2019 audit, we found that about 80% of investigations into complaints against builders resulted in no action taken against the builder. We found that Tarion did not consider the seriousness of these allegations when it renewed builders' licences; nor had it established a builders' code of conduct to define the actions and behaviours that would constitute dishonest conduct and lack of integrity. As a result, it was difficult for Tarion to verify whether the allegations were founded. Tarion staff who conducted these investigations told us that it was difficult to determine when builders acted dishonestly or without integrity because Tarion had no code of conduct to define these terms.

In our follow-up, we found that this action item was assigned to the Home Construction Regulatory Authority for implementation. The Home Construction Regulatory Authority issued a guide called "Good Conduct for New Home Builders" and published the guide on its website. The guide was updated in July 2021 to reflect expectations for good conduct along with potential actions that can be taken against any builder found not following the code of conduct. For example, the guide explains that if a builder is found to not have reasonably met the expectations of good conduct, HCRA may refer an issue to the discipline committee, or in severe cases, issue a Notice of Proposal to refuse, suspend or revoke a licence or impose conditions on a licence.

- *commit sufficient staff resources to initiate and complete investigations into all homeowners' complaints against builders on a timely basis; and*
Status: Fully implemented.

Details

In our 2019 audit, we found that as of June 30, 2019, there was a backlog of 41 complaints received in the five-year period from 2014 to 2018 that had not been investigated. All complaints were outstanding for more than six months, with some dating back to early 2017. Tarion told us that the backlog was due to limited staffing resources.

In our follow-up, we found that the backlog of 41 complaints was cleared.

- *take into account relevant information in re-licensing decisions for builder code-of-conduct violations*
Status: Fully implemented.

Details

In our 2019 audit, we found that when allegations of inappropriate behaviour by builders were not investigated on a timely basis, this information was not available to be considered in renewing a builder's licence to put up new homes.

In our follow-up, we found that the responsibility of investigating complaints against builders was transferred to the Home Construction Regulatory Authority in February 2021. Using a newly established guide for builder conduct, the Home Construction Regulatory Authority told us that it ensures investigations into any complaints raised against builders are conducted on a timely basis in order to ensure that this information can be available for consideration in renewing a builder's licence.

Recommendation 16

To 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, we recommend that Tarion Warranty Corporation:

- *establish clear and specific criteria to help determine when a builder's licence should be restricted or revoked for Code violations; and*

Status: Fully implemented.

Details

In our 2019 audit, we found that Tarion had not established clear or specific criteria to determine how many Building Code violations have to occur before a builder's licence is revoked or restricted.

In our follow-up, we found that in April 2020, Tarion revised its policy to include clear criteria that can be used to determine whether a builder's licence should be restricted or revoked for Code violations. For example, if Tarion finds that a builder had Code violations that do not pose a significant risk to health and safety, a warning letter will be issued. If Code violations are found to pose a minor risk to health and safety and a warning letter was issued in the past, a restriction on the builder's license will be imposed. Lastly, if Code violations pose a significant risk to health and safety and the builder is unwilling or unable to correct them, the builder will face a licence revocation. The responsibility for applying this policy was transferred to the Home Construction Regulatory Authority in February 2021.

- *implement a risk-based inspection process to inspect homes for compliance with the Code during construction.*

Status: Fully implemented.

Details

In our 2019 audit, we found that under the *Ontario New Home Warranties Plan Act*, Tarion could inspect houses and townhouses at the time of construction to assess whether builders are in compliance with the Code. Tarion could therefore make compliance with the Code a licensing requirement for builders, and conduct risk-based inspections of homes built by those who have had Code violations in the past. However, historically, Tarion did not do these types of risk-based inspections.

In our follow-up, we found that Tarion took steps to implement a process to inspect houses and townhouses at the time of construction to assess whether builders are in compliance with the Code using a risk-based approach. In 2020, Tarion identified 30 builders with recent Code violations. Tarion found that 13 of the 30 builders had no new construction projects to inspect. Tarion staff conducted inspections of six builders and identified no significant risks during the inspection. Due to COVID-19 restrictions in 2020, the remaining 11 builders were inspected in 2021.

Recommendation 17

To help municipalities plan their inspections and improve builders' compliance with the Ontario Building Code, we recommend that Tarion Warranty Corporation report on a timely basis to municipalities all significant instances of builder non-compliance with the Code that it identifies.

Status: In the process of being implemented by November 2021.

Details

In our 2019 audit, we found that Tarion does not share Ontario Building Code (Code) violations that are noted as a result of a warranty-related home inspection with municipalities, even though such information could help municipalities better plan inspections and target specific builders. Municipal inspectors inspect new home construction and assess compliance with the Ontario Building Code.

In our follow-up, we found that Tarion consulted on this recommendation and has established a municipal working group to seek input on establishing a process for Tarion to provide Code violation information to municipalities. Tarion informed us that it expects to complete initial work on this item by November 2021.

Recommendation 18

To improve builders' compliance with the Ontario Building Code, we recommend that the Ministry of Government and Consumer Services:

- *work with the Ministry of Municipal Affairs and Housing to recommend consistent inspection standards for use by all municipalities for assessing compliance with the Ontario Building Code; and*
Status: In the process of being implemented by December 2022.

Details

In our 2019 audit, we found limitations in Ontario Building Code (Code) inspections conducted by municipal inspectors, whose role is to inspect new home construction and assess compliance with the Code. For example, some municipalities do not allow inspectors to carry ladders because of safety issues. As a result, certain home components such as roof attachment or nuts on anchor bolts may not get inspected as required.

In July 2020, the Government of Ontario passed Bill 184, which included amendments to the *Building Code Act, 1992*, which allow for the future establishment of an administrative authority (AA) that will deliver building regulatory services. Between September 2020 and March 2021, the Ministry of Municipal Affairs and Housing had convened nine stakeholder engagement sessions to obtain feedback on how the authority will be governed and held accountable, the services it will deliver, and how it will be funded.

After reviewing the feedback from these stakeholder engagement sessions, the Ministry has determined that there is a need for further information to gain a better understanding of service improvements that are critical to the sector, to help the Ministry to finalize the scope of services to be delegated to a future administrative authority. To that end, the Ministry is planning to host a further round of stakeholder engagement sessions beginning in the Fall of 2021.

In order to identify the best operational practices related to inspections, and to promote best practices among municipalities for promoting compliance with the Building Code, the Ministry is developing a survey to be sent to municipal building officials, and the feedback that we receive will be shared with municipalities to promote improved inspection standards.

In addition, in July 2020 Bill 197 was passed, which enables the Ministry of Municipal Affairs and Housing to make regulations under the *Building Code Act* rather than Cabinet. This change was made to further the government's efforts toward the cross-country harmonization of construction codes, but will also facilitate any proposed changes to the Code as a result of meeting our recommendation.

- *work with the Ministry of Municipal Affairs and Housing to establish a process for municipalities to report on a timely basis to Tarion all significant instances of builder non-compliance with the Code that it identifies during its inspections.*

Status: In the process of being implemented by December 2022.

Details

The Ministry of Municipal Affairs and Housing is developing a process to consult with partners, including Tarion, Ontario Building Officials Association, Large Municipal Building Officials of Ontario, Association of Municipalities of Ontario and various municipalities, and Ontario Home Builders' Association to develop best solutions to address our recommendation.

Recommendation 19

To hold builders accountable for the cost of warranty obligations that they do not honour, we recommend that Tarion Warranty Corporation:

- *update its security deposit policies and adjust its thresholds for the deposits to more closely align with its risk exposure;*

Status: Fully implemented.

Details

In our audit in 2019, we found that Tarion was using outdated, lower compensation amounts from the early 1990s to calculate the amount of security deposits required from builders. Tarion was also using an average home selling price of \$250,000, significantly below the 2018 average price of about \$648,000 to calculate security deposits from builders.

In our follow-up, we found that Tarion updated its security deposit policy in December 2020, which sets out the rules for taking and releasing security deposits by Tarion from builders. According to the new policy, Tarion assesses the security requirement based on a number of factors, such as length of time the builder has been registered with Tarion, number of homes built, credit rating, history of claims paid and financial position of the builder.

- *set collection targets and provide sufficient resources to improve its collections results from builders and their guarantors; and*
Status: Fully implemented.

Details

In our 2019 audit, we found that Tarion has on average recovered only about 30 cents on every dollar owed by builders and their guarantors. We reviewed Tarion's 16 biggest settlements with homeowners by dollar value from 2014 to 2018, worth a total of \$5 million. Each homeowner received at least \$150,000 in compensation. However, Tarion was able to recover only \$603,000 of the \$5 million from the 16 builders and their guarantors—the remaining \$4.4 million was never collected from these 16 builders.

In our follow-up, we noted that Tarion had undertaken extensive studies to further analyze the collectability issue. Tarion established collection targets for each registration status, and it added an additional full-time employee to the Collections team to improve collection efforts.

- *publicly report on its collection efforts each year.*
Status: Fully implemented.

Details

In our follow-up, we noted that Tarion publicly reports its collection efforts annually on its website.

Recommendation 20

To help homebuyers make more informed choices when selecting a builder, we recommend that Tarion Warranty Corporation add the following information about each

licensed builder, all in clear and easy-to-understand language, to the Ontario Builder Directory:

- *all results of Tarion investigations that found the builder's behaviour lacked honesty and integrity;*
Status: Fully Implemented.

Details

In our 2019 audit, we found that the Ontario Builder Directory (Directory), compiled by Tarion for public use, was missing information that could help prospective homebuyers make a more informed choice when selecting a builder. Tarion did not include in the Directory results of Tarion investigations that found the builder's behaviour lacked honesty and integrity.

In our follow-up, we found that the Directory had been updated to include investigation results related to lack of honesty and integrity.

- *past convictions for illegal building activities;*
Status: Fully implemented.

Details

In our 2019 audit, we found that the Ontario Builder Directory (Directory), compiled by Tarion for public use did not include past convictions for illegal building activities.

In our follow-up, we found that the Directory had been updated to include charges and convictions related to illegal building activities.

- *the number and percentage of homes with major structural defects that a builder constructed each year;*
Status: Fully implemented.

Details

In our 2019 audit, we found that the Ontario Builder Directory (Directory), compiled by Tarion for public use, did not include the number and percentage of homes a builder constructed with major structural defects.

In our follow-up, we found that the Directory had been updated to include information on major structural defects.

- *the amount of money a builder owes to Tarion that remains unpaid;*

Status: Fully implemented.

Details

In our 2019 audit, we found that the Ontario Builder Directory (Directory), compiled by Tarion for public use, did not include the amount of money a builder owes to Tarion that remains unpaid for costs that Tarion paid to homeowners when builders did not honour their warranty responsibilities.

In our follow-up, we found that the Directory had been updated to include amounts remaining unpaid to Tarion by the builders.

- *the number of defects under warranty that a builder refused to repair; and*

Status: Fully implemented.

Details

In our 2019 audit, we found that the Ontario Builder Directory (Directory), compiled by Tarion for public use, did not include the number of defects under warranty that a builder refused to repair.

In our follow-up, we found that the Directory had been updated to include information on defects that a builder refused to repair.

- *the number of defects the builder refused to repair that were due to the builder's noncompliance with the Ontario Building Code.*

Status: Fully implemented.

Details

In our 2019 audit, we found that the Ontario Builder Directory (Directory), compiled by Tarion for public use, did not include the number of defects the builder refused to repair that were due to the builder's non-compliance with the Ontario Building Code.

In our follow-up, we found that the Directory had been updated to include information on Ontario Building Code defects that the builder refused to repair.

Recommendation 21

To discourage illegal home construction in Ontario, we recommend that the Ministry of Government and Consumer Services:

- *provide Tarion Warranty Corporation with the ability to directly fine any individuals and/or corporations found to have engaged in illegal home construction;*

Status: In the process of being implemented by January 2023.

Details

In our 2019 audit, we found that in the past 10 years, Tarion has paid out \$19.8 million to homeowners to cover the cost of warranty repairs on 869 illegally built homes that builders refused to cover. We also found that it is very difficult and time-consuming for Tarion to successfully prosecute an illegal builder through the courts because it is a challenge to gather sufficient evidence to convict them. Even when Tarion does obtain a successful conviction, an illegal builder usually faces low fines that do not provide a strong deterrent.

In our follow-up, we found that, sections 75 to 79 of the *New Home Construction Licensing Act*, provides the Home Construction Regulatory Authority the ability to implement administrative penalties. However, these sections of the *New Home Construction Licensing Act* have not been proclaimed. The Ministry of Government and Consumer Services is working with the Home Construction Regulatory Authority to develop a regulation to implement administrative penalties. Once the regulation has been drafted, the Ministry would publicly consult on the proposal and seek approval from the Government to proclaim sections 75 to 79 of the *New Home Construction Licensing Act*.

- *establish an appeals process for individuals and/or corporations wishing to dispute the fines imposed by Tarion; and*

Status: In the process of being implemented by January 2023.

Details

Implementation of this action item is dependent on the implementation of administrative penalties. The Home Construction Regulatory Authority is yet to develop a mechanism to fine any individuals and/or corporations found to have engaged in illegal home construction, along with an appeals process.

- *establish a process by which Tarion can share information about illegal builders to governments for investigation of potential tax evasion.*

Status: Little or no progress.

Details

In our audit in 2019, we found that there are significant financial incentives to build homes illegally. Builders avoid paying Tarion fees and, sometimes, a significant amount of tax, including HST and, under the principal residence capital gains tax exemption, income tax. All of these costs apply to the sales of new homes, built and sold by legal builders.

In our follow-up, we noted that the Ministry of Government and Consumer Services is working with the Ministry of Finance to establish a process so that Tarion and the Home Construction Regulatory Authority can share illegal building information with the Ministry of Finance. The Ministry of Government and Consumer Services is in the process of reviewing privacy legislations to ensure information sharing is consistent with the *Freedom of Information and Protection of Privacy Act* and other privacy legislations.

Recommendation 22

To help reduce illegal building in Ontario, we recommend that Tarion Warranty Corporation work with the Ministry of Government and Consumer Services to impose restrictions on the owner-built exemption such as those in place in British Columbia.

Status: Little or no progress.

Details

We found in our 2019 audit that laws currently in place in Ontario to deter illegal building are largely ineffective. In contrast, British Columbia, which has an owner-built home exemption similar to

Ontario's, has specific laws designed to prevent individuals from abusing the exemption. For example, owner-builders in British Columbia must live in the house for a minimum of 12 months before they can sell it. They must then wait 18 months from occupancy of their first owner-built home before applying to build a second, three years before applying for a third, and five years for each subsequent owner-built exemption. Owner-built homes that are sold are not covered by warranty. Rather, the individual who built the home is personally liable for the warranty coverage for up to 10 years, and this information must be disclosed to the homebuyer.

During our follow-up, the Ministry of Government and Consumer Services informed us that it is working with Tarion and the Home Construction Regulatory Authority to examine potential options to address illegal building in Ontario. This has included looking at British Columbia's approach to owner-builders.

Recommendation 23

So that investigations into illegal building activity are completed on a timely basis, we recommend that Tarion Warranty Corporation:

- *procure a case-management system to increase staff efficiency on investigations; and*

Status: Fully implemented.

Details

In our 2019 audit, we found that there was no dedicated case-management system, which would help with the planning, prioritizing and tracking of investigations. Instead, staff must enter data into four different systems to document their work, which was time-consuming and inefficient.

In our follow-up, we found that the Home Construction Regulatory Authority has implemented a new Customer Relations Management (CRM) System, which is capable of facilitating compliance and investigations activities.

- *commit the necessary staff resources to eliminate the backlog of investigations.*

Status: Fully implemented.

Details

In our 2019 audit, we found that, as of June 30, 2019, Tarion had a backlog of 139 tips that it had not yet investigated, the majority of which (107) were received between 2018 and 2019. Of the remainder, four tips were from 2016 and 28 from 2017. Tarion had classified 24 of them as high priority, because they related to more than one illegally built home. Four more involved repeat offenders.

In our follow-up, we noted that Tarion had eliminated the backlog.

Issues Raised by Tarion's Own Ombudsperson Not Always Fully Resolved

Recommendation 24

To resolve issues identified by the Ombudsperson's Office of Tarion Warranty Corporation, we recommend that Tarion work directly with the Ombudsperson's Office to:

- *fully resolve all issues raised in the Ombudsperson's public reports since 2008; and*

Status: Fully Implemented.

Details

In our 2019 audit, we found that issues raised by Tarion's ombudsperson were not always fully resolved. Since its inception in 2008, Tarion's Ombudsperson's Office has issued 10 reports, including 33 recommendations for Tarion to improve how it licenses builders and resolves warranty disputes.

In our follow-up, we noted that Tarion addressed all 13 of the outstanding recommendations from the past reports.

- *post the results of this review on Tarion's website.*

Status: Fully implemented.

Details

In our follow-up, we noted that Tarion had posted recommendations with their associated status for each recommendation on its website.

Lack of Government Oversight Led to Ongoing Issues Not Being Addressed

Recommendation 25

To ensure Tarion Warranty Corporation meets its mandated responsibilities to help homeowners who seek its help, we recommend that the Ministry of Government and Consumer Services:

- *consider requiring, in statute, a binding agreement between Tarion and the Ministry that sets out Tarion's accountability;*

Status: Fully implemented.

Details

In our 2019 audit, we found that there was no statutory requirement for an agreement between the Ministry of Government and Consumer Services and Tarion to set out the accountability relationship and the respective authorities and responsibilities of the two parties, as there was with most other such administrative authorities and the Minister.

In our follow-up, we noted that the government passed legislative changes that require Tarion to sign a binding administrative agreement with the Minister. Tarion and the Minister entered into a new Administrative Agreement on February 26, 2021.

- *establish a process to track and analyze information provided by Tarion;*

Status: In the process of being implemented by December 2021.

Details

In our audit in 2019, we found that the Ministry of Government and Consumer Services could not effectively evaluate whether Tarion was fulfilling its mandate and could not make informed decisions to seek improvements because it did not have effective systems and processes to ensure it collected the right information from Tarion.

In our follow-up, we noted that the Ministry of Government and Consumer Services has developed preliminary recommendations for enhancing the key operating statistics that Tarion reports to the Ministry. Once the metrics are finalized, a formal business

process and protocol is to be developed for the Ministry to track and analyze data provided by Tarion.

- *establish performance indicators and targets to measure Tarion's performance; and*
Status: Little or no progress.

Details

As we mentioned above, the Ministry of Government and Consumer Services is in the process of developing appropriate performance measures, targets and assessment approaches.

- *assess Tarion's performance against these targets on a regular basis and take corrective actions where necessary.*
Status: Little or no progress.

Details

This recommendation will be implemented once the Ministry of Government and Consumer Services has identified appropriate performance measures, targets and assessment approaches.

Recommendation 26

Keeping consumer protection as the primary consideration, and complexity and costs as additional considerations, and with Tarion's agreement to implement the recommendations in this report (with government monitoring the timely implementation of these recommendations), we recommend that the Ministry of Government and Consumer Services continue to thoroughly assess the following, taking both qualitative and quantitative factors into account:

- *proceeding with a separate regulatory authority for regulating and licensing builders or maintaining this responsibility within Tarion; and*
Status: Fully implemented.

Details

During our audit in 2019, we found that the government wanted to create a separate regulatory authority for regulating and licensing builders. In February 2019, the government said that it was moving forward with this change. The plan called for a new

regulator to take over Tarion's current role of regulating builders by fall 2020.

In our follow-up, we noted that the government has proceeded with establishing a separate regulatory authority to regulate and license new home builders and vendors. On November 6, 2020, the government filed regulations to designate the Home Construction Regulatory Authority as the regulatory authority under the *New Home Construction Licensing Act, 2017*. The designation came into effect when the Act was proclaimed on February 1, 2021.

- *maintaining Tarion as the warranty administrator or changing to a multi-provider insurance model.*
Status: Fully implemented.

Details

During our audit in 2019, we found that the government was evaluating different approaches for providing new-home warranties. The government was considering the option of delivering new home warranties through a competitive, multi-provider insurance model in which builders obtain warranty insurance from private-sector insurers.

In our follow-up, we noted that the government made the decision to maintain Tarion as the warranty administrator in December 2019.

Tarion Operations

Recommendation 27

So that Tarion Warranty Corporation staff who deal with the public are qualified to perform home inspections and correctly answer questions regarding possible violations of the Ontario Building Code, we recommend that Tarion require such staff to obtain the Ontario Building Code certification.

Status: Fully implemented.

Details

In our audit in 2019, we found that some Tarion staff assigned to assist homeowners in resolving their warranty disputes did not have the appropriate

qualifications. At the time of our audit, we found that only 16 of Tarion's 51 inspection staff had the Code certification, and Tarion had no process to ensure that qualified staff always perform the more complex inspections, which are more likely to relate to non-compliance with the Code.

In our follow-up, we found that Tarion implemented a policy and training that ensures all potential Ontario Building Code issues are reviewed by Ontario Building Code qualified persons before a final assessment is made. In addition, Tarion also hired two directors with an in-depth understanding of the Ontario Building Code to oversee the inspection program.

Recommendation 28

To provide homeowners and builders with accurate information in a timely manner, we recommend that Tarion Warranty Corporation:

- *commit the necessary staff resources to ensure it meets its internal targets for answering calls within specified times;*

Status: Fully implemented.

Details

In our 2019 audit, we found that in each of the five years between 2014 and 2018, only 40% of calls on average were answered within the two-minute time frame, although Tarion's goal was to answer 70% of the calls within two minutes.

In our follow-up, we noted that Tarion hired additional staff to support internal targets for answering calls.

- *periodically review recorded calls to ensure callers are given accurate and helpful information; and*

Status: Fully implemented.

Details

In our audit in 2019, we listened to a sample of 50 recorded calls between February 1, 2019, and March 31, 2019, and found that in 14% of our sample, Tarion's response to caller questions was inaccurate and/or unhelpful.

In our follow-up, we noted that Tarion implemented a quality assurance audit process in March 2020 to review recorded calls, to ensure callers are given accurate and helpful information by call centre representatives. According to the new process, the Supervisor of the Call Centre is responsible for reviewing between two and four randomly selected calls per day.

- *establish a clear customer-service standard for call-centre staff that focuses on providing more helpful information for homeowners to better navigate the dispute-resolution process and identify those who may need further assistance.*

Status: Fully implemented.

Details

In our 2019 audit, we found that callers were occasionally given inaccurate information. For instance, without obtaining all the facts, Tarion told one caller that a roof leak was not covered by the builder's warranty when, in fact, it would be covered in certain circumstances.

In our follow-up, we noted that Tarion created a new call centre customer service standard and revised its existing policies to better train its call centre staff to ensure callers are given accurate information. In addition, Tarion also conducts daily quality assurance audits.

Recommendation 29

To establish and maintain the internal Ombudsperson's Office's formal independence from senior management of Tarion Warranty Corporation, we recommend that:

- *the Ombudsperson's Office report directly to Tarion's Board of Directors (Board) on all operational matters, including budget and salary approvals;*

Status: Fully implemented.

Details

In our 2019 audit, we found that the CEO has been reviewing the operating budget of the Ombudsperson's Office, which could diminish that Office's independence from senior management. We also

noted that the CEO was directly involved in deciding the Ombudsperson's salary increases.

In our follow-up, we found that the Ministry of Government and Consumer Services signed a new administrative agreement with Tarion in February 2020. The new administrative agreement clarifies the roles and responsibilities of the Ombudsperson's Office, and it requires that the Ombudsperson's Office report directly to Tarion's Board of Directors on all operational matters, including budget and salary approvals. We also reviewed the revised employment letter of the Ombudsperson, which clearly states that the Ombudsperson's function now reports directly to the Tarion Board.

- *the Board review the performance of the Ombudsperson's Office;*

Status: Fully implemented.

Details

In our follow-up, we found that the Ministry of Government and Consumer Services signed a new administrative agreement in February 2020. The new administrative agreement requires the Board to review the performance of the Ombudsperson's Office.

- *Tarion management abstain from any role or involvement in evaluating or reviewing the performance of any employee of the Ombudsperson's Office; and*

Status: Fully implemented.

Details

In our 2019 audit, we found that 12 months after taking the job, the Ombudsperson received a 20% salary raise on the recommendation of the CEO, without any documented performance evaluation. When we asked about the lack of any written evaluation, the Ombudsperson told us that the CEO does such evaluations verbally.

In our follow-up, we found that the Ministry of Government and Consumer Services signed a new administrative agreement with Tarion in February 2020. The new administrative agreement requires that the Board review the performance of the Ombudsperson and management must abstain from any role

or involvement in evaluating or reviewing the performance of the Ombudsperson, or any employee within the Ombudsperson's Office.

- *Tarion work with the Ministry of Government and Consumer Services to add a provision in the Ontario New Home Warranties Plan Act that prevents Tarion from accessing any information in homeowners' files held by the Ombudsperson's Office.*

Status: Fully implemented.

Details

In our 2019 audit, we found that Tarion has asked the Ombudsperson to disclose to it confidential information about homeowners who have complained to the Ombudsperson. For example, in 2018, Tarion's legal department asked the Ombudsperson on two occasions to disclose information in a homeowner's file to help it prepare for a hearing before the Licence Appeal Tribunal.

In our follow-up, we found that the Ministry of Government and Consumer Services signed a new administrative agreement in February 2020. The new administrative agreement specifically states that the files and records of the Ombudsperson and their Office cannot be accessed by Tarion.

Recommendation 30

To better align the compensation structures of Tarion Warranty Corporation with the intent of the Ontario New Home Warranties Plan Act, we recommend that Tarion:

- *review and revise the key performance indicators it uses in the corporate performance scorecard to reflect its mandate of regulating builders and assisting homeowners with warranty disputes; and*

Status: Fully implemented.

Details

In our 2019 audit, we found that five of the 11 key performance indicators used in the corporate performance scorecard incentivized Tarion to maximize profit and minimize expenses, which can have the unintended consequence of keeping claims payouts to a minimum. Tarion's compensation policies for

senior executives appeared misaligned with the spirit and intent of the *Ontario New Home Warranties Plan Act*, which is to regulate builders and assist homeowners with warranty disputes.

In our follow-up, we found that Tarion delinked all key performance indicators related to financial measures from its incentive plan. In addition, Tarion also included more performance indicators to measure Tarion's services to consumers, such as call response time in the Call Centre, timeliness of inspections, and issuance of Warranty Assessment Reports within established time frames.

- *undertake a review to assess the current bonus pay method to determine whether it is consistent with public-sector practices, and adjust it accordingly.*

Status: Fully implemented.

Details

In our 2019 audit we found that vice presidents and higher can earn bonuses worth 30% to 60% of their annual salaries, and that senior management accounted for one-third of the \$2 million paid in bonuses in 2018.

In our follow-up, we found that Tarion adjusted the compensation of its executive team members following a compensation study undertaken by a consultant it retained in January 2020. According to the new compensation structure, the maximum amount of bonus a senior management team member can earn is 30% of their annual salary. The recent changes to the compensation are expected to yield a savings of about \$700,000 per year.

Recommendation 31

To confirm the sufficiency of assets in the Guarantee Fund to cover any future catastrophic construction defects, we recommend that Tarion Warranty Corporation conduct a review of the Fund on an annual basis.

Status: Fully implemented.

Details

We found in our 2019 audit that the value of the Guarantee Fund was more than double the amount required to offset estimated future liabilities. Tarion

maintains a Guarantee Fund to compensate homeowners whose builder does not honour their warranty claims. The Guarantee Fund provides a financial reserve to help shield Ontario homeowners from possible catastrophic construction defects. Therefore, it is critical to periodically review the value of the Guarantee Fund to ensure it has sufficient assets.

During our follow-up, we noted that Tarion continues to perform the review of the Guarantee Fund on an annual basis, to confirm the sufficiency of assets in the Guarantee Fund to cover any future catastrophic construction defects.

Recommendation 32

To improve transparency of and public access to Tarion Warranty Corporation, we recommend that Tarion hold annual open meetings where members of the public can physically attend to ask questions and voice concerns.

Status: Fully Implemented.

Details

In our 2019 audit, we found that Tarion held its last in-person meeting in 2015, where many angry homeowners attended and voiced concerns about "poor customer service" and difficult warranty administration processes. The following year, in 2016, Tarion switched to online annual meetings, where people could not physically attend but could submit questions in writing. Questions were screened and selectively answered. The requirement for a public meeting was included in the 2010 accountability agreement between the Ministry and Tarion so that people could attend to obtain organizational updates and ask questions in-person to Tarion management and employees.

During our follow-up, we found that the administrative agreement signed in February 2021 required Tarion to hold annual public meetings open to the general public within two weeks after the annual report is published. Tarion told us that due to COVID-19 it has not started holding public meetings in-person. Tarion informed us that it expects to hold its annual public meeting in-person in 2022.