

Consultation paper on HBC construction type definitions

Consultation under s.103ED of
the Home Building Act 1989

9 August 2021

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1. Executive summary

Home building compensation is a compulsory insurance for businesses that do residential building work regulated under the Home Building Act 1989 (whether as a corporation, partnership or individual). A contract of insurance must be taken out for each project over \$20,000 (including GST), unless exempt. Projects typically requiring insurance include the construction of a home or low-rise multi-unit building, or the renovation or alteration of a home, or installation of a backyard swimming pool.

The insurance helps homeowners if the insured business cannot complete work on their home or honour their statutory warranty obligations due to insolvency, death, disappearance, or suspension of the business's contractor licence for failing to comply with an order of the NSW Civil and Administrative Tribunal or a court to pay compensation to the homeowner.

We, the State Insurance Regulatory Authority (SIRA), regulate the insurance scheme. The current sole provider of insurance is a NSW Government-operated insurer, the NSW Self Insurance Corporation, which trades as 'icare HBCF'.

Following a recent review of the home building compensation scheme done by the Independent Pricing and Regulatory Tribunal (IPART), we are reviewing our Insurance Guidelines that we issue to regulate some aspects of the insurance scheme.

This consultation paper is about how we define the types of construction work that icare HBCF (and any new market entrant) must price its insurance against. We currently define nine types of construction. This allows for each type of work to be assigned a different premium rate, reflecting the different level of risk associated with different types of work. Since the current definitions were adopted in 2017, there has been a significant change in icare HBCF's premium rates for some construction types. There can now be very different premium rates charged depending on the type of project being insured. Base premiums currently range from 0.3363% to 7.6305% of the cost of the insured work depending on the construction type.

We are seeking your feedback to ensure the way we regulate premiums for different types of construction projects results in a fair allocation of the cost of insuring different types of work as well as descriptions that are understandable and practical for users.

Changes we make following this consultation are not expected to result in changes that affect the overall costs or benefits of the scheme as a whole. This is because the total scope of risks insured by the scheme remains the same. The consultation is about how the risks and costs are apportioned across different types of projects the scheme insures. This means that whatever changes we adopt will mean that some people will pay more for insurance and some will pay less, and some will pay the same (all other factors being equal).

This is part only of the work we are doing to update our regulation of the scheme. We will provide further updates to stakeholders as that work progresses.

2. Why we are reviewing construction types

In 2017, SIRA developed its current Insurance Guidelines¹ that regulate the insurance premiums of the sole insurer icare HBCF and which would have also regulated any new APRA-authorised insurer entering the scheme.

The Guidelines require icare HBCF to determine a base premium for each of nine defined construction types. icare HBCF must determine a sustainable premium rate for each of those construction types, which it must file with SIRA. icare HBCF must then apply its filed premiums without discretion.

This is intended to divide the overall risk 'pool' into segments that have similar characteristics, and achieve pricing that reflects the relevant risks of each segment. icare HBCF combines this base rate with other factors (e.g. any loading or discount for the particular contractor who will do the work) to determine the premium that must be paid for each project.

The intended outcome is that contractors (and their customers) are charged lower premiums on average for lower risk types of projects, and higher premiums on average for higher risk types of projects. However, this must be balanced against:

- that the definitions of construction types fairly reflect risk (e.g. so that some low-risk projects are not routinely assigned high-risk pricing or vice versa); and
- that the construction type definitions are able to be understood and applied by insurers, intermediaries, contractors and their customers.

This review is intended to provide an opportunity to consider how the current construction type categories have performed in practice and consider potential improvements to how SIRA regulates these matters.

This consultation process is also intended to satisfy the requirements of section 103ED of the Home Building Act 1989, which requires SIRA to consult insurers in the scheme, before we issue, amend, revoke or replace Insurance Guidelines relating to premiums or market practices.

¹ Home building compensation (premium) insurance guidelines (2017-739) — published LW 22 December 2017 - <https://legislation.nsw.gov.au/view/pdf/asmade/sl-2017-739>

2.1. Table of current constructions types in SIRA's insurance guidelines compared to volume and proportion of insurance certificates, base premium rates, and average premium per certificate.

Current category name	Current additional detail	Number of insurance certificates issued in the period FY2015/16 to FY2019/20 (out of the total of 356,552 certificates issued in that period)	icare HBCF base premium rate (metropolitan locations inc. GST and stamp duty) as percentage of the contract value of the work; and average premium charged in FY2019/20
C01 New single dwelling construction	New single dwelling construction - includes granny flats when an addition to an existing dwelling.	115,631 certificates (32.4% of certificates issued across all construction types)	1.0030% base rate from 30 July 2021 FY2019/20 average premium charged per certificate (inc GST and stamp duty): \$3,751
C02 Multi dwelling alterations/additions (i.e. majority of work is structural)		16,056 (4.5% of certificates issued across all construction types)	7.6305% base rate from 30 July 2021 FY2019/20 average premium per certificate (inc GST and stamp duty): \$1,293
C03 New multi dwelling construction (three [3] storeys or less)	The C03 category does not include the construction of free-standing dwellings on individual sites without any shared services or structural components (e.g.	20,702 (5.8% of certificates issued across all construction types)	

C04 Single dwelling alterations/additions (i.e. majority of work is structural)	Single dwelling alterations/additions where the majority of work is structural work	72,410 (20.3% of certificates issued across all construction types)	1.0722% base rate from 30 July 2021 FY2019/20 average premium per certificate (inc GST and stamp duty): \$1,680
C05 Swimming Pools	Swimming pools as stand-alone building contracts	26,758 (7.5% of certificates issued across all construction types)	0.5627% base rate from 30 July 2021 FY2019/20 average premium per certificate (inc GST and stamp duty): \$401
C06 Renovations (i.e. majority of work is non structural) single and multidwelling		65,757 (18.4% of certificated issue across all construction types)	0.3363% base rate from 30 July 2021 FY2019/20 average premium per certificate (inc GST and stamp duty): \$286

C07 Other not included above		171 (0.05% of certificates issued across all construction types)	
C08 Multiple dwellings renovations non structural		13,724 (3.8% of certificates issued across all construction types)	
C09 New duplex, dual occupancy, triplex and/or terrace (attached) construction		25,343 (7.1% of certificates issued across all construction types)	

2.2. Some premiums are determined by land title in addition to built form

The construction of dwellings in a strata or community title schemes has historically been grouped within 'C03 - New multi dwelling construction' since before the establishment of icare as the insurance operator and SIRA as the regulator (see for example the construction types described in the HBCF Underwriting Guidelines of January 2015²). Because premiums were historically charged at below sustainable rates, and included greater cross-subsidisation across construction types, this did not result in significant differences in premiums.

However, changes since 2017 to move to sustainable premium rates, and reduce cross-subsidies across construction types have had the result that there can be large differences in the amount of premium that some projects are charged, depending on the land title relevant to the work rather than the type of work being done.

For example, for the construction of a duplex under the base premium rates that apply from 30 July 2021:

- If each dwelling will be subject to Torrens title subdivision, the base premium would be 1.0030% of the construction cost (including GST and stamp duty on the insurance).
- If subject to strata or community title, the base premium would be 6.2501% of the construction cost (including GST and stamp duty on the insurance).

To address this, we are seeking your feedback on options that remove reference to land title so that it ceases to be a factor in determining the premium that will apply to insured work.

2.3. The 'other' category has become redundant

The number of certificates of insurance issued in this category each year has declined from 95 in FY2010/11 to only four certificates in FY2019/20. The current sole insurer, icare HBCF have advised SIRA that they consider that the other categories of work are sufficient to be able insure any project. We are seeking you feedback on the option of deleting the category.

2.4. 'Renovation' and 'Alteration' categories may not align to 'major defect' risk

Historically, the insurance scheme insured homeowners for 6 years after the completion of work for losses arising from 'structural defects' and 2 years from the date of completion for other losses. The categorisation of construction types reflected this difference in insured risk by drawing a distinction between work done to an existing building that is non-structural (termed 'renovations') or work that is structural (termed 'alterations and additions').

In 2015, amendments to the Home Building Act 1989 commenced so that statutory warranties and insurance under the Act instead covered 'major defects' for 6 years after the completion of work and 2 years for other losses. Currently, 'major defects' are defined³ to include defects in a 'major element' of a building, which includes:

²

https://web.archive.org/web/20160615060950/https://www.hbcf.nsw.gov.au/portal/server.pt/gateway/PTARGS_0_1383_453_349_3801_43/http://portal-app/Portlets/ucmapi/Default.aspx?l=1&IdcService=GET_FILE&RevisionSelectionMethod=Latest&dDocName=012885

³ Under Section 18E of the Home Building Act 1989

<https://legislation.nsw.gov.au/view/html/inforce/current/act-1989-147#sec.18E>

- a) an internal or external load-bearing component of a building that is essential to the stability of the building, or any part of it (including but not limited to foundations and footings, floors, walls, roofs, columns and beams), or
- b) a fire safety system, or
- c) waterproofing, or
- d) any other element that is prescribed by the regulations as a major element of a building.

The defect must also be:

- attributable to defective design, defective or faulty workmanship, defective materials, or a failure to comply with the structural performance requirements of the National Construction Code (or any combination of these), and
- that causes, or is likely to cause—
 - i) the inability to inhabit or use the building (or part of the building) for its intended purpose, or
 - ii) the destruction of the building or any part of the building, or
 - iii) a threat of collapse of the building or any part of the building.

A major defect also includes:

- a) For buildings more than two storeys high, the failure of external cladding of a building to comply with the performance requirements of the National Construction Code for fire resistance and fire safety for that building, or
- b) the use of a building product (within the meaning of the Building Products (Safety) Act 2017) in contravention of that Act.

The definitions of renovations or alterations and additions have not been updated to reflect these changes.

We would not expect to be able to fully observe until after 2025, the full impact on claims development of changes made in 2015 to statutory warranty definitions. This is because the insurance is a 'long tail' scheme in which claims may be lodged up to 10 years after work has been completed (combined with the time required to observe how the courts interpret the scope of the new definition of 'major defect').

There is some early data supporting the view that it may be appropriate to amend the construction type definitions to reflect the change. For example, in 2019 icare provided SIRA with four years of data about defect types reported by icare's building consultants, who attend sites to evaluate defects that are the subject of claims.⁴ On that basis, information that icare has provided indicates that defects associated with waterproofing are some of the most prevalent relating to claims. The top five most common defects listed were:

- external balcony waterproofing (15.59% of claims)
- frames and trusses (10.41% of claims)
- external waterproofing (excluding external balconies) (9.98% of claims)
- brickwork/masonry (9.83% of claims)
- internal waterproofing (8.97% of claims)

⁴ icare has only recorded this information since August 2015. The data is subject to the caveat that many claims are multi-causal, with more than one defect being present in a single claim, and while icare's building consultants report to icare the defect types for each claim at the time of defect assessment, icare does not record the ultimate cost for each defect type within a claim. In 2019, SIRA gave this data to the NSW Parliament's Inquiry into the regulation of building standards, building quality and building disputes:

<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2540>

In practice icare HBCF has sought, to the extent possible, to interpret the meaning of 'structural' to align with exposure to work on 'major elements' of buildings.⁵

We are seeking your feedback on options to better categorise projects to reflect the level of risk of 'major defect' claims and therefore associated premium rates for the work.

We will also correct an error in the title of the C06 renovation category, which incorrectly refers to 'multidwelling', whereas C08 is the correct category that is dedicated to relevant renovation work in multi-dwelling buildings.

3. What options we are seeking your feedback on

We have suggested two options below. You are welcome to suggest modifications to these or alternative options we have not canvassed.

- Option 1 would mean we would cease to prescribe uniform construction types for icare HBCF and any new insurer. Instead it would be each insurer's responsibility to define the construction types against which they propose to price their premiums.
- Options 2A or 2B would mean we continue to prescribe construct types, with some changes. The changes we propose include deleting one construction type and adjusting the definitions for the remaining eight construction types. Both option 2A and 2B attempt to reclassify work in a similar way, but Option 2B does this by reference to the National Construction Code.

Note: These options relate only to how contracts of insurance are priced. The options do not change the scope of work that is required to be insured under the scheme. They also are not intended to alter other market practices, such as how many certificates of insurance are issued in respect of dwellings, the amount of cover available, or how claims are processed.

3.1. Option 1 – Require icare to define the construction types it proposes to price against as part of its premium filings instead of defining construction types in SIRA Guidelines

This option would involve amending the Guidelines so that icare HBCF (and any new insurer entering the scheme) would have the flexibility to adopt their own construction categories and definitions, and which they could adjust periodically. This means icare would be able to propose amendments to its definitions over time to reflect emerging claims experience or future changes to the statutory warranty definitions (or their interpretation by the courts), but within a regulatory framework set by SIRA, and subject to continued SIRA oversight.

3.1.1. How this option could work:

- icare HBCF would need to include any proposed changes to its construction type definitions in its annual premium filings together with its proposed base premiums for those construction types.
- icare HBCF would need to provide a sufficient basis for any proposed changes together with information supporting that its proposed premiums are not excessive or inadequate.

⁵ See icare's "Structural V Non-Structural Construction classification types for HBCF Insurance premium purposes guide" <https://www.icare.nsw.gov.au/-/media/icare/unique-media/builders-and-homeowners/media-files/all-hbcf-files/structural-v-non-structural-construction-classification-types-for-hbcf-insurance-premium-purposes-guide.pdf> accessed 5 July 2021

- Similar to how the current guidelines bind icare HBCF to premiums that it files with SIRA, icare HBCF would not be able to deviate from any construction types that have been filed with SIRA, assessed by SIRA and that SIRA has not rejected. Any changes would require icare HBCF to lodge a new filing with SIRA for assessment.
- icare HBCF would continue to report to SIRA information about every insurance policy they issue, including the construction type and premium charged so that we may monitor the scheme and icare HBCF's performance.

3.1.2. How this option relates to IPART's recommendations:

IPART's review of the home building compensation scheme found that the regulation of premiums for new market entrants are unnecessarily prescriptive. Increasing flexibility around construction categories would represent a step in the direction of reducing the level of prescription around premiums (we expect to also consider other opportunities to change the way in which we regulate premiums as part of our review of other aspects of our Insurance Guidelines in response to IPART's findings and recommendations).

3.1.3. Benefits and Risks

Key benefits of this option are:

- Ability for icare HBCF to file adjustments to construction types without first needing to wait for SIRA, as the insurance regulator, to review and amend the Insurance Guidelines that regulate the scheme. This means icare HBCF can act more quickly to address emerging risks of some project types being allocated premiums that do not reflect the appropriate level of risk.

Key risks of this option are:

- Adds potential complexity to premium filing processes for both icare HBCF and SIRA as the insurance regulator. These processes will need to expand to accommodate the production and assessment not only of proposed premium pricing, but also technical definitions of construction types and supporting information.
- Adds potential complexity to monitoring the performance of the scheme over time. This is because the scope of work captured under different 'construction types' may be subject to more frequent change so tracking performance against it may become less meaningful. In the event that more insurers were to enter the scheme and adopt their own bespoke construction types, it may also become more difficult to compare how the scheme is performing across different insurers.

3.2. Option 2A – Retain self-contained descriptions of categories with edits

This option involves:

- Deleting the 'other' category of work;
- Removing references to land-title, with the outcome that:
 - detached dwellings will be priced under C01 regardless of whether Torrens, strata, or community title apply, and regardless of the number of dwellings being constructed under a contract for building work;
 - attached dwellings such as duplexes and triplexes will be priced under C09 regardless of whether Torrens, strata, or community title apply; and
 - C02, C03 and C08 pricing will be limited to multi-dwelling buildings such as manor houses and apartment buildings regardless of land title.
- Updating the scope of categories relating to work done to existing dwellings to distinguish between:
 - projects where the majority of the work is exposed to risk of a 'major defect' up to six years after the completion of work; and

- projects that where defect claims are more likely to be limited to more minor matters covered by a shorter 2-year period of warranty after the completion of the work.

3.2.1. Benefits and Risks

Key benefits of this option are:

- More consistent pricing: the change addresses current perverse outcomes where identical projects can have significantly different premium outcomes depending on the title of the land on which the work will be done.
- Simplifies the construction types by reducing the number to eight.
- Aligns to some previous work that icare HBCF has done to try to better reflect 'major defect' risk in its premium setting practices for projects for renovation or alterations and additions to existing homes.

Key risks of this option are:

- Removing lower risk work done within strata or community title schemes from the 'multi-dwelling' construction categories may result in further concentration of risk in those categories, and some upward pressure on premiums in those categories.
- Removing the 'other' category presents a risk that it may be more complicated to deal with the occurrence of any unique projects that for some reason are not readily classifiable. We would expect to work with icare HBCF to manage any such occurrence if one were to arise.

Category	Description	Examples or further detail:
C01	Residential building work relating to the construction of any number of free-standing dwellings.	<p>Examples of work in this category include:</p> <ul style="list-style-type: none"> • Single lot with proposed new single dwelling and associated structures (e.g. where a swimming pool, garage or shed will be built on the lot under the same contract as the dwelling). • Single lot with multiple new free-standing single dwellings and associated structures and regardless of whether it will be subdivided (e.g. dual-occupancy, detached community title villas, single dwelling built in conjunction with a detached secondary dwelling). • On-site work to install a manufactured home.
C02	<p>Residential building work done to an existing building containing two or more dwellings of any number of storeys (including in mixed use buildings), and where any dwelling is partially or wholly located above another dwelling, or where there is common space below such dwellings, and the majority of the work is:</p> <ul style="list-style-type: none"> • work on a 'major element' of the building as defined in the Home Building Act 1989, or • the installation or replacement of external cladding on a building with a rise in storeys of more than two. 	<p>Examples of work in this category include:</p> <ul style="list-style-type: none"> • The installation, removal or non-cosmetic alteration of an internal or external load-bearing component of a building. • The installation, modification or replacement (excluding testing, maintenance or servicing) of: a fire sprinkler or other fire suppression systems and fixed services for fire-fighting purposes (e.g. pumps and hose-reels); hardwired fire detection and alarm systems; • Work to create, penetrate or seal a fire compartment; • Installing fire-resisting doors to a fire compartment or fire escape. • Work involved in any protective treatment of a dwelling designed to prevent the penetration of water or moisture into the dwelling or in the protective treatment of wet areas in a dwelling designed to prevent the unwanted escape of water from those areas by using solid membranes or membranes applied by brush, roller or any other method. • Installation or non-cosmetic alteration of fixed roof coverings of any material (e.g. tiles, slates, sheeting) or roof flashing. <p>Excluded from this category are contracts for residential building work for:</p> <ul style="list-style-type: none"> • the construction, alteration or repair of a swimming pool or spa (which is part of C05).

C03	Residential building work relating to the construction of a building containing two or more dwellings (including in mixed use buildings) with a rise in storeys of up to three, where any dwelling is partially or wholly located above another dwelling, or where there is common space below such dwellings.	<p>Examples of work in this category include construction of:</p> <ul style="list-style-type: none"> • residential apartment buildings; • terraces with a shared basement garage under the building; • manor house developments; • structures built in conjunction with the above buildings (e.g. where a swimming pool, garage or shed will be built on the same land under the same contract as the dwellings)
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C04	<p>Residential building work done to one or more existing detached dwellings or attached dwellings, where no part of any dwelling is located above another dwelling, and there is no common space below such dwellings, and the majority of the work:</p> <ul style="list-style-type: none"> • is work on a 'major element' of the building as defined in the Home Building Act 1989, or • the installation or replacement of external cladding on a building with a rise in storeys of more than two. 	<p>Examples of work in this category include:</p> <ul style="list-style-type: none"> • The installation, removal or non-cosmetic alteration of an internal or external load-bearing component of a building. • The installation, modification or replacement (excluding testing, maintenance or servicing) of: a fire sprinkler or other fire suppression systems and fixed services for fire-fighting purposes (e.g. pumps and hose-reels); hardwired fire detection and alarm systems; • Work to create, penetrate or seal a fire resisting wall between attached dwellings; • Work involved in any protective treatment of a dwelling designed to prevent the penetration of water or moisture into the dwelling or in the protective treatment of wet areas in a dwelling designed to prevent the unwanted escape of water from those areas by using solid membranes or membranes applied by brush, roller or any other method. • Installation or non-cosmetic alteration of fixed roof coverings of any material (e.g. tiles, slates, sheeting) or roof flashing. <p>Excluded from this category are contracts for residential building work for:</p> <ul style="list-style-type: none"> • the construction, alteration or repair of a swimming pool or spa (see C05) • the erection of prefabricated patios, garages and sheds (see C06); • like for like replacement of roof coverings not involving any work to the roof framing elements (see C06); • timber decks (including timber slatted balconies) and pergolas (see C06); • landscaping – where retaining walls do not exceed 25% of the contract price (see C06); • solar panels (see C06); • driveways and other paving (see C06); • specialist work (e.g. plumbing and gasfitting work, electrical wiring work or air-conditioning work) that does not involve changes to: load bearing structures; fire protection systems; or waterproofing (see C06).
C05	<p>Residential building work to construct, alter or repair a swimming pool or spa.</p>	<p>Excavation and installation of a swimming pool (of any material, and whether indoor or outdoor), and associated filtration systems, paving and fencing to provide a child resistant safety barrier surrounding the pool.</p>

C06	<p>Residential building work done to one or more existing detached dwellings or attached dwellings, where no part of any dwelling is located above another dwelling, and there is no common space below such dwellings, and the majority of the work:</p> <ul style="list-style-type: none"> • is not work on a 'major element' of a building as defined in the Home Building Act 1989; and • is not work to install or replace external cladding on a building with a rise in storeys of more than two. 	<p>Also included in this category are contracts for:</p> <ul style="list-style-type: none"> • work in a building containing multiple dwellings that is excluded from C08 because it is work undertaken exclusively within one dwelling that does not involve common property. <p>Examples of work included in this category are contracts for:</p> <ul style="list-style-type: none"> • the erection of prefabricated patios, garages and sheds; • like for like replacement of roof coverings not involving any work to the roof framing elements; • timber decks (including timber slatted balconies) and pergolas; • landscaping – where retaining walls do not exceed 25% of the contract price; • solar panels; • driveways and other paving • painting and decorating work; • fences, gates and free-standing walls. • specialist work (e.g. plumbing and gasfitting work, electrical wiring work or air-conditioning work) that does not involve changes to: load bearing structures; fire protection systems; or waterproofing.
C07	N/A – deleted	N/A – deleted

C08	<p>Residential building work relating to an existing building of any number of storeys that contains two or more dwellings (including in mixed use buildings) and where any dwelling is partially or wholly located above another dwelling, or where there is common space below such dwellings, and the majority of the work:</p> <ul style="list-style-type: none"> • is not work on a 'major element' of a building as defined in the Home Building Act 1989, and • is not work to install or replace external cladding on a building with a rise in storeys of more than two. 	<p>Excluded from this category are contracts for:</p> <ul style="list-style-type: none"> • work being undertaken is exclusively within one dwelling that does not involve common property (see C06). <p>Examples of work included in this category are contracts for:</p> <ul style="list-style-type: none"> • specialist work (e.g. plumbing and gasfitting work, electrical wiring work or air-conditioning work) that does not involve changes to: load bearing structures; fire protection systems; or waterproofing.
C09	<p>Residential building work relating to the construction of any number of attached dwellings, where no part of any dwelling is located above another dwelling, and there is no common space below</p>	<p>Examples of work in this category include:</p> <ul style="list-style-type: none"> • Attached duplex, triplex, row house, terrace house, town house or villa unit, where each is separated by a fire-resisting wall. • Single dwelling built in conjunction with an attached secondary dwelling (e.g. attached granny flat). • Construction of a secondary dwelling that will be attached to an existing single dwelling. • Includes associated structures built in conjunction (e.g. where a swimming pool, garage or shed will be built on the same lot(s) under the same contract as the dwellings)

3.3. Option 2B – Define premium categories by reference to the Building Code of Australia and ‘major elements’ of a building

Australia has a national building classification system, which is published by the Australian Building Codes Board in the Building Code of Australia (BCA), which is part of the National Construction Code (NCC). The Home Building Act 1989 pre-dates the BCA, which was adopted by the States and Territories in the early 1990s⁶. However, over time some NSW laws that govern the building industry have adopted references to the national BCA or NCC. For example:

- Section 18E of the Home Building Act 1989 defines a ‘major defect’ in part by reference to ‘a failure to comply with the structural performance requirements of the National Construction Code’;
- Clause 56 of the Home Building Regulation 2014 defines the scope of insurance exemptions for multi-storey buildings over three storeys by reference to the BCA’s definition of ‘storey’ and ‘rise in storeys’; and
- The Design and Building Practitioners Act 2020 and the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 both reference building classes of the BCA to define the scope of work to which those law apply.

On that basis we are seeking your feedback on whether it would be easier and more consistent for industry to define insurance categories of work by reference to the BCA. The table below takes this approach while seeking to achieve same outcome as Option 2A above.

A summary of the building classes referred to in the below table can be found at: <https://www.abcb.gov.au/Resources/Publications/Education-Training/building-classifications>

3.3.1. Benefits and Risks

These are similar to Option 2A, with the following additional risks and benefits:

- Alignment to the National Construction Code encourages further embedding industry familiarity and use of that Code in NSW.
- It provides clearer markers to track insurance scheme data and performance for Class 2 buildings against other regulatory schemes in NSW that are specific to Class 2 buildings.
- For users who are not familiar with the National Construction Code there is a risk it may make the definitions harder to understand (although we have attempted to ameliorate this risk by the inclusion of examples).

⁶ <https://ncc.abcb.gov.au/ncc-online/About/BCA-History>

Category	Description (Note that 'building classes' are those defined under the Building Code of Australia)	Examples or further detail:
C01	Residential building work involved in the construction of any number of detached Class 1a dwellings together with any Class 10 structures built in conjunction with that dwelling.	<p>Examples of work in this category include:</p> <ul style="list-style-type: none"> • Single lot with proposed new single dwelling and associated structures (e.g. where a swimming pool, garage or shed will be built on the lot under the same contract as the dwelling). • Single lot with multiple new free-standing single dwellings and associated structures and regardless of whether it will be subdivided (e.g. dual-occupancy, detached community title villas, single dwelling built in conjunction with a detached secondary dwelling). • On-site work to install a manufactured home.
C02	<p>Residential building work done to an existing Class 2 building (including if part of a mixed use building) of any number of storeys or an associated Class 10 structure, (excluding where all the work relates to a Class 10 structure that is a swimming pool), and the majority of the work is:</p> <ul style="list-style-type: none"> • work on a 'major element' of the building as defined in the Home Building Act 1989, or • the installation or replacement of external cladding on a building with a rise in storeys of more than two. 	<p>Examples of work in this category include:</p> <ul style="list-style-type: none"> • The installation, removal or non-cosmetic alteration of an internal or external load-bearing component of a building. • The installation, modification or replacement (excluding testing, maintenance or servicing) of: a fire sprinkler or other fire suppression systems and fixed services for fire-fighting purposes (e.g. pumps and hose-reels); hardwired fire detection and alarm systems; • Work to create, penetrate or seal a fire compartment; • Installing fire-resisting doors to a fire compartment or fire escape. • Work involved in any protective treatment of a dwelling designed to prevent the penetration of water or moisture into the dwelling or in the protective treatment of wet areas in a dwelling designed to prevent the unwanted escape of water from those areas by using solid membranes or membranes applied by brush, roller or any other method. • Installation or non-cosmetic alteration of fixed roof coverings of any material (e.g. tiles, slates, sheeting) or roof flashing.

C03	Residential building work involved in the construction of a Class 2 building (including if part of a mixed use building) with a rise in storeys of up to three together with any Class 10 structures built in conjunction with that building.	<p>Examples of work in this category include construction of:</p> <ul style="list-style-type: none"> • residential apartment buildings; • terraces with a shared basement garage under the building; • manor house developments; • structures built in conjunction with the above buildings (e.g. where a swimming pool, garage or shed will be built on the same land under the same contract as the dwellings)
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C04	<p>Residential building work done to an existing Class 1a building or associated Class 10 structures (excluding where all the work relates to a Class 10 structure that is a swimming pool) and the majority of the work:</p> <ul style="list-style-type: none"> • is work on a 'major element' of the building as defined in the Home Building Act 1989, or • the installation or replacement of external cladding on a building with a rise in storeys of more than two. 	<p>Examples of work in this category include:</p> <ul style="list-style-type: none"> • The installation, removal or non-cosmetic alteration of an internal or external load-bearing component of a building. • The installation, modification or replacement (excluding testing, maintenance or servicing) of: a fire sprinkler or other fire suppression systems and fixed services for fire-fighting purposes (e.g. pumps and hose-reels); hardwired fire detection and alarm systems; • Work to create, penetrate or seal a fire resisting wall between attached Class 1a buildings; • Work involved in any protective treatment of a dwelling designed to prevent the penetration of water or moisture into the dwelling or in the protective treatment of wet areas in a dwelling designed to prevent the unwanted escape of water from those areas by using solid membranes or membranes applied by brush, roller or any other method. • Installation or non-cosmetic alteration of fixed roof coverings of any material (e.g. tiles, slates, sheeting) or roof flashing. <p>Excluded from this category are contracts for residential building work for the following that are part of C06:</p> <ul style="list-style-type: none"> • the erection of prefabricated patios, garages and sheds; • like for like replacement of roof coverings not involving any work to the roof framing elements; • timber decks (including timber slatted balconies) and pergolas; • landscaping – where retaining walls do not exceed 25% of the contract price; • solar panels; • driveways and other paving; • specialist work (e.g. plumbing and gasfitting work, electrical wiring work or air-conditioning work) that does not involve changes to: load bearing structures; fire protection systems; or waterproofing.
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C05	Residential building work to construct, alter or repair a Class 10b structure that is a swimming pool, if on the same land as a Class 1a or Class 2 building (including if part of a mixed use building). And including work to construct Class 10 structures associated with that swimming pool	Excavation and installation of a swimming pool (of any material, and whether indoor or outdoor), and associated filtration systems, paving and fencing to provide a child resistant safety barrier surrounding the pool.
C06	<p>Residential building work done to an existing Class 1a building or an associated Class 10 structure (excluding where all the work relates to a Class 10 structure that is a swimming pool) and the majority of the work:</p> <ul style="list-style-type: none"> • is not work on a 'major element' of a building as defined in the Home Building Act 1989; and • is not work to install or replace external cladding on a building with a rise in storeys of more than two. 	<p>Also included in this category are contracts for:</p> <ul style="list-style-type: none"> • Work done exclusively within one dwelling of a Class 2 building that does not involve common property. <p>Examples of work included in this category are contracts for:</p> <ul style="list-style-type: none"> • the erection of prefabricated patios, garages and sheds; • like for like replacement of roof coverings not involving any work to the roof framing elements; • timber decks (including timber slatted balconies) and pergolas; • landscaping – where retaining walls do not exceed 25% of the contract price; • solar panels; • driveways and other paving • painting and decorating work; • fences, gates and free-standing walls. • specialist work (e.g. plumbing and gasfitting work, electrical wiring work or air-conditioning work) that does not involve changes to: load bearing structures; fire protection systems; or waterproofing.
C07	N/A – deleted	N/A – deleted

C08	<p>Residential building work done to an existing Class 2 building (including if part of a mixed use building) or an associated Class 10 structure (excluding where all the work relates to a Class 10 structure that is a swimming pool), and the majority of the work:</p> <ul style="list-style-type: none"> • is not work on a 'major element' of a building as defined in the Home Building Act 1989, and • is not work to install or replace external cladding on a building with a rise in storeys of more than two. 	<p>Excluded from this category are contracts for:</p> <ul style="list-style-type: none"> • work done exclusively within one dwelling of a Class 2 building that does not involve common property (which is included in C06). <p>Examples of work included in this category are contracts for:</p> <ul style="list-style-type: none"> • specialist work (e.g. plumbing and gasfitting work, electrical wiring work or air-conditioning work) that does not involve changes to: load bearing structures; fire protection systems; or waterproofing.
C09	<p>Residential building work involved in the construction of any number of attached Class 1a dwellings, together with any Class 10 structures built in conjunction with that building or buildings.</p>	<p>Examples of work in this category include:</p> <ul style="list-style-type: none"> • Attached duplex, triplex, row house, terrace house, town house or villa unit, where each is separated by a fire-resisting wall. • Single dwelling built in conjunction with an attached secondary dwelling (e.g. attached granny flat). • Construction of a secondary dwelling that will be attached to an existing single dwelling. • Includes associated structures built in conjunction (e.g. where a swimming pool, garage or shed will be built on the same lot(s) under the same contract as the dwellings)

3.4. Other options we have considered but are excluding

3.4.1. Abolishing construction types for the purpose of setting base premium rates

This option would apply a uniform base premium to all construction types regardless of risk. While it would simplify the calculation of premiums, it would also result in significant cross-subsidisation across different types of building work. We expect this would involve decreases in premiums for constructing, altering or renovating multi-dwelling buildings, but at the expense of higher premiums to build, alter or renovate single dwellings, or construct swimming pools. So, for example, homeowners contracting work on a new free-standing houses would be cross-subsidising the commercial development of low-rise multi-unit buildings.

Note that we could use fewer or different construction categories and are open to stakeholder views on those matters.

3.4.2. Using development consent to categorise some construction types

We have considered the use of planning approval pathways under the Environment Planning and Assessment Act 1979 as potential markers for some categories of insured work. This was on the basis that:

- planning pathways can provide a signal for the scale of work that will be done, and
- the planning approval documentation may provide an easier way to determine which premium applies to a project without needing to consider the detail of the work that will be done.

We have rejected this option, because:

- It is sometimes not a good marker of insurance risk: some work on 'major elements' of buildings do not require planning approvals (e.g. some kitchen and bathroom renovations to an existing dwelling may be 'exempt development' despite involving waterproofing work), so this may not be a sufficient marker for whether work is likely to be exposed to risk of major defects that must be warranted and insured for six years after the completion of the work.
- It is not consistent: the planning approval pathway that applies to a particular type of work may vary in different locations depending on which local environmental plan and development control plan applies to some work, or based on other considerations such as whether the work is proposed to be done within a conservation area or to a heritage item.

4. How to make a submission

We encourage you to tell us what you think about the options in this paper. You can do this by lodging a written submission in one of the following ways:

- email to HBCreform@sira.nsw.gov.au
- the SIRA website www.sira.nsw.gov.au
- the NSW Government Have Your Say website www.nsw.gov.au/have-your-say

4.1. Consultation questions

1. Do you agree with excluding land title from premium price setting? Please indicate your reasons
2. Which of the options outlined in this paper do you prefer and why?

3. If icare were required to define its own construction categories for premium purposes, when and how should industry be notified or consulted about proposed future amendments?
4. If you prefer Option 2A or 2B, are the categories appropriate? If not, what changes do you recommend and why?
5. If you prefer a different option to the ones outlined in this consultation paper, please explain your preferred approach and the reasons.

4.2. Key dates

The timeframe for you to make a submission in this consultation is 13 September 2021

Any submissions received after the published deadline will be considered at our discretion.

4.3. Disclosure and handling of submissions

Submissions to this consultation may be published on the SIRA website.

Publication of submissions will usually include your name and the name of the organisation, if relevant. We will remove contact details such as email addresses, postal addresses and telephone numbers.

If your submission contains confidential or commercially sensitive information that you do not wish to be published, please clearly indicate in writing at the time of your submission that you prefer it or any part of it to be treated confidentially. We will then make every effort to protect that information.

At our discretion we may not publish certain submissions (or part of submissions) due to our assessment of length, content, appropriateness or confidentiality.

All personal information or health information provided in submissions is dealt with in accordance with:

- the Privacy and Personal Information Protection Act 1998 and,
- the Health Records and Information Privacy Act 2002

Any requests for access to confidential submissions are dealt with in accordance with the Government Information (Public Access) Act 2009.

4.4. What happens next

We will use the feedback we receive from this consultation to help us decide what amendments to make to the Premium Guidelines. We will publish any changes to the Insurance Guidelines on the NSW Legislation website and SIRA website. Depending on the changes we make, it may be necessary for icare HBCF to file a new set of premiums with SIRA to reflect changes to the construction types. Those steps may take a few months to complete, before contractors experience a change in premium outcomes for new contracts of insurance.

We will publish further updates for stakeholders about progress and timelines during this process.

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident compulsory third party (CTP) insurance and home building compensation in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers.

However to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the NSW Legislation website legislation.nsw.gov.au

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals, or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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