

Home building compensation (eligibility) insurance guidelines

January 2018

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1. Introduction

- 1.1 The State Insurance Regulatory Authority (SIRA) is the NSW Government organisation responsible for regulating insurance and alternative indemnity products (building cover contracts) under the *Home Building Act 1989* (the Act).
- 1.2 SIRA's adoption of principles-based regulation is intended to encourage a transparent, accountable and flexible model for licence holders.
- 1.3 The practices of licence holders, and those acting on their behalf, must align with these Guidelines.

2. Commencement

- 2.1 The Guidelines apply from 1 January 2018, until revoked or replaced.

3. Definitions

- 3.1 The terms used in these Guidelines have the following meanings:

Term	Definition
Act	<i>Home Building Act 1989 (NSW)</i>
adverse trading history	A contractor is considered to have an adverse trading history if any of the following events has occurred: previous insolvencies, past HBC claims, contractor licence suspension/cancellation / fines/penalties, outstanding NSW Civil and Administrative Tribunal/court orders, unresolved complaints /disputes at NSW Fair Trading, and loss notifications
authorised person	A person to whom SIRA has delegated a function under section 26 of the <i>State Insurance and Care Governance Act 2015</i>
building cover contract	A contract of insurance under Part 6 of the Act or a contract or arrangement for the provision of cover by means of an alternative indemnity product
business structure	The structure of the contractor entity that holds the contractor licence, i.e. sole trader, partnership, trust or company
contractor	A person who is required by Part 6 of the Act to enter into a building cover contract
dispute	A dispute regarding a licence holder's eligibility decision for a contractor
eligibility model	An eligibility model is comprised of eligibility criteria, conditions, decisions, the duration, reviews, suspensions, cancellations, and any other structures that may affect a contractor's eligibility

Term	Definition
Guidelines	<i>Home building compensation (eligibility) insurance guidelines</i>
HBC	Home building compensation
licence holder	A licensed insurer or licensed provider
NCAT	NSW Civil and Administrative Tribunal
Regulation	Home Building Regulation 2014
SiCorp	NSW Self Insurance Corporation
SIRA	State Insurance Regulatory Authority

4. Regulatory framework

- 4.1 These Guidelines are issued under the following sections of the Act:
- 4.1.1 103EC (c) contracts of insurance, including eligibility requirements for obtaining insurance and underwriting of contracts of insurance
 - 4.1.2 103EC (d) review of compliance with any such eligibility requirements
 - 4.1.3 104E (1) (e) alternative indemnity products, including eligibility requirements for obtaining cover and underwriting of products, and
 - 4.1.4 104E (1) (f) review of compliance with any such eligibility requirements.
- 4.2 Under section 103ED (4) of the Act, Insurance Guidelines may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.
- 4.3 Under section 103ED (7) of the Act, it is a condition of licence issued under Part 6C that licence holders comply with the relevant provisions of these Guidelines.

5. Eligibility principles

- 5.1 Eligibility refers to the approval that a contractor has to apply for in order to obtain a building cover contract for specific projects.
- 5.2 All eligibility approvals provide contractors with an eligibility profile outlining:
- 5.2.1 the value and number of individual projects permitted under construction at any time, and
 - 5.2.2 the maximum contract limits for all individual construction types approved.
- 5.3 The primary purpose of HBC eligibility is to minimise the risk of loss to homeowners, licence holders and the scheme. A contractor must be assessed against defined criteria in order to obtain HBC eligibility.

- 5.4 SIRA will manage and regulate HBC eligibility and hold licence holders to the following overarching principles:
 - 5.4.1 Eligibility criteria are fair and reflective of risk.
 - 5.4.2 Eligibility criteria and application are transparent.
 - 5.4.3 Eligibility is assessed reasonably.
 - 5.4.4 Eligibility provides stability and is not unreasonably volatile.
 - 5.4.5 Eligibility provides incentives for risk management and good business practices.
 - 5.4.6 Eligibility supports a strong and viable building industry.
 - 5.4.7 Eligibility supports a viable HBC market.

Principle 1: Eligibility criteria are fair and reflective of risk

- 5.5 For an eligibility system to be effective it should set an appropriate threshold by identifying unacceptable risks and not unreasonably restricting the ability of contractors to trade.
- 5.6 In general, fairness can be assessed relative to similar cohorts of contractors. The intention is that contractors that engage in similar industries, business activities, and share similar risk profiles should share similar eligibility characteristics and factors. Therefore these contractors should be assessed as holding similar degrees of risk.
- 5.7 The licence holder will need to provide justification that it's proposed eligibility assessment criteria fairly reflects a contractor's risk factors.

Principle 2: Eligibility criteria and application are transparent

- 5.8 Licence holders must make information relating to their eligibility model publicly available. This information should include key criteria, requirements, assessment processes and complaints and review processes. This information should reflect the licence holder's adoption of the eligibility principles.
- 5.9 Each assessment of a contractor's eligibility must provide sufficient information and justification to ensure that a contractor understands the assessment process and how their individual eligibility outcome was determined.

Principle 3: Eligibility is assessed reasonably

- 5.10 The HBC scheme should be fair, affordable and financially viable.
- 5.11 Contractors should be assessed reasonably, taking into consideration their capabilities, financial history, previous claims history, financial backing and level of external financial support. Licence holders must balance a contractor's financial and non-financial risks while avoiding unreasonable inhibitions on contractors' ability to trade. The eligibility criteria and assessment process should be as simple as reasonably possible, to support a process that is easy for contractors to navigate and avoids undue cost.

Principle 4: Eligibility provides stability and is not unreasonably volatile

- 5.12 Eligibility assessments should not be unreasonably volatile from year to year. Movement should reflect changes in the actual or perceived level of industry and/or contractor risk. Assessments of eligibility should also aim to minimise disruption to the NSW residential building industry.
- 5.13 Eligibility assessments should also ensure a consistent approach to the underwriting of building cover contracts without unreasonable changes due to market influences.

Principle 5: Eligibility provides incentives for risk management and good business practices

- 5.14 Contractor eligibility should provide incentives for contractors to undertake effective risk management with the objective being to reduce both the likelihood and severity of potential future claims through sound business practices, arrangements to support building work supervision and quality assurance, and financial backing. Similarly, eligibility criteria should not drive adverse business practices or place undue restriction on business trading structures.

Principle 6: Eligibility supports a strong and viable residential building industry

- 5.15 SIRA will consider the combined effect of the eligibility models for all licence holders on the building industry. It is important that the eligibility models (when viewed together) offer access to cover on terms that can be met by a sufficient range of contractors to supply a competitive, sustainable and viable market for residential building and trade services. The eligibility criteria must not unduly limit eligibility to the degree that only a small segment of contractors would be able to access building cover contracts. Eligibility models must provide reasonable access for new contractors entering the market. Examples of unacceptable criteria include limiting eligibility only to contractors that have previously entered into building cover contracts, or requiring contractors to have long continuous trading histories.

Principle 7: Eligibility supports a viable HBC market

- 5.16 SIRA will periodically assess the combined effect of eligibility models on the HBC market. If required, SIRA may consider additional regulatory options to support a viable and sustainable HBC market for building cover contracts. Additional regulatory options may include requirements for all licence holders to offer insurance to certain home building contractors, supported by a risk equalisation mechanism.

6. Eligibility requirements

- 6.1 A licence holder's eligibility model must include and demonstrate the following core requirements.

Licence holder requirements

- 6.2 Licence holders must issue a building cover contract for all contractors the licence holder has deemed eligible. A licence holder may not refuse to supply building cover contracts to a contractor, for which that licence holder has assessed the contractor as eligible.

Eligibility assessment criteria

- 6.3 Licence holders must have eligibility assessment criteria, considering each construction type (as outlined in Annexure A), to determine whether a contractor has adequate business strength and capability to qualify for eligibility, and if so, the extent of their eligibility.
- 6.4 When assessing whether a contractor is deemed eligible, a licence holder must consider all the financial and non-financial requirements within their SIRA approved eligibility assessment criteria.

Financial requirements

- 6.5 A licence holder must as a minimum include the following financial aspects of a contractor in their eligibility criteria:
- 6.5.1 the net tangible assets of the contractor
 - 6.5.2 the contractor's net profit position
 - 6.5.3 the contractor's annual turnover, and
 - 6.5.4 industry specific indicators.

Non-financial requirements

- 6.6 A licence holder must as a minimum include non-financial requirements in their eligibility criteria, including:
- 6.6.1 management structures
 - 6.6.2 contractor qualifications
 - 6.6.3 business capacity
 - 6.6.4 arrangements to support supervision of building work and quality assurance
 - 6.6.5 trading history
 - 6.6.6 a contractor's existing exposure, and
 - 6.6.7 existing eligibility and conditions imposed by other licence holders.
- 6.7 The eligibility criteria must however:
- 6.7.1 be objective and based on quantifiable information where possible

- 6.7.2 be aligned with the principles defined in these Guidelines, and
- 6.7.3 not add an undue burden of compliance on the contractor.

Eligibility conditions

- 6.8 Licence holders may require that a contractor meet additional conditions to reflect the relevant risk. These conditions may include requiring a contractor to obtain a director, adult beneficiary or trustee guarantee, obtain an indemnity of undertaking from a third party, or participate in mentoring or review programs.

Eligibility decisions

- 6.9 Eligibility decisions must be provided to the contractor in writing and include the following information as a minimum:
 - 6.9.1 the contractor's eligibility outcome
 - 6.9.2 the types of work for which the contractor is eligible to obtain building cover contracts as per Annexure A
 - 6.9.3 the maximum number and total cost of projects that are not commenced or completed for which the contractor is eligible to obtain building cover contracts, and
 - 6.9.4 the maximum project cost of an individual project for which the contractor is eligible to obtain building cover contracts.
- 6.10 The licence holder must document in writing and provide to contractors the reasons for:
 - 6.10.1 requiring further information from the contractor
 - 6.10.2 declining eligibility, including on re-assessment
 - 6.10.3 not providing the level of turnover cover sought by the contractor
 - 6.10.4 any special conditions the contractor has to comply with for eligibility
 - 6.10.5 amending the terms and conditions of a contractor's eligibility or revoking eligibility, including re-assessment, and
 - 6.10.6 any requirement of the contractor to obtain a director, adult beneficiary or trustee guarantee, or an indemnity of undertaking from a third party.

Eligibility duration

- 6.11 Eligibility provided to a contractor must adhere to the following rules:
 - 6.11.1 A licence holder must not grant eligibility for a period greater than three years to any contractor.
 - 6.11.2 A licence holder must not grant eligibility for a period less than 12 months.

Expiring eligibility

- 6.12 A licence holder must give at least 30 business days' notice to a contractor when the contractor's eligibility is set to expire. The notification must include appropriate information regarding how the contractor can renew their eligibility

and provide sufficient time for eligibility to be reassessed and granted before expiry.

Eligibility reviews

- 6.13 Licence holders are required to have an eligibility review process in place to monitor a contractor's risks and to identify below benchmark performance. Where a major risk management issue arises, an eligibility review may be undertaken to reassess the contractor's eligibility.
- 6.14 Licence holders must give written notice to a contractor prior to undertaking an eligibility review.
- 6.15 An eligibility review should be undertaken within a 30 business day period.
- 6.16 A contractor should only be required to provide information for assessment on a six monthly basis, unless a licence holder can demonstrate this would prevent appropriate risk management.
- 6.17 Licence holders may continue, revise, restrict, suspend or cancel a contractor's eligibility based on the findings of the eligibility review, in accordance with 6.9. The decision to suspend or cancel a contractor's eligibility must comply with 6.19-25.

Revising or restricting eligibility

- 6.18 If based on the findings of the eligibility review, in accordance with clause 6.9, the licence holder deems it necessary to revise or restrict a contractor's eligibility, the licence holder must give at least 30 business days' notice to the contractor.

Suspending eligibility

- 6.19 If a licence holder receives information that may trigger an eligibility review that, if confirmed, would lead to the cancellation of a contractor's eligibility, the licence holder may suspend the contractor's eligibility.
- 6.20 Where it has been determined to suspend a contractor's eligibility, the licence holder must provide the contractor with at least 10 business days' written notice. The notice should include reasons for the decision prior to the effective day of suspension.
- 6.21 Upon advice from NSW Fair Trading or an authorised person of SIRA, in writing and with reference to the Guidelines, the licence holder may suspend the contractor's eligibility immediately.
- 6.22 Eligibility may be reinstated after a period of suspension, following the completion of an eligibility review.
- 6.23 Suspension of eligibility does not affect building cover contracts already provided for completed and in progress building projects.

Cancelling eligibility

- 6.24 The licence holder must give the contractor at least 30 business days' notice of a licence holder's decision to cancel a contractor's eligibility. The reasons for the

decision must be in accordance with clause 6.9. The licence holder must give written notice to the contractor of reasons for the decision.

- 6.25 Cancellation of eligibility does not affect building cover contracts already provided for completed and in progress building projects.

7. Data collection

Disclosure to SIRA

- 7.1 SIRA has powers to require that licence holders give certain information, documents or data to SIRA. This includes, but is not limited to, section 121C of the Act, under which SIRA may require that a licence holder disclose to SIRA data relating to building cover contracts, claims and other related matters under the Act.

SIRA's register

- 7.2 In accordance with section 102A of the Act, SIRA will maintain a register of building cover contracts and other particulars, including claims.
- 7.3 Licence holders must disclose to SIRA information as requested about their building cover contracts. Some of this information will be used by SIRA for the purposes of the register under section 102A of the Act.

8. Eligibility model filing process

Eligibility model

- 8.1 The licence holder's eligibility model must include:
- 8.1.1 eligibility assessment criteria
 - 8.1.2 application procedures
 - 8.1.3 service standards
 - 8.1.4 forms and publications
 - 8.1.5 information to be made available on the licence holder's website, and
 - 8.1.6 complaints and dispute management processes.

Assessment and rejection of the eligibility model

- 8.2 An eligibility model must be lodged at least once each year by each licence holder unless SIRA allows the extension of a current filing period. All eligibility models submitted by a licence holder and approved by SIRA will supersede the existing eligibility model, so the current eligibility model will expire on the effective date of the new eligibility model.
- 8.3 Once an eligibility model filing has been accepted as complete and not requiring further information, SIRA will conduct a detailed review of the eligibility model

presented by the licence holder to consider whether the eligibility model has been explained to the satisfaction of SIRA.

- 8.4 SIRA will assess the licence holder's eligibility model against the following criteria:
 - 8.4.1 compliance with the principles described in these Guidelines
 - 8.4.2 compliance and alignment with the Act and Regulation, and
 - 8.4.3 compliance with provisions of the eligibility requirements defined in these Guidelines.
- 8.5 Failure to demonstrate compliance with these Guidelines, and in particular any of the above mentioned criteria, may result in the rejection of the eligibility model.
- 8.6 In order to complete the assessment SIRA may request the licence holder to:
 - 8.6.1 provide additional information in respect of the eligibility model to SIRA, and
 - 8.6.2 consult with SIRA, or an authorised person nominated by SIRA for that purpose, in relation to the licence holder's eligibility model.
- 8.7 SIRA will complete an assessment of a licence holder's eligibility model within six weeks of receipt of all relevant information needed to assess the eligibility model.
- 8.8 Once SIRA provides written notification of approval of the eligibility model, a licence holder must apply that eligibility model from the agreed commencement date without discretion.
- 8.9 SIRA will assess a licence holders' compliance with these Guidelines upon licence application and on an annual basis as at 30 September each year.
- 8.10 Failure to demonstrate compliance with these Guidelines, and in particular any of the above mentioned criteria, may result in the cancellation of a licence holder's licence.

9. Transitional requirements

- 9.1 To minimise disruption, the following transitional requirements apply for the period up to 31 December 2018.

SICorp eligibility model

- 9.2 The *icare HBCF Underwriting Procedures Manual V7.0* together with the *icare complaint and dispute handling procedure for claims and eligibility (20 July 2017)* are deemed to be compliant with these Guidelines in respect of eligibility until the earlier of:
 - 9.2.1 31 December 2018, or
 - 9.2.2 the date on which a new or amended eligibility model for SICorp commences in accordance with these Guidelines.
- 9.3 Deemed compliance is subject to SICorp submitting an eligibility model to SIRA for assessment against these Guidelines by no later than 1 October 2018.

SICorp contractor eligibility

- 9.4 All current contractor eligibility with SICorp will continue to apply until such time as the contractor's planned eligibility review occurs in accordance with the *icare HBCF Underwriting Procedures Manual V7.0*.

10. Dispute resolution process

- 10.1 Licence holders must have a process in place where a contractor may appeal aspects of their eligibility determination. The dispute process must include as a minimum:
- 10.1.1 contact details for appeals and reviews within the licence holder
 - 10.1.2 a clear process for and internal register of complaints that can be reviewed by SIRA
 - 10.1.3 actions required by a contractor and the licence holder in the dispute process
 - 10.1.4 timeframes for lodging and resolving disputes
 - 10.1.5 procedures for acknowledgement by a licence holder of any request for review within five business days and completion and finalisation of the review in a timely manner
 - 10.1.6 further options for the contractor that include lodging a complaint with SIRA, and
 - 10.1.7 providing SIRA's contact details to the contractor so that they may seek a further review where they are not satisfied with the approach or outcome of the licence holder's determination.
- 10.2 A contractor may request that SIRA undertake a regulator compliance review to investigate potential breaches of the Act, the Regulation or the Insurance Guidelines. A regulator compliance review is not a mechanism of appeal to review of the merits of a particular contractor's eligibility, and does not overturn eligibility decisions.
- 10.3 SIRA may audit a licence holder to ensure compliance with these Guidelines.

11. Annexure A: Construction types

Category	Additional detail (if required)
C01 - New single dwelling construction	New single dwelling construction - includes granny flats when an addition to an existing dwelling.
C02 - Multi dwelling alterations / additions (i.e. majority of work is structural)	Multi dwelling alterations / additions (i.e. majority of work is structural) where a strata or community title exists over any number of storeys and including terraces, villas, townhouses or multi dwelling units.

Category	Additional detail (if required)
C03 - New multi dwelling construction (three [3] storeys or less)	<p>New multi dwelling construction (three storeys or less) - (e.g. blocks of units, flats etc.) where a strata or community title exists.</p> <p>The C03 category <i>does not</i> include the construction of free-standing dwellings on individual sites without any shared services or structural components (e.g. common walls, roofing etc.) and which will not be subject to strata title or community title on occupation.</p>
C04 Single dwelling alterations / additions (i.e. majority of work is structural)	Single dwelling alterations/additions where the majority of work is structural work.
C05 Swimming pools	Swimming pools as stand-alone building contracts.
C06 Renovations (i.e. majority of work is non-structural) single and multi-dwelling	<p>May include the following structural contracts, which are considered renovations for premium and contribution purposes (i.e. coded as C06 contracts), even though a six year period of building cover contracts may be deemed to apply:</p> <ul style="list-style-type: none"> • the erection of prefabricated patios, garages and sheds • bathroom and kitchen renovations that may include projects involving window replacement and water proofing membranes • replacement of roof coverings without alteration to roof structure • timber decks (including timber slatted balconies) and pergolas • landscaping - where retaining walls do not exceed 25 per cent of the contract price • solar panels, or • driveways and other paving.
C07 Other - not included above	Other construction types which do not fit any of the other valid codes like C01 to C06. E.g. Could include kit / transportable homes.
C08 Multiple dwellings renovations - non-structural	Renovations (where the majority of the work is minor and non-structural) to multi-unit dwellings over any number of storeys and including terraces, villas, townhouses or multi-dwelling units.
C09 New duplex, dual occupancy, triplex and/or terrace (attached) construction	<p>New construction of duplex, dual occupancies, triplex and/or terrace (attached)</p> <p>A new single dwelling with a granny flat or studio with certificates issued for each occupancy.</p>

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident 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

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