



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: PLC:LLPC:JWgl130921

13 September 2021

Mr Adam Dent
Chief Executive
State Insurance Regulatory Authority

By email: HBCreform@sira.nsw.gov.au

Dear Mr Dent,

Consultation paper on HBC construction type definitions

The Law Society of NSW welcomes the opportunity to comment on the Consultation paper on Home Building Compensation construction type definitions. The Law Society's Property Law and Litigation Law and Practice Committees have contributed to this submission.

Our responses to the consultation paper questions are below.

1. Do you agree with excluding land title from premium price setting? Please indicate your reasons

Yes, we agree with excluding land title from premium price setting.

We note the example provided at paragraph 2.2 in the consultation paper, highlighting the marked difference in premiums depending on whether a duplex is situated on parcels subdivided under strata or community schemes legislation, or as a conventional subdivision. We agree this is an anomaly which should be addressed, and we note that the exclusion of land title from the determination of premiums will likely result in lower premium rates for some classes of work, based on the examples given.

We agree that the premium assessment should primarily be based on the type of work being done (including, for example, the rise in storeys), which is more aligned to the assessment of risk, than the nature of the land title concerned.

2. Which of the options outlined in this paper do you prefer and why?

We note that the three options provided in the consultation paper as to how contracts of insurance should be priced are:

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

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

We do not support Option 1. In addition to the key risks identified at paragraph 3.1.3 of the consultation paper, we believe that a further risk in allowing icare HBCF and any future entrants to set their own criteria is that entrants may seek to optimise market share by offering products with relatively lower premiums, while potentially sacrificing consumer protections. The potential consequences are exemplified by the collapse of HIH Insurance Limited, which had become regarded as the leading insurance provider, in part, by offering an unsustainably priced product.

We prefer Option 2B to Option 2A. The benefits of Option 2B identified at paragraphs 3.2.1 and 3.3.1 of the consultation paper are, in our view, persuasive. In particular, Option 2B would allow for already known and accepted construction type definitions to be applied. Builders are familiar with the Building Code of Australia (“BCA”), part of the National Construction Code (“NCC”), and as the consultation paper notes at paragraph 3.3, BCA and NCC definitions are already adopted in a number of other legislative instruments. In our view, this approach would provide greater consistency for the building industry.

We suggest the risk of a lack of familiarity with the NCC, which is identified at paragraph 3.3.1, could be overcome by the use of examples and provision of fact sheets or guides. In any event, industry participants would (and should) arguably be more familiar with defined terms in the NCC than with those set out in supporting material for insurance products.

3. If icare were required to define its own construction categories for premium purposes, when and how would industry be notified or consulted about proposed future amendments?

We note this is not our preferred option. However, if the Authority is minded to proceed with this option, we suggest there is a need for further industry consultation via peak industry bodies. We suggest also that notification of commencement should occur with sufficient time to allow material to be circulated to industry participants, and for any relevant continuing professional development addressing the changes to be arranged.

4. If you prefer Option 2A or 2B, are the categories appropriate? If not, what changes do you recommend and why?

In our view this is a topic best left to stakeholders with the appropriate technical expertise.

5. If you prefer a different option to the ones outlined in this consultation paper, please explain your preferred approach and the reasons.

Not applicable, as our preferred option is Option 2B.

Any questions in relation to this letter should be directed to lawsociety@lawsociety.com.au or 9231 5809

Yours sincerely,

President