

15.08.2022

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

Re: Home Building Compensation Reform

I welcome the State Insurance Regulatory Authority (SIRA) review underway of the NSW Government's compulsory insurance scheme for businesses that build and renovate homes, the home building compensation scheme ('HBC scheme') and the opportunity to comment on potential reforms.

I encourage the NSW Government to take urgent action to address issues well known in the building industry, including those raised in the SIRA Discussion Paper 2022. Currently formal channels and processes do little to curb rogue, unscrupulous builders who use loop holes, a costly complaints process and inadequate policing of regulation to their advantage with extremely detrimental (financial, physical and psychological) consequences for victim homeowners.

I offer my further assistance to drive HBC scheme and legislative changes to better protect consumers, including my offer to address any parliamentary / review committee or parliament.

Overview

The HBC scheme has failed for many years to protect all consumers. Critical urgent reforms required include (but are not limited to):

1. **Urgent need to increase the significantly outdated \$340,000 threshold, last increased in 2012. The proposed 17.6% increase to \$400,000 is grossly inadequate and the methodology to determine it flawed.** Refer my **Question 8** response.
 - In real terms, the proposed increase to \$400,000 is going backwards to what it was in 2012.
 - It should be increased to at least \$477,000 (as at June 2021), updated to reflect the increase in costs from June 2021 to now. Refer Annexure 1 analysis by a Sydney university finance academic.
 - Furthermore, applying one maximum payout to all (regardless of the amount, whether \$400,000, \$550,000 or some other amount) constitutes a grossly unfair risk/reward (premiums paid/payout potentially received) trade-off and hence an inequitable and unconscionable treatment of consumers. The sole winner is the NSW Government; the sole loser is the homeowner with losses greater than the threshold amount.
2. **The threshold amount should be reviewed annually.** Refer my **Question 10** response.
 - Under the current model (based on actual construction costs rather than forecast), there will always be a lag between the threshold increase and actual construction cost increase, to the detriment of the consumer. Hence it is critical to minimise that lag and the potential significant consumer detriment (as seen since the 2012 last increase).
3. **Claims should be allowed earlier in the building dispute process, specifically to when the business fails to comply with a rectification order issued by NSW Fair Trading.** Refer my **Question 5** response.
 - Furthermore, the process must be simplified. Currently it is difficult to navigate creating further inequities for already disadvantaged groups (including CALD, low literacy, First Nations people).
4. **Personal director penalties and access to their personal assets** should apply to deter unscrupulous culpable builders from deliberately not complying with their insurance obligations, with stronger penalties for repeat offenders. Refer my **Question 4** response.

5. **All recommendations should be implemented in the IPART 'Efficiency and Effectiveness of the NSW Home Building Compensation Fund' Report 14.12.2020, including but not limited to #13:**
'The NSW Government amends the Home Building Act 1989 to require SIRA to determine icare's builder eligibility assessment and claims handling processes.'
Refer my **Question 28** response.
6. **Retrospective HBC scheme additional payment/compensation to reflect, at a minimum, the updated \$340,000 threshold amount, should be given to homeowners** whose legitimate claims exceeded the outdated \$340,000 threshold from at least 2018 when the NSW Ombudsman raised concerns about the \$340,000 cap. Refer my comments at the end of **Question 10**.

The HBC scheme purpose is to provide that last resort protection to consumers; hence consumer protection should be at the core of the scheme. I find it disturbing that the SIRA Discussion Paper 2022 fails to give any meaningful acknowledgement of the consumer – the homeowner who, from the time of a HBC scheme claim, is also a victim. It fails to mention the often very crippling human toll – physical, psychological as well as financial - on victims caused initially by their builder and exacerbated by the current HBC scheme process and the NSW Government's failure to ensure its currency for the past decade.

My Personal Situation Context

In June 2019 what started as a 1 year renovation of my 'forever' home with [REDACTED] was in fact the start of a 3 year nightmare which continues.

I eventually received the HBC scheme \$340,000 maximum payout in July 2021, over a year after my unscrupulous builder abandoned my site. I was compelled to go to NCAT even though an NCAT breach was a certainty. Only by my persistent pleas for assistance to the NSW Government and others was I able to achieve the outcome in July 2021.

Prior to engaging my builder, my due diligence included checks on the NSW Fair Trading (NSWFT) public register, ASIC searches, calling three referees and inspecting his then current job. I diligently followed all procedures I had been advised: I honoured all my obligations under my contract; I lodged a complaint with NSWFT; I engaged two building consultants and a lawyer; I reached out to NSW Government Ministers, (including the Premier, then Treasurer responsible for icare) and opposition, NSW Building Commissioner, NSW Information and Privacy Commissioner, regulators (SIRA, NSW Ombudsman); I went to NCAT ... I have had to contact police on a number of occasions due to threats and aggression towards me and theft.

My builder deliberately lied to icare to his sole advantage, set up his 7th company 5 days prior to abandoning my site, breached the NSWFT Order (including instructions to rectify the HBC policy contract sum) having made no effort to comply and finally placed his company into liquidation days before ASIC was due to deregister it and with three active claims against him at NCAT. The company had no assets (nor did his prior 5 failed companies). NSWFT ultimately cancelled his personal builder's licence and disqualified him from being a director or officeholder of any company for 12 months, a penalty he ignored. Regardless of all this, I was forced to go to NCAT (or Court).

The \$340,000 HBC scheme payout I received is **grossly insufficient** to cover the significant defects and part incomplete works. Hence none of my other costs, covered in theory under the HBC scheme (including accommodation, legal, building consultant costs), were recouped. The actions of my builder and the legislative and HBC scheme system failures, have left me in a disastrous financial position from which I do not know how I will recover, as well as having a significant physical and psychological impact [REDACTED]

I still do not have a house I can live in, 3 years on.

I have advocated for changes to the HBC scheme (some included in the SIRA Discussion Paper 2022) to better protect all consumers since December 2020.

Reform idea 1 – Cover victims of unlawfully uninsured home construction

Question 1:	Should victims of unlawfully uninsured work be able to claim on the home building compensation scheme in some circumstances?
	Yes.
Question 2:	If adopted, should cover for uninsured loss be limited to the construction or significant alteration of homes that requires planning consent or that must be declared to NSW Fair Trading?
	No comment.
Question 3:	If adopted, should homeowners be required to diligently pursue the responsible business for a remedy first, if they want to claim for uninsured loss?
	The level of pursuit required should be comparable to that required of homeowners with insured works.
Question 4:	Should unpaid premiums and claim costs for uninsured work be recovered from building businesses and developers that have not complied with their insurance obligations, including culpable directors?
	<p>Yes. Furthermore:</p> <ol style="list-style-type: none"> This proposal should apply not only to uninsured works but also insured works where the building business, developer and culpable directors have deliberately not acted in good faith to their advantage (for instance, by understating the contract sum) in their dealings with the HBC scheme. Their actions leave homeowners financially exposed or financial loss and the HBC scheme with a financial loss. Must recover a multiple of unpaid premiums from building businesses or developers and culpable directors. Must recover claim costs associated with an uninsured project from the responsible building business or developer and culpable directors. Personal director penalties and access to their personal assets must apply to deter unscrupulous culpable builders, with stronger penalties for repeat offenders.

Reform idea 2 – Allow claims earlier in the building dispute process

Question 5:	Should homeowners be able to make an insurance claim if the business that worked on their home fails to comply with a rectification order issued by NSW Fair Trading (whereas currently claims are only accepted if the business is no longer trading)?
	<p>Yes.</p> <p>Claims must be allowed earlier in the building dispute process.</p> <ol style="list-style-type: none"> Currently the first 3 of the 4 HBC scheme triggers are solely within the control of the builder (ie builder is unable to complete work or honour statutory warranties due to insolvency; death; disappearance; license suspension for not complying with a court or tribunal order to pay compensation to the homeowner). The triggers force the consumer, where there is an unscrupulous builder involved, to go to NCAT or Court, a costly drawn out process which some victims simply cannot afford on top of losses caused by their builder with more significant lost time. It is a difficult process to navigate which creates further inequities for already disadvantaged groups (including CALD, low literacy, First Nations people). NCAT is not cheap in terms of cost and time. While the NCAT filing fees alone are not significant, it requires a building consultant's report (I received an estimate of \$30k to prepare) and it is advisable to have legal representation if the loss is substantial (as applied to me). NCAT has a jurisdictional cap of \$500,000 forcing some victims to go to the even most costly and drawn out Court process. I questioned these late triggers and why a NSWFT Order breach did not trigger the HBC scheme with Minister Anderson (then responsible for NSWFT) and then NSW Building Commissioner, Mr Chandler, in December 2020.

- e. The current protracted process further significantly disadvantages the victim homeowner in a strong market as I have experienced. The building renovation market is currently extremely strong, much higher than in early 2019 when I entered into my building contract, or mid-2020 when the builder abandoned my site. This now presents additional issues including: supply of labour, supply of materials (compounded by COVID19). All of which has materially forced up costs and timeframe to complete my home with consequential cost (eg accommodation) and wellbeing implications.
- f. A much faster pathway to getting a remedy will avoid up to years of time and cost spent on litigation. Importantly, as a consequence it will help reduce the significant financial and also physical and psychological impact on the victim.

g. Furthermore, I recommend:

- The addition of a new ‘hardship’ HBC scheme trigger for an insurance claim in the event of a compelling hardship situation and overwhelming evidence against a builder.
- Greater clarity on all HBC scheme triggers.
I experienced difficulty obtaining clarity from Gallagher Bassett Services Pty Ltd regarding ASIC’s impending deregistration of my builder. It was important to know whether ASIC deregistration would trigger the icareHBCF policy (ASIC’s website noted ‘strike-off action in progress’ on 04.2021) because:
 - If it did, then I would not stop the de-registration process; however
 - If it did not, then unless I stopped the de-registration process (as recommended by ASIC) then I would be unable to take any future legal action against the company.

Gallagher Bassett advised it depended on the reason for ASIC’s deregistration. I then went back to ASIC several times. When I provided the reason – ie failure to pay ASIC filing fees for 2 years – Gallagher Bassett still would not comment on whether a trigger event would occur.

I could only obtain clarity following my approach to the Treasurer, then Hon Perrottet (responsible for icare) and the icare Board Chair, Mr John Robertson, on 12.05.2021. icare (Mr then provided written confirmation that it would. I am extremely grateful for that introduction to Mr , who was enormously helpful.

A victim should not have to go to such lengths to simply obtain clarity on triggers (without pre-empting their claim outcome).

- Urgent review/increase of the NCAT jurisdictional cap of \$500,000.
This low threshold (in light of current construction costs) forces more victims into the more costly and drawn out Court process or to understate their loss to icare (as I was advised by icare to do in order to go to NCAT and avoid Court given the certain outcome).

Question 6:

If homeowners are provided a quicker pathway to claim, should claims be limited to losses directly arising from non-completion and breaches of statutory warranty (i.e. remove cover for associated losses such as legal costs or alternative accommodation, removal and storage costs).

No.

- a. Additional costs are still likely to be incurred. I recommend continuation of inclusion, possibly with sub-limits, of:
 - Accommodation, removal and storage costs: as there can be lengthy delays from when a NSWFT complaint is lodged, NSWFT issues an Order and the builder breaches that Order; and

	<ul style="list-style-type: none"> - Legal and also building consultant costs: as the victim should be entitled to legal advice particularly early on and if the loss is substantial. Dealing with an unscrupulous builder and NSWFT is a new, foreign, difficult world for most victims. <p>b. The Discussion Paper notes that such costs are currently covered. In theory this is correct, however in practice not necessarily so. This again highlights the Government's failure to protect all consumers due to its failure to increase the \$340,000 threshold in over a decade.</p> <p>In my case, the \$340,000 payout received was grossly insufficient to cover the significant defects and part incomplete works, let alone any of my other costs like accommodation, removal, legal, building consultant costs. None of those additional costs were compensated.</p>
Question 7:	If homeowners are provided a quicker pathway to claim, should claims be limited to those lodged within the 6-year warranty period, plus an extended 6 months for losses that only became apparent at end of the warranty period (whereas currently the scheme accepts claims up to 10 years after the work is completed)?
	No comment.

Reform idea 3 – Update the minimum insurance cover

Question 8:	<p>Should the minimum amount of cover offered by the scheme be increased from \$340,000 to \$400,000 to reflect the increase in the average cost of building a new single dwelling since the cover amount was last updated in 2012?</p> <p>If you prefer a different amount, please tell us what it is and your reasons.</p>
	<p>a. The minimum amount of cover is in urgent need of an increase from the outdated \$340,000, but \$400,000 is grossly inadequate. In real terms, the proposed increase to \$400,000 is going backwards to what it was in 2012.</p> <ul style="list-style-type: none"> - The new amount should be evidence-based, based on the 'actual' increase in housing construction costs since 2012 and not an arbitrary number (\$400,000) based on flawed methodology based on 'averages'¹. <ul style="list-style-type: none"> - Construing a threshold based on 'averages', while obliging consumers to pay premiums on 'actual' costs is unconscionable and inequitable. It benefits the NSW Government and consumers who pay premiums based on less than the threshold amount. It significantly penalises all other consumers. - The \$340,000 should be increased to at least \$477,000 (as at June 2021), updated to reflect the increase in costs from June 2021 to now. Refer Annexure 1 analysis by a Sydney university finance academic. The analysis shows housing construction costs in NSW increased by 40.1% from February 2012 (date of last HBC scheme increase) to June 2021 (date analysis undertaken)², virtually double that of the general Consumer Price Index. The annual increase was approximately 3.8%. Based on this, the \$340,000 cap would have needed to be adjusted to \$477,000 to keep it in line with changes in housing construction costs as at June 2021. And it has only worsened since the original analysis in June 2021. - The revised amount therefore must be greater than \$477,000 (and indeed \$400,000)

¹ The SIRA Discussion Paper 2022 notes:

'SIRA data outlined below shows that average construction costs for new dwellings insured under the HBC scheme have increased since financial year 2012-13 to between \$263,000 and \$399,000 depending on the type of building. On this basis we have suggested the insured amount be adjusted to \$400,000.'

² Analysis source: Cordell Housing Index Price (CHIP) Cordell Building Indices May 2021' Report. Cordell Housing Indexes, part of the Corelogic Group.

as the SIRA Discussion Paper 2022 also acknowledges the significant increase in costs since my academic's analysis in June 2021:

*'Government statistics and industry data also indicate significant recent increases in the cost of building work. For example, for the year ending March 2022, the Australian Bureau of Statistics reported that in NSW there was a **13.5% increase** in house construction prices and a **9.5% increase** in other residential construction prices¹⁰, while **CoreLogic's Cordell Construction Cost Index** indicated national construction costs **increased 9% over the 12 months to March 2022**¹¹.*³

Both analyses (ie my independent university academic and SIRA Discussion Paper) reference the same source -CoreLogic's Cordell Construction Cost Index.

I question, given the ABS reports a 13.5% increase in NSW over 12 months to March 2022, how could the proposed 17.6% increase covering the past decade and beyond be justified? The 17.6% increase to \$400,000 is grossly inadequate.

- Since 01.02.2012, other costs covered by the HBC scheme, including rental accommodation (in Sydney and elsewhere) and consultants' fees (legal, building), also have significantly increased by more than the proposed 17.6% increase. In theory such costs are covered by the HBC scheme but they are not for all consumers (including those whose defects alone exceed the low \$340,000 cap).
- b. Applying one maximum payout to all (regardless of the amount, whether \$400k or \$550k or some other amount) constitutes a grossly unfair risk/reward (premiums paid/payout potentially received)trade-off and hence an inequitable and unconscionable treatment of consumers.
 - For example, Homeowner 1 with a \$1.5m renovation pays HBCF premiums based on a \$1.5m contract sum; their maximum payout is \$340,000. Homeowner 2 with a \$50,000 renovation pays substantially less premiums based on a \$50,000 contract sum; however their maximum payout could also be \$340,000.
 - With exponentially rising construction costs (and other costs covered by the HBC scheme) as seen in recent years, the gap between actual loss and the threshold widens. And so too the inequity as premiums are paid on the rising costs while payouts are capped at the threshold.
 - Sole winner is the NSW Government; sole loser is the consumer with losses greater than the threshold amount.
- c. This raises the broader issue not raised in the SIRA Discussion Paper 2022. While that paper and the HBC scheme and importantly the relevant legislation/regulations (Home Building Act 1989 S102(3)) and regulations (Home Building Regulation 2014 Clause 45)⁴refer to the \$340,000 threshold as a 'minimum', in practice the \$340,000 is applied as a 'maximum' payout. Why? This maximum application is inequitable and unconscionable.

³ SIRA Discussion Paper 2022.

⁴ i. The Home Building Act 1989 S102(3) notes '... insurance must provide for cover of **not less than** the amount prescribed by the regulations ...' <https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-1989-147#sec.102>

ii. The Home Building Regulation 2014 Clause 45 headed '**Minimum Insurance Cover**' <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2014-0811#sec.45>

In particular, note subclauses:

(1)(b) ... \$340,000 in relation to each dwelling ...

(2) An insurance contract must provide (and is taken to provide) that the **minimum** amount of cover payable is to be the amount provided for from time to time by the Act and this Regulation.

(3) Subclause (2) does **not prevent** an insurance contract from providing for a **minimum** amount of cover that **exceeds** the amount referred in that subclause.'

d. The insufficiency of the \$340,000 cap was raised by the NSW Ombudsman in *'Is your builder 'fit and proper': the weaknesses of the home building licensing scheme in NSW', A special report to Parliament under section 31 of the Ombudsman Act 1974, 16 May 2018*, yet the NSW Government failed to act. This is confirmed by the NSW Ombudsman on 18.07.2022:

'Although the Ombudsman's 2018 report to Parliament had raised some concerns about the current payment cap of \$340,000 from the Home Building Compensation Fund, this figure is set by government policy.'; and
*'The NSW Ombudsman has previously, in its 2018 public report, noted that the maximum cap would not be high enough to provide full compensation in all cases.'*⁵

The NSW Deputy Secretary Better Regulation and NSW Fair Trading Commissioner, Ms Natasha Mann, agreed 'the \$340,000 cap is simply wrong' in 2022.⁶

Had the NSW Government acted in 2018 on the NSW Ombudsman's concerns, my financial loss and that of others would be substantially less.

e. *'HBCF is a 'last-resort' scheme'*⁷ however it does not provide equitable last resort protection to all consumers. It is intended to protect the consumer from loss or damage which they cannot recover compensation from the builder or have the builder rectify. As such, it should provide an appropriate, last resort safety net to protect all consumers. It does not.

f. The HBC scheme \$340,000 cap has not increased in over a decade (01.02.2012), yet increased by 13% two years prior to that and 50% prior 10 years⁸:

Time Period	Minimum level of insurance cover	% increase
01.05.1997 – 28.02.2007	\$200,000	50%
01.03.2007 – 31.01.2012	\$300,000	13%
01.02.2012 – present 2022	\$340,000	0%
2022 proposed	\$400,000	17.6% to address past 10 years & future

g. Increasing the cap is unlikely to create a material, additional financial burden on the NSW Government purse, given *'The average cost of a claim in NSW is around \$90,000' ... 'Only a small number of defect disputes (around 0.4% of all building works) end up as HBCF claims.'*⁹ Regardless, this should not be the dominant consideration to increase the cap; the equitable protection of all consumers should.

h. I question why is it not possible for a consumer, at their discretion, to request higher insurance cover upon payment of a higher premium at entry into an icareHBCF policy?

i. I have raised these HBC scheme issues with politicians (on both sides) and regulators (SIRA and the NSW Ombudsman) for over a year. Premier Perrottet was contacted in May 2021 (as icare was under his stewardship during his 2017-2021 Treasurer position). I welcome the Government's acknowledgement now that this outdated \$340,000 cap requires an increase but that increase must be an appropriate, evidence-based one.

Question 9: The legislation allows for projects to be insured by means of two contracts of insurance (one covering the construction period and the other for the post-completion warranty period), although no insurer offers this option at this time. If insurers were to start offering this option, should each contract also be

⁵ NSW Ombudsman letter to [REDACTED] dated 18.07.2022 pages 3 and 5.

⁶ Teleconference between Ms Natasha Mann and [REDACTED] 26.04.2022, confirmed in letter dated 10.05.2022.

⁷ IPART 'Efficiency and Effectiveness of the NSW Home Building Compensation Fund' Report 14.12.2020, page 2.

⁸ SIRA Discussion Paper 2022.

⁹ IPART 'Efficiency and Effectiveness of the NSW Home Building Compensation Fund' Report 14.12.2020, page 2.

	<p>increased from \$340,000 to \$400,000 of cover (i.e. together offering a potential total of \$800,000 cover)?</p> <p>If you prefer a different amount, please tell us what it is and your reasons.</p> <p>No comment.</p>												
Question 10:	<p>How often should the threshold amount be reviewed:</p> <p>a) every 3 years?</p> <p>b) every 5 years?</p> <p>c) every 10 years?</p> <p>If you prefer a different frequency, please tell us what it is and your reasons.</p> <p>The threshold should be reviewed annually (no less frequent) for the following reasons:</p> <p>a. Under the current model (based on actual construction costs rather than forecast), there will always be a lag between the threshold increase and actual construction cost increase, to the detriment of the consumer. Hence it is critical to minimise that lag and the potential significant consumer detriment.</p> <p>b. Construction cost increases in 2022 is a prime example of significant price hikes in one year. Refer Question 8 above, including: <i>‘For example, for the year ending March 2022, the Australian Bureau of Statistics reported that in NSW there was a 13.5% increase in house construction prices and a 9.5% increase in other residential construction prices¹⁰, while CoreLogic’s Cordell Construction Cost Index indicated national construction costs increased 9% over the 12 months to March 2022¹¹.</i></p> <p>c. It is inequitable and unconscionable to review the threshold other than on an annual basis.</p> <ul style="list-style-type: none"> - Longer than annual represents a greater inequitable risk/reward (premiums paid/payout received) trade-off for the consumer. - With exponentially rising construction costs (and other costs covered by HBC scheme) as seen in recent years, the gap between actual loss and the threshold widens. And so too the inequity as premiums are paid on the rising costs while payouts are capped at the threshold. - Sole winner is the NSW Government; sole loser is the consumer with losses greater than the threshold amount. <p>d. The inadequacy of a ‘less than 1 year cap reviews’ is further highlighted by the number and annual % increase rate of payouts at the maximum \$340,000 threshold since the 2012 increase and 2015 review.</p> <p>The following Table includes data I obtained under Section 8 of GIPA Act on 16.03.2022 and also from the SIRA Discussion Paper 2022. It highlights that while \$340,000 was an appropriate threshold when introduced in 2012, it ceased to be so as <i>‘there has been an increasing number of claims that have reached or exceeded the current minimum cover of \$340,000¹¹’</i>:</p> <p>There are real people behind each of these numbers. I am one person behind the ‘2021, 47, 10.90%’ statistics. My life – and no doubt many others – are severely adversely impacted by the failure to appropriately increase this threshold since 2012.</p> <table border="1" data-bbox="581 1682 1422 1839"> <thead> <tr> <th>Year</th> <th>GIPA data provided to ██████████ 16.03.2022</th> <th>SIRA Discussion Paper 2022</th> </tr> </thead> <tbody> <tr> <td>2013</td> <td>-</td> <td>-</td> </tr> <tr> <td>2014</td> <td>1 0.61%</td> <td>-</td> </tr> <tr> <td>2015</td> <td>8 2.90%</td> <td>-</td> </tr> </tbody> </table>	Year	GIPA data provided to ██████████ 16.03.2022	SIRA Discussion Paper 2022	2013	-	-	2014	1 0.61%	-	2015	8 2.90%	-
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¹⁰ SIRA Discussion Paper 2022.

¹¹ SIRA Discussion Paper 2022.

	2016	12	5.61%	7%
	2017	20	6.19%	13%
	2018	25	10.56%	11%
	2019	29	11.59%	12%
	2020	50	12.13%	18%
	2021	47	10.90%	
	2022 (part)	5	8.00%	

e. It could be perceived that the NSW Government’s failure to review the HBC scheme cap on an annual basis (and indeed since 2012) would exacerbate an inequitable risk/return mandatory monopoly model and could be a deliberate strategy to minimise HBC scheme payouts to the detriment of some victim consumers.

Retrospective application of the updated threshold amount: As a result of the NSW Government’s failure to ensure the currency of the \$340,000 threshold amount (refer my responses to **Question 8** and **Question 10** above), it is fair and reasonable that the NSW Government authorises:

- **Retrospective HBC scheme additional payment / compensation to reflect, at a minimum, the updated \$340,000 threshold amount. Such payment / compensation should be given to homeowners** whose legitimate claims exceeded the outdated \$340,000 threshold from at least **2018** when the NSW Ombudsman raised concerns about the \$340,000 cap.

This is no more than what each homeowner would have received had the HBC scheme threshold amount been appropriately regularly revised since 2012.

It does not compensate for the trauma suffered by many victims exacerbated by the Government’s failure to ensure currency of this threshold amount, but it will go some way to help us move forward. It is the morally right thing to do.

Reform idea 4 – Increase cover for non-completion claims

Question 11:	Should the cover for non-completion claims be increased from 20% of the value of the insured work, given most non-completion claims exceed that amount? Which of the following options do you prefer?
	<ul style="list-style-type: none"> a. Keep the current 20% amount of cover, or b. Increase non-completion cover to 25% of the value of the insured work (paid for by an estimated increase in insurance premiums of 2.4%), or c. Increase non-completion cover to 30% of the value of the insured work (paid for by an estimated increase in insurance premiums of 4.9%). <ul style="list-style-type: none"> a. The consumer should decide. b. The consumer should have the flexibility to select sub-limits (and also some exclusions), with a corresponding premium adjustment. c. The consumer should be provided easy to understand, timely and readily available information (including the premium cost at each potential level of cover) so they may make an informed decision. d. Therefore, the consumer should be offered various levels of cover, including but not limited to 20%, 25% or 30%.

Reform idea 5 - Publish exemptions granted by SIRA

Question 12:	Should SIRA publish a register of projects that SIRA has exempted from insurance, so that a person with an interest in the property may check whether work was lawfully done without insurance under an exemption granted by SIRA?
	Yes. Provides greater transparency and consumer protection.

Reform idea 6 – Update the threshold for requiring insurance

Question 13:	Should the \$20,000 threshold above which work must be insured be increased to \$26,000 in line with increases in the average cost of building since the threshold was last updated in 2012? If not, what should the threshold be?
	The threshold above which work must be insured could be increased to a higher amount (say \$26,000). Furthermore, consumers should be given the option (not the obligation) to insure works less than the threshold amount, say from \$10k.
Question 14:	How often should the threshold amount be reviewed: a) every 3 years? b) every 5 years? c) every 10 years? If you prefer a different frequency, please tell us what it is and your reasons.
	Threshold should be reviewed at the same frequency and concurrently with the \$340,000 threshold review as the analysis is related ie refer my Question 10 response.

Reform idea 7 – Opt-outs or premium caps for high value projects

Question 15:	Should homeowners and building businesses be able to agree to opt-out of insurance for work of over \$2 million to a single dwelling?
	No. All consumers should be treated in an equitable manner. Either opt-out should be available to all or none. If all, then appropriate, easy-to-understand information must be readily available to all.
Question 16:	Alternatively, should insurance remain mandatory for high value work on single dwellings, but with premium prices be capped for work over \$2 million?
	Yes, premium prices should be capped. a. There must be an equitable risk / reward trade-off for all consumers (not just high net worth consumers with works over \$2 million). Currently there is not. b. There should be a correlation between potential maximum pay-out and premiums paid for all consumers. Currently there is not. c. The threshold at which it is capped should be based on an appropriate risk/reward analysis to ensure equitable treatment for all consumers. That threshold is not necessarily \$2 million. d. The SIRA Discussion Paper 2022 refers to <i>'Where claims do occur for work on single dwellings of \$2 million or more, most approach or hit the cap of \$340,000, which suggests the homeowners are more likely to suffer uninsured losses exceeding that amount.'</i> However, I suffered significant uninsured losses for works of less than \$1 million. e. Refer my Question 8 response.

Reform idea 14 – Legislatively amend SIRA's functions to regulate icare HBCF

Question 28:	Should SIRA have the power to make icare HBCF amend and resubmit its eligibility or claims handling models and to adopt specific changes, if SIRA finds the models do not comply with legislation or guidelines?
	Yes. Furthermore: a. Any consumer adversely impacted by the icare HBCF models which SIRA subsequently deem non-compliant, should be appropriately financially compensated. b. I strongly support the implementation of IPART's recommendation that <i>'an independent regulator (SIRA or IPART) determine icare's premiums'</i> . I note the NSW Government rejects this recommendation however, as the Government has a conflict of interest, the IPART recommendation should be upheld. c. I strongly support the urgent implementation of all recommendations in the IPART <i>'Efficiency and Effectiveness of the NSW Home Building Compensation Fund'</i> Report 14.12.2020, including but not limited to #13. Implementation of all recommendations, particularly

those noted below, would have significantly mitigated my financial loss.

#	IPART Recommendation
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| 2 | That Fair Trading develop a program of proactive investigations and audits of building work in the low rise residential sector, similar to the approach being taken by the Building Commissioner in relation to apartment buildings. |
| 3 | Fair Trading and NCAT should collect information and publicly report on the number and type of complaints (including construction type, issue type, value of rectification and other costs), and the time taken to resolve them. |
| 4 | That the NSW Government amend section 8 of the Home Building Act to cap the deposits for residential works over \$20,000 at 5%. |
| 5 | That the NSW Government amend section 8A (2)(a) of the Home Building Act so that the value of progress payments paid upon the completion of specified stage of work (as a proportion of the total value of the contract) must reflect the costs of completing that stage of work (as a proportion of total costs). |
| 6 | Service standards should be introduced for Fair Trading for the time taken to resolve disputes, for example, 80% of disputes resolved within 28 days, average length of time to resolve disputes is 28 days or less. The service standards for NCAT hearing and resolving a dispute should include shorter time frames, for example, 80% of matters are finalised within 6 months (instead of 18 months, as it currently the case). |
| 13 | The NSW Government amends the Home Building Act 1989 to require SIRA to determine icare's builder eligibility assessment and claims handling processes. |

Question 29:	Should the law require that SIRA must publish a statement about its assessment and decision each time icare HBCF's lodges a new eligibility or claims handling model?
	Yes.

Reform idea 15 - Refocus of the regulatory regime to a single, State-insurer model

Question 30:	Do you think it is commercially viable for multiple insurers and providers to operate in the NSW home building scheme?
	<p>a. I shall leave it to experts in the field to determine commercial viability.</p> <p>b. From a consumer perspective however, I recommend appropriate NSW Government initiatives to encourage competition.</p> <ul style="list-style-type: none"> - Opening to competitors has the potential to better protect consumers in terms of coverage and premiums. - The sole fact that the HBC scheme \$340,000 threshold has not increased in over a decade (since 2012) in spite of significantly increasing construction costs and premiums demonstrates that fundamental problems exist with the current structure to the detriment of consumers. - The current monopoly structure is seriously flawed. It fails to protect all consumers at all times.
Question 31:	If relaxing the regulation of private insurers' pricing and eligibility practices fails to achieve new market entrants, should the NSW Government reinstate icare's monopoly and focus on running a sole insurer model as efficiently as possible?
	<p>Regardless of whether icare is a monopoly, the NSW Government should always focus on running icare as efficiently as possible, including but not limited to, with:</p> <ul style="list-style-type: none"> a. Greater public transparency. b. Strengthened governance structures. c. Greater focus and accountability on its purpose - customer protection. d. Consumer representation on its Board to enable the consumer voice is heard and not again forgotten. e. Establishment of a consumer advisory panel.

Concluding Remarks

After 3 years I remain homeless, let down by my unscrupulous builder and the NSW Government's failure to protect me via its outdated HBC scheme. I respectfully request urgent changes to the HBC scheme, as noted herein.

My builder is exactly the type of builder who plagues the industry, gives the industry a bad name and leaves many financially, physically and psychologically damaged. It must stop. The consequences are costly, not just for victims (homeowners and families, suppliers, sub-contractors, employees ...) but also the NSW Government and all taxpayers. The industry and its regulation need to be fixed. NSW Government leadership and action is urgently required to fix it.

While the toll on my health and those of other victims cannot be easily restored, retrospective application of the next increased threshold amount (following SIRA's review findings) to all homeowners whose legitimate claims exceeded the outdated \$340,000 from at least 2018 would at least help us. This is no more than what victims would have received had the NSW Government ensured the HBC scheme \$340,000 threshold currency since 2012. In my case, it would enable me to complete my house and return home after more than 3 years, provide safety and a start to moving forward with my life.

I welcome for my experience to continue to be used as a platform to drive positive change for greater consumer protection. I look forward to hearing from you.

Sincerely



Annexure 1: HBCF 2012-set \$340k cap adjusted to 2021 value

The HBCF maximum cap of \$340k was set on 01.02.2012. The aim of this analysis is to determine the appropriateness of this \$340k cap in 2021.

1. Conclusion

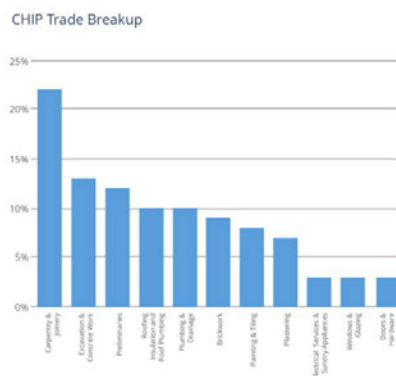
Table 1 below, based on the analysis herein, shows that **housing construction costs in NSW have increased by 40.1% over the period from February 2012 to 30.06.2021, virtually double that of the general Consumer Price Index.** The annual increase is approximately 3.8% pa.

Based on this, the \$340,000 cap for the icareHBCF policy set in February 2012, would need to be adjusted to \$476,510 to keep it in line with changes in housing construction costs.

2. Analysis Source

This analysis estimates the changes in the housing costs in New South Wales from December 2011 to March 2021 using data provided by Cordell Housing Indexes, part of the Corelogic Group. Corelogic is one of the leading providers of data on the Australian housing and construction industry.

The most recent report from the 'Cordell Housing Index Price (CHIP) Cordell Building Indices May 2021' Report is referenced. It includes a quarterly index of housing construction costs going back to March 2011. The data for this analysis is extracted from page 19 of the report. The index compares changes in the costs of construction within the residential market and covers freestanding and semi-detached single and two story dwelling homes in NSW, from March 2011 to March 2021. The chart below shows the broad composition of housing costs in the Cordell Housing Index Price (CHIP) by type of cost.



Source: Cordell Housing Index Price (CHIP) Cordell Building Indices Report May 2021, page 4.

3. Analysis

As the HBCF \$340k was set on 01.02.2012, a comparison from February 2012 to June 2021 would be ideal. However, this exact match is not possible, so this analysis uses the March 2012 Quarter as the starting point, which covers February 2012. The March Quarter 2021 is the most recent available. The index values are shown in Table 1 below.

Table 1: Changes in construction costs from March 2012 to 2021			
[Source: Cordell Housing Construction Cost Index, May 2021]			
	CHIP Index Value - NSW	CPI Index Value - NSW	Comments
March Quarter 2012	217.7	178.7	
December Quarter 2020		211.4	Latest available
March Quarter 2021	305.1		Most recent available
Percentage Change	40.1%	18.3%	Most recent value/March Quarter 2012 Value
Annual % Change	3.82%	1.94%	