

16th August 2022

Attention:
Richard Potts
Manager
HBCF Regulatory Policy
Level 14-15, 231 Elizabeth St Sydney NSW 2000

RE: Home Building Compensation Reform Discussion Paper dated 9th August 2021

Dear Mr Potts,

We have considered the options proposed in the home building compensation reform discussion paper and our response is as follows:

Theme 1 Better supporting homeowners

Reform idea 1 – Cover victims of unlawfully uninsured home construction

1. No victims of unlawfully uninsured work should NOT be able to claim on the home building compensation scheme.

As indicated in the discussion paper, the vast majority of homeowners already obtain legitimate warranty insurance coverage through the scheme with only 21 instances in 2 years where homeowners were denied a claim because of an uninsured loss. This coverage would result in additional costs to an already expensive scheme. The costs are not just limited to potential claims where no premium was earned but also the compliance and administration burden on the insurer to identify if homeowners were complicit in uninsured work.

Its assumed most of the 21 cases were the result of fraud committed by the builder (providing fake certificates of issuance) since there is already ample warnings in industry standard contracts, government websites etc to give homeowners guidance on obtaining warranty coverage. As indicated by SIRA, compliance improvements can be implemented to better protect homeowners.

For example. Assetinsure includes a QR code on all new certificates of insurance ('COI') issued under the Victorian home warranty scheme. This instantly allows homeowners to confirm if the COI is valid with key fields matching what is included in the COI. Additionally, the homeowner can input the reference number on our website and search for the COI.

2. If this is reform is adopted, cover should be limited to the construction or significant alteration of homes that requires planning consent.
3. If adopted, homeowners should be required to first pursue the business for remedy.
4. Yes, all responsible parties should be pursued for full recovery. Builders that have knowingly issued fraudulent COIs should lose their building license and be banned for 5 years from acting as a director.



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

5. Although there is some merit in allowing homeowners to claim earlier under the scheme, we don't support this change since it draws the insurer into contract disputes that it is neither qualified nor fairly compensated to administer. It would likely result in unfair punishment of builders and additional losses for the insurer.

Instead, we would recommend empowering NSW Fair Trading to take stronger action against builders that fail to comply with rectification orders including instructing the homeowner to lodge a claim with the insurer if the rectification timeframe is not met and in extreme cases instructing the insurer to withhold eligibility (if required). This in conjunction with increased information sharing between NSW Fair trading and the relevant insurer would place pressure on the builders to rectify / complete works as required.

There is a net benefit to the both the insurer and homeowner given:

- i. Solvent builders can rectify defects and remove downstream claims losses
 - ii. Would enable the insurer to identify negative trends in disputes between homeowners and builders and remove eligibility earlier (if required) preventing additional claims and negative homeowner experiences.
 - iii. Builders that are identified as 'higher risk' can be performance managed by the insurer until they show an improvement in building practices. Thereby improving the industry as a whole.
 - iv. It achieves the same result in that it encourages builders to deal with disputes earlier and / or improve the quality of work.
 - v. If the builder is found to be an unsuitable operator. Claims will be brought forward sooner through the removal of eligibility.
6. Yes, if homeowners are provided a quicker pathway to claim, cover should be removed for other associated costs.
 7. The 'delayed claim' period should be removed with claims limited to those lodged within the 6 year warranty period plus an additional 60 days allowance for lodgement after the end of the warranty period. If a defect is discovered on the last day of warranty cover, it doesn't take 6 months to have a tradie inspect and lodge a claim form.

Reform idea 3 – Update the minimum insurance cover

8. Assetinsure supports the increase in claim cover from \$340,000 to \$400,000 based on SIRA's recommendation with premium adjusted to factor in the increased cost of claims.
9. Actuary analysis of claims data should be completed to identify the proportional cost to the scheme for non-completion + defect claims in the construction period versus pure defect claims in the post construction phase. The \$400,000 would be appropriate for construction period cover but a reduced coverage amount for the warranty defect period would be more than likely appropriate (example \$200,000) but this should be modelled.
10. Every 5 years.



Reform idea 4 – Increase cover for non-completion claims

11. We support the recommendation that non-completion cover be increased to 30% of the value of the insured work (paid for by an estimated increase in insurance premiums of 4.9%).

Reform idea 5 – Publish exemptions granted by SIRA

12. Yes, a list should be made public.

Theme 2 - Housing affordability and regulatory burdens

Reform idea 6 – Update the threshold for requiring insurance

13. As it stands, NSW already has the highest threshold (compared with other states) for insurance requirements and therefore we do not support increasing the threshold at this time. However, we do not see this change as a major concern either way.
14. We would support reviewing in 3 years to evaluate the impact of the recent cost inflation impacting the industry.

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

15. We do not support homeowners having the option to opt-out of insurance for work equal to or exceeding \$2m for a single dwelling build. This will create unnecessary complexity to the scheme for very little benefit to homeowners that have the financial means to pay current premiums.

As indicated insurers would be unwilling to provide cover for partially completed works if the value changes to less than \$2m. Additionally, insurers could be unwilling to provide cover for (sub \$2m) future works such as alterations since the insurer could be exposed to uninsured work claims.

16. We support insurance remaining mandatory but capping premium prices for work over \$2m.

Reform idea 8 – Broader insurance exemptions for high rise buildings

17. Assetinsure supports exemptions for multi-dwelling buildings over 3 storeys to be expanded to not require insurance for renovations and alterations.

Reform idea 9 – Insurance exemptions for some housing services

18. Yes this is supported.
19. Yes this is supported
20. This could be mitigated by a legislated requirement that if the buildings are sold within the 6 years of completion that warranty insurance is obtained.

Reform idea 10 – Insurance exemptions for local government

21. Yes but be required to obtain warranty insurance if the buildings are sold within 6 years of completion of the build.



Reform idea 11 – Premium refunds or exemptions for ‘build-to-rent’ schemes

22. The charge and refund approach recommended is not supported. SIRA already has the capability to approve exemptions from insurance requirements and should extend this system to suitable ‘build to rent’ projects rather than expect the insurer to provide administrative support with no tangible benefit.
23. Yes they should be exempt from the scheme.

Reform idea 12 – Repeal provisions that regulate former scheme insurers

24. Support the repeal of legislation.

Theme 3 – Providers and how they are regulated

Reform idea 13 - Reform or repeal provision for ‘alternative indemnity products’

25. No fidelity funds should not be allowed in the scheme.
26. N/A
27. Yes AIPs should be removed from the scheme unless backed by an APRA regulated insurer.

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

28. We do not support SIRA having the power to make icare HBCF amend and resubmit its eligibility or claims handling models and to adopt specific changes.

It’s appreciated that icare HBCF currently does not face competitive pressures however this change would not support private insurers entering the market if they were also subject to such direction. Insurers must be able to determine their own benchmarks for builder eligibility and relevant premiums within each insurers respective risk framework. The administrative burden of such approach would also lead to higher costs.

The current collaborative approach between SIRA and icare HBCF is supported.

29. Unless the government intends to only provide this level of disclosure for icare HBCF this is not supported since disclosure of practices and approaches would weaken a private insurer’s competitive position.

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

30. We support the removal of regulation of eligibility and pricing for any new insurer entering the scheme. This would encourage insurers including Assetinsure to enter the market. We think the market is commercially viable since we have successfully operated in Victoria since 2016.
31. No, the door should remain open for private insurers to enter the market similar to Victoria.



Note - Owner Builder Insurance

Outside of the reforms proposed, Assetinsure with our partner Australian Owner Builders Insurance Services Pty Ltd ('AOBIS') provides owner builder insurance to most states of Australia. It is our strong recommendation that owner builder insurance be mandated for the sale of owner builder properties within 6 years of completion. The current practice of including in the contract of sale for the property a 'consumer warning' is not equivalent to \$340,000 or \$400,000 in warranty defect coverage and thus the government has created a class of homeowners that aren't afforded adequate protections.

If you have any questions, please feel free to reach out to me directly.

Yours sincerely



Head of Builders Warranty & Domestic Building Insurance