Issue	Reform	Submission
Theme 1 - Better supporting homeowners 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, if there are stringent checks and balances. Such cover is potentially quite easily rorted. There is a strong argument that cover should only be available in the case of fraud.
	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?	Yes.
	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?	Yes.
	Question 4: Should unpaid premiums and claim costs for uninsured work be recovered from building businesses and developers that	Yes.

	have not complied with their insurance obligations, including culpable directors?	
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)?	No. Rectification orders are: • issued inconsistently; • issued at the inspector's discretion; • not issued in the last 6 months before the expiry of limitation period under Part 2C of the HBA; • not usually issued if there is any suggestion of a contract dispute; • often issued without investigation by an expert of appropriate discipline (e.g. engineer). To allow recourse to HBCF after a failure to comply with a rectification order would bestow an inconsistent benefit across owners. It would also prejudice builders who are subject to a rectification order in circumstances where there has not been investigation of defects by an appropriate expert.
	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, these are significant and relevant losses, directly related to non-completion and breaches of statutory warranty. We suggest that additional cover is provided for these losses, that is, that they are not within the cap.

	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)?	There are good reasons for the scheme to accept claims up to 10 years after completion of the work, given the limited triggers for cover.
	Question 8: 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? If you prefer a different amount, please tell us what it is and your reasons.	Yes, but to at least $500,000. Other models for higher amounts for more costly dwellings need to be looked at, or capping premium as an alternative for more costly dwellings. The cost of rectification is often higher than the cost of the defective work so the initial cost of construction is a clumsy way to determine the amount.
	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 increased from $340,000 to $400,000 of cover (i.e. together offering a potential total of $800,000 cover)?	It is not clear that such an arrangement would provide up to $800,000 in cover, save for in the most unusual of circumstances.

	If you prefer a different amount, please tell us what it is and your reasons.	
	Question 10: 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.	3 years. It is always open to the review to result in no change. However economic conditions can mean that a longer period is too long.
	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? Keep the current 20% amount of cover, or 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 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%).	Yes. The extra cost of completion (over the remaining contract liability) if a replacement contractor is engaged frequently exceeds 20% of the value of the insured work. Builders who take over a build in these types of circumstances usually charge a premium, for the counter party and other risks involved. Underquoting and over-claiming by the original builder can also be a factor in these claims.

	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?	If there an exemptions, there should be a record of the exemptions. Also, it should be discussed what information will be provided regarding the exemptions. Some suggestions include that the register include similar information to the HBCF check, including the type of work which was subject of the exemption.
Theme 2 – Housing affordability and regulatory burdens 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 needs to be drawn somewhere. The amount of $20,000 has always seemed rather arbitrary. It is also a significant amount for many consumers, who are unprotected at this level. However, price rises in materials and labour will be pushing many smaller jobs above the threshold. Given that a policy decision has been made to preserve the lower contract value end of the market for contractors without imposing a requirement for HBCF eligibility, it must be recognised that this market is being eroded by price rises. Contractors relying on this market fall foul of s.10 and s.92 of the Act if they are tempted to exceed the threshold.
	Question 14: How often should the threshold amount be reviewed: every 3 years?	3 years, if not more frequently.

	b) every 5 years? c) every 10 years? If you prefer a different frequency, please tell us what it is and your reasons.	
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?	Currently premiums are driven by the contract value, in circumstances where maximum cover remains the same, regardless of the contract price. Owners of more costly homes obtain little benefit. Opting out would have some attraction, alternatively an option to continue with the same capped cover model up to a certain portion of the contract price, thereby eliminating the excessive premium.
	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?	See above. The contract price threshold for a premium cap may be suggested at too high a level for the current maximum claim.
Reform idea 8 – Broader insurance exemptions for high rise buildings	Question 17: Should the insurance exemption for the construction of multi-dwelling buildings over 3 storeys be expanded so that insurance is not required for renovations or alterations to such buildings?	In the current climate of insolvency events, there seems to be a case for removing the high rise exemption rather than extending it. In terms of extending specifically to exempt renovations and alterations, this introduces completion risk to owners corporations, as distinct from developers in a new construction context. This risk may be considered

		acceptable for developers to manage, but it is a significant burden for owners corporations.
Reform idea 9 – Insurance exemptions for some housing services	Question 18: Should building work be exempt from insurance if there will be no beneficiary, because the homes will be used to provide social or affordable housing or specialist disability accommodation?	A risk is always present that the property will be sold to an owner occupier or landlord and used as a residence within the warranty period. It may be a better solution for the payment of the premium to be deferred until the property changes hands or use. This is something which could be noted on the title.
	Question 19: Should this insurance exemption be limited to building work done on behalf of charities that provide housing services, so that there is no profit motive to sell the homes without insurance?	See above.
	Question 20: Should this insurance exemption only apply to work where the conditions of planning consent or restrictions on the use of land require that the homes must be used for housing services?	See above.
Reform idea 10 – Insurance exemptions for local government	Question 21: Should councils be exempt from insurance to develop housing on council-owned land?	See above.

Reform idea 11 – Premium refunds or exemptions for 'build-to-rent' schemes	Question 22: Given there is no beneficiary to claim insurance, should Build-to-Rent scheme developers be able to cancel the policy and claim a refund for the insurance premium?	See above.
	Question 23: Should the renovation or alteration of a Build-to-Rent building be exempt from insurance, given the homes are intended to be used for long term lease over 15 years and there will be no person able to claim on insurance during that time?	See above.
Reform idea 12 – Repeal provisions that regulate former scheme insurers	Question 24: The former private home warranty insurance scheme stopped insuring work in 2010 and is no longer receiving claims. Is there any reason to not repeal legislation for that former insurance scheme?	The legislation is of marginal relevance now, so keeping it has little advantage. There is perhaps some interesting data regarding late emergence of defects, but that is a minor point.
Theme 3 – Providers and how they are regulated Reform idea 13 - Reform or repeal provision for 'alternative indemnity products'	Question 25: Should fidelity funds be allowed to operate in the scheme that are not legally obliged to compensate homeowners, and instead have the discretion whether and how much to pay?	A fidelity fund with no obligation to pay claims is not a good consumer solution, in a context where consumers would not play a role in the choice of product.
	Question 26: If you answered 'yes', how can the risks to homeowners and buildings businesses from such a discretionary fund be managed?	We answered no, but for completeness we provide the suggestion of creating a code of conduct regarding how claims are assessed and approved, and imposing regular audits.

	Question 27: Should the NSW Government instead remove provision for 'alternative indemnity products' such as fidelity funds from the scheme, given that IPART has found it is unlikely that any such product could be offered that would have the same consumer protections as insurance?	In our experience, contractors who are interested in AIPs are those who would not or cannot satisfy the underwriting criteria for iCare. Perhaps another solution is to engage with that part of the industry by creating pathways to eligibility. This might involve conditions or contract caps for a period.
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.
	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, there should be transparency.
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?	No, it is likely to fail as did the previous iteration of that model. The market is not big enough for insurers to each effectively pool risk at a sensible premium level. Competition will create a temptation to increase market share by a race to the bottom on premium. This creates the risk of further collapse.

	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?	Yes. For all practical purposes, this is the current model. Any, effectively, fictional alternatives in the legislation should sensibly be removed.