



# HOME BUILDING COMPENSATION REFORM

August 2022



**Master  
Builders  
Association**  
New South Wales



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Builders  
Association**  
New South Wales

Monday, 22 August 2022

Home Building Compensation Reform  
Department of Customer Service  
GPO Box 5341  
SYDNEY NSW 2001

By email: [HBCreform@sira.nsw.gov.au](mailto:HBCreform@sira.nsw.gov.au)

Dear Sir/Madam,

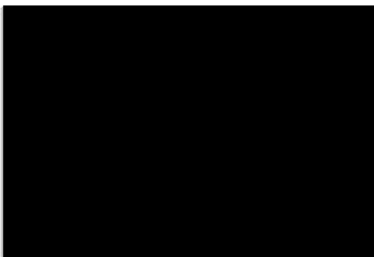
**RE: HOME BUILDING COMPENSATION REFORM – DISCUSSION PAPER RESPONSE**

Thank you for the opportunity to make a submission to the above referenced discussion paper. The Master Builders Association of NSW (MBA) has surveyed its membership and industry stakeholders and the responses reflect an industry position.

For your reference we have identified and answered the questions in the order presented in the Discussion Paper.

We would be pleased to speak further to this submission if required. I can be contacted directly on [REDACTED] or mobile [REDACTED]

Yours Sincerely,



**EXECUTIVE DIRECTOR**

**Attachments.**

## 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?**

Industry response to this question indicates (majority) that homeowner of unlawfully insured work should **not** be able to claim.

This position is particularly the case where it can be established that the homeowner has deliberately set out not to pay for insurance.

Other responses however, indicate that in certain circumstances where insurance has not been taken out due to no fault of the homeowner then some cover could be extended.

In these instances, options as identified in the discussion paper may be appropriate.

Further an education program advising homeowners of the importance of checking not only license status of the builder, but also the existence of relevant insurance should be a priority.

This is a complex issue as the builders who are complying by obtaining the relevant insurance are those that are completing the eligibility process and paying premiums that would ultimately service claims lodged by the uninsured. Compliant builders who are lawfully obtaining certificates of insurance may see this approach as unfair. The Home Building Compensation (HBC) scheme was formed to protect consumers and an element of that protection is ensuring licensed builders are obtaining and maintaining an eligibility facility.

### 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.

The Master Builders Association of NSW (MBA) agrees that there should be limitations based on the classification of works that would be covered to ensure the continued viability of the HBC scheme.

It is important that owner-builders be excluded from claiming for uninsured works as they should remain responsible for insuring works that they undertake. Similarly, homeowners who are complicit in non-insured works taking place or related entities of the building business should also be prohibited from claiming on the HBCF as this would protect compliant builders from unnecessary premium increases.

If the builder subject to a loss notification or claim holds HBCF eligibility, a Special Eligibility Review should be called so that the Insurer can assess if the builder can retain their current eligibility (as is the case currently). This serves to reduce further risk to other homeowners.

**Question 3:**

**If adopted, should homeowners be required to diligently pursue the responsible businesses and developers for a remedy first, if they want to claim for uninured loss?**

MBA is of the opinion that to protect the financial viability of the HBCF, the homeowner should be required to pursue the responsible business in an attempt to rectify any disputes first. MBA submits that the HBCF should continue to be a 'last resort' safety net for homeowners, including the uninsured.

**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?**

Yes.

MBA agrees that the building businesses and developers that do not wish to comply with the requirements of the scheme and consequently have caused losses to the fund, should be held accountable for not complying with their obligations. Whilst non-compliant builders are in the minority, the majority of builders are paying higher premiums and abiding by stricter eligibility requirements as a result of the increased risk that those builders bring to the industry. Builders have long expressed frustration that they are being punished for the actions of the few through stricter eligibility requirements and higher insurance premiums. The possibility of being subject to recovery action would serve as a deterrent and the fund actively pursuing recovery actions would serve as an example.

However, with insolvency being the most likely trigger for a policy to respond, the ability for SIRA to successfully pursue building businesses, developers, or culpable directors for claims costs is severely limited with the current resources and structure.

## 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)?**

Yes, subject to considerations expressed in the discussion document.

Where an option exists for claiming earlier in the dispute resolution process, it should include an expectation that the homeowner has taken reasonable steps to resolve the dispute. For example, a homeowner could be required to provide evidence confirming that the repairs were not rectified to standard, or provide sufficient evidence that the builder is not willing to conduct the rectification works.

If adopted, the eligibility criteria for an insured to be able to claim earlier would have to be very clear and in accordance with strict guidelines on when a claim can be made.

However, before any new process is established, MBA believes that a review should be conducted of the current dispute resolution process through NSW Fair Trading. The current dispute resolution process is considered amongst some participants as one-sided.

### 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).**

Yes.

In the event that homeowners are provided with a quicker pathway to claim, MBA believes that only costs directly arising from non-completion and breaches of statutory warranty should be claimable. An argument could be made that there would be less accrued associated costs (such as legal fees or temporary accommodation costs) with earlier intervention, however the costs to the fund of managing the volume of claims lodged at the earlier stage may increase and be passed on to businesses.

### 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)?**

Yes.

MBA submits that the 6-year warranty period plus the extended 6 months where applicable is a manageable period of cover for home warranty policies in NSW. Between Years 6 and 10, there is the probability that maintenance related issues may arise and it would be the responsibility of the fund to investigate and verify where the resultant works were defective or not. Such building issues only become more complex over time and would certainly lead to increased demand on the fund.

### Reform idea 3 – Update the minimum insurance 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 difference amount, please tell us what it is and your reasons.**

Yes.

Given the rising costs of construction materials and labour, it would be reasonable to increase the minimum cover as indicated. The MBA understands that this reform is expected to have a minimal effect in terms of financial impact to the fund.

#### 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)?**

**If you prefer a different amount, please tell us what it is and your reasons.**

No.

It does not seem appropriate to allow claims up to double the amount of the contract. MBA submits, it would be simpler to have one maximum claimable limit.

#### Question 10:

**How often should the threshold 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

## 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?

- 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%).

Without additional information around the claims and what is driving the increase in costs, MBA cannot make an informed decision. We do note however that increasing the cover for non-completion claims will have direct cost implications payable for insurance premiums.

## 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.

MBA believes it would be beneficial for parties with an interest to have this information available.

This information could be accessed on SIRA's existing public register ([www.hbccheck.nsw.gov.au](http://www.hbccheck.nsw.gov.au)).

## Reform idea 6 – Update 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?**

Interestingly, industry feedback on this issue was slightly in favor of **NOT** increasing the threshold from \$20,000. The reason given is that it is believed that much work undertaken in the sector (up to the \$20,000 threshold) is being undertaken by unlicensed contractors. Raising the threshold would allow more unlicensed activity on this sector.

On the other hand, the views identified in the Discussion Paper “Costs and Risks – Quantification or Mitigation” also had support.

On balance MBA believes there is no compelling need to increase the \$20,000 threshold.

### 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 difference frequency, please tell us what it is and your reasons.**

Dependent on the outcome of Q13, every 5 years.



## 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?**

### Question 16:

**Alternatively, should insurance remain mandatory for high value work on single dwellings, but with premium prices to be capped for work over \$2 million?**

Industry feedback on this issue was in favor of providing an “opt out of insurance”. There are however a number of concerns which need to be noted.

The benefits of the opt-out identified in the discussion paper are somewhat limited. While it is acknowledged that there would be cost savings for homeowners undertaking high-value single dwelling work, this would impact only a small proportion of projects. Further, builders that specialise in high-value projects would likely still require an eligibility facility to allow them to undertake alterations & additions work that is below the \$2 million single dwelling threshold, negating this potential benefit.

Additionally, a homeowner can already engage a diverse range of contractors, including those that primarily work in the commercial or high-rise construction space (providing the contractor has an active eligibility facility). Introducing an opt-out for high value projects may create an uneven playing field which sees contractors which meet the requirements of the scheme directly competing against contractors that are not required to meet the same standards, potentially placing them at a disadvantage.

Builders subject to the scheme must meet strict financial requirements. Disadvantages could occur where contractors are competing against others who aren't required to meet the same financial standards.

A homeowner's decision to opt-out of insurance could negatively impact future owners which purchase an uninsured property, which the discussion paper acknowledges.

MBA encourages the investigation into providing mandatory cover up the certain limits.

## 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 for such buildings?**

Yes.

It is noted however this exemption would likely in the first instance, result in higher premiums payable for insurance as the premium pool would be reduced.

## 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?**

Yes. It is noted however that this exemption could result in higher premiums payable for insurance as the premium pool would be reduced.

### 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?**

Yes. Although a charity could derive a benefit not available to others from selling the homes without insurance, as a not-for-profit entity the usual profit motive is absent.

Confining the contracting party to a charity that provides housing services should largely achieve the desired outcome of the exemption while keeping the administrative burden on the parties to a minimum.

### Question 20:

**Should this insurance exemption only apply to work where the conditions of planning consent or restrictions on the use of the land require that the homes must be used for housing services?**

No.

If the proposed exemption comes into effect, determining the circumstances of the work is likely to be the area where much of the uncertainty or risk of abuse exists.

## Reform idea 10 – Insurance exemptions for local government

### Question 21:

**Should councils be exempt from insurance to develop housing on council-owned land?**

Similar to reform idea 9, any exemption from insurance for local councils should be confined to those developments used to provide social or affordable housing or specialist disability accommodation.

It is noted that this exemption could result in higher premiums payable for insurance as the premium pool would be reduced.

## 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?**

The Government has strict guidelines that set out which projects qualify under the Build-to-Rent scheme. As that there is no beneficiary able to claim on the insurance, it is reasonable for these projects to be exempt or eligible for a refund.

MBA notes that this approach would require amendment to the current cancellation criteria as presently a certificate of insurance can only be cancelled in limited circumstances.

### 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?**

As submitted above, given the Government has strict guidelines that set out which projects qualify under the Build-to-Rent scheme and that there is no beneficiary able to claim on the insurance it is reasonable for these types of projects to be exempt from the requirement to obtain insurance.

MBA notes that this reform may result in a reduced premium pool in the HBC Fund.

## 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?**

No.

MBA is not aware of any reason that would prevent the repeal of legislation governing the former insurance scheme.

SIRA could consider incentivising insurers to finalise any outstanding matters.

## 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?**

Reforming legislation around alternative indemnity providers would be unlikely to result in improved outcomes for consumers in NSW. MBA holds a view that the introduction of fidelity funds into NSW would be problematic and not suitable.

Fidelity funds are beneficial in smaller marketplaces where the funds are not required to comply with APRA capital requirements. The long-term viability of a fidelity fund in a large market such as NSW is uncertain and would be unlikely to provide consumers with the level of protection they would expect.

### Question 26:

**If you answered ‘yes’, how can the risks to homeowners and buildings businesses from such a discretionary fund be managed?**

Not applicable.

### 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?**

Yes.

MBA believes the NSW Government should remove the provision for ‘alternative indemnity products’ from the scheme.

## 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 to adopt specific changes, if SIRA finds the models do not comply with legislation or guidelines?**

Yes.

MBA supports this proposal.

### Question 29:

**Should the law require that SIRA must publish a statement about its assessment and decision each time icare HBCF lodges a new eligibility or claims handling model?**

Yes.

MBA supports measures that improve transparency of regulatory decisions affecting the operation of the scheme.

## Reform idea 15 – Refocus 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?**

Within the current framework, MBA does not believe it is commercially viable for multiple insurers and providers to operate in the NSW home building scheme.

### 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.

In the absence of competition from new entrants, *icare’s* focus should be on running a sole provider insurer model as efficiently and transparently as possible.