



Reform of the Home Building Compensation Fund

Discussion Paper - December 2015



Fair
Trading

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Minister's message

The Home Building Compensation Fund (HBCF), formerly known as the Home Warranty Insurance Scheme, is established under the *Home Building Act 1989* and is compulsory for all residential building work in NSW for contracts over \$20,000.

Insurance under the HBCF provides a safety net for consumers when a builder does not, or cannot, honour their commitments due to insolvency, death, disappearance, or licence suspension.

Home warranty insurance was first introduced in NSW in 1972 as a government-run scheme and later in 1997, it became a privately-run scheme. However, in 2010, following the global financial crisis and the withdrawal of private insurers from the home warranty insurance market, the NSW Government again assumed responsibility for the scheme. The NSW Self Insurance Corporation (SICorp) currently manages the HBCF.

This Discussion Paper provides an overview of the HBCF and identifies some of the issues affecting the scheme. It considers a range of options to make the current system more efficient, while ensuring consumers continue to enjoy the security offered by the HBCF.

We have already engaged stakeholders in the residential construction industry in developing solutions, and we are now seeking input from the broader community. I encourage you to take part in this consultation process to have your say about the future of the HBCF. You can comment on all of the topics or just those of particular interest to you. We are keen to hear your views and your feedback will assist us in dealing with the challenges ahead.

We look forward to your comments.



Victor Dominello MP

Minister for Innovation and Better Regulation



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Introduction

Purpose of this Discussion Paper

The purpose of this paper is to guide discussion on options for reforming the Home Building Compensation Fund.

The NSW Government is seeking feedback on the issues raised and options presented in this paper.

Have your say

We invite you to read this paper and provide comments. You may wish to comment on only one or two matters of particular interest or all of the issues raised in this Discussion Paper.

To assist you in making a submission, an optional online survey is available on our website at www.fairtrading.nsw.gov.au

However, the survey is not compulsory and submissions can be made in writing:

- email to:
HBCFreform@finance.nsw.gov.au
or
- post to:
HBCF Reform
Fair Trading Policy & Legislation
PO Box 972
PARRAMATTA NSW 2124

Please take careful note of the deadline for submissions:

Submissions close at 5pm on Friday 12 February 2016.

Important note: All submissions will be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission together with reasons. Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the Government Information (Public Access) Act 2009).

Next steps: All submissions received will be acknowledged. Once the consultation period has closed, feedback will be analysed and all potential options assessed. More information about the progress of the review will be made available on NSW Fair Trading's website at www.fairtrading.nsw.gov.au

Executive Summary

The Home Building Compensation Fund (HBCF) is NSW's statutory insurance scheme for residential building work. The HBCF is established under the *Home Building Act 1989* (NSW). The HBCF has undergone significant changes since it commenced operating as a privately-run scheme in 1997. In July 2010, the NSW Government assumed responsibility for the HBCF following the withdrawal of private insurers from the home building insurance market. The NSW Government is currently the sole provider of HBCF insurance.

By law, builders must obtain insurance under the HBCF for residential building work over \$20,000 in NSW (there are exemptions for multi-unit constructions above three storeys high and some other special cases). The HBCF provides a safety net for consumers if their builder cannot complete building work or fix defective building work due to insolvency, death, disappearance or licence suspension for failure to comply with a court or tribunal money order.

Reform of the HBCF is necessary as it is not financially sustainable in its current form. The HBCF lost approximately \$62 million in 2013 and \$33 million in 2014.

The Discussion Paper outlines 18 potential reform options aimed at ensuring the HBCF achieves financial sustainability so that it can continue to fulfil its consumer protection role into the future.

These potential reform options cover operational and administrative changes to the HBCF, as well as changes to the builder licensing system that are linked to the HBCF. A summary of these options can be found on the following page.

The Discussion Paper also suggests five broad reform models that combine the various potential reform options in different ways:

Model 1: Retain the current scheme, reduce administration costs and raise premiums

Model 2: Reduce scheme coverage

Model 3: Combine reduced scheme coverage and raised premiums

Model 4: Move to a voluntary insurance scheme

Model 5: Combine a voluntary and mandatory scheme

The Discussion Paper gives the community an opportunity to provide the NSW Government with their feedback on these potential reform options and models, to help shape the future of the HBCF.

Summary of reform options

Reform Option (page no.)	Overview
Premium Pricing (p.19)	Current premiums do not cover projected claim costs and expenses. Premium prices could be increased to address this.
Reduce the coverage period for major defects (p.20)	Shorten from 6 to 4 years of cover. Would reduce the premium shortfall, but remove cover for problems that present after 4 years.
Replace combined cover with separate cover for non-completion and defects (p.22)	Split current \$340,000 combined cover into \$200,000 for defects and \$200,000 for non-completion. Potentially reduces total claims cost by 7-11%. Some claims under future policies may receive lower payouts.
Adopt a voluntary model of insurance (p.23)	Would reduce regulatory burden and upfront costs of building work. Relies on private insurers re-entering the market to offer insurance, and assumes consumers will choose to purchase insurance.
Split cover into mandatory for non-completion and voluntary for defective work (p.25)	Retain compulsory insurance for non-completion and make cover for defective work voluntary. Currently, 61% of finalised licensed builder claims relate to defects. Relies on the private sector offering suitable insurance products, and assumes consumers will choose to purchase voluntary insurance.
Increase the cost threshold for requiring insurance (p.27)	The current threshold of \$20,000 could be increased to focus HBCF insurance on work of higher value.
Limit the requirement for insurance to certain types of building work (p.27)	Insurance could be focused on only some types of work, eg. new residential construction or significant structural renovations. May reduce regulatory burdens and upfront costs of excluded work, but also narrow the premium pool and remove insurance cover for some work.
Remove cover for low-rise multi-units (p.28)	Replace insurance for low rise multi-unit developments with the new strata building defects inspection regime that will be implemented as part of the NSW Government's strata law reforms.
Adopt a fee-for-service model for distribution (p.29)	Abolish broker commissions, which would provide an immediate cost saving. Builders pay brokers only for the specific services provided/requested by the builder.
Have Government 'direct-sell' the product (p.30)	Would allow builders or consumers to purchase insurance directly from the Government, without a broker, reducing costs. Could be used in conjunction with fee-for-service model (above).
Test the market for outsourced management services (p.31)	Assess whether savings can be made by separating the eligibility assessment function from the claims management function.

Reform Option (page no.)	Overview
Create licence classes to reflect the scale and risk of relevant work (p. 32)	Change the structure of the licensing system by introducing classes or tiers of licences which specify the type of construction that can be undertaken based on the associated complexity and risk.
Requirements for company contractor licences (p.33)	Licence eligibility for privately held companies could be changed to allow better tracing and exclusion of individuals with a history of involvement in insolvent entities.
Transfer insurance eligibility into the licensing process (p.35)	The builder licensing system could be modified to include financial assessments similar to current insurance eligibility assessments.
Narrow the scope of activities licensed and regulated under the <i>Home Building Act 1989</i> (p.37)	Review of existing licence categories to abolish, revise or consolidate those where the potential for consumer detriment is low or where other legislation provides adequate protection.
Refocus continuing professional development to address risk areas (p.37)	Require some licensed builders, as a condition of their licence, to undertake learning in particular areas of concern, such as key defect risks or building supervision practices.
Enhanced supervision requirements for licensees (p.38)	Suggested options include limiting the number of projects a supervisor can work on at any given time or requiring supervisors to be on site at all times tradespeople are on site.
Random or risk-targeted inspections of licensees (p.39)	NSW Fair Trading and SICorp are investigating a pilot project for onsite inspections aimed at identifying defects during the construction phase.

A. The Home Building Compensation Fund

Introduction

The *Home Building Act 1989* (the Act) requires that builders obtain insurance under the Home Building Compensation Fund (HBCF) before any residential building work over \$20,000 is done in New South Wales. The HBCF provides protection for consumers in the case of non-completion or defective building work where they cannot recover compensation from the builder or have the builder rectify the defects because the builder has died, disappeared, become insolvent or had their licence suspended for failing to comply with a court or tribunal money order.

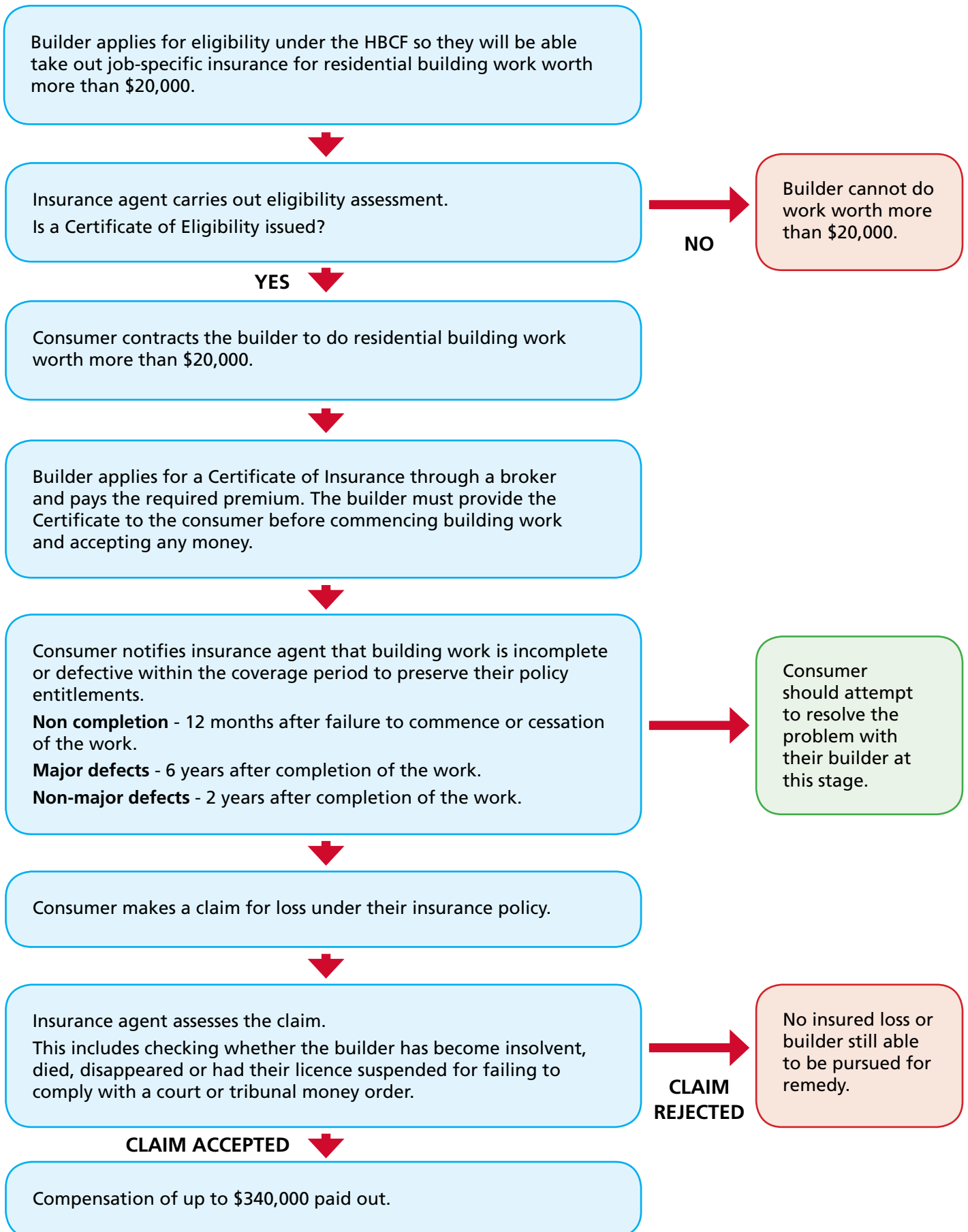
Home building insurance has undergone significant changes since it was first introduced in NSW as a government-run scheme in 1972. It was privatised in 1997 (previously known as the Home Warranty Insurance Scheme) but following adverse economic conditions which severely impacted the building industry, private insurers gradually began withdrawing from the market. Given that home building insurance is mandatory, and an important consumer safeguard, to ensure its continuation the NSW Government stepped in and assumed responsibility for the scheme on 1 July 2010. The NSW Self Insurance Corporation (SICorp) who took over the scheme is now part of Insurance and Care NSW (icare).

The HBCF is part of a comprehensive consumer protection regime for homeowners undertaking residential building projects in NSW. Other consumer protection measures include licensing, education and awareness, certification and dispute resolution mechanisms. The HBCF is intended to provide a last-resort safety net for consumers given the significant cost of home building, the importance of the home to individuals and families and the asymmetry in experience between consumers and builders. It is therefore important to ensure the long-term viability of the HBCF.

This Discussion Paper provides an overview of the requirements of the HBCF, its current status and the issues it faces. A range of reform options is suggested to provide an opportunity to offer feedback on how to provide an effective and sustainable insurance scheme into the future.

B. Insurance under the HBCF

Example of the Home Building Compensation Fund (HBCF) process



Current requirements for insurance under the HBCF

The Act requires that builders obtain insurance under the HBCF for residential building work where the contract price for the work exceeds \$20,000¹. If the contract price is not known, insurance is required when the reasonable market cost of the labour and material exceeds \$20,000. This threshold has been increased twice since the commencement of the HBCF on 1 May 1997 (see *Figure 1.0*).

Time period	Threshold
1 May 1997 to 1 April 2002	\$5,000
2 April 2002 to 31 January 2012	\$12,000
1 February 2012 to present	\$20,000

Figure 1.0: Thresholds for work requiring insurance under the HBCF - 1 May 1997 to present

Certain work is exempt from the insurance requirements,² including the construction of multi-storey residential buildings that have a rise of more than three storeys and contain two or more separate dwellings.³

Obtaining insurance under the HBCF

Builders are required to apply for eligibility before they can become insured under the HBCF.⁴ Eligibility means that the builder has been assessed by an approved insurance agent and has been permitted to apply for job-specific Certificates of Insurance. From 4 August 2015, annual eligibility limits which restricted how much work builders were able to undertake each year were replaced with 'open job limits', which now allow builders to apply for additional insurance on new projects as others are completed.

A Certificate of Insurance under the HBCF needs to be provided for each project by:

- a builder or tradesperson, before taking any money from a home owner and before starting any work under a contact;
- a 'spec' builder, before starting any residential building work on a property owned by the builder;⁵ or
- a developer, before entering into a contract for the sale of a property on which a builder is doing, or has done, residential building work for the developer.

1. *Home Building Act 1989* (NSW) s 92(3); *Home Building Regulation 2014* (NSW) reg 53.

2. *Home Building Act 1989* (NSW) s 97; *Home Building Regulation 2014* (NSW) pt 6 div 6.

3. *Home Building Regulation 2014* (NSW) reg 56.

4. A Certificate of Insurance is insurance cover issued specifically for the project.

5. A 'spec' builder is a licensed individual, company or partnership who carries out residential building work on land that they own. The building work is speculative, meaning the property is generally intended to be sold at completion.

Owner-Builders

From 15 January 2015, owner-builders are no longer required, or able, to obtain insurance under the HBCF. An owner-builder must upon sale of the land provide a consumer warning stating that an owner-builder permit was issued for that land, and therefore the building work done is not required to be insured under the HBCF.⁶

Minimum insurance cover required

Insurance under the HBCF must provide a minimum cover of \$340,000.⁷ This minimum amount also operates as the fixed amount of cover provided in practice, as no insurer has ever offered more than the minimum required amount. The cover may be subject to limitations, such as if the consumer pays more than the legal limit for deposits or has paid more than what is outlined in the contract for a progress payment. *Figure 1.1* shows the change in the minimum insurance cover required under the HBCF since its commencement.

Time period	Minimum level of insurance cover
1 May 1997 to 28 February 2007	\$200,000
1 March 2007 to 31 January 2012	\$300,000
1 February 2012 to present	\$340,000

Figure 1.1: Minimum level of insurance cover under the HBCF - 1 May 1997 to present

Period of cover

Insurance under the HBCF must provide cover for loss arising from non-completion of work for at least 12 months after the failure to commence, or cessation, of the work.⁸

Insurance under the HBCF must also provide cover for other loss for at least:⁹

- 6 years after completion of the work for loss arising from a major defect;¹⁰ and
- 2 years after completion of the work for any other loss not arising from a major defect.

⁶ *Home Building Act 1989* (NSW) s 95.

⁷ *Home Building Act 1989* (NSW) s 102(3); *Home Building Regulation 2014* (NSW) reg 45(1).

⁸ *Home Building Act 1989* (NSW) s 103B(1).

⁹ *Ibid* s 103B(2).

¹⁰ *Ibid* s 18E(4). Note that the terminology 'major defects' commenced on 15 January 2015 and was one of a number of changes to the Act introduced through the *Home Building Amendment Act 2014* (NSW).

Circumstances when an insurance claim can be made

Since 2002, the HBCF has been a last-resort scheme which means a claim can only be made when compensation cannot be recovered from the builder, or the builder cannot rectify the work, because the builder:¹¹

- has died;
- has disappeared;
- has become insolvent; or
- has had their licence suspended for failing to comply with a money order of a court or the NSW Civil and Administrative Tribunal in respect of a building claim.¹²

In all other circumstances, the consumer must pursue the claim with the builder directly. However, the consumer can notify the insurer upon becoming aware of the incomplete or defective work in order to preserve their policy entitlements while pursuing the builder.

^{11.} Home Building Regulation 2014 (NSW) reg 40.

^{12.} The licence suspension trigger applies to policies issued on or after 19 May 2009.

C. The case for reform of the HBCF

The HBCF is in need of reform

Home building insurance in Australia has proven to be a challenging product that is sensitive to changing economic conditions and difficult to price.¹³ In its current form, the HBCF is not financially sustainable. The pricing structure of HBCF premiums has remained unchanged since 2010 and does not cover the claims costs and other fund expenses to the end of the defects liability period for all policies.

Difficulty of pricing premiums

The number of claims on the HBCF varies each year, depending on economic conditions in the home building market and in general. There are a number of reasons why it is difficult to accurately forecast claims and price premiums to match the risk:

- significant delay between the date a Certificate of Insurance is issued and the commencement of the project;
- the duration of building projects may range from a few weeks to several years;
- HBCF coverage remains in place for 6 years after completion of the building work; and
- it may take time for defects to emerge, homeowners to identify a loss and lodge a claim, and for that claim to be assessed.

Claims on the HBCF

Since 1 July 2002, more than 4,800 claims relating to licensed builders¹⁴ have been accepted by insurers as at 30 June 2014.¹⁵ The average payout to a claimant for finalised claims was \$64,800, and \$5,100 to third parties.¹⁶ This average payout is close to 50 times the average premium paid per certificate in the June 2014 quarter.¹⁷

Builder insolvency accounted for more than 94 per cent of accepted claims.¹⁸ According to the Supplement to Quarterly Reports: Observations on Scheme Progress to 30 June 2014:

“ Over 80% of builder insolvencies generate three or fewer insurance claims. At the other extreme, a small number of insolvencies have generated more than 100 claims each. Insolvencies generate claims of all types: failure to commence, failure to complete and defects claims. ”¹⁹

¹³ Figure 1.2 provides a comparison of home building insurance schemes across Australia, and Appendix 1 provides a brief history of home building insurance in NSW.

¹⁴ Not including owner builder claims.

¹⁵ Finity, *Supplement to Quarterly Reports: Observations on Scheme Progress to 30 June 2014* (18 December 2014) p.2. Note that figures are from 1 July 2002 to 30 June 2014 in relation to builders.

¹⁶ Ibid. Third Parties includes payments to investigators, loss adjusters, legal expenses etc. but not insurers' claims handling expenses (overheads).

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

As at 30 June 2014, insurers have declined approximately 20% (1,188) of claims on the basis either no defect has been found (55%), the builder was found to be solvent (25%), the claim was made outside the warranty period (11%) or a missing builder was located (8%).²⁰

Scheme losses

The HBCF's total comprehensive income for 2014 was approximately a \$33 million loss and for 2013 was approximately a \$62 million loss.²¹ This means that the HBCF's costs (claims and running costs) substantially exceed its income which is primarily drawn from premiums.

²⁰ Ibid.

²¹ The Treasury, New South Wales Government, *New South Wales Home Warranty Insurance Fund: Financial Statements for the year ended 30 June 2014*, p.4.

Figure 1.2: Home Building Insurance – jurisdictional comparison

	New South Wales	Queensland	Victoria	Western Australia	South Australia	Northern Territory	Australian Capital Territory	Tasmania
Legislation	<i>Home Building Act 1989</i>	<i>Queensland Building and Construction Commission Act 1991</i>	<i>Building Act 1993</i>	<i>Home Building Contracts Act 1991</i>	<i>Building Work Contractors Act 1995</i>	<i>Building Act (as in force at 1 January 2015)</i>	<i>Building Act 2004</i>	<i>Housing Indemnity Act 1992</i>
Insurance scheme	Home Building Compensation Fund	Queensland Home Warranty Scheme	Domestic Building Insurance	Home Indemnity Insurance	Building Indemnity Insurance	Residential Building Cover	Housing Indemnity Insurance or fidelity certificate	–
Type of scheme	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Voluntary
Insurance provider	Government with private insurers as agents	Government	Government with private insurer as agent	Private insurers with Government providing reinsurance	Private insurers with Government providing reinsurance	Fidelity Fund run by Master Builders Association (NT): underwritten by the Government for the first 5 years of its establishment	Private insurers. Fidelity Fund run by Master Builders Association (ACT)	No insurers in the market
First resort or last resort	Last resort	First resort	Last resort	Last resort	Last resort	Last resort	Last resort	–
Minimum threshold	\$20,000	\$3,300	\$16,000	\$20,000	\$12,000 + requires council approval	\$12,000	\$12,000	–
Insurance cover amount	\$340,000 or 20% of the contract price up to \$340,000 for non-completion	\$600,000 maximum: \$200,000 for non-completion, vandalism and forcible removal, defects and/or subsidence or settlement occurring before completion \$200,000 for fire, storm or tempest occurring before completion \$200,000 for defects and/or subsidence or settlement occurring after completion.	\$300,000 or 20% of the contract price up to \$300,000 for non-completion	\$100,000 or the value of the contract work, whichever is the lesser. Maximum of \$20,000 for loss of deposit.	\$80,000	\$200,000 for defective guaranteed work less any amount paid for non-completion of guaranteed work. 20% of the contract price up to maximum \$200,000 for non-completion.	\$85,000	–

	New South Wales	Queensland	Victoria	Western Australia	South Australia	Northern Territory	Australian Capital Territory	Tasmania
Period of cover	<p>Major defect: 6 years after completion.</p> <p>Non-major defect: 2 years after completion.</p> <p>Additional 6 months cover where the loss becomes apparent in the final 6 months of the period of insurance.</p> <p>Non-completion: 12 months after failure to commence or cessation of the work. No extended claim period applies.</p>	<p>Category 1 defect: 6 years and 6 months from the contract or payment of premium or commencement.</p> <p>Category 2 defect: 6 months after practical completion.</p> <p>Non-completion: payment for loss if the contract is properly terminated by the insured within 2 years from the contract or payment of premium.</p>	<p>Structural defect: 6 years from completion or termination of the contract.</p> <p>Non-structural defect: 2 years from completion or termination of the contract.</p>	6 years from practical completion	5 years from completion	<p>Non-structural defect: 1 year after the last day of construction period.</p> <p>Structural defect: 6 years after the last day of construction period.</p> <p>Non-completion: 90 days after a prescribed event such as the day the builder completely ceases to carry out the work.</p>	5 years from certificate of occupancy	–
Maximum excess payable	\$250	–	<p>Excess for a claim for defective work ranges up to \$1000 depending on the period when a claim is made after completion.</p> <p>No excess for loss or damage arising between commencement date and 3 months after completion; or from non-completion.</p>	\$500	\$400	\$500	\$500	–

D. Options for reform

There are many ways the HBCF could be reformed. This section sets out various options which could be adopted either alone, or as a combination.

The conclusion (section E) sets out five reform models to achieve financial sustainability for the HBCF using different combinations of the individual reform options set out below.

1. Premium pricing

HBCF premiums are calculated through a risk assessment of factors including the location of the project, the contract price and the risk presented by the type of work. Premium rates are calculated over an average seven-year building cycle, to facilitate more stable premiums over the long term. A minimum premium rate of \$160 applies to all projects. The current premium rates are:

Type of work	Premium rate (as a percentage of contract price)
Single dwelling and structural work	0.60% in metropolitan areas 0.48% in country locations
Non-structural work	0.42% in metropolitan areas 0.336% in country locations
Swimming pool projects and multiple dwelling projects	0.90% in metropolitan areas 0.72% in country locations
Structural alterations and additions and non-structural repairs and renovations undertaken on a multiple dwelling property (including high-rise residential buildings)	50% loading applies to the structural and non-structural work premium rates

It is difficult to provide an effective comparison of insurance premiums between jurisdictions which accurately takes into account the differences between the schemes.

The average HBCF premium per project certificate issued for a builder is \$1,447.²²

²² NSW Fair Trading, *NSW Home Building Compensation Fund - Information on the Scheme as at 31 March 2015*, p.13.

Figure 1.3 shows the average premium (including charges) per project certificate issued by type of cover.

	New single dwelling construction	New multi dwelling (three storeys or less) ²³	Alterations/ additions ²⁴	Swimming pools	Renovations (including kitchens and bathrooms) ²⁵	Other	Average per certificate issued
March 2015	\$2,145	\$2,400	\$1,092	\$426	\$322	\$400	\$1,447

Figure 1.3 Average premium per project certificate – Builder: based on Table D2.1: NSW Home Building Compensation Fund Information on the Scheme as at 31 March 2015, p.13.

To ensure the long-term sustainability of the HBCF, premiums must cover expected future claims costs and expenses. At present, claim costs and expenses substantially exceed premium income.²⁶

A premium increase will ultimately be passed on to the consumer. It is important that HBCF premium prices are both reasonable and sufficient to ensure the long-term viability of the scheme and the protection it provides to consumers.

2. Reduce the coverage period for major defects

Currently, HBCF insurance must provide cover for loss arising from a major defect in residential building work for at least 6 years after work is completed, and in the case of any other loss, at least 2 years after work is completed.

A major defect is defined as a defect in a major element of a building that prevents all or part of the building from being lived in or used for its intended purpose, or which causes the destruction or threatens the collapse of the building or part of it.²⁷

Victoria has similar mandatory insurance periods which require non-structural defects to be covered for at least 2 years and structural defects to be covered for at least six years.²⁸ Some other jurisdictions have a blanket period of cover, of either 5 or 6 years from a specific event (eg. completion of the building work).

One option to reform the HBCF is to reduce the period of coverage for major defects from 6 years to 4 years, which could have a significant impact on reducing the premium shortfall. However, this option would reduce the consumer protection afforded by the HBCF considerably.

²³ A project certificate is issued for each unit in a multi-unit development.

²⁴ Alterations and additions – structural (i.e. the majority of the work is structural).

²⁵ Renovations – non-structural (i.e. the majority of the contract is non-structural), including eg. kitchen/bathroom renovations and trade work.

²⁶ Please see page [16] of this discussion paper under the heading: HBCF – Scheme losses.

²⁷ *Home Building Act 1989* (NSW) s 18E(4).

²⁸ Victoria, *Victorian Government Gazette - Special*, No S 98, 23 May 2003, cl 12.

The time when defect claims are made depends on a range of factors, including:

- when the defect emerges or is identified
- whether the defect meets the threshold in the legislation and
- if and when the builder dies, disappears, becomes insolvent or has their licence suspended.

Non-major defective works are more likely to be apparent shortly after construction is completed. A trigger event for a consumer to be able to make a claim under the HBCF (that is, builder insolvency, death, disappearance or licence suspension) is more likely to occur over time. Claims are also more likely to be made closer to the expiry of the relevant claims period.

The majority of claims are reported within 7 years of the date that certificates are written. About 15% of multi-unit defect claims and about 7% of other dwelling type defect claims are reported more than 7 years after the certificates are written.

Consultation questions

1. Do you think that the period of insurance cover for major defect claims is appropriate?
2. What do you anticipate would be the impact of reducing the insurance cover period on:
 - a) the consumer
 - b) the builder
 - c) the building industry?

3. Replace combined cover with separate cover for non-completion and defects

The Act requires minimum insurance cover of \$340,000 for loss arising from both non-completion²⁹ and defective work. For low rise multi-units, if the proportion of the contract price per unit is over \$20,000, then cover of \$340,000 per unit must be obtained. If the proportion of the contract price per unit is under \$20,000 then total insurance cover of \$340,000 must be obtained.³⁰

All other jurisdictions with a mandatory last-resort home building insurance scheme have one combined insurance cover amount. Of the last-resort insurance schemes, NSW has the highest minimum insurance amount. From 1 July 2014, Victoria increased its insurance amount from \$200,000 to \$300,000.³¹ Queensland's mandatory first-resort scheme is the only scheme that has a split cover approach, with a maximum benefit of up to \$600,000.³² See *Figure 1.2* for jurisdictional comparison of insurance cover amounts.

NSW's \$340,000 insurance cover could be replaced with \$200,000 for loss arising from non-completion and \$200,000 cover for loss arising from defective work. A costing of the impact of this option indicates this would likely reduce total claims cost by between 7% and 11%.

The minimum insurance amount needs to be sufficient to provide consumers with adequate compensation for loss or damage resulting from non-completion or defective work.

As can be seen in *Figure 1.4*, out of the finalised accepted claims³³ in relation to builders, the average claim sizes for failure to commence, failure to complete, major defect and other defects are below a \$200,000 insurance cover threshold.

Claim code	Number of claims	Total gross paid \$	Average claim size \$
Failure to commence	219	4,655,291	21,257
Failure to complete	1,475	118,894,503	80,606
Major defect	2,137	161,997,672	75,806
Other defect	510	31,384,704	61,539
Total	4,341	316,932,170	73,009

Figure 1.4: Claims Experience by Claim Code (incl GST) for Finalised Accepted Claims Builders: based on Table E5: NSW Home Building Compensation Fund Information on the Scheme as at 31 March 2015, 16.

²⁹ Note that cover for non-completion may be limited to an amount that is not less than 20% of the contract price (including any agreed variation to the contract price) for the work: Home Building Regulation 2014 (NSW) reg 42(1)(i).

³⁰ Home Building Regulation 2014 (NSW) reg 46.

³¹ Victorian Building Authority, *Domestic building insurance* (1 June 2015) <<http://www.vba.vic.gov.au/consumers/domestic-building-insurance>>.

³² See Queensland Building and Construction Commission, *Insurance Policy Conditions: Edition 8, Effective 1 July 2009* for further information <<https://www.qbcc.qld.gov.au/sites/default/files/Insurance%20Policy%20Edition%208.pdf>>.

³³ Finalised accepted claims are those with all costs known. Note: claims data relates only to project certificates issued from 1 July 2002 and to claims that have been notified to date on those certificates.

Adopting a split coverage model will impact on the benefits consumers receive under the HBCF. For those who claim solely in relation to defective work or solely in relation to non-completion, their potential total compensation would be reduced from \$340,000 to \$200,000. It is estimated that 8 to 10% of claims exceed \$200,000 by varying amounts. However, for consumers who claim in relation to both non-completion and defective work, their potential total compensation would be increased to \$400,000. This could provide significant benefits where the full \$200,000 cover is used in an initial non-completion claim as there would be an additional \$200,000 available to compensate for defective work.

Consultation questions

3. Should insurance cover under the HBCF be split into separate cover for loss arising from non-completion and loss arising from defective work?
4. Is coverage of \$200,000 for loss arising from non-completion and \$200,000 cover for loss arising from defective work appropriate?

4. Adopt a voluntary model of insurance

Home building insurance has been mandatory in NSW since it was first introduced in 1972. Every other Australian jurisdiction, with the exception of Tasmania, currently has a mandatory home building insurance scheme.

Another model to consider is voluntary insurance. Under this model, it could be optional for either the builder or the homeowner to take out insurance.

A voluntary scheme would reduce the regulatory burden of commencing residential building work. If the builder and homeowner both chose not to purchase insurance, the upfront costs of building would also be reduced.

In 2008, the Tasmanian Government removed the requirement for mandatory home building insurance as it considered the scheme did not offer consumers value for money.³⁴ The scheme had been changed from a first resort to a last-resort scheme and consumers were often unaware of the limitations until they made a claim.³⁵

In response to Tasmania's move to a voluntary home building insurance scheme, insurers previously offering home building insurance exited the market.³⁶ There are now no insurers providing home building insurance in Tasmania, which means that consumers are unable to purchase this insurance.³⁷

In Western Australia, a voluntary home building insurance scheme was replaced with a mandatory home building insurance scheme in 1997.³⁸

^{34.} Tasmania, *Parliamentary Debates*, House of Assembly, 27 May 2008, 37-97 (David Llewellyn).

^{35.} *Ibid.*

^{36.} Economic Regulation Authority Western Australia, *Final Report - Inquiry into Western Australia's Home Indemnity Insurance Arrangements* (2013), p.86.

^{37.} *Ibid.*, p.64.

^{38.} *Ibid.* 9, p.30.

Under the voluntary insurance arrangements in Western Australia, less than half of all new dwellings and substantial renovations were covered by home building insurance.³⁹ The Western Australian Government considered a significant number of consumers could potentially be at risk, and that introduction of compulsory home building insurance would increase protection for consumers.⁴⁰

Voluntary insurance does operate in some overseas jurisdictions. In the United Kingdom some mortgage lenders require insurance as a condition of providing a loan to build a new home. The dominant provider of this insurance is NHBC, which is a non-profit company, independent of government. NHBC has offered its 'Buildmark' insurance product in the United Kingdom since the 1980s. It claims to hold a market share of 80%. NHBC is governed by a Council that includes industry representatives with an interest in building standards. They include mortgage lenders, law societies, consumer groups, architects, surveyors and house builders. Buildmark is part of a wider builder and developer registration scheme operated by the NHBC, which includes technical and commercial assessments of builders (i.e. a voluntary licensing system, independent of government). Builders must be registered with NHBC to be eligible to purchase Buildmark insurance, and may be required to provide a form of security to NHBC (eg. personal indemnity) in order to be registered.⁴¹

While a voluntary model reduces costs, it places the onus on the consumer to weigh up the risks and advantages of taking out insurance. Consumers may not have a sufficient level of awareness to be able to make an informed decision about the purchase of insurance. Consumers would need to be aware of:

- the existence of an insurance product
- their right or ability to take out insurance
- the benefits and risks of not taking out insurance⁴²
- the quality of the building work being undertaken
- the risk of non-completion or defective work and
- whether the builder will die, disappear, become insolvent or have their licence suspended.

Some of these can be difficult to predict at the outset.

Consumers may be reluctant to purchase insurance if they consider it to be unaffordable. This type of insurance is generally a 'grudge purchase', meaning that people resent having to pay for it. However, in the event that something goes wrong with residential building work, the potential consumer losses are significant. The experience in other Australian jurisdictions indicates that under a voluntary model, it is possible that take up rates for insurance would be low, which could expose consumers to financial losses.

³⁹ Western Australia, *Parliamentary Debates*, Legislative Assembly, 27 June 1996, 3474 (Cheryl Edwardes).

⁴⁰ Ibid.

⁴¹ NHBC, NHBC <<http://www.nhbc.co.uk/>>.

⁴² For example, behavioural psychology research suggests consumers under-insure because they are overly optimistic and underestimate the potential for some kinds of adverse events.

A voluntary insurance scheme also raises the issue of adverse selection, whereby those who take out insurance would likely be at-risk builders or consumers who think their builder is at risk. With fewer low-risk participants in the scheme, the pressure of claims on the pool of premiums may make a voluntary scheme expensive or unviable.

If purchasing insurance becomes voluntary, it is unclear whether private insurers will re-enter the home building insurance market to actually offer this cover. It has previously been found that insurance industry representatives believed that voluntary home building insurance is not practical because of the small market size and these adverse selection problems.⁴³ As the NSW Government is currently the sole provider of insurance in NSW, consideration would need to be given to whether SICorp would continue to provide insurance under a voluntary scheme.

Consultation question

5. Should insurance under the HBCF be voluntary?

5. Split cover into mandatory for non-completion and voluntary for defective work

Currently, insurance under the HBCF provides cover for both non-completion and defective work. Consideration could be given to requiring mandatory insurance for the risk of non-completion, and allowing insurance for defective building work to be voluntary. Non-completion and defective work claims tend to differ because:

- the period of insurance cover is different; and
- the requirements to establish a claim are different (for example, defective work needs to be classified as either a 'major defect' or a 'non-major defect' for a claim to be made).

Western Australia's Economic Regulation Authority (ERA) believed that non-completion presented a greater risk than defective work.⁴⁴ Under the ERA's recommended model for home building insurance in Western Australia:⁴⁵

- builders would be required to hold insurance to cover non-completion risks. This insurance would be provided by private sector insurers with government reinsurance.
- warranty period insurance would be voluntary, limited to covering structural defects and be provided by building industry associations.

⁴³ The Senate Standing Committee on Economics, Commonwealth of Australia, *Australia's mandatory Last-Resort Home Warranty Insurance Scheme* (2008), p.46.

⁴⁴ Economic Regulation Authority Western Australia, *Final Report - Inquiry into Western Australia's Home Indemnity Insurance Arrangements* (2013), p.9.

⁴⁵ *Ibid*, p.12, p.20.

It can be seen from the HBCF finalised accepted claims data in relation to builders (*Figure 1.5*), that there is a higher proportion of defect claims (approximately 61% of claims) than claims for failure to commence and non-completion (approximately 39% of claims), with a relatively high claim size. This indicates that consumers in NSW experience significant losses for defective work.

Claim code	Number of claims	Percentage of claims	Total gross paid \$	Average claim size \$
Failure to commence	219	5%	4,655,291	21,257
Failure to complete	1,475	34%	118,894,503	80,606
Major defect	2,137	49%	161,997,672	75,806
Other defect	510	12%	31,384,704	61,539
Total	4,341	100%	316,932,170	73,009

Figure 1.5: Claims Experience by Claim Code (incl GST) for Finalised Accepted Claims Builders: based on Table E5: NSW Home Building Compensation Fund Information on the Scheme as at 31 March 2015, 16.

Under this option, voluntary insurance for defect cover would have the same issues as discussed in the previous section, including possible low take-up rates and the possibility that private insurers would not offer the insurance which would reduce the available consumer protection.

Voluntary defect cover could also be developed as a range of 'optional extras.' These optional insurance products could offer cover for high risk work. Such insurance products could specify certain types of defects for the purpose of insurance cover, such as waterproofing and fire protection systems.

Consultation questions

6. Should insurance under the HBCF be mandatory for non-completion and voluntary for defective work?
7. Should there be mandatory insurance cover for only certain types of defects? What types of defects should require mandatory cover?
8. Do you think that a similar scheme to the Western Australian proposal should be adopted in NSW?

6. Change the value or types of building work covered by the HBCF

Insurance under the HBCF is required where the contract price for the residential building work exceeds \$20,000. While there are some exemptions from the insurance requirements (eg. built-in furniture and cabinetry), the majority of residential building work must be insured if the value of the work is over the threshold.

Increase the cost threshold for requiring insurance

The insurance requirement threshold was recently increased from \$12,000 to \$20,000 to take into account increases in building costs and to avoid capturing a number of works which are not considered 'core' residential building work.

An increase in the threshold would reduce the number of projects requiring insurance under the HBCF and allow for wider competition on a greater range of work. It would also reduce the cost of work falling under the threshold, as builders would no longer have to purchase insurance and this cost saving could be passed on to consumers.

However, further increasing the cost threshold for insurance would also exclude more lower-value residential building work from the consumer protections of the HBCF. Of course, all other consumer protection measures of the home building sector, such as licensing of builders, would remain in place.

Narrowing the range of work that would require insurance under the HBCF, would also reduce the total premium pool and could potentially reduce the viability of the scheme.

Consultation question

9. Should the cost threshold for insurance be increased? If so, what amount should the threshold be increased to?

Limit the requirement for insurance to certain types of building work

Another option to limit the scope of the HBCF is to only require insurance for new residential construction, or work involving significant structural renovations to an existing dwelling, i.e. work which carries the greatest risk of consumer loss. This would lower costs for excluded work and open up competition in this market to a greater number of builders.

There are a number of ways this approach could be implemented. Certain residential building work such as swimming pools, landscaping or fencing could be excluded from the requirement to hold insurance completely, or excluded only when carried out as a stand-alone project. Where any excluded work is part of a contract to build a home as part of a significant structural renovation, insurance requirements could still apply. This approach has been adopted in NSW for built-in furniture and cabinetry, which does not require insurance if done as a stand-alone contract.

Excluding some types of residential construction work from coverage under the HBCF would reduce the premium pool as well as the protection available to consumers. However, for lower-risk work, this approach may be preferable as it would reduce costs to consumers who are not at significant risk.

Consultation questions

10. Should the requirement to hold insurance be focused on core residential building work such as the construction of a new home or significant structural renovations of an existing home?
11. What (if any) types of work could be excluded from the requirement to hold insurance?
12. What types of work should not be excluded from the requirement to hold insurance?
13. Should any excluded works be subject to insurance requirements when done as part of a larger contract?

Remove cover for low-rise multi-units

Currently, all mandatory home building insurance schemes in Australia exempt multi-unit residential buildings that have a rise of more than three storeys. Another option for reforming the HBCF and reducing pressure on the pool of premiums could be to remove cover for low-rise multi-units (three storeys or less), other than duplexes. The current claims data indicates that this is one of the changes that would have the greatest impact in reducing the premium shortfall.

As at 31 March 2015, there were 637 finalised accepted claims relating to licensed builders for new low-rise multi-units which had an average claim size of \$107,863.⁴⁶ There were also 220 open accepted claims for new low-rise multi-units, which had an average claim size of \$457,136.⁴⁷ Open accepted claims are claims where at least part of the cost is an estimate of future payments. Open accepted claims may settle for more or less than the estimate.

Of these 857 finalised and open accepted claims for new low-rise multi-units, the average claim size was approximately \$197,525. While new low-rise multi-units represented approximately 17% of all finalised and open accepted claims, they accounted for approximately 36% of the total incurred costs.⁴⁸ This indicates the impact of low-rise multi-units on the HBCF.

While non-completion risks for multi-unit developments are primarily borne by developers rather than consumers, after completion the HBCF compensates owners for unresolved defective building work if they cannot get compensation from the builder. This option would remove the protections afforded by the HBCF for consumers who purchase these types of units.

An alternative to this is to include low-rise multi-unit buildings in the strata building defects inspection regime set out in Part 11 of the *Strata Schemes Management Act 2015*. Under this regime, developers will be required to provide Fair Trading with a building bond of 2% of the contract price of residential or mixed use building work, which also involves the registration of a strata plan. The bond will be held for 2 years after completion as a financial security that can be used to rectify any unresolved defective building work.

Consultation questions

14. Should low-rise multi-unit buildings apart from duplexes be exempted from HBCF insurance requirements?
15. Do you agree with low-rise multi-unit buildings being covered by the strata building defects inspection regime?

⁴⁶ NSW Fair Trading, *NSW Home Building Compensation Fund - Information on the Scheme as at 31 March 2015*, p.17: Table E7 - Claims Experience by Type of Cover (incl GST) for Finalised Accepted Claims - Builders.

⁴⁷ Ibid: Table E8 - Claims Experience by Type of Cover (incl GST) for Open Accepted Claims - Builders.

⁴⁸ Note that these figures exclude claims data for multi-unit buildings greater than three storeys and only relate to claims where liability has been accepted by the insurer in regards to builders.

7. Reduce administration costs

Adopt a fee-for-service model for distribution

Many insurance products are distributed through brokers, who act as an intermediary between the insurer and the beneficiary. A broker can advise on risk management strategies, lower the premium and prevent claims. Brokers sometimes charge a fee for their services, or they might receive a commission from the insurer.

HBCF insurance is distributed to builders through brokers under a commission-based model where the broker receives approximately 15% of the premium. Brokers generally charge builders an administration fee in addition to the commission and possibly a fee for assisting a builder prepare an eligibility application.

There are currently 111 approved brokers/intermediaries under the HBCF, ranging from industry associations, such as the Housing Industry Association and Master Builders Association, to general purpose brokers.

As the NSW Government is currently the sole provider of HBCF insurance, the existing distribution model may not be the most appropriate and could be contributing to higher costs. Other government-run statutory monopoly products, such as workers compensation insurance, do not pay commissions to brokers to arrange the insurance.

Instead of a commission-based model, a fee-for-service distribution model could be considered, along with online systems for builder self-service. This would provide cost savings equivalent to the current commissions paid to brokers. This could directly contribute to reducing any premium increases required to ensure the sustainability of the scheme.

Introducing a fee-for-service distribution model would mean that if a builder needed to engage a broker to obtain insurance from SICorp, the builder would be required to pay the broker a fee based on the service provided in arranging the insurance. These fees would be open to market competition, meaning it is unlikely that the cost to builders under a fee-for-service model would be as high as the current costs.

Consultation question

16. Should a fee-for-service distribution model be considered for the provision of insurance under the HBCF?

Have Government 'direct sell' the product

Another option to reduce administration costs could be to have the NSW Government directly sell insurance under the HBCF. This option could potentially be implemented in conjunction with, or instead of, the fee-for-service model option.

A direct-selling option would reduce costs by removing brokers from the process, saving on commission. This approach is how consumers purchase many other forms of insurance, for example purchasing car insurance directly from the insurance provider. A builder could still choose to go through a broker, but would also have the choice to purchase the insurance directly from the insurer.

Another option could be to allow homeowners to purchase the insurance directly. The NSW Home Warranty Insurance Inquiry (the Grellman Inquiry, 2003) noted that consumer-purchased insurance would ultimately be the preferable model.⁴⁹ Builders currently pass the cost of this insurance onto consumers through pricing so this would not represent a significant additional cost to consumers.

However, insurers may still need to conduct builder assessments and exercise eligibility limit controls against builder risks. Under this option, builders could be required to register a project to meet these eligibility controls and initiate contact by the insurer with the homeowner.

This option would have a resourcing impact from the additional costs to government of distributing the insurance. For example, additional staff would be required to process applications and respond to enquiries. However, this cost is likely to be much lower than the commissions paid to brokers under the distribution model currently in place.

Builders may still require assistance in applying for eligibility and responding to eligibility reviews. However, as such reviews are primarily an assessment of the financial position of a builder's business, such assistance would be available from other sources either internally or externally (for example, accountants).

Consultation questions

17. Should insurance under the HBCF be directly sold to builders by the Government?
18. Should homeowners also be able to purchase insurance directly from the Government? Should this be in addition to, or instead of, builders purchasing the insurance?

⁴⁹ Richard Grellman, *NSW Home Warranty Insurance Inquiry: Final Report (2003)* 2.

Test the market for outsourced management services

One of the main administrative expenses associated with managing the HBCF is the assessment of applications for insurance and the management of claims. Currently, these functions are outsourced to Residential Builders Underwriting Agency Pty Ltd and QBE Insurance (Australia) Limited. These providers support SICorp’s risk management by assessing applications to determine whether a builder is eligible for insurance and handle all claims and loss notifications.

These services are essential to the HBCF’s operation and must be maintained in some form. However, there could be greater market competition for specific tasks that have the potential to reduce administrative costs.

Consultation questions

19. Should the application/eligibility assessment function and the claims management function be separated for the purpose of outsourcing these tasks?
20. Is there any reason why these functions should not be individually defined and procured from a wider marketplace?

8. Reforms to the licensing system

Claims on the HBCF can only be made if the defective or incomplete work was contracted to a licensed builder. It is therefore worthwhile considering whether changes to the licensing regime could help improve building quality and reduce the number of future claims.

There are a number of approaches to building licensing in different jurisdictions in Australia. *Figure 1.6* outlines the approach in several jurisdictions, looking specifically at what building work requires a licence (residential/commercial), whether any licence threshold exists and whether licences are ‘tiered’ to reflect the scale and risk of the work permitted by the relevant licence.⁵⁰

	Licence required for		Threshold for licence	Tiered licences ⁵¹
	residential	commercial		
NSW	Yes	No	\$5,000	No
VIC	Yes	Yes	\$5,000	No
QLD	Yes	Yes	\$3,300	Open, medium rise and low rise
SA	Yes	Yes	\$0	No
WA	Yes	Yes	\$20,000	No
ACT	Yes	Yes	N/A	Classes A, B, C, D

Figure 1.6: Jurisdictional comparison of licensing schemes

⁵⁰ The information in this table only relates to builder licences equivalent to, or as close as possible to, the NSW Contractor Licence – General Building Work. It is intended to demonstrate various differences, not provide a direct comparison.

⁵¹ Licence classes which reflect the scale and risk of the relevant work.

Create licence classes to reflect the scale and risk of relevant work

Contractor licences for general building work in NSW allow builders to perform a range of building work. While there are some restrictions on these licences, such as those relating to specialist work, there are no limits on the type of dwelling the licensee can build or renovate. This approach does not place emphasis on the varying degrees of difficulty, skill and business acumen required for different types of residential construction work. For example, there are significant differences between building a single level standalone dwelling compared to building a multi-unit, multi-storey housing complex.

Queensland and the ACT are two examples of systems with tiered building licences. The tiers are based on the degree of complexity and risk of the work, and cover residential and commercial building. While Queensland's licence tiers are linked to National Construction Code building classes, the ACT has developed their own licence tier criteria.

As commercial building is not licensed in NSW, there is not as much scope to stratify licence classes in NSW. A licence is required to perform residential building work where the total cost of the work exceeds \$5,000.⁵² The definition of residential building work is limited to:⁵³

- the construction of a dwelling
- alterations or additions to a dwelling or
- repairing, renovating, decorating or applying protective treatment to a dwelling.

Dwellings are buildings that are designed, constructed or adapted for use as a residence.⁵⁴ Dwellings can also include other structures such as swimming pools and garages when constructed for use in conjunction with a dwelling.⁵⁵ However, many other buildings, structures and improvements such as boarding houses, guest houses, hostels, and lodging houses are excluded.⁵⁶ Generally, the scope of building work that could be licensed covers houses and units.

If NSW introduced a tiered licensing system, changes could also be made to licensing eligibility requirements. As the complexity of building increases, so do the risks associated with it. In order to reduce risk, financial management and building project management capabilities are important. A tiered system could require qualifications in financial management and building project management for licences for more complex building. Directors of companies holding contractor licences could also be required to hold these qualifications, whether or not they are the nominated qualified supervisor.

It is uncertain whether licences which reflect the scale and risk of the relevant work would help to reduce the number of claims made on the HBCF. It is difficult to isolate the effect this approach has had in Queensland and the ACT.

⁵² Note that specialist work such as plumbing, electrical and air-conditioning requires a licence regardless of the cost of the work.

⁵³ *Home Building Act 1989* (NSW) sch1 cl 2. Note that other work is included in the definition of residential building work such as specialist work done in connection with a dwelling.

⁵⁴ *Ibid* sch 1 cl 3(1).

⁵⁵ *Ibid* sch 1 cl 3(2).

⁵⁶ *Ibid* sch 1 cl 3(3).

There would also be significant challenges and costs associated with transitioning to such a system, and any impact would not be realised immediately as licensing changes would need to be phased in.

Consultation questions

21. Could the introduction of licence classes based on the type of construction improve the quality of building in NSW?
22. If tiered licensing was introduced, should project and financial management skills be introduced as licensing eligibility requirements for more complex building projects?

Requirements for company contractor licences

Insolvency is by far the main cause of insurance claims under the HBCF. This makes sense as HBCF insurance is only available if the builder cannot pay the claim themselves. From 1 July 2002 to 30 June 2014, more than 94% of accepted claims relating to licensed builders were triggered by builder insolvency.⁵⁷ Of these insolvency related claims, the majority arose from company insolvencies (approximately 92%), in comparison to individual (approximately 7%) and partnership insolvencies (approximately 1%).

Consideration could be given to changing the way companies are licensed, to help address the high rates of claims arising from insolvent companies.

Contractor licences can be cancelled on a number of grounds including:⁵⁸

- a period of 30 days expires during which there has not been a nominated supervisor for the contractor licence;
- the holder of the contractor licence becomes bankrupt;
- the company holding the contractor licence has become the subject of a winding up order under the *Corporations Act 2001* (Cth) or has been voluntarily wound up; or
- the company holding the contractor licence has been deregistered under Chapter 5A of the *Corporations Act 2001* (Cth).

As at 30 June 2015, companies held approximately 18% of all contractor licences in NSW.⁵⁹ In comparison, individuals held approximately 78% of all contractor licences in NSW, and partnerships held approximately 4% of all contractor licences in NSW.⁶⁰

Despite holding a smaller proportion of all contractor licences, **companies generally account for the highest number of cancelled contractor licences in NSW, that is, approximately 86% of all cancelled contractor licences in 2014-15.**⁶¹ In 2013-14 this was approximately 91%, and in 2012-13 approximately 82%.⁶² The main reasons that company contractor licences are cancelled are that there is no nominated supervisor, or that the company was voluntarily wound up.⁶³

^{57.} Finity, *Supplement to Quarterly Reports: Observations on Scheme Progress to 30 June 2014* (18 December 2014) p.2.

^{58.} *Home Building Act 1989* (NSW) s 22(1).

^{59.} Based on data from NSW Fair Trading's Home Building Service.

^{60.} *Ibid.*

^{61.} *Ibid.*

^{62.} *Ibid.*

^{63.} *Ibid.*

Currently, a company that holds a contractor licence must have a nominated supervisor, who is either a director of the company, or an employee of the company. If only one qualified supervisor is nominated, they must hold a current endorsed individual contractor licence⁶⁴ or qualified supervisor certificate⁶⁵ that includes all classes of work that the company wishes to undertake.

The nominated qualified supervisor is responsible for the carrying out of all relevant work undertaken by the contractor, must discharge their responsibilities as the nominated supervisor for their employer, and cannot delegate those responsibilities to another person.

One option for licensing reform is to **require that the nominated qualified supervisor of a company that holds a contractor licence must be a director of the company, and not an employee.**

If a company's contractor licence is cancelled on grounds that relate to insolvency, the director who was the nominated supervisor could be disqualified for a period of time from being a director of another company that holds a contractor licence. If the director held an endorsed individual contractor licence, that licence would need to be suspended. However, the director could continue to hold a qualified supervisor certificate. In this way, the person would be able to continue to work in the non-residential sector or as an employee until the disqualification period ends.

Disqualifying risk prone licensees from acting as directors of contractor licensed companies may deter rogue companies. Poor performing directors may also be removed from operating companies in the building industry for a period of time. Tracing and penalising a director when a company's licence is cancelled may be easier than tracing and penalising an employee.

An exception to this could be made for public companies as they are accountable to shareholders and the ASX, and are likely a low risk for licence cancellation.

The *Corporations Act 2001* (Cth) governs company insolvency and imposes a duty on company directors to prevent insolvent trading.

^{64.} A contractor licence authorises that holder to contract and advertise to carry out the work described on their licence card. Individuals may have their contractor licence endorsed with a Q and this indicates that the licence is also equivalent to a qualified supervisor certificate. As an endorsed contractor licence is qualified, they do not require a nominated supervisor.

^{65.} A qualified supervisor certificate allows the holder to supervise and carry out the work described in their certificate.

It is important to recognise that there is a distinction between:

- directors that have been associated with repeated company insolvencies or where it may be suspected that the director uses insolvency as a business model, generally referred to as 'phoenixing'; and
- directors that have been associated with a one-off company insolvency.

This distinction would need to be taken into account in determining the disqualification period.

Consultation questions

23. Do you think that eligibility for a company contractor licence should be amended to require the director to hold a qualified supervisor certificate?
24. Do you agree that public companies should be exempt from this proposal? If yes, on what basis should they be exempt?
25. What length of time should a person be disqualified from being the director of a contractor licensed company?
26. Are there any other penalties that could be imposed on directors? If so, what?
27. Are there any other measures that could be introduced to reduce the number of insolvency claims caused by companies that hold contractor licences? If yes, please explain.

Transfer insurance eligibility assessment into the licensing process

When issuing insurance to builders, the HBCF assumes a risk that the builder is unable to complete the construction of a dwelling or return and rectify defective work. Before providing the insurance, an assessment is carried out to determine if the builder is an acceptable risk, and therefore eligible to purchase insurance. This assessment looks at the financial performance of the builder including their working capital, overhead expenses, margins and profitability, and requested turnover and turnover growth, as well as a range of other factors such as the builder's trade credit history, the builder's licence history, and previous HBCF claims. Builders granted an entitlement to purchase insurance are issued with a Certificate of Eligibility.

Consideration could be given to transferring some or all of this insurance eligibility assessment process to Fair Trading's licensing process.

This would mean that licence eligibility would be conditional upon the builder undertaking and meeting a financial assessment. Builder solvency analysis is an extremely specialised commercial function. If some, or all, of the insurance eligibility assessment process was transferred, significant additional resources would be required as Fair Trading does not currently have the capabilities to undertake the required detailed financial assessment.

One drawback of this option is that the **financial assessment condition could act as a barrier for some builders to get a licence and ultimately may reduce competition in the industry.**

Currently, not all builders who are granted a licence go on to get insurance eligibility under the HBCF if they decide to contract to do work under \$20,000. If the person does not have insurance eligibility with the HBCF, their licence is issued with the condition 'Only for contracts not requiring insurance under the HBCF'.

One way to ensure builders who do not intend to get insurance are not subject to the assessment process is to create a separate licence class.

For example, if a builder intends only to do work under the \$20,000 threshold, they would not be subject to any insurance eligibility assessment. However, a builder who later wishes to upgrade to doing work over the threshold would then need to reapply for a different type of licence subject to an insurance eligibility assessment.

This option could potentially reduce the cost of the insurance product, and increase the efficiency of the licence and eligibility assessment process. However, this benefit is subject to how the scheme operates and interacts with the insurer's requirements. Further potential issues include:

- how Fair Trading would monitor the financial viability of the builder (noting that some builders are subject to annual financial review, or intensive reporting conditions by SICorp) as well as processing increased eligibility limit requests initiated by builders
- determining the actions that Fair Trading would take in the event the builder no longer meets financial assessment requirements
- when Fair Trading would be required to report to the insurer about the builder's financial viability;
- whether Fair Trading would be liable to pay compensation to the insurer if the financial assessment was not undertaken properly
- if the insurer made changes to their insurance eligibility requirements, whether there would need to be ongoing reassessment of the builder by Fair Trading or
- given Fair Trading's licensing decisions are subject to review, this may present challenges for an insurer making related commercial decisions.

Given that the insurer would be carrying the risk of granting insurance to builders, it is likely that it would continue to undertake its own assessments to ensure the builder is financially viable. This could result in a builder having to undergo two substantial financial assessments in order to be issued with a licence and be granted eligibility to purchase insurance. There is also a possibility that, even if a builder met Fair Trading's financial assessment, the insurer may reject their application for insurance eligibility.

Consultation questions

28. Do you think that some or all of the insurance eligibility assessment process should be transferred to the Fair Trading licensing process?
29. If it should be transferred to Fair Trading, what aspects of the insurance eligibility assessment process should be transferred?

Narrow the scope of activities licensed and regulated under the Act

The home building licensing regime is designed to protect consumers by ensuring only people with the appropriate skills and qualifications can carry out residential building work in NSW. It is important to regularly assess whether existing licences continue to provide a public benefit which justifies the cost and impact on business.

As a result of the most recent review of the Act, stand-alone contracts for internal paint work, tennis courts, ponds and water features no longer need a licence unless done as part of other residential building work. These works were excluded to reduce red tape and better target the Act towards core residential building work.⁶⁶

For most existing home building licences, there is a justifiable case to support continued regulation. However, there may still be opportunities to improve the licensing system.

For example, removal of existing excavation, wood and metal fencing and cleaning work licences could be considered, given these areas are regulated in other ways which also provide the same level of consumer protection. These categories of work carry a low risk to consumers financially and are not licensed in some other jurisdictions.

Removing licensing requirements from these activities would mean they would no longer be regulated under the Act and therefore would not require insurance under the HBCF. However, work health and safety laws and the Australian Consumer Law, would continue to apply to these activities.

Consultation questions

30. Is there scope to improve home building licensing through the revision, consolidation or removal of some licences? If so, what licences could be considered?
31. Should excavation work continue to be licensed? Should fencing work continue to be licensed? Should cleaning work continue to be licensed?

Refocus continuing professional development to address risk areas

Currently, general builders and swimming pool builders are required to undertake continuing professional development (CPD) activities each year as a condition of their licence renewal. There is no requirement for CPD providers or courses to be accredited. Builders are required to keep records of the CPD activities they complete.

CPD must relate to one of eight learning areas but licensees are able to choose the subject matters they learn about within these topics. These learning areas are technical issues, sustainability, compliance, communication, dispute resolution, contracts, safety and business management.

Possible changes could include requiring builders to undertake CPD focused on some of the risk areas that lead to claims on the HBCF.

⁶⁶ These changes came into effect from 15 January 2015.

This could include business management skills, costs estimation, building supervision practices and key defect risks.

However, requiring certain types of CPD training could increase the ongoing costs of keeping a licence, and impose unnecessary costs on builders who already maintain their skills.

IPART's September 2014 report, *Reforming licensing in NSW*, recommended removing mandatory CPD for all home building licensees and certificate holders and developing voluntary professional development programs. The underlying rationale was that mandatory CPD imposes a cost of approximately \$8.1 million per year to licensees⁶⁷ and does not guarantee that learning actually takes place, as the focus tends to be on attendance rather than individually tailored learning. The Government sought to repeal the mandatory CPD requirement in 2014. However, the Legislative Council amended the proposed laws and the CPD requirements were retained.

An alternative option could be to put a condition of training on the licence of certain builders to require them to undertake learning in particular areas.

For example, builders who have previously performed defective work could be required to undertake targeted training to reduce the risk of them performing future defective work.

Consultation questions

32. Should CPD requirements be more targeted towards risk areas that lead to claims on the HBCF?
33. Should a condition be placed on the licence of a builder found to have previously produced defective work?
34. Should the requirements of CPD be narrowed to only apply to general builders (i.e. to cease applying to swimming pool builders)

Enhanced supervision requirements for licensees

Poor supervision of work on building sites is a known cause of problems which can lead to eventual claims on the HBCF.

Drivers of poor site supervision may include the cost of supervision and availability restrictions impacting on the ability to employ sufficient suitably qualified supervisors for sites. These issues may be acute where:

- there are shortages of qualified labour in the market, such as during building boom periods (currently being experienced in NSW)
- businesses grow quickly and builders take on more jobs than they have capacity to supervise
- builders may try to maximise their margin or price-competitiveness by employing fewer supervisors or
- builders and supervisors are responsible for concurrent but geographically dispersed projects with significant travel times between them (improvements in mobile technology may be helping to address this problem to some extent).

67. Independent Pricing and Regulatory Tribunal, *Reforming Licensing in NSW - Review of licence rationale and design – Regulation Review – Final Report* (2014), p.91.

One way to address the impact of poor supervision leading to defective work and subsequent claims on the HBCF is to strengthen the supervision requirements.

Options could include limiting the number of projects any one supervisor could take on, limiting the number of companies a supervisor can work for at once, or requiring supervisors to be on site at all times tradespeople are on site.

While this option may help reduce the incidence of defects, it does not target the trigger that activates claims on the HBCF, which are predominately builder insolvencies.

Builder insolvencies are generally attributed to poor management of projects and inadequate financial management skills. However, reducing the incidence of defects could reduce the exposure of the HBCF to subsequent claims following a builder insolvency.

Consultation questions

35. Should additional supervision requirements be imposed on licensees?
36. If there were new supervision requirements, what would be the best way to implement them? For example, should supervisors be limited in how many projects they can undertake or have on-site requirements?
37. How should any additional supervision requirements be targeted to where they are most needed? For example:
 - a) Should the requirement apply only to particular types of building or trade work? If yes, indicate which types.
 - b) Should any requirements to have additional supervisors be linked to the volume or scale of building projects that a licensee works on?

Random or risk-targeted inspections of licensees

Another option to target licensees who may be at risk of producing defective work leading to claims on the HBCF is to use inspection processes and early detection to improve standards.

Fair Trading and SICorp are currently investigating the potential for a pilot project for on-site inspections, which will aim to improve the quality of new construction projects insured under the HBCF and reduce the number defective work claims.

Qualified building inspectors would check for any supervision issues and standards of work. An inspection checklist would be used throughout the project to ensure there is transparency in the elements under inspection, and records kept of the inspections completed.

Insured builders would be required to grant access to worksites and provide relevant documentation to SICorp, its agents or service providers, when they apply for coverage under the HBCF.

To provide a meaningful review, it is proposed that the pilot be wide-ranging, with an estimated 100 to 150 inspections. If any issues are identified as posing a serious risk, they would be referred to SICorp insurance agents for review.

The pilot project is proposed to run for approximately 4 months. It is hoped that, if successful, it could be applied to other parts of the industry.

Consultation questions

38. Could inspections by qualified assessors assist in detecting defective work earlier, and therefore enable it to be rectified for less cost?

E. Conclusion

The previous section provided a range of reform options to offer an opportunity for feedback on how to provide an effective and sustainable HBCF into the future. These reform options could be adopted individually or in various combinations.

Set out below are five reform models that combine the various options in different ways to achieve financial sustainability for the HBCF.

Model 1 – Retain current scheme, reduce administration costs and raise premiums

The current HBCF is unsustainable because the premiums it charges do not cover the claims and administration expenses of the scheme.

One model for reform could be to retain the HBCF in its current form but seek to reduce the administration costs and increase premiums to cover the shortfall.

Fees paid to agents and brokers form a significant portion of administration costs. Section 7 outlines a number of ways in which these administration costs could be reduced, including the adoption of a fee-for-service model, testing the market for claims management services or the NSW Government direct selling the insurance.

Under *Model 1*, administration costs would be reduced using one or more of these elements and premiums would then be increased to a level sufficient to cover these costs and all expected claims on the HBCF.

Model 2 – Reduce scheme coverage

A second model could reduce administration costs and reduce coverage provided by the HBCF while maintaining current settings for premiums.

The reduction of scheme coverage would require some combination of the options set out in sections 2, 6 and 7, such as reducing the period of cover for defects claims, and limiting the value or types of building work that require insurance from the HBCF.

There are various ways in which certain types of building work could be excluded from the HBCF including:

- raising the threshold for insurance to exclude lower cost building work
- excluding certain types of work (such as fencing or swimming pools) and/or
- removing certain types of buildings, such as low-rise multi-units.

Model 3 – Combination of reduced scheme coverage and raised premiums

Model 3 could combine the two models outlined above by both increasing premiums and reducing scheme coverage to address scheme losses. Reduced administration costs would also be pursued under this option.

Consideration could also be given to splitting the coverage between non-completion and defects, as outlined in section 3.

Under *Model 3*, the balance between reduced scheme coverage and increased premiums would be determined by which individual reform options were selected and their impact on the financial position of the HBCF. The individual options selected to reduce scheme coverage (from those outlined in sections 2, 6 and 7) would directly influence how much premiums would need to be increased.

Of course, any reduction in scheme coverage also reduces the consumer protection available from the HBCF.

Model 4 – A voluntary insurance scheme

As set out in section 4, *Model 4* would be a completely voluntary insurance scheme rather than the mandatory scheme currently in place. Consumers would have the choice as to whether or not they purchase home building insurance.

This model would lower the regulatory burden and would also lower costs for consumers who choose not to purchase the insurance. A voluntary insurance scheme could be provided by private insurers and be adapted to meet the needs of homeowners.

Whether this model would be commercially attractive to private insurers in NSW would need further examination, to determine what types of cover would be made available to consumers.

Model 5 – Combination of voluntary and mandatory scheme

Model 5 could comprise of a combination of voluntary and mandatory insurance.

Under this model, insurance for non-completion would be mandatory, but insurance against the risk of defects would be entirely optional and could be at the discretion of either the homeowner or the builder. *Model 5* is set out in section 5. As with the *Model 4*, the commercial viability of voluntary insurance for defect cover would need further consideration.

Consultation questions

39. Which of the above reform models do you believe should be adopted? Please give reasons.
40. Are there any other combinations of reform options that you think should be considered? Please give reasons.
41. What do you see as the costs and benefits of your preferred option?

Appendix 1: Brief history of home building insurance in NSW

a) 1972 – 30 April 1997: Government-run insurance scheme

In 1972, home building insurance was first introduced in NSW as a government-run scheme, administered by the Builders Licensing Board until 1987 when it was replaced by the Building Services Corporation.⁶⁸ Two insurance schemes operated:

- **House Purchasers Agreement:** cover of up to \$40,000 for individual building work above \$1,000 was initially provided.
- **Trade Indemnity Agreement:** cover above \$200 up to \$1,000 for work performed by individual tradespersons was initially provided.

In March 1990, these were replaced with the:

- **Comprehensive Insurance Scheme:** \$100,000 maximum cover for defective work and \$25,000 maximum cover for incomplete work. General defects were covered for 3 years, and major structural defects were covered for 7 years, from the date of substantial commencement of the building work.
- **Special Insurance Scheme:** \$10,000 maximum cover for 1 year which applied to single trade or specialist trade work.

In the early 1990s, a move towards private underwriting was recommended in the *Royal Commission into Productivity in the Building Industry in New South Wales* (Gyles Royal Commission, 1992) report, and in the *Inquiry into the New South Wales Building Services Corporation* (Dodd Inquiry, 1993) report.

b) 1 May 1997 – 30 June 2002: Private partially 'first resort' insurance scheme

i. Nature of the scheme

On 1 May 1997 a private Home Warranty Insurance Scheme (now known as the HBCF), commenced under the *Home Building Act 1989* (NSW) (the Act).

Loss arising from non-completion of work had to be covered for at least 12 months after the failure to commence, or cessation of, the work.⁶⁹ Other loss insured in accordance with the Act had to be covered for a period of at least 7 years after the completion of the work or the end of the contract relating to the work, whichever was the later.⁷⁰ The minimum cover required was \$200,000.⁷¹

The insurance scheme was partially 'first resort' as only an insurance claim for a breach of a statutory warranty could be made directly to the insurer.⁷² An insurance claim for non-completion could only be made if the builder was insolvent, dead or could not be found.⁷³

⁶⁸ In 1995, the Building Services Corporation was integrated into the Department of Fair Trading.

⁶⁹ *Home Building Act 1989* (NSW) (Historical version for 5 July 2000 to 29 June 2001) s 103B(1).

⁷⁰ *Ibid* s 103B(2).

⁷¹ *Ibid* s 102(3).

⁷² *Ibid* s 99(1)(b).

⁷³ *Ibid* s 99(1)(a).

Providers of home building insurance had to be approved by the Minister.⁷⁴ *Figure 1.7* contains details about the insurers that provided home building insurance in NSW under the private scheme.

ii. Claims under the government-run insurance schemes

The Fair Trading Administration Corporation continued to administer claims arising from the Comprehensive and Special Insurance Schemes.

iii. Impact of the collapse of HIH Casualty and General Insurance Limited (HIH)

In March 2001, the home building insurance market was impacted by the collapse of HIH⁷⁵ which held approximately 30 to 40% of the market. In response, the Government established a rescue scheme, administered by the Building Insurers' Guarantee Corporation, which indemnified consumers holding valid HIH and FAI home building insurance policies.

On 13 March 2002, the NSW and Victorian Governments announced uniform reforms to their respective home building insurance schemes to help ensure their long-term viability.

c) 1 July 2002 – 30 June 2010: Private-run 'last-resort' insurance scheme

i. Nature of the scheme

On 2 April 2002, the threshold for works requiring insurance increased from \$5,000 to \$12,000.⁷⁶ On 1 July 2002, reforms to the Act and Home Building Regulation 1997 commenced.⁷⁷ The most notable were:

- the period of cover for insurance was split into 6 years cover for structural defects and 2 years cover for non-structural defects (previously 7 years for all defects)
- a claim for non-completion of building work could be capped at 20% of the contract price for the work and
- the home building insurance scheme became a 'last-resort' scheme whereby consumers could only make a claim against their policy if the builder had died, disappeared or become insolvent.

ii. Allianz Australia Insurance Limited withdraws from the home building insurance market

In April 2002, Allianz Australia Insurance Limited's agent, Dexta Corporation Limited, unable to secure a reinsurer, announced that it was withdrawing from the home building insurance market. Although the NSW and Victorian Governments implemented arrangements for the necessary reinsurance, Allianz Australia withdrew from the home building insurance market on 31 December 2002.

Royal & Sun Alliance Limited (known as Vero Insurance Limited from November 2003) and Reward Insurance Limited were the remaining insurers providing home building insurance to builders. Australian Unity General Insurance Limited continued to provide cover to owner-builders.

⁷⁴ Ibid s 103A.

⁷⁵ In December 1998 FAI General Insurance Company Limited (FAI) was incorporated into HIH.

⁷⁶ See Home Building Amendment (Insurance) Regulation 2002 (NSW).

⁷⁷ See Home Building Amendment (Insurance) Act 2002 (NSW).

iii. Further amendments to the private-run 'last-resort' home building insurance scheme

A range of amendments to the home building insurance scheme were made following the changes that commenced on 1 July 2002, some of which will be noted in this section.

The *Inquiry into the NSW Home Warranty Insurance Scheme* (Grellman Inquiry) report, released in 2003, found that home building insurance should continue to be provided by the private sector.

The Grellman Inquiry made seven primary recommendations for reform of the scheme. Some of the changes implemented as a result of the Grellman Inquiry's recommendations included:

- from 31 December 2003, the construction of multi-storey residential buildings was exempted from home building insurance
- the Home Warranty Insurance Scheme Board was established to monitor the operation of the scheme and provide advice to the Minister⁷⁸ and
- a Home Warranty Insurance Industry Deed was entered into between the Government and the private insurers approved to provide home building insurance in NSW.⁷⁹

On 1 March 2007, the minimum cover provided under the home building insurance scheme increased from \$200,000 to \$300,000.⁸⁰

A fourth trigger was introduced which enabled homeowners whose insurance policies were issued from 19 May 2009 to make a claim under the policy if a builder's licence was suspended for failing to comply with a money order made by a court or the NSW Civil and Administrative Tribunal.⁸¹

iv. Impact of private insurers' intention to withdraw from the home building insurance market

On 1 July 2009, Wesfarmers General Insurance Limited trading as Lumley General announced its intention to withdraw from the home building insurance market by 1 January 2010. In July 2009, CGU Insurance Limited also advised of its intention to withdraw from the home building insurance market on 30 November 2009.

In response to private insurers withdrawing from the home building insurance market, the New South Wales Government announced on 8 November 2009 that it would underwrite the home building insurance scheme.

By the end of 2009, Calliden Insurance Limited, QBE Insurance (Australia) Limited and Vero Insurance Limited were the remaining home building insurers and they continued to provide home building insurance until 30 June 2010.

⁷⁸. See *Home Building Amendment Act 2004* (NSW).

⁷⁹. See *Ibid.*

⁸⁰. See *Home Building Amendment (Minimum Insurance Cover) Regulation 2007* (NSW).

⁸¹. See *Home Building Amendment Act 2008* (NSW).

d) 1 July 2010 – present: Government run ‘last-resort’ insurance scheme

i. Nature of the scheme

On 1 July 2010, SICorp, trading as the HBCF, became the sole provider of home building insurance within NSW, replacing private insurers. SICorp operates an outsourced distribution model with Residential Builders Underwriting Agency Pty Ltd (formerly Calliden Insurance Limited) and QBE Insurance (Australia) Limited appointed as insurance agents which grant eligibility, issue insurance policies and manage claims on behalf of the HBCF. Between 1 July 2010 and 30 September 2010, Vero Insurance Limited also issued certificates of insurance as an agent on behalf of the HBCF.

Home building insurance policies issued before 1 July 2010 remain in force, and the insurer who issued them must continue to manage and settle claims on policies written before that date.

ii. 2012 changes to HBCF

Changes were made to the HBCF under the *Home Building Amendment Act 2011* (NSW). The following changes commenced on 1 February 2012:

- the threshold for work requiring insurance was raised from \$12,000 to \$20,000;
- the excess payable by consumers making a claim on insurance was reduced from \$500 to \$250; and
- the minimum insurance cover required was increased to \$340,000.

iii. Review and changes to the HBCF in 2015

In 2015, a range of legislative and administrative changes were made to the HBCF as a result of the review of the Act, a review of the HBCF and other matters. These have included:

- **Renaming the Home Warranty Insurance Scheme as the Home Building Compensation Fund (HBCF).**
- **Excluding owner-builders from requiring insurance under the HBCF.**
- **Establishing an online register of certificates:** Previously it was difficult to check the validity of a certificate of insurance, and if a certificate of insurance was invalid, the HBCF did not provide a homeowner with cover. Homeowners can now check their builder’s or tradesperson’s insurance and previous claims on a property through an online public register of insurance certificates.
- **Open job limits:** From 4 August 2015 annual eligibility limits which restricted how much work residential builders were able to do each year were replaced with ‘open job limits’. Builders can now apply for additional insurance on new projects as others are completed, as the new Claims and Insurance Management System (CIMS) is able to monitor the projects in real time. The open job limit changes have been strongly embraced by builders and will provide the HBCF with additional information to identify builders with delayed projects which may indicate financial stress or disputes. The number of eligible small builders subject to annual financial assessment has also been reduced.

- **Deployment of new IT transaction system by SICorp:** SICorp made significant operational changes to CIMS from 4 August 2015. These changes include applications being submitted via an online system which captures more information on the building project for which cover is being sought, and enables insurance agents to process homeowners' insurance claims through CIMS.
- **Reduction in number of brokers participating as distributors:** SICorp has introduced several new general requirements on intermediaries including clarifying the obligation of good faith, preventing commercial relationships with the Building Contract Review Program Service providers and introducing minimum builder client or GWP annual thresholds in order to act as a HBCF intermediary. If an intermediary meets the Distribution Deed criteria of 10 builders or generating \$200,000 Gross Premium nationally, they can continue to service builders in NSW. Those who do not meet the eligibility criteria will have the option of making wholesaling arrangements with larger eligible brokers.
- **Transfer of SICorp to Insurance and Care NSW (icare):** On 1 September 2015, the *State Insurance and Care Governance Act 2015* (NSW) commenced which allocated the governance functions of the HBCF across the Insurance and Care NSW Board and the State Insurance Regulation Board. SICorp has become part of icare (and the HBCF has been rebranded 'icare hbcf'), which will be the single provider of services for NSW insurance and care schemes.
- **Establishment of NSW State Insurance Regulatory Authority (SIRA):** The home building insurance regulatory functions of Fair Trading have been assumed by SIRA, a new independent regulator of NSW Government insurance schemes. The *State Insurance and Care Governance Act 2015* (NSW) amended the Act to provide that SIRA is able to issue guidelines with respect to appropriate market practices, or claims handling procedures, in connection with the provision of insurance under the HBCF by or on behalf of SICorp.

Figure 1.7: Home building insurance providers in NSW 1 May 1997- 30 June 2010

(this table is organised based on the date of the approval)

Insurer	Approval date	Withdrawal from the home building insurance market	Additional information
HIH Casualty and General Insurance Limited (HIH) <i>Incorporated FAI in December 1998</i>	28 April 1997	Approval revoked when HIH was placed into liquidation on 15 March 2001.	NSW Government introduced a rescue package to guarantee cover on valid home building insurance policies issued by FAI and HIH.
Royal & Sun Alliance Limited (Royal & Sun) <i>Renamed Vero Insurance Limited (Vero) on 8 November 2003</i>	28 April 1997 (Royal & Sun) 8 November 2003 (Vero)	Provided insurance until 30 June 2010 when the private-run HBCF ended.	Vero was approved to provide insurance through its authorised brokers. Vero was an authorised agent for the HBCF between 1 July 2010 and 30 September 2010.
FAI General Insurance Company Limited (FAI) <i>Incorporated into HIH in December 1998</i>	1 May 1997	See HIH.	See HIH.
Zurich Australian Insurance Limited	May 1997	Late 2000	Offered cover mainly for small jobs (trade work).
Mercantile Mutual Insurance (Australia) Limited (Mercantile Mutual)	1997	Sale of its home building insurance product ceased in 2000.	Offered cover through authorised agents: <ul style="list-style-type: none"> • Owner Builder Insurance Services – owner-builder work • Swimming Pool and Spa Association – swimming pools and spas Around October 1999, Mercantile Mutual merged with QBE Insurance.
Suncorp Metway Insurance (Suncorp)	26 July 1999	31 December 2000	Offered cover through its authorised agent, Dexta Corporation Limited.
Allianz Australia Insurance Limited (Allianz)	Offered cover from 1 January 2001	31 December 2002	Offered cover through its agent, Dexta Corporation Limited (Dexta). In April 2002, Dexta, unable to secure a reinsurer, announced that it was withdrawing from the market. The NSW and Victorian Governments implemented arrangements for the necessary reinsurance.
Key Insurance Company Pty Limited (Key Insurance) <i>Key Insurance's general insurance business was acquired by Australian Unity General Insurance Limited (Australian Unity) on 13 December 2001. Australian Unity was acquired by Calliden Group Limited in 2007.</i>	22 March 2001	See Australian Unity.	Approved to provide owner-builder insurance through its authorised agents: <ul style="list-style-type: none"> • Buildsafe Independent Housing Group • Building Industry Solutions. See Australian Unity.
Reward Insurance Limited (Reward) <i>Acquired by Australian International Insurance Limited (AIIIL) in 2003</i>	19 April 2001	Reward withdrew on 31 December 2003, following its acquisition by AIIIL.	Offered cover through its authorised agent, Australian Home Warranty. See AIIIL and Lumley General Insurance Limited.

Insurer	Approval date	Withdrawal from the home building insurance market	Additional information
<p>Australian Unity General Insurance Limited (Australian Unity)</p> <p><i>Acquired Key Insurance on 13 December 2001.</i></p> <p><i>Australian Unity's general insurance business was acquired by Calliden Group Limited in 2007.</i></p> <p><i>On 1 August 2007 Australian Unity changed its name to Calliden Insurance Limited.</i></p>	13 December 2001	Calliden Insurance Limited provided insurance until 30 June 2010 when the private-run HBCF ended.	<p>Australian Unity was approved to offer insurance through its authorised agents for owner-builder work.</p> <p>Calliden Insurance Limited continued to provide cover for owner-builder work through its authorised agents.</p> <p>Calliden Insurance Limited's approval was amended to cover all types of home building insurance from 1 December 2008. It was approved to provide home building insurance through its authorised brokers.</p> <p>Calliden Insurance Limited has been an agent authorised to provide insurance cover on behalf of the HBCF since 1 July 2010. See Calliden Limited.</p>
<p>Australian International Insurance Limited (AIIIL)</p> <p><i>Acquired Reward in 2003.</i></p> <p><i>AIIIL was integrated with Lumley General Insurance Limited in June 2007 into what would later become Wesfarmers General Insurance Limited trading as Lumley General.</i></p>	1 January 2004	See Lumley General Insurance Limited.	<p>AIIIL offered cover through its authorised agent, Australian Home Warranty.</p> <p>See Lumley General Insurance Limited.</p>
CGU Insurance Limited	17 May 2004	30 November 2009	<p>Approved to provide insurance through its authorised brokers.</p> <p>In July 2009, CGU advised of its intention to withdraw from the home building insurance market by 30 November 2009.</p>
<p>Lumley General Insurance Limited (Lumley)</p> <p><i>Integrated with Australian International Insurance Limited (AIIIL) in June 2007 into what would later become Wesfarmers General Insurance Limited trading as Lumley General (Wesfarmers).</i></p>	24 September 2004	Wesfarmers withdrew from the market on 31 December 2009.	<p>Lumley was approved to provide insurance through its authorised brokers.</p> <p>As of 1 June 2007, the home building insurance businesses of Lumley and AIIIL were integrated following the purchase of AIIIL's parent company, OAMPS Ltd, by Lumley's parent company, Wesfarmers Limited. Home building insurance was provided by under the name of Lumley General Insurance Limited.</p> <p>On 17 October 2008, Lumley changed its name to Wesfarmers General Insurance Limited trading as Lumley General.</p> <p>In July 2009, Wesfarmers announced its intention to withdraw from the home building insurance market by 1 January 2010.</p>
<p>Calliden Limited</p> <p><i>Transferred to Calliden Insurance Limited</i></p>	1 August 2005	Calliden Insurance Limited provided insurance until 30 June 2010 when the private-run HBCF ended.	<p>Approved to provide insurance through its authorised agents.</p> <p>As of 1 December 2008, the insurance business of Calliden Limited was transferred to Calliden Insurance Limited.</p> <p>Calliden Insurance Limited has been an agent authorised to provide insurance cover on behalf of the HBCF since 1 July 2010.</p>
QBE Insurance (Australia) Limited (QBE)	September 2005	Provided insurance until 30 June 2010 when the private-run HBCF ended.	<p>Approved to provide insurance through its authorised brokers.</p> <p>QBE has been an agent authorised to provide insurance cover on behalf of the HBCF since 1 July 2010.</p>



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