

# Home Building Compensation Fund

A builder must take out insurance under the Home Building Compensation Fund (HBCF, previously Home Warranty Insurance) for any residential home building work valued at over \$20,000.

Insurance under the Fund commenced on 1 May 1997 under *Home Building Act 1989*. From 1 July 2010, the NSW Self Insurance Corporation (now trading as icare hbcf) became the sole provider of insurance under the HBCF within NSW.

Insurance policies issued this date still remain in force and the insurer that issued the policy remains responsible for the period of cover.

If you are a home owner, check that a valid insurance certificate has been obtained for the work you want done. Do this before work starts and before paying any money. Without it, you will not be able to be compensated for defective or incomplete building work if the builder becomes insolvent, dies or disappears. Insurance under the HBCF can also protect you if the builder's licence is suspended for failure to comply with a tribunal or court money order in your favour if your policy was issued on or after 19 May 2009.

You must notify the insurer in writing, if your builder has left the work incomplete or you become aware of defective work within the time of the policy, to safeguard your position under the insurance cover.

## When insurance must be provided

Insurance under the HBCF must be provided where the contract price is over \$20,000, or if the contract price is not known, where the reasonable market cost of the labour and materials involved is over \$20,000, by:

- a builder or tradesperson before taking any money (including a deposit) from a home owner (including an owner-builder) under a residential building contract and before starting any work under that contract

- a 'spec' builder before starting any residential building work on a property owned by the builder
- 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.

Where the contract price or the reasonable market cost of the labour and materials involved does not exceed \$20,000, there is no legal requirement to obtain insurance under the HBCF.

Contractors who carry out residential building work must hold an appropriate licence with Fair Trading where the labour and materials involved are valued at over \$5,000.

Contractors who carry out specialist work (ie. electrical wiring, plumbing, gasfitting, air conditioning and refrigeration) require a licence regardless of the value of the work.

Home owners should be wary of any builder or tradesperson who says they do not need insurance if the value of work exceeds \$20,000, or who suggests you obtain an owner-builder permit while they carry out the work for you.

## Certificate of insurance

The certificate of insurance under the HBCF should:

- be issued for your specific project - including the name of the contractor, home owner, property address and total value of the contract
- reflect that the builder's name and licence number on the insurance certificate is exactly the same as that on the building contract.

Before making any payment under a building contract, check that a certificate of insurance is valid by:

- contacting the approved insurance agent whose contact details appear on the certificate, or
- using the HBCF certificates register at: [www.hbcf.nsw.gov.au](http://www.hbcf.nsw.gov.au)

**Important:** A builder must be eligible to obtain a job-specific certificate of insurance. You can check whether your builder is eligible to obtain insurance at the following

page: <https://www.onegov.nsw.gov.au/publicregister/#/publicregister/search/Trades>

A certificate of insurance is insurance cover issued specifically for your project. 'Eligibility' means that the builder has been assessed and has been granted the entitlement to apply for job-specific certificates of insurance.

### **Builders can obtain eligibility and certificates for job-specific projects from the approved insurance agents**

From 1 October 2010, the following insurance agents are authorised to provide insurance on behalf of the HBCF for residential building work under the *NSW Home Building Act 1989* - Residential Builders Underwriting Agency Pty Ltd (RBUA) and QBE Insurance (Australia) Limited. For more information, go to the Approved insurance agents web page.

For information on insurers that were previously approved to sell insurance under the HBCF, go to the Past approved insurers web page.

### **Minimum cover**

From 1 February 2012, insurance policies under the HBCF must provide cover of at least \$340,000. Between 28 February 2007 and 31 January 2012, the minimum cover was \$300,000. From 1 May 1997 to 28 February 2007, the minimum cover was \$200,000.

The cover may be subject to some limitations. If you pay more than the legal limit for deposits or pay more than what is outlined in the contract for a progress payment, you may not be able to claim that overpayment that you made to the builder. You must check the terms and conditions of your insurance policy for other limitations that may apply.

Cover for incomplete work may be limited to not less than 20% of the contract price (including any agreed variation to the contract price).

### **Exemptions from insurance requirements**

Residential building work done by some Government departments is automatically exempted from the insurance provisions (section 103E *Home Building Act*

1989; clauses 59 and 60 of the Home Building Regulation 2014). Also exempt are stand-alone contracts for: internal paintwork; or the installation of built-in furniture; or work related to tennis courts, ponds and water features.

## **Multi-storey buildings**

### **General exemption**

Construction of a new **multi-storey** residential building does not require insurance cover under the HBCF. To be exempt from insurance requirements, a multi-storey building is a building that:

- has a rise of more than three storeys, and
- contains two or more separate dwellings.

*Storey* and *rise in storeys* has the same meaning as in the Building Code of Australia of the National Construction Code Series.

### **Not exempted**

Construction of a new multi-unit residential development (where the rise is three storeys or less, eg. villa units, town houses, low and medium rise projects) requires insurance cover under the HBCF. A developer must attach the certificate of insurance to the contract for sale of such dwellings.

Insurance cover must also be taken out before residential building work is done on an existing multi-storey building (eg. repairs, maintenance, alterations and additions).

### **Applying for exemption from insurance requirements:**

Section 97 of the *Home Building Act 1989* allows the Chief Executive to grant an exemption from the requirements for insurance under the HBCF contained in Part 6 of the Act, if satisfied that there are exceptional circumstances or that full compliance is impossible or would cause undue hardship. (Clause 55 of the Home Building Regulation 2014 prescribes persons entitled to apply for an exemption).

An exemption will not be considered where insurance under the HBCF cannot be provided because of a contractor's financial or business circumstances.

For more information, refer to our Complaints against insurers web page.

## Council requirements

Under the development and construction approval process, the principal certifying authority (PCA) and the council (if the council is not the PCA) must be notified of certain information about the builder and their insurance before the building work starts. Failure to do so can affect whether the principal certifying authority may issue an occupation certificate for the completed building work. This may impede the sale of the property and affect its market price.

## Claims on insurance under the Home Building Compensation Fund

A home owner (including a subsequent purchaser) may lodge an insurance claim under the HBCF if there is a loss (eg. financial loss or damage) as a result of a builder, tradesperson, developer or owner-builder failing to complete or start work and/or failing to fix defective work. This only applies if the home owner can neither recover the financial loss nor have the work rectified or completed.

**Important:** To protect their rights under an insurance policy, if a home owner becomes aware of defective or incomplete work during the period of insurance, they must immediately notify the insurer in writing. A formal claim (with all required supporting documentation) may then be lodged at a later date.

For details on making a claim, periods and types of cover, and claim notification and lodgement procedures, refer to our Home Building Compensation Fund claims web page. You will also find useful information on our Resolving building disputes web page.

## Complaints against insurers

Fair Trading can investigate complaints about insurers approved to provide insurance under the HBCF in NSW.