

Home building compensation (prudential) insurance guidelines

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1. Introduction

- 1.1 The State Insurance Regulatory Authority (SIRA) is the NSW government organisation responsible for regulating insurance and alternative indemnity products (building cover contracts) under the Home Building Act 1989 (the Act).
- 1.2 SIRA's adoption of principles-based regulation is intended to encourage a transparent, accountable and flexible model for licence holders.
- 1.3 The practices of licence holders, and those acting on their behalf, must align with these Guidelines.

2. Commencement

- 2.1 The Guidelines apply from 1 January 2018, until revoked or replaced.

3. Definitions

- 3.1 The terms used in these Guidelines have the following meanings:

Term	Definition
Act	<i>Home Building Act 1989 (NSW)</i>
ANA	Adjusted net assets
APRA	The Australian Prudential Regulation Authority established by the <i>Australian Prudential Regulation Authority Act 1998</i> and any successor authority
APRA regulated licence holder	Licensed insurers regulated by APRA
building cover contract	A contract of insurance under Part 6 of the Act or a contract or arrangement for the provision of cover by means of an alternative indemnity product
contractor	A person who is required by Part 6 of the Act to enter into a building cover contract
FCR	financial condition report
Guidelines	<i>Home Building Compensation (Prudential) Insurance Guidelines</i>
HBC	Home building compensation

Term	Definition
ICAAP	Internal Capital Adequacy Assessment Procedures
licence holder	A licensed insurer or a licensed provider
Non-APRA regulated licence holder	SICorp and licensed providers not regulated by APRA.
PCA	prescribed capital amount
PCR	prudential capital requirements
Regulation	Home Building Regulation 2014
SIRA	State Insurance Regulatory Authority

4. Regulatory framework

- 4.1 These Guidelines are issued under the following sections of the Act:
- 4.1.1 103EC (b) prudential standards and the application of those standards to licensed insurers
 - 4.1.2 104E (d) prudential standards and the application of those standards to licensed providers
 - 4.1.3 103ED (4) insurance guidelines may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time
- 4.2 Under section 103ED (7) of the Act, it is a condition of licence issued under Part 6C that licence holders comply with the relevant provisions of these Guidelines.

5. Prudential supervision principles

- 5.1 The primary purpose of these prudential standards is to ensure licence holders maintain long-term financial viability, prudent claims reserving policies and sufficient financial resources at all times to meet its liabilities under the Act or under building cover contracts issued under the Act.
- 5.2 SIRA will seek to manage the HBC Scheme to the following overarching principles:
- 5.2.1 apply a risk based approach to prudential supervision
 - 5.2.2 align prudential standards and supervision with other prudential regulators
 - 5.2.3 ensure transparent prudential management of a statutory compensation product, and
 - 5.2.4 apply competitive neutrality principles in the application of prudential standards across differing licence holder types.

Apply a risk based approach to prudential supervision

- 5.3 Prudential supervision of licence holders will be risk based to ensure a sustainable, viable and competitive HBC market in NSW. Considerations will include risk to contractors and consumers, risk to the NSW Government and economy and external financial risk factors.

Align prudential standards and supervision with other prudential regulators

- 5.4 Prudential standards and the supervision framework will be aligned to the Prudential Standards and monitoring framework set by APRA for General Insurance as far as practicable.

Ensure transparent prudential management of a statutory compensation product

- 5.5 Prudential standards and the supervision framework will be transparent to ensure the viability and sustainability of the licence holders and the HBC Scheme.

Apply competitive neutrality principles in the application of prudential standards across differing licence holder types

- 5.6 The application of prudential standards will be aligned to competitive neutrality principles recognising differing licence holder types including government operated, APRA regulated, and non-APRA regulated entities.

6. Prudential standards

- 6.1 SIRA has determined that the prudential standards for the HBC Scheme will be based on APRA's Prudential Framework governing general insurers as far as practicable. For the purpose of these Guidelines, the most recent version of the General Insurance Prudential Standards (GPS) published by APRA will apply.
- 6.2 Where a licence holder is regulated by APRA, the licence holder must maintain an authority to carry on insurance business under the Insurance Act 1973 (Cth) and comply with the financial conditions and directions to which its authority is subject. Any additional requirements and/or information to be provided to SIRA are stated within each of the standards below.
- 6.3 Where a licence holder is not regulated by APRA, the licence holder must comply with the applicable standard in a manner that has regard to the licence holder's size, complexity, market risk and structure and any additional requirements specified in these Guidelines.
- 6.4 A licence holder (or applicant) may apply to SIRA for approval of an alternative approach in relation to one or more of the standards listed in these Guidelines. In making such an application, the applicant will need to provide SIRA with satisfactory evidence that their proposed alternative approach adequately addresses the risks the standard is addressing in the context and circumstances

of that applicant. If SIRA approves an alternative approach to one or more standards listed in this guideline for a particular licence holder, the licence holder's licence will be conditional on full compliance with that alternative approach at all times.

- 6.5 For non-APRA regulated licence holders, any reference to APRA in the applicable APRA's Prudential Standards is to be read as SIRA and any reference to insurer to be read as licensed provider.

Capital adequacy

- 6.6 The prudent management of a licence holder's capital is a key safeguard to ensuring a sustainable and viable HBC market that is well placed to meet financial movements and liabilities.
- 6.7 The APRA GIP Capital Adequacy Standards to be applied are:
- 6.7.1 GPS 110 Capital Adequacy: Overarching Standard
 - 6.7.2 GPS 112 Capital Adequacy: Measurement of Capital
 - 6.7.3 GPS 113 Capital Adequacy: Internal Model-based Method
 - 6.7.4 GPS 114 Capital Adequacy: Asset Risk Charge
 - 6.7.5 GPS 115 Capital Adequacy: Insurance Risk Charge
 - 6.7.6 GPS 116 Capital Adequacy: Insurance Concentration Risk Charge
 - 6.7.7 GPS 117 Capital Adequacy: Asset Concentration Risk Charge
 - 6.7.8 GPS 118 Capital Adequacy: Operational Risk Charge
 - 6.7.9 GPS 120 Capital Adequacy: Assets in Australia
- 6.8 Until the HBC Fund administered by SICorp (and backed by the NSW Government) returns to surplus, the SICorp HBC Fund is deemed to comply with the minimum capital requirements and minimum target level of 1.3 times the PCA as per GPS 110. SIRA expects SICorp to be administered in a commercially sound manner and to provide SIRA with an ICAAP for review.
- 6.9 All other Prudential Standards will apply to SICorp as a non-APRA regulated entity.
- 6.10 The following table outlines how SIRA will apply the above Standards and any additional information that licence holders are required to provide to SIRA.

Standard	APRA-regulated	Non-APRA regulated
GPS 110	<p>Details of calculation of PCA for the NSW HBC product to be provided to SIRA.</p> <p>SIRA may require security as per section 105I (c) where SIRA considers there is sufficient risk.</p>	<p>Licence holders are required to meet the requirements of a Category D General Insurer.</p> <p>SIRA to approve calculation of PCA, which has been completed by the licence holder's actuary, with a minimum of an annual review.</p> <p>Minimum PCA is set at \$2 million.</p> <p>Adjusted Net Assets (ANA) shall be maintained at a minimum target level of 1.3 times the PCA. A licence holder is to notify SIRA immediately if the ANA fall below this</p>

Standard	APRA-regulated	Non-APRA regulated
		<p>minimum target. If the ANA falls below the minimum target SIRA may increase the level of regulatory supervision oversight and intervention and may require security as per section 105I (c) of the Act.</p> <p>SIRA can impose at any time a supervisory adjustment to the PCA resulting in a PCR.</p> <p>Licences may be suspended or cancelled if assets fall below the PCR.</p> <p>ICAAP to be approved by SIRA.</p>
GPS 112	-	SIRA to approve calculation, which has been completed by licence holder's actuary
GPS 113	-	Not available for licence holders
GPS 114	-	SIRA to approve calculation, which has been completed by licence holder's actuary
GPS 115	-	SIRA to approve calculation, which has been completed by licence holder's actuary
GPS 116	-	SIRA to approve calculation, which has been completed by licence holder's actuary
GPS 117	-	SIRA to approve calculation, which has been completed by licence holder's actuary
GPS 118	-	SIRA to approve calculation, which has been completed by licence holder's actuary
GPS 120	-	Fidelity Fund assets to be held in financial institutions approved by the SIRA

Reinsurance management

- 6.11 A licence holder must maintain reinsurance or excess of loss policies to mitigate against large events. In line with APRA's Prudential Standards, a licence holder must maintain a specific reinsurance management framework to manage the risks arising from its reinsurance arrangements. Reinsurance is subject to the Act for both APRA regulated and non-APRA regulated licence holders.
- 6.12 As per section 105T of the Act, it is a condition of a licence as an APRA-regulated licence holder to notify SIRA of:
- 6.12.1 particulars of arrangements made or proposed to be made for re-insurance in respect of liabilities under contracts of insurance entered into under Part 6 by the APRA-regulated licence holder, and
 - 6.12.2 the terms of any approval of APRA under the Insurance Act 1973 of the Commonwealth in respect of any such re-insurance.
- 6.13 The APRA GIP Reinsurance Management Standard to be applied is GPS 230 Reinsurance Management.

6.14 The following table outlines how SIRA will apply this standard and any additional information that licence holders are required to provide to SIRA.

Standard	APRA-regulated	Non-APRA regulated
GPS 230	<p>Notify SIRA of proposed changes to its reinsurance arrangements.</p> <p>To provide to SIRA:</p> <ul style="list-style-type: none"> • final reinsurance arrangements, and • APRA's approval of such reinsurance arrangements as soon as practicable after receipt. 	<p>Reinsurance or excess of loss policies to be provided to SIRA for approval</p> <p>Notify SIRA of proposed changes to reinsurance or excess of loss arrangements</p>

Audit and actuarial matters

6.15 A licence holder's audit and actuarial policies and procedures are expected to align with APRA's Prudential Standards.

6.16 The APRA GIP Audit and Actuarial Standards to be applied are:

6.16.1 GPS 310 Audit and Related Matters

6.16.2 GPS 320 Actuarial and Related Matters

6.17 The following table outlines how SIRA will apply this standard and any additional information that licence holders are required to provide to SIRA.

Standard	APRA-regulated	Non-APRA regulated
GPS 310	-	-
GPS 320	Actuarial reports to be provided to SIRA	Actuarial reports to be provided to SIRA

Governance matters

6.18 Appropriate corporate management and governance is required to ensure that the HBC Scheme is sustainable and viable.

6.19 The APRA GIP Governance Matters Standards to be applied are:

6.19.1 GPS 220 Risk Management

6.19.2 GPS 231 Outsourcing

6.19.3 GPS 232 Business Continuity Management

6.19.4 GPS 510 Governance

6.19.5 GPS 520 Fit and Proper

6.20 The following table outlines how SIRA will apply this Standard and any additional information that licence holders are required to provide to SIRA.

Standard	APRA-regulated	Non-APRA regulated
CPS 220	-	Evidence or details of compliance to be provided
CPS 231	-	Evidence or details of compliance to be provided
CPS 232	-	Evidence or details of compliance to be provided
CPS 510	-	SIRA requires licence holders to demonstrate compliance with approved Governance as per their approved licence conditions.
GPS 520	-	Licence holder to demonstrate compliance with as per licence conditions. Trustees of fidelity funds are to be approved by SIRA

7. Prudential reporting

Provision of information to SIRA (APRA regulated)

- 7.1 SIRA will assess an APRA regulated licence holder's compliance with these Guidelines upon licence application against the following criteria:
- 7.1.1 compliance with the principles described in these Guidelines, and
 - 7.1.2 compliance with the prudential standards and any additional requirements described in these Guidelines.
- 7.2 Failure to demonstrate compliance with these Guidelines, and in particular any of the above mentioned criteria, may result in an assessment of non-compliance requiring remedial action or suspension of an APRA regulated licence holder's licence.
- 7.3 All information is required to be submitted to SIRA by 30 September each year unless otherwise stated within these Guidelines. An APRA regulated licence holder must provide sufficient information to SIRA to demonstrate current and continued compliance with the Guidelines.
- 7.4 In order to complete the assessment, SIRA may request the APRA regulated licence holder to:
- 7.4.1 provide additional information in respect of the prudential requirements to SIRA, and
 - 7.4.2 consult with SIRA, or an authorised person nominated by SIRA for that purpose, in relation to the APRA regulated licence holder's compliance with the prudential standards as described in these Guidelines.

- 7.5 SIRA will complete an assessment of an APRA regulated licence holder's compliance with the prudential standards within six weeks of receipt.
- 7.6 Once SIRA confirms that an assessment is complete and compliance with the prudential standards has been confirmed, an APRA regulated licence holder will apply the prudential standards without the exercise of discretion.

Assessment and rejection of a licence holder's prudential requirements (non-APRA regulated)

- 7.7 A non-APRA regulated licence holder is expected to provide sufficient information to SIRA to demonstrate current and continued compliance with the Guidelines, including the submission of an ICAAP report and attestation certificate from the Chair of the Board of Directors (or equivalent position) of the non-APRA regulated licence holder.
- 7.8 SIRA will assess a non-APRA regulated licence holder's prudential requirements upon licence application against the following criteria:
 - 7.8.1 compliance with the principles described in these Guidelines, and
 - 7.8.2 compliance with prudential standards described in these Guidelines.
- 7.9 All information is required to be submitted to SIRA by 30 September each year unless otherwise stated within these Guidelines.
- 7.10 In order to complete the assessment, SIRA may request the non-APRA regulated licence holder to:
 - 7.10.1 provide additional information in respect of the prudential requirements to SIRA, and
 - 7.10.2 consult with SIRA, or an authorised person nominated by SIRA for that purpose, in relation to the non-APRA regulated licence holder's compliance with the prudential standards as described in these Guidelines.
- 7.11 SIRA will complete an assessment of a non-APRA regulated licence holder's compliance with the prudential standards within six weeks of receipt.
- 7.12 Failure to demonstrate compliance to a reasonable degree with these Guidelines considering the individual circumstances of the non-APRA regulated licence holder (including size, structure, market risk etc.) may result in an assessment of non-compliance requiring remedial action or suspension of a non-APRA regulated licence holder's licence. SIRA may allow new non-APRA regulated licence holders an agreed transitional period in order to demonstrate compliance with the standards.
- 7.13 Any variation of the non-APRA regulated licence holder's prudential requirements must be submitted to SIRA and will be assessed within six weeks of receipt.
- 7.14 Once SIRA confirms that an assessment is complete and compliance with the prudential standards has been confirmed a non-APRA regulated licence holder will apply the prudential standards without discretion.

Continuous disclosure of breaches

- 7.15 An APRA regulated licence holder must notify SIRA in writing within 10 business days of:

- 7.15.1 any material non-compliance with the financial conditions and directions to which its authority under the Insurance Act 1973 is subject
 - 7.15.2 any material non-compliance with a requirement of the Financial Sector (Collection of Data) Act 2001, the Insurance Act 1973 or Insurance Regulations 2002, or
 - 7.15.3 any material breaches to these Guidelines.
- 7.16 The notification is to include any proposed remedial action.
- 7.17 A non-APRA regulated licence holder must notify SIRA in writing within 10 business days of any material breaches to these Guidelines, including a description of the proposed remedial action.

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident third party (CTP) insurance and home building compensation in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers.

However to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the NSW Legislation website legislation.nsw.gov.au

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