

# Home building compensation (eligibility) insurance guidelines

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December  
2021

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## 1. Commencement

These home building compensation (eligibility) insurance guidelines (Guidelines) apply from the date on which they are published on the NSW legislation website, until revoked, replaced or amended.

## 2. Definitions

The terms used in these Guidelines have the following meanings:

Term	Definition
Act	Home Building Act 1989 (NSW)
Authority	State Insurance Regulatory Authority (SIRA) constituted under the State Insurance and Care Governance Act 2015
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
dispute	A dispute about a licence holder's eligibility decision regarding a contractor
eligibility model	The systems and practices by which a licence holder decides whether it will offer to underwrite a contractor (comprising matter such as decision-making criteria, conditions, duration, reviews, suspensions, cancellations, and disputes processes)
Guidelines	Home building compensation (eligibility) insurance guidelines
HBC	Home building compensation
HBC legislation	Includes the Act, the Regulation and any insurance guidelines made under the Act
licence holder	A licensed insurer or licensed provider
NCAT	NSW Civil and Administrative Tribunal
Regulation	Home Building Regulation 2014 or any remake of the Home Building Regulation as in force from time to time
SICorp	NSW Self Insurance Corporation

## 3. Guideline-making powers

3.1 These Guidelines are issued under section 103EC, 103ED and section 104E of the Act.

## 4. Scope of the Guidelines

4.1 The Guidelines apply to all insurers and providers of alternative indemnity products that are the holder of a licence that is in force under Part 6C of the Act and includes SICorp.

### **Explanatory note**

Section 103ED (7) of the Act makes it a condition of a licence issued under Part 6C that licence holders must comply with the relevant provisions of these Guidelines.

Under section 105H (5) of the Act, a licence holder who contravenes, whether by act or omission, any condition to which the licence is subject is guilty of an offence.

Under section 105L of the Act, the Authority may suspend the licence of a licence holder (other than SICorp) in some circumstances such as where the licence holder has contravened its licence or HBC legislation.

## **5. Eligibility principles**

- 5.1 Eligibility refers to a licence holder's commitment to a contractor that the licence holder will accept applications from the contractor for building cover contracts, subject to any limits and conditions specified by the licence holder.
- 5.2 If a licence holder grants eligibility to a contractor, the licence holder must provide the contractor with a defined scope of projects for which the licence holder will offer building cover contracts, and which at a minimum must include a dollar value measure of that scope.
- 5.3 Licence holders' eligibility models must comply with the following overarching principles.

### **Principle 1: Eligibility criteria are fair and reflective of risk**

- 5.4 For an eligibility model to be effective it should set an appropriate threshold by identifying unacceptable risks and not unreasonably restricting the ability of contractors to trade.
- 5.5 The licence holder must provide justification that its proposed eligibility assessment criteria fairly reflects a contractor's risk factors.

### **Principle 2: Eligibility criteria and application are transparent**

- 5.6 Licence holders must make information about their eligibility model publicly available. This information should include key criteria, requirements, assessment processes and complaints and review processes. This information should reflect the licence holder's adoption of the eligibility principles.
- 5.7 Each assessment of a contractor's eligibility must provide sufficient information and justification to ensure that a contractor understands the assessment process and how their individual eligibility outcome was determined.

### **Principle 3: Eligibility is assessed reasonably**

- 5.8 The HBC scheme should be fair, affordable and financially viable.
- 5.9 Licence holders must assess contractors reasonably, taking into consideration factors relevant to their claim risks while avoiding unreasonable barriers to contractors' ability to trade. The eligibility criteria and assessment process should be easily understandable for contractors to navigate and avoid undue cost.

### **Principle 4: Eligibility provides stability and is not unreasonably volatile**

- 5.10 Licence holders' eligibility assessments should not be unreasonably volatile from year to year. Movement should reflect changes in the actual or perceived level of industry and/or contractor risk. Assessments of eligibility should also aim to minimise disruption to the NSW residential building industry.

- 5.11 Licence holders' eligibility assessments should also ensure a consistent approach to the underwriting of building cover contracts without unreasonable changes due to market influences.

### **Principle 5: Eligibility provides incentives for risk management and good business practices**

- 5.12 Licence holders' eligibility models should provide incentives for contractors to undertake effective risk management with the objective being to reduce both the likelihood and severity of potential future claims through sound business practices, arrangements to support building work supervision and quality assurance, and financial backing. Similarly, eligibility criteria should not drive adverse business practices or place undue restrictions on business trading structures.

### **Principle 6: Eligibility supports a strong and viable residential building industry**

- 5.13 Licence holders' eligibility criteria must not unduly limit eligibility such that only a small segment of contractors would be able to access building cover contracts. Eligibility models must provide reasonable access for new contractors entering the market. Examples of unacceptable criteria include limiting eligibility only to contractors that have previously entered into building cover contracts, or requiring contractors to have long continuous trading histories.

## **6. Eligibility requirements**

- 6.1 A licence holder's eligibility model must include and demonstrate the following core requirements.

### **Licence holder requirements**

- 6.2 Licence holders must specify any circumstances in which they will have the discretion to refuse to issue a building cover contract, or apply conditions to the issue of a building cover contract, in a particular case.
- 6.3 Any circumstances proposed by the licence holder must be consistent with the eligibility principles.

### **Eligibility assessment criteria**

- 6.4 Licence holders must have eligibility assessment criteria against which they will assess each contractor.
- 6.5 The eligibility criteria must:
- 6.5.1 include defined financial and/or non-financial criteria,
  - 6.5.2 be objective and based on quantifiable information where possible,
  - 6.5.3 be aligned with the principles defined in these Guidelines, and
  - 6.5.4 not place an undue administrative burden on the contractor.

### **Eligibility conditions**

- 6.6 Licence holders may require that a contractor meet additional conditions to reflect the relevant risk. These conditions may include requiring a contractor to:
- 6.6.1 obtain a specified rating from a credit rating agency that holds an Australian financial services licence under the Corporations Act 2001 (Cth),
  - 6.6.2 obtain a director, adult beneficiary or trustee guarantee,
  - 6.6.3 obtain an indemnity of undertaking from a third party, or

6.6.4 participate in mentoring or review programs.

## **Eligibility decisions**

- 6.7 Eligibility decisions must be provided to the contractor in writing and include the following information as a minimum:
- 6.7.1 the contractor's eligibility outcome,
  - 6.7.2 any applicable limits on the types of work for which the contractor is eligible to obtain building cover contracts, and
  - 6.7.3 any applicable limits on the value or number of projects for which the contractor is eligible to obtain building cover contracts.
- 6.8 The licence holder must document in writing and provide to the contractor the reasons for:
- 6.8.1 requiring further information from the contractor,
  - 6.8.2 declining eligibility, including on re-assessment,
  - 6.8.3 not providing the level of turnover cover sought by the contractor,
  - 6.8.4 any conditions the contractor must comply with for eligibility, and/or
  - 6.8.5 amending the terms and conditions of a contractor's eligibility or revoking eligibility, including re-assessment.

## **Eligibility duration**

- 6.9 Eligibility may be granted on an ongoing basis or for a set time period.

## **Expiring eligibility**

- 6.10 A licence holder must give at least 30 business days' notice to a contractor when the contractor's eligibility is set to expire. The notification must include information about how the contractor can renew their eligibility and provide sufficient time for eligibility to be reassessed and granted before expiry.

## **Eligibility monitoring or reviews**

- 6.11 Licence holders' eligibility models must include systems to monitor or review the risk or adverse events associated with each eligible contractor. These may operate on a continuous, periodic or 'by exception' basis.
- 6.12 The eligibility model must specify a service standard for the period of notice the licence holder will give to a contractor prior to undertaking an eligibility review. The licence holder may propose different notice periods for different types of contractors. The period of notice must be reasonable having regard to the eligibility principles.
- 6.13 The eligibility model must specify a service standard for the target duration within which the licence holder will complete an eligibility review. The licence holder may propose different target durations for different types of contractors provided that is consistent with the eligibility principles.
- 6.14 Licence holders may continue, revise, restrict, suspend or cancel a contractor's eligibility based on the findings of an eligibility review. Such decisions must comply with requirements of these guidelines for eligibility decisions, suspension or cancellation as applicable.

## **Suspending eligibility**

- 6.15 If a licence holder receives information that, if confirmed, would lead to the cancellation of a contractor's eligibility, the licence holder may suspend the contractor's eligibility.

- 6.16 Where it has been determined to suspend a contractor's eligibility, the licence holder must provide the contractor with at least 10 business days' written notice except in circumstances which warrant immediate suspension. The notice must include reasons for the decision of suspension.
- 6.17 The licence holder must prescribe any circumstances, consistent with these guidelines, in their eligibility model in which the licence holder may suspend the eligibility immediately.
- 6.18 Eligibility may be reinstated after a period of suspension, following the completion of an eligibility review.

### **Cancelling eligibility**

- 6.19 The licence holder must give the contractor at least 30 business days' notice of a licence holder's decision to cancel a contractor's eligibility except in circumstances that warrant immediate cancellation. The licence holder must give written notice to the contractor of reasons for the decision.
- 6.20 The licence holder must prescribe any circumstances that warrant immediate cancellation in their eligibility model, that are not inconsistent with the eligibility principles.

#### **Explanatory note**

Suspension or cancellation of a contractor's eligibility does not affect building cover contracts already entered into by the licence holder with that contractor.

## **7. Eligibility model filing process**

### **Eligibility model**

- 7.1 The licence holder's eligibility model must include:
  - 7.1.1 eligibility assessment criteria
  - 7.1.2 application procedures
  - 7.1.3 service standards
  - 7.1.4 forms and publications
  - 7.1.5 information to be made available on the licence holder's website,
  - 7.1.6 complaints and dispute management processes,
  - 7.1.7 the date on which the model is proposed to take effect.

### **Frequency of eligibility model filings**

- 7.2 A licence holder must file an eligibility model with the Authority:
  - 7.2.1 before operating an initial eligibility model,
  - 7.2.2 if the licence holder proposes to amend or replace its eligibility model, or
  - 7.2.3 if directed by the Authority in writing, to file an eligibility model within a specified time period, which must be no sooner than 60 business days of the date on which the Authority provides that written direction.

### **Assessment of the eligibility model**

- 7.3 If requested by SIRA the licence holder must:
  - 7.3.1 provide additional information in respect of the eligibility model to SIRA, and
  - 7.3.2 consult with SIRA, or a person nominated by SIRA for that purpose, in relation to the licence holder's eligibility model.

- 7.4 If SIRA provides written notification that the eligibility model is not rejected, a licence holder must apply that eligibility model from the proposed commencement date without discretion.

## 8. Transitional requirements

- 8.1 Licence holders must file an eligibility model within 12 months of the date of the commencement of these Guidelines.
- 8.2 The Home building compensation (eligibility) insurance guidelines (2017-738) — published on the NSW Legislation Website on 22 December 2017 continue to apply to a licence holder's existing eligibility model until the commencement of a new model which is filed under these Guidelines and not-rejected by SIRA.

## 9. Dispute resolution process

- 9.1 Licence holders must have a process in place where a contractor may appeal aspects of their eligibility determination. The dispute process must include as a minimum:
- 9.1.1 contact details for appeals and reviews within the licence holder
  - 9.1.2 a clear process for and internal register of complaints that can be reviewed by SIRA
  - 9.1.3 actions required by a contractor and the licence holder in the dispute process
  - 9.1.4 timeframes for lodging and resolving disputes
  - 9.1.5 procedures and service standards for acknowledgement by a licence holder of any request for review and completion and finalisation of the review in a timely manner
  - 9.1.6 further options for the contractor that include lodging a complaint with SIRA, and
  - 9.1.7 providing SIRA's contact details to the contractor so that they may seek a further review where they are not satisfied with the approach or outcome of the licence holder's determination.

### Explanatory note

A contractor may request that SIRA undertake a regulator compliance review to investigate potential breaches of the Act, the Regulation or the Insurance Guidelines. A regulator compliance review is not a mechanism of appeal to review the merits of a particular contractor's eligibility and does not overturn eligibility decisions. SIRA may audit a licence holder to determine compliance with these Guidelines.



## **Disclaimer**

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident compulsory 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](http://legislation.nsw.gov.au)

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals, or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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