

Home building compensation (premium) insurance guidelines

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1. Commencement

These home building compensation (premium) 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
cohort	A subset of the licensed insurer's portfolio that exhibits claims experience that is statistically different from other subsets. Examples include construction type and project size
contract of insurance	A contract of insurance under Part 6 of the Act
contractor	A person who is required by Part 6 of the Act to enter into a contract of insurance
construction type	The construction type defined in Part 7 of these Guidelines
dispute	A dispute regarding a licensed insurer's pricing decision for a contractor
Guidelines	Home building compensation (premium) insurance guidelines
HBC	Home building compensation
HBC legislation	Includes the Act, the Regulation and any insurance guidelines made under the Act
licensed insurer	An insurer that is the holder of a licence that is in force under Part 6C of the Act and includes the NSW Self Insurance Corporation
premium	The amount to be paid for a contract of insurance
premium filing	A report provided by a licensed insurer to the Authority containing a range of information in support of its annual premium rating structure
product category	The product categories defined in Part 5 of these Guidelines
Regulation	Home Building Regulation 2014, or any remake of the Home Building Regulation as in force from time to time
Risk Premium	Inflated and discounted expected cost of claims
SICorp	NSW Self Insurance Corporation
written premium	The sum of the Risk Premium, expense loadings and profit / safety loadings

3. Guideline-making powers

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

Explanatory note:

Under section 103BD of the Act, insurance guidelines may provide for the determination of insurance premiums.

Under section 103ED (4) of the Act, 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.

Under section 103ED (7) of the Act, it is a condition of licence issued under Part 6C that licensed insurers comply with the relevant provisions of these Guidelines.

4. Scope of the Guidelines

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

4.2 These Guidelines specify:

4.2.1 the minimum requirements for contracts of insurance

4.2.2 how insurers are to present premium filings to the Authority, and

4.2.3 how the Authority will assess those filings.

Explanatory note:

These Guidelines do not apply to alternative indemnity products (AIPs) under the Act. The determination of premiums or other charges for provision of cover by means of AIPs are governed by a separate AIP Guideline issued under section 104E of the Act.

5. Product categories

5.1 Licensed insurers may offer any one or more of the types of contracts of insurance provided for by the HBC legislation, being:

5.1.1 construction period insurance contract

5.1.2 warranty period insurance contract

5.1.3 any other contract of insurance in relation to residential building work that is required by section 92 of the Act, or

5.1.4 any other contract of insurance in relation to residential building work that is required by section 96 of the Act.

5.2 Licensed insurers may specialise and choose to offer a particular form(s) of contract of insurance.

5.3 Licensed insurers must price each contract of insurance according to the premium methodology approved by the Authority.

Additional products

5.4 Licensed insurers may offer additional products and/or product extensions that provide for matters beyond the minimum requirements set out in the HBC legislation. Additional products or product extensions may include, but are not limited to:

5.4.1 top-up cover for additional risks. For example, first resort cover where a home owner may claim in situations where a contractor is solvent and trading, or

- 5.4.2 additional warranty cover for extensions to the warranty period.
- 5.5 Additional products must be submitted to the Authority for approval in compliance with these Guidelines.
- 5.6 A licensed insurer's premium filing must separately address:
 - 5.6.1 the minimum requirements set out in the Act and the Regulation, and
 - 5.6.2 the additional product/product extension.

6. Premium principles

- 6.1 Licensed insurer premium filings must demonstrate compliance with the following principles:

Principle 1: Premiums are fair and reflective of risk

- 6.2 Premiums should be fair and reflect each contractor's level of risk.
- 6.3 In general, fairness can be assessed relative to similar cohorts of contractors. The intention is that contractors that engage in similar industries, business activities, and share similar risk metrics should have similar premium rates.
- 6.4 The licensed insurer must show that its proposed target average premium rate for a particular cohort fairly reflects the expected claims costs, expenses and suitable profit margin for that cohort.

Principle 2: Premiums should not be excessive or inadequate

- 6.5 The HBC scheme should be fair, affordable, and financially viable.
- 6.6 At a scheme level, premiums should not be excessive or inadequate. Affordability in this context relates to the premium burden and the subsequent impact on the NSW economy.
- 6.7 In accordance with section 103BG of the Act, the Authority may reject a licensed insurer's premium filing if it is deemed to be excessive or inadequate, or does not conform to the relevant provisions of these Guidelines.

Principle 3: Premiums should not be unreasonably volatile

- 6.8 Premiums should not be unreasonably volatile year on year.
- 6.9 Licensed insurers must demonstrate that premium movements reflect changes in the actual or perceived level of industry and contractor risk.
- 6.10 Premiums should consider experience over the entire building cycle. In doing so, premiums should not vary according to the phase of the building cycle.

Principle 4: Premiums should provide incentives for risk management and good business practices

- 6.11 Premiums should provide incentives for contractors to improve business practices thereby reducing both the likelihood and severity of potential future claims.
- 6.12 Licensed insurers may offer contractors discounts or load premiums based on the licensed insurer's risk management practices. Discounts and loadings must conform with principles one, two and three and should be designed, to the extent possible, to generate incentives to reduce the level of risk.
- 6.13 At the same time, perverse incentives or incentives that might compromise the scheme must be avoided.

Principle 5: Premiums to be consistent with licensed insurer's capital requirements

- 6.14 Licensed insurers are required to have a capital management plan in place that recognises the financial and insurance risks inherent in HBC portfolios. A licensed insurer's premium basis needs to be consistent with their approved capital management plan.
- 6.15 In setting premiums, SICorp must comply with NSW government competitive neutrality principles.

7. Premium requirements for licensed insurers

- 7.1 Licensed insurers must quote a premium for all contractors the licensed insurer has deemed eligible, in accordance with the HBC (eligibility) insurance guidelines.

Factors to be used in pricing

- 7.2 Licensed insurers must submit pricing for each contract of insurance option to the Authority for assessment and approval before making the offering to the market.
- 7.3 Factors that a licensed insurer must consider in pricing are:
 - 7.3.1 contract value,
 - 7.3.2 construction type, and
 - 7.3.3 contractor risk factors.
- 7.4 Licensed insurers may also consider in pricing the factors of:
 - 7.4.1 location of premises, and
 - 7.4.2 developer risk ratings.
- 7.5 Licensed insurers may apply to the Authority for approval to use additional factors. If a licensed insurer would like to use additional factors in the licensed insurer's determination of premiums, these must be submitted in writing to the Authority for consideration by the Authority, along with clear reasons.
- 7.6 Licensed insurers must demonstrate that any proposed additional factors comply with the premium principles of these Guidelines.
- 7.7 The Authority can approve or reject these additional factors for use in premium pricing.

Contract value

- 7.8 Licensed insurers must price contracts of insurance in accordance with the contract price of the contract for the work to be insured (or, if there is no contract price, the reasonable market cost of the labour and materials involved), excluding the cost of the HBC insurance (being the premium and any applicable taxes and insurance intermediary fees).

Construction type

- 7.9 Licensed insurers must price contracts of insurance in accordance with the categories specified below. Any additional categories must be submitted to and approved by the Authority before being used to class premium pricing.
- 7.10 In the event that a project does not fall within any one of the defined construction type categories, the licensed insurer may assign the project to the category that the licensed insurer considers best aligns to the level of project risk.
- 7.11 References to a 'Class 1a', 'Class 2' or 'Class 10' or 'mixed use' building or structure in the below definitions of construction type categories have the same meanings as

they do for the purposes of the National Construction Code published by or on behalf of the Australian Building Codes Board.

- 7.12 'Secondary dwelling' has the same meaning as in the principal local environmental planning instrument prescribed by the Standard Instrument (Local Environmental Plans) Order 2006.

7.13 The construction type categories are:

Category	Description	Examples or further detail:
New Dwelling Construction	Residential building work relating to the construction of a Class 1a building and any associated Class 10 buildings or structures.	<ul style="list-style-type: none"> • A single dwelling being a detached house including any associated structures (e.g. a swimming pool, garage, shed). • One or more attached dwellings being a duplex, semi-detached house, row house, terrace house, town house, villa unit etc. including any associated structures (e.g. a swimming pool, garage, shed). • A modular/transportable house or kit home including any associated structures (e.g. a swimming pool, garage, shed). • A secondary dwelling (e.g. a granny flat) whether or not attached to the principal dwelling or whether built in conjunction with a new principal dwelling or in addition to an existing principal dwelling. • On-site work to install a manufactured home to the extent covered by the legislation.
New Residential Apartment Building Construction	Residential building work relating to the construction of a Class 2 building (or a mixed-use building with a Class 2 component) with a rise in storeys of up to three and any associated Class 10 buildings or structures.	<ul style="list-style-type: none"> • Low rise residential apartment buildings and associated structures (e.g. a swimming pool, garage, shed). • Low rise buildings containing a mix of commercial space and dwellings and associated structures (e.g. a swimming pool, garage, shed).
Building Work to an Existing Dwelling	Residential building work relating to an existing Class 1a building and any associated Class 10 buildings or structures, or work within one existing dwelling in a Class 2 building that does not include work on common property.	<ul style="list-style-type: none"> • Structural and non-structural building work comprising of additions, alterations, decorative or protective treatment, extensions, maintenance, renovations, rectification, repairs etc. (excluding the addition of a new secondary dwelling or swimming pool). • Any work to home unit, residential flat, or apartment that does not involve common property.

<p>Building Work to an Existing Residential Apartment Building</p>	<p>Residential building work relating to an existing Class 2 building (or a mixed-use building with a Class 2 component) and any associated Class 10 buildings or structures that involves work on multiple dwellings or any common property.</p>	<ul style="list-style-type: none"> • Structural and non-structural building work comprising of additions, alterations, decorative or protective treatment, extensions, maintenance, renovations, rectification, repairs etc. to low, medium, and high-rise residential apartment buildings and associated structures (excluding the addition of a new dwelling, or addition of an in-ground or above-ground swimming pool). • Structural and non-structural building work comprising of additions, alterations, decorative or protective treatment, extensions, maintenance, renovations, rectification, repairs etc. to low, medium, and high-rise buildings containing a mix of commercial space and dwellings and associated structures (excluding the addition of a new dwelling, or addition of an in-ground or above-ground swimming pool).
<p>Swimming Pools</p>	<p>Residential building work involved in the construction, renovation, alteration, repair, extension, maintenance, or decorative or protective treatment of a swimming pool associated with a Class 1a or Class 2 building (excluding construction or installation of a swimming pool that will be located within a Class 2 or mixed-use building, such as a roof-top or basement swimming pool).</p>	<ul style="list-style-type: none"> • Excavation and installation of a swimming pool (of any material), and associated work such as filtration systems or heating, paving and fencing to provide a child resistant safety barrier surrounding the pool, and soft landscaping.

Location

7.14 Licensed insurers may set premiums for projects in regional locations of NSW at a lower rate than those in metropolitan locations to reflect the level of risk and cost of claims.

7.15 Metropolitan and regional locations are defined by the follow postcodes.

Location	Postcodes
Metropolitan (Sydney, Newcastle, Central Coast)	2000 to 2309; 2315 to 2327; 2555 to 2574; 2745 to 2786
Regional	2311 to 2312; 2328 to 2551; 2575 to 2739; 2787 to 2899; 3544, 3691, 3707, 4377, 4380, 4383, 4385.

Contractor risk factors

7.16 Licensed insurers must apply loadings and discounts for each contractor that are based on risk factors filed by the licensed insurer and not-rejected by the Authority.

7.17 The risk factors must:

7.17.1 include defined financial and/or non-financial criteria,

7.17.2 be objective and based on quantifiable information where possible that reflect a contractor's level of risk, and

7.17.3 demonstrate consistency with the principles defined in these Guidelines.

Developer risk factors

7.18 For residential building work contracted to be done by a developer, a licensed insurer may prescribe:

7.18.1 A premium discount that will apply if the developer achieves a rating specified by the licensed insurer, where the rating is provided by a credit rating agency that holds an Australian financial services licence under the Corporations Act 2001 (Cth), and

7.18.2 The amount of premium discount may be fixed or set as a sliding scale by the licensed insurer based on the level of rating achieved.

Disclosure of premium methodology

7.19 Licensed insurers must make publicly available a premium calculator which can be utilised to accurately estimate or reconstruct the premium charged to contractors.

7.20 Licensed insurers must make available the terms and conditions of their contract of insurance policy to contractors and consumers on a publicly accessible website at all times. Licensed insurers must give adequate prior notice of any changes to these terms and conditions to affected contractors.

Limits

7.21 Adjusting for factors, licensed insurers must charge premiums within 50 per cent of the approved base level premiums.

8. Premium filing process

Frequency of submission of premiums

- 8.1 A licensed insurer must not offer a premium that has not been filed with the Authority.
- 8.2 Licensed insurers must submit a premium filing every 12 months by a date determined by the Authority, unless the Authority authorises the licensed insurer to continue offering the licensed insurer's current filed premiums.
- 8.3 A licensed insurer may submit a revised filing to the Authority at any time.
- 8.4 The Authority may require a licensed insurer to lodge a new filing at any time, subject to the notice period of eight weeks to do so specified in section 103BF (2) of the Act.

Premium filing meetings

- 8.5 Each licensed insurer is encouraged to meet with the Authority for a pre-filing meeting.
- 8.6 Examples of items that may be covered in this meeting include, but are not limited to:
 - 8.6.1 expected business volumes and contract values
 - 8.6.2 material assumptions underlying the proposed premium rates
 - 8.6.3 changes in premium rates or the approach to setting premium rates since the previous filing, and
 - 8.6.4 the licensed insurer's business plan, and how the business plan relates to the proposed filing.

Premium filing in accordance with sections 103BF of the Act

- 8.7 Information listed below is to be provided separately for each product category and construction type. The filing must include:
 - 8.7.1 either confirmation that the policy will provide only the minimum coverage required by the Act, or a description of additional coverage to be offered
 - 8.7.2 a description of the proposed rating structure
 - 8.7.3 the base premium for metropolitan locations
 - 8.7.4 the function that relates base premium to contract value
 - 8.7.5 proposed reinsurance arrangements and premiums and the impact of any allowance made for reinsurance recoveries
 - 8.7.6 the impact of any allowance made for indemnities
 - 8.7.7 the allowance made for expenses including, but not limited to, distribution, underwriting, policy administration, claims handling and overheads. Detail as to how expense loadings are applied. For example, flat expense per policy or as a percentage of the base premium
 - 8.7.8 the impact of inflating future cashflows and the inflation assumptions applied
 - 8.7.9 the impact of discounting future cashflows and the discount rate assumptions applied
 - 8.7.10 discounts and loadings applied to each level of each rating factor. Approved rating factors are listed in Part 7.
 - 8.7.11 profit/safety loadings, and
 - 8.7.12 government taxes/levies applied.

- 8.8 The filing must include a projection of the following components over the next year, subdivided by rating factor and in aggregate:
 - 8.8.1 number of certificates issued
 - 8.8.2 contract value covered
 - 8.8.3 written premium before the application of loadings and discounts
 - 8.8.4 written premium after the application of loadings and discounts, and
 - 8.8.5 government taxes/levies charged.
- 8.9 Actuarial sign-off is required to support:
 - 8.9.1 the calculation of the risk premium. Information must be provided separately for non-completion and defect claims and cover average claim frequency and average claim size assumptions. There must be a demonstrated link between experience over the full building cycle and the assumptions presented in the premium filing,
 - 8.9.2 the allowance for expenses. Expenses should be reasonable and the allowance made must be supported by evidence,
 - 8.9.3 the profit/safety loading. The profit/safety loading should not be excessive or inadequate and should consider the licensed insurer's capital requirements, target rate of return on capital, and the compulsory nature of the contract of insurance, and
 - 8.9.4 risk factors and discounts/loadings.
- 8.10 For filings subsequent to a licensed insurer's initial filing, the filing must include:
 - 8.10.1 an explanation, justification and quantification of effects on proposed premium changes from the licensed insurer's current in-force filing, and
 - 8.10.2 a comparison of actual experience with the projections made in the previous filing. The comparison must cover:
 - 8.10.2.1 the number and breakdown by product category, rating factor and average premium of actual certificates issued during the previous 12 months with projections in the licensed insurer's previous filings covering that period, and
 - 8.10.2.2 actual expenses for this product by type during the previous 12 months with projections in the licensed insurer's previous filings covering that period.
- 8.11 Each premium filing must include the proposed commencement date for the premiums for the purposes of section 103BE of the Act and the licensed insurer's assessment of how the proposed premiums meet the premium principles as specified in Part 6 of these Guidelines.

Assessment and rejection of premium filing in accordance with section 103BG of the Act

- 8.12 The Authority will assess a licensed insurer's premium filing against the following criteria:
 - 8.12.1 compliance with the premium principles of these Guidelines,
 - 8.12.2 compliance with the premium requirements as described in Part 7 of these Guidelines, and
 - 8.12.3 compliance with the premium filing requirements described in paragraphs 8.7 to 8.11 of these Guidelines.
- 8.13 Failure to demonstrate compliance to a reasonable degree with these Guidelines and in particular any of the above-mentioned criteria, may result in a rejection of the premium filing.

- 8.14 The Authority will complete an assessment of a licensed insurer's premium filing within eight weeks of receipt. The assessment period will begin only when all of the required premium filing information has been received by the Authority.
- 8.15 For the purposes of section 103BE (5) of the Act, the period allowed for rejecting a premium is eight weeks.
- 8.16 The Authority may request additional information or amendments to the premium filing in order to ensure that the criteria of the Guidelines are met. Licensed insurers must respond to requests for additional information or amendments promptly.
- 8.17 The Authority will advise a licensed insurer in writing once the assessment is complete, advising that the premium filing has not been rejected.
- 8.18 Once the Authority confirms that an assessment is complete and the premium filing has been not been rejected, a licensed insurer must apply the premiums from the proposed commencement date without discretion.
- 8.19 Where a premium filing is rejected, the Authority will provide written notice of its rejection of a premium and the reasons for the rejection.
- 8.20 Where a premium is rejected, the Authority and the licensed insurer will adhere to the arbitration process outlined in section 103BG of the Act.

9. Transitional arrangements

- 9.1 Each licensed insurer must file with the Authority a premium or set of premiums it proposes to charge within 12 months of the date of the commencement of these Guidelines.
- 9.2 The Home building compensation (premium) insurance guidelines (2017-739) — published on the NSW legislation website on 22 December 2017 continue to apply to a licensed insurer's existing premiums until the commencement of the licence holder's new premium filing that is not-rejected by the Authority.

10. Premium compliance assurance programs

- 10.1 Each licensed insurer must maintain a program of premium compliance assurance to ensure that insured contractors within their portfolio of insurance are compliant with their premium obligations in accordance with the HBC legislation.
- 10.2 Each licensed insurer must report quarterly, to the Authority, all premium compliance assurance activities, findings and outcomes. The Authority may specify, from time to time, the format and reportable items required from each licensed insurer.
- 10.3 Each licensed insurer must provide the Authority with the files, data or any other relevant information in relation to the premium compliance assurance activities, as requested from time to time.

11. Dispute resolution process

- 11.1 Licensed insurers must have a process in place where a contractor may appeal aspects of their premium determination. The dispute process must include as a minimum:
- 11.1.1 contact details for appeals and reviews within the licensed insurer
 - 11.1.2 a clear process for and internal register of complaints that can be reviewed by the Authority

- 11.1.3 actions required by a contractor and the licensed insurer in the dispute process
- 11.1.4 timeframes for lodging and resolving disputes
- 11.1.5 procedures for acknowledgement by a licensed insurer of any request for review within five business days and completion and finalisation of the review in a timely manner
- 11.1.6 further options for the contractor that include lodging a complaint with the Authority, and
- 11.1.7 providing the Authority's contact details to the contractor so that they may seek a procedural review where they are not satisfied with the approach or outcome of the licensed insurer's determination.

Explanatory note:

A contractor may request that the Authority undertake a regulator compliance review to investigate potential breaches of the Act, the Regulation or any of the insurance guidelines. A regulator compliance review is not a mechanism of appeal to review the merits of a particular premium, and does not overturn premium decisions.

The Authority may audit a licensed insurer 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

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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