



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: Prop:RHgl:1923954

1 June 2020

Review of the effectiveness and efficiency of
the NSW Home Building Fund
Independent Pricing and Regulatory Tribunal
PO Box K35
HAYMARKET POST SHOP NSW 1240

By online submission portal

Dear Sir/Madam,

Review of the effectiveness and efficiency of the NSW Home Building Compensation Fund

The Law Society of NSW appreciates the opportunity to comment on the Review of the effectiveness and efficiency of the NSW Home Building Compensation Fund Issues Paper ("Issues Paper"). The Law Society's Property Law Committee has contributed to this submission.

Our responses to the questions in the Issues Paper are set out in the attached table.

General comments

The Law Society notes that there have been a number of inquiries into the operation of the Home Building Compensation Fund ("HBCF"), the *Home Building Act 1989* ("HBA") and the building sector generally. The Review of Licensing in the NSW Home Building Industry undertaken by Irene Moss in September 2006 included a recommendation that the HBA be rewritten to make it simpler and easier to use for consumers and industry.

We note that over the decades there have been numerous amendments to the HBA. We suggest that one way of reducing the administrative burden of the operation of the HBCF would be to prioritise the rewrite of the HBA. We understand that work did begin on this project in 2007.

The Issues Paper notes that the protections afforded to consumers under the HBCF only apply to buildings up to three storeys in height, and that the Strata Building Bonds and Inspections Scheme addresses defects in buildings more than three storeys in height. The Law Society considers the limitation of the HBCF to buildings up to three storeys in height is arbitrary and should be reviewed.

The Appendices to the Issues Paper set out valuable information. The comparative information set out in Appendix F could usefully be supplemented by including information regarding the premiums in other jurisdictions, particularly in Queensland where the scheme operates on a first resort basis.

Any questions in relation to this submission should be directed to Gabrielle Lea, Policy Lawyer on 9926 0375 or email: gabrielle.lea@lawsociety.com.au.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'R Harvey', with a long horizontal flourish extending to the right.

Richard Harvey
President

**Review of the efficiency and effectiveness of the
NSW Home Building Compensation Fund**

Submission by the Law Society of NSW – June 2020

NO.	QUESTIONS	COMMENTS
1	What changes to the scheme would encourage the supply of new, innovative products - both different types of insurance and non-insurance products?	<ul style="list-style-type: none"> • The Law Society suggests that any changes made must be focused on enhancing consumer protection. • We do not support removing the mandatory obligation on builders to obtain the required insurance as a means of generating innovation as this may result in reduced levels of consumer protection.
2	Should private providers be allowed to mitigate risk by limiting insurance to high risk builders, or other methods?	No, it is important from a consumer perspective that all builders can access insurance. However, we have no objection to differential premiums reflecting the diverse risk profiles of different builders.
3	To what extent do the requirements of the <i>Home Building Act 1989</i> duplicate the <i>Insurance Act 1973</i> and increase costs of entry for private insurers?	We note that recent amendments contemplate products which are not insurance products, so some duplication is unavoidable. We are unable to comment in relation to the impact upon costs of entry.
4	What additional information would be helpful to homeowners in selecting a builder?	<p>To the extent the following information is not readily available to a homeowner, the following information may be helpful:</p> <ul style="list-style-type: none"> • limitations on type of work; • enforceable undertakings; and • claims determined against the builder.
5	How could the claims process be made more efficient?	We defer to the expertise of other stakeholders.

NO.	QUESTIONS	COMMENTS
6	<p>What incentives should the scheme have for builders to undertake good risk management and encourage good business practices?</p> <p>– Are the current incentives sufficient for builders to undertake good risk management and encourage good business practices?</p> <p>– What further incentives should be included for builders to undertake good risk management and encourage good business practices?</p> <p>– What incentives should be included in eligibility conditions and/or premium pricing so that builders are incentivised to reduce the likelihood and severity of potential future claims through improved quality of work?</p>	<p>In relation to promoting good business practices and improving the quality of work, we support greater compliance with building standards, and we note the NSW Government’s ongoing work to address these issues.</p> <p>We defer to the expertise of other stakeholders in relation to the specific questions listed.</p>
7	<p>How could enhanced information collection be used to further mitigate builders’ insolvency risk?</p> <p>– How could enhanced information collection in relation to builder progress payments, critical stage inspections and issuance of compliance certificates be used to further mitigate builders’ insolvency risk?</p> <p>– Are licensed providers able to readily access information on builder progress payments, critical stage inspections and issuance of compliance certificates or would</p>	<ul style="list-style-type: none"> • Care needs to be taken that any such reforms do not impose an undue administrative burden on builders, many of whom are small business operators. • In our view, critical stage inspections are best addressed in the context of wider building reforms. • We support the existing mentoring program and regard it as sufficient. The proposal for a program with increased supervision is not supported.

NO.	QUESTIONS	COMMENTS
	<p>licensed providers be required to collect this information themselves?</p> <p>– Could this information be used effectively in imposing conditions on builders’ eligibility, either through reducing a builder’s open job limit, or through a more light-handed approach by requiring that builders enter into a program with increased supervision?</p> <p>– Are there other measures that should be implemented to mitigate builders’ insolvency risk?</p>	
8	Is an efficiency study of icare’s economic costs necessary?	No, in a single provider market the benefits of such a study would be limited.
9	Do you consider the current eligibility assessment process should be simplified?	No, the process plays a key role in ensuring the efficacy of the scheme in providing consumer protection.
10	Could this be done without subjecting the Home Building Compensation Fund to greater risk?	Please see our response to question 9
11	Are there any other unnecessary regulatory or administrative burdens and barriers?	<ul style="list-style-type: none"> • The complexity of, and frequent changes to, the operation of the regulatory framework creates a significant administrative burden. • With the move to a single insurer, it may be appropriate to query the role that brokers play in the current scheme.