

Home Owners Guide to Home Building Compensation Fund Insurance

Protect yourself and your investment by verifying that your builder holds valid Home Building Compensation Fund Insurance before proceeding with any building works in New South Wales, Australia.

What is Home Building Compensation Fund Insurance?

Part 6 of the [Home Building Act 1989 \(NSW\)](#) provides the applicable law for Home Building Compensation Fund Insurance in NSW. The insurance is established and administered by the Government through the iCare NSW. Insurance brokers who provide access to the insurance includes industry associations such as the Housing Industry Association of NSW and the Master Builders Association.

HBCF insurance, or Home Building Compensation Fund insurance, is a type of insurance that is mandatory for builders in the state of New South Wales, Australia when undertaking [residential building works](#) under the Home Building Act 1989 (NSW). The purpose of HBCF insurance is to provide protection for homeowners in the event that a builder is unable to complete the building works or rectify any defects that may arise due to insolvency, death or disappearance, or failure to comply with Tribunal orders.

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the right legal advice.

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.

What are other names for Home Building Compensation Fund Insurance?

Home Building Compensation Fund Insurance is known by many different names. These include:

- HBCF
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- Building Insurance
- HIA Home Warranty Insurance
- MBA Home Warranty Insurance
- Home Warranty Insurance
- Home Building Insurance
- Construction Contract Insurance
- Home warranty insurance NSW
- Home Owners Warranty Insurance NSW

Often people incorrectly refer to HBCF Insurance by a different name. However, where people are building a home in NSW and they reference any of the above then it is likely the insurance the person is referring to is HBCF Insurance required under the Home Building Act.

Does a builder need Home Building Compensation Fund Insurance for contract works?

Builders and contractors who carry out works or propose to carry out works in New South Wales where the contract price being \$20,000 or more is required to effect HBCF insurance prior to taking any payment or carrying out of any construction works.

Builders are required to hold HBCF insurance for the duration of the building works and to provide evidence of this insurance to the homeowner.

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What is the Owners responsibility for HBCF insurance?

Owners have certain obligations when it comes to HBCF insurance.

Homeowners are responsible to verify that the builder holds valid HBCF insurance before proceeding with any building works. Owners must ensure that they provide and disclose the insurance under the sale of land contracts.

What does HBCF Cover?

One of the key coverage areas of HBCF insurance is for eligible [residential building works](#), which includes new homes, renovations, and extensions to existing homes in houses and apartments. This insurance covers a range of damage or defects that may occur during the building process, including structural defects, non-compliance with building regulations, and failure to meet contract specifications.

However, it should be noted that HBCF insurance does not cover general wear and tear or damage caused by natural disasters such as floods or bushfires. Additionally, the coverage limits and exclusions may vary depending on the policy, so it is important to review these carefully.

The home warranty insurance coverage depends from policy to policy and period to period. However current examples includes:

- a. loss or damage resulting from non-completion of the work because of the insolvency, death or disappearance of the builder;
- b. loss or damage arising from a [breach of a statutory warranty](#) by the builder, being loss or damage in respect of which you cannot recover compensation from the builder or have the builder rectify because of the insolvency, death or disappearance of the builder;
- c. the loss or damage resulting from faulty design, where the design was provided by the builder;
- d. loss or damage resulting from non-completion of the work because of early [termination of the contract](#) because of the builder's wrongful failure or refusal to complete the work;
- e. the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of an event referred to in paragraph (a) and (b);
- f. the loss of a deposit or progress payment due to an event referred to in paragraph (a) and (b); and
- g. any legal or other reasonable costs incurred by you in seeking to recover compensation from the builder for the loss or damage or in taking action to rectify the loss or damage.

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Who needs Home Building Compensation Fund Insurance?

Under section 92 of the Home Building Act 1989 (NSW), all builders and contractors are required to effect HBCF Insurance where the total value of works carried out is \$20,000 or more.

What happens if the works are not covered by HBCF insurance?

There are several legal and practical implications of uninsured works.

There are at least 2 practical problems for owners. The first is that they will likely not be able to obtain home and content insurance which is an insurance often required for bank loans. The second is that the insurance certificate must be provided with the sale of land contract. The Home Building Act prohibits the sale of land where home warranty insurance should have been effected.

There are at least 2 practical problems for builders. First, under section 94 of the Act, Builders are not entitled to payment pursuant to their contract. Second, Builders are exposed to penalties and disciplinary action by the Office of Fair Trading.

A [specialist construction lawyer](#) can assist with advising and navigating on this complex area of law. It is possible in some circumstances to remedy uninsured work so that owners and builders can avoid problems.

Does an owner-builder need HBCF?

Owner-builder's do not need to effect HBCF insurance. However, every builder and contractor that they engage where the total value of works is \$20,000 or more is required to effect Home Warranty Insurance and provide the HBCF certificate to the owner prior to accepting any monies or carrying out any works. If the builder or contractor enters into multiple contracts with the owner then the total value of the contracts is use to value the works.

Who pays for HBCF Insurance?

Most of the industry contract templates in NSW specifies a contingency for the home warranty insurance payment. It is best practice for home owners to require the builder to allow for the insurance cost in the contract price. This is because the builder is responsible for liaising with the insurance broker and paying the insurance premium to the broker.

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Upon receipt of the warranty insurance, the Owner can pay the first payment to the Builder, usually this is the 10% deposit payment.

HBCF Insurance and NSW Construction Contracts

In NSW, there are 4 main construction industry contract templates.

1. The first is the [Office of Fair Trading Contract](#). This contract is made by the NSW Government. This contract has a provision that clearly states the procedure the parties are to follow prior to effecting HBCF insurance.

Owners should avoid the following industry association contracts. These contracts are not made by the Government and they are skewed to benefit the Builder and contractor. These industry bodies do not provide regulatory authority under the Home Building Act.

2. The second contract is the most commonly used by NSW builders, being the [HIA Contract](#). This contract is made to favour the Builder and HIA member.
3. The third is the [Master Builders of NSW contracts](#). This contract is fairer to home owners compared to the HIA Contract.
4. The fourth is the [ABIC Contract](#). These contracts are usually used for high value contracts where the owner appoints an architect.

The industry 3 Contracts briefly make provision for HBCF insurance but the industry associations could improve their administration of compliance of their members. Unfortunately it is not unusual to hear of builders and contractors carrying out uninsured work who represent to be members of industry associations.

How We Can Help

If you are a homeowner and your builder or contractor has failed to provide you HBCF insurance then call [Contracts Specialist](#) for a free 15 minutes consultation to understand your rights and obligations.

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