



**Western Sydney Community Legal
Centre (WSCLC)**

**Home Building Advocacy
Service**

**Submissions on
Home Building Compensation Premium Guidelines based on the
Discussion Paper – August 2017**

August 2017

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1. INTRODUCTION

1.1 Western Sydney Community Legal Centre

The Western Sydney Community Legal Centre (WSCLC) was formed in 2016, as a result of the amalgamation of the Macquarie Legal Centre, Mt Druitt and Area Legal Centre, Hawkesbury Nepean Community Legal Centre.

WSCLC is committed to serving the community by providing free legal information, referrals, advice and casework for low-income earners living in Western Sydney on a range of issues, including apprehended violence orders, care and protection, civil law and consumer complaints, credit and debt, crime, discrimination, family law and relationships, guardianship and powers of attorney, home building disputes, local government, motor vehicle accidents, neighbourhood disputes, tenancy, traffic offences, victims compensation, wills and probates.

The WSCLC is managed by a committee made up of members of the community and employs both permanent staff and volunteers who dedicate their time and skills to assisting the public. The management committee also oversees outreach programs such as Children's Court Assistance Scheme (CCAS), Central West Contact Service (CWCS), Women's Domestic Violence Court Advocacy Service (DVCAS) and the Family Relationship Centre Advice Service (FRC).

WSCLC is also involved in various education programs for both students of law, providing community legal centre experience alongside educational clinical programs, as well as facilitating awareness programs at other public institutions such as schools.

1.2 The Home Building Advocacy Service

The Home Building Advocacy Service (HoBAS) is one of the specialist services run by WSCLC. HoBAS provides free legal advice to all residents of NSW, on home building disputes arising under the *Home Building Act 1989* (NSW).

HoBAS is funded by NSW Fair Trading and run by WSCLC. This program assists the government to achieve its consumer protection and social justice policy objectives.

As part of our ongoing experiences in providing advice and conducting casework on home building disputes and claims at HoBAS, WSCLC wishes to make submissions on the Home Building Compensation Premium Guidelines as it affects the Home Building Consumers of NSW.

1.3 Scope of Services at HoBAS

HoBAS provides free legal information and advice, to home building consumers in NSW on home building disputes and claims, which may arise with builders or trades persons. In specific instances HoBAS provides advocacy, further assistance and legal representation to culturally and linguistically disadvantaged consumers, consumers with a disability, aboriginal consumers and elderly home building consumers in relation to Home Building Law under the Home Building Act 1989 (NSW)

HoBAS advises clients on:

- Defective and incomplete work.
- General advice on contractual disputes,
- Damages caused by the builder/ trades person.

- Process and procedure at NSW Civil and Administrative Tribunal (NCAT), including advice on evidence required and document preparation .
- Advice on NCAT appeals.
- Transfer of proceedings from the court system to NCAT.
- General advice on Home Building Compensation Fund.

1.4 The form of these submissions

Our experience in assisting clients with home building disputes have revealed a number of systemic issues and areas of concern in relation to the consumer protection provided by Law, the Home Building Compensation Fund. We would like to make a general comment on the Discussion Paper on Home Building Compensation Guidelines as it will have an impact on the Home Building Consumer.

The cost of HBCF premiums are added on to the contract price of the home building consumer and borne by the consumer.

The Focus questions are primarily to set up guidelines for HBC providers with private insurers being permitted to re enter the market.

HoBAS would not be commenting on any focus questions in the discussion paper, but will make a general comment on any effect the premium guidelines may have on the home building consumer.

2 HoBAS COMMENTS

We strongly agree that Home Building Compensation premiums should be calculated on risk based pricing.

We are of the view that premiums should reflect the risk, taking into account the risks addressed when deciding on the eligibility profile discussed in detail in our Submissions on the Home Building Eligibility Guidelines.

However, we are concerned that the contractor will pass the increased premium, which is due to higher risk to the homeowner, as the homeowner pays for the premiums of the HBCF insurance.

When calculating the risk profile of the contractor, it is recommended that the following be considered:

- Contractors technical capabilities - Current contractor licence – link to NSW Fair Trading
- Financial capacity and business capability– details to be obtained from the contractor
- Past performance of the contractor -
 - Breaches of Act – NSW Fair Trading Licence check
 - NCAT orders - NSW Fair Trading Licence check
 - History of directors involved in previously deregistered companies - NSW Fair Trading
 - History of sole traders going into liquidation and forming new companies (Phoenixing) - - NSW Fair Trading
 - History of insurance claims - SIRA

- Business capacity - details to be obtained from the contractor
 - Number of employees / tradespeople
 - Number of projects in hand
 - Level of supervision

There should be a mechanism in place for the additional loading of premium to be borne by a contractor who has a high-risk profile, rather than it being transferred to the consumer. If the higher risk premium is passed on to the home building consumer, they are penalised by having to pay additional amounts for the risk of the contractor who does not have any incentive to improve their risk profile.

It is recommended to consider the additional risk loading as a penalty fee to the contractor rather than building it to the premium, which is generally passed on to the home building consumer.