

# Home Building Compensation Scheme

NSW

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Master Electricians Australia (MEA) is the industry association representing electrical contractors recognised by industry, government and the community as the electrical industry's business partner, knowledge source and advocate. You can visit our website at [www.masterelectricians.com.au](http://www.masterelectricians.com.au)

MEA commends the NSW government for protecting homeowners against failing construction companies during a time of rising liquidations.

As advocates for the electrical industry, MEA supports the proposal to establish separate categories for insurance requirements across different trades. We also recognise the challenges faced by small principal contractors who may exceed the \$20,000 threshold due to variation work. The Government should implement a system to assist small businesses in meeting these requirements, fostering a supportive and sustainable operating environment rather than punitive outcomes. This approach would demonstrate commitment to contractors' success while maintaining protections for homeowners.

It is essential to recognise that, like homeowners, subcontractors also face financial risks when a principal contractor fails to complete a project. Master Electricians advocates for an initiative similar to the *Fair Entitlements Guarantee* scheme whereby subcontractors unpaid by an insolvent construction contractor will be paid for work carried out, subject to reasonable limitations. For more details, please refer to our [Security of Payment policy document](#). Implementing such a scheme would strengthen safeguards against failing principal contractors, supporting a robust subcontractor market and helping prevent reduced subcontractor availability, which could otherwise drive-up home construction and renovation costs due to supply shortages.

## Supporting Information

### *Concerns About Insolvency of Eligible Building Businesses in NSW*

MEA is concerned about the increasing number of construction company insolvencies, which is part of a systemic security-of-payment issue across the sector. The collapse of a head contractor should not come at the expense of homeowners or sub-contractors. MEA therefore supports the HBCS which seeks to compensate those who are at a financial loss consequent to a principal contractors' failure.

Notably, "builders behind more than 5200 homes, worth at least a collective \$2.2 billion, have collapsed since 2021 and the official insolvency figures released ... show failures in construction have hit a nine-year high, just short of the decade record of 1802."<sup>1</sup> And the construction liquidation pandemic is set to get worse with "more than 22,000 construction businesses across Australia ... expected to fail over the next year"<sup>2</sup>.

While these failed construction statistics cover the entire Australian construction industry—much of which lies outside the scope of this scheme—they underscore the very real and growing risks surrounding the completion of all building projects, including construction works conducted on homes.

### *Actions to Reduce Insolvency Risk*

The discussion paper has proposed several limitations to HBCS eligibility, including:<sup>3</sup>

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<sup>1</sup> Michael Bleby "Grimmest in 45 years: Building collapses to get worse" *Australian Financial Review* [09 May 2023] <[Construction crisis: Home building faces grimmest conditions in 45 years \(afr.com\)](#)>

<sup>2</sup> Andrew Heaton "22,188 Aussie Construction Businesses Will Fail in Next 12 Months" *Sourceable* [26 September 2024] <[22,188 Aussie Construction Businesses Will Fail in Next 12 Months – Architecture . Construction . Engineering . Property](#)>

<sup>3</sup> "Review of the Home Building compensation Fund Supporting Information" *NSW Government*, at 2 <[HBCF Review - Supporting Information.pdf](#)>

- limiting the value and number of individual projects that the building business can have under construction at any time ('open job limit')
- screening unstable or unreliable businesses from the scheme
- limiting the maximum contract value for any individual project; and
- imposing conditions, such as the injection of additional capital into their business.

The discussion paper did however recognise that "the conditions of eligibility may limit the number and nature of home building projects that can be undertaken by eligible businesses which could impact on the timing and cost of home building work for all"<sup>4</sup>. MEA agrees that such limitations could hinder the business operations of principal contractors. Evaluations should instead consider factors like financial position, payment history, and access to liquid assets. Restrictions based on contract value and number of contracts unfairly limits the operational capacity of principal contractors and overextends regulatory reach into the natural market. This approach risks penalising contractors with strong financial health and sufficient resources to complete all available projects.

### *Ways to Provide Greater Transparency About Insolvent Building Businesses*

Providing information about insolvent businesses addresses the issue too late, although post-liquidation information does have value, allowing households to identify directors, partners, or sole traders associated with collapsed building companies, providing disincentive again phoenixing.

To enhance transparency during the builder vetting process, it is essential to provide clear information upfront to homeowners. In line with the broader objective of improving Australia's SOP scheme, MEA supports initiatives that publicly identifies builders who are late in paying their subcontractors, provided homeowners are made aware of where to find such information. This would facilitate more informed decision-making for both homeowners and subcontractors.

Requiring licensed builders to pay subcontractors and suppliers as a condition of their licence would also greatly assist. This has been a requirement in Queensland since 2014, and implemented successfully via a small 'monies owed complaints' team in the QBCC. Contact from the regulator to a licensee asking for information to address a complaint of non-payment by a subcontractor (i.e. showing there is a 'genuine dispute' as to the amount to be paid or by when) results in a substantial portion of payments being made at that point, before an investigation or show cause to suspend a licence occurs.

### *Obstacles, if any, to Reducing Insolvency Risks*

Factors which may obscure reducing insolvency risks include:

- Limited access to financial information about principal contractors' stability.
- Complex contracts which can be made more difficult due to a homeowners' limited contractual understanding.
- Insufficient due diligence by a homeowner which can often be the result of limited financial or contractual literacy.
- Risk of "black market" practices, especially during a cost-of-living crisis, where builders may offer to work without home building insurance to reduce costs or conduct unregulated cash jobs.
- New homeowners or those inexperienced in renovations may miss early signs of contractor instability, limiting their ability to act before significant issues arise.

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<sup>4</sup> *Ibid*

### *What is the Value in Publishing and Monitoring Insolvency Data Specific to HBC Scheme?*

This would be highly beneficial. As advocates for an improved and harmonised SOP system across Australia, MEA finds the lack of accessible, specific data on building and construction insolvencies both frustrating and limiting. MEA strongly encourages the release of such information.

Access to detailed insolvency data would enable homeowners and subcontractors to make more informed investment decisions and improve accountability within the construction industry. This information would raise awareness among all stakeholders about the risks associated with constructing or renovating their homes, likely prompting greater caution in selecting and vetting principal contractors, and ultimately leading to greater accountability of principal contractors regarding their finances.

## Cover Amount

### *Maximum Cover for Completed Work - \$340,000*

#### *Should the Cover Amount Differ for Different Types of Building Work?*

The coverage amount reflects the total costs associated with constructing a house, but the expenses for electrical installations are generally much lower than this figure. Typically, the financial impact of a failed electrical contractor during home construction or renovation does not reach such a high level of financial loss. By creating a separate category for electrical contractors, we can reduce costs for both homeowners and principal contractor.

Obviously bigger properties would entail greater costs as would those with more expensive technology installations (such as solar PV, etc), but for the average home it is unfair to impose the same level of cost burdens on specialist trades as those faced by builders. MEA advocates for different trades to have their own categories.

#### *The Basis for the Adjustment of the Cover Amount (for example, HB data about building costs or the Producer Price Index)*

Creating separate categories for different trades, such as electrical contractors, and establishing appropriate cover amounts should be informed by data reflecting average quotes from electrical contractors and historical claims. Gathering information on the average cost of HBCS claims related to principal electrical contractors will help determine suitable cover amount figures.

#### *How Often Should the Cover Amount be Adjusted?*

Every five years to enable a clear and identifiable trend in the average cost of home construction and insurance claims.

#### *What is the Premium Impact and Value of Increasing the Cover Amount to \$540,000?*

While the proposal to increase the cover amount is understandable, MEA cautions against allowing insurance premium costs to rise too high. We could also see an increase in unregulated building works being performed as homeowners choose for 'off-the-book' services to reduce costs, ultimately leading to an array of safety concerns in the building industry.

Data from the QBCC shows a very high proportion of home warranty scheme claimants are fully compensated, noting the base insurance limit of \$200,000. are resolved within the insurance limit of \$200,000<sup>5</sup>.

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<sup>5</sup> QBCC annual report 2022-23

Promoting a more competitive building insurance market could address these concerns by enabling competition to drive down insurance costs for principal contractors.

### Maximum Cover for Incomplete Work – 20% of the Contract Price

#### *What are the Complexities of the Conditions of Insurance for Incomplete Works?*

Education for both industry and consumers is essential to ensure work is paid for at appropriate stages of completion. However, where a substantial proportion of a contract is materials (for example installation of costly electrical equipment), the trade contractor should be able to seek payment before completion to ensure they are not carrying the risk of ordering expensive items. It is important that contractors are not restricted unreasonably in payments they can lawfully receive at certain times during a contract.

The Personal Properties Security Register could be utilised with appropriate assistance and education for trade contractors and homeowners alike. In addition, it is typically more expensive for a new contractor to be engaged to complete works as they need to inspect and obtain certificates for prior work. It may reasonably cost more than an additional 20 per cent to complete a contract, and the incoming contractor should not be penalised by a limitation on the maximum cover.

#### *Should the Limit be Increased (for example to 30 or 40%)?*

It is essential to balance premium costs against reasonable compensation limits. MEA supports different limits for different trades, based on historical evidence of costs to complete.

#### *Should the 20% Limit be Increased for Only Some Types of Home Building Work?*

As above

## Compliance

#### *How Easy or Hard is it to Comply with the Insurance Requirements?*

Complying with HBCS requirements adds operational and administrative costs for contractors, which are ultimately passed on to clients.

There is also concern that variation work pushing contract values above the \$20,000 threshold may leave smaller contractors uncovered if they have failed to realise the threshold has been met. This is particularly risky for small contractors with limited resources for timely and efficient administrative oversight, as they may not realise the total project cost until it is too late. If the \$20,000 limit includes material costs, an expensive electrical appliance may tip a small electrical contractor above the threshold. The application on contract variation should be carefully considered to keep administrative costs low, otherwise a variation that would ordinarily be \$1,000 becomes much higher if an insurance premium must also be paid for the entire contract.

It is important to provide assistance with compliance through educational materials, potentially included in continued professional development modules, focused on promoting compliance.

#### *Should Homeowners that Don't Have Insurance be Compensated (if so how)? And What, if any, Limits Should Apply?*

It is suggested appropriate limitations should apply if cover was to extend in this circumstance, whereby a consumer reasonably believes cover is in place.

The discussion paper raised the following concerns:<sup>6</sup>

- Non-Insurance – where the building business does not take out insurance;
- Fake Insurance – where the building business or insurance broker pretends to have taken out insurance, and provides a fake certificate of insurance;
- Under Insurance – where the building business takes out insurance to cover a lower value of the home building work than the contract price, resulting in underpayment of the insurance premium; or
- Delayed Insurance – where the building business accepts a deposit but does not obtain the HBC insurance for some weeks or months

If the insurance premium is payable as a separate amount together with the contract deposit, consumers will be more aware of paying the amount (and an education campaign is necessary to ensure consumers know it is a requirement).

#### *What Ways Could Compliance be Improved?*

Simplifying the application process for small principal contractors would ease administrative burdens, promoting better compliance with insurance requirements. Incorporating insurance requirements into local CPD programs would help remind principal contractors of their obligations and encourage subcontractors to verify insurance coverage on each project.

## Conclusion

The Home Building Compensation Scheme (HBCS) is a positive step in protecting stakeholders, particularly households with limited financial flexibility, from the fallout of construction company liquidations.

MEA advocates for categorising trades under the scheme, recognising that some trades impose less financial loss than others in the event of failure. For example, the cost of insurance for electrical work is likely to be lower than for building work. Establishing separate categories would allow for fairer insurance costs that better reflect the scale of the work being performed.

Recognising that small principal contractors who may not typically reach the \$20,000 threshold, or do so inadvertently through variation work, may not be resourced to administratively recognise and/or respond to the insurance requirements. A system should be implemented to assist small contractors with resourcing capacity to meet insurance requirements.

We look forward to the outcome of this consultation.

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<sup>6</sup> “Review of the Home Building compensation Fund Supporting Information” NSW Government, at 2 < [HBCF\\_Review\\_-\\_Supporting\\_Information.pdf](#) >