



HBCF Claims Information for Homeowners

Version 2.6

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This document has been prepared by:

Insurance and Care NSW (icare) provides services in the administration of the **Home Building Compensation Fund** for the NSW Self Insurance Corporation.

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Document control

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1.1	23/05/2011	HWIF	Wording of Service Standards and Prescribed Claims Information
1.2	01/02/2012	HWIF	Consequential changes as a result of commencement of the Home Building Amendment Act 2011
1.3	02/08/2012	HWIF	Minor amendment to section 8 clarifying scope of works to be provided to all tendering builders.
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1.5	15/01/2015	HBCF	Changes in line with the Home Building Amendment Act 2014
2.0	19/07/2017	HBCF Team and SI Client Services	Tone of Voice/Copyright and branding changes in accordance with icare branding guide. Accessibility applied.
2.1	04/10/2017	Claims Manager, HBCF	Updated to reflect appointment of Gallagher Bassett as Claims Manager
2.2	06/09/2018	Claims Manager, HBCF	Revision for SIRA 2018 submission
2.3	20/06/2019	Claims Manager, HBCF	Revision for SIRA 2019 submission
2.4	31/01/2020	Claims Manager, HBCF	Revision for SIRA 2020 submission
2.5	12/03/2021	Claims Manager, HBCF	Revision for SIRA 2020 submission
2.6	22/06/2021	HBCF Technical Writer	Updated to latest Word document version to enable Word's Accessibility Checker. Entire document has been rewritten in plain English. Complaints and Disputes handling chapter has been expanded to provide more detailed information. Added new chapters: • About your policy. • Grounds for a Claim • Warning signs of building work problems • What to do when things go wrong • Make (lodge) a claim. • Looking after your mental health Note: <i>Word and PDF versions of this document are stored in the icare HBCF Teams folder: Customer Advocate Response > Amended Documents. Please use these versions for reviews and updates.</i>
2.6	22/06/2021	HBCF Technical Writer	Updated to icare HBCF defined styles for publishing to PDF.

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1. Introduction to Home Building Compensation

The Home Building Compensation Fund was established on 1 July 2010 to underwrite insurance under the *Home Building Act 1989*. Insurance and Care NSW (icare) administers the fund for the NSW Self Insurance Corporation (SICorp). Together they are icare HBCF. icare HBCF is a provider of home building compensation insurance under Part 6 of the *Home Building Act 1989*.

Note: The information in this document applies only to claims made under insurance policies issued from 1 July 2010 onwards.

1.1. How HBC insurance protects consumers

Insurance under icare HBCF protects consumers from defective and incomplete work on residential buildings where the builder becomes insolvent, dies, or disappears. icare HBCF also provides protection where the builder's licence is suspended by NSW Fair Trading because the builder failed to comply with an NSW Civil and Administrative Tribunal (NCAT) or a Court compensation (money) order in favour of the homeowner.

Note: Within this document, reference to builders and building work includes and applies to work done by trade contractors and other building contractors such as electricians, plumbers, carpenters, swimming pool builders etc.

1.2. HBC insurance regulation and governance

The State Insurance Regulatory Authority (SIRA) is the NSW government agency responsible for regulating providers of insurance and alternative indemnity products (building cover contracts) under the *Home Building Act 1989* (the Act).

The *Home Building Act 1989* and the *Home Building Regulation 2014* and SIRA's Home Building Compensation (claims handling) insurance guidelines define how claims are managed.

SIRA commenced regulation of the Home Building Compensation (HBC) scheme (the scheme) on 1 January 2018.

The 2018 reforms enhance SIRA's powers to monitor and regulate the scheme by:

- licensing private providers
- assessing and approving or rejecting premiums
- managing the performance of the scheme's providers
- regulating scheme providers' financial and prudential positions
- issuing and enforcing HBC insurance guidelines with rules for:
 - premium setting
 - fees
 - market practices
 - claims handling
- using data collection and analytics to increase transparency and accountability, and competition and innovation
- operating the Building Insurers' Guarantee Fund to provide a safety net for policy holders if a provider is declared insolvent.

SIRA's website has detailed information about home building compensation and you can find the Home Building Compensation (claims handling) insurance guidelines there: <https://www.sira.nsw.gov.au/>

1.3. Claims principles, legislation, and policy directives

Although the General Insurance Code of Practice does not strictly apply to State insurance such as HBC insurance, icare HBCF believes that certain aspects of the code are good practice for the claims manager. icare HBCF believes that the claims manager should adopt these practices when handling claims, as long as those practices are not in conflict with NSW legislation, SIRA's Home Building Compensation (claims handling) insurance guidelines or this booklet. You can find the General Insurance Code of Practice at www.codeofpractice.com.au.

icare HBCF expects the claims manager to adhere to the following principles:

- the fair and prompt determination of indemnity
- the early and proactive resolution of those claims where settlement is warranted
- the strong defence of non-meritorious claims
- professional and timely claims services
- use transparent business practices
- apply consistent service standards.

If there are large-scale losses caused by the collapse of a major builder, the claims manager must focus on the interests of individual claimants.

The claims manager must work within the framework of the NSW Government's *Model Litigant Policy* released on 1 July 2016 under *Premier's Memorandum 2016-03*.

This policy includes:

- dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation
- paying legitimate claims without litigation including making partial settlements of claims or interim payments where it is clear that liability is at least as much as the amount to be paid
- acting consistently in the handling of claims and litigation
- trying to avoid litigation wherever possible.

2. About your policy

Your Certificate of Insurance (COI) is proof of your Home Building Compensation insurance policy.

2.1. Your Certificate of Insurance (COI)

Your builder must give you the COI before they take a deposit (or any other payment) from you under the building contract and before they start work. If you don't have insurance, you will not be able to make a claim.

Your COI should contain:

- your name and the builder's name
- the site address of the building work
- contract price
- a brief description of the building work.

Make sure you know if you are contracting with an individual, partnership or company. Check that the builder's or contractor's name shown on your certificate is the same as that on the building contract and the licence issued by NSW Fair Trading.

2.1.1. Check the validity of your certificate of insurance

Your COI contains a unique certificate number. You can use this number to check the validity of your certificate on the publicly available, online Certificates Register (<https://www.sira.nsw.gov.au/insurance-coverage/home-building-compensation-insurance/hbc-check>).

This register contains all certificates issued by icare HBCF and any other providers.

2.2. Losses covered

Your policy covers you for the following losses:

- loss or damage resulting from non-completion of the work because the builder dies, disappears or becomes insolvent
- loss or damage arising from a breach of a statutory warranty because the builder dies, disappears or becomes insolvent and you can't recover compensation from them.

To find out more about statutory warranties, please refer to Terms used in this document on page 19.

icare HBCF also covers losses where NSW Fair Trading has suspended a builder's licence for failure to comply with a compensation (money) order of NCAT or a court in your favour.

2.3. Losses indemnified

An indemnified loss is a loss that icare HBCF agrees to compensate you for, if it's within the terms of the policy. The terms of the policy include the grounds for a claim and the insurance periods. The policy also defines what is considered major defects and other defects.

Indemnified losses include:

- loss or damage arising from a breach of statutory warranty (for example, defective work)
- loss or damage resulting from faulty design, where the design was provided by the builder
- loss or damage resulting from not finishing the work because the contract was ended early because of the builder's wrongful failure or refusal to complete the work
- the cost of alternative accommodation, removal, and storage costs reasonably and necessarily
- loss of deposit or progress payment
- any legal or other reasonable costs you incur trying to recover compensation from the builder for the loss or damage, or in taking action to rectify the loss or damage.

2.4. Policy insurance periods

The Home Building Act 1989 sets these insurance periods. A claim is only valid if made within the relevant insurance period.

Incomplete work

- **within twelve months** of the date the work stopped or failed to start

Completed work

- **within six years** of the date of completion for **major defects**
- **within two years** of the date of completion for **other defects**

***Note:** Please refer to your policy for definitions of defects.*

The date of completion for residential work is:

- On the date the work is completed according to the contract for that work.
- If the contract does not define when the work is completed or there is no written contract, the work is regarded as complete when it is completed except for any omissions or defects that do not prevent the work from being reasonably capable of being used for its intended purpose.
- For new strata buildings, completion is simply the date of issue of an Occupation Certificate that authorises the occupation and use of the whole of the building.

Except for strata building, the earliest of the following events may indicate when completion occurs:

- the date the builder handed over the project to you
- the date the contractor last carried out work on site (other than remedying minor defects)
- the date that the Principal Certifying Authority (PCA) for the work issued an Occupation Certificate.

Owner-builder work under an owner-builder permit (in relation to a claim or potential claim by an owner who is a successor in title to the owner-builder built project) is taken to have been completed on the earlier of the date of issue of:

- Occupation Certificate for the work, or
- the date that is 18 months after issue of the owner-builder permit for the work.

***Note:** The Home Building Act 1989 defines completion date and practical completion date in Part 1 Preliminary, Section 3B. Please refer to the Act for these detailed definitions: <https://legislation.nsw.gov.au/view/html/inforce/current/act-1989-147>*

***Note:** Effective from 15 January 2015, icare HBCF has ceased issuing insurance cover for owner-builders who sell their properties. For more information about owner-builder work, visit the NSW Fair Trading website at <https://www.fairtrading.nsw.gov.au>.*

2.5. Amount limits of your cover

There are several limitations on cover.

For policies issued from 1 February 2012:

- the maximum amount of cover provided is \$340,000.

For policies issued between 1 July 2010 and 31 January 2012:

- the maximum amount of cover provided is \$300,000.

2.5.1 Maximum limit for incomplete work

The most prominent of the cover limits is the maximum liability for non-completion costs:

- **capped at 20% of the contract price.**

Refer to your insurance policy wording for more details. You can download a copy of the policy from the icare website. Go to the Related Downloads section at the bottom of the page: <https://www.icare.nsw.gov.au/builders-and-homeowners/homeowners/claims>.

3. Grounds for a claim

To establish grounds for a claim against your builder for faulty or incomplete work, an insurable **'trigger event'** must have occurred.

If a trigger event hasn't occurred, you can send a Loss Notification to the claims manager.

3.1. Trigger events

Your insurance policy is only activated if an insurable '**trigger event**' occurs and you are unable to recover from the builder because of it. **Trigger events** are:

- the builder dies
- the builder becomes insolvent
- the builder disappears
- the builder's licence is suspended because they failed to comply with an NCAT or Court order to pay money to you in a building claim.

3.2. Notification of a loss

You can and should send a **Loss Notification form** to the claims manager **before** any trigger event where you believe you may suffer a loss covered by the policy.

You must notify the claims manager of your loss within your insurance periods (refer to Policy Insurance Periods on page 7). Generally, you must notify the claims manager within six months of becoming aware of the possible loss (for example, defective work). If an issue becomes apparent during the last six months of the insurance period, you have six months from the date of the issue becoming apparent in which to notify the claims manager.

It is in your interest to provide early notification by submitting a Loss Notification form to the claims manager. Your notification will protect your claim rights, so you may be able to make a claim after the insurance periods expire. **If you don't notify within the insurance periods, you may not be able to claim later.**

The icare HBCF Loss Notification form and contact details are available on the icare HBCF website: <https://www.icare.nsw.gov.au/builders-and-homeowners/homeowners/claims>.

The form should include as much detail about any incomplete work, defective work, and any other losses you think you may need to claim later.

3.2.1 Delayed notification

Provided you submit a Loss Notification Form to the claims manager within the insurance periods icare HBCF can't reduce our liability or the amount we pay under the policy, merely because of a delay in providing a loss notification, if you send the loss notification:

- within **six months** of you becoming aware of the defective work
- for incomplete work, **within 12 months** of the contract date or the start date defined in the contract, or the date the work stopped, whichever is the latter.

However, we may reduce our liability or reduce any amount otherwise payable in respect of a claim notified outside of these periods. Your notification will also help to protect your rights to claim later.

4. Warning signs of building work problems

The sooner you can identify building works problems, the sooner they can be resolved. There are common warning signs of building work not going to plan.

These include:

- project delays without asking for an extension of time
- going outside of the contract period
- difficulties getting the builder on site
- the builder demanding progress payments without finishing the work or outside of the contract
- attempting to carry out defective work or work not agreed under the contract, etc.
- asking you to pay subcontractors direct when that was not what was originally agreed.

Note: *If you pay the builder amounts that are outside or in excess of the building contract (excluding variations), your icare HBCF insurance policy may not cover you for these amounts.*

5. What to do when things go wrong

5.1. Contact the builder

When you think that the building work is not going to plan or that there are problems with the building work, the first person you should talk to about this is your builder.

Your building contract should include details of the work your builder is doing and when they should complete that work. Your builder must honour the contract with you.

As a homeowner you need to take all appropriate actions to try and have your builder address any incomplete or defective work.

This can include lodging a complaint with NSW Fair Trading or enforcing your rights through the NSW Civil and Administrative Tribunal (NCAT) or a court depending on the amount involved.

If you do not explore all or some of these avenues, we may reduce the amount paid under any claim or reject the whole claim as you will not have tried to enforce the statutory warranties (an important requirement for delayed claims).

5.2. If the builder won't help you

You may need to contact NSW Fair Trading and seek their help if:

- your builder refuses to fix the problems
- you cannot contact the builder
- your builder fails to turn up at the site.

If you can't resolve a dispute with your builder or tradesperson, NSW Fair Trading may be able to assist with building-related disputes about:

- incomplete or defective residential building work
- damage caused to other structures because of residential building work being done
- specialist work (that is, electrical wiring, plumbing, gasfitting or air conditioning/refrigeration).

You can learn more at NSW Fair Trading (<https://www.fairtrading.nsw.gov.au>).

5.3. How to Contact NSW Fair Trading

If you don't yet have grounds for a claim (refer to Policy Insurance Periods on page 8) in some cases (for example, where the builder refuses to rectify defects) NSW Fair Trading may recommend that you refer the dispute to the NSW Civil and Administrative Tribunal (NCAT) (<https://www.ncat.nsw.gov.au/>) or a Court. If the builder fails to comply with a money order from NCAT or a Court within 28 days of the 'comply by date', NSW Fair Trading will suspend the builder's licence **and then you may lodge a claim under your HBC cover.**

If you believe that your builder has disappeared, you should lodge a complaint with NSW Fair Trading. If NSW Fair Trading cannot locate the builder, they will send you a letter confirming that the builder can't be found. **This letter will allow you to lodge a claim under your HBC cover.**

5.4. Your builder must provide the Certificate of Insurance

Where a builder does not give you an icare HBCF certificate of insurance for their job, they may be in breach of the *Home Building Act*. Your builder must give you the certificate of insurance before they start building work and before they take a deposit (or any other payment) from you under the building contract.

If a builder does not provide you with an icare HBCF certificate of insurance, you should notify NSW Fair Trading as soon as possible. **In some instances, the builder may be able to apply and get HBC cover for work they have already started or completed.**

5.4.1 Notify the claims manager of a possible loss

The icare HBCF Loss Notification form and contact details are available on the icare HBCF website: <https://www.icare.nsw.gov.au>. The form should include as much detail about any incomplete work, defective work, and any other losses you think you may need to claim later.

When you send the loss notification to the claims manager, you are taken to have given notice of every loss that was a result of the same defect as caused the notified loss, whether or not the claim about the notified loss has been settled. If additional losses from the same defect arise during the cover period, you would remain protected.

When the claims manager receives a loss notification, they will send you written advice about the insurance periods that apply to your policy and the information you need to provide so that you can make a claim.

If you can't make a claim because there hasn't been a trigger event, you must diligently pursue the builder to enforce a statutory warranty, including taking action against the builder or owner-builder so that any future claim is not prejudiced. You may need to seek help from NSW Fair Trading, NCAT, or a Court. You may also have obligations to allow reasonable access to the builder for inspection and repair.

5.5. Claims manager investigations

Once you have notified the claims manager of your loss, the claims manager will undertake a series of investigatory measures:

- Checking that you have provided sufficient details (from the certificate of insurance) to identify the residence and builder concerned:
 - street number or site address
 - builder's name
 - licence number
 - your name, and information regarding the loss (the alleged incomplete and/or defective work)

Consider the status of the builder – ask you whether the loss or damage resulted from faulty and incomplete work where the builder has become insolvent, died or disappeared or the builder's licence has been suspended due to failure to comply with an NCAT or a Court order to pay you a sum of money.

- Investigate inconsistent entity names - where the name of the builder shown on the certificate of insurance is different to the name of the entity that entered into the residential building contract. This may not of its own accord invalidate a claim (although the status of each entity in relation to death, disappearance or insolvency would need to be further considered). Such matters will be determined on a case-by-case basis.
- Verify in relation to the certificate of insurance and policy:
 - that the policy period is valid
 - the cover is matched to the property address that is the subject of the claim
 - the alleged loss or damage occurred within the policy period.

- Confirm that you are the beneficiary of the policy (this includes subsequent purchasers). You must provide proof of ownership of the residence your notification is about.
- Consider timeframes for lodgement of notification—whether you have notified the claims manager of the loss within the insurance period.
- Seek other sources of information in the absence of the certificate of insurance.

If there is no evidence of the certificate of insurance, the claims manager will ask you to locate evidence of the valid certificate and who issued it. For a valid claim to be considered, there must be evidence of a certificate of insurance.

You can search for previously approved insurers at the SIRA website: <https://www.sira.nsw.gov.au>. A certificate of insurance / policy issued prior to 1 July 2010 would not have been issued by icare HBCF or the NSW Self Insurance Corporation.

5.6. Preliminary assessment

The claims manager will make a preliminary assessment and determine if you have provided all the evidence needed to lodge a claim. If the claims manager needs it, they will give you written advice asking for more information.

Where the claims manager does not believe that your loss is covered by the insurance policy, they will advise you of other options such as:

- asking your home/building insurer if the loss was caused by an event that may be covered under your home building insurance policy
- contacting NSW Fair Trading to resolve a dispute with your builder
- seeking legal advice for potential legal remedies.

5.7. Claim form

The claims manager will send you a claim form within two business days of you contacting them. They will advise you what the grounds are for accepting a claim.

You can get a claim form from the icare HBCF website at <https://www.icare.nsw.gov.au>.

6. Make (lodge) a claim

You can **lodge a claim** when the grounds for a claim are established.

Note: *To avoid delays and help the claims manager assess the claim, please provide all the relevant documentation requested in the icare HBCF Claim form and any receipts, invoices, statements, and other payment details that support your claim.*

The **icare HBCF Claim form** and contact details are available on the icare HBCF website: <https://www.icare.nsw.gov.au/builders-and-homeowners/homeowners/claims>.

Claim investigation generally follows the same procedures as notification investigation, along with additional considerations (refer to Notification of a Loss in section 3.2).

6.1. Deadlines for lodging a claim

A claim must generally be lodged within the timeframes set out in Policy Insurance Periods on page 8. However, you can make a claim after the period of insurance, when the builder's insolvency, death or disappearance, including licence suspension for non-compliance with a Court or NCAT Order to pay you money, does not occur until after the expiry of the period of insurance.

You can only make a claim after the period of insurance if you submitted written notification of the loss to us during the period of insurance (or if the loss becomes apparent within the last six months of the period of insurance within six months after the loss became apparent) and since the loss became apparent, you have diligently pursued the builder to try to enforce the statutory warranty concerning your loss (refer to Notification of a Loss in section 3.2).

6.2. Required information for lodging a claim

SIRA defines the information required to lodge a claim. Please provide the following information in your claim form.

The property you're claiming about:

- your name, address, and contact details and those of each owner of the property
- the address of the property
- if the builder completed the work before you became the owner, evidence of the transfer of title

The Insurance Certificate and building contract:

- the certificate number or other identifier
- if you contracted directly with the builder, evidence of your contract for the work and information about the work that the builder did

The building work:

- a description of what you allege to be all defective or incomplete work, together with the date you first saw it was defective or incomplete
- details of any prior complaints you made or action you took about the defective or incomplete work.

The builder:

if you believe that something happened to allow you to lodge a claim, you need to send us all the relevant documents that show evidence of that. The reasons you may be allowed to lodge a claim are: the builder has died, disappeared, become insolvent, or had their licence suspended because they didn't comply with an order from NCAT or a Court to pay you money.

6.2.1. Additional information about your claim

We can assess your claim without the additional information below, but more information may help us to assess and prove your claim. If you can, please also provide:

- The name and address and telephone number of the builder.
- If you bought the property after the builder completed the work, a copy of the contract for sale of the property and all attachments.
- Where you contracted directly with the builder:
 - Copies of any documents setting out variations to the work, that you agreed with the builder.
 - Proof of all payments made to the builder.
 - Copies of all plans and specifications relating to the work agreed to be performed by the builder.
 - Copies of any approvals or certificates you received relating to the work, from any relevant public or statutory authority.
- Reports you obtained in relation to the work.

Note: *The claims manager will need to consider that if you bought the property after the builder completed the work, you may not have access to contracts, specifications, etc. or information about some of the items requested.*

6.2.2. Claim information for defective work claims

If you can also provide the following information and documents at the time of the property inspection this will greatly assist the assessment process.

Where the works have been completed and are in your (the owner's) possession:

- Plans (floor, site, elevation and/or engineering)
- Building inspection report (if undertaken and available)
- Pre-purchase inspection report (if undertaken and available)
- Occupation certificate or certificate of completion
- Correspondence issued to builder and/or developer and their responses.

For non-completion claims where building work has not been completed in accordance with the building contract:

- Documented evidence on the status of construction including recent colour photos
- Details of what you have paid to date. For example:
 - receipts and/or bank statements confirming monies paid
 - copies of invoices and/or progress payment requests detailing what works relate to monies paid.
- Building contract documents including approved plans and specifications
- Building variation details agreed to and signed by all parties
- Termination documentation/details
- Details of who was responsible for the design of the building and whether:
 - you engaged the architect and/or engineer
 - the builder engaged the architect and/or engineer.

You should also provide the following documents, if possible:

- Construction drawings (floor, site, elevation and/ or engineering)
- Contract Variations (agreed to and signed by all parties).

6.3. Strata title

The owners corporation or the body corporate or a person/s acting under the authority of the owners corporation (for example, strata managing agent), must submit claims about the common property of a strata-titled property.

6.4. Indemnity issues

The claims manager will consider a range of issues before granting indemnity.

These issues will include:

- whether the claim occurred within the relevant policy period (or within six months of a loss becoming apparent where that occurs in the last six months of the period of insurance)
- whether the policy has been triggered through the death, disappearance, or insolvency of the builder, or the builder's licence has been suspended by NSW Fair Trading because of a failure to comply with a compensation (money) order in favour of the claimant made by NCAT or a Court
- whether you have given previous notification of loss within the relevant time frames related to the period of insurance and have taken adequate enforcement action against the builder
- if an owner-builder policy, whether the defects being claimed were present and noted by the inspecting building consultant prior to issuance of the certificate of insurance
- determine whether there has been a previous claim on the same property and, if so, the amount of any remaining indemnity and whether there has been a previous cash settlement covering any of the claim items. For example: There has been a previously accepted claim of \$100,000 in relation to 10 dwellings; the amount of indemnity is thus reduced by \$10,000 per unit.

The minimum amount of cover otherwise payable in respect of a dwelling in a building or complex containing more than one dwelling for which a claim has already been made, is reduced by an amount calculated by dividing the amount of any claim paid, in relation to common property of the building or complex by the number of dwellings contained.

The claims manager will collect the claim excess by deducting it from claim proceeds. The amount of the claim excess will depend on the policy relevant to the claim.

6.5. Communication with claimant about the builder's status

If, at any time, the claims manager forms the view that the builder has not died, disappeared or become insolvent or the builder's licence has not been suspended by NSW Fair Trading because of a failure to comply with an NCAT or Court compensation (money) order in your favour, the claims manager will inform you within five business days and provide the details of the source of that view.

Within 30 business days of receipt of the claim, the claims manager will inform you whether it accepts that the status of the builder has been established so that the policy is triggered or alternatively whether further information is required.

7. Claims management

icare HBCF has appointed Gallagher Bassett as the claims manager. Gallagher Bassett provides claim management services for and on behalf of icare HBCF.

7.1. The role of the claims manager

The claims manager must always act reasonably and appropriately. They must act also within the limits of their authorisation.

The claims manager will always keep you informed of the progress of your claim.

icare HBCF has provided the claims manager with policy direction and procedural guidance and expects that they have enough technical capability and experience to apply expert judgment to claims management issues.

7.2. How claims are assessed

The claims manager and their service providers assess claims by referring to the contract documents for the building works or any other relevant act or regulations, codes, and standards.

The claims manager may appoint a building consultant to visit your property, do an inspection and review the items on your claim form. You will need to give the building consultant access to the property and it's usually best if you are there during the inspection.

The building consultant will give the claims manager a detailed report, with the reasons for their opinion on each claimed item.

The claims manager will review all the information they have and assess what the policy will cover. Then they will send you a determination letter that includes the building consultant's report and lists all items the policy covers.

The determination letter will include decisions on each of the items you claimed. If you agree to these decisions, the claims manager will start to source quotations for the work. You can nominate your own builder or any licensed builder to submit a quotation.

Note: *icare HBCF tries to determine claims within 90 days, but some claims are very complex and have unique issues. For these claims, we will estimate how much longer it will take and ask you to agree to a new date for our determination.*

The claims manager will determine the most appropriate quotation. If you use a different builder that charges more, you must pay the difference.

7.2.1. Defect assessment tools

Where they can't determine defects by referring to the contract documents for the building works or any other relevant Act or regulations, codes, and standards, the claims manager and their service providers use the Guide to Standards & Tolerances¹ issued by NSW Fair Trading, to help them to determine whether items are defective.

7.3. Severe financial hardship

If the claims manager become aware that you are experiencing severe financial hardship as a result of the claim, they will identify the claim as requiring prompt attention and take all reasonable steps to handle, investigate and determine the claim in the shortest possible time.

This could include instructing service providers to give priority to the claim and if liability is in order, considering advance cash payments for alternative accommodation or completed works that are not contested on a without prejudice basis.

¹ <https://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renovate/guide-to-standards-and-tolerances>

7.4. Preliminary/Interim Payments

You may be eligible for some financial relief while you're waiting for the claims manager to assess your claim. The claims manager will review your claim details and, **if applicable**, may settle incurred costs while they are still assessing your claim.

While you're waiting for the claim decision, **if you're eligible**, you may receive payments for things such as:

- reasonable legal and other costs of pursuing the builder
- storage fees
- alternative accommodation

Each time the claims manager makes a payment, they will send you written confirmation of the settlement with the payment details.

8. Determination of indemnity and liability

To determine the indemnity, the claims manager assesses the available information to confirm that your policy covers you for the items you have claimed. Once they confirm which of your claimed items are covered under the policy conditions and exclusions, they will send you their determination of the liability - the extent of the loss.

The claims manager will send you written notification of their indemnity and liability decisions and include their reasons for each decision.

8.1. Written decision about your claim

The claims manager will send you written confirmation of their decision:

- to accept the claim and on what conditions
- to reject part of the claim, and provide reasons for the decision
- to reject the whole claim, and provide reasons for the decision

8.1.1. Disputing the decision

Note: *You have the right to dispute the decision. The claims manager will tell you about their internal dispute resolution system (IDR) and your rights to appeal the decision through NCAT (or the District Court where the amount involved exceeds the \$500,000 jurisdictional limit of NCAT).*

For more information about complaints and disputes, please refer to icare HBCF's Complaint and Dispute Handling Procedures document on page 15.

The claims manager will advise you about options for raising issues with higher authorities, making complaints, and helping to resolve disputes. Their communications will also include necessary information and contact details.

Note: *It is suggested you consider exhausting all internal review processes before appealing to NCAT or the Court, as this may help you to avoid unnecessary costs.*

8.2. Timeframes for decision

Within 30 business days of receiving a claim, the claims manager will send you written confirmation that they either:

- accept that the status of the builder has been established so that the policy is triggered
- do not accept that the status of the builder has been established so that the policy is not triggered
- require more information.

Under clause 39 of the *Home Building Regulation 2014*, if icare HBCF doesn't give you a decision on your claim within 90 days, or agree a later deadline for the decision with you, the Regulation states that we must accept liability.

Note: *icare HBCF tries to determine claims within 90 days, but some claims are very complex and have unique issues. For these claims, we will estimate how much longer it will take and ask you to agree to a new date for our determination.*

Where you don't agree to an extension, the claims manager will consider:

- whether provisions of the NSW government's model litigant principles are relevant in relation to the partial settlements of claims or interim payments where it is clear that liability is at least as much as the amount to be paid
- on the balance of likelihood, its judgment would be to accept the claim in whole or in part, and look towards a resolution on that basis
- whether to deny the claim.

9. Nature and extent of liability

Once the claims manager has determined that you are entitled to cover under the insurance policy, they will assess the liability under the policy. The claims manager will carefully consider the policy to determine whether the policy conditions have been breached or any endorsements or exclusions apply, or whether they should accept that the incomplete work or defects are within the terms of the policy.

Some examples of policy exclusions are:

- consequential loss, such as loss of rental income, loss of profit, additional mortgage interest, etc.
- you didn't take reasonable and timely action to minimise the damage
- the defect was due to a faulty design that you or the previous owner provided
- damage caused by the normal drying out of building work
- damage from fair wear and tear of the building work
- for claims arising from owner-builder work, defects being claimed that were in any report obtained prior to issuance of a certificate of insurance.

9.1. Technical report contents

The claims manager makes the decision on liability for defects with the assistance of a technical assessment report. The claims manager will use this report to assess liability and will send this report to the claimant with their liability decision letter. The claimant can request a copy of the report at any time.

The technical assessment report may be prepared by a licensed builder, investigator, building consultant, engineer or loss adjuster or a combination of these experts depending on the category of building and the nature of the defects.

The report should include the following information for each claimed item:

- observations on the location and extent of the defects
- cause of the defects
- reasons why the work is compliant (not defective) or reference to the relevant breach of code, standard or regulation

- details of rectification of defects or proposed scope of rectification work requiring builder quotations
- cost of rectification, if appropriate.

The claims manager will carefully consider technical assessment reports prepared for and on your behalf and must determine whether to rely on that report or seek its own.

Where appropriate, the claims manager will use the Guide to Standards & Tolerances to assist in determining whether the work is defective and if so, the extent.

9.2. Consultant reporting

The claims manager will ensure that the appointed consultant or service provider undertakes their investigations according to the claim manager's instructions and reports its findings quickly.

Consultants and other service providers must provide their services in a timely manner and provide information (such as reports) that meet requirements for accuracy and completeness.

For detailed information on the service standards that apply to consultants and service providers, please refer to the chapter titled Service standards on page 16.

10. Settlement methods

The icare HBCF preferred method of settling claims is to arrange for progress payments to be made to the rectifying builder on your behalf. These payments are made according to your building contract with the new builder.

By paying rectifying builders on your behalf, icare HBCF helps provide some certainty about your home being repaired and habitable.

The new builder must get HBC cover for the new building contract before any payment can be made.

The following are circumstances when a cash settlement may be considered:

- loss of deposit claims
- you will incur a significant uninsured loss
- you undertake to complete the remaining works as an owner-builder (under a permit)
- the remaining work is of a minor nature and the technical consultant has recommended that you can complete the works
- cash settlement is agreed as part of a disputed claims settlement.

Note: In some case, if you're eligible, the claims manager may be able to provide you with interim or preliminary payments while you are still waiting for your claim to be assessed.

For more information, please refer to Preliminary/ Interim Payments on page 18.

11. Finalisation of claims

11.1. Payments

The claims manager will pay settlements within 10 business days of receiving the documentation to support the payment. NCAT- or Court-ordered payments will be made within the timeframes specified by NCAT or the Court.

11.2. Progress payments to a new builder

Your contract with the builder defines the value of the progress payments and when they should be made. icare HBCF pays these progress payments to the builder on your behalf. The claim excess is usually deducted from these progress payments. Please check your policy to learn more about your policy excess.

12. Complaint and dispute procedures

12.1. Request a review of the claim decision or make a complaint

If you don't agree with a claim decision, you can request a review through the Gallagher Bassett internal dispute resolution (IDR) process. You must refer any dispute about a claim decision to the claims manager's IDR, no later than 30 days after you received written notice of the claim decision.

Gallagher Bassett will ask you to state the dispute in writing unless you have already provided a written statement.

How to contact the disputes resolution officer:

- Phone: (02) 9464 7270
- Email: complaints_builderswarrantyclaims@gbtpa.com.au
- You can also make a complaint about Gallagher Bassett's service to the dispute resolution officer.

Note: For detailed information about how icare HBCF handles complaints and disputes, please refer to the HBCF Complaint and Disputes Handling Procedures document on the icare website: <https://www.icare.nsw.gov.au/builders-and-homeowners/disputes/lodge-a-dispute>

12.2. Claims manager's internal dispute resolution (IDR) system

You should contact the dispute resolution officer to lodge your dispute. The claims manager uses its internal dispute resolution system (IDR) to manage disputes. The claims manager's IDR area considers and determines disputes and complaints that require escalation because you are dissatisfied with their decision.

The claims manager maintains a register of complaints and disputes and how and when they were resolved.

12.2.1. Dispute deadlines

There is a deadline for raising a dispute about the claims manager's decision. Unless there are special circumstances, you should lodge any dispute about the claim manager's decision not later than 30 days after you receive written notice of the decision.

The claims manager's communications include necessary information about the IDR system and contact details for the dispute resolution officer.

12.2.2. IDR process time restraints

The claims manager will confirm with you that it will not impose any time constraints until it has exhausted the internal review processes and any review raised with icare HBCF. This means that the 45-day time limit to appeal (to NCAT or a court) does not start until all icare review processes have been completed.

You can bypass all internal review procedures and proceed to appeal the decision immediately to NCAT or the court.

12.3. icare HBCF claims committee and claims management

If the claims manager's IDR area does not overturn the original decision, your right of appeal is to NCAT (or the District Court or Supreme Court depending on the amount in dispute), but **you should consider proceeding to the icare HBCF claims committee for a final review of the claims manager's decision before taking external action.** The claims manager will advise you that a new 45-day period will be granted for you to lodge an appeal at either NCAT or the District Court.

icare HBCF will consider the claims manager's submission and recommendation and any input from the icare HBCF claims committee members and then decide.

The icare HBCF claims committee is a committee of senior icare HBCF personnel constituted by icare HBCF to advise on disputed matters. Where a committee member has a conflict of interest in any disputed matter, they will excuse themselves from being involved with any consideration or decision-making.

The icare HBCF claims committee will decide the outcome of the dispute within 10 business days of receiving the dispute.

12.4. NSW Civil and Administrative Tribunal (NCAT) and Court appeals

If a claim is denied, you can appeal to NCAT within 45 days of the claims manager's final written notification that they have exhausted the claim review processes and rejected your claim. In some circumstances the NCAT may grant leave for an application to be lodged later than 45 days after the decision.

12.4.1. Deadlines for NCAT and Court appeals

Unless NCAT grants leave for a late application due to special circumstances, you must lodge your appeal with NCAT or the Court within 45 days of the claims manager's final written notification that they have rejected your claim (or following the claims manager's IDR decision or the icare HBCF claims committee's decision, each of which generates new 45-day appeal rights).

The claims manager's communications include necessary information and contact details for NCAT.

12.4.2. Lodging an NCAT appeal after the deadline

The Home Building Act 1989 allows you to lodge an appeal more than 45 days after the decision, if NCAT or a Court agrees that there are special circumstances and agrees to give you more time to lodge your appeal.

12.4.3. Special circumstances for lodging the NCAT appeal after the deadline

Without limiting the type of circumstances that may be considered special circumstances, the *Home Building Act 1989* further provides that the time taken for icare HBCF to review the decision is a factor in determining special circumstances.

12.5. Complaints to SIRA about icare HBCF

The State Insurance Regulatory Authority (SIRA) regulates the State Home Building Compensation scheme. **Although SIRA cannot overturn an individual claim decision, SIRA can review icare HBCF's compliance with the legislation, guidelines, and policy.**

icare HBCF and the claims manager must comply with the *Home Building Act 1989* and the *Home Building Regulation 2014* and SIRA's Home building compensation (claims handling) insurance guidelines² and icare HBCF's documented approach to managing claims.

If you have any concerns about icare HBCF's conduct in dealing with your claim, please contact SIRA:

- Phone: 13 10 50
- Email: contact@sira.nsw.gov.au
- Website: <https://www.sira.nsw.gov.au/disputes-and-complaints/home-building-compensation-disputes>

² SIRA Home Building Compensation (Claims Handling) Guidelines: https://www.sira.nsw.gov.au/__data/assets/pdf_file/0004/327181/HBC-claims-handling-insurance-guidelines.pdf

13. Service standards

13.1. Claims manager service standards

icare HBCF expects the claims manager to meet the following standards:

Action	Service standard	Claims manager requirement for completion
Response to your initial enquiry	The claims manager will send you a claim form	Within two business days
Receipt of notification	The claims manager will acknowledge receipt of a notification and advise that the prescribed claims information is required before claim can be assessed	Within two business days
	The claims manager will register the notification on the system	Within two business days
Receipt of claim if prescribed claims information is incomplete	The claims manager will notify you in writing that all information has not been received and advise exactly what further information is required to process the claim	Within five business days
	The claims manager will register the incomplete claim as a notification on the system	Within five business days
	The claims manager will raise an initial case reserve on the system	Within five business days of registration
Follow up of prescribed claims information	If the claims manager has not received all the prescribed claim information from you within five business days of receiving some prescribed claim information, the claims manager will inform you in writing of the additional information that is required	Within 24 hours after the expiration of five business days from the initial request
Receipt of claim if prescribed claims information is complete	The claims manager will acknowledge receipt of a claim, advise of the next steps to be taken to assess the claim. The claims manager and inform you that the claim will be deemed as accepted or declined within 90 days, unless you agree to an extension of time for the claims manager to determine the claim.	Within five business days
	The claims manager will register the claim on the system	Within five business days
	The claims manager will raise an initial case reserve on the system	Within five business days of registration
Determination of builder's status	If at any time the claims manager forms the view that the policy has not been triggered, the claims manager will inform you in writing and provide details of the source of that view	Within five business days

Action	Service standard	Claims manager requirement for completion
	The claims manager will inform you whether it accepts that the status of the builder has been established so that the policy is triggered or alternatively whether further information is required	Within 30 business days of receipt of claim
Appointment of service provider	The claims manager will appoint any necessary technical consultant	Within five business days of registration of the claim
	After appointing any service provider, the claims manager will notify you and provide the contact details for the provider	Within five business days
Determination of claim	The claims manager will either accept or deny the claim	Within 90 days after receipt of all prescribed claims information (unless an extension is agreed)
Supply of consultants' reports to claimants	The claims manager will provide you with copies of reports from service providers that are relied upon to reject a claim or reduce the liability in respect of a claim. There is no requirement to disclose information where: • it is confidential information provided by third parties • the information cannot be disclosed under law • the information is subject to legal professional privilege.	Within 10 business days of receiving a written request
Review of case reserves	The claims manager will review case reserves whilst investigations are continuing, and evidence is being obtained to enable a determination of indemnity and liability to be made	Every four weeks or within five business days of receipt of new information
Review of claim	The claims manager will review the claim	Every four weeks or within five business days of receipt of new information
Communication with claimant	The claims manager will return all telephone calls with the claimant or their representative	Within one business day
	The claims manager will keep the claimant informed about the progress of the claim in writing	Every month
	The claims manager communicates to you at least three days before the expiry of a service standard when it believes that it cannot meet its claim service standards and will indicate its likely response time and the way in which the claim will be handled	At least three days prior to expiration of service standard
Claim dispute or complaint	The claims manager is to consider your escalated complaints disputes through their internal IDR	Within 15 business days of lodgement of the dispute

Action	Service standard	Claims manager requirement for completion
	icare HBCF claims committee must consider any escalated complaints	Within 10 business days of receiving a request to review a complaint
Payments	The claims manager will action the payment of accounts and settlements	Within 10 business days or within the timeframes specified by NCAT or a court
Actioning icare HBCF instructions	The claims manager is to action any instructions issued by icare HBCF	Within two business days of the instruction being issued
Responding to queries from icare HBCF, SIRA or NSW Fair Trading	The claims manager may regularly receive enquiries from icare HBCF, SIRA or NSW Fair Trading. Some may be of a claims specific nature while others may be related to scheme policy	Within two business days of general requests Within four business hours for urgent queries (such as where there is ministerial involvement)
Finalisation	The claims manager will finalise a claim: • once the claim has been fully investigated • when they have determined the liability and amount (if any) • when they have paid you and relevant service providers.	Within 14 days of last action on claim

13.2. Standards for service providers

The claims manager will require the service providers it contracts with, to:

- operate in a professional manner
- inform you of their status and the identity of the claims manager for whom they are acting
- comply with the Home Building Act 1989 and the Home Building Regulation 2014 along with SIRA's Home building compensation (claims handling) guidelines
- maintain professional indemnity insurance for an amount of at least \$2 million
- charge in accordance with a fee structure which reflects normal commercial standards.

13.3. Technical requirements for service providers

The claims manager will ensure that each service provider has:

- been approved by the claims manager
- a current licence, registration and/or qualification if required by any applicable law
- enough expertise to act on the matters for which they have been appointed by the claims manager.

13.3.1. Service provider service level timeframes

- Building consultants must acknowledge receipt of the appointment in writing. Within one business day, building consultants must define the following in their acknowledgement notice:
 - the name of the handling consultant
 - company reference number
 - confirmation of claimant contact
- Building consultants must complete the inspection of the building within five business days from the appointment date or have justifiable reason(s) to complete it in excess of five days. An example of a justifiable reason could be that the owner cannot enable the building consultant to perform the inspection within five days.
- If a claim assessment is finalised on a first and final report, the building consultant must provide that report within 20 business days or have a justifiable reason to take longer. The claims manager must pre-approve or pre-acknowledge the reason to exceed this time frame. A justifiable reason can be, for example, that there were an excessive number of defects to be assessed.
- If a claim report is not identified as first and final, the building consultant must provide the report within 15 business days of receiving appointment instructions or have justifiable reason(s) to take longer. The claims manager must pre-approve or pre-acknowledge the reason(s) to take longer than 15 business days to complete the report.
- If a re-appointment occurs, building consultants must send written acknowledgement within one business day.
- Building consultants must provide their supplementary reports within an acceptable number of business days of any acceptable claim developments that the claims manager needs to act on. The claim consultant will determine the acceptable number of days and re-appoint a building consultant.
- Building consultants must provide their tax invoice and related documents (time sheets, disbursement invoices, etc.) and their full report within three business days of finalisation of the claim.

14. Your feedback

We continuously gather feedback and measure the experiences of our customers. We use a variety of feedback tools and measure different aspects of the customer experience. This helps us to understand how our partners and icare HBCF are performing and to identify opportunities for continuous improvement.

14.1. Why are we measuring customer experience?

- To provide our customers with a voice.
- To hold icare, our scheme agents and partners accountable for their performance.
- To understand where we can improve in our processes and systems.
- To measure our continuous improvement programs.

14.2. How do we measure customer experience?

One of our key metrics is the Net Promoter Score (NPS), which we use to measure our customers' experiences with icare, our scheme agents, and service providers. NPS is a globally recognised metric of advocacy used by organisations that allows us to understand the sentiment of our customers.

Find out more about the icare customer experience and NPS on our website: <https://www.icare.nsw.gov.au/about-us/customer-engagement/icare-customer-experience>.

15. Terms used in this document

Term	Definition
Act	<i>Home Building Act 1989</i>
Builder	A person who is required by Part 6 of the Act to enter into a building cover contract. See also contractor.
Building cover contract	A contract of insurance under Part 6 of the Act or a contract or arrangement for the provision of cover by means of an alternative indemnity product. See also Certificate of Insurance.
Business days	Monday to Friday, excluding public holidays.
Certificate of Eligibility (COE)	A certificate outlining the conditions under which icare HBCF has approved a builder to purchase COIs for residential work requiring home building compensation cover. Getting a COE is the first step towards being able to purchase COIs from icare HBCF for residential building work in NSW. The certificate records: • Approved Open Job Limits (OJLs) • Approved Construction Type and associated maximum contract value limits • COE issue date and expiry.
Certificate of Insurance (COI)	A certificate evidencing a policy of insurance provided under Part 6 Home Building Act to provide home building compensation cover. Builders must provide homeowners with a COI before they start building work and before they take a deposit.
Claim	A claim for indemnity by a claimant under a building cover contract.
Claimant	A person making a claim under a building cover contract.
Claims manager	An external claims agency engaged by icare HBCF to act as its agent to perform various claims management tasks and responsibilities delegated to it.
Contractor	A person who is required by Part 6 of the Act to enter into a building cover contract. <i>Note: ‘Builder’ is used throughout this document, but this could also mean a licensed contractor, such as electricians, plumbers etc.</i>
Dispute	A dispute regarding a claim manager’s decision about the claim.
Guidelines	Home Building Compensation (claims handling) insurance guidelines. Guidelines issued by SIRA for handling HBC insurance claims.
Indemnity	An indemnity refers to a clause in a contract where one party (the indemnifier) promises to protect another party (the indemnified) from a loss caused by a specific event. icare HBCF indemnifies homeowners (who have an icare HBCF-issued insurance policy) against defective or incomplete building work where they cannot recover from the builder because of various reasons.
Liability	icare HBCF’s liability is the amount it will pay under the terms of the HBC insurance policy.
Licence holder	A licensed insurer or a licensed provider under the Act. icare HBCF is a licensed insurer.

Term	Definition
HBC legislation	Includes the Act and Regulation and any Insurance Guidelines made under the Act.
Loss Notification	The process of notifying icare HBCF (usually by contacting the claims manager) of alleged losses from defective or incomplete building work. <i>Note: Homeowners must notify icare HBCF/the claims manager of alleged losses before the insurance periods' expiry dates. Notifying before insurance periods' expiry dates may protect the homeowner's right to make a claim later, after the insurance periods' expiry dates.</i>
NCAT	NSW Civil and Administrative Tribunal Provides a forum to resolve disputes and review administrative decisions. In some dispute resolution cases (for example, where the builder refuses to rectify defects) NSW Fair Trading may recommend a homeowner refer their dispute to NCAT for resolution. See https://www.ncat.nsw.gov.au/ for further information.
NSW Fair Trading	Responsible for the administration of the Home Building Act including contracts, licensing and dispute resolution. Where grounds for a claim under a COI issued by icare HBCF are not yet established (for example, the builder has not died, disappeared or become insolvent) homeowners can access a dispute resolution service provided by NSW Fair Trading. See https://www.fairtrading.nsw.gov.au/housing-and-property/building-andrenovating/resolving-building-disputes for further information.
Regulation	<i>Home Building Regulation 2014</i>
Scheme (the scheme)	The Home Building Compensation (HBC) scheme
Scheme agent	icare HBCF use two scheme agents. On behalf of icare HBCF, Gallagher Bassett is the claims manager and Corporate Scorecard is the eligibility risk manager.
Service provider	Building Consultants are an example of service providers.
SICorp	NSW Self Insurance Corporation
SIRA	State Insurance Regulatory Authority

Term	Definition
Statutory warranty	The following warranties set out what you are entitled to under the contract between you and your builder and tradesperson. Even if these warranties are not written into the contract you sign, the law says that they still apply to the work you are having done on your home. Statutory warranties are in effect for six years for major defects and two years for all other defects, commencing from the date the work was completed. These warranties are: • the work will be performed with due care and skill • the work will be in accordance with any plans and specifications set out in the contract • all materials supplied will be suitable for the purpose for which they are to be used • materials will be new, unless otherwise specified • the work will be done in accordance to, and will comply with, the <i>Home Building Act 1989</i> or any other law • the work will be done with due diligence and within the time stated in the contract, or otherwise in a reasonable time • the work will result in a dwelling that is reasonably fit to live in, if the work includes: ◦ construction of a dwelling ◦ making of alterations or additions to a dwelling ◦ repairing, renovation, decoration or protective treatment of a dwelling • the work and any materials used in doing the work will be reasonably fit for the specified purpose or result that the owner has advised the contractor, while indicating that the owner relies on the contractor's skill and judgment.

16. Looking after your mental health

LifeWorks are proud to partner with Gallagher Bassett to provide telephonic counselling support for NSW HBCF Homeowners.

- Immediate telephone counselling: You can arrange a telephone counselling appointment within a business day. You can access up to three sessions, with the same counsellor. If there is a requirement for ongoing support, your telephone counsellor will discuss with you the most appropriate referral recommendation – generally to see your GP for a Mental Health Care Plan.
- Assessment of risk of harm: All Homeowners who contact our service are assessed for risk of harm. If at any stage during the intake process you are assessed as being at-risk, LifeWorks will take the appropriate steps to ensure you are connected with immediate counselling support.

If you're feeling stressed about building works at your home, please call 1300 361 008.

17. Disclaimer

Please note that this document contains general information only and cannot be relied upon for any other purpose. The intention of this document is to provide general guidance in plain language, however there are a variety of documents, guidelines, legislation, and other information to which you should refer rather than relying on this document. icare HBCF will not accept any liability arising from reliance or use of this document.

