


Submission to the Independent Pricing and Regulatory Tribunal

On the draft report into the Home Building Compensation Fund



 **MASTER BUILDERS
INSURANCE BROKERS**
Your Industry Specialists

 Your go-to construction
insurance broker

Contents

Executive Summary.....	1
-------------------------------	----------

Response to Draft Findings and Recommendations	2
---	----------

Dispute resolution not aligned with licencing regime	2
---	---

Essential role of brokers	4
---------------------------------	---

Publication of a builder's risk rating.....	9
---	---

Separate construction period and warranty period product offerings.....	10
--	----

Increased transparency of eligibility assessments and premium risk factors	12
---	----

Streamlined and timely eligibility dispute resolution	13
--	----

Executive Summary

In response to the IPART review of the efficiency and effectiveness of the NSW Home Building Compensation Fund, Master Builders Insurance Brokers ('MBIB') are pleased to enclose our response to the paper. We believe the enclosed document will address key pain points that the scheme presently faces.

The Home Building Compensation Fund should continue to be the last resort avenue to compensate the homeowner for incomplete work or defects for the following triggers: death, disappearance, insolvency or loss of licence. As it was never the intention of the Home Building Compensation Fund to settle or mediate contractual disputes, clear separation should be made between the dispute resolution process and the Home Building Compensation Fund.

Given the complexities of the fund, we are of the firm view brokers play an indispensable role in providing builders with guidance and advocacy in times of heightened need during the Home Warranty eligibility process. Making brokers voluntary will ultimately increase the cost of the product and achieve poorer outcomes. Passing the responsibility onto the likes of accountants and external consultants will be counterproductive; history has shown that having too many intermediaries that are not proficient in the product can be harmful to builder eligibility outcomes.

Retaining a minimum coverage requirement of \$340,000 for each part of a split policy will be a barrier to entry for potential participants in the market. MBIB have a long-held view that a split policy with a minimum coverage level for both policies or policy sections would only create additional capital requirements for a class of insurance that is already suffering under the weight of its extended liability tail.

As we enter an age where information is mostly 'on-demand' and easy to access, there is an increased push for builder's risk ratings to be published to allow consumers to make more informed decisions on the financial stability of the builder they choose. If this is the case, we believe the basis for calculation of risk ratings be made accessible to the builder to enable them to make informed decisions for their business to ensure they are presented in the best light to the consumer.

It would be counter-intuitive to give the homeowner access to a risk rating model without clearly illustrating what the rating represents. Instead, MBIB believe the rating tool visible to homeowners should have a greater focus on the quality of work.

Greater transparency should be given to both builders and HBCF stakeholders into the individual risk ratings, and the framework surrounding the eligibility assessments. Given the intricacies of the various segments of builders, MBIB strongly opposes a 'one size fits all' approach to assessments. The ability to be able to override system-generated decisions and make a decision based on professional judgement and commercial awareness where it's appropriate would be a welcomed change.

Since the pandemic hit our shores in early 2020, the industry has seen various stimulus packages introduced to help cushion the financial impact on our economy. To complement the government's push to fast track pipeline and to increase activity, we would like to see icare provide greater flexibility where COVID19 has impacted a builder.

Response to Draft Findings and Recommendations

Dispute resolution not aligned with licencing regime

IPART Recommendation 1:

That the NSW Government improve access and timeliness to dispute resolution processes, by ensuring Fair Trading and NCAT are sufficiently resourced and have the relevant expertise.

IPART Recommendation 2:

That Fair Trading develop a program of proactive investigations and audits of building work in the low rise residential sector, similar to the approach being taken by the Building Commissioner in relation to apartment buildings.

There is growing need to review the current dispute resolution process to make it fair and efficient for both builders and homeowners. The current process unfairly impacts the builder as any dispute lodged by a homeowner triggers Home Building Compensation Fund ('HBCF') restrictions, impacting the builder's ability to trade. These restrictions are enforced prior to any judgement which throws out the notion "innocent until proven guilty". The intention of the HBCF is not to mediate a contractual dispute so there needs to be a clear delineation between disputes which automatically trigger HBCF restrictions and those which do not. A mandatory dispute resolution process that is fast, outcomes focussed and encourages open communication between all parties is essential as matters may be resolved quickly without the need to impose harmful HBCF restrictions on builders.

The Fair Trading dispute management system is considered amongst some construction participants to be one-sided, geared towards the benefit of the consumer. We recognise that Fair Trading generally attempt to ensure fairness for both parties to a dispute however more can be done to improve builders' confidence in the process. MBIB support the recommendation calling for increased funding of Fair Trading which would allow sufficient personnel to investigate issues in a timely manner. Currently, delays of two to four weeks before an investigator is on site is standard by which time the dispute has progressed and the opportunity for a swift conclusion has likely passed.

Often homeowners will enter into a dispute with a builder at the very last stages of construction, or upon completed work. One of the common flaws to the current system is that a rectification order can be enforced against the builder before payment is made for the works. There is no onus on the homeowner to make the payment for the works during the process of the dispute, and the builder is often left with significant financial loss due to the possible delay of other works depending on their insurance terms. There is often further financial loss placed on the builder after the resolution process is completed as Fair Trading rarely enforce payment on the homeowner for the completed works, resulting in the builder taking the loss rather than continuing on a lengthy legal proceeding to acquire payment. As homeowners become aware of this loophole, many are becoming opportunistic to escape payment.

March 2021 will see a welcomed change to the Building and Construction Industry Security of Payment Act 1999 ('SOP Act'), for which, builders can pursue homeowners for their payments¹. This change, however, will not address all segments of work, with a lot of residential projects falling outside the scope of the SOP Act.

We believe that the NSW government should do more to facilitate a dispute resolution process that is not only financially binding for all parties but can address disputes informally first without the drawn-out process of NCAT. This mandatory negotiation between parties should be informal in the first instance; which will, in turn, foster better relationships between parties. The sole focus of the initial stage in the dispute resolution process is to address the issue promptly and save on legal costs. Similar to the Victorian process (use of DBDRV before VCAT), claims should only be lodged through NCAT once an informal dispute resolution process has been exhausted.²

To minimise the number of disputes, there should be better alignment between licencing and quality of work. Master Builders Insurance Brokers ('MBIB') is supportive of the work the NSW building commissioner is doing to better enforce compliance and lift the standard of construction in NSW. An accessible portal for both the homeowner and the builder, similar to that of the Multi Party Rating Tool that rewards contractors for the highest quality work, but also gives the industry better inspiration would be a welcomed change to the low rise residential sector.

¹ Addisons, <https://addisons.com/knowledge/insights/new-nsw-security-of-payment-regulation-extends-adjudication-scheme-to-owner-occupier-construction-contracts/>, accessed 14-Oct-2020

² Victorian civil & administrative tribunal, <https://www.vcat.vic.gov.au/case-types/building-and-construction/apply-building-and-construction>, accessed 14 October 2020

Essential role of brokers

IPART Recommendation 6:

The use of brokers become voluntary under the scheme, to provide builders with more options on how they manage their HBCF obligations.

IPART Recommendation 6 – the use of brokers to become voluntary – is not practical in the current environment and would result in increased costs and poorer outcomes for builders, homeowners, and the Scheme.

It goes without saying that MBIB have a vested interest in this recommendation in particular. It is difficult to challenge the proposal that the use of brokers should be voluntary and the reasons for same without appearing to be entirely self-serving. What we have strived to do is detail why we believe this proposal would not be in the best interests of the HBCF Scheme stakeholders.

It appears that IPART's basis for this recommendation can be summarised as follows:

- › Brokers are not compulsory in the Victorian scheme
- › Brokers are not required because there is only one provider of HBC cover
- › icare has the technology to enable it to transact directly with the builder
- › Builders can feel like the broker is not effectively presenting their case to icare or its Eligibility Risk Manager
- › The value that brokers provide in purchasing the certificates of insurance is likely limited, and
- › Brokerage costs add to the cost of insurance for homeowners

Brokers are not compulsory in the Victoria scheme

While it is correct to say that *brokers* are not compulsory in the Victorian scheme, *distributors* are. The statement that brokers are not compulsory doesn't provide an accurate reflection of that scheme's operation as it is more an issue of terminology rather than substance.

Brokers are voluntary however every builder must nominate one of the six authorised distributors³. In the Victorian scheme, the distributors essentially act as, and provide similar services to, a broker. Distributors assist builders with applications for eligibility and purchasing of project specific certificates of insurance (where the builder does not wish to self-issue via the VMIA builders' portal, BuildVic). The distributor is also required to process any requests for amendments to or cancellations of previously issued certificates of insurance.

Builders can elect to utilise the services of a broker however that broker can only transact with one of the distributors and cannot deal with VMIA directly.

Distributors do not have the authority to make decisions on behalf of the VMIA, so in many ways a broker is duplicating the service that the builder could obtain via a distributor directly.

³ VMIA Domestic Building Insurance, <https://dbi.vmia.vic.gov.au/builders>, accessed 12 October 2020.

Brokers are not required because there is only one provider of HBCF cover

Despite the prescriptive nature of the eligibility manual, there are still grey areas when it comes to applying it to a builder's unique circumstances. One of the roles of a broker in the Scheme is to act as an interpreter between the underwriter, the builder and the builder's accountant. Someone that can ask the right questions, understand commercial realities of residential construction businesses, and marry that to an understanding of accounting and financial matters. This helps to ensure that the underwriter has a true and complete picture of the risk posed by a particular business and the builder also understands the process sufficiently to provide the necessary information. A broker can facilitate understanding between builders and the Eligibility Risk Manager to optimise the outcome for all parties.

The financial statements are often prepared by accountants who, while skilled in their area of expertise, are not familiar with the requirements of the HBCF Scheme. There is a tension between accounting decisions made to benefit the business in terms of tax outcomes, asset protection and the like and the net asset and working capital requirements of the HBCF regime; they often operate at odds to one another. Brokers frequently have an education element in their role, with the builder and their accountant.

It is possible that a builder's accountant could fulfil this intermediary function in lieu of a broker however, this would most likely result in significantly higher costs for many builders. Accountants are specialists in accounting, not the HBCF scheme and it would be difficult for an accountant to be aware of the nuances of the scheme when it is not part of their general day-to-day role. The services offered by a distributor, charged out at an accountant's hourly rate would add considerable cost to procurement in our view.

The Scheme undergoes regular changes, some major and others relatively minor and unless the accountant is an HBCF specialist who remains up-to-date they will not be able to assist the builder, the Eligibility Risk Manager or icare to the same level that brokers currently do.

MBIB recognises the important role accountants play in structuring a builder's affairs and the potential impact of this on eligibility outcomes. This is why MBIB have presented training sessions over the years specifically aimed at educating accountants about the Scheme and the common issues that cause difficulty during eligibility reviews. We would continue to see this as a critical part of our role moving forward.

icare has the technology to enable it to transact directly with the builder

icare currently have two systems brokers use to manage a builder's HBC; BEAT and CIMS and an additional system solely for builder use known as the Builder Self Service Portal ('BSSP').

BEAT is used for eligibility facility reviews, builder information, etc. whereas CIMS is the project specific insurance policy issuance system. As a broker the only exposure we have had to the BSSP is via the user guide published by icare. No BSSP test system has been made available to brokers so we will largely confine our comments to the BEAT and CIMS systems.

The appearance and navigation of each of the three systems is different and not very intuitive (except for perhaps the BSSP). It is our understanding that all three systems were designed and built by three different providers, with the result being that the systems do not communicate well with each other.

icare have published user manuals for all three systems that a builder or accountant would need to familiarise themselves with prior to being able to utilise them⁴. Collectively, the manuals run to 86 pages.

icare arguably does have the technology to enable it to transact directly with builders however it is not user friendly or intuitive. In contrast, the technology utilised in the Victorian scheme (known as BuildVic) allows a builder to manage all aspects of their domestic building insurance including eligibility facility reviews and issuance of job specific policies in one clean, user-friendly interface.

Despite the usefulness of BuildVic we find that on average, 20-25% of Victorian certificates issued by MBIB are processed by our specialist team, rather than the builder themselves. Of those certificates self-issued by builders, we estimate that 8% on average require cancellation or amendment due to processing errors made by the builder. MBIB expects that this error rate would be even higher if builders were transacting via the currently available icare systems. This would need to be taken into account if estimating the costs involved in icare assuming responsibility for this function.

In the short to medium term we would anticipate that icare and its Eligibility Risk Manager would need to spend considerable time and effort in educating builders in how to use the systems while also responding to ongoing questions from users.

Builders can feel like the broker is not effectively presenting their case to icare or its Eligibility Risk Manager

An effective broker adds value to the builder and the Scheme. Brokers (or other advisors) with insufficient experience or knowledge, who operate merely as a post box, do not add value to the Scheme or the builder. Rather than a focus on builders dealing direct within a framework that is clearly not set up for it, MBIB would welcome further rigour around the skills and abilities of those distributing the product and the level of advocacy and support provided.

Brokers actions are not always the cause of builder dissatisfaction. If builders don't fully understand how their eligibility is assessed they can become frustrated if they feel that sufficient weight hasn't been given to the particulars of their business or the quality of their work.

This is also related to recommendation 15 in the Report with respect to increased transparency of eligibility assessments (which is addressed on p. 12 of this response). A one size fits all approach does not allow room for the Eligibility Risk Manager to make considered judgements based on the facts particular to a builder. A broker may well have presented the builders case effectively, however the eligibility manual does not allow the Eligibility Risk Manager the latitude to adapt the guidelines to the builder's unique circumstances.

In this situation it is incumbent upon the broker to educate the builder on those factors that carry the greatest weight when assessing eligibility and to effectively manage expectations during the review process.

⁴ BEAT user guide for Distributors V2.5, PolicyCenter UserGuide for Distributors v2.0 and HBCF Builder Self-Service Portal user guide version 1

The value that brokers provide in purchasing the certificates of insurance is likely limited

In theory the issuing of certificates should be straight-forward but that is not always the case.

MBIB have a specialist team dedicated to issuing project specific certificates of insurance on behalf of builders. New team members undertake a rigorous induction and training program to equip them with the necessary skills and knowledge to accurately process HBCF insurance certificates.

At present there are three documents published by icare (two infographics and a fact sheet)⁵ to complement the eligibility manual, being the primary source document, which can be used to determine the correct classification of a project for the purposes of HBC cover. The two project application forms have also been recently updated to provide additional guidance to builders on selecting the correct construction type.

Despite the information available, in a recent Distributor Update⁶ received from icare it was noted that 'one item that continues to be highlighted...is the incorrect classification of duplex/triplex projects when they are subject to strata subdivision.' Distributors were also reminded '...that it is not the Eligibility Risk Managers responsibility to review information recorded by distributors and/or builders...' Additionally in an earlier Distributor Update⁷ icare asked distributors to '...please keep in mind that incorrect submissions have a negative effect on the Fund...'

From the above it may be tempting to draw the conclusion that brokers don't in fact provide value in assisting with the purchase of policies but that would be a mistake. Instead it is apparent that even with their in-depth knowledge of the scheme and easy access to the latest updates, brokers can still make mistakes when it comes to classification of projects. It is also apparent that in certain circumstances Distributors, under their distribution agreement can be held accountable for certificates processed incorrectly, an opportunity which would be lost to the scheme (or at very least logistically difficult) if dealing direct with builders.

If brokers aren't providing the checks and balances when it comes to ensuring that the correct project classification has been selected, where will this responsibility lie?

Without brokers to review every project application submitted, and unless the Eligibility Risk Manager or icare take over this role, there is a risk to the scheme that premium collected will not be commensurate with the risk assumed. This could occur inadvertently but also due to a deliberate choice by some builders to select the classification with the lower premium.

⁵ HBCF Primary Construction Types Infographic v.2, HBCF Secondary Dwelling Construction Types Infographic v.1 and Structural V Non-Structural Construction Classification types for HBCF insurance premium purposes.

⁶ Distributor Update #24 received 28-Sep-2020

⁷ Distributor Update #6 received 12-Mar-2020

Brokerage costs add to the cost of insurance for homeowners

It is MBIB's position that the cost savings anticipated by the removal of brokers is likely to be a false economy. icare and its Eligibility Risk Manager are currently not equipped to handle the volume of enquiries and the increased workload that transacting with builders directly would entail.

Under the current distribution structure, it has been clearly articulated to MBIB that we are the builders point of contact for the scheme and that builder liaison is not icare's role. It has been our experience that icare have been somewhat reluctant to meet with builders on eligibility matters, noting that this is the responsibility of the broker and/or the Eligibility Risk Manager. Additionally, when approached for clarification on policy processing matters (where the eligibility manual does not contemplate the scenario and/or the manual is vague as to the correct course of action) icare has declined to provide guidance while making it clear that if it considers that a project specific application has been processed incorrectly, then as the broker we would be held liable.

In our view, icare HBCF would require significant transformation to enable it to transact with builders directly.

It was suggested in the Report⁸ that accountants could be used to assist builders in lieu of brokers. We would suggest that an accountant would charge substantially more for their services than would a broker. Please see p. 6 of this response for additional commentary on this matter.

⁸ Section 4.5, page38: Review of the Efficiency and Effectiveness of the NSW Home Building Compensation Fund (Draft Report), IPART, September 2020

Publication of a builder's risk rating

IPART Recommendation 7:

icare's premium calculator provide the estimated premium for each builder to help homeowners better manage their costs and understand the insolvency risk associated with different builders.

Publication of a builder's risk rating without clear and concise information about what goes into determining a risk rating could be detrimental to builders. There is a very real danger that a builder's risk rating will become a proxy for the quality of the work they produce which is not what the risk rating represents.

Transparency around the impact of the different factors on a rating is also imperative so that builders can make informed decisions about their business, for example around the retention of funds in the business or the net margin targeted.

Given the complex premium calculations introduced by icare HBCF over the years, it is sometimes difficult for builders to calculate the correct premium that will apply to a particular project, let alone a prospective homeowner. Please see p. 7 for the discussion on the challenges of selecting the correct construction type for projects.

MBIB do not believe that this recommendation will produce the effect intended.

Separate construction period and warranty period product offerings

IPART Recommendation 11:

That the NSW Government requires icare to make available separate cost-reflective construction period and warranty period products so that a new entrant could provide construction period cover only.

MBIB agrees that the consumer must be put at the centre of this discussion and that consumer protection remains critical in all our deliberations. While consumer protection in NSW remains critical the experience of the last nine years illustrates that the complexity and fluid nature of the building industry coupled with an extended defect tail presents too much of a gamble and capital burden for the private insurance market.

Having been a broker active in discussions to drive underwriters back into the market it has been clear that the significant capital reserves required to underwrite this long tail class of business relative to the size of the market has been prohibitive in almost any context. While MBIB's view remains that an industry approach is required to drive frequency and severity of claims down in order to drive interest in this market, the IPART review has again foreshadowed a split policy approach to drive interest in this policy class.

MBIB have a long-held view that a split policy with a minimum coverage level for both policies or policy sections would only create additional capital requirements for a class of insurance that is already suffering under the weight of its extended liability tail. While it is correct that splitting the policies would bring additional interest to the scheme with more short tail underwriters being attracted to the idea of non-completion cover, this would not negate the need for every build to still carry defects cover that complies with the NSW Home Building Amendment Act 2014. As a result, this would be fundamentally doubling the cover at a time where the scheme can least afford it.

In contrast we believe if the coverage was split with \$200k applied to non-completion and \$150k applied to ongoing defects, the goal of opening up varied underwriter appetites would be achieved while not fundamentally changing the level of consumer protection.

If there are concerns from a consumer protection perspective that coverage for non-completion and/or defects are reducing, we believe HBCF should turn its mind to the statements made in the IPART paper and look at claims leakage and the unnecessary incremental cost of claims in the scheme which IPART rightly point out are 50% higher than any other states⁹. MBIB contends that there would be very few claims that would exceed the level of cover if these claims were being more appropriately managed with a stronger dispute resolution system and tighter claims management.

⁹ Section 1.6, page 5: Review of the Efficiency and Effectiveness of the NSW Home Building Compensation Fund (Draft Report), IPART, September 2020

While this approach may continue to be considered in any form it must be acknowledged that splitting the policy response is likely to bring speculative capital into the market. It could create serious issues down the track were entrants to withdraw after a shallow entry, particularly in what is now clearly an insurance market that has a broader reluctance around construction risk.

Current Market Volatility

Any efforts to drive a product that has not generated a return on capital historically should be critically assessed. While we understand the intentions behind opening this market to other participants IPART should consider consultation with the Insurance Council of Australia to fully understand the complexity key markets face in entering this market in Australia.

At a time where capacity is shrinking dramatically in the Australian and Overseas insurance market for Australian construction risk, it is our view that SIRA/HBCF have an opportunity through this hard market period to bring the portfolio to a more sustainable position in order to attract market entrants at a different point of the insurance cycle.

Importantly, with certain parts of the construction Professional Indemnity and Liability market facing extreme challenges at the moment, we fear that had insurers entered the market two or three years ago, they could already be exiting due to portfolio performance pressures and competition for capital.

These are considerations that should be front of mind when also considering the entry of non-APRA approved participants to this market as the current economic environment presents a far from ideal time to enter even for a major insurer with significant capital reserves.

Increased transparency of eligibility assessments and premium risk factors

IPART Recommendation 15:

icare provides greater transparency in how it undertakes its eligibility assessments and how it determines individual builder loading/discounts used in risk-adjusted premiums.

There is a strong emphasis placed on the automatically generated outcome produced by BEAT which is underpinned by the eligibility manual which states that ‘...BEAT is the basic source of the assessment, but not a definitive determination in all circumstances.’¹⁰ However, immediately following this statement the manual goes on to say that only if ‘...exceptional circumstances warrant it...’¹¹ can the automatic outcome generated by BEAT be overridden.

In practice there is a reluctance to override the BEAT outcome even when information provided by the builder and/or their accountant arguably support this course of action. This is particularly difficult for builders to accept when their business does not fit the narrow definition provided for in the eligibility manual.

There is an impression of ‘ticking the box’ in order to satisfy the eligibility manual, rather than the information sought actually affecting the outcome of the assessment. This encompasses both the decision to provide a facility and if so, the size and any conditions to same.

Additionally, there is a rigidity in the application of provisions in the manual. For instance, the manual requires that a builder maintain a minimum of 3% ANTA as a function of total turnover. The reason provided for this minimum requirement is that ‘ANTA is viewed as a “buffer”, available to the builder business for successful withstanding of normal business disruptions or “shocks”...’ This is an understandable position to take. Business disruptions do occur, and it is prudent to require a builder to maintain sufficient assets to guard against business failure. The difficulty arises when there is no ability for the Eligibility Risk Manager to apply professional judgement in unusual circumstances.

2020 has seen the emergence of a global pandemic in COVID-19 which ‘...has caused the largest shock to economic activity in Australia since the 1930s’ resulting in Australia officially entering recession earlier this year. Government stimulus packages such as HomeBuilder have helped insulate the residential construction industry to a degree so far, but it is still a time of uncertainty for residential builders and the wider community. To date, and in our experience, icare have not provided any flexibility around the requirement for a builder to maintain a minimum 3% ANTA position despite the prevailing economic conditions.

If the justification for requiring an asset buffer is to allow a business to withstand ordinary business shocks, then an event such as COVID-19 could be reasonably expected to start to erode that buffer. Widespread conditions such as these require flexibility and a commercial approach on the part of icare and in turn, the Eligibility Risk Manager. Rigid adherence to a minimum requirement set out in the manual has the potential to precipitate a business failure if not handled carefully; the very outcome that the review process is hoping to avoid. At the very least, it has the potential to produce an outcome that is not in a business’s long-term interests and by extension, that of the Scheme.

⁹ Section 1.6, page 5: Review of the Efficiency and Effectiveness of the NSW Home Building Compensation Fund (Draft Report), IPART, September 2020

Increased transparency of eligibility assessments and premium risk factors

IPART Recommendation 15:

icare provides greater transparency in how it undertakes its eligibility assessments and how it determines individual builder loading/discounts used in risk-adjusted premiums.

There is a strong emphasis placed on the automatically generated outcome produced by BEAT which is underpinned by the eligibility manual which states that ‘...BEAT is the basic source of the assessment, but not a definitive determination in all circumstances.’¹⁰ However, immediately following this statement the manual goes on to say that only if ‘...exceptional circumstances warrant it...’¹¹ can the automatic outcome generated by BEAT be overridden.

In practice there is a reluctance to override the BEAT outcome even when information provided by the builder and/or their accountant arguably support this course of action. This is particularly difficult for builders to accept when their business does not fit the narrow definition provided for in the eligibility manual.

There is an impression of ‘ticking the box’ in order to satisfy the eligibility manual, rather than the information sought actually affecting the outcome of the assessment. This encompasses both the decision to provide a facility and if so, the size and any conditions to same.

Additionally, there is a rigidity in the application of provisions in the manual. For instance, the manual requires that a builder maintain a minimum of 3% ANTA as a function of total turnover.¹² The reason provided for this minimum requirement is that ‘ANTA is viewed as a “buffer”, available to the builder business for successful withstanding of normal business disruptions or “shocks”...’¹³ This is an understandable position to take. Business disruptions do occur, and it is prudent to require a builder to maintain sufficient assets to guard against business failure. The difficulty arises when there is no ability for the Eligibility Risk Manager to apply professional judgement in unusual circumstances.

2020 has seen the emergence of a global pandemic in COVID-19 which ‘...has caused the largest shock to economic activity in Australia since the 1930s’¹⁴ resulting in Australia officially entering recession earlier this year. Government stimulus packages such as HomeBuilder have helped insulate the residential construction industry to a degree so far, but it is still a time of uncertainty for residential builders and the wider community. To date, and in our experience, icare have not provided any flexibility around the requirement for a builder to maintain a minimum 3% ANTA position despite the prevailing economic conditions.

¹⁰ icare, HBCF Eligibility Manual, 1 March 2020, p.49

¹¹ icare, HBCF Eligibility Manual, 1 March 2020, p.49

¹² icare, HBCF Eligibility Manual, 1 March 2020, p.34

¹³ icare, HBCF Eligibility Manual, 1 March 2020, p.34

¹⁴ Reserve Bank of Australia, <https://www.rba.gov.au/publications/smp/2020/aug/domestic-economic-conditions.html>, accessed 13-Oct-20

If the justification for requiring an asset buffer is to allow a business to withstand ordinary business shocks, then an event such as COVID-19 could be reasonably expected to start to erode that buffer. Widespread conditions such as these require flexibility and a commercial approach on the part of the Eligibility Risk Manager. Rigid adherence to a minimum requirement set out in the manual has the potential to precipitate a business failure if not handled carefully; the very outcome that the review process is hoping to avoid. At the very least, it has the potential to produce an outcome that is not in a business's long-term interests and by extension, that of the Scheme.

Streamlined and timely eligibility dispute resolution

IPART Recommendation 17:

icare reviews its dispute resolution processes to resolve eligibility issues in a more streamlined and timely manner.

MBIB supports recommendation 17 and the call for a more streamlined and timely eligibility dispute resolution process.

As noted in IPART's Report, there is a clearly delineated appeals process documented in icare's HBCF Complaint and Dispute Handling Procedures, version 5.0 which includes required service standards. An appeals process that takes up to seven weeks can be disastrous for a business if the eligibility terms giving rise to the appeal are imposed during the appeal process, rather than at the end and only then in the event the appeal is unsuccessful.

Arguably more of a concern is the lack of transparency of the appeals process itself. Brokers or builders aren't permitted in the underwriter committee meeting convened to rule on the appeal. Instead, they must rely on the underwriter to present the case for appeal on their behalf – that is, the underwriter who made the original decision on eligibility in the first place. At the very least there is an appearance of a conflict of interest in such a situation, if not in fact.