

16 August 2022

Home Building Consultation reform consultation
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Submission on the consultation for Home Building Compensation Reform

Savill Hicks Corp Pty Ltd (SHC Insurance Brokers) welcomes the opportunity to provide comment on the State Insurance Regulatory Authority (SIRA) consultation on Home Building Compensation Reform.

SHC Insurance Brokers is currently one of the largest distributors of the Home Building Compensation Fund (HBCF) Insurance for NSW, managing in excess of 5600 residential builders. SHC is also one of the longest standing distributors of this consumer protection product, in its various iterations around Australia. We submit that our experience, our knowledge developed over a rich history of participation, and the market leading structure of our internal resourcing stand us in unequalled terms of providing meaningful responses to questions and issues raised in the Discussion Paper subject of this consultation.

Background

We note the Discussion Paper provided with the invitation to respond to this review outlines potential regulatory reforms in response to the Independent Pricing and Regulatory Tribunal (IPART) review of Home Building Compensation in NSW and poses additional potential reforms outside those IPART recommendations.

HBCF has been available through a monopoly state insurance model delivered by iCare for the NSW Government and administered by SIRA since July 2010. Prior to this, the private insurance market offered the product, broadly identified as Home Warranty Insurance overseen by an Industry Deed with the NSW Government. This product through its various forms has been cumbersome operationally for all stakeholders, unprofitable for private market and government insurers and largely unavailable for most consumers requiring its protection by virtue, almost entirely, of its 'last resort' structure.

At a time when reporting and identification of building defects are at an unsustainable high¹, and coupled with current economic conditions impacting the solvency and viability of many building companies, the experience of consumers able to seek redress or support of the HBCF scheme is arguably at critical stages. Expanding on this submission, about 11,000 complaints relevant to building matters were received in NSW each year between 2019 and 2021². Notwithstanding, less than 800 claims are reported by SIRA as made to HBCF in any year. This is important. More than 92% of consumers experiencing defective building work are unable to seek support of the scheme and are therefore forced too either:

¹ Centre for International Economics, 2021, 'Building Confidence Report – A Case for intervention'

² [SMH - Domain report of building defects in NSW](#), 2022, 'Almost ruined us: the number one complaint of new home buyers in NSW'

- (a) live with those defects for want of capacity to have them rectified or take action to that end.
- (b) attend to rectification themselves at their own cost.
- (c) seek remedy through legal or other similar avenues at their own, often significant cost.

While IPART does not, in its report recommend the introduction of a 'first resort' model as exists in Queensland and everywhere else of the world, this position is developed out of consideration to the scope of that review and of potential insurer interest in alternate insurers entering the scheme, a point discussed later. The last resort model operating in NSW is noted by IPART to be the cause of unnecessary cost and delay to consumers in having faulty work rectified. IPART further identifies the remit of the NSW Building Commissioner in seeking to address the significant incidence of poor-quality building outputs and does note that the Building Commissioner should turn consideration to those buildings within the scope of the HBCF scheme. To date, the work of the Building Commissioner has been significant with much advancement made, that is however entirely related to the National Construction Code (NCC) Class 2 segment and no effective reform has occurred in the Class 1 segment, save for preliminary review of the Home Building Act.

Alternate insurers

SHC Insurance Brokers interacts with the Australian general insurance market on a range of Insurance products and enjoys a competitive environment in sourcing insurance coverage for clients where there is a commercial market. Issues for private Insurers who participated in the NSW Home Warranty scheme in our experienced view, are both historic and a function of the scheme operating in NSW. Those insurers, including many of the largest capital providers in the country suffered significant losses and the product was not viable for them to continue. These considerations were both profitability and regulatory in nature. The regulatory environment overseeing the last resort scheme removes the ability of an insurer to price risk accordingly and more importantly, entirely removes the ability for the insurer to mitigate claims or manage exposure given the nature of the event triggering the claim being complete and catastrophic.

Internationally, there is no known capital market prepared to offer an insurance policy essentially providing protection against prior events based on an insolvency trigger. This is unlikely to change if ever. Importantly, several Australian jurisdictions are exclusive in delivery of this consumer protection as last resort, therefore involving the insolvency barrier. Queensland is the only outlier to this and notably, is the only market in which commercial reinsurance is readily available. Of greater importance, the Queensland scheme, enables full participation of the consumer at the time of the event and operates on a cost neutral basis for the State insurer.

SHC Insurance Brokers thanks SIRA for the opportunity to respond to this review. We welcome the opportunity to further discuss this review and our submission and responses. Please contact the undersigned should you require further engagement on our response.

Decennial Liability Insurance

We note reference to Decennial Liability Insurance (DLI) in the Discussion Paper. We also note that the NSW Government established the DLI Ministerial Panel to consider the opportunities and operation of any potential DLI program in NSW. We understand that review has been completed and that reporting of the findings of the Panel due to be handed to Government imminently. We submit there are many positive enhancements available under DLI as it is offered around the world, to effective consumer protection.

We further note that there is already one general insurer able to offer this product in NSW (and Australia), with others presently in the late stages of identification of capacity to enter that market. While the Discussion Paper refers to this insurance applying to Class 2 construction, and the focus of the DLI Ministerial Panel has been directed at Class 2 construction, general insurers in our consultations are viewing this product opportunity as a 'whole-of-market' offering, that is cover should and would be open, subject to regulatory considerations, to any building form.

Responses to the Discussion Paper

We have detailed our responses to each 'Reform Idea' and question within the Discussion Paper under Attachment A to this response. Please refer to that table as attached here for our submission to each item.

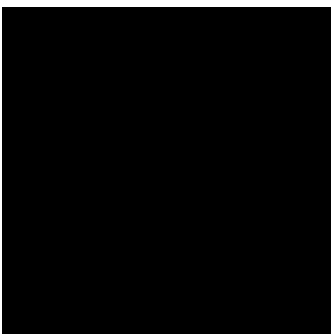
Conclusion

We welcome this review of the HBCF and the arrangements under which cover is proposed to be offered into the future. We agree with the premise of the consultation that a review is required to better place consumer protection as a viable, economic, and available source of Insurance, without heavily impacting the building industry in obtaining cover.

Given previous comments made in our response, we submit the cost of the insurance, already noted as being more expensive than most other jurisdictions (including the first resort Queensland scheme) does not correlate with the benefit provided in that the majority of consumer complaints made have no insurance protection.

The impost on the building industry further exacerbates this issue. The cost to builders and trades seeking eligibility, through necessary professional services and advice specifically related to obtaining and maintaining this insurance is a cost directly passed onto consumers in the normal operation of building entities. Those consumers see no tangible benefit with the limited cover provided from that increased cost. We are, however now seeing positive changes within the scheme making the process easier and welcome the consideration of higher coverage limits.

Yours sincerely



CEO

Encl.

Theme 1 – Better Supporting home owners

Reform idea 1

SHC Insurance Brokers supports measures to best support homeowners and ensure that required protection is in place for those that need it when it counts. While it is noted the Discussion Paper proposes providing protection to consumers that do not have Insurance in place by virtue of the failure of the contractor to secure cover as required, this is, in our view a flawed proposition.

- Given the volume of identified breaches in the Discussion Paper, of requirements to obtain cover, this amounts to less than 0.5% of all certificates issued in that same period. With the extremely low claim rate on those certificates, there would be an extremely small number of consumers that would impact under the scheme that did not have cover and that would be able to make a valid claim under the current last resort model.
- Offsetting the very small number of consumers benefiting from this measure, the cost of that cover would firstly be met by those contractors and consumers following their regulatory obligations and secondly but extremely importantly, dilute the requirement those compliant builders have in getting the cover, given their clients would receive cover irrespective of their actions.

If the regulator is seeking to better inform consumers of their right to HBC Insurance and ensure it is in place, the NSW Government has significant digital capability, which could be tied to current HBC insurance distribution services. This would ensure the Home owner has agreed to the issue of a certificate and its accuracy at the time of purchase and preclude the issuance until such authority has been granted. Warnings of overpayment and other consumer protections would simply be delivered in a proactive manner at the same time. While detractors from this program for issues such as smaller works would say not everything needs regulatory approval, those projects would be handled differently as discussed in a later segment of this response.

Questions and responses – Reform idea 1

1. Should victims of unlawfully uninsured work be able to claim on the home building compensation scheme in some circumstances?

No:

- More should be done to facilitate assurance of cover where it is required such as using existing electronic resources of government.
- Facilitating automatic cover for those not in possession of a certificate of HBCF dilutes the obligation of builders to obtain the cover. It is likely builders will avoid the cost and imposition of seeking eligibility if they know their clients will have cover irrespective of their action.

2. If adopted, should cover for uninsured loss be limited to the construction or significant alteration of homes that requires planning consent or that must be declared to NSW Fair Trading?

No / Not applicable – Response to Question 1 is ‘no’

3. If adopted, should homeowners be required to diligently pursue the responsible business for a remedy first if they want to claim for an uninsured loss?

No / Not applicable – Response to Question 1 is ‘no’

4. Should unpaid premiums and claims costs for uninsured work be recoverable from the building businesses and developers that have not complied with their insurance obligations, including culpable directors?

Unclear how this could be applied.

- Only if the builder or party to the required transaction was solvent could this be pursued. Given the scheme operation and the time taken to pursue those charges and the legal issues involved, the economics of this proposal are not clear
- The option in the preamble to this reform idea would remove the occurrence of ‘uninsured’ work as each project would require electronic agreement from the owner before proceeding.

Reform idea 2

SHC Insurance Brokers strongly supports movement to a first resort model, with regulator (Fair Trading is submitted to be the most appropriate regulator) involvement at the time of complaint. Facilitating regulatory powers such as those in the Design and Building Practitioners Act and the Residential Apartment Buildings Act have shown in the Class 2 segment to be highly effective in changing building industry practice of poor delivery of design and construction and enabling the regulator to actively address issues early in protection of consumers.

Questions and responses – Reform idea 2

5. Should homeowners be able to make an insurance claim if the business that worked on their home fails to comply with a rectification order issued by NSW Fair Trading (whereas currently claims are only accepted if the business is no longer trading)?

Yes, this program moves the current scheme toward first resort delivery and facilitates real consumer protection. It must be supported by:

- Regulation such as that initiated by the NSW Building Commissioner for Class 2 buildings to facilitate the regulatory environment enabling inspection, investigation, determination, and order of rectification of ‘at-fault’ parties.
- Increasing the resourcing of the regulator to attend to those complaints that are made in an efficient and effective manner.

6. If homeowners are provided a quicker pathway to claim, should claims be limited to losses directly arising from non-completion and breaches of statutory warranty (i.e. remove cover for associated losses such as legal costs or alternative accommodation, removal and storage costs)?

No. Cover should remain as it is offered with the amendment of the move to a first resort delivery as set out in the response to question 5 above.

- Consumers would not need the services of legal or professional advice as the scheme facilitates early intervention and independent regulatory review and determination. A consumer using legal or professional advice would only do so in the case of an appeal or if they choose that option which would be rare and ill advised in most cases.
- Alternative accommodation is critical if the consumer is required to vacate the premises for safety in any rectification or if the issues are deemed significant enough to warrant leaving. Removing this significantly disadvantages the consumer for matters that are not of their making.

7. If homeowners are provided a quicker pathway to claim, should claims be limited to those lodged within the 6-year warranty period, plus an extended 6 months for losses that only became apparent at end of the warranty period (whereas currently the scheme accepts claims up to 10 years after the work is completed)?

The period should not be less than six years. While the current timing allows for alignment to Statutory Warranties, the NSW DLI program under investigation allows for ten years cover. If that is adopted and in place and regulation facilitates its entry to the Class 1 segment, that cover will likely be seen by consumers as preferred and potentially in some or many cases be more economical.

Reform idea 3

It is noted that the minimum amount of cover afforded by a HBCF policy is \$340,000, that value has not increased since 2012. Given the efflux of time and the clear evidence in the Discussion paper that across the past five years, the frequency of consumers being under protected by virtue of inadequate indemnity limits is growing. For that reason, there is a strong case for the limit to be increased.

Coupling the growing frequency of underinsured consumers is the current economic climate which is seeing building cost increase significantly. More recently, the ABS has reported at June 2022³ the cost of inputs to the house construction segment has increased by 17.3%. This is a lag indicator with the costs in the building industry known to be higher than that in real time and further increases in building material costs coming in the next month, and likely beyond. While building output costs are not keeping pace with the input costs, this is a lag indicator, and those output rates will increase as the industry 'closes-out' historic projects and prices new projects into the changing environment. This does however place significant risk on consumers where their builder does not survive the current economic cycle and the cost to complete significantly exceeds the available limits on any HBCF cover held.

While it is proposed that the cover could be linked to actual contract value and that would be a positive proposition, in line with general insurance product offerings, there are risks to the adequacy of cover under a linear approach as adopted in the Discussion Paper. Where the cover is linked to contract price, it would significantly hinder consumers with smaller contract values by virtue of the need to rectify defective work if a builder fails and given the economic peculiarities such as the cost pressures in place in current times. SHC Insurance Brokers recommends a contract alignment to the value of works with a cost escalation sub-limit of approximately 10% (this applies in most general insurance construction risk products and by adding a minimum indemnity limit, this also protects the smaller contracts with the contract value to be used as the indemnity metric above that minimum).

Questions and responses – Reform idea 3

8. Should the minimum amount of cover offered by the scheme be increased from \$340,000 to \$400,000 to reflect the increase in the average cost of building a new single dwelling since the cover amount was last updated in 2012?

If you prefer a different amount, please tell us what it is and your reasons.

As a primary step, yes, the limit of indemnity should be increased given the clear evidence of growing underinsurance, amounting to nearly 20% of all claims in the most recent reporting.

The amount should have a minimum cover of \$400,000 for the reasons set out in the Discussion Paper if the linear, 'one-size-fits-all' approach is to be maintained.

A model of amending indemnity to align with contract amounts is preferable if it also has:

- A minimum limit of, for example \$100,000; and

³ [ABS Producer Price Index - June 2022](#)

- Where the contract exceeds \$100,000, it is tied to the contract value with an escalation sub-limit of approximately 10% to cater for economic shocks such as those in place in current times.
9. The legislation allows for projects to be insured by means of two contracts of insurance (one covering the construction period and the other for the post-completion warranty period), although no insurer offers this option at this time. If insurers were to start offering this option, should each contract also be increased from \$340,000 to \$400,000 of cover (i.e. together offering a potential total of \$800,000 cover)?

If you prefer a different amount, please tell us what it is and your reasons.

All requirements for cover should be uniform. If there is cover for one aspect of the required protection, it should be consistent across all forms. Commentary to the requirement outside this is redundant as there is no current offering in the market. Ensuring consistency moving forward enables clarity for any scheme seeking to divide covers.

10. How often should the threshold amount be reviewed:
- a) every 3 years?
 - b) every 5 years?
 - c) every 10 years?

If you prefer a different frequency, please tell us what it is and your reasons.

In the event of ongoing increase, we understand that the timing is open to Government to determine. We would recommend Government review and consult with industry and communities each five years.

Reform idea 4

SHC Insurance Brokers strongly supports amendment of the '20%-cap' on indemnity for non-completion of building work. This limit is grossly undervalued and is leaving significant numbers of consumers significantly underinsured.

Evidence provided by SIRA in the Discussion Paper shows that in all except one of the last ten years, more than half, in some years significantly more than half have been underinsured by virtue of this indemnity limit. It highlights the inequity of a last resort model and the inadequacy of information and understanding of consumers in contract pricing, contract management and exposure.

We recommended earlier, that digital platforms would be efficient in ensuring that consumers acknowledged (simply and without delay) the issuance of a certificate of HBCF insurance, but it also enables the insurer to adequately inform the owner of the options for ensuring the contract price is adequate and to not 'over-pay' or 'pay ahead' of the progress payment schedule (including details of the 'standard' progress payment schedule). This would be a proactive measure all dealt with simply through verification of the contract and insurance by the owner through link from the insurer to a service such as a Service NSW account electronically. Notwithstanding the above, movement of the threshold is from the evidence categorically required. The percentage of that is unclear as it is not known from the data provided, what the shortfall for those majority of consumers that are underinsured by virtue of the existing cap is.

Further consultation on this is crucial.

Questions and responses – Reform idea 4

11. Should the cover for non-completion claims be increased from 20% of the value of the insured work, given most non-completion claims exceed that amount? Which of the following options do you prefer?
- a) Keep the current 20% amount of cover, or
 - b) Increase non-completion cover to 25% of the value of the insured work (paid for by an estimated increase in insurance premiums of 2.4%), or
 - c) Increase non-completion cover to 30% of the value of the insured work (paid for by an estimated increase in insurance premiums of 4.9%).

As above, SHC Insurance Brokers supports amendment of the 20%-cap on liability for non-completion claims. We are unable to make a preference to the actual value. While we acknowledge any increase would have premium implication, experience in the insurance industry shows consumers are prepared to pay premium, subject to affordability, to ensure adequate cover. SHC Insurance Brokers does not have sufficient data from the Discussion Paper to make a meaningful determination of the value of any amendment to the 20%-cap.

Reform idea 5

SHC Insurance Brokers acknowledges the ability to exempt a person (or entity) from the requirement to obtain HBCF cover. Those automatic exemptions are covered in legislation and anyone else seeking to obtain an exemption can and should apply. There is insufficient history to comment fully on this, however it should be recorded within the register of HBCF certificates where an exemption has been issued to better protect consumers and potential future successors in title to those properties.

Questions and responses – Reform idea 5

12. Should SIRA publish a register of projects that SIRA has exempted from insurance, so that a person with an interest in the property may check whether work was lawfully done without insurance under an exemption granted by SIRA?

Yes, this should be published for the protection of future consumers to those properties.

Theme 2 – Housing affordability and regulatory burdens

Reform idea 6

SHC Insurance Brokers submit that the current \$20,000 threshold for requirement of HBCF insurance appears adequate in comparison to other jurisdictions. We do not see a need to amend that value.

Questions and responses – Reform idea 6

13. Should the \$20,000 threshold above which work must be insured be increased to \$26,000 in line with increases in the average cost of building since the threshold was last updated in 2012? If not, what should the threshold be?

No, the threshold provides for a significant investment by a consumer and facilitates cover to consumers that is important for their perspective of investment. There should not be any increase in the limit.

14. How often should the threshold amount be reviewed:
- a) every 3 years?
 - b) every 5 years?
 - c) every 10 years?

If you prefer a different frequency, please tell us what it is and your reasons.

As with earlier responses to similar questions, we recommend that Government formally review this threshold every five years. This does not presuppose or require amendment of the values; it is proactive and timely to test the adequacy of the regulatory requirements.

Reform idea 7

SHC Insurance Brokers rejects the premise that high value homes should be removed from the requirement for insurance or that there is an opt out proposition included in the regulatory framework. Any dilution of cover is detrimental to consumers. This cover is, and must remain mandatory for all and any class proposition, determining the importance of having consumer protection should not be based on financial circumstances.

Irrespective of capacity to build a larger home (or to purchase one after construction), this does not determine that the consumer is a sophisticated construction industry practitioner. These consumers deserve consumer protection the same as any other. There may be an argument to limit the indemnity as it currently is, to \$340,000. That figure should the determination of this review be to move to indemnity aligned with contract price to be 'capped' at a figure. If \$2 million is the determined threshold of SIRA, that could be the figure selected.

Opt-out arrangements bring to pass a voluntary scheme. Only one jurisdiction in Australia has moved to making their consumer protection scheme voluntary. That was Tasmania in the early 2000's. There has been

no product on offer in that state since that decision and there is currently activity within Government to re-introduce a mandatory scheme, given the significance of consumers impacted by having no cover.

Questions and responses – Reform idea 7

15. Should homeowners and building businesses be able to agree to opt-out of insurance for work of over \$2million to a single dwelling?

No. We disagree with this premise for those reasons set out earlier.

16. Alternatively, should insurance remain mandatory for high value work on single dwellings, but with premium prices be capped for work over \$2 million?

Yes, there is a cap on indemnity already in place, it is inequitable that a consumer pays more in premium despite there being no commensurate increase in indemnity. There should be a cap on liability and on premiums to accord with standard insurance underwriting and pricing processes.

Reform idea 8

SHC Insurance Brokers supports the idea that requirements for when HBCF is required or not be made clearer. While noting this, specific to this requirement is the consideration of the NSW Government to the introduction of DLI. This will facilitate cover for those buildings excluded from HBCF insurance and potentially be an alternative to those larger buildings initially. We submit it is too early to determine this action and that SIRA ought to wait on the determination of Government for the proposed DLI scheme to make a fuller determination. When in possession of that determination, further consultation could proceed.

Questions and responses – Reform idea 8

17. Should the insurance exemption for the construction of multi-dwelling buildings over 3 storeys be expanded so that insurance is not required for renovations or alterations to such buildings?

It is too early to make this determination. SIRA should await the Government's direction of the future of the DLI program before progressing this reform idea.

Reform idea 9

SHC Insurance Brokers objects to the proposition of automatic exemptions of certain housing types. While it is acknowledged that affordable housing and social housing is a critical need in our built environment, those people eventually purchasing or getting benefit of those homes, especially in the affordable housing segment would be heavily reliant on the potential benefits of adequate insurance for the quality of building work. Removing that will catastrophically impact those consumers, those who can least afford the cost of rectification or litigation in remediation.

There is already an opportunity for stakeholders to seek an exemption from these requirements and that should remain open to all. Noting that the quantum of applications relevant to those exemptions is very small (less than 10) and the approvals a small percentage of that.

Questions and responses – Reform idea 9

18. Should building work be exempt from insurance if there will be no beneficiary because the homes will be used to provide social or affordable housing or specialist disability accommodation?

No. While at inception there may be no intention to sell or dispose of that asset, however this is not guaranteed. Events over the life of the HBCF insurance policy may and do change and removing this requirement will ensure future beneficiaries will not have cover. Importantly, this is converse to reform idea 1 in the Discussion Paper.

19. Should this insurance exemption be limited to building work done on behalf of charities that provide housing services, so that there is no profit motive to sell the homes without insurance?

No. The ability to apply for an exemption is already enabled in regulation. That is sufficient to enable any person to apply for an exemption. SIRA have the responsibility and capability to determine those on their merits when they come. It is important to note this is very infrequent already, highlighting this is not a significant issue.

Introducing new regulation to essentially buy out of consumer protection only hams future consumers. The regulation in place works as it is and any person seeking relief can do so by virtue of an application for exemption.

20. Should this insurance exemption only apply to work where the conditions of planning consent or restrictions on the use of the land require that the homes must be used for housing services?

This fits more to the Build-To-Rent (BTR) scenario and does apply better. BTR however has much stronger requirements in place restricting future passing of title. This form of amendment is complex and needs clarification of many legislative instruments. Further consultation must be progressed before any action on this point.

Reform idea 10

SHC Insurance Brokers objects to the extension of exemptions to any Local Government Association (LGA). While developing or building housing in communities is necessary, the end beneficiary will be a consumer that can least afford a catastrophe event of building failure, when that property passes on in ownership.

LGAs have historically had mixed outcomes, and when an administrator is appointed the determination to realise assets and sell property is progressed, those consumers will not have the benefit of consumer protection afforded to all other housing products in NSW.

Questions and responses – Reform idea 10

21. Should councils be exempt from insurance to develop housing on council-owned land?

No. If a council requires or believes it is entitled to an exemption for the use of a property, they are free to make application for an exemption which would adequately be determined by SIRA as the current requirement allow.

Reform idea 11

BTR is an important step in developing more housing in NSW. In saying this, BTR applies to buildings of a specific scale and to developers and stakeholders with specific turnover requirements. It is not seen how BTR would apply directly into the residential housing environment.

Despite the above, BTR should be exempted from HBCF given the requirements imposed on holding of property by the developer for a period more than double the HBCF indemnity period, there would not be a claim possible on that policy.

Questions and responses – Reform idea 11

22. Given there is no beneficiary to claim insurance, should Build-to-Rent scheme developers be able to cancel the policy and claim a refund for the insurance premium?

BTR should be exempted from requirements for HBCF given the legislative requirements in place on the holding of property developed under the scheme. It is unclear how often if at all BTR would apply in the HBCF environment.

23. Should the renovation or alteration of a Build-to-Rent building be exempt from insurance, given the homes are intended to be used for long term lease over 15 years and there will be no person able to claim on insurance during that time?

Refer to previous responses above.

Reform idea 12

SHC Insurance Brokers holds no formal position on the management of insurers that departed the market over ten years ago. The reform idea seems, as it is presented to make sense, however, we do not have the data or information to make a meaningful contribution to this reform idea.

Questions and responses – Reform idea 12

24. The former private home warranty insurance scheme stopped insuring work in 2010 and is no longer receiving claims. Is there any reason to not repeal legislation for that former insurance scheme?

SHC Insurance Brokers does not have a view on the reform idea for those reasons above.

Theme 3 – providers and how they are regulated

Reform idea 13

SHC Insurance Brokers opposes the allowance and/or introduction of any Alternative Indemnity Provider (AIP) that is not a government legislated insurance corporation or an insurer approved under the Insurance Act 1973 (Cth).

Australia is heavily and appropriately regulated in the provision of financial products through APRA and that regulation enables and ensures adequate protection of insured (as loosely as that term applies) and their interests under an instrument intended to provide financial protection or benefit. Dilution or attempts to sidestep those regulatory requirements is extremely ill informed and only serves to put the community and consumers at significant risk.

While AIPs will decry their superior risk management and capabilities, there is no escaping the fact that they do not provide the financial security both required by federal regulation or the consumer expectation of protection at the time of need. AIPs are structured on accounting methodology of solvency, not of accrual of capital relevant to exposure. This puts consumers at an unnecessary and avoidable risk where there are APRA approved Insurers looking to enter the market. These vehicles are beneficial where there has been a market failure from licensed Insurers in certain product lines with limited commercial options otherwise available.

It is understood, the NSW Government and SIRA would like to see alternate insurers participating in the scheme in NSW.

- Diluting the security under those alternate providers providing financial risk products puts consumers at significant risk.
- The cause of insurers exiting the market and no interest of re-entering the scheme is more to do with the regulatory environment limiting the ability of an insurer to price risk and mitigate claims exposures, coupled with the last resort mechanism than it is any other measure or assumption posed.

Questions and responses – Reform idea 13

25. Should fidelity funds be allowed to operate in the scheme that are not legally obliged to compensate homeowners, and instead have the discretion whether and how much to pay?

Fidelity schemes in other jurisdictions (NT and ACT) were both established and received cash flow from the respective Territories (\$400,000 start-up capital to the ACT scheme). These markets however are dramatically different to NSW and the same arrangement would likely not be feasible in NSW due to the volatility and size of the market.

As stated above, only statutory insurance corporations or Insurance Act 1973 approved insurers should be able to provide insurance for long tail financial risk products.

26. If you answered 'yes', how can the risks to homeowners and buildings businesses from such a discretionary fund be managed?

Not applicable – response to question 25 is categorically 'no'.

27. Should the NSW Government instead remove provision for ‘alternative indemnity products’ such as fidelity funds from the scheme, given that IPART has found it is unlikely that any such product could be offered that would have the same consumer protections as insurance?

It should be removed and with immediate effect. It fosters hope of diluted and inadequate capital protection to consumers. IPART is right that no provider will become eligible given the rigour and requirement SIRA will have to impose to ensure compliance with State and Federal regulation in the provision of financial services.

If an AIP had a solution to this product, they would pursue the approval of their instrument under the Insurance Act with APRA. This is a very telling proposition as to why these providers are not suitable to offer this product.

Reform idea 14

SHC Insurance Brokers supports an overall regulation and administration of the scheme. As the only provider, iCare should be subject to any requirements and administration as would be experienced by any other insurer entering the market. SHC Insurance Brokers has no view of the administration of iCare outside of the required oversight of the scheme as it would apply to any insurer participating.

It should be noted that if SIRA intends running the scheme in almost totality, there will be less interest from private insurers to participate. Effective regulation is fully supported but a statutory scheme is difficult for private insurers to participate in if they have no control of their own underwriting, policy and claims propositions.

SIRA should have the ability to require, as the scheme administrator compliance with regulatory requirements without question.

Questions and responses – Reform idea 14

28. Should SIRA have the power to make icare HBCF amend and resubmit its eligibility or claims handling models and to adopt specific changes, if SIRA finds the models do not comply with legislation or guidelines?

Yes. SIRA is the scheme administrator. As such, SIRA must have confidence that every market provided, irrespective of being a government insurer or a private insurer are compliant with regulatory requirements. There should be no disparity in these elements of administration.

29. Should the law require that SIRA must publish a statement about its assessment and decision each time icare HBCF’s lodges a new eligibility or claims handling model?

Yes. Transparency is critical. Any private insurer will want to be confident they have the same requirements and obligations, the same oversight and review as a subsidiary provider such as iCare is to SIRA.

Reform idea 15

SHC Insurance brokers have submitted at length in this submission why private insurers have not and will not participate in this scheme under its current arrangements. While a move to first resort is positive and may introduce much more interest from the private market, key considerations outside that are:

- The regulatory environment significantly restricts the normal operation of an insurance product, particularly in terms of underwriting, policy, and claims management.
- The proposed DLI arrangements and consideration by government will slow interest while insurers review the outcomes and future of consumer protection in that environment. Discussion on that framework provides for a more favourable operating environment and for cheaper and better consumer protection for stakeholders.

Questions and responses – Reform idea 15

30. Do you think it is commercially viable for multiple insurers and providers to operate in the NSW homebuilding scheme?

Yes. Previous participation by five insurers was viable and competition was strong. Those providers were happy with their level of participation. The cause of exit of insurers was losses and portfolio performance, exacerbated by regulatory reform making the market difficult and not viable into the future.

31. If relaxing the regulation of private insurers' pricing and eligibility practices fails to achieve new market entrants, should the NSW Government reinstate icare's monopoly and focus on running a sole insurer model as efficiently as possible?

It is too early to make this determination considering the consideration of the DLI product into NSW and the review of the Home Building Act currently underway.