



Inquiry into the Provision, Regulation and Pricing of modern insurance products for Small Businesses

**Submission to the Parliamentary Joint Committee on
Corporations and Financial Services**

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1. Introduction

This submission responds to the Parliamentary Inquiry into Small Business Insurance by examining systemic insurance challenges faced by small businesses ('**SMEs**') through the lens of the residential construction sector. Drawing on findings from *CRC Building 4.0 Report 80: Why are insolvencies so high in the Construction Industry and what can be done about it?* and Australian Securities and Investment Commission ('**ASIC**') data, it highlights how insurance obligations, affordability, and regulatory complexity contribute to financial vulnerability for SMEs, using the residential construction sector as a case study example. As part of our research into insolvency vulnerabilities within the residential construction sector, industry stakeholders attended workshops ('workshop participants') and provided invaluable insights into challenges across the residential construction industry. These insights are referred to throughout this submission.

Insurance is not a peripheral compliance requirement: it is a critical determinant of business continuity in the residential construction industry. Builders cannot legally operate without holding valid statutory or private insurance, (for further detail see Appendix B in Bryant et al., 2025) and loss of coverage often triggers cascading consequences, including licence suspension and inability to secure new client contracts. These dynamics undermine the stability of the construction industry and increase risks for homeowners and the broader economy (Bryant et al., 2025, pp. 42–43).

This submission provides context, case studies, and recommendations to improve insurance access, affordability, and regulatory alignment for SMEs in high-risk sectors.

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2. Response to terms of Reference

This submission addresses the following Terms of Reference:

- Access to insurance coverage which meets contemporary business needs;
- Affordability and availability of insurance for SMEs in the high-risk residential construction sector
- Adequacy of the regulatory framework governing insurance conduct and compliance; and
- Related Matters: Interactions with Broader Legislative and Regulatory Frameworks.

3. Context: Vulnerability of Small Businesses in the Residential Construction Industry

Insurance companies play a pivotal role in shaping how construction is governed, financed, and monitored. The policies, decisions, and services of insurance companies influence the operating environment of SMEs within the construction sector and can either support or destabilise the industry. Insurers provide coverage for builders, developers, and homeowners, such as home warranty insurance, construction works insurance, all risks insurance, and professional indemnity insurance (Chan, 2019). Their capacity and willingness to underwrite risk directly affect project viability and professional practice.

Our research determined that the construction industry has one of the highest insolvency rates across Australia, with SMEs disproportionately affected. Unlike other SME business models, residential construction involves long project timelines, thin profit margins and significant upfront financial commitments – including insurance costs.

3.1. Liquidity Pressures and Insurance

In all Australian jurisdictions, builders are legally obligated to obtain home warranty insurance prior to commencing residential construction work. (Building Work Contractors Act (SA), 1995, Section s 34; Home Building Act 1989 (NSW), Section s 92; Queensland Building and Construction Commission Act 1991 (Qld), Section s 68).

Insurance obligations act as a critical constraint in Australia’s construction regulatory framework. Eligibility for insurance is contingent upon continued solvency, compliance with licensing and reporting obligations, and a satisfactory claims history. Adverse findings such as unresolved defect reports, unpaid debts, and/or litigation may lead to suspension or cancellation of insurance. Without valid insurance, builders may be unable to obtain the regulatory approvals or contracts required to continue trading. In practice, this can exclude otherwise viable and competent firms from participating in the market (Bryant et al., 2025, pp. 42–43).

Importantly, in some jurisdictions, insurance functions not only as monitor of continued probity but as a regulatory gatekeeper. In Victoria, for example, builders must be ‘eligible’ to be insured before they are able to register with the state regulatory body. This effectively positions insurers as de facto regulators, with significant influence over market entry and practitioner viability.¹

3.2. Insights from ASIC Data

ASIC data shows that insolvency in the construction industry rarely stems from a single issue. (Australian Securities & Investment Commission, 2024, Table 3.2.2.2; Australian Securities & Investments Commission, 2023) Our analysis of that data reveals that the top three causes of financial distress include:

- Inadequate cashflow or high cash use;
- Poor strategic management of the business; and
- Other factors (Bryant et al., 2025, pp. 48–50).

The project team collaborated with ASIC to determine the underlying factors caught by the ‘other factors’ classification in ASIC’s publicly available data. Free-text data provided by ASIC highlighted that several factors can co-occur with others during financial distress – for example, contractual disputes (n=173), defects (n=73), health issues (including mental health issues) (n=43) and **cancelled insurance (n=9)** were recurring themes in this category,² highlighting that cancelled insurance policies during times of financial distress can further exacerbate levels of financial distress in this industry (Bryant et al., 2025, pp. 49–50).

¹ As part of the builder registration requirement in Victoria, builders are required to pass financial and personal probity checks. Section 171E of the Building Act 1993 (Vic) outlines these requirements, including that an applicant must be eligible to be covered by the required insurance in relation to managing, arranging, or carrying out domestic building work to a specified annual cost (Building Act 1993 (Vic) s171E(1)(a)).

² References to n=# are to the number of free text fields that referred to each factor.

4. Access to Insurance Coverage that Meets Contemporary Business Needs

The high rates of insolvency in the residential construction industry disproportionately affect SMEs. The compliance burden associated with insurance obligations can consume significant time and resources, diverting attention from core business activities (Bryant et al., 2025, pp. 64–65). Larger firms often manage these requirements through dedicated compliance teams, while SMEs struggle without the same access to resources - reinforcing systemic inequities (Productivity Commission, 2013). SMEs are also more sensitive to premium increases (Sellers, 2025).

4.1. Cost Pressures and Structural Liquidity Gaps

Insurance is central to this industry: builders are legally prohibited from undertaking residential building work above prescribed monetary thresholds without holding the relevant statutory or private insurance cover – typically home warranty insurance (Building Work Contractors Act (SA), 1995, Section s 34; Home Building Act 1989 (NSW), Section s 92; Queensland Building and Construction Commission Act 1991 (Qld), Section s 68).

However, deposit caps under construction contracts fail to account for preliminary costs and insurance premiums, leaving very little working capital to fund subsequent stages of the project. This creates a circular problem: builders must commit substantial upfront capital before clients have committed to the build and/or have finance approval however they have inherent difficulty, and take on inherent risk, in sourcing that initial capital prior to securing client commitment and finance approval (Bryant et al., 2025, p. 53).

To obtain finance approval, banks require a fully documented and executed construction contract with supporting documentation, including Insurance certificates. However, builders cannot seek upfront payment for these pre-construction costs (say, by way of a larger deposit), requiring businesses to draw on their own reserves (*Director of Consumer Affairs v Glenvill Pty Ltd [2009] VSC 76*; Domestic Building Contracts Act 1995 (Vic), Home Building Contracts Act 1991 (WA)). In practice, this means builders often absorb these costs without certainty the project will proceed. If a client withdraws from the project – due to planning delays, disputes or finance issues - the builder may never recoup these expenses.

Even when projects proceed, delays in progress payments often leave builders operating in a cash-negative position for months. For SMEs with limited reserves, this dynamic introduces significant risk well before construction begins and contributes to high rates of financial stress during early project phases.

In addition to delayed progress payments, builders face structural limitations imposed by insurance providers. Workshop participants noted that Insurers often cap the total value of work a builder can undertake at any one time, based on their financial standing, past performance, and internal risk management procedures. While these caps are intended to mitigate risk and ensure builders do not overextend, they can inadvertently restrict business viability.

For SMEs in construction, maintaining cash flow depends on a continuous pipeline of contracts. Insurance requirements that delay progress payments or restrict access to new projects create a compounding liquidity risk: not only are payments from current projects delayed, but the business is also prevented from mitigating the costs associated with those delays with new income-generating projects. This leaves SMEs financially vulnerable despite having the operational capacity to deliver more work. These challenges arise from rigid insurance frameworks to reflect the realities of modern construction cycles.

4.2. Compounding Factors

The workshop participants confirmed that the costs associated with contractual delays typically fall on builders. Many rely on trade credit or personal funds to bridge liquidity gaps (Reserve Bank of Australia, 2022). SMEs can face heightened exposure as they have no mechanism to recover such costs if a project does not proceed.

Legal and contractual interdependencies further amplify risk. Each project involves a complex web of agreement including head contracts, subcontractor agreements, supplier terms and conditions, insurance policies and finance arrangements. These must remain aligned throughout the build. A breach in one area can unravel the entire network of agreements, stall construction and expose all parties to financial loss or litigation (Bryant et al., 2025, pp. 42–43). Therefore, the risks and costs arising from insurance pressures can compound and exacerbate SME vulnerabilities throughout the sector.

4.3. The interplay between financial distress and underinsurance

Workshop participants highlighted a recurring pattern in residential construction insolvency: financial distress often triggers decision that undermine consumer protections and accelerate business failure:

As one participant explained:

“When a builder is going down the tubes, one of the first things that they’re going to do to try and improve cashflow is to not take out insurance.”

This dynamic creates a vicious cycle: cash flow pressures lead to non-compliance with mandatory, and other necessary, insurance, which increases risk to consumers and further erodes confidence in the builder’s viability. These behaviours compound systemic fragility and highlight the need for reforms that align insurance practices with the objectives of the SBR Regime.

5. Affordability and Availability Across Regions and High-Risk Industries

Builders are generally obligated to obtain home warranty insurance prior to commencing work, which provides financial protection to homeowners in the event of incomplete or defective construction. However, this coverage does not shield the builder from liability. In fact, workshop participants highlighted that many insurance schemes include provisions that allow the insurer to recover these costs from the builder after paying out a claim (Bryant et al., 2025, p. 54).

As discussed in Section 4.1 above, beyond insurance premiums, builders face additional compliance obligations before work can begin, such as insurance approvals, documentation requirements and staged payment protocols. In periods of economic volatility, these constraints can exacerbate financial pressures and contribute to insolvency risk, particularly for SMEs operating on thin margins. (Bryant et al., 2025, p. 55)

6. Adequacy of the Regulatory Framework: Protecting Insurance during Pt 5.3B Restructuring

The small business restructuring ('SBR') regime under Part 5.3B of the *Corporations Act 2001* (Cth) was introduced to provide a low-cost, debtor-in-possession alternative to voluntary administration for SMEs. However, the appointment of a restructuring practitioner may result in the suspension or cancellation of a company's existing business insurance (Bull, 2025, pp. 151–152). Unlike other insolvency frameworks, the insurance cover maintained by the registered liquidator appointed as a restructuring practitioner does not apply as the directors remain in control of the company throughout the SBR Regime process (Bryant et al., 2025, para. [7.52], [7.103] citing; Bull, 2025, pp. 151–152 and 247 (Recommendation 11)).

The issue is that many policies, and some statutory regimes, include exclusions for 'insolvency' or 'external administration' which capture SBR Regime appointments. Others have been amended to specifically include SBR Regime appointments as grounds for cancellation or suspension. These practices undermine the legislative intent of the SBR Regime because the SME cannot continue to trade as a builder without valid insurance, which defeats the purpose of restructuring under the SBR Regime. This is demonstrated below in section 6.1 through a relevant case study.

6.1. Case Study 1: Insurance Cancellation During Restructuring

A Victorian-based SME builder entered into a Part 5.3B small business restructuring process under the *Corporations Act 2001* (Cth) after experiencing cash flow issues due to delayed progress payments. Upon appointment of a restructuring practitioner, the builder's insurance was automatically cancelled under insurer policy terms treating the restructuring process as an insolvency event.

This cancellation meant the builder, who remained in control of the company during the SBR Regime process, was unable to obtain new work or continue existing projects, despite being otherwise viable under the restructuring plan. The outcome forced liquidation, illustrating how current insurance practices in some jurisdictions undermine the policy intent of the SBR Regime and ASIC's consumer protection mandate for new businesses (Insurance Contracts Act 1986 (Cth), Section s 11AB).

6.2. Post-SBR Insurance Coverage

Workshop participants also reported limited clarity in New South Wales and Victoria regarding insurance renewal after a residential construction business successfully exits the SBR Regime. This uncertainty makes it difficult for practitioners to advise on whether the SBR Regime is a viable option for SMEs in the residential construction industry in those states.

As one workshop participant noted:

"Insurance renewal post-SBR [Regime] is the single biggest issue disadvantaging those states' use of the SBR [Regime]."

Another explained:

"Generally speaking, if a builder has had an insolvency event [including SBR Regime] in the previous three years...it's very unlikely that we will provide eligibility [for insurance]."

This lack of clarity surrounding insurance renewal following a successful SBR Regime process, coupled with the insurer's limited understanding of the SBR Regime's rescue purpose, create significant barriers to the SBR Regime's uptake and undermine its 'rescue' objectives. Without clearer guidance on post-SBR Regime insurance eligibility, viable businesses risk being forced into liquidation, contrary to the intent of the SBR Regime.

7. Recommendations

The authors make the following recommendations in relation to each of the Terms of Reference considered in this submission:

7.1. Recommendation 1: Simplify compliance for SMEs

Streamline insurance-related compliance processes for small SMEs in the residential construction industry by reducing duplicative requirements and introducing digital lodgement options. Consider a tiered compliance framework calibrated to business size and risk profile.

Policy Rationale: A tiered compliance framework aligns with principles of regulatory proportionality, already adopted by Australian regulators including APRA and ASIC (see, for example: APRA, 2025a, 2025b; Australian Securities & Investments Commission, 2025, p. 280). Smaller entities face disproportionately high compliance costs relative to their size and risk exposure. By calibrating obligations to business size and risk profile, regulators can:

- (1) reduce barriers to entry and growth for SMEs;
- (2) enhance efficiency by focusing regulatory resources on higher risk entities; and
- (3) support innovation and competition in sectors dominated by large firms.

International best practice extrapolated from the United Kingdom and European Union further supports proportional regulation, by way of risk-based compliance models, in financial services and insurance markets (Bank of England; Castro Carvalho et al., 2017; European Insurance and Occupational Pensions Authority, 2025; *New Rules to Simplify Insurance and Boost UK Competitiveness; Technical Advice on the Implementation of the New Proportionality Framework under Solvency II - EIOPA*; Ostrowska, 2025). Introducing a similar approach in Australia would help address systemic inequities while maintaining prudential integrity.

7.2. Recommendation 2: Exclude insurance costs from capped deposit limits

It is recommended that the Committee explore whether **insurance costs be excluded from capped deposit limits for the residential construction industry, and potentially other industries**. Current caps fail to reflect modern construction practices and upfront compliance obligations, creating liquidity gaps that disproportionately burden SMEs.

7.3. Recommendation 3: Investigate systemic under-insurance

The Committee may wish to examine whether ASIC has sufficient data and enforcement tools to address systemic underinsurance in high-risk sectors, such as the construction sector.

7.4. Recommendation 4: Review policies and legislation for exclusions that include SBR Regime

Relevant matters for the Committee's consideration include the following:

- Methods to enhance ASIC's guidance to insurers to facilitate improved treatment of businesses undergoing restructuring under the SBR Regime
- The explicit omission of Part 5.3B appointments from insurance policy exclusions related to insolvency or external administration

- Improved harmonisation between ASIC, state licensing bodies, and insurance regulators to prevent insurance cancellation during restructuring.
- Review of state and territory legislation relevant to the provision of insurance to identify unintended consequences, such as the. cancellation or suspension of essential insurance in the event of an SME appointing a restructuring practitioner under the SBR Regime.
- Require New South Wales and Victorian statutory insurers to provide clear post-SBR Regime eligibility criteria for the renewal of essential business insurance in the construction industry and explore harmonisation across states and territories.

8. Conclusion

This submission highlights the need for a coordinated policy and regulatory response to improve insurance access and affordability for SMEs in the residential construction sector. Specifically, the Committee is asked to consider:

1. **Improved access to tailored insurance products** for small construction businesses to reflect modern risk profiles and industry/business practices.
2. **Streamlined compliance obligations** for SMEs through simplified processes and tiered frameworks based on size and risk profile.
3. **Regulatory reform** to ensure that the appointment of a restructuring practitioner under Part 5.3B of the *Corporations Act 2001* (Cth) does not trigger automatic cancellation or suspension of essential insurance; and
4. The undertaking of **a broader inquiry** into the interaction between insurance regulation, bankruptcy and insolvency law, and construction-specific legislation, such as deposit caps, and renewal of insurance following a successful exit from the SBR Regime.

These measures will help reduce systemic risk, support business continuity for financially viable businesses, and strengthen consumer protection in a sector that is critical to Australia's economy.

We would welcome the opportunity to provide further evidence or appear before the Committee to elaborate on these issues.

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