

Submission: Proposed Minimum Financial Requirements Regulations 2026

Thank you for the opportunity to make a submission in relation to the proposed regulations concerning minimum financial requirements (MFR) for builders.

I make this submission drawing on my experience advising Australian governments on building regulatory issues for almost 30 years. In particular, in 2017 and again in 2024, I advised the Queensland government on its security of payment laws and in 2024/2025 I was appointed by the NSW Government to conduct a review of the Home Building Compensation Fund.

The MFR Regs propose financial regulation of builders as part of the new first resort domestic building insurance warranty scheme. The first resort scheme in Victoria will be based on the Queensland model which has been in place for around 40 years. It is my opinion that implemented well, the proposed first resort scheme will be a far superior scheme than the last resort scheme that Victoria and all other jurisdictions (except Queensland) have operated for over 20 years.

By way of background, a government-run first resort home building insurance scheme operated in Victoria in the 1970s through to about 1997. It was then decided to allow private insurers to take over the government run scheme. The private insurance market, introduced in 1997, had failed by 2001 with the largest private insurer, HIA/FIA, becoming insolvent. The Victorian Government had to step in at significant public expense. One of the outcomes of this mess was a decision to retain private insurer participation at all costs by acceding to the requests of the insurers and industry to move to a 'last resort' scheme and to exempt apartment buildings over 3 storeys from the scheme. The model failed. Within 8 years, private insurers had withdrawn, and the Victorian Government had no option but to again become the sole insurer in about 2010. Since then a second insurer, Asset Insure has entered the market and issues policies to a small segment of the Victorian market.

Whilst the above story played out across most Australian jurisdictions, the Queensland government did not move to private insurance in the late 90s. Instead it retained the first resort model it had copied from Victoria and NSW in the 1980s.

The Queensland scheme is reinsured by global reinsurers which has meant that at no time has the Queensland government had to fund the builders warranty scheme. This is to be contrasted from Victoria and NSW where the governments have had to pour hundreds of millions of dollars into the last resort domestic builders warranty schemes.

Both the first and last resort schemes require the financial viability of builders to be closely managed in order to manage risk. Under a last resort scheme this task is to

predict and prevent insolvency in order to limit claims on the fund. This is done through stringent eligibility criteria which restrict the number and value of domestic building projects a builder can undertake.

I am aware from the work I have done in NSW in this area that many builders find complying with eligibility criteria restricts to their growth and creates financial pressure on their business. They say that it is costly to pay accountants to produce reports that are required for eligibility assessments and that eligibility decisions are unfair. I was told by builders that worked both in Qld and NSW, that the Qld MFR requirements were much simpler and fairer than the NSW eligibility requirements.

The Qld Productivity Commission has recently recommended to the government that MFRs be abolished. The report notes that Qld are the only jurisdiction that has MFRs. That might be the case, and in Qld MFRs apply to all licensed building contractors, whereas eligibility requirements under last resort schemes only apply to builders wanting to conduct domestic or home building work for which insurance is required (which includes multi-unit residential buildings up to 3 storeys).

I would expect that Qld will need to retain some sort of financial regulation of builders in order to support its first resort warranty scheme. If they don't they may risk ongoing support from global reinsurers for the home building warranty scheme.

I am not in a position to say whether the MFR Regs are reasonable in terms of the substantive financial limitations they will place on building businesses and how assets have been defined. I presume that they have been model on the Qld MFRs. On this basis, any claims that builders will not be able to run successful businesses whilst meeting the proposed MFRs would seem to be overstated. As noted above, Qld has had MFRs in place for many years and there is a thriving building industry in that state. We are not in completely uncharted waters.

No doubt stakeholders will raise credible concerns about substantive issues in the proposed MFR Regs and those should be taken on board but I suspect blanket claims that MFRs won't work, will see the collapse of the sector or are not warranted at all to support a first report insurance scheme would appear to be unjustified.

A handwritten signature in blue ink, appearing to read 'Bronwyn Weir', with a stylized flourish at the end.

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