

Eligibility Manual v8.0

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Insurance and Care NSW (icare) provides services in
the administration of the **Home Building Compensation
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1 Preamble & Disclaimer

Insurance and Care NSW (icare) provides services in the administration of the Home Building Compensation Fund (HBCF) for the NSW Self Insurance Corporation (SICorp). In this Manual, a reference to HBCF includes a reference to SICorp and icare.

HBCF issues this version V8.0 based on the need to:

- Comply with the State Insurance Regulatory Authority's (SIRA) *Home building compensation (eligibility) insurance guidelines* (issued January 2018)
- Address minor issues throughout the manual.

1 Objectives of icare HBCF

The objectives of HBCF are to:

- Provide insurance that satisfies the requirements for a licensed insurer under Part 6 of the *Home Building Act 1989* and complies with all SIRA guidelines.
- Ensure that builders can take on a level of work (and have access to insurance cover) commensurate with their capacity to do so.
- Minimise unnecessary disruption to the NSW residential construction industry and ensure a consistent approach to the underwriting of insurance without consideration of market influences and to support a strong and viable residential building industry.
- Deliver services on a financially prudent basis to manage the risk of loss.
- Take an even-handed and consistent approach to underwriting and to minimise the risk of events (such as builder insolvency) which are grounds for a claim. As HBCF assumes liabilities that extend for six years from completion of building works it is fundamental to its objectives that businesses trade without financial stress.

2 Purpose of this Manual

The material in this document is to provide guidance to icare distributors, builders, and builder advisors as a key reference source for applying for and maintaining eligibility under the Home Building Compensation Fund (HBCF). HBCF trades as icare HBCF with functions managed by Insurance and Care NSW (icare) on behalf of the NSW Self Insurance Corporation (SICorp).

In this document, a reference to HBCF includes a reference to SICorp and icare.

3 Contractor Licensing

Builders and contractors entering into residential building contracts requiring HBCF cover must hold a current home building contractors license issued under the *Home Building Act 1989* (i.e. the name appearing on the builder's/contractor's licence).

The person or entity seeking and holding HBCF eligibility must be the person or entity holding a building licence.

It is not the role of HBCF to determine whether insurance is required under Part 6 of the Home Building Act for a project. This is the role of the Principal Certifying Authority (PCA) engaged for the project under the *Environmental Planning and Assessment Act 1979* and/or NSW Fair Trading or SIRA, which administer the Home Building Act.

4 Builder Eligibility Overview

'Eligibility' is the term used to describe the approval to enable a builder to obtain a certificate of insurance for specific projects and under what conditions.

Builder Eligibility assessments take account each of the following criteria including financial and non-financial requirements:

- builder's financial performance;
- builder's financial position including equity exposed to the building operations;
- builder's history, management structure;
- builder's technical qualifications and business capabilities; and
- existing eligibility and conditions imposed by other licence holder (if any).

All Eligibility approvals provide the builders with an Eligibility Profile including:

- The value and number of individual jobs permitted under construction at any time (referred to as open job limits)
- the maximum contract price for individual construction categories for which the builder is approved (referred to as a construction profile).

The open job limits utilised by certificates of insurance are replenished upon completion of each project. A builder's Eligibility may also include ongoing conditions on the business or conditions for specific projects. The Eligibility approval is not a standing entitlement or contract of insurance and may be revised or cancelled at any time provided the process set out in this manual for cancellation is followed.

The Eligibility approval conditions, explained in detail throughout this manual, could include:

- security from the director(s), adult beneficiary trustee guarantee, or related entities;
- a group trading agreement;
- maintaining capital levels;
- utilising a Building Contract Review Program (BCRP) service provider;
- monitoring of job completion times and close out margin reporting;
- increased frequency of financial reporting;
- job specific security; or
- Controlled reductions or increases in open job limits.

'Eligibility' may be subject to review. The Eligibility Risk Manager upon completion of each underwriting assessment will determine the requirement, frequency and next Eligibility review date. HBCF may amend the next review date, scope or requirement for review from time to time at its sole discretion and provide at least 40 business days notification for a Programmed Eligibility Review (PER) at a specified due date.

Presently, following a successful Eligibility approval, a new Certificate of Eligibility is issued to a builder without an expiry date. From 1 January 2019 onwards, a Certificate of Eligibility will typically be granted to a builder for a period of no less than one year and no greater than three years. A builder will be provided with at least 30 business days' notice before their Certificate of Eligibility is due to expire containing information regarding how they can renew their Certificate of Eligibility before the expiry date.

4.1 Form of insurance cover offered

HBCF offers a 'project specific' form of insurance cover whereby each insurable residential building contract (or dwelling) proposed to be undertaken by a builder requires an individual policy (contract of insurance under Part 6 of the *Home Building Act 1989*), as evidenced by a certificate of insurance issued by Insurance and Care NSW on behalf of

the insurer, the NSW Self Insurance Corporation. Application for cover for an individual project is made by an eligible builder using the appropriate application method:

- Licensed Builder Application form – All Work (Excluding Multiple Dwelling Projects)
- Licensed Builder Application form – Multiple Dwelling Projects (i.e. two (2) or more dwellings)
- Lodgement via the icare Builder Self-Service Portal (BSSP).

Intermediaries, on approval from HBCF, may provide a digital solution to collecting the equivalent of the above forms.

Applications for individual projects may be rejected or have specific conditions applied if they do not satisfy underwriting criteria.

5 Distribution and Advocacy

5.1 Distributors

All intermediaries must have executed a Distribution Deed of the form specified by HBCF following selection to the icare distribution panel following the successful evaluation under Distribution Tenders from time to time.

5.2 Role of Authorised Representatives

Authorised Representatives of distributors are NOT permitted to act as HBCF distributors.

5.3 Distributor functions

The objectives of consistency and procedural fairness provide a right for all Distributors to advocate on behalf of builders. The principal role of a Distributor (subject to the requirements under the Distribution Deed entered with **icare HBCF** and subject to the procedures set out in this manual) is to:

- Transact through HBCF IT Transaction Systems (CIMS and BEAT);
- Manage the builder's requirements for making new applications for eligibility;
- Manage the builder's responsibilities for eligibility review;
- Ensure that the builder meets all conditions of eligibility; and
- Advocate on behalf of builder clients.

5.4 Policy issuance

Distributors are to submit and bind all policy applications received from builders through access to CIMS or bind cover submitted by builders through the icare Builder Self-Service Portal within:

- The agreed service standards;
- A builder's conditions of eligibility;
- Certificate issuance policy of this manual; and
- CIMS Operations Manual.

5.5 Distributor advocacy

Appropriate advocacy will assist in an informed decision by the Eligibility Risk Manager based on a complete submission as required under this manual. The Distributor must disclose all matters material to the Eligibility assessment in their possession and knowledge. This includes seeking approval for an Eligibility profile that will represent the builder's insurance requirements for the next 12 months (not for a lesser amount, which will knowingly require an increase within the following twelve (12) months).

5.6 Distributor communications with builders

The Distributor is required to communicate clearly and in a timely manner HBCF's requirements and decisions as well as assist in obtaining information that is necessary for the Eligibility Risk Manager to conduct risk assessments and to monitor and manage ongoing risks.

The Distributor is to help minimise unnecessary disruption to projects due for commencement and identify such concerns to the Eligibility Risk Manager as appropriate.

In providing communication to builder clients including any requests for further information, the Distributor should always ensure they have a clear understanding of the reasons behind the requirements to allow effective communication.

To carry out this function effectively and efficiently, a Distributor is to be very familiar with the current versions of the following as published on the icare HBCF website:

- HBCF current Eligibility Manual
- The requirements for new eligibilities, including documentation requirements and the minimum financial benchmarks

- The requirements for Programmed Eligibility Reviews, including frequency cycles and documentation requirements
- Communications and directions made by the Eligibility Risk Manager or HBCF
- Processes and requirements for issuing Certificates of Insurance.

During the actual assessment process, the Eligibility Risk Manager are encouraged by HBCF to deal directly with builders where clarity or further particulars are required. The intent of direct communication is to ensure:

- Decisions are made on the most contemporary information
- Time delays are minimised
- Builders are given direct access to the Eligibility Risk Manager staff completing the assessment.

As a courtesy, the Eligibility Risk Manager should provide a copy to the Distributor of communications between the Agent and builders.

5.7 Distribution reserving policy

Reserving is the term given when, if approached to insure the same business by two (2) or more different Distributors; an insurer selects to provide a quotation to one of those Intermediaries exclusively. In those circumstances, the insurer has "Reserved" for the Distributor to whom it elects exclusively to quote.

HBCF will not reserve terms and will provide terms to the Distributor who is holding a current and valid letter of appointment or authority to seek terms from their builder client.

5.8 Premium credit terms and payment of premiums

The Distributor is to comply with the credit terms agreed in HBCF distribution deed and CIMS Operations Manual.

Distributors are held responsible for any premium payments (other than payment dishonours, which were initially collected in good faith). The Distributor is to actively pursue builder payment dishonours, resubmit payment to HBCF and immediately advise icare HBCF of potential credit concerns.

Where a Distributor has generated a certificate, without providing a copy to any party by any means, and the builder no longer requires it, the certificate is to be cancelled without formal cancellation procedures applying. Intermediaries will have the authority to cancel certificates in the CIMS in such circumstances. CIMS will hold a credit for future application to premium due. Refunds will normally not be issued except in unusual circumstances. Any request for refund will need to be made to HBCF.

5.9 Change of Distributor protocol

Note: From 3 April 2017 a moratorium has been imposed on changes to the appointed Eligibility Risk Manager.

A Letter of Appointment resulting in a change of distributor must be provided to HBCF for processing in the builder's record in the Builder Eligibility Assessment Tool (BEAT). The previous Distributor will be advised of the new appointment in writing. Distributor access to BEAT will provide the new Distributor with the builder Eligibility profile, conditions of Eligibility approval and any outstanding review requirements.

A builder is not able to change to a new distributor while an eligibility assessment is being undertaken.

5.10 Representation of multiple builders with Eligibility covered in the same GTA

Where more than one builder with Eligibility is covered by the same Group Trading Agreement (GTA) (see section 14.5 Group entities & Group Trading Agreements (GTAs)) all of these builders are to be represented by the same distributor. This ensures that Eligibility assessments for all the builders in a GTA with Eligibility occur at the same time with the assessments being undertaken on a group basis.

6 Builders Eligibility Application and Review Procedure

6.1 Eligibility decision-making framework

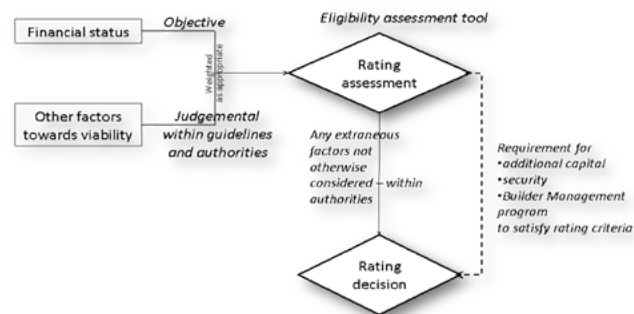
Whilst cover provides an indemnity to the homeowner and their successors in title, the risk to the insurer arises from the death, disappearance or insolvency of the builder or contractor who

purchases the insurance. As a result, the Eligibility to purchase insurance is an assessment of the builder's business strength and capability in the first instance.

Builders must meet HBCF's financial and non-financial assessment criteria (as assessed by the Eligibility Risk Manager through the application of this Manual, BEAT and instructions, guidelines or written directions given from time to time by HBCF) or where outside the preferred parameters, demonstrate to the Eligibility Risk Manager or HBCF, sufficient mitigation to comprise an acceptable risk.

Opportunities exist for referrals to the Eligibility Risk Manager's Internal Disputes Resolution (IDR) process and ultimately to HBCF Underwriting Committee of Review (UWC). Any escalation of the application decision is to be in accordance with this document. Requests for any review that require modification to the guidelines set out in this manual are not for consideration under the review processes and out of scope for the IDR or UWC processes.

Figure 1: Builder management program



The eligibility decision framework consists of two (2) aspects:

- A **financial assessment** (objective review) utilising the respective financial elements.
- A **non-financial assessment** (subjective review) of other relevant factors within these guidelines or the professional judgement of the assessing underwriter (e.g. management structure, contractor qualifications, business capacity, supervision of building work, quality assurance, trading history, existing exposure and other licence holder eligibility and imposed conditions).

6.1.1 Builder Eligibility Assessment Tool (BEAT)

The HBCF has developed an internet-based eligibility assessment tool for managing builder eligibility and reviews. As well as an assessment tool BEAT provides vital data to other core IT transactions system and the pricing calculator. BEAT provides the following functions for HBCF, the Eligibility Risk Manager, and Distributors:

- The analysis of a builder's financial reports and calculation of accounting ratios (e.g. revenue, net profit, net tangible assets and other industry specific indicators)
- Holds all eligibility limits, conditions of eligibility and applicable risk-based pricing factors
- Financial outputs and risk warnings for eligibility approval decisions affecting small and medium builders
- The day to day management of eligibility reviews
- An output report setting out the results of the analysis and conditions of eligibility including the applicable risk-based pricing factors
- The storage of financial reports and supporting eligibility submission documents.

6.1.2 External advisor

The HBCF may appoint an appropriately skilled and experienced external advisor to assist in the financial assessment of major builders other than major project home builders (and any other builders or classes of builder that may be referred to HBCF from time to time), including any related entities where appropriate.

The external advisor to be used will not be made known to the builder or distributor and the recommendations as provided to HBCF is not available to distributors and builders.

Where direct contact is needed by the external advisor with the builder to complete its report HBCF the Distributor will be advised.

6.2 Risk mitigating conditions

It is vital that, where conditions apply to a builder's Eligibility to remedy weaknesses, the weaknesses and compliance with conditions within each subsequent eligibility review are re-evaluated. The objective of eligibility conditions is to reduce risks over time through changed builder behaviour.

6.3 Construction types

Table 1 sets out the way different construction types are identified by HBCF for premium setting, policy application requirements, and eligibility (construction profile) approval:

Table 1 Construction Types

Construction Code	Construction Type
C01	New single dwelling construction - Includes Granny Flats when an addition to an existing dwelling.
C02	Multi dwelling alterations/additions (i.e. majority of work is structural) where a strata, company or community title exists over any number of storeys and including terraces, villas, townhouses or multi dwelling units
C03*	New multi dwelling construction (three (3) storeys or less) - (e.g. blocks of units, flats etc.) where a strata, company or community title exists or is proposed
C04	Single dwelling alterations/additions where most of the work is structural work
C05	Swimming pools as stand-alone building contracts

Construction Code	Construction Type
C06**	<p>Renovations (where most of the work is minor - Non-Structural) to single dwellings including specialist contractors and single trade projects (where majority of work is minor works) and including**:</p> <ul style="list-style-type: none"> • the erection of prefabricated patios, garages and sheds • bathroom and kitchen renovations that may include projects involving window replacement and water proofing membranes • replacement of roof coverings without alteration to roof structure • timber decks (including timber slatted balconies) and pergolas • landscaping – where retaining walls do not exceed 25% of the contract price • solar panels • driveways and other paving.
C07	Other works – projects not included in other definitions due to unusual circumstances (distributors should contact HBCF for clarification before processing an application as C07).
C08	Renovations (where most of the work is minor - Non-Structural) to where a strata, company or community title exists over any number of stories and including terraces, villas, townhouses or multi dwelling units
C09***	New Construction of a Duplex, Dual Occupancy, Triplex &/or Terrace (Attached) (including a new single dwelling with a Granny Flat with certificates issued for each dwelling/occupancy)

*The C03 category DOES NOT include the construction of free-standing dwellings on individual sites without any shared services or structural components (e.g. common walls, roofing etc.) and which will not be subject to strata title or community title on occupation.

** Included in this category for pricing purposes. This does not impact on cover provided by the policy.

*** Terraces (attached) can be included as C09 where individual building contracts are entered for each dwelling or it is not intended that the terraces be subject to strata or community title. Where intended to be subject to strata, company or community title; terrace projects are to be issued as a C03 construction type.

7 Builder's Eligibility Assessment

There are different approaches to builder eligibility assessment based on the complexity of a builder's corporate structure, market segments and scale of operations.

7.1 Fatal scenarios

Note: *This section identifies considerations for businesses that either pose an either greater than normal reputational risk to HBCF or where home owners, insurers, or creditors have suffered losses due to mismanagement.*

Some factors are deemed to be "fatal" to eligibility (both new applications and reviews) and should have an over-riding impact on any eligibility decision. The below factors are an overriding impediment for eligibility approval and must be supported by objective facts capable of external review:

1. Business financial measures indicate a high probability of current insolvent trading unless supported by an "unqualified going concern" statement by an external accountant.
2. Losses to creditors arising from business closures or insolvencies involving the directors or key managers in the past 5 years.
3. HBCF or its equivalent paying claims arising from business closures or insolvencies involving the directors or key managers in the past 5 years or significant new claims under investigation.
4. NSW Civil and Administrative Tribunal (NCAT) orders in favour of a homeowner arising from business closures or insolvencies involving the directors or key managers in the past 5 years.
5. NSW Fair Trading contractor licence suspensions for non-compliance with an NCAT order or successful prosecution involving the directors or key managers in the past 5 years.
6. Businesses trading because of a Deed of Company Arrangement or Debt agreement or Personal insolvency agreement through bankruptcy.
7. Adverse creditor payment history other than arising from commercial transactions in dispute involving the directors or key managers in the past 5 years
8. Insufficient ANTA available for security
9. Current winding-up petitions by creditors
10. A key manager, director or principal of the builder was a director or key manager of a previous business within the immediate 9 months prior to a business closure.

Business financial measures in this section include:

- Sufficient current working capital (i.e. assets able to be converted to cash in next 30 days to meet all current liabilities)
- Trading losses over any of the past 9 months.

A creditor in this section includes all the following (without limitation):

- Suppliers of materials and services
- Government instrumentalities (including Australian Taxation Office (ATO))
- Workers compensation insurer
- Bank, Finance or credit provider and utility companies
- Employees with outstanding entitlements
- Subcontractors and contractors
- Homeowners.

Business closures include all the following:

- A person who was at any stage in the last 5 years subject to bankruptcy, a debt agreement or personal insolvency agreement within the meaning of the *Bankruptcy Act 1966* (regardless of whether subsequently annulled (unless the annulment was under s153 of the *Bankruptcy Act 1966*), discharged or released).
- A company which was at any stage in the last 5 years an externally-administered body corporate within the meaning of the *Corporations Act 2001* (regardless of whether that external administration was subsequently terminated, released, discharged or otherwise ended).

- A partnership where a partner (or partners) were at any stage in the last 5 years:
 - subject to bankruptcy, a debt agreement or personal insolvency agreement within the meaning of the *Bankruptcy Act 1966* (regardless of whether subsequently annulled (unless the annulment was under s153 of the *Bankruptcy Act 1966*), discharged or released).
 - an externally-administered body corporate within the meaning of the *Corporations Act 2001* (regardless of whether that external administration was subsequently terminated, released, discharged or otherwise ended).

or the partnership was subject to dissolution or winding up within the meaning of the *Partnerships Act 1892*.

- A person who was a director, secretary, shareholder, officer or key manager of any company which was at any stage in the last 5 years an externally-administered body corporate within the meaning of the *Corporations Act 2001* (regardless of whether that external administration was subsequently terminated, released, discharged or otherwise ended) within 5 years of that external administration.
- A company whose director, secretary, shareholder, officer or key manager was a director, secretary, shareholder, officer or key manager of any company which was at any stage in the last 5 years an externally-administered body corporate within the meaning of the *Corporations Act 2001* (regardless of whether that external administration was subsequently terminated, released, discharged or otherwise ended) within 5 years of that external administration.

7.2 Assessment of the principals and key managers

Due to the nature of cover, the Eligibility Risk Manager must consider the history of all directors, major shareholders and other key managers defined below including details of any related entities, former business associations and former key manager roles.

For Medium and Major Builders an assessment of succession planning in the organisation to ensure continuation of the business in the event of key personnel changes and an assessment of the capabilities and depth of the builder's management team and its structure is to be undertaken.

7.2.1 Directors, principals, and key managers

A key factor in the success of a company is the past performance and experience of its principals and key managers. Checks to identify possible previous adverse associations are to be undertaken through:

- ASIC
- NSW Fair Trading Contractor licensing register
- abr.business.gov.au
- Mercantile Agency or equivalent, including a full director's history extract on each director and nominated supervisor will enable the Eligibility Risk Manager to verify the personal information of each director, partner or business proprietor and identify any adverse features.

Any identified characteristics that may affect risk – such as director disqualifications, financial relationships that may lead to conflicts of interests – will be fully investigated and where necessary, lead to a rejection of the application unless rectified.

Disqualifications of non-directors who become the direct or indirect source of finance, executive control or other support to the builder are to be assessed as if it were the disqualification of a director, partner or principal of the builder.

7.2.2 Key managers

A key manager includes anyone who directs the critical decision making of the builder, or is likely to exert influence, based on essential experience they hold, on the business.

The key managers include, but are not limited to:

- Directors or principals
- Material shareholders (including parent entities and key managers of parent entities)
- Nominated licensed building supervisors
- Chief Executive Officer (CEO) and operations managers
- Chief Financial Officer (CFO) and finance managers
- Senior Managers including construction managers and senior project managers
- Sales and Marketing Managers.

Builders will need to demonstrate they have the necessary experience amongst its key managers.

Note: Where a principal of a small builder can demonstrate a strong background and experience in their own right, checks do not extend to key managers.

Deficiencies should be addressed by the following:

- Denying Eligibility
- Denying a limit increase in Eligibility
- Requiring the builder to enter the BCRP for contracts of \$50,000 and over.

Where it appears that a person who is not a director or principal of a builder but, as a key manager, may direct the critical decision making or is likely to exert influence on other key managers then the role of that person including any adverse history must be considered as part of the Eligibility assessment.

In determining whether a person or entity is a key manager of a business, guidance can also be sought by reference to the definition of a **close associate** contained in the *Home Building Act 1989*, which provides:

A person is a **close associate** of a builder for, or holder of, a contractor licence or of a builder for the renewal or restoration of such a licence if the person:

- is a partner of the builder or holder, or
- is an employee or agent of the builder or holder, or
- is a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the builder or holder or a person referred to above has a beneficial interest, or
- bears a 'prescribed relationship' to the builder or holder, or
- is a corporation that is a subsidiary (within the meaning of the *Corporations Act 2001* of the Commonwealth) of the builder or holder, or
- holds or is entitled to exercise, in respect of the builder or holder or the business of the builder or holder, any other 'relevant financial interest', 'relevant position' or 'relevant power'.

A person bears a 'prescribed relationship' to a builder or holder of a licence if the relationship is that of:

- a spouse, or
- an existing or former de facto partner, or
- a child, grandchild, sibling, parent or grandparent, whether derived through the above circumstances or otherwise.

Note: "De facto partner" is defined in section 21C of the Interpretation Act 1987.

Relevant financial interest means:

- any share in the capital of the business, or
- any entitlement to receive any income, other than salary, derived from the business, whether the entitlement arises at law or in equity or otherwise.

Relevant position means the position of director, manager, and other executive positions and secretary; however those positions are designated.

Relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

- to participate in any directorial, managerial or executive decision, or
- to elect or appoint any person to any relevant position.

7.2.3 Common directorships with eligible entities and group structures

If there are related entities that are licensed in NSW, then the application cannot proceed until a group assessment is conducted.

7.3 Assessment of open job limits and assumed turnover

The open job value and number of jobs under construction are the limits governing access to HBCF policies of insurance for NSW residential projects over \$20,000. Eligibility reviews test the assumed annual turnover to identify equity and working capital sufficiency.

The assumed turnover is the total revenue likely to be generated:

- if the builder was trading at the maximum volumes permitted by the open job limits; plus
- any non-HBCF activity (e.g. commercial construction works); and
- utilisation of equivalent interstate Eligibility approvals.

It takes account of the builder's current average completion time from purchasing cover to completion as well as the past 12 months average contract values. BEAT uses the assumed turnover to test ANTA and other BEAT ratios.

When determining the actual turnover of a builder HBCF considers:

- The assumed turnover that will be generated by HBCF open job limit.
- The additional business turnover of related entities under the same management control or ownership
- The business turnover of entities under the control of the same parent entity
- All turnover producing activity including residential work undertaken outside of NSW including non-residential construction
- Budgeted construction costs for jobs under project management agreements.

In assessing turnover for Eligibility purposes an Underwriter should work with the assumed turnover calculation automatically generated by BEAT based on the builder's open job value and open job number profile in first instance. If, in the opinion of the Underwriter, the assumed turnover generated by BEAT appears materially higher or lower to their own estimate they may change the figure in BEAT and provide sufficient commentary in BEAT for doing so.

***Note:** The definition of 'related entity' and 'control' is to be interpreted in the broadest context to cover all business activity, assets, equity and/or liabilities with common director or shareholder interest or control to the building operations being assessed.*

7.4 Determining open job number and project limits

Assessment of appropriate under construction (open Job) limits will consider:

- Contracts currently under construction including non HBCF activity or interstate activity
- Demonstrated construction times
- Estimated contracts to be commenced in the next 12-month period
- Net tangible asset calculation
- Length of time the business has been operating
- Industry, construction, and contractual experience
- Benchmark comparisons with peer builders.

The financial strength of the business, personal financial position of the directors/partners together with the building expertise of the principals will determine the level of the approved open jobs eligibility limit.

7.4.1 Open job value and job size growth

The assumed turnover of the builder is to be compared with previous financial years to identify any abnormal growth expectations.

Builders who seek to increase their open job limit significantly will need to demonstrate their financial and technical ability to undertake these jobs.

The following factors could be considered when assessing open job value levels:

- Technical ability and experience
- Number and size of current projects
- Gross margins
- Capital available to fund overhead growth
- Geographic spread to enable span of control to be exercised
- Complexity of contracts
- Confirmation of financing abilities and sources
- Ability to source qualified and competent subcontractors
- Day-to-day management of subcontractors.

7.4.2 Open job limit growth

Growth requires capital until increased cash flow and profits cover the increased overheads associated with the growth.

Increased growth increases overhead cost (staff, systems, plant and machinery, vehicles, offices). Until the extra projects generate sufficient profit to fund the additional costs, these additional costs must be funded placing pressures on working capital.

Funding growth from retained earnings assists to mitigate this risk. In time the extra profit can be used to assist covering additional overhead costs.

The entity must have the management experience to manage the requested level of growth including:

- Managing a greater geographic spread of projects
- Managing jobs of varying complexity
- Managing a higher number of project managers or supervisors, as with a higher number of projects, day to management of each project becomes increasingly devolved
- Sourcing and managing a higher number of subcontractors
- Co-ordinating the cash flow in relation to a higher number of jobs at different stages.

The source of the increased sales projections must be understood.

- If growth is being driven by a relationship with a marketing entity,
 - What is the fee structure to the marketing agent – how will it affect builder margins?
 - To what extent can the builder control job scheduling. Is there a risk that the builder will not be able to effectively control the level of concurrent jobs?
- A heightened risk exists where the growth request is seeking to address cash flow shortages, through deposit collection or through a disproportionate number of contracts in early stages. Financial assessment, appropriate questions and a review of the work in progress (including a check that there is a suitable mix across work stages) may assist to gauge this risk type.

7.4.3 Project limit increase

This is not the same as an open job limit increase application hence a full financial underwriting assessment is not required unless there is an outstanding Eligibility review requirement.

The Project Limit Increase is assessed based on experience and satisfactory technical references, utilising the BCRP where an experience deficiency is identified.

Annual indexation of successfully completed projects may be applied, based on the applicable Construction Cost Index.

7.4.4 Temporary open job limit increases

A temporary open job limit increase may be considered that exceeds the open job limit outside the underwriting criteria where there is a positive track record of job completions over the previous 6 months and the increase is temporary and for no more than one project.

8 Builder Eligibility Review Category

8.1 Builder size classification

Whilst home warranty insurance is effectively a generic icare has in place several customised Eligibility rules targeted at various segments of the residential construction industry. Builders are classified based on the eligibility open job limits sought by a builder and approved. Builders are classified as either:

- New builders
- System reviewed small builders
- Small builders
- Medium builders
- Major non-project home builders
- Major project home builders.

The current HBCF Eligibility Review categories are as set out in Table 2.

Table 2 Builder Review Categories

Primary HBCF Builder segment	Open Job Value Approved	Maximum Open Job Number Approved	Eligibility Review Category
New Homes (new single dwelling construction, granny flats, new construction of a duplex, dual occupancy, triplex &/or terrace (attached))	≤ \$3M	8 projects	System reviewed small builder
New Homes (new single dwelling construction, granny flats, new construction of a duplex, dual occupancy, triplex &/or terrace (attached))	> \$3M to ≤ \$5M	8 projects	Small builder
New Homes (new single dwelling construction, granny flats, new construction of a duplex, dual occupancy, triplex &/or terrace (attached))	> \$5M to ≤ \$10M	30 projects	Medium builder
New Homes (new single dwelling construction, granny flats, new construction of a duplex, dual occupancy, triplex &/or terrace (attached))	> \$10M	> 30 projects	Major builder
Alterations and Additions (Structural) – Single dwellings	≤ \$3M	8 projects	System reviewed small builder
Alterations and Additions (Structural) – Single dwellings	> \$3M to ≤ \$5M	8 projects	Small builder
Alterations and Additions (Structural) – Single dwellings	> \$5M to ≤ \$10M	20 projects	Medium builder
Alterations and Additions (Structural) – Single dwellings	> \$10M	> 20 projects	Major builder
Renovations (Non-structural) – Single dwellings	≤ \$3M	20 projects	System reviewed small builder
Renovations (Non-structural) – Single dwellings	> \$3M to ≤ \$10M	50 projects	Medium builder
Renovations (Non-structural) – Single dwellings	> \$10M	> 50 projects	Major builder
New Multi-unit (low rise)	N/A	N/A	System reviewed small builder
New Multi-unit (low rise)	≤ \$5M	2 projects	Small Builder
New Multi-unit (low rise)	>\$5M to ≤ \$30M	5 projects	Medium builder
New Multi-unit (low rise)	> \$30M	> 5 projects	Major builder
Alterations and Additions (Structural) – Multi-units	N/A	N/A	System reviewed small builder
Alterations and Additions (Structural) – Multi-units	≤ \$5M	2 projects	Small builder
Alterations and Additions (Structural) – Multi-units	> \$5M to ≤ \$10M	5 projects	Medium builder

Primary HBCF Builder segment	Open Job Value Approved	Maximum Open Job Number Approved	Eligibility Review Category
Alterations and Additions (Structural) – Multi-units	> \$10M	> 5 projects	Major builder
Renovations (Non-structural) – Multi-units	N/A	N/A	System reviewed small builder
Renovations (Non-structural) – Multi-units	≤ \$3M	20 projects	Small builder
Renovations (Non-structural) – Multi-units	> \$3M to ≤ \$10M	50 projects	Medium builder
Renovations (Non-structural) – Multi-units	> \$10M	> 50 projects	Major builder
Swimming Pools (Pool specialists only)	≤ \$1M	20 projects	System reviewed small builder
Swimming Pools	> \$1M to ≤ \$2M	50 projects	Small builder
Swimming Pools	> \$2M to ≤ \$5M	100 projects	Medium builder
Swimming Pools	> \$5M	> 100 projects	Major builder

All builders are to be allocated a single combined open job limit (both number and value) in recognition of the variety of projects they anticipate commencing.

8.2 Determining a builder's Eligibility review category and primary HBCF builder segment

A builder's Primary HBCF Builder segment is inferred with reference to their approved construction type limits, trading history of primary segment of building work (cross-referencing matrix contained in Table 3) and its approved open job limits.

Table 3 Referencing construction codes to Primary HBCF Builder Segment

Construction code (Reference: Table 1 Construction Types)	Primary HBCF Builder segment (Reference: Table 2 Builder Review Categories)
C01	New Homes (new single dwelling construction, granny flats, new construction of a duplex, dual occupancy, triplex &/or terrace (attached))
C02	Alterations and Additions (Structural) Multi Units
C03	New Multi-unit (low rise)
C04	Alterations and Additions (Structural) – Single dwellings
C05	Swimming Pools
C06	Renovations (Non-structural) – Single dwellings
C07	N/A
C08	Renovations (Non-structural) – Multi-units
C09	New Homes (new single dwelling construction, granny flats, new construction of a duplex, dual occupancy, triplex &/or terrace (attached))

8.3 Standard job profile limits

Table 4 shows standard construction values by builder and construction type – applications for job profile limits that exceed these values are to be tested by underwriters for demonstrated experience.

Table 4 Standard construction values by builder and construction type

Building Construction type	Dwelling code	New Builder (inexperienced) (must be subject to BCRP)	System Reviewed Small Builder	Small Builder (incl. New licence with 3yrs key manager experience)	Medium Builder	Major Builders
New single construction	C01	\$400K	\$400K	\$600K	\$600K	\$1M
New multi-unit (4 or more units)	C03	No	No	(on application)	(on application)	(on application)
Multi-Unit Rectification	C02	No	No	(on application)	(on application)	(on application)
New multi-unit, duplex or villa (3 or less units per site)	C09	\$300K	\$300K	\$500K	\$500K	\$500K
Structural alterations & additions (non multi-unit)	C04	\$350K	\$350K	\$500K	\$500K	\$1M
Swimming pools	C05	\$50K (for pool specialist only)	\$50K (for pool specialist only)	\$75K	\$100K	\$100K
Renovations (non multi-unit)	C06	\$50K	\$50K	\$150K	\$200K	\$200K
Multi-Unit Alterations and Renovations	C08	No	No	(on application)	(on application)	(on application)
New terrace construction (attached)	C09	No	No	\$500k per dwelling	\$500k per dwelling	\$500k per dwelling

Note: These construction amounts are the standard generally allowable for the category concerned but may be adjusted up or down by the Eligibility Risk Manager based on the builder's construction history and experience. Builders are free to apply for more or less than the standard.

1. Builders will be granted an Eligibility profile consistent with their history, skills, licence conditions (refer to Fair Trading website for more information) and experience and need not be granted Eligibility for all construction types
2. Where builders are seeking higher than the standard limit, applications must be supported by an appropriate construction history and experience demonstrated through references from a structural engineer, architect or similar. References are to detail the address of the work, construction value, date completed, scope of work, licensed builder's role and the principals and key management personnel involved. The Eligibility Risk Manager is to be satisfied that the references support the builder's competence within the proposed work/limit.
3. The experience required for a New Builder to gain immediate Small Builder status includes three years' experience as a manager or project manager for a previous builder employer relevant to the building construction type sought or other suitable and relevant experience.
4. The builder must demonstrate previous experience in:
 - Managing contracts with homeowners
 - Engaging and supervising a wide range of subcontractors
 - Satisfying the specifications and building codes on projects
 - Completion of projects on time and to budget.

Participation in the BCRP will satisfy the requirements for experience after at least three (3) varied jobs are satisfactorily completed. Where a builder has completed two (2) similar projects (i.e. same construction type) in line with the maximum job profile being sought the builder should have the BCRP condition removed.

9 Eligibility Review Information Requirements

HBCF has in place tailored Eligibility review information requirements to all builders, considering a builder's construction type and builder size classification to determine whether a builder has adequate business strength and capacity to qualify for eligibility and if so, the extent of their eligibility.

HBCF reserves the right to contact the builder, either directly or through the Eligibility Risk Manager, to resolve any identified concerns once an assessment has commenced. The broker will be made aware of the reasons the direct contact is needed. HBCF reserves the right as part of its review to engage external advisors without notifying the builder or the broker. Where HBCF deems it necessary to perform a more intensive review requiring further information from a builder, the broker will first be advised and HBCF or its external advisors will make direct contact with the builder.

9.1 Eligibility review for New Builders

The application for 'New Builder Eligibility' is for residential contractors/builders who fall within the following criteria:

- Have not previously contracted direct with homeowners
- Have not previously operated their own building business (including being a Director/Key Manager of a building company).

Builders with adverse financial history and their "associates", older than 3 years, may also be placed in this segment as a condition of granting Eligibility.

Note: *Trust corporate structures will not be approved for New Builders.*

Note: *A full financial assessment is not required other than complying with ANTA requirements.*

Conditions to apply to Eligibility, except in exceptional circumstances where the New Builder can demonstrate to the Eligibility Risk Manager a reasonable justification to exceed the standard condition limits, should be:

- The builder must utilise the services of a BCRP service provider for all contracts of \$50,000 and more
- Profiles permitting the construction of new dwellings should be limited to maximum of 3 concurrent dwellings with each job to be confirmed and signed-off by the homeowner or certified by the BCRP service provider
- Maximum value of projects under construction – \$2 million with no more than 3 open projects.

The following 'Types of Construction' are **not** generally available to New Builders:

- Architect/Designer tendered and managed projects
- Multiple-dwelling developments other than duplex or triplex
- High-rise multi-unit rectification
- Developer owned projects.

The facility is to be reviewed within 15-months to determine ongoing Eligibility. Following an acceptable review of financial performance, practical experience and BCRP reports, the Eligibility Risk Manager may elevate a builder from the New Builder to either the System Reviewed Small Builder or Small Builder segment. To remove the "new builder" classification for eligibility purposes, the principal(s) can be assessed as a small builder where they can demonstrate:

- They have traded as a licensed builder for at least 12 months, and/or
- They have more than 3 years' experience as a key manager over construction activity with another licensed builder in the building construction profile or equivalent experience.

9.2 Eligibility review for System Reviewed Small Builders

Builders in this segment of eligibility will have their eligibility profile restricted to the maximum open job value and open job numbers as set out in Table 2.

During the period of eligibility, contained in the Certificate of Eligibility, a builder in this segment may be subject to the following types of reviews:

- Special Eligibility Reviews (see section 17.4 Special Eligibility Reviews) triggered for a variety of reasons including risk alerts monitored by the Eligibility Risk Manager. The result of these reviews may result in a builder's eligibility being either:
 - unchanged;
 - modified;
 - restricted;
 - suspended; or
 - cancelled
- In accordance with the relevant provisions and notice periods of this manual.

- A full financial assessment when seeking a Builder Profile Change (see section 17.5 Eligibility Builder Profile Change (BPC)) which may result in the builder being re-classified into another builder eligibility segment (i.e. small, medium or major builder). It should be noted that the result of a BPC review may be to suspend/cancel a builder's eligibility.

At least 30 business days before a builder's Certificate of Eligibility is due to expire (subject to the results of any review listed above being undertaken in the interim) a builder will be provided with a written notice advising them that their Certificate of Eligibility will be automatically renewed for a period of 1-3 years based on their present eligibility profile. In the written notice a builder will be provided with instructions on how they can decline the invitation for automatic renewal of their Certificate of Eligibility.

9.3 Eligibility review for Small Builders

Builders in this segment of eligibility will have their eligibility profile restricted to the maximum open job value and open job numbers as set out in Table 2.

Trading evidence is required for the past 3 years or the maximum trading history available if 3 years immediate prior trading does not exist. The submission must include the following:

- The three most recent tax returns or accountant prepared financial statements (latest not more than 12 months old). Tax Assessment notices are not acceptable.
- Current Statement of Personal Assets and Liabilities (SPAL) in the form set out in the Eligibility Application Form.
- Proof of ownership for properties (Local Government rates notice to be the minimum evidence of ownership) listed on the SPAL.
- Work in progress summary or all projects under construction including projects in NSW not requiring HBCF or interstate projects.
- Aged debtor and aged creditor listings as at the balance date of the most recent financial statements subject to review.
- Details of any home warranty eligibility held for residential building work being undertaken outside of NSW.

- Details of any franchise arrangements, brand licensing or group buying schemes and any external marketing operations (see section 10.4 Franchise, marketing or buying group participation).
- Details of any claims, Tribunal, court actions and/or other litigation with homeowners, suppliers, sub-contractors or other parties above **\$50,000**.
- A project pipeline forecast for the next 12 months.

Where HBCF and/or the Eligibility Risk Manager deems it necessary to perform a more intensive review requiring further information from a builder, the broker will first be advised and HBCF and/or the Eligibility Risk Manager (or its external advisors) will make direct contact with the builder.

Financial accounts provided for an annual Eligibility review (i.e. Programmed Eligibility Review (PER)) need to be externally prepared and signed by the builder. Internally prepared management accounts are sufficient for other Eligibility reviews (subject to section 13 Financial Statements Inconsistency).

***Note:** Tax returns held by brokers and submitted to HBCF or HBCF Eligibility Risk Manager are to have the Tax File number adequately masked to be unreadable.*

9.4 Eligibility review for Medium Builders

Builders in this segment of eligibility will have their eligibility profile restricted to the maximum open job value and open job numbers as set out in Table 2.

The principal(s) and/or key management personnel of a Medium Builder need to be able to demonstrate that they have:

- traded as a licensed builder for at least 2 years in the Medium or Small Builder category and have adequate financial performance, or
- more than 3 years' experience as a manager or project manager with other small and medium licensed builders in the building construction type sought or at least equivalent other suitable and relevant experience.

9.4.1 Corporate structure

All corporate structures must be clearly defined with documentation to understand the group structure. A corporate tree showing all related parties and ownership structures (directors and shareholders) may be requested by the Eligibility Risk Manager or HBCF.

9.4.2 Financial reports

- The currency of the annual financial reports is a significant factor in determining the reliability of the assessment that can result from the rating tools. The latest 30 June annual financial reports are required for the past 3 years (or all years of trading if, less than three years). Where a previous entity traded, the total of 3 years' annual financial reports can include the previous trading entity (i.e. 2 years trading as a sole trader and one year as a company would satisfy the 3-year requirements).
- Where accounts have been previously provided in support of a previous assessment there is no requirement to resubmit them.
- The latest annual reports relied upon for an assessment are to be no older than 9 months. Where an application is relying on accounts that are older than 9 months, interim management accounts no more than three months old are required in addition to the annual accounts.
- For group structures, the same requirements for financial reporting will apply to all related entities that have balance sheet related loans with the builder that affect the ANTA or current ratio of the builder and where group treasury arrangements are in place. In this instance a group is to be considered in the broadest context where control can be considered common to the building entity.
- Financial accounts provided for an annual Eligibility review (i.e. Programmed Eligibility Review (PER)) need to be externally prepared and signed by the builder. Internally prepared management accounts are sufficient for other Eligibility reviews (subject to section 13 Financial Statements Inconsistency).

9.4.3 Statement of Personal Assets and Liabilities (SPAL)

- Current Statement of Personal Assets and Liabilities (in the form set out in the Eligibility Application Form).
- Proof of ownership for properties (Local Government rates notice to be the minimum evidence of ownership) listed on the SPAL.

9.4.4 Additional details required

- Aged debtor and aged creditor listings as at the balance date of the most recent financial statements subject to review.
- Details of any home warranty eligibility held for residential building work being undertaken outside of NSW.
- Details of any franchise arrangements, brand licensing or group buying schemes and any external marketing operations (see section 10.4 Franchise, marketing or buying group participation).
- Details of any claims, Tribunal, court actions and/or other litigation with homeowners, suppliers, sub-contractors or other parties above **\$50,000**.
- A project pipeline forecast for the next 12 months.

Where HBCF and/or the Eligibility Risk Manager deems it necessary to perform a more intensive review requiring further information from a builder, the broker will first be advised and HBCF and/or the Eligibility Risk Manager (or its external advisors) will make direct contact with the builder.

9.5 Eligibility review for Major Non-Project Home Builders

A Major Non-Project Builder meets the criteria as set out in Table 2 plus the following:

- Builders deemed to be a 'Major Builder' by HBCF
- A major builder deemed not to be a Major project home builder
- The principal(s) and/or key management personnel of a Major Non-project Builder need to be able to demonstrate that they have either:
 - Traded as a licensed builder in the small and medium category for at least 5 years
 - Adequate financial performance over a 3-year period, or more than 5 years' experience as a manager or supervisor with other medium and major licensed builders in the building construction type sought

- At least equivalent other suitable and relevant experience.

Note: The definition of 'related entity' and 'control' is to be interpreted in the broadest context so as to cover all building activity, assets, equity and/or liabilities.

Note: Annual business turnover covers residential and non-residential work undertaken in and outside of New South Wales.

The builder, via their distributor, can request a meeting to discuss the outcome with HBCF and/or the Eligibility Risk Manager following HBCF's eligibility decision.

The HBCF reserves the right to contact the builder, either directly or through the Eligibility Risk Manager, to resolve any identified concerns once an assessment has commenced. The broker will be made aware of the reasons the direct contact is needed. The HBCF reserves the right as part of its review to engage external advisors without notifying the builder or the broker. Where HBCF deems it necessary to perform a more intensive review requiring further information from a builder, the broker will first be advised and HBCF or its external advisors will make direct contact with the builder.

9.5.1 Corporate structure

The corporate structures must be clearly defined and all other related documentation that the Eligibility Risk Manager will need to understand the group structure. A corporate tree showing all related parties and ownership structures (directors and shareholders) may be necessary or helpful.

9.5.2 Financial reports

- For publicly listed entities or groups, the publicly available ASIC and ASX reports will be utilised.
- The currency of the annual financial reports is a significant factor in determining the reliability of the assessment that can result from the rating tools. The latest 30 June annual financial reports are required for the past 3 years (or all years of trading if less than 3 years). Where a previous entity traded, the total of 3 years' annual financial reports can include the previous trading entity (i.e. 2 years trading as a sole trader and one year as a company would satisfy the 3-year requirements).
- Where accounts have been previously provided in support of a previous assessment there is no requirement for resubmitting them.

- The latest annual report relied upon for an assessment is to be no older than 9 months. Where an application is relying on accounts that are older than nine (9) months, interim management accounts no more than three (3) months old are required in addition to the annual accounts.
- For group structures, the same requirements for financial reporting will apply to all related entities that have balance sheet related loans with the builder that affect the ANTA or current ratio of the builder and where group treasury arrangements are practised. In this instance a group is to be considered in the broadest context where control can be considered common to the building entity.
- Financial accounts provided for an annual Eligibility review (i.e. Programmed Eligibility Review (PER)) need to be externally prepared and signed by the builder. Internally prepared management accounts are sufficient for other Eligibility reviews (subject to section 13 Financial Statements Inconsistency).

9.5.3 Additional details required

- A detailed breakdown of related party loan balances (both assets and liabilities) and related transactions (such as revenue, management fees, rent, hire fees etc.) at the balance date for each financial period, together with the purposes and repayment agreements
- A Business Operational Plan (see section 9.6.4 A Business Operational Plan)
- Details of any franchise arrangements, brand licensing or group buying schemes and any external marketing operations (see section 10.4 Franchise, marketing or buying group participation).
- The purpose of external funding and confirmation from financial institutions of facilities in place including limits, when facilities mature or are due for renewal and details of any loan covenants together with any breach of covenant and what actions were taken
- Details of any claims, Tribunal, court actions and/or other litigation with homeowners, suppliers, sub-contractors or other parties above \$50,000.
- Aged debtor and aged creditor listings as at the balance date of the most recent financial statements subject to review as well as ATO integrated client account statements (for previous 12 month period) and details of any repayment plans.

- Details of any home warranty eligibility held for residential building work being undertaken outside of NSW.
- Copy of standard residential progress payment schedule in building contracts.
- Breakdown of current working capital (including cash at bank, debtors, creditors and work in progress/unearned revenue valuation) prepared as at a date within **60 days** of the submission date.

Where HBCF and/or the Eligibility Risk Manager deems it necessary to perform a more intensive review requiring further information from a builder, the broker will first be advised and HBCF and/or the Eligibility Risk Manager (or its external advisors) will make direct contact with the builder.

9.6 Eligibility review for Major Project Home Builders

For the purposes of insurance, a builder is a 'major project home builder' where the builder is a project home builder with an open job value limit greater than \$10 million. These builders predominantly generate sales through display homes.

The risk management strategy of HBCF for major builders requires that a comprehensive annual review be undertaken of the financial position of the builder.

The builder, via their broker, can request a meeting to discuss the outcome with HBCF and/or the Eligibility Risk Manager following HBCF's eligibility decision.

HBCF reserves the right to contact the builder, either directly or through the Eligibility Risk Manager, to resolve any identified concerns once an assessment has commenced. The broker will be made aware of the reasons the direct contact is needed. The HBCF reserves the right as part of its review to engage external advisors without notifying the builder or the distributor. Where HBCF deems it necessary to perform a more intensive review requiring further information from a builder, the distributor will first be advised and HBCF or its external advisors will make direct contact with the builder.

9.6.1 Corporate structures

Any corporate structures must be clearly defined and together with all other related documentation that the Eligibility Risk Manager will need to understand the group structure. A corporate tree showing all related parties and ownership structures (directors and shareholders) may be necessary or helpful.

9.6.2 Financial reports

- The currency of the annual financial reports is a significant factor in determining the reliability of the assessment that can result from the rating tools. The latest 30 June annual financial reports are required for the past 3 years (or all years of trading if, less than 3 years). Where a previous entity traded, the total of 3 years' annual financial reports can include the previous trading entity (i.e. 2 years trading as a sole trader and one year as a company would satisfy the 3-year requirements).
- Where accounts have been previously provided in support of a previous assessment there is no requirement for resubmitting them.
- The latest annual reports relied upon are to be no older than 9 months. Where an application is relying on accounts that are older than 9 months, interim management accounts no more than 3 months old are required in addition to the annual accounts.
- For group structures, the same requirements for financial reporting will apply to all related entities that have balance sheet related loans with the builder that affect the ANTA or current ratio of the builder and where group treasury arrangements are practised. In this instance a group is to be considered in the broadest context where control can be considered common to the building entity.
- HBCF reserves the right to seek its own independent accounting investigation of any company or group that in the opinion of the agent or HBCF represents excessive risk.
- Financial accounts provided for an annual Eligibility review (i.e. Programmed Eligibility Review (PER)) need to be externally prepared and signed by the builder. Internally prepared management accounts are sufficient for other Eligibility reviews (subject to section 13 Financial Statements Inconsistency).

9.6.3 Additional requirements for major project home builders:

Publicly listed companies, trusts and groups will be reviewed on publicly available financial reports and ASX announcements.

Private entities are to provide the following information:

- Concise history of the group for up to 5 prior years
- A comprehensive Business Plan
- The building and business history of directors, key managers including licence holders, and shareholders (with more than a 25% shareholding)
- A detailed breakdown of related party loan balances (both assets and liabilities) and related transactions (such as revenue, management fees, rent, hire fees etc.) at the balance date for each financial period, together with the purposes and repayment agreements
- A Business Operational Plan (see Section 9.6.4 A Business Operational Plan)
- Details of any franchise arrangements, brand licensing or group buying schemes and any external marketing operations (see section 10.4 Franchise, marketing or buying group participation).
- The purpose of external funding and confirmation from financial institutions of facilities in place including limits, when facilities mature or are due for renewal and details of any loan covenants together with any breach of covenant and what actions were taken
- Details of any claims, Tribunal, court actions and/or other litigation with homeowners, suppliers, sub-contractors or other parties above **\$50,000**
- Contract **Work in Progress Valuation Statement** (see Section 9.6.5 A Work in Progress Valuation Statement)
- Work in Progress schedule showing for period end reported, all current construction jobs detailing contract price, site commencement date, and stage of progress, cost to complete and undrawn contract value (Indicating each project as either NSW residential, other State residential or commercial)
- Copy of standard residential progress payment schedule in building contracts

- Breakdown of current working capital (including cash at bank, debtors, creditors and work in progress/unearned revenue valuation) prepared as at a date within **60 days** of the submission date;
- **Internal Controls Statement** (refer to Section 9.6.6 An Internal Controls Statement)
- land holding and display home information including ownership/leasehold/contract terms, address, stage of development, estimated current market value and method of valuation (directors' or independent market or sworn valuation) for each property.
- Aged debtor and aged creditor listings as at the balance date of the most recent financial statements subject to review as well as ATO integrated client account statements (for previous 12 month period) and details of any repayment plans.
- Details of any home warranty eligibility held for residential building work being undertaken outside of NSW.

9.6.4 A Business Operational Plan

A Business Operation Plan is required setting out the following:

- Current and anticipated total sales turnover
- Proposed HBCF eligibility limit requirements and job type requirements for the next 12 months
- Market segments and geographical regions targeted
- Current gross margin targets on new sales
- Staff organisational chart
- CVs for all changed key managers
- Group corporate tree with shareholder details where changes have occurred.

9.6.5 A Work in Progress Valuation Statement

A Work in Progress Valuation Statement is to be provided by the external accountants or auditors in which:

- The AASB111 (or AASB15 as applicable) accounting standard has been applied to the work in progress and unearned revenue values in the balance sheet
- Land and buildings for resale or speculative construction WIP is based on the directors' best estimate of realisable value or at cost whichever is the lesser amount
- All amounts shown as WIP are current assets.

9.6.6 An Internal Controls Statement

An Internal Controls Statement is a director's declaration on the builder's letterhead, capable of external testing, that:

- Sales margins that are less than the company gross margin targets are authorised by the business principal or a manager authorised by the principal before tenders or building quotes are submitted
- Movement to forecast gross profit margin are monitored for individual projects by the management team:
 - at contract signing
 - prior to commencement of construction following confirmed orders to major suppliers and supply and install contractors
 - during construction monthly
 - at practical completion.
- There is a control to address systemic margin erosion by amending estimating procedures, master pricing files and standard model pricing as appropriate
- Estimating master pricing files have a forward pricing contingency based on forecast market conditions
- Management monthly review of:
 - dynamic cash flow forecast for current year and with a minimum of 6 months into the future
 - Profit and loss results against the initial budget set and against current forecast with ongoing changes to the profit and loss forecast as required
 - YTD balance sheet, aged debtors and aged creditors reports.
- All projects undergo a close out review of gross margin and construction defects at 90 days from handover and controls exist to adjust gross margin targets on future sales estimates.

10 Consideration of Other Non-Financial Requirements

10.1 Previous business history and capacity

History can reasonably be viewed as a sound indicator of the potential for the future and is thus to be thoroughly considered in terms of risk. There is also an expectation that builders not be permitted to engage in phoenix corporate activity (i.e. using the corporate veil to start up new operations where previous homeowners, warranty insurers or creditors have suffered a loss through a prior associated business).

However, it should also be noted that the past may have been a learning process and builders may be able to demonstrate that they have redeemed a previous position. The onus should be on the builder to justify new eligibility being granted.

Consideration of the past *insolvency* of any direct or related entity should consider the circumstances of the insolvency.

The following questions may identify whether the history is adverse:

- Are there previous insolvencies where the builder principals or key managers had an association or related group entities?
- Is the latest insolvent event under 3 years old?
- Is there evidence of avoidance of trade creditors, building disputes or tax liabilities?
- Is there a history of building disputes?
- Was there evidence that the principals had withdrawn funds prior to an external administration or deregistration?
- Were such persons prosecuted for any offences in connection with the insolvency or found personally liable for the debts of the failed enterprise?

In considering a new application where adverse history is applicable, the following can be considered as a mitigant:

- Evidence is clearly provided that the substantial causes of the insolvency were not because of mismanagement
- The history in the immediate past 5 years has no repeats of any adverse activity
- At least 3 years has past and there are no HBCF claims and trade creditors were not impacted by the history event.

There should be an expectation of at least 10% ANTA or (deeds of indemnity and at least 5% entity ANTA) if such a builder is to be favourably considered for future Eligibility unless 5 years have passed since the adverse history.

10.2 Claims notifications, NCAT/ Court orders and builders licence incident record

Where a previous entity association is identified the Eligibility Risk Manager is to investigate/assess the materiality and relevance of any past claims history whether emanating from the 'first resort' period or arising from a prior business failure under the 'last resort' scheme.

If an adverse claims history exists, judgment will need to be made with the available information and the contemporary position of the builder as to the current risk presented by the builder.

In most building entities, particularly small builders, the nominated supervisor should be deemed a key manager of the business. As such, any adverse track record of the nominated supervisor is to be investigated and appropriately mitigated, prior to the application proceeding. There are exceptions to this rule where the directors are sufficiently experienced.

10.3 Work in Progress (WIP) reports

WIP information can assist to understand the impact of the current construction activity on the future cash flow of a builder.

10.3.1 Delays in completion

- Is the builder having difficulty sourcing material and/or subcontractors or having significant disputes?
- A builder completing earlier contract stages, with front-end loaded progress payments, but not progressing sufficiently through subsequent stages, will have cash flow constraints in the future with pre-earned income.

10.3.2 Stages of construction

Ideally, there is a proportionate spread of projects by stage of completion, a high proportion of projects at any particular stage/s of completion may be indicative of current or future issues:

- If there is a disproportionate number of contracts in the early stages of construction this could indicate the builder is seeking to address a cash flow problem through taking a major number of deposits or performing front-end loaded work stages only.
- A detailed assessment could extend to considering the progress payments schedule when compared against the construction stages (footings, frame, fit-out, lock up etc.). If the progress payments are front-end loaded (i.e. the progress payment received is significantly greater than cost of construction for stage) this means the latter progress payments will not cover the higher construction costs.
- The Progress Payments schedule is likely, for many home builders, to be conducive to an unearned revenue liability. That is, progress payments received will exceed the cost of work completed plus margin

A Work in Progress report (WIP) sets out the following:

- name of homeowner (prepopulated)
- site address (prepopulated)
- commencement date (builder populated)
- current stage of works (builder populated)
- estimated completion date (builder populated)
- contract value (builder populated)
- balance of progress payments outstanding (builder populated)
- building costs to date (builder populated)
- estimated building cost to complete (builder populated).

Due to potential unreliability of WIP valuations the standard treatment is for a write back to nil unless based on realistic assumptions.

Major Project Home Builders (MPHB) are required to support all financial eligibility assessments with an accountant's declaration that the balance sheet treatment of WIP valuation complies with the relevant Australian Accounting Standard.

10.4 Franchise, marketing or buying group participation

HBCF policy is to assess each franchisee or buying group participant as independent businesses.

Subject to confidentiality arrangements between the parties, the group heads of agreement should be obtained and assessed by the Eligibility Risk Manager to understand the nature of the relationship.

This category of builder presents potential additional risk as additional contractual obligations and requirements may apply within the relationship:

- Upfront participation costs
- Immediate opportunities for unsustainable growth
- Payments or royalties payable to the group from operating revenues
- Is the builder permitted to source material, labour or other inputs outside of the group arrangements?

11 Financial Assessment Scope

Financial assessment of eligibility reviews should be conducted as follows:

- For sole traders and partnerships (between individuals), the personal assets of the individual should be assessed.
- For partnerships, by aggregating the financial information of the partners of the business, however the financial circumstances of the individual partners should also be considered separately, as this may indicate that one partner is higher risk, which leads to the partnership being higher risk.
- For partnerships (between entities, or trusts), the assets of the entities and the trusts should be assessed separately.
- Groups of building companies under common control or shareholding may be deemed a Group as detailed in this manual and applying the criteria to the consolidated accounts of all entities with building operations. In any event all building entities within a group are to be reviewed concurrently by the same Eligibility Risk Manager.
- For trust structures, the financial statements of the trading entity (Trust or Trustee) should be assessed. Often the best test of which entity trades is the ABN used by the business.

- For franchise businesses, the criteria are to be applied to each individual franchise business and the franchisor (if required) as separate entities. It is important to have knowledge of the franchisee, franchisor, the agreement and respective obligations and guarantees for and to each other – that is, what if a problem arises, how the franchisor will react and what their obligations are. If the franchisee is a multiple franchisee, the builder's individual franchise business and a consolidation of all the franchisee's businesses should be assessed.

The extent that the Eligibility Risk Manager would be required to go beyond one arm's length will depend upon the apparent risk of intercompany transactions, rights and obligations.

12 Eligibility Financial Measures

12.1 ANTA

ANTA is the acronym used by HBCF for Adjusted Net Tangible Assets and is intended to represent the net 'fire sale' position of assets less third-party liabilities.

ANTA is viewed as a "buffer", available to the builder business for successful withstanding of normal business disruptions or "shocks", such as:

- A dispute with a home owner over a progress payment
- Seasonal issues, such as a building industry shut down
- Periods of extended inclement weather
- Other difficulties encountered that result in not being able to progress sites or collect progress payments
- Errors & unbudgeted unfavourable variances in pricing
- Errors & unbudgeted unfavourable variances in direct costs
- Errors & unbudgeted unfavourable variances in overhead expenses
- Abnormal & extraordinary expenses (such as inventory write – downs).

icare applies ANTA against what it considers to be a builder's total turnover (see section 7.3 Assessment of open job limits and assumed turnover). A minimum threshold of 3% is required to meet icare eligibility requirements. Builders are encouraged to retain ANTA in the actual building entity or related group of companies, secured by an icare Group Trading Agreement (see section

14.5 Group entities & Group Trading Agreements (GTAs)), through a premium discount.

When arriving at the final ANTA calculation, the past two financial year-end ANTA figures are considered. The final ANTA figure will be the lesser of:

- the most recent financial year end
- the average of last 2 financial year-ends.

If a builder is subject to intensive monitoring, and the ANTA position in an intensive monitoring submission is substantially worse than the last financial year end assessment (e.g. ANTA is negative), the final ANTA figure will be the ANTA position in the intensive monitoring submission.

This approach determines the ANTA for all assessment types, including requests to release Eligibility deeds of indemnity (not job specific deeds).

The following ANTA adjustments may apply:

- Where the balance sheet WIP value is validated with a robust builder WIP valuation methodology, then this WIP value can be added to the ANTA by registering this on BEAT (subject to the WIP testing provisions – see section 10.3 Work in Progress (WIP) reports). Once the underwriter registers that the WIP Contract value is satisfactory, an ANTA value may include the WIP contract value.
- Liabilities secured off balance sheet not used to underpin Deeds of Indemnity or Group Trading Agreements may be discounted.

12.1.1 How is ANTA calculated?

A builder's open job limit is converted to the assumed turnover as if that limit was fully utilised during a full year. The average construction time and average contract values are used to forecast assumed turnover.

There may also be additional activity added to the assumed turnover for assessing whether sufficient ANTA exists. This includes non-residential activity, residential activity that does not require HBCF and interstate activity. The aggregate is used as the turnover to test the ANTA percentage.

ANTA will adjust the value taken up for certain assets and liabilities. For example, the value of real estate assets is taken at 85% of valuation to allow for market variations and selling costs. The book value of real estate assets in the company balance sheet is deemed to be the valuation.

HBCF must ensure that the assets considered in meeting the ANTA requirements allow for either security or can be easily converted to cash through sale.

Table 5 sets out HBCF discounting policy in respect to the most common assets and liabilities in arriving at the ANTA calculation.

Table 5 ANTA Discounting Policy

Assets	Weighting	Liabilities	Weighting
Cash (current assets)	100%	Current Liabilities (excluding related party loans)	100%
Debtors (current assets) excluding debtors over 30 days	100%	Non-Current Liabilities (excluding related party loans)	100%
Debtors (current assets) aged more than 30 days (subject to result of Eligibility Risk Manager review)	0%	Current Related Party Loans accepted by the Eligibility Risk Manager as non-payable	0%
WIP /land/speculative building	85%	Non-Current Related Party Loans accepted by the Eligibility Risk Manager as non-payable	0%
Net Contract WIP	0% (refer to note below)		
Prepayment (current assets)	50%		
Land and Buildings (non-current assets)	85%		
Intangible assets (i.e. good will)	0%		
Plant and Equipment (non-current assets)	50%		
Motor Vehicles (non-current assets)	50%		
Other Investments (Related Entities)	0%		
Listed Companies equity	75%		
Other Investments (Not Related Entities)	50%		
Other non-current Assets	0%		
Related Party Loans	0%		

Note: Unless proven as a tangible value and accepted by the Eligibility Risk Manager, WIP arising from building contract activity is assumed to be a nil contributor to ANTA.

12.1.2 Additional asset or liability evidence

This information is not generally requested from the builder at the time of lodging a new application or review submission, but the Eligibility Risk Manager looking for additional evidence arising from the assessment should refer to Table 6 as a guideline.

Table 6 Additional evidence to support asset declarations

Item	Acceptable Evidence (if detailed review is required)
Assets	
Cash at bank	Bank account statements over previous six (6) months, (Small Builder only).
Residential Property	Council Rates notice or proof of purchase
Motor vehicles	Make and registration number
Inventory (land and buildings)	Council rates notice or proof of purchase
Other investments (exclude any investments in unlisted companies)	Share script etc. details of valuation methodology
Plant and tools	Copy of asset register or declared insurance values
Trade debtors	Copy of accounts receivables listing; copies of invoices for major receivables
Work in Progress	Details of all incomplete projects: Name of the homeowner Site address Commencement date, Current stage of works, Estimated completion date, Contract value, Progress payments outstanding Estimated cost to complete
Liabilities	
Mortgages/Secured property loans	Copy of Bank Facility letter
Overdraft	Copy of Bank Facility letter
Vehicle finance	Copy of Finance Facility letter
Unsecured loans	Copy of Bank Facility letter
Credit cards	Credit Card Statements

12.2 Gearing ratio and undrawn lines of credit

A gearing ratio is the percentage of total third-party debt compared to total discounted assets. The target gearing ratio recognised by HBCF as appropriate will be an aggregate gearing ratio of less than 70%. The aggregate calculation applies the group rules as set out in this manual.

Gearing of more than 70% may indicate that:

- the builder will have difficulty in accessing additional working capital through external funding
- the off-balance sheet activities of the builder could be in financial distress and place significant adverse strain on the builder, over and above the requirement to service the liability in question.

A source of working capital available to a building entity could come from funding (such as an overdraft, loan) which the lender has secured on an asset which is not held in the balance sheet of the builder. Quite often, the secured asset holder is a director or a related entity.

The underlying assumption is that a successful building entity is generating consistent positive net wealth. This wealth may be:

- retained in the builder's balance sheet (hence strong Builder ANTA position providing possible premium discounts)
- diverted to the balance sheet of a related entity
- held in the personal position of a director/ shareholder.

At no time is an undrawn line of credit acceptable as a mitigant for unprofitable trading without evidence that such adverse profit performance is fully mitigated by management responses and changes to the business strategy with demonstrated effectiveness or justified future business outcomes.

To consider undrawn funding facilities, an up to date letter from the financial institution confirming the value of undrawn facilities is required. The funding must be in the name of the builder entity. Multiple facilities may be aggregated.

12.3 Balance sheet considerations

Contingent liabilities are taken at face value in ANTA calculations. Any contingent liabilities are assessed for their likelihood and impact – by obtaining further information from the builder and Distributor.

Intangible assets, including but not limited to items of goodwill, establishment costs, licence fees and franchise fees are not to be included in ANTA calculations.

Related debtors' loans payable by related parties should only be considered as assets for ANTA calculations if both of the following are true:

- The full value of the loan remains on the balance sheet of the related party holding a strong ANTA in its own right
- The related party is directly related to the builder.

Deferred tax liabilities are not included as ANTA. Deferred Tax Assets are only useful in reducing future tax liabilities and are not available to fund current working capital requirements.

Retention payments arising out of contractual obligations with previous customers are generally not included in ANTA. Uncertainty often exists as to the collectability of these retentions, depending on the specific underlying contract, and the record of accomplishment of the builder in terms of previous retention releases. Track record and level of dependency on recovery of retention payments can be considered.

Where trade debtors are calculated by BEAT to exceed 30 days, a close study of the trade debtors listing and trends in debtor days is required. The value of trade debtors over 30 days should be treated as doubtful in the calculation of ANTA.

12.4 Gross margins

There are two ways of expressing gross margin. Most builders and BEAT will benchmark margin as a mark-up on the cost of sales (on-cost margin). Financial advisors and accountants will express the margin as a percentage of sales revenue (on-sales margin). It is essential that the correct comparison and communication be made.

Inadequate gross margin is the primary cause of cash flow deficiency in the industry. Where there is a demonstrated weakness in the gross margin due to under-pricing the BCRP is an appropriate Eligibility condition for small builders.

When assessing the gross margins of the business, the amount of industrial or commercial turnover is considered. Traditionally the gross margins obtained from commercial and industrial projects are lower than those obtained from residential building; therefore, any change in construction profile will need to be considered against historical performance.

A consideration of the way overheads are accounted in the profit and loss report will affect gross margins. A builder who charges all direct overheads costs to a project will report a lower gross margin.

12.5 Overhead Expense Days Coverage

HBCF considers the ability of a business to sustain normal overheads from retained equity to be a relevant measure of working capital.

HBCF has developed an “expense days coverage” ratio that represents the number of days the normal overheads can be sustained from working capital.

12.6 Current working capital

Builders exhibiting signs of working capital deficiency (determined by below benchmark expense day coverage) are required to submit a current snapshot of their working capital position (no more than 30 days old) in addition to the financial statements. This schedule will list the Current Assets and Current Liabilities of the business and used by the Eligibility Risk Manager to confirm the builder’s liquidity, ongoing viability and ability to undertake and complete projects.

Fundamental to a consideration of current working capital is the emerging trend. Weakening trends require explanation other than ANTA or security as mitigations. It is the experience of HBCF that businesses that do not fundamentally address adverse working capital trends early require more drastic remediation later.

Other key factors considered include:

- Overdraft balance and available limit
- Taxation and GST liabilities
- Work in progress (WIP) levels
- Agreed terms for suppliers and subcontract labour
- Directors’ loans
- Aged list of creditors and debtors
- Bank facilities letter and letter from bankers confirming banking covenants have been met.

12.7 Turnover of inventory (speculative WIP)

Where there is evidence of working capital investments that may be readily convertible to cash (either as security for borrowing or sale of in the next 12 months) the cost invested in the inventory can be accepted as a mitigant for low expense days coverage.

To realise this asset as working capital the Eligibility Risk Manager is to examine:

- The builder’s track record of realising inventory sales within expected time frames and values
- The basis of the balance valuation (contract of sale in place, pending settlements within current period, cost assumptions).

Where there is a high degree of dependence on the inventory for short-term liabilities this mitigation is to be questioned.

12.8 Cash flow projections and budgets

Cash Flow projections and budgets, if sufficiently accurate, are an important part of the forward planning of a business. In some circumstances where growth is requested from a poor working capital position a cash flow statement can be useful to management. Requesting this report can focus the builder on the need for cash flow control. Where cash flow projections and budgets are requested to mitigate concerns over growth performance against forecast must be tested in subsequent assessments until the concerns are removed.

12.9 Related liabilities as quasi working capital

Where there is evidence of a current related liability that has not changed over the prior 2 years’ financial statements, the current related liabilities can be considered as non-current. The exercise of this mitigant must have the appropriate explanations.

Where current related liabilities are to be treated as a non-current liability mitigant of working capital weaknesses a loan agreement is required confirming non-repayment in the next 12 months. The exercise of this mitigant must have the appropriate explanations.

12.10 Cross border aggregations and commercial builders

Where interstate or non-residential building activity is included in the turnover, the Eligibility Risk Manager should ensure that it understands the total turnover and undertake the assessment based on total activity. The building entity must meet HBCF criteria for the total turnover and not just the NSW limits sought. A copy of the equivalent interstate insurance Eligibility approval must be obtained.

13 Financial Statements Inconsistency

The Eligibility Risk Manager is to come to a view whether the accounts as presented, are a fair representation of the financial position of the builder and, if not, request from the builder:

- amended accounts with explanations of their concerns; and/or
- externally prepared financial statements.

14 Eligibility Conditions

14.1 Eligibility decisions

Following an Eligibility review the Eligibility Risk Manager will provide to the builder's distributor, in writing, the following information as a minimum:

- the builder's Eligibility outcome (e.g. approved, approved with conditions, decline);
- the construction types (see section 6.3 Construction types) for which the builder is eligible to obtain certificates of insurance (subject to section 18 Specific Certificate of Insurance Underwriting Issues);
- the maximum project cost of an individual job they can undertake for a particular construction type (i.e. construction limits); and
- the maximum:
 - aggregate cost of jobs they can undertake at any point in time (i.e. open job value); and
 - number of projects they can undertake at any one time (i.e. open job number).

The Eligibility Risk Manager, when undertaking an Eligibility review, will provide written reasons for:

- requiring further information from the builder;
- declining Eligibility, including on re-assessment;
- not providing the open job limits sought by the builder;

- any special conditions the builder must comply with for Eligibility (e.g. obtaining a security as detailed in this section); and
- amending the terms and conditions of a builder's Eligibility or revoking Eligibility, including re-assessment.

14.2 Requirement for Eligibility deeds as security

A security may be requested, in some circumstances, to protect HBCF and expose assets outside of the eligible building company considered essential to meet ANTA thresholds. A security can provide some reassurance, regarding issues identified through the Eligibility assessment process, as to the risk that a builder may represent. A deed of indemnity for eligibility is never mandatory and builders will always have a choice instead to simply comply with basic HBCF underwriting requirements (e.g. by undertaking a capital injection to meet minimum ANTA requirements).

A security can be required when assessing the risk presented by a project application for a certificate of insurance.

The principle reason for obtaining a security is to ensure the support of the indemnifying parties if the building entity experiences a deficiency in working capital, ANTA or other business issues.

Where a Deed of Indemnity is not an appropriate remedy, alternative remedies should be sought that are more appropriate to addressing the identified deficiencies.

HBCF's preferred security instruments are Deeds of Indemnity (standard Deeds have been developed by HBCF for this purpose). The expiry of Eligibility Deeds will be 3 years after completion of construction on the last insurance policy issued by HBCF.

In conjunction with annual eligibility assessments, where Eligibility Deeds are a condition of eligibility, the need and value of existing Deeds are to be tested and new deeds executed.

Where ANTA testing removes the need for a Deed of Indemnity application can be made to HBCF requesting relinquishment of the current deed. Deed wording relinquishes prior deeds with the execution of a later document so relinquishing prior deeds is not required.

The original security (Deeds) will be held by HBCF. It is the Eligibility Risk Manager's responsibility to ensure that the builder has provided the original security (correctly completed) to the Distributor prior to issuing a certificate of Eligibility or activating terms.

The security sources in Table 7 are permissible and are required when there are doubts regarding (or as a supplement towards) the Net Tangible Asset backing of the builder, where that party has the financial capacity to back the security.

Table 7 Security by builder structure types

Builder Structure	Possible Security
Individual – sole trader	Nil
Partnership	Nil
Trust	Adult Beneficiaries of the Trust or the Trustee provided a financial interest or directorship exists with the eligible builder.
Standalone company	Directors
Company as part of a group	Associated Company with common directors or shareholders with the eligible builder.
Minimum Mandatory Deed Value	\$50,000 (for all structure types)

Deeds are not acceptable from an 'unrelated' party, partner/spouse or family member or a party without management involvement in the building entity such as spouses who are not partners or directors of the business.

Where a builder has a clean three (3) year trading history and a total business turnover of up to \$3 million, then the directors' personal position is accepted as equity without the need to obtain a Deed of Indemnity.

A sole trader with insufficient capital may consider forming a partnership with a suitable partner or set up an incorporated entity with sufficient ANTA.

Table 8 provides a guide for the "order of preference" in terms of a suitable associated party for the purposes of providing a deed of indemnity for Eligibility.

Table 8 Order of preference

Preference Order	Indemnifier	Comment
1	Related Companies	Other than related group entities securing a Group Trading Agreements This also includes developers, in the case of a multi dwelling project, where the builder has a deficient level of equity, or where the equity value within the builder entity cannot be determined.
2	Directors/ Shareholders of the building entity	
3	Beneficiaries of a related trust	This is dependent on those beneficiaries having an interest in the building entity, through directorship and/or shareholding.

Preference Order	Indemnifier	Comment
4	Related unit trust	This would depend on the trust deed allowing such an undertaking
5	Related discretionary trust	This is a last resort and is only to be used as a pro – active behaviour influencing mechanism. It is unlikely any financial benefit to HBCF would be derived from such a security. If provided, such a security would not be included in the financial assessment.

Deeds of Indemnity are not intended as the sole remedy for any parlous financial situations.

Where a builder with an existing Eligibility has their financial position deteriorate to such an extent that their ANTA becomes less than zero, the builder is to be subject to risk management (see section 16 Builder's Risk Mitigation) and while a Deed of Indemnity may form part of the risk management strategy it is expected that a security will not be the extent of that strategy.

14.3 Determining value of security deeds

Assumed Turnover is used in assessing the ANTA and subsequent value required under a deed. Assumed turnover is the expected revenue generated by a full utilisation of the open job limits over a complete year.

The director's net asset value after being discounted to 80% needs to be sufficient to cover the ANTA deficiency. For example:

ANTA deficiency = \$200,000
net asset value required = $\$200,000 / 0.8 = \$250,000$
(Please note $\$200,000 \times 120\% = \$240,000$)
DOI's amount is \$250,000.

HBCF requires a DOI value to have a 20% buffer. (This is reasonable, as the asset's value is fluctuating in the market, when it really turns into money, the value may drop. HBCF takes the approach of a 20% buffer, i.e. will discount the net asset value at 80%).

Note: The minimum acceptable deed value is \$50,000.

14.4 New Eligibilities following dissolution of partnerships, trusts or companies

Where a new Eligibility is sought for a builder who was formerly a principal or shareholder of another licensed building company and where HBCF has issued Certificates of Insurance a Deed in Respect of a Former Business should be sought.

The Deed should cover exposure of HBCF to other past entity, in part as security for any issues that may have led to the dissolution of the former licensee.

14.5 Group entities & Group Trading Agreements (GTAs)

Where the GTA tests set out below exist a corporate group can be submitted for assessment to allow a consolidated view to be taken of ANTA and working capital.

Where the ANTA and requirements of this manual can be satisfied by an Eligibility Deed of Indemnity or capital injection, the need for a GTA should be waived. In this instance the wider current and non-current liabilities and external guarantees of the indemnifying party are to be tested.

Note: It is not intended for HBCF use of the term group or GTA group to align with the provisions in the Corporations Act 2001 (Commonwealth) including the definitions of subsidiary, connected entity, consolidated entity, holding company, related entities or related parties.

***Note:** It is HBCF's first choice to assess the individual builder and use an eligibility deed to allow other group assets to support identified ANTA weaknesses.*

***Note:** HBCF has a preference to limit entities comprising a group assessment to 10*

The GTA:

- Allows the conduct of a group risk assessment across a group
- Provides a level of assurance that corporate groups will meet the ongoing statutory warranty obligations of an builder entity, if the building entity is wound up or sold
- Permits for building group deployment of capital for maximum returns.
- Allows a group treasury arrangement to exist for working capital and borrowing support.

Where a consolidated assessment is undertaken a GTA will be a condition of eligibility approval across all entities within the assessed group.

Any of the following properties identify the requirement for a consolidated assessment and subsequent GTA to be considered:

- Related loans activity (a group treasury function) moves funds between group members and there are fluctuations in current or non-current related loan balances from year to year
- The building entity/entities exchange management or licensing fees with other related entities at non-commercial rates
- There is evidence of internal cost recovery between related entities
- The assets in a non-building related entity provide security for an external loan facility in the building entity which would have a material impact on the building entities borrowing capacity
- There are collateral liabilities (third part borrowings in a related entity or cross guarantee) on a building entity.

The outcome of a group assessment should establish an aggregate open job limit being offered to all builders in the group. A GTA allows the sharing of eligibility limits for group entities within the aggregate approved limit without further financial assessment.

14.6 Job specific deeds and values

The use of remediation options should be considered to mitigate the risk associated with a high value or high-risk project.

Where a builder's financials are not strong and/or there are inadequate:

- experience levels;
- established history; and/or
- contractual arrangements

project-specific remediation should be considered for the following types of projects:

- multi-unit projects
- developer projects
- speculative developments
- architect or designer managed projects
- high value projects
- related party projects (see Table 10 in section 18.8 Certificate Referral Requirements).

A job specific deed of indemnity (JSD) may be appropriate where the financial strength of the builder is not strong, or where under the contract the control vest with a third party, e.g. a developer. A project specific deed of indemnity from company/ies or principal(s) with a vested interest in the successful completion of the project and robust financial resources may assist in reducing risk.

The value of job specific deeds is required to be 10% of the Contract Value or 50% of the maximum loss available under the *Home Building Act 1989* for the project whichever is the lesser. The expiry of Job Specific Deeds will be 6 years after completion of construction to align with the insurers liability under policies issued.

14.7 Multiple indemnifiers

It is intended that indemnifiers be jointly and severally liable for any amount sought to be recovered under the Deed. Accordingly, where there are multiple indemnifiers for the one builder only one Deed of Indemnity form can be submitted on behalf of the builder (using the Multiple Party version of the Deed).

It is not permitted for different indemnifiers to provide separate deeds (including separate amounts). Additionally, as the most recent Deed would result in all prior deeds being terminated the use of separate Deeds is not appropriate.

14.8 Review of securities

The Eligibility Risk Manager must review and if necessary amend security requirements attached to a builder's Eligibility each time the Eligibility Risk Manager completes an Eligibility review.

If for any reason the security provided by the builder becomes void, voidable, illegal, unenforceable, ineffective or insufficient, then the Eligibility Risk Manager is to seek an immediate satisfactory alternative (such as a permanent capital injection or a new security for a revised amount, in which case a new Deed for the revised amount should be obtained and the previous Deed returned).

Following the release on 16 October 2013 of new versions of all Deeds of Indemnities utilised by HBCF the following provisions apply:

- In all instances where a deed has previously been provided on behalf of a builder (for the purposes of Eligibility) that deed should be refreshed/replaced by the new version of the Deed at the next Eligibility review
- The provision of a new deed will automatically terminate any prior Deeds of the same type (e.g. a new Eligibility deed will revoke any previous Eligibility deeds but not any Job Specific deeds or Group Trading Agreements) provided on behalf of the builder (for the purposes of Eligibility). It will not be necessary for such prior deeds to be returned to the indemnifiers.

Changes in the amount of the Deed of Indemnity from the existing security require a new Deed to be obtained.

Note: *As the new deed terminates any prior deeds, it is not possible for two deeds to co-exist. A new deed for the total revised value is to be executed.*

14.9 Release of securities

If the builder (and their Distributor) consider the builder's financial position (or other circumstances) has improved, the builder may request an Eligibility review. The builder is to provide all the relevant information to enable a full Eligibility review to be completed. Builders are not entitled to seek such a review more frequently than annually.

14.10 Provision of security documents to the Eligibility Risk Manager

The Eligibility Risk Manager is responsible for preparing any security documents that a builder needs to execute as a condition of their Eligibility.

On receipt of an executed original security document the distributor should ensure the Deed has been executed correctly. A copy of all executed original Deeds should be forwarded to the Eligibility Risk Manager at the close of the week.

HBCF will deem the requirements of providing a Deed have been met where:

- the Distributor confirms to the Eligibility Risk Manager they hold the original executed Deed in their office;
- the Distributor has reviewed the Deed to ensure it has been completed properly; and
- provides the Eligibility Risk Manager with an electronic copy of the Deed (e.g. via email).

15 Declinature, Cancellations, Suspensions, and Modifications of Eligibility

15.1 General

Builders, including any director, principle or key manager of the builder entity, who pose an adverse risk, may have Eligibility declined, cancelled, suspended, restricted or have conditions imposed based on any of the following:

- The outcome of a Special or Programmed Eligibility review
- Currently insolvent
- Does not have a current builder licence
- Currently unprofitable/negative cash flow – BEAT rates risk as “decline”
- Adverse trade credit listing
- Threatening or intimidating behaviour towards staff, homeowners, subcontractors, HBCF, or the Eligibility Risk Manager's officers.
- Significant defect claim notifications (with consideration to the size of the builder and the number of completions it undertakes over the period)

- Advice and evidence that homeowners' complaints have not been addressed (including non-complied court or Tribunal orders and advice by NSW Fair Trading of increased complaint occurrence)
- Trading through other entities without disclosure to the Eligibility Risk Manager during any eligibility assessment
- Claim 'triggers' have been activated
- Licensing authority sanctions (including advice by NSW Fair Trading of disciplinary action or intended disciplinary action)
- Industry association expulsion
- Evidence of non-disclosure
- Evidence of poor workmanship
- Criminal record
- Court actions, collections, defaults, court actions against directors/owners/partners/trustees
- Past insolvencies or involvement in building companies that have been liquidated/wound up
- Current winding-up petitions by creditors
- Adverse claims history for any warranty work
- Failure to provide additional information that is fairly and reasonably requested by the Eligibility Risk Manager of HBCF.

The above applies to any director, principal or key manager of the builder entity.

Generally, a nominated supervisor is deemed a key manager of a building entity, particularly if this is a "small" or "medium" builder. This is particularly where the directors, in their own right, have insufficient experience to support the requested project limits.

A builder who would receive a 'Decline' rating, if it were subject to an eligibility assessment, would generally have their Eligibility cancelled unless they were subject to intensive management due to HBCF exposure to open jobs.

Declinature, cancellations, suspensions or conditions of Eligibility are to be approved in accordance with the Delegated Underwriting Authorities.

15.2 Suspended Eligibility

The distributor is to ensure notice of and completed Eligibility reviews submissions are submitted in sufficient time to permit the assessment to commence.

The Eligibility Risk Manager is to suspend Eligibility where the builder (and/or their Distributor):

- Has not submitted sufficient information to allow a schedule Eligibility review to commence by the due date, or
- Has not provided the necessary information to allow for completing a review in a timely manner, or
- Has not responded to previous requests for information, or
- Is not co-operating with reasonable requests from the Eligibility Risk Manager.

The Eligibility Risk Manager may also suspend a builder's Eligibility where the Eligibility Risk Manager has received information which, if confirmed, would likely lead to cancellation, while the Eligibility Risk Manager investigates the veracity of the information.

Prior to suspending Eligibility, the Eligibility Risk Manager is to put the distributor or builder on written 10 days' notice that the builder's Eligibility will be suspended if the required information is not provided by a specified date.

Where it has been determined to suspend a builder's Eligibility (whether by the Eligibility Risk Manager or by HBCF), the Eligibility Risk Manager must provide the builder with at least 10 business days written notice. The decision should include the reasons for the decision prior to the effective date of the suspension and confirm the right of the builder to request via their Distributor that the decision be escalated to the Eligibility Risk Manager's Underwriting Committee and potentially to HBCF's Underwriting Committee.

Upon advice from NSW Fair Trading or an authorised person of SIRA, in writing and with reference to SIRA's Guidelines, HBCF may suspend the builder's eligibility immediately.

Suspension of eligibility does not affect building cover contracts already provided for complete and in progress building projects.

Note: *Certificates of Insurance cannot be issued against a suspended Eligibility.*

Note: *A suspended Eligibility may be reinstated as a current Eligibility following successful completion of a review.*

15.3 Cancelled Eligibility

A cancelled Eligibility is one which has been revoked and the builder is no longer able to use the Eligibility to obtain Certificates of Insurance. The Eligibility Risk Manager should without notice cancel a builder's Eligibility where the builder:

- is no longer licensed (i.e. the licence has been surrendered by the builder or suspended or cancelled by Fair Trading or has expired for longer than three (3) months and as such is unable to be renewed or restored).
- is subject to a form of external administration within the meaning of the *Corporations Act 2001*, *Bankruptcy Act 1966* and/or *Partnerships Act 1892*.
- ceases to exist – for example has died (for an individual) or has been wound up or deregistered (for a company) or the partnership has been dissolved
- has disappeared (within the meaning of the *Home Building Act 1989*)
- is currently subject to an NCAT order

Where a licence suspension is lifted by Fair Trading and/or an expired licence is reissued by Fair Trading following a new application by the builder Eligibility should not be reinstated without a new application.

Where the licence expired because of an oversight and has been reissued within 12 months of an Eligibility assessment/Programmed Eligibility reinstating Eligibility without a new assessment can be sought.

A builder's Eligibility may also be cancelled where following a special or Programmed Eligibility Review of the builder that it is considered in the best interests of HBCF that the builder's Eligibility should be cancelled.

Where it has been determined to cancel a builder's Eligibility (whether by the Eligibility Risk Manager or by HBCF), the Eligibility Risk Manager must provide the builder with at least **30 business days** written notice of that decision. The notice of intended cancellation may be given at the same time as a notice of intended suspension of eligibility (see section 15.2 Suspended Eligibility).

The reasons for the decision should be provided prior to the effective date of the new Eligibility and advice of the right of the builder to request, via their Distributor, that the decision be escalated to the Eligibility Risk Manager's Underwriting Committee and potentially to HBCF's Underwriting Committee.

Cancellation of eligibility does not affect building cover contracts already provided for complete and in progress building projects.

15.4 Modification of existing Eligibility Profile and terms

Following a special or programmed review or otherwise, the Eligibility Risk Manager may determine to modify the existing Eligibility Profile and Terms for a builder (subject to the application of relevant delegations and authority levels). The Eligibility Risk Manager is to advise the builder, through the builder's Distributor, of their new Eligibility Profile and Terms with all conditions and risk-based pricing factors managed by BEAT.

Where the change to the builder's Eligibility Profile and Terms is to the benefit of the builder, the change is to have immediate effect, including to any applications for Certificates of Insurance currently on referral.

Where the change to the builder's Eligibility Profile and Terms is to the detriment of the builder, the Eligibility Risk Manager will:

- enact the Eligibility Profile immediately;
- provide to the builder at least **20 business days** written notice of that decision during which time any conditions associated with the Eligibility Profile (e.g. capital injection, provision of a deed of indemnity) are to be met (see section 15.5 Restrictive conditions); and
- if the terms are not met within 20 business days, and a satisfactory submission to the Eligibility Risk Manager underwriting committee is not received, the builder may be provided with **10 business days** written notice of Eligibility suspension.

This must be provided prior to the effective date of the new Eligibility and advice of the right of the builder to request, through their Distributor, that the decision be escalated to the Eligibility Risk Manager's Underwriting Committee and potentially to HBCF's Underwriting Committee.

The Eligibility Risk Manager must provide the builder with at least **10 business days** written notice of any decision to discontinue issuing certificates together with reasons for the decision. This notice must include the opportunity for the builder to request via their distributor for the decision to be escalated to the Eligibility Risk Manager's Underwriting Committee and potentially to HBCF's Underwriting Committee.

15.5 Restrictive conditions

Where an existing builder is reviewed and it is determined, at the conclusion of the assessment, that a capital injection or a deed of indemnity or other conditions of Eligibility are required to be met, then the builder must meet the following time frames:

- The builder must satisfactorily meet the conditions of Eligibility within **20 business days**.
- The builder may choose to make a submission, to the Eligibility Risk Manager's Underwriting Committee, disputing the conditions or review outcome.
- The Eligibility Risk Manager must receive a dispute within **20 business days**.
- The Eligibility Risk Manager's Underwriting Committee, in accordance with the Underwriting Committee procedures set out in this Manual and the Complaints and Disputes Procedures Manual, then considers this submission.
- If the terms are not met within 20 business days, and a satisfactory submission to the Eligibility Risk Manager underwriting committee is not received, the builder may be provided with **10 business days** written notice of Eligibility suspension.
- Depending on the circumstances of the builder's business (e.g. there are concerns regarding the builder's solvency), the builder may be provided with **10 business days** written notice of Eligibility suspension irrespective of a satisfactory submission to the Eligibility Risk Manager underwriting committee having been made within 20 business days.
- If the entity subsequently requests Eligibility, a new Eligibility application is required to re-assess the builder.

To facilitate the operation the above, at the time of issuing Eligibility terms:

- Builder and distributor must be advised of the above time frames and of the possibility of Eligibility being suspended and cancelled, if the terms are not met.
- Builders are advised of the dispute resolution processes, which can be accessed by a submission to the Eligibility Risk Manager's Underwriting Committee.

The BEAT underwriting assessment is to be noted accordingly.

15.6 No advice to be provided

The Eligibility Risk Manager in providing the builder with the reasons for the decision **should not provide advice**, either directly or indirectly, to the builder on potential remediation.

Specifically, the Eligibility Risk Manager is not to advise a builder on any strategy or course of action to:

- obtain Eligibility.
- maintain Eligibility.
- improve the financial position of the builder's business generally.

The Eligibility Risk Manager is not to provide financial advice through the builder's Distributor or to otherwise advise the builder on the operation or management of their business and is to advise the builder to obtain their own financial advice from a suitably qualified professional.

15.7 Escalation and disputes

If the builder is not satisfied with the way any matter has been handled, their concerns can be escalated initially to the internal Underwriting Committee of the Eligibility Risk Manager with further escalation to HBCF's Underwriting Committee if needed. The letter notifying the builder of the suspension, cancellation, or condition of Eligibility is to refer to the escalation and disputes process.

Additionally, a builder may lodge a complaint with SIRA so that they may seek a further review where they are not satisfied with the approach or outcome of HBCF's determination. A builder may also request that SIRA undertake a regulator compliance review to investigate potential breaches of the Home Building Act, the Home Building Regulation or SIRA's Insurance Guidelines. A regulator compliance review is not a mechanism of appeal to review of the merits of a builder's Eligibility and does not overturn Eligibility decisions.

SIRA may be contacted by telephone on 13 10 50 or email contact@sira.nsw.gov.au and is located at:

Level 6, McKell Building
2-24 Rawson Place
Sydney NSW 2000

***Note:** Refer to HBCF's 'Complaints and Disputes Handling Procedures Manual' for a detailed guideline on the handling of complaints and disputes in relation to underwriting decisions involving Eligibility and Certificates of Insurance.*

16 Builder's Risk Mitigation on Eligibility Assessment

16.1 Risk profile of a builder

Steps may be required to mitigate risk identified during the Eligibility assessment process.

The BEAT scoring and weightings within the tool will not be disclosed by HBCF and should they come to the knowledge of a Eligibility Risk Manager, should not be disclosed to the market. BEAT is the basic source of the assessment, but not a definitive determination in all circumstances. If exceptional circumstances warrant it, the automatic result can be over-ridden. Additionally, the Eligibility Risk Manager may consider other extraneous factors, which come to attention either before or after the initial assessment decision (e.g. builder and Distributor advocacy).

16.2 Eligibility for builders recovering from adverse events

Builders can present for Eligibility review where ongoing cash flow is dependent on commencing new contracts with HBCF insurance and where the threshold for ANTA would normally be fatal.

The builder can qualify for ongoing Eligibility provided;

- There is no deficiency in working capital or working capital deficiencies are fully mitigated
- The proposed open job limits do not exceed pre-adverse event levels
- There is no evidence that the adverse event was a result of actions within the control of the directors/principals seeking eligibility, other than financial/operational decisions impacting on working capital (Note: financial/operational decisions by previous key managers can be discounted where no longer associated with the builder)
- There is no creditor actions or disputes likely to impact ongoing trading
- Previous KPI deteriorations have been reasonably mitigated for the going forward position

- A sustainable cash flow for the next 12 months has been provided and tested
- Retained earnings forecasts should permit ANTA restoration within 12 months.

The following eligibility conditions will normally apply, with an undertaking provided by the builder, until normal ANTA criteria are restored:

- Quarterly financial reporting by external accountants
- Detailed WIP reporting quarterly
- Close out reports for each completed project
- Earnings (except for modest living expense drawings to directors/principals) will be retained in the business for the exclusive use of building contract funding
- A HBCF risk reduction strategy will be implemented where there is KPI deterioration between quarterly reviews.

It should be noted that icare will not support a proposal for a builder to trade via a Deed of Company Arrangement within the meaning of the *Corporations Act 2001* (see section 7.1 Fatal scenarios).

17 Type of Eligibility Reviews and Intensively Monitored Builders

The objectives of the eligibility reviews program are to:

- Identify risks outside the appetite of the fund
- Inform builder management of any below benchmark performance and to establish appropriate future review intervals and scope
- Contribute to improved standards of financial management and business controls
- Enforce HBCF adverse history rules to reduce phoenix operations
- Identify industry trends to inform portfolio policy and guidelines.

SiCorp has extended the number of small builders that qualify for system review based on project volumes that can be managed by the licensed builder and where delays in construction are a better indicator of difficulty. Data on delays in construction time are inherent in the adoption of open job limits compared to annual limits. This data will be more dynamic and current than relying on builder review WIP Reports.

Programmed Eligibility Reviews (“PER”) are programmed on an annual basis. BEAT sets out the schedule of PERs. This schedule is subject to other reviews superseding them, which include:

- Builders subject to intensive monitoring
- Builders requesting a Builder Profile Change to existing Eligibility which initiates a review
- Special Eligibility Reviews triggered by a risk management issue (e.g. adverse credit, significant growth, delays in actual completion dates)
- Any modified review requirements issued by HBCF or recommended by the Eligibility Risk Manager.

Table 9 Programmed Eligibility Review cycles

New Builders	<p>Within 15 months of the issue date of the initial Eligibility, a Review is to carry out to assess whether “new” builder status should be maintained or whether the builder can be placed in another category (i.e. small medium major).</p> <p>While the builder remains in the “new” builder category, the builder is to be reviewed annually, with each submission due by the anniversary of the first review terms issued date</p> <p>For Eligibility review purposes, if a builder participates in the BCRP, the builder is to be treated as a “new” builder and should be reviewed annually.</p> <p>Note: this requirement does not apply where the participation in the BCRP relates to a specific project and is not a condition of Eligibility.</p>
System Reviewed Small Builders	<p>A Programmed Eligibility Review is not required where a builder’s eligibility limits do not exceed the small builder limits for non-review set out in Table 2.</p>
Small Builders	<p>Frequency: Annual or as determined by specific eligibility conditions</p> <p>A full Programmed Eligibility Review is required annually, where a small builder falls outside of ‘New’ or the ‘System Reviewed’ limits (refer Table 2).</p> <p>In terms of scheduling, priority is given to:</p> <ul style="list-style-type: none"> • Small Builders with conditions imposed on Eligibility such as intensive monitoring • Small Builders having a deed of indemnity as a condition of Eligibility • Small Builders that have a multi-unit approved limit.
Medium Builders	<p>Frequency: Annual or as determined by specific eligibility conditions.</p> <p>Timing of the review should be prioritised for:</p> <ul style="list-style-type: none"> • Medium Builders with conditions imposed to Eligibilities such as intensive monitoring, a deed of indemnity or paid up capital • Medium Builders that have a multi-unit approved limit.
Major Builders	<p>Frequency: Annual or as determined by specific eligibility conditions.</p>

17.1 Programmed eligibility reviews (PER)

Unless the builder qualifies as a System Review Small Builder an annual financial assessment is a requirement on the Eligibility Risk Manager and Distributor. Builders qualifying for System review are set out in Table 2.

A BEAT next review date is set for each Programmed Eligibility Review and a blank new assessment generated pending the review.

The Eligibility Risk Manager is to complete a BEAT assessment, ensuring that all documents are attached, and underwriting notes are included in the BEAT assessment. The BEAT assessment is to contain all documents as attachments and underwriting notes. No eligibility is to be granted without BEAT assessments finalised and the BEAT eligibility record setting out the current eligibility profile. No active eligibility is to exist without a finalised BEAT assessment and a valid builders licence.

All builders will be priority assigned a next review date based on the following:

- Financial risk profile of last assessment
- Annual review conditions or intensive monitoring conditions

BEAT will provide distributors with at least 40 business days email notice that Programmed Eligibility Review (PER) is required. BEAT provides online reporting to the Eligibility Risk Manager and distributors of upcoming and overdue reviews.

If no submission or satisfactory explanation has been received from the builder within 30 business days of the annual review due date a management strategy is to be determined and agreed to by the Eligibility Risk Manager's Underwriting Committee. Options for consideration could be:

- Completing the assessment recommendation based on information that is readily available
- Reducing the eligibility limits to utilised levels restricting growth (see section 15.5 Restrictive conditions)
- Increasing the frequency of reviews
- Recommending a risk loading on the premium
- The Eligibility Risk Manager is to exercise discretion in requesting information that is provided previously by the builder or available in HBCF systems
- Suspension or cancelation of eligibility where no open jobs exist (see sections 15.2 Suspended Eligibility and 15.3 Cancelled Eligibility).

A 'Builder Profile Change' should always be incorporated into the PER assessment if requested by the Distributor. The Eligibility Risk Manager is to consider the results of the review in the context of the builder's existing Eligibility Profile and Terms and determine whether the builder's Profile and terms should vary. The possible actions include:

- Revised Eligibility Limits (note that increases in open job value and job limits should not be granted unless requested)
- Revised Eligibility Conditions, including:
 - reduced open job value or job limits
 - the Building Contract Review Program
 - security or additional security
 - additional capital
 - released or amended Security.
- Suspension or cancelation of Eligibility (pending resolution of an outstanding issue) where no open jobs exist

17.2 Intensively monitored Major Builders

Where a builder has an intensive monitoring condition of eligibility requiring financial submissions more than annually, the Eligibility Risk Manager is to advise SICorp within 14 days of the review submission date any improving, stable or deteriorating trends for the weaknesses identified during the most recent annual review.

The Eligibility Risk Manager should make recommendations to SICorp for additional measures to be taken where significant adverse trends are observed.

Where a builder is delinquent in providing an intensive review within 30 days of the due date the Eligibility Risk Manager is to make recommendations to SICorp for additional measures in consultation with the Distributor.

Options for consideration where a review is delinquent could be:

- Completing an assessment recommendation based on information that is readily available
- Insisting on a builder meeting with HBCF staff attending
- Increasing the frequency of reviews
- Recommending a risk loading on the premium
- Scoping a forensic accounting review to be undertaken by an independent party.

The Eligibility Risk Manager is to perform the following additional duties for intensively monitored Major Project Home Builders:

- Provide monthly updates to HBCF regarding overdue reviews or outstanding eligibility conditions
- When terms are confirmed by HBCF, ensure these terms are communicated and met
- Provide quality assurance on terms and communications issued by HBCF ensuring that the builder receives the review outcome including the strengths and weaknesses identified during to assessment and all conditions of eligibility.

17.3 Intensively monitored Non-Major Builders

The following would be justification for increasing the frequency of reporting if the deterioration is not considered a serious impact on the ability of the builder in respect of current open jobs:

- Deteriorating actual completion times.
- Gross Margin deterioration – builder may be “buying” projects.
- Creditor days extending.
- Escalating purchase rate of insurance contracts - gaining deposit monies to source cash.
- Trading Losses; deteriorating net tangible asset position.
- Restructuring of Groups – asset transfers/ quarantining assets.
- Strategic change in the nature/ focus of the business (relative to that traditionally undertaken).
- Deteriorating financial trends (liquidity, profitability).
- Diminished turnover.
- Trade Credit deterioration - terms reduced/ removed.
- Mercantile alerts – i.e. Dun & Bradstreet, Veda.
- Change in management or ownership.
- Change in financial institution.
- Change in progress payment patterns.
- High Growth.

The builder is to be subject to intensive monitoring while the issues triggering more frequent assessments continue or new issues arise. The BEAT builder assessment must have the intensive monitor period (quarterly or half yearly) added as condition of eligibility.

Once the builder’s Eligibility is no longer considered high risk (i.e. the builder meets the minimum requirements for Category Y over at least 12 months), annual Programmed Eligibility reviews can reoccur in accordance with the PER requirements. The BEAT eligibility record is to have the intensive monitor condition removed.

17.4 Special Eligibility Reviews

Special Eligibility Reviews are triggered where there is a major risk management issue identified including any of the following:

- A noticeable alteration in trends (compared to the previous 12 months) being an increase in:
 - the number of certificates (generally in a short time frame) requested by a builder, where there may be concern regarding the capacity of the builder.
 - the number of known incomplete projects that are outside the builder’s estimated completion time frames
 - a builder seeking to exceed or increase the approved annual Eligibility open job value.
- Receipt of adverse market information, including (but not limited to) delinquency in attendance on site, failure to communicate with consumers, non-payment of sub- contractors or suppliers, or is not contactable on telephone numbers provided.
- Changes (that are of a negative nature) in trade credit days beyond the 30-day ageing category.
- Significant deterioration in the financial or operational circumstances (identified through interim accounts or other sources) of the builder.
- Potentially significant “First Notification of Loss” received by the claim teams.
- Financial accounts contain specific “adverse” commentary relating to any component of the reports.
- Complaints including consumer complaints to the Eligibility Risk Manager and complaints notified to HBCF by Fair Trading (including any disciplinary or intended disciplinary action).
- Court and/or NSW Civil and Administrative Tribunal (NCAT) actions.
- Non-compliance with Court or Tribunal orders.
- Alerts received through credit referencing or credit monitor facilities.
- Dishonoured and significantly overdue premium payment transactions – other than innocent isolated incidents.

- Adverse report by a BCRP service provider (where applicable)
- Change in builder ownership (i.e. partners or directors).
- Change in the nominated supervisor deemed to be a key manager.
- Filing of an application for the winding up of a builder.
- Risk alert or referral of matter from SIRA to HBCF.

During the Special Eligibility Review, which should be undertaken within 30 business days, issuing Certificates of Insurance should be put on hold if the issue of the certificate would be to the immediate detriment of HBCF. The Eligibility Risk Manager must provide the builder with at least **10 business days** written notice of any decision to discontinue issuing certificates together with reasons for the decision. This notice must include the opportunity for the builder to request via their Distributor for the decision to be escalated to the Eligibility Risk Manager's Underwriting Committee and potentially to HBCF's Underwriting Committee.

To conduct a Special Eligibility Review, the Eligibility Risk Manager is to obtain from the builder, through the builder's Distributor, current information to enable the review to be completed. Generally, the information required will be the same as for a PER except that internal interim financial reports completed by accounting qualified staff are acceptable.

The outcomes from such reviews could be:

- No change to Eligibility
- Revised Eligibility
- Restrictive Eligibility Conditions, including
 - reduced open job value or job limits
 - the BCRP
 - security
 - additional capital
 - suspension of Eligibility (pending resolution of an outstanding issue)
 - cancellation of Eligibility.

The Eligibility Risk Manager may only suspend or cancel Eligibility where this is within their delegated authority. Where it is not within the Eligibility Risk Manager's authority, it must obtain written approval from HBCF. Where insured projects are still under construction, the Eligibility Risk Manager is to seek approval from HBCF before suspending or cancelling Eligibility.

Where it has been determined to suspend or cancel a builder's Eligibility (whether by the Eligibility Risk Manager or by HBCF), the Eligibility Risk Manager must provide the builder with at least **10 business days** written notice of that decision. The reasons for the decision should be provided prior to the effective date of the suspension or cancellation. The Eligibility Risk Manager should advise the builder via their Distributor of the right to request that the decision be escalated to the Eligibility Risk Manager's Underwriting Committee and potentially to HBCF's Underwriting Committee.

If appropriate, the Eligibility Risk Manager may also resolve that the builder should be subject to ongoing intensive monitoring.

17.5 Eligibility Builder Profile Change (BPC)

A builder profile change (BPC) is a request by a builder to change their open job value and/or open job number eligibility profile in circumstances where the builder's request cannot be approved under section 7.4.2 Open job limit growth of this manual.

Changes to Profile can create negative financial consequences for the builder. Ramifications include changes to working capital requirements, building cycles, available resources and management. The Eligibility Risk Manager should examine all factors that may be seen to affect future viability. The Eligibility Risk Manager will also assess overall financing requirements for the open job value, construction type and maximum contract value sought.

The Distributor is to initiate a BPC in BEAT by submitting the next scheduled review earlier than required by BEAT with changes to the proposed construction limits and the attachment of required supporting reports and documents.

17.5.1 Mitigating builder exposure risk

Where because of a builder review it is necessary to mitigate the exposure presented by a builder the Eligibility Risk Manager should look to employ techniques such as:

- reducing open job limits to reduce the scheme exposure
- seeking additional securities
- new lines of credit or injection of capital
- increasing monitoring frequency
- reviewing and monitoring a mitigation strategy proposed by the builder.

The determination of such strategies should be done in consultation with the builder and their Distributor.

18 Specific Certificate of Insurance Underwriting Issues

This section sets out the nature of the specific underwriting issues to be considered by the Eligibility Risk Manager in assessing project applications referred to it for individual underwriting.

18.1 Applications by Builders subject to the Building Contract Review Program

The Eligibility Risk Manager must not approve a certificate of insurance for a builder until:

- a Building Contract Review Program service provider selected from the Service Provider Panel has been appointed by the builder in respect of that project.
- the Building Contract Review Program service provider has made an initial report to the Eligibility Risk Manager and that report is favourable and makes no adverse findings in respect to the building work to which the certificate of insurance applies, that would be detrimental to HBCF.

18.2 Underwriting of new multiple dwelling projects

The provisions of this Section apply to multiple dwelling projects such as villas, town houses etc. that are intended to be subject to strata, company or community title and low and medium rise buildings containing units, flats etc. The provisions of this Section do not apply to other projects such as duplexes, triplexes, terraces etc. unless

intended to be subject to strata, company or community title.

All applications for Insurance for new multiple dwelling projects must include as an attachment to the project application form or online submission the following documents for review:

- A copy of the Certificate of Title or a Rates Notice for the property to verify Ownership
- Funding approval of the project
- A copy of the contract between the builder and the developer to confirm:
 - The developer is identified as the other party to the contract with the builder
 - The credentials, financial position and funding arrangements of the correct developer are being assessed
 - The correct entities are captured under any Related Party Undertaking.

A copy of the contract is required to:

- Establish that there is a written contract (not always the case where the builder and developer are related entities).
- Confirm the contract amount and whether it includes:
 - GST
 - The number of dwellings (units) being constructed
 - The site address.

Special care in assessing developer risk should be exercised where:

- The property owner is a separate entity to the contracting party (including where the owner and developer are related entities) in which case a Deed of Indemnity – Irregular Contract Arrangements must be obtained from HBCF
- The property owner has entered into a joint venture with the developer
- The developer is a SPV formed to manage the development and then be liquidated after completion of the project (or on sale of all dwellings) – characteristics that should be used to assist to identify SPVs are:
 - Recent date of incorporation
 - Primary asset is the proposed development
 - Name of the company.
 - The developer and builder are related entities (e.g. common directorship between a builder and developer or majority shareholding/controlling interest).

The Eligibility Risk Manager must critically assess the technical and managerial skills of the builder. Where there is reasonable doubt as to the builder's capabilities to successfully complete the development project, a certificate of insurance should not be issued. Some issues that may require detailed consideration:

- Scope of works – the Eligibility Risk Manager may need to have its technical services unit assess the application.
- Proof of funding for contract – what financing arrangements are in place and whether the developer has the funds to pay this (e.g. a recent funding offer letter, on the institutions letterhead).
- Terms of the contract – the Eligibility Risk Manager is to obtain a copy of the contract and assess the extent to which the terms may be weighted in favour of the developer.

In considering such applications, the Eligibility Risk Manager should follow the following steps:

- Determine if the builder stands on its own merits i.e. does the builder have sufficient financial capacity – ANTA and Working Capital – and proven experience in successfully completing similar projects so that it is not necessary to assess further.
 - If not, determine whether the developer has the financial capacity and proven experience in successfully completing similar projects.
 - If not, whether the parent company (or related company) of the developer can provide the necessary financial strength.
 - If not (if for example the builder and/or developer is a SPV), whether the director(s) and/or shareholders can provide the necessary financial strength.
 - If the builder cannot satisfy the above, the application should be declined.

18.3 Underwriting of rectification or additions to multi-dwelling buildings/properties

New multi-storey (high-rise) residential construction is automatically exempted under the *Home Building Act 1989* from the requirement to obtain insurance cover. In general terms, a multi-storey building means a building that has a rise in storeys of more than three (3) (not counting a storey only used as a car park) and which contains two (2) or more separate dwellings.

However, this exemption does not apply to works carried out on existing multi-storey (or other multi-dwelling) buildings, such as repairs, maintenance, renovations, alterations and additions to either the common property of the building or to individual dwellings. These works require home warranty insurance cover to be obtained by the builder where the contract price is over \$20,000, or, (if the contract price is not known) the reasonable market cost of the labour and materials involved exceeds \$20,000.

Construction work on multi-dwelling buildings/properties, including work carried out on existing multi-storey (high-rise) buildings, requires some specialist skills and has some risks that need to be managed.

Relevant examples of where cover is required for residential building work undertaken on an existing multi-unit building include repairs, maintenance, alterations or additions to the common property of a strata scheme, company title scheme or community land scheme such as:

- The installation of new or the replacement of old handrails or balustrades or balconies
- Repairing or maintaining air-conditioning systems, plumbing or electrical works
- Painting corridors, stairwells, hallway doors
- Waterproofing repairs
- Concrete spalling repairs
- Repairing roofs and guttering.

These examples would also apply where the work is carried out on the common area of a multi-dwelling building/property owned by one entity.

To obtain a certificate of insurance, the builder must have an Eligibility work profile to match the project requirements.

The Eligibility Risk Manager must critically assess the technical and managerial skills of the builder. Certificates of Insurance should not be issued without consideration of the following additional documentation:

- Scope of works
- Proof of funding for contract – whether the building/property owner has the funds to pay for the work contracted (not required where the work is being undertaken on behalf of an owners' corporation).

Sometimes the project is the result of an insurance claim. In such cases, confirmation that the project is being contracted by the insurer should be obtained - such as:

- A work request document on the insurer's letterhead
- A description of the works
- Terms of the contract – the Eligibility Risk Manager is to obtain a copy of the contract and assess the extent to which the terms may be weighted in favour of the property owner.

18.4 Speculative 'spec' construction

A 'spec' builder is the general term for an individual, company or partnership that carries out residential building work on land that they own - that is, residential building work carried out other than under a building contract with another party. The building work is speculative in that the property is generally intended for resale following completion of the work.

Regardless of any stated intention to retain the property for investment or rental purposes, the 'spec' builder must arrange insurance cover under part 6 of the Home Building Act on the proposed residential building work before starting the work and attach the certificate of insurance evidencing cover to any contract for sale of the property that occurs within six years of completion of the building work.

It is an offence under the *Home Building Act 1989* for any builder who does residential building work other than under a contract to start the work before taking out insurance cover on the proposed work. It is also an offence for the 'spec' builder to enter into a contract for sale of the property on which the builder carried out the building work without attaching a certificate of insurance evidencing insurance cover to the contract for sale.

The purchaser of a property from a 'spec' builder may have the right to rescind the contract for sale before settlement if a certificate of insurance is not attached to the contract for sale.

Generally, the risk for work undertaken by a 'spec' builder is related to defective work and not non-completion of work. However, like work undertaken on behalf of a developer, there may be cases where a 'spec' builder enters

into arrangements to sell a property prior to completion of the building work (including off the plan sales if a multi dwelling project) that imply the work will be completed and, therefore, the risk would include non-completion and loss of deposit.

18.5 Contract Variations

All contract variations are to be in writing between the builder and homeowner (or principal). The owner's copy of the certificate of insurance lists the original contract price. An additional premium must be paid by the builder in the event of a variation of greater than 20%.

Variation requests above 20% must be supported with a copy of the variation to contract documentation to verify the scope of the variation.

Where a variation above 20% is subsequently identified, and an amendment to the certificate of insurance has not been sought by the builder (and additional premium has not been paid in relation to the variation), it will be considered an adverse event in assessing a builder's 'adverse history' for premium pricing purposes and a loading to future premiums applied. An opportunity will be provided for builders to pay the outstanding premium prior to the loading being applied.

Note: *Variations may put the project outside of the builder's Eligibility profile. However, as HBCF is on risk for the project in any event there is no need for any further risk assessment at the project level to approve the change to the policy/certificate of insurance. However, where a builder has a history of projects where variations circumvent the Eligibility OJLs or profile limits (or a substantial variation on a single project) then consideration should be given to undertaking a Special Eligibility Review (SER) to determine the appropriate limits for the builder. Variations or multiple contracts at the same site could have put the original project outside the builder's Eligibility profile. In such cases, a special Eligibility review should be undertaken. However, as HBCF is on risk for the project in any event an application an amended certificate of insurance because of a contract variation should be treated on its own merits and separate to any Eligibility review.*

18.6 Contracts originally under \$20,000

Where variations increase the contract price to an amount over \$20,000 during construction or where a builder is not aware of the value of the project at the time the contract is entered, the builder is to make application for a certificate of insurance as soon as the builder becomes aware of the price of the project is likely to exceed \$20,000. The builder is not to request or receive any (further) payment under the contract until an amended certificate of insurance is issued.

The application for amendment to the certificate of insurance is to be accompanied by a letter of satisfaction from the building owner/Owners Corporation (or strata manager) confirming that all the work done to date is satisfactory and there are no disputes. An inspection report and notification to Fair Trading are not normally required in these cases unless the owner's satisfaction letter is not forthcoming.

18.7 Retrospective Cover

Generally, most builders are aware of their statutory obligations to obtain insurance cover prior to commencement of work (and prior to receiving any payment, including a deposit, under a contract).

Note: *icare has no appetite for retrospective cover for multi-unit alterations and renovations contracts and will not issue cover for such projects at site for over 30 days.*

Where a builder, due to an oversight, has not taken out cover for a job and subsequently seeks to obtain retrospective cover for the work there is a risk that cover is being sought because a problem/defect and/or a customer complaint has arisen. An application for retrospective cover may be received after payment of a deposit but prior to commencement of the work, during construction or after completion of the work.

Written confirmation from the homeowner that there is no dispute between the homeowner and builder must accompany any application for retrospective cover.

An inspection report from an independent certified building inspector should also accompany the application, depending upon the extent to which the building work has progressed. The Eligibility Risk Manager should sight a copy of the inspector's certificate of currency for its professional indemnity insurance prior to processing the application. Where the project has been completed, the Occupation Certificate for the work should also accompany the application (if possible).

Given the objectives of HBCF in relation to consumer protection, subject to the exception above, cover should not be withheld where the underwriting criteria have otherwise been satisfied, there is no dispute and the inspection report is satisfactory. That is, cover may be granted throughout the statutory warranty period of cover.

Repeat offences by a builder are a trigger for a special Eligibility review and consideration of cancellation of Eligibility. Notification of instances where cover has not been obtained prior to commencement of work and/or payment of monies under the contract must be notified to HBCF and NSW Fair Trading (via HBS-RAAB@finance.nsw.gov.au). Such notification may be done by the broker on behalf of the builder.

18.8 Certificate Referral Requirements

Table 10 describes the circumstances and the action to take for referral of project applications to the Eligibility Risk Manager.

Table 10 Certificate Referral Requirements

Issue	Action
A close relationship between builder and homeowner (non-arm's length) that may create a risk.	Job-specific deed may be required from related party and/or director(s) of building company.
Multi-unit new construction (excluding duplexes and triplexes not intended to be subject to strata, company or community title)	Review proof of ownership and adequate unconditional funding is consistent with the building contract. Ensure that adequate drawings and specifications are attached to CIMS.
Construction Type not within builder's Profile	Require Eligibility profile review.
Estimated Start Date is more than 30 days in the past - works have commenced but not completed.	<ul style="list-style-type: none"> • Seek clarification whether works have already commenced and the circumstances. • Where works have commenced but are yet to be completed – obtain copy of the Building Contract. • Where construction work is to 'Footings' but not beyond – an engineer's report confirming the footings have been completed to an acceptable standard and is within the requirements of the contract is required. A copy of the engineer's Professional Indemnity cover also to be supplied. • Where construction work is beyond 'Footings' stage – a Building Consultant's Defects Report confirming work completed is to a satisfactory standard, is within the requirements of the contract and the schedule of payments is consistent with the value of works completed is also to be supplied. • Written explanation from builder detailing why the job wasn't registered prior to work commencing: • Investigate whether builder has a history of purchasing policies after commencement. Consider whether it was an isolated administrative oversight, emergency building work or preliminary demolition work – all of which can be excused. • The Eligibility Risk Manager is to advise HBCF of each builder where a satisfactory explanation has not been provided including all relevant details. • Where the project is for repair/renovation/rectification work to a multi-unit property which has been on foot for more than 30 days, the application should be declined.

Issue	Action
Estimated Completion Date is in the past	<ul style="list-style-type: none"> • Seek clarification and explanation, including confirming the actual start and completion dates and reasons for the situation arising. • Where works have started but are yet to be completed – obtain: <ul style="list-style-type: none"> ◦ Copy of the Building Contract. ◦ Where construction work is to ‘Footings’ but not beyond – an engineer’s report confirming the footings have been completed to an acceptable standard and are within the requirements of the contract is required. A copy of the engineer’s Professional Indemnity cover is also to be supplied. ◦ Where construction work is beyond ‘Footings’ stage – a Building Consultant’s Defects Report confirming work completed is to a satisfactory standard, is within the requirements of the contract and the schedule of progress payments is consistent with the value of works completed is also to be supplied. ◦ Written explanation from builder detailing why the job was not registered prior to work commencing. • Where works are 100% complete - Obtain: <ul style="list-style-type: none"> ◦ Final Inspection Report (Defects Report – cannot be older than 6 months and must be completed by an independent registered building surveyor/inspector, architect or engineer together with a copy of PI cover from the provider of the report). ◦ Letter of satisfaction from the owner confirming all works are complete, they are satisfied with the quality of workmanship and no claims are on foot. ◦ Copy of the Building Contract. ◦ Written explanation from builder detailing why the job was not registered prior to work commencing. • Copy of email distributor has sent to NSW Fair Trading – Home Building Service advising works commenced without home warranty insurance being in place (Email address: HBS-RAAB@finance.nsw.gov.au) If the determination gained from reviewing information is unsatisfactory and there has been repetition of the instances, a review should be conducted to determine whether the builder should maintain Eligibility. Serious repeat offences should bring about suspension of Eligibility or a requirement for the builder to enter the BCRP for contracts of \$50,000 and over (builder will be permitted to undertake contracts below \$50,000 without alternatives being required to be adopted, unless there are other impediments applying). • The Eligibility Risk Manager is to advise HBCF of each builder where a satisfactory explanation has not been provided including all relevant details. • Where the project is for repair/renovation/rectification work to a multi-unit property which has been on foot for more than 30 days, the application should be declined.
Records show no current NSW contractors’ licenced and/or not licenced for the contracted work	Do not proceed. Require valid, current licence

Irregularities are to be pursued with the builder's Distributor. Any identified risks should be fully investigated and where necessary, lead to a rejection of the application unless satisfied with the outcome of the investigation or the situation is rectified.

18.9 Cancelled and Amended Certificates of Insurance

18.9.1 Cancelled certificates of insurance

Cancellations or alterations to Certificates of Insurance previously issued by HBCF may occur in circumstances where the certificate has been issued well in advance of building commencement and changes have occurred to the owner's or the developer's original plans.

It is the responsibility of the builder or holding Distributor to gather the information required for a cancellation of the certificate of insurance.

Conditions for a certificate of insurance to be considered for a cancellation or amendment are:

- A period of no more than two (2) years has lapsed since the date of issuance of the certificate and the date the request to cancel is received by the Eligibility Risk Manager; and
- There is no contractual dispute between the builder and the homeowner; and
- Work has not commenced, **and** no payment has been made to the builder under the contract (or if a deposit has been paid **and** work has not commenced, that the deposit has been refunded in full).

The following documentation is required to cancel a certificate of insurance:

- Letter from builder addressed to the distributor advising the reasons for cancellation including confirmation the certificate has not been provided to any third party (e.g. PCAs, Councils, prospective purchasers, conveyancers, real estate agents, finance providers) nor been included in any promotional or advertising materials.
- Confirmation in writing from the homeowner (or developer) stating:
 - no "building work" has commenced – this is to be taken as meaning that there has been no commencement of land clearance
 - any deposit paid by the homeowner has been refunded in full

- the reasons for the cancellation and attaching a copy of any document terminating the contract between the building entity and the owner
- no claim exists in respect of the project for which the certificate has been issued and that the homeowner or developer agrees not to rely on the certificate.
- the certificate has not been provided to any third party (e.g. PCAs, Councils, prospective purchasers, conveyancers, real estate agents, finance providers).

Note: *Letter from homeowner (or developer) is not required for builders that issue 50 or more policies per annum.*

Under no circumstances is a certificate of insurance to be cancelled in order that it can be reissued with a new date of issue. There are important provisions under the *Home Building Act 1989* where the rights and obligations of builders and homeowners are reliant on the date of issue of a certificate of insurance. Any request of a distributor, builder or homeowner for the cancellation and reissue of a certificate of insurance with an amended date must be declined.

18.9.2 Amendments to certificates of insurance (other than the contract variations)

Under no circumstances is the date of issue of a certificate of insurance or the names of the contracting parties to be changed to another party. There are provisions under the *Home Building Act 1989* where the rights and obligations of builders and homeowners are reliant on the date of issue of a certificate of insurance. Any request of a broker or builder or homeowner for the date of issue of a certificate of insurance to be amended must be declined.

As indicated in the section on 'Contract Variations', additional premium may be required where the contract price has increased by more than 20%. All contract variations are to be in writing between the builder and homeowner (or principal). Variation requests above 20% must be supported with a copy of the variation to contract documentation to verify the scope of the variation.

18.9.3 Early termination of the building contract

There will be instances where a building contract between a builder and homeowner is terminated after work has commenced and/or monies have been paid under the building contract and prior to completion of the work.

Where work has commenced, or monies have been paid, HBCF is on risk. As such, where a contract is terminated after work has commenced (even if the amount of work carried out is minor) HBCF is unable to cancel the policy (and even if it did it would still be on risk for the work undertaken under the original contract).

Accordingly, HBCF has determined to treat any early termination of a contract as a variation and to amend the premium to reflect the value of the works completed. The partial refund of the premium would be the difference between the premium (including GST and Stamp Duty) paid on the original contract price (including variations) and the revised premium (including GST and Stamp Duty) based on the amount of the final account/invoice.

The certificate of insurance is to be amended (and a replacement certificate issued) to show the new contract amount (i.e. the amount of the final account/invoice).

For the certificate of insurance to be amended and for a refund to occur the Distributor should obtain the original certificate of insurance and a statutory declaration from the builder detailing the stage of works completed, the final contract value and confirmation that there is no dispute between the parties as to the value of the work performed and that there are no monies outstanding to HBCF.

If the parties are in dispute as to the final contract value it would not be possible to partially refund the premium until the dispute is resolved. The resolution of the dispute should require evidence of the final account/invoice.

18.9.4 Subsequent applications Involving the same parties and/or site

As each certificate of insurance issued exposes HBCF to the maximum indemnity under the policy it is important to ensure that the reasons for a builder and/or homeowner requiring a further certificate of insurance for works at the same site are appropriate.

Where a builder applies for a second and additional Certificate/s of Insurance for work to be undertaken at the same site and for the same homeowner (or a related person/entity or an owners corporation) a copy of the building contract, plans & specifications and scope of works must be obtained.

- Where it is determined that the work under the original contract has been completed and the new contract covers new work legitimately not envisaged at the time of the original contract or where it had always been planned that the work be undertaken in stages (and the same builder was the successful tenderer for the next stage) then a certificate of insurance application may be approved.
- Should it be determined, after reviewing the submitted documentation, that the work is being undertaken as a variation to the original building contract (i.e. there is no new contract) then a further certificate of insurance should not be issued. Rather the matter should be treated as an amendment to the original certificate of insurance (refer to previous sections on 'Contract Variations' and 'Amendments to Certificates').
- Where it appears that the work to be covered by the additional certificate of insurance would normally be treated as a variation, but the parties are entering into new contractual arrangements the reasons for doing so should be obtained. Such cases should then be referred to HBCF for consideration and advice prior to issuing a Certificate of Insurance for the work covered by the new contract.
- Where it is determined that there is a new contract in place a check should be undertaken as to whether the combined total of the contracts would result in the profile limits for the builder being exceeded. If so, the builder should be advised to submit a Builder Profile Change application and an assessment of that application completed to determine whether the application for the further certificate of insurance can be approved (again the reasons for entering into new contractual arrangements should be obtained and, if necessary, referred to HBCF).

***Note:** NSW Fair Trading has advised that where a builder is returning to a site to rectify defective work performed by that builder (e.g. because of a complaint by a homeowner or an owners corporation) that neither the statutory warranty nor home warranty provisions of the Home Building Act 1989 apply to that work. In such circumstances, an application for a certificate of insurance covering the rectification work must be declined.*

18.9.5 Fraudulent certificates of insurance – receipt of information

Where a Distributor receives information alleging the provision of fraudulent Certificates of Insurance by any person or entity (including a builder, developer, owner-builder, homeowner, Distributor, staff member etc.) this must be recorded and immediately reported to HBCF for forwarding on to Fair Trading for assessment and a Special Eligibility Review commenced (where the builder holds current Eligibility).

19 Other Special Underwriting Considerations

19.1 Developers

Under the *Home Building Act 1989* an individual, partnership or corporation is a **developer** where residential building work is done on their behalf in connection with an existing or proposed building or residential development where four (4) or more of the existing or proposed dwellings are or will be owned by the individual, partnership or corporation.

A developer of residential building work also includes the owner of the land where the development is carried out and who owns, or will in future own, four (4) or more of the existing or proposed dwellings.

The definition also provides that if another person or organisation who will also own four (4) or more of the units in the development entered into the building contract for the work, then they also are considered to be the developer. A company that owns a building under a company title scheme is not a developer for the purposes of the Act.

Under the Act, a residential building contract entered into by a builder with a developer is treated the same as any other contract for the purposes of obtaining home warranty insurance cover.

The builder is required to obtain insurance cover for each dwelling covered by the contract. The developer must attach the certificate of insurance to the contract for sale of each dwelling.

The Home Building Act also provides that a person who is the immediate successor in title to a developer who has done residential building work on land is entitled to the benefit of the statutory warranties as if the developer were required to hold a contractor licence and had done the work under a contract with that successor in title to do the work.

Residential building work done on behalf of a developer is taken to have been done by the developer. Accordingly, a developer (in addition to the builder) must demonstrate their financial capacity to be involved in multi-unit development projects.

A developer may demonstrate their financial capacity by being a well-established developer (that is, not a special purpose vehicle (SPV)) and which has a record of adjusted Net Tangible Assets of at least 10% of the contract price or proposed value of the project. Otherwise, the developer (or its director/s or a related entity) is required to provide suitable security (e.g. Related Party Undertaking).

Generally, the risk for work undertaken on behalf of a developer is only related to defective work and not non-completion. This is because a developer is excluded from being a beneficiary under a contract of home warranty insurance (policy). However, there may be cases where a developer enters into arrangements to sell a property prior to completion of the building work (including *off the plan* sales) that imply the work will be completed and, therefore, the risk might include non-completion and loss of deposit.

Usually in relation to *off the plan* sales a contract to purchase is signed, but the date for completion of the contract will not be until the building is completed and the strata plan is registered. The purchaser usually pays a deposit and the balance is paid when the contract is 'settled' upon the building's completion.

19.2 Kit homes

The scheme does not provide cover for **suppliers** of Kit Homes, but cover is required for contracts, which include the erection/construction of such homes, subject to existing minimum threshold values.

19.3 Marketing groups and franchises

Of central importance to the analysis of a group member is that the heads of agreement should be able to evidence that the builder has control over its business yet is able to source/receive improved business support.

The Eligibility Risk Manager should understand what support is offered to HBCF in the event of a group member becoming insolvent.

There should also be consideration of the degree of dependence on the parent group to ascertain whether the financial position of the group or franchise licensee needs to be assessed.

The Eligibility Risk Manager may seek a Deed of Indemnity from the group or licensee company (and/or its principals) as an added precaution.

Should any of these requirements not be to the satisfaction of the Eligibility Risk Manager, the builder's application is assessed as a Category Y or Z with additional conditions applied.

20 Building Contract Review Program (BCRP)

20.1 Underwriting considerations

The BCRP aims to assist new entrants to the building industry, as well as existing small to medium builders, to obtain Eligibility (or cover for a specific project) where the builder is unable to provide suitable evidence of experience in the proposed building activity.

The BCRP is intended to be a transition phase and builders can apply in future to have the condition removed. It is expected that a new builder will participate at least three times in the BCRP before being permitted to contract for similar projects without the program. The reports issued by the BCRP service providers will be used during all Eligibility reviews. The participating builder will be provided with a copy of all BCRP final reports.

Subject to *minimum Eligibility requirements* having been satisfied, builders may be required to engage a BCRP service provider for contracts of **\$50,000** and over (or such higher threshold determined by the Eligibility Risk Manager) as a condition of Eligibility or approval for a specific project.

The BCRP must be used as a condition of Eligibility in the following instances (where all other relevant financial and non-financial considerations are satisfactory):

- where the builder has never contracted and successfully completed a new single dwelling or alteration project for a homeowner
- where the builder is proposing to contract a significantly larger or more complex project than the builder's experience supports
- where the builder has never contracted with a developer and successfully completed a multi-unit project (as the multi-unit contractor or key manager within a building business).

The BCRP is also appropriate where the Gross Margins of the builder are an issue of concern. The program can assist a builder to correctly price contracts and test actual cost against budget.

Under the BCRP builders are required to participate in a process whereby the contractual arrangements for a project (including scheduled payments) are reviewed and approved, costings are checked, residential building work is inspected, and, where appropriate, progress payments are endorsed.

CIMS will not issue a certificate of insurance to a builder required to participate in the BCRP for a project where the contract price is **\$50,000** or over (or such higher threshold as determined by the Eligibility Risk Manager) until:

- a BCRP service provider selected from the provider panel has been appointed by the builder in respect of that project; and
- the BCRP service provider notifies the Eligibility Risk Manager (via the Distributor) that the project is to be covered by the provider's program; and
- the BCRP service provider confirms to the Eligibility Risk Manager (and via the Distributor) that:
- the contractual documentation for a project has been examined and assessed as satisfactory; and
- the builder has provided a detailed budget which provides a gross margin that is reasonable for the project requirements, type, size and value
- the BCRP service provider is also to determine (and advise the Eligibility Risk Manager and Distributor) the number of site and off-site construction reviews required, considering the nature of the project.

***Note:** The intent of the BCRP is to ensure that the builder's supervision and contract administration is appropriate and that the project is running to budget and contracted completion date.*

20.2 Outline of BCRP Eligibility and certificate process

20.2.1 Eligibility

- Builder applies through broker/Distributor for Eligibility.
- In cases where the Eligibility Risk Manager is not satisfied that the builder fully meets the Eligibility criteria there may be a requirement for the builder to participate in the BCRP for projects with a contract price of \$50,000 or more (or such higher threshold as determined by the Eligibility Risk Manager).
- Builder accepts Eligibility conditions (including participation in the BCRP).
- Eligibility is granted subject to a condition requiring the builder's participation in the BCRP for each project contracted by the builder with a contract price of \$50,000 or more (or such higher threshold as determined by the Eligibility Risk Manager).

20.2.2 Certificates of insurance

- Builder selects preferred BCRP service provider from provider panel and accepts quotation.
- Builder submits contract documentation and detailed project budget to the BCRP service provider.
- BCRP service provider reviews and confirms that the contract documents [including construction period] are appropriate and the project budget and scheduled progress payments are reasonable. The service provider also determines the number of builder performance reviews (site visits and remote site visits). Where the service provider is unable sign off on these components or if work has commenced (or payment made to the builder) under the building contract the service provider is to notify the Eligibility Risk Manager.
- BCRP service provider notifies Distributor and Eligibility Risk Manager of confirmation of appropriateness of contract documents and reasonableness of the project budget, scheduled progress payments, and provides a schedule of builder performance reviews.
- Distributor applies, on behalf of builder, to the Eligibility Risk Manager for a certificate of

insurance for the project attaching the BCRP service provider's confirmation and builder performance review schedule.

- Eligibility Risk Manager approves the issue of a certificate of insurance for the project.
- The BCRP service provider undertakes builder performance reviews during project.
- On completion of the final review, the BCRP service provider confirms that the project has been completed and forwards a final report to the builder and the Eligibility Risk Manager.

20.3 Overview – operation of Building Contract Review Program

A competitive tender has been utilised to select and establish a panel of BCRP service providers from which builders may choose. The BCRP providers are to deliver all the following components of the program for each engagement.

20.3.1 BCRP component 1 – contract document review

Reviewing contract documentation for each project to ensure that:

- The correct parties to the residential building contract: site address etc. are identified
- The correct name and licence number of the builder's trading entity is shown on all documentation (i.e. name on building contract, certificate of insurance application and licence is the same)
- The licence held by the builder's trading entity covers all the work being contracted
- The building contract terms do not create a commercial risk for the completion of the project because of unfair terms, provisions etc. (including contracts with developers and architect administered contracts)
- The project application for insurance is consistent with the BCRP service provider's understanding of the project
- Review the project's construction schedule provided by the builder to ensure that it is appropriate for the type and complexity of the project.

20.3.2 BCRP component 2 – reasonableness of budget and progress payments

- Ensure that the builder provides a detailed budget, providing for a gross margin that is reasonable for the project requirements, type, size and value.
- Adequately test the builder's detailed budget completeness and realistic costs including contingency allowance. Verify as much as possible likely contingencies including cost erosion and wage assumptions.
- Review and confirm the scheduled payments under the building contract directly relate to the progress of work carried out at each stage that a payment is scheduled (i.e. progress payments do not exceed the cost of work performed and materials supplied under the contract plus margin).

20.3.3 BCRP component 3 – builder performance review schedule

Determine the number of reviews (site visits and remote site assessments) that are required to be completed, considering the nature of the project (and as determined by HBCF), to ensure that:

- The builder's supervision of the project construction works is of an acceptable industry standard
- The project is progressing to contractual completion date and budget.

Site visits require attendance at the project site by the BCRP service provider.

Remote site assessments do not require site assessment. The service provider must review sufficient information and make any necessary enquiries. The completion of a remote site assessment can include (as an example) a review of project photographs or relevant documentation and phone enquiries with the builder.

Site visits and remote site assessments do not reflect the mandatory certification inspection dates; rather they are to be determined based on the specific project and the requirements under component 4 of the BCRP.

20.3.4 BCRP component 4 – builder performance review

- Obtain a copy of the certificate of insurance for the project from the builder and check that all details correspond with the contract and the licence of the builder's trading entity
- Undertake reviews as determined under BCRP component 3 - Builder Performance Review Schedule

At the time of each site visit or remote site assessment:

- review all scheduled progress payments invoiced to determine that progress claims were appropriate
- review all third-party certificates (including engineers' inspections, mandatory PCA inspections, trade compliance certificates etc.) issued since the previous BCRP review
- review contract variations ensuring they are in writing and properly costed
- review progress in accordance with the project construction schedule and terms of contract and investigate reasons for any significant delays
- review the builder's competence in site supervision for all works carried out since the previous report, and any areas previously identified as a concern including:
 - a. set out and levels
 - b. sequencing of trades
 - c. general standard of finish
 - d. frame integrity
 - e. cavity drainage integrity, external weep holes and termite barrier integrity
 - f. sill and window flashings
 - g. wet area treatment
 - h. stormwater disposal
 - i. future integrity of footings against drainage and other works still required to be completed.
- For each site visit or remote site assessment prepare a report and include dated photographs, any concerns (including over items 'a' to 'i' above) and notes covering an observation of the following:
 - General site presentation
 - Work flow of trades and materials
 - Competence of the trades and appropriateness of the materials being used.

- Immediately report to the Eligibility Risk Manager any concerns over the builder's competency to complete the project (including concerns as to time delays, standard of work performed, any evidence of cash flow issues and where payments have been made or sought other than as scheduled under the building contract)
- Provide timely copies of all completed Builder Performance Review Reports to the builder and Eligibility Risk Manager.

20.3.5 BCRP component 5 – final report on completion of project

On completion of the project prepare a final report including:

- Confirmation that all Builder Performance Reviews identified in component 3 of the BCRP have been completed
- Details as to whether there are any resolved issues of concern
- Comment on the progression or development of the builder's competency relating to specific areas that have been reviewed as part of the BCRP for the project.

20.3.6 Services to the Eligibility Risk Manager (and/or Distributors)

To enable a builder to obtain, and an Eligibility Risk Manager to approve, a certificate of insurance for a specific project:

- BCRP component 1, 2 and 3 – Confirmation
 - Confirm the cost of the BCRP to the builder.
 - Confirm the requirements of BCRP components 1, 2 and 3 have been completed satisfactorily, or have been adjusted to be satisfactory, (through the Eligibility Risk Manager and the builder's Distributor).
 - Provide the number and timing of site visits or remote site assessments required during the project to the builder (and the Eligibility Risk Manager and builder's Distributor).
- BCR component 1,2 and 3 – Incomplete notice
 - If the Builder does NOT satisfactorily complete the requirements of BCRP components 1, 2 and 3, the BCRP service provider must notify the Eligibility Risk Manager of this fact within 7 days of the due date of the requested information.

- BCRP component 1,2 and 3 –Project commenced notice
 - If the builder has already commenced works under the project contract, the BCRP service provider must notify the Builder's Eligibility Risk Manager of this fact immediately.

20.3.7 During the project

The BCRP provider must Immediately report to the Eligibility Risk Manager any concerns over the builder's competency to complete the project (including concerns as to time delays, standard of work performed, any evidence of cash flow issues and where payments have been made or sought other than as scheduled under the residential building contract) including copies of all Builder Performance Review Reports completed to that time.

The BCRP provider should also provide timely copies of all completed Builder Performance Review Reports for the project to the builder and Eligibility Risk Manager. Such reports should be placed on the BEAT record for the builder and referred to during programmed eligibility reviews.

20.3.8 On completion of the project

BCRP component 5 - Final report on completion of the project

- On completion of the project, the BCRP provider must prepare a final report using the standard HBCF template and provide a copy to the builder and the Eligibility Risk Manager. The final report is to be placed on the BEAT record for the builder and referred to during Programmed Eligibility reviews.
- The content of the final report is to include:
 - Confirmation that all builder performance reviews identified in BCRP Component 3 have been completed
 - Details as to whether there are any unresolved issues of concern
 - Comment on the progression or development of the builder's competency relating to the specific areas that have been reviewed as part of the BCRP for the project.

Note: *The HBCF will seek feedback from all builders who have participated in the BCRP.*

20.4 Programmed reviews of builders and exiting the program

The Eligibility Risk Manager is to closely monitor all builders holding Eligibility subject to use of the BCRP. Irrespective of builder size all builders, required to participate in the BCRP as a general condition of Eligibility, are to undergo a programmed eligibility review every 12 months.

Consideration can be given to removing the condition requiring participation in the BCRP after three (3) completed projects. Contact should be made with the BCRP service provider/s and reference made to the final reports and individual Builder Performance Review Reports to determine whether it is appropriate for the builder to “graduate” out of the BCRP.

Where the builder has not completed three projects through the BCRP at the time of the initial programmed Eligibility review, the issue can be revisited at each subsequent review or on request by the builder.

Once the builder’s Eligibility is no longer subject to use of the BCRP, subsequent reviews are to occur in accordance with the builder size as described in the next Section.

In addition to programmed Eligibility reviews, special Eligibility reviews are to be undertaken when triggered by a defined event.

21 Customer Service

The Eligibility Risk Manager’s focus is to be upon customer service, responding technically correctly and in a timely manner to all customer and other stakeholder enquiries – technical and procedural.

21.1 Standards

SIRA’s Home building compensation (eligibility) insurance guidelines require HBCF to meet certain service standards. The following quantitative service standards, detailed in Table 11 and Table 12, are to apply (all days shown being “business days”):

Table 11 Service Standard for Eligibility Assessment and Review

Eligibility assessment and review	Eligibility Risk Manager Requirement for completion
Issue notice to the Builder commencing an eligibility review process and requesting provision of information and documentation by specified due date (Programmed Eligibility Reviews - PER- only)	Notice issued at least 40 days prior to due date
Acknowledge receipt of eligibility application or review documents	Within 2 days of receipt of the documents
The application/review documents have been received but are deficient and further information is required from the builder to progress the application/ review.	Within 7 days of receipt of the documents
Complete Eligibility assessment/review and communicate Eligibility profile, terms and conditions to the builder (via the distributor)	Within 10 days of receipt of complete information

Table 12 Service Standard for Project Applications

Project Applications Service Standards	Eligibility Risk Manager Requirement for completion
Assess whether additional information required and/or Builder Profile Change and if required request information or initiate review.	Within 2 days of receipt of the application for a Certificate
Underwrite application for certificate of insurance and advise the Builder through their broker of decision including any proposed conditions on the approval, e.g. security, Building Contract Review Program (BCRP)	Within 5 days of receipt of complete information or completion of review (whichever later)
Issue decision via CIMS to distributor	Within 2 days of receipt of builder accepting underwriting conditions

Note: The Eligibility Risk Manager must communicate immediately with the builder's Distributor where it believes it cannot meet the service standards prior to the due date for delivery. The Eligibility Risk Manager is to advise of the reasons for the delay and the expected actual delivery date.

22 Complaints against the Eligibility Risk Manager

The HBCF and its Eligibility Risk Manager is required to comply with SIRA's Home building compensation (eligibility) insurance guidelines. Under the Guidelines the Eligibility Risk Manager is required to establish and maintain an internal complaints handling process. The Guidelines can be accessed via the SIRA website at www.sira.nsw.gov.au.

22.1 General insurance code of practice - buying insurance

Although the Code of Practice does not strictly apply to State Insurance, HBCF believes that aspects are good practice for the Eligibility Risk Manager.

The following standards have been adapted to apply to the initial enquiry and buying of insurance and renewal of cover:

- The Eligibility Risk Manager will only ask for and consider relevant information when assessing an Eligibility application.
- The builder will have access to information about them that the Eligibility Risk Manager has relied on in assessing the application and an opportunity to correct any mistakes or inaccuracies. The Eligibility Risk Manager will provide its reasons in writing upon request. In special circumstances, the Eligibility Risk Manager may decline to release information, but it will not do so unreasonably. In these circumstances, the Eligibility Risk Manager will give the builder reasons and they will have the right to request a review of the decision through the disputes and complaints handling procedures described in HBCF Complaints and Disputes Handling Procedures Manual.
- Where an error or mistake in assessing the application for Eligibility or a certificate of insurance is identified, the Eligibility Risk Manager will immediately initiate action to correct it.
- All sales processes are to be conducted in a fair, honest and transparent manner to the extent that the Eligibility Risk Manager has influence over it.
- If the Eligibility Risk Manager cannot provide insurance, they will:
 - give reasons.
 - refer the builder to HBCF, or NIBA for information about options (unless they already have someone acting on their behalf); and if the builder is dissatisfied with the decision.
 - make available information about the complaints handling procedures, including the Underwriting Committee for any required re-determined final opinion.
- If Eligibility is to be cancelled, any money owed by the Eligibility Risk Manager will be sent within 15 business days to the Distributor.

Note: The Code of Practice can be accessed at www.codeofpractice.com.au

22.2 What is a Complaint?

A **complaint** is defined as any expression of dissatisfaction with a product or service offered or provided by the HBCF or its Eligibility Risk Manager (including the Eligibility Risk Manager's service providers).

22.3 What is a Dispute?

A dispute is defined as a complaint that has been considered and responded to by the Eligibility Risk Manager and the complainant is not satisfied with the outcome.

22.4 HBCF Complaints and Disputes Handling Procedures

The HBCF's Complaints and Disputes Handling Procedures manual explains how HBCF and its Eligibility Risk Manager handle complaints and disputes in relation to standards of service, underwriting decisions and decisions on claims. The Procedures manual also sets out the role and operation of underwriting and claims committees established by HBCF and its Eligibility Risk Manager.

The procedures manual can be accessed at HBCF website at <https://www.icare.nsw.gov.au/builders-and-homeowners/lodge-a-dispute/>.

22.5 Lodging a complaint or dispute

22.5.1 Complaints about service standards

A complaint regarding service standards or other matters of a general nature should initially be directed to the Eligibility Risk Manager either face to face, by phone or in writing (including email).

If a complainant does not feel that their complaint has been dealt with effectively by the Eligibility Risk Manager, they can lodge a dispute with HBCF.

Disputes should be lodged in writing.

22.5.2 Complaints about underwriting decisions (Eligibility and project certificates)

A complaint by a builder in relation to an underwriting decision concerning a builder's Eligibility for insurance or the issue of a certificate of insurance (project certificate) should in the first instance be submitted to the Eligibility Risk Manager via the builder's distributor.

If the matter is not resolved, the builder can then request via their distributor that it be escalated to the Eligibility Risk Manager's Underwriting Committee and potentially to HBCF's Underwriting Committee.

22.6 Handling of complaints

The Eligibility Risk Manager has its own internal complaint handling procedures that are approved by HBCF. At a minimum, complaints will be handled in the following way:

- Verbal complaints will be acknowledged immediately and written complaints within three (3) business days advising the complainant of the complaint handling procedure. All complaints regarding an eligibility or claim decision will be acknowledged in writing.
- Complaints will be investigated, and a response provided in writing within 15 business days of receipt of the complaint provided the Eligibility Risk Manager has all the necessary information and has completed any investigation that may be required.
- In cases where further information, assessment or investigation is required, reasonable alternative timeframes will be agreed.
- Complainants will be kept informed of the progress of the response to their complaint.
- The response to the complainant will include reasons for the decision and information about how to access the dispute resolution process of HBCF.
- If the complainant is dissatisfied with the Eligibility Risk Manager response to a complaint, they may escalate the complaint and request it be treated as a dispute.

22.7 HBCF dispute resolution

HBCF will contact the builder or homeowner within five (5) business days of receiving the dispute to let the complainant know it has been received and provide a contact name.

HBCF will review the dispute in accordance with its Complaints and Disputes Procedures I, Underwriting Procedures Manual and/or other relevant guidelines and procedures as applicable.

HBCF will then determine the dispute and notify the Eligibility Risk Manager of the decision. The Eligibility Risk Manager is to implement the decision, which is final and binding, as soon as practicable. The Eligibility Risk Manager is also to notify the builder of the decision, in writing, and include contact details for HBCF should information be required about the decision.

The advice to a builder of HBCF's response to a dispute will include information regarding dispute mechanisms external to HBCF. A builder may lodge a complaint with SIRA so that they may seek a further review where they are not satisfied with the approach or outcome of HBCF's determination.

A builder may also request that SIRA undertake a regulator compliance review to investigate potential breaches of the Home Building Act, the Home Building Regulation or SIRA's Insurance Guidelines. A regulator compliance review is not a mechanism of appeal to review of the merits of a builder's Eligibility and does not overturn Eligibility decisions.

SIRA may be contacted by telephone on 13 10 50 or email contact@sira.nsw.gov.au and is located at:

Level 6, McKell Building
2-24 Rawson Place
Sydney NSW 2000

23 Underwriting Committees of Review

23.1 Eligibility Risk Manager underwriting committee

Each Eligibility Risk Manager is to establish and maintain an 'underwriting committee'. The Eligibility Risk Manager constitutes an Underwriting Committee so that collectively its members have the necessary skills, knowledge and experience to be able to consider and make informed underwriting decisions.

Matters referred to the Eligibility Risk Manager's Underwriting Committee include:

- All underwriting decisions made by the Eligibility Risk Manager that are disputed by a builder
- Underwriting decisions which are required to be referred to the Eligibility Risk Manager's Underwriting Committee under the Delegations of Underwriting Authorities
- Underwriting decisions requiring consideration of (relevant) factor(s) not expressly dealt with

by HBCF Underwriting Procedures Manual

- Underwriting decisions relating to high risk builders, i.e. those that are or may be required to be (depending on the view taken by the Committee) subject to intensive monitoring
- Any other matter determined by HBCF
- At least 10 business days' notice is given to a builder where a Eligibility Risk Manager proposes to suspend or adversely modify an Eligibility approval. The Eligibility Risk Manager, acting under the appropriate authority level, shall advise the builder of the decision and reasons.
- Where the builder has insured projects still under construction, the Eligibility Risk Manager will seek approval from HBCF before suspending or cancelling the builder's Eligibility.

***Note:** A complaint by a builder in relation to an underwriting decision concerning a builder's Eligibility for insurance under HBCF or the issue of a certificate of insurance should in the first instance be submitted to the Eligibility Risk Manager via the builder's Distributor.*

***Note:** If the Eligibility approval, conditions or denial outcome is unacceptable to the builder they, can then request via their Distributor that it be escalated to the Eligibility Risk Manager's Underwriting Committee and potentially to HBCF's Underwriting Committee.*

Where the Eligibility Risk Manager's Committee reviews a dispute raised by a builder, the Committee is to consider the matter on its merits based on all the relevant information available. This includes any further information submitted to the Committee by the builder, following notification of the original decision. The Committee is also to seek further information or clarification of information provided from the builder where considered appropriate.

The Eligibility Risk Manager's Underwriting Committee's members must be available so that meetings of the Committee can be convened within **ten business days** of receipt of a dispute which has complete information with a view to a determination in respect of such dispute being able to be made no later than **five (5) business days**, after the Committee has considered the dispute.

The Eligibility Risk Manager's Underwriting Committee should be continually assessing the quality of decision-making by staff with a delegated underwriting authority, based in part on any inordinate level of dispute emanating from individual decisions.

If the Eligibility Risk Manager does not overturn or modify the original decision, the builder may in some instances request that the matter be referred to HBCF's Underwriting Committee for review.

Note: Refer to HBCF's 'HBCF Complaints and Disputes Handling Procedures' for a detailed guideline on the handling of complaints and disputes in relation to underwriting decisions involving applications for, or a review of, Eligibility and applications for a certificate of insurance for a specific project. The procedure also sets out the provisions for the establishment, constitution and operation of Underwriting Committees by the Eligibility Risk Manager and HBCF and the process for escalating disputes to HBCF.

23.2 HBCF underwriting committee

The HBCF has established and will maintain a committee of review for Eligibility Risk Manager decisions – the "HBCF's Underwriting Committee". The HBCF's Underwriting Committee includes representatives of HBCF, who will also provide the chair of the committee. The committee will also have a representative from the Eligibility Risk Manager and two (2) industry representatives (each with a reserve) as nominated by the Master Builders Association of NSW and the Housing Industry Association NSW Division.

The Underwriting Committee will **not** convene without two (2) industry representatives participating.

The HBCF's Underwriting Committee is to operate as a committee of review to:

- review the builder challenged conditions of Eligibility by the Eligibility Risk Manager
- review decline decisions by the Eligibility Risk Manager
- review all additional information provided by the builder to mitigate adverse decisions
- make recommendations to HBCF.

The recommendations of HBCF's Underwriting Committee in making its decision are not binding on HBCF.

The HBCF's Underwriting Committee will also be responsible for the review and recommendations to HBCF of changes to the Underwriting Guidelines and Underwriting Procedures Manual as well as consideration of other underwriting matters and related processes.

The HBCF may in its absolute discretion, determine an underwriting matter without first having received a recommendation from HBCF's Underwriting Committee. Situations where HBCF may act without a recommendation include:

- an urgent response is required
- HBCF's Underwriting Committee is unable to agree on a recommendation
- HBCF is concerned, on reasonable grounds, that the Committee or a member of the Committee may be prejudiced in relation to a matter.

The Eligibility Risk Manager must also refer to HBCF any matters requiring decision, not within the Eligibility Risk Manager's authority or delegated functions, as soon as practical after it becomes aware that such a decision is required and must refer the decision together with the Eligibility Risk Manager's recommendation for determination.

Where a matter is referred to HBCF's Underwriting Committee, the Eligibility Risk Manager is to prepare a submission incorporating relevant background material and the Eligibility Risk Manager's recommendation.

The HBCF's Underwriting Committee will meet as required. It shall make its Eligibility determinations having regard to prudent insurance industry practice, having received input from the Eligibility Risk Manager. Where a Committee member has a conflict of interest in any disputed matter, they must abstain from decision-making of the matter.

The HBCF, on receipt of a matter with complete information, should decide in respect of such matter (either with or without a recommendation from HBCF's Underwriting Committee) and communicate that decision, which is final and binding, to the builder (either directly or via the Eligibility Risk Manager) within thirty (30) business days. Additionally, a builder may lodge a complaint with SIRA so that they may seek a further review where they are not satisfied with the approach or outcome of HBCF's determination.

A builder may also request that SIRA undertake a regulator compliance review to investigate potential breaches of the Home Building Act, the Home Building Regulation or SIRA's Insurance Guidelines. A regulator compliance review is not a mechanism of appeal to review of the merits of a builder's Eligibility and does not overturn Eligibility decisions.

SIRA may be contacted by telephone on 13 10 50 or email contact@sira.nsw.gov.au and is located at:

Level 6, McKell Building
2-24 Rawson Place
Sydney NSW 2000

Note: *'HBCF Complaints and Disputes Handling Procedure' manual provides further detailed guidelines on the handling of complaints and disputes in relation to underwriting decisions involving applications for, or a review of, Eligibility and applications for a certificate of insurance for a specific project. The Manual also sets out the provisions for the establishment, constitution and operation of Underwriting Committees by Eligibility Risk Manager and HBCF and the process for escalating disputes to HBCF.*
