



Building Indemnity Insurance Review Consultation Paper

February 2024



Government
of South Australia





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We acknowledge Aboriginal people as the state's first peoples, nations and Traditional Owners of South Australian land and waters. We recognise that their unique cultural heritage, customs, spiritual beliefs and relationship with the land are of ongoing importance today, and we pay our respects to Elders past, present and emerging leaders of the future.



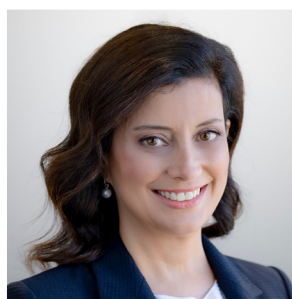
Treasurer's Foreword

I am pleased to present the South Australian government's *Building Indemnity Insurance Review Consultation Paper*.

Housing security is a priority for this government and a cornerstone policy of creating a better quality of life for all South Australians. As such, the government recognises the need for a robust safety net in place when building a home.

This consultation is an opportunity to listen to individuals and industry across a range of aspects of Building Indemnity Insurance – and to simplify and strengthen the scheme to protect South Australians and support builders in the long term.

Hon. Stephen Mullighan
Treasurer



Minister's Foreword

South Australia's Building Indemnity Insurance scheme is designed to give homeowners strong protections for their investment so they know that once work has started, it will be completed and any defects remedied.

Unfortunately, as recent events have indicated, this has not always been the case, with some consumers left with no, or insufficient, cover when a builder has gone into liquidation.

This consultation will seek insights from consumers, builders, industry groups and any other interested stakeholder, that will help us ensure this program is providing adequate cover for both industry and consumers in protecting these significant investments.

Minister Michaels
Minister for Consumer and
Business Affairs



Purpose and scope of the review

Purpose

The Government of South Australia is conducting a review of Building Indemnity Insurance (BII) arrangements and related consumer protections in South Australia.

An integral part of the review is understanding stakeholders' experiences and views on these matters.

Scope

The aims of the review are to:

- Develop a long-term solution for the administrative framework for BII by the South Australian Government.
- Review and strengthen consumer protections.

This includes examining whether existing BII cover is fit for purpose, by examining factors such as what is covered by BII, the minimum thresholds, and maximum cover limits; and addressing gaps in consumer protection and consumer education.

How to be involved

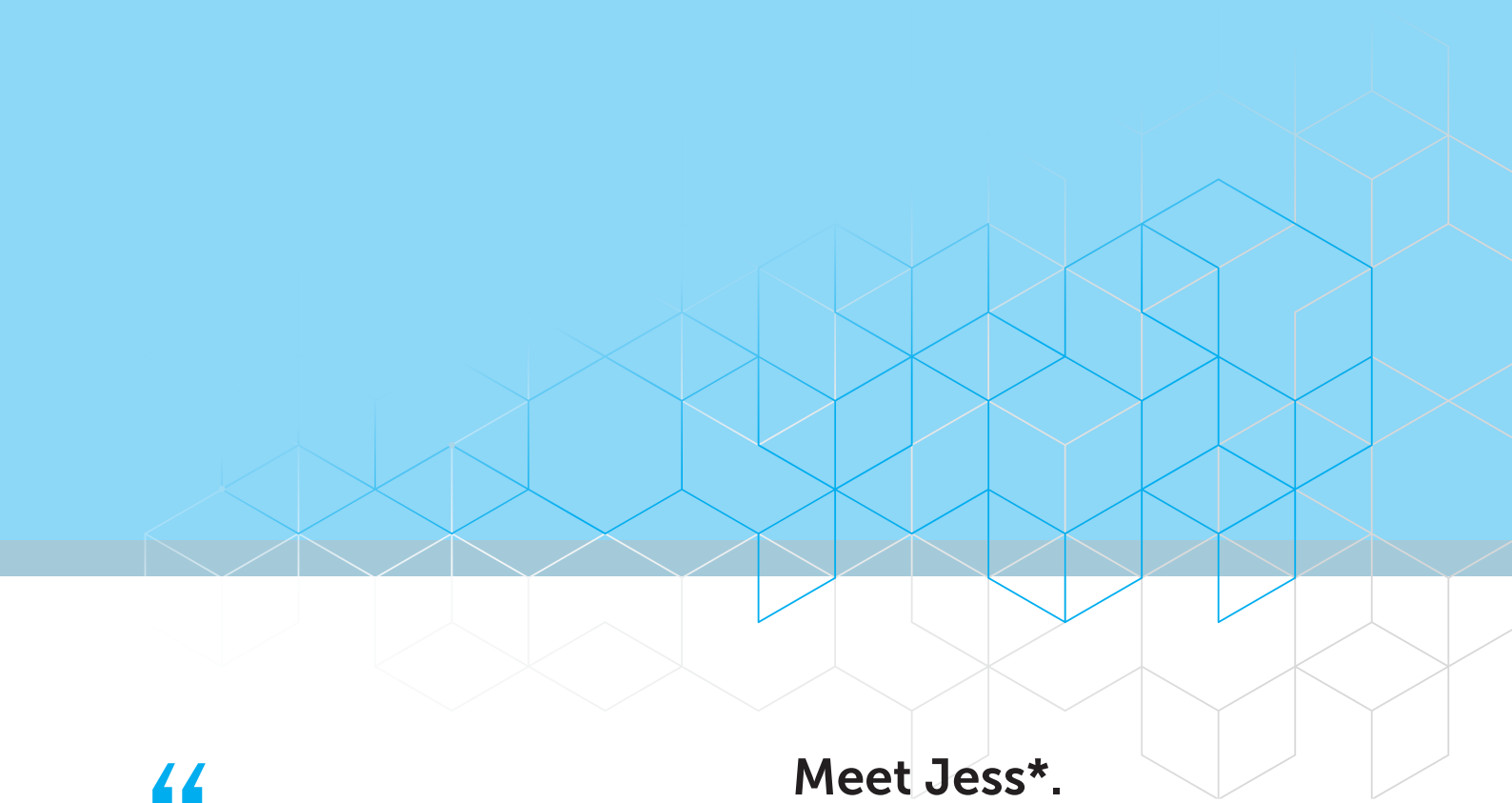
The consultation process is being supported by an independent engagement organisation.

There are a range of ways in which you can be involved in this consultation process:

- You can read this paper, and then complete the [survey](#).
- You can also prepare a [submission](#) using the guidelines.
- You can register to be part of an [interview](#) or [workshop](#).

Purpose of this consultation paper

This consultation paper has been designed to support people who wish to complete the survey, or provide a submission to the review. It provides some background information about BII, outlines the challenges being experienced with the system, and outlines the things we would like to explore in the review.



“

Builds shouldn't be able to start without insurance.

It would be great to empower owners so they can get insurance in place.”

- MARIE

Meet Jess*.

In 2020, Jess who has a disability was able to sign a contract to build a home, as part of a group of allotments provided exclusively to people on low incomes or living with a disability.

Jess's mum Marie* supported her during the process and was very proactive about making sure that Building Indemnity Insurance was in place for the build. She repeatedly sought the certificates from the builder.

The builder was upfront about their difficulties in getting the insurance, however they eventually reassured her that it was in place, although they still failed to produce the certificate.

When the builder went into administration, they found out that BII was not in place and they had no insurance to cover the price escalation in contracting with a new builder.



What is Building Indemnity Insurance?

Building Indemnity Insurance (BII) is compulsory insurance that a builder must take out when performing major *domestic building work*. It provides protection to the builders' customers if the builder dies, disappears or becomes insolvent before finishing the building work, or for defective work on a completed home, for up to five years post completion.

What work requires Building Indemnity Insurance?

BII is required for domestic building work that:

- Is being performed by a building work contractor under a contract with a customer or on their own behalf (such as speculative building work or build-to-rent); AND
- Has a contract value of \$12,000 or more; AND
- Requires approval under the [Planning, Development and Infrastructure Act 2016](#) ("council approval").

"Domestic building work" is work involved in constructing, erecting, altering, repairing, adding to or demolishing a building that is intended to be used as a place of residence.

This commonly includes houses, townhouses, units and some apartments (high-rise apartments are not currently covered).

It also includes other building work within, or on the boundary of, the "curtilage" of the house. This includes structures like sheds, swimming pools and gazebos that are built within a normal house block.

There are some exemptions.

The following types of work do not require BII:

- Subcontracts to another builder who is contracted to perform the work (the head contractor must meet any BII requirements).
- Contracts solely for demolition work.
- Residential buildings that are over three storeys and contain two or more separate dwellings.

Work performed by a genuine owner builder does not require BII but any builders who perform work for them valued at \$12,000 or more must take out BII for their work. A person who sells or rents two or more buildings in a five-year period that they have built or improved, is considered to be a building work contractor (unless they can prove otherwise) and is required to be licensed as a builder and take out BII.

What does the insurance cover?

BII covers the additional costs of completing a building project above the original contract price. This includes the costs of fixing any defects in the work already performed. The customer still needs to pay the remainder of their contract price as part of the costs for the new builder.

BII also covers the costs of performing rectification of defective work for projects within the 5-year statutory warranty period after completion of a home.

Under the [Building Work Contractors Act 1995](#) ('the Act'), an insurer is required to provide a minimum of \$80,000 of insurance cover for BII. The two insurers operating in South Australia provide a policy limit above this amount, being \$150,000. The policy provides cover up to a maximum limit of \$150,000 per project and has an excess of \$400. It covers the original owner and any subsequent owner (for up to 5 years after completion of the project).

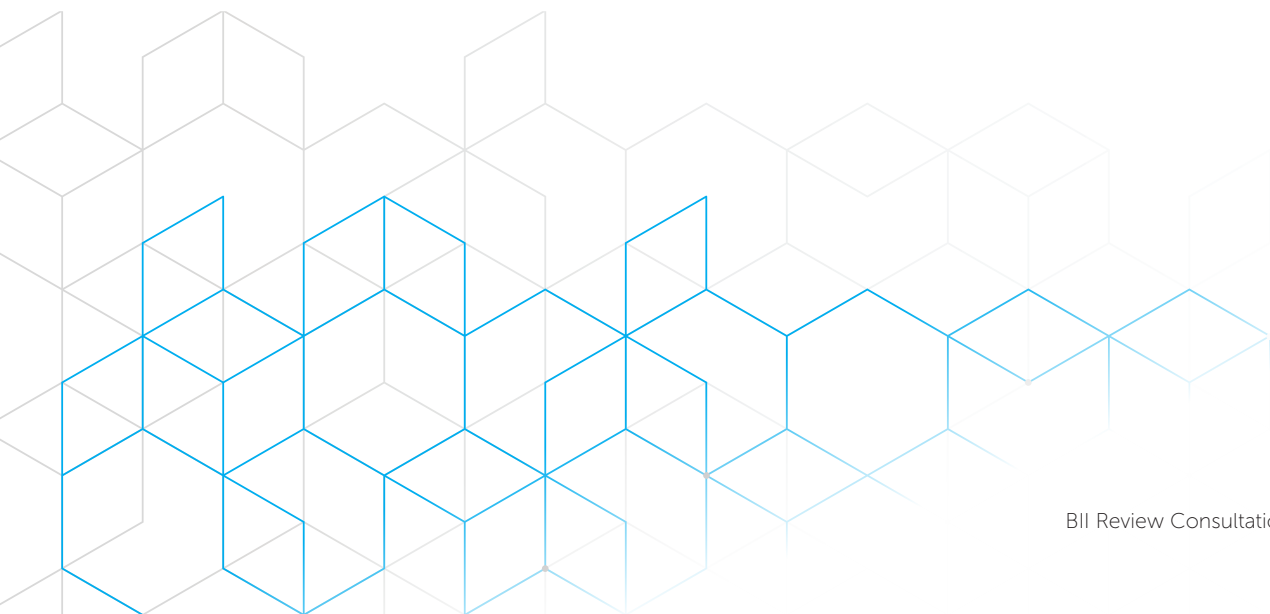
When does cover commence?

Cover commences as soon as the insurance is taken out. Under the Act, a builder cannot perform building work until an insurance policy is in force.

Under the [Planning, Development and Infrastructure \(General\) Regulations 2017](#), there is a certification process for BII. A person must not commence domestic building work unless or until a copy of a certificate of insurance in relation to that work has been lodged with the relevant authority. The certificate of insurance is to be lodged:

- When the application for building consent is lodged - this applies if there is a domestic building work contract for the building work prior to the building consent application being lodged, or if the building work is to be performed by a builder on their own behalf, or
- In any other case, prior to or at the time of giving notice of the intended commencement of the building work - this notice is to be provided before the building work commences.

Until the insurance is taken out, any deposit and other payments made to the builder are not covered by BII. There are limits on the amount that a builder can take as a deposit (usually 5% plus some third-party costs) to limit this risk.



Who takes out the insurance?

The builder takes out the insurance and must provide a copy of the certificate of insurance to the customer before commencing the building work. The builder passes on the cost of the insurance to the customer.

Builders are limited in the amount of work they can insure on an annual basis to manage the risk of insolvencies. The insurer grants the builder an annual eligibility or turnover limit, which allows the builder to insure building projects up to the value of the annual limit. As new works are insured, the available 'limit' or 'cap' is reduced by the value of the building work. The annual limit reinstates to the full approved limit on the eligibility renewal date.

The insurance can be provided by any insurer, so long as the policy meets the minimum requirements under the Act. Currently, almost all BII is provided by QBE through an arrangement with the Government of South Australia, which fully underwrites this. While at least one other insurer is operating in the South Australian market, there are no insurers with scale or appetite to underwrite the majority of the market.

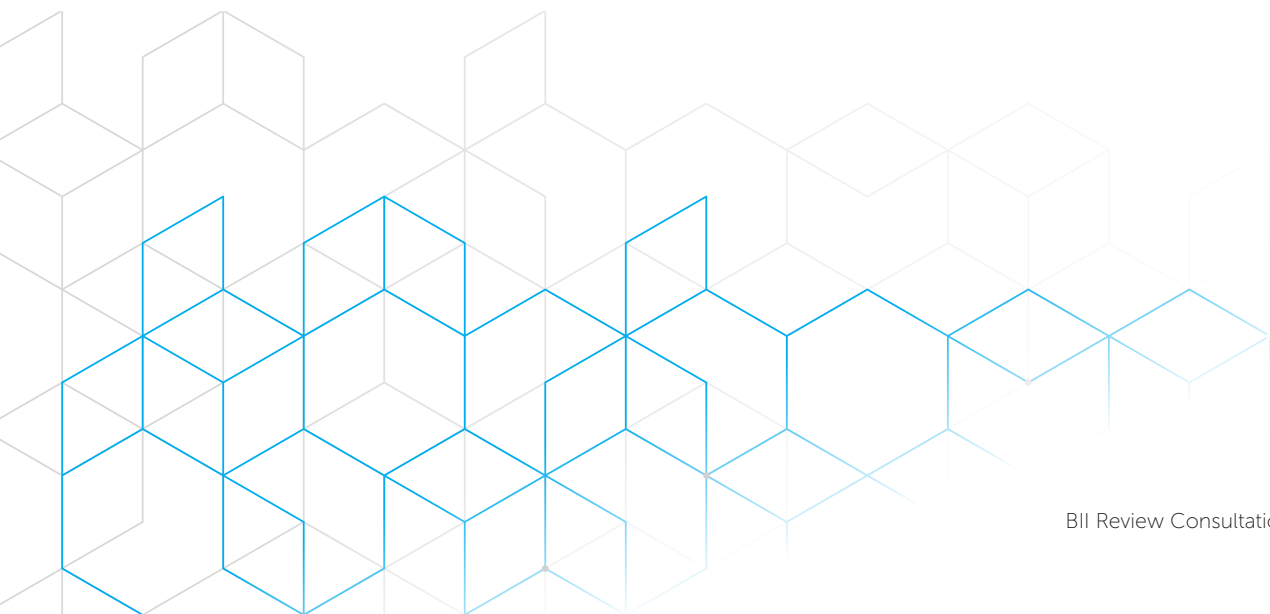
Who checks that insurance is in place?

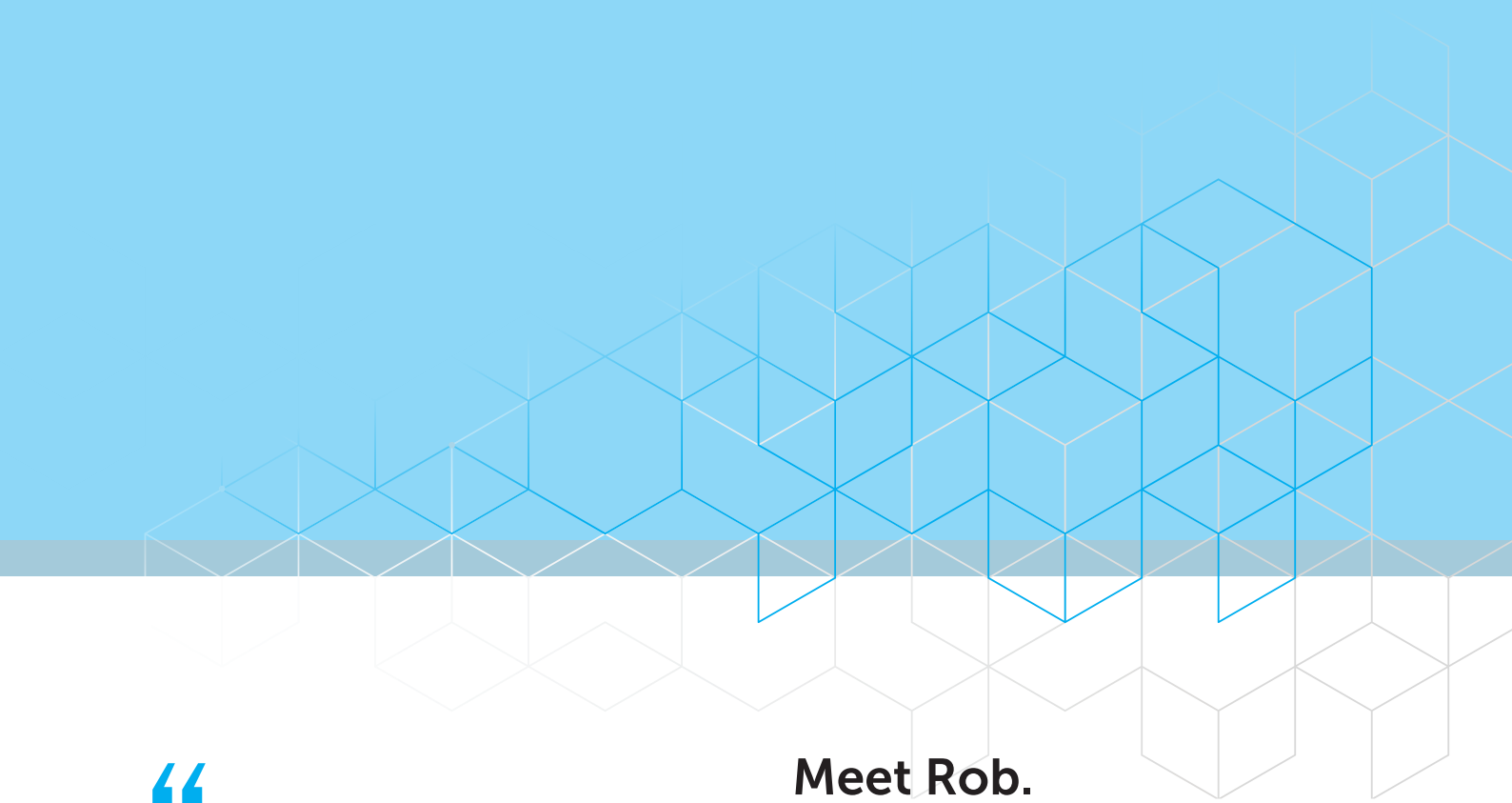
The primary checks to ensure that BII is in place are through the development approval process. When a person applies for development approval and a builder has been engaged for the project, they must supply a copy of the BII certificate with their application. The relevant authority (e.g. local council or private accredited professional) is obliged to check that BII is in place before granting building consent. Builders normally apply for building consent as part of the development approval process for their customers.

Where a person applies for building rules consent before engaging a builder, they must supply a copy of the BII certificate to the local council on or before giving notice of commencement of the building work to the council.

Customers should ensure that they have received a copy of the BII certificate from their builder. QBE has an [online register](#) to allow people to easily check whether a BII policy is in place. QBE will also email a copy of the certificate to the builder's customer, using details supplied by the builder.

Consumer and Business Services is the licensing authority for builders and can take action against builders who fail to take out BII.





“

It is important to have insurance in place and it's good to have it. Our system is a lot better than elsewhere in Australia. I have noticed in the last 9 months, the certificate has changed as it now has a link to show that it is a genuine certificate - this is a fantastic idea.”

- ROB

Meet Rob.

Rob owns and runs a small boutique building company and navigates his insurance through a broker, who is very supportive. “They help you to jump through hoops, and they are a very important part of the system”, says Rob.

While Rob says builders welcomed the across the board increase in caps in response to rising construction costs, the reporting thresholds didn't change so it put some builders into another reporting category they're not used to.

Rob would like to see a mechanism where both caps and reporting thresholds are reviewed as standard practice during times of rising prices.

In addition, Rob would like more checks and balances to ensure that construction doesn't commence unless a certificate is produced.



Why are we doing a review?

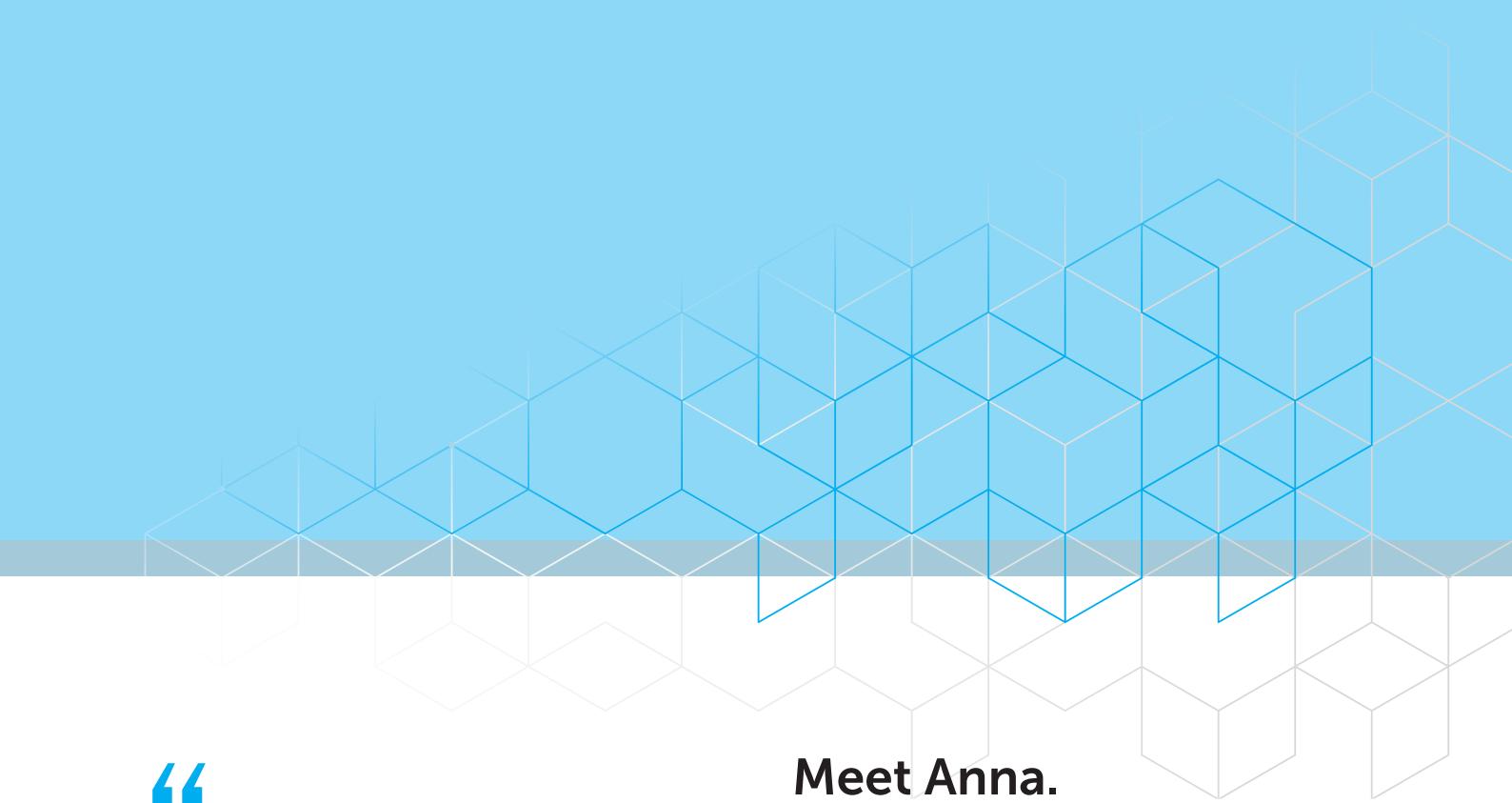
It has been ten years since the last review of building indemnity insurance arrangements, and more than six years since the insurance cover limit was last reviewed. Combined with increased residential building sector activity in recent years and the emergence of a number of consumer protection challenges such as fraudulent insurance certificates and uninsured building works, it is timely to review arrangements to ensure they best meet the needs of South Australian consumers and builders.

The key areas we are reviewing are listed below, but we welcome your feedback on any aspects of BII and related consumer protections.

- Cover – who should be covered, and what should they be covered for.
- Benefits – the capped amount of insurance claimable, and how high value projects are considered.
- Navigating the system – how it supports builders to put the cover in place, how gaps in protection such as uninsured works occur, and how everyone navigates the claims process.

What we want to discuss in this review

In the following section we pose key questions that we want your feedback on as part of the consultation process. There might be other issues that you wish to raise, and you can do so by making a [submission](#), completing the [survey](#), or registering for an [interview](#) or [workshop](#).



“

*I was incredibly vulnerable.
I didn't have anyone who was
out there for me.*

*We have no experience in the
building industry and don't
know anyone who does.*

*We need support for the
biggest financial risk we
will ever take.”*

- ANNA

Meet Anna.

Anna wanted to replace their tired house with a bigger and better home for her family. While initially the process went well, after a while, her builder became unreliable, missing meetings and failing to meet commitments made to them.

Just two days after they had paid \$80,000 for an incomplete roof, the builder went into administration, leaving Anna and her family in limbo. Early hopes from the administrator that another builder might take over the business were dashed and upon receiving quotes from other builders they discovered that the home would cost significantly more than their original planned budget to complete.

While BII was in place for this build, the coverage limit of \$150,000 is not enough, and means that Anna and her family cannot afford to finish building their home when prices have risen so much. They are now stuck renting and paying a mortgage on a property they might never be able to live in.

Anna found it difficult to navigate the system after the builder went into administration.



Cover - what and who should be covered?

We want to explore what types of building works should be covered by BII, and what should not. We also want to understand who cover should be available to, and when that cover should commence.

For example we want to know:

- If swimming pools and tennis courts should be covered.
- If multi-storey residential developments should also be covered.
- If deposits should be covered.
- If developers should be covered.
- If \$12,000 is the right minimum threshold for BII.
- At what point in the contracting or construction process should BII be required.

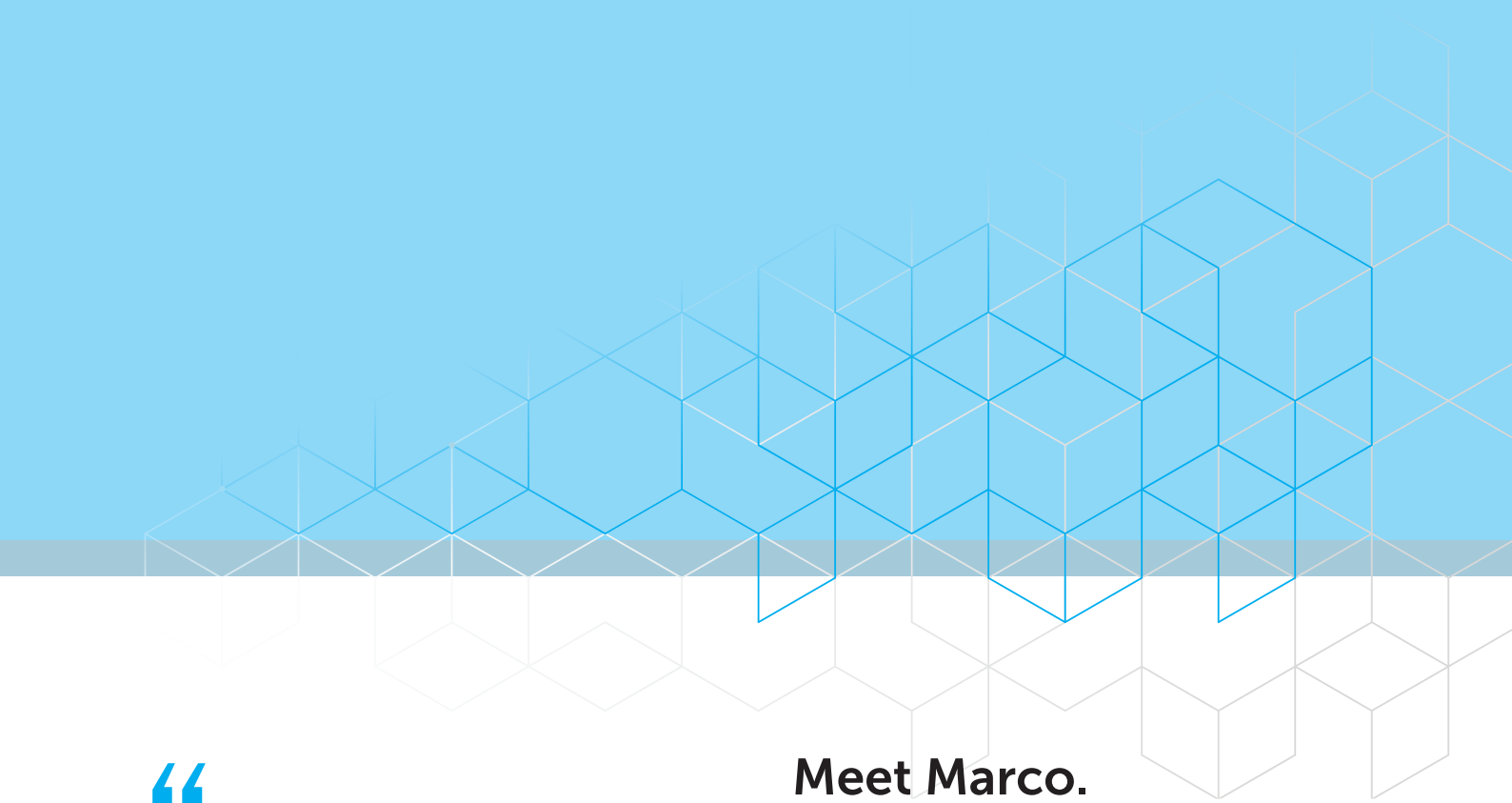
Scheme Benefits

We want to explore the levels of cover to understand if the current levels are adequate. We also want to explore how high value projects should be insured under BII.

For example we want to know:

- If the maximum insurance cover of \$150,000 is appropriate.
- Your views on adding categories to the insurance cover, such as a maximum amount of cover for deposits.
- If the maximum insurance cover should be a percentage of the contract.
- Your views on offering additional cover above the mandatory limit for higher value projects.

If you have feedback and ideas on cover or benefits, please click here to fill out the [survey](#), or send us a [submission](#).



“

“Clients get sent a certificate but usually aren’t aware of what BII is before then. Some people are more aware of the insurance now as it has been a very public issue lately.”

- MARCO

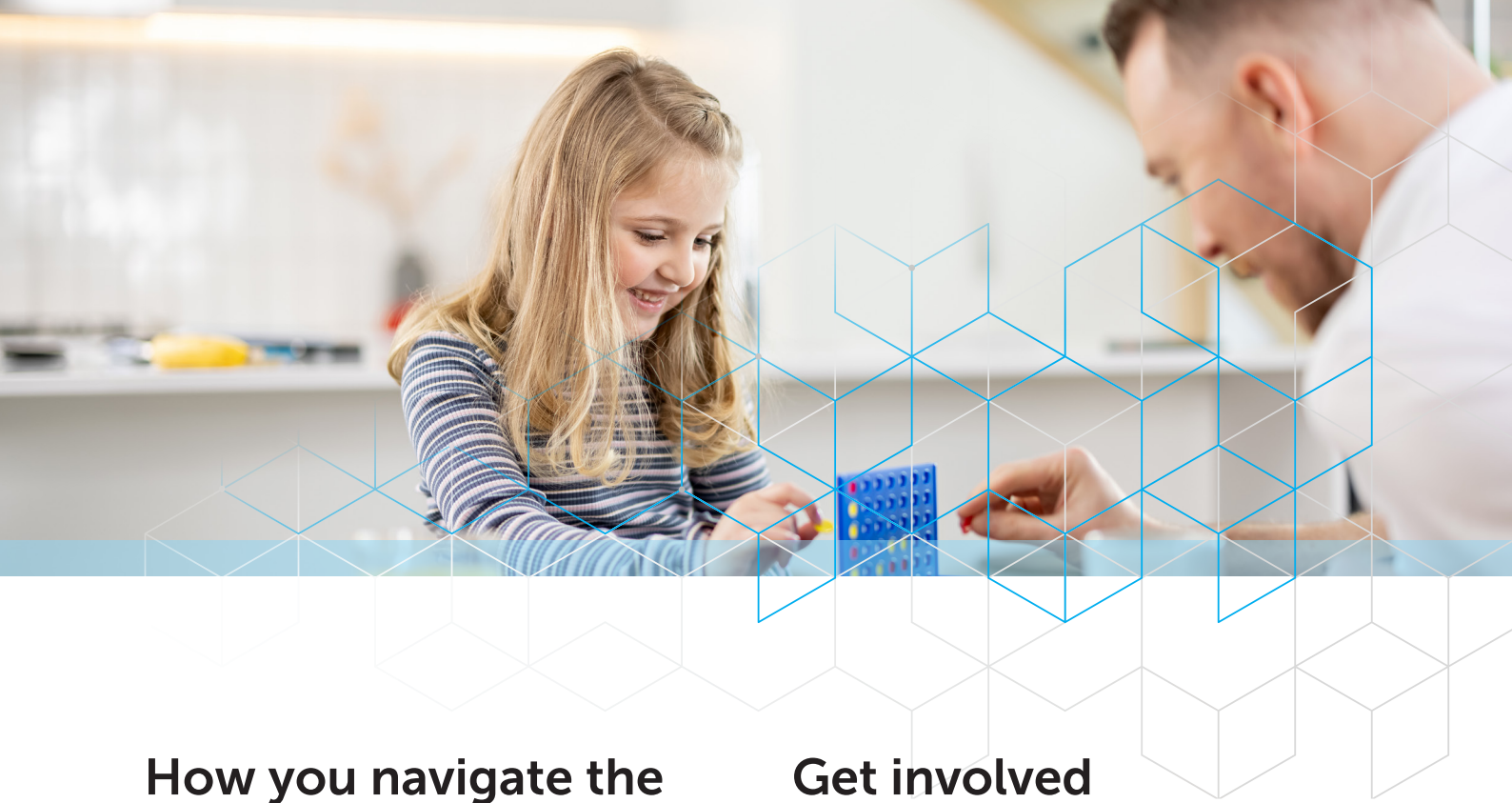
Meet Marco.

Marco owns and runs a medium size building company.

After many years having BII, Marco is interested in exploring ways to automate/simplify the system to make the review process simpler and certificates to be issued instantly, to support the workflow for builders and their clients. Education is also really important.

Marco would also like to see the \$150,000 limit changed to be a percentage of the contract price.

“The amount might be fine for a lower value build, but for a \$5m home, it wouldn’t cover much at all. Perhaps above a certain threshold it could be left up to the owner to decide if they want to be part of the scheme.”



How you navigate the system

How people interact with the system is also important to explore. We want to understand the opportunities for improvement that would make that interaction smoother and more efficient for all stakeholders.

For example we want to understand:

- Who should take out the insurance.
- What information is needed to support people interacting with the system.
- Which checks and balances should be in place to protect builders and homeowners.
- What challenges are faced by builders and brokers in the current process for assessing and reviewing eligibility limits.
- Your views on ways to improve the system and how it will impact a builder's ability to manage their building works pipeline.
- Your views on the current brokers/distribution system.

If you have feedback and ideas on navigation, please fill out the [survey](#), or send us a [submission](#).

Get involved

There are multiple ways to provide your feedback to the review:

- Read this guide and complete a [survey](#).
- If you want to tell us more, please send us a [submission](#).
- If you want to share your story, register for a one-on-one [interview](#).
- Register your interest in being part of a [workshop](#), where you will be part of a group and will together discuss your experiences and perspectives on BII.

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