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**From:** [REDACTED]  
**Sent:** Monday, 18 August 2025 8:56 AM  
**To:** CED, FOI  
**Subject:** Re: New FOI Request - Recent MBFF Annual Reports (within last 5 years)

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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Libby,  
Apologies. I just read through a couple of points at the end of my FOI request which I wish to amend. (In Background).

- The Internal Review was conducted by the very Directorate that **had not been** undertaking the Regulatory Oversight functions that they should have been conducting for the entirety of the MBFFs existence - some 22 years).
  - it was admitted to us during our meetings and correspondence with the Review Team that they, nor their predecessors, had been undertaking the required Regulatory Oversight Functions.
- [REDACTED] had input into this review, however many of [REDACTED] concerns were not included in the review - including:
  - the review team refused to look at the past performance of the MBFF to date as regulatory oversight review, and their adherence to the Approval Criteria, Prudential Standards, and the intent of the legislation, to ensure the Government would be in the best position to test and adjust the regulatory settings moving forward, and require the MBFF to adhere to these legislative and regulatory requirements. The review team pushed back on this aspect, stating that it was not within the terms of reference of the review, despite the large amount of data that we provided them that indicated that there were and still are many issues with the Fund and its management.
  - this area of review was also articulated out of bounds in the review's final report.
  - How can you conduct a review without back casting to ensure the right regulatory settings and oversight are set into the future?
- This is why I continue to seek access to these reports, as it has been demonstrated that the relevant Government area has no interest in undertaking their regulatory oversight role and have failed to hold the MBFF to account, or worse still, kept the apparent shortcomings hidden from the Public and their right to know what is happening with the fund that was specifically set up to protect them when they are at their most vulnerable and things have spectacularly failed them with their build. We are trying to hold the Govt and Minister to account.

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**From:** [REDACTED]  
**Sent:** Sunday, August 17, 2025 2:22:51 AM  
**To:** CED, FOI  
**Subject:** New FOI Request - Recent MBFF Annual Reports (within last 5 years)  
Libby,  
Separate an in addition to FOI 25-030 (the combined FOI Request)

## Request

I request the following Master Builder's Fidelity Fund (MBFF) Reports:

- *Master Builder's Fidelity Fund Financial Report for the Year Ended 30 Jun 2021*
- *Master Builder's Fidelity Fund Financial Report for the Year Ended 30 Jun 2022*
- *Master Builder's Fidelity Fund Financial Report for the Year Ended 30 Jun 2023*
- *Master Builder's Fidelity Fund Financial Report for the Year Ended 30 Jun 2024*
- *Master Builder's Fidelity Fund Financial Report for the Year Ended 30 Jun 2025 (may not have been submitted to the ACT Government at this time)*

### This request is on the basis that:

I have been going through the information that I have in detail from previous FOI Requests, the Ombudsman's interim and final decisions and recent ACT Insurance Authority's Annual Reports.

Due to the following reasons, I feel that there is new information articulated in the case below, that may now sway in favour of disclosure in the public interest for the recent MBFF reports (within 5yrs) to be released, either in full or in part. I therefore call upon the CED FOI team to determine a way forward:

- The ACT Insurance Authority (ACT IA) Annual Reports specifically identifies (in figures) a long list of Financial Reporting data for the QBE managed, territory indemnifying Residential Builders Warranty Insurance (BWI). (See all of the data points published in the Annual Reports in the attached document).
- The ACT IA Annual Reports (commencing from FY19-20) fully articulate the Financials of the QBE Insurance product, along with the broader Financials of the ACT IA. These are available to the public through the ACT IA's website, released within 90 days of the end of the previous FY (ie - by 30 Sep each year).
- The Master Builders Fidelity Fund (MBFF) Annual Reports (Financial Statements) continue to **not be publicly available** (obscured), nor is there any reporting of it tabled in the ACT LA.
  - The MBFF Annual Reports are only publicly available upon FOI Request (outside of 5yrs only - seen to be historical records) IAW the Attached Ombudsman's Decision.
- The decision not to approve access to all of the reports appears to have been a close call, noting that:
  - The Ombudsman's draft consideration (13 Sep 22 - preliminary view pending any further submissions) - identified that they should set aside EPSDD's decision, and substitute a decision that the applicant should be given access to the information at issue (ie. all of the available reports).
    - 109. *Based on the nature and currency of the financial information, and the nature of the residential building insurance market, I am not satisfied that disclosure of the information at issue would have a significant prejudicial effect on the business affairs of the MBFF.*
  - This was subsequently adjusted in the Ombudsman's decision and reasons for decision (17 Nov 22)
    - **Decision - 2.** *Under s 82(2)(b) of the FOI Act, I vary the decision of the Environment, Planning and Sustainable Development Directorate (EPSDD), dated 31 March 2022.*
    - **Conclusion -**
      - 133. *For the reasons set out above, I have decided to vary EPSDD's decision of 31 March 2022 under s 82(2)(b) of the FOI Act.*
      - 134. *Documents 8, 10 and 14 are contrary to the public interest information about should be withheld from release. (Within last 5yrs)*
      - 135. *The applicant is to be given access to documents 1, 3, 4 and 6. (Older docs)*
  - The change was based off multiple factors, mainly related to Factors favouring non-disclosure (Nature and detail of the information, Current or merely historical, Nature and custom of the particular market):
  - **Nature and detail of the information**
    - 108. *In response to the draft consideration, the MBFF submitted the MBFF financial reports contain information about certificate fees, expected and potential claims, and assets indicating the number of claims which might be expected as a result of the previous five years of issued Fidelity Fund Certificates.*
      - **Certificate fees.** There are no number identifying the specific amount charged per certificate, or the number of certificates issued in the MBFFs Annual Financial Statements - It only itemises the total amount in dollars collected as "contributions" Revenue (otherwise read premiums) for the FY.

- **The expected and potential claims and assets.** There are no number identifying the specific number of expected and potential claims and assets in the MBFFs Annual Financial Statements - It only itemises the total amount in dollars expected under each category for the FY.
  - Both of the above are materially no differently reported than is already reported publicly on the QBE BWI under the ACT IA Annual Reporting (their so called “competitor”).
  - They also both articulate the risks and other factors in a similar way, again one now publicly available in detail (QBE BWI), and the other not available at all (MBFF), except 5yrs or older when requested specifically by FOI.
- **109. I have considered this submission and I accept the MBFF financial reports contain detail about their financial position and business operations which attracts some sensitivity and could reasonably be expected to prejudice the business affairs of the MBFF if disclosed.**
  - The ACT IA are quite rightly publishing the QBE BWI, as the Government underwrites it and it is in the public’s interest to do so,
  - the ACT Government refuses to table in the ACT LA, or otherwise publish all of the MBFFs Annual Financial Reports, unless the non-recent ones have been specifically requested by FOI Request. This is despite:
    - The Government is the regulatory oversight body of the MBFF
    - It was intended for transparency purposes (and recorded in Hansards at the time of passing the Bill) that MBFF Annual Reporting would be tabled in the ACT LA each year, noting that the Fund was not registered nor had regulatory oversight by APRA, but rather the ACT Government was to provide that regulatory oversight function.
    - Recommendation 15 from the 2018-20 Building Quality Inquiry - The Committee recommends that the Minister responsible for Fidelity Funds established under the *Building Act 2004* provide audited accounts and an annual report to the Assembly on their performance, and
    - The Government’s own admission in their response that **a public report be provided annually on the general operation of insurers and fidelity funds**, including an overview of the numbers of claims and amounts paid, and compliance with reporting obligations.
  - Publishing one (QBE’s BWI) but not the other (MBFF) gives the MBFF a so called “competitive advantage” over the QBE’s BWI, rather than being on an even playing field.
- **Current or merely historical**
  - **113. In response to the draft consideration, the MBFF submitted:**
    - **In an extraordinarily hard commercial environment, all of the above information extending back at least five years, from a perspective of “trading history”, is extremely sensitive and might cause extreme commercial harm if released.**
  - **114. I have considered this submission and ultimately decided in agreement with it. I consider the financial reports of the MBFF which are over five years old are merely historical as they are unlikely to reveal any relevant information about the business affairs of the MBFF.**
  - **115. I consider that the financial reports which are less than five years old are likely to contain information that is current, where disclosure is more likely to reveal sensitive financial information of the MBFF.**
    - The information in MBFF’s Annual Financial Reports is not substantially different to the information provided publicly on the QBE’s BWI in the ACT IA Annual Reports. This is especially noting that the ACT Govt (through ACT IA) bears the risk for the QBE BWI, and is therefore articulated both specifically and more broadly across the IA within the ACT IA Annual Reports.
    - Publishing one (QBE’s BWI) but not the other (MBFF) gives the MBFF a so called “competitive advantage” over the QBE’s BWI. Having all of the MBFFs Annual Reports being available (not just older than 5yrs) will actually even playing field, and more importantly shine a light on where there may be a lack of regulatory oversight

occurring in the ACT Government, or persuade the Government to undertake their due diligence in this regard.

○ **Nature and custom of the particular market**

- 116. *In submissions to the Office the MBFF said that:*
  - *Until 2019, a complying home warranty insurance policy or fidelity fund certificate was only available from two providers in the ACT – the MBFF and QBE. In 2019, QBE advised the ACT Government that they were intending to withdraw from providing home warranty insurance in the ACT. It is the understanding of the MBFF that following discussions, the ACT Government determined it appropriate to underwrite the policies subsequently issued by QBE. From a consumer or builder’s perspective, very little changed as they continued to deal directly with QBE. However, from the perspective of the MBFF, the ACT Government, throughout their management of the home warranty insurance scheme, became a competitor of the MBFF. The market in the ACT remains a duopoly as of March 2022...*
  - *As with any duopoly market, it remains a concern to the MBFF that the market remain fair and equitable.*
  - *It is therefore not at all appropriate that one participant in the duopoly, being the MBFF, be required to provide all Financial Reports...to the public at large....*
- **It is indeed not appropriate - therefore the Government should also be tabling the MBFFs Annual Reports, or at least make them publicly available, thus making them both available.**
- 117. *The ACT Insurance Authority 2020-2021 annual report explains:*
  - *Commencing 12 March 2020, the Territory entered into a 3-year indemnity agreement with QBE to continue providing Builders Warranty Insurance to ACT builders with the Territory indemnifying QBE in respect of any claim losses. The Authority is currently administering the financial transactions relating to this agreement on behalf of the Territory. Under the agreement, the Authority receives premium revenue from QBE for any new policies written, QBE is paid a commission and receives fees for the administration of the claims management services it continues to provide.*
- 121. *I note that the financial reports of QBE are publicly available. The ACT Insurance Authority also publishes Builders Warranty Insurance financial performance information for transparency as the indemnity covers non-ACT government entities.*
  - **Please see the attached comparison document in relation to the BWI extensive data points reported on under the ACT IA Annual Reports versus the MBFF annual reporting.**
- 122. *In response to the draft consideration, the EPSDD submitted:*
  - *While QBE publishes annual reports for their broader business, these reports do not contain specific details relevant to their ACT residential building insurance product...concerned about the potential competitive disadvantage that would be placed on the MBFF by the public release of their annual reporting and financial information as the same information is not made publicly available for QBE insurance under their reporting requirements.*
  - **Annual Financial Reporting.** Under the Building Act legislation - Div 6.3 Residential Building Insurance:
    - **S95 - Duties of insurers.** The Insurance business must abide by the Insurance Act 1973 (Cwlth). That includes the relevant reporting requirements IAW the Insurance Prudential Standards.
    - **S103 - Prudential Standards** are determined by the Minister and must be complied with by the approved scheme. The Current Prudential Standards are set out under Disallowable Instrument: 2005-250 - Building (Prudential Standards) Determinations 2005.
      - Due to the ACT Government now underwriting the QBE BWI (as at 12 Mar 20), QBE is required to report financials to the ACT

Government on the BWI. The ACT IA also must report these, alongside its risks in the underwriting and administrative arrangements it has with QBE in relation to the BWI scheme for transparency purposes

- The Annual Reports for MBFF (FY18-19) and ACT IA reported BWI (FY23-24) have been compared and I have provided a summary (see attached).
- There is not a substantive difference in the reporting of the two separate reports, one currently publicly available, however its equivalent is not.
- **123. I have considered this submission and I accept the release of financial information of a single competitor in a commercial environment involving only two entities would give the other a competitive advantage.**
  - **The competitive advantage currently sits with MBFF, noting that their recent Annual Reports (within last 5yrs) are not publicly available, when the other Insurance scheme's Annual Financial information is.**
- *124. I have decided that this factor applies in relation to the MBFF financial reports. However, I attribute minor weight to documents 1, 3, 4 and 6 because I do not consider disclosure would reveal current financial information which would a detrimental effect on the MBFF. (Outside of last 5yrs)*
- *125. In respect of documents 8, 10 and 14 I afford significant weight to this factor, as I conclude that it is reasonable to expect disclosure of sensitive financial information of the MBFF would prejudice the business affairs of the MBFF to a significant degree. (Within last 5yrs).*
  - The information in the MBFF Annual Financial Reports is no more sensitive than the information made publicly available by their so-called "competitor" under the ACT IA Annual Reports done for transparency purposes, noting the ACT Government's underwriting arrangement. (See attached comparison document).
  - The ACT IA Annual Reports include the Builders Warranty Insurance financial performance for the reporting period ending 30 June each FY, and is included for transparency of this function due to the indemnity covering non-ACT Government entities.
- **Balancing the factors**
  - *132. I am satisfied documents 8, 10 and 14 are contrary to the public interest information. This is because I attribute minor weight to the factor favouring disclosure and factored in the pro-disclosure bias in the FOI Act, whereas I have attributed significant weight to the factor favouring non-disclosure.*
- **With the evidence above, along with the Background provided below, is this enough to shift the calculus and weigh in favour of disclosure, factoring in the pro-disclosure bias in the FOI Act?**

## Background

*Ombudsman's varied Interim Decision (dated 13 Sep 22 - attached)*

*Ombudsman's varied Decision (dated 17 Nov 22 - attached)*

*ACT Insurance Authority Annual Report 2020-21*

- *ACT Insurance Authority Annual Report 2021-22*

*ACT Insurance Authority Annual Report 2022-23*

*ACT Insurance Authority Annual Report 2023-24*

*01 – Data from Annual Reports Comparison – ACTIA-QBE & MBFF*

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- I have had multiple meetings with the Previous Minister for Building and Sustainable Development, other MLAs and EPSDD.
- [REDACTED] to obtain information in my pursuit to hold the ACT Government to account with regards undertaking their responsibilities as the Master Builder’s Fidelity Fund Regulator (in the absence of APRA).
- I requested an Inquiry to be undertaken by the then Standing Committee on Planning Transport and City Services. This was referred to the responsible Directorate and an “Internal Review into Building Warranty Insurance” was conducted by that Directorate as a result.
  - The Internal Review was conducted by the very Directorate that **had not been** undertaking the Regulatory Oversight functions that they should have been conducting for the entirety of the MBFFs existence - some 22 years).
    - The lack of performance of the Regulatory Oversight Functions was admitted to us during our meetings and correspondence with the Review Team.
  - [REDACTED] input into this review, however many of [REDACTED] concerns were not included in the review - including:
    - In absence of it having been done over the last 22yrs, a regulatory oversight review of the performance of the MBFF to date, and their adherence to the Approval Criteria, Prudential Standards, and the intent of the legislation.
    - It was not until we kept the pressure on the Review Team that the Directorate obtained copies of:
      - The Trust Deed (still in original form from 2002)
      - The Compliance Plan (not updated since original)
      - The Contingency Plan (not updated since original)
      - Many of the Annual Reports going back to 2003
      - Many of the reportable Request (Claim) Statistics required under the Prudential Standards (these are still not complete)
    - How can you undertake your Regulatory Oversight Functions without these documents?
  - We were pleased however, that the legislation has since been updated for the first time to increase to the Minimum Insurable Amount (from \$85,000 to \$200,000), and there has finally been a Consumer Representative appointed.

Regards,

[REDACTED]