

# Domestic Construction

## INSURANCE POLICY

### Residential Builders' Western Australia

POLICY





# Policy Wording

## 1 Residential builders warranty insurance

Residential builders warranty insurance protects the person on whose behalf work is to be done and the subsequent homeowners. The policy covers loss or damage resulting from the non-completion of the work or breach of statutory warranty because of:

- Death; or
- Disappearance; or
- Insolvency

of the builder.

A builder takes out this insurance policy, but the beneficiary is the homeowner or subsequent homeowner.

The builder must provide a Residential Builders Warranty Certificate to the homeowners for each job they undertake. In addition, a copy of the Residential Builders Warranty Certificate will be provided to the builder/contractor and the local authority/council.

A copy of this policy wording is held by the builder and a copy is also provided to each homeowner with the Certificate.

## 2 The insurer

### QBE Insurance (Australia) Limited

ABN: 78 003 191 035

82 Pitt Street

SYDNEY NSW 2000

## 3 Your policy terms and conditions

- 3.1 Some words in this **policy** have special meaning. Those words appear in the **policy** in **bold**. What they mean is set out in section 16.

## 4 Who is covered by this policy?

- 4.1 **You** are the person covered under this **policy**. **We** do not cover anyone except **you**.

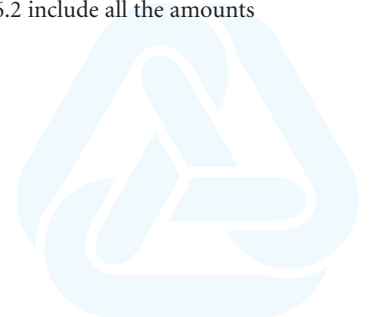
## 5 What is covered by this policy?

- 5.1 **We** will pay for the following sustained by **you**:
- 5.1.1 loss or damage resulting from non-completion of the **work** because of the **insolvency**, death or **disappearance** of the **builder** or **speculative builder**;
- 5.1.2 loss or damage resulting from loss of a deposit because of the **insolvency**, death or **disappearance** of the **builder** or **speculative builder**; or

- 5.1.3 loss or damage (including consequential loss) arising from the inability to take advantage of an entitlement to, or to enforce or recover under, a **remedy** for the **work** but only if **you** cannot recover compensation from the **builder** or **speculative builder** or have the **builder** or **speculative builder** rectify the loss or damage because of the **insolvency**, death or **disappearance** of the **builder** or **speculative builder**.

## 6 How much will we pay?

- 6.1 **We** may do two things, at **our** option, when **we** pay a claim under this **policy**. **We** will either make good the loss or damage or pay the amount of that loss or damage.
- 6.2 However, the following limitations apply to what **we** will pay:
- 6.2.1 **We** will not pay:
- (a) the first \$500 of each claim in relation to each **dwelling** in each **building** insured under this **policy**.
  - (b) more than \$13,000 (or any other minimum amount prescribed by the **Act**) for loss of a deposit.
- 6.2.2 **We** will not pay more than \$100,000 in total (or such other minimum amount as may be prescribed by the **Act**) or the **cost of the work** (whichever is the lesser), in the aggregate for all claims under this **policy** for each **dwelling**.
- 6.2.3 If the **work** is carried out or to be carried out on land in a plan of subdivision containing common property, and the loss or damage relates to common property, **we** will not pay more to **you** for that claim than the amount calculated by dividing the amount payable for that claim by the number of **dwellings** in the **building**.
- 6.3 The limitations in clause 6.2 include all the amounts payable under clause 5.1.



## 7 What we don't pay

### 7.1 We will not pay under this policy:

- 7.1.1 under clauses 5.1.1 or 5.1.2 for **work** done by the **speculative builder**.
- 7.1.2 for claims in the nature of liquidated damages for delay or damages for delay. However, this limitation does not extend to any increase in rectification costs caused by the passing of time.
- 7.1.3 for loss or damage that could reasonably be expected to result from fair wear and tear of the **work**, or from **your** failure to maintain the **work**.
- 7.1.4 in relation to a defect in, or repair of damage to the non-residential part of a **building** that supports or gives access to the residential part, unless it is a defect or damage that adversely affects the structure of the residential part or the access to it.
- 7.1.5 for loss or damage caused by the normal drying out of the **building** if the **builder** or **speculative builder** has taken all reasonable precautions in allowing for the normal drying out when carrying out the **work**.
- 7.1.6 for damage due to or made worse by the failure by **you** to take reasonable and timely action to minimise the damage.
- 7.1.7 in relation to an appliance or apparatus (such as a dishwasher or air conditioning unit) if the claim is made after the expiry of the manufacturer's warranty period for the appliance or apparatus concerned, or, if there is no warranty period, outside the reasonable lifetime of the appliance or apparatus.
- 7.1.8 in relation to damage to **work** or materials that occurs outside the reasonable life time of that **work** or materials or the manufacturer's warranty period for the materials.
- 7.1.9 for legal liability resulting from any event unless expressly insured under this **policy**.
- 7.1.10 in relation to an interest in the **building** that is not **your** interest.
- 7.1.11 in relation to a defect due to a faulty design provided by **you** or a previous owner (other than the **speculative builder**).
- 7.1.12 for a deposit, progress or other payment to the extent that it exceeds the amount specified for such a payment in section 10 of the **Act**.
- 7.1.13 for loss, damage or defects due to:
  - (a) an act, error or omission of someone other than the **builder** or **speculative builder** or someone contracted by them.
  - (b) faulty or unsuitable materials supplied by **you** or supplied by a **developer**.
- 7.1.14 arising from, connected with or relating to personal injury, death, disease or illness of a person or for injury to or impairment of a person's mental condition.
- 7.1.15 other than in relation to the cover provided in clause 5.1.3, for consequential loss of any kind, including loss of rent or other income, loss of value, loss of opportunity, inconvenience or distress, unless expressly insured under this **policy**.
- 7.1.16 for any claims connected with or relating to:
  - (a) war, invasion, acts of foreign enemies, hostilities or war like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority.
  - (b) fraud or dishonest conduct of any kind by **you** or a **developer**.
  - (c) any **terrorism**.
  - (d) radioactivity or the use, existence or escape of any nuclear fuel, nuclear material or nuclear waste or action of nuclear fission or fusion.
  - (e) the existence or use of asbestos products and/or products containing asbestos in the **building** or on or in the land on which the **building** is built.

- (f) mechanical or electrical breakdown, not attributable to the workmanship of, or the installation by the **builder** or **speculative builder**.
- (g) **your** failure to maintain appropriate protection against pest infestation or exposure to natural timbers.
- (h) the action of vermin, termites, moths or other insects, unless, and to the extent that, the work involved the treatment of the termites, moths or other insects or the prevention of the action of the vermin, termites, moths or other insects.

- 7.1.17 for loss, claim, cost, expense or obligation of any kind directly or indirectly arising from or relating to mould, fungus, mildew or spores unless, and to the extent that, the **work** involved the treatment of mould, fungus, mildew or spores or the prevention of mould, fungus, mildew or spores.
- 7.1.18 for claims insured under another policy of insurance issued under or pursuant to the **Act**.
- 7.1.19 for any claims that were allowed to be excluded by the **Act** as at the date the **certificate of insurance** was issued.

## 8 How long are you covered for?

- 8.1 This **policy** covers claims in respect of **work** made within the period of 6 years from the **completion** of the **work**.

## 9 How long do you have to claim?

- 9.1 **You** must notify **us** of a claim for loss or damage resulting from all causes (other than incomplete **work**) within a reasonable time of when **you** first became aware, or when **you** ought reasonably have become aware, of the fact or circumstance giving rise to the claim.
- 9.2 In any event, **you** must notify **us** of a claim within the period of 6 years from the **completion** of the **work**.
- 9.3 If **you** notify **us** of a defect, **you** are taken to have given notice of every defect to which the defect is directly or indirectly related, whether or not the claim in respect of the defect that was actually notified has been settled.

## 10 Making a claim

- 10.1 **You** must make a claim by completing **our** claim form. The claim form is available on **our** website [www.qbe.com](http://www.qbe.com).
- 10.2 In answering any questions **you** must be honest and tell **us** everything **you** know. **We** will use this information to decide whether to pay a claim.
- 10.3 **You** must give **us** any assistance, information or documents which **we** request. This includes giving **us**, **our** nominated builder and **your** builder, reasonable access to inspect, rectify or complete the **work** (unless **you** have reasonable grounds to refuse access).
- 10.4 **You** must not make any admissions, offer, promise or payment in connection with any claim.
- 10.5 **You** must comply with **your** obligations under the **policy**, otherwise **we** may not have to pay **your** claim(s).
- 10.6 **We** will acknowledge receipt of **your** claim notification within 5 business days. At this time **we** will confirm that **we** have all the required information or **we** will tell **you** of any other information needed to enable **us** to assess **your** claim.
- 10.7 **We** will notify **you** within 30 business days of receiving all the information necessary to assess **your** claim, if **we** accept that the builder is dead, has **disappeared** or is **insolvent**.

## 11 Failures by the builder

- 11.1 **We** will not either refuse to pay **you** for a claim under this **policy** or reduce any payment under this **policy** on the ground that the **builder** or **speculative builder**:
  - 11.1.1 failed to comply with the duty of disclosure; or
  - 11.1.2 made misrepresentations to **us**.
- 11.2 **We** may, however, recover from the **builder** or **speculative builder** any amount **we** pay under this **policy** in those circumstances.



## 12 Other important matters

### Enquiries and complaints

- 12.1** We believe that it is important that the good relationship we have with our clients is not damaged through any misunderstanding or dispute that may arise from our products or services.
- 12.2** Therefore, if you are:
- 12.2.1 uncertain about any aspect of your insurance cover or any claim you have made on this policy; or
  - 12.2.2 concerned with delays in processing; or
  - 12.2.3 dissatisfied with any response from us or our agents including loss adjusters or investigators;
- please make your concerns known to the staff in our Branch Office, in the first instance. Our Branch Staff have the knowledge and skills to resolve most misunderstandings that arise.
- 12.3** However, if any issue or complaint remains unresolved to your satisfaction, the matter can be referred to our Internal Dispute Resolution Panel. This Panel comprises senior managers who have the authority to review your dispute and attempt to reach an amicable outcome with you. It is our aim to respond to your complaint within 10 working days. If our internal dispute resolution process fails to satisfy your concerns, you are still able to use the options available to you through the normal legal process.
- 12.4** Our contact details are on page three of this policy.

### Our rights and obligations

- 12.5** We may, at our discretion, fulfil our obligations under this policy by either engaging or paying a builder to repair or rectify loss or damage or paying you the cost to you of doing so.

### Loss prevention

- 12.6** You must take all reasonable steps to prevent and/or minimise any act, error or omission or event which might cause or contribute to a claim under this policy.

### Recovery from others

- 12.7** If we pay a claim, we are entitled to be subrogated to your rights to recover against any other party (including the builder or speculative builder, or a contractor or supplier or a liquidator or administrator or the estate of the builder or speculative builder) to the extent of the amount paid by us.
- 12.8** You must not limit or exclude your rights against a party from whom you might otherwise be able to recover in respect of a loss or damage. If you do, our liability to you is reduced to the extent that we can no longer recover from that other party as a result of your actions.
- 12.9** You must provide us with reasonable assistance to recover damages or contribution from any other person.

### Goods and services tax

- 12.10** Despite the other provisions of this policy, our liability to you will be calculated taking into account any input tax credit to which you would have been entitled to for any acquisition which is relevant to your claim.
- 12.11** You must tell us whether you were entitled to claim an input tax credit on the premium at the time of making a claim under the policy. If you do not provide us with this information we may deduct up to 1/11<sup>th</sup> of the amount otherwise payable in settlement of your claim.
- 12.12** If you are registered for GST, this represents the reduction in the cash settlement for claims that would apply based on your entitlement to claim an input tax credit on the replacement goods or services.
- 12.13** If you were not entitled to an input tax credit on the premium, this will equal the GST credit to which we would have been entitled if you had disclosed your entitlement.
- 12.14** If you are only entitled to a partial input tax credit on the premium, this represents the reduction in the cash settlement for claims that would apply based on your entitlement to claim an input tax credit on the replacement goods or services plus the GST credit to which we may have been entitled if you had disclosed your entitlement.

**12.15** Unless stated otherwise, all amounts payable by **us** under this **policy** and all **policy** limits are inclusive of GST.

**12.16** 'GST', 'input tax credit' and 'acquisition' have the meaning given under the A New Tax System (Goods and Services Tax) Act.

#### Application of laws

**12.17** This **policy** is subject to the law of Western Australia. The law of Western Australia includes Commonwealth legislation such as the Insurance Contracts Act. A reference to any legislation is a reference to the legislation as amended from time to time.

#### 13 Conflict with the Act

**13.1** This **policy** is intended to comply with the requirements set out under the **Act**. However, if this **policy** conflicts with, or is inconsistent with the **Act**, the **policy** must be read and enforceable as if it complies with the **Act**.

#### 14 The builder's duty of disclosure

**14.1** Before a person enters into a contract of general insurance with an insurer, that person has a duty, under the Insurance Contracts Act, to disclose to the insurer every matter they know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of insurance and, if so, on what terms.

**14.2** You, the **builder** or **speculative builder**, have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

**14.3** Your duty however does not require disclosure of any matter:

14.3.1 that diminishes the risk to be undertaken by the insurer.

14.3.2 that is of common knowledge.

14.3.3 that your insurer knows or, in the ordinary course of its business, ought to know.

14.3.4 as to which compliance with your duty is waived by the insurer.

#### 15 Privacy promise

**15.1** As this **policy** is entered into by a builder and the beneficiary will be the homeowner(s), this privacy promise will apply to both those parties as appropriate. The builder will need to provide information to enable the policy to be issued and information about the homeowner will be obtained to enable the **certificate of insurance** to be issued. In the event of a claim, further information may be required about either or both parties.

**15.2** **We** are bound by the General Insurance Information Privacy Code, an industry code approved under the Privacy Act 1988 (Cth). **We** are committed to safeguarding **your** privacy and the confidentiality of **your** personal information. **We** will only collect personal information from **you** or about **you**, or the builder, which is relevant to this insurance policy, assessing and processing claims and use it in a way **you** would reasonably expect.

**15.3** The personal information collected may include personal details, construction details financial information and arrangements.

**15.4** Without this personal information **we** may not be able to issue insurance cover or process claims.

**15.5** **We**, or **our** authorised agent may disclose personal information to:

15.5.1 a financial institution, credit provider, credit/trade reference company, **your** major creditors including building material suppliers, accountant or other insurer (for the purpose of assessing the builder prior to a **policy** being issued);

15.5.2 an investigator, assessor or State or Federal authority (for the purpose of investigating or assessing an application or a claim).

15.5.3 a lawyer or recovery agent (for the purpose of defending an action or recovering **our** costs).

15.5.4 another insurer (for the purpose of seeking recovery or to assist them to assess insurance risk) or a reinsurer who may be located overseas.

15.5.5 any insurance reference bureau (for the purpose of recording any claims made upon **us** under this **policy**).

- 15.6** Personal information may also be obtained from the above people or organisations.
- 15.7** In addition, **we** will:
- 15.7.1 give **you** the opportunity to correct **your** personal information, or obtain access to it (some restrictions and a fee may apply).
- 15.7.2 provide **our** dispute resolution procedures to **you** in respect of any complaint **you** may have regarding **your** personal information.
- 15.8** Further information can be obtained by contacting **our** Compliance Manager by telephone (02) 9375 4656 or by fax (02) 9221 1330 or email to compliance.manager@qbe.com.

## 16 Words with special meanings

- 16.1** The following definitions apply in this **policy**:

### Act

The Home Building Contracts Act 1991 and the Home Building Contracts Regulations 1992. The regulations when referred to separately are referred to as the **regulations**.

### Associated work

Includes site works, swimming pools, spas, pergolas, carports, garages, sheds, fencing, retaining walls, paving, driveways, landscaping and other like works.

### Builder

The builder registered under the Builders Registration Act 1939 and named in the **certificate of insurance** as the builder.

For the purposes of the cover **we** give in clauses 5.1, builder includes any person contracted by the **builder** to perform the **work**.

### Building

The **dwelling(s)** described in the **certificate of insurance**.

### Building contract

The **residential building contract** between **you** or a **developer** and the **builder** or between **you** and a **speculative builder** pursuant to which **residential building work** is done or is to be done in connection with the **building**.

### Certificate of insurance

The certificate the **we** produce that includes important information and details about this **policy**. The **certificate of insurance** will be evidence that **we** have accepted cover under this **policy**.

### Completion (of the work)

The time where the **work** is completed except for any omissions or defects which do not prevent the **work** from being reasonably capable of being used for its intended purpose.

### Construct

In relation to a **dwelling** means perform any work commencing with the preparation of the site and ending with the completion of the **dwelling** (including any **associated work**) and includes:

- painting where that is part of the work included in a contract; and
- the provision of lighting, heating, water supply, drainage, sewerage, gas and other like services.

### Cost of the work

- In the case of **work** performed under a **building contract**, the amount payable under the **building contract**.
- In the case of **work** not performed under a **building contract**, the estimated cost of construction specified in the application for a building licence under part XV of the Local Government (Miscellaneous Provisions) Act 1960.
- In the case of **work** that is placing a **dwelling** on land, the cost of:
  - placing the **dwelling** on the land including siting, stumping and any other work in connection with that placement; and
  - any residential building work to the **dwelling** after placement.
- In the case of **work** that is placing a transportable **dwelling** on land for the first time after construction, the cost of:
  - the **dwelling**;
  - placing the **dwelling** on the land including siting, stumping and any other work in connection with that placement; and
  - any **residential building work** to the **dwelling** after placement.

### Cost plus contract

A contract under which a builder is entitled to recover an amount excluding prime cost items and provisional sums that is not determined at the time when the contract is entered into, being an amount that includes the actual cost to be incurred in:

- acquiring materials; and
- performing work,

specified in the contract, together with an additional amount that comprises either:

- a sum calculated as a percentage of that cost; or
- a specified sum,

or both.

### Developer

Any means a person for whom **residential building work** is performed under:

- a **residential building work contract**; or
- a **cost plus contract** between a builder and another person for the performance by the builder of **residential building work** but does not include a contract for the performance by a builder of **residential building work** for another builder who is in turn obliged to perform the work under another contract;

in relation to 4 or more **dwellings**.

### Disappearance

Includes cannot be found, after due search and enquiry.

### Dwelling

A building occupied or intended for occupation solely or mainly as a place of residence.

### Insolvency

- In relation to an individual, that the individual is insolvent under administration (within the meaning of the Corporations Act 2001).
- In relation to a corporation, that the corporation is an externally-administered body corporate administration (within the meaning of the Corporations Act 2001).

### Policy

This policy wording, any endorsements and the **certificate of insurance**.

### Residential building work

The whole or part of the work of:

- **constructing** or **re-constructing** a **dwelling** including an existing **dwelling** and/or **strata-titled dwelling**;
- placing a **dwelling** on land;
- altering, improving or repairing a **dwelling**, including a **strata-titled dwelling**; or
- **constructing** or carrying out any **associated work** in connection with:
  - **constructing** or **re-constructing** a **dwelling** including an existing **dwelling** and/or **strata-titled dwelling**;
  - placing a **dwelling** on land; or
  - an existing **dwelling**, including a **strata-titled dwelling**.
- when it is to be performed under a contract which also includes constructing or re-constructing of an existing **dwelling** or **strata-title dwelling**, placing a **dwelling** on land or altering, improving or repairing a **dwelling** or a **strata-titled dwelling** or it is **associated work** of the kind prescribed in the Act.

### Remedy

An order for remedy under section 12A of the Builders' Registration Act 1939.

### Residential building work contract

A contract for the performance of **residential building work**, but does not include:

- a **cost plus contract**; or
- a contract for the performance of **residential building work** for a builder who is in turn obliged to perform the work under another contract.

### Speculative builder

An individual or corporation who performs **residential building work** on their own land, is registered under the Builders Registration Act 1939 and named on the **certificate of insurance** as a speculative builder.

For the purposes of the cover we give in clause 5.1, speculative builder includes any person contracted by the **speculative builder** to perform the work.

### Strata-titled dwelling

A building or part of a building, occupied or intended for occupation solely or mainly as a place of residence, that is erected on a lot in respect of which a plan is registered under the Strata Titles Act 1985.

### Terrorism

Any act that, having regard to the nature of the act, and the context in which it was done, is reasonable to characterise as an act of terrorism. An act can only be characterised an act or terrorism if it:

- causes or threatens to cause death, personal injury or damage to property;
- is designed to influence a government or to intimidate the public or a section of the public; or
- is carried out for the purpose of advancing a political, religious, ideological, ethnic or similar cause.

Any lawful activity or industrial action cannot be characterised as an act of terrorism.

### We/our/us

QBE Insurance (Australia) Limited ABN 78 003 191 035.

### Work

**Residential building work** which is done or is to be done by the **builder** under the **building contract**, by the **speculative builder** to the **building**.

### You/your

The person on whose behalf the **work** is done or is to be done, and any successor in title to that person.

You/your does not include:

- Any **developer**, but only for claims that relate to non-completion of **residential building work** or loss of deposit;
- The **speculative builder**;
- The **builder**;
- A person who does **residential building work** other than under a contract;
- The holder of a **builder's** registration who and that carried out the **work**; or
- Any related bodies corporate of those above, within the meaning of section 50 of the Corporations Act 2001.

**16.2** A reference to any legislation is a reference to the legislation as amended from time to time.



