

Domestic Construction

INSURANCE POLICY

Owner Builders'
Western Australia

POLICY



Policy Wording

1 Owner builders warranty insurance

Owner builders warranty insurance protects the person who purchases a house built by an owner builder and the subsequent homeowners. The policy covers loss or damage resulting from breach of statutory warranty because of:

- Death; or
- Disappearance; or
- Insolvency

of the owner builder.

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

The owner must provide an Owner Builders Warranty Certificate to the beneficiary when they sell the home. In addition, a copy of the Owner Builders Warranty Certificate will be provided to the owner builder and the local authority/council.

A copy of this policy wording is held by the owner 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 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 **owner builder** or have the **owner builder** rectify the loss or damage because of the **insolvency**, death or **disappearance** of the **owner 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 the first \$500 of each claim in relation to each **dwelling** in each building insured under this policy.
- 6.2.2 **We** will not pay more than \$100,000 in total (or such other minimum amount as may be prescribed from time to time 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 1.1 and the amount in 6.2.1.

7 What we don't pay

- 7.1 **We** will not pay under this **policy**:
- 7.1.1 in relation to visible defects in the **work** of which **you** should reasonably been aware when acquiring the **building**, including any defect or incomplete **work** that is referred to in any report required by **us** before entering into this **policy**.
- 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 or liquidated damages the subject of a **remedy**.
- 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 **owner 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 is made 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 **owner builder**).
- 7.1.12 for loss, damage or defects due to:
- an act, error or omission of someone other than the **owner builder** or someone contracted by them.
 - faulty or unsuitable materials supplied by **you**.
- 7.1.13 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.
- 7.1.14 for any claims connected with or relating to:
- 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.
 - fraud or dishonest conduct of any kind by **you**.
 - any **terrorism**.
 - radioactivity or the use, existence or escape of any nuclear fuel, nuclear material or nuclear waste or action of nuclear fission or fusion.
 - 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.
 - mechanical or electrical breakdown, not attributable to the workmanship of, or the installation by the owner **builder**.
 - your** failure to maintain appropriate protection against pest infestation or exposure to natural timbers.
 - 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.
- 7.1.15 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.
- 7.1.16 for claims insured under another policy of insurance issued under or pursuant to the **Act**.
- 7.1.17 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 7 years from the date the **owner builder** is issued with a building licence for 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 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.
- 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 owner 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 **owner 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 **owner 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 [insert] 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 **owner builder**, or a contractor or supplier or a liquidator or administrator or the estate of the **owner**) 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 1/11th 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 owner 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 **owner 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 an owner 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.

Building

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

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.

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

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.

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.

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).

Owner builder

The owner builder as that term is defined in section 25A of the **Act**, named in the **certificate of insurance** as the owner builder and to which section 25F of the **Act** applies.

For the purposes of the cover we give in clauses 5, builder includes any person contracted by the owner builder to perform the **work**.

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**.

Remedy

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

Sale contract

A contract entered into by the **owner builder** for the sale of land on which the **building** is constructed or to sell or dispose of the **building** and to which section 25F of the **Act** applies.

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 **owner builder** to the **building** before the **sale contract** was entered into.

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:

- The **owner 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.