

# Home Warranty Insurance Residential Building Work Owner Builder (NSW)



## SECTION 1 - INTRODUCTION

This Home Warranty Insurance policy is underwritten by Lumley General Insurance Limited. ABN 24 000 036 279 and consists of this policy wording and a Certificate of Insurance. They are important documents and provide proof of contract between You and Us. Please keep them in a safe place.

This policy is issued in compliance with the Act and if any term of the policy conflicts or is inconsistent with the Act then the policy must be read and be enforceable as if it complies with the Act.

Please read the policy and Certificate of Insurance carefully and together to ensure that You fully understand them and that they provide You with the protection that You need.

This policy is issued to comply with section 95 of the Act. The cover provided by the policy extends, subject to the terms, conditions and exclusions of the policy, to Owner Builder Works to which section 95 of the Act requires. If this policy has been provided to you in error insofar as the Owner Builder Works performed, arranged, supplied, managed or supervised are not those for which section 95 of the Act applies, You should contact Us.

The policy is for the period of insurance and will not be renewed and is not of a type that is renewable nor cancellable.

If it is not completely in accordance with Your intentions or You are in doubt as to the meaning or effect of the wording, please contact Your insurance broker, legal representative or Us immediately for clarification.

Some of the words in the policy have specific meanings. You should refer to Section 3 for the definitions of those words.

## SECTION 2 – IMPORTANT NOTICES

### 2.1 Your Duty of Disclosure

We rely on the truth of what the Owner Builder tells Us in providing You with this cover and separately what

You tell Us when and if You make a Claim. We will not avoid Your Claim or refuse to make or limit payment under Your Claim solely on the grounds that the Owner Builder:

- (i) breached any duty of utmost good faith;
- (ii) failed to comply with any duty of disclosure;
- (iii) made misrepresentations to Us;
- (iv) failed to comply with a provision or a requirement of the policy;
- (v) by act or omission of any description, prejudiced Our interest, or
- (vi) failed to pay the premium or any instalment of the premium.

In the event that We make a payment under this policy in the circumstances in which this section applies, We are entitled to seek recovery of such payment, including any fees and charges incurred, from the Owner Builder.

### 2.2 Regulatory Notification

We will notify the Director General, the Office of Fair Trading or other regulatory authority as and where required by the Act or the Regulations:

- (a) of any detail related to the cover provided by this policy; including but not limited to:
  - (i) Your identity; or
  - (ii) the identity of the Owner Builder; or
  - (iii) the location and scope of the Owner Builder Works subject of the cover provided by this policy;
- (b) if We refuse to issue cover for Owner Builder Works performed by the Owner Builder;
- (c) where the Owner Builder fails to purchase the required cover;

- (d) of each Claim made under the policy including but not limited to:
- (i) the details or nature of the Claim;
  - (ii) the end result of the Claim;
  - (iii) the amount paid under the Claim, and
  - (iv) action taken in relation to or as a result of the settlement of the Claim.

### 2.3 Certificates of Insurance

When We issue this policy, We will provide You, through the Owner Builder, with a Certificate of Insurance stating the policy has been issued in compliance with the Act. At the request of either You or the Owner Builder, We will also provide a copy of the policy, the Certificate of Insurance and any associated document to the policy.

### 2.4 Privacy

We are committed to ensuring the confidentiality and security of personal information. We may disclose personal information to:

- a State or Federal Authority, an assessor or investigator (for the purpose of assessing or investigating Your Claims);
- a lawyer or recovery agent (for the purpose of defending an action brought by You, the Owner Builder and/or by a third party against You and/or Us or for the purpose of recovering Our costs);
- another insurer or a reinsurer (for the purpose of seeking recovery from them or to assist them to assess insurance risks);
- an insurance reference bureau (for the purpose of recording any Claims You make upon Us); and
- other service providers (only for a purpose in connection with this insurance).

Personal information may also be obtained about You or Your employees from the above people or organizations. We will give You and Your employees the opportunity to correct this personal information, or obtain access to it.

We will provide Our dispute resolution procedures to You in respect of any complaint You may have regarding Your personal information. You may request access to information held by Us about You, by contacting Us. Our and Our Group's Privacy statement are also available on Our Website [www.lumley.com.au](http://www.lumley.com.au) in the Compliance link.

### 2.5 Goods and Service Tax (GST)

If this policy is subject to payment of Goods and Services Tax in relation to the premium then You or the Owner Builder will pay that tax.

### 2.6 Our Code Of Practice

We subscribe to the General Insurance Code of Practice that sets the standards of practice and service for the insurance industry. It is Our aim to provide a quality service to You, Our customer. However We recognize that occasionally there may be some aspect of Our service or a decision We have made that You wish to query or draw to Our attention.

If after talking to Us, You wish to take the matter further, please ask for the matter to be referred to Our Code Compliance Manager. We have a complaints and dispute resolution procedure that undertakes to provide an answer to Your matter within 15 working days provided We have all the information We need. We also undertake to inform You of Your alternatives should You still not be happy with Our answer.

You also have the right to appeal Our decision to the Tribunal. Please refer to section 7.3.

## 2.7 Severability Clause

Some provisions and terms of this policy have been inserted in the policy due to the requirements of the Act or the Regulations. Should it be found by the Tribunal or any court that any provision or term of this policy is invalid or not in accordance with the Act or the Regulations or that the Act or the Regulations or any part of the Act or the Act or the Regulations are invalid then the provision or term of the policy shall be deemed to be severed from this policy and not binding upon the insurer or You. The remainder of the policy shall remain in full force and effect.

## SECTION 3 - DEFINITIONS

For the purposes of this policy, the following words have special meanings. Where also appearing in the Act or the Regulations, they are consistent with the Act or the Regulations. If there is any discrepancy, the definition contained in the Act or the Regulations will apply. The defined words are shown in the policy with the first letter capitalised. Words in the singular includes the plural and vice versa. The defined word includes derivatives of the word.

**Act** means:

The *Home Building Act 1989 (NSW)*.

**Building Site** means:

The place where Owner Builder Work, has been carried out, arranged, managed or supervised by the Owner Builder.

**Certificate of Insurance** means:

The certificate We issue to You, through the Owner Builder, evidencing that cover for the Owner Builder Work has been issued by Us.

**Claim** means:

For the purposes of the policy, written notice made by You on Our Claim form of any Defect, breach of an Statutory Warranty or failure by the Owner Builder to comply with the requirements of the Insurable Contract of Sale.

**Claim Form** means:

Our approved Claim Form in addition to all information required to be provided by You to Us as detailed in Our Claim Form.

**Commencement Day** means:

The earlier of:

- (a) the date the relevant Owner Builder Work was completed by the Owner Builder; or
- (b) the date of Practical Completion of the relevant Owner Builder Work by the Owner Builder; or
- (c) the last date the Owner Builder or a person under the supervision, direction or, management of the Owner Builder attended the Building Site for the purposes of performing Owner Builder Work only in the case of the Owner Builder Work being incomplete at the time of sale of the Building Site by the Owner Builder

**Common Property** means:

Property in a strata, cluster or other subdivision or parcel of land to which ownership of the property or part of the parcel is not comprised in any one lot. Ownership of Common Property vests in You and other lot owners within any parcel of land as tenants in common in shares proportional to Your lot entitlement within the parcel as defined in the *Strata Schemes Management Act 1996 (NSW)*.

**Completion Date** means:

- (a) the date of the final inspection of the Owner Builder Work at the Building Site by the relevant Principal Certifying Authority; or
- (b) if there is not a final inspection by a Principal Certifying Authority, the date 6 months after the issue of the Owner Builder Permit issued to the Owner Builder in respect of the Owner Builder Work carried out at the Building Site.

**Condition Report** means:

A report provided by a Prescribed Building Practitioner identifying;

- (a) the scope of all Owner Builder Works performed, arranged, managed, or supervised by or for the Owner Builder; and

- (b) the condition (in the professional or expert opinion of the Prescribed Building Practitioner) of the Owner Builder Works referred to in part (a) above at the time of the Condition Report being written; and
- (c) the quality of materials used (in the professional or expert opinion of the Prescribed Building Practitioner) in the Owner Builder Works performed, arranged, managed or supervised by or for the Owner Builder; and
- (d) the suitability of the materials (in the professional or expert opinion of the Prescribed Building Practitioner) including the fitness of those materials for their intended purpose within the Dwelling; and
- (e) a list of all Defects including Structural Defects and Non-Structural Defects associated with the Dwelling or in any way related to the Owner Builder Work performed, arranged, managed or supervised by or for the Owner Builder; and
- (f) a list of all second hand materials used in the Owner Builder Work performed, arranged, managed or supervised by or for the Owner Builder; and
- (g) a list of incomplete Owner Builder Work at the Building Site; and
- (h) a list of all areas of the Dwelling and the Building Site that the Prescribed Building Practitioner was not able to access or view and that do not form part of the Condition Report;

The content of the Condition Report is not limited to those matters identified in sections (a) to (h), and additional information may be included and relied upon by Us in the event of a Claim, to identify the extent of cover provided by the policy.

**Construct** means:

In relation to a Dwelling;

- (a) to build, rebuild, erect or re-erect the Dwelling; or
- (b) making alterations to the Dwelling; or
- (c) to enlarge or extend the Dwelling; or

- (d) to cause any other person to do anything referred to in (a), (b) or (c) in relation to the Dwelling; or
- (e) to manage or arrange the doing of anything referred to in (a), (b) or (c) in relation to the Dwelling.

**Dead** means:

For the purposes of this policy Dead includes:

- (a) in the case of a Builder who is not a company or a body corporate, the death of the Builder or all of the partners in the Builder; or
- (b) in the case of a company or body corporate, the appointment of a liquidator to that company pursuant to the *Corporations Act 2001 (Cth)*.

**Defect** means:

In relation to Owner Builder Work a breach of any Statutory Warranty as defined in Part 2C of the Act.

**Developer** means:

An individual, partnership or corporation (other than a company that owns a building or development under a company title scheme) for whom:

- (a) Residential Building Work is performed in a building or residential development where 4 or more of the Dwellings are or will be owned by the individual, partnership or corporation; or
- (b) Residential Building Work is performed in connection with a retirement village or accommodation specifically designed for the disabled where all of the residential Dwellings are or will be owned by the individual, partnership or corporation.

**Director General** means:

- (a) The Commissioner of the Office of Fair Trading, Department of Commerce; or
- (b) If the position identified in (a) does not exist, the Director General of that Department.

**Disappears** means:

Not being able to be found after due search and enquiry.

**Dwelling** means:

A building or portion of a building for which Owner Builder Work is performed that is designed, constructed or adapted for use as a Dwelling (such as a detached or semi-detached house, transportable house, terrace or town house, duplex, villa-home, strata or company title home unit or residential flat) and includes:

- (a) any swimming pool or spa constructed for use in conjunction with a Dwelling; and
- (b) such additional structures and improvements as are declared by the Regulations;

However, it does not include Dwellings or portions of Dwelling declared by the Regulations to be excluded from this definition.

**Insolvent** means:

- (a) In the case of a natural person, insolvent under administration as defined in the *Corporations Act 2001 (Cth)*; or
- (b) In the case of a body corporate, subject to external administration as defined in the *Corporations Act 2001 (Cth)*.

**Insurable Contract of Sale** means:

A contract for the sale of land to which:

- (a) section 95 of the Act applies; and
- (b) Owner Builder Work was carried out by, arranged or managed by or on behalf of the Owner Builder before the sale; and
- (c) the reasonable market cost of the Owner Builder Work exceeds \$12,000 at the time the work was carried out.

**Multi-Storey Residential Building** means:

A building that:

- (a) has a rise in Storeys of more than 3; and
- (b) that contains 2 or more separate Dwellings.

**Non-Structural Defect** means:

In relation to a building, a Defect in Owner Builder Work other than a Structural Defect.

**Owner Builder** means:

- (a) a person who does Owner Builder Work (as described in Part 6 of the Act); and
- (b) who is issued with an Owner Builder Permit for that Owner Builder Work.

**Owner Builder Permit** means:

An Owner Builder permit referred to in section 12 and/or 13 of the Act

**Owner Builder Work** means Residential Building Work:

- (a) where the reasonable market cost of the labour and materials involved exceeds \$12,000; and
- (b) that relates to a single Dwelling or a dual occupancy;
  - (i) that may not be carried out on the Building Site except with development consent under Part 4 of the *Environmental Planning and Assessment Act 1979 (NSW)*, or
  - (ii) that is a complying development within the meaning of the *Environmental Planning and Assessment Act 1979 (NSW)*.

However if the Building Site is owned by a company that is wholly owned by individuals, the land is to be taken for the purposes of this policy to be owned by those individuals.

**Practical Completion Date** means:

In relation to Owner Builder Work, the date when the Residential Building Work is completed by or for the Owner Builder (before the sale of the Dwelling by the Owner Builder) except for any omissions or Defects that do not prevent the Owner Builder Work from being reasonably capable of being used for its intended purpose.

**Prescribed Building Practitioner** means-

- (a) an architect registered under the *Architects Act 2003 (NSW)*; or
- (b) a holder of a Building Consultancy License (as that term is defined in the Act and Regulations), issued by the Director General.

**Principal Certifying Authority** means:

The same as it does in the *Environmental Planning and Assessment Act 1979 (NSW)* namely a Principal Certifying Authority appointed under section 109E of the *Environmental Planning and Assessment Act 1979 (NSW)*.

**Regulations** means:

The *Home Building Regulation 2004 (NSW)*.

**Residential Building Work** means:

Any Residential Building Work involved in, or involved in co-ordinating or supervising any work involved in:

- (a) the Construction of a Dwelling, or
- (b) the making of alterations or additions to a Dwelling, or
- (c) the repairing, renovation, decoration or protective treatment of a Dwelling.

It includes Owner Builder Work or Residential Building Work declared by the Regulations to be roof plumbing work or specialist work done in connection with a Dwelling and work concerned in installing a prescribed fixture or apparatus in a Dwelling (or in adding to, altering or repairing any such installation).

It does not include work that is declared by the Regulations to be excluded from this definition

**Statutory Warranty** means:

The same as it does in section 18B of the Act, namely:

- (a) the Owner Builder warrants that the Residential Building Work performed in a proper and workmanlike manner in accordance with the approved plans and specifications; and
- (b) the Owner Builder warrants that all materials supplied by the Owner Builder for use in the Residential Building Work are good and suitable for the purpose for which they are used and that unless otherwise stated in the Insurable Contract of Sale, those materials will be new; and
- (c) the Owner Builder warrants that the Residential Building Work was or will be performed in accordance and

will comply with the Act or any other law; and

- (d) the Owner Builder warrants that the Residential Building Work will be carried out with due diligence and within the time stipulated in the Insurable Residential Building Contract or if no time is stipulated then within a reasonable time;
- (e) the Owner Builder warrants that if the work consists of the Construction, alteration or addition, repair, renovation, decoration or protective treatment of a Dwelling, the Dwelling will be reasonably fit for occupation as a Dwelling.

**Storey** means:

The same as it does in the Regulations, but does not include a space within a building if the space contains only accommodation intended for vehicles.

**Structural Defect** means:

In relation to a Dwelling, any Defect of a Structural Element of the Dwelling that is attributable to Defective design, Defective or faulty workmanship or Defective materials (or any combination of these) and that:

- (a) results in, or is likely to result in, the Dwelling or any part of the Dwelling, being required by law to be closed or prohibited from being used; or
- (b) prevents or is likely to prevent, the continued practical use of the Dwelling or any part of the Dwelling ; or
- (c) results in or is likely to result in:
  - (i) the destruction of the Dwelling or any part of the Dwelling ;
  - (ii) physical damage to the Dwelling or any part of the Dwelling ; or
- (d) results in or is likely to result in, a threat of imminent collapse that may reasonably be considered to cause destruction of or physical damage to the Dwelling or any part of the Dwelling .

**Structural Element** means:

In relation to a Dwelling,

- (a) any internal or external load-bearing component of the Dwelling that is essential to the stability of the Dwelling or any part of it; or
- (b) Any component, including weatherproofing, that forms part of the external walls or roof of the Dwelling .

**Tribunal** means:

The Consumer, Trader and Tenancy Tribunal established by the *Consumer, Trader and Tenancy Tribunal Act 2001 (NSW)*.

**We, Our, Us** means:

Lumley General Insurance Limited ABN 24 000 036 279, .

**You, Your** means:

- (a) the person who is the purchaser of the land on which the Owner Builder Work was carried out, managed or arranged ;
- (b) each person who becomes entitled to the benefit of any Statutory Warranty;
- (c) any person who is a successor in title to the purchaser of the Dwelling; and
- (d) the body corporate for land or building if the Owner Builder Work is carried out, managed or arranged on that land subject to the terms and conditions of this policy,

but does not mean:

- (i) the Owner Builder;
- (ii) a Developer who does Owner Builder Work (except where the Developer is also the purchaser of the land on which Owner Builder Work was carried out, managed or arranged and, in the capacity as purchaser, has entered into an Insurable Contract of Sale in respect of that land);
- (iii) the purchaser if the purchaser is a related body corporate (as defined in the Corporations Act 2001) of the Owner Builder; or
- (iv) the purchaser, if neither the purchaser nor the Owner Builder is a public company but each has a common director or a common shareholder.

## **SECTION 4 - THE COVER**

### **4.1 Our Agreement**

We agree to cover You in the event the Owner Builder is Dead, Disappears or becomes Insolvent during the period of insurance, subject to the terms, conditions and exclusions of this policy and You suffer loss or damage:

- (a) arising from a breach of a Statutory Warranty, implied into the Insurable Contract of Sale established by Part 2C of the Act; or
- (b) when You cannot recover compensation from the Owner Builder:
  - (i) for faulty design, where the design was provided by the Owner Builder;
  - (ii) for the cost of alternative accommodation, and removal and storage costs reasonably and necessarily incurred as a result of an event arising from Section 4.1 (a) and (b); or
  - (iii) for any legal or other reasonable costs incurred by You in seeking to recover compensation from the Contractor for loss or damage in taking action to rectify the loss or damage,

We will not be liable to pay You any more than \$300,000 in the aggregate for any and all Claims made under the policy in respect of any one Dwelling, which amount includes any legal or other reasonable costs incurred by You in seeking to recover compensation from the Contractor for loss or damage in taking action to rectify the loss or damage .

### **4.2 Breadth of Indemnity**

The indemnity referred to in Section 4.1 (a) to (d) inclusive, includes an

indemnity in respect of the acts or omissions of all persons who were contracted by the Owner Builder to perform the Owner Builder Work resulting in loss or damage of the kind referred to in Section 4.1 (a) to (d) inclusive.

#### 4.3 Period of Insurance

(a) Cover is provided by the policy, subject to the terms, conditions and exclusions of this policy, for:

(i) Non-Structural Defects in respect of loss or damage occurring during the period starting on the Commencement Day and ending 2 years after the earlier of:

(A) the Completion Date of the Owner Builder Work; or

(B) the date of termination of the Insurable Contract of Sale.

(ii) Structural Defects in respect of loss or damage occurring during the period starting on the Commencement Day and ending 6 years after the earlier of:

(A) the Completion Date of the Owner Builder Work, or

(B) the date of termination of the Insurable Contract of Sale.

#### SECTION 5 - WHAT IS NOT COVERED

We will not pay for any loss or damage, whether direct or indirect, or Your legal liability in respect of:

(a) (i) any Residential Building Work performed to the remainder of the Dwelling or Building Site other than that noted in the policy;

(ii) any Residential Building Work carried out, managed or arranged or not carried out, managed or arranged by any predecessors to You, by You or by subsequent owners, to You; or

(iii) any Residential Building Work which are the subject of any other insurance, guarantee or indemnity issued under the Act or similar legislation.

(b) any Defect or incomplete Residential Building Work that is referred to in the Insurable Contract of Sale or the Condition Report by a Prescribed Building Practitioner required by Us before the insurance cover is provided.

(c) Any Statutory Warranty that all materials used under the Residential Building Work were new if:

(i) the Condition Report states that those materials were or are not new;

(ii) the Insurable Contract of Sale states or implies that the materials used were not new; or

(iii) it was or is apparent from the nature of the Residential Building Work that the materials were not new.

(d) Non-completion of the Residential Building Work or Residential Building Work which is incomplete.

(e) Residential Building Work:

(i) not the subject of the Insurable Contract of Sale and not noted in the Certificate of Insurance;

(ii) carried out, managed or arranged after the earlier of the date of the Insurable Contract of Sale or the Condition Report.

(f) Fair wear and tear of Residential Building Work, where such wear and tear could be reasonably expected.

(g) Such damage caused by the normal drying out of the components

- concerned with Residential Building Work if the damage has occurred despite the Owner Builder taking all reasonable precautions in allowing for the normal drying out when carrying out the Residential Building Work.
- (h) Your failure to take reasonable and timely action to minimise the damage.
  - (i) Defects relating to landscaping, paving, retaining structures, driveways or fencing works unless those works:
    - (i) are integral to the Construction of the Dwelling , or
    - (ii) require the issue of a Development Consent under the *Environmental Planning and Assessment Act 1979 (NSW)* or an Owner Builder Permit under the Act, or
    - (iii) could result in water penetration of or within the Dwelling , or
    - (iv) could adversely affect health or safety, or
    - (v) adversely affect the Structural Element of the Dwelling, or
  - (j) Any act committed or condoned by You related to the Residential Building Work or Claim which is dishonest, fraudulent, criminal or malicious.
  - (k) Claims that may otherwise arise under an Insurable Residential Building Contract in the nature of liquidated damages for delay or damages for delay suffered or incurred by the Contractor. This exclusion will not limit any increase in rectification costs caused by the effluxion of time.
  - (l) Consequential loss, not otherwise covered under this policy including, without limitation, loss of rent or other income, loss of enjoyment, loss of business opportunity, inconvenience or distress.
  - (m) Bodily injury, death or illness.
  - (n) Work or materials made outside the reasonable lifetime of the work or materials or the manufacturer's warranty period for the materials.
  - (o) Malfunction in any mechanical or electrical equipment or appliance, if the malfunction is not attributable to the workmanship of, or installation by, the Owner Builder.
  - (p) Liability imposed upon the Owner Builder, under the Insurable Contract of Sale, if that liability would not have otherwise arisen at law.
  - (q) A Claim in relation to an appliance or apparatus (such as a dishwasher or airconditioning unit) if the Claim is made after the expiry of the manufacturer's warranty period for the appliance or apparatus or, if there is no warranty period, outside the reasonable lifetime of the appliance or apparatus.
  - (r) Any loss or damage incurred as a result of Defective or faulty design where that design was provided by You or a previous owner.
  - (s) War;
  - (t) Any act of terrorism. For the purpose of this section an act of terrorism being an act that, having regard to the nature of the act, and the context in which the act was done, it is reasonable to characterise as an act of terrorism, whereby any lawful activity or any industrial action cannot be characterised as an act of terrorism for the purposes of this section, except if it:
    - (i) causes or threatens to cause death, personal injury or damage to property, and
    - (ii) is designed to influence a government or to intimidate the public or a section of the public, and
    - (iii) is carried out for the purpose of advancing a political, religious,

ideological, ethnic or similar cause.

- (u) Civil unrest.
- (v) A nuclear event.
- (w) An act of God or nature.
- (x) Failure by You to maintain appropriate protection against pest infestation or exposure of natural timbers.
- (y) Risks that are normally insured under a policy for public liability or contract works.
- (z) Asbestos contamination or removal.
- (aa) Events that gave rise to a Claim that:
  - (i) occurred prior to the Commencement Day; or
  - (ii) which might give rise to a Claim and which were known to You prior to the Commencement Day.
- (bb) Residential Building Work performed under any contract related to the Construction of a Multi-Storey Residential Building.
- (cc) (i) You if You are the Owner Builder or a Developer; or
  - (ii) You if You are a related body corporate, as defined in the *Corporations Act 2001 (Cth)*, of the Owner Builder; or
  - (iii) You and the Owner Builder if You have a common director or shareholder although both You and the Owner Builder are not public companies.

## SECTION 6 – CLAIMS SETTLEMENT

We will, at Our discretion, either make good, direct the Owner Builder to make good, or pay the amount assessed by Us as the loss or damage suffered by You subject to the following limitations:

- (a) We are not liable for an amount of \$500 in respect of each Claim.

- (b) In the event the Residential Building Work is carried out, managed or arranged on land in a plan of subdivision containing Common Property in any description or form, any Claim paid by Us relating to the Common Property shall be divided by a number equal to the number of all Dwellings on the land and the relevant amount referred to in section 6(b) shall be deducted from that amount for each Dwelling.

The cover so provided extends only to the registered proprietor of the Dwelling identified in the policy and that registered proprietor's lot entitlement within the land in the plan of subdivision. No cover is provided to the body corporate, strata scheme or Common Property manager.

- (c) In the event of a Claim made on land in a plan of subdivision containing Common Property, the Strata Scheme, Body Corporate or other Common Property management body shall be entitled to make a Claim only in the capacity as Your agent with regard to the Common Property. We are not obliged to make any payment to Your agent in settlement of any Claim made including Your share of the Common Property.
- (d) In relation to the cover provided by section 4.1(b), We will only pay for alternative accommodation and storage costs reasonably and necessarily incurred, provided:
  - (i) those costs are incurred only by the registered proprietor of the Dwelling; and
  - (ii) the registered proprietor is a natural person or if the Dwelling is tenanted, the tenant is a natural person.

## SECTION 7 - HOW TO MAKE A CLAIM

### 7.1 Your Obligations

- (a) You must notify Us of any fact or circumstance that may give rise to a Claim as soon as You become aware of the fact or circumstance.
- (b) You must take all reasonable precautions to avoid or minimise loss or damage that is covered by this policy.
- (c) You must notify Us in writing on Our Claim Form as soon as You become aware of loss or damage that is insured by this policy but in any event, not later than 6 months after the date that You first became aware of or ought reasonably to have been aware of the fact or circumstance that gives rise to the Claim.

If You do not notify Us in writing on Our Claim Form as required by this section We may either refuse or limit payment of Your Claim.

- (d) If We have been advised in writing on Our Claim Form within 180 days after You first became aware, or might reasonably have been expected to have become aware, of the fact or circumstance that gives rise to the Claim, then We will not reduce or limit Our liability under this policy or reduce any amount otherwise payable in respect of a Claim made, only by reason of any delay in the Claim being notified to Us.
- (e) If You make a Claim under this policy:
  - (i) You must comply with any reasonable directions that We give You in relation to the completion or rectification of the Residential Building Work or settlement or resolution of Your Claim;

- (ii) You must not undertake or cause to be undertaken, any rectification works without notifying Us unless those works are reasonably necessary to prevent or minimise further loss or damage;
- (iii) You must provide Us or the Owner Builder or other person We nominate, with reasonable access to the Building Site for the purposes relating to the Claim.

We will not reduce Our liability to You by reason of a failure on Your part to comply with these conditions unless and only to the extent that We can prove that the failure increased Our liability under this policy.

- (f) In the event that You bring any action against the Owner Builder, You are required to notify Us within 30 days of lodging that proceeding in the Tribunal or Court, and to provide to Us all details of the action You have made against or in any way connected with the Owner Builder in those proceedings.
- (g) In the event that the Owner Builder brings proceedings against You, You are required to notify Us within 30 days of receipt by You of advice of those proceedings from the Tribunal or Court and to provide to Us all details of the action made against You by the Owner Builder.
- (h) The period for making a Claim under the policy ceases simultaneously with the end of the period of insurance and We will not accept any Claim made after the expiry of the policy.
- (i) If at the time that You make a Claim, there are any monies as

assessed by Us as owing by You under the relevant Insurable Contract of Sale, those monies must firstly be applied:

- (i) toward rectification costs of any Defective and/or incomplete Residential Building Work, and then
  - (ii) toward the costs of any other loss or damage incurred of a nature which is referred to in Section 4.
- (j) You agree not to undertake or cause to be undertaken any rectification works or completion works without notifying Us or Our agent, unless such works are reasonably necessary to prevent or minimise any further loss or damage.
- (k) In the event You make a Claim under the policy, You are obliged to advise Us of all matters that may impact Our decision with regard to that Claim or to the cover provided by the policy. If You fail to advise us of a fact that does alter the cover provided or that would alter the decision We make in respect of any Claim, We may either refuse to pay that Claim or We may seek to recover part or all of the monies already paid to You.

## **7.2 Our Obligations**

- (a) If We have not provided You with a written determination of a Claim that has been submitted to Us within 90 days from the receipt of that Claim, and We have not obtained an extension of time from You or the Tribunal, We will accept liability for that Claim, however only in line with the terms, conditions and exclusions provided by the policy.

- (b) If We are given notice of a Defect, such notice is deemed to include every other Defect that is directly or indirectly related to it, whether or not the Claim in respect of such Defect was actually notified to Us or settled.
- (c) We are not entitled either to refuse to pay or cancel a Claim on the ground that the policy was obtained by misrepresentation or non-disclosure by the Contractor or that the policy premium has not been paid providing, in the latter case, that a certificate evidencing insurance has been given or We have otherwise accepted cover.

## **7.3 Dispute Resolution**

In the event that We make a decision on a Claim and you disagree with any part of that decision, please ask to speak to the manager in the first instance. Should this not resolve Your dispute, We also have an internal dispute resolution panel that is available to You. You also have a right of appeal to the Tribunal. If you wish to appeal Our decision to the Tribunal or a court You must lodge and file that application with the Tribunal no later than 45 days after receipt by You of our letter of decision related to Your Claim.

## **7.4 Subrogation**

In the event that We have the right to recover monies paid or payable under this policy from any other person or entity You agree to subrogate Your rights to Us to the extent that We make a payment to You with respect to a Claim and agree to co-operate with Us in any proceedings at law which We may take under that right of subrogation.



176 Wellington Parade  
East Melbourne VIC 3002  
P: 1300 300 115 F: 1300 308 115  
[austhomewarranty.com.au](http://austhomewarranty.com.au)

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ABN 340 05 543 920 AFS Licence No. 238317