

Housing Indemnity Insurance Building Work Builder (TAS)



SECTION 1 - INTRODUCTION

This Housing Indemnity 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 the Regulations.

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

The policy is for the period of insurance and will not be renewed and is not of a type that is renewable, nor cancellable except in those circumstances detailed in Section 4.5.

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

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 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 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 Builder:

- (i) failed to comply with any duty of disclosure;
- (ii) made misrepresentations to Us;

In the event that We make a payment under this policy in the circumstances in which this clause applies, We are entitled to seek recovery of such payment, including any fees and charges incurred, from the Contractor or the person required to make the payment.

2.2 Regulatory Notification

We may notify the Office of Consumer Affairs and Fair Trading or any other regulatory authority:

- (a) if We refuse to provide cover for Building Works at the Building Site;
- (b) if the Builder is not eligible to renew or purchase insurance cover;
- (c) if in respect of Building Work performed prior to the commencement of the Act, the Builder fails to purchase or maintain required insurance cover; or
- (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 with a Certificate of Insurance stating the policy has been issued in compliance with the Act. At Your or the Builder's request, 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 or in line with a provision or requirement of the Act or Regulations);
- a lawyer or recovery agent (for the purpose of defending an action by a third party, the Builder or You against either You 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 organisations. 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 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 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 in relation to a Claim to a court of competent jurisdiction. 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 and or the Regulations. Should it be found by the Tribunal or any court that any provision or term of the policy, is invalid or not in accordance with the Act and/or the Regulation or that a term or provision of the Act or Regulations is 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 the Insured. The remainder of the policy shall remain in full force and effect.

2.8 Limitation or Exclusion of Rights Against Third Parties

You must not limit or exclude your rights against a party from whom you might otherwise be able to recover in respect of 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 the limitation or exclusion by You.

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 also consistent with the Act or Regulations. If there is any discrepancy, the definition contained in the Act or the Regulations shall 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 derivative of the word.

Act means:

The *Housing Indemnity Act 1992 (Tas)*.

Builder means:

- (a) A person or firm engaged by an Owner or an Owner's agent to manage or Perform Building Work; or
- (b) A person or firm carrying on the business of managing or Performing Building Work with a view to sale or letting (whether by lease, licence or other agreement) of land or Buildings improved as a result of the Building Work.

Building means:

A structure or part of a structure

Building Act means:

The *Building Act 2000 (Tas)*.

Building Owner means:

The person for whom Building Work has been or is to be Performed under a Building Work Contract.

Building Site means:

The land or lot where the Residential Building Work is being, has been, or is about to be, Performed.

Building Work means:

For the purposes of this policy, work Performed by the Builder at the Building Site related to the Residential Building named in the policy and includes:

- (a) the erection, re-erection, construction, underpinning, or alteration of a Residential Building and the addition to, or demolition or removal of a Residential Building; and

- (b) the making of any excavation, or filling for or incidental to the erection, re-erection, construction, underpinning or alteration of a Residential Building and the addition to, or demolition or removal of, a Residential Building; and
- (c) any other work that is prescribed by the Regulations to be Building Work.

In this policy, it does not include:

- (i) the delivery of any Materials; or
- (ii) any other Building Work that is exempted under the Act or the Regulations.

Building Work Contract means:

A contract between a Builder and another person for the Performance by the Builder of Building Work but does not include a subcontract for the performance of Building Work.

Certificate of Insurance means:

The certificate We issue to You evidencing that cover for the Residential Building Work has been issued by Us.

Claim means:

For the purposes of this policy, written notice made by You on Our Claim Form of any Defect, breach of an Statutory Warranty or failure by the Builder to comply with the requirements of the Building Work Contract.

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 Building Work Contract was entered into; or
- (b) the first date that the Builder attends the Building Site to Perform Building Work.

Common Property means:

Property in a strata scheme, community scheme, cluster or other subdivision that vests in You and other owners as tenants in common in shares proportional to Your lot entitlement as defined in the *Strata Titles Act 1998 (Tas)* and the *Land Titles Act 1980 (Tas)*.

Completion Date means:

The date the Building Work is completed, which for the purposes of this policy shall only be the earlier of:

- (a) the day on which a certificate of completion (building work) was issued as required under section 112 of the Building Act; or
- (b) if a certificate of completion (building work) is not applicable or required for the Building Work Performed by the Builder, then the day on which the certificate of final inspection as required under section 92 of the Building Act; or
- (c) the two year anniversary of the day on which the building permit was issued under section 72(1) of the Building Act.

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 Building Work a breach of a Statutory Warranty set out in Part 2 of the Act namely:

- (a) that the Building Works Performed by the Builder were Performed in a proper and skilled manner; or

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- (b) that the materials used by the Builder in the Building Works were good and suitable; or
- (c) that the Building Works Performed by the Builder were carried out in compliance with all statutory requirements.

Disappears means:

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

Insolvent means:

- (a) In the case of a natural person, bankrupt or subject to a composition or deed or scheme of arrangement with, or for the benefit of, creditors; or
- (b) In the case of a body corporate, subject to external administration under the *Corporations Act 2001* (Cth).

Materials means:

In relation to Building Work, goods to be supplied and fitted or installed in the course of the Building Work.

Perform means:

In relation to Building Work, to:

- (a) cause Building Work to be carried out; or
- (b) manage or arrange the carrying out of Building Work.

Reasonable Legal Costs and Expenses means:

- (a) Costs incurred after the later of:
 - (i) the date which You lodged the Claim with Us together with all reasonable information and evidence (as determined by Us) in support of that Claim; and
 - (ii) the expiration of 90 days following the date you lodged the Claim, and

- (b) costs calculated on a party/party basis in accordance with the appropriate court or Tribunal scale having regard to the quantum of Your loss and damage covered by the policy.

Regulations means:

The *Housing Indemnity Regulations 2004* (Tas).

Residential Building means:

A Building intended primarily for occupation as a place of residence or as an adjunct to such a Building but does not include:

- (a) a Building divided into a number of separate places of residence that are intended only for rental; or
- (b) a Building of a class prescribed in the Regulations for the purposes of this definition; or
- (c) a Building comprising 3 or more separate places of residence situated directly one above the other; or;
- (d) a Building designed to house more than 12 persons who are not all members of the same family.

Statutory Warranty means:

The Statutory Warranties detailed in Part 2 of the Act, namely:

- (d) that the Building Works Performed by the Builder were Performed in a proper and skilled manner; or
- (e) that the materials used by the Builder in the Building Works were good and suitable; or
- (f) that the Building Works Performed by the Builder were carried out in compliance with all statutory requirements.

Sub-contract means:

In relation to Building Work, a contract for the Performance of Building Work for a Builder who is obliged to Perform the

Building Work under a Building Work Contract.

Sub-contractor means:

A person or firm engaged to Perform Building Work under a Sub-contract.

Variation means:

A document altering the price or scope of the Building Work agreed between the Building Owner and the Builder under Building Work Contract, however for the purposes of this policy, only a written Variation signed by both the Building Owner and the Builder shall be deemed as a Variation.

We, Our, Us means:

Lumley General Insurance Limited ABN 24 000 036 279.

You, Your means:

(w) the Building Owner where the Building Owner is the registered proprietor of the Residential Building; or

(x) a successor in Title to the Building Owner;

but does not mean:

(i) the Builder;

(ii) a person who does Building Work under a Residential Building Contract; or

(iii) a related company within the meaning of section 50 of the *Corporations Act 2001 (Cth)* to any person or corporation referred to in this definition; or

(iv) the Building Owner, if neither the Builder nor the Building Owner is a public company but each has a common director or a common shareholder.

SECTION 4 - THE COVER

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

(a) resulting from the non-completion by the Builder of Building Work referred to in and required to be Performed by the Builder under the Building Work Contract; or

(b) resulting from a breach by the Builder of a Statutory Warranty; or

provided that the Contractor is Dead, has Disappeared or is Insolvent.

4.2 Breadth of Indemnity

The indemnity referred to in clause 4.1, includes an indemnity in respect of the acts or omissions of all persons who were sub-contracted by the Builder to perform the Building Works under the Building Work Contract resulting in loss or damage of the kind referred to in clauses 4.1.

4.3 Limit of Indemnity

(a) We will not be liable to pay You any more than the lesser value of:

(i) \$200,000; or

(ii) the cost of the Building Works Performed by the Builder as set out in the Building Work Contract at the time the Building Works were Performed,

which amount is the total sum in the aggregate for any and all Claims made under the policy in respect of any one Residential Building, and which amount

includes your Reasonable Legal Costs and Expenses incurred in enforcing a successful action in a Court of competent jurisdiction.

- (b) If Your Claim relates to the indemnity provided by clause 4.1(a) We will not be liable to pay You more than 20% of the Building Work Contract price for the Building Works.

4.4 Period of Insurance

Cover is provided by the policy, subject to the terms, conditions and exclusions of this policy, for the period of 6 years after the earlier of:

- (a) the Completion Date of the Building Work, or
- (b) the date of termination of the Building Work Contract.

4.5 Cover Cancellation

The policy when issued cannot normally be cancelled, however in the event that:

- (a) it can be proven that no Building Works have been Performed by the Builder under the Building Work Contract; and
- (b) the Building Work Contract has been terminated, abandoned or ended by mutual agreement; and
- (c) no Building Works will be Performed by the Builder under the Building Work Contract, and
- (d) We receive written confirmation from both You and the Builder requesting that the policy be cancelled and no reliance will be placed on it by either You or the Builder in the future,

the policy may be cancelled. In the event all of the requirements of 4.5(a) to (d) inclusive are not satisfactorily completed, the policy will not be

cancelled even if We do not have any known liability under the policy.

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 Building Work Performed to the remainder of the Residential Building, Building or Building Site other than that noted in the policy, or
- (ii) any works Performed or not Performed by any predecessors to You, by You or by subsequent owners, or
- (iii) any Building Works which are the subject of any other insurance, guarantee or indemnity issued under the Act or similar legislation.
- (i) (b) Non-completion of Building Work where the Builder's Death, Insolvency or Disappearance occurred before the Builder commenced any Building Work on the Building Site that required the use of any tools or building materials
- (c) Money paid to the Builder:
 - (i) that exceeds the amounts that should have been paid to the Builder in accordance with Section 20 of the Act; and/or
 - (ii) that exceeds the amount that should have been paid to the Builder in accordance with the relevant Building Work Contract.
- (d) Normal wear and tear of Building Work or drying out of the components concerned with Building

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- Work or the Residential Building including but not limited to normal shrinkage of materials or foundations, heave or any movement of earth, rust, corrosion, gradual deterioration and/or depreciation of materials. if the wear and tear or drying out has occurred despite the Builder taking all reasonable precautions in allowing for the normal wear and tear or drying out.
- (e) Your failure to maintain the Building Work or maintain the appropriate protection against pest infestation or exposure of natural timbers.
 - (f) Defects relating to landscaping, paving, retaining structures, driveways or fencing works unless those works are integral to the construction of a Residential Building, or
 - (g) Defects in, or the repair of damage to structural elements in the non-residential part of a Residential Building that supports or gives access to the residential part of the Residential Building, unless it is a Defect or damage that adversely affects the structure of the residential part or the access to the Residential Building.
 - (h) Defects which were evident or were reasonably evident or would have been evident during a reasonable inspection at or prior to the time of purchase of the Residential Building by You or if You or a previous owner of the Residential Building has already been compensated for that loss or damage.
 - (i) Any act committed or condoned by You relating to the Claim or the Building Work which is dishonest, fraudulent, criminal or malicious.
 - (j) Penalties, fines, liquidated damages or any other sums imposed against the Builder that relate to the delay on the part of the Builder. This exclusion will not limit any increase in rectification costs caused by the effluxion of time.
 - (k) Any exemplary or punitive damages awarded by a Court against either the Builder or You.
 - (l) Consequential loss, not otherwise covered under this policy.
 - (m) Bodily injury, death or illness.
 - (n) Failure or malfunction in any mechanical or electrical equipment or appliance if the malfunction is not attributable to the workmanship of or installation by the Builder.
 - (o) Building Work or Materials made outside the reasonable lifetime of the work or Materials or the manufacturer's warranty period for the Materials.
 - (p) A failure by You or a previous owner for loss damage due to, or made worse by the failure of You or a previous owner to take reasonable and timely action to minimise the loss or damage.
 - (q) Liability imposed upon the Builder if that liability would not have been imposed upon the Builder in the absence of a Building Work Contract.
 - (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) (i) War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, civil unrest, rebellion, revolution,

insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power.

- (ii) Any act of terrorism. For the purpose of this clause an act of terrorism means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or groups of persons, whether acting alone or on behalf of or in connection with any organisations or governments, committed for political, religious, ideological, ethnic or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear.

This clause also excludes loss, damage, liability, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (i) or (ii) above.

- (t) The use, existence or escape of nuclear weapons material, or ionising radiation from, or contamination by radioactivity from, any nuclear fuel or any nuclear waste from the combustion of nuclear fuel, including any self sustaining process of nuclear fission or fusion.
- (u) Risks that are normally insured under a policy for public liability or contract works.
- (v) An injury arising, directly or indirectly, out of inhalation or, or fears of the consequences of exposure to, or inhalation of, asbestos, asbestos fibres or derivatives of asbestos.
- (w) The cost of cleaning up, or removal of, or damage to, or loss of use of, property arising out of any asbestos,

asbestos fibres or any derivatives of asbestos.

- (x) 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.
- (y) Any costs incurred or loss suffered related to the cost of alternative accommodation and/or storage as a result of an event occurring for which section 4 of this policy applies.

SECTION 6 – CLAIMS SETTLEMENT

We will, at Our discretion, either make good, direct the 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) If Your Claim relates to loss and damage suffered as a result of the non-Completion of the Residential Building Works, We may elect to settle Your Claim in full by way of a single payment of an amount that does not exceed 20% of the Building Work Contract price (including Variations).
- (b) For any loss or damage You have suffered with regard to an event referred to in Section 4.1 of this policy, You must pay the first \$500 of each Claim made.
- (c) In the event the Building Work is Performed 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 Residential Buildings or lots on the land and the relevant amount referred to in Section 6(b) shall be

deducted from that amount for each Residential Buildings or lot.

The cover so provided extends only to the registered proprietor of the Residential Buildings 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.

- (d) 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 and the other owners 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.
- (e) Where a successful Claim is made by You and We agree to make payment to an alternate Builder to remedy the loss or damage suffered by You, the amount identified in Section 6 (b) and payable by You, must firstly be paid by You to the alternate Builder before We will authorise the alternate Builder to commence those rectification works.

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) Despite section 7.1(a) of this policy, in order for Your Claim to have been deemed to have been validly made, You are obliged to notify Us in writing on Our Claim Form as soon as You become aware of loss or damage that is covered by this policy but in any event not later than 90 days after the date that You first became aware of or ought reasonably have been aware of the event that gave rise to the Claim.

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

- (d) 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 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;
 - (ii) You must provide Us or any 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.

- (e) In the event that You bring any action against the Builder, You are required to notify Us within 30 days of lodging that proceeding in a Court, and to provide to Us all details of the action You have made against the Builder in those proceedings.
- (f) In the event that the Builder brings proceedings against You, You are required to notify Us within 30 days of receipt by You of advice of those proceedings from a Court and/or the Builder and to provide to Us all details of the action made against You by the 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 Building Work Contract, those monies must firstly be applied:
 - (i) toward rectification costs of any Defective and/or incomplete 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

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.

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 You must lodge and file that application with the Tribunal no later than 45 days after receipt by You of our letter of decision for 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 the extent We make payment to You with respect to a Claim and agree to cooperate with Us in any proceedings at law which We may take under that right of subrogation.



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