

# Housing Indemnity Insurance Building Work Owner 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/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.

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.

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 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 on your behalf 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) failed to comply with any duty of disclosure;
- (ii) made misrepresentations to Us.

In the event of 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 Owner Builder.

#### 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 Owner 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 Owner 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 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 statements 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 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.

### 2.6 Severability Clause

Some provisions and terms of this policy have been inserted in the policy due to the requirements of the Act, the Building Act, the Regulations and the Building Regulations. Should it be found by a court of competent jurisdiction that any provision or term of this policy, is invalid or not in accordance with the Act, the Building Act, the Regulations or the Building Regulations or that the Act, the Building Act, the Regulations or the Building 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.

### 2.7 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, they are consistent with the Act. If there is any discrepancy, the definition contained in the Act 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 *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 and part of a Building or structure

**Building Act** means:

The *Building Act 2000 (Tas)*.

**Building Site** means:

The place where the Building Work is being, has been or is about to be carried out.

**Building Work** means:

For the purposes of this policy, work Performed by the Owner 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

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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) Building Work performed by a Builder under a Building Work Contract; or
- (iii) Building Work performed by a Building Practitioner (as that term is defined in the Building Act) under a Building Work Contract; or
- (iv) Building Work related to a Residential Building Performed under a Building Work Contract; or
- (v) Building Work that is exempt under the Act or Regulations; or

**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 Building 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 or a breach by the Owner Builder to Perform the Building Works in accordance with the requirements of section 18(1) of the Act.

**Commencement Day** means the date on which the period of insurance commences. For the purposes of this policy, the period of insurance shall commence on the Completion Date.

**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 Owner 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.

**Condition Report** means:

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A report required by section 16(2)(a) of the Act

### **Defect** means:

For the purposes of this policy, is a failure by the Owner Builder to ensure:

- (a) that the Building Work Performed by the Owner Builder was carried out in a proper and skilled manner; or
- (b) that the materials used by the Owner Builder in the Building Work Performed by the Owner Builder were good and suitable; or
- (c) that the Building Work Performed by the Owner Builder was carried out in compliance with all statutory requirements.

### **Insurable Contract of Sale** means:

A contract for the sale of a Residential Building to which:

- (a) Division 2 of Part 3 of the Act applies; and
- (b) Building Work was carried out by the Owner Builder before the sale; and
- (c) the value of the Building Work exceeds \$12,000 at the time the work was carried out.

### **Materials** means:

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

### **Owner Builder** means:

In relation to a Residential Building means:

- (a) a person to whom Division 2 of Part 3 of the Act applies; and
- (b) a mortgagee in possession of the Residential Building from the person identified at subclause (a); or

- (c) the executor or administrator of the estate of that person.

It does not mean:

- (i) a Builder; or
- (ii) a Building Practitioner as that term is defined in the Building Act;

### **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.

### **Qualified Person** means:

- (a) an architect; or
- (b) a structural engineer; or
- (c) a building surveyor or assistant building surveyor; or
- (d) a building inspector holding a certificate of competency granted under the Local Government Act 1962 (Tas); or
- (e) any other person nominated by Us with specific reference to this section.

### **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 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.

**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 Building Site at which the Residential Building subject of this policy is situated, on which the Building Work was Performed however only when You are the Registered proprietor of the Residential Building;
- (b) any person who is a successor in title to the purchaser only when they become the registered proprietor of the land; and

but does not mean:

- (i) the Owner Builder;

- (ii) the purchaser if the purchaser is a related body corporate (as defined in the *Corporations Act 2001 (Cth)*) of the Owner Builder; nor
- (iii) 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 during the period of insurance, subject to the terms, conditions and exclusions of this policy in the event that You suffer loss arising from:

- (a) the Building Work not being Performed by the Owner Builder in a proper or skilled manner; or
- (b) the materials used by the Owner Builder in the Building Work were not good and proper; or
- (c) that the Building Work Performed by the Owner Builder was not Performed in accordance with all statutory requirements.

### 4.2 Limit of liability

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

- (a) \$200,000; or
- (b) the cost of the Building Works Performed by the Owner Builder at the time the Building Works were Performed as that value is declared to Us by the Owner Builder,

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.

### 4.3 Period of Insurance

Cover is provided by the policy for a period not exceeding 6 years commencing from the Completion Date.

### 4.6 Cover Cancellation

Once issued by us this policy is not cancellable under any circumstances by You or the Builder.

## 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;
- (ii) any works carried out, managed or arranged or not carried out, managed or arranged by any predecessors to You (unless that predecessor is the Owner Builder and those Building Works Performed by that predecessor are those to which this policy applies), by You or by subsequent owners, to You; or
- (iii) any Building Works which are the subject of any other insurance, guarantee or indemnity.

- (b) any Defect or incomplete Building Work that is referred to in the Insurable Contract of Sale or the Condition Report by a Qualified Person.
- (c) Any warranty that all materials used under the work were new if:
  - (i) the Condition Report referred to in clause 5(b) 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 Building Work that the materials were not new.
- (d) Non-completion of the Building Work or Building Work which is incomplete.
- (e) Building Works:
  - (i) not the subject of the Insurable Contract of Sale and not noted in the Certificate of Insurance;
  - (ii) carried out, managed, Performed or arranged after the earlier of the date of the Insurable Contract of Sale or the Condition Report referred to in clause 5(b).
- (f) Normal wear and tear of Building Work including but not limited to normal shrinkage of materials or foundations, heave or any movement of earth, rust, corrosion, gradual deterioration, depreciation and/or normal drying out of materials.
- (g) Your failure to maintain the Building Work or maintain the appropriate protection against pest infestation or exposure of natural timbers.

- (h) Defects relating to landscaping, paving, retaining structures, driveways or fencing works unless those works are integral to the construction of the Residential Building, or
- (i) 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 Building by You or if You or a previous owner of the Residential Building has already been compensated for that loss or damage.
- (j) Any act committed or condoned by You relating to the Building Works or Claim that is dishonest, fraudulent, criminal or malicious.
- (k) Penalties, fines, liquidated damages or any other sums imposed against either the Owner Builder or You that relate to the delay on the part of the Owner Builder. This exclusion will not limit any increase in rectification costs caused by the effluxion of time.
- (l) Any exemplary or punitive damages awarded by a Court of competent jurisdiction against either the Owner Builder or You.
- (m) Consequential loss, not otherwise covered under this policy.
- (n) Bodily injury, death or illness.
- (o) Work or materials made outside the reasonable lifetime of the work or materials or the manufacturer's warranty period for the materials.
- (p) 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 Owner Builder.

- (q) Liability imposed upon the Owner Builder if that liability would not have been imposed upon the Owner Builder in the absence of an Insurable Contract of Sale.
- (r)
  - (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.
- (s) 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.
- (s) 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.

- (t) Risks that are normally insured under a policy for public liability or contract works.
- (u) 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.
- (v) 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.
- (w) 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.
- (x) Building Work Performed under any Building Work Contract by a Builder.
- (y)
  - (i) You if You are the Owner Builder; 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.
- (z) 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 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) For any loss or damage You have suffered with regard to an event referred to in Section 4 of this policy, You must pay the first \$500 of each Claim.
- (b) In the event the Building Work is Performed, 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 Residential Buildings on the land and the relevant amount referred to in Section 6(a) shall be deducted from that amount for each Residential Building.

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

## **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) 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 insured 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;
- (iii) You must provide Us or any 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 a court, and to provide to Us all details of the action You have made against 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 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 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.
- (k) 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.
- (l) 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

- (a) 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 28 days after receipt by You of our letter of decision for Your Claim.
- (b) Where We have notice of the relevant proceedings We will accept the decision of the Tribunal when any of the events referred to in Clause 4.1 have occurred and if so, are liable for the amount of loss of damage suffered by the Owner Builder, or purchaser as the case may be as a result thereof, however We maintain our rights to appeal any decision of the Tribunal to a Court of competent jurisdiction.

**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 We make 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.



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