

Housing Indemnity Insurance Residential Building Work Owner Builder (WA)



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 the Regulations and if any term of the policy conflicts or is inconsistent with the Act and the Regulations then the policy must be read and be enforceable as if it complies with the Act and 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;
- (iii) 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 will notify the Builders' Registration Board:

- (a) if We refuse to provide cover for Residential Building Works at the Building Site;
- (b) of the existence of this policy and any detail related to the policy; or
- (c) if in respect of Residential Building Work performed prior to the commencement of the Order, 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 provided You stating the policy has been issued in compliance with the Order. 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 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 the Tribunal. 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 and the Regulations. Should it be found by the Disputes Tribunal or any court that any provision or term of this policy, is invalid or not in accordance with the Act and the Regulations or that the Act and the 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 *Home Building Contracts Act 1991* (WA).

Associated Work means:

The same as it does in the Act, namely:

- (a) site works; and
- (b) swimming pools and spas; and
- (c) pergolas, carports, garages and sheds; and
- (d) fences, retaining walls, paving, driveways and landscaping; and
- (e) other like works as that detailed in (a) to (d) inclusive.

BR Act means:

The *Builders' Registration Act 1939* (WA).

Builder means:

A person who or a partnership which carries out or intends to carry out or manages, arranges or intends to manage or arrange Residential Building Work.

Builders' Registration Board means:

The Builders' Registration Board constituted under the BR Act.

Building Licence means:

A Building Licence issued under section 374 of the *Local Government (Miscellaneous Provisions) Act 1960* (WA).

Building Site means:

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

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 alleged Defect or alleged failure by the Builder to comply with the requirements of the Residential Building Work Contract.

Commencement Day means:

The date of issue of the Building Licence to the Owner Builder for the relevant Residential Building Work.

Common Property means:

Property in a strata, 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 1985 (WA)*.

Completion Date means:

The date of Practical Completion of the Residential Building Work.

Condition Report means:

A report provided by a Condition Report Author identifying;

- (a) the scope of all Residential Building Works performed, arranged, managed, or supervised by or for the Owner Builder; and
- (b) the condition (in the professional or expert opinion of the Condition Report Author) of the Residential Building 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 Condition Report Author) in the Residential Building 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 Condition Report Author) including those materials fitness for their intended purpose within the Dwelling; and
- (e) a list of all Defects associated with the Dwelling or in any way related to the Residential Building Work performed, arranged, managed or supervised by or for the Owner Builder; and; and
- (f) a list of all second hand materials used in the Residential Building Work performed, arranged, managed or supervised by or for the Owner Builder; and

(g) a list of incomplete Residential Building Work at the Building Site; and

(h) a list of all areas of the Dwelling and or the Building Site that the Condition Report Author was not able to access or view and that do not form part of the Condition Report;

however the contents of the Condition Report is not limited to those identified in sections (a) to (h) and additional information may be included and relied upon by Us in the event of a claim in identifying the extent of cover provided by the policy.

Condition Report Author means:

Either a building inspector, building surveyor, engineer, architect or other building professional approved by Us.

Construct means:

In relation to a Dwelling the Performance of any Residential Building Work commencing from the preparation of the Building Site to the completion of the Dwelling (including Associated Work) and includes;

- (a) painting where that is part of the Residential Building Work performed or arranged by the Owner Builder; and
- (b) the provision of lighting, heating, water supply, drainage, sewage, gas and other like services.

Dead means:

For the purposes of this policy Dead includes:

- (a) in the case of an Owner 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)*.

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Defective means:

In relation to Residential Building Work a failure to maintain a standard or quality of Residential Building Work specified in the relevant Residential Building Work Contract.

Disappears means:

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

Disputes Tribunal means:

The Building Disputes Tribunal established under section 26 of the BR Act.

Dwelling means:

The same as it does in the Act, namely building occupied or intended for occupation solely or mainly as a place of residence.

Home Building Work means:

The whole or part of the work of;

- (a) constructing or re-constructing a dwelling including an existing dwelling and/or strata-titled dwelling;
- (b) placing a dwelling on land;
- (c) altering, improving or repairing a dwelling, including a strata-titled dwelling; or
- (d) constructing or carrying out any associated work in connection with —
 - (i) any work referred to in paragraph (a) or (b); or
 - (ii) an existing dwelling, including a strata-titled dwelling;

Implied Warranties mean:

The warranties implied into any Residential Building Work Contract as required in section 12A of the BR Act

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).

Owner Builder in relation to a Dwelling, means —

- (a) a person who Constructs the Dwelling under a Building Licence issued to that person in accordance with section 4A(1)(c) of the BR Act ; or
- (b) a person who —
 - (i) is registered under the BR Act ;
 - (ii) Constructs the Dwelling for himself or herself as his or her principal place of residence and not for immediate sale; and
 - (iii) was issued a Building Licence for the Residential Building Work for the Dwelling when no policy of insurance that complies with Division 2 of the Act was in force, or no corresponding cover (of the type referred to in section 25DA of the Act) was provided by an approved fund, in relation to the Residential Building Work.

Practical Completion Date means:

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

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 scale having regard to the quantum of Your loss and damage covered by the policy.

Regulations means:

The *Home Building Contracts Regulations 1992 (WA)*.

Residential Building Work means:

Home Building Work that is:

- (a) Home Building Work described in paragraph (a), (b) or (c) of the definition of that term in this policy; or
- (b) Home Building Work described in paragraph (d) of the definition of that term in this policy, when it is associated work of a prescribed kind;

But does not include Home Building Work where the cost of the building work is less than the amount prescribed by the Act and Regulations;

Sale Contract means:

The same as it does in the Act, namely:

In respect of Residential Building Work Performed by an Owner Builder, means a contract to sell or otherwise dispose of;

- (a) a dwelling constructed by the Owner Builder; or
- (b) the land on which the Building is Constructed.

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 Construction was carried out, managed or arranged ;
- (b) each person who becomes entitled to the benefit of any Implied Warranty;
- (c) any person who is a successor in title to the purchaser; and
- (d) the body corporate for land or building if the Residential Building Work is carried out, managed or arranged on that land.

but does not mean:

- (i) the Owner Builder;
- (ii) a Developer who does Residential Building Work;
- (iii) the purchaser if the purchaser is a related body corporate (as defined in the Corporations Act 2001) of the Owner Builder; nor
- (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 that 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 a loss of entitlement to enforce or recover under a remedy under section 12A of the BR Act by reason of the Insolvency, Disappearance or Death of the Owner Builder provided that the Owner Builder is Dead, has Disappeared or is Insolvent.

4.2 Limit of Indemnity

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

- (a) \$100,000 or such other sum as prescribed under the Act; or
- (b) the cost of the Residential Building Works Performed by the Owner Builder at the time the Residential 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 Dwelling, 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 in respect of loss or damage, subject to the terms, conditions and exclusions of this policy, occurring during the period ending 7 years, from the Commencement Day.

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 works 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,
- (iv) Residential Building Work which was not carried out, managed or arranged by the Owner Builder.
- (b) any Defect or incomplete Residential Building Work that is referred to in the Sale Contract or the Condition Report by a Condition Report Author.
- (c) Non-completion of the Residential Building Work or Residential Building Work which is incomplete.
- (d) Residential Building Work:
 - (i) not the subject of the Sale Contract and not noted in the Certificate of Insurance;
 - (ii) carried out, managed or arranged after the earlier of the date of the Sale Contract or the Condition Report.
- (e) Normal wear and tear of Residential 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.
- (f) Your failure to maintain the Residential Building Work or maintain the appropriate protection against pest infestation or exposure of natural timbers.
- (g) Defects relating to landscaping, paving, retaining structures, driveways or fencing works unless those works:

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- (i) are Associated Works that form part of the Residential Building Work performed or arranged by the Owner Builder, or
 - (ii) require the issue of a Building Licence 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
 - (vi) are not completed and the Owner Builder is Dead, Insolvent or Disappeared.
- (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 Home by You or if You or a previous owner of the Dwelling has already been compensated for that loss or damage.
- (i) Any act committed or condoned by You relating to the Residential Building Works or Claim is dishonest, fraudulent, criminal or malicious.
- (j) 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.
- (k) Any exemplary or punitive damages awarded by the Disputes Tribunal or a Court against either the Owner Builder or You.
- (l) Consequential loss, not otherwise covered under this policy.
- (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) 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.
- (p) Liability imposed upon the Owner Builder if that liability would not have been imposed upon the Owner Builder in the absence of an Sale Contract.
- (q) (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. For the purposes

of this clause, an act of terrorism is 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

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.

- (r) 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.
- (s) Risks that are normally insured under a policy for public liability or contract works.
- (t) 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.
- (u) 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.
- (v) 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) (i) You if You are the Owner Builder or Developer; or
- (ii) You if You are a related body corporate, as defined in the *Corporations Act 2001*, 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.
- (w) This policy provides no indemnity for the cost of alternative accommodation and or storage of any kind, whether bought about as a result of an event referred to in section 4 of the policy or not.

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 for any loss or damage You have suffered with regard to an event referred to in Sections 4 of this policy,

- (a) You must pay the first \$500 or such other sum as prescribed under the Act of each Claim made.

A Claim of \$500 or more may relate to more than one Defect if the amount Claimed for one or more defects is less than \$500.
- (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 Dwelling 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.

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, within a reasonable period of time after

the date that You first became aware of or ought reasonably have been aware of the Claim or 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) Despite the requirements of clauses 7.1(b) and (c) of this policy, We acknowledge that Section 54 of the Insurance Contracts Act 1984 (We may not refuse to pay Claims in certain circumstances) applies to this policy.

However if We have been advised in writing within a reasonable period of time after You first became aware, or might reasonably expected to have become aware, of the the Claim or event that gave rise to the Claim, then We will not rely on Section 54 of the Insurance Contracts Act 1984 to reduce Our liability under this policy or to 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 any Owner Builder or other person We nominate, with reasonable access to the Building Site for the purposes relating to the Claim. However You have the right on reasonable grounds, that includes loss of confidence in the Owner Builder, to refuse to provide this access.

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 Disputes Tribunal or 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 Disputes 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 Sale Contract, 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.
- (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.

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 a court of competent jurisdiction. If you wish to appeal Our decision to You must lodge and file that application with a court of competent jurisdiction within a reasonable period of time 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 a court of competent jurisdiction 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 a court.

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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