

Domestic Construction

INSURANCE POLICY

Owner Builders'
New South Wales

POLICY



Policy Wording

1 Owner builders warranty insurance

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

- Death; or
- Disappearance; or
- Insolvency

of the owner builder.

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

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

A copy of this policy wording is held by the owner builder and a copy is also provided to each homeowner with the Certificate.

2 The insurer

QBE Insurance (Australia) Limited

ABN: 78 003 191 035

82 Pitt Street

SYDNEY NSW 2000

3 Your policy terms and conditions

- 3.1 Some words in this **policy** have special meaning. Those words appear in the **policy** in **bold**. What they mean is set out in section 16.

4 Who is covered by this policy?

- 4.1 **You** are the person covered under this policy.
We do not cover anyone except **you**.

5 What is covered by this policy?

Primary cover

- 5.1 **We** will pay for loss or damage resulting from a breach of a **statutory warranty** implied by the **Act** but only if **you** cannot recover compensation from the **owner builder** or have the **owner builder** rectify the loss or damage because of the **insolvency**, death or **disappearance** of the **owner builder**.

Supplementary cover

- 5.2 **We** will also pay for the following:

- 5.2.1 the cost to **you** of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of an event referred to in clauses 5.1;
- 5.2.2 loss or damage resulting from faulty design where the design was provided by the **owner builder** but only if **you** cannot recover compensation from the **owner builder** or have the **owner builder** rectify the loss or damage because of the **insolvency**, death or **disappearance** of the **owner builder**; and
- 5.2.3 any legal or other reasonable costs incurred by **you** in seeking to recover compensation from the **owner builder** for, or in taking action against the **owner builder** to rectify, the loss or damage referred to in clauses 5.1.

6 How much will we pay?

- 6.1 **We** may do two things, at **our** option, when **we** pay a claim under this **policy**. **We** will either make good the loss or damage or pay the amount of that loss or damage.

- 6.2 However, the following limitations apply to what **we** will pay:

- 6.2.1 **We** will not pay the first \$500 of each claim under this **policy**.
- 6.2.2 If the **work** is not **residential flat building work**, **we** will not pay more than \$200,000 in total (or such other minimum amount as may be prescribed from time to time by the **Act**) in the aggregate for all claims under this **policy** for each **dwelling**. In respect of a **dwelling** contained in a building or complex containing more than one **dwelling**, this total may be reduced by not more than an amount calculated by dividing the amount of any claim paid by **us** in relation to **common property** of the building or complex, by the number of **dwellings** contained in the building or complex.

6.2.3 If the **work** is **residential flat building work**, and the amount obtained by dividing the contract price of the **work** by the number of **dwellings** in the building does not exceed \$12,000, **we** will not pay more than \$200,000 in the aggregate for all claims made under this **policy** for that building.

6.2.4 If the **work** is **residential flat building work**, and the amount obtained by dividing the contract price of the **work** by the number of **dwellings** in the building exceeds \$12,000, **we** will not pay more than \$200,000 in the aggregate for all claims made under this **policy** in respect of each **dwelling** in that building.

6.3 The limitations in clause 6.2 include the amounts payable under clause 5.2.

7 What we don't pay

7.1 **We** will not pay under this **policy** for claims:

7.1.1 in the nature of liquidated damages for delay or damages for delay. However, this limitation does not extend to any increase in rectification costs caused by the passing of time.

7.1.2 for loss or damage that could reasonably be expected to result from fair wear and tear of the **work**, or from **your** failure to maintain the **work**.

7.1.3 in relation to visible defects in the **work** of which **you** should reasonably have been aware when acquiring the **building**.

7.1.4 in relation to any defect or incomplete **work** that is referred to in a report on the **work** that was required by **us** before this **policy** was entered into.

7.1.5 in relation to a defect in, or repair of damage to, **structural elements** in the non-residential part of a **building** that supports or gives access to the residential part, unless it is a defect or damage that adversely affects the structure of the residential part or the access to it.

7.1.6 for loss or damage caused by the normal drying out of the **building** if the **owner builder** has taken all reasonable precautions in allowing for the normal drying out when carrying out the **work**.

7.1.7 for damage due to or made worse by the failure by **you** to take reasonable and timely action to minimise the damage.

7.1.8 in relation to an appliance or apparatus (such as a dishwasher or air conditioning unit) if the claim is made after the expiry of the manufacturer's warranty period for the appliance or apparatus concerned, or, if there is no warranty period, outside the reasonable lifetime of the appliance or apparatus.

7.1.9 in relation to damage to **work** or materials that is made outside the reasonable life time of that **work** or materials or the manufacturer's warranty period for the materials.

7.1.10 for legal liability resulting from any event unless expressly insured under this **policy**.

7.1.11 in relation to an interest in the **building** that is not **your** interest.

7.1.12 in relation to a defect due to a faulty design provided by **you** or a previous owner (other than the **owner builder**).

7.1.13 where the damage is due to, or increased by, the affected part of the **building** being used primarily for non-residential use.

7.1.14 for loss, damage or defects due to an act, error or omission of someone other than the **owner builder** or someone contracted by the **owner builder**.

7.1.15 arising from, connected with or relating to personal injury, death (other than of the **owner builder**), disease or illness of a person or for injury to or impairment of a person's mental condition.

7.1.16 for consequential loss of any kind, including loss of rent or other income, loss of value, loss of opportunity, inconvenience or distress, unless expressly insured under this **policy**.

7.1.17 connected with or relating to:

- (a) war, invasion, acts of foreign enemies, hostilities or war like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority.

- (b) fraud or dishonest conduct of any kind by **you** of any kind.
- (c) any **terrorism**.
- (d) radioactivity or the use, existence or escape of any nuclear fuel, nuclear material or nuclear waste or action of nuclear fission or fusion.
- (e) the existence or use of asbestos products and/or products containing asbestos in the **building** or on or in the land on which the **building** is built.
- (f) mechanical or electrical breakdown, not attributable to the workmanship of, or the installation by the **owner builder**.
- (g) **your** failure to maintain appropriate protection against pest infestation or exposure to natural timbers.
- (h) the action of vermin, termites, moths or other insects unless, and to the extent that, the **work** involved the treatment of the termites, moths or other insects or the prevention of the action of the vermin, termites, moths or other insects.

- 7.1.18 for any loss, cost, expense or obligation of any kind directly or indirectly arising from or relating to mould, fungus, mildew or spores unless, and to the extent that, the **work** involved the treatment of mould, fungus, mildew or spores or the prevention of mould, fungus, mildew or spores.
- 7.1.19 for claims insured under another policy of insurance issued under or pursuant to the **Act**.
- 7.1.20 for claims that were allowed to be excluded by the **Act** as at the date the **certificate of insurance** was issued.

8 How long are you covered for?

Structural defects

- 8.1 This **policy** covers loss or damage arising from a **structural defect** for six years after the **completion** of the **work**.

Other causes

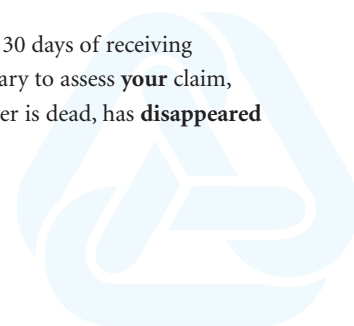
- 8.2 This **policy** covers loss, damage or expense, other than loss, damage or expense arising from a **structural defect**, for two years after the **completion** of the **work**.

9 How long do you have to claim?

- 9.1 **You** must notify **us** of a claim for loss or damage within six months of when **you** first became aware, or when **you** ought reasonably have become aware, of the fact or circumstance giving rise to the claim.
- 9.2 If **you** notify **us** of a **structural defect** or other defect, **you** are taken to have given notice of every defect to which the defect is directly or indirectly related, whether or not the claim in respect of the defect that was actually notified has been settled.

10 Making a claim

- 10.1 **You** must make a claim by completing **our** claim form. The claim form is available on **our** website **www.qbe.com**.
- 10.2 In answering any questions **you** must be honest and tell **us** everything **you** know. **We** will use this information to decide whether to pay a claim.
- 10.3 **You** must give **us** any assistance, information or documents which **we** request. This includes giving **us**, **our** nominated builder and **your** builder, reasonable access to inspect, rectify or complete the **work** (unless **you** have reasonable grounds to refuse access).
- 10.4 **You** must not make any admissions, offer, promise or payment in connection with any claim.
- 10.5 **You** must comply with **your** obligations under the **policy**, otherwise **we** may not have to pay **your** claim(s).
- 10.6 **We** will acknowledge receipt of **your** claim notification within 5 business days. At this time **we** will confirm that **we** have all the required information or **we** will tell **you** of any other information needed to enable **us** to assess **your** claim.
- 10.7 **We** will notify **you** within 30 days of receiving all the information necessary to assess **your** claim, if **we** accept that the builder is dead, has **disappeared** or is **insolvent**.



11 Failures by the owner builder

- 11.1 We will not either refuse to pay a claim under this **policy** or to cancel this **policy** for failure to comply with the duty of disclosure or a misrepresentation by the **owner builder**. We will not refuse to pay under this policy if the premium is unpaid by them, if we have issued a **certificate of insurance** or otherwise accepted cover under this **policy**.
- 11.2 We may, however, recover from the **owner builder** any amount we pay under this **policy** in those circumstances.

12 Other important matters

Enquiries and complaints

- 12.1 We believe that it is important that the good relationship we have with **our** clients is not damaged through any misunderstanding or dispute that may arise from **our** products or services.
- 12.2 Therefore, if **you** are:
- 12.2.1 uncertain about any aspect of **your** insurance cover or any claim **you** have made on this **policy**; or
 - 12.2.2 concerned with delays in processing; or
 - 12.2.3 dissatisfied with any response from **us** or **our** agents including loss adjusters or investigators;
- please make **your** concerns known to the staff in **our** Branch Office, in the first instance. **Our** Branch Staff have the knowledge and skills to resolve most misunderstandings that arise.
- 12.3 However, if any issue or complaint remains unresolved to **your** satisfaction, the matter can be referred to **our** Internal Dispute Resolution Panel. This Panel comprises senior managers who have the authority to review **your** dispute and attempt to reach an amicable outcome with **you**. It is **our** aim to respond to **your** complaint within 10 working days. If **our** internal dispute resolution process fails to satisfy **your** concerns, **you** are still able to use the options available to **you** through the normal legal process.
- 12.4 **Our** contact details are on page three of this **policy**.

Our rights

- 12.5 We may, at **our** discretion, fulfil **our** obligations under this policy by either engaging or paying a builder to repair or rectify loss or damage or paying **you** the cost to **you** of doing so.
- 12.6 We will not reduce **our** liability under this **policy** or reduce any amount otherwise payable in respect of a claim, if **you** delay in notifying **us** of a claim, if the claim is notified to **us** within the time periods set in clause 9.

Loss prevention

- 12.7 **You** must take all reasonable steps to prevent and/or minimise any act, error or omission or event which might cause or contribute to a claim under this **policy**.

Recovery from others

- 12.8 If we pay a claim, we are entitled to be subrogated to **your** rights to recover against any other party (including the **owner builder**, or a contractor or supplier or a liquidator or administrator or the estate of the **owner builder**) to the extent of the amount paid by **us**.
- 12.9 **You** must not limit or exclude **your** rights against a party from whom **you** might otherwise be able to recover in respect of a loss or damage. If **you** do, **our** liability to **you** is reduced to the extent that we can no longer recover from that other party as a result of **your** actions.
- 12.10 **You** must provide **us** with reasonable assistance to recover damages or contribution from any other person.

Goods and services tax

- 12.11 Despite the other provisions of this **policy**, **our** liability to **you** will be calculated taking into account any input tax credit to which **you** would have been entitled to for any acquisition which is relevant to **your** claim.
- 12.12 **You** must tell **us** whether **you** were entitled to claim an input tax credit on the premium at the time of making a claim under the **policy**. If **you** do not provide **us** with this information we may deduct up to 1/11th of the amount otherwise payable in settlement of **your** claim.
- 12.13 If **you** are registered for GST, this represents the reduction in the cash settlement for claims that would apply based on **your** entitlement to claim an input tax credit on the replacement goods or services.

- 12.14** If **you** were not entitled to an input tax credit on the premium, this will equal the GST credit to which **we** would have been entitled if **you** had disclosed **your** entitlement.
- 12.15** If **you** are only entitled to a partial input tax credit on the premium, this represents the reduction in the cash settlement for claims that would apply based on **your** entitlement to claim an input tax credit on the replacement goods or services plus the GST credit to which **we** may have been entitled if **you** had disclosed **your** entitlement.
- 12.16** Unless stated otherwise, all amounts payable by **us** under this **policy** and all **policy** limits are inclusive of GST.
- 12.17** 'GST', 'input tax credit' and 'acquisition' have the meaning given under the A New Tax System (Goods and Services Tax) Act.

Application of laws

- 12.18** This policy is subject to the law of New South Wales. The law of New South Wales includes Commonwealth legislation such as the Insurance Contracts Act.
- 12.19** A reference to any legislation is a reference to the legislation as amended from time to time.

13 Conflict with the Act

- 13.1** This **policy** is intended to comply with the requirements set out under the **Act**. However, if this **policy** conflicts with, or is inconsistent with the **Act**, the **policy** must be read and enforceable as if it complies with the **Act**.

14 The owner builder's duty of disclosure

- 14.1** Before a person enters into a contract of general insurance with an insurer, that person has a duty, under the Insurance Contracts Act, to disclose to the insurer every matter they know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of insurance and, if so, on what terms.
- 14.2** You, the **owner builder**, have the same duty to disclose those matters to the insurer before **you** renew, extend, vary or reinstate a contract of general insurance.

- 14.3** Your duty however does not require disclosure of any matter:

- 14.3.1 that diminishes the risk to be undertaken by the insurer.
- 14.3.2 that is of common knowledge.
- 14.3.3 that your insurer knows or, in the ordinary course of its business, ought to know.
- 14.3.4 as to which compliance with your duty is waived by the insurer.

15 Privacy promise

- 15.1** As this **policy** is entered into by an owner builder and the beneficiary will be the homeowner(s), this privacy promise will apply to both those parties as appropriate. The builder will need to provide information to enable the policy to be issued and information about the homeowner will be obtained to enable the **certificate of insurance** to be issued. In the event of a claim, further information may be required about either or both parties.
- 15.2** **We** are bound by the General Insurance Information Privacy Code, an industry code approved under the Privacy Act 1988 (Cth). **We** are committed to safeguarding **your** privacy and the confidentiality of **your** personal information. **We** will only collect personal information from **you** or about **you**, or the builder, which is relevant to this insurance policy, assessing and processing claims and use it in a way **you** would reasonably expect.
- 15.3** The personal information collected may include personal details, construction details financial information and arrangements.
- 15.4** Without this personal information **we** may not be able to issue insurance cover or process claims.
- 15.5** **We**, or **our** authorised agent may disclose personal information to:
- 15.5.1 a financial institution, credit provider, credit/trade reference company, **your** major creditors including building material suppliers, accountant or other insurer (for the purpose of assessing the builder prior to a **policy** being issued);

- 15.5.2 an investigator, assessor or State or Federal authority (for the purpose of investigating or assessing an application or a claim).
- 15.5.3 a lawyer or recovery agent (for the purpose of defending an action or recovering **our** costs).
- 15.5.4 another insurer (for the purpose of seeking recovery or to assist them to assess insurance risk) or a reinsurer who may be located overseas.
- 15.5.5 any insurance reference bureau (for the purpose of recording any claims made upon **us** under this **policy**).

15.6 Personal information may also be obtained from the above people or organisations.

15.7 In addition, **we** will:

- 15.7.1 give **you** the opportunity to correct **your** personal information, or obtain access to it (some restrictions and a fee may apply).
- 15.7.2 provide **our** dispute resolution procedures to **you** in respect of any complaint **you** may have regarding **your** personal information.

15.8 Further information can be obtained by contacting **our** Compliance Manager by telephone (02) 9375 4656 or by fax (02) 9221 1330 or email to compliance.manager@qbe.com.

16 Words with special meanings

16.1 The following definitions apply in this **policy**:

Act

The Home Building Act 1989 and regulations. The regulations when referred to separately are referred to as the **regulations**.

Building

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

Certificate of insurance

The certificate the **we** produce that includes important information and details about this **policy**. The **certificate of insurance** will be evidence that **we** have accepted cover under this **policy**.

Common property

- Common property within the meaning of the Strata Schemes (Freehold Development) Act 1986 or the Strata Schemes (Leasehold Development) Act 1986; or
- Associated property within the meaning of the Community Land Development Act 1989.

Completion (of the work)

- The date of final inspection of the **work** by the applicable principal certifying authority.
- If there is no final inspection by the principal certifying authority, on the date that is six months after the issue of the permit from the **owner builder** in relation to the **work**.

Developer

An individual, partnership or corporation on whose behalf **residential building work** is done:

- in connection with a building or residential development where 4 or more of the existing or proposed dwellings are or will be owned by the individual, partnership or corporation; or
- in connection with a retirement village or accommodation specially designed for the disabled where all the residential units are or will be owned by the individual, partnership or corporation.

A developer does not include a company that owns a building under a company title scheme.

Disappearance

Includes cannot be found, after due search and enquiry.

Dwelling

A building or portion of a building 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 unit or residential flat).

Dwelling includes any swimming pool or spa constructed for use in conjunction with a dwelling and such additional structures and improvements that are declared by the **regulations** to form part of a dwelling.

Dwelling does not include buildings or portions of buildings declared by the **regulations** to not be a dwelling.

Insolvency

- In relation to an individual, that the individual is insolvent under administration (within the meaning of the Corporations Act 2001).
- In relation to a corporation, that the corporation is an externally-administered body corporate administration (within the meaning of the Corporations Act 2001).

Owner builder

The owner builder that holds a permit issued under the **Act**, who owns the land the subject of the **sale contract** and named in the **certificate of insurance** as the owner builder.

For the purposes of the cover we give in clauses 5.1 and 5.2, owner builder includes an individual contracted by the **owner builder** to perform the **work**.

Owner builder work

Residential building work:

- the reasonable market cost of the labour and materials involved in which exceeds the amount prescribed by the **Act**.
- that relates to a single dwelling or a dual occupancy:
 - that may not be carried out on the land concerned except with development consent under Part 4 of the Environmental Planning and Assessment Act (NSW).
 - that is a complying development within the meaning of the **Act**.

Policy

This policy wording, any endorsements and the **certificate of insurance**.

Residential building work

Any work involved in, or the coordinating or supervising any work involved in the:

- construction of a **dwelling**;
- the making of alterations or additions to a **dwelling**; or
- the repairing, renovation, decoration or protective treatment of a **dwelling**.

Residential building work includes work declared by the **regulations** to be roof plumbing work or specialist work done in connection with a **dwelling** or work concerned in installing a prescribed fixture or apparatus in a **dwelling** (or in adding to, altering or repairing any such installation).

Residential building work does not include work declared by the **regulations** not to be residential building work.

Residential flat building

A building that comprises 2 or more strata, community scheme or company title home units.

Residential flat building work

Owner builder work which is done or is to be done on the **common property** of an existing single **residential flat building** or a single **residential flat building** (if the whole building is owned by the same person) where the contract price of the **work** (inclusive of GST) is more than \$12,000.

Sale contract

The contract between **you** and the **owner builder** for the sale by the **owner builder** of land on which **work** is done or is to be done in connection with the **building**.

Statutory warranty

Each of the following warranties

- That the **work** will be performed in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract.
- That all materials supplied will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the contract, those materials will be new.
- That the **work** will be done in accordance with, and will comply with, the **Act** and any other law.
- That the **work** will be done with due diligence and within the time stipulated in the contract, or if no time is stipulated, within a reasonable time.
- That, if the **work** consists of construction of a **dwelling**, the making of alterations or additions to a **dwelling** or the repairing, renovation, decoration or protective treatment of a **dwelling**, the **work** will result, to the extent of the **work** conducted, in a dwelling that is reasonably fit for occupation.
- That the **work** and all materials used in doing the **work** will be reasonable fit for the specified purpose or result, if the person for whom the **work** is done expressly makes known to the holder of the owner builders permit or person required to hold such a permit (or another person with the express or apparent authority to enter into or vary contractual arrangements on behalf of the holder or person), the particular purpose for which the **work** is required or the result that the **work** is to achieve, so as to show that the person for whom the **work** is done relies on the holder's or person's skill or judgment.

Structural defect

Any defect in a **structural element of a building** that is attributable to defective design, defective or faulty workmanship or defective materials (or a combination of these) and that:

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

Structural element

Any component or part of an assembly which provides necessary supporting structure to the whole or any part of the building.

Structural element of a building

- Any internal or external load-bearing component of the building that is essential to the stability of the building or any part of it, including things such as foundations, floors, walls, roofs, columns and beams.
- Any component (including weatherproofing) that forms part of the external walls or roof of the building.

Terrorism

Any act, or the preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division any such government, or in pursuit of political, religious, ideological or similar purpose to intimidate the public or a sector of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- involves violence against one or more persons;
- involves damage to property;
- endangers life other than that of the person committing the action;
- creates a risk to health or safety of the public or a section of the public; or
- is designed to interfere with or disrupt an electronic system.

We/our/us

QBE Insurance (Australia) Limited ABN 78 003 191 035.

Work

Owner builder work which is done or is to be done by the **owner builder** to the **building** before the **sale contract** was entered into.

You/your

Any person who is a purchaser of land the subject of the **sale contract** and any successor in title to that person.

You/your does not include:

- Any **developer** on whose behalf the work is undertaken;
- The **owner builder**;
- A person who does **residential building work** other than under a contract;
- The holder of a builders licence who and that carried out the **work**; or
- Any related bodies corporate of those above, within the meaning of section 50 of the Corporations Act 2001.

16.2 A reference to any legislation is a reference to the legislation as amended from time to time.

