

# HOME WARRANTY INSURANCE POLICY FOR RESIDENTIAL BUILDING WORK – 1 FEBRUARY 2012

## How to read the policy

The **policy** covers **you** for the types of loss, and for the amounts of loss, described in clause 1.

Clause 2 explains the period for which the **policy** provides cover.

The **policy** does not cover **you** for the losses set out in clause 3.

**Your** entitlement to indemnity is subject to conditions. In particular, **you** must comply with the obligations relating to claims in clause 4 and the general obligations set out in clause 5.

In some cases, cover under the **policy** may be limited by clause 6.

Words and phrases appearing in bold have the special meanings explained in clause 7.

## 1. Cover

### 1.1 Residential building work

- (a) Subject to the terms of the **policy** and in accordance with the **Act** and the **Regulation**, the **policy** will cover **you** if **you** suffer the following losses or damage in respect of the **work**:
- (i) loss or damage resulting from non-completion of the **work** because of the **insolvency**, death or **disappearance** of the **builder**; and
  - (ii) loss or damage arising from a breach of a **statutory warranty**, being loss or damage in respect of which **you** cannot recover compensation from the **builder** or have the **builder** rectify because of the **insolvency**, death or **disappearance** of the **builder**.
- (b) Subject to the terms of the **policy**, in accordance with the **Act** and the **Regulation** and without limiting paragraph (a), the **policy** will cover **you** for the following loss or damage, being loss or damage in respect of which **you** cannot recover compensation from the **builder**, or have the **builder** rectify, because of the **insolvency**, death or **disappearance** of the **builder**:
- (i) loss or damage resulting from faulty design, where the design was provided by the **builder**;
  - (ii) loss or damage resulting from non-completion of the **work** because of early termination of the **contract** because of the **builder's** wrongful failure or refusal to complete the **work**;
  - (iii) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of an event referred to in paragraph (a);
  - (iv) the loss of a deposit or progress payment due to an event referred to in paragraph (a); and
  - (v) any legal or other reasonable costs incurred by **you** in seeking to recover compensation from the **builder** for the loss or damage or in taking action to rectify the loss or damage.
- (c) The **policy** will also cover **you** for any acts and omissions of all persons contracted by the **builder** to perform the **work** resulting in the loss or damage referred to in paragraph (a) or (b).

### 1.2 Amount of cover

- (a) At **our** discretion, **we** will either make good the loss or damage by engaging or paying a builder to repair or rectify the loss or damage, or pay to **you** the amount of that loss or damage, subject to paragraphs (b) and (c) and the limits on cover set out in subclause 1.3.

- (b) Subject to paragraph (c), and except where clause 6 applies (to residential flat building work), the **policy** will not cover **you** for more than \$340,000 (or such other amount as may be prescribed by the **Act** and the **Regulation** at the time the **policy** is entered into) in the aggregate for all claims made.
- (c) In respect of a **dwelling** in a building or complex containing more than one dwelling, the amount referred to in paragraph (b) 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.

### 1.3 General limits on cover

- (a) **You** must meet the first \$250 of each claim made.
- (b) If the claim is in respect of loss or damage resulting from non-completion of the **work**, the **policy** will not cover **you** for more than 20% of the **contract** price (including any agreed variation to the **contract** price) for the **work**.
- (c) The **policy** will not cover **you** for the amount of a deposit that exceeds the maximum payment permitted by section 8 of the **Act**.
- (d) **We** will not be liable for the amount of any part of a progress payment that exceeds the amount specified for such a payment under the **contract**.
- (e) All references in the **policy** to dollar amounts and the **contract** price are inclusive of any applicable goods and services tax (GST).

## 2. Period of insurance

### 2.1 Non-completion

In respect of loss or damage arising from non-completion of the **work**, the **policy** provides cover for a period of 12 months after the failure to commence, or cessation of, the **work**.

### 2.2 Structural defects

In respect of loss or damage arising from a **structural defect**, the **policy** provides cover for a period of six years after the completion of the **work** or such other period as may be prescribed by the **Act** and the **Regulation**.

### 2.3 Other loss and damage

In respect of loss or damage arising other than from a **structural defect** or non-completion of the **work**, the **policy** provides cover for a period of two years after the completion of the **work** or such other period as may be prescribed by the **Act** and the **Regulation**.

### 2.4 Completion of the work

**Work** is taken to be complete:

- (a) on the date that the **work** is completed within the meaning of the **contract** under which the **work** was done; or
- (b) if:
- (i) the **contract** does not provide for when **work** is completed;
  - (ii) there is no **contract**; or
  - (iii) in any other case,

on the date of **practical completion**.

### 3. Loss and damage for which the policy provides no cover

The **policy** will not cover **you** for:

- (a) claims that may otherwise arise under the **contract** 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 effluxion of time;
- (b) a claim for loss or damage resulting from any of the following:
  - (i) war;
  - (ii) an **act of terrorism**;
  - (iii) civil unrest;
  - (iv) a nuclear event;
  - (v) failure by **you** to maintain appropriate protection against pest infestation or exposure of natural timbers;
  - (vi) consequential loss, including, without limitation, loss of rent or other income, loss of enjoyment, loss of business opportunity, inconvenience or distress; or
  - (vii) malfunction in any mechanical or electrical equipment or appliance, if **we** prove that the malfunction is not attributable to the workmanship of, or installation by, the **builder**;
- (c) 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**;
- (d) a claim in relation to a defect in, or the repair of damage to, a **structural element** 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;
- (e) damage caused by the normal drying out of the **work** if the **builder** has taken all reasonable precautions in allowing for the normal drying out when carrying out the **work**;
- (f) damage due to or made worse by **your** failure to take reasonable and timely action to minimise the damage;
- (g) a claim 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;
- (h) a claim in relation to damage to **work** or materials that is made outside the reasonable lifetime of that **work** or materials or the manufacturer's warranty period for the materials; or
- (i) a claim in relation to a defect due to a faulty design provided by **you**.

The **policy** does not cover an interest in the **work** that is not **your** interest and **we** are not liable under the **policy** to any person other than **you**. The **policy** does not cover any claim by the **builder**. The **policy** does not cover a claim by any person who is, in relation to the **work**, a **developer** or the holder of a contractor licence (as defined in the **Act**) or another person who does **residential building work** in relation to the **work** other than under a contract, or a company or a body corporate that is related (within the meaning of s.50 or s.228 of the *Corporations Act 2001* (Cth)) to any of those persons.

### 4. Claims conditions

#### 4.1 Making a claim

- (a) The **policy** provides cover in respect of loss giving rise to a claim only if **you** make a claim in respect of the loss during the **period of insurance**.
- (b) Except in the case of claims arising from non-completion of **work**, **you** may make a claim in respect of a loss that becomes apparent in the last six months of the **period of insurance** within six months after the loss becomes apparent.
- (c) Except in the case of claims arising from non-completion of **work**, if the **insolvency**, death or **disappearance** of the builder does not occur until after the expiry of the **period of insurance** (or occurs during the last six months of the **period of insurance**), **you** may make a claim after the **period of insurance** in respect of a loss which becomes apparent during the **period of insurance**, provided that:
  - (i) **you** notify **us** of the loss during the **period of insurance** (or, if the loss becomes apparent within the last six months of the **period of insurance**, within six months after the loss became apparent), with the notification setting out such information as may be reasonably necessary to put **us** on notice as to the nature and circumstances of the loss;
  - (ii) any notification which **you** give under clause 4.1(c)(i) must be in writing and in such form as may be prescribed by the **Regulation** from time to time; and
  - (iii) since the loss became apparent, **you** have diligently pursued the enforcement of the **statutory warranty** concerned in respect of the loss.
- (d) Subject to clause 63(4) of the **Regulation**, if **you** notify **us** of a loss, **you** are taken for the purposes of the **policy** to have given notice of every loss caused by the same defect as caused the loss of which **you** notified **us**, whether or not a claim in respect of the notified loss has been settled.

#### 4.2 Awareness of facts and circumstances giving rise to a claim

- (a) **We** may not reduce **our** liability under the **policy** or reduce any amount otherwise payable in respect of a claim, merely because of a delay by **you** in notifying **us** of the claim, if the claim is notified to **us**:
  - (i) unless paragraph 4.2(a)(ii) applies, within six months after **you** first become aware (or ought reasonably become aware), of the fact or circumstance under which the claim arises; or
  - (ii) if the claim is for loss or damage resulting from non-completion of **work**, within 12 months after the later of:
    - (A) the date of the **contract**;
    - (B) the date provided in the **contract** for commencement of **work**; or
    - (C) the date on which **work** ceased,

but **we** may reduce **our** liability under the **policy** or reduce any amount otherwise payable in respect of a claim notified outside of these periods.

#### 4.3 Certificate of insurance

- (a) If **we** have provided to **you** or another person a certificate of insurance evidencing insurance for the **work**, or if **we** have otherwise accepted cover, **we** are not entitled to refuse to pay a claim in respect of the **work** or to cancel the **policy** solely because the premium was not paid.
- (b) If **we** have provided to **you** or another person a certificate of insurance evidencing insurance for the **work**, or if **we** have otherwise accepted cover, **we** are not entitled to refuse to pay a claim in respect of **work** done after the **contract** has commenced or to cancel the **policy** solely because the **contract** was entered into before the **period of insurance** commenced.

## 5. General conditions

### 5.1 Non-disclosure or misrepresentation

- (a) **We** are not entitled to either refuse to pay a claim under the **policy** or to cancel the **policy** on the ground that the **policy** was obtained by misrepresentation or non-disclosure by the **builder**.
- (b) When **you** provide information to **us**, including when **you** answer **our** questions, **you** must be honest and ensure that the information that **you** provide to **us** is accurate and complete.

### 5.2 Recovery

- (a) If **we** pay a claim, **we** are entitled to be subrogated to **your** rights against any person in relation to the claim to the extent of the amount paid by **us**. **You** must provide **us** with reasonable assistance to recover damages or contribution from any other person.
- (b) **You** must not limit or exclude **your** rights against a person from whom **you** might otherwise be able to recover in respect of loss or damage. If **you** do, **we** may reduce **our** liability to **you** to the extent that **we** cannot recover from that other person as a result of the limitation or exclusion by **you**.

### 5.3 Other conditions

- (a) Without limiting **your** obligations under subclause 4.1, if **you** suffer loss or damage arising from a breach of a **statutory warranty** in respect of the **work**, **you** must act to enforce the **statutory warranty** and if **you** fail to take sufficient action **we** may reduce **our** liability by an amount that fairly represents the extent to which **our** interests have been prejudiced.

*Note: for example, you might do this by lodging a complaint with NSW Fair Trading, a home building division application with the Consumer, Trader and Tenancy Tribunal and/or commencing court proceedings to try to have the builder finish any incomplete work or rectify any defective work.*

- (b) **You** must give **us** any assistance, information or documents which **we** request. This includes giving **us** and **our** nominated builder reasonable access to inspect, rectify or complete the **work** unless **you** have reasonable grounds to refuse access.
- (c) The **policy** is subject to the laws of New South Wales.

## 6. Residential flat building work

- (a) This clause applies to the following **work** in relation to an existing single **residential flat building** where the **contract** price (inclusive of GST) exceeds \$20,000:
  - (i) **work** on the **common property** of the existing single **residential flat building** (where the building comprises strata, community scheme or company title home units), and
  - (ii) **work** on an existing single **residential flat building** if the whole building is owned by the same person.
- (b) If the amount obtained by dividing the **contract** price by the number of dwellings in the building does not exceed \$20,000, the **policy** will not cover **you** for more than \$340,000 (or such other amount as may be prescribed by the **Act** and the **Regulation** at the time the **policy** is entered into) in the aggregate for all claims made.
- (c) If the amount obtained by dividing the **contract** price by the number of dwellings in the building exceeds \$20,000, the **policy** will not cover **you** for more than \$340,000 (or such other amount as may be prescribed by the **Act** and the **Regulation** at the time the **policy** is entered into) in the aggregate for all claims made in respect of each dwelling in the building.
- (d) In this clause, 'dwelling', in relation to a strata, community scheme or company title home unit, includes any garage or storage area that is included in the same title as the unit.

## 7. Terms with special meanings

In the **policy** the words in bold have the meaning indicated below.

**Act** means the *Home Building Act 1989* (NSW) as amended from time to time.

**Act of terrorism** means 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.

**Builder** means the builder described in the **insurance application**.

**Building claim** means a claim for:

- (a) the payment of a specified sum of money;
- (b) the supply of specified services;
- (c) relief from payment of a specified sum of money;
- (d) the delivery, return or replacement of specified goods or goods of a specified description; or
- (e) a combination of two or more of the remedies referred to in paragraphs (a) to (d),

that arises from a supply of building goods or services whether under a **contract** or not, or that arises under a contract that is collateral to a contract for the supply of building goods or services, but does not include a claim that the **Regulation** declares not to be a building claim.

**Building claim order** means an order of a court or the Consumer, Trader and Tenancy Tribunal to pay an amount of money in respect of a **building claim**.

**Common property** means:

- (a) common property within the meaning of the *Strata Schemes (Freehold Development) Act 1973* (NSW) or the *Strata Schemes (Leasehold Development) Act 1986* (NSW), or
- (b) association property within the meaning of the *Community Land Development Act 1989* (NSW).

**Contract** means a contract between **you** and the **builder** pursuant to which the **work** is done or is to be done.

**Developer** means an individual, a partnership or a corporation on whose behalf **residential building work** is done in the following circumstances:

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

An owner of land on which **residential building work** is done in the above circumstances, is a **developer**.

A company that owns a building under a company title scheme is not a developer for the purposes of the **policy**.

**Disappearance** includes a reference to the fact that, after due search and inquiry, the **builder** cannot be found.

**Dwelling** means the dwelling(s) (as defined under the **Act**) described in the **insurance application**.

**Insolvency** means:

- (a) in relation to an individual, that the individual is insolvent under administration (within the meaning of the *Corporations Act 2001* (Cth)); or
- (b) in relation to a corporation, that the corporation is an externally-administered body corporate (within the meaning of the *Corporations Act 2001* (Cth)).

For the purposes of the application of the **policy** to any loss that is the subject of a **building claim order** made against the **builder** that remains unsatisfied, **insolvency** includes the suspension of the **builder's** licence under section 42A of the **Act**.

**Insurance application** means the application form completed by **you** or the **builder** applying for this insurance.

**Period of insurance** means the period of cover specified in clause 2.

**Policy** means this policy wording, any endorsements and the certificate of insurance.

**Practical completion** means, subject to section 3B of the **Act**, when the **work** is completed except for any omissions or defects that do not prevent the **work** from being reasonably capable of being used for its intended purpose or the earliest of whichever of the following dates can be established for the **work**:

- (a) the date on which the **builder** handed over possession of the work to **you**;
- (b) the date on which the **builder** last attended the site to carry out **work** (other than **work** to remedy any defect that does not affect practical completion); or
- (c) the date of issue of an occupation certificate under the *Environmental Planning and Assessment Act 1979* (NSW) that authorises commencement of the use or occupation of the work.

**Regulation** means the *Home Building Regulation 2004* (NSW), as amended from time to time.

**Residential building work** has the same meaning as it does under the Act.

**Residential flat building** means any building containing two or more dwellings.

**Residential flat building work** means work which is done or is to be done on the common property of an existing single residential flat building, where the contract price is more than \$20,000.

**Statutory warranty** means any of the following warranties:

- (a) 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;
- (b) 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;
- (c) that the work will be done in accordance with, and will comply with, the Act and any other law;
- (d) 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;
- (e) that, if the work consists of 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, the work will result, to the extent of the work conducted, in a dwelling that is reasonably fit for occupation as a dwelling; and
- (f) that the work and any materials used in doing the work will be reasonably fit for the specified purpose or result, if you expressly made known to the builder (or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of the builder), the particular purpose for which the work was required or the result that you desired the work to achieve, so as to show that you relied on the builder's skill and judgment.

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

- (a) results in, or is likely to result in, the building or any part of the building being required by or under any law to be closed or prohibited from being used;
- (b) prevents, or is likely to prevent, the continued practical use of the building or any part of the building;
- (c) results in, or is likely to result in:
  - (i) the destruction of the building or any part of the building; or
  - (ii) physical damage to the building or any part of the building; or

- (d) 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.

For the purposes of this definition of **structural defect**, 'structural element of a building' means:

- (a) 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; and
- (b) any component (including weatherproofing) that forms part of the external walls or roof of the building.

**Structural element** in relation to a building, means a component or part of an assembly which provides necessary supporting structure to the whole or any part of the building.

**We, our or us** means the Self Insurance Corporation incorporated under the *NSW Self Insurance Corporation Act 2004* (NSW).

**Work** means the **residential building work** which is done or is to be done by the **builder** to the **dwelling** under the **contract**.

**You or your** means the person on whose behalf the **work** is done or is to be done including any owner of the land at the time the **contract** is entered into, on which **residential building work** is done, and any successor in title to that person.