

DOMESTIC BUILDING OWNER BUILDER

INSURANCE POLICY

For Certificates of Insurance issued on or after 1 July 2017

This policy is underwritten by

Victorian Managed Insurance Authority

Level 10 South, 161 Collins Street
Melbourne VIC 3000

ABOUT THIS DOCUMENT

Some key words and terms used in this document have a special meaning. These key words are in bold to draw to **your** attention that they have a special meaning. The special meaning is contained in the definition section of the Policy Terms and Conditions.

Where **we** refer to '**we**' or '**us**' in this booklet **we** are referring to the Victorian Managed Insurance Authority.

Where we refer to '**you**' or '**your**' in this document **we** are referring to the purchaser of the **home** under the **sale contract** and any successor in title to that purchaser (but **we** are not referring to the **owner builder** or a **developer** or a person who is excluded from the definition of '**you/your**' in the definition section of the Policy Terms and Conditions).

**This document contains 2 separate parts:
General Information and the Policy Terms and Conditions.**

General Information

This part of the document contains information **you** and the **owner builder** need to know. Please read it carefully.

Policy Terms and Conditions

This part of this document contains the Policy Terms and Conditions, which together with any endorsements and the **certificate of insurance** detail all the terms, conditions, limitations and exclusions relating to this **policy**. It forms part of **your** legal contract with **us**.

If **we** issue a policy, **you** will be given a **certificate of insurance**. The **certificate of insurance** sets out the specific terms applicable to **your** cover and should be read together with the Policy Terms and Conditions.

The Policy Terms and Conditions, any endorsements and the **certificate of insurance we** send to **you** form **your** legal contract with **us** so please keep them in a safe place for future reference.

If **you** or **owner builder** require further information about insurance for **domestic building work** (Domestic Building Insurance), please contact **us**.

Date of preparation: 1 July 2017

Date effective: 1 July 2017

VMIA reference: OBPOL-0717-1

ABOUT VICTORIAN MANAGED INSURANCE AUTHORITY

The Victorian Managed Insurance Authority (VMIA) is a corporation created by the *Victorian Managed Insurance Authority Act 1996* to provide certain types of insurance products. It is a designated insurer under the *Building Act 1993* to provide Domestic Building Insurance.

GENERAL INFORMATION FOR DOMESTIC BUILDING OWNER BUILDER INSURANCE POLICY

The information contained in this part is general information only and does not form part of **your** contract with **us**. The Policy Terms and Conditions in the rest of this document together with any endorsements and the **certificate of insurance** contain details of **your** contract.

Duty of Disclosure – What **you** and the **owner builder** must tell **us**

You and the **owner builder** have a Duty of Disclosure. **You** and the **owner builder** are required before **you** enter into, renew, vary, extend or reinstate this **policy**, to tell **us** everything **you** and the **owner builder** know and that a reasonable person in the circumstances could be expected to know, is a matter that is relevant to **our** decision whether to cover **you**, and anyone else to be covered under this **policy**, and if so, on what terms.

- **You** and the **owner builder** do not have to tell **us** about any matter:
 - that diminishes the risk
 - that is of common knowledge
 - that **we** know or should know in the ordinary course of **our** business as an insurer, or
 - which **we** indicate **we** do not want to know.
- If **you** do not tell **us**:
If **you** do not comply with **your** Duty of Disclosure **we** may reduce or refuse to pay a **claim** or cancel this policy. If **your** non-disclosure is fraudulent **we** may treat this **policy** as never having worked.
- If the **owner builder** does not tell **us**:
If the **owner builder** does not comply with its Duty of Disclosure **we** will not either refuse to pay a **claim** under this **policy** or reduce any liability under this **policy** on that ground. However **we** may recover from the **owner builder** any amount **we** pay under this **policy** in those circumstances.

Privacy

Privacy legislation regulates the way organisations can collect, use, keep secure and disclose personal information. VMIA is bound by the *Privacy and Data Protection Act 2014* (Vic.) when collecting and handling **your** and the **owner builder's** personal information.

VMIA has a privacy policy which explains what sort of personal information **we** hold about **you** and the **owner builder** and what **we** do with it.

We will only collect personal information from or about **you** and the **owner builder** for the purpose of assessing the application for insurance and administering this policy, including any claims **you** make. **We** will only use and disclose **your** and the **owner builder's** personal information for a purpose **you** or the **owner builder** would reasonably expect or where **you** or the **owner builder** have provided consent to the disclosure.

We may need to disclose personal information to our reinsurers, (who may be located overseas), insurance intermediaries, insurance reference bureaux, credit reference agencies, our advisers, the Victorian Building Authority or other authorities

established to regulate the building industry and those involved in the claims handling process (including assessors and investigators), for the purposes of assisting **us** and them in providing relevant services and products, or for the purposes of litigation. **We** may disclose personal information to any person who is insured by this **policy** (which may include any successor in title to **you**) and to family members or agents authorised by **you** or the **owner builder**. **We** may disclose the following personal information to any person: **policy** number; date of **certificate of insurance**; address of **building site**; name of **owner builder**; whether a **claim** has been made; and the amount of any indemnity remaining under the **policy** limits. **We** may also disclose information to organisations which conduct customer service surveys or research or other enquiries related to these types of policies and claims on **our** behalf. **We** will request **your** consent to disclose for any other purpose.

By providing personal information to us, **you** and the **owner builder** consent to **us** making these disclosures. Without **your** and the **owner builder's** personal information **we** may not be able to issue insurance cover to **you** or process **your claim**.

You and the **owner builder** also have the opportunity to find out what personal information **we** hold about **you** and the **owner builder** and, when necessary, correct any errors in this information. Generally **we** will do this without restriction or charge.

For further information about VMIA's Privacy Policy (which is available at the website www.vmia.vic.gov.au) or to access or correct **your** personal information, please contact:

The Privacy Officer, Victorian Managed Insurance Authority
Level 10 South, 161 Collins Street Melbourne VIC 3000

Telephone: 03 9270 6912

Facsimile: 03 9270 6949

Email: privacy@vmia.vic.gov.au

Dispute resolution

We will do everything possible to provide a quality service to **you** and the **owner builder**. However, **we** recognise that occasionally there may be some aspect of our service or a decision **we** have made that **you** or the **owner builder** wish to query or draw to our attention.

We have a Complaints and Dispute Resolution Procedure which undertakes to provide an answer to **your** or the **owner builder's** complaint within 15 working days.

If **you** or the **owner builder** would like to make a complaint or access **our** internal dispute resolution service please contact the VMIA by telephone or by email dbiclaims@vmia.vic.gov.au and ask to speak to a dispute resolution specialist.

Please note that **you** may also seek a review of a decision **we** make about a **claim** made under this **policy** at the Victorian Civil and Administrative Tribunal provided **you** do so within 28 days of the decision. Please contact the Victorian Civil and Administrative Tribunal on www.vcat.vic.gov.au if **you** wish to seek a review of a decision **we** make.

POLICY TERMS AND CONDITIONS FOR DOMESTIC BUILDING OWNER BUILDER INSURANCE POLICY

Insurer

1. This **policy** is underwritten by the Victorian Managed Insurance Authority, ABN 39 682 497 841 of Level 10 South, 161 Collins Street Collins Street, Melbourne.

Our distributors

2. **We** have authorised a number of entities to be **our** distributor and to distribute domestic building insurance policies on **our** behalf as **our** agent.

Our agreement with you

3. This **policy** is a legal contract between **you** and us. The **owner builder** pays **us** the premium on **your** behalf, and **we** provide **you** with the cover as set out in the **policy**, during the period of insurance described in these Policy Terms and Conditions.
4. The limitations set out in clauses 37 to 39 in the section headed 'How much will **we** pay? - Limitations' apply to all **claims** except where otherwise stated. The amount of any limitation that applies to this **policy** is set out in the Policy Terms and Conditions.
5. The excesses set out in clauses 40 to 46 in the section headed 'How much will **we** pay? – Excess' apply to all **claims** except where otherwise stated. The amount of any deductible that applies to this **policy** is set out in the Policy Terms and Conditions.
6. The exclusions set out in clause 47 in the section headed 'What **we** don't pay' apply to all **claims** except where otherwise stated.
7. The conditions set out in clauses 59 to 70 in the section headed 'General Conditions' apply to all **claims** except where otherwise stated.

This Policy

8. This **policy** consists of the Policy Terms and Conditions in this document and any endorsements and the **certificate of insurance we give you** and also give to the **owner builder**.
9. Please read this **policy** carefully, and satisfy yourself that it provides the cover **you** require.
10. This **policy** will not be renewed and is of a kind that is not usual to renew.
11. If **you** want more information about any part of this **policy**, please ask us.
12. The address and telephone number of the VMIA is on the **certificate of insurance**.
13. **You** should keep the Policy document and **certificate of insurance** together in a safe and convenient place for future reference.

Paying the premium

14. The **owner builder** must pay the premium by the due date.

How Goods and Services Tax affects any payments we make

15. When **we** pay a claim, **your** GST status will determine the amount **we** pay.
16. When **you** are:
 - (a) not registered for GST, the amount **we** pay is the sum insured/limit of liability or the other limits of insurance cover including GST;
 - (b) or would be, entitled to **claim** an input tax credit in respect of any GST component of an amount otherwise covered by this policy, then the indemnity **we** give to **you** will exclude the GST component of that amount. In these circumstances, the input tax credit may be claimable through **your** Business Activity Statement (BAS).
17. **You** must advise **us** of **your** correct Australian Business Number.
18. Any GST liability arising from **your** incorrect advice is payable by you.
19. Where the settlement of **your claim** is less than the sum insured/limit of liability or the other limits of insurance cover, **we** will only pay an amount for GST (less **your** entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover **your** loss, **we** will only pay the GST relating to our settlement of the claim.
20. **We** will (where relevant) pay **you** on **your claim** by reference to the GST exclusive amount of any supply made by any business of **yours** which is relevant to **your claim**.
21. GST, Input Tax Credit (ITC), Business Activity Statement (BAS) and Acquisition have the same meaning as given to those expressions in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related legislation as amended from time to time.

Words with special meanings – definitions which apply to all sections of this policy

22. Some key words and terms used in this **policy** have a special meaning. These key words are in bold to draw to **your** attention that those words have a special meaning.
23. If words and terms are only used in just one section of the policy, **we** will describe their special meaning in that section.
24. Wherever the following words or terms are used in this **policy** and they are in bold, they mean what is set out on pages 5 to 9:

POLICY TERMS AND CONDITIONS FOR DOMESTIC BUILDING OWNER BUILDER INSURANCE POLICY CONTINUED

WORD OR TERM	MEANING
Act	the <i>Building Act 1993 (Vic)</i> and the regulations made under the Act . The regulations when referred to separately are referred to as the regulations .
building	the home(s) located at the building site described in the certificate of insurance .
building site	the place where the work was carried out .
carry out or carried out	includes manage or arrange the carrying out.
certificate of insurance	the certificate we produce that includes important information and details about this policy and forms part of this policy . The certificate of insurance will be evidence of the issue of this policy .
claim	a claim for indemnity under the policy by you or on behalf of you made on a VMIA claim form and sent to the VMIA.
commencement date	the date of the sale contract .
common property	the common property of the building on land in a plan of subdivision containing common property .
completion (of the work)	(a) the date of issue of the occupancy permit in respect of the building (whether or not that permit is subsequently cancelled or varied). (b) if an occupancy permit is not issued, the date of issue under part 4 of the Act of a certificate of final inspection of the work. (c) in any other case, the date of practical completion of the work .
construction	(a) build, rebuild, erect or re-erect the building ; (b) make alterations to the building ; (c) enlarge or extend the building ; or (d) cause any other person to do, or manage or arrange the doing of, any of the above in relation to the building .
defective	in respect of any of the work , in breach of a statutory warranty given by the owner builder under the sale contract .
developer	any building owner or other person for whom 3 or more homes are or will be built on any one building site or on more than one building site under one domestic building contract. In calculating the number of homes that are being or will be built for the purpose of determining whether a building owner or other person is a developer , a home which is or is to be the principal place of residence of that building owner or person is to be disregarded.
disappeared	cannot be found, after due search and enquiry. If the owner builder is a body corporate then we will accept it has disappeared if it is deregistered in accordance with the <i>Corporations Act 2001</i> .

POLICY TERMS AND CONDITIONS FOR DOMESTIC BUILDING OWNER BUILDER INSURANCE POLICY CONTINUED

WORD OR TERM	MEANING
<p>Domestic Building Contracts Act or Domestic Building Contracts Regulations</p>	<p>respectively, the <i>Domestic Building Contracts Act 1995</i> (Vic) and the regulations made under that legislation.</p>
<p>domestic building work</p>	<p>the following work:</p> <ul style="list-style-type: none"> (a) the erection or construction of a home, including; <ul style="list-style-type: none"> (i) any associated work including but not limited to, landscaping, paving and the erection or construction of any building or fixture associated with the home (such as retaining structures, driveways, fencing, garages, workshops, swimming pools or spas); and (ii) the provision of lighting, heating, ventilation, air conditioning, water supply, sewage or drainage to the home or the property on which the home is, or is to be; (b) the renovation, alteration, extension, improvement or repair of a home; (c) any work such as landscaping, paving or the erection or construction of retaining structures, driveways, fencing, garages, workshops, swimming pools or spas that is to be carried out in conjunction with the renovation, alteration, extension, improvement or repair of a home; (d) the demolition or removal of a home; (e) any work associated with the construction or erection of a building: <ul style="list-style-type: none"> (i) on land zoned for residential purposes under a planning scheme under <i>the Planning and Environment Act 1987</i> (Vic); and (ii) in respect of which a building permit is required under the Act; (f) any site work (including work required to gain access, or to remove impediments to access, to a building site) related to work referred to above; (g) the preparation of plans or specifications for the carrying out of work referred to above; or (h) any work that the Domestic Building Contracts Regulations state is building work for the purposes of the Domestic Building Contracts Act. <p>Domestic building work does not include:</p> <ul style="list-style-type: none"> (i) any work that the Domestic Building Contracts Regulations state is not building work to which the Domestic Building Contracts Act applies; (j) any work in relation to a farm building or proposed farm building (other than a home); (k) any work in relation to a building intended to be used only for business purposes; (l) any work in relation to a building intended to be used only to accommodate animals; (m) design work carried out by an architect or a building practitioner registered under the Act as an engineer or a draftsman; (n) any work involved in obtaining foundations data in relation to a building site; or (o) the transporting of a building from one building site to another.

POLICY TERMS AND CONDITIONS FOR DOMESTIC BUILDING OWNER BUILDER INSURANCE POLICY CONTINUED

WORD OR TERM	MEANING
home	<p>any residential premises or part of any other premises that is used as residential premises.</p> <p>Home does not include:</p> <p>(a) a caravan or rooming house within the meaning of the <i>Residential Tenancies Act 1997</i> (Vic.);</p> <p>(b) any residence that is not intended for permanent habitation;</p> <p>(c) a motel, residential club, residential hotel or residential part of licensed premises under the <i>Liquor Control Reform Act 1998</i> (Vic.);</p> <p>(d) a nursing home, hospital or accommodation associated with a hospital;</p> <p>(e) any residence that the Domestic Building Contracts Regulations state is not a home for the purposes of the definition of home in the Domestic Building Contracts Act.</p>
insolvent	<p>(a) in relation to an individual, that the individual is insolvent under administration (within the meaning of the <i>Corporations Act 2001</i>).</p> <p>(b) in relation to a body corporate, that the body corporate is an externally- administered body corporate (within the meaning of the <i>Corporations Act 2001</i>).</p>
non-structural defect	a defect in the building other than a structural defect .
Order	Domestic Building Insurance Ministerial Order under the Act no. S98 issued on Friday 23 May 2003, and any Ministerial Order which is supplementary to and operates in conjunction with this order.
owner builder	the person(s) named in the certificate of insurance as the owner builder.
policy	these policy terms and conditions, any endorsements and the certificate of insurance .
relevant building surveyor	Same meaning as it has in the Act .
sale contract	the contract of sale for the building between the owner builder and the person named as the purchaser in the certificate of insurance on which the work exceeding \$16,000 was carried out before the sale and to which section 137B of the Act applies.
statutory warranty	<p>each of the following warranties implied by section 137C of the Act:</p> <p>(a) that the work was carried out in a proper and workmanlike manner.</p> <p>(b) that all materials used in the work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the sale contract, those materials were new.</p> <p>(c) that the work was carried out in accordance with all laws and legal requirements including the Act and the regulations.</p>

POLICY TERMS AND CONDITIONS FOR DOMESTIC BUILDING OWNER BUILDER INSURANCE POLICY CONTINUED

WORD OR TERM	MEANING
structural defect	<p>any defect in a structural element of the building that is attributable to defective design, defective or faulty workmanship or defective materials (or a combination of these) and that:</p> <p>(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;</p> <p>(b) prevents, or is likely to prevent, the continued practical use of the building or any part of the building;</p> <p>(c) results in, or is likely to result in:</p> <ul style="list-style-type: none"> (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 <p>(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.</p>
structural element	<p>in relation to the building means:</p> <p>(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 (but not limited to) foundations, floors, walls, roofs, columns and beams; or</p> <p>(b) any component (including weatherproofing) that forms part of the external walls or roof of the building.</p>
terrorism	<p>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 of 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:</p> <p>(a) involves violence against one or more persons;</p> <p>(b) involves damage to property;</p> <p>(c) endangers life other than that of the person committing the action;</p> <p>(d) creates a risk to health or safety of the public or a section of the public; or</p> <p>(e) is designed to interfere with or disrupt an electronic system.</p>
Tribunal	<p>the Victorian Civil and Administrative Tribunal established by the <i>Victorian Civil and Administrative Tribunal Act 1998 (Vic)</i>.</p>
Tribunal or Court Order	<p>an order in favour of you, other than an order referred to below as an order that is not included, made by the Tribunal or a court of competent jurisdiction where the Tribunal or court has made a finding:</p> <p>(1) that the owner builder is responsible for:</p> <ul style="list-style-type: none"> (a) loss or damage sustained by you arising from a breach by the owner builder of a statutory warranty implied into the sale contract by the Act. (b) the cost to you of alternative accommodation, removal and storage costs reasonably and necessarily incurred subsequent to and as a result of an event referred to in clause 31; <p>(2) as to the amount of the loss or damage suffered by you as a result of the events mentioned in (1).</p>

POLICY TERMS AND CONDITIONS FOR DOMESTIC BUILDING OWNER BUILDER INSURANCE POLICY CONTINUED

WORD OR TERM	MEANING
Tribunal or Court Order. (continued)	Tribunal or Court Order does not include: <ol style="list-style-type: none"> (1) any order made by the Tribunal or a court of competent jurisdiction: <ol style="list-style-type: none"> (a) as a consequence of any default by the owner builder of provisions contained in terms of settlement or any agreement which resolved a dispute between you and the owner builder; or (b) which is an interim order; or (c) without having a hearing on the merits; or (2) a dispute resolution order issued under Division 6 of Part 4 of the Domestic Building Contracts Act.
we/our/us	the Victorian Managed Insurance Authority (VMIA).
work	the domestic building work which is described in the certificate of insurance and was done to the building by the owner builder or any person contracted by the owner builder before the sale contract was entered into.
you/your	(a) the person(s) named as the purchaser in the certificate of insurance and who is entitled to the benefit of the statutory warranties in the sale contract and any successor(s) in title to that person.

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

25A. For the purpose of clauses 26 and 31 an **owner builder** has failed to comply with a **Tribunal or Court Order** if:

- (a) the period within which the **owner builder** may appeal the **Tribunal or Court Order** has expired; and
- (b) if the **owner builder** has appealed the **Tribunal or Court Order**, the appeal has been concluded and the time within which the **owner builder** may appeal the outcome of the appeal has expired; and
- (c) following the expiration of all appeal periods, **you** have served a written demand on the **owner builder** seeking compliance with the **Tribunal or Court Order** and more than 28 days has passed since the demand was served; and
- (d) the **owner builder** has not complied with the **Tribunal or Court Order** and **you** make a statutory declaration declaring in what way the **owner builder** has not complied with the **Tribunal or Court Order**.

DOMESTIC BUILDING OWNER BUILDER INSURANCE

26. Domestic Building Owner Builder Insurance protects **you**. This **policy** covers loss or damage resulting from a breach of **statutory warranty** only if the **owner builder** has:
- died; or
 - **disappeared**; or
 - become **insolvent**; or
 - failed to comply with a **Tribunal or Court Order**.
27. The **owner builder** takes out this **policy**, but the beneficiary is **you**.
28. The **owner builder** is provided with a copy of the **certificate of insurance** and a copy of the Policy Terms and Conditions.
29. The **owner builder** must provide a copy of the **certificate of insurance** and the Policy Terms and Conditions to **you**.

WHO IS COVERED BY THIS POLICY?

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

WHAT IS COVERED BY THIS POLICY?

Primary cover

31. **We** will indemnify **you** for loss or damage sustained by **you** arising from a breach by the **owner builder** of a **statutory warranty** implied into the **sale contract** by the **Act** but only if the **owner builder** has died, **disappeared**, become **insolvent** or failed to comply with a **Tribunal or Court Order**.

Supplementary cover

32. **We** will also indemnify **you** for the cost to **you** of alternative accommodation, removal and storage costs reasonably and necessarily incurred subsequent to and as a result of an event referred to in clause 31 in the section headed 'What is covered by this **policy**? – Primary cover'. **We** will not pay for accommodation or storage costs for any period of accommodation or storage that exceeds 60 days, excluding any period or periods of delay attributable to **us**.
- 32A. In considering whether the cost of alternative accommodation is reasonably and necessarily incurred **we** will consider:
- (a) if **you** are already living in the building, the impact that the proposed rectification or completion work will have on the general amenity of, and **your** ability to reside in, the **building**;
 - (b) the number of people who are residing in or are intended to reside in the **building**;
 - (c) the size, location and general amenity of the **building**;
 - (d) **your** existing alternative accommodation or any alternative accommodation that is available to **you**;
 - (e) the fair market value of the proposed alternative accommodation, storage or removal;
 - (f) what alternative accommodation is available having regard

to the length of time that the alternative accommodation is required;

(g) any other matters **we** consider relevant in determining whether these costs are reasonable and necessary.

HOW LONG ARE YOU COVERED FOR?

Non-structural defects

33. This **policy** covers loss or damage arising from a **non-structural defect** occurring during the period commencing on the **commencement date** and ending 2 years after the **completion** of the **work**.
34. If the **commencement date** is more than 2 years after the **completion** of the **work**, this **policy** does not cover loss or damage arising from a **non-structural defect**.

Other causes

35. This **policy** covers loss or damage arising from a cause other than a **non-structural defect**, occurring during the period commencing on the **commencement date** and ending 6 years after the **completion** of the **work**.

HOW MUCH WILL WE PAY?

General

36. **We** may indemnify **you** under this **policy** by, at **our** option, either making good the loss or damage or paying the amount of that loss or damage covered by the **policy**.

Limitations

37. Subject to clause 38, **we** will not pay more than \$300,000 in total in the aggregate for all **claims** under this **policy** for each **home**. This amount includes the reasonable legal costs and expenses that **you** incur associated with a successful **claim** against **us**; but **we** will not pay any amount for any other legal costs or expenses **you** incur including but not limited to any legal costs and expenses associated with or incidental to obtaining a **Tribunal Court Order** or any legal costs or expenses **you** incur as a result of any appeal relating to a **Tribunal or Court Order**.
38. If a **claim** is paid for loss or damage in relation to **common property**, the amount of cover available in respect of each **home** in the relevant plan of subdivision shall be reduced by dividing the amount paid by **us** for that **claim** by the number of **homes** in the plan of subdivision.
39. The limitations in clauses 37 and 38 include amounts payable under clause 32 in the section headed 'What is covered by this **policy**? – Supplementary cover'.

Excess

40. 'Excess' means the first amount **you** must contribute to any **claim you** make under this **policy**.
41. **We** deduct the excess shown below from the amount of **your claim**.
42. Where a sub-limit is applicable, the excess will be applied to the **claim** prior to applying the sub-limit.
43. **We** will not pay the following amounts for each **claim** under this **policy**:
- (a) any amount for **claims** under \$500 made between 3 and 12 months after **completion** of the **work**;
 - (b) the first \$500 for **claims** made between 1 and 3 years after **completion** of the **work**;
 - (c) the first \$750 for **claims** made between 3 and 5 years after **completion** of the **work**; and
 - (d) the first \$1000 for **claims** made later than 5 years after **completion** of the **work**.
44. The amounts set out in 'Excess' will be applied only once in relation to:
- (a) any **claim** comprising more than one defect; or
 - (b) two or more **claims** that relate to the same defect.
45. For the purposes of the Excess clause:
- (a) a **claim** of \$500 or more may relate to more than one defect, if the loss or damage for any one or more of those defects is less than \$500.

(b) the date a **claim** is made is the date that **you** notify **us** of circumstances that may give rise to a **claim** or the date the **claim** is made, whichever is the earlier.

46. To avoid doubt, if the **sale contract** is entered into before the end of 3 months after the **completion** of the work no amount is payable by **you** or applied to **you** under the Excess clause for loss or damage arising between the **commencement date** and the date that is 3 months after the **completion** date.

WHAT WE DON'T PAY

47. **We** will not pay under this policy:
- (a) for **claims** in the nature of damages (liquidated or otherwise), fines or penalties for delay. However, this limitation does not extend to any increase in rectification costs caused by the passing of time and amounts payable under clause 32 in the section headed 'What is covered by this **policy**? – Supplementary cover'.
 - (b) for any **claims** for a breach of a **statutory warranty** that all material used in the work were new, to the extent that any materials were not new if:
 - (i) a condition report required by section 127B(2)(a) of the **Act** states that the materials were not new; or
 - (ii) it was apparent from the nature of the **work** were not new.
 - (c) for loss or damage relating to landscaping, paving, retaining structures, driveways or fencing, other than (and to the extent that) the work:
 - (i) is integral to the construction of the **building**;
 - (ii) requires the issue of a building permit under the **Act**;
 - (iii) could result in water penetration of or within the **building**;
 - (iv) could adversely affect health or safety;
 - (v) adversely affects the structural adequacy of the **building**; or
 - (vi) is not completed.
 - (d) 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**.
 - (e) for damage due to or made worse by the failure by **you** to take reasonable and timely action to minimise the damage.
 - (f) in relation to visible defects in the **work** of which **you** should reasonably have been aware when acquiring the **building**, including any defect or incomplete work that is referred to in a report prepared in accordance with section 137B of the **Act**.
 - (g) for consequential loss of any kind, including (without limitation) loss of rent or other income, loss of value, loss of opportunity, inconvenience or distress, unless expressly insured under this **policy**.

- (h) for loss and damage incurred as a result of risks normally insured under a **policy** for public liability or contract works.
- (i) for any **claims** connected with or relating to:
- (i) 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.
 - (ii) fraud or dishonest conduct by **you** of any kind.
 - (iii) any terrorism.
 - (iv) radioactivity or the use, existence or escape of any nuclear fuel, nuclear material or nuclear waste or action of nuclear fission or fusion.
 - (v) 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.
 - (vi) the malfunction of any mechanical or electrical equipment, not attributable to the workmanship of, or the installation by the **owner builder**.
 - (vii) **your** failure to maintain appropriate protection against pest infestation or exposure to natural timbers.
 - (viii) the action of vermin, termites, moths or other insects.
- (j) for any **claims** that were allowed to be excluded by the **Act** or the **Order** as at the date the **certificate of insurance** was issued.

FAILURES BY THE OWNER BUILDER

48. **We** will not either refuse to pay a **claim** under this **policy** or reduce any liability under this **policy** on the ground that the **owner builder**:
- (a) failed to comply with any duty of good faith;
 - (b) failed to comply with any duty of disclosure;
 - (c) made representations to **us**;
 - (d) failed to comply with a provision or requirement of the **policy**;
 - (e) by act or omission prejudiced our interests; or
 - (f) failed to pay the **policy** premium.
49. **We** may, however, recover from the **owner builder** any amount **we** pay under this **policy** in those circumstances.

HOW LONG DO YOU HAVE TO CLAIM?

50. **We** will refuse any **claim** by **you** unless **you** notify **us** in writing that the **owner builder** has died, **disappeared**, become **insolvent** or failed to comply with a **Tribunal or Court Order** within 180 days of **you** becoming aware of that event or happening or when **you** might reasonably be expected to have become aware of that event or happening (whichever is the earlier).

51. If **you** notify **us** in writing that the **owner builder** has died, **disappeared**, become **insolvent** or failed to comply with a **Tribunal or Court Order** within 180 days of **you** becoming aware of that event or happening or when **you** might reasonably be expected to have become aware of that event or happening (whichever is the earlier) **we** will not rely on section 54 of the *Insurance Contracts Act 1984* (Cth.) as if this **policy** were a contract of insurance to which the Insurance Contract Act 1984 (Cth.) applies to reduce **our** liability under this **policy** or reduce any amount otherwise payable in respect of a **claim** made by reason only of any delay in a **claim** being notified by **you** to **us**.
52. 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.

MAKING A CLAIM

53. **You** must make a **claim** by completing **our** claim form. The claim form is available on **our** website www.vmia.vic.gov.au or contact VMIA on 1300 363 424.
54. 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**.
55. If **we** have not determined a written **claim** within 90 days of receipt of the **claim** (or within any extension of time granted to **us** by **you** or the **Tribunal**) **we** are deemed to have accepted liability for the **claim**.
56. **You** must:
- (a) comply with our reasonable directions in relation to completion or rectification of the **work**. This includes giving **us**, our nominated builder and the **owner builder**, reasonable access to inspect, rectify or complete the **work** (unless **you** have reasonable grounds to refuse access, including loss of confidence in our builder or the **owner builder**);
 - (b) not undertake any rectification work without notifying **us**, unless that work is reasonably necessary to prevent or minimise further loss or damage;
 - (c) not make any admissions, offer, promise, payment or incur any cost or expense in connection with any **claim**, without **our** written consent;
 - (d) give **us** any assistance, information or documents which **we** request.
57. **We** will acknowledge receipt of **your claim** 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**.
58. **We** will notify **you** within 30 business days of receiving all the information necessary to assess **your claim**, if **we** accept that the **owner builder** is dead, has **disappeared** or is **insolvent**, or the **owner builder** has failed to comply with a **Tribunal or Court Order**.

GENERAL CONDITIONS

Our rights and obligations

59. **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.
60. Subject to the clauses 61 and 62 below, **you** must comply with **your** obligations under this policy, otherwise **we** may not have to pay **your claim(s)**.
61. Section 54 of the *Insurance Contracts Act 1984* (Cth.) (insurer may not refuse to pay claims in certain circumstances) applies to this **policy** as if this **policy** was a contract of insurance to which the *Insurance Contracts Act 1984* (Cth.) applies.
62. **We** will not reduce **our** liability to **you** under this **policy** because **you** have failed to comply with any of the requirements in clause 56 (a) to (d), unless, and only to the extent that, **your** failure increased **our** liability under this **policy**.
63. If **we** have notice of proceedings before the **Tribunal** about the **work**, **we** will accept as determinative of the issues any finding made by the **Tribunal**:
- (a) as to whether any of the following events has occurred:
 - (i) the non-completion of the **work**;
 - (ii) an event referred to in clause 31 in the section headed 'What is covered by this **policy**? - Primary Cover';
 - (iii) an event referred to in clause 32 in the section headed 'What is covered by this **policy**? - Supplementary cover'; and
 - (b) if so, as to the amount of the loss or damage suffered by **you** as a result of the events mentioned in clause (a).
- 63A. If **you** have obtained a **Tribunal or Court Order**, **we** will accept as determinative, subject to any terms, conditions, limitations and exclusions in the **policy**, any finding made as to:
- (a) whether the **owner builder** is responsible for loss or damage sustained by **you** arising from a breach by the **owner builder** of a **statutory warranty** implied into the **sale contract** by the **Act**;
 - (b) the amount of the loss or damage suffered by **you** as a result of the events mentioned in (a);
 - (c) the cost to **you** of alternative accommodation, removal and storage costs reasonably and necessarily incurred subsequent to and as a result of an event referred to in clause 31.

64. **We** will notify the Building Practitioners Board (or its successors) at the times and in the manner agreed with the Building Practitioners Board (or its successors) in the event that:
- (a) the **owner builder** is refused insurance by **us** or ceases to be eligible to renew or procure insurance from **us** or, in respect of **domestic building work** performed prior to the commencement of the **Order**, fails to purchase or maintain the required insurance (if **we** are aware of that failure); and
 - (b) any **claim** under this **policy** is settled by agreement or otherwise.
65. **We** will provide a **certificate of insurance** in the form required by the **Order** in respect of the **building** to the **owner builder** immediately on the issue of the **policy** or, at any time after that date, at the request of **you** or the **owner builder**.

Loss prevention

66. **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**. This includes taking reasonable steps to prevent access to any person for the purpose of removing goods and materials in lieu of payment.

Recovery from others

67. 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**.
68. **You** must not limit or exclude **your** rights against a party from whom **you** might otherwise be able to recover in respect of any loss or damage covered by this policy. 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.
69. **You** must provide **us** with reasonable assistance to recover damages or contribution from any other person.

Application of laws

70. This **policy** is subject to the law of Victoria.

Conflict with the Order

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