

# DOMESTIC BUILDING OWNER BUILDER

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## Insurance Policy



**QBE Insurance (Australia) Limited**

ABN 78 003 191 035  
AFS Licence No. 239545

628 Bourke Street  
Melbourne VIC 3000  
Telephone: 03 9246 2666  
Facsimile: 03 9246 2611

This Policy is underwritten by

**Victorian Managed Insurance Authority**

ABN 39 682 497 841

Level 10 South, 161 Collins Street  
Melbourne VIC 3000  
PO Box 18409  
Collins Street East, VIC 8003

## About this booklet

Some key words and terms used in this booklet 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 or QBE Australia acting in its capacity as agent for the Victorian Managed Insurance Authority.

Where **we** refer to "**you**" or "**your**" in this booklet **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 booklet contains 2 separate parts:

#### General Information and the Policy Terms and Conditions.

#### General Information

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

#### Policy Terms and Conditions

The Policy part of this booklet contains the Policy Terms and Conditions, which together with the **certificate of insurance** detail all the terms, conditions 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 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 the **owner builder** require further information about insurance for **domestic building work** (Domestic Building Insurance), please contact **us**.

#### About VMIA

The Victorian Managed Insurance Authority 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. VMIA has authorised QBE Australia as its agent to issue Domestic Building Insurance on its behalf.

#### About QBE Australia

QBE Insurance (Australia) Limited is a member of the QBE Insurance Group (ASX: QBE). QBE Insurance Group is Australia's largest international general insurance and reinsurance group, and one of the top 25 insurers and reinsurers worldwide. The company has been operating in Australia since 1886.

QBE Australia is a household name in Australian insurance, backed by sizeable assets, and well known as a strong and financially secure organisation.

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QM2998-0714

## 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 booklet together with the **certificate of insurance** contain details of **your** contract.

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

Under the Insurance Contracts Act 1984, **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. QBE Australia is bound by the Privacy Act 1988 (Cth.) and VMIA is bound by the Privacy Act 2000 (Vic.), when collecting and handling **your** and the **owner builder's** personal information.

VMIA and QBE Australia have developed privacy policies which explain 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.

**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 people listed as co-insured on this **policy** and to family members or agents authorised by **you** or the **owner builder**. **We** may also disclose information to organisations which conduct customer service surveys on **our** behalf. **We** will request **your** consent to 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](http://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](mailto:privacy@vmia.vic.gov.au)

For further information about QBE Australia's Privacy Policy or to access or correct **your** or the **owner builder's** personal information, please contact The Compliance Manager, QBE Insurance (Australia) Limited, GPO Box 82 Sydney NSW 2001.

## The General Insurance Code of Practice

QBE Australia is a signatory to the General Insurance Code of Practice. The Code aims to:

- promote more informed relations between insurers and their customers;
- improve consumer confidence in the general insurance industry;
- provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- commit insurers and the professionals they rely upon to higher standards of customer service.

## Dispute resolution

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

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

If the **owner builder** or **you** would like to make a complaint or access **our** internal dispute resolution service please contact the nearest QBE Australia office or VMIA and ask to speak to a dispute resolution specialist.

# 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.

## Insurer's agent

2. VMIA has authorised QBE Insurance (Australia) Limited, ABN 78 003 191 035, AFS Licence No. 239545 of 82 Pitt Street, Sydney to issue this **policy** on its behalf as its 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 booklet 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 **your** QBE Australia branch and VMIA are on the **certificate of insurance**.
13. **You** should keep the Policy Booklet 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:
- not registered for GST, the amount we pay is the sum insured/limit of liability or the other limits of insurance cover including GST;
  - 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 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 below:

Word or Term	Meaning
<b>Act</b>	the Building Act 1993 and regulations. The regulations when referred to separately are referred to as the <b>regulations</b> .
<b>building</b>	the <b>home(s)</b> located at the <b>building site</b> described in the <b>certificate of insurance</b> .
<b>building site</b>	the place where the <b>work</b> was <b>carried out</b> .
<b>carry out or carried out</b>	includes manage or arrange the carrying out.

Word or Term	Meaning
<b>certificate of insurance</b>	the certificate we produce that includes important information and details about this <b>policy</b> and forms part of this <b>policy</b> . The <b>certificate of insurance</b> will be evidence of the issue of this <b>policy</b> .
<b>claim</b>	a claim for indemnity under the <b>policy</b> by <b>you</b> or on behalf of <b>you</b> made on a VMIA claim form sent to the VMIA or its agent.
<b>commencement date</b>	the date of the <b>sale contract</b>
<b>common property</b>	the common property of the <b>building</b> on land in a plan of subdivision containing common property.
<b>completion (of the work)</b>	<ol style="list-style-type: none"> <li>the date of issue of the occupancy permit in respect of the <b>building</b> (whether or not that permit is subsequently cancelled or varied).</li> <li>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 <b>work</b>.</li> <li>in any other case, the date of practical completion of the <b>work</b>.</li> </ol>
<b>construction</b>	<ol style="list-style-type: none"> <li>build, rebuild, erect or re-erect the <b>building</b>;</li> <li>make alterations to the <b>building</b>;</li> <li>enlarge or extend the <b>building</b>; or</li> <li>cause any other person to do, or manage or arrange the doing of, any of the above in relation to the <b>building</b>.</li> </ol>
<b>defective</b>	in respect of any of the work, in breach of a <b>statutory warranty</b> given by the <b>owner builder</b> under the <b>sale contract</b>
<b>developer</b>	any building owner or other person for whom 3 or more <b>homes</b> 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 <b>homes</b> that are being or will be built for the purpose of determining whether a building owner or other person is a <b>developer</b> , a <b>home</b> which is or is to be the principal place of residence of that building owner or person is to be disregarded.
<b>disappearance</b>	cannot be found, after due search and enquiry.
<b>Domestic Building Act or Domestic Building Regulations</b>	respectively, the Domestic Building Contracts Act 1995 and the regulations made under that legislation.

Word or Term	Meaning
<b>domestic building work</b>	<p>the following work:</p> <p>(a) the erection or construction of a <b>home</b>, including;</p> <p>(i) any associated work including but not limited to, landscaping, paving and the erection or construction of any building or fixture associated with the <b>home</b> (such as retaining structures, driveways, fencing, garages, workshops, swimming pools or spas); and</p> <p>(ii) the provision of lighting, heating, ventilation, air conditioning, water supply, sewage or drainage to the <b>home</b> or the property on which the <b>home</b> is, or is to be;</p> <p>(b) the renovation, alteration, extension, improvement or repair of a <b>home</b>;</p> <p>(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 <b>home</b>;</p> <p>(d) the demolition or removal of a <b>home</b>;</p> <p>(e) any work associated with the construction or erection of a building:</p> <p>(i) on land zoned for residential purposes under a planning scheme under the Planning and Environment Act 1987 (Vic); and</p> <p>(ii) in respect of which a building permit is required under the <b>Act</b>;</p> <p>(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;</p> <p>(g) the preparation of plans or specifications for the carrying out of work referred to above; or</p> <p>(h) any work that the <b>Domestic Building Regulations</b> state is building work for the purposes of the <b>Domestic Building Act</b>.</p> <p><b>Domestic building work</b> does not include:</p> <p>(i) any work that the <b>Domestic Building Regulations</b> state is not building work to which the <b>Domestic Building Act</b> applies;</p> <p>(j) any work in relation to a farm building or proposed farm building (other than a <b>home</b>);</p> <p>(k) any work in relation to a building intended to be used only for business purposes;</p> <p>(l) any work in relation to a building intended to be used only to accommodate animals;</p>

Word or Term	Meaning
<b>domestic building work</b> (continued)	<p>(n) any work involved in obtaining foundations data in relation to a building site; or</p> <p>(o) the transporting of a building from one building site to another.</p>
<b>Home</b>	<p>any residential premises or part of any other premises that is used as residential premises.</p> <p><b>Home</b> does not include:</p> <p>(a) a caravan or rooming house within the meaning of the Residential Tenancies Act 1997 (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 Liquor Control Reform Act 1998 (Vic.).</p> <p>(d) a nursing home, hospital or accommodation associated with a hospital;</p> <p>(e) any residence that the <b>Domestic Building Regulations</b> state is not a home for the purposes of the definition of home in the <b>Domestic Building Act</b>.</p>
<b>insolvency</b>	<p>(a) in relation to an individual, that the individual is insolvent under administration (within the meaning of the Corporations Act 2001).</p> <p>(b) in relation to a body corporate, that the body corporate is an externally-administered body corporate (within the meaning of the Corporations Act 2001).</p>
<b>non-structural defect</b>	a defect in the <b>building</b> other than a <b>structural defect</b> .
<b>Order</b>	Domestic Building Insurance Ministerial Order under the <b>Act</b> no. S98 issued on Friday 23 May 2003, and any Ministerial Order which is supplementary to and operates in conjunction with this order.
<b>owner builder</b>	the person, partnership or company named in the <b>certificate of insurance</b> as the owner builder.
<b>policy</b>	these policy terms and conditions, any endorsements and the <b>certificate of insurance</b> .
<b>sale contract</b>	the contract of sale for the <b>building</b> between the <b>owner builder</b> and the person named as the purchaser in the <b>certificate of insurance</b> on which the <b>work</b> exceeding \$16,000 was carried out before the sale and to which section 137B of the <b>Act</b> applies.

Word or Term	Meaning
<b>statutory warranty</b>	each of the following warranties implied by section 137C of the <b>Act</b> : (a) that the <b>work</b> was carried out in a proper and workmanlike manner (b) that all materials used in the <b>work</b> were good and suitable for the purpose for which they were used and that, unless otherwise stated in the <b>sale contract</b> , those materials were new. (c) that the <b>work</b> was carried out in accordance with all laws and legal requirements including the <b>Act</b> and the regulations.
<b>structural defect</b>	any defect in a <b>structural element</b> of the <b>building</b> that is attributable to defective design, defective or faulty workmanship or defective materials (or a combination of these) and that: (a) results in, or is likely to result in, the <b>building</b> or any part of the <b>building</b> 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 <b>building</b> or any part of the <b>building</b> ; (c) results in, or is likely to result in: (i) the destruction of the <b>building</b> or any part of the <b>building</b> ; or (ii) physical damage to the <b>building</b> or any part of the <b>building</b> ; 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 <b>building</b> or physical damage to the <b>building</b> or any part of the <b>building</b> .
<b>structural element</b>	in relation to the <b>building</b> means: (a) any internal or external load-bearing component of the <b>building</b> that is essential to the stability of the <b>building</b> or any part of it, including (but not limited to) foundations, floors, walls, roofs, columns and beams; or (b) any component (including weatherproofing) that forms part of the external walls or roof of the <b>building</b> .

Word or Term	Meaning
<b>terrorism</b>	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: (a) involves violence against one or more persons; (b) involves damage to property; (c) endangers life other than that of the person committing the action; (d) creates a risk to health or safety of the public or a section of the public; or (e) is designed to interfere with or disrupt an electronic system.
<b>Tribunal</b>	the Victorian Civil and Administrative Tribunal established by the Victorian Civil and Administrative Tribunal Act 1998.
<b>we/our/us</b>	VMIA and where the context permits also QBE Insurance (Australia) Limited ABN 78 003 191 035 only where QBE Australia is acting in its capacity as agent for the VMIA and not in any other capacity.
<b>work</b>	the <b>domestic building work</b> which is described in the <b>certificate of insurance</b> and was done to the <b>building</b> by the <b>owner builder</b> or any person contracted by the <b>owner builder</b> before the <b>sale contract</b> was entered into.
<b>you/your</b>	(a) the person named as the purchaser in the <b>certificate of insurance</b> and who is entitled to the benefit of the <b>statutory warranties</b> in the <b>sale contract</b> and any successor in title to that person. (b) if the <b>work</b> is carried out on a plan or subdivision containing <b>common property</b> , the body corporate for the land or the <b>building</b> on that land <b>You/your</b> does not include: (a) any <b>developer</b> ; (b) the <b>owner builder</b> ; (c) any related bodies corporate of those above, within the meaning of section 50 of the Corporations Act 2001. (d) a company which has director or a common shareholder with the <b>owner builder</b> if neither the company or the <b>owner builder</b> is a public company.

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

## Domestic Building Insurance

26. Owner Domestic Building Insurance protects **you**. This **policy** covers loss or damage resulting from a breach of **statutory warranty** because of:
- death; or
  - disappearance; or
  - insolvency
- of the **owner builder**.
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 **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

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**.

### 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**.
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
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 the duty of good faith;
  - (b) failed to comply with the 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 of the death, **disappearance** or **insolvency** of the **owner builder** 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 of the death, **disappearance** or **insolvency** of the **owner builder** 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.) 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 the VMIA claim form. The claim form is available on **our** websites [www.vmia.vic.gov.au](http://www.vmia.vic.gov.au) and [www.qbe.com](http://www.qbe.com) 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**.

### 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**.
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).
64. **We** will notify the Victorian Building Authority (at the times and in the manner agreed with the Victorian Building Authority) 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**.