

DOMESTIC BUILDING INSURANCE

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
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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 homeowner on whose behalf **domestic building work** is done or is to be done by the **builder** or **speculative builder** and any successor in title to that homeowner (but **we** are not referring to the **builder** or **speculative 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 **builder** or **speculative 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 **builder** or the **speculative 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.

GENERAL INFORMATION FOR DOMESTIC BUILDING 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 builder or speculative builder must tell us

Under the Insurance Contracts Act 1984 (the Act), **you** and the **builder** or **speculative builder** have a Duty of Disclosure. **You** and the **builder** or the **speculative builder** are required before you enter into, renew, vary, extend or reinstate this **policy**, to tell us everything **you** and the **builder** or the **speculative 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 **builder** or **speculative 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 **builder** or **speculative builder** does not tell **us**:
If the **builder** or **speculative 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 **builder** or **speculative 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 **builder's** or **speculative 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 **builder** or **speculative builder** and what **we** do with it.

We will only collect personal information from or about **you** and the **builder** or **speculative 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 **builder's** or **speculative builder's** personal information for a purpose **you** or the **builder** or **speculative 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 **builder** or **speculative 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 **builder** or **speculative builder** consent to **us** making these disclosures. Without **your** and the **builder's** or **speculative builder's** personal information **we** may not be able to issue insurance cover to **you** or process **your claim**.

You and the **builder** or **speculative builder** also have the opportunity to find out what personal information **we** hold about **you** and the **builder** or **speculative 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

For further information about QBE Australia's Privacy Policy or to access or correct **your** or the **builder's** or **speculative 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 **builder** or **speculative builder** and **you**. However, **we** recognise that occasionally there may be some aspect of **our** service or a decision **we** have made that the **builder** or **speculative 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 **builder's** or the **speculative builder's** or **your** complaint within 15 working days.

If the **builder** or **speculative 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 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, Melbourne Victoria 3000.

Insurer's agent

2. VMIA has authorised QBE Insurance (Australia) Limited, ABN 78 003 191 035, AFS Licence No. 239545 of 8 Chifley Square, Sydney NSW 2000, 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 **builder** or **speculative 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 40 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 41 to 47 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 48 in the section headed 'What **we** don't pay' apply to all **claims** except where otherwise stated.
7. The conditions set out in clauses 60 to 71 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 **builder** or **speculative 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 **builder** or **speculative 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 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
Act	the Building Act 1993 and regulations. The regulations when referred to separately are referred to as the regulations .
builder	the person, partnership or company named in the certificate of insurance as the builder.
building	the home(s) located or to be located at the building site described in the certificate of insurance .
building contract	the contract described in the certificate of insurance between you or a developer and the builder or between you and the speculative builder pursuant to which the work is carried out or is to be carried out in connection with the building .
building site	the place where the work is carried out or is to be 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 sent to the VMIA or its agent.
commencement date	The earlier of: (a) the date that the building contract is entered into; or (b) the date of issue of the building permit for the work .
common property	the common property of the building on land in a plan of subdivision containing common property.

Word or Term	Meaning
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	includes, in respect of any of the work : (a) in breach of a statutory warranty given by the builder or speculative builder under the building contract ; or (b) where there has been a failure to maintain any standard or quality of work specified in the building 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.
disappearance	cannot be found, after due search and enquiry.
Domestic Building Act or Domestic Building Regulations	respectively, the Domestic Building Contracts Act 1995 and the regulations made under that legislation.
domestic building contract	a contract for the provision of domestic building work .

Word or Term	Meaning
domestic building work	<p>the following work:</p> <p>(a) the erection or construction of a home, 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 home (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 home or the property on which the home is, or is to be;</p> <p>(b) the renovation, alteration, extension, improvement or repair of a home;</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 home;</p> <p>(d) the demolition or removal of a home;</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 Act;</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 Domestic Building Regulations state is building work for the purposes of the Domestic Building Act.</p> <p>Domestic building work does not include:</p> <p>(i) any work that the Domestic Building Regulations state is not building work to which the Domestic Building Act applies;</p> <p>(j) any work in relation to a farm building or proposed farm building (other than a home);</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
domestic building work (continued)	<p>(m) design work carried out by an architect or a building practitioner registered under the Act as an engineer or a draftsman;</p> <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>
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 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 Domestic Building Regulations state is not a home for the purposes of the definition of home in the Domestic Building Act.</p>
insolvency	<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>
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 to this order
policy	these policy terms and conditions, any endorsements and the certificate of insurance .
speculative builder	<p>a person, partnership or corporation who:</p> <p>(a) owns land and carries out domestic building work on it;</p> <p>(b) is a registered building practitioner under the Act or has a partner or director who is a registered building practitioner under the Act; and</p> <p>(c) is named on the certificate of insurance as a speculative builder.</p>

Word or Term	Meaning
statutory warranty	<p>each of the following warranties implied by section 8 of the Domestic Building Act:</p> <p>(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 building contract.</p> <p>(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 building contract, those materials will be new.</p> <p>(c) that the work will be done in accordance with, and will comply with, the Act and any other law.</p> <p>(d) that the work will be done with reasonable care and skill and within the time stipulated in the building contract.</p> <p>(e) that, if the work consists of the erection or construction of a home, or is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the home will be suitable for occupation at the time the work is completed.</p> <p>(f) if the building contract states the particular purpose for which the work is required, or the result which the building owner wishes that work to achieve, so as to show that the building owner relied on the builder's skill and judgment, that the work and materials used in carrying out the work will be reasonably fit for that purpose or will be of such a nature and quality that might reasonably be expected to achieve that result.</p>
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> <p>(i) the destruction of the building or any part of the building; or</p> <p>(ii) physical damage to the building or any part of the building; or</p> <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>

Word or Term	Meaning
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>
Trade Practices Act Provision	Sections 52, 53, 55A or 74 of the Trade Practices Act 1974 (Cth) or Section 9, 11 or 12 of the Fair Trading Act 1999.
Tribunal	the Victorian Civil and Administrative Tribunal established by the Victorian Civil and Administrative Tribunal Act 1998.
we/our/us	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.
work	<p>the domestic building work which is described in the certificate of insurance and is done or is to be done by:</p> <p>(a) the builder or any person contracted by the builder to the building under the building contract; or</p> <p>(b) the speculative builder or any person contracted by the speculative builder to the building under the building contract; or</p> <p>(c) the speculative builder or any person contracted by the speculative builder to the building.</p>

Word or Term	Meaning
you/your	<p>the person on whose behalf the work is done or is to be done and who is named on the certificate of insurance as the owner and any successor in title to that person.</p> <p>You/your does not include:</p> <ul style="list-style-type: none"> (a) any developer, but only for claims for non-completion of the work (but you/your does include developer for other claims including claims for supplementary cover related to the non-completion of the work); (b) the speculative builder; (c) the builder; (d) a person who does domestic building work other than under a domestic building contract; or (e) any related bodies corporate of those above, within the meaning of section 50 of the Corporations Act 2001; or (f) A company which has a common director or a common shareholder with the speculative builder or the builder if neither the company or the speculative builder or the builder 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. Domestic Building Insurance protects **you**. This **policy** covers loss or damage resulting from the non-completion of the **work** or breach of **statutory warranty** because of:

- death; or
- **disappearance**; or
- **insolvency**

of the **builder** or **speculative builder**.

27. This **policy** also covers loss or damage resulting from conduct in breach of certain **Trade Practices Act Provisions**.

28. The **builder** or **speculative builder** takes out this **policy**, but the beneficiary is **you**.

29. The **builder** or **speculative builder** is provided with a copy of the **certificate of insurance** and a copy of the Policy Terms and Conditions.

30. The **builder** or **speculative builder** must provide a copy of the **certificate of insurance** and the Policy Terms and Conditions to **you**.

Who is covered by this policy?

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

What is covered by this policy?

Primary cover

32. **We** will indemnify **you** for the following sustained by **you**:
- (a) loss or damage resulting from non-completion of the **work** because of the **insolvency**, death or **disappearance** of the **builder** or **speculative builder**; or
 - (b) the following loss or damage but only if **you** cannot recover compensation from the **builder** or **speculative builder**, or have the **builder** or **speculative builder** rectify the loss or damage, because of the **insolvency**, death or **disappearance** of the **builder** or **speculative builder**:
 - (i) loss or damage arising from **work** that is **defective**; or
 - (ii) loss or damage resulting from conduct of the **builder** or **speculative builder** in respect of the **work** that contravenes a **Trade Practices Act Provision** (but only for the cost of rectifying the **work**).

Supplementary cover

33. **We** will also indemnify **you** for the following:
- (a) 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 32 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**; and
 - (b) **your** loss of a deposit or progress payment (or part of it) under the **building contract** due to an event referred to in clause 32 in the section headed 'What is covered by this **policy**? - Primary cover'.

How long are you covered for?

Non-structural defects

34. 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** or the date of termination of the **building contract**, whichever is the earlier.

Other causes

35. This **policy** covers loss, damage or expense, 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** or the date of termination of the **building contract**, whichever is the earlier.

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. **Our** liability under clause 32(a) is limited to 20% of the **building contract** price (accounting for any adjustment of the **building contract** price as a result of an agreed variation to the **work**). This limitation does not apply to amounts payable under clause 33 in the section headed 'What is covered by this **policy**? – Supplementary cover'.
40. The limitations in clauses 37 and 38 include amounts payable under clause 33 in the section headed 'What is covered by this **policy**? – Supplementary cover'.

Excess

41. 'Excess' means the first amount **you** must contribute to any **claim you** make under this **policy**.
42. **We** deduct the excess shown below from the amount of **your claim**.
43. Where a sub-limit is applicable, the excess will be applied to the **claim** prior to applying the sub-limit.
44. **We** will not pay the following amounts for each **claim** for defective work 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**.
45. 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.
46. 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.

47. To avoid doubt, no amount is payable by **you** or applied to **you** under the Excess clause for loss or damage arising:

- (a) between the **commencement date** and the date that is 3 months after the **completion date**; or
- (b) from non-completion of the **work**.

What we don't pay

48. **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 33 in the section headed 'What is covered by this **policy**? – Supplementary cover'.
 - (b) for any amount that exceeds the amounts that should have been paid to the **builder** or **speculative builder** in accordance with section 11, section 40(2), 40(3) or 40(4) of the **Domestic Building Act**. However, this limitation does not apply to amounts payable under clause 33 in the section headed 'What is covered by this **policy**? – Supplementary cover'.
 - (c) for any **claim** that relates to the failure to complete the **work** if the death, **disappearance** or **insolvency** of the **builder** or **speculative builder** occurs before the **builder** or **speculative builder** commences any **work** on the **building site** (other than the removal of vegetation) that requires the use of tools or building materials. This exclusion does not apply to amounts payable under clause 33 in the section headed 'What is covered by this **policy**? – Supplementary cover' and the following costs and expenses:
 - (i) any money paid to the **builder** or **speculative builder**; and
 - (ii) all other reasonable costs and expenses incurred by **you** in relation to the **building contract**.
 - (d) 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.
- (e) 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**.
- (f) for damage due to or made worse by the failure by **you** to take reasonable and timely action to minimise the damage.
- (g) 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**.
- (h) 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**.
- (i) for loss and damage incurred as a result of risks normally insured under a policy for public liability or contract works.
- (j) 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 **builder** or **speculative 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.
 - (k) 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 builder
49. **We** will not either refuse to pay a **claim** under this **policy** or reduce any liability under this **policy** on the ground that the **builder** or **speculative 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.
50. **We** may, however, recover from the **builder** or **speculative builder** any amount **we** pay under this **policy** in those circumstances.
- ### How long do you have to claim?
51. **We** will refuse any **claim** by **you** unless **you** notify us in writing of the death, **disappearance** or **insolvency** of the **builder** or **speculative 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).
52. If **you** notify us in writing of the death, **disappearance** or **insolvency** of the **builder** or **speculative 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**.
53. 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
54. **You** must make a **claim** by completing the VMIA claim form. The claim form is available on **our** websites www.vmia.vic.gov.au and www.qbe.com or contact VMIA on 1300 363 424.
55. 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**.
56. 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**.

57. **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 **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 **builder** or **speculative 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.
58. **We** will acknowledge receipt of **your** claim notification within 5 business days. At this time **we** will confirm that **we** have all the required information or **we** will tell **you** of any other information needed to enable **us** to assess **your claim**.
59. **We** will notify **you** within 30 business days of receiving all the information necessary to assess **your claim**, if **we** accept that the **builder** is dead, has **disappeared** or is **insolvent**.

General Conditions

Our rights and obligations

60. **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.
61. Subject to the clauses 62 and 63 below, **you** must comply with **your** obligations under this **policy**, otherwise **we** may not have to pay **your claim(s)**.
62. Section 54 of the Insurance Contracts Act 1984 (Cth.) (insurer may not refuse to pay claims in certain circumstances) applies to this **policy**.
63. **We** will not reduce **our** liability to **you** under this **policy** because **you** have failed to comply with any of the requirements in clause 57 (a) to (d), unless, and only to the extent that, **your** failure increased **our** liability under this **policy**.
64. 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 32 in the section headed 'What is covered by this **policy**? - Primary Cover';
 - (iii) an event referred to in clause 33 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 64(a).

65. **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 **builder** or **speculative 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.
66. **We** will provide a **certificate of insurance** in the form required by the **Order** in respect of the **building** to the **builder** or **speculative builder** immediately on the issue of the **policy** or, at any time after that date, at the request of **you** or the **builder** or the **speculative builder**.

Loss prevention

67. **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

68. If **we** pay a **claim**, **we** are entitled to be subrogated to **your** rights to recover against any other party (including the **builder** or **speculative builder**, or a contractor or supplier or a liquidator or administrator or the estate of the **builder** or **speculative builder**) to the extent of the amount paid by **us**.
69. **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.
70. **You** must provide us with reasonable assistance to recover damages or contribution from any other person.

Application of laws

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

Conflict with the Order

72. 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**.