

HOME WARRANTY INSURANCE POLICY FOR RESIDENTIAL BUILDING WORK

How to read the policy

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

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

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

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

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

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

1. Cover

1.1 Residential building work

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

1.2 Amount of cover

- (a) At **our** discretion, **we** will either make good the loss or damage by engaging or paying a builder to repair or rectify the loss or damage, or pay to **you** the amount of that loss or damage, subject to paragraphs (b) and (c) and the limits on cover set out in subclause 1.3.
- (b) Subject to paragraph (c), and except where clause 6 applies (to residential flat building **work**), the **policy** will not cover **you** for more than \$300,000 (or such other amount as may be prescribed by the **Act** and the **Regulation** at the time the **policy** is entered into) in the aggregate for all claims made.
- (c) In respect of a **dwelling** in a building or complex containing more than one dwelling, the amount referred to in paragraph (b) may be reduced by not more than an amount calculated by dividing the amount of any claim paid by us in relation to **common property** of the building or complex, by the number of dwellings contained in the building or complex.

1.3 General limits on cover

- (a) **You** must meet the first \$500 of each claim made.
- (b) If the claim is in respect of loss or damage resulting from non-completion of the **work**, the **policy** will not cover **you** for more than 20% of the **contract** price (including any agreed variation to the **contract** price) for the **work**.
- (c) The **policy** will not cover **you** for the amount of a deposit that exceeds the maximum payment permitted by section 8 of the **Act**.
- (d) **We** will not be liable for the amount of any part of a progress payment that exceeds the amount specified for such a payment under the contract.
- (e) All references in the **policy** to dollar amounts and the **contract** price are inclusive of goods and services tax (GST).

2. Period of insurance

2.1 Non-completion

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

2.2 Structural defects

In respect of loss or damage arising from a **structural defect**, the **policy** provides cover for a period of six years after the completion of the **work** or the end of the **contract**, whichever is the later.

2.3 Other loss and damage

In respect of loss or damage arising other than from a **structural defect** or non-completion of the **work**, the **policy** provides cover for a period of two years after the completion of the **work** or the end of the **contract**, whichever is the later.

2.4 Completion of the work

Work is taken to be complete:

- (a) on the date that the **work** is completed within the meaning of the **contract** under which the **work** was done;
- (b) if the **contract** does not provide for when **work** is completed or there is no **contract**, on the date of the final inspection of the **work** by the applicable principal certifying authority; or
- (c) in any other case, on the latest date that the **builder** attends the site to complete the **work** or hand over possession to the owner or if the **builder** does not do so, on the latest date the **builder** attends the site to carry out **work**.

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

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

- (a) claims that may otherwise arise under the **contract** in the nature of liquidated damages for delay or damages for delay, however this limitation does not extend to any increase in rectification costs caused by the effluxion of time;
- (b) a claim for loss or damage resulting from any of the following:
 - (i) war;
 - (ii) an **act of terrorism**;
 - (iii) civil unrest;
 - (iv) a nuclear event;
 - (v) failure by **you** to maintain appropriate protection against pest infestation or exposure of natural timbers;
 - (vi) consequential loss, including, without limitation, loss of rent or other income, loss of enjoyment, loss of business opportunity, inconvenience or distress; or
 - (vii) malfunction in any mechanical or electrical equipment or appliance, if **we** prove that the malfunction is not attributable to the workmanship of, or installation by, the **builder**;

- (c) loss or damage that could reasonably be expected to result from fair wear and tear of the **work**, or from your failure to maintain the **work**;
- (d) a claim in relation to a defect in, or the repair of damage to, a **structural element** in the non residential part of a building that supports or gives access to the residential part, unless it is a defect or damage that adversely affects the structure of the residential part or the access to it;
- (e) damage caused by the normal drying out of the **work** if the **builder** has taken all reasonable precautions in allowing for the normal drying out when carrying out the **work**;
- (f) damage due to or made worse by **your** failure to take reasonable and timely action to minimise the damage;
- (g) a claim in relation to an appliance or apparatus (such as a dishwasher or air conditioning unit) if the claim is made after the expiry of the manufacturer's warranty period for the appliance or apparatus concerned, or, if there is no warranty period, outside the reasonable lifetime of the appliance or apparatus;
- (h) a claim in relation to damage to **work** or materials that is made outside the reasonable lifetime of that **work** or materials or the manufacturer's warranty period for the materials; or
- (i) a claim in relation to a defect due to a faulty design provided by **you**.

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

4. Claims conditions

4.1 Notifying us

- (a) The **policy** only provides cover in respect of loss of which **you** become aware (or ought reasonably become aware) and which is notified to **us** within the **period of insurance**, other than loss described in paragraph (b).
- (b) If **you** become aware (or ought reasonably become aware) within the last six months of the **period of insurance** of a loss that does not arise from non-completion of **work**, then the **policy** only provides cover in respect of that loss if it is notified to **us** within six months of the date **you** became aware (or ought reasonably have become aware).
- (c) **We** may not reduce **our** liability under the **policy** or reduce any amount otherwise payable in respect of a claim, merely because of a delay by **you** in notifying us of a claim:
 - (i) if the claim is notified to **us** within six months after **you** first become aware (or ought reasonably become aware), of the fact or circumstance giving rise to the claim; or
 - (ii) if the claim is for loss or damage resulting from non-completion of **work** and is notified to **us** within 12 months after the later of:
 - (A) the date of the **contract**;
 - (B) the date provided in the **contract** for commencement of **work**; or
 - (C) the date on which **work** ceased,

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

- (d) If **you** notify **us** of a **structural defect** or other defect, **you** are taken for the purposes of the **policy** 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.

4.2 Certificate of insurance

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

5. General conditions

5.1 Non-disclosure or misrepresentation

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

5.2 Recovery

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

5.3 Other conditions

- (a) Without limiting **your** obligations under subclause 4.1, if **you** suffer loss or damage arising from a breach of a **statutory warranty** in respect of the **work**, **you** must take steps to enforce the **statutory warranty** and if **you** take no action **we** may reduce **our** liability by an amount that fairly represents the extent to which **our** interests have been prejudiced.

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

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

6. Residential flat building work

- (a) This clause applies to the following **work** in relation to an existing single **residential flat building** where the **contract** price (inclusive of GST) exceeds \$12,000:
 - (i) **work** on the **common property** of the existing single **residential flat building** (where the building comprises strata, community scheme or company title home units), and
 - (ii) **work** on an existing single **residential flat building** if the whole building is owned by the same person.
- (b) If the amount obtained by dividing the **contract** price by the number of **dwellings** in the building does not exceed \$12,000, the **policy** will not cover **you** for more than \$300,000 (or such other amount as may be prescribed by the **Act** and the **Regulation** at the time the **policy** is entered into) in the aggregate for all claims made.
- (c) If the amount obtained by dividing the **contract** price by the number of dwellings in the building exceeds \$12,000, the **policy** will not cover **you** for more than \$300,000 (or such other amount as may be prescribed by the **Act** and the **Regulation** at the time the **policy** is entered into) in the aggregate for all claims made in respect of each **dwelling** in the building.
- (d) In this clause, '**dwelling**', in relation to a strata, community scheme or company title home unit, includes any garage or storage area that is included in the same title as the unit.

7. Terms with special meanings

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

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

Act of terrorism means an act that, having regard to the nature of the act, and the context in which the act was done, it is reasonable to characterise as an act of terrorism.

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

Building claim means a claim for:

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

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

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

Common property means:

- (a) **common property** within the meaning of the *Strata Schemes (Freehold Development) Act 1973* (NSW) or the *Strata Schemes (Leasehold Development) Act 1986* (NSW), or

(b) association property within the meaning of the *Community Land Development Act 1989* (NSW).

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

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

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

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

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

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

Insolvency means:

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

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

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

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

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

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

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

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

Residential flat building work means **work** which is done or is to be done on the **common property** of an existing single **residential flat building**, where the **contract** price is more than \$12,000.

Statutory warranty means any of the following warranties:

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

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

- (a) results in, or is likely to result in, the building or any part of the building being required by or under any law to be closed or prohibited from being used;

(b) prevents, or is likely to prevent, the continued practical use of the building or any part of the building;

(c) results in, or is likely to result in:

- (i) the destruction of the building or any part of the building; or
- (ii) physical damage to the building or any part of the building; or

(d) results in, or is likely to result in, a threat of imminent collapse that may reasonably be considered to cause destruction of the building or physical damage to the building or any part of the building.

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

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

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

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

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

You or **your** means the person on whose behalf the **work** is done or is to be done, and any successor in title to that person.