

HOME WARRANTY INSURANCE POLICY FOR OWNER-BUILDER WORK – 1 FEBRUARY 2012

How to read the policy

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

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

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

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

Words and phrases appearing in bold have the special meanings explained in clause 6.

1. Cover

1.1 Owner-builder 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 loss or damage in respect of the **work** arising from a breach of a **statutory warranty**, being loss or damage in respect of which **you** cannot recover compensation from the **owner-builder** or have the **owner-builder** rectify because of the **insolvency**, death or **disappearance** of the **owner-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 **owner-builder**, or have the **owner-builder** rectify, because of the **insolvency**, death or **disappearance** of the **owner-builder**:
- loss or damage resulting from faulty design, where the design was provided by the **owner-builder**;
 - the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of an event referred to in paragraph (a) above; and
 - any legal or other reasonable costs incurred by **you** in seeking to recover compensation from the **owner-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 **owner-builder** to perform the **work** resulting in the loss or damage referred to in paragraph (a) or (b).

1.2 Amount of cover for owner-builder work

- (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) **You** must meet the first \$250 of each claim made.
- (c) All references in the **policy** to dollar amounts are inclusive of any applicable goods and services tax (**GST**).

1.3 Limit on cover

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

2. Period of insurance

2.1 Structural defects

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

2.2 Other loss and damage

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

2.3 Completion of the work

Work is taken to be complete on the date of **practical completion**.

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

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

- (a) claims that may otherwise arise 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:
- war;
 - an **act of terrorism**;
 - civil unrest;
 - a nuclear event;
 - failure by **you** to maintain appropriate protection against pest infestation or exposure of natural timbers;
 - consequential loss, including, without limitation, loss of rent or other income, loss of enjoyment, loss of business opportunity, inconvenience or distress; or
 - 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 **owner-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 **owner-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;

- (i) a claim in relation to a defect due to a faulty design provided by **you**; or
- (j) a claim in relation to any defect that is referred to in any report on the **work** required by **us** to be obtained before the **policy** was issued.

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 **owner-builder**.

4. Claims conditions

4.1 Making a claim

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

4.2 Awareness of facts and circumstances giving rise to a claim

- (a) **We** may not reduce **our** liability under the **policy** or reduce any amount otherwise payable in respect of a claim, merely because of a delay by **you** in notifying **us** of the claim, if the claim is notified to **us** within six months after **you** first become aware (or ought reasonably become aware), of the fact or circumstance under which the claim arises.
- (b) **We** may reduce **our** liability under the **policy** or reduce any amount otherwise payable in respect of a claim notified outside of this period.

4.3 Certificate of insurance

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

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 **owner-builder**.
- (b) When **you** provide information to **us** including when **you** answer **our** questions, **you** must be honest and ensure that the information that **you** provide to **us** is accurate and complete.

5.2 Recovery

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

5.3 Other conditions

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

Note: for example, you might do this by lodging a home building division application with the Consumer, Trader and Tenancy Tribunal and/or commencing court proceedings to try to have the owner-builder 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. 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.

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).

Disappearance includes a reference to the fact that, after due search and inquiry, the **owner-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)).

Insurance application means the application form completed by the **owner-builder** applying for this insurance.

Owner-builder means the owner-builder described in the **insurance application** holding a **permit** for the **work**.

Owner-builder work has the same meaning as it does under the **Act**.

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

Permit means an owner-builder permit issued under Division 3 of Part 3 of the **Act**.

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

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

- (a) the date of issue of an occupation certificate under the *Environmental Planning and Assessment Act 1979* (NSW) that authorises commencement of the use or occupation of the **work**; or
- (b) the date that is 18 months after the issue of the **owner-builder** permit for the **work**.

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

Statutory warranty means any of the following warranties, where **you** are entitled to the benefit of these statutory warranties as if the **owner-builder** were required to hold a contractor licence (as defined in the **Act**) and had done the **work** under a contract with **you** to do the **work**:

- (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 **owner-builder** (or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of the **owner-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 **owner-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 **owner-builder work** which has been done by the **owner-builder** to the **dwelling**.

You or **your** means the purchaser of land on which the **work** has been done, and any successor in title to that person.