

Lumley

General



Home Warranty Insurance Policy

Residential Building Work

**performed by a Licensed Contractor or
Developer and Supply of a Kit Home**

New South Wales

Underwritten by

Wesfarmers General Insurance Limited

Trading as Lumley General

ABN 24 000 036 279

Level 9, 309 Kent Street Sydney New South Wales 2000

Tel: (02) 9248 1111

SECTION 1 - INTRODUCTION

This Home Warranty Insurance policy is underwritten by Wesfarmers General Insurance Limited, trading as Lumley General ABN 24 000 036 279, and consists of this policy wording and a Certificate of Insurance. They are important documents and provide proof of contract between You and Us. Please keep them in a safe place.

This policy is issued in compliance with the Home Building Act 1989 and the Home Building Regulation 2004.

Please read the policy and Certificate of Insurance carefully to ensure that You fully understand them and that they provide You with the protection that You need.

The policy is for the period of insurance and will not be renewed and is not of a type that is renewable, nor cancellable except in those circumstances detailed in Section 4.6.

This policy is issued to comply with sections 92, 93 and 96A of the Act. The cover provided by the policy extends, subject to the terms, conditions and exclusions of the policy, to Residential Building Works to which section 92 of the Act applies, to the Supply of Kit Homes to which Section 93 of the Act applies and to land sold by Developers on which Residential Building Work has been done to which Section 96A of the Act applies.. If this policy has been provided to you in error in that the Residential Building Works performed, arranged, Supplied, managed or supervised are not works to which Sections 92, 93 and 96A of the Act apply, but are Residential Building Works to which Sections 95 or 96 apply, You should contact Us as this policy does not provide the cover required for those works.

If it is not completely in accordance with Your intentions or You are in doubt as to the meaning or effect of the wording, please contact Your insurance broker, legal representative or Us immediately for clarification.

Some of the words in the policy have specific meanings. You should refer to Section 3 for the definitions of those words.

SECTION 2 – IMPORTANT NOTICES

2.1 Your Duty of Disclosure

We rely on the truth of what the Contractor, or Supplier tells Us in providing You with this cover and separately what You tell Us when and if You make a Claim. We will not avoid Your Claim or refuse to make or limit

payment under Your Claim solely on the grounds that the Contractor or Supplier:

- (i) breached any duty of utmost good faith;
- (ii) failed to comply with any duty of disclosure;
- (iii) made misrepresentations to Us;
- (iv) failed to comply with a provision or a requirement of the policy;
- (v) by act or omission of any description, prejudiced Our interest, or
- (vi) failed to pay the premium or any instalment of the premium.

In the event that We make a payment under this policy in the circumstances in which this section applies, We are entitled to seek recovery of such payment, including any fees and charges incurred, from the Contractor or Supplier.

2.2 Regulatory Notification

We will notify the Director General, the Office of Fair Trading or other regulatory authority at the times and in the manner agreed with the Director General, the Office of Fair Trading or other regulatory authority or as required by the Act or the Regulations:

- (a) any and all details related to any cover issued by this policy: including but not limited to:
 - (i) Your identity; or
 - (ii) the identity of the Contractor, Supplier or Developer' or
 - (iii) the location and scope of the Residential Building Works or Supply subject of the cover;
- (b) if We refuse to issue cover for Residential Building Works or Supply at the Building Site;
- (c) if the Contractor, Supplier or Developer ceases to become eligible to renew or purchase insurance cover;
- (d) if in respect of Residential Building Work or Supply performed where the Contractor, Supplier or Developer fails to purchase or maintain required insurance;
- (e) of each Claim made under the policy including but not limited to:

- (i) the details or nature of the Claim;
- (ii) the end result of the Claim;
- (iii) the amount paid under the Claim, and
- (iv) action taken in relation to or as a result of the settlement of the Claim.

2.3 Certificates of Insurance

When We issue this policy, We will provide You, through the Contractor, Supplier or Developer, with a Certificate of Insurance stating the policy has been issued in compliance with the Act. At Your or the Contractor's, Supplier's or Developer's request, We will also provide a copy of the policy, the Certificate of Insurance and any associated document to the policy.

2.4 Privacy

We are committed to ensuring the confidentiality and security of personal information. We may disclose personal information to:

- a State or Federal Authority, an assessor or investigator (for the purpose of assessing or investigating Your Claims or in line with a provision or requirement of the Act or Regulations);
- a lawyer or recovery agent (for the purpose of defending an action by a third party, the Contractor, Supplier or Developer or You against either You or Us or for the purpose of recovering Our costs);
- another insurer or a reinsurer (for the purpose of seeking recovery from them or to assist them to assess insurance risks);
- an insurance reference bureau (for the purpose of recording any Claims You make upon Us); and
- other service providers (only for a purpose in connection with this insurance).

Personal information may also be obtained about You or Your employees from the above people or organisations. We will give

You and Your employees the opportunity to correct this personal information, or obtain access to it.

We will provide Our dispute resolution procedures to You in respect of any complaint You may have regarding Your personal information. You may request access to information held by Us about You, by contacting Us. Our Privacy Statement is available on Our Website www.lumley.com.au.

2.5 Goods and Service Tax (GST)

If this policy is subject to payment of Goods and Services Tax in relation to the premium then You, the Contractor, the Supplier or the Developer will pay that tax.

2.6 Code Of Practice

We subscribe to the General Insurance Code of Practice that sets the standards of practice and service for the insurance industry. It is Our aim to provide a quality service to You, Our customer. However We recognize that occasionally there may be some aspect of Our service or a decision We have made that You wish to query or draw to Our attention.

If after talking to Us, You wish to take the matter further, please ask for the matter to be referred to the Internal Dispute Resolution Committee. We have a complaints and dispute resolution procedure that undertakes to provide an answer to Your matter within 15 working days provided We have all the information We need. We also undertake to inform You of Your alternatives should You still not be happy with Our answer.

You also have the right to appeal Our decision in relation to a Claim to the Tribunal. Please refer to Section 7.3.

2.7 Severability Clause

Some provisions and terms of this policy have been inserted in the policy due to the requirements of the Act and or the Regulations. Should it be found by the Tribunal or any court that any provision or term of the policy, is invalid or not in accordance with the Act and/or the Regulation or that a term or provision of the Act or Regulations is invalid, then the provision or term of the policy shall be deemed to be severed from this policy and

not binding upon the insurer or You. The remainder of the policy shall remain in full force and effect.

2.8 Limitation or Exclusion of Rights Against Third Parties

You must not limit or exclude Your rights against a party from whom You might otherwise be able to recover in respect of loss or damage. 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 the limitation or exclusion by You.

SECTION 3 - DEFINITIONS

For the purposes of this policy, the following words have special meanings. Where also appearing in the Act or the Regulations, they are also consistent with the Act or Regulations. If there is any discrepancy, the definition contained in the Act or the Regulations shall apply. The defined words are shown in the policy with the first letter capitalised. Words in the singular includes the plural and vice versa. The defined word includes derivatives of the word.

Act means:

The *Home Building Act 1989 (NSW)*.

Building Owner means:

The person for whom the Residential Building Work or Supply has been or is being carried out, managed or arranged.

Building Site means:

The land or lot where the Residential Building Work or Supply is being, has been, or is about to be, carried out.

Certificate of Insurance means:

The certificate We issue to You, through the Contractor, Supplier or Developer evidencing that cover for the Residential Building Work or Supply has been issued by Us.

Claim means:

For the purposes of this policy, written notice made by You on Our Claim Form of any event which You believe to be insurable under Sections 4.1 or 4.2 of this policy.

Claim Form means:

Our approved Claim Form in addition to all information required to be provided by You to Us as detailed in Our Claim Form.

Commencement Day means:

The earlier of:

- (a) the date the relevant Insurable Residential Building Contract or Insurable Supply Contract was entered into; or
- (b) the date of Residential Building Work or Supply commences.

Common Property means:

Property in a strata, cluster or other subdivision or parcel of land to which ownership of the property or part of the parcel is not comprised in any one lot. Ownership of Common Property vests in You and other lot owners within any parcel of land as tenants in common in shares proportional to Your lot entitlement within the parcel as defined in the *Strata Schemes Management Act 1996 (NSW)*.

Completion Date means:

- (a) the date the Residential Building Work or Residential Flat Building Work or Supply required by the Insurable Residential Building Contract or Insurable Supply Contract was completed within the meaning of the Insurable Residential Building Contract or Insurable Supply Contract; or
- (b) if the Insurable Residential Building Contract or Supply Contract does not provide for when Residential Building Work or Supply is complete or in the absence of a Residential Building Contract or Supply Contract, the date of the final inspection by the Principal Certifying Authority; or
- (c) in any other case, on the latest date that the Contractor or Supplier attends the Building Site to complete the Residential Building Work or Supply or hand over possession to the Building Owner or if the Contractor or Supplier does not do so, on the latest date the Contractor or Supplier attends the Building Site to carry out Residential Building Work or Supply.

Construct means:

In relation to a Dwelling;

- (a) to build, rebuild, erect or re-erect the Dwelling; or
- (b) making alterations to the Dwelling; or
- (c) to enlarge or extend the Dwelling; or
- (d) to cause any other person to do anything referred to in (a), (b) or (c) in relation to the building; or
- (e) to manage or arrange the doing of anything referred to in (a), (b) or (c) in relation to the building.

Contractor means:

An individual, partnership or corporation that is the holder of a contractor licence issued by the Director General enabling the Contractor to contract with third parties to perform, carry out, arrange or manage the carrying out or intends to perform, carry out, arrange or manage the carrying out of Residential Building Work.

Dead/Death means:

For the purposes of this policy Dead includes in the case of a Builder or Supplier who is not a company or a body corporate, the death of the Builder or Supplier or all of the partners in the Builder or Supplier.

Developer means:

Any individual, partnership or corporation on whose behalf:

- (a) Residential Building Work is done with an existing or proposed Dwelling in a building or residential development where 4 or more of the existing or proposed Dwellings are or will be owned by the individual, partnership or corporation; or
- (b) Residential Building Work is done in connection with an existing or proposed retirement village or accommodation specifically designed for the disabled where all of the residential units are or will be owned by the individual, partnership or corporation,

However a company that owns a building under a company title scheme is not a Developer for the purposes of this policy.

Director General means:

- (a) The Commissioner of the Office of Fair Trading, Department of Commerce; or
- (b) If the position identified in (a) does not exist, the Director General of that Department.

Disappears/Disappearance means:

Not being able to be found after due search and enquiry.

Dwelling means:

A building or portion of a building for which Residential Building Work is performed under an Insurable Residential Building Work Contract that is designed, constructed or adapted for use as a Dwelling (such as a detached or semi-detached house, transportable house, terrace or town house, duplex, villa-home, strata or company title home unit or residential flat) and includes:

- (a) any swimming pool or spa constructed for use in conjunction with a Dwelling; and
- (b) such additional structures and improvements as are declared by the Regulations;

In relation to a strata, community scheme or company title home unit, Dwelling includes any garage or storage area that is included in the same title as the unit.

However, it does not include Dwellings or portions of Dwelling declared by the Regulations to be excluded from this definition.

Insolvent/Insolvency means:

- (a) In the case of a natural person, insolvent under administration as defined in the *Corporations Act 2001 (Cth)*; or
- (b) In the case of a body corporate, subject to external administration as defined in the *Corporations Act 2001 (Cth)*.

Insurable Residential Building Contract means:

A Residential Building Contract in which the contract price for the Residential Building Work exceeds \$12,000 and includes a contract for Insurable Residential Flat Building Work.

Insurable Residential Flat Building Work

means:

The following Residential Building Work performed in connection with an existing single Residential Flat Building where the contract price (inclusive of GST) exceeds \$12,000:

- (a) work on the common property of the existing single Residential Flat Building (where the building comprises strata, community scheme or company title home units); or
- (b) work on an existing single Residential Flat Building if the whole building is owned by the same person.

Insurable Supply Contract means:

A Supply Contract in which the contract price for the Supply exceeds \$12,000.

Kit Home means the same as it does in the Act and Regulations.

Multi-Storey Residential Building means:

A building that:

- (a) has a rise in Storeys of more than 3; and
- (b) that contains 2 or more separate dwellings.

Non-Structural Defect means:

In relation to a Dwelling, a defect in the Residential Building Work other than a Structural Defect.

Principal Certifying Authority means:

The same as it does in the *Environmental Planning and Assessment Act 1979 (NSW)*.

Regulations means:

The *Home Building Regulation 2004 (NSW)*.

Residential Building Contract means:

A contract made between the Building Owner and the Contractor, which contract complies with the requirements of the Act and the Regulations and includes but is not limited to:

- (a) a description of the Residential Building Work required to be performed by the Contractor; and

- (b) a price payable by the Building Owner for the performance of the Residential Building Works; and
- (c) A date for the commencement of the Residential Building Work; and
- (d) A time period allowed for the Residential Building Work to be performed;
- (e) Specifications; and
- (f) plans and drawings; and
- (g) all other inclusions, notices, clauses, limitations and sections required to be included by the Act and the Regulations.

Residential Building Work means:

Any building work referred to in section 3 of the Act that is not excluded by clause 9 of the Regulations and includes Residential Flat Building Work.

Residential Flat Building means:

A building containing 2 or more Dwellings.

Residential Flat Building Work means:

Residential Building Work performed in connection with a Residential Flat Building.

Statutory Warranty means:

The same as it does in section 18B of the Act.

Storey means:

The same as it does in the Regulations, but does not include a space within a building if the space contains only accommodation intended for vehicles.

Structural Defect means:

In relation to a Dwelling or Kit Home, any defect of a Structural Element of the Dwelling or Kit Home 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 Dwelling or Kit Home or any part of the Dwelling or Kit Home, being required by law to be closed or prohibited from being used; or

home warranty insurance

- (b) prevents or is likely to prevent, the continued practical use of the Dwelling or Kit Home or any part of the Dwelling or Kit Home; or
- (c) results in or is likely to result in:
 - (i) the destruction of the Dwelling or Kit Home or any part of the Dwelling or Kit Home;
 - (ii) physical damage to the Dwelling or Kit Home or any part of the Dwelling or Kit Home; or
- (d) results in or is likely to result in, a threat of imminent collapse that may reasonably be considered to cause destruction of or physical damage to the Dwelling or Kit Home or any part of the Dwelling or Kit Home.

Structural Element means:

In relation to a Dwelling or Kit Home,

- (a) any internal or external load-bearing component of the Dwelling or Kit Home that is essential to the stability of the Dwelling or Kit Home or any part of the Dwelling or Kit Home 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 Dwelling or Kit Home.

Successor in Title means:

A subsequent registered proprietor.

Supplier means:

The supplier of a Kit Home named in the Certificate of Insurance and required by section 93 of the Act not to enter into a Supply Contract unless an insurance contract is in force.

Supply means:

Supply of a Kit Home stated in the Certificate of Insurance pursuant to a Supply Contract.

Supply Contract means:

The contract to supply a Kit Home specified in the Certificate of Insurance and in respect of which an

insurance contract is required by Section 93 of the Act to be in force.

Tribunal means:

The Consumer, Trader and Tenancy Tribunal established by the *Consumer, Trader and Tenancy Tribunal Act 2001 (NSW)*.

Variation means:

A document altering the price or scope of Residential Building Work signed by and agreed between the Building Owner and the Contractor under an Insurable Residential Building Contract, however for the purposes of this policy, only a written Variation signed by, or on behalf of, both the Building Owner and the Contractor shall be deemed as a Variation.

We, Our, Us means:

Wesfarmers General Insurance Ltd ABN 24 000 036 279, trading as Lumley General.

You, Your means:

- (a) the Building Owner; or
- (b) a person who purchases land from a Developer on which Residential Building Work has been done, or is to be done, in circumstances where the Developer is required to obtain insurance pursuant to Section 96A of the Act (subject to Regulations 74(2) and 77); or
- (c) a person to whom a Kit Home covered by the Supply Contract is supplied or proposed to be supplied; or
- (d) a Successor in Title to any person referred to in (a) to (c) above,

but does not mean:

- (i) the Contractor;
- (ii) a Developer who does Residential Building Work (except where the Developer is also the Building Owner and, in the capacity of Building Owner, has entered into an Insurable Residential Building Contract in respect of the Residential Building Work) ; or
- (iii) a person who does Residential Building Work under a Residential Building Contract (except where the person is also the Building Owner and, in the capacity of

Building Owner, has entered into an Insurable Residential Building Contract in respect of the Residential Building Work); or

- (iv) a related company within the meaning of section 50 of the Corporations Act 2001 (Cth) to any person or corporation referred to in this definition; or
- (v) the Building Owner, if neither the Contractor nor the Building Owner is a public company but each has a common director or a common shareholder.

SECTION 4 - THE COVER

A. Work by Contractors

4.1 We agree to cover You if the Contractor is Dead, Disappears or becomes Insolvent during the period of insurance, subject to the terms, conditions and exclusions of this policy, if You suffer loss or damage:

- (a) resulting from the non-completion by the Contractor of Residential Building Work referred to in the Insurable Residential Building Contract because of the Insolvency, Death or disappearance of the Contractor; or
- (b) resulting from a breach by the Contractor of a Statutory Warranty, being loss or damage in respect of which You cannot recover compensation from the Contractor or have the Contractor rectify because of the Insolvency, Death or Disappearance of the Contractor; or
- (c) resulting from faulty design only where that design was provided by the Contractor being loss or damage in respect of which You cannot recover compensation from the Contractor or have the Contractor rectify because of the Insolvency, Death or Disappearance of the Contractor; or
- (d) resulting from the non-completion by the Contractor of the Residential Building Work referred to in the Insurable Residential Building Work Contract because of early termination of the Insurable Residential Building Work Contract because of the Contractor's wrongful failure or refusal to complete the Residential Building Work, being loss or damage in respect

of which You cannot recover compensation from the Contractor because of the Insolvency, Death or Disappearance of the Contractor; or

- (e) related to the costs of alternative accommodation and removal and storage costs that are reasonably and necessarily incurred as a result of an event referred to in Section 4.1 (a) and/or (b) of the policy;
- (f) resulting from the loss of a deposit or loss of any progress payment specified under the relevant Insurable Residential Building Work Contract as a result of an event referred to in Section 4.1 (a) and/or (b) of the policy; or
- (g) subject to Section 4.4(a) any legal or other reasonable costs incurred by You in seeking to recover compensation from the Contractor for loss or damage or in taking action to rectify the loss or damage.

B. Kit Homes

4.2 We agree to cover You if the Supplier is Dead, Disappears or becomes Insolvent during the period of insurance, subject to the terms, conditions and exclusions of this policy if You suffer loss or damage:

- (a) resulting from the non-supply of the Kit Home because of the Insolvency, Death or Disappearance of the Supplier;
- (b) resulting from the materials and/or components used in the Kit Home not being good or suitable for the purpose for which they were used, but only if You cannot, because of the Insolvency, Death or Disappearance of the Supplier, recover compensation from the Supplier or have the Supplier rectify;
- (c) resulting from the design of the Kit Home being faulty, but only if You cannot, because of the Insolvency, Death or Disappearance of the Supplier, recover compensation from the Supplier or have the Supplier rectify;
- (d) resulting from the non completion of the Supply because of the early termination of the Insurable Supply

Contract because of the Supplier's wrongful failure or refusal to complete the Supply, but only if You cannot, because of the Insolvency, Death or Disappearance of the Supplier recover compensation from the Supplier, or have the Supplier rectify;

- (e) related to the costs of alternative accommodation and removal and storage costs that are reasonably and necessarily incurred as a result of an event referred to in Section 4.2(a), (b) and (c) of the policy;
- (f) resulting from the loss of a deposit or loss or any progress payment specified under the relevant Insurable Supply Contract as a result of an event referred to in Section 4.2(a), (b) or (c) of the policy; or
- (g) subject to Section 4.4(a), any legal or other reasonable costs incurred by You in seeking to recover compensation from the Supplier for loss or damage or in taking action to rectify the loss or damage.

4.3 Breadth of Indemnity

The indemnity referred to in Sections 4.1 and 4.2, includes an indemnity in respect of the acts or omissions of all persons who were contracted by the Contractor or Supplier to perform the Insurable Residential Building Works under the Insurable Residential Building Contract or make the Supply under the Insurable Supply Contract resulting in loss or damage of the kind referred to in Sections 4.1 or 4.2 inclusive.

4.4 Limit of Indemnity

A. Dwellings (other than Dwellings in Residential Flat Buildings) and Kit Homes

In respect of Dwelling (other than Dwellings in Residential Flat Buildings) and Kit Homes, we will not be liable to pay You any more than \$300,000 in the aggregate for any and all Claims made under the policy in respect of any one Dwelling or Kit Home or in the case of a building owned under a company title scheme, the entire building, which amount includes any legal or other reasonable costs incurred by You in seeking to recover compensation from the Contractor or Supplier for loss or damage in taking action to rectify the loss or damage.

B. Insurable Residential Flat Building Work

In respect of Insurable Residential Flat Building Work:

- (a) if the amount obtained by dividing the contract price (inclusive of GST) by the number of Dwellings in the Residential Flat Building does not exceed \$12,000, We will not be liable to pay You any more than \$200,000 in the aggregate for any and all Claims made under the policy in respect of the Residential Flat Building.
- (b) If the amount obtained by dividing the contract price (inclusive of GST) by the number of Dwellings in the Residential Flat Building exceeds \$12,000, We will not be liable to pay You any more than \$200,000 in the aggregate for any and all Claims made under the policy in respect of any one Dwelling in the Residential Flat Building.

C. Claims for non-completion or non-supply

- (a) If Your Claim relates to the indemnity provided by Section 4.1(a) We will not be liable to pay You more than 20% of the Insurable Residential Building Contract price for the Insurable Residential Building Works.
- (b) If Your Claim relates to the indemnity provided by Section 4.2(a), We will not be liable to pay You more than 20% of the Insurable Supply Contract price for the Supply.

4.5 Period of Insurance

A. Work by Contractors

- (a) We will provide insurance cover for loss arising from non-completion of the Residential Building Work under Section 4.1(a) for a period of 12 months from the date of the failure to commence, or cessation of, the Residential Building Work the subject of the cover.
- (b) Otherwise, cover is provided by Section 4.1 of the policy, subject to the terms, conditions and exclusions of this policy, for:
 - (i) Non-Structural Defects, in respect of loss or damage occurring during the period starting on the Commencement Day and

ending 2 years after the later of:

- (A) the Completion Date of the Residential Building Work; or
- (B) the date of termination of the Insurable Residential Building Contract

(ii) Structural Defects, in respect of loss or damage occurring during the period starting on the Commencement Day and ending 6 years after the later of:

- (A) the Completion Date of the Residential Building Work, or
- (B) the date of termination of the Insurable Residential Building Contract

B. Kit Homes

(a) We will provide insurance cover for loss arising from non-completion of the Supply under Section 4.2(a) for a period of 12 months from the date of the failure to commence, or cessation of, the Supply the subject of cover.

(b) Otherwise, cover is provided by Section 4.2 of the policy, subject to the terms, conditions and exclusions of the policy, for:

(i) Non-Structural Defects, in respect of loss or damage occurring during the period starting on the Commencement Day and ending 2 years after the later of:

- (A) the Completion Date of the Supply; or
- (B) the date of termination of the Insurable Supply Contract,

(ii) Structural Defects, in respect of loss or damage occurring during the period starting on the Commencement Day and ending 6 years after the later of:

- (A) the Completion Date of the Supply; or
- (B) the date of termination of the Insurable Supply Contract.

4.6 Cover Cancellation

The policy when issued cannot normally be cancelled, however in the event that:

A. (a) it can be proven that no Residential Building Works have been performed by the Contractor under the Insurable Residential Building Contract; and

(b) the Insurable Residential Building Contract has been terminated, abandoned or ended by mutual agreement; and

(c) no Residential Building Works will be performed by the Contractor under the Insurable Residential Building Contract, and

(d) we receive written confirmation from both You and the Contractor requesting that the policy be cancelled and no reliance will be placed on it by either You or the Contractor in the future, or

B. (a) it can be proven that no Supply has been performed by the Supplier under the Insurable Supply Contract; and

(b) the Insurable Supply Contract has been terminated, abandoned or ended by mutual agreement; and

(c) no Supply will be performed by the Supplier under the Insurable Supply Contract, and

(d) we have received written confirmation from both You and the Supplier requesting that the policy be cancelled and no reliance will be placed on it by either You or the Supplier in the future,

the policy may be cancelled. In the event all of the requirements of 4.6A.(a) to (d) or 4.6B.(a) to (d) inclusive are not satisfactorily completed, the policy will not be cancelled even if We do not have any known liability under the policy.

SECTION 5 - WHAT IS NOT COVERED

We will not pay for any loss or damage, whether direct or indirect, or Your legal liability in respect of:

- (a)
 - (i) any Residential Building Work or Supply performed to the remainder of the Dwelling, Kit Home or Building Site other than that noted in the policy, or
 - (ii) any works or Supply carried out, managed or arranged or not carried out, managed or arranged by any predecessors to You, by You or by subsequent owners, or
 - (iii) any Residential Building Works or Supply which are the subject of any other insurance, guarantee or indemnity issued under the Act or similar legislation.
- (b) Non-completion of Residential Building Work or Supply where the Contractor's or Supplier's Death, Insolvency or Disappearance occurred before the Contractor or Supplier commenced any Residential Building Work or Supply on the Building Site (other than the removal of vegetation) that required the use of any tools or building materials, however this exclusion or limitation is subject to Your right to recover:
 - (i) any money paid in relation to the relevant Insurable Residential Building Contract or Insurable Supply Contract; and
 - (ii) any legal or other reasonable costs incurred by You in seeking to recover compensation from the Contractor or Supplier for loss or damage or in taking action to rectify the loss or damage.
- (c) Money paid to the Contractor or Supplier:
 - (i) that exceeds the amounts that should have been paid to the Contractor in accordance with section 8 of the Act or clause 57 of the Regulations; and/or
 - (ii) that exceeds the amount that should have been paid to the Contractor or Supplier in accordance with the relevant Insurable Residential Building Contract or Insurable Supply Contract.
- (d) Residential Building Works to which Section 95 of the Act applies, namely to any Residential Building Works performed, arranged, managed or supervised by an Owner Builder as that term is defined in the Act at the Building Site.
- (e) Fair wear and tear of Residential Building Work or Kit Home, where such wear and tear could be reasonably expected.
- (f) Such damage caused by the normal drying out of the components concerned with Residential Building Work or Kit Home, if the damage has occurred despite the Contractor or Supplier taking all reasonable precautions in allowing for the normal drying out when carrying out the Residential Building Work or in preparing the assembly tolerances of the Kit Home.
- (g) Your failure to take reasonable and timely action to minimise the damage.
- (h) Defects relating to landscaping, paving, retaining structures, driveways or fencing works unless those works:
 - (i) are integral to the Construction of a Dwelling or Kit Home, or
 - (ii) require the issue of a building permit under the Act, or
 - (iii) could result in water penetration of or within a Dwelling or Kit Home, or
 - (iv) could adversely affect health or safety, or
 - (v) adversely affect the Structural Element of a Dwelling or Kit Home, orare not completed and the Builder or Supplier is Dead, has become Insolvent or Disappeared.
- (i) Defects in, or the repair of damage to Structural Elements in the non-residential part of a Dwelling or Kit Home that supports or gives access to the residential part of the Dwelling or Kit Home, unless it is a defect or damage that adversely affects the structure of the residential part or the access to the Dwelling or Kit Home.
- (j) Any act committed or condoned by You relating to the Claim or the Residential Building Work or Kit Home or Supply which is dishonest, fraudulent, criminal or malicious.

- (k) Claims that may otherwise arise under an Insurable Residential Building Contract or Insurable Supply Contract in the nature of liquidated damages for delay or damages for delay suffered or incurred by the Contractor or Supplier. This exclusion will not limit any increase in rectification costs caused by the effluxion of time.
- (l) Consequential loss, not otherwise covered under this policy including, without limitation, loss of rent or other income, loss of enjoyment, loss of business opportunity, inconvenience or distress.
- (m) Bodily injury, death or illness.
- (n) Malfunction in any mechanical or electrical equipment or appliance, if the malfunction is not attributable to the workmanship of, or installation by, the Contractor or Supplier.
- (o) A Claim in relation to an appliance or apparatus (such as a dishwasher or airconditioning unit) if the Claim is made after the expiry of the manufacturer's warranty period for the appliance or apparatus or, if there is no warranty period, outside the reasonable lifetime of the appliance or apparatus.
- (p) Liability imposed upon the Contractor or Supplier, under the Residential Building Contract or Supply Contract, if that liability would not have otherwise arisen at law.
- (q) Any loss or damage incurred as a result of Defective or faulty design where that design was provided by You or a previous owner.
- (r) War.
- (s) Any act of terrorism being 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, whereby any lawful activity or any industrial action cannot be characterised as an act of terrorism for the purposes of this section, except if it:
 - (i) causes or threatens to cause death, personal injury or damage to property, and
 - (ii) is designed to influence a government or to intimidate the public or a section of the public, and
 - (iii) is carried out for the purpose of advancing a political, religious, ideological, ethnic or similar cause.
- (t) Civil unrest.
- (u) A nuclear event.
- (v) An act of God or nature.
- (w) Failure by You to maintain appropriate protection against pest infestation or exposure of natural timbers.
- (x) Risks that are normally insured under a policy for public liability or contract works.
- (y) Asbestos contamination or removal.
- (z) Events that gave rise to a Claim that:
 - (i) occurred prior to the Commencement Day; or
 - (ii) which might give rise to a Claim and which were known to You prior to the Commencement Day.
- (aa) Residential Building Work performed under any Residential Building Contract related to the Construction of a Multi-Storey Residential Building.
- (bb) Claims made by You, if you are the Contractor or Developer; or
 - (i) You, if you are a related body corporate, as defined in the *Corporations Act 2001 (Cth)*, of the Contractor, or
 - (ii) You and the Contractor if You have a common director or shareholder although both You and the Contractor are not public companies.

SECTION 6 – CLAIMS SETTLEMENT

We will, at Our discretion, either make good, direct the Contractor or Supplier to make good, or pay the amount assessed by Us as the loss or damage suffered by You subject to the following limitations:

- (a) If Your Claim relates to loss and damage suffered as a result of the non-Completion of the Residential Building Works or Supply, We may elect to settle Your Claim in full by way of a single payment of an amount that does not exceed 20% of the Insurable Residential Building Contract or Insurable Supply Contract price including any Variations.
- (b) For any loss or damage You have suffered with regard to an event referred to in Section 4.1 of this policy, You must pay the first \$500 of each Claim made.

- (c) In the event the Residential Building Work or Residential Flat Building Work or Supply is carried out, managed or arranged on land in a plan of subdivision containing Common Property in any description or form, any Claim paid by Us relating to the Common Property shall be divided by a number equal to the number of all Dwellings or lots on the land and the relevant amount referred to in Section 6(b) shall be deducted from that amount for each Dwelling or lot.

The cover so provided extends only to the registered proprietor of the Dwelling identified in the policy and that registered proprietor's lot entitlement within the land in the plan of subdivision. No cover is provided to the body corporate, strata scheme or Common Property manager.

- (d) In the event of a Claim made on land in a plan of subdivision containing Common Property, the Strata Scheme, Body Corporate or other Common Property management body shall be entitled to make a Claim only in the capacity as Your agent and the other owners with regard to the Common Property.
- (e) In relation to the cover provided by Section 4.1(e) and 4.2(e), We will only pay for alternative accommodation and storage costs reasonably and necessarily incurred provided:
 - (i) those costs are incurred only by the registered Building Owner of the Building Site; and
 - (ii) the registered Building Owner is a natural person or if the Dwelling or Kit Home is tenanted, the tenant is a natural person.
- (f) Where a successful Claim is made by You and We agree to make payment to an alternate Contractor or Supplier to remedy the loss or damage suffered by You, we will deduct the amount identified in Section 6 (b) and payable by You from any amount that we would otherwise pay to the alternate Contractor or Supplier.

SECTION 7 - HOW TO MAKE A CLAIM

7.1 Your Obligations

- (a) You must notify Us of any fact or circumstance that may give rise to a Claim as soon as You become aware of the fact or circumstance.

- (b) You must take all reasonable precautions to avoid or minimise loss or damage that is covered by this policy;
- (c) You must notify Us in writing on Our Claim Form as soon as You become aware of loss or damage that is covered by this policy but in any event:
 - (i) In the case of loss or damage suffered arising from non-Completion of the Residential Building Work or Supply, not later than 12 months after the later of:
 - (A) the date of the Insurable Residential Building Contract or Insurable Supply Contract; or
 - (B) the date provided by the Insurable Residential Building Contract or Insurable Supply Contract for the commencement of the Residential Building Work or Supply; or
 - (C) the date the Residential Building Work or Supply ceased; or
 - (ii) In the case of all other loss or damage suffered which loss or damage has not arisen from the non-Completion of the Residential Building Work or Supply, however that is covered by this policy, not later than 6 months after the date that You first became aware of or ought reasonably have been aware of the event that gave rise to the Claim.

If You do not notify Us in writing on Our Claim Form as required by this section We may either refuse or limit payment of Your Claim.

We may not reduce the amount we would otherwise pay under this policy merely because of a delay in a claim being notified to Us provided the claim is notified within the time set out in this clause.

- (d) If You make a Claim under this policy:

- (i) You must comply with any reasonable directions that We give You in relation to the completion or rectification of the Residential Building Work or Supply or settlement or resolution of Your Claim;
- (ii) You must not undertake or cause to be undertaken, any rectification works without notifying Us unless those works are reasonably necessary to prevent or minimise further loss or damage;
- (iii) You must provide Us or any Contractor or Supplier or other person We nominate, with reasonable access to the Building Site for the purposes relating to the Claim.

We will not reduce Our liability to You by reason of a failure on Your part to comply with these conditions unless and only to the extent that We can prove that the failure increased Our liability under this policy.

- (e) In the event that You bring any action against the Contractor or Supplier, You are required to notify Us within 30 days of lodging that proceeding in the Tribunal or Court, and to provide to Us all details of the action You have made against the Contractor or Supplier in those proceedings.
- (f) In the event that the Contractor or Supplier brings proceedings against You, You are required to notify Us within 30 days of receipt by You of advice of those proceedings from the Tribunal or Court and to provide to Us all details of the action made against You by the Contractor or Supplier.
- (g) The period for making a Claim under the policy ceases simultaneously with the end of the period of insurance and We will not accept any Claim made after the expiry of the policy.
- (h) If at the time that You make a Claim, there are any monies as assessed by Us as owing by You under the relevant Insurable Residential Building Contract or Insurable Supply Contract, those monies must firstly be applied:

- (i) toward rectification costs of any defective and/or incomplete Residential Building Work or Supply, and then
 - (ii) toward the costs of any other loss or damage incurred of a nature which is referred to in Section 4.
- (i) You agree not to undertake or cause to be undertaken any rectification works or completion works without notifying Us or Our agent, unless such works are reasonably necessary to prevent or minimise any further loss or damage.
 - (j) In the event You make a Claim under the policy, You are obliged to advise Us of all matters that may impact Our decision with regard to that Claim or to the cover provided by the policy. If You fail to advise us of a fact that does alter the cover provided or that would alter the decision We make in respect of any Claim, We may either refuse to pay that Claim or We may seek to recover part or all of the monies already paid to You.

7.2 Our Obligations

- (a) If We have not provided You with a written determination of a Claim that has been submitted to Us within 90 days from the receipt of that Claim being only a claim made on our Claim Form, and We have not obtained an extension of time from You or the Tribunal, We will accept liability for that Claim subject to the terms, conditions and exclusions provided by the policy.
- (b) If We are given notice of a defect, such notice is deemed to include every other defect that is directly or indirectly related to it, whether or not the Claim in respect of such defect was actually notified to Us or settled.
- (c) We are not entitled either to refuse to pay or cancel a Claim on the ground that the policy was obtained by misrepresentation or non-disclosure by the Contractor, Supplier or Developer or that the policy premium has not been paid providing, in the latter case, that a certificate evidencing insurance has been given or We have otherwise accepted cover.

7.3 Dispute Resolution

In the event that We make a decision on a Claim and you disagree with any part of that decision, please ask to speak to the manager in the first instance. Should this not resolve Your dispute, We also have an internal dispute resolution panel that is available to You. You also have a right of appeal to the Tribunal. If You wish to appeal Our decision to the Tribunal You must lodge and file that application with the Tribunal no later than 45 days after receipt by You of our letter of decision for Your Claim.

7.4 Subrogation

In the event that you have rights against any other person or entity in respect of loss or damage covered by this policy, we are subrogated to Your rights to the extent We make payment to You with respect to a Claim and You agree to co-operate with Us in any proceedings at law which We may take under that right of subrogation.