

**calliden**

**Home Warranty Insurance - Victoria**

Insurance Policy

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### Calliden Home Warranty Insurance - Victoria Insurance Policy

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## Important Information

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This Policy is subject to the Insurance Contracts Act 1984, under that Act you have a duty of disclosure.

### Duty of Disclosure

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Before you take out insurance with us, you have a duty, under the Insurance Contracts Act 1984, to tell us of everything that you know, or could reasonably be expected to know, is relevant to our decision to insure you and to the terms of that insurance. If you are not sure whether something is relevant you should inform us anyway.

You have the same legal duty to inform us of those things before you renew, extend, vary, or reinstate your contract of general insurance.

Your duty however does not require disclosure of things that:

- reduce the risk
- are common knowledge
- we know or, in the ordinary course of our business, ought to know, or
- we have indicated we do not want to know.

If you do not comply with your duty of disclosure, we may be entitled to:

- reduce our liability for any claim
- cancel the contract
- refuse to pay the claim
- avoid the contract from its beginning, if your non-disclosure was fraudulent.

### Limitation or Exclusion of Rights Against Third Parties

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This Policy provides that you must not limit or exclude your rights against a party from whom you might otherwise be able to recover in respect to the loss or damage - see Condition e) of this Policy.

### Interested Parties

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This Policy provides that the cover provided by this Policy does not extend to an interest in the Dwelling that is not your interest - see Condition f) of this Policy.

## Privacy

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Calliden respects your privacy and operates at all times in accordance with its privacy policy. This privacy notification provides a summary of how Calliden treats your privacy, and it is recommended that you read the policy in conjunction with this notice.

Calliden collects personal information to assess your request for insurance, to administer your Policy, provide other insurance services as requested by you, and also to notify you about other Calliden services or promotions from time to time. At the time of collecting your information we will inform you of the purpose for the collection and the consequences if you choose not to provide the information.

In order to provide its insurance services Calliden may need to share your information with third parties including your agent or broker and Calliden's reinsurers and claims providers (for a full list see Calliden's privacy policy).

In accordance with Calliden's privacy policy you may obtain access at any time to information that Calliden or its service providers hold on you. If you would like to contact Calliden about privacy, or would like to obtain a copy of the privacy policy you may do so through one of the following means:

- obtain the privacy policy online at [www.calliden.com.au](http://www.calliden.com.au)
- by phone 02 9551 1111
- by email to [privacy@calliden.com.au](mailto:privacy@calliden.com.au)
- by letter to Privacy Officer, PO Box 348, Milsons Point NSW 1565

## Our Agreement With You

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This Policy is a legal contract between you and us.

You, or any other person insured under this Policy, must comply with all provisions of this Policy, otherwise there may be no claim payable under this Policy.

This Policy will only respond to claims in connection with work described in the Contract which supported the Application for this insurance, and carried out at the site described in the Certificate of Insurance.

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## Important Information (cont'd)

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### Dispute Resolution Process

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#### How You Can Resolve a Complaint You Have with Us

If you would like to make a complaint, we will do everything we can to try to resolve it as quickly and fairly as possible. The following paragraphs provide details on how you can lodge your complaint and how Calliden will try to resolve it.

You may contact us at any time if you are dissatisfied with any matter relating to your insurance with Calliden, including:

- our decision on your claim;
- our handling of your claim;
- the service of our representatives, assessors, loss adjusters or investigators; and
- your insurance policy.

#### Contact Us

- If you have a complaint regarding your claim, please contact your claims consultant.
- If you have a complaint regarding your insurance policy, please contact us on 02 9551 1111 and we will try to resolve your complaint straight away.
- You can write to us at:
  - Fax: 02 9551 1155
  - Address: PO Box 348, Milsons Point NSW 1565

#### How We Resolve Complaints

- We will address all complaints, except where specific circumstances apply, in accordance with Calliden's Complaints Handling Process. This process is compliant with the Insurance Council of Australia's Code of Practice. Both the Code of Practice and our Complaints Brochure, which contains a guide to our process, are available upon request.
- We will handle all complaints without cost to you.
- A complaints consultant will be assigned to the management of your complaint and will acknowledge your complaint within 2 business days of receipt. If further information is required to consider the complaint, it will be requested at this time.
- The complaints consultant will aim to resolve your complaint within a further 13 business days. In certain circumstances a longer period may be required, and we will request a later response date.
- The outcome of the complaint will be advised to you in writing, stating our reasons and any corrective action that will be undertaken.

#### If Your Complaint is Still Unresolved

If we cannot resolve your complaint within 15 business days or you are not happy with our response to your complaint, you can seek an external review via our external dispute resolution scheme, administered by the Financial Ombudsman Service (FOS).

This national scheme is for consumers, free of charge and is aimed at resolving disputes between insureds and their insurance companies.

For more information call 1300 78 08 08 or visit [www.fos.org.au](http://www.fos.org.au)

If the FOS is unable to address your complaint then Calliden may be able to provide you with details of an alternative external dispute resolution service.

### General Insurance Code of Practice

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Calliden is a signatory to the General Insurance Code of Practice (Code). The Code aims to raise standards of service between insurers and their customers. Calliden's service standards are in accordance with the Code.

For any information about the Code, including a copy of the Code, contact us or the Financial Ombudsman Service on 1300 78 08 08 or visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au)

### Goods and Services Tax

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All references in this Policy to dollar amounts and the Contract price are inclusive of Goods and Services Tax (GST).

If you are not registered for GST in the event of a claim we will reimburse you the GST component in addition to the amount that we pay. The amount that we are liable to pay under this Policy will be reduced by the amount of any input tax credit that you are or may be entitled to claim for the supply of goods or services covered by that payment.

If you are entitled to an input tax credit for the premium, you must inform us of the extent of that entitlement at or before the time you make a claim under this Policy. We will not indemnify you for any GST liability, fines or penalties that arise from or are attributable to your failure to notify us of your entitlement (or correct entitlement) to an input credit on the premium.

If you are liable to pay an excess under this Policy, the amount payable will be calculated after deduction of any input tax credit that you are or may be entitled to claim on payment of the excess.

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## Definitions

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Some key words and terms used in this **Policy** have special meanings. Wherever the following words or terms are used in the **Policy** they mean what is set out below.

**Act** means the Building Act 1993 as amended from time to time.

**Application** means the application form completed by the **Builder** applying for this insurance.

**Builder** is the builder described in the **Application** provided the builder is a builder under the **Order**.

**Building Practitioners Board** means the same as it does in the **Order**.

**Certificate of Insurance** means the most recent certificate issued by **us**.

**Commencement Day** means the same as it does in the **Order**.

**Completion Date** means the same as it does in the **Order**.

**Contract** means the **Insurable Domestic Building Contract** between **you** and the **Builder** pursuant to which the **Work** is being, or is about to be, carried out.

**Defective** means the same as it does in the **Order**.

**Developer** means the same as it does in the **Order**.

**Disappearance** (and its corresponding forms) means the same as it does in the **Order**.

**Domestic Building Work** means the same as it does in the **Order**.

**Dwelling** means the home (as defined in the **Order**) described in the **Application**.

**Insolvent** (and its corresponding forms) means the same as it does in the **Order**.

**Insurable Domestic Building Contract** means the same as it does in the **Order**.

**Non-Structural Defect** means the same as it does in the **Order**.

**Order** means the Order made under the **Act** by the Minister for Planning and as gazetted in May 2003 entitled 'Domestic Building Insurance Ministerial Order'.

**Policy** means this policy wording, any endorsements and the **Certificate of Insurance**.

**Statutory Warranty** means a warranty implied into the **Contract** by section 8 of the Domestic Building Contracts Act 1995.

**Structural Defect** means the same as it does in the **Order**.

**Structural Element** means the same as it does in the **Order**.

**Trade Practices Provision** means the same as it does in the **Order**.

**Tribunal** means the same as it does in the **Order**.

**Work** means the **Domestic Building Work** which is carried out or to be carried out by the **Builder** to the **Dwelling** under the **Contract**.

**We/us/our** means Calliden Insurance Limited (Calliden) (ABN 47 004 125 268, AFSL No. 234438)

**You/your/yours** means the person described in the **Application** as the owner of the building or land in respect of which the **Work** is or was being carried out, any successor in title to that person, and any other person who becomes entitled to the benefit of the **Statutory Warranties**.

This **Policy** is intended to comply with the requirements set out under the **Order** and any term of this **Policy** which conflicts with, or is inconsistent with, the **Order** shall be read and be enforceable as if it complies with the **Order**.

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## Our Cover

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**We** will provide insurance cover to **you**, subject to the terms, conditions and exclusions set out in this **Policy**, if the **Builder** dies, becomes **Insolvent**, or **Disappears** and **you** suffer:

- a) loss or damage resulting from non- completion of the **Work**;
- b) loss or damage resulting from **Defective Work**;
- c) loss or damage arising from a breach of a **Statutory Warranty**;
- d) loss or damage resulting from a failure of the **Builder** to maintain a standard of quality of work specified in the **Contract**;
- e) loss or damage resulting from conduct by the **Builder** in connection with the **Contract** that contravenes a **Trade Practices Provision**;
- f) the loss of a deposit or progress payment under the **Contract**; and
- g) the costs of alternative accommodation, removal and storage that are reasonably and necessarily incurred as a result of an event referred to in paragraphs a), b), c), and d) above. **We** will only pay the costs of alternative accommodation or storage that are reasonably and necessarily incurred for up to 60 days, excluding any period of delay attributable to **us**.

The cover **we** give in paragraphs a) to g) above extends to the acts or omissions of all persons contracted by the **Builder** to perform the **Work**.

### Certificate of Insurance

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- a) **We** must provide a **Certificate of Insurance** evidencing that insurance for the **Work** has been issued which complies with the **Order**:
  - i. to **you** immediately on the issue of this **Policy**; and
  - ii. on request by **you** or the **Builder** at any time.
- b) The **Certificate of Insurance** shall be in the form prescribed by the **Order**.

- c) Even though **you** or another person who applies for this insurance may be required to pay the premium when lodging an **Application**, **we** may refuse to accept the **Application**. The **Work** is not covered until **we** have provided to **you** or that other person a **Certificate of Insurance** evidencing insurance for the **Work**.

### Period of Cover

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- a) This **Policy** provides the cover in relation to **Non-Structural Defects** in respect of loss or damage occurring during the period commencing on the **Commencement Day** and ending 2 years after the earlier of:
  - i. the **Completion Date** of the **Contract**; and
  - ii. the date of termination of the **Contract**.
- b) Subject to paragraph a) above, this **Policy** provides the cover in respect of all other loss or damage occurring during the period commencing on the **Commencement Day** and ending 6 years after the earlier of:
  - i. the **Completion Date** of the **Contract**; and
  - ii. the date of termination of the **Contract**.

### We will pay

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1. **We** will pay up to, but not more than \$200,000 in the aggregate, for all claims made under this **Policy** in respect of any one **Dwelling**, including reasonable legal costs and expenses incurred by **you** associated with a successful claim against **us**.
2. If the claim is in respect of the cover for loss or damage resulting from conduct of the **Builder** that contravenes a **Trade Practices Provision**, **we** will only pay the costs of rectifying the **Work**.
3. If the **Work** is carried out on land in a plan of subdivision containing common property, any claim paid by **us** relating to the common property is applied pro rata to all such residences, and reduces **your** remaining available cover accordingly.
4. If the claim is in respect of the cover for loss or damage resulting from non-completion of the **Work**, **we** will not pay more than 20% of the **Contract** price (including any agreed variation to the **Contract** price) for the **Work**.

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## Our Cover (cont'd)

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### We will not pay

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1. Subject to paragraph 2 below, **you** must bear at **your** own risk:
  - a) the first \$1,000 of each claim first made more than 5 years after the **Completion Date**;
  - b) the first \$750 of each claim first made between 3 and 5 years after the **Completion Date**;
  - c) the first \$500 of each claim first made between 1 and 3 years after the **Completion Date**; or
  - d) a claim under \$500 made between 3 and 12 months after the **Completion Date**.
2. For the purposes of paragraph 1 above:
  - a) a claim of \$500 or more may relate to more than one defect if the amount claimed for any one or more defects is less than \$500.
  - b) The date when a claim is made is the earlier of:
    - i. the date when **you** first notify **us** of a circumstance that may give rise to a claim; and
    - ii. the date a claim is made.
  - c) An excess may be applied only once in relation to:
    - i. any claim comprising more than one defect; or
    - ii. two or more claims that relate to the same defect.

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## Exclusions

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- a) **We** will not pay if **you** are the **Builder**.
- b) **We** will not pay if **your** claim relates to a person who is excepted under the **Order**.
- c) **We** will not pay any claims for penalties, fines, liquidated damages or other sums relating to delay on the part of the **Builder**, except to the extent that such amounts represent the increase in rectification costs caused by the effluxion of time.
- d) **We** will not pay any claims for money paid to the **Builder** that exceeds the amounts that should have been paid in accordance with section 11 of the Domestic Building Contracts Act 1995, and as the case requires, sections 40(2), 40(3), or 40(4) of that Act.
- e) Subject to **your** right to recover any money paid to the **Builder** in relation to the **Contract** and **your** reasonable costs and expenses incurred in relation to the **Contract**, **we** will not pay any claims for the cover for non-completion of the **Work** if the **Builder** dies, becomes **Insolvent** or **Disappears** before the **Builder** commences the **Work** (other than the removal of vegetation) that requires the use of any tools or building materials.
- f) If **you** are also a **Developer**, **we** will not pay any claims for non-completion of the **Work**.
- g) **We** will not pay for loss or damage in respect of **Work** relating to landscaping, paving, retaining structures, driveways or fencing, with the exception of such works which:
  - i. are integral to the construction of a building,
  - ii. require the issue of a building permit under the **Act**,
  - iii. could result in water penetration of or within a building;
  - iv. could adversely affect health or safety;
  - v. adversely affect the structural adequacy of a building; or
  - vi. are not completed and the **Builder** has died, become **Insolvent** or **Disappeared**.
- h) **We** will not pay for loss or damage due to fair wear and tear of the **Work**, or from **your** failure to maintain the **Work**.
- i) **We** will not pay for loss, damage, consequential loss, cost or expense, disablement or liability, directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with:
  - i. war, invasion, acts of foreign enemies, hostilities, or war-like operations (whether war be declared or not) or civil war;

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## Exclusions (cont'd)

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- ii. mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, military or usurped power, confiscation, nationalisation, requisition, or destruction of or damage to property by or under order of any government, public or local authority or looting, sacking or pillage following any of the above.
- iii. nuclear reaction, nuclear radiation, radioactive contamination or nuclear weapon material;
- iv. risks normally insured under a policy for public liability or contract works,
- v. asbestos, or any materials containing asbestos in whatever form or quantity.
- vi. an act of God or nature,
- vii. **Your** failure to maintain appropriate protection against pest infestation or exposure to natural timbers,
- viii. consequential loss, not otherwise covered by the **Order**,
- ix. 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**.

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## Claims Procedure

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1. **You** should notify **us** of any facts or circumstances which may give rise to a claim as soon as **you** become aware of them to ensure that **you** comply with the requirements set out in paragraphs 2 below.
2. **We** may refuse to accept a claim if it is made later than 180 days after the date on which **you** first became aware, or might reasonably be expected to have become aware, of the death, **Disappearance** or **Insolvency** of the **Builder**.
3. If **you** give **us** written notice within 180 days after the date on which **you** first became aware, or might reasonably be expected to become aware, of the death, **Disappearance** or **Insolvency**, of the **Builder**, **we** will not rely on section 54 of the Insurance Contracts Act 1984 to reduce **our** liability under this **Policy**, or to reduce any amount otherwise payable in respect of a claim made by reason only of a delay in a claim being notified to **us**.
4. If **you** submit a claim to **us** in writing, **we** will make a decision regarding **our** liability within 90 days of receipt of the claim. If **we** do not make a decision regarding **our** liability within 90 days then, unless **we** receive an extension of time from **you** or the **Tribunal**, **we** will be deemed to have accepted liability for the claim.
5. If **you** wish to dispute **our** decision regarding **your** claim, **you** may appeal to the **Tribunal**. If **we** are given notice of proceedings before the **Tribunal**, **we** will accept findings made by the **Tribunal** as to whether any of the following events has occurred:
  - a) the non-completion of the **Work**;
  - b) an event referred to in paragraphs a) to g) under the section of the **Policy** entitled 'Cover'; and
  - c) if such an event has occurred, the amount of loss or damage suffered by **you** as a result of the event.
6. If **you** notify **us** of a defect (the initial defect), **we** will consider **you** to have given **us** notice of every other defect to which the initial defect is directly or indirectly related, whether or not the claim in respect of the initial defect is settled.
7. **You** must use **our** claim form to make a claim.
8. Upon making a claim under this **Policy**, **you** must:
  - a) comply with any reasonable direction by **us** in relation to the completion or rectification of the **Work**;
  - b) not undertake or cause to be undertaken, any rectification work without notifying **us**, unless those works are reasonably necessary to prevent or minimise any further loss or damage;
  - c) provide **us**, or any builder nominated or approved by **us**, with reasonable access to the relevant building site for the purpose of inspection, rectification and completion of the **Work**. **You** may refuse to provide access to any builder nominated by **us** if **you** have reasonable grounds for doing so (such as loss of confidence in the builder); and

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## Claims Procedure (cont'd)

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- d) **We** may not reduce our liability to **you** by reason of **your** failure to comply with a requirement under paragraphs 5 a), b) and c) above, unless **we** can prove that **your** failure increased **our** liability under this **Policy**.
9. **You** must not make any admissions, offer, promise or payment in connection with any claim.

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## Conditions

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- a) **We** may not avoid this **Policy** or refuse to make or reduce any payment under this **Policy** on the grounds that:
- i. the **Builder** breached any duty of the utmost good faith;
  - ii. the **Builder** failed to comply with any duty of disclosure;
  - iii. the **Builder** made representations to **us**;
  - iv. the **Builder** failed to comply with a provision or requirement of the **Policy**;
  - v. the **Builder** prejudiced **our** interests by act or omission of any description; or
  - vi. the premium or any instalment of the premium has not been paid.
- b) **We** are entitled to recover from the **Builder** any claim paid by **us** in the circumstances referred to in paragraph a) above.
- c) If **we** pay a claim, **we** are entitled to be subrogated to **your** rights against any party in relation to the claim to the extent of the amount paid by **us**.
- d) **We** will notify the **Building Practitioners Board**, at the times and in the manner agreed with the Board, in the event that:
- i. a **Builder** is refused insurance, ceases to be eligible to renew or procure insurance or, in respect of **Domestic Building Work** performed prior to the commencement of the **Order**, fails to purchase or maintain required insurance;
  - ii. any claim under this **Policy** is settled or paid by agreement or otherwise.
- e) **You** must not limit or exclude **your** rights against a party from whom **you** might otherwise be able to recover in respect to the loss or damage. If **you** do, **our** liability to **you** is reduced to the extent **we** can no longer recover from that other party as a result of the limitation or exclusion by **you**.
- f) The cover provided by this **Policy** does not extend to an interest in the **Dwelling** that is not **your** interest. **We** will not be liable under this **Policy** to anyone except **you**.
- g) **You** must take reasonable precautions to avoid or minimise loss or damage covered by this **Policy**.
- h) **You** must comply with **your** obligations under the **Policy**. Otherwise **we** may not have to pay **your** claim(s).

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## Other Matters

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### Jurisdiction

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This **Policy** is governed by the law of Victoria. The law of Victoria includes Commonwealth legislation such as the Insurance Contracts Act 1984. Any rights to refuse to pay a claim are subject to section 54 of that Act.

### How we will communicate

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- a) **All** communications **you** are required to give or make under this **Policy** must be sent in writing to **us**.
- b) All communications **we** are required to give or make under this **Policy** will be sent in writing to **you** at the address specified in the **Certificate of Insurance** or as notified by **you** from time to time.
- c) All communications sent by post to **you** or **your** appointed agent will be deemed to have been received by **you** on the third day following the day of posting.
- d) All communications sent by facsimile to **you** or **your** appointed agent will be deemed to have been received by **you** on the date of transmission.

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