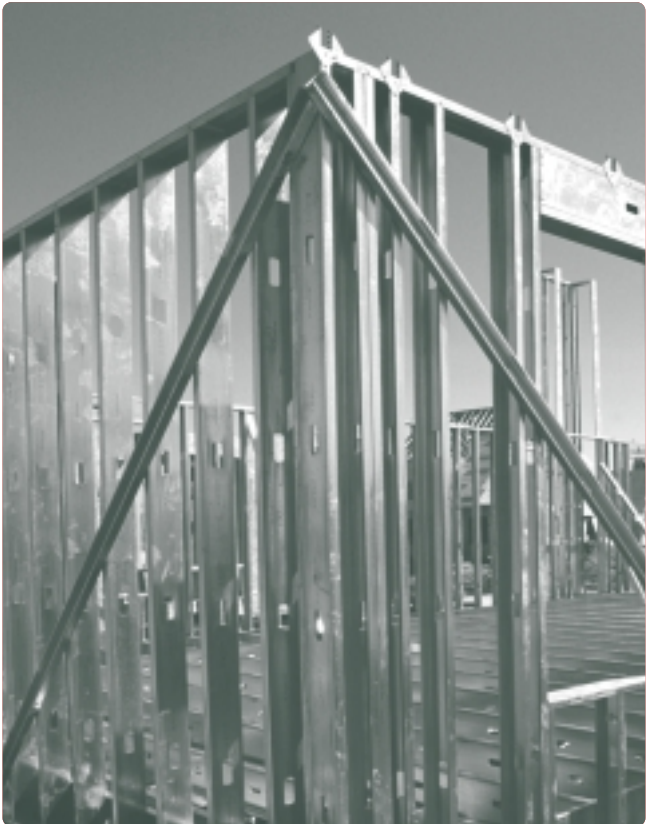




Owner-Builder  
VIC

Residential Construction  
Warranty Insurance



# Important Notices

The policy is made up of this policy wording, any endorsements and the certificate of insurance. You should read those documents together, to tell you what we cover, what we exclude, what we pay to settle claims and other important information.

Please note that you have obligations under the policy with which you must comply, otherwise we may not have to pay your claim(s).

## Renewal

The policy will not be renewed and is not of a kind that it is usual to renew.

## Duty of Disclosure

Before you enter into a contract of general insurance with an insurer, you have a duty, under the *Insurance Contracts Act 1984*, to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of insurance and, if so, on what terms.

You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of any matter:

- ▼ that diminishes the risk to be undertaken by the insurer;
- ▼ that is of common knowledge;
- ▼ that your insurer knows or, in the ordinary course of its business, ought to know;
- ▼ as to which compliance with your duty is waived by the insurer.

### **Non-disclosure**

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract.

If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

# 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.

# Interested Parties

The cover provided by this policy does not extend to an interest in the home that is not your interest. We will not be liable under this policy to anybody except you.

# Privacy Statement

The *Privacy Act 1988* (as amended) now applies and requires us to inform you that:

## **Purpose of Collection**

We collect personal information (*this is information or an opinion about an individual whose identity is apparent or can reasonably be ascertained and which relates to a natural living person*) for the purposes of providing insurance services to you, including:

- ▼ evaluating your application;
- ▼ evaluating any request for a change to any insurance provided;
- ▼ providing, administering and managing the insurance services following acceptance of an application; and
- ▼ investigating and, if covered, managing claims made in relation to any issue you have with us or other companies within the same group.

The personal information collected can be used or disclosed by us for a secondary purpose related to those purposes listed above, but only if you would reasonably expect us to use or disclose the information for this secondary purpose. However for sensitive information, the secondary purpose must be directly related to the purposes listed above.

### **Disclosure**

We may disclose your personal information (and receive some personal information from), when necessary and in connection with the purposes listed above, to other companies within the same group, your insurance broker or our agent, Government bodies, loss assessors, claim investigators, reinsurers, other insurance companies, mailing houses, claims reference providers, other service providers, hospitals, medical and health professionals, legal and other professional advisers.

### **Consequences if Information is not Provided**

If you do not provide us with personal information we need we will be unable to consider your application for insurance cover, administer your policy or manage any claim under your policy.

### **Access**

You can request access to the personal information by writing to your nearest Vero branch or Vero Head Office and providing us with full details of what you would like to know or see.

### **Other Offers**

We would like to use your personal information to keep you up to date with the range of other products and services available from us or other members of the Vero group of companies to which we belong. We may give your personal information to our agent or your broker to enable us to send you this information. Please contact us if you do not want us to do this.

# Goods and Services Tax

This policy has a provision concerning GST on premium and claims.

# 1. Definitions

In the **policy**:

You/your means the party person who is the purchaser of the land on which the work is done together with (where the context admits):

- (a) each person who becomes entitled to the benefit of any **statutory warranties**;
- (b) each person who is a successor in title to the purchaser; and
- (c) if the **domestic building work** is carried out on land in a plan of subdivision containing common property, the body corporate for that land or a building on that land.

We/our/us means Vero Insurance Limited  
ABN 48 005 297 807.

**Act** means the *Building Act 1993*.

**Builder** has the same meaning as it has in the **Order**.

**Certificate of Insurance** means the certificate referred to in clause 4.

**Completion date** has the same meaning as it has in the **Order**.

**Contract** means any contract for the sale of a building between you and the owner-builder, provided it is an insurable contract of sale under the **Order**.

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

**Domestic building work** has the same meaning as it does in the **Order**.

**Dwelling** means the home described in the **project application**, provided it is a home under the **Order**.

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

**Non-structural** defect means a defect that is not a **structural defect**.

**Order** means the **Order** under section 135 of the **Act** made by the Minister for Planning and as gazetted in May 2002 entitled "*Domestic Building Insurance Ministerial Order*".

**Owner-builder** means the owner-builder described in the **project application** who is also an owner-builder under the **Order**.

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

**Project application** means the application form completed by the **owner-builder** to apply for this insurance.

**Statutory Warranties** means the warranties implied by section 137C of the **Act**.

**Structural defect** has the same meaning as it does in the **Order**.

**Trade practices provision** has the same meaning as it does in the **Order**, namely sections 52, 53, 55A or 74 of the *Trade Practices Act 1974* of the Commonwealth or sections 9, 11 or 12 of the *Fair Trading Act 1999*.

**Tribunal** has the same meaning as it does in the **Order**, namely the Victorian Civil and Administrative Tribunal established by the *Victorian Civil and Administrative Tribunal Act 1998*.

**Work** means the **domestic building work** which is carried out or to be carried out by the **owner-builder** to the **dwelling**.

A reference to any legislation is a reference to the legislation as amended from time to time.

## 2. The Policy

This **policy** is subject to 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.

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

## 3. What's Covered

### 3.1 When We Will Pay

Subject to the terms of this **policy**, including the exclusions, we will cover you if the **owner-builder** becomes **insolvent**, dies or disappears and you suffer:

- (a) loss or damage resulting from a breach of any of the **statutory warranties**; and

- (b) alternative accommodation, removal and storage costs as a result of clause 3.1(a).

We will not pay you in respect of a **statutory warranty** that all materials used under the **work** were new to the extent that any materials used were not new if:

- (a) condition report required by section 137B(2)(a) of the **Act** states that the materials were not new; or
- (b) it was apparent from the nature of the relevant **work** that the materials were not new.

## 3.2 What We Will Pay

We will either make good or pay the amount of that loss or damage (at our option), subject to the following limitations:

- (a) Subject to paragraphs clause 3.2(b) to (g) inclusive, you must bear at your own risk:
  - (i) the first \$1,000 of each claim first made more than 5 years after the **completion date**;
  - (ii) the first \$750 of each claim first made between 3 and 5 years after the **completion date**;
  - (iii) the first \$500 of each claim first made between 12 months and 3 years after the **completion date**;
  - (iv) claim under \$500 first made, between 3 and 12 months after the **completion date**.
- (b) For the purposes of clause 3.2(a):
  - (i) 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;
  - (ii) the date when a claim is made is the earlier of:
    - ▼ the date when you first notify us of a circumstance that may give rise to a claim; and
    - ▼ the date a claim is made;and
  - (iii) an excess may be applied only once in relation to:
    - ▼ any claim comprising more than one defect; or
    - ▼ two or more claims that relate to the same defect.

- (c) Clause 3.2(a) does not reduce our liability in respect of loss or damage arising between:
  - (i) the date of the **contract**; and
  - (ii) the date that is 3 months after the **completion date**if the **contract** is entered into before the end of 3 months after the **completion date**.
- (d) We will not pay more than \$200,000 in the aggregate for all claims made under this **policy** in respect of any one **dwelling**, including your reasonable legal costs and expenses associated with a successful claim against us.
- (e) 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.
- (f) If the claim is in respect of loss or damage resulting from conduct of the **builder** which contravenes a **trade practices provision**, we will only pay the costs of rectifying the **work**.
- (g) We will only pay alternative accommodation, removal and storage costs reasonably and necessarily incurred for up to 60 days.

## 3.3 What We Exclude

- (a) We will not pay if:
  - (i) you are the **owner-builder**;
  - (ii) you are a related body corporate (within the meaning of section 50 of the *Corporations Act 2001*) to the **owner-builder**; or
  - (iii) you and the **owner-builder** have a common director or shareholder although both you and the **owner-builder** are not public companies.
- (b) We will not pay any claim for loss or damage relating to any defect or incomplete **work** which is referred to in the report required to be provided to an intending purchaser by the **owner-builder** under section 137B of the **Act**.
- (c) We will not pay for loss or damage relating to **work** that is landscaping, paving, retaining structures, driveways or fencing, except for such works **which**:

- (i) is integral to the construction of a building;
  - (ii) requires 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) could adversely affect the structural integrity of a building; or
  - (vi) is not completed and the **builder** has died, become **insolvent** or **disappeared**.
- (d) We will not pay for loss or damage that could reasonably be expected to result from fair wear and tear of the **work**, or from your failure to maintain the **work**.
- (e) We will not pay you for loss or damage incurred as a result of:
- (i) war;
  - (ii) a nuclear event;
  - (iii) civil unrest;
  - (iv) risks normally insured under a **policy** for public liability and/or contracts works;
  - (v) asbestos contamination or removal;
  - (vi) act of God or nature;
  - (vii) a failure by you to maintain appropriate protection against pest infestation or exposure to natural timbers;
  - (viii) consequential loss or damage not otherwise covered by the **Order**; or
  - (ix) malfunction in any mechanical or electrical equipment or appliance where we can prove that such malfunction is not attributable to the workmanship of, or installation by, the **owner-builder**.

## 4. When Cover Becomes Effective

- (a) Upon issue of this **policy**, we will provide a **certificate of insurance** evidencing that insurance for the **work** has been issued which complies with the **Order**. The **certificate of insurance** shall be in the form prescribed under the **Order**.
- (b) We will also provide a **certificate of insurance** if you or the **builder** request one at any time after the **policy** has been issued.

- (c) Even though you or another person who applies for this insurance may be required to pay the premium when lodging a **project application**, we may refuse to accept the **project application**. The **work** is not covered until we have provided to you or another person a **certificate of insurance** evidencing insurance for the **work**.

## 5. How Long We Cover You For

- (a) This **policy** provides cover in relation to **non-structural defects** in respect of loss or damage occurring during the period:
- (i) commencing on the date of the **contract**; and
  - (ii) ending not earlier than 2 years after the **completion date** for the work.
- (b) Subject to clause 5(a), the **policy** provides cover in respect of all other loss or occurring during the period:
- (i) commencing on the date of the **contract**; and
  - (ii) ending not earlier than 6 years after the **completion date** for the domestic **building work**.

## 6. When You Must Make a Claim

- (a) We may refuse to accept a claim if it is made later than 180 days after you first become aware, or might reasonably have been expected to become aware, of the death, **disappearance** or **insolvency** of the **owner-builder**.
- (b) If you notify us in writing within 180 days of first becoming aware, or of when you might reasonably have been expected to have become aware, of the death, **disappearance** or **insolvency** of the **owner-builder**, then we will not rely on any delay by you in notifying us of the claim to reduce our liability to you for the claim pursuant to section 54 of the *Insurance Contracts Act 1984*.

## 7. When We May Not Avoid The Policy or Refuse to Pay a Claim

In accordance with clause 28 of the **Order**, we may not avoid the **policy** or refuse to make or reduce any payment under the **policy** on the grounds that:

- (a) the **owner-builder**:
  - (i) breached any duty of the utmost good faith;
  - (ii) failed to comply with any duty of disclosure;
  - (iii) made representations to us;
  - (iv) failed to comply with a provision or requirement of the **policy**; or
  - (v) prejudiced our interests; and
- (b) the premium or any instalment of the premium has not been paid by any person.

We are entitled to recover from the **owner-builder** any claim paid by us in the circumstances referred to in clauses 7(a) and (b).

If you fail to carry out your obligations under this **policy**, we may reduce our liability to you only to the extent that your failure prejudiced our interests.

## 8. Refusal of Cover

We will notify the Building Practitioners Board, at the times and in the manner agreed with the Board, in the event that:

- (a) 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; or
- (b) any claim under a policy of required insurance is settled or paid by agreement or otherwise.

## 9. Making a Claim

- (a) 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 clause 6 (*'When You Must Make a Claim'*).

- (b) If you submit a claim to us in writing, we will make a decision regarding our liability to you within 90 days. If we do not make a decision regarding our liability to you within 90 days then, and unless we receive an extension of time from the **Tribunal**, we will be deemed to have accepted liability for your claim.
- (c) If you notify us of a defect, we will consider you to have given us notice of every other defect to which the defect notified is directly or indirectly related, whether or not your claim in respect of the defect that was actually notified is settled.
- (d) 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** with respect to:
  - (i) whether an event referred to in clause 3.1 (*'When We Will Pay'*) has occurred; and
  - (ii) if such an event, or events, has occurred, the amount of loss or damage suffered by you as a result.

## 10. Subrogation

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.

You must not limit or exclude your rights against any such party. 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.

## 11. Your Obligations

Upon making a claim, 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; and

- (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 a particular builder if you have reasonable grounds for doing so (such as loss of confidence in the builder).

You must take all reasonable precautions to avoid or minimise any loss or damage covered by this **policy**.

You must give us any assistance, information or documents which we request.

You must not make any admissions, offer, promise or payment in connection with any claim.

If you fail to carry out your obligations under the policy, we may reduce our liability to you only to the extent that your failure prejudiced our interests.

## 12. Goods and Services Tax

As part of the **policy** premium, we will charge you an amount on account of GST.

You must inform us of the extent to which you are entitled to an input tax credit for that GST amount each time that you make a claim under this **policy**. No payment will be made to you for any GST liability that you may incur on the settlement of a claim if you do not inform us of your entitlement or correct entitlement to an input tax credit.

Despite the other provisions of this insurance (including provisions in the wordings, any schedules and any endorsement), our liability to you will be calculated taking into account any input tax credit to which you are entitled for any acquisition which is relevant to your claim, or to which you would have been entitled were you to have made a relevant acquisition.

If your sum insured or **policy** limit is not sufficient to cover your loss, we will only pay GST (less any relevant input tax credit) that relates to our proportion of your loss. We will pay that GST amount in addition to your sum insured or **policy** limit.

'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given under the *A New Tax System (Goods and Services Tax) Act 1999*.

**Insured by:**  
Vero Insurance Limited  
ABN 48 005 297 807

V4707 11/03

