



Developer

NSW

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 residential building that is not your interest. We will not be liable under this policy to anybody except you.

Privacy Statement

The Privacy Act 1988 (Cth) (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*) from or about you for the purposes of:

- ▼ providing insurance services to you;
- ▼ evaluating the project application by the builder;
- ▼ evaluating any request for amendment to any insurance provided;
- ▼ issuing, administering and managing the insurance provided following acceptance of a project application; and
- ▼ investigating and, if covered, managing claims made in relation to any insurance you have with us or other companies within the Promina 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.

The personal information collected can be used or disclosed by us as required by any relevant home building insurance legislation.

Disclosure

When necessary and in connection with the purposes listed above, we may disclose your personal information to, and/or receive some personal information from:

- ▼ other companies within the Promina group;
- ▼ your insurance intermediary or our agent;
- ▼ Government bodies, loss assessors, claims investigators, reinsurers;
- ▼ other insurance companies, mailing houses, claims reference providers, legal and other professional advisers;
- ▼ other service providers, hospitals, medical and health professionals.

Consequences if Information is not Provided

If you do not provide us with the information we need we will be unable to administer your policy or manage any claim under your policy.

Access

You can request access to the personal information we hold about you by contacting us at Vero Insurance Limited, 465 Victoria Avenue, Chatswood, NSW 2067.

In some circumstances we may not agree to allow you access to some or all of the personal information we hold such as when it is unlawful to give it to you. In such cases we will give you reasons for our decision.

Privacy Statement issued

Vero Insurance Limited, 465 Victoria Avenue, Chatswood, NSW 2067.

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 Promina group. 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 person:

- (a) who enters into a contract with the **developer** for the sale of land on which **work** has been done or is to be done;
- (b) on whose behalf the **work** has been done or is to be done (but not the **developer**); and
- (c) any successor in title to such a person.

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

Act means the *Home Building Act 1989*.

Builder means the person responsible for doing the **work**.

Completion has the same meaning as it does in the **Regulation** in respect of the **work**.

Contract means the contract between the **builder** and the **developer** pursuant to which the **work** has been done or is to be done.

Contract price has the same meaning as it does under the **Act** in relation to the **contract**.

Developer is the developer described in the **project application** provided the developer is a developer under the **Act**.

Disappearance has the same meaning as it does under the **Act**.

Dwelling means dwelling(s) (as defined under the **Act**) described in the **project application** and includes any garage or storage area that is included in the same title as the dwelling(s).

Insolvency has the same meaning as it does under the **Act**.

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

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

Regulation means the *Home Building Regulation 2004*.

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

Residential flat building means any building or portion of a building containing 2 or more strata or company title home units (including any associated structures and improvements).

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

Statutory warranty has the same meaning as it does under the **Act**.

Structural defect has the same meaning as it does under the **Act**.

Structural element has the same meaning as it does under the **Act**.

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

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 New South Wales. The law of New South Wales 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 **Act** and any term of this **policy** which conflicts with, or is inconsistent with, the **Act** shall be read and be enforceable as if it complies with the **Act**.

3. What's Covered

3.1 When We Will Pay

Subject to the terms of this **policy**, including the exclusions, we will pay:

- (a) a person on whose behalf the **work** has been done or is to be done if that person suffers loss or damage resulting from non-completion of the **work** because of the **insolvency**, death or **disappearance** of the **builder**; or
- (b) you if you suffer the following loss or damage, being loss or damage in respect of which you cannot recover compensation from the **builder** or have the **builder** rectify because of the **insolvency**, death or **disappearance** of the **builder**:
 - (i) loss or damage arising from a breach of a **statutory warranty**;
 - (ii) loss or damage resulting from faulty design, where the design was provided by the **builder**;
 - (iii) loss or damage resulting from non-completion of the **work** because of early termination of the **contract** because of the **builder's** wrongful failure or refusal to complete the **work**;
 - (iv) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of an event referred to in clauses 3.1(a) or 3.1(b)(i) above;
 - (v) the loss of a deposit or progress payment due to an event referred to in clauses 3.1(a) or 3.1(b)(i) above; and
 - (vi) any legal or other reasonable costs incurred by you in seeking to recover compensation from the **builder** for the loss or damage or in taking action to rectify the loss or damage.

The cover we give in clauses 3.1(a) and 3.1(b) extends to the acts or omissions of a person contracted by the **builder** to perform the **work**.

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) We will not pay the first \$500 of each claim;
- (b) If the **work** is not **residential flat building work**, we will not pay more than \$200,000 (or such other amount as may be prescribed from time to time by the **Act** and the **Regulation**) in the aggregate for all claims under this **policy**;
- (c) If the work is **residential flat building work**, and the amount obtained by dividing the value of the **work** by the number of **dwellings** in the building does not exceed \$12,000, we will not pay more than \$200,000 in the aggregate for all claims made under this **policy**;
- (d) If the work is **residential flat building work**, and the amount obtained by dividing the value of the work by the number of **dwellings** in the building exceeds \$12,000, we will not pay more than \$200,000 in the aggregate for all claims made under this **policy** in respect of each **dwelling** in the building;
- (e) If the claim is in respect of 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**;
- (f) We will not pay for any part of a deposit or payment that exceeds the amount specified for such a deposit or payment in section 8 of the **Act**;
- (g) We will not pay for any part of a progress payment that exceeds the amount specified for such a payment under the **contract**.

3.3 What We Exclude

We will not pay:

- (a) if you are the **builder**;
- (b) if you are a **developer**;
- (c) if you are a person who does **residential building work** other than under a contract;
- (d) if you are a holder of a contractor licence who or which carried out **residential building work**;

- (e) if you are a company related (within the meaning of section 50 of the *Corporations Act 2001*) to any corporate person referred to in clauses 3.3(b) - 3.3(d) above;
- (f) if your claim relates to the sale of land more than 6 years after the completion of the **work**;
- (g) if the **contract price** does not exceed \$12,000 or any other amount prescribed by the **Regulation**;
- (h) if, where the **contract price** is not known, the reasonable market cost of the labour and materials involved does not exceed \$12,000 or any other amount prescribed by the **Regulation**;
- (i) claims that may otherwise arise under the **contract** in the nature of liquidated damages for delay. However, the limitation does not extend to any increase in rectification costs by the effluxion of time;
- (j) 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**;
- (k) for loss or damage in relation to a defect in, or the repair of damage to, **structural elements** in the non-residential part of a building that supports or gives access to the residential part, unless it is a defect or damage that adversely affects the structure of the residential part or the access to it;
- (l) for damage caused by the normal drying out of the **work** if the **builder** has taken all reasonable precautions in allowing for the normal drying out when carrying out the **work**;
- (m) for damage due to or made worse by the failure by you or your predecessors in title to take reasonable and timely action to minimise the damage;
- (n) for loss or damage in relation to an appliance or apparatus (such as a dishwasher or air conditioning unit) if the claim is made after the expiry of the manufacturer's warranty period for the appliance or apparatus concerned, or, if there is no warranty period, outside the reasonable lifetime of the appliance or apparatus;

- (o) in respect of a claim for damage to work or materials that is made outside the reasonable lifetime of that work or material or the manufacturer's warranty period for the materials;
- (p) in respect of a claim in relation to a defect due to a faulty design provided by you or your predecessor in title;
- (q) a claim in relation to loss, damage, costs or expenses of any nature directly or indirectly arising from or in respect of:
 - (i) an act of terrorism; or
 - (ii) any action taken in controlling, preventing, suppression or in any way relating to an act of terrorism;

regardless of whether any other cause or event contributed concurrently to the death, injury, illness, loss, damage, costs or expenses.

For the purpose of this policy, act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is committed for or in connection with political, religious, ideological, ethnic or similar purposes or reasons including the intention to influence any government and/or to put the public or any section of the public in fear.

In the event that any portion of this exclusion is found to be invalid or unenforceable, the remainder of this policy shall remain in full force and effect.

- (r) a claim in relation to loss, damage, costs or expenses of any nature directly or indirectly arising from or in respect of:
 - (i) the inhalation of, or exposure to, asbestos, asbestos fibres or derivatives of asbestos; or
 - (ii) the fear of consequences of exposure to, or inhalation of, asbestos, asbestos fibres or derivatives of asbestos.

We will not pay for that part of a claim in relation to loss, damage, costs or expenses directly or indirectly arising from or in respect of the cost of cleaning up, or removal of, or damage to, or loss of use of, property arising out of any asbestos, asbestos fibres or derivatives of asbestos.

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 anybody except you.

4. When Cover Becomes Effective

Even though you or another person who applies for this insurance may be required to pay the premium (and associated statutory charges) 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 that other person a certificate of insurance evidencing insurance for the **work**.

If we have provided to you or another person a certificate of insurance evidencing insurance for the **work**, we are not entitled to refuse to pay a claim in respect of the **work** or to cancel the insurance merely on the grounds that the premium (and associated statutory charges) were not paid.

5. How Long We Cover You For

- (a) This **policy** provides cover in respect of loss or damage arising from non-completion of the **work** for 12 months after the failure to commence, or cessation of, the **work**.
- (b) This **policy** provides cover in respect of loss or damage arising from a **structural defect** for 6 years after the **completion** of the **work** or the end of the **contract**, whichever is the later.
- (c) This **policy** provides cover in respect of loss or damage, other than loss or damage arising from a **structural defect** or non-completion of the **work**, for 2 years after the **completion** of the **work** or the end of the **contract**, whichever is the later.

6. When You Must Make a Claim

- (a) Except as referred to in clause 6(b), we will not pay any claim if the claim is notified to us later than 6 months after you first become aware, or ought reasonably to be aware, of the fact or circumstance giving rise to the claim.
- (b) We will not pay any claim for loss or damage resulting from incomplete **work** if the claim is notified to us later than 12 months after:
 - (i) the date of the **contract**;
 - (ii) the date provided in the **contract** for the commencement of **work**; or
 - (iii) the date **work** ceased,whichever is the latest.
- (c) We may not reduce our liability under this **policy** or reduce any amount otherwise payable in respect of a claim, merely because of a delay by you in notifying us of a claim if the claim is notified to us within the time periods specified in clauses 6(a) and 6(b) above.
- (d) 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 notify you in writing of our decision regarding our liability to you within 90 days of you lodging your claim with us then, unless we agree a longer period of time with you (such as when further information is required), we will be deemed to have accepted liability for your claim.

7. Non-Disclosure or Misrepresentation

We are not entitled to either refuse to cover you for a claim under this **policy** or to cancel this **policy** for failure to comply with the duty of disclosure or misrepresentation by the **builder**.

We may, however, recover from the **builder** any amount we would not otherwise have paid in those circumstances.

You must comply with your obligations under the **policy**, otherwise we may not have to pay your claim(s).

8. 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 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.

9. Other terms

You must use our claim form to make a claim.

You must give us any assistance, information or documents which we request. This includes giving us, our nominated builder and your builder, reasonable access to inspect, rectify or complete the **work** unless you have reasonable grounds to refuse access).

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

You must comply with your obligations under the **policy**, otherwise we may not have to pay your claim(s).

10. Goods and Services Tax

In addition to the **policy** premium, we will charge an amount on account of GST.

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*.

Vero Insurance Limited contact details:

If your property is in New South Wales or ACT:

Vero Warranty

Locked Bag 9000

Chatswood NSW 2067

**If your property is in Victoria, South Australia,
Western Australia or Tasmania:**

Vero Warranty

PO Box 294

Collins Street West

Melbourne VIC 8007

Insured by:
Vero Insurance Limited
ABN 48 005 297 807

V4705 PB 09/05

Effective date: 01/09/05

